

**ASIAN DEVELOPMENT BANK**

**CONSULTATION DRAFT  
OF  
THE SAFEGUARD POLICY STATEMENT**

**October 2007**

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## ABBREVIATIONS

ADB	–	Asian Development Bank
CAP	–	Corrective Action Plan
CCO	–	Chief Compliance Officer
CSS	–	country safeguard systems
DMC	–	developing member country
EA	–	environmental assessment
EARF	–	Environmental Assessment Review Framework
EBRD	–	European Bank for Reconstruction and Development
EIA	–	Environmental Impact Assessment
EMP	–	Environmental Management Plan
EPFI	–	Equator Principles Financial Institution
ESMS	–	Environment and Social Management System
FI	–	financial intermediary
GHG	–	greenhouse gas
IDB	–	Inter-American Development Bank
IEE	–	Initial Environmental Examination
IFC	–	International Finance Corporation
IP	–	Indigenous Peoples
IPP	–	Indigenous Peoples Plan
IPPF	–	Indigenous Peoples Planning Framework
IPSA	–	Initial Poverty and Social Assessment
IR	–	involuntary resettlement
MFF	–	multitranche financing facility
MFI	–	multilateral financial institution
MRM	–	Management Review Meeting
NGO	–	nongovernment organization
OCR	–	ordinary capital resources
OD	–	operations department
OED	–	Operations Evaluation Department
OM	–	operations manual
PIL	–	prohibited investment activities list
RF	–	Resettlement Framework
RP	–	Resettlement Plan
RSES	–	Environment and Social Safeguard Division
SEA	–	Strategic Environmental Assessment
SEIA	–	Summary Environmental Impact Assessment
SES	–	special evaluation study
SIA	–	Social Impact Assessment
SIEE	–	Summary Initial Environmental Examination
SPS	–	Safeguard Policy Statement
SPU	–	Safeguard Policy Update
SRC	–	Staff Review Committee
UN	–	United Nations
WB	–	World Bank

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## I. BACKGROUND AND INTRODUCTION

1. The operational policies of Asian Development Bank (ADB) include three safeguard policies: the Policy on Involuntary Resettlement (1995), the Policy on Indigenous Peoples (1998), and the Environment Policy (2002). All three safeguard policies are due for review. There is a need to address emerging environmental and social challenges of development in ADB's developing member countries (DMCs), respond to lessons learned from ADB's experience with safeguards, and adapt to new ADB lending modalities and financing instruments. There is also a need to reflect changing best practices of other multilateral financial institutions (MFIs) and private sector institutions, such as the Equator Principles Financial Institutions (EPFI).<sup>1</sup> In October 2004, Management approved a concept paper for a safeguard policy update (SPU) to enhance the effectiveness of ADB's safeguard policies, and ensure that these policies remain relevant to changing client needs and to new business opportunities.

2. The SPU is intended to: (i) articulate the safeguard requirements to improve their clarity, coherence and consistency; (ii) balance a front-loaded procedural approach with one more focused on results during implementation; (iii) make policy implementation more adaptable in practice to match an evolving range of lending products and innovative financing modalities; (iv) work towards greater harmonization with safeguard practices across MFIs and tailor safeguard approaches to different clients with different capacities; and (v) improve internal processes and resource allocation. The SPU is expected to result in a Safeguard Policy Statement (SPS) to be submitted to ADB's Board for consideration. Once approved by ADB Board, it would supersede the current three safeguard policies. The SPU will also revise respective Operations Manual (OM) sections; and update ADB's Handbook on Involuntary Resettlement and Environment Assessment Guidelines, and formulate a Handbook on Indigenous Peoples. A "Policy Implementation Plan" will also be formulated.

3. The purpose of this consultation draft of the SPS is to solicit views from ADB stakeholders on the policy objectives, principles, requirements and the delivery processes outlined in the SPS. The consultation draft proposes a consolidated approach to enhancing the development effectiveness of ADB's safeguard policies. It reflects issues raised and comments received on a discussion note on the SPU which was posted for comment on ADB's website in October 2005, as well as results of special evaluation studies of the three safeguard policies completed in 2006-2007. Based on comments received on the consultation draft, a draft working paper (W-Paper)<sup>2</sup> on the SPS will subsequently be prepared for consideration of ADB Management and Board. Finally, on the basis of comments received on the W-Paper, a restricted paper (R-Paper) will be prepared for submission to ADB's Board for consideration and approval. It is important therefore to recognize that the contents of this consultation draft are by no means definitive, and instead are presented purely to facilitate consultation and feedback.

## II. CHANGING CONTEXT

4. Asia and the Pacific, the most populated and fastest growing region in the world, is undergoing dramatic social and environmental changes. Concerns have grown about the long-term sustainability of development in many Asian countries. Rapid industrialization and urbanization, coupled with increased demand for natural resources, are triggering changes in land use, human settlement, declining water quality and quantity, loss of biodiversity,

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<sup>1</sup> EPFIs are financial institutions that have adopted the Equator Principles. Equator Principles is a financial industry framework for addressing environmental and social risks in project financing.

<sup>2</sup> Working papers and restricted papers are draft policy documents prepared at certain stages of ADB's policy formulation cycle.

deforestation and desertification, elevated pollution levels and negative impacts on human health. These threats tend to impact the poor severely. High population density and rising demand for land for urban development and infrastructure have increased risks associated with involuntary resettlement of people and adverse impacts on vulnerable groups such as the poor and Indigenous Peoples. Of the 250 million Indigenous Peoples in the world, some 70% are in the Asia and Pacific. Some 120 languages have become either endangered or extinct. The challenge of preventing further disparity and impoverishment caused by environmental degradation and involuntary resettlement, acknowledging the special needs and respecting the rights of Indigenous Peoples and other vulnerable groups, and improving the policies and building the capacity of DMCs to manage these impacts is particularly acute.

5. DMCs have been responding to emerging social and environmental challenges to varying extents. Some DMCs have improved their own environmental and social safeguard policies and regulatory frameworks, while others continue to have less developed systems, often relying on the policies of aid agencies to process and implement development projects. The development processes in the region also have altered the roles and responsibilities of public and private entities, civil society, and local communities in favor of socially and environmentally sustainable development and higher expectation for transparency and citizen participation. Similarly, the roles of the commercial banking industry and financial intermediaries have expanded, with growing pressure for corporate social and environmental responsibilities. DMCs increasingly recognize the need to raise standards and develop capacity to respond to global and regional environmental and social risks, and promote social and environmentally sustainable growth. In addition, private sector proponents are increasingly willing to adopt progressive investment practices that are socially and environmentally responsible, and they may wish to go beyond mere compliance if there is a clear business case.

6. MFIs have been updating their environmental and social safeguard policies to ensure relevance to changing needs. In 2005, the World Bank launched a program on the pilot use of country systems to address social and environmental safeguards in Bank-supported operations. The World Bank also revised its safeguard policies on Indigenous Peoples and Physical Cultural Resources in 2005 and 2006, respectively, to reflect best international practice. In 2006, the International Finance Corporation (IFC) adopted its Policy on Social and Environmental Sustainability, along with eight Performance Standards, to introduce results-based requirements and best practice for the private sector. The new IFC Performance Standards have been adopted by over 50 large commercial financial institutions for project finance. In the same year, the Inter-American Development Bank (IDB) issued its Environment and Safeguards Compliance Policy (2006) that also provides for the selective use of country systems. The European Bank for Reconstruction and Development (EBRD) is currently updating its Environmental Policy, and the ongoing policy update aims to ensure the relevance and improve the clarity of EBRD's social and environmental requirements, and assure that EBRD requirements harmonize with the safeguards of IFC.

7. There has also been a growing emphasis on donor harmonization and alignment with country systems. In 2005, the Paris Declaration on Aid Effectiveness established global commitments for donors and partner countries to improve the management and effectiveness of aid in reducing poverty and inequality, increasing growth, building capacity, and accelerating achievement of the Millennium Development Goals (MDGs). The declaration has five important principles: country ownership; alignment with country development strategies, priorities and procedures; harmonization of approaches and actions among donors; managing for development results; and mutual accountability. These principles provide a powerful impetus for donors to help foster the better integration of social and environmental considerations into

developing country partners' strategies and priorities, and continue and deepen their efforts towards harmonized approaches in addressing social and environmental issues. Consultations undertaken in the context of ADB's efforts to enhance support to Ordinary Capital Resources (OCR) borrowers have shown that clients in the public sector generally agree with ADB's safeguard objectives and basic principles. However, some OCR clients believe that shared safeguard principles could be upheld better through their own country systems than through ADB's own procedures.

8. The nature of ADB's business is also changing, with a rapidly expanding private sector program, diversifying investments and clients in the financial sector and capital markets, and an increasing number of large-scale infrastructure projects where social and environmental impacts could be highly complex and sensitive. In response to the anticipated needs of the fast-growing region in the coming decade, ADB has adopted a reform agenda<sup>3</sup> and introduced new lending modalities and instruments to enhance the development effectiveness of its operations. Recent ADB initiatives—Managing for Development Results (MfDR),<sup>4</sup> Innovation and Efficiency Initiatives (IEI), and Enhancing ADB Support to Middle-Income Countries and Borrowers from Ordinary Capital Resources—evolved in tandem with international consensus on the need for increased aid effectiveness. The current generation of safeguard policies was designed when direct project lending was the dominant modality for development assistance. Safeguard policies need to cater to the evolving range of ADB lending products and innovative financing modalities, which often are not well served by the traditional project-level safeguard approach. New lending modalities and financing instruments, such as the pilot Multitranche Financing Facility (MFF) and the Refinancing Facility,<sup>5</sup> have increased the complexity in applying safeguard policies and ensuring compliance. The new modalities and the likelihood of continued innovation, as well as changing client circumstances, suggest the need to enhance the effectiveness and relevance of ADB's safeguards.

### III. CURRENT SAFEGUARD POLICIES AND EXPERIENCE

#### A. ADB's Current Safeguard Policies

9. **ADB's Safeguard Policy Framework.** Safeguard policies generally are understood to be those operational policies that seek to avoid, or where avoidance is not feasible, minimize, or mitigate adverse environmental and social impacts, including the protection of the rights of those affected or likely to be marginalized by the development process. ADB's safeguard policy framework consists of three operational policies on the environment,<sup>6</sup> Indigenous Peoples, and involuntary resettlement. These are accompanied by OM F1, Environmental Considerations in ADB Operations; OM F2, Involuntary Resettlement; and OM F3, Indigenous Peoples. ADB's Guidelines on Environmental Assessment (2003), the Handbook on Resettlement (1998), and the forthcoming Handbook on Indigenous Peoples provide information on good practice approaches for safeguard implementation. In addition to the three safeguard policies, several sector policies (e.g., water, energy, and forestry) have environmental safeguard elements.

<sup>3</sup> On 25 August 2004, ADB adopted a comprehensive reform agenda to enhance its development effectiveness.

<sup>4</sup> MfDR requires a constant focus on outcomes and systems for monitoring and reporting on performance. (<http://www.adb.org/MfDR/default.asp>).

<sup>5</sup> R194-5: Pilot Financing Instruments and Modalities, approved 25 August 2005.

<sup>6</sup> The Environment Policy contains five main elements, but only the fifth is concerned with the environment as a safeguard issue (through its policy element 5: Integrating Environmental Considerations in ADB Operations, paras. 30 and 50–70).

10. **Safeguard Requirements.** All three safeguard policies involve a structured process of impact assessment, planning, and mitigation to address the adverse effects of projects and programs throughout the project cycle. The safeguard policies require that (i) impacts are identified and assessed early in the project cycle; (ii) plans to avoid, minimize, mitigate or compensate for the potential adverse impacts are developed and implemented; and (iii) affected people are informed and consulted during project preparation and implementation. The policies apply to all ADB-financed projects, including private sector operations, and to all project components, whether financed by ADB, the government, or cofinanciers. The internal procedural requirements are detailed in the OM F1, F2 and F3 sections, and involve similar implementation processes: (i) screening and scoping start as soon as potential projects for ADB financing are identified, and continue throughout the project cycle; (ii) impacts are assessed, safeguard plans summarizing mitigation measures, monitoring program, and institutional arrangements are prepared, and arrangements are made to integrate safeguards in project design and implementation; (iii) affected people are consulted during project preparation and implementation, and information is disclosed in a form, manner and language accessible to them; and (iv) safeguard plans are disclosed to the general public, and the information is updated at various stages in the project cycle.<sup>7</sup> ADB's safeguard policies require that both ADB and DMC safeguard requirements must be met.

11. **Roles and Responsibilities.** A basic principle of the three safeguard policies is that implementation of the provisions of each policy is the responsibility of the borrower or project sponsor. Borrowers/clients are required to undertake social and environmental assessments, carry out consultation with affected peoples and communities, prepare and implement safeguards plans, monitor the implementation of these plans, and prepare and submit progress reports. ADB's role is to explain policy requirements to the borrower/client, help the borrower/client meet those requirements during project processing and implementation through capacity building program, and ensure due diligence and review, and monitoring and supervision. Although considerable attention is placed on the project processing and approval phase of the project cycle, ADB's role in monitoring safeguard compliance continues during project implementation. ADB's project completion reports and project performance evaluation reports include review of the implementation of safeguards.

## **B. Compliance Oversight**

12. **Compliance System.** Upon reorganization in 2002,<sup>8</sup> ADB established a safeguard policy compliance system to monitor compliance with its safeguard policies. ADB's Chief Compliance Officer (CCO), with the support of the Environment and Social Safeguard Division (RSES), is responsible for advising Management and operational departments (ODs) on compliance with safeguard policies, and related operational procedures and guidelines. Compliance with the safeguard policy is reviewed and monitored throughout the project cycle. If a project poses risks of noncompliance, actions are recommended at the Management Review Meeting (MRM) to ensure compliance, and project compliance is reviewed again at a Staff Review Committee (SRC) meeting. ODs take steps to ensure that outstanding safeguard requirements are met before Board approval. Review missions are undertaken during project implementation to monitor compliance with safeguard provisions in the legal agreements and take appropriate actions if there are risks of noncompliance.

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<sup>7</sup> ADB's *Public Communications Policy*, approved on 22 April 2005, sets out disclosure requirements for various ADB activities, including safeguards.

<sup>8</sup> *Reorganization of the Asian Development Bank*, 18 September 2001.

13. **Accountability Mechanism.** In May 2003, ADB approved a new accountability mechanism through which people adversely affected by ADB-financed projects can express their grievances and seek solutions, and also report alleged violations of ADB's operational policies and procedures, including safeguard policies.<sup>9</sup> ADB's accountability mechanism comprises two separate but related functions: (i) consultation, led by ADB's special project facilitator, to assist people adversely affected by ADB-assisted projects in finding solutions to their problems; and (ii) compliance review, to establish ADB's accountability in its operations by providing a forum in which project-affected people can file requests for compliance review. ADB's Compliance Review Panel is responsible for the second function.

### C. Experience with ADB's Safeguard Policies

14. **Environment.** ADB formally introduced environmental assessment into its lending operations in 1979.<sup>10</sup> By the time the current Environment Policy was adopted in 2002, ADB had accumulated more than two decades of environmental assessment and management experience. In that period, the policy principles and scope of environmental safeguards evolved from an initial focus on technical assessment and mitigation measures to an emphasis on development and implementation of a comprehensive environmental management plan (EMP). The key elements of the EMP are mitigation measures, monitoring program, cost estimates, budget and institutional arrangements for implementing the EMP. In addition, public consultation and information disclosure, and consideration of alternatives, are emphasized in the environmental assessment process. While procedural compliance has improved over time, the substantive aspects—integration of findings and recommendations of environmental assessment into the project design, borrower/client ownership of EMPs, and the effective implementation of EMPs—remain challenging.

15. The 2006 Operations Evaluation Department (OED) Special Evaluation Study (SES) on Environmental Safeguards (Appendix 1) concluded that the safeguard element of ADB's environmental policy is relevant and has been effective in avoiding major significant adverse environmental impacts from ADB-financed projects, though transaction costs have decreased efficiency of project processing. The study recommended revision in the Environment Policy to (i) refocus efforts "from front-end loan processing and approval to results delivery," (ii) better integrate and align country systems and procedures with the policy for environmental assessment; (iii) broaden the focus of policy application from the "project" to "capacity building"; and (iv) better integrate environmental and social safeguards for a stronger focus on sustainable development. The study also recommend among other things considering (i) strengthening the environmental expertise of resident missions; (ii) giving nongovernment organizations (NGOs) a greater role in monitoring; (iii) reviewing the application of environmentally sensitive Category B project classification and the 120-day disclosure rule for Category A projects; (iv) strengthening country systems; and, (v) developing an action plan for implementing the revised environment policy, including specific attention to ensuring an appropriate match between ADB capacity and policy requirements.

16. **Involuntary Resettlement.** The Policy on Involuntary Resettlement (IR) was formulated in 1995 based on the World Bank's policy on involuntary resettlement. As ADB-financed projects became more complex, ADB projects had to address the full and partial impacts on assets, as well as loss of livelihood without physical relocation, particularly in urban areas that have many informal dwellers. Experience with the implementation of the policy suggests that

<sup>9</sup> The accountability mechanism replaced the *Inspection Policy* (1995) functions at ADB.

<sup>10</sup> *Environmental Considerations in ADB Operations* (December 1979).

many aspects of the IR policy implementation could be improved, including: (i) treatment of those without clear land title (e.g., squatters or other informal settlers); (ii) scope of resettlement compensation, covering appropriate replacement values, restoration and/or rehabilitation, and livelihoods; (iii) unambiguous definition of “affected” versus “displaced” persons; and (iv) capacity development for impact assessment and resettlement planning, and implementation by the DMCs.

17. The 2006 OED SES on IR Safeguards (Appendix 1) concluded that the policy has been broadly effective in achieving outcomes for affected persons and creating resettlement capacity in many DMCs. However, its inputs and processes are assessed as being less than efficient, and the current policy approach as less likely to be sustainable, given the transaction costs to ADB and its borrowers/clients. Consequently, the SES recommends that during the safeguard policy update, ADB needs to (i) reconcile the differences between the 1995 IR Policy and the OM and clarify whether the scope of the policy covers both physical and economic displacement; (ii) clarify ambiguous key terms and implementation modalities, including replacement cost, compensation and relocation assistance, treatment of squatter situations, and land acquisition procedures; (iii) develop a “results-based” framework with a set of performance standards; (iv) increase DMC capacity and reliance on country systems for land acquisition and resettlement safeguards; and (v) provide clear guidelines and procedures for IR operations. The SES also identified a mismatch between policy requirements and available staff resources, and recommended that the SPU include a policy implementation plan.

18. **Indigenous Peoples.** ADB's Policy on Indigenous Peoples was adopted in 1998. The broad definition of “Indigenous Peoples” in the policy follows the international consensus that has been emerging in the past decades, the general classification of Indigenous Peoples by international institutions (such as the United Nations and International Labour Organization) and the status recognized by international law. The application of the policy poses particular challenges in the region due to the huge variation in national history, cultures, ideologies, economic resources, demography, and politico-institutional frameworks. A country's national legislation and definitions of Indigenous Peoples, if any, seldom correspond fully to ADB's policy. Experience with policy implementation has been mixed and key challenges remain, including: (i) recognition of Indigenous Peoples' cultural identity and rights to their ancestral lands and resources; (ii) fair sharing of development benefits among affected Indigenous Peoples' communities and the rest of society; and (iii) meaningful and culturally appropriate consultation with Indigenous Peoples' communities in planning and implementing projects that are likely to affect their lives.

19. The 2007 OED SES on Indigenous Peoples Safeguards (Appendix 1) concludes that the policy is relevant to ADB and its borrowers/clients but “less effective.” Adverse impacts of ADB-financed projects have generally been avoided or mitigated, largely as a result of the implementation of resettlement plans and environmental management plans. However, inputs and processes are assessed as having been less efficient, and the current policy approach as less likely to be sustainable, given the transaction costs to ADB and its borrower/clients. The SES recommends that during the safeguard policy update, ADB (i) clarify the areas in the Policy on Indigenous Peoples (1998) that are misunderstood or ambiguous, including the definition of “Indigenous Peoples”; (ii) integrate Indigenous Peoples issues in a RP or an EMP where risks to Indigenous Peoples are primarily related to resettlement or environmental damage; (iii) clarify requirements regarding the consultation process during project preparation and implementation; (iv) develop a sequential approach for capacity building in the application of the Indigenous Peoples safeguard; and (v) develop an Indigenous Peoples Policy Implementation Plan. Responses of ADB Management and recommendations of the

Development Effectiveness Committee of ADB's Board to the independent evaluations of environment, involuntary resettlement, and Indigenous Peoples safeguards are posted on ADB's website.<sup>11</sup>

20. Over the last few years, internal review of ADB environmental and social safeguard policy implementation has highlighted the need for improved performance. Issues during project preparation and processing include: (i) quality of consultation and disclosure; (ii) adequate assessment of DMC frameworks and capacity; (iii) optimal sequencing of safeguard planning during the project cycle; and (iv) variable quality of safeguard documents. The adequacy of budgetary allocations for safeguards has also been recognized as critically important. Implementation issues have centered on budgeting for safeguard requirements (design changes, compensation payments, etc.), implementing mitigation measures, ensuring the update of safeguard plans on the basis of detailed engineering design and changes in scope, improving agency oversight at the contractor level, and ensuring adequate ADB supervision and compliance monitoring, especially oversight on the ground.

#### IV. KEY POLICY ISSUES AND CONSIDERATIONS

##### A. Policy Articulation and Scope

21. **Improving Clarity, Consistency and Coherence.** Although the three safeguard policies share common elements and principles, there is some ambiguity, duplication, and inconsistency among them. For example, the coverage of social elements in environmental assessment needs to be clarified. Some elements of the Policy on Indigenous Peoples are also covered in the Policy on Involuntary Resettlement. All three policies require disclosure and consultation, though the requirements and processes are not in alignment. They also differ in the extent to which they cover different lending instruments, and the procedural responses they prescribe. In addition, procedural requirements are currently mixed with key policy principles, sometimes giving undue emphasis to compliance with procedures that are not necessarily critical to achieving the objectives of the policies. The current policies and operational procedures also mix instructions to ADB staff with requirements for borrowers/clients in one place, often making the boundaries of responsibilities and accountabilities unclear. Greater coherence among the safeguard policies and full clarity in their policy principles, the requirements for borrowers/clients, and internal implementation procedures would help ADB staff and borrowers/clients better understand what needs to be done to achieve the objectives of safeguard policies, as well as their differentiated roles and responsibilities in enhancing the quality of development outcomes.

22. **Distinguishing Safeguards from “Aspirational” Elements.** Safeguard “do no harm” elements are currently mixed with “aspirational” development objectives to varying extent in the three safeguard policies. For instance, ADB's Environment Policy contains five main elements: (i) promoting environmental intervention to reduce poverty; (ii) mainstreaming environmental considerations into economic growth; (iii) maintaining global and regional life-support systems; (iv) building partnerships; and (v) integrating environmental safeguards into ADB operations. However, only the fifth element addresses environmental safeguard issues. The first four elements deal with ADB's corporate environment strategy, while the fifth element focuses on environmental safeguards and assessment at the project level. Separating crosscutting, thematic environmental issues of an aspirational nature from the safeguard requirements would allow each issue to be addressed with enhanced focus and attention for appropriate

<sup>11</sup> Visit: <http://www.adb.org/Evaluation/safeguard-policies.asp>

implementation. In parallel, the aspirational elements of the environment policy would be delivered through a corporate level environment strategy. Similarly, addressing the issue of the developmental aspirations of the Policy on Indigenous Peoples at a wider strategic level would be more effective than it might in the more limited context of safeguard compliance. It is therefore considered appropriate that the scope of the SPS will focus specifically on safeguards, and not the broader aspirational elements.

**23. Safeguard Elements in Other Policies and Strategies.** Several safeguard requirements addressing environment-related issues are currently scattered across several ADB sector/thematic policies and strategies.<sup>12</sup> Such requirements in other policies and strategies are dealt with in a piecemeal fashion and rely partly on the implementation processes of ADB's Environment Policy. The resulting compartmentalization reduces opportunities for a holistic understanding of project impacts. In addition, the safeguard component of the existing Environment Policy (2002) focuses on principles and procedures of environmental assessment. The Policy does not explicitly set out policy principles and requirements addressing project impacts/risks on pollution prevention and abatement (including greenhouse gas emissions), biodiversity and natural resources management, and physical cultural resources. Environmental assessments of projects address these issues in an ad hoc manner. Therefore, ADB should adopt an enhanced approach to consolidate environmental safeguard elements currently covered in other ADB sector policies/strategies. The environmental safeguard principles and requirements will need to be explicitly articulated to include sectoral issues and comprise (i) environmental assessment, (ii) pollution prevention and abatement, (iii) biodiversity and natural resources management, and (iv) physical cultural resources.

