

Complaint to the Asian Development Bank for Violations of its Safeguard Policy, Malir Expressway (MEX)

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1. Statement of the Issue

This is a complaint to the Asian Development Bank (ADB) regarding its Malir Expressway project. The Malir Expressway (MEX) is a project to build a 38.75 km six-lane dual carriageway. Its Environmental Impact Assessment (EIA) Report states its objective is “to improve the traffic flow in this stretch by providing a 6-lane all weather road of international highway standards of geometrics, strength and durability of road and cross drainage structures like bridges and culverts.”¹ This Project will be funded partially by the ADB through the Government of Sindh’s Public Private Partnership (PPP) Support Facility (PSF). This “is a public sector company of the GoS, incorporated under Section 42 of the Companies Ordinance, 2017.” “The PSF is expected to manage a Viability Gap Fund (VGF). The financing for the VGF is also augmented by USD 100 million support from the ADB,

¹ Environmental Impact Assessment (EIA), Project Number: 46538-002 March 2022 Draft Pakistan: Supporting Public-Private Partnership Investments in Sindh Province Malir Expressway Project: Main Report hereinafter “March 2022 EIA” or “EIA” para 4 <<https://www.adb.org/projects/documents/pak-46538-002-eia>>

complemented by grant funds from the Department for International Development (DFID), Government of the United Kingdom (administered by the ADB).”² Hence ADB owes a responsibility that the Environmental Impact Assessment (EIA) for the project is in conformity with its own policies, national, and international law.

ADB issued a report in June 2022³ classifying MEX as a “Category A” project. Such projects, according to ADB policy, “may have diverse, irreversible, unprecedented and significantly adverse environmental impacts, which may go beyond physical boundaries of the project.” ADP states that such projects “shall be subject to both national environmental regulations along with any specific environmental and social safeguard policies from the Financing Source.” In order to push the project forward, the Government of Sindh (GoS), the borrower, conducted an improper assessment of the environmental risks in their Environmental Impact Assessment and also failed to present adequate solutions to these risks. The GoS hired the National Engineering Services Pakistan (NESPAK) Private Limited to prepare the EIA and the Land Acquisition and Resettlement Plan for MEX.⁴ In their EIA, they posit: “During the design, construction, and operation of the project, the borrower/client will apply pollution prevention and control technologies and practices consistent with international good practice, as reflected in internationally recognized standards.”⁵ These solutions are vague and inadequate in light of the devastation (misrepresented in the EIA) to Malir’s agricultural green belt, wildlife habitat, and the natural environment. Moreover, the borrower conducted a public EIA hearing in March 2022 months after the project had commenced in violation of the Sindh Environmental Protection Act 2014. Before this hearing, Borrower shared an 800-page EIA report prepared by NESPAK which is different from the one present on the ADB website in June 2022. ADB mentioned on this website that “comments from ADB SDSS are being incorporated by project consultants and that SEPA has issued a No Objection Certificate (NOC) for this project” thus giving it the green light.⁶ However, since the EIA study was done in violation of law and misrepresents the environmental damage caused by this project, it must be rejected.

Proponents misrepresented the project site of MEX as “barren/degraded tract” that is “not classified as a biodiversity hotspot.”⁷ We submit that MEX will indelibly harm the local habitat and the ecosystem that sustains a variety of diverse wildlife and vegetation. We also submit that there are multiple residents who identify as indigenous tribes. MEX’s construction will thus lead to numerous violations of Pakistan’s commitments under its Ecosystem Restoration Initiative and its obligations under the 2018 Paris Agreement of the United Nations Framework Convention on Climate Change. MEX will endanger wildlife due to damage to their habitat and lead to felling of trees and loss of vegetation. The ecosystem initiative requires the state to do quite the opposite - that is conserve forests and biodiversity.⁸ Mitigation measures proposed by the borrower are in violation of domestic and international laws (Paris Agreement, Kyoto Protocol, UNFCCC) that Pakistan has ratified. They violate Pakistan Climate Change Act 2017 as well. Mitigation strategies are non-comprehensive and do not satisfy international law. Section 8(a) of this Act says the state must “formulate,

