

EMBARGOED DRAFT

INTERNATIONAL
ACCOUNTABILITYPROJECT

B*i*C
Bank Information Center

Phulbari Coal Project:

*An Assessment of the Draft Resettlement Plan Prepared by
Global Coal Management/Asia Energy Corporation*

August 2008

The Phulbari Coal Project: An Assessment of the Draft Resettlement Plan Prepared by Global Coal Management/Asia Energy Corporation¹

August 2008

Executive Summary

Introduction

The Phulbari coal project is a proposed open pit coal mine in northwest Bangladesh and includes the construction of at least one 500-MW power plant. The project will acquire almost 6,000 hectares of land (60 km²) and, according to project documents and independent reports will physically and economically displace between 50,000-220,000 people. This displacement will take place in one of the most densely populated countries in the world and will destroy a critical agricultural region in the country, threatening Bangladesh's food supply.² Land, specifically land used for agriculture, and other resources such as timber, fish ponds and bamboo trees, will not be replaced. The scope and impacts on the natural resources and water supply around the project area will be severe. In short, the lives and livelihoods of hundreds of thousands of people will be irrevocably disrupted by the mining operation.

While a vibrant grassroots movement has formed around the project it has been met with gross violations of human rights. Concerns from the Phulbari community and opposition to the mine, coupled with a changing political situation in Bangladesh have created a volatile environment in the project area. Many of those opposing the mine have suffered various civil rights abuses, including, in some cases, public beatings, arrest and torture.³

The Asian Development Bank's (ADB) private sector operations department (PSOD) had been working since 2004 with Asia Energy Corporation (AEC), a wholly owned subsidiary of U.K.-based Global Coal Management Resources (GCM),⁴ to prepare the Phulbari Coal Project for Board Approval. After repeated concerns from the Phulbari community and civil society organizations and questions from within the Bank, PSOD dropped the project from its pipeline in April 2008, declaring that it was still "premature" to provide political risk guarantee and investment support to AEC. However, the ADB's South Asia Department has suggested that the Bank's public sector arm may consider the project should the Bangladesh government request it.⁵

¹ This report was written by the International Accountability Project and commissioned by the Bank Information Center in order to provide analysis of AEC's draft Resettlement Plan for the Phulbari Coal Project in Bangladesh.

² The Phulbari region remains one of the only areas in Bangladesh that does not face annual water-logging which is likely to be exacerbated through climate change (AEC Phulbari Coal Project Environmental and Social Impact Assessment, Volume 1, Chapter 7, p. 30)

³ For example, see: <<http://www.thedailystar.net/2007/02/23/d70223020325.htm>>.

⁴ Henceforth, "AEC" will denote references to GCM as well as its subsidiary, since the company is still known as "Asia Energy Corporation" in Bangladesh.

⁵ Meeting with Civil Society Organizations, March 29, 2008.

In addition to possible financing from ADB, AEC continues to receive support through equity investments of several major private financial institutions. In a recent development, Barclay's Bank, one of the key shareholders and financial advisor to the project, sold its shares in AEC, withdrawing its financial support for the project as of June 2008.

This report provides a desk review and assessment of the December 2006 draft Resettlement Plan (RP) prepared by AEC.⁶ It analyzes the existing draft Resettlement Plan in relation to international best practice on displacement of people and against ADB's own resettlement policies. Furthermore, this report aims to identify the likely impacts on the well-being of those directly and indirectly impacted by the project.

Analysis and Findings

Underestimation of affected peoples: The draft Resettlement Plan grossly underestimates the scope of the affected population. While AEC identifies 49,487 persons to be affected, according to a September 2006 Expert Committee Report (ECR) commissioned by the Bangladesh Government, up to 129,417 people will be directly affected by the mine and indirect impacts of the project will affect over 220,000 people, primarily due to dewatering.⁷ AEC has not only failed to account for all those potentially affected by immediate and long-term environment impacts, but also excludes those displaced by the mine's associated facilities, members of communities bisected by the project, a comprehensive range of host communities members, and all so-called "non-displaced" persons.

Lack of replacement agricultural land: Land scarcity will be a significant factor in this project.⁸ Agriculture is a key economic activity for people in the project area with 67 percent of all surveyed households earning income from the sale of agricultural products. While 80 percent of the land that will be taken for this project is agricultural, there is insufficient land to meet replacement needs. Despite limited possibilities for affected peoples to purchase productive land, the selection criteria governing access to the limited lands identified as available is not specified.

Under-compensation and limited rehabilitation measures: Cash compensation is a primary feature of this project. However, cash-based compensation, as opposed to land-based compensation, has been found to rarely improve the livelihoods of displaced

⁶ The draft RP was previously available AEC's website however, since late-2007 it has been removed and is currently under revision. AEC notes on their website that the revised draft RP would be disclosed in "early 2008" however, as of the date of this analysis, no updated RP is publicly available. (The AEC 2006 draft RP has been made available on the website of Bank Information Center, < <http://www.bicusa.org/en/Project.Resources.59.aspx>>.

⁷ In November 2005, the Bangladesh (BD) Govt. formed an Expert Committee to evaluate the Phulbari project. The head of this committee was Prof. Md. Nurul Islam (Director, Institute of Appropriate Technology, Bangladesh University of Engineering and Technology). The Committee examined all relevant documents, met 19 times and conducted a field visit to Phulbari in January 2006. Its 163-page report is in Bangla and covers numerous issues, including the legal and environmental aspects of the project. The summary of the report has been translated into English. The title of the report is: Report of the Expert Committee to Evaluate Feasibility Study Report and Scheme of Development of the Phulbari Coal Project, September 20, 2006.

⁸ The draft RP acknowledges land in Bangladesh is "a scarce and valuable resource {...}" (p. 6-6).

persons.⁹ ADB policy on involuntary resettlement recommends land-based compensation whenever possible for displaced populations who practice land-based livelihoods.¹⁰ Furthermore, according to current research on development-induced displacement “compensation by itself cannot adequately restore and improve the income levels and livelihood standards of people subjected to expropriation and forced displacement.”¹¹ The draft Resettlement Plan contains no mention of benefit sharing for affected peoples and does not adequately plan for such things as employment opportunities and sufficient livelihood assistance following resettlement. In general, the impacts on vulnerable groups, such as women—who according to AEC make-up almost half of the affected population—needs to be studied more comprehensively in order to adequately plan for restoration of livelihoods and mitigate adverse impacts unique to these groups.

Inadequate resettlement planning: All land needed for the mine footprint will be taken at once, through a single-notification process. However, affected households will be relocated as mine expansion occurs, over the course of at least 10 years. Legal and social structures during this interim period—after land acquisition but before actual relocation—are tenuous. Those households not immediately resettled will need to lease back their agricultural land from the company in order to continue farming. Water supply during this time poses a particular problem, as does the availability of social services in partially vacated communities.

Lack of transparency and accountability: Openness, informed consultation and systems of accountability are absolutely necessary to achieve participatory decision-making in this project and, as study and experience have proven, lessen the adverse impacts of the project. However, public information disclosure and consultation for the Phulbari mine have been minimal, with very limited information available in the *Bangla* language. In addition, civil rights abuses leading to the intimidation of members of the affected communities have corroded the consultation process. Finally, plans for grievance mechanisms during project implementation lack independence and consequent ability to deliver fair remedies.

Conclusion

Implementing a successful resettlement program, including the improvement of livelihoods for affected persons, is difficult and complex in any setting. However, **the clear problems around land scarcity and displacement described in this report, along with the lack of community and civil society support and the challenging political situation in Bangladesh, do not make for an environment conducive to implementing a successful resettlement endeavor, especially in a project of this size and scale.**

Overall, AEC’s draft Resettlement Plan dramatically fails to address some of the key components of a sound displacement and resettlement strategy and therefore would lead to all the classic disasters that occur during involuntary resettlement on a large scale.

⁹ See, for example: Robinson, W. Courtland. *Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement*, May 2003.

¹⁰ Asian Development Bank, *Operations Manual (OM)*, Section F2/OP, September 2006, p. 3, para. 11.

¹¹ Downing, Theodore E. (2002). *Avoiding New Poverty: Mining-Induced Displacement and Resettlement*, p. 5.

Based on the information provided in the AEC draft RP, this assessment concludes that the Phulbari coal project is likely to:

- ***Risk the impoverishment of tens of thousands of people.*** The draft RP fails to adequately address the fact that the project will dramatically alter the livelihoods of a huge population—turning thousands of current farming households into landless wage-laborers, who will be forced to compete either for limited agricultural jobs or for jobs in entirely different economic sectors. There is no meaningful analysis of the risks and complications involved in this transition. The skill-sharing and support programs that the draft RP proposes are vague and do not identify how people would transition into alternative livelihoods without impoverishment. Furthermore, the draft Resettlement Plan greatly underestimates the amount of people that will be affected by this project. Exclusion of the wider scope of affected people from the project’s compensation and entitlements matrix is a violation of ADB policy, which acknowledges that people who lose access to resources “such as forest, waterways, or grazing lands...should be provided with replacement in kind.” Importantly, it also violates ADB’s resettlement principles because the underestimation limits the population’s access to any compensation or livelihood restoration assistance—resulting in people being left worse off than they were before the mine project.¹²
- ***Lead to conflict in the project area.*** AEC acknowledges that the displacement of people in this project is involuntary, and its draft Resettlement Plan identifies involuntary resettlement as “an integral component” of the project. Despite this, major concerns from the affected population have not been addressed and peaceful demonstrations in opposition to the mine, as described in this report, have been met with the use of military force. AEC also acknowledges, in its draft RP, that “the relocation of displaced households to the host community areas may cause social tension and problems” arising from “inequalities between host and re-settler communities” and “increased population and pressure on resources,” along with religious and cultural differences. The draft RP has in no way addressed the lack of community support for this project and has not thoroughly thought through conflict that may arise due to resettlement and displacement.
- ***Significantly impact food security in Bangladesh.*** The vast majority of people in the Phulbari area are farmers and fisherfolk and over 80 percent of the land being acquired for the project is agricultural land which will not be replaced. Many of the concerns generated by the project center on the issues of land and agricultural production. Specific concerns cited in the draft RP include: impacts on the income and livelihoods of agricultural laborers; disruptions to current occupations related to agricultural production; “the adverse impact that the loss of agricultural land will have on those who are already poor;” and adverse impacts on shareholders and tenants losing access to cultivation rights as a result of land acquisition for resettlement.

The project, however, will not only adversely impact the livelihoods of farmers in Phulbari. As an agricultural area of major importance to Bangladesh, producing three annual harvests of rice plus additional crops and abundant fish,

¹² Asian Development Bank, Handbook on Resettlement: A Guide to Good Practice (1998), p. 7.

the project location raises serious questions and concerns for the nation as a whole. Due to its elevation, the Phulbari area is one of the only regions of Bangladesh not vulnerable to flooding that has devastated the rest of the country in recent years. Despite these factors, there is no analysis in the draft RP of the ramifications of transforming one of the most important food baskets of the country into an open-pit mine.