**24. Improving Clarity of Policy Scope and Triggers.** ADB's experience in implementing the Policy on Involuntary Resettlement and the Policy on Indigenous Peoples shows that further clarification on the scope and triggers of each policy is needed. There is frequently debate as to whether the IR policy is triggered only by land acquisition. There is a need to clarify that the policy is triggered by involuntary acquisition of land and land-based assets, changes in land-use patterns, and restricting access to common land and legally designated protected areas. In addition, there is a need to clarify that the current policy covers both physical and economic displacement and these terms need to be clearly defined. The Indigenous Peoples policy in its current form does not provide a clear operational definition of Indigenous Peoples. The complexities involved in identifying "Indigenous Peoples" for the purposes of policy application are exacerbated by the need for situational analysis and by different perceptions among indigenous communities regarding ancestral domain and communal rights. There is a need to clarify the characteristics that will be used to identify Indigenous Peoples. There is also a need to identify the triggers of the policy as those impacts on Indigenous Peoples' dignity, human rights, livelihood systems, culture, ancestral domains, communal assets, and territorial, natural and cultural resources.

**25. Project Screening and Classification.** The project classification system has been considered important in reflecting the significance of expected impacts and setting the level of due diligence and supervision. The current classification system requires each project be categorized, respectively, for environment, involuntary resettlement, and Indigenous Peoples. However, having three separate categorization processes for a single project may not be efficient, and sometimes promotes a piecemeal approach to safeguards. In addition, the classification may not reflect the actual scope of impacts or have a material impact on the level of due diligence undertaken on a particular project in practice. For example, there may be little

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<sup>12</sup> This includes such policies as *Energy, 1997; Forestry, 1995; and Water, 2001*.

difference in the scope and detail of safeguard planning and due diligence undertaken between an involuntary resettlement category 'A' and 'B' project.<sup>13</sup> ADB is the only multilateral financial institution (MFI) that introduces a classification system for involuntary resettlement and Indigenous Peoples, and subdivides the environmental category 'B'. OED's special evaluation study on environmental safeguards recommends that ADB eliminate the 'B-sensitive' category, as it is not clearly defined and may overlap with category 'A' projects. It is proposed that environmental category 'B-sensitive' be eliminated, and project classifications for involuntary resettlement and Indigenous Peoples be eliminated in line with the practice of other MFIs.

**26. Consultation and Participation.** Consultation and participation is central to the achievement of safeguard policy objectives. ADB's existing safeguard policies have varying consultation requirements. They all imply the need for prior and informed consultation with affected persons and communities in the context of safeguard planning, and for continued consultation during project implementation to identify and help address safeguard issues that may arise. ADB needs to be explicit that it will require free, prior, and informed consultation with affected persons and communities in the implementation of all three safeguard policies. Furthermore, the current 1998 Policy on Indigenous Peoples includes in its section on Policy Objectives (para. 31) a statement that projects should be conceived, planned and implemented, to the maximum extent possible, with the informed consent of affected communities. Taking into account the practice at other MFIs, it is proposed to consider the following formulation of *ascertaining, through a process of free, prior and informed consultation, that indigenous communities provide their broad support to the project*, which is consistent with the World Bank and IFC's approach.<sup>14</sup> In September 2007, the United Nations 61<sup>st</sup> General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples which requires *obtaining Indigenous communities' free, prior, and informed consent prior to the approval of any project affecting them*. Noting this development, this issue will be further discussed during the internal and external consultations.

## **B. Policy Application and Delivery Issues**

**27. Balancing Front-loaded Procedural Requirements with Implementation.** The current safeguard policies place considerable emphasis on meeting procedural requirements and milestones during project processing. The policies give less attention to supervision and achieving results during project implementation. The timing and sequencing of front loaded procedural requirements are not always optimal, and the achievement of these requirements alone does not ensure satisfactory safeguard outcomes. For instance, during project processing and before the Management Review Meeting, significant effort is expended to prepare draft resettlement plans on the basis of project feasibility reports. However, the most important resettlement planning and implementation activities might need to be done later as part of detailed design activities that may take place later during project implementation. Similarly, significant staff input is expended on preparing draft Summary Environmental Impact Assessment (SEIA) report to satisfy disclosure procedures for environmentally sensitive projects. However, the finalization and implementation of robust EMPs, which are the basis for project implementation, receive substantially less attention. ADB's experience with safeguard implementation and the recent OED studies have observed that substantially more attention to safeguards is needed during project implementation.

<sup>13</sup> As currently defined, a category 'A' project means 200 or more people will experience major impacts, which are defined as being physically displaced from housing, or losing 10% or more of their productive assets.

<sup>14</sup> Broad community support is defined by IFC as "a collection of expressions by the affected communities, through individuals and/or their recognized representatives, in support of the project. There may be broad community support even if some individuals or groups object to the project."

28. **Strengthening Safeguard Frameworks.** The framework approach as currently applied to sector loans and MFF (i.e., Environmental Assessment and Review Framework, Resettlement Framework, or Indigenous Peoples' Framework) provides guidance on safeguard screening, assessment, institutional arrangements, and processes to be followed for subprojects or subsequent tranches that are prepared after Board approval. The criteria for eligibility which ensures that quality projects are identified and delivered are also specified when a framework approach is used. A key issue related to the framework approach is to ensure that the borrower/client will appropriately apply the safeguards framework in preparing and implementing appropriate safeguard plans once the project has been approved by the Board. To ensure the safeguards framework are appropriately implemented, greater attention is needed on the assessment of institutional capacity of the borrower/client, and mechanisms and measures for capacity building need to be developed and integrated in the design of projects. In addition, monitoring and supervision of the subprojects needs to receive more attention to avoid the risk of noncompliance with safeguard policies. In addition, and as an issue related to balancing front-load requirements with implementation, it has been proposed that a framework approach to safeguards could be considered for wider application to the projects where detailed design takes place after Board approval. For the consultation purpose, a wider application of the framework approach is proposed for consideration. ADB will conduct a more detailed analysis of implementation risks and issues before it considers committing to this approach.

29. **Financial Intermediation.** ADB has a growing portfolio of projects with financial intermediaries (FIs), mainly in the context of its private sector operations. FI projects present special challenges from a safeguard perspective. ADB does not have direct oversight or strong leverage on subprojects, because subprojects are often unknown when an FI project is appraised and funds are dispersed widely to many subprojects. The FI financing can entail several layers of intermediation which also complicates social and environmental risk management. Under the current environment policy, safeguard requirements are determined based on ADB's financing modality (equity or credit line), and all investments are put through the same level of analysis, i.e., all FI projects (unless otherwise treated as a category 'C' project) are required to adopt an environmental management system (EMS), an involuntary resettlement framework, and an Indigenous Peoples safeguard frameworks of the kind used for sector loans. It is desirable that requirements for FIs are based on potential social and environmental impacts/risks rather than the nature of ADB's investment, which will require strengthened ADB due diligence and review of FI business activities and borrower/client's capacity for environmental and social management. Requirements for FIs should be also proportional to the level of potential impact/risk. In addition, FIs may find it more operationally useful to introduce involuntary resettlement and Indigenous Peoples concerns in an integrated environmental and social management system (ESMS).

### **C. Responding to Changing Client Requirements and Long-Term Sustainability of Safeguard Systems**

30. **Strengthening and Use of Country Safeguard Systems (CSS).** Consultations undertaken in the context of ADB's efforts to enhance support to (OCR) borrowers have shown that many borrowers/clients believe that the transaction costs of complying with ADB safeguards policy excessive, and middle-income countries believed that shared safeguard principles could be upheld better through their own country systems than through ADB's own procedures. They believe procedures and approaches could be improved to better reflect different client needs and widely divergent capacities of DMCs to implement safeguards. ADB has recognized that DMCs have their own system to deliver safeguards, and that supporting DMCs' efforts to strengthen and use their own systems would enhance country ownership,

extend development impacts, and reduce transaction costs. This is also in line with the increasing trend towards country ownership under the Paris Declaration on Aid Effectiveness. ADB needs to develop its approach for the strengthening and use of CSS in ADB projects, taking into account the World Bank's experience in piloting the use of country system in 2005-2007. The approach would include the following attributes: (i) conditions for CSS application (iii) methodology of CSS assessments, (iv) ADB's and the borrower's roles and responsibilities, (v) procedures and other related requirements such as gap filling, and (vi) resource implications.

31. **Harmonizing with Safeguard Policies of Other MFIs.** Over the last five years or so, a number of other MFIs have updated or are in the process of updating their safeguard policies. The policy advances and best practice adopted by these institutions have relevance to ADB operations. Harmonizing ADB's safeguard policy principles and requirements with other MFIs' is also required to enhance development impacts, reduce transactional cost, and encourage collaborative behavior. MFIs have made some progress in defining a common framework of principles for environment assessment.<sup>15</sup> Continued harmonization of safeguard practices across MFIs is needed. Through the SPU, ADB is seeking to ensure that its safeguard policy objectives, principles, and requirements bear a close relationship to those of other MFIs. In particular, the World Bank Group's safeguard policies and their implementation experience in the following areas would be taken as reference for the SPU: (i) the World Bank's Piloting the Use of Borrower System to Address Environmental and Social Safeguard Issues; (ii) the World Bank safeguard policies and IFC's Sustainability Policy and Performance Standards on involuntary resettlement, Indigenous Peoples, environmental assessment, pollution prevention and abatement, biodiversity and natural resources management, and physical cultural resources; and (iii) the World Bank Group's Environmental, Health, and Safety Guidelines. Appendix 2 provides an overview of recent policy updates at other MFIs.

32. **Private Sector Clients.** ADB's private sector investment program has expanded rapidly over the past 5 years. Private sector clients are a diverse group with varying environmental and social awareness and capabilities, and the projects they finance can vary considerably in size and nature, e.g., from small and medium-sized energy efficiency or renewable energy enterprises to large companies in extractive industries, energy and infrastructure. The operation cycle is typically much shorter than that for public sector projects, and safeguard due diligence typically needs to be undertaken within tight time frames. Complex financing structures—for example, special purpose vehicles for securitization or multi-tiered financial intermediation raise difficult questions on the way in which ADB safeguards should be applied. While existing safeguard procedures remain relevant for traditional infrastructure finance, the ever-changing business environment, diversified financial products, and increasing complexity of ADB interventions in the financial sector and capital markets, may require new and innovative approaches. In addition, some private sector clients might be willing to adopt progressive investment practices that are socially and environmentally responsible, and they may wish to go beyond compliance if there is a clear business case. Taking into account of the new IFC Performance Standards that have been adopted by over fifty large commercial financing institutions for project finance ("Equator Principles") and will become an important reference point for many private sector clients, it may be useful to consider the potential role of IFC's Performance Standards in private sector operations.

33. **Developing ADB's Capacity and Optimizing Resource Allocation.** Improvement in safeguard effectiveness will require enhanced ADB capacity, particularly to devote greater

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<sup>15</sup> *A Common Framework for Environmental Assessment: A Good Practice Note*, Multilateral Financial Institutions, Working Group on Environment. February 28, 2005.

efforts to project implementation, CSS assessment, and capacity development in DMCs. This will require building ADB's capacity to better understand DMCs' own safeguard frameworks, manage safeguard implementation monitoring, and engage with clients in addressing the realities of safeguard implementation. In particular, project teams must have a firm grasp of the objectives and principles of the safeguard policies, as they are on the front line in ensuring that policies are applied. For the past several years, ADB has provided staff training programs on all three safeguard policies and such training needs to continue both at headquarters and in resident missions. At the same time, staff resources requirements for safeguard implementation in operational departments and the regional and sustainable development department need to be optimized to ensure that adequate attention is placed on project implementation and supervision while also meeting urgent project processing needs and due diligence requirements. A critical need is to ensure that resident missions are properly equipped with relevant safeguard expertise, especially in DMCs with extensive portfolios of complex and sensitive projects. It is evident that optimal allocation of resources to policy implementation and monitoring will remain central to improved safeguard delivery.

#### **D. Updating the Safeguard Policy Framework**

34. The issues and considerations discussed above could be addressed through the articulation of a consolidated safeguard policy statement (SPS). This statement would describe the objectives of the safeguard policies and clearly articulate key policy principles and requirements that pertain across all operations. It would also summarize the general processes for delivery of the policies. The policy statement would be geared to application in a wide range of present and future lending modalities and cater to varying capacities and needs of DMC clients in the public and private sector. It is therefore proposed that ADB adopt a safeguard policy structure that consists of an overarching safeguard policy statement, including (i) common objectives of safeguard policies and ADB's commitments; (ii) individual safeguard policies, clarifying respective objectives and principles; (iii) policy delivery process applicable to all safeguard policies, such as early screening, free prior and informed consultation, review of safeguard plans and/or frameworks, reporting and disclosure, and monitoring and supervision; and (iv) a clear delineation of roles and responsibilities of ADB and borrower/clients. The SPS will be accompanied by (i) a set of requirements that the borrower/client is required to meet in delivering the policy principles; (ii) OM sections specifying ADB's internal review procedures for due diligence and supervising/monitoring of projects; and, (iii) guidelines/handbooks.

## V. THE DRAFT SAFEGUARD POLICY STATEMENT

35. The draft Safeguard Policy Statement (policy objectives, principles and delivery process) presented in this Chapter is subject to further discussion and revision based on consultations.

### A. Overarching Statement on ADB's Safeguard Commitment

36. ADB affirms that environmental and social sustainability are prerequisites for economic growth and poverty reduction in Asia and the Pacific. ADB is therefore committed to ensuring social and environmental sustainability of the projects it supports. In this context, the goal of the safeguard policies is to promote the sustainability of project outcomes by protecting the environment and people from potential adverse impacts of projects.

37. The objectives of ADB's safeguards are to:

- (i) avoid adverse impacts of a project on the environment and affected people, where feasible;
- (ii) where avoidance is not feasible, minimize, mitigate, and/or compensate for adverse project impacts on affected people and the environment; and
- (iii) help borrowers/clients to strengthen their safeguard systems and develop capacity to manage environmental and social risks.

38. ADB adheres to the objectives of the safeguards and their delivery. ADB assumes responsibility to review, monitor, and supervise projects throughout the project cycle against the standards embodied in the safeguard policy statement. By adhering to its social and environmental safeguards, ADB enhances the predictability, transparency, and accountability of its actions and decision-making; helps borrowers/clients manage social and environmental impacts and risks; and promotes the long-term sustainability of investments. Transforming this commitment into results on the ground depends on the shared but differentiated efforts of ADB and its borrowers/clients.

### B. Safeguard Policies

39. The following are ADB's three safeguard policies:

- (i) Policy on Environmental Safeguards;
- (ii) Policy on Involuntary Resettlement Safeguards; and
- (iii) Policy on Indigenous Peoples Safeguards.

40. Each policy prescribes objectives and includes a set of policy principles, and is accompanied by a set of specific requirements (Attachment A-C). The policies apply to all projects including ADB-funded and/or ADB-administered sovereign and non-sovereign investment projects funded by a loan, and/or a grant, and/or other means, such as equity and/or guarantee (hereafter broadly referred to as projects).

## 1. Objectives, Scope and Policy Principles on Environmental Safeguards

<b>Objectives</b>	<ul style="list-style-type: none"> <li>• To ensure the environmental soundness and sustainability of projects.</li> <li>• To support integration of environmental considerations into the project decision making process.</li> </ul>
<b>Scope</b>	The policy applies to all projects with potential environmental impacts and risks.
<b>Policy Principles</b>	<ol style="list-style-type: none"> <li>1. Use a screening process for each proposed project, as early as possible, to determine the appropriate extent and type of environmental assessment, so that appropriate studies are undertaken proportional to significance of potential impacts/risks.</li> <li>2. Conduct environmental assessment for each proposed project to consider potential impacts and risks on physical, biological, socio-economic (including health and safety), and physical cultural resources in the context of the project's area of influence. Assess potential trans-boundary and global impacts, including climate change. Use strategic environmental assessment if appropriate.</li> <li>3. Examine financially and technically feasible alternatives to the project, project design and components, including the no project alternative, their potential environmental impacts, and document the rationale for selecting the particular alternative(s) proposed.</li> <li>4. Avoid and, where avoidance is not feasible, minimize, mitigate and/or compensate for adverse project impacts through environmental planning and management, and prepare an environmental management plan (EMP) or equivalent instrument that includes the proposed mitigation measures, environmental monitoring and reporting requirements, emergency response procedures, related institutional or organizational arrangements, capacity development and training measures, implementation schedule, cost estimates and performance indicators.</li> <li>5. Carry out free, prior and informed consultation with affected people and facilitate their informed participation. Involve key stakeholders, including project-affected persons and local NGOs early in the project preparation and ensure that their views and concerns are made known and understood by decision makers and taken into account. Continue consultations throughout project implementation as necessary to address environmental assessment-related issues that affect them. Establish a grievance mechanism to receive and facilitate resolution of the affected communities' concerns and grievances about the project's environmental performance.</li> <li>6. Disclose draft environmental assessments before appraisal, in a form, manner and language(s) accessible to affected communities and other key stakeholders.</li> <li>7. Implement the mitigation measures and monitor their effectiveness. Document monitoring results, including development and implementation of corrective actions, and disclose periodic progress reports.</li> <li>8. Do not implement project activities that involve or are likely to result directly or indirectly in the significant conversion or degradation of critical habitats. If a project is located within a legally protected area, implement additional programs to promote and enhance the conservation aims of the protected area. If the project has the potential to adversely impact non-critical habitats, proceed if only there are no technically and financially feasible alternatives, overall benefits from the project substantially outweigh the environmental costs, and any conversion or degradation is appropriately mitigated. Manage renewable natural resources in a sustainable manner.</li> <li>9. Apply pollution prevention and control technologies and practices consistent with international good practice, as reflected in internationally recognized standards such as the World Bank Group's Environmental, Health and Safety (EHS) Guidelines. Ensure opportunities, where financially and technically feasible, to adopt cleaner production processes, and good practices of energy efficiency or renewable energy. Avoid or, when avoidance is not feasible, minimize or control the intensity or load of pollutants emissions and discharges, including direct and indirect greenhouse gases emissions, waste generation, and release of hazardous material from their production, transportation, handling and storage. Avoid the use of hazardous materials subject to international bans or phase-outs. Procure and use pesticides in a sustainable manner.</li> <li>10. Preserve physical cultural resources (PCR) and avoid their destruction or damage by using field based surveys with qualified specialists during environmental assessment. Provide for the use of "chance find" procedures that include a pre-approved management and conservation approach for materials that may be discovered during project implementation.</li> </ol>

## 2. Objectives, Scope and Policy Principles on the Involuntary Resettlement Safeguards

<b>Objectives</b>	<ul style="list-style-type: none"> <li>• Avoid involuntary resettlement wherever feasible, and minimize involuntary resettlement through assessing project alternatives and alternative project designs.</li> <li>• Enhance or at least restore the livelihoods of all affected people in real terms relative to pre-project levels and improve the standards of living of the affected poor and other vulnerable groups.</li> </ul>
<b>Scope</b>	<p>The Policy on Involuntary Resettlement covers physical displacements (loss of residential land, shelter or relocation) and economic displacements (loss of lands, assets, access to assets, income sources and means of livelihoods) as a result of (i) involuntary acquisition of land, (ii) involuntary restriction on land use, and (iii) involuntary restriction of access to legally designated parks and protected areas. It covers losses and involuntary restrictions that are full or partial, and permanent or temporary.</p>
<b>Policy Principles</b>	<ol style="list-style-type: none"> <li>1. Screen projects early to identify their past, present and future involuntary resettlement impacts and risks, and to determine the scope of the resettlement planning process which includes corrective action for unmitigated past displacements, if such displacements are directly linked to the project. Identify, assess and address the potential economic and social impacts of the project through gender disaggregated social impact assessments.</li> <li>2. Carry out free, prior, informed consultations with all affected people, host communities and local NGOs. Inform all affected people of their rights and options. Ensure their participation in planning and implementation of resettlement plans and also in their monitoring and evaluation of such plans. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, Indigenous Peoples, or persons without legal entitlements. Establish a local independent grievance redress mechanism. Support social and cultural institutions of affected people and their host population. Where social impacts and risks are complex and sensitive, resettlement and compensation decisions should be preceded by a 'social preparation phase'.</li> <li>3. Improve or at least restore livelihoods of all affected households through (a) land-based resettlement strategies when livelihoods are land-based, and cash compensation at replacement value for land when the loss of land does not undermine livelihoods; b) prompt replacement of assets and access to assets of equal or higher value; (c) prompt compensation at full replacement cost for assets that can not be restored, and (d) where feasible, additional revenues and services through benefit sharing schemes. Those affected by physical displacements should receive in addition a) assistance to relocate, b) secure tenure, c) better housing at resettlement sites with comparable access to employment and production opportunities, d) civic infrastructure and community services, e) transitional support, and f) development assistance, such as land development, credit facilities, training or employment opportunities. Integrate resettlers economically and socially into their host communities, and extend project benefits to host communities. Improve the standards of living of vulnerable groups affected by the project to comply at least with national minimum standards and provide them in rural areas with legal and affordable access to land and resources, and in urban areas with legal and affordable access to adequate housing. In case of negotiated settlements involving economic or physical displacements, procedures will be developed in a transparent, consistent and equitable manner to offer the affected people compensations and livelihood restorations, which meet the objectives of this policy principle.</li> <li>4. The absence of formal legal title to land by an affected person is not a bar to compensation.</li> <li>5. Address the potential economic and social impacts of the project that are caused by involuntary restriction of access to legally designated parks and protected areas.</li> <li>6. Disclose draft resettlement plans, including documentation of the consultation process before appraisal at the local level and in a form, manner and language(s) accessible to affected people and other key stakeholders. The final resettlement plans and their updates will also be disclosed to the affected people and the public.</li> <li>7. Involuntary resettlement should be conceived and executed as part of a development project or program. Satisfactory resettlement plans, or equivalent documents, elaborate in detail the entitlements outlined in principle 3 as a time-bound action plan, outline budgets and implementation arrangements and provide a date by which livelihood restoration will be achieved. The full costs of resettlement will be included in the presentation of the costs and benefits of the project. For a project with large scale involuntary resettlement, consider implementing the involuntary resettlement component as a stand alone operation.</li> <li>8. Pay compensation and provide entitlements before physical or economic displacement. Implement all resettlement plans under close supervision throughout the project implementation and up to completion.</li> <li>9. Prepare a project completion report that assesses the outcome of resettlement, its impact on the standards of living of the affected people and if the objectives of the resettlement plan have been achieved, taking into account the baseline conditions and the results of resettlement monitoring.</li> </ol>

### 3. Objectives, Scope and Policy Principles on the Indigenous Peoples Safeguards

<b>Objectives</b>	Design and implement projects in a way that fosters full respect for Indigenous Peoples' identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by the Indigenous Peoples themselves, so that they (i) receive culturally appropriate social and economic benefits; (ii) do not suffer adverse impacts of projects; and (iii) are able to participate actively in projects that affect them.
<b>Scope</b>	The Policy is triggered if a project impacts directly or indirectly on the dignity, human rights, livelihood systems, or culture of Indigenous Peoples, or affects the territories, natural or cultural resources that Indigenous Peoples own, use, occupy or claim as an ancestral domain or asset. "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 and recognition of this identity by others, (ii) collective attachment to geographically distinct habitats or ancestral territories and to the natural resources in these habitats and territories, (ii) because of forced severance, (iii) presence of distinct customary cultural, economic, social or political institutions, and (iv) indigenous language. A group that has lost "collective attachment to geographically distinct habitats or ancestral territories in the project area" (item [iii]) remains eligible for coverage under this Policy.
<b>Policy Principles</b>	<ol style="list-style-type: none"> <li>1. Screen early to determine (a) whether Indigenous Peoples are present in, or have collective attachment to, the project area, and (b) whether there are likely project impacts on Indigenous Peoples.</li> <li>2. Undertake free, prior and informed consultations with affected communities to solicit their participation (a) in designing, implementing, and monitoring measures to avoid adverse impacts, or, when avoidance is not feasible, to minimize, mitigate, or compensate for such effects; and (b) in tailoring project benefits for them in a culturally appropriate manner. To enhance Indigenous Peoples' active participation, the projects affecting them will provide for culturally-appropriate capacity development.</li> <li>3. In deciding whether to proceed with the project, ascertain that the affected Indigenous Peoples' communities provide their broad support to the project, including measures proposed to respond to anticipated project impacts, on the basis of free, prior, and informed consultation.</li> <li>4. Avoid, to the maximum extent possible, any restricted access to and relocation from protected areas and natural resources. Where such avoidance proves not to be feasible, ensure that the affected Indigenous Peoples' communities participate in the design, implementation, monitoring and evaluation of management plans for such areas and natural resources and that their benefits are equitably shared.</li> <li>5. Put in place an action plan for the legal recognition of customary rights to lands and territories, or ancestral domain, when the project involves (a) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples traditionally owned, or customarily used or occupied; or (b) the involuntary acquisition of such lands.</li> <li>6. Undertake a social assessment or use similar methods to assess potential project impacts, both positive and adverse, on Indigenous Peoples. Give full consideration to options preferred by the affected Indigenous Peoples in the provision of project benefits and in designing of mitigation measures. Identify social and economic benefits for affected Indigenous Peoples that are culturally appropriate, and gender and inter-generationally inclusive and develop measures to avoid, minimize and/or mitigate adverse impacts on Indigenous Peoples.</li> <li>7. Prepare an Indigenous Peoples Plan (IPP) or equivalent document that is based on the social assessment, uses qualified professionals, and draws on indigenous knowledge and the participation of the affected communities. The IPP includes a framework for continued consultation with the affected communities during project implementation; specifies measures to ensure that Indigenous Peoples receive culturally appropriate benefits; identify measures to avoid, minimize, mitigate or compensate for any adverse project impacts; and include culturally-appropriate grievance procedures, monitoring and evaluation arrangements, and the time-bound actions and budget for implementing the planned measures. Disclose a satisfactory draft IPP, or equivalent document, including documentation of the consultation process and the results of the social assessment, before appraisal, in a form, manner and language(s) accessible to affected communities and the public. The final IPP and its updates will also be disclosed to the affected Indigenous Peoples and the public.</li> <li>8. Commercial development of the cultural resources and knowledge of Indigenous Peoples is conditional upon their prior agreement to such development.</li> <li>9. Monitor the implementation of the IPP, using qualified professionals, and adopting a participatory monitoring approach, wherever possible, and prepare a project completion report that assesses if the objective and desired outcome of the IPP have been achieved, taking into account the baseline conditions and the results of IPP monitoring.</li> </ol>

## C. Policy Delivery Process

### 1. General Requirements

41. **Screening and Scoping.** ADB will carry out screening at the earliest stage of project preparation when sufficient information is available for this purpose. Screening is undertaken to (i) determine the significance of potential impacts or risks that a project might present; (ii) identify the level of assessment and institutional resources required for the safeguard measures; and (iii) determine disclosure requirements.