² EIA para 45

³ Asian Development Bank, Environmental Monitoring Report Semestral Report June 2022 PAKISTAN: Supporting Public-Private Partnership Investments in Sindh Province hereinafter “ADB EMR June 2022” <<https://www.adb.org/projects/documents/pak-46538-002-emr>>

⁴ EIA para 48

⁵ EIA para 92

⁶ ADB EMR June 2022 Table 4 p9

⁷ EIA para 290

⁸ ADB Strategy Para 24

comprehensive adaptation and mitigation policies, plans, programmes, projects and measures designed to address the effects of climate change and meet Pakistan's obligations under international conventions and agreements relating to climate change and within the framework of a national climate change policy as may be approved by the Federal Government from time to time." The EIA does not satisfactorily explain how such laws are being met. ADB thus owes a responsibility to have a proper EIA conducted given that this project is not in harmony with its country strategy and violates international norms the ADB seeks adherence to.

2. Violation of ADB Instruments, International and Domestic Law

A. MEX heightens the impact of climate change

ADB Partnership strategy 2021-2025 identifies three pillars for their financial assistance, one of which includes "social protection to enhance productivity and people's well-being". According to this strategy, "considerations of gender equality, *climate change and disaster resilience*, governance, and regional cooperation and integration will cut across these pillars."⁹ ADB strategy recognizes Pakistan's exposure to hazards and climate change impacts and states: "Pakistan is highly exposed to natural hazards, including floods, droughts, cyclones, and earthquakes, as well as infectious disease outbreaks." "Extreme weather events will increase in frequency and severity with harmful associated effects on agricultural productivity, water availability, and infrastructure reliability."¹⁰ According to project affected persons, MEX will reduce agricultural productivity and will also cause damage to this essential green belt on the outskirts of Karachi protecting the city from the harsh effects of climate change. Karachi has undergone numerous heat waves in the last decade and its meteorological data shows an increase of two degrees Celsius since the 1960s. MEX will also hinder and block the flow of several tributaries that lead into the Malir River thereby exposing the city to flooding and affecting water availability to residents in Malir.

B. MEX does not strengthen connectivity as per ADB Strategy

ADB claims its strategies must be aligned with "people-centered priorities of the government."¹¹ One of its strategies is to improve connectivity in Pakistan. This includes upgrading national highways and provincial roads. ADB's support extends to commercially viable and sustainable roads that "promote connectivity, safety, *climate resilience*, *environmental sustainability*, and *inclusiveness*."¹² The MEX is not people-centric. Moreover, it barely strengthens connectivity, harms the environment through emissions and other damage, and reduces climate change and disaster resilience. It is not inclusive and benefits a small social group. Mohammad Aslam, a local farmer and project affected person, claims this project does not benefit local residents of Malir and is being constructed mainly to

⁹ADB Country Partnership Strategy December 2020 Pakistan, 2021–2025 —Lifting Growth, Building Resilience, Increasing Competitiveness hereinafter "ADB Strategy" para 3
<<https://www.adb.org/documents/pakistan-country-partnership-strategy-2021-2025>>

¹⁰ADB Strategy para 18

¹¹ADB Strategy Para 21

¹²ADB Strategy Para 23, 43

save a mere fourteen minutes of travel time for about 9,000 commuters.¹³ Most of these commuters will be residents of middle and upper middle class neighborhoods of the Defence Housing Authority (DHA) and Clifton in Karachi. This road will facilitate access from DHA , Phase 1 to 8 and Clifton to elite gated communities such as DHA City in DHA Phase 9, Education City and Bahria Town near the Super Highway.¹⁴ Locals submit that an ulterior goal of this project is to connect two elite areas (DHA 1 to 8 with DHA Phase 9) and therefore increase real estate values at both ends. The road will barely improve connectivity and is hardly relevant for Karachi’s residents, most of whom live below the poverty line and will not use the road.