It is strongly recommended that project financiers, including public development banks and private financial institutions investing in Global Coal Management Resources, immediately conduct a cost benefit analysis on the merits of the project, including all social (displacement) and environmental costs in the short- and long-term. This analysis must be completed, reviewed and debated publicly before the Phulbari coal project is considered a viable option for meeting energy needs in Bangladesh.

Given the multi-faceted problems associated with the resettlement components of this project, and the overwhelming risk to the lives and livelihoods of hundreds of thousands of Bangladeshis, it is recommended that ADB and other financiers carefully consider their involvement in this project. It is estimated that just under two-thirds of the Bangladeshi people live without access to electricity, and institutions such as the ADB should take a leadership role in promoting thorough and grounded assessments of alternative means for meeting energy needs in Bangladesh.

**The Phulbari Coal Project:
An Assessment of the Draft Resettlement Plan Prepared by
Global Coal Management/Asia Energy**

August 2008

Table of Contents

I.	Introduction	1
II.	Overview of development-induced displacement and common policy pitfalls	3
III.	Analysis of AEC’s 2006 draft Resettlement Plan	
1.	Significant underestimation of the number of project affected peoples	4
2.	Problems related to land scarcity and land acquisition	8
3.	Inadequate compensation, livelihood restoration and rehabilitation assistance	11
4.	No guarantees of livelihood restoration and discrepancies in the assistance measures	14
5.	Problems with the resettlement processes	17
6.	No indication of broad community support and no assessment of potential sources of conflict	20
7.	Inadequate public information disclosure, consultation and independent grievance mechanism	23
IV.	Conclusion	25

The Phulbari Coal Project: An Assessment of the Draft Resettlement Plan Prepared by Global Coal Management/Asia Energy

30 July 2008

I. Introduction

The Phulbari coal project is a proposed open pit coal mine in northwest Bangladesh and includes the construction of at least one 500-MW power plant. The project will acquire almost 6,000 hectares of land (60 sq km) and, according to project documents and independent reports will physically and economically displace between 50,000-220,000 people. This displacement will take place in one of the most densely populated countries in the world and will destroy a critical agricultural region in the country, threatening Bangladesh's food supply.¹³ Land, specifically land used for agriculture, and other resources such as timber, fish ponds and bamboo trees, will not be replaced. The scope and impacts on the natural resources and water supply around the project area will be severe. In short, the lives and livelihoods of hundreds of thousands of people will be irrevocably disrupted by the mining operation.

While a vibrant grassroots movement has formed around the project it has been met with gross violations of human rights. Concerns from the Phulbari community members and opposition to the mine, coupled with a changing political situation in Bangladesh have created a volatile environment in the project area. Many of those opposing the mine have suffered various civil rights abuses, including, in some cases, public beatings, arrest and torture.¹⁴ Most notably, in August 2006, the Bangladesh Rifles opened fire on tens of thousands of local people who were conducting a peaceful demonstration around the Phulbari project area. At least three people were killed from Phulbari, including a 14-year old boy, and several hundred people were wounded.¹⁵ Following the 2006 demonstration, Global Coal Management Resources (GCM), a U.K.-based mining company operating through its wholly owned subsidiary, Asia Energy Corporation (AEC),¹⁶ was forced to leave the project area. However, the company's influence in Bangladesh and desire to implement the project remains strong.

The Role of the Asian Development Bank (ADB) and Private Financial Institutions

The ADB is a regional development bank whose primary mandate is to reduce poverty in Asia. Each of its projects must prescribe to rules that prevent or minimize social

¹³ The Phulbari region remains one of the only areas in Bangladesh that does not face annual water-logging which is likely to be exacerbated through climate change (cite study that shows the annual inundation).

¹⁴ For example, see: <http://www.thedailystar.net/2007/02/23/d70223020325.htm>.

¹⁵ *Killings in Phulbari Ignite Unstoppable Protest: Local Communities Stand Strong against Open Cut Mining*. Society for Environment and Human Development.
<http://www.sehd.org/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=40>

¹⁶ Henceforth, "AEC" will denote references to GCM as well as its subsidiary, since the company is still known as "Asia Energy Corporation" in Bangladesh.

disruption and environmental damage.¹⁷ ADB's private sector operations department (PSOD) had been working with AEC since 2004 to prepare the Phulbari Coal Project for ADB Board approval. After repeated concerns from the Phulbari community and civil society organizations and questions within the Bank, PSOD dropped the project from its pipeline in April 2008, declaring that it was still "premature" to provide political risk guarantee and investment support to AEC. However, the ADB's South Asia Department has suggested that the Bank's public sector arm may consider the project should the Bangladesh government request it.¹⁸

In addition to possible financing from ADB, AEC continues to receive support through equity investments of several major private financial institutions. Some of these institutions are signatories to the Equator Principles—a set of environmental and social standards for private project finance—and while these principles are not yet applicable to equity investments, the Equator Principles, along with the ADB's social and environmental policies, provide benchmarks against which to measure the risks and benefits of the Phulbari coal project.

In a recent development, Barclay's Bank, one of the key shareholders and financial advisor to the project, sold its shares in AEC, withdrawing its financial support for the project as of June 2008.

In this paper

While there are a number of serious concerns with this project, including environmental impacts, this report focuses specifically on the involuntary resettlement and displacement aspects of the project. It provides a desk review and assessment of the December 2006 draft Resettlement Plan (RP) prepared by AEC as this is the only document to date that details how social displacement would be tackled as a consequence of mine development and implementation.¹⁹

The report analyzes the existing draft Resettlement Plan in relation to international best practice on displacement of people and against ADB's own resettlement policies. It aims to identify the likely impacts on the well-being of those directly and indirectly impacted by the project.

Section II of the paper provides an overview of international norms on development-induced displacement and development bank policy on involuntary resettlement. Section III, the bulk of this report, provides detailed analysis of the provisions laid out in the draft Resettlement Plan. Finally, Section IV outlines key gaps and provides our conclusions to this analysis.

¹⁷ See ADB's Safeguard Policies: www.adb.org/safeguards.

¹⁸ Meeting with Civil Society Organizations, March 29, 2008.

¹⁹ The draft RP was previously available AEC's website however, since late-2007 it has been removed and is currently under revision. AEC notes on their website that the revised draft RP would be disclosed in "early 2008" however, as of the date of this analysis, no updated RP is publicly available. (The AEC 2006 draft RP has been made available on the website of Bank Information Center, <http://www.bicusa.org/en/Project.Resources.59.aspx>).

II. Overview of development-induced displacement and common policy pitfalls

Development-induced displacement, including involuntary resettlement, is the largest cause of forced migration in the world today, greater than displacement caused by conflict or natural disasters. Every year, approximately 15 million people across the globe are forcibly uprooted from their homes, communities and lands to make way for such things as mines, dams, power plants, and agro-fuel plantations. While involuntary resettlement and economic displacement may sometimes be necessary, the relocation of large populations can come hand in hand with egregious corruption, the use or threat of violence to force people from their homes, undemocratic imposition of projects, and systemic failure to fairly compensate, resettle and rehabilitate displaced peoples. In addition to constituting an enormous violation of fundamental human rights, without effective mitigation massive forced displacement can lead to impoverishment, social unrest, environmental degradation, and loss of cultural diversity.

The United Nations has declared development-induced displacement a prima facie violation of fundamental human rights.

The United Nations has declared development-induced displacement a *prima facie* violation of fundamental human rights, and has issued various declarations and guidelines of international law that require that development-induced displacement be avoided at all costs, and in cases where it must go forward, that it follow a series of rights-respecting practices. International financial institutions such as the Asian Development Bank, the World Bank and the International Finance Corporation have also adopted policies that call for recognition of certain rights of people facing displacement. Despite these changes in policy regarding development-induced displacement, studies have increasingly found that “although people continue to be relocated, the goal of rehabilitation remains exceedingly difficult to achieve, and the preferred goal of sustainable development, where people are better off than they were before resettlement, has seldom been achieved.”²⁰ Inadequate financing and underestimation of social costs of large-scale projects continues to be key components of this failure.²¹

The common problem of underestimating the number of projected affected peoples has been found to have devastating impacts for people in the project area. The final report of the World Commission on Dams (WCD) found that **underestimation of the numbers of people facing displacement leads to a distorted understanding of the social, economic and environmental risks and benefits associated with particular projects**, and therefore an underestimation of the true costs of the projects and “extent of the negative impacts.”²² Indeed, the ADB’s own evaluation reports have pointed to the persistent problems in underestimating the scope of affected persons. A September 2006 Special Evaluation Study conducted by the ADB’s Operations Evaluation Department (OED) found that, across the board, the number of affected persons impacted by ADB’s projects was often significantly underestimated: “The actual number of [affected peoples]

²⁰ Cernea, M (2006). Population displacement inside protected areas: a redefinition of concepts in conservation policies. Policy Matters 14, 8-26.

²¹ Ibid.

²² World Commission on Dams, *Dams and Development: A New Framework for Decision-Making* (2000), p.

104. <www.dams.org/report/>

recorded was 65 percent higher than estimated in the [Resettlement Plans].²³ The ADB OED study concluded that the ADB must take measures to address the frequent underestimation of the numbers of affected persons.

AEC has significantly underestimated the number of people potentially affected by the Phulbari coal project.

Finally, according to current research on development-induced displacement, “compensation by itself cannot adequately restore and improve the income levels and livelihood standards of people subjected to expropriation and forced displacement.”²⁴ Cash compensation in particular, as opposed to land-based compensation, has rarely improved the livelihoods of displaced persons. Findings in a prominent study on development-induced displacement in India include: “Compensation for land in the form of cash payments (rather than land-for land) has increased landlessness among tribal peoples and other largely illiterate, vulnerable groups.”²⁵

As described in the following sections, AEC has significantly underestimated the number of people potentially affected by the Phulbari coal project and is primarily using cash-based compensation and restoration measures which will not adequately restore, much less enhance, the livelihoods of affected people in the Phulbari area. Specifically, the sections below outline: the underestimation of potentially affected people (III.1); issues around land scarcity and land acquisition (III.2.); problems with under-compensation and the lack of benefit-sharing mechanisms (III.3.); under-planning in the resettlement process (III.4.); a general lack of support for the project (III.5.); and inadequate transparency and accountability measures (III.6.). Taken together, these issues present a significant barrier to the likelihood that this project will have an economic or social benefit for the people in the project area.