42. **Environment Categorization.** ADB uses a classification system to reflect the significance of potential environmental impacts of a project. A project's environmental assessment category is determined by the category of its most environmentally sensitive component, including direct, indirect, and cumulative impacts. Each proposed project is scrutinized as to its type, location, scale, sensitivity and magnitude of its potential environmental impacts. Projects are assigned to one of the following four categories:

- (i) **Category A:** A proposed project is classified as Category A if it is likely to have significant adverse environmental impacts that are irreversible, diverse, or unprecedented on human populations, biodiversity, or natural resources. These impacts may affect an area broader than the sites or facilities subject to physical works. An environmental impact assessment (EIA) is required.
- (ii) **Category B:** A proposed project is classified as Category B if its potential adverse environmental impacts are less adverse than those of Category A projects. These impacts are site-specific, few if any of them are irreversible, and in most cases mitigation measures can be designed more readily than for Category A projects. An initial environmental examination (IEE) is required.
- (iii) **Category C:** A proposed project is classified as Category C if it is likely to have minimal or no adverse environmental impacts. Beyond screening and desk review, no further environmental assessment action is required.
- (iv) **Category FI:** A proposed project is classified as Category FI if it involves investments of ADB funds through a financial intermediary (FI). An environmental and social management system (ESMS) is required. Where the FI's investments have minimal or no adverse social or environmental risks, the FI project will be considered Category C projects and need not apply any specific requirements.

43. **Involuntary Resettlement.** Screening for involuntary resettlement is to be conducted as early in the project cycle, at the project concept stage where feasible, and no later than project or program preparatory technical assistance. If through the screening process, involuntary resettlement impacts are identified, resettlement plans will be prepared commensurate with the extent and scale of the impacts.

44. **Indigenous Peoples.** Projects are screened according to the significance of their impacts on Indigenous Peoples. The impacts on Indigenous Peoples will be considered significant if they positively or negatively: (i) affect their customary rights of use and access to land and natural resources; (ii) change their socioeconomic status; (iii) affect their cultural and communal integrity; (iv) affect their health, education, livelihood, and social security status; or (v) alter or undermine the recognition of indigenous knowledge. The significance is decided by scrutinizing

the type, location, scale, nature, and magnitude of a project's potential impacts on Indigenous Peoples. If through the screening process, adverse impacts on Indigenous Peoples are identified, relevant safeguard plans will be prepared commensurate with the extent and scale of the impacts.

45. **Information Disclosure.** ADB is committed to working with the borrower/client to ensure that relevant information (whether positive or negative) on environmental and social safeguard issues is made available, in a form, manner, and language(s) accessible to the affected communities and accessible to other key stakeholders, including the general public, for them to provide meaningful inputs into project design and implementation. ADB will post on its website the following safeguard documents:

- (i) For each proposed project (other than those expected to have minimal or no adverse impacts or private sector FI projects), ADB will disclose draft environmental assessment, IR plan, and Indigenous Peoples plan before appraisal.
- (ii) Environmental, IR and Indigenous Peoples monitoring reports submitted by borrower/clients during project implementation will be disclosed.

46. **Consultation and Participation.** ADB is committed to working with the borrower/client to put into practice processes of free, prior and informed consultation and participation. ADB will require the borrower/client to engage with the communities, groups, or persons affected by the proposed projects and civil society through information disclosure, consultation and informed participation, in a manner commensurate to the risks and impacts on the affected communities. Such consultation and participation is an ongoing process and will be carried out as early as possible in the project cycle so that views of affected communities or persons are taken into account in the design of the project and its mitigation measures.

47. In addition, for projects with potential impacts on Indigenous Peoples, the borrower/client will ensure their free, prior, and informed consultation and facilitate their informed participation on matters affecting them directly, such as proposed mitigation measures, sharing of project benefit and opportunities, and implementation arrangements. The borrower/client will ascertain whether the affected Indigenous Peoples communities provide their broad support to the project, and where there is such support, the consultation process will be clearly documented in the safeguard documents. ADB will also assure itself that there is broad community support<sup>16</sup> for the project within the affected communities. ADB will review the borrower/client's documentation of the engagement process, and in addition, through its own investigation, assure itself that there is broad community support for the project within the affected Indigenous Peoples communities. ADB will not finance the project if it is unable to ascertain that such support exists.

48. **Due Diligence and Review of Safeguard Assessments and Plans.** For projects proposed for financing, ADB will conduct safeguard due diligence, and review the borrower/client's safeguard documents as part of its overall due diligence. ADB's safeguard due diligence and review emphasizes the process of safeguard assessments and planning, in addition to producing quality safeguard documents. Due diligence and review involves field visits as well as desk review. Through such due diligence, ADB will confirm that (i) all key potential social and environmental impacts/risks of the project are identified; (ii) adequate

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<sup>16</sup> Broad community support is a collective expression by the affected communities, through individuals and/or their recognized representatives, in support of the project. There may be broad community support even if some individuals or groups object to the project.

measures to avoid, minimize, mitigate, or compensate for the adverse impacts are incorporated into the safeguard documents; (iii) the borrower/clients understand ADB's requirements, and have the necessary commitment and capacity to adequately manage social and environmental impacts/risks; (iv) the role of third parties is appropriately defined in the safeguard plans; and (v) consultation with affected people are conducted in accordance with ADB's requirements. For projects with significant adverse environmental or social impacts, ADB project teams will participate in consultation activities to understand the main concerns of affected peoples and ensure such concerns are appropriately addressed in project design. In cases where such safeguard documents do not meet ADB's safeguard requirements, the borrower/client will be required to undertake additional assessment or improve the safeguard plans. ADB will not finance projects that do not comply with its safeguard requirements.

**49. Monitoring and Reporting.** Borrowers/clients are required to implement safeguard measures and relevant safeguard plans, as provided in the legal agreements, and to submit periodic monitoring reports on their implementation performance. The extent of monitoring activities, including their scope and periodicity, should be commensurate with the project's risks and impacts. ADB will require the borrower/client to:

- (i) establish procedures to monitor and measure the effectiveness of the safeguard implementation;
- (ii) verify compliance and progress of the safeguard measures toward the intended outcomes;
- (iii) document monitoring results, and identify necessary corrective and preventive actions in the periodic monitoring reports;
- (iv) follow up on these actions to ensure progress toward the desired outcomes;
- (v) retain, for projects with significant impacts and risks, qualified and experienced external experts or qualified NGOs to verify its monitoring information; and
- (vi) submit periodic monitoring reports on safeguard measures as agreed with ADB.

**50.** ADB reviews project performance against the borrower/client's commitments as agreed in the legal documents. Monitoring of environmental and social safeguards is integrated into the project performance management system. ADB will carry out the following monitoring actions to supervise project implementation:

- (i) conduct periodic site visits of projects with significant adverse environmental or social impacts;
- (ii) review periodic monitoring reports submitted by borrowers/clients to ensure that adverse impacts and risks are mitigated as planned and as agreed with ADB;
- (iii) work with the borrower/client to rectify to the extent possible any failures to comply with its safeguard commitments, as covenanted in the financing agreements; and exercise remedies to reestablish compliance as appropriate; and
- (iv) for highly complex and sensitive projects, require appointment of independent environmental and/or social experts to verify the periodic monitoring reports submitted to ADB. Highly complex and sensitive projects are those deemed by ADB to have significant, complex, multidimensional and generally inter-related potential social or environmental impacts. These potential impacts tend to affect an area broader than the sites or facilities subject to physical works.

## **2. Specific Requirements**

### **(a) Project Loans**

51. For project loans the general requirements specified in paragraphs 39 to 47 apply.

### **(b) Application of Framework Approach**

52. Framework approaches applies to projects delivered through sector lending modality, MFFs, or other lending modalities where subprojects or project components are prepared after Board approval. Where appropriate, the framework approach may apply where the project or project component is subject to detailed design after Board approval. The framework approach is not appropriate for highly complex and sensitive projects, with the exception of specific non-sensitive components of such projects. Through the safeguard frameworks, appropriate directions for guarding against potential adverse impacts must be provided for social and environmental risk management. Impact assessment and specific mitigation measures (such as the environmental assessment and environmental management plan, involuntary resettlement plan, and Indigenous Peoples plan) are prepared during project implementation, in conformity with the safeguard frameworks agreed by ADB and the borrower/client.

53. Safeguard frameworks will be prepared for each relevant safeguard policy and shall

- (i) fully reflect the objectives and policy principles of the relevant safeguard policy;
- (ii) explain the general anticipated impacts of the components or subprojects to be financed under the proposed project;
- (iii) describe the institutional arrangements and capacity, and implementation procedures (including budget and capacity development requirements);
- (iv) outline safeguard criteria that are to be used in selecting components, or subprojects, if the project is sector-wide;
- (v) specify the requirements that will be followed in screening, impact assessment, and development of management plans;
- (vi) provide for public consultation and information disclosure;
- (vii) specify monitoring and reporting requirements; and
- (viii) specify the responsibilities and authorities of the borrower and ADB in the preparation, review, and clearance of safeguard documents.

54. In order to determine whether a framework approach is appropriate, ADB will assess the executing agency (EA) capacity for environmental and social management. The framework approach for implementing the policy will not entail different policy principles for different projects, but rather different procedures for delivery of those principles. If there are gaps between ADB's requirements and country's procedural requirements, or where there are gaps in borrowers' capacity, the framework should specify the specific gap-filling requirements to ensure that policy principles are achieved. It is expected that frameworks could be agreed upstream with borrowers/clients for sectors at sub-national and national levels, and then tailored to the specificities of individual projects.

### **(c) Financial Intermediation**

55. For project involving investments through financial intermediaries (FI), ADB will conduct safeguard due diligence to assess the potential social and environmental impacts and risks associated with the FI's existing and likely future portfolio, and its commitment and capacity in

social and environmental management. The FI will be required to establish and maintain an appropriate environmental and social management system (ESMS) to ensure that its investments meet ADB's safeguard requirements. ADB's safeguard requirements for the FI will be tailored to suit the FI's specific structure and the level of potential impacts/risk. The ESMS will incorporate the following elements: (i) environmental and social policies; (ii) screening and review procedure; (iii) organizational structure and staffing including skills and competencies in environmental and social areas; (iv) training requirements; and (v) reporting.

56. All FIs will apply the Prohibited Investment Activities List (PIL) (Attachment D). Where the FI's investments have minimal or no adverse social or environmental risks, the FI project will be considered Category C projects and need not apply any other specific requirements. In addition to the PIL, (i) where the FI's investments have potential significant environmental or social impacts, the FI will be required to establish and maintain an appropriate ESMS to ensure that its sub-projects meet the relevant elements of ADB's safeguard requirements and the applicable national laws and regulations, (ii) where the FI's investments are expected to have limited environmental and social impacts, the FI will be required to establish and maintain an appropriate ESMS to ensure that its sub-projects meet the applicable national laws and regulations.

#### (d) Strengthening and Use of CSS

57. ADB recognizes that DMCs have developed in varying degrees their own safeguard systems to deliver safeguards, and supporting DMC efforts to strengthen and use their own systems would enhance country ownership, reduce transaction costs and extend development impacts. On the other hand, ADB needs to ensure that application of CSS in ADB projects does not undermine the achievement of ADB policy principles. ADB's overall approach for the strengthening and use of CSS has the following attributes:

- (i) **Definition.** "Country safeguard systems" is used to mean a country's legal and institutional framework, consisting of its national, sub-national, or sectoral implementing institutions and relevant laws, regulations, rules, and procedures, which pertain to the safeguard policy areas.
- (ii) **Criteria for the Use of CSS.** The borrower may propose the use of its own safeguard systems to ADB-financed projects at the national, subregional, sectoral, or agency level. ADB may consider application of a borrower's CSS to identify and manage the social and environmental risks associated with ADB-financed projects in such country, subregion, or sector, including those sponsored by the agency, provided that (a) the CSS is equivalent to ADB's, i.e. the CSS is designed to achieve the objectives and adhere to the applicable policy principles set out in ADB's safeguard policies; and (b) the borrower/client has relevant capacity to implementing the applicable laws, regulations, rules, and procedures in the country or specific sector concerned.
- (iii) **Country/Sector/Agency Level Assessment – Determining Equivalence.** ADB will be responsible for assessing and determining the equivalence through CSS assessment at national, subnational, sector, or agency level. If the assessments reveal that gaps can be addressed reasonably, ADB and the borrower will agree on specific gap-filling measures to be included in an action plan. The assessments will need to be updated as required to reflect changes in CSS.

Recent analytical work and assessments of other MFIs, updated as required, can be used. Joint assessments with other MFIs will be encouraged.

- (iv) **Project Level Assessment – Determining Acceptability.** Once ADB has determined that the CSS is equivalent to ADB's, it may consider the application of CSS at the country, sub-region, sector or agency level. For each project, ADB will conduct an acceptability assessment (including capacity, track record and practice of executing agency and implementing agencies) before actually introducing the use of CSS into the project. The assessment will be done as part of the project design process during the project preparation. The project team will also assist the borrower develop an Action Plan for capacity building as needed.
- (v) **Project Implementation.** For projects that use CSS, ADB's responsibilities for safeguard review before the Board approval will not be removed. The review will be based on the requirements under CSS and agreed Action Plan (rather than ADB's requirements). After the Board approves a project that uses CSS, ADB supervision will follow the same procedures as for any other ADB-financed project.
- (vi) CSS will not be applied to highly complex and sensitive projects.

58. Appendix 3 provides details of the proposed approach for strengthening and application of CSS.

#### (e) For Projects with Cofinancing

59. In the context of a cofinancing transaction that requires project-specific contractual commitment by ADB to facilitate mobilization of cofinancing and/or administration of the financing partner's funds,<sup>17</sup> ADB's safeguard policy requirements will apply. In the case of a guarantee or cofinancing transaction with active coordination under formal arrangements with a financing partner to facilitate the processing and implementation of the project,<sup>18</sup> where ADB has satisfied itself that the safeguard policies of a MFI, bilateral institution, or other public/private financing partner are at least equivalent to ADB's safeguard objectives and policy principles, and that such financing partner has the capacity to implement its policies, the safeguard policies of such financing partner may apply. This approach will not remove ADB's responsibilities for due diligence and safeguard review during project preparation. Unless otherwise approved by the ADB Board, ADB's oversight responsibilities for monitoring and supervision during project implementation will also not be removed. In the context of a cofinancing transaction in which the financial partner's funds are provided in parallel to ADB's, without formal arrangements between the parties,<sup>19</sup> ADB's safeguard policy requirements will apply to all ADB financed components. In any context, ADB will make efforts to collaborate with the borrower/client and cofinanciers to adopt a single environmental and social process and unified safeguard documentation, consultation and disclosure requirements, consistent with the principles of this Safeguard Policy Statement.

<sup>17</sup> This refers to ADB-administered direct, value-added (DVA) cofinancing in ADB's Cofinancing Strategy.

<sup>18</sup> This refers to Collaborative Cofinancing in ADB Cofinancing Strategy.

<sup>19</sup> This refers to Third-party Financing (Non-DVA Cofinancing) in ADB's Cofinancing Strategy.

## **D. Roles and Responsibilities**

### **1. ADB's Roles and Responsibilities**

60. ADB is responsible for screening projects to specify ADB's safeguard requirements; undertaking due diligence and reviewing the borrower/client's assessment and plans to ensure that safeguard measures are in place to avoid, minimize, mitigate, or compensate for adverse social and environmental impacts consistent with ADB safeguard policies; determining the feasibility of ADB financing; helping the borrower/client in building capacity to meet the objectives and requirements of the policies; monitoring and supervising the borrower/client's social and environmental performance throughout the project cycle. ADB also discloses social and environmental assessment and safeguard plans prepared by the borrower/client.

61. If a borrower/client fails to comply with legal agreements on safeguard requirements, including those described in the safeguard plans and frameworks, ADB will seek corrective measures and work with the borrower/client to bring it back into compliance. If the borrower/client fails to reestablish compliance then ADB may exercise legal remedies including suspension, cancellation, or acceleration of maturity, which are available under the legal agreements. Resorting to legal remedies in the event of noncompliance is not automatic or mandatory. Before resorting to such measures, ADB uses available means to rectify the situation satisfactory to all parties to the legal agreements, including initiating dialogue with the parties concerned to achieve compliance with legal agreements.

### **2. Roles and Obligations of Borrower/Clients**

62. The borrower/client is responsible for assessing projects and their impacts, preparing safeguard plans, and engaging with affected communities through information disclosure, consultation and informed participation, in a manner consistent with ADB policy objectives, principles, and requirements as specified in Attachments A-D. The borrower/client will submit to ADB for review all required information, including the assessment reports, safeguard plans/frameworks, and monitoring and evaluation reports. The borrower/client must comply with host country laws, regulations, and standards. Further, the borrower/client must implement safeguard measures agreed with ADB to deliver the principles and meet the requirements under the policies. Where national safeguard policies and regulations (i.e., country safeguard systems) differ from ADB safeguard policy requirements, ADB and the borrower/client will agree on specific measures to ensure that ADB's safeguard policy requirements are fully complied with.

## **VI. RESOURCE IMPLICATIONS**

63. It is important to ensure that the updated safeguard policies are appropriately resourced and that resource constraints are taken into account in defining the SPS. While the issue of qualified and adequate resources remains central to effective safeguard delivery, it is considered premature to provide quantitative data on the resources requirements at this early stage of policy formulation. Accordingly, this section will be up updated to provide a more detailed discussion when the results of the analyses become available at the W-paper stage.

64. In optimizing resource utilization and allocation, various options will be examined in the context of the following considerations: (i) the correct apportionment of incremental resource requirements across internal administrative budget, TA and loans, determined by the demarcation between ADB and borrower/client responsibilities; (ii) efficiencies and streamlined internal procedural requirements that achieve ADB's objectives and adhere to the principles of

the safeguard policies; and (iii) efficiency measures, which will include improving skills mix and competencies, optimizing number of safeguard specialists at Headquarters and at Resident Missions, and increasing sector specialization and pooling of specialist resources.

65. A draft policy implementation plan, and an analysis on resource implications, will be developed at the time of W-paper formulation, after the external consultation process.

## **VII. CONCLUSION**

66. It will be recommended that the Board approve the Safeguard Policy Statement in Chapter V. The Policy Statement will supersede the safeguard requirements of the Environment Policy (2002), the Policy on Indigenous Peoples (1998), and the Policy on Involuntary Resettlement (1995).

## OED Special Evaluation Study (SES) on Safeguard Policies and Management Responses

### Issues and Recommendations

#### I. OED Special Evaluation Study on Environmental Safeguards

Recommendations by OED	Management Response	SPU Actions
<p>Review of the 2002 Environment Policy and Potential Refinement (paras. 195–207)</p> <p>a) Refocus efforts “from front-end loan processing and approval to results delivery, and from safeguards to enhancement”</p> <p>b) Integrate ADB requirements with national procedures</p> <p>c) Broaden the focus of ADB safeguard activities from “the project” to “environmental capacity”</p> <p>d) Integrate environmental and social safeguards</p>	<p>a) Management fully agrees that ADB’s safeguard policies and procedures need to be outcome oriented. In this regard, Management would emphasize the importance of achieving an appropriate balance between front-end processing and implementation to ensure effective delivery of results. With regard to SES proposals to refocus from “safeguards to environmental enhancement,” we would note again that ADB’s activities to address the wider, non-safeguard elements of the environment policy were not reviewed in the SES. We therefore assume that the SES is referring to the role of environment assessment in promoting environment enhancement at the project level, and we agree that this should be emphasized in the safeguard policy update.</p> <p>b) We agree that ADB needs to pay due attention to the respective policy and institutional contexts in which ADB’s safeguard policies are to be applied. While several developing member countries (DMCs) have developed environment assessment systems, often with the assistance of ADB and the World Bank that meet or approach international standards of practice, the issue of enforcement at the level of projects remains a crucial consideration. Since all ADB projects must comply with both ADB policies and each DMC’s own environment assessment requirements, there is a clear need to ensure alignment in the delivery of these requirements.</p> <p>c) The SES suggests that attention paid to project compliance with safeguard requirements has come at the cost of broader safeguard capacity building efforts at country or sector level. If we understand the text correctly, the suggestion is that efforts at broader capacity building may substitute for attention to safeguards at project level. Our experience is that both project compliance and broader capacity building are important and that they are complementary. To the extent that a trade-off exists in the allocation of scarce resources, we would need to continue to ensure procedural and substantive compliance of individual projects with ADB’s safeguard policies. At the project level, this includes capacity building in the context of environmental management plans.</p> <p>d) The SES does not explain what it means by integration nor does it appear to have studied or presented substantive findings on the issue of integration. However, Management agrees that there</p>	<p>a) The issue of balancing a front-loaded procedural approach with one more focused on results delivery is addressed in the proposed SPS by emphasizing capacity building, application of framework approach, and monitoring and supervision during project implementation. The wider non-safeguard elements will be addressed in the upcoming Environment Strategy.</p> <p>b) An approach for strengthening and using country safeguard system (CSS) is proposed in the SPS and Appendix 3.</p> <p>c) Strengthening borrower/client’s capacity to manage social and environmental impacts/risks is emphasized as a common objective of the safeguard policies, and incorporated in the strengthening and use of country safeguard system, project processing and implementation.</p> <p>d) The three safeguard policies are consolidated in the proposed SPS.</p>

Recommendations by OED	Management Response	SPU Actions
	<p>is merit in ensuring consistency and synergies across the safeguard policies and procedures. This will be considered in the context of the safeguard policy update.</p>	<p>Consistency and synergies of requirements and procedures across the safeguard policies are also addressed in preparing the three sets of requirements for borrowers.</p>
<p>Strengthening Organizational Effectiveness (paras. 208–211)</p> <p>a) Consolidate regional department environment specialists in the sector divisions within a safeguard unit under the region</p> <p>b) Strengthen ADB Resident Missions (RMs)</p>	<p>a) Management believes that arrangements within operations departments need not adopt a “one size fits all” approach. Operations departments are responsible for implementation of ADB’s safeguard requirements as well as the broader environment agenda in their regions and DMCs. They need the flexibility to tailor their arrangements to the needs of their clients. Furthermore, all environment specialists perform a mix of safeguard and non-safeguard functions, and placing them within a safeguard unit would limit the role of operations departments in mainstreaming environment in ADB operations.</p> <p>b) The proposals to strengthen Resident Missions with environment specialist expertise certainly merit serious consideration.</p>	<p>A study on resources implication is ongoing. Based on the findings of this study, a Safeguard Policy Implementation Plan will be developed to address staffing and resource allocation at W-paper stage.</p>
<p>Improving the Quality of ADB’s Environment Assessment Process and Lowering Transactions Costs to Make it More Cost Effective (paras. 212–217)</p>	<p>In particular, we agree with the suggestions to review environmentally sensitive Category B project classification, opportunities to reduce transaction costs included for sector loan sub-projects, and the need to improve monitoring. We also agree that ADB should not shy away from environmentally sensitive projects, where appropriate capacity exists to address the environmental impacts. We recognize that the quality of environment assessment has varied across projects, ranging from high quality assessments for complex and sensitive projects to more basic assessments for routine subprojects in sector loans, and we are seeking to improve both procedural compliance and substantive quality through ADB’s safeguard compliance system. The peer reviews of EIAs now organized by the Environment Community of Practice are also seeking to ensure ADB-wide consistency and quality. We are also committed to continuing to seek to promote international best practice through ADB projects, and together with the World Bank and other MFIs, we have developed common principles for environment assessment in the context of harmonization efforts. In this regard, we would note the increasing application of strategic environment assessment, assessment of cumulative and induced impacts, and third party monitoring especially in the context of complex and sensitive projects. Regular training programs are also being provided to ensure that environment specialists and mission leaders are abreast of evolving environment assessment practice. Management agrees that the suggestions made by the SES should be reviewed in the safeguard policy update.</p>	<p>The consultation draft of SPS proposes to remove the environmentally sensitive Category B.</p> <p>Actions to improve the environmental assessment process will be extended through harmonizing ADB’s safeguard policies with those of other MFIs.</p> <p>ADB’s internal environmental review procedure (operations manual) will further address these issues.</p>