C. Borrower conducted the EIA after the project started

On March 9, 2022, the Borrower held an Environmental Impact Assessment (EIA) hearing. Project affected persons including local residents, rural, indigenous communities, and environmentalists participated in the EIA hearing and raised their objections. They argued that the EIA must be done in accordance with the law, and in this case the public hearing was being conducted a year after work was started.¹⁵ The validity of SEPA itself is under question considering Sindh Environmental Protection Council (SEPC) is not functional. SEPA’s standing under the provincial or local government is also under question. They submitted these objections in writing as well. (*Attachment 1*, EIA Objections March 9). The borrower, the Government of Sindh, went ahead and approved this flawed EIA on or around April 25, 2022.¹⁶ The ADB has tacitly accepted this irregular process by bringing the project to a financial close. Project affected persons have filed an appeal of this approval in violation of SEPA before the Sindh Environmental Tribunal. In July 2022, due to objections raised before the Tribunal, SEPA quickly amended a procedural irregularity that the EIA did not have the signature of the organization’s Director General.¹⁷

D. Borrower did not conduct adequate stakeholder consultations

According to the Asian Development Bank’s (ADB) Safeguard Policy Statement 2009, whenever a project affects the livelihoods, culture, human rights and dignity of indigenous people, impacts the environment, or results in involuntary resettlement, the proponents must hold meaningful stakeholder consultations. This means the borrower, the Government of Sindh, must facilitate “informed participation”, ensure women’s participation and include “affected people and concerned nongovernment organizations, early in the project preparation process and ensure that their views and concerns are made known to and understood by decision makers and taken into account.” The process of consultation must

¹³ Mohammad Aslam, Statement at the Karachi Press Club, March 2022

¹⁴ See EIA Para 36, 46. Former states the positive impacts will be: “Upon its completion, the travelling time from the Karachi-Hyderabad Motorway, M-9 to KPT Interchange on the main Korangi Road (Formerly known as the Hino Chowk) will be reduced to only 30 minutes. Therefore, the daily commutation between Karachi Port, Industrial Areas of Landhi and Korangi, and also between the CBD Area, Clifton and DHA (Phase 1 to 8) and the proposed DHA City & the Education City will be more convenient, uninterrupted and economical.”

¹⁵ According to section 17 (1) of the Sindh Environmental Protection Act 2014 (SEPA), “No proponent of a project shall commence construction or operation unless he has filed with the Agency an initial environmental examination or environmental impact assessment, and has obtained from the Agency approval in respect thereof”.

¹⁶ Sepa grants EIA approval for controversial Malir Expressway, Dawn, April 25, 2022, <<https://www.dawn.com/news/1686653>>

¹⁷ SEPA chief signs ‘fresh’ EIA report of Malir Expressway to avoid legal troubles, Dawn, July 21, 2022, <<https://www.dawn.com/news/1686653/sepa-grants-eia-approval-for-controversial-malir-expressway>>

continue “throughout project implementation.”¹⁸ The EIA however fell short of this requirement in letter and spirit. According to the census of 2017, Malir district’s population is 2,008,901, out of which 934,491 are women, and 400,485 rural women. There are about 338,257 households out of which 149,820 are rural.¹⁹ Borrower interviewed a total of 240 households within these villages/settlements located along the CoI for the collection of baseline socio-economic data.²⁰ They report only six consultative meetings (four with male participants and two with females) with a total number of 98 participants in the Study Area. Out of these 98 participants, 72 were male and 26 were female including elderly members of the local stakeholder/community.”²¹ Out of these only two were farmers.

E. Borrower did not conduct adequate consultations with women

ADB Safeguard Policy requires consultations with affected communities are “gender inclusive and responsive.” ADB has elaborated the components of meaningful stakeholder consultation:

(i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is *gender inclusive and responsive*, and tailored to the needs of disadvantaged and vulnerable groups; and (v) *enables the incorporation of all relevant views of affected people* and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues.”²²