III. Analysis of AEC’s 2006 draft Resettlement Plan

1. Significant underestimation of the number of project affected peoples

In its draft RP, AEC estimates that the project will displace 49,487 people (11,247 households) including 2,200 Indigenous Peoples and over 24,000 women. Significantly, of the total affected households identified in the draft RP nearly half (48.25%) belong to groups recognized as being socio-economically vulnerable. In addition to indigenous groups, vulnerable groups include those below the poverty line, female headed and elderly households. The largest group of vulnerable peoples is households below the poverty line, with nearly one-third (29.23%) out of all directly affected households falling below this line (pp. 4-10 & 4-11).²⁶

However, the estimate of 49,487 affected peoples is exceedingly low. According to an Expert Committee Report (ECR) commissioned by the Bangladesh Government in September 2006, up to 129,417 people will be directly affected by the mine and indirect impacts of the project will affect over 220,000 people, primarily due to dewatering in the

²³ Asian Development Bank Operations Evaluations Department, Special Evaluation on Involuntary Resettlement Safeguards, p. v. (September 2006)

²⁴ Downing, *ibid.*

²⁵ Robinson, W. Courtland. *Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement*, May 2003.

²⁶ Henceforth, all page citations in this form refer to the AEC 2006 Draft Resettlement Plan unless otherwise noted.

area.²⁷ The analysis below finds that AEC has not only failed to account for all those potentially affected by immediate and long-term environment impacts, but also excludes those displaced by the mine's associated facilities, members of communities bisected by the project, a comprehensive range of host communities members, and all so-called "non-displaced" persons.

Exclusion of this wider scope of affected people from the project's compensation and entitlements matrix is a violation of ADB policy, which acknowledges that people who lose access to resources "such as forest, waterways, or grazing lands... should be provided with replacement in kind." Importantly, **their exclusion will also limit this population's access to any compensation or livelihood restoration assistance—resulting in people being left worse off than they were before the mine project.**²⁸

1.1. Those affected by immediate and long-term environmental impacts, including dewatering

The ADB's Resettlement Handbook states that strip mining "may cause severe localized effects, or resettlement effects due to severe loss of environmental quality (e.g. polluted land or water)."²⁹ Therefore, the principles of the resettlement policy—e.g. compensation and assistance to ensure that affected people are able to meet or exceed previous standards of living—should apply to all people whose livelihoods stand to be affected as a result of dewatering or other environmental impacts. However, it is unlikely that AEC's estimate of affected people (49,487 people) includes all those who will be affected by environmental impacts.

Communities in the project region rely on tubewells for their water. Because of the mining activities, namely the use of deep dewatering tubes required to stabilize the mine and maintain safe working conditions, it is expected that access to water in the project area will be reduced as the water table is lowered (p. 2-4). Although the draft RP briefly refers to the provision of irrigation water, it does not provide details such as irrigation capacity, costs, operations and management.³⁰ While AEC has plans to re-distribute pumped water for surface use,³¹ it is highly optimistic to assume that no one will suffer crop failures or livestock deaths because of the decreased access to water.

In order to address this issue, Asia Energy would need to conduct actual ground level tests on a pilot basis and develop appropriate research, monitoring and evaluation

²⁷ In November 2005, the Bangladesh (BD) Govt. formed an Expert Committee to evaluate the Phulbari project. The head of this committee was Prof. Md. Nurul Islam (Director, Institute of Appropriate Technology, Bangladesh University of Engineering and Technology). The Committee examined all relevant documents, met 19 times and conducted a field visit to Phulbari in January 2006. Its 163-page report is in Bangla and covers numerous issues, including the legal and environmental aspects of the project. The summary of the report has been translated into English. The title of the report is: Report of the Expert Committee to Evaluate Feasibility Study Report and Scheme of Development of the Phulbari Coal Project, September 20, 2006.

²⁸ Asian Development Bank, Handbook on Resettlement: A Guide to Good Practice (1998), p. 7.

²⁹ Asian Development Bank Resettlement Handbook, Section 1.3.

³⁰ These details may or may not be covered by the Environment Impact Assessment for the project.

³¹ Environmental experts and the Government of Bangladesh Expert Committee Report, however, note that AEC has not conducted actual field level tests to see whether such an operation is feasible within the Phulbari area and what the impacts would be on the surrounding agriculture land.

indicators related to gauging livelihood impacts from dewatering in the broadly defined project area (beyond those directly displaced). Overall, it is likely that the impacts to be caused by dewatering will extend far outside the immediate mine footprint and buffer zone. In fact, the Bangladesh Government ECR estimates that ground water depletion will extend 314 square kilometers.

In addition to the impacts the project will have on water availability, it is likely that there will be significant contamination of land and rivers much beyond the mine area due to acid mine drainage. Hundreds of small rivers in the area are linked like a huge net, allowing polluted water to travel long beyond the mining footprint.³²

Another important environmental concern is that the project may lead to the degradation of the Sundarbans, a UNESCO protected mangrove forest because the coal will be transported through this area in barges. This forest is a habitat for the Bengal Tiger and many endangered species and also serves as a source of livelihood for fisherfolk and other communities dependent on the wetlands for sustenance. The Sundarbans also act as a natural barrier protecting the Bangladeshi people from the impacts of typhoons, floods and other natural disasters. The draft RP does not consider the long-term environmental impacts of the project when assessing the number of affected people and appropriate entitlements and compensation for indirect displacement.

1.2. Displacement resulting from the Khulna Coal Terminal

The land acquisition and resettlement estimates provided by AEC in the coal mine draft RP do not include an analysis of impacts caused by the Khulna Coal Terminal to be developed on the coast for the export of coal, which will displace thousands more people. It is not clear whether or how the coal terminal project is being considered as part of the Phulbari mine project. Nor is it clear if the coal terminal is compliant with ADB or other international safeguard standards. While a separate resettlement plan for the coal terminal has been developed, it is not publicly available on either AEC's or ADB's websites. Financiers of this project must consider this associated facility and its potential environmental and social impacts when considering the approval of the coal mine project as a whole.

1.3. Members of communities bisected by the project

Eleven villages will be bisected by the mining project, meaning that half the village will be inside the mine footprint and the other half outside of it. According to the draft RP, it cannot yet be determined whether nearly 800 households (roughly 3,500 people) in these 11 villages will require relocation as a result of mine disturbances (see Annex 1 of the draft RP). Moreover, if relocated, it is unclear whether those affected will be moved within their existing villages or be forced to a resettlement site or other villages. Although the aim will be to exclude these villages "as far as possible" from the resettlement program, the draft RP explains, mine disturbances including "excessive noise levels" may necessitate their relocation (p. 4-2).

1.4. Members of host communities

The majority of physically displaced people will be relocated to a resettlement site in the western extension of Phulbari Township. The draft RP notes that "households may have to be moved for land use consolidation" (p. 8-1) for the western extension. In this regard,

³² Anu Muhammad, economics professor at Jahangirnagar University, in BBC News Article: "Bangladesh coal divides region". <http://news.bbc.co.uk/2/hi/business/5080386.stm>

AEC identifies 987 landowners in the host areas that will be directly affected due to this land consolidation and land acquisition for the creation other resettlement sites to be established in the first phase of the project³³ (p. 9-1). However, the draft RP does not mention how many host community members will be affected by resettlement in subsequent phases of the project—roughly project years four to ten.

In addition, the lack of available land in Phulbari, coupled with the dramatic increase in demand (due to host villagers wishing to relocate within Phulbari and/or replace land used for resettlement) will impact many more people than those host community members being physically relocated.

“Failure to compensate host communities adequately (or at all) ...can quickly render resettlement unsustainable.”

Introducing an expanded population into an existing village will tax the social, health and other municipal systems of that village. It also may create increase demand for natural resources such as water or fuelwood. While it can be difficult to estimate the affect of an expanded population on a host community’s resources and services, an impact assessment can be applied and, ideally, “a resource inventory of the host area would indicate the potential for meeting expanded demand.”³⁴

Outside of the 987 landowners in host communities identified for relocation, AEC does not make any provisions for inclusion of other host community members in its estimation of affected people. AEC acknowledges in the draft RP that the host community is concerned about impacts from displacement however, it fails to address these issues (p. 9-8). It is critically important that the draft RP includes a comprehensive assessment of how host community members will be directly and indirectly affected by resettlement and what their entitlements should be. “Failure to compensate host communities adequately (or at all)...can quickly render resettlement unsustainable.”³⁵

1.5. So-called “non-displaced” persons

According to the AEC draft RP, there are a total of 1,487 households within the project area—or 10 percent of the total affected population—which are classified as “affected by loss of land but non-displaced.”³⁶ The assumption here is that these households “will incur only loss of land without any displacement” (p. 1-3). However, it is currently widely acknowledged that displacement includes both the physical relocation of a household and the loss of access to resources affecting one’s livelihood.³⁷ Therefore, even if no physical relocation incurs, if peoples are adversely affected through, for instance, the loss of land due to the project, they should still be considered as “displaced persons.”

³³ The first phase of resettlement, roughly project years 1-3, will include the establishment of resettlement sites in Phulbari, Hamidpur, Joypur-1 and Khayerbari.

³⁴ Cernea, Michael. (1999) *The Economics of Involuntary Resettlement: Questions and Challenges*.

³⁵ *ibid*

³⁶ These households are enumerated in Table 1-2 on p. 1-3.

³⁷ For example, the International Finance Corporation, in its Performance Standard 5 on Land Acquisition and Involuntary Resettlement, states that "Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition."

Furthermore, included in this figure of “non-displaced” persons are 110 households potentially affected by proposed changes to transportation infrastructure—new rail corridors and the realignment of existing corridors. However, plans for changes to rail and road networks have not yet been finalized, making it impossible to assess their *actual* displacement impacts, both temporary and permanent. The households that have been identified as “affected” due to transportation infrastructure are excluded from estimates on the number of people displaced on the basis that “these households would be relocated locally within their existing villages” (Annex 1, p. 8). “Relocation” within a village is still displacement. Households being physically resettled within their own villages should not be excluded from displacement estimates.

The majority of land and natural resources taken for this project will not be replaced and there will be very limited possibilities for affected peoples to find productive land to purchase elsewhere.

2. Problems related to land scarcity and land acquisition

Land scarcity will be a significant factor in this project.³⁸ According to AEC, the project will acquire 5,933 hectares of land (almost 60 km²) over 80 percent of which is agricultural land (around 4,763 hectares) (p. 4-8). The majority of the land acquired will be for the mine footprint (5,192 hectares) with the remaining land taken for resettlement sites and transportation realignment. If the project is implemented, the open-pit mine will destroy or displace: 1,577 ponds (used to earn income through sale of fish); 80,000 fruit and timber trees (plus many thousands of bamboo sticks); 928 businesses; 36,052 homes, barns, boundary walls and toilets; 106 schools; 48 health facilities; 138 mosques, temples and churches; 692 graveyards; and 2 ancient archaeological sites (pp.7-8 in draft RP Summary).