Recommendations by OED	Management Response	SPU Actions
<p>Improving the Effectiveness of Public Disclosure and Partnerships with Nongovernment Organizations and Civil Society on the Environment (paras. 218–223)</p> <p>a) Revisit the rule that summary environmental impact assessments (SEIAs) are disclosed 120 days before Board consideration of a category A project.</p> <p>b) The SES states that the “involvement of the environment specialists within the project team directly responsible for gaining approval has compromised the perceived independence of the (environment assessment) process.”</p> <p>c) “Ways of constructively engaging with nongovernment organizations in monitoring and implementation should be explored in RSDD’s review of the environment policy.”</p>	<p>a) Management agrees that the timing of disclosure of SEIAs should be reviewed, and that there may be merit in shortening the disclosure period. It is noted that, in addition to subsequent disclosure of SEIAs, Category A projects also require consultation with affected people at least twice during the environment assessment process, including disclosure of information in a form and language that they can readily understand.</p> <p>b) Management believes that involvement of operations department environment specialists in project teams is crucial to successful integration of environmental concerns in ADB projects. We also believe that ADB’s safeguard compliance system led by ADB’s Chief Compliance Officer provides appropriate independent review of environment assessments.</p> <p>c) Management agrees with this suggestion.</p>	<p>The timing of disclosure of SEIAs is under review.</p> <p>This will be addressed in the operations manual of ADB.</p> <p>This issue is under review.</p>
<p>Moving Towards Adoption of Improved Country Systems and Harmonization with Other Development Partners in Selected DMCs (paras. 224–228)</p>	<p>Management agrees that the strengthening of country safeguard systems is an important development objective, and ADB should continue to support DMCs in this regard. We are pleased that the final version of the SES has taken into account earlier internal comments on the need for a cautious and phased approach to any proposals for wide application of country systems for ADB projects. Such proposals would need to be based on a transparent and rigorous assessment of the commonalities between a country’s system and ADB safeguard policy requirements, and also the capacity within countries to deliver and enforce their own safeguard requirements. Such assessments</p>	<p>An approach for strengthening and using country safeguard system (CSS) is proposed in the SPS and Appendix 3.</p> <p>The World Bank Group’s safeguard policies and their implementation experience in the following areas have been taken as reference: (i) the World Bank’s Piloting the Use of</p>

Recommendations by OED	Management Response	SPU Actions
	<p>should also take into account the complexities of country systems, including the reality that the nature and robustness of environment assessment processes vary across within the scope of the SES were not able to respond to these considerations probably because of time and resource constraints (para. 201) and therefore are not a basis for categorizing countries in various groups. <i>TA 6285-REG: Strengthening Country Systems</i> is currently reviewing country systems in selected DMCs and identifying possible approaches to be considered in the safeguard policy update.</p> <p>With regard to proposed harmonization with other partners, we would like to note that close consultation is already taking place with the World Bank on its pilot application of country systems for safeguards, both in the context of the MFI working group on environment and at country level. We agree that lessons from the World Bank experience will be relevant, including those on the incremental costs of upstream due diligence and downstream supervision.</p>	<p>Borrower System to Address Environmental and Social Safeguard Issues; (ii) the World Bank safeguard policies and IFC's Sustainability Policy and Performance Standards on involuntary resettlement, Indigenous Peoples, environmental assessment, pollution prevention and abatement, biodiversity and natural resources management, and physical cultural resources; and (iii) the World Bank Group's Environmental, Health, and Safety Guidelines.</p>
<p>Developing an Action Plan to Implement the Revised Environment Policy (para. 229)</p>	<p>Management agrees that an action plan will be required to implement the updated policy on environment safeguards, which should include a realistic assessment of required resources. Management, however, does not share the view that ADB should consider a dilution of its safeguard policy objectives and principles [para. 229 (ii)]. The safeguard policy update will instead explore more efficient and effective delivery mechanisms of these policy objectives and principles.</p>	<p>Following the consultations, a Safeguard Policy Implementation Plan will be developed to address staffing and resource allocation at W-paper stage.</p>

## II. OED Special Evaluation Study on Involuntary Resettlement Safeguards

Recommendations by OED	Management Response	SPU Actions
<b>A. Recommendations for the Update of the Safeguard Policies</b>		
Management and the Board need to reconcile the difference between the 1995 Policy and the currently applied policy (para. 166)	Management recognizes that there are ambiguities in the 1995 Policy on Involuntary Resettlement. We believe that successive versions of the Operations Manual were able to clarify these ambiguities and elaborate on operational procedures consistent with the intent of the policy. Management acknowledges the need to ensure that the updated policy to be submitted for Board approval provides full clarity on its scope, objectives, and principles. We also believe that the policy should be accompanied by clear operational procedures for delivery of results.	Policy scope and triggers are clarified in the consultation draft of SPS. Further improvement will be made following the consultations.
The policy should have a results-based framework distinguishing desired impact, outcomes, outputs, activities, and inputs both at macro (country) and micro (project) level (para. 167)	Management agrees that achievement of results should guide the policy update. The substance of the recommendation as laid out in para. 167 deserves further review.	This issue is under review.
The updated policy should highlight a set of performance standards (para. 168)	Management agrees in principle that the concept of performance standards is relevant and merits consideration in the safeguard policy update. We note that a set of performance standards for safeguards have been introduced for the first time in the context of International Finance Corporation's recently approved safeguard policies and procedures, and experience with these may be relevant.	A set of safeguard requirements for borrowers/clients (comparable with performance standards) are proposed in Attachment A-D.
The updated policy should elaborate on the objective of greater reliance on country executing agency systems for land acquisition and resettlement safeguards (para. 169)	We agree that consideration should be given to greater reliance on country systems where this does not compromise achievement of safeguard policy objectives. We would note that it is already an established practice for resettlement frameworks and plans to take into account country and executing agency systems, with filling of gaps as required to meet ADB safeguard policy provisions. Over time, such gaps can be expected to diminish, especially with support of development partners, although this might only be a longer-term prospect in several developing member countries (DMCs). We would point out that <i>TA 6285-REG: Strengthening Country Systems</i> is reviewing possible approaches for assessing country systems and their increased application. The results will be considered in the safeguard policy update. We are also in close consultation with the World Bank on the performance of its pilot program on the application of country	ADB is developing an approach for strengthening and using CSS, and supporting DMCs' efforts to enhance their own safeguard systems.

Recommendations by OED	Management Response	SPU Actions
	systems.	
The updated policy should have clear guidelines and procedures regarding the identification of resettlement operation needed (para. 170)	Management agrees with this recommendation. We have noted the issues and recommendations summarized in Box 3 and agree these should be considered as part of the safeguard policy update. The need for clarity in guidelines and procedures will be addressed through the revisions to the Operations Manual that will accompany the updated policy and through the revised Handbook on Involuntary Resettlement that will follow. A key issue will be to formulate operational procedures that improve the relevance and effectiveness of resettlement planning and implementation, and address opportunities to reduce transactions costs.	Revision of the IR safeguard procedures (operations manual) and IR Handbook is underway.
The updated policy should be clearer on guidelines and procedures regarding compensation and assistance within resettlement operations (para. 171)	Management agrees that the issues and suggestions in Box 4 should be considered in the safeguard policy update. The need for clarity in guidelines and procedures will be addressed in the revisions to the Operations Manual and the Handbook.	Revision of the IR safeguard procedures (operations manual) and IR Handbook is underway.
<b>B. Recommendations for Involuntary Resettlement Implementation</b>		
The SES finds that there are significant constraints on staff resources to implement the Involuntary Resettlement Policy and to ensure strong engagement with executing agencies in this regard (para. 172).	Management agrees that this issue warrants serious attention. We have noted that among the three suggested options to address this issue, one is to consider “changing the policy in ways that will be less staff intensive for ADB.” In this regard, Management believes that the emphasis should be to improve the efficiency and effectiveness of operational procedures without compromising policy delivery. This will be explored in the safeguard policy update, along with options to optimize internal resource allocation.	A study on resources implication is ongoing. Based on the findings of this study and following the consultations, a Safeguard Policy Implementation Plan will be developed to address staffing and resource allocation at W-paper stage.
Formulate a time-sequenced implementation plan (para. 173 [i])	As part of the safeguard policy update process, we agree that the updated policy and operational procedures should be accompanied by a time-bound action plan that includes a realistic assessment of resource requirements and their optimal allocation. The options offered for inclusion in this plan will be considered, including the need to strengthen specialist expertise in resident missions and to review responsibilities of RSES and the Operations Departments.	A Safeguard Policy Implementation Plan will be developed to address the issues of staffing and resource allocation at W-paper stage.
Improve IR monitoring (para. 173 [ii])	Management agrees that monitoring and supervision of involuntary resettlement implementation needs more attention. We would note that the policy update is looking at ways to balance procedural	As indicated in the consultation draft, it is proposed to enhance ADB’s responsibilities for

Recommendations by OED	Management Response	SPU Actions
	<p>requirements during processing with increased attention to project implementation. We would point out that partnerships with nongovernment organizations and civil society organizations are already being integrated into resettlement plan implementation and monitoring processes, particularly in DMCs with a strong and reputable nongovernment organization base. This recommendation merits attention in the safeguard policy update.</p>	<p>monitoring and supervision during project implementation, and borrower/client's responsibilities for monitoring and reporting, and disclosure of monitoring reports.</p>
<p>Get more involved in building country systems and capacity (para. 173 [iii])</p>	<p>Management agrees that the strengthening of country systems and capacity is a sound development objective that should continue to be pursued. RETA 6285 will elaborate an approach for assessing equivalence between country systems and international best practice, as well as associated capacity constraints. This will allow identification of gaps at country and sector levels for targeted capacity building by ADB and other development partners.</p>	<p>The overall objectives of the safeguard policies as stated in the consultation draft emphasize capacity building. An approach for strengthening and using country safeguard system is proposed in the consultation draft of SPS and Appendix 3.</p>

### III. OED Special Evaluation Study on Indigenous Peoples Safeguards

Recommendations by OED	Management Response	SPU Action Areas
<p>The safeguard policy update should clarify the areas that cause misunderstanding in the 1998 Policy on Indigenous Peoples and address the policy drift related to OM Section F3 and IP practice in ADB (para 176)</p>	<p>Management agrees that there is a compelling need to ensure clarity in the IP Policy. Management, however, disagrees with the suggestion that there is a “policy drift” in the provisions of Operation Manual Section F3. In terms of application of IP definition, scope of the Policy and consultation process for IP, recent versions of the OM F3 sought to further clarify some ambiguities in the Policy while maintaining consistency with its original intent and objectives. The IP Policy and OM F3 recognize the variety of definitions and contexts that exist, and the difficulty of arriving at a uniform definition of IP in Asia. Both the Policy and OM use “IP” as a generic term, providing guidance on how to identify IPs for the purpose of policy application, based on the characteristics of IPs and the specific circumstances under which IPs are vulnerable to external development interventions. Management intends to ensure that the updated safeguard policies to be submitted for Board approval provide clarity on definitions, scope, objectives, and principles.</p>	<p>The definition of Indigenous Peoples, the scope and triggers of the Policy on Indigenous Peoples are provided in the consultation draft, which are consistent with World Bank’s approach. Feedback from consultation will be useful in further clarifying these issues.</p>
<p>ADB should set goals for the development of IP and IP strategies for some DMCs where ADB’s forward program involves considerable interaction with IP (para 177)</p>	<p>Management agrees that ADB should address IP development needs more broadly, in addition to addressing IP issues as project-specific safeguards. ADB already provides strategic assistance to address IP’s broader socioeconomic and cultural needs and concerns as detailed in paragraphs 138-146. Although beyond the scope of the SPU, Management recognizes that the adequacy and significance of the assistance may still need to be further enhanced including the need to consider IP development when preparing Country Partnership and Strategies.</p>	<p>The wider non-safeguard elements will be addressed in the upcoming IP Strategy and <i>updated Social Protection Strategy</i>.</p>
<p>If ADB maintains a stand-alone IP policy, it should include a results-based framework—distinguishing desired impact, outcomes, outputs, activities, and inputs, both at macro (country) and at micro (project) level (para 178)</p>	<p>Management agrees that a results-based framework is relevant and merits consideration.</p>	
<p>A sequential approach to policy development and capacity building in IP safeguards should be adopted, focusing on a few DMCs first (para 179)</p>	<p>Management agrees with the principle of a sequential approach to policy and capacity development. We recognize that many DMCs differ considerably in their legal, policy and institutional framework for IP. As part of the ongoing RETA 6285: Strengthening Country Systems, we are in</p>	<p>An approach for strengthening and using country safeguard system (CSS) is proposed in the SPS and Appendix 3.</p>

Recommendations by OED	Management Response	SPU Action Areas
	the process of identifying an approach for assessing equivalence between current ADB Policy and country systems, as well as identifying gaps at country and/or sector levels for targeted capacity building.	In addition to SPU, this issue is also addressed through country partnership strategy exercise, policy dialogue, and technical assistance projects.
IPDPs should be prepared for projects that have clear risks for IP, which are capable of being mitigated through project interventions” and “IPDPs would be prepared only in cases where risks to IP are not covered in the resettlement and environment policies (para 180)	While the existing Policy requires the preparation of an IPDP for projects with significant impacts on IPs, both positive and negative, there can be differing perspectives as to whether IPDPs should be formulated only for projects with negative impacts. This recommendation will merit further discussion during the SPU. While Management agrees that duplication or overlapping of mitigation measures should be avoided, we disagree that a blanket policy statement be made on not requiring IPDPs for projects when the issues to be addressed are primarily resettlement and/or environment in nature. We believe that in many project areas where IPs are involved, greater social risks and impacts are evident and hence an IPDP can be deemed necessary to maintain a holistic approach. Management agrees that the issue warrants further review in the SPU.	This recommendation is under review. Feedback from consultations will be useful in policy design.
Conceptual work and case study work is needed to lay out the particular risks for IP associated with different categories of investments, as there is currently a high degree of divergence in approaches to the definition of these risks. (para 181)	Management agrees with this recommendation. The updated IP Handbook will include “typical” scenarios or sector-specific “triggers” that help identify cultural, social and environmental impacts and risks on IPs, including land and resettlement impacts.	An IP Handbook is under preparation.
The safeguard policy update should describe the criterion to be used to determine whether the amount of consultation and broad communication support for a project and mitigation measures is adequate and in what circumstances ADB endorses the principle of free, prior and informed consent for the project from the side of IP. (para 182)	Consultation and disclosure requirements will be reviewed as part of the SPU, along with assessment of practices applied by other multilateral development banks.	Taking into account the practice at other MFIs, it is proposed in the consultation draft to consider the following formulation of <i>ascertaining, through a process of free, prior and informed consultation, that indigenous communities provide their broad support to the project</i> , which is consistent with the World Bank and IFC’s approach. This issue will be further discussed during the

Recommendations by OED	Management Response	SPU Action Areas
		internal and external consultations.
To complement the safeguard policy update, there is a need for an IP policy implementation plan that reconciles the policy aspirations with organizational, budget, and human resources implications (para 183)	Management agrees that the SPU should include a realistic assessment of resource requirements and their optimal allocation. The SPU will further study the suggestions in paragraph 183, specifically the human resource implications and the allocation of responsibilities for monitoring compliance and evaluation between RSDD, ODs, and RMs.	A Safeguard Policy Implementation Plan will be developed to address staffing and resource allocation at W-paper stage.

## Experience of Other Multilateral Financial Institutions

1. Over the past 5 years or so, many multilateral financial institutions (MFIs) have revised or updated their environmental and social safeguard policies. A review of the rationale, approach, and results of the policy revision has been undertaken as an input to ADB's Safeguard Policy Update (SPU). This note discusses experiences of World Bank (WB) and its private sector lending arm—the International Finance Corporation (IFC), Inter-American Development Bank (IDB), European Bank for Reconstruction and Development (EBRD), and Equator Principles Financial Institutions (EPFI).

### World Bank

2. WB has ten environmental and social safeguard policies, including a separate policy framework for using country systems.<sup>1</sup> These policies are complemented by the WB Policy on Disclosure of Information (2002), which lays down disclosure requirements for safeguard planning documents.

3. In 1998 WB embarked on the update of its Indigenous Peoples (IP) policy that resulted in some policy clarification, simplification, flexibility, and strengthening. The revised Operational Policy on Indigenous Peoples (2005) (i) clarifies some ambiguities related to social assessment, screening, and scope; (ii) simplifies project processing requirement; (iii) introduces the principle of proportionality and a planning framework (instead of an up-front plan) for projects that involve preparation and implementation of annual investment programs and multiple subprojects; and (iv) requires WB to provide project financing only where free, prior and informed consultation results in broad community support of the affected IP, and that prior agreement of the affected Indigenous Peoples to commercial development of affected Indigenous Peoples cultural resources and knowledge is a condition to such development.<sup>2</sup>

4. In 2006 WB updated its Physical Cultural Resources (PCR) policy. The policy applies to projects located in, or in the vicinity of, recognized cultural heritage sites (archaeological, paleontological, historical, and sacred) and projects designed to support the management or conservation of physical cultural resources. It requires a consultative process and includes relevant project-affected groups, concerned government authorities and relevant nongovernmental groups.

5. While in the process of updating its Indigenous Peoples and PCR policies, WB was also evaluating the application of country safeguard systems in its operations. Recognition of the changing paradigm on the relationship between development effectiveness and greater use of country systems had led WB to explore further use of borrower systems in addressing environmental and social safeguard issues. The WB Executive Directors approved in 2005 a 2-year pilot program to explore further use of borrower systems and a new policy framework to govern the pilot program. The new policy describes the approach for assessing country systems, and specifies the respective roles of the borrower and WB, and the requirements for the documentation and disclosure of the basis for using country systems. The policy consists of

<sup>1</sup> The ten policies include (i) OP/BP 4.01: Environmental Assessment, (ii) OP/BP 4.04: Natural Habitats, (iii) OP 4.09: Pest Management, (iv) OP/BP 4.12: Involuntary Resettlement, (v) OP/BP 4.10: Indigenous Peoples, (vi) OP 4.36: Forests, (vii) OP 4.11: Physical Cultural Resources, (viii) OP/BP 4.37: Safety of Dams, (ix) OP/BP 7.50 Projects on International Waterways, and (x) OP/BP 7.60 Projects in Disputed Areas. The last two policies principally relate to international law, and thus are not included in OP 4.00 on *Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects*.

<sup>2</sup> See the World Bank's website on indigenous people at: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTINDPEOPLE/0,,menuPK:407808~pagePK:149018~piPK:149093~theSitePK:407802,00.html>

a unified policy statement and eight safeguard areas distilled from current WB safeguard policies in a summary table format (OP 4.00: Table A1), each of which is composed of objective statements and associated operational principles for achieving the stated objectives.

6. A preliminary WB evaluation of its 2-year pilot program finds that, to achieve systemic and sustainable improvements in borrower capacity, it is necessary to move beyond the current project-based approach adopted under the pilot program. Consequently, the evaluation proposes to introduce a set of country level pilots for the use of country systems through which the same methodologies for assessing suitability of safeguards systems would be applied at the country level. In turn, the assessments would recommend for the country as a whole, those systems that could be relied upon as equivalent to the WB's systems. The preliminary evaluation notes that there will be a comprehensive report to the Board on the experience of the project-based country system pilot program followed by a full discussion of the safeguards pilot and its implications for the WB's environmental and social policies at the completion of the pilot period.

7. In the longer term, the WB is considering a separate assessment of the potential use of a principles-based approach to safeguards for some types of operations, after an evaluation of the lessons learned in applying the IFC and MIGA safeguards policies is undertaken.

8. The WB Operational Policy on Environmental Assessment (OP 4.01) was updated in March 2007 to reflect the issuance of OP/BP 8.00 Rapid Response to Crises and Emergencies.

### **International Finance Corporation**

9. The safeguard policies of IFC were adopted from the World Bank's policy in 1998, with modifications to reflect the private sector focus of its operations. In 2003 IFC launched an update of its safeguard policies following the findings and recommendations of its Compliance Advisor Ombudsman and the results of IFC's internal monitoring and evaluation analyses. The update was guided by the need for: (i) clear, simple, and easy to use requirements; (ii) addressing policy gaps; (iii) emphasis on private sector considerations while ensuring compatibility with WB safeguard policies; and (iv) incorporation of the concept of sustainability in IFC policies.

10. IFC's new sustainability policy framework, which was approved in 2006, clearly demarcates IFC responsibilities from those of its clients. Requirements for IFC are specified in the following: (i) Policy on Social and Environmental Sustainability, (ii) Disclosure Policy,<sup>3</sup> and (iii) Environmental and Social Review Procedure. Requirements for clients are outlined in the Performance Standards.<sup>4</sup> In addition, Guidance Notes (companion documents to the Performance Standards), Glossary of Terms, and Environmental, Health, and Environmental, Health and Safety Guidelines<sup>5</sup> are developed to provide guidance to IFC's clients and IFC staff.

<sup>3</sup> The Disclosure Policy requires IFC to disclose the Environmental and Social Review Summary, which is a brief summary of IFC review findings and recommendations, no later than 60 days and 30 days prior to Board consideration for Category A and Category B projects, respectively. The Performance Standards (PS) specify the disclosure requirements for IFC clients. PS 1 (Social and Environmental Assessment Management System) provides that the assessment document for projects with adverse impacts must be disclosed before project construction commences. The timing of disclosure of resettlement action plans or resettlement frameworks, and Indigenous Peoples Development Plans or community development plans, is not explicitly stated in PS 5 (Land Acquisition and Involuntary Resettlement) and PS 7 (Indigenous Peoples), respectively.

<sup>4</sup> The eight Performance Standards include (i) Social and Environmental Assessment and Management System, (ii) Labor and Working Conditions, (iii) Pollution Prevention and Abatement, (iv) Community Health, Safety and Security, (v) Land Acquisition and Involuntary Resettlement, (vi) Biodiversity Conservation and Sustainable Natural Resource Management, (vii) Indigenous Peoples, and (viii) Cultural Heritage.

<sup>5</sup> See: [http://www.ifc.org/ifcext/policyreview.nsf/Content/S\\_FAQs](http://www.ifc.org/ifcext/policyreview.nsf/Content/S_FAQs)

11. The new policy framework fully integrates social and environmental assessment, provides for an approach to community engagement through free, prior, and informed consultation leading to broad community support, introduces a labor standards and working conditions policy, and a new performance standard on community health and safety, and requires the establishment and maintenance by clients of social and environmental management system, among others. Formerly standalone policies such as pest management, safety of dams, forest, and international waterways were integrated into the eight new sets of performance standards.<sup>6</sup> In November 2007, Management will report to the Board how IFC clients perceive the Performance Standards.

### **Inter-American Development Bank**

12. The safeguard policy framework of IDB is set out in a number of its sector policies, including the Environment and Safeguards Compliance Policy (2006), Disaster Risk Management Policy (2007), Operational Policy on Indigenous Peoples (2006), and Operational Policy on Involuntary Resettlement (IR) (1998). Disclosure requirements are laid out in the IDB Policy on Information Disclosure (2006).<sup>7</sup>

13. The Environment and Safeguards Compliance Policy, which supersedes the Environment Policy (1979), implements and reinforces IDB's Environment Strategy (2003). Consequently, it contains policy directives both for environmental mainstreaming and for environmental safeguards.<sup>8</sup> Among others, the environmental safeguard directives cover protection of critical natural habitats and cultural sites, avoidance of hazardous materials, and pollution prevention and abatement. Furthermore, the environmental assessment process for high safeguard risk operations deals with issues relevant to health and safety. For cofinancing operations, the policy promotes collaboration with borrowers and other lenders in adopting a single environmental assessment process and a unified documentation. Finally, for in-country safeguard systems, the policy lays down an approach similar to that of World Bank. Country systems will only be applied where IDB has determined that the borrower system is equivalent or superior to IDB's. In 2009, Management will report to the Board its experience with the use of country systems.<sup>9</sup>

14. The Disaster Risk Management Policy (2007), which replaces the 1999 Policy on Natural and Unexpected Disasters, requires a comprehensive approach addressing (i) prevention and mitigation of disasters, and (ii) post disaster response. The new Policy requires that, through its social and environmental screening and classification process, project teams identify if the projects have high exposure to natural hazards or have high potential to exacerbate risk; carry out a natural hazard risk assessment for projects that are found to be highly exposed to natural hazards or have high potential to exacerbate risk; conduct alternative analysis of prevention and mitigation measures; and include appropriate structural and non-structural mitigation measures in project design and implementation.