However, proponents met with only 26 women - 11 from Shah Faisal Colony and 15 from Sammo Goth.²³ Given that the population of women on both sides of the riverbed alone is estimated at 29,365, this sample is too small to be considered gender inclusive. Borrower acknowledged that “rural women are major contributors in ... crop production, livestock production, cottage industry, ... transporting water, fuel and fodder to and from the home.”²⁴ They surveyed women about their economic activities and only 4 and 1 percent reported working in farming and livestock respectively.²⁵ Women’s concerns were also recorded based on unrepresentative samples and likely do not reflect women’s views relevant to farming, livestock, fuel and fodder transport. Borrower carried out a survey of about 240 respondents, comprising 91% male and 09% females. Explaining the low representation of women, Borrower casually refers to the “law and order situation in Karachi without further explanation.”²⁶ Women’s participation in the livestock and farming was thus not properly recorded.²⁷ Similarly, the borrower made little effort to document women’s knowledge that

¹⁸ ADB Safeguard Policy Statement (2009), Environmental Safeguards, Involuntary Resettlement Safeguards, Indigenous Peoples Safeguards pp 16, 17,18 <<https://www.adb.org/sites/default/files/institutional-document/32056/safeguard-policy-statement-june2009.pdf>>

¹⁹ <http://www.pakinformation.com/population/malir.html>

²⁰ EIA para 70

²¹ EIA para 449

²² Safeguard Policy Statement, Para 32

²³ EIA para 458

²⁴ EIA para 422

²⁵ EIA para 424

²⁶ EIA para 381

²⁷ EIA Para 424

could be relevant to climate change mitigation strategies. Women consulted said their main concerns were residential disturbance, mobility of women, lack of facilities of safe drinking water, insufficient health and educational facilities and no transport facilities.²⁸ Many rural women may not openly speak about their daily labor and their occupations as these are normalized and rendered “invisible” as everyday chores or part of the informal rural economy. In sum, these consultations have not explored the needs of marginalized rural women and their livelihoods and have thus not been done in a meaningful manner.

F. Involuntary Settlements of the ADB Safeguard Policy was not part of the EIA

The EIA report that was presented to the public before the hearing is significantly different from the EIA that is now present on the ADB website. These differences are evident in several places. One such discrepancy is that public documents make no reference to the ADB Safeguard Policy while the ADB EIA has tens of references to it. In the area of resettlement, rehabilitation, and compensation for affected people paragraphs 450 and 451 of the public EIA do not match the corresponding paragraphs 499 and 500 in the EIA on ADB website. The public EIA (para 451) mentions only compensation according to the national law, the Land Acquisition Act (LAA) 1894, and the Land Acquisition and Resettlement Plan (LARP) for the proposed Project. The ADB EIA, on the other hand, presents enhanced rights for those displaced and mentions compensation according to the “Land Acquisition Act (LAA), 1894 and *ADB Social Safeguard Policy*, 2009 by preparing Land Acquisition and Resettlement Plan (LARP) for the proposed Project.” The ADB Policy’s additional safeguards in cases of involuntary settlement include early screening including surveys, census and gender analysis, meaningful consultations, restoration/improvement of livelihoods, and improving the living standard of displaced people. The policy ensures a safety net for non-title holder owners and “*displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of nonland assets.*”²⁹ The LAA in contrast is less generous and does not recognize non-title holders. The Policy also necessitates the preparation of a draft resettlement plan which has not yet been prepared by the proponents of Malir Expressway. This is a ground for rejecting the EIA as ADB aims to avoid involuntary resettlement and minimize resettlement. This project may result in possible displacement of many of the 375,000 residents in about 45 goths and neighborhoods in the project area.

G. EIA erroneously records impact on the environment

The EIA mis-stated that there are no threatened fauna species recorded in the study area.”³⁰ Borrower states that in focus group discussions (FGDs) they learnt wildlife habitat has been harmed due to unplanned commercialization, hunting, poaching, overgrazing, forest destruction, and exploitation of natural resources. That “once healthy forests” “home to different wildlife species including mammals, reptiles, amphibians and avifauna” are now “unsuitable and detreated.”³¹ They claim their consultant found no legally and ecologically

²⁸ EIA para 459, 461

²⁹ Asian Development Bank, Safeguard Policy Statement, June 2009 p27

<<https://www.adb.org/sites/default/files/institutional-document/32056/safeguard-policy-statement-june2009.pdf>>

³⁰ EIA para 532

³¹ EIA paras 163 and 164

protected important sites related to localized habitat.³² They found that “reptiles and amphibians are unable to maintain their habitats because of severe/extreme anthropogenic pressure and that native species are extinct or have migrated.” The EIA claims that “non-availability of surface as well as groundwater and discharge of untreated wastewater into Malir River” has “irreversibly reduced the biodiversity in the area.”³³ The EIA fails to, however, give a full picture of the still remaining rich biodiversity of the area and how commercialization like the one anticipated by this project will further degrade habitat.