As described in more detail below, the majority of land and natural resources taken for this project will not be replaced and there will be very limited possibilities for affected peoples to find productive land to purchase elsewhere. Cash compensation, as opposed to land-based compensation is a central feature of this project—a process necessitated by the overall shortage of land in the area. Furthermore, land for the resettlement of the tens of thousands of people acknowledged to be directly displaced by this project has not yet been identified (pp. 5-8 & 9-8). Finally, there are a number of outstanding questions and concerns related to the land acquisition process, notably the accessibility of land prior to formal acquisition.

2.1. No land-for-land compensation and limited possibilities for affected persons to purchase land

While agriculture is a key economic activity for people in the project area, with 67 percent of all surveyed households earning income from the sale of agricultural products (p. 3-15), AEC states in the draft RP that most households physically displaced by the project “will become landless” (p. 7-11). Thus, it is critical to note that the draft RP for the Phulbari project explicitly excludes replacement agriculture lands from its compensation and entitlements: “**the Project will not directly acquire replacement cultivation land for displaced households, because this will simply transfer the impacts associated with the loss of land to households in host communities**” (p. 10-6, emphasis added).

³⁸ The draft RP acknowledges land in Bangladesh is “a scarce and valuable resource {...}” (p. 6-6).

Although the draft RP makes it clear that replacement lands will not be provided to displaced households—operationally defined as those households assumed to lose 100 percent of their land to the project—it repeatedly suggests that some of these households will use cash compensation to purchase replacement lands: “it is anticipated that the affected HHs [Households] in this project will continue to live in the present location till there is need to displace them, and will invest the compensation to buy land” (p. 10-7).³⁹

However, the draft RP glaringly ignores the fact that potential replacement agricultural lands equal in size to those acquired for the coal mine simply do not exist in Bangladesh. The inadequacy of potential replacement lands can be clearly seen in a table detailing “Available lands for purchasing replacement cultivation land” which indicates that **only one-third of agricultural lands acquired for the project could potentially be replaced within the project vicinity**. Expanding the search for potential replacement land to “neighboring” districts—including those located up to 200 kilometers from the Phulbari project—this same table shows a total of 2,280 hectare of potential replacement lands. This figure is less than half the 4,763 hectares of agricultural lands to be acquired for the project (Table 10-10, pp. 10-7 & 10-8).

Given the undeniable scarcity of lands, the draft RP indicates that it will rely on improving existing land based activities and assumes that this will free up land for redistribution. Rather than replacing lands, it explains,

“the approach will be to work jointly with resettler and host communities over an extended period of time to explore ways in which agriculture and land-based livelihoods can be improved to the benefit of both groups. The sub-division and reallocation of cultivation lands could then occur as part of an informed decision-making process” (p. 10-6).

Even if efforts to improve land-based activities proved 100 percent successful in increasing yields and/or incomes, the assumption that this will free up lands for redistribution is unfounded. Moreover, the vague reference to an “informed decision-making process” governing the envisioned redistribution of land assets is wholly inadequate particularly in light of how deeply divisive and conflict-ridden programs of land redistribution attempted and implemented elsewhere have proven to be.⁴⁰

Furthermore, despite the clear statements in the draft RP that land and other unmovable assets will only be compensated with cash, there are indications that the affected population has been led to believe that replacement of land will be an option. For example, the Resettlement Survey conducted by AEC asked 9,760 affected households to indicate their preferences regarding their relocation sites and included “close to area where agricultural production can be re-established” as one of the five possible choices. Significantly, over 75 percent of all households to be displaced indicated that this was important to them (p. 8-2). Moreover, when asked to select three factors that would be important to them in restoring their livelihoods, 95 percent of all landowning households

³⁹ Also see pp. 7-5, 7-11 & 10-6.

⁴⁰ See, for example: *Reducing the Incidence and Impact of Land-Related Conflict* (Box 4.4, p. 158), <info.worldbank.org/etools/docs/library/35455/landrelatedconflict>; *Struggle for Land in Bolivia*, <<http://news.bbc.co.uk/2/hi/americas/5303280.stm>>; *Detailed analyses of conflict related to land reform in many countries throughout the world*, <www.crisisgroup.org/library/documents/>.

surveyed selected purchase replacement cultivation land as their primary priority (p. 10-3).

Similarly, when asked how they would use their compensation money, nearly 37 percent of host area landowners likely to be affected by the project indicated that they would purchase new agricultural land (p. 9-4). However, it is not clear in the draft RP whether or how these populations have been fully informed about the lack of replacement land in the area.

2.2. No information on land needed for priority 2 and 3 resettlement groups

The Priority 1 resettlement group (those being resettled in the first 2-3 years of the project) is provided the option of resettlement to the Western Extension of Phulbari Township (plots provided; choice of cash compensation to build house or house provided), designated village resettlement sites (also cash compensation or house provided), individual resettlement to area of own choice (cash compensation only), or relocation within existing village (in the case of partially-affected villages). However, there is no information in the draft RP regarding whether or how Priority 2 and 3 groups (those being resettled in project years 4-10) will be provided similar options.

Over 2,000 households are projected to be resettled after the first three years of the project. However, there is no mention in the draft Resettlement Plan of land required for these resettlement sites, including no reference in the budget. It is unclear whether a separate RP will be created for the populations to be displaced by acquisition for priority 2 and 3 resettlement sites in future years—no assertion is made to this effect. It is similarly unclear whether households and businesses relocated in project years 4-10 will be required to construct or arrange for the construction of replacement housing, structures, or basic infrastructure and services (p. 7-9), an omission which points to the overall lack of planning and details on the procedures for resettlement of those being relocated after priority 1 resettlement.

2.3. Lack of information on how land in host communities will be purchased

The draft RP states that host areas will be “acquired” from existing townships. It is unclear what the provisions and policies guiding this acquisition are. The RP must detail the acquisition procedures for resettlement sites, along with affects on host populations in each of these sites (as described in section 1.4.).

2.4. Problem with accessing land for mine development prior to finalization of land acquisition

The draft RP states that “in order to proceed with project development according to the implementation schedule, Asia Energy may have to enter into private purchase agreements with households in Phase 1 (753 households), since the land acquisition process would not yet have been finalized at the time that the land in question is to be accessed for mine development” (p. 12-2). **Direct purchase of lands prior to the finalization of formal land acquisition procedures is unacceptable, particularly in light of the fact that Bangladesh’s current land legislation allows only for state expropriation of land for public purposes and the draft RP acknowledges that the project will require “the drafting of special legislation” (p. 6-3).**

2.5. Lack of information on cut-off date and Land Acquisition Plan

Prior to formally taking the lands required for this project, a Land Acquisition Plan (LAP) must be finalized and submitted to the government. As described in the draft RP,

the "LAP is required to legally identify all owners of land and assets that will be acquired by Project developments" (Summary, p. 14). This "identification" process is done through a rapid survey of the land, fixtures and assets of affected peoples on a specified date, referred to as the cut-off date. Overall, there is lack of information about the cut-off date and how a rapid assessment of the area will be done immediately prior to land acquisition. The overall cut-off date for entitlements should be publicly announced sufficiently in advance of the actual date and the timeframe for which people are able to submit claims or objections, limited to just 15 days after the notice of intention to acquire lands is issued (p. 6-10), should be extended.

Investors must acknowledge the serious impoverishment risks associated with cash-based (instead of land-based) compensation which remains a central feature of this project.

Furthermore, the field survey should be conducted by an independent entity, *not* a consultant contracted by AEC (pp. 6-9 – 6-11) and details on how community and local representatives are included in conducting the survey should be specified.

Finally, there is lack of detail regarding the participatory and transparent nature of the Land Acquisition Plan. The LAP should be developed in a transparent manner and any "procedures [that] will be established to streamline the land acquisition process—e.g. through special legislation and the provision of additional manpower and resources to Government land departments" (Summary, p. 14) should also be clearly and transparently designed and implemented.

3. Inadequate compensation, livelihood restoration and rehabilitation assistance

As described above, the draft RP states that agricultural land will not be replaced, nor will other productive assets such as fruit trees, ponds and fish stocks. Investors, especially the ADB, given its mandate for poverty reduction in Asia, must acknowledge the serious impoverishment risks associated with cash-based (instead of land-based) compensation which remains a central feature of this project.

While ADB standards recommend land-based compensation whenever possible for displaced populations who practice land-based livelihoods, if cash is given as compensation, ADB policy requires that the amount meet replacement costs.⁴¹ However, it is not clear from the draft RP if cash compensation will be made at replacement costs. This is an issue of acute importance since land prices will quickly escalate when thousands are displaced and vast areas are impacted by dewatering. Other concerns regarding compensation and entitlements, as described below, include unaddressed problems in establishing land ownership, inadequate entitlements for informal traders, squatters and employed workers, no compensation for perennial crops and the provision of payments to head of households instead of women.

3.1. Planned compensation for land unlikely to meet full replacement costs

ADB policy requires that compensation be made at "full replacement costs." The ADB Handbook on Resettlement states: "Replacement costs are equal to market costs plus transaction costs only if the markets reflect reliable information about prices and availability of alternatives to the assets lost" (p. 6). However, in this case, the market value will NOT reflect reliable information about prices (see below) and additional risk analysis is needed in order to properly determine replacement value and the feasibility of displaced households in finding homestead land.

⁴¹ Asian Development Bank, Operations Manual (OM), Section F2/OP, September 2006, p. 3, para. 11.

On the one hand, AEC acknowledges that there will be problems in using only “market prices” as the asset valuation method and suggests additional payments above the market value of assets. The draft RP states that “experience on other projects in Bangladesh involving land acquisition has shown that compensation values determined in this [market prices] manner often do not reflect the actual market value of the properties” (p. 6-18). In addition, there is known land scarcity in the area,⁴² and the market for purchase of land will be further flooded with new demand from the displaced population, leading to rapid escalation in prices. Not only will those who are physically displaced by the mine footprint be looking for replacement land, but around 37 percent of the host area land owners said that they would like to purchase land with compensation they may receive (p. 9-4). This factor will heighten the demand for land even more. Lastly, predicted environmental impacts from dewatering and acid-mine drainage will reduce the availability of high-quality land, further driving up the cost of good (productive) land.

In parts of the draft RP, AEC suggests measures that may be taken in order to meet the difference between market and replacement values. The draft RP notes that compensation awards determined by Bangladesh’s Deputy Commissioner are invariably lower than the real market or replacement value of the acquired properties (pp. 7-9 and 6-5). This problem is to be corrected by the addition of a “top-up” payment.⁴³ The intent of the top-up payment is to make compensation equal to replacement value as required by the ADB (pp. 6-7, 6-18, 7-5 and 7-15).