<sup>6</sup> IFC. 2005. *Performance Standards: What's New and Different*.

<sup>7</sup> The IDB Policy on Information Disclosure provides that for operations requiring environmental impact assessments (EIAs) and/or other relevant environmental analyses, these analyses will be made available to the public in the borrowing country and IDB headquarters before IDB conducts its analysis mission, in the case of public sector borrowers, or its due diligence mission, in the case of private sector borrowers. As necessary, IDB also prepares an Environmental and Social Management Report which is made available to the public no later than the time at which the Loan or Guarantee Proposal has been cleared by the Executive Vice President for distribution to the Board of Executive Directors.

<sup>8</sup> Under environmental safeguards, the policy requires an integrated screening and classification based on environmental and associated social impacts that are direct, indirect, regional, or cumulative in nature, including those of relevant associated facilities. IDB adopts a single project classification system

<sup>9</sup> IDB. 2006. *Environment and Safeguards Compliance Policy*.

15. IDB's Operational Policy on Indigenous Peoples and Strategy for Indigenous Development (2006) seeks both development of Indigenous Peoples, as well as safeguarding of Indigenous Peoples and their rights against adverse impacts and exclusion in IDB-funded projects. This new approach complements the earlier focus of IDB on avoiding or mitigating the adverse impacts of IDB-projects on Indigenous Peoples. To further safeguard Indigenous Peoples rights in projects that have significant potential impacts and risks, IDB requires and verifies that the project proponent has, through good faith negotiation with affected Indigenous Peoples or groups, obtained agreements regarding the project and mitigation measures. The Policy on Indigenous Peoples also addresses the issue on uncontacted indigenous peoples in view of their exceptional nature, as well as their special vulnerability and the impossibility of applying prior consultation and good faith negotiation mechanisms. It requires the Bank to finance only those projects that respect the right of uncontacted Indigenous Peoples to remain in voluntary isolated condition and to live freely according to their culture.

16. The IR policy applies only to involuntary physical displacement of people caused by an IDB project. The policy aims to minimize disruption of livelihood of people living in the project's area of influence, by avoiding or minimizing the need for physical displacement, ensuring that when people must be displaced they are treated equitably and, where feasible, can share in the benefits of the project that requires their resettlement. Where the people that will be displaced involve Indigenous Peoples, IDB will only support operations if IDB determines that the resettlement component will result in direct benefits to them relative to their prior condition, customary rights will be fully recognized and fairly compensated, compensation options will include land-based resettlement, and the affected Indigenous Peoples have given their informed consent to the resettlement and compensation measures.<sup>10</sup>

### **European Bank for Reconstruction and Development**

17. EBRD's policy framework pertaining to social and environmental safeguards is contained in its Environmental Policy (2003). Policy requirements in reference to the EBRD's approach to addressing impacts on involuntary resettlement, Indigenous Peoples<sup>11</sup> and cultural property, and labor and working conditions are covered by the Environmental Policy through its expanded notion of 'environment' which includes worker protection issues and community issues.<sup>12</sup> Similar to WB, IFC, and IDB, EBRD also has a Public Information Policy (2006). However, the policy covers only the disclosure of project summary documents that discuss environmental and social issues related to the project. All other disclosure requirements for environmental impact assessments and monitoring reports are outlined in the Environmental Policy.<sup>13</sup> Consultation requirements, as specified in Annex 2 of the Policy, are adapted to the needs of the project and encourage use of appropriate methods of meaningful consultations depending on the objective of the consultation, cultural norms of the project location, and good international practice.

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<sup>10</sup> IDB. 1998. *Operational Policy on Involuntary Resettlement*.

<sup>11</sup> EBRD policy on Indigenous Peoples is contained in the Political Aspects of the Mandate of European Bank in Relation to Ethnic Minorities (2003) that recognizes minority rights in accordance with international agreements, i.e. European Convention on Human Rights, the Declaration on Principles of the Helsinki Final Act, and the work of the Conference on Security and Cooperation in Europe (CSCE), the Charter of Paris for a New Europe (1990) and the UN Commission on Human Rights. Policy requirements in reference to the Bank's approach to ethnic minorities' or indigenous peoples' rights are further clarified in the revised Environmental Policy.

<sup>12</sup> The Policy provides that direct investments be classified according to type, location, sensitivity, scale, and nature and magnitude of their potential environmental impacts. Investments in financial intermediaries are classified as FI. For existing projects and/or company facilities, a separate categorization is assigned to determine whether an Environmental Audit is required (Category 1) or not Category 0.

<sup>13</sup> For private sector projects, Annex 2 of the Environmental Policy prescribes a disclosure period of a minimum of 60 days between the date the Environmental Impact Assessment (EIA) is made available to the Board and the date of Board consideration. For public sector projects, the requirement is a minimum of 120 days. EBRD may prescribe a longer disclosure period for more complex projects.

18. In 2006 EBRD reviewed its Environmental Policy and concluded that revisions in the Policy were necessary. In light of the significant changes in EBRD's countries of operation, new strategic priorities of EBRD and emerging best industry practice, the ongoing policy revision aims to (i) ensure that EBRD's social and environmental requirements are relevant, appropriate, and reflect best industry practices; (ii) improve clarity of these requirements; and (iii) assure EBRD clients and partners that EBRD requirements "afford at least the same level of environmental and social safeguards as those of the IFC and the Equator Banks."<sup>14</sup>

19. EBRD targets to have a revised policy by the end of 2007. The proposal under consideration is a policy framework that consists of the following elements:

- (i) An Environmental and Social Policy that would be similar to the existing Environmental Policy, including its four strategic directions, and recognizing more explicitly consideration of social issues;
- (ii) Policy Requirements comparable to IFC's Performance Standards. These will provide detailed, policy-level descriptions of EBRD's project requirements in various areas; and
- (iii) Environmental and Social Review Procedures that contain EBRD's internal process for social and environmental appraisal and monitoring of projects. These will provide further clarity on actions required, timelines, and responsibilities.

### **Equator Principles Financial Institutions**

20. Equator principles financial institutions (EPFI) are those that have adopted the Equator Principles. The Equator Principles is a financial industry framework for addressing environmental and social risks in project financing. Adopted in 2003 by ten of the world's leading commercial banks, the Equator Principles are an offshoot of the desire of the banks to develop a common and coherent set of environmental and social policies and guidelines to be applied globally and across all industry sectors. Each of the EPFIs declares that it has or will put in place policies or business processes that are consistent with the Equator Principles. They commit not to provide loans to projects where the borrower will not or is unable to comply with their respective social and environmental requirements.

21. The Equator Principles were revised in July of 2006 (i) to reflect and be consistent with the IFC's Performance Standards on Social and Environmental Sustainability on which the original set of Equator Principles were based, and (ii) to incorporate learning from implementation and comments from a variety of stakeholders. The new Equator Principles apply to all project financing with capital costs of \$10 million or more.<sup>15</sup> Persuaded by the argument that environmental and social corporate responsibility makes good business sense, 54 financial institutions from 19 countries and operating in more than 100 countries have adopted the new Equator Principles as of September 2007.<sup>16</sup>

<sup>14</sup> EBRD. 2007. *Environmental Policy Discussion Paper*.

<sup>15</sup> The original threshold was US\$50 million. See explanation for this change, and other information on the Equator Principles at: <http://www.equator-principles.com/faq.shtml>.

<sup>16</sup> See: <http://www.equator-principles.com/join.shtml>.

## Approach for Strengthening and Use of Country Systems to Address Environmental and Social Safeguard Issues in ADB Operations

### I. Introduction

1. The Asian Development Bank (ADB) has three safeguard policies<sup>1</sup>—the policy on involuntary resettlement (1995), the policy on Indigenous Peoples (1998), and the environment policy (2002). These policies are central to achieving sustained development impacts of projects and poverty reduction, which are major development goals of ADB. In addition, these policies define internal compliance review processes and accountability mechanisms of ADB as a development institution.

2. ADB recognizes that its developing member countries (DMCs) have their own policies, legal framework, institutional arrangements, and administrative procedures for delivering safeguards, and that the development of the capacity and track record of the governments, project sponsors, executing agencies, and other stakeholders is important to implement these policies and framework effectively. ADB also recognizes that further development of such country safeguard systems (CSS) will promote socially and environmentally sustainable development in the Asia and Pacific region. In October 2004 ADB Management approved a concept paper for a safeguard policy update (SPU) with a provision for potential strengthening and use of CSS in project processing and implementation. In December 2005 ADB approved TA6285 for Strengthening Country Safeguard Systems, with the main objective of formulating ADB's overall strategic approach for strengthening and use of CSS, and developing methodology and tools for assessing CSS.

3. This Appendix presents the main output of TA 6285. Section II provides the definition and rationale for the strengthening and use of CSS; Section III presents the proposed overall strategic approach for strengthening and use of CSS; Section IV and V discuss ADB's and borrower's roles and responsibilities, respectively; Section VI presents the methodology for CSS assessments; and Section VII, the last section, discusses resource implications.

### II. Terminology and Rationale

4. **Definition.** "Country safeguard system" is used to mean a country's legal and institutional framework, consisting of its national, sub-national, or sectoral implementing institutions and relevant laws, regulations, rules, and procedures, which pertain to the policy areas of environmental and social safeguards.<sup>2</sup>

5. **Rationale.** Operational experience, evaluation, and studies inside and outside ADB show that the effectiveness of development agencies' safeguard policies depends largely on the degree to which the safeguard policy principles and requirements are rooted in DMCs' culture and socio-economic context of decision making, and development agencies can increase the impacts of their development assistance if they support efforts to strengthen the DMCs' legal frameworks, policies, and institutions that are already in place and work more directly with them.

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<sup>1</sup> "Safeguard policies" are generally understood to be those operational policies that seek to avoid, minimize, or mitigate adverse environmental and social impacts, including the protection of the rights of those affected or likely to be marginalized by the development process. There is no formal definition of ADB's safeguards policies. However, the three policies mentioned here are identified as "safeguards policies" in the Accountability Mechanism Paper (p. 60). (ADB, 2003 *Review of the Inspection Functions: Establishment of a New ADB Accountability Mechanism*).

<sup>2</sup> This definition is largely consistent with the World Bank's definition of "country system" for environmental and social safeguards.

6. In the last decade, many DMCs have upgraded and/or adopted new national policies, laws, and procedures on environmental assessment, involuntary resettlement, and Indigenous Peoples. The legal framework and procedures in some DMCs may well be equivalent to ADB's safeguard policy principles and requirements. In some DMCs policies and institutional capacities remain weak and require significant efforts toward policy improvement and capacity development. Establishment of partnership with DMCs in strengthening and using CSS can help to enhance the DMCs' ownership of and to scale up the development impacts. When accompanied by suitable measures for capacity development, the use of CSS can reduce risks by improving quality and timeliness in project implementation.

7. The OED special evaluation studies on ADB's three safeguard policies pointed out that ADB's existing safeguard policies and implementation procedures follow a "one-size-fits-all" approach and do not distinguish among various legal/institutional frameworks, implementation capacities and track records across different DMCs. They recommended that the SPU explore opportunity and develop a strategic approach to increase the capacity of and reliance on country systems for environmental and social safeguards.

8. The World Bank and Inter-American Development Bank have already made efforts toward using CSS.<sup>3</sup> Development of ADB's strategic approach and methodology for assessing CSS will facilitate harmonization with its development partners, streamline and speed up procedures for improved investment services, and reduce transaction costs as the borrowers would not need to operate parallel processes or duplicate work for donor projects.

9. **ADB's Experience with Assessment and Use of CSS.** ADB has been assessing DMCs' legal requirements and institutional capacities in the context of project processing, but implicitly and not in a rigorous manner. Under normal project preparation and review process, for instance, ADB does due diligence to identify gaps between DMC's and ADB's safeguard requirements; and assess implementation capacities of executing agencies to arrive at the social and environmental plans, draft loan covenants, and develop targeted capacity building measures. However, such assessments are usually limited at the project level, and often lack systematic and rigorous analysis of CSS.

10. While the CSS-like approach at the project level may provide useful experience, it has been carried out in an informal and inconsistent way. In order to respond to the ongoing developments in the region in which DMCs have increasingly established their own systems and are willing to further strengthen them for environmental and social safeguards, there is a need to develop rigorous and transparent methodologies for CSS assessments, and adopt a strategic approach for strengthening and using CSS more systematically.

### III. Overall Approach for the Strengthening and Use of CSS in ADB Supported Operations

11. The borrower/client may propose the use of its own safeguard system to ADB financed projects on a national, subregional, sectoral, or agency level. ADB may consider to apply a borrower's CSS to identify and manage the social and environmental impacts/risks associated with ADB-supported projects in such country, subregion, or sector, including those sponsored by the agency, provided that (i) the CSS is equivalent to ADB's safeguard policy principles, and

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<sup>3</sup> In 2004, the World Bank launched a program on the pilot use of CSS for 20 projects in 14 countries. In 2006, IADB approved its Environment and Safeguards Compliance Policy that provides for considering the use of "in-country systems" (section B16).

(ii) the borrower has relevant capacity and necessary commitment to implementing the applicable laws, regulations, rules and procedures in the country and specific sector concerned.

12. **Equivalence and Acceptability.** Equivalence and acceptability are two criteria for deciding on the use of CSS. ADB would consider a borrower's CSS to be equivalent to ADB's, if the borrower's system is designed to achieve the objectives and adhere to the applicable policy principles set out in ADB's safeguard policies. ADB also assesses the acceptability of borrower/client's implementation capacity, including track record and practices, before deciding on the use of the borrower's system.

13. **Addressing Gaps to Strengthen CSS.** Where the borrower/client has to make changes in its legal/institutional framework to meet the objectives and deliver the principles of ADB's safeguard policies, and is committed to doing so, ADB may, when determining equivalence, take account of measures to improve CSS. Similarly, if the borrower/client needs to strengthen its implementation capacity to be ready for effectively delivering safeguards, and is committed to doing so, ADB may, when determining acceptability, take account of measures to strengthen the borrower/client's implementation capacity and practices. Action plans addressing such types of needed changes will be prepared by the borrower/client in an agreed timeframe, with the assistance of ADB and other partners. The Action Plan for equivalence will focus on how to enhance the alignment of CSS with ADB's policy principles through necessary improvements in the policy or regulatory framework. The Action Plan for capacity building will address relevant capacity development issues of the borrower/client and across key institutions.

14. **Disclosure.** To the extent possible, the proposal for the strengthening and use of CSS, together with its justification, is presented in the country partnership strategy (CPS) or CPS progress reports.<sup>4</sup> If the subject is not discussed in the current CPS, the proposal to use CSS is presented in the project or program information document (PID)—the initial version and all substantive updates—for the first project in the agency, sector, subnational area, or a country in which use of CSS is considered. CSP-related documents and PID are disclosed in conformity with the requirements of ADB's Public Communications Policy (2005).

15. **Levels of CSS.** ADB may consider application of CSS to various levels, such as agency, sector, subnational or national levels based on (i) discussions/dialogue with the borrower/client on ADB's current knowledge of CSS, country/sector context, and expected operations of ADB in the DMC; and (ii) outcomes of assessments of equivalence and acceptability.

16. **Scope of CSS Application.** As the extent of equivalence and acceptability is safeguard specific, the strengthening and use of CSS will be policy by policy. A DMC may thus qualify for a CSS approach for one, two, or for all safeguard areas, i.e., environment, Indigenous Peoples, and involuntary resettlement, depending on the result of the CSS assessments.

17. **Exclusion to CSS.** CSS will not be applied to highly complex and sensitive projects.<sup>5</sup> These types of projects will be considered under ADB's normal project processing requirements.

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<sup>4</sup> Examples are Country Operations Business Plan and mid-term review reports.

<sup>5</sup> Highly complex and sensitive projects are those deemed by ADB to have significant, complex, multidimensional and generally inter-related potential social or environmental impacts. These potential impacts tend to affect an area broader than the sites or facilities subject to physical works.

18. **Changes in CSS.** If, during project implementation, the DMC amends applicable laws or regulations, but the project implementation is not adversely affected, ADB and the borrower/client could agree to amend the legal agreements to reflect the changes, or refrain from any action if it is determined by ADB that the changes are not significant enough to warrant an amendment. If, however, the CSS is changed, and such change adversely affects the achievement of the agreed objectives, ADB discusses with the borrower/client, as part of ADB-country dialogue, the implementation of additional measures (beyond the project level) to meet those objectives.

#### IV. ADB's Responsibility and Accountability

19. **Determining Equivalence.** ADB would be responsible for determining equivalence through CSS assessment. ADB will

- (i) in collaboration with the borrower/client, assess equivalence of CSS with ADB's policy objectives and principles, including identification of actions needed for CSS reform;
- (ii) help borrower/client prepare the Action Plan based on the results of the assessment; and incorporation of the Action Plan's provisions into the legal agreements for using CSS. The legal agreements would allow ADB to suspend the use of CSS and revert to its own, if the borrower/client stops implementing the Action Plan;
- (iii) be responsible, along with the DMC, for the conduct of consultation with stakeholders to discuss and validate the findings of the equivalence assessments and to seek agreement on the proposed measures outlined in the Action Plan; and
- (iv) provide necessary financial support to develop and implement the Action Plan through program loans and technical assistance, and supervise the Action Plan implementation.

20. Recent analytical work and assessments of other MFIs, updated as required, can be used. Joint assessments with other MFIs are encouraged.

21. **Project Level Assessment.** Once ADB has determined that the CSS is equivalent to ADB's, it may consider the application of CSS at the country, subregion, sector, or agency level. For each such project, the ADB project team will conduct an acceptability assessment before actually introducing the use of CSS in the project, which includes analysis of capacity, and track record and practice of executing agency and implementing agencies. The assessment will be done as part of the project design process during the project preparation. The project team will also assist the borrower/client to develop an Action Plan for capacity building, as needed. The results of acceptability assessment will be documented and reflected in the RRP.

22. **Project Level Document Review and Supervision.** The use of CSS will not remove ADB's responsibilities for safeguard review before Board approval of proposed projects. The only difference is that the review will be based on the requirements under CSS and on the agreed Action Plan. After the Board approves a project that uses CSS, ADB supervision will follow the same procedures as for any other investment project.

23. The use of CSS will not alter the role of ADB's Office of the Special Project Facilitator, Compliance Review Panel, and Operations Evaluation Department.

## V. Borrower/Client's Responsibility

24. **CSS Assessment and Action Plan Development.** The borrower/client will support and participate in the equivalence and acceptability assessments. The borrower/client will

- (i) facilitate sharing of all relevant documents, data, and information with the ADB assessment team, and conduct of seminars/workshops, as necessary;
- (ii) assist in organizing and conducting consultation with stakeholders to discuss and validate the findings of the assessments; and
- (iii) develop action plans outlining the measures addressing needed changes.

25. **Implementation.** The borrower/client is responsible for implementing the action plans, and achieving and maintaining equivalence as well as necessary commitment and capacity, in accordance with ADB's assessments. For each project that uses CSS, the specific provisions of CSS and any additional actions that the borrower/client needs to undertake would become part of the borrower/client's contractual obligations to ADB, and subject to ADB's normal contractual remedies.

## VI. Methodology for CSS Assessments

26. The methodology, tools and guidance on ADB internal procedure and specific assessment schemes for each safeguard policy are being developed.

## VII. Resource Implications

27. Although the processes involved in the strengthening and use of CSS will be resource intensive<sup>6</sup> during upstream country/sector level assessment and project preparation, cost savings are expected in the medium and long term. This is because in the long run the equivalence and acceptability assessments are most likely to be incremental. Application of CSS to ADB projects will entail costs for (i) equivalence and acceptability assessments, including the consultation to be held after the assessments, (ii) medium to long-term capacity development activities to strengthen CSS; (iii) training of Bank staff, and (iv) monitoring and supervision of CSS-portfolio.

28. Resource implications will be further examined, and resources such as (i) pre-CPS assessment; (ii) Project Preparatory Technical Assistance (PPTA) sources; (iii) advisory TA for assessment and capacity development at the national, subregional or sector level; and (iv) program loans and advisory TA for helping DMCs to strengthen national legal framework and institutional capacity need to be considered.

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<sup>6</sup> World Bank experience indicates high staff inputs/consultants time for the conduct of the assessments and public consultations, and preparation of the assessment reports.

## **SAFEGUARD REQUIREMENTS FOR BORROWERS/CLIENTS**

### **ENVIRONMENT**

#### **A. Introduction and Rationale**

1. Environmental sustainability is a cornerstone of positive development outcomes and poverty reduction. Environmental safeguards are crucial to ensure the environmental soundness and sustainability of projects, and to support integration of environmental considerations into the decision-making process.

2. This document outlines the requirements for borrowers/clients in applying environmental policy principles set out in the Safeguard Policy Statement (SPS) to ADB-financed projects. It discusses the scope of application, outlines delivery mechanisms, and highlights special environmental safeguard procedural requirements on some project financing modalities. The document underscores the importance of environmental assessment, planning and management, information disclosure and consultation, including establishment of a grievance redress mechanism during project implementation, and monitoring and reporting. It includes further environmental safeguard requirements deserving particular attention, such as biodiversity conservation and sustainable use of natural resources, pollution prevention and abatement, human health and safety, and preservation of physical cultural resources.

#### **B. Scope of Application**

3. These environmental requirements apply to all projects including ADB-funded and/or ADB-administered sovereign and non-sovereign investment projects funded by a loan, and/or a grant, and/or other means (such as equity and/or guarantee).

#### **C. General Requirements**

##### **1. Environmental Assessment**

4. Environmental assessment is a generic term to describe an ongoing process of environmental analysis and planning to address environmental impacts associated with a project. The borrower/client will, at early stage of project preparation, identify potentially adverse environmental impacts, and determine significance of those impacts and the scope of environmental assessment. If adverse environmental impacts are identified, the borrower/client will undertake an environmental assessment as early as possible in the project cycle to improve project selection, location, planning, design, and implementation.

5. The assessment process is based on current information, including an accurate project description, and appropriate environmental and social baseline data. The environmental assessment will consider all relevant impacts and risks of the project on natural environment (physical and biological) and socio-economic aspects (e.g., human health and safety, involuntary resettlement,<sup>1</sup> and physical cultural resources) in an integrated way and in the context of the project's area of influence. The project's potential environmental impacts and risks will be reviewed against applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental matters, including those laws implementing host country obligations under international law. The assessment will also consider potential

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<sup>1</sup> See Attachment B, *Safeguard Requirements for Borrowers/Clients: Involuntary Resettlement*.

transboundary effects, such as pollution of airsheds, or use or pollution of waterways, as well as global impacts, such as those on climate.

6. Impacts and risks will be analyzed in the context of the project's area of influence. This area of influence encompasses (i) the primary project site(s) and related facilities that the borrower/client (including its contractors) develops or controls, such as power transmission corridors, pipelines, canals, tunnels, relocation and access roads, borrow and disposal areas, construction camps; (ii) associated facilities that are not funded as part of the project (funding may be provided separately by the borrower/client or by third parties including government), and whose viability and existence depend exclusively on the project and whose goods or services are essential for the successful operation of the project; (iii) areas potentially impacted by cumulative impacts from further planned development of the project, any existing project or condition, and other project-related developments that are realistically defined at the time the assessment is undertaken; and (iv) areas potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location. The area of influence does not include potential impacts that would occur without the project or independently of the project. The borrower/client will address impacts and risks commensurate to its control and influence over the third party actions.

7. Depending on the type of project and the nature and magnitude of its impacts and risks, the assessment may comprise a full-scale environmental impact assessment (EIA), an initial environmental examination (IEE) or equivalent process, or a desk review. When the project involves existing activities, environmental audits will need to be performed to determine any areas of concern.

8. A typical Environmental Assessment report includes the following major elements: (i) Executive Summary, (ii) description of the project, (iii) description of the environment, (iv) anticipated environmental impacts and mitigation measures, (v) analysis of alternatives, (vi) environmental management plan(s), or equivalent planning document(s), (vii) consultation and information disclosure, and (viii) conclusion and recommendations. Annex 1 provides further details. Assessments with narrower scope may be conducted for projects with limited impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures.