The Borrower relied on the IBAT software for the initial ecological based screening and to identify the status of the potential wildlife species.³⁴ They supplemented it with “literature review, stakeholders/departmental consultations and random ground truthing.”³⁵ Using these tools, they identified 118 listed species in the IUCN red list of species at risk of extinction.³⁶ They listed 16 birds in the area and claimed that the project is not a corridor for migratory birds.³⁷ Locals state that there are many more than 16 bird species in the area and that the online database “Ebird” identifies 176 bird species at Malir Dam, just one location along the project site. The EIA falsely finds “there are no species of conservation importance, endemic species, endangered, critically endangered.”³⁸ However, local researcher Salman Baloch, has identified at least two bird species that are in endangered status as per the IUCN red list - the Steppe Eagle and the Egyptian Vulture- birds which are not even mentioned in the EIA.

Many important species have not been registered by the flawed EIA. Baloch has identified 74 butterfly species in the area, which are not mentioned in the report. The presence of a large variety of butterflies is indicative of a rich host plant environment and recognized by scientists as the health of biodiversity. The EIA mentions 9 mammals and 4 reptiles in the project area³⁹ while locals rebut there are at least 10 mammal species and 15 reptilian and amphibian species, and 176 bird species that will be affected due to the project's current design, most of which are not included in the report. *See Attachment 2*, List of Wildlife and Vegetation.⁴⁰

H. EIA remediation for harm to wildlife is inadequate

Mitigation methods suggested in the EIA are isolated and deal only with incidental and accidental harm pursuant to project activities. They do not evaluate the harm in totality to wildlife habitat and the ecosystem and how various affected flora and fauna species interact with one another. For example, they state in their EIA that two aquatic species, the “*Channa punctatus* (Dpla) and *Oreochromis mosambicus* (Wild tilapia)” are found in some stretches of Malir River. EIA adds that these sturdy species “live in stagnant dirty waters” and are commercially insignificant.⁴¹ This commercial-only evaluation does not account for how migratory and local birds rely on this fish for food and how these fish feed on other aquatic

³² EIA para 266

³³ EIA para 297

³⁴ EIA para 246

³⁵ EIA para 241

³⁶ EIA para 247 to 249

³⁷ Note that the list given in the EIA erroneously lists three bird varieties twice and hence the correct number as per their findings is only 13. See EIA para 302 Table 5.17

³⁸ EIA para 288

³⁹ EIA paras 299 and 300, Tables 5.14 and 5.15

⁴⁰ Prepared by wildlife photographer, Salman Baloch relying on <<https://ebird.org/hotspot/L12365576?yr=all&m=&rank=mrec>>

⁴¹ EIA para 309

life. They fail to adequately assess the effects on Kirthar National Park which is about 10 to 15 km from the park at end point and 30 to 35 km from the starting point. Kirthar was designated a national park by the Sindh Wildlife Department in 1974 and is the first of Pakistan's parks to be included in the UN's listing of National Parks of 1975. Borrower acknowledges that animals will be "affected" due to construction activities involving excavation, blasting, and more; yet again they do not provide adequate mitigation strategies and casually state that "care shall be taken during construction activities for avoiding purposely or chance killing of animals." They add: "Special measures will be adopted to minimize impacts on birds, such as avoiding noise generating activities during the critical period of breeding." "Hunting, poaching and harassing of wild animals shall be strictly prohibited, and Contractor shall be required to instruct and supervise its labor force accordingly and clear orders will be given in this regard." These remedial measures are ordinary and those that should be part of basic minimum labor training anyway. Local experts profess that the project will indelibly harm the sensitive ecosystem of these animals. The EIA simply does not account for how the area is an extended buffer zone for a large number of species of Kirthar National Park and the damage that will be caused to their habitat. The EIA says there is no game reserve, game sanctuary or national park in the project area which misrepresents the impact on a national park in close proximity."⁴² The EIA mentions all the environmental and climate treaties and conventions Pakistan has ratified; yet Borrower fails to adhere to the main objectives of the Convention on Biological Diversity, 1994 which is to preserve biodiversity and it shows no coherent scheme or plan for environmental management.