However, on the other hand, contradictory statements throughout project documents conflate or use the terms “market value” and “replacement value” interchangeably. For instance, Chapter 14 of the draft RP states that cost estimates “reflect market/replacement values” (p. 14-4, 7-9). Similarly, Chapter 7 treats these concepts as if there were equivalent: “determination by the RSC Compensation Task Group of the replacement value (equivalent to market value) of assets for additional assistance payments to affected persons” (p. 7-9). There are also numerous references in AEC information sheets distributed to stakeholders (annexed to the Phulbari project Public Consultation and Disclosure Plan) stating that “market prices” will be used as the method of determining the value of land and other assets.

It is clear that the historical or even current market value of land at the time of acquisition by AEC (i.e. at the outset of the project) cannot possibly be considered indicative of replacement costs. Moreover, given the multiple contradictory statements in the draft RP and other project documents and the lack of information on the “top-up” payments, it is a serious concern that compensation is not likely to be paid at replacement values.

⁴² Landlessness is already a problem in the project area with approximately 45 percent of households included in AEC’s Demographic Survey of households in a 5 kilometer radius of the project reporting that they do not own cultivated land. Moreover, more than two-thirds of all survey households were recorded as operating small landholdings with the majority of land-owning household cultivating landholdings of one hectare or less. (pp. 3, 4, 3-6 & 3-7).

⁴³ It is significant to note that it is unclear what this “top-up” payment will entail. In other parts of the draft RP, it notes that in addition to compensation for property at the “average registered value of similar properties in the vicinity during the twelve months preceding” the actual acquisition, “payment of an additional premium of 50 percent of the assessed value of the property,” will be made in order to account for the “compulsory nature of the acquisition.” (p. 7-9) However, it does not explicitly state if this is the top-up payment referred to above or an additional payment for property owners.

3.2. Difficulty of establishing land ownership/claims to compensation

Documentation requirements for displaced people seeking cash compensation for land and other assets appear onerous at best. As detailed in the draft RP, “legally entitled persons are required to submit a myriad of papers” including deeds, receipts showing that land taxes have been paid, a petition to the Land Acquisition Office, an inheritance/inheritor certificate, etc. (p. 6-17). Difficulties in fulfilling these requirements are both likely and foreseeable given the investment of time away from subsistence activities required and high rates of poverty and non-literacy among affected persons. Indeed, the draft RP acknowledges that compensation payments “are often delayed because awardees do not have the required papers to confirm their titles to the properties in question” (p. 6-17).

Anticipating such difficulties and delays, the draft RP calls for AEC to contract with non-governmental organizations (NGOs) to undertake “social preparation programmes” and assist with preparing paperwork in affected communities. Although the project budget includes a lump sum for contracted NGOs equal to TK10,000 (US\$ 146.00) per affected person (p. 14-9), it is unknown whether this will be sufficient to meet the need for services by affected people nor is it clear that NGOs have the capacity to adequately meet this need given the scale of displacement entailed by this project. Likewise, a budgetary allocation for two compensation officers (p 11-6) appears woefully inadequate for a project projected by AEC to displace roughly 50,000 people.

3.3. Inadequate compensation for informal traders and squatters

ADB policy recognizes all persons affected by the project—including “sharecroppers or tenant farmers losing user rights; users depending on customary land use rights but without formal land title; *seasonal migrants; and squatters*”—as “eligible for compensation *and rehabilitation* irrespective of legal or ownership titles” (ADB Resettlement Handbook, section 1.5; emphasis added). The entitlement matrix included in the draft RP states that those who do not have either formal title or customary rights—e.g. those who have been on the land for less than 2 years, described in the draft RP as “informal traders/squatters”—will receive cash compensation for buildings and structures. However, the population is apparently not eligible for any other assistance for household and livelihood rehabilitation. This clearly violates ADB’s resettlement policy.

3.4. Unclear compensation and livelihood restoration assistance for workers

Workers employed by businesses to be eliminated or relocated by the project are also excluded from the matrix of compensation and entitlements for the project, with the exception of those classified as permanent employees. Compensation to sharecroppers losing access to cultivation rights is limited to compensation for standing crops and, for those relocating to a project-designated resettlement site, a livelihood restoration grant disbursed for a period of two years (p. 7-12). In the absence of detailed information on current skills, market demand, labor absorption capacity or current patterns of land use in the designated resettlement villages, including availability of lands for sharecropping or leasing of lands, it is impossible to determine what the prospects for displaced sharecroppers will be (see Section 3.2 below). Moreover, given the loss of lands used for resettlement in the host villages and increasing demand for land, a corresponding increase in competition for cultivation rights among non land-owning households should be anticipated.

3.5. Possible inadequate compensation for livestock and other homestead income

While agriculture is a key economic activity for affected peoples with 67 percent of all surveyed households earning income from the sale of agricultural products (p. 3-15), land scarcity is a constraint and most households pursue a diversified range of land-based

The draft RP makes no mention of how project affected persons will share in the benefits of the coal mine.

economic activities. Other key components contributing to livelihood include livestock, with nearly 65 percent of all households owning cattle and 44 percent owning goats (p. 3), and sale of forest/tree products. Despite survey data pointing to the vital importance of the mixed subsistence strategies pursued by most households, the draft RP does not contain details on the size of cultivated landholdings, crop types and yields, the number and type of livestock owned by affected peoples or specific forest/tree products sold. Some of this data is available in the Environmental and Social Impact Assessment (ESIA).⁴⁴ Nonetheless, it is difficult to assess whether or not

resettlement options and entitlements are adequate and account for such things as transportation of livestock and replacement of lost income from non-movable assets such as homestead gardens, fruit trees, ponds and forests.

3.6. No clear compensation for perennial crops

For temporary loss of private land, the draft RP entitlement matrix states that plot owners will receive cash compensation for crop losses for the duration of temporary occupation. For perennial crops (e.g. trees) which take many years to re-establish productivity, the matrix vaguely states that compensation will be paid, with no information on the method of valuation. It is unclear whether or how compensation will account for lost productivity for the full number of years it takes to re-establish perennial crops.

3.7. Concern regarding payments to head of households

For those receiving cash compensation, payments would presumably be made to the head of household (generally male)—yet experience with resettlement shows that results are much better when payments are made to females regardless of whether the formal/legal head of household is male. While there are some monitoring indicators listed in the draft RP annex (“Example Monitoring Indicators”) which touch on gender issues, the economic activities of women who are not the head-of-households are not listed or detailed.

4. No guarantees of livelihood restoration and discrepancies in the assistance measures

The draft RP makes no mention of how project affected persons will share in the benefits of the coal mine, a concept that is critical to preventing impoverishment of the displaced. In terms of livelihood restoration and rehabilitation, there is lack of detail on employment opportunities for affected persons (particularly displaced farmers), a lack of information on the labor absorption capacity of host communities, and lack of clarity regarding various assistance funds. Moreover, as affected households are expected to find their own replacement lands, it is unclear how training for land-based economic activities will be delivered to dispersed households.

⁴⁴ Phulbari Coal Project Environmental and Social Impact Assessment (ESIA) 2006, Volume 1, Chapter 8.

4.1. Lack of a benefit sharing mechanism

Research suggests that impacts from displacement can include, “marginalization, food insecurity, loss of common lands and resources, increased health risks, social disarticulation, the disruption of formal educational activities, and the loss of civil and human rights.” Accordingly, “failure to mitigate or avoid these risks may generate ‘new poverty,’ as opposed to the ‘old poverty’ that people suffered before displacement. Certain groups—especially indigenous peoples, the elderly and women—have been found to be more vulnerable to displacement-induced impoverishment risks.”⁴⁵

The RP makes no mention of how project affected persons will share **directly** in project benefits and lacks any explicit requirements or guidelines for the establishment of equitable benefit-sharing mechanisms. This omission constitutes a failure to incorporate a major lesson learned in recent studies on resettlement and best practices. The forthcoming book, *Can Compensation Prevent Impoverishment? Reforming Resettlement through Investments and Benefit-Sharing*, edited by Michael Cernea and Hari Mohan Mathur (2008, Oxford University Press) addresses this issue and rejects the long-held thesis that compensation is in itself enough to restore and improve the livelihoods disrupted by displacement. Instead, the editors of or authors in this volume recommend changing displacement policies, laws and practices, by adding investment financing and ex-post benefit-sharing to full compensation.

4.2. Employment, training, and income of displaced persons

While there are some support and skills-retraining programs planned that will focus on intensifying and improving agricultural production in the area, there is no avoiding the fact that the project will dramatically alter the livelihoods of a huge population—taking farms and small businesses away from community members and expecting affected households to use cash compensation re-invent a livelihood in a an environment with limited economic alternatives. Yet the significance of these changes does not appear to have been addressed with the local population. Rather, documentation distributed to the affected population seems to imply that there will either be agricultural land available for purchase close to the resettlement sites, or that there will be an option for employment at the mine. Documents also imply that land will once again be available for farming after mine closure. However, environmental critiques of the project contend that acid mine drainage and failure to properly rehabilitate the mine may prevent long term use of the land either during or after mine closure—a period of well over thirty-five years.

The draft RP fails to completely analyze how displaced persons will be absorbed into labor markets. It estimates that wage and enterprise-based opportunities generated by the mine will provide employment opportunities to 35-38 percent of all affected households but, gives no concrete examples of what types of jobs these might be and how long they would last. Most of these jobs will be related to mining activities and associated construction and are, therefore, temporary. According to the draft RP, it is anticipated that only 100-150 affected households will secure permanent jobs involving direct employment at the mine (p. 10-10 & Table 10-13, p. 10-11). This estimate is consistent with experience in the region (the Barapukuria mine resulted in around 100 permanent jobs), so this should not be the only employment generation option provided.

⁴⁵ Downing, Theodore E. (2002). *Avoiding New Poverty: Mining-Induced Displacement and Resettlement*, p. 3.

The lack of long-term or permanent employment opportunities at the mine for affected households stands in sharp contrast to the identified needs of those displaced by the project: among affected sharecroppers and leaseholders, nearly one-third (32%) stressed the “need for employment in the Project as the sole way of livelihood restoration” (p. 10-4). Although the draft RP states that AEC intends to develop an overall Project

The lack of long-term or permanent employment opportunities at the mine for affected households stands in sharp contrast to the identified needs of those displaced by the project.

Employment Policy which will include a Preferential Employment Strategy, it does not make any commitments to draw a certain percentage of its workforce from affected households. Likewise, there are no provisions to ensure that subcontractors have a clear legal obligation to preferentially employ affected peoples (p. 10-15).