9. A typical environmental audit report includes the following major elements: (i) Executive Summary; (ii) facilities description, including both past and current activities; (iii) summary of national, local and any other applicable environmental laws, regulations, and standards; (iv) audit and site investigation procedure; (v) findings and areas of concern; and (vi) Corrective Action Plan (CAP), providing the appropriate corrective actions for each area of concern, including costs and schedule.

## **2. Environmental Planning**

10. The borrower/client will prepare an environmental management plan (EMP) or equivalent planning document(s) that addresses the potential impacts and risks identified by the environmental assessment. The EMP will include the proposed mitigation measures, environmental monitoring and reporting requirements, emergency response procedures, related institutional or organizational arrangements, capacity development and training measures, implementation schedule, cost estimates and performance indicators. Where impacts and risks cannot be avoided or prevented, mitigation measures and actions will be identified so that the project is designed, constructed and operated in compliance with applicable laws and regulations, and meets the requirements specified in this document. The level of detail and

complexity of the environmental planning documents and the priority of the identified measures and actions will be commensurate with the project's impacts and risks.

11. The EMP or equivalent planning document(s) will define expected outcomes as measurable events to the extent possible, and include performance indicators, targets, or acceptance criteria that can be tracked over defined time periods. It shall be responsive to changes in project circumstances, unforeseen events, and the results of monitoring.

### **3. Information Disclosure and Consultation**

12. The borrower/client will carry out free, prior and informed consultation with affected people by the proposed project and facilitate their informed participation. The borrower/client will also consult with local nongovernment organizations (NGOs). The consultation should be carried out as early as possible in the project cycle so that views of affected people are taken into account in the project design and its environment impact mitigation measures. The consultation process and its results are described in the environmental assessment reports. The borrower/client will provide relevant information on the project's environmental issues before appraisal, in a form, manner and language(s) accessible to affected people and key stakeholders.

13. The borrower/client will carry out effective consultation through prior disclosure of relevant and adequate information to the affected people, including draft environmental assessment documents and plans; and will focus on the environmental risks and adverse impacts, and the proposed mitigation measures and actions to address these. It will be carried out on an ongoing basis as impacts and risks arise. The consultation process will be undertaken in a manner that is culturally appropriate. The borrower/client will tailor its consultation process to the language(s) accessible to the affected people, their decision-making process, and the needs of disadvantaged or vulnerable groups.

14. The borrower/client will submit to ADB the following documents and disclose them to key stakeholders:

- (i) draft environmental assessment reports, before appraisal;
- (ii) revised or final environmental assessment reports;
- (iii) new or updated environmental assessment reports, and corrective action plan prepared during implementation, if any;
- (iv) environmental monitoring reports.

### **4. Grievance Redress Mechanism**

15. If ongoing risks to or adverse impacts on affected people are anticipated, the borrower/client will establish a grievance mechanism to receive and facilitate resolution of the affected peoples' concerns and grievances about the project's environmental performance. The grievance mechanism should be scaled to the risks and adverse impacts of the project. It should address concerns promptly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected people, and at no cost and without retribution. The mechanism should not impede access to the country's judicial or administrative remedies. The affected people will be appropriately informed about the mechanism.

## 5. Monitoring and Reporting

16. The borrower/client will monitor the progress of implementation of the EMP or equivalent planning document(s), and the extent of compliance with its environmental commitments. The extent of monitoring will be commensurate with the project's risks and impacts. In addition to recording information to track performance, the borrower/client will undertake inspections to verify compliance and progress toward the expected outcomes. For projects likely to have significant adverse environmental impacts, the borrower/client will retain qualified and experienced external experts<sup>2</sup> to verify its monitoring information. The borrower/client will document monitoring results, identify the necessary corrective actions and reflect them in the updated EMP or equivalent planning document(s). The borrower/client will implement these corrective actions, and follow up on these actions to ensure their effectiveness.

17. The borrower/client will prepare periodic progress reports that describe progress with implementation of the EMP or equivalent planning document(s), and, if any, compliance issues and corrective actions. For projects likely to have significant adverse environmental impacts, the borrower/client will submit, at the minimum, semiannual progress reports during construction. For projects likely to have significant adverse environmental impacts during operation, reporting will continue at the minimum on an annual basis. Such periodic progress reports will be posted in a location accessible to the public. The costs of monitoring requirements will be reflected in project budgets.

## 6. Biodiversity Conservation and Sustainable Natural Resource Management

18. The borrower/client will assess the significance of project impacts on biodiversity and natural resources as an integral part of the environmental assessment process specified in paragraphs 4 to 9. The assessment will focus on the major threats to biodiversity, which include habitat destruction and invasive alien species, and on use of natural resources in an unsustainable manner. When the project involves activities in a critical habitat<sup>3</sup> or a legally protected area, the borrower/client will retain qualified and experienced external experts to assist in conducting the assessment.

19. In areas of natural habitat, the project will not significantly convert or degrade<sup>4</sup> such habitat, unless the following conditions are met:

- (i) There are no technically and financially feasible alternatives
- (ii) A comprehensive analysis demonstrates that overall benefits from the project substantially outweigh the project costs including environmental costs, and
- (iii) Any conversion or degradation is appropriately mitigated. Mitigation measures will include a combination of actions, such as post-project restoration of habitats,

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<sup>2</sup> External experts mean experts not involved in day to day project implementation or supervision.

<sup>3</sup> Critical habitat includes areas with high biodiversity value, including habitat required for the survival of critically endangered or endangered species; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or which are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic or cultural importance to local communities. Critical habitats include those areas either legally protected or officially proposed for protection.

<sup>4</sup> Significant conversion or degradation is: (i) the elimination or severe diminution of the integrity of a habitat caused by a major, long-term change in land or water use; or (ii) modification of a habitat that substantially reduces the habitat's ability to maintain viable population of its native species. Significant conversion may include, for example, land clearing; replacement of natural vegetation (e.g., by crops or tree plantations); permanent flooding (e.g., by a reservoir); drainage, dredging, filling, or canalization of wetlands; or surface mining.

offset of losses through the creation of ecologically comparable area(s) that is managed for biodiversity, and/or compensation to direct users of biodiversity.

20. No project activity that involves or is likely to result directly or indirectly in the significant conversion or degradation of critical habitat will be implemented.

21. In circumstances where some project activities are located within a legally protected area, the borrower/client, in addition to the requirement specified in paragraph 20 above, will meet the following requirements:

- (i) Act in a manner consistent with defined protected area management plans
- (ii) Consult protected area sponsors and managers, local communities, and other key stakeholders on the proposed project
- (iii) Implement additional programs, as appropriate, to promote and enhance the conservation aims of the protected area

22. The borrower/client will not intentionally introduce any new alien species (i.e. not currently established in the country or region of the project) or alien species with a high risk of invasive behavior unless carried out in accordance with the existing regulatory framework for such introduction, if such framework is present, or is subject to a risk assessment (as part of the environmental assessment) to determine the potential for invasive behavior. The borrower/client will exercise due diligence to prevent accidental or unintended introductions of such alien species.

23. Renewable natural resources will be managed in a sustainable manner. Sustainable resource management is the management of the use, development and protection of resources in a way, or at a rate, which enables people and communities, including Indigenous Peoples, to provide for their present social, economic and cultural well-being while also sustaining the potential of those resources to meet the reasonably foreseeable needs of future generations and safeguarding the life-supporting capacity of air, water and soil ecosystems. Where possible, the borrower/client will demonstrate the sustainable management of the resources through an appropriate system of independent certification.

## **7. Pollution Prevention and Abatement**

24. 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 such as the World Bank Group's Environment, Health and Safety Guidelines. These standards contain the performance levels and measures that are normally acceptable and applicable to projects. When host country regulations differ from the levels and measures presented in these standards, the borrower/client will achieve whichever is more stringent. If less stringent levels or measures are appropriate in view of specific project circumstances, the borrower/client will provide full and detailed justification for any proposed alternatives.

25. The borrower/client will avoid, or where it is not possible to avoid, minimize or control the generation of hazardous and non-hazardous wastes as far as practicable, and release of hazardous materials resulting from project activities. Where waste cannot be recovered or reused, it will be treated, destroyed, and disposed of in an environmentally sound manner. When waste disposal is conducted by third parties, contractors that are reputable and legitimate enterprises licensed by the relevant regulatory agencies will be used.

26. The borrower/client will minimize or control the intensity or load of pollutants emission and discharge. When the project has the potential to constitute a significant source of emissions in an already degraded area, strategies that contribute to the improvement of ambient conditions, such as evaluation of project location alternatives and emissions offsets, will be introduced.

27. The environmental assessment should ascertain that pest management activities related to the project are based on integrated approaches and aim to reduce reliance on synthetic chemical pesticides in agricultural and public health projects. Health and environmental risks associated with pest management should be minimized with support, as needed, to institutional capacity development to help regulate and monitor the distribution and use of pesticides and enhance the application of integrated pest management. No formulated products that are in WHO Classes IA and IB, or formulations of products in Class II will be procured unless there are no alternatives or restrictions denying use or access to lay personnel and others without training or proper equipment. The recommendations and minimum standards described in the UN Food and Agriculture Organization (FAO) International Code of Conduct on the Distribution and Use of Pesticides (Rome, 2003) should be followed and only procurement of those pesticides that are manufactured, labeled, handled, stored, applied and disposed of according to acceptable standards is permitted.

28. When the project is expected to produce significant quantities of greenhouse gases (GHGs), the borrower/client will quantify direct emissions from the facilities within the physical project boundary and indirect emissions associated with the off-site production of power used by the project. The borrower/client will conduct quantification and monitoring of GHG emissions annually in accordance with internationally recognized methodologies. In addition, the borrower/client will evaluate technically and financially feasible options to reduce or offset project-related GHG emissions during the design and operation of the project. These options may include carbon financing, energy efficiency improvement, the use of renewable energy sources, alterations of project design, emissions offsets, and the adoption of other mitigation measures such as the reduction of fugitive emissions and gas flaring.

29. The borrower/client will be prepared to respond to accidental and emergency situations. This preparation will include response planning document(s), which addresses the training, resources, responsibilities, communications, procedures and other aspects required to effectively respond to emergencies associated with project hazards.

## **8. Physical Cultural Resources**

30. The borrower/client is responsible for siting and designing a project to avoid significant damage to physical cultural resources (PCR).<sup>5</sup> Physical cultural resources likely to be affected by the project will be identified and the project's potential impacts on these resources assessed by using field based surveys with qualified and experienced specialists as an integral part of the environmental assessment process specified in paragraphs 4 to 9.

31. When the project is likely to have adverse impacts on PCR, the borrower/client will identify appropriate measures for avoiding or mitigating these impacts as part of the environmental planning process specified in paragraphs 10 and 11. These measures may range

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<sup>5</sup> Movable or immovable objects, sites, structures, groups of structures, and natural features and landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic, or other cultural significance. Physical cultural resources may be located in urban or rural settings, and may be above or below ground, or under water. Their cultural interest may be at the local, provincial or national level, or within the international community.

from full site protection to selective mitigation, including salvage and documentation, in cases where a portion or all of the PCR may be lost.

32. When the proposed location of a project is in areas where PCR are expected to be found as determined during the environmental assessment process, chance finds procedures will be included in the EMP or equivalent environmental planning document(s). Chance finds shall not be disturbed until an assessment by a competent specialist is made and actions consistent with these requirements are identified.

33. The project will not remove any PCR unless there are no technically or financially feasible alternatives to removal, and any removal is conducted by the best available techniques.

## **D. Specific Requirements on Different ADB Financing Modalities**

### **1. Program Loans**

34. If the policy actions associated with a program loan are likely to have significant adverse environmental impacts on human populations, biodiversity or natural resources, the borrower/client will prepare a strategic environmental assessment (SEA) of such policy actions.

35. If an investment component is included in the program loan and specific projects are identified, the general requirements specified in Section C will apply to these projects.

### **2. Sector Finance**

36. The borrower/client will agree with ADB on an Environmental Assessment and Review Framework (EARF) to guide subprojects selection, environmental assessment and management of subprojects, and facilitate compliance with the general requirements specified in Section C. The EARF shall

- (i) fully reflect the objectives, principles and requirements of the Policy on Environmental Safeguards;
- (ii) explain the anticipated impacts of the components or subprojects to be financed under the proposed project;
- (iii) describe the institutional arrangements and capacity, and implementation procedures (including budget and capacity development requirements);
- (iv) outline environmental criteria that will be used for selecting components, projects, or subprojects;
- (v) specify the requirements that will be followed in screening, environmental assessment, and development of management plans;
- (vi) describe public consultation and information disclosure requirements;
- (vii) describe monitoring and reporting requirements; and
- (viii) specify the responsibilities in the preparation, review, and clearance of environmental documents.

37. To establish the broad criteria (including the environmental parameters) for selecting subprojects to be financed under a project, a few subprojects are identified and appraised prior to loan approval. For these subprojects, the borrower/client will prepare relevant documentation, including environmental assessment and planning document(s).

38. The general requirements specified in Section C apply to subprojects and components identified during project implementation.

### **3. Multitranche Financing Facilities (MFF)**

39. ADB's safeguard requirements apply to all components, projects, subprojects financed under an MFF. The general requirements specified in Section C will apply to components, projects and subprojects identified during preparation and implementation of an MFF.

40. The borrower/client will agree with ADB on an EARF as specified in paragraph 36.

### **4. Wider Application of EARF**

41. An EARF will be prepared for a project loan or grant where subprojects or project components are identified after Board approval. The borrower/client will agree with ADB on an EARF as specified in paragraph 36. The general requirements specified in Section C will apply to subprojects and project components identified during project implementation.

### **5. Emergency Assistance Loans**

42. For emergency assistance loans, the completion of a standard environmental assessment may not be possible before Board approval. In such cases, an EARF as per paragraph 36 will be prepared. Components and subprojects identified during the project implementation will follow the general requirements specified in Section C.

### **6. Financial Intermediaries (FIs)**

43. ADB's requirements for social safeguard and environmental assessment and management for the FIs will be proportional to the level of potential impacts. All FIs will apply the Prohibited Investment Activities List (PIL) (Attachment D). FIs with business activities that have minimal or no adverse environmental impacts or risks will be considered Category C projects and need not apply any other specific requirements. In addition to the PIL, FIs providing long-term corporate finance or project finance will require the recipient of such finance to:

- (i) follow national laws where the activity financed presents limited environmental impacts;
- (ii) follow national laws and apply ADB's general requirements specified in Section C where the activity financed presents significant environmental impacts.

44. The FI will establish and maintain an Environmental and Social Management System (ESMS) to ensure that its investments meet the requirements specified in paragraph 43 (i) or (ii). The ESMS should incorporate the following elements: (i) environmental and social policies; (ii) screening and review procedure; (iii) organizational structure and staffing including skills and competencies in environmental and social areas; (iv) training requirements; and (v) monitoring and reporting.

45. Where the business activities financed by the FI present environmental impacts or risks, the FI will prepare and submit annual reports on the implementation status of its ESMS. If the reports suggest that ESMS is not functioning, then a corrective action plan will be developed and submitted by the FI in addition to the annual reports.

### **7. Corporate Investments**

46. The borrower/client will establish and maintain an ESMS. The ESMS will include a screening mechanism that would identify if the work that it would be supporting is likely to be in

noncompliance with ADB's environmental safeguard requirements. The borrower/client will not provide contracting services for projects that are likely to have unmitigated non-compliance with ADB's environmental safeguard requirements. The ESMS will also include the following elements: (i) organizational structure and staffing including skills and competencies in environmental and social management; (ii) training requirements; and (iii) monitoring and reporting.

47. The borrower/client will submit annual reports on the implementation status of ESMS with specific reference to environmental impacts. If reports suggest that ESMS is not functioning, then a corrective action plan will be developed and submitted by the borrower/client in addition to the annual reports.

48. In case the investment includes existing activities, general requirements on the existing activities specified in paragraph 7 and 9 will apply.

## OUTLINE OF AN ENVIRONMENTAL ASSESSMENT (EA) REPORT

A typical EA report includes the following major elements (not necessarily in the order shown):

### **A. Executive Summary**

This section concisely describes the critical facts, significant findings and recommended actions.

### **B. Policy, Legal, and Administrative Framework**

This section discusses the policy, legal, and administrative framework within which the environmental assessment is carried out. Identifies project-relevant international environmental agreements to which the country is a party.

### **C. Description of the Project**

This part describes the proposed project, its major components and its geographic, ecological, social, and temporal context, including any associated facility required by and for the project (e.g., access roads, power plants, water supply, quarries and borrow pits, and spoil disposal). Normally includes drawings and maps showing project layout and components, the project site and the project's area of influence.

### **D. Description of the Environment (Baseline Data)**

This section describes relevant physical, biological, and socioeconomic conditions within the study area. Also takes into account current and proposed development activities within the project's area of influence including those not directly connected to the project. Indicates the accuracy, reliability, and sources of the data.

### **E. Anticipated Environmental Impacts and Mitigation Measures**

This section predicts and assesses the project's likely positive and negative impacts in the project's area of influence, in quantitative terms to the extent possible. Identifies mitigation measures and any residual negative impacts that cannot be mitigated. Explores opportunities for enhancement. Identifies and estimates the extent and quality of available data, key data gaps, and uncertainties associated with predictions, and specifies topics that do not require further attention. Examines global, transboundary, and cumulative impacts as appropriate.

### **F. Analysis of Alternatives**

This segment systematically examines financially and technically feasible alternatives to the proposed project site, technology, design, and operation – including the 'no project' alternative - in terms of their potential environmental impacts; the feasibility of mitigating these impacts; their capital and recurrent costs; their suitability under local conditions; and their institutional, training, and monitoring requirements. States the basis for selecting the particular project design proposed and, where appropriate, justifies recommended emission levels and approaches to pollution prevention and abatement.

## **G. Consultation and Information Disclosure**

This part describes the process undertaken to involve key stakeholders, including affected persons and groups, in the project design and preparation and measures for ensuring continuing participation during project implementation; describes information disseminated and the method of dissemination; and summarizes comments received from key stakeholders and how these comments have been addressed.

## **H. Environmental Management Plan(s)—or Equivalent Planning Documents**

This section consists of the set of mitigation and management measures to be taken during implementation of the project to avoid, reduce, mitigate, or compensate for adverse environmental impacts, in the order of priority. May include multiple management plans and actions. Includes the following key components (level of detail commensurate with the project's impacts and risks):

- (i) Mitigation
  - (a) identifies and summarizes anticipated significant adverse environmental impacts and risks;
  - (b) describes with technical details each mitigation measure, including the type of impact to which it relates and the conditions under which it is required (e.g., continuously or in the event of contingencies), together with designs, equipment descriptions, and operating procedures, as appropriate; and
  - (c) where appropriate provides linkage with any other mitigation plans (e.g. for involuntary resettlement, Indigenous Peoples or emergency response) required for the project.
- (ii) Monitoring
  - (a) describes with technical details monitoring measures, including the parameters to be measured, methods to be used, sampling locations, frequency of measurements, detection limits (where appropriate), and definition of thresholds that will signal the need for corrective actions; and
  - (b) describes monitoring and reporting procedures to (i) ensure early detection of conditions that necessitate particular mitigation measures, and (ii) document the progress and results of mitigation.
- (iii) Disclosure and Consultation Process
  - (a) describes information disclosure measures, including information to be disseminated, and the method of dissemination; and
  - (b) describes process of community engagement during project design and implementation.
- (iv) Implementation Arrangements
  - (a) specifies implementation schedule showing phasing and coordination with overall project implementation;
  - (b) describes institutional or organizational arrangements, i.e. who is responsible for carrying out the mitigation and monitoring measures. To

strengthen environmental management capability, such arrangements may include one or more of the following additional topics: (i) technical assistance programs, (ii) training programs, and (iii) organizational changes; and

(c) estimates capital and recurrent costs and describes sources of funds for implementing the EMP(s).

(v) Performance Indicators

describes the desired outcomes as measurable events to the extent possible, such as performance indicators, targets or acceptance criteria that can be tracked over defined time periods.

## **I. Conclusion and Recommendations**

## **SAFEGUARD REQUIREMENTS FOR BORROWERS/CLIENTS**

### **INVOLUNTARY RESETTLEMENT**

#### **A. Introduction and Rationale**

1. ADB experience indicates that involuntary resettlement (IR) under development projects, if unmitigated, could give rise to severe economic, social, and environmental risks: production 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.

2. This document outlines the requirements for borrowers/clients in applying IR policy principles set out in the Safeguard Policy Statement (SPS) to projects supported by ADB. It discusses the scope of application, outlines delivery mechanisms and highlights special involuntary resettlement safeguard procedural requirements of some project financing modalities.

#### **B. Scope of Application**

3. These IR requirements apply to all projects including ADB-funded and/or ADB-administered sovereign and non-sovereign investment projects funded by a loan, and/or a grant, and/or other means (such as equity and/or guarantee). They also cover actions conducted in anticipation of ADB projects.

4. The requirements apply to full or partial, permanent or temporary physical displacement (loss of residential land, shelter or relocation) and economic displacement (loss of lands, assets, access to assets, income sources and means of livelihoods) arising from (i) involuntary acquisition of lands, (ii) involuntary restriction on land use, and (iii) involuntary restriction of access to legally designated parks and protected areas.

5. There could be three types of displaced people in a project area: (i) people with formal legal rights to the land they occupy; (ii) persons without formal legal rights to land they occupy but their claims to such land are recognized or recognizable under the national laws; and (iii) persons with neither formal legal rights nor recognized or recognizable claims to the land they occupy.

6. The borrower/client will provide adequate replacement housing or cash compensation at full replacement cost, and provide relocation assistance to physically displaced people, prior to relocation. For those persons under paragraph 5 (i) or (ii), the borrower/client will also provide either replacement property of equal or higher value or cash compensation at full replacement cost. For those persons under paragraph 5 (iii), the borrower/client will provide adequate housing with security of tenure. If they own and occupy structures, the borrower/client will compensate them for the loss of assets other than land, such as dwellings and other improvements to the land, at full replacement cost. The entitlements of those under type 5 (iii) is given only if they occupy the project area prior to the cut-off date for resettlement eligibility.

7. If resettlement impacts extend to loss of income or livelihood sources, regardless of whether or not the affected people are physically displaced, the borrower/client will promptly compensate loss of assets or access to assets at full replacement cost. In cases where land

acquisition affects commercial structures, affected business owners are entitled to the cost of reestablishing commercial activities elsewhere, for lost net income during transition period, and for the costs of the transfer and reinstallation of the plant, machinery or other equipment. Business owners with legal rights or recognized or recognizable claims to land where commercial activities are carried out are entitled to replacement property of equal or greater value or cash compensation at full replacement cost. The borrower/client will adequately compensate economically displaced people under para 5 (iii) for lost assets such as crops, irrigation infrastructure and other improvements made to the land other than land, at full replacement cost.

8. The borrower/client will rehabilitate displaced people by providing additional assistance (e.g., credit facilities, training, job opportunities) and opportunities to improve or at least restore their income-earning capacity, production levels, and standard of living.

9. In the event of potential adverse economic, social or environmental impacts from project activities other than land acquisition (e.g., loss of access to assets or resources or restrictions on land use), these impacts will be avoided, minimized, mitigated or compensated for through the environmental assessment process. If these impacts are found significantly adverse at any stage of the project, the borrower/client will consider applying the policy principles and safeguard requirements on involuntary resettlement, even where no initial land acquisition was involved.

## **C. General Requirements**

### **1. Screening**

10. Each project proposed for ADB financing is screened as early as possible by the borrower/client to ascertain whether it has any potential IR impacts and/or unmitigated past IR activities, identify feasible alternative project alternatives, and estimate financial and human resources required for resettlement planning and implementation.

11. As early as possible, the borrower/client will assess applicable government policies, institutional and legal frameworks for land acquisition, compensation, relocation and rehabilitation, and verify whether or not they satisfy the policy principles. If they do not, the borrower/client, in consultation with ADB, will decide on what specific actions are needed to meet the policy principles for the project. With the assistance of a qualified and experienced resettlement specialist, the borrower/client will determine if a project has significant resettlement impacts based on the following criteria: (i) scale of IR/displacement, (ii) severity of IR impacts/displacement; and (iii) borrower/client's capacity to adequately address these impacts. For projects with large-scale involuntary resettlement, consider implementing resettlement as a standalone operation.

### **2. Social Assessment**

12. The borrower/client will conduct a social impact assessment for projects with potential IR impacts. The social assessment report will outline identified social impacts, conduct an inventory of affected people<sup>1</sup> and their assets,<sup>2</sup> assess their income and livelihoods,<sup>3</sup> and provide information

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<sup>1</sup> Population record of all affected people, according to their location, is prepared through a count based on local population data or census. In many cases, a full census is not available before appraisal, and therefore, an updated resettlement plan will be required based on a census of affected people after detailed measurement survey and prior to land acquisition/impacts.