I. Impact on farming and other economic activities wrongly assessed

EIA estimated that initially the total number of mature, sub mature and pole crop and saplings trees, which are likely to be removed or damaged, were 1,831.⁴³ The actual number of trees is much higher. Borrower claims during the operations stage no trees will be harmed and regardless they will mitigate with plantation efforts.⁴⁴ EIA lists 18 types of trees found here, but miss out on a number of varieties. They do not include mulberry, guava, jamun and cheeku.⁴⁵ See Attachment 2, List of Vegetation and Wildlife. The EIA states: "No significant horticultural practices were reported, except few guava, papaya and lemon gardens were observed. Some sporadic trees of Date Palm, Coconut and Jaman were reported in the study area."⁴⁶ But this is rebutted by locals who report a much larger presence of trees and orchards. According to locals, planting new trees as substitutes is time-consuming and destabilizes the already rich biodiversity surrounding the Malir River.⁴⁷ Moreover, these new plantations will not likely restore the ecosystem as ongoing urban development like the Mex and Bahria Town do not provide a conducive environment for nature to prosper. The EIA states that the "major crops grown in the area include wheat and fodder during the winter season (kharif) and vegetables and fodder (rabi) in the summer season. EIA lists 22 crops,

⁴² EIA Operation and Maintenance (O & M) , p55/469

⁴³ EIA para 27, Table ES-1: Potential Impacts and Their Applicable Mitigation Measure

⁴⁴ EIA p 56/469

⁴⁵ EIA para 293, Table 5.13

⁴⁶ EIA para 29, para 331 and 332

⁴⁷ Trees of recovering tropical forests were found to be different from those of old-growth forests. They had tougher leaves, with lower concentrations of the nutrients phosphorus and nitrogen — both essential for plant and tree growth." See Mihai Andre, 'Cutting down trees and planting new ones is wrecking the soil. ZME Science (2019) <<https://www.zmescience.com/science/agriculture-science/cutting-down-trees-and-planting-new-ones-is-wrecking-the-soil/>>

fruits and vegetables grown here as well as livestock found here.⁴⁸ They claim 225.96 acres of agricultural land will be lost where Lucerne, vegetables and fodders are cultivated.⁴⁹ Locals claim there are 23 types of vegetables grown here and 57 varieties of wild shrubs and vegetation. *See Attachment 2, List of Wildlife and Vegetation.* During stakeholder consultation, the official at the Agriculture Department “showed his concerns that the proposed route is disturbing the agriculture land and fruit orchards permanently.”⁵⁰ We submit that the loss to agriculture, orchards and vegetation is much larger than that presented in the EIA.

J. Change in Hydrologic Regime not addressed adequately

The EIAs profess the water flow in four nullahs will be interrupted.⁵¹ These are the nullahs behind PAF Museum, Chakora Nullah, Thaddo Nullah, and a Malir River tributary (Konkar Naddi). They propose bridges for crossings and “box and pipe culverts are being proposed along with specific design arrangements for the crossing of the sewerage and storm water drainage outlets.”⁵² Community stakeholders objected to this at the EIA hearing and added that the proponents have not assessed various critical aspects of hydrologic changes including structural integrity of culverts that will be built especially during floods, how these culverts will affect riverbeds, how the course of the river will be altered, and the impact of all this on flora and fauna.