It is also notable that gender disaggregated data on occupational differences and other sources of income for men and women are not detailed, making it impossible to assess whether planned livelihood support opportunities are designed to address the needs of affected men and women alike. The information provided in the RP raises concerns. For example, although women tend to bear a large share of responsibility for managing livestock and female-headed households more often derive income from livestock among affected peoples, it

is unclear what tenure rights female and male-settlers will have to graze their livestock in host community sites with limited space and insufficient replacement lands.

4.3. Discrepancies and lack of detail on various assistance funds

The draft RP states that a “Household Rehabilitation Fund” and a “Social Investment Fund” will be created to support livelihood restoration and diversification particularly for vulnerable groups. It states that the latter “will be managed by a properly constituted, representative board” (p. 10-15). Yet, the structure of this board is extremely vague—there is no definition of what is meant by “properly constituted”. In addition, while the “Household Rehabilitation Fund” is budgeted for US\$25 million, the “Social Investment Fund” is not included in the budget. This discrepancy should be rationalized.

Furthermore, publicly distributed project material states that a “Community Development Fund” will be created using mine profits (Phulbari News Update #2, Aug 2005). However, there is no mention of such a fund in the draft RP. Also, if the Community Development Fund relies on profits from mining operations, it cannot expect funds for years following initiation of mining operations, making it less than useful to help resettled and rehabilitate the affected population.

In February 2008, staff of IAP asked AEC to clarify the details of various livelihood restoration and assistance measures. AEC responded with: “we appreciate that this information in the RP could be clearer and we are in the process of making changes to it with regard to these various funds and entitlements.” The lack of detail in this response and in the draft RP makes it difficult to assess whether or how assistance funds will meet the needs of resettled communities.

4.4. Discrepancies and concerns regarding “shifting and displacement allowances”

Under the cost estimate table in the draft RP (p. 16 and p. 14-8), the budget for “shifting and displacement allowances” is stated to be US\$3.381 million. The draft RP does not clearly describe what these funds are to be used for however, it states that: displaced households moving to resettlement housing will be given approximately \$150 (Tk 10,000); displaced households electing “free-choice” resettlement will be given \$300 (Tk

20,000); displaced permanent wage laborers will receive approximately \$130 per person (calculated as approximately \$1.50 per day for 3 months); displaced renters will receive approximately \$45 (Tk 3,000) in rental stipend (to cover 3 months in rent); and, there is an additional \$90 (Tk 6,000) for “shifting” allowances although it is unclear what this is or who it goes towards. Yet:

- Even considering the level of poverty in the area, these amounts are exceedingly low. Survey data reported in the draft RP (p. 3-15) indicates that most households earn roughly between US\$50-150 per month (p.3-15). This would mean that even the highest displacement allowance (\$300) is equal to 6 months’ total minimum income anyone receives in the area.
- Additional “household rehabilitation grants” included in the budget (p. 14-8) are slated to be paid over a period of 4 years. These are estimated to be \$730 (Tk 50,000) per year for land owners and \$366 (Tk 25,000) per year for landless households—for a total of \$2920 for landowners and \$1460 for landless households. However, this budget conflicts with a previous reference in the draft RP which states that legal and customary land owners will receive “annual Project assistance” for 10 years from date of land acquisition (p. 10). It is unclear which of these references is correct or if the “household rehabilitation grants” are different or in addition to the “annual Project assistance.”
- The draft RP does not make any provisions for project delays (that are common in large scale projects of such scale and complexity) where not all people are resettled within the projected 10-year period. If all allowances are budgeted for 10 years, it is unclear if these benefits would be extended until affected populations have been moved and for several years following resettlement to ensure re-establishment of livelihoods.

5. Problems with the resettlement processes

According to the draft RP, all land required for the mine footprint (5,192 hectares) will be formally acquired at once—through a “single notification process.” However, following land acquisition, the actual resettlement of affected households will take place in 6 phases over the course of 10 years as the mining operation develops and expands:

- Phase 1: project year 1—approximately 803 households will be resettled
- Phase 2a: project year 2—approximately 1951 households will be resettled
- Phase 2b: project year 2—approximately 1804 households will be resettled
- Phase 3: project years 3-5—approximately 2480 households will be resettled
- Phase 4: project year 6—approximately 723 households will be resettled
- Phase 5: project year 8—approximately 814 households will be resettled
- Phase 6: project years 9-10—approximately 1185 households will be resettled

Although the government and the company will have bought all land necessary for this project at one point in time, they will not have identified all resettlement locations at that time. Thus, those who will be resettled in subsequent phases will have no guaranteed lands or provisions for relocation. The failure to clearly designate lands to be used for all phases of resettlement means that people to be resettled in the project area as well as people in the potential host communities will live in a state of uncertainty for years.

The draft RP also states that if residents decide to relocate in a project resettlement site, and are not in the first resettlement phase they will need to lease-back their own agricultural land from AEC in order to continue farming until actual relocation is necessary and resettlement sites have been prepared. The terms of these lease agreements, including rents, duration of leases, and terms for renewal, are not specified in the draft RP. (For more on this point, see section IV.5.1. below.)

The failure to clearly designate lands to be used for all phases of resettlement means that people to be resettled in the project area as well as people in the potential host communities will live in a state of uncertainty for years.

Furthermore, social structures during this interim period—after land acquisition but before actual relocation—are tenuous. Water supply during this time poses a particular problem, as does the availability of social services in partially vacated communities. Regarding the selection of resettlement sites for displaced peoples, it is unclear if or how resettlement preferences have been prioritized and there is an overall lack of information about resettlement sites and resettlement decision-making structures. The concerns raised by these gaps are described in more detail in the following sub-sections.

5.1. Leases between inhabitants and AEC

The draft RP is silent on the terms of the lease agreement between inhabitants and AEC after land acquisition but before inhabitants are required to vacate the land. “The Project will acquire land in phases and a substantial amount of land will remain unused for [a] long period before physical occupation of land takes place for mining and related activities. ***This land can be leased back to owners/interested persons for an agreed period of time for cultivation” (emphasis added)*** p. 10-6). Displaced people, under no circumstances, should have to lease their own land and other fixed assets that they never had to rent before. This is particularly critical for inhabitants who lack land title. In January 2008, AEC was specifically asked by IAP staff if people will be expected to pay rent during the interim period for the land acquired by AEC. AEC responded that “Asia Energy has not accounted for a direct income coming from these households.” This response is vague and the terms of the leases between inhabitants and AEC remain unclear.

5.2. Water supply during interim resettlement period

Dewatering will begin immediately, even if physical displacement does not occur for several years for many people. Given the depth of the mine, the water table in the entire region will drop significantly and this is likely to result in the subsidence of soil. The draft RP indicates that water will be piped for crop irrigation to local farmers during this period. Yet this expense does not appear in the draft RP budget. Also, while it seems feasible that irrigation could be provided to productive agricultural plots, it is unclear whether grazing areas, fruit trees or vegetable gardens on individual homesteads would receive water. These are unlikely to be connected to the irrigation system as they are not large-scale agricultural operations. Yet, according to surveys conducted by AEC, 88 percent of the households to be displaced by the project own livestock (p. 3-11) and 82 percent have at least some fruit trees (p. 4-22), providing an important source of both income and food supply.

When asked about additional water supply provisions, AEC responded that they are making projections of water needs based on 50 liters per day per household (water for non-homestead agricultural needs is handled separately). However, it is unclear on what basis AEC has arrived at this figure and whether 50 liters per day would be sufficient for

homestead needs including vegetable gardens, fruit trees, and livestock. It is also unclear how water will be transported or delivered to individual homesteads and over what distances.

5.3. Social services during interim resettlement period

Around 31 percent of the surveyed households indicated that they may prefer to self-relocate upon receiving cash compensation for their land and assets. These households will relocate in the first couple of years of the project (p. 8-2). The entitlement matrix in chapter 7 of the draft RP states that those persons electing “self-relocation” will be required to “evacuate the Project displacement area at the same time, over an agreed period, irrespective of their location in terms of the Project’s resettlement programme” (p. 7-6). This means that even if their lands are not yet needed for project implementation, households choosing to relocate outside the resettlement sites will be required to vacate their homes at the outset of the project—at the time of land acquisition. **This requirement is likely to create half- or mostly-vacated towns resulting in attenuated support networks and poorly staffed or insufficient social services (schools, clinics, markets, etc.)** for those who choose to remain on their traditional lands until the Phulbari Township or other village resettlement sites are ready and physical displacement is required. Likewise, basic municipal services such as road maintenance, electricity, waste management, etc. may fall by the wayside in the acquired areas during this interim period, as local governments are unlikely to want to invest in these areas (given their imminent removal). Provisions to ensure basic service coverage during the 10 years or more before physical relocation do not appear to have been considered, either in the draft RP budget or through evidence of contracts with local government regarding responsibilities for service provision.

5.4. Resettlement preferences have not been prioritized

Given that the draft RP does not include a provision to replace lost land and other immovable assets (fish ponds, bamboo trees, etc.), the next best option would be to resettle people in areas where they have access to agricultural lands (for purchase or as sharecroppers). Indeed, as referenced above, around 75 percent of households to be displaced (based on AEC’s survey) indicated that “close to an area where agricultural production can be re-established” is an important factor for them in choosing a resettlement site—in fact, this is more significant than any of the other factors listed in the survey (p. 8-2). Yet, this is not listed even as a *secondary* criterion for resettlement site selection (p. 8-5). Similarly, criteria to be used in matching other preferences and needs of affected people to site selection have not been identified, including those relevant to maintaining kin and community networks.

5.5. Lack of details on resettlement sites

As detailed above (see section 2.2.), there is little information on the resettlement sites for those being relocated in the later phases of the project. Elaborating on this point, the draft RP adds (in a footnote) that the locations for Phase I resettlement sites “have subsequently been defined more clearly” but does not provide detailed information on these locations (p. 9-8). In this regard, there is no information in the draft RP on the size of the homestead plot per household, what can be expected in terms of gardening areas, barns and pastures for livestock, and whether any available lands will be cleared in advance or will need to be cleared by re-settlers themselves. The draft RP states that a significant percentage of those being physically displaced have livestock but there is no information on how this livestock will be moved to new homesteads and how herds will be maintained, i.e. if there is access to grazing land or forests near the resettlement sites.