<sup>2</sup> The asset inventory is a preliminary record of affected or lost assets at the household, enterprise, or community level.

regarding economic, social, and cultural conditions of affected people and their communities including a gender-disaggregated description of the findings, based on a sample of 10% of affected people and 20% of affected vulnerable populations.

### 3. Formulation of Resettlement Planning Documents

13. The borrower/client will prepare and implement resettlement planning documents in consultation with affected peoples. The objective of a resettlement plan (RP) is to provide the planning document for (i) ensuring that livelihoods and standards of living of affected people are improved or at least restored to pre-displacement (physical/economic) levels; (ii) ensuring that the standards of living of vulnerable affected groups will be improved (not merely restored) by providing adequate housing, security of land tenure, and income sources for them. A RP includes measures to ensure that the displaced people are (i) informed about their options and rights pertaining to resettlement; and (ii) consulted on choices, and provided with technically and economically feasible resettlement alternatives.

14. A RP provides detailed socioeconomic information of the project area and affected people, scope and significance of resettlement impacts, policy and legal framework, entitlements of all affected people, institutional framework, budget, monitoring and evaluation and time-frame for implementing the RP. A resettlement plan includes the requirements set out in Annex 1.

15. A RP is developed in consultation with affected peoples and based on the significance of involuntary resettlement impacts. The information contained in a RP could be tentative until the completion of detailed design of the project. All costs of compensation, relocation, and livelihood restoration will be project costs. To ensure timely availability of required resources, land acquisition and resettlement costs may be considered for inclusion in ADB financing. Resettlement expenditure is eligible for ADB financing, if incurred in compliance with the ADB Safeguard Policy Statement and with ADB-approved resettlement planning documents. If ADB funds are used for resettlement costs, expenditure items will be clearly reflected in RPs.

16. The borrower/client will establish clear milestones to ensure that no physical and economic displacement of affected people occurs until all compensation payments at full replacement cost and other entitlements are made, and an approved rehabilitation program supported by an adequate budget is available. If a project restricts access to land, such restrictions will be imposed in accordance with a timetable outlined in RP which is agreed upon.

17. The borrower/client will finalize the RP soon after the completion of detailed engineering designs. The anticipated changes to the RP are in the number of affected people, areas for land acquisition, budget, and implementation timetable. The entitlement matrix of the RP may be updated to reflect these changes. The standards set in the original entitlement matrix will not be lowered when the RP is finalized. The borrower/client will ensure that the final RP (i) adequately reflects all IR issues relating to the project, (ii) describes the specific mitigation measures that will be taken to address these issues, and (iii) ensures the availability of sufficient resources for this purpose.

18. Projects with large-scale involuntary resettlement impacts will have adequate contingency funds to address the identified potential IR impacts as well as those identified during project implementation, and to provide enhanced social benefits to affected people to mitigate

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<sup>3</sup> Pre-appraisal land assessments record key features of population settlements, and natural land features, together with landownership and usage patterns.

their initial trauma and impoverishment. The borrower/client will inform newly identified affected people about the project and RP. Supplementary RPs, addendums to RPs, and revised RPs will be endorsed by the borrower/client prior to submitting to ADB for review. ADB's approval is required before the award of civil works contracts or similar milestones occur.

19. A final RP is also required for the following: (i) RP(s) for specific components of a project whose sites/alignments cannot be defined prior to loan approval;<sup>4</sup> (ii) an addendum to the draft RP(s) prepared during project processing; and (iii) RP(s) to cover unanticipated impacts.

#### **4. Negotiated Land Acquisition**

20. Borrower/clients are encouraged to acquire land and other assets through negotiated settlements based on a free, prior and informed consultation with affected people. Negotiated land acquisition enhances the acceptability of projects by affected people. Negotiated land acquisition includes offers of fair and appropriate compensation and other incentives or benefits. The borrower/client will ensure that any negotiations with affected people openly address the risks of asymmetry of information and bargaining power of the parties. The borrower/client will engage an independent external party to document the processes and agreements of such negotiations. The borrower/client will agree with ADB on a resettlement framework (RF) that outlines the participatory process, policies and laws that are applicable to such transactions, third party validation, mechanisms of calculating replacement cost of land and other assets affected, and record-keeping requirements.

#### **5. Information Disclosure**

21. The borrower/client will submit to ADB and disclose the following resettlement planning documents to key stakeholders:

- (i) a draft RP endorsed by the borrower/client before appraisal;
- (ii) a revised RP endorsed by the borrower/client after finalizing the plan;
- (iii) new RPs or addendums, if any;
- (iv) resettlement due diligence reports and corrective action plans, if any, and
- (v) monitoring reports.

22. The borrower/client will provide relevant resettlement information<sup>5</sup> as brochures, leaflets, or booklets in a form, manner and language(s) accessible to affected people and key stakeholders. For non-literate people, suitable other communication methods are to be used.

#### **6. Consultation**

23. The borrower/client will carry out free, prior, and informed consultation with the active participation of affected people, host communities, and the civil society for each project with IR impacts. Such consultation and participation is an ongoing process which will begin as early as possible so that all stakeholders' views, concerns and suggestions could be considered in formulating resettlement planning instruments, such as RP.

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<sup>4</sup> The Report and Recommendation of the President (RRP) will justify why an RF, instead of an RP was prepared for the specific component.

<sup>5</sup> This includes measurement of losses, detailed asset valuations, entitlements and special provisions, grievance procedures, timing of payments and displacement schedule.

## **7. Grievance Redress Mechanism**

24. The borrower/client will establish a grievance mechanism to receive and facilitate resolution of the affected peoples' concerns and grievances about displacements in an impartial manner. The grievance mechanism will be scaled to the impacts of the project. It should address concerns promptly, using an understandable and transparent process that is culturally appropriate and accessible to the affected people, and at no cost and without retribution. The mechanism should not impede access to the country's judicial or administrative remedies. The affected people will be appropriately informed about the mechanism.

## **8. Monitoring and Reporting**

25. The borrower/client will monitor and measure the progress of implementation of RP. In addition to recording information to track performance, the borrower/client will use dynamic mechanisms, such as inspections and audits, where relevant, to verify compliance and progress toward the desired outcomes. For projects with large-scale involuntary resettlement impacts, the borrower/client will retain qualified and experienced external experts to conduct semi-annual monitoring and/or verify monitoring information of the borrower/client. The external experts engaged by the borrower/client will advise on compliance issues, and if any significant IR issues are found, an additional RP or an addendum to the approved RP will be prepared. Until such planning documents are formulated, disclosed, and approved, the borrower/client will not proceed with implementing the specific project components, where IR impacts are identified.

26. The borrower/client will prepare periodic progress reports that describe progress with implementation of the RP or equivalent planning document(s), and, if any, compliance issues and corrective actions. For projects with large-scale involuntary resettlement impacts, the borrower/client will submit, at the minimum, semiannual resettlement progress reports. Quarterly progress reports are required for projects that entail relatively short implementation periods. The progress will be reported closely following the IR monitoring indicators agreed at the time of the RP approval. The costs of both internal and external RP monitoring requirements will be reflected in project budgets.

## **9. Unanticipated Impacts**

27. If unanticipated IR impacts become apparent during project implementation, such as change in alignment and footprint, the borrower/client will screen the potential impacts, and if necessary, the borrower/client will formulate additional RPs, outlining measures and required resources to address the impacts adequately. If the IR impacts are not significant, specific mitigation measures are included in an addendum to the approved RP. If the changes occur 2 years after the approval of the final RP, the borrower/client will ensure the addendum covers changes to the socio-economic profile of affected people, compensation rates, entitlements, and implementation and institutional arrangements.

## **10. Project Completion**

28. On completion of resettlement activities, as necessary, the borrower/client will prepare and submit a completion report which includes an evaluation of the implementation of RPs and the degree of compliance with IR-related loan covenants. The report will include an assessment of (i) the degree of affected people' participation throughout the project cycle; (ii) a comparison of the level of income and livelihoods of affected people with that of the baseline status; (iii) whether the project has achieved the objectives of RPs; and (iv) lessons learned, if any, for future projects.

## **D. Specific Requirements on Different ADB Financing Modalities**

### **1. Program Loans**

29. Policy-based loans and grants—because of their systemic impacts on the DMC—require a deeper analysis of potential social, including IR impacts. In policy-based interventions that are likely to affect relevant national, sub-national policies, guidelines, approaches, and legal frameworks, the borrower/client will discuss and agree with ADB on the proposed actions and remedies. Investment components of a program loan or grant will comply with the general safeguards requirements applicable to projects, subprojects, and project components described above.

### **2. Sector Finance**

30. The borrower/client will agree with ADB on RF to guide subprojects selection, social assessment, and resettlement planning, and facilitate compliance with the general requirements specified in Section C.

31. A RF will (i) fully reflect the IR policy principles; (ii) explain anticipated impacts of components or subprojects to be financed under the proposed project; (iii) describe the institutional arrangements and capacity, and implementation procedures (including budget and capacity development requirements); (iv) outline safeguard criteria that are to be used in selecting components, projects, or subprojects, if the intervention is sector-wide; (v) specify the requirements that will be followed in screening, impact assessment, and preparation of RPs; (vi) include arrangements for free, prior and informed consultation with affected people and for information disclosure; (vii) specify monitoring and reporting requirements; and (viii) specify the responsibilities and authorities of borrower/clients and ADB in the preparation, review, and approval of RPs of subprojects. Annex 2 describes the detailed content of a RF.

32. To establish the broad criteria for selecting subprojects to be financed under the loan or grant, a few subprojects are identified and appraised prior to loan approval. For these subprojects, the borrower/client will prepare relevant documentation, including resettlement planning document(s).

33. The general requirements specified in Section C apply to subprojects and components identified during project implementation.

### **3. Multitranche Financing Facilities (MFF)**

34. ADB's safeguard requirements apply to all components, projects, subprojects financed under an MFF. The general requirements specified in Section C will apply to components, projects and subprojects identified during preparation and implementation of an MFF.

35. The borrower/client will agree with ADB on an RF as specified in paragraph 31.

### **4. Wider Application of Resettlement Framework**

36. Resettlement framework will be prepared for a project loan or grant where subprojects or project components are identified after Board approval. The borrower/client will agree with ADB on an RF as specified in paragraph 31. The general requirements specified in Section C will apply to subprojects and project components identified during project implementation.

## **5. Emergency Assistance Loans**

37. For emergency assistance loans, the completion of a standard IR plan may not be possible before Board approval. In such cases, an RF as specified in paragraph 31 will be prepared. Components and subprojects identified during the project implementation will follow the general requirements specified in Section C.

## **6. Financial Intermediaries**

38. ADB's requirements for social safeguard and environmental assessment and management for the FIs will be proportional to the level of potential impacts. All FIs will apply the Prohibited Investment Activities List (PIL) (Attachment D). FIs with business activities that have minimal or no adverse IR impacts will be considered Category C projects and need not apply any other specific requirements. In addition to the PIL, FIs providing long-term corporate finance or project finance will require the recipient of such finance to:

- (i) follow national laws where the activity financed presents limited IR impacts;
- (ii) follow national laws and apply ADB's general requirements specified in Section C where the activity financed presents significant IR impacts.

39. The FI will establish and maintain an Environmental and Social Management System (ESMS) to ensure that its investments meet the requirements specified in paragraph 38 (i) or (ii). The ESMS should incorporate the following elements: (i) environmental and social policies; (ii) screening and review procedure; (iii) organizational structure and staffing including skills and competencies in environmental and social areas; (iv) training requirements; and (v) monitoring and reporting.

40. Where the potential activities financed by the FI present significant IR impacts, an RF in line with Annex 2 will be formulated and made as a core appendix of ESMS. The FI will submit annual reports on the implementation status of ESMS with specific reference to IR impacts. If reports suggest that ESMS is not functioning, then a corrective action plan will be developed and submitted by the FI in addition to the annual reports.

## **7. Corporate Investments**

41. The borrower/client will establish and maintain an ESMS. The ESMS will include a screening mechanism that would identify if the work that it would be supporting is likely to be in noncompliance with ADB's IR safeguard requirements. The borrower/client will not provide contracting services for projects that are likely to have unmitigated noncompliance with ADB's IR safeguard requirements. The ESMS will also include the following elements: (i) organizational structure and staffing including skills and competencies in environmental and social management; (ii) training requirements; and (iii) monitoring and reporting.

42. The borrower/client will submit annual reports on the implementation status of ESMS with specific reference to IR impacts. If reports suggest that the ESMS is not functioning, then a corrective action plan will be developed and submitted by the borrower/client in addition to the annual reports.

## **8. Special Considerations for Indigenous Peoples**

43. If the project affected people are Indigenous Peoples or ethnic minorities, a combined Indigenous Peoples Plan/RP could be formulated to address both involuntary resettlement and Indigenous Peoples issues.

**Annex 1****OUTLINE OF RESETTLEMENT PLAN**

The resettlement plan (RP) prepared in conjunction with the feasibility study covers the following elements:

- (i) executive summary;
- (ii) assessment of alternatives to avoid IR impacts and if avoidance is proven to be unfeasible, measures to minimize IR impacts through alternative designs;
- (iii) description of the project;
- (iv) inventory of affected people, their assets and their livelihoods;
- (v) social impact assessment based on a sample of at least 10% of the affected people and 20% of affected vulnerable populations;
- (vi) host community survey;
- (vii) legal framework, policy objectives and gap filling measures, documentation of process and time line for land acquisition through expropriation or negotiated settlements. Negotiated settlements provide for compensation and assistance to meet the objectives of ADB's safeguard policy;
- (viii) entitlement matrix, compensation rates at replacement cost, unit costs and methodology for assessing compensation, special measures to improve the living standards of vulnerable groups, the cut-off date and measures to be taken to provide land for land;
- (ix) detailed budget and cost estimates;
- (x) institutional responsibilities covering, preparation, implementation, grievance redress mechanisms and monitoring and evaluation;
- (xi) information disclosure measures, including information to be disseminated, and the method of dissemination;
- (xii) public participation and community consultation including, summary of consultations in preparation of RP;
- (xiii) time bound implementation plan tied to the civil works implementation to include, asset acquisitions, compensation payments and delivery of entitlements, livelihood restoration, institutional establishment;
- (xiv) time bound monitoring and evaluation to measure results, resettlement implementation and reporting;
- (xv) details of required social preparation; and
- (xvi) due processes for enabling land purchase on the basis of a negotiated settlement. The draft RP will list additional tasks or revisions to be undertaken to prepare the final RP.

## OUTLINE OF A RESETTLEMENT FRAMEWORK

The purpose of the resettlement framework (RF) is to set out the guidelines to screen subprojects, project components or activities of an operation and to prepare resettlement plans for subprojects or specific components of an operation. The RF outlines how each of the essential elements of the resettlement planning process will be addressed, including organizational arrangements. Subproject resettlement plans (RPs) consistent with the RF are subsequently submitted to ADB for approval after specific planning information becomes available and as a condition for award of civil works contract or similar milestone. The RF covers the following elements, consistent with the provisions described in the Requirements for Involuntary Resettlement Safeguards.

The standards described in the RF may not be lowered but may be enhanced in the RPs based on the findings of the social assessment and project impacts.

### A. Introduction

This section briefly describes the operation, its subprojects and/or components, general likely scope of anticipated involuntary resettlement impacts of the components or subprojects to be financed under the proposed operation, and an explanation of why a RP cannot be prepared by project appraisal.

### B. Objectives, Policy Framework and Entitlements

- (i) principles and objectives governing resettlement plan preparation and implementation consistent with the Safeguard Requirements for Borrowers/Clients: Involuntary Resettlement and ADB's Safeguard Policy Statement (SPS) including, a gap analysis between the applicable national laws and policies and the SPS, and measures to fill the gaps;
- (ii) criteria for screening and selecting components, projects, or subprojects, including measures to avoid and minimize involuntary resettlement impacts;
- (iii) estimated number of affected persons and likely categories of physically and economically displaced persons, to the extent feasible; and
- (iv) eligibility criteria for defining various categories of affected persons.

### C. Socioeconomic Information

- (i) methods to be employed for conducting the socioeconomic survey, census, inventory of losses, land assessment for losses, and replacement land; and
- (ii) methods of valuing affected assets to meet replacement cost.

### D. Consultation, Participation and Disclosure

This section outlines mechanisms for free, prior and informed consultation and participation of affected people in preparing, implementing and monitoring resettlement plans including, (i) institutional responsibilities, and (ii) disclosure arrangements, such as information to be disseminated, and the method of dissemination.

**E. Compensation, Income Restoration and Relocation**

- (i) measures proposed for income restoration including, income compensation and special measures to support vulnerable households to improve their living standards;
- (ii) measures to provide land for land replacement; and
- (iii) support to host populations in the event of physical relocation.

**F. Grievance Redress Mechanisms**

This section discusses measures to establish independent and viable grievance mechanisms at the local level including, rights of judicial appeal.

**G. Institutional Arrangements and Implementation**

- (i) a comprehensive assessment of institutional capacity and resource capability to prepare, implement and monitor resettlement. Additional measures necessary to enhance institutional capacity including costs;
- (ii) organizational procedures for delivery of entitlements, including, for operations involving private sector intermediaries, the responsibilities of the financial intermediary, the government, the private developer and co-financiers; and
- (iii) a description of the implementation process, linking resettlement preparation, approval and implementation to civil works.

**H. Budget and Financing**

This section shows indicative budgets, if available, and financing arrangements including flow of funds, to reach affected people. Identification of funding sources and responsibilities for allocation, approval, and delivery of funds including, contingency arrangements.

**I. Monitoring and Evaluation**

This section identifies steps to establish internal and external monitoring and evaluation of resettlement including disclosure and reporting requirements to the borrower/client and ADB.

## **SAFEGUARD REQUIREMENTS FOR BORROWERS/CLIENTS**

### **INDIGENOUS PEOPLES**

#### **A. Introduction and Rationale**

1. Nearly three-quarters of the world's Indigenous Peoples live in the Asia and Pacific region. ADB recognizes the rights of Indigenous Peoples to development. In practice, however, Indigenous Peoples do not automatically benefit from development, which often planned and implemented by those in the mainstream or dominant population in the respective countries they reside. Special efforts are needed to engage Indigenous Peoples in the planning of development programs which affect them, in particular those development programs which are supposedly designed to meet their specific needs and aspirations. Indigenous Peoples are more and more threatened as development programs infringe into areas which they traditionally own, occupy or use or consider as ancestral assets.

2. This document outlines the requirements for borrowers/clients in applying Indigenous Peoples policy principles outlined in the Safeguard Policy Statement (SPS) to ADB-financed projects. It discusses the scope of application, outlines delivery mechanisms, and highlights special Indigenous Peoples safeguard procedural requirements of some project financing modalities. This set of policy requirements aims to safeguard Indigenous Peoples' rights to maintain, sustain and preserve their cultural identities, practices and habitats, and ensure that projects affecting them will take into consideration necessary measures to protect these rights.

#### **B. Scope of Application**

3. These requirements for Indigenous Peoples safeguards apply to all projects including ADB-funded and/or ADB-administered sovereign and non-sovereign investment projects funded by a loan, and/or a grant, and/or other means (such as equity and/or guarantee). They also cover actions conducted in anticipation of ADB projects.

4. There are varied and changing contexts in which Indigenous Peoples live and there is no universally accepted definition of "Indigenous Peoples." Indigenous Peoples may be referred to in different countries by such terms as "indigenous communities," "ethnic minorities," "indigenous cultural communities," "aboriginals," "hill tribes," "minority nationalities," "scheduled tribes," or "tribal groups".

5. For operational purposes, 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 and to the natural resources in these habitats and territories;
- (iii) distinct customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
- (iv) an indigenous language, often different from the official language of the country or region.

6. A group that has lost "collective attachment to geographically distinct habitats or ancestral territories in the project area" (paragraph 5 [ii]) because of forced severance remains eligible for coverage under the Policy.

7. The Policy on Indigenous Peoples is triggered, if a project impacts directly or indirectly on the dignity, human rights, livelihood systems, or culture of Indigenous Peoples, or affects the territories, natural or cultural resources that Indigenous Peoples own, use, occupy, or claim as their ancestral domain or asset.

## **C. General Requirements**

### **1. Free, Prior and Informed Consultation and Broad Community Support**

8. The borrower/client will undertake free, prior and informed consultation with affected Indigenous Peoples to obtain their broad community support of the project, and their informed participation in (a) designing, implementing, and monitoring measures to avoid adverse impact on them, or when avoidance is not feasible, to minimize, mitigate, and compensate for such effects; and in (b) tailoring project benefits that accrue to them in a culturally appropriate manner. Free, prior and informed consultation is an ongoing process and will be started as early as possible in the project cycle so that views of affected Indigenous Peoples can be taken into account in the project design.

9. To carry out free, prior and informed consultation, the borrower/client will:

- (i) establish a strategy for inclusive consultation to take place on a level playing field on which all participants (affected Indigenous Peoples' communities and Indigenous Peoples organizations if any, and other local civil society organizations) have the same say (this includes special measures for marginalized groups) and are able to voice their concerns without facing any pressure or guidance;
- (ii) use consultation methods appropriate to the social and cultural values of the affected Indigenous Peoples' communities, giving special attention to the concerns of indigenous women, and the youth;
- (iii) provide the affected Indigenous Peoples, prior to actual consultation, all relevant information (draft documents and plans, including an assessment of potential impacts that may arise during and after project implementation).

10. In deciding whether to proceed with the project, the borrower/client will ascertain whether the affected Indigenous Peoples communities provide their broad support to the project, and where there is such support, the borrower/client will provide documentation that details the process and outcomes of consultations with Indigenous Peoples and Indigenous Peoples organizations, including (i) the findings of the social assessment; (ii) the process of free, prior and informed consultation with the affected Indigenous Peoples' communities; (iii) additional measures including project design modification, that may be required to address adverse impacts on the Indigenous Peoples and to provide them with culturally appropriate project benefits; (iv) recommendations for free, prior, and informed consultations with and participation by Indigenous Peoples' communities during project implementation, monitoring and evaluation; and (v) any formal agreements reached with Indigenous Peoples communities and/or the Indigenous Peoples organization.

11. When the borrower/client and the affected Indigenous Peoples have serious differences and disagreements on the project, its components, or IPP, the borrower/client should adopt good faith negotiations for them to resolve such differences and disagreements.

## **2. Screening**

12. Screening will be conducted as early as possible in the project cycle. Screening will determine (i) whether Indigenous Peoples are present in, or have collective attachment to, the project area, and (ii) whether there are likely project impacts on Indigenous Peoples. In conducting the screening, the borrower/client will seek the technical judgment of qualified and experienced expert(s).

13. Screening of impact can continue throughout the project cycle. The results of the screening of whether the projects will trigger the Policy or not will be validated and such results could change in later stages as further information becomes available.

## **3. Social Assessment**

14. When screening confirms likely impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced expert(s) to carry out a full social impact assessment, and if adverse impacts on Indigenous Peoples are identified, prepare an IPP in conjunction with the feasibility study.

15. Based on the screening, a field-based social impact assessment (SIA) will be conducted either as part of the feasibility study or as a stand-alone activity. The SIA will identify the project affected Indigenous Peoples and the potential impacts of the proposed project on them. The SIA will provide the baseline socioeconomic profile of the Indigenous groups in the project area and project impact zone, assess their access to and opportunities to avail of basic social and economic services, assess the short and long-term, direct and indirect as well as positive and negative impacts of the project on each ethnic group's social, cultural and economic status, assess and validate which Indigenous groups will trigger the Indigenous Peoples policy principles, and assess the subsequent approaches and resource requirements to address the various concerns and issues of projects that affect them.

16. The level of detail and comprehensiveness of the social assessment will be proportional to the complexity of the proposed project and commensurate with the nature and scale of the proposed project's potential effects on the Indigenous Peoples, whether adverse or positive.

## **4. Indigenous Peoples Planning**

17. If the screening and SIA indicate that the proposed project will have impacts on Indigenous Peoples, the borrower/client will prepare an Indigenous Peoples Plan (IPP), or an equivalent document, in the context of the SIA and in free, prior informed consultations with the affected Indigenous Peoples' communities. The IPP, or an equivalent document, will set out the measures through which the borrower/client will ensure that (a) affected Indigenous Peoples receive culturally appropriate social and economic benefits; and (b) when potential adverse impacts on Indigenous Peoples are identified, these will be avoided to the maximum extent possible. Where this avoidance is proven to be unfeasible, the IPP will prepare based on free, prior and informed consultations with Indigenous communities, and with measures to minimize, mitigate, and compensate for the adverse impacts. The level of detail and comprehensiveness of IPPs (Annex A) will vary depending on the specific project and the nature of impacts to be addressed. The borrower/client will integrate the elements of the IPP into the project design.