K. Indigenous People

The EIA states that there are no groups of people in the Project area who could be categorized as indigenous people, therefore ADB policy does not apply to the proposed Project.⁵³ The report adds: “Among Sindhi, the tribes settled here are Syed, Jokhia, Khaskheli, Palari, Bareja, Bhabra, Dhars, Sirhindi, Jamot and Mohanas. These tribes are land owners who keep herds and do fishing. Balochi tribes that reside in the district are Kulmati, Jadgal, Gorgej, Hoot, Vadela, Vashki, Zarzedagh, Tumpi, Laghari, Khosa, Rindh, Brohi and Harani (Kharani)”⁵⁴ The EIA also does not deny the indigenous and tribal settlements in areas nearby as they later post that: “Densely and sparsely populated areas, indigenous and tribal settlements and private/Government infrastructures need to be avoided.”⁵⁵ In fact there are multiple tribes in the project area that identify as indigenous. According to ADB’s explanation, the term Indigenous Peoples “is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and (iv) a distinct language, often different from the official language of the country or region.”⁵⁶ There are multiple tribes in the affected villages who meet this criteria. Sixteenth century Chaukhandi tombs are just one

⁴⁸ EIA para 358, Table 5.22; EIA para 360. Table 5.23

⁴⁹ EIA Table ES-1: Potential Impacts and Their Applicable Mitigation Measures

⁵⁰ EIA p 224/469

⁵¹ EIA Table ES-1: Potential Impacts and Their Applicable Mitigation Measure para 6

⁵² Ibid.

⁵³ EIA para 426

⁵⁴ EIA Para 367 and 368

⁵⁵ EIA para 168

⁵⁶ Safeguard Policy Statement p 18

archeological evidence of the presence of two tribes. Multiple tribes still live with their distinct social and cultural values.⁵⁷

ADB uses various criteria in assessing harm to indigenous people in light of their vulnerability. These include how deeply “customary rights of use and access to land and natural resources are impacted, and whether the project affects “cultural and communal integrity”, “health, education, livelihood, and social security status.” ADB also placed importance on the recognition of indigenous knowledge.”⁵⁸ Since all these areas are negatively impacted, MEX should be classified a Category A project. These are proposed projects likely to have significant impacts on indigenous peoples. Hence, the Borrower must assess which indigenous people are affected and how they must satisfy ADB Policy.

Policy principles include inter alia “a culturally appropriate and gender-sensitive social impact assessment” and that the Borrower develop measures to avoid, minimize, and/or mitigate adverse impacts on Indigenous Peoples, and undertake meaningful consultations with affected Indigenous Peoples in design and implementation.”⁵⁹ It is imperative that the Borrower “ascertain the consent of affected Indigenous Peoples communities”. ADB policy requires consent of the indigenous people affected before they are subjected to physical displacement, loss to livelihoods and of natural resources, and loss of spaces of spiritual value.⁶⁰

The policy holds that “ADB will screen all projects to determine whether or not they have potential impacts on Indigenous Peoples. For projects with impacts on Indigenous Peoples, an Indigenous Peoples plan will be prepared. The plan’s level of detail and comprehensiveness will be commensurate with the degree of impacts”⁶¹ Hence, ADB must reject this EIA and ask the Borrower to assess harm to indigenous people.

3. Conclusion

In light of the procedural and substantive objection raised above the ADB must reject the EIA and conduct a new environmental impact assessment that takes into account the real harm to the environment including that to biodiversity and the ecosystem, involuntary resettlement of and harm to the culture, customary practices, economy and heritage of indigenous people. The EIA is flawed in multiple respects as highlighted above and has also not met the standards of procedural law and there have been inadequate and non-meaningful stakeholder consultations. It is also imperative in light of climate change that Karachi’s green space be preserved and not uprooted with unplanned development that does not meet ADB criteria for connectivity and climate change resilience.

⁵⁷ “These sand stone built tombs are attributed with Jokhia and Kalmati tribes and believe to be built between 16th to 18th centuries.” See Abdul Jabbar, Chaukhandi tombs: a peculiar funerary memorial architecture in Sindh and Baluchistan (1977) < <http://dspace.unive.it/handle/10579/985>>

⁵⁸ Safeguard Policy Statement para 52

⁵⁹ Safeguard Policy Statement p 18 para 2

⁶⁰ Safeguard Policy Statement p 18 para 4

⁶¹ Safeguard Policy Statement para 52