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ADB Safeguard Policy Review and Update: Indigenous Peoples Safeguards

REGIONAL CONSULTATIONS

22 – 24 November 2021



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POLICY REVIEW
AND UPDATE**

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Restatement of ADB's Commitment to Meaningful Consultations



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The Safeguard Policy Review and Update Phase II consultations intend to provide opportunities for stakeholders to express their views and opinions on ADB's environment and social safeguards in the most meaningful and safe manner.

All stakeholders are encouraged to articulate any project-related input and concerns they have during the consultation sessions, all of which will be recorded and duly documented during each event proper, allowing ADB to review, consider and respond to, if necessary. Background materials on the thematic areas have been released for the reference of participants in preparation for the dialogues.

All types of project feedback are welcome and will not be used to lead to any retaliation, abuse, or any kind of discrimination. Written session documentations containing the summary of feedback will be open for review by participating stakeholders prior to disclosure to the public to ensure the comfort and safety of stakeholders, and the accuracy and transparency of proceeding records.

If you have any issues or concerns on confidentiality, potential risks, abuse, or any kind of discrimination during the course of the consultations, please get in touch with the SPRU Secretariat through safeguardsupdate@adb.org.

Gentle Reminders



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- ✓ If possible, join from a quiet, distraction-free area
- ✓ Ensure your audio and video are working
- ✓ Put your microphone on mute when you are not speaking
- ✓ Virtually raise your hand on the Zoom feature to raise a point or question
- ✓ Be respectful to other joining participants
- ✓ Be conscious of time as per the agreed agenda



AGENDA



SAFEGUARD POLICY REVIEW AND UPDATE

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1. **Introduction** (5mins)
Azim Manji, Session Moderator and Stakeholder Engagement Team Leader
2. **Session 1:** Welcome and Overview of the Safeguard Policy Statement (2009) (10mins)
Bruce Dunn, Director, Safeguards Division (SDSS), SDCC
3. **Session 2:** Presentations on ADB Indigenous Peoples Safeguards
 - **Part 1:** Overview of ADB Indigenous Peoples Safeguards (10 minutes)
Tulsi Bisht, Senior Social Development Specialist
 - **Part 2:** Summary of Analytical Study (15 minutes)
Sam Johnston, ADB Consultant
4. **Session 3:** Moderated Discussion (75 minutes)
Moderated by Jelson Garcia, Senior Stakeholder Engagement Specialist
5. **Event Evaluation** (5 minutes)
6. **Wrap up** (5 minutes)
Bruce Dunn

Session I: Welcome and Overview of the Safeguard Policy Statement (2009)

Bruce Dunn, Director, Safeguards Division



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ADB Safeguards Policy Statement, 2009 (SPS): Overview

Three Policy Objectives

1 Avoid adverse impacts of projects on the environment and affected people, where possible;

2 Minimize, mitigate, and/or compensate for adverse project impacts on the environment and affected people when avoidance is not possible

3 Help borrowers/clients to strengthen their **safeguard systems** and develop the **capacity** to manage environmental and social risks.

Scope and Architecture

- **Approved July 2009**, effective March 2010, 11 years of implementation experience
- **Scope:** 3 main policy areas: Environment (ENV), Involuntary Resettlement (IR), and Indigenous Peoples (IP)
- **Architecture:**
 - One umbrella policy statement. 3 sets of policy principles.
 - Borrower requirements for each of the 3 policy areas (Appendices 1-3)
 - Requirements for different finance modalities – e.g. sector loans, emergency assistance, policy-based lending, financial intermediaries, corporate finance. No coverage of results-based lending (Appendix 4)
 - Prohibited Investment Activities List (Appendix 5)
 - Strengthening and Use of Country Safeguard Systems (Appendix 6)

