



Building Country Safeguard Systems

## Briefing Note No. 2

# Strengthening Country Safeguard Systems for Effective Environmental Management



Country safeguard systems are composed of the policies, practices, legal frameworks, and institutions that a country puts in place in order to avoid, minimize, or mitigate potentially harmful environmental and social impacts of development activities. All developing member countries have safeguard systems which meet ADB requirements to some degree.

The 2009 Safeguard Policy Statement of the Asian Development Bank calls for strengthening country safeguard systems as an objective in itself, to ensure that such systems achieve the benchmarks set by international good practices.

Environmental safeguards first emerged as a response to the adverse impacts that rapid growth and development was having on natural resources. Countries and multilateral financial institutions (MFIs) alike recognized the need to establish and implement legal and administrative frameworks that would assess potential risks and manage the impacts of development projects on the environment.

The environmental impact assessment (EIA) process was first developed as part of the 1969 National Environmental Policy Act of the United States, which later influenced the introduction of EIA policies in many countries in Europe and Asia.<sup>1</sup> Other countries soon followed suit in developing their own environmental policies to manage the environmental risks and impacts of development projects.

The table summarizes the introduction of the EIA system in several developing member countries (DMCs) of the Asian Development Bank (ADB).

<sup>1</sup> Overseas Environmental Cooperation Center. 2000. *Environmental Impact Assessment for International Cooperation: Furthering the Understanding of Environmental Impact Assessment Systems for Experts Engaged in International Cooperation Activities*. Environment Agency, Government of Japan. [https://www.env.go.jp/earth/coop/coop/document/eia\\_e/10-eiae.pdf](https://www.env.go.jp/earth/coop/coop/document/eia_e/10-eiae.pdf)



# Introduction of Environmental Impact Assessment in Asia and the Pacific

Bangladesh	No specific EIA legislation, but a Declaration that EIAs should be carried out for all major development projects, 1995
The People's Republic of China	Environmental Protection Law, 1979 (trial); 1989 (nontrial)
India	Notifications dated 5 May 1994 under the Environment Protection Act, 1986
Malaysia	Environmental Quality (Prescribed Activity) (EIA) Order, 1987
The Philippines	Presidential Decree (PD) 1151 Philippines Environment Policy, 1975 PD 1586 Establishing the Environmental Impact Statement (EIS), 1978 Rules and Regulations to Implement the EIS System, 1987
Sri Lanka	National Environmental Act, 1980, amended in 1986
Thailand	Improvement and Conservation of National Environmental Quality Act 1975, amended in 1978
Viet Nam	Environmental Protection Law, 1994

EIA = environmental impact assessment.

Source: V. Kulkarni and T. V. Ramachandra. 2006. *Environmental Management*. TERI Press, India.

## Environmental Safeguards in Multilateral Financial Institutions

Alongside the development of environmental policies in many countries worldwide were the efforts of international organizations in establishing, developing, and further refining environmental safeguards among MFIs.

ADB's initial environmental guidelines were published in 1981, at a time when many other MFIs were beginning to develop approaches to manage the adverse impacts on the environment brought about by activities they supported. The World Bank, for example, adopted its environmental policy and procedures in 1984, which required the integration of environmental considerations in the initial stages of project preparation. Revised versions of its environmental policy came out in 1991, 1999, and 2013. The World Bank policy required environmental assessment of all projects proposed for financing to help ensure that they were environmentally sound and sustainable, and to consequently improve decision making.<sup>2</sup> In 2012, the World Bank began the process of updating its environmental and social framework and launched a third round of consultations on the draft text in August 2015.

ADB adopted its Environment Policy in 2002. This was replaced in 2009 by the present Safeguard Policy Statement (SPS). The SPS brings together ADB's three distinct safeguards on environment, involuntary resettlement, and Indigenous Peoples into one comprehensive framework. The environmental safeguards aim to ensure the environmental soundness and sustainability of projects and support the integration of environmental considerations into the project decision-making process.<sup>3</sup> The SPS environmental safeguard requirements apply to all ADB-financed projects and are based on a set of policy principles (figure).

The SPS highlights strengthening the environmental and social safeguards of DMCs as a development objective in itself. It also paves the way for the application of CSS to ADB-financed projects in lieu of the SPS requirements. Doing so can reduce transaction costs, enhance country ownership, and help ensure the long-term sustainability of development activities. However, use of CSS is neither automatic nor mandatory, and requires assessment of equivalence and acceptability.<sup>4</sup> ADB deems a borrower's CSS equivalent if they are designed to achieve the same objectives and adhere to the policy scope, triggers, and applicable principles set out in the SPS. ADB assesses the acceptability of the borrower's implementation practice, enforcement capacity, track record, management systems, and human resources. ADB undertakes both assessments before deciding on the use of the borrower's CSS.

<sup>2</sup> World Bank. 2013. Operational Policy 4.01: Environmental Assessment. <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOP-MANUAL/0,,contentMDK:20064724~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

<sup>3</sup> ADB. 2009. *Safeguard Policy Statement*. Manila. <http://www.adb.org/documents/safeguard-policy-statement>

<sup>4</sup> Footnote 3, p. 24.