18. If Indigenous Peoples are the sole or the overwhelming majority of direct project beneficiaries and when only positive impacts are identified, the elements of an IPP will be included in the overall project design, and a separate IPP will not be required. In such cases,

the project document will include a summary of how the project complies with the Policy on Indigenous Peoples Safeguards, in particular, will explain how the requirements for free, prior and informed consultations are fulfilled and how accrual of benefits has been integrated into the project. The project design and legal covenants will also explicitly specify how benefits accrue to Indigenous Peoples in the project area and how free, prior and informed consultations will be done during implementation.

19. The borrower/client will finalize draft IPPs after the completion of detailed engineering design, and detailed measurement surveys. Addendums to the draft IPPs will be prepared closely following the award of contract packages, and the implementation time schedules of each project component or subproject for implementing IPPs. The mitigating measures to avoid adverse impact on IPs will be enhanced but the agreed outcomes of the draft IPP will not be lowered or minimized. If new groups of Indigenous Peoples are identified prior to submission of the final IPP to ADB, free, prior and informed consultation, aimed at obtaining broad community support, will also be undertaken.

## **5. Information Disclosure**

20. The borrower/client will submit to ADB the following documents and disclose them to key stakeholders:

- (i) draft IPP/Indigenous Peoples Planning Framework (IPPF) endorsed by the borrower/client, before appraisal;
- (ii) revised and final IPP/IPPF upon completion of such plan;
- (iii) new or updated IPPs or addendums to IPPs, prepared during implementation;
- (iv) due diligence reports and corrective action plans, if any; and
- (v) monitoring reports.

21. The borrower/client will provide relevant key information on the projects and the IPPs in a form, manner and language(s) accessible to key stakeholders, especially the affected Indigenous Peoples. In case of nonliterate Indigenous Peoples, other appropriate communication methods will be utilized.

## **6. Grievance Redress Mechanism**

22. If ongoing risks to or adverse impacts on affected communities are anticipated, the borrower/client will establish a grievance mechanism to receive and facilitate resolution of the affected communities' concerns and grievances about displacements in an impartial manner. The grievance mechanism will be scaled to the impacts of the project. It should address concerns promptly, using an understandable and transparent process that is culturally appropriate and accessible to the affected communities, and at no cost and without retribution. The mechanism should not impede access to the country's judicial or administrative remedies. The affected communities will be appropriately informed about the mechanism.

## **7. Monitoring and Reporting**

23. The borrower/client will monitor and measure the progress of implementation of IPP. In addition to recording information to track performance, the borrower/client should use dynamic mechanisms, such as inspections and audits, where relevant, to verify the compliance with the requirements and the progress toward achieving the desired outcomes. For projects with significant adverse impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced external experts to conduct semi-annual monitoring and/or verify monitoring

information of borrower/client. The external experts engaged by the borrower/client will advise on compliance issues, and if any significant Indigenous Peoples issues are found, an additional IPP or an addendum to the approved IPP will be prepared.

24. The borrower/client will prepare periodic progress reports on progress of IPP implementation highlighting compliance issues and corrective actions, if any. The borrower/client will submit semiannual progress reports. The costs of monitoring requirements will be reflected in project budgets.

## **8. Unanticipated Impacts**

25. If unanticipated impacts on Indigenous Peoples become apparent during project implementation, such as change in alignment and footprint, the borrower/client will carry out a social impact assessment, and as relevant, prepare an IPP or an addendum to the IPP focusing on measures and required resources to mitigate adverse impacts, if any, and to provide for culturally-appropriate benefits for affected Indigenous Peoples.

## **9. Project Completion**

26. As necessary, the borrower/client will prepare and submit a project accomplishment/completion report that will include an assessment of the implementation of IPPs and the degree of compliance with Indigenous Peoples-related loan covenants. The report will include assessment of the following: (i) degree of Indigenous Peoples' participation in the project; (ii) impacts, both positive and adverse, on Indigenous Peoples; (iii) achievement of the objectives of the relevant safeguard instrument(s); and (iv) lessons learned for future operations involving Indigenous Peoples.

## **D. Specific Requirements on Different ADB Financing Modalities**

27. **Preparation of an Indigenous Peoples Planning Framework.** Framework approach is applied to projects delivered through sector lending modality, multitranches financing facility (MFF) or other lending modalities where subprojects are prepared after Board approval. For such projects that may trigger the Indigenous Peoples Policy, an IPPF will be prepared, instead of an IPP, before Board approval. An IPPF sets out the Indigenous Peoples Policy principles together with the screening and planning procedures, which apply to all subprojects, components, or tranches that are to be determined and approved during loan implementation by the borrower/client and ADB.

28. An IPPF will put into detail participatory screening procedures for components/subprojects/tranches to determine whether indigenous peoples are affected or not; spell out strategies for ensuring the free, prior and informed consultations and participation of affected Indigenous Peoples at each stage of project preparation and implementation; and strategies to ensure that project benefits will accrue to Indigenous Peoples and mitigate any adverse impacts on them. Annex B provides the details of the content of an IPPF.

29. **Preparation of Subproject or Component IPPs.** If the screening of a subproject or a project component identified in the IPPF indicates that Indigenous Peoples are present in, or have collective attachment to, the area of the subproject or component, the borrower/client will ensure that, before the individual subproject or component is implemented, a social assessment is carried out and an IPP is prepared in accordance with the requirements specified in Section C. The borrower/client will submit each IPP to ADB for review before the respective program or subproject or component is considered eligible for financing.

30. Other projects with subprojects or components where impacts on Indigenous Peoples may not be known in advance and where all or part of the impact area cannot be determined before appraisal, due to the preliminary status of technical design, and/or the need for a clearly defined community process for site selection, will require the preparation of an IPPF prior to appraisal.

31. In stand-alone projects, for specific project component activities that may not be defined or have adequate design detail prior to appraisal, the borrower/client will justify any departure from standard procedures, with reference to the specific circumstances of the individual project and the component processing schedule.

### **1. Program Loans**

32. Policy-based loans and grants—because of their size and systemic impact on the country—require a deeper analysis of potential social impacts, including impacts on Indigenous Peoples. For programs that are likely to affect Indigenous Peoples through the development of relevant national, subnational policies, approaches, and legal frameworks, the borrower/client will incorporate proposed actions and remedies in the project design. Investment components of the program loan or grant will comply with the general requirements specified in Section C.

### **2. Sector Finance**

33. For sector loans or grant that are likely to involve impact on Indigenous Peoples, the borrower/client will agree with ADB, before appraisal, on an IPPF for the project and an IPP for each core subproject having impacts on Indigenous Peoples. The IPPs prepared for the first subproject will serve as the model for subsequent Indigenous Peoples planning for other subprojects under the sector loan or grant. The borrower/client will ensure that contract schedules and packages consistently match each subproject requiring an IPP. The borrower/client will also ensure that sufficient IPP technical and management capacity are provided during project implementation.

34. The general requirements specified in Section C apply to subprojects and components identified during project implementation.

### **3. Multitranche Financing Facility**

35. ADB's safeguard requirements apply to all components, projects, subprojects financed under an MFF. Components, subprojects, and projects identified during preparation and implementation of an MFF will follow the general requirements specified in Section C.

36. In addition, an IPPF as described in paragraph 27 and 28 will be required. The IPPF will explain the anticipated general impacts of the investments (which are likely to be financed under the MFF) on Indigenous Peoples; outline safeguard criteria that are to be used in selecting components, projects, or subprojects; specify the requirements that will be followed for the screening and categorization, impact assessments, development of management plans, public consultation and information disclosure, and monitoring and reporting; describe the institutional arrangements (including budget and capacity requirements), and the counterparties' and ADB's responsibilities and authorities for the preparation, review, and clearance of safeguard documents.

#### **4. Wider Application of IPPF**

37. An IPPF will be prepared for a project loan or grant where subprojects or project components are identified after Board approval. The borrower/client will agree with ADB on an IPPF as specified in paragraph 27 and 28. The general requirements specified in Section C will apply to subprojects and project components identified during project implementation.

#### **5. Emergency Assistance Loans**

38. For emergency assistance loans, the completion of standard surveys and free, prior and informed consultation requirements based on a feasibility study may not be possible before Board approval. In such cases, an IPPF will be prepared prior to Board circulation of the project design and included as a core appendix. Components and subprojects identified during the project implementation will follow the general requirements specified in Section C.

#### **6. Financial Intermediaries**

39. ADB's requirements for social safeguard and environmental assessment and management for the FIs will be proportional to the level of potential impacts. All FIs will apply the Prohibited Investment Activities List (PIL) (Attachment D). FIs with business activities that have minimal or no adverse impacts on Indigenous Peoples will be considered as Category C projects and need not apply any other specific requirements. In addition to the PIL, FIs providing long-term corporate finance or project finance will require the recipient of such finance to:

- (i) follow national laws where the activity financed presents limited impacts on Indigenous Peoples;
- (ii) follow national laws and apply ADB's general requirements specified in Section C where the activity financed presents significant impacts on Indigenous Peoples.

40. The FI will establish and maintain an Environmental and Social Management System (ESMS) to ensure that its investments meet the requirements specified in paragraph 39 (i) or (ii). The ESMS should incorporate the following elements: (i) environmental and social policies; (ii) screening and review procedure; (iii) organizational structure and staffing including skills and competencies in environmental and social areas; (iv) training requirements; and (v) monitoring and reporting.

41. Where the business activities financed by the FI present impacts on IP, the FI will prepare and submit an annual report on the implementation status of its ESMS. If the reports suggest that ESMS is not functioning, then a corrective action plan will be developed and submitted by the FI in addition to the annual report.

#### **7. Corporate Investments**

42. The borrower/client will establish and maintain an ESMS. The ESMS will include a screening mechanism that would identify if the work that it would be supporting is likely to be in noncompliance with ADB's Indigenous Peoples safeguard requirements. The borrower/client will not provide contracting services for projects that are likely to have unmitigated noncompliance with ADB's Indigenous Peoples safeguard requirements. The ESMS will also include the following elements: (i) organizational structure and staffing including skills and competencies in environmental and social management; (ii) training requirements; and (iii) monitoring and reporting.

43. The borrower/client will submit annual reports on the implementation status of ESMS with specific reference to impacts on IP. If reports suggest that ESMS is not functioning, then a corrective action plan will be developed and submitted by the borrower/client in addition to the annual reports.

## **E. Special Considerations**

### **1. Ancestral Domains, Lands and Related Natural Resources**

44. Indigenous Peoples are closely tied to land, forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties. In this situation, when carrying out the social assessment and preparing the IPP, the borrower/client will pay particular attention to

- (i) the customary rights of the Indigenous Peoples, both individual and collective, pertaining to ancestral domains, lands or territories that they traditionally owned, or customarily used or occupied, and where access to natural resources is vital to the sustainability of their cultures and livelihood systems;
- (ii) the need to protect such ancestral domains, lands and resources against illegal intrusion or encroachment;
- (iii) the cultural and spiritual values that the Indigenous Peoples attribute to such lands and resources;
- (iv) Indigenous Peoples' natural resources management practices and the long-term sustainability of such practices, and
- (v) the need to rehabilitate the livelihood systems of Indigenous Peoples who have been evicted from their lands before proper safeguards were put in place.

45. If the project involves (a) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied (such as land titling projects), or (b) the acquisition of such lands, the borrower/client will integrate in the IPP an action plan for the legal recognition of customary rights to such lands, territories, and ancestral domain. Normally, the action plan is carried out before project implementation but in some cases, the action plan may need to be formulated concurrently with the project itself. Such legal recognition may take the following forms:

- (i) full legal recognition of existing customary land tenure systems of Indigenous Peoples; or
- (ii) conversion of customary usage rights to communal and/or individual ownership rights.

46. If neither option is possible under national law, the IPP will include measures for legal recognition of perpetual or long-term renewable custodial or user rights.

47. For all projects affecting Indigenous Peoples' ownership and access to land and natural resources, the borrower/client will prepare an IPP that could be combined with a resettlement plan. Such a combined plan will be compatible with the Indigenous Peoples' cultural preferences, and will include culturally appropriate livelihood restoration measures. The borrower/client will document the results of the free, prior and informed consultation process for that particular Indigenous Peoples community. Where possible, the plan will allow the affected Indigenous Peoples to obtain full ownership of the resources they traditionally owned, or customarily used or occupied, if the restrictions cease to exist.

## **2. Commercial Development of Natural and Cultural Resources**

48. **Commercial Development of Natural Resources.** If the project involves the commercial development of natural resources (such as minerals, hydrocarbon resources, forests, water, or hunting/fishing grounds) on lands or territories used or claimed by Indigenous Peoples, the borrower/client will ensure that as part of the free, prior, and informed consultation process the affected communities are informed of (a) their rights to such resources under statutory and customary law; (b) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (c) the potential effects of such development on the Indigenous Peoples' livelihoods, environments, and use of such resources. The borrower/client will include in the IPP, arrangements to enable the Indigenous Peoples to receive in a culturally-appropriate manner an equitable share of the benefits to be derived from such commercial development which is at least equal or higher than any other affected landowner.

49. **Commercial Development of Cultural Resources.** If the project involves the commercial development of Indigenous Peoples' cultural resources and knowledge, the borrower/client will ensure that as part of the free, prior, and informed consultation process, the affected communities are informed of (a) their rights to such resources under statutory and customary law; (b) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (c) the potential effects of such development on Indigenous Peoples' livelihoods, environments, and use of such resources. Commercial development of the cultural resources and knowledge of these Indigenous Peoples is conditional upon their prior agreement to such development. The IPP will reflect the nature and content of such agreements and will include arrangements to ensure that Indigenous Peoples receive in a culturally appropriate way an equitable share of the benefits to be derived from such commercial development.

## **3. Physical Relocation of Indigenous Peoples**

50. The borrower/client will explore to the maximum extent possible alternative project designs to avoid physical relocation of Indigenous Peoples which will result in adverse impacts on their identity, culture, and customary livelihoods. In exceptional circumstances, when avoidance is proven to be impossible, the borrower/client will not carry out such relocation without obtaining broad support for it from the affected Indigenous Peoples' communities as part of the free, prior, and informed consultation process. In such cases, the borrower/client will prepare an IPP that could be combined with a resettlement plan. Such combined plan need to be compatible with the Indigenous Peoples' cultural preferences, and will include a land-based resettlement strategy. The borrower/client will document the results of the free, prior and informed consultation process for that particular Indigenous Peoples community. Where possible, the plan will allow the affected Indigenous Peoples to return to the lands and territories they traditionally owned, or customarily used or occupied, if the reasons for their relocation cease to exist.

## **4. Restriction of Access to Protected Areas and Natural Resources**

51. In many countries, the lands and natural resources set aside as legally designated parks, protected areas, and/or exclusive zones, may overlap with lands and territories that Indigenous Peoples customarily used or claim as ancestral territory. ADB will recognize these rights, of ownership, occupation, or usage, as well as the need for long-term sustainable management of critical ecosystems. Therefore, involuntary restrictions on Indigenous Peoples' access to legally designated parks, protected areas, exclusion zones, and other natural

resources, in particular access to their sacred sites, will be avoided to the maximum extent possible, and management arrangements of such sites will give priority to collaborative approaches that enable Indigenous Peoples, as the custodians of the resources, to continue to use them in an ecologically sustainable manner. Under exceptional circumstances, where avoidance is proven to be impossible, the borrower/client will prepare, with the free, prior, and informed consultation of the affected Indigenous Peoples' communities, necessary steps and guidelines for preparation, during project implementation, of an individual parks', protected areas' and natural resources' and/or exclusion zones' management arrangements, that will ensure that the Indigenous Peoples participate in the design, implementation, monitoring, and evaluation of the arrangements, and receive equitable share of the benefits. The compensation and livelihood restoration measures will be developed by the borrower/client for all such operations in an IPP that could be combined with a resettlement plan. Such combined plan will need to be compatible with the Indigenous Peoples' cultural preferences, and will include culturally appropriate livelihood restoration measures. The borrower/client will document the results of the free, prior and informed consultation process for that particular Indigenous Peoples community. Where possible, the plan will allow the affected Indigenous Peoples to obtain full ownership of the territory they traditionally owned, or customarily used or occupied, if the protected area or natural resource management system ceases to exist.

## **5. Indigenous Peoples and Development**

52. In furtherance of the objectives to benefit Indigenous Peoples, DMCs could request ADB to support the country in its development planning and poverty reduction strategies by providing financial assistance for a variety of initiatives designed to

- (i) strengthen local legislation to establish legal recognition of the customary or traditional land tenure systems of Indigenous Peoples;
- (ii) enhance the participation of Indigenous Peoples in the development process by incorporating their perspectives in the design of development programs and poverty reduction strategies, and providing them with opportunities to benefit more fully from development programs through policy and legal reforms, capacity building, and free, prior, and informed consultations, participation, and empowerment;
- (iii) support the development priorities of Indigenous Peoples through programs developed by governments in cooperation with Indigenous Peoples;
- (iv) address the gender and intergenerational issues that exist among many Indigenous Peoples, including the special needs of indigenous women, youth, and children;
- (v) prepare participatory profiles of Indigenous Peoples to document their culture, demographic structure, gender and intergenerational relations and social organization, institutions, production systems, religious beliefs, and resource use patterns;
- (vi) strengthen the capacity of Indigenous Peoples' communities and Indigenous Peoples organizations to prepare, implement, monitor, and evaluate development programs;
- (vii) strengthen the capacity of government agencies responsible for providing development services to Indigenous Peoples;
- (viii) protect indigenous knowledge, including the strengthening of intellectual property rights; and
- (ix) facilitate partnerships among the government, Indigenous Peoples' organizations, civil society organizations, and the private sector to promote Indigenous Peoples' development programs.

**OUTLINE OF INDIGENOUS PEOPLES PLAN**

- A. Executive Summary of the IPP
- B. Social Assessment
  - (i) A review of the legal and institutional framework applicable to Indigenous Peoples.
  - (ii) Baseline information on the demographic, social, cultural, and political characteristics of the affected Indigenous Peoples' communities, the land and territories that they have traditionally owned or customarily used or occupied, and the natural resources on which they depend.
  - (iii) Taking the review and baseline information into account, the identification of key project stakeholders and the elaboration of a culturally appropriate process for free prior and informed consultation with the Indigenous Peoples at each stage of project preparation and implementation.
  - (iv) An assessment, based on free, prior, and informed consultation, with the affected Indigenous Peoples' communities, of the potential adverse and positive effects of the project. Critical to the determination of potential adverse impacts is an analysis of the relative vulnerability of, and risks to, the affected Indigenous Peoples' communities given their distinct circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to other social groups in the communities, regions, or national societies in which they live.
  - (v) An assessment of the affected IPs' perception about the project and its impact on their social, economic and cultural status.
  - (vi) The identification and evaluation, based on free, prior, and informed consultation with the affected Indigenous Peoples' communities and , of measures necessary to avoid adverse effects, or if such measures are not feasible, the identification of measures to minimize, mitigate, or compensate for such effects, and to ensure that the Indigenous Peoples receive culturally appropriate benefits under the project.
- C. The documentation of the free, prior, and informed consultation with the affected Indigenous Peoples' communities that was carried out during project preparation, and that led to their broad community support for the project and safeguard measures.
- D. A plan for ensuring free, prior, and informed consultation with the affected Indigenous Peoples' communities during project implementation.
- E. Measures to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate.
- F. When potential adverse effects on Indigenous Peoples are identified, measures to avoid, minimize, mitigate, or compensate for these adverse effects.
- G. Measures to strengthen social, legal, and technical capabilities of (a) government institutions to address Indigenous Peoples issues and (b) of Indigenous Peoples' organizations to represent Indigenous Peoples more efficiently.

- H. Accessible procedures appropriate to the project to address grievances by the affected Indigenous Peoples' communities arising from project implementation. When designing the grievance procedures, the borrower/client takes into account the availability of judicial recourse and customary dispute settlement mechanisms among the Indigenous Peoples.
- I. Mechanisms and benchmarks appropriate to the project for monitoring, evaluating, and reporting on the implementation of the IPP. The monitoring and evaluation mechanisms should include arrangements for the free, prior, and informed consultation with the affected Indigenous Peoples' communities, and mechanism for disclosure of information.
- J. Process of involving local organizations and nongovernment organizations with proven expertise in Indigenous Peoples development.
- K. The institutional arrangement and mechanism for implementing the IPP.
- L. The cost estimates and financing plan for the IPP.

## **OUTLINE OF INDIGENOUS PEOPLES PLANNING FRAMEWORK**

The Indigenous Peoples Planning Framework (IPPF) sets out:

- A. The types of programs and subprojects likely to be proposed for financing under the project.
- B. The information on Indigenous Peoples most likely to be affected by the project or subprojects, and the potential positive and adverse effects of such project or subprojects on Indigenous Peoples.
- C. A set of activities for carrying out the social assessment (see Annex 1.B) for such programs or subprojects.
- D. A strategy for ensuring free, prior, and informed consultation with the affected Indigenous Peoples' communities at each stage of project preparation and implementation.
- E. Institutional arrangements (including capacity building where necessary) for screening project activities, evaluating their effects on Indigenous Peoples, preparing IPPs, and addressing any grievances.
- F. Monitoring and reporting arrangements, including mechanisms and benchmarks appropriate to the project.
- G. Disclosure arrangements for IPPs to be prepared under the IPPF.
- H. Budget arrangements for IPP to be prepared for such projects or subprojects.

## PROHIBITED INVESTMENT ACTIVITIES\*

The following are not qualified for ADB financing:

- (i) production or activities involving harmful or exploitative forms of forced labor<sup>1</sup>/child labor;<sup>2</sup>
- (ii) production of or trade in any product or activity deemed illegal under host country laws or regulations;
- (iii) production of or trade in any product or activity that contravenes any international conventions and agreements to which the host country is a party, and which have the force of law in the host country;
- (iv) production of or trade in weapons and munitions, including paramilitary materials;
- (v) production of or trade in alcoholic beverages (excluding beer and wine);<sup>3</sup>
- (vi) production of or trade in tobacco;<sup>3</sup>
- (vii) gambling, casinos, and equivalent enterprises;<sup>3</sup>
- (viii) trade in wildlife or wildlife products regulated under the Convention on International Trade in Endangered Species (CITES) of Wild Fauna and Flora;<sup>4</sup>
- (ix) production of or trade in radioactive materials, including nuclear reactors and components thereof;<sup>5</sup>
- (x) production of or trade in or use of unbonded asbestos fibers;<sup>6</sup>
- (xi) commercial logging operations or the purchase of logging equipment for use in primary tropical moist forest;
- (xii) production, commercial-scale use, trade, storage, or transport of products containing polychlorinated biphenyls;<sup>7</sup> and hazardous chemicals;<sup>8</sup>
- (xiii) production of or trade in pharmaceuticals,<sup>9</sup> pesticides/herbicides,<sup>10</sup> or ozone-depleting substances<sup>11</sup> subject to international phase outs or bans;

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\* A reasonableness test will be applied when the activities to be financed would have a significant development impacts but circumstances of the country require adjustments to this Prohibited Investment Activities list.

<sup>1</sup> Forced labor means all work or service not voluntarily performed, that is extracted from an individual under threat of force or penalty.

<sup>2</sup> Child labor means the employment of children whose age is below the host country's statutory minimum age of employment or employment of children in contravention of International Labor Organization Convention No. 138 "Minimum Age Convention" ([www.ilo.org](http://www.ilo.org)).

<sup>3</sup> This does not apply if the activity concerned is ancillary to a sponsor's/project's (or subproject's) primary operations.

<sup>4</sup> A list of CITES is available from [www.cites.org](http://www.cites.org).

<sup>5</sup> This does not apply to the purchase of medical equipment, quality control (measurement) equipment, and any equipment where ADB considers the radioactive source to be trivial and/or adequately shielded.

<sup>6</sup> This does not apply to the purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20%.

<sup>7</sup> A group of highly toxic chemicals, polychlorinated biphenyls, are likely to be found in oil-filled electrical transformers, capacitors, and switchgear dating from 1950 to 1985.

<sup>8</sup> A list of hazardous chemicals is available from [www.pic.int](http://www.pic.int).

<sup>9</sup> A list of pharmaceutical products subject to phase-outs or bans is available from [www.who.int](http://www.who.int).

<sup>10</sup> A list of pesticides and herbicides subject to phase-outs or bans is available from [www.pic.int](http://www.pic.int).

<sup>11</sup> A list of the chemical compounds that react with and deplete stratospheric ozone, resulting in the widely publicized ozone holes is listed in the Montreal Protocol, together with target reduction and phase out dates. <http://www.unep.org/ozone/montreal.shtml>.

- (xiv) transboundary trade in waste or waste products,<sup>12</sup> except for non-hazardous waste destined for recycling;
- (xv) marine and costal fishing practices, such as large scale pelagic drift net fishing and fine mesh net fishing, harmful to unwanted vulnerable and protected species in large numbers and damaging to the marine biodiversity and habitats; and
- (xvi) production or activities that impinge on the lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples.

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<sup>12</sup> As defined by the Basel Convention. See [www.basel.int](http://www.basel.int).