5.6. Lack of information about the various resettlement decision-making structures

A number of supervisory and decision-making bodies will be created through the resettlement plan and process. AEC will have a permanent Resettlement Division within their corporation. The draft RP also calls for the establishment of Local Liaison Forums (LLFs) which will be the primary vehicle for community participation, information sharing and first-order grievance redress. LLFs are also charged with representing community interests to the company on matters related to resettlement. In addition, a Resettlement Steering Committee (RSC) with participation from Asia Energy, local government representatives at various levels, and representatives from the LLFs, will be established in order to “ensure proper coordination of resettlement activities.” RSC will also convene various issue-specific committees (such as for compensation determination, or grievance redress). The draft RP states that each committee will have separate Terms of References (ToRs) and compositions. The finalization of these details, however, is pushed off for a future (unspecified) date. Given their importance, these ToRs and details on committee composition should be included in the draft RP, not postponed, in order to ensure that affected stakeholders have an opportunity to provide feedback on the proposed decision-making structures before they go into effect. However, it must be noted local people have not allowed AEC to operate in the area since the October 2006 killings. **There remains tremendous mistrust by communities against the company and thus, it is difficult to imagine how such committees would work without the necessary social capital.**

6. No indication of broad community support and no assessment of potential sources of conflict

AEC acknowledges that the displacement of people in this project is involuntary, and its draft Resettlement Plan identifies involuntary resettlement as “an integral component” of the project. As defined by the International Finance Corporation (IFC), “resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition that result in displacement.”⁴⁶ Clearly, in projects requiring the compulsory taking of land, the possibilities of conflict are higher than in other projects. This being the case, building community support and a general understanding of the project is essential.

In order to address this issue, IFC policy states that in cases where there is “significant adverse impacts on affected communities,” which can include projects involving involuntary resettlement, IFC will assure itself that free, prior and informed consultation has resulted in the “broad community support for the project within the affected communities.” Indicators of “broad community support” (BCS) as identified by IFC, can include whether there have been formal or informal “expression of support or objections to the project.” This can include such things as

“photographs, media reports, personal letters or third party accounts, etc., regarding events/demonstrations/other activities for the project undertaken by project-affected communities, with high relative levels of participation by: (i) the affected community as a whole: or (ii) by sub-groups particularly affected by the project.”⁴⁷

⁴⁶ International Finance Corporation (IFC), Performance Standard 5 on Land Acquisition and Involuntary Resettlement (2006), p. 1.

⁴⁷ International Finance Corporation, Environmental and Social Review Procedures (2007), pp. 33-40.

If using this framework, it is unlikely that the Phulbari coal project would meet standards for broad community support. **Indeed, opposition and many concerns raised by communities facing physical displacement and by host community members have been ignored, exacerbating the potential for conflict in the area.**

6.1. Expressions of opposition ignored while invalid assumptions regarding community support are made

In the draft RP, Asia Energy has failed to acknowledge the clear and significant expressions of concern about and opposition to the mine from the people in Phulbari and surrounding areas. Among other things, community members have organized mass demonstrations in opposition to the mine (e.g. the August 2006 demonstrations) and have spoken out against the mine in community meetings and in the media and have organized mass demonstrations in opposition to the mine. Recalling the use of force against unarmed demonstrators in the August 2006 demonstration, one community member highlighted the lack of response from AEC:

“That was why we had a demonstration to show that people of Phulbari are against this project. It was a peaceful rally, but BDR (Bangladesh Rifles, border security force) provoke fire on us. That is why people of Phulbari are angry with Asia Energy. Asia Energy never contacted us after August 26 killing. There is no way Asia Energy will come in and work in Phulbari without people’s agreement.”⁴⁸

Community members have also endorsed at least one letter to the Asian Development Bank and other financial institutions citing their numerous concerns with the project. In December 2007 over 40 community leaders from the Phulbari, Birampur, Nababganj and Parbatipur upazillas (subdistricts) wrote to the ADB President and Executive Directors requesting that the bank “remove its support of investment and political risk guarantee for the Phulbari Coal Mine Project.”⁴⁹

Community members have also engaged international civil society to support their messages and appeals to stop project development. In December 2007, the World Organization Against Torture issued an urgent appeal for its members and supporters to write to the Government of Bangladesh, GCM and financial investors like the ADB, to investigate the human rights abuses associated with the project. Similarly, in early 2008, the World Development Movement based in the U.K. mobilized its supporters to send thousands of emails to Barclays Bank, which was previously invested in GCM/AEC, calling on the bank to withdraw its support from the project.

Despite these actions, the draft RP remains silent on any hint of opposition. The demonstration and other indications of opposition to the mine occurring before December 2006 have not been acknowledged in the draft RP. Instead, AEC makes several invalid assumptions regarding community support. For example, the Public Consultation and Disclosure Plan (PCDP), available on AEC’s website, states: “Directly affected people mostly appeared supportive of the project, participating in the consultation process through attendance at meetings and responding to the various surveys, raising concerns as

⁴⁸Quote from interviews conducted during a fact-finding visit by Japan Center for a Sustainable Environment and Society (JACSES), available at <<http://www.accountabilityproject.org/article.php?id=277>>.

⁴⁹ A copy of this letter is available at: <<http://www.bicusa.org/en/Project.Resources.59.aspx>>.

outlined above.” (PCDP, page 35, section 4.5) This assertion is questionable because: (i) **participation** in a meeting or survey **cannot be equated with consent or support for the project** (as should be abundantly clear by the number of concerns raised during the consultation outlined in the same document); and (ii) even if the people attending the meetings indeed expressed universal support, they are a self-selected group that does not necessarily represent the entire affected population.

“The relocation of displaced households to the host community areas may cause social tension and problems.”

6.2. Uncertain support in host communities and potential sources of conflict

Discussion of the impact on the designated host communities for this project is contained in Chapter 9 of the draft RP and is based on a host area survey undertaken among landowners potentially affected by the establishment of four resettlement sites in Phase 1. A total of 987 landowners were identified potentially affected host community members, 85 percent of whom were included in the survey.

Although the draft RP concludes that 73 percent of host community members who were surveyed “supported” the establishment of the resettlement sites, it is entirely unclear how support is defined or assessed. Moreover, significant lack of support was reported for two of the four sites, with nearly 40 percent (38.8 percent) and 33 percent showing the “lowest support” in these sites (p. 9-4). Among the 36 percent of host area landowners surveyed “who do not support the establishment of the resettlement sites over one-third opposed the mine; well over half (52.8 percent) expressed concern about the loss of agricultural lands, and well over a third (36.4 percent) cited insufficient agricultural lands in the area (p. 9-4).

Community members opposing the project have expressed concern about how AEC has attempted to garner support for the project and the divisive effects:

“AEC Asia Energy’s tactic is to break community moral by giving expensive gift and corrupt people’s mind. Asia Energy is trying to corrupt local people by giving out many gifts and divide community by money. For that, we do not trust Asia Energy and fight against Asia Energy.”⁵⁰

Further concerns expressed by households in the host community pertain to compensation practices, payments, and their status as affected persons, employment opportunities, community services and facilities, and relations between the mine and the community (p. 12). Significantly, the draft Resettlement Plan states that “the relocation of displaced households to the host community areas may cause social tension and problems” and that this was a “commonly raised concern” (p. 9-10). In addition to “social tensions and problems” arising from “inequalities between host and resettler communities” and “increased population and pressure on resources,” host community members identified religious and cultural practices as potential sources of social tensions and difficulties.

The concerns raised by members of the host communities appear to be well grounded given that the RP gives inadequate provisions to benefit host communities. The lack of

⁵⁰ Quote from interviews conducted during a fact-finding visit by Japan Center for a Sustainable Environment and Society (JACSES), available at <<http://www.accountabilityproject.org/article.php?id=277>>.

benefits points to the potential for disparities between support, services, and infrastructure provided to resettled households compared to their hosts in resettlement sites. Prior experience in other projects involving large-scale resettlement provides ample evidence that such disparities typically generate social tensions that frequently erupt into overt conflict between settlers and members of their host communities.⁵¹

Given what we know about the potential for conflict in such situations, benefits to the host community must be an integral part of project planning and cannot simply be assumed as follows: “Though access to the range of community infrastructure and services to be provided at the resettlement sites, the resettlement programme is anticipated to contribute to the enhancement of the quality of life in the host areas” (p. 9-6). This assumption, vague and with no accompanying details on how this presumed overflow of benefits might be concretized, stands in striking contrast to the needs identified by members of the host communities: improved water supply; access to electricity; health and training facilities, a secondary school, places of worship, and roads linking host villages with markets and resettlement sites (pp. 9-5, 9-9 & 9-10).⁵²

Lastly, concerns pertaining to religious and cultural differences between displaced people and members of their designated host communities deserve special attention (p. 9-8). For example, community representatives of certain indigenous *Munda* households expressed concern about their relocation sites given their own cultural necessities. This led to the need for further consultations regarding site requirements.

7. Inadequate public information disclosure, consultation and independent grievance mechanism

Involuntary resettlement and displacement in any project is a difficult undertaking. However, in this project it is particularly problematic given the size of the affected population, the exclusion of replacement land in the compensation matrix, and the scarcity of land in the area. Together these factors will force a massive transition for people away from traditional land-based livelihoods to uncertain sources of livelihood.

Openness, informed consultation and systems of accountability are absolutely necessary to achieve participatory decision-making on the project and, as study and experience have proven, lessen the adverse impacts of the project. However, public information disclosure and consultation for the Phulbari mine have been minimal, with very limited information available in the Bangla language. Furthermore, civil rights abuses leading to the intimidation of members of the affected communities have corroded the consultation process. Plans for grievance mechanisms during project implementation also lack independence. Following are specific examples of how the draft RP falls short of ADB and international best practice in these areas. These are in no way exhaustive and much more thought needs to go into an accountable and transparent governance process regarding this project.

⁵¹ See: Hoshour CA. (2000) Relocating development in Indonesia: a look at the logic and contradictions of state directed resettlement, PhD thesis, Harvard University.

⁵² It is highly instructive to compare the concerns and “expectations” expressed by members of the host community with details on AEC’s plan to address these concerns and expectations, as summarized in Table 9-12. (p. 9-10)

7.1 Lack of information available in the local language

The ADB, as well as international best practice, requires timely disclosure of project documents to project affected people as part of the consultation process. This must happen **PRIOR TO** the finalization and approval of the document as the possibility of making any changes to the document are likely to be significantly reduced once AEC receives government approval. Specifically, the ADB's Public Communications Policy states that the "borrower or private sector sponsor" shall make available to the affected population, in a language and form accessible to them: (i) before appraisal—a draft resettlement plan; (ii) after completion of the final resettlement plan—such resettlement plan; and (iii) following revisions to the resettlement plan as a result of detailed technical design or change in scope in the program or project —the revised resettlement plan.

Disclosure at this level cannot be considered compliant with the ADB's policy requirements for meaningful, accessible and timely disclosure.

Despite these clear guidelines, it appears that a Bangla-language version of the 2006 draft RP was never produced and it appears that neither the December 2006 English-language version nor the expected new version of the RP will be translated until AEC has approval from the Government of Bangladesh (the draft RP suggests that only the Executive Summaries are to be distributed in Bangla (p. 5-8)). To date and according to available research, AEC has only produced brochures, informational sheets and videos about the project that seem more suited to public relations and advertisement than to providing needed details to the affected population about the terms of resettlement.