# Environmental Safeguards Policy Principles

**1** SCREEN EARLY on to determine extent and type of environmental assessment suitable to potential environmental impacts and risks

**2** Conduct ENVIRONMENTAL ASSESSMENT to identify potential impacts and risks including transboundary and global as well as climate change

**3** EXAMINE ALTERNATIVES to location, design, technology, and components including their potential impacts and risks

**4** Avoid, minimize, mitigate and/or offset adverse impact by preparing an ENVIRONMENTAL MANAGEMENT PLAN

**5** Undertake MEANINGFUL CONSULTATIONS with affected people and facilitate their informed participation and establish a GRIEVANCE REDRESS MECHANISM

**6** DISCLOSE DRAFT ENVIRONMENTAL ASSESSMENT prior to project appraisal, in an accessible location, and form or language understandable to affected people

**7** IMPLEMENT the Environmental Management Plan and MONITOR its effectiveness

**8** Avoid implementing projects in CRITICAL HABITATS except in very specific situations and if certain conditions are met

**9** APPLY POLLUTION PREVENTION and CONTROL TECHNOLOGIES and PRACTICES consistent with international good practices

**10** Ensure HEALTH and SAFETY of workers' and the local communities'

**11** CONSERVE and AVOID DAMAGE to physical cultural resources

Source: ADB. 2009. *Safeguard Policy Statement*. Manila.



## Environmental Safeguards in Developing Member Countries

Recognizing that the development of CSS is a continual process, many DMCs undertake to improve their environmental safeguard requirements, two examples of which are discussed below.

### The People's Republic of China

The People's Republic of China (PRC) adopted the trial implementation of its Environmental Protection Law (EPL) in 1979. The initial provisions of this law included, among others, EIA, the principle of environmental liability and a related pollution charging system. In 1989, a nontrial EPL was promulgated. The new law set out general principles for environmental protection and described key instruments for environmental management. Under the 1989 EPL, EIA must be conducted for proposed projects and compliance with applicable environmental standards is required.

Since then, the environmental regulatory framework in the PRC has expanded with the enactment of at least 24 new laws on environmental protection, including a separate law on EIA in 2002.<sup>5</sup> From 2000 to 2004, the PRC amended several existing laws, including the Air, Water, and Waste Management laws. In general, the amendments highlighted a preventive approach and imposed a stricter response to noncompliance. The PRC also revised its EPL in 2001, which required public authorities to hold public hearings involving potentially affected parties. A new version of the EPL was subsequently approved in 2014. The revised law retained the obligation to conduct EIAs, required that these be made public, and set fines for violating the disclosure requirements.<sup>6</sup>

Gaps in enforcement of the PRC's environmental laws, however, lead to noncompliance. The five most common offences are: failure to comply with EIA requirements,

noncompliance with environmental standards and failure to pay pollution charges, operating without necessary environmental permits, engaging in hazardous waste disposal without a required permit, and pollution releases to air and water as a result of industrial accidents.<sup>7</sup> A 2010 ADB study recommended a gradual approach to improving the PRC's system, which includes focusing on short-term management and technological innovation, and enhancing the efficiency of law enforcement.<sup>8</sup>

### Indonesia

Indonesia officially introduced its EIA<sup>9</sup> system in 1986 through Government Regulation No. 29.<sup>10</sup> Since then, it has been implementing and enhancing its Country Environmental Safeguard System (C[E]SS) which requires an environmental management and monitoring report<sup>11</sup> and adds the obligation for companies to secure an environmental permit. The system is tested and found to be robust.

<sup>5</sup> Organisation for Economic Co-operation and Development. 2006. *Environmental Compliance and Enforcement in China: An Assessment of Current Practices and Ways Forward*. <http://www.oecd.org/env/outreach/37867511.pdf>

<sup>6</sup> T. Yang. 2014. *The 2014 Revisions of China's Environmental Protection Law*. Swiss Re Centre for Global Dialogue. 16 October. [http://cgd.swissre.com/features/The\\_2014\\_Revisions\\_of\\_Chinas\\_Environmental\\_Protection\\_Law.html](http://cgd.swissre.com/features/The_2014_Revisions_of_Chinas_Environmental_Protection_Law.html)

<sup>7</sup> Footnote 5, p.26.

<sup>8</sup> ADB. 2012. *Technical Assistance Completion Report: Strengthening Enforcement of Environmental Laws and Regulations in the People's Republic of China*. Manila. <http://www.adb.org/sites/default/files/project-document/73978/43056-012-prc-tcr.pdf>

<sup>9</sup> Analisis Mengenai Dampak Lingkungan (AMDAL).

<sup>10</sup> ADB. 2012. *Country Safeguard Systems Regional Workshop Proceedings: Towards Common Approaches and Better Results*. Manila. <http://hdl.handle.net/11540/2926>

<sup>11</sup> Upaya Pengelolaan Lingkungan Hidup dan Upaya Pemantauan Lingkungan Hidup (UKL-UPL).





Although the C(E)SS has been strengthened in recent years, Indonesia needs to do the following to align it fully with international good practices and make it an acceptable alternative to ADB's environmental safeguard requirements:

(i) further strengthen the EIA and environmental permit system, (ii) integrate EIA and environmental permit into sectoral project cycles and permitting procedures, (iii) improve the EIA certification system and accreditation of EIA consultants, (iv) strengthen the technical capacity for EIA review and the technical pool of experts, and (v) develop an EIA knowledge management network and EIA information systems.<sup>12</sup>

<sup>12</sup> ADB. 2014. *Country Safeguard Systems Second Regional Workshop Proceedings: Towards Common Approaches and Better Results*. Manila. <http://www.adb.org/publications/country-safeguard-systems-second-regional-workshop-proceedings>



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