ADB Safeguard Policy Update

Rationale and Approach

- **ADB Safeguard Policy Statement, (SPS) 2009** – more than a decade old
- **Changing development trends and client needs in Asia-Pacific**
- **Need to increase focus on risks and vulnerabilities** (e.g., Public health, climate change, biodiversity, labor issues, gender, vulnerable and disadvantaged groups, sexual exploitation, abuse and harassment risks, civil society space)
- **Financing modalities evolving** (e.g., Private sector lending, results-based lending, financial intermediaries, equity investments, bond markets etc.)
- **Consideration of country context:** (e.g. working in fragile and conflict affected situations and small island developing states)
- **Policy gaps between ADB SPS and other multilateral financing institutions** and opportunities for increased convergence
- **Need to strengthen implementation, oversight and capacity support**

Update informed by ADB Independent Evaluation Department (IED)

[Corporate Evaluation of the Effectiveness of 2009 Safeguard Policy Statement \(May 2020\)](#)

Independent Evaluation Department (IED): Corporate Evaluation of Effectiveness of the 2009 Safeguard Policy Statement

KEY FINDINGS:

- **Overall performance** of projects
 - Preparation stage of safeguards satisfactory,
 - Implementation, capacity and effectiveness needs attention
- **Environment and Involuntary Resettlement** were satisfactory.
- **Limited integration** between environment and social safeguards
- **Results for Indigenous People (IP)** were less than satisfactory and limited.
 - Tendency to avoidance of projects in areas where IPs live,
 - Issues with the triggering of the IP safeguards, when IPs considered to be “mainstreamed”
 - Mitigation and management planning often reduced impacts associated with involuntary resettlement.



Source: IED, 2020. [Corporate Evaluation of Effectiveness of the 2009 Safeguard Policy Statement](#)

Safeguards Policy Review and Update (SPRU)

Approach and Methodology

Policy update time frame: 2.5 years - August 2020 to March 2023

Implementation phases:

- 1. Policy update planning** (August 2020 - June 2021):
 - [Background Information Paper](#) (November 2020).
 - [Stakeholder Engagement Plan](#) (April 2021, updated July 2021)
 - [Preliminary information sessions](#) and outreach (May-July 2021)
- 2. Analytical Studies** (December 2020 – June 2022):
 - Policy architecture, benchmarking standards / thematic issues
 - Review implementation experience
- 3. Policy preparation** (April 2022 - March 2023):
 - Working paper for ADB Board consideration (October 2022)
 - Final ADB Board approval (March 2023)
- 4. Policy roll out** (2023-2024):
 - Implementation guidance, staff instructions, good practice notes,
 - Training and capacity building for staff and clients

Stakeholder
Engagement &
Consultation



Session 2 Part I: Overview of ADB Indigenous Peoples Safeguards

Tulsi Bisht, Senior Social Development Specialist
Sustainable Development and Climate Change Department (SDCC)

Sam Johnston, ADB Consultant



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Safeguards Requirement 3 (SR3): Indigenous Peoples

Objectives of Indigenous Peoples Safeguard:

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 Indigenous Peoples themselves so that they (i) receive culturally appropriate social and economic benefits, (ii) do not suffer adverse impacts as a result of projects, and (iii) can participate actively in projects that affect them.

Application of Indigenous Peoples Safeguard:

Apply to all ADB-financed and or ADB-administered sovereign and non-sovereign projects. The requirement also applies to actions conducted in anticipation of ADB financing of projects.

Safeguards Requirement 3 (SR3): Indigenous Peoples

Indigenous Peoples Identification Criteria:

- The term Indigenous Peoples is used in a generic sense to refer to distinct, vulnerable, social and cultural group possessing in varying degree four characteristics (i) self-identification as a distinct group that is also recognised by others; (ii) collective attachment to distinct habitats or ancestral territories; (iii) separate and customary cultural, economic, social or political institution; and (iv) distinct language.

Indigenous Peoples Safeguard Triggers:

- Triggered if a project directly or indirectly affects the dignity, human rights, livelihood systems, or culture of Indigenous Peoples or affects the territories or natural or cultural resources that Indigenous Peoples own, use, occupy, or claim as their ancestral domain.
- Triggers include both Negative & Positive impacts.