Disclosure at this level cannot be considered compliant with the ADB's policy requirements for meaningful, accessible and timely disclosure.

7.2. Information for non-literate populations

Over one third of the affected population is non-literate (as described in the survey data in the draft RP) (p. 3-4). It is not clear what efforts have been made to date, or are planned, to disseminate information, in an "appropriate form", to those who cannot read the information sheets and other documents. The project's PCDP further states that the Public Information Office only receives questions in writing, and responds to them in writing. AEC should have specified a plan and measures which it would undertake to get relevant information to non-literate populations.

7.3. Independence and structure of the grievance task force

The specifics of the grievance mechanism require clarification. The draft RP states that overall responsibility for grievance redress lies with Asia Energy's Resettlement and Development Division, but that grievances would first be handled by a task force under the Resettlement Steering Committee (RSC), brought forth through the Local Liaison Forum (LLF) representatives. The mechanism's independence under this model would depend upon how the decision-making structure is set up within the RSC task force. The RSC would consist of representatives from Asia Energy, local government at various levels, and the LLFs. However, the critical details on who would sit on the grievance task force – and how decision-making would occur – are not available in the draft RP for public comment.

If grievances cannot be resolved by the established mechanism within the RSC task force, both the draft RP and PCDP state that an appeal can be made to the national legal court system. The PCDP further states that, in this case, "the resolution of all grievances and

disputes will be according to applicable legislation” (p. 43). This vague statement seems to imply that the standards to be applied in disputes that cannot be resolved by the RSC will not be ADB safeguard policy standards (assuming the ADB is involved in the project) but rather national legislation. This raises serious concerns given the asymmetry of power within Bangladesh and the fact that the country is currently operating under emergency rule.

IV. Conclusion

As described in this report, the scale and extent of the physical and economic displacement in this project will leave hundreds of thousands of people vulnerable to homelessness, joblessness, food insecurity and disruption of traditional community and social safety nets. However, the full extent of project impacts on the population, environment and economy cannot be completely assessed because the draft Resettlement Plan fails to address critical issues related to displacement and involuntary resettlement. For instance:

- It is not clear how “support” for this project was defined or assessed—a significant omission in light of large-scale opposition to the project among affected households and concerns expressed by members of the host community.
- There is no analysis conducted specifically identifying the potential risks of escalating land prices or conflict caused by physically displacing a large population in a country with an overall lack of available land.
- There is no cost analysis of the Phulbari area’s contribution to food production and food security in Bangladesh given that this area is not typically affected by annual flooding.⁵³
- There is little to no assessment of whether or how cash compensation will leave populations as well off as they would have been without the project and it is unclear how the project will assist affected people to reinvest their cash compensation.
- There are no cost estimates for acquiring replacement land in host communities, nor have sites for resettlement been finalized. It is not clear if land acquisition in identified host communities will be based on purchase or expropriation, nor is there information on how affected households will replace lost lands.
- Given the lack of baseline data, including an inventory of lost assets, settlement patterns, land tenure, and a livelihood analysis, there is no basis for assessing project impacts in the host communities.
- There are no contingency plans dealing with possible difficulties and delays in project implementation such as landowners in designated host communities refusing to relinquish their lands and accommodate the resettlers, “self-relocating” individuals being unable to find land to build new homesteads, or project implementation extending beyond 10 years.

Contingency plans and cost-benefit analyses and studies addressing each of the above gaps in project planning are imperative preliminary steps to ascertaining the viability of such a large-scale resettlement operation. Among other things, these studies should seek to answer the questions: (i) Does this project merit the involuntary resettlement and displacement that would lead to the potential impoverishment of tens of thousands of

⁵³Government of Bangladesh, Expert Committee Report, September 2006.

people; (ii) Do the costs associated with ensuring the full restoration and improvement of lives and livelihoods of affected peoples continue to make the project economically feasible; and, (iii) Are there alternative energy scenarios for Bangladesh that would be more cost effective and carry less social impact? This detailed assessment of AEC's draft Resettlement Plan does not show that resettlement is merited in this project and, if it was merited, the draft RP does not adequately plan for the restoration of livelihoods for affected people.

Furthermore, project sponsors and financing institutions must consider the broader context in which this project is taking place. Implementing a successful involuntary resettlement program, while also improving the livelihoods for affected people, is difficult and complex in any setting. Scholars and practitioners in the field of involuntary resettlement agree that: "the problem of mining-induced displacement and resettlement (MIDR) poses major risks to societal sustainability."⁵⁴ The World Bank Group's policy on involuntary resettlement elaborates on these risks:

"Bank experience indicates that involuntary resettlement under development projects, if unmitigated, often gives rise to severe economic, social and environmental risks: productive systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost."⁵⁵

In addition to these challenges, the Phulbari coal project is further complicated by the associated civil and human rights abuses. Lack of information available to project affected communities and an inadequate project resettlement plan overall, along with a lack of clarity from investors about whether or not the project will go forward has contributed to a significant amount of anxiety, frustration and, ultimately, dissent around the project. The project has already been met with resistance from Phulbari community members, NGOs in Bangladesh, international civil society, and the Asian Development Bank itself.⁵⁶ **The clear problems around land scarcity and displacement described in this report, along with the lack of community and civil society support and the challenging political situation in Bangladesh, do not make for an environment conducive to implementing a successful resettlement endeavor, especially in a project of this size and scale.**

Overall, AEC's draft Resettlement Plan dramatically fails to address many key components of a sound displacement and resettlement strategy. Given these failings, it is both likely and foreseeable that the project would replicate disastrous effects that have become all too familiar when development-induced displacement and resettlement are involuntary and implemented on a large-scale. Based on the information provided in the AEC draft RP, this assessment concludes that the Phulbari coal project is likely to:

⁵⁴ Downing, Theodore E. (2002). *Avoiding New Poverty: Mining-Induced Displacement and Resettlement*, p. 5.

⁵⁵ World Bank Operational Policy 4.12 on Involuntary Resettlement (2001).

⁵⁶ "ADB postpones funding." *The Daily Star*, Bangladesh, April 7, 2008.

- ***Risk the impoverishment of tens of thousands of people.*** The draft RP fails to adequately address the fact that the project will dramatically alter the livelihoods of a huge population—turning thousands of current farming households into landless wage-laborers, who will be forced to compete either for limited agricultural jobs or for jobs in entirely different economic sectors. There is no meaningful analysis of the risks and complications involved in this transition. The skill-sharing and support programs that the draft RP proposes are vague and do not identify how people would transition into alternative livelihoods without impoverishment. Furthermore, the draft Resettlement plan greatly underestimates the amount of people that will be affected by this project. Exclusion of the actual scope of affected people from the project’s compensation and entitlements matrix is a violation of ADB policy, which acknowledges that people who lose access to resources “such as forest, waterways, or grazing lands...should be provided with replacement in kind.” It also violates ADB’s resettlement principles because the underestimation limits the population’s access to any compensation or livelihood restoration assistance—resulting in people being left worse off than they were before the mine project.⁵⁷
- ***Lead to conflict in the project area.*** AEC acknowledges that the displacement of people in this project is involuntary, and its draft Resettlement Plan identifies involuntary resettlement as “an integral component” of the project. Despite this, major concerns from the affected population have not been addressed and peaceful demonstrations in opposition to the mine have been met with the use of military force. AEC also acknowledges that “the relocation of displaced households to the host community areas may cause social tension and problems” arising from “inequalities between host and resettler communities” and “increased population and pressure on resources,” along with religious and cultural differences. The draft RP has in no way addressed the lack of community support for this project and has not thoroughly thought through conflict that may arise due to resettlement and displacement.
- ***Significantly impact food security of Bangladesh.*** The vast majority of people in the Phulbari area are farmers and fisherfolk and over 80 percent of the land being acquired for the project is agricultural land which will not be replaced. Many of the concerns generated by the project center on the issues of land and agricultural production. Specific concerns cited in the draft RP include: impacts on the income and livelihoods of agricultural laborers; disruptions to current occupations related to agricultural production; “the adverse impact that the loss of agricultural land will have on those who are already poor;” and adverse impacts on shareholders and tenants losing access to cultivation rights as a result of land acquisition for resettlement.

The project, however, will not only adversely impact the livelihoods of farmers in Phulbari. Given its location in an agricultural area of major importance to Bangladesh, producing three annual harvests of rice plus additional crops and abundant fish, the project raises serious questions and concerns for the nation as a whole. Due to its elevation, the Phulbari area is one of the only regions of Bangladesh not vulnerable to flooding that has devastated the rest of the country in recent years. Despite these factors, there is no analysis in the draft RP of the

⁵⁷ Asian Development Bank, Handbook on Resettlement: A Guide to Good Practice (1998), p. 7.

ramifications of transforming one of the most important food baskets of the country into an open-pit mine.

It is strongly recommended that project financiers, including public development banks and private financial institutions investing in Global Coal Management Resources, immediately conduct a cost benefit analysis on the merits of the project, including all social (displacement) and environmental costs in the short- and long-term. This analysis must be completed, reviewed and debated publicly before the Phulbari coal project is considered a viable option for meeting energy needs in Bangladesh.

Given the multi-faceted problems associated with the resettlement components of this project, and the overwhelming risk to the lives and livelihoods of hundreds of thousands of Bangladeshis, it is recommended that ADB and other financiers carefully consider their involvement in this project. It is estimated that just under two-thirds of the Bangladeshi people live without access to electricity, and institutions such as the ADB should take a leadership role in promoting thorough and grounded assessments of alternative means for meeting energy needs in Bangladesh.

This report was prepared by Jennifer Kalafut, Co-Director of the International Accountability Project (IAP) and commissioned by the Bank Information Center (BIC). It includes input from: Leanne Farrell, IAP consultant; Kate Hoshour, IAP Research Fellow; Shefali Sharma, BIC South Asia Consultant; and a number of Bangladeshi individuals with expert knowledge of the project.

International Accountability Project (IAP) challenges destructive development projects that uproot and impoverish millions of people across the Global South. Working with grassroots and international partners, IAP advocates for international policies that respect the rights and livelihoods of people threatened by unjust development, and we support communities to hold their ground and defend their homes, environment and human rights.

Bank Information Center (BIC) is a non-profit, non-governmental organization which partners with civil society in developing and transition countries to influence the World Bank and other international financial institutions (IFIs) to promote social and economic justice and ecological sustainability.

International Accountability Project

221 Pine Street, 6th Floor
San Francisco, CA 94104, USA
Tel: +1.415.659.0555
Web: www.accountabilityproject.org
Email: iap@accountabilityproject.org

Bank Information Center

1100 H Street, NW, Suite 650
Washington, DC 20005, USA
Tel: +1.202.737.7752
Web: www.bicusa.org
Email: Info@bicusa.org