Safeguards Requirement 3 (SR3): Indigenous Peoples

Indigenous Peoples Safeguard Requirements:

- Screening and Categorization of projects based on impact significance
- Conducting Social Impact Assessment (SIA)
- Ensuring Consultation, Participation & Information Disclosure
- Preparing and Implementing Indigenous Peoples Plan (IPP)
- Outlining Beneficial and Mitigative Measures
- Setting up Grievance Redress Mechanism
- Capacity Building of the Borrowers where required.
- Institutional Arrangements and Budgeting for IPP Implementation
- Undertaking Monitoring & Reporting on IPP Implementation

Safeguards Requirement 3 (SR3): Indigenous Peoples

Broad Community Support (BCS):

SPS requires projects to seek Broad Community Support (BCS) from the project affected Indigenous communities where the project activities include

- (i) commercial development of cultural resources and knowledge of IP;
- (ii) physical displacement from traditional or customary lands; and
- (iii) commercial development of natural resources within customary land.

Requirements to seek BCS and its documentation are laid out in SR 3.

- ADB reviews the documentation of the BCS process to satisfy itself of the BCS for a project.
- ADB conducts its own due-diligence to assure itself of existence of BCS.
- ADB does not finance the project if such support does not exist.

Safeguards Requirement 3 (SR3): Indigenous Peoples

IED Report Outcomes on IP Safeguard Implementation

- Indigenous Peoples outcomes have been less than satisfactory;
- Emphasis on avoiding areas where Indigenous Peoples live;
- Mainstreaming Indigenous Peoples communities;
- Indigenous Peoples issues are narrowed to resettlement aspects;
- Borrowers' reluctance to implement IP safeguard requirements;
- Planning documents lack adequate social impact assessment;
- Information disclosure is a concern;
- Limited use of the IP safeguard requirements, despite the presence of IPs in many project locations;
- Significant drop in the share of projects triggering IP safeguards since SPS approval

Session 2 Part 2: ADB Indigenous Peoples Safeguards: Summary of Analytical Study

Sam Johnston, ADB Consultant



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Analytical Study Objective:

- Study objective is to provide informed recommendations for the update of IP Safeguards.

Analytical Study Methodology:

- Desk based document review - IED Report and ADB Management Response, project documents related to IP safeguards such as selected Indigenous Peoples Plans (IPPs), Monitoring Reports and relevant reports from ADB Accountability Mechanism
- Benchmarking with other MFI polices - Comparative analysis with AIIB, AfDB, EBRD, EIB, IDB, IFC, NDB, World Bank
- Stakeholder consultations - ADB staff, developing member countries (DMCs), Private Sector clients and organizations, civil society organisations, Indigenous Peoples and IP Organizations (IPO) and Representatives

Implementation of ADB's IP Policy

- The diversity of IPs in Asia and the Pacific has required different approaches to using and implementing SR3
- Common challenges
 - **Identification of IPs**
 - Complex and need further clarification
 - **Vulnerability as a criterion to trigger IP policy**
 - Helps focus on those who need help but causes misalignment with MFIs
 - **Conflating involuntary resettlement impacts with SR3 specific impacts on IPs**
 - Results in involuntary resettlement issues getting priority over the SR3 impacts
 - **IP safeguard is complex**
 - Rigorous and distinct requirements and takes longer to prepare and implement projects
 - **Resource constraints**
 - Monetary resources, time and skills in ADB, DMCs, IPOs and clients
 - **Need for a robust and culturally sensitive Social Impacts Assessment**
 - **Alignment with other multilateral finance institutions (MFI) on IP policies**



Findings of Benchmarking of ADB IP Safeguards with MFIs

Objective: The objective of benchmarking is to compare the IP safeguards of ADB with those of other MFIs to assess the extent of harmonization and alignment with each other.

- **General structure** – ADB has its overarching statement, objectives and principles for three safeguards separate from the safeguard delivery requirements; while majority of the MFIs have structured IP safeguards in an integrated manner under one standard or framework.
- **IP Policy Objectives** - ADB shares with other MFIs the objectives of avoiding and minimizing the potential adverse impacts on IP. Some MFIs have more detailed objectives such as FPIC, support for women, girls and other groups within IP communities.
- **IP Policy Scope of Application & Triggers** - SPS shares the criterion of 'distinctiveness' based on four characteristics similar to other MFIs in the process of IP identification. There is a marked difference in ADB's approach that requires social groups to be 'vulnerable' too. Other MFIs like IFC, WB only require 'distinctiveness'.

Findings of Benchmarking of ADB IP Safeguards with MFIs

- **Scope of the standard - IPs only or IPs and Vulnerable People** – differences exist as ADB policy refers only to IP based on identification criteria; some MFIs have broadened the scope of IP safeguard to include other vulnerable groups.
- **Social Impact Assessment (SIA)** - ADB has similar requirements of conduct of SIA. Other MFIs (IFC, WB, EBRD) require an integrated approach to environment and social impact assessment (ESIA), while ADB requires separate SIA and EIA.
- **Stakeholder Engagement (Information Disclosure & Consultation)** - ADB shares the meaningful consultation and disclosure requirement with other MFIs. One difference is some comparator MFIs (WB, EBRD, IDB) have separate standard for stakeholder engagement that ADB does not have.

Findings of Benchmarking of ADB IP Safeguards with MFIs

- **Roles and responsibilities** – Provisions defining roles and responsibilities of both borrower and the MFI are similar across the institutions.
- **Special Requirements (Broad Community Support vs Free Prior and Informed Consent)** - there is a divergence as ADB requires seeking BCS, other MFIs such as EBRD, EIB, WB, IFC, IDB have adopted FPIC.
- **Relationship Between National and International Standards** - ADB requires a gap assessment between SPS requirements and national safeguard policies and identified gaps need to be addressed to comply with ADB requirements. Some MFIs such as IFC, IDB have similar requirements, while WB does not have such specific references.
- **Grievance Redress Mechanism** - All MFIs including ADB have requirements related to GRM. Some MFIs such as EBRD, IFC, IDB have more details on GRM requirements. All MFIs require early establishment, accessibility, impartiality and transparency in GRM.

Findings of Benchmarking of ADB IP Safeguards with MFIs

- **Promoting Benefits and Wellbeing of IPs** - All MFIs share the objective that IP benefit from development interventions in a culturally appropriate way. ADB has a provision where borrowers can request financial assistance for specific activities to help achieve this objective. WB has a similar approach where IP themselves can seek support for various initiatives.
- **Monitoring, Reporting and Institutional Support** – All MFIs share the requirement of monitoring and reporting. ADB requirements are similar in detail compared to other MFIs including the requirement of engaging 'qualified and experienced external expert/NGO. Though MFIs require assessment of borrowers' capacity and commitment, not all provide for implementation support, while ADB does offer capacity building support.
- **Voluntary Isolation** - ADB does not have any requirement for IP's living remotely or in voluntary isolation, MFIs like WB, IFC, IDB, EBRD have such requirements.

Key issues for further consideration

A - Developing clarity for technical terms, concepts and safeguard requirements:

- Clarity for technical terms
- Clarity for 'positive impacts' as an IP safeguard trigger

B - IP identification and triggers:

- 'Distinctiveness' alone or both 'distinct' and 'vulnerable'
- Non-tangible triggers such as 'dignity', 'human rights', 'culture' and assessment procedures and tools

Key issues for further consideration

C - Improving SR3 requirements and processes:

- Improving SIA to assess IP impacts (tangible/non-tangible)
- Developing IP specific mitigation measures
- Improving consultation procedures
- Making GRM more inclusive
- Monitoring and reporting systems to include non-tangible indicators
- Promoting capacity building for ADB staff and borrowers

D - Additional requirements:

- Approaches to address political sensitivities of SR3 implementation
- Further consultations for adopting FPIC or continue with BCS

Session 3: Moderated Discussion

Moderator: Jelson Garcia, Stakeholder Engagement Specialist
Consultations for Safeguard Policy Review



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Round 1

1. Please share any perspectives or recommendations for improving ADB safeguard policy and implementation.

Round 2

1. How can MFI safeguard policies support better projects and development outcomes?
2. Are there challenges with legal and regulatory frameworks and implementation capacities? How can these be addressed?
3. How can we ensure that IPs more effectively participate in projects that affect them?



Wrap Up and Synthesis

Bruce Dunn, Director, Safeguards Division



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your feedback and
suggestions



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