



Building Country Safeguard Systems

Briefing Note No. 4

Safeguarding Indigenous Peoples through Strengthening Country Safeguard Systems



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.

It is estimated that there are over 300 million Indigenous Peoples in the world.¹ They are among the world's poorest, representing a third of the global population living in poverty. About 70% of the global Indigenous Peoples population are found in Asia and the Pacific. Many face lack of recognition of their cultural identity, exclusion, and marginalization,² as well as threats brought about by rapid industrialization, urbanization, and development. In India, for example, of the more than 60 million people displaced from 1947 to 2004 by land acquisition, at least 60% were Indigenous Peoples.³

International development institutions, including the Asian Development Bank (ADB), have recognized the need to protect the diverse customary tenure and sustainable production systems upon which Indigenous Peoples' livelihoods depend.⁴ In 2007, the United Nations issued a Declaration on the Rights of Indigenous Peoples (UNDRIP), based on the principle of free, prior, and informed consent. Figure 1 illustrates policy developments in Indigenous Peoples safeguards prior to UNDRIP and afterward in various international bodies, including ADB. ADB came out with its first Policy on Indigenous Peoples in 1998. It outlined ADB's commitment and approach to recognizing the circumstances of Indigenous Peoples and ensuring that they participate in and benefit equally from development.

Safeguarding the Rights and Welfare of Indigenous Peoples

In 2009, ADB approved the Safeguard Policy Statement (SPS) which is the comprehensive articulation of ADB's safeguard policies in three areas: environment, involuntary resettlement, and Indigenous Peoples. The Indigenous Peoples Safeguards of the SPS aim to ensure that projects are designed and implemented in a way that respects the identity, dignity, human rights, livelihood systems, and cultural uniqueness of Indigenous Peoples as defined by the Indigenous Peoples themselves. This is to help ensure that indigenous communities can actively participate in and receive culturally appropriate social and economic benefits from development projects, and do not suffer adverse impacts from them. Borrowers and clients must follow ADB's specific set of requirements⁵ as well as the host country's environmental and social laws. The countries in Asia and the Pacific vary greatly in terms of history, cultures, ideologies, economic resources, demography, and political and

¹ ADB. 2008. *Technical Assistance for Targeted Capacity Building for Mainstreaming Indigenous Peoples Concerns in Development*. Manila. <http://www.adb.org/projects/39356-012/main#project-overview>

² United Nations. 2014. *Indigenous Peoples in the Asian Region*. Thirteenth Session of the UN Permanent Forum on Indigenous Issues. 15 May. <http://www.un.org/esa/socdev/unpfii/documents/2014/press/asia.pdf>

³ ADB. 2015. *Country Safeguard Systems: Second Regional Workshop Proceedings*. Manila. p. 4. <http://www.adb.org/publications/country-safeguard-systems-second-regional-workshop-proceedings>

⁴ United Nations Inter-Agency Support Group on Indigenous Issues. 2014. *Lands, Territories and Resources*. Thematic paper toward the preparation of the 2014 World Conference on Indigenous Peoples. http://www.un.org/en/ga/president/68/pdf/wcip/IASG_Thematic%20paper_Lands,%20territories%20and%20resources.pdf

⁵ ADB. 2009. *Safeguard Policy Statement*. Manila. <http://www.adb.org/documents/safeguard-policy-statement>

institutional frameworks, making it challenging to apply the Indigenous Peoples safeguards. Legal and policy frameworks for Indigenous Peoples, and even the definitions in many countries, are seldom aligned with ADB's policy.

Experience with policy implementation has been mixed and key challenges remain, including the following: (i) recognition of Indigenous Peoples' cultural identity and rights to their ancestral lands and resources, (ii) fair sharing of development benefits among affected indigenous communities and the rest of society, and (iii) meaningful and culturally appropriate consultation with indigenous communities in planning and implementing projects that are likely to affect their lives.⁶

These complex social realities in the region make it impracticable to come up with a single, all-encompassing definition of Indigenous Peoples. The SPS seeks to overcome this difficulty by providing a set of characteristics that a group of people must possess to be identified as Indigenous Peoples for purposes of policy application in the context of ADB projects (see right panel). Safeguards are triggered if a project directly or indirectly affects Indigenous Peoples' dignity, human rights, livelihood systems, culture, and territories, or natural or cultural resources that they own, use, or occupy. Figure 2 summarizes the Indigenous Peoples safeguard policy principles of the SPS.

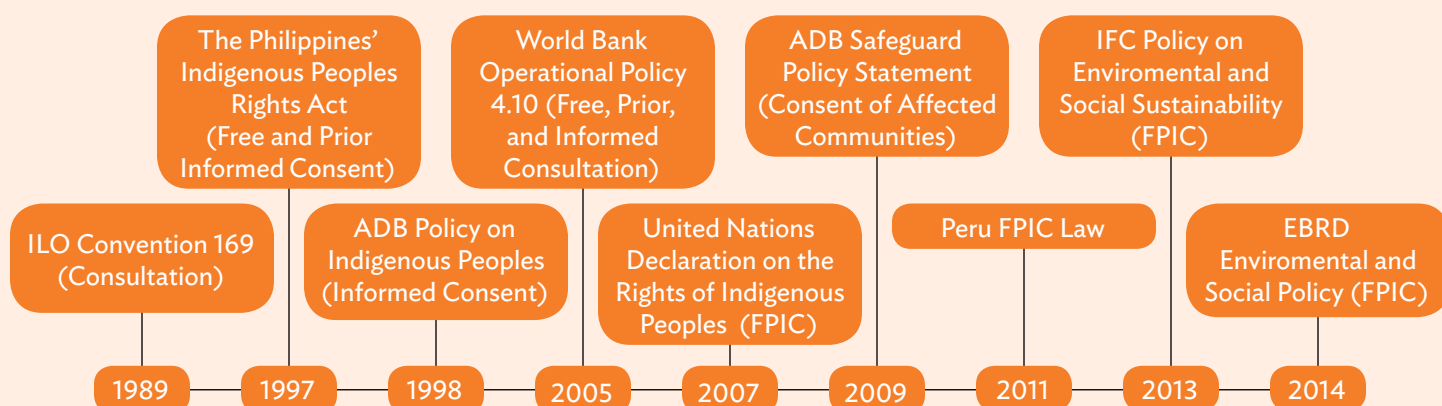
Strengthening Country Systems in Indigenous Peoples Safeguards

Apart from ensuring that environmental and social (involuntary resettlement and Indigenous Peoples) safeguards are integrated in every project, ADB also helps its developing member countries (DMCs) strengthen and effectively implement their country safeguard systems (CSS) and build their capacity to address environmental and social issues in development projects by providing technical assistance.

Developing CSS capacity among DMCs paves the way for the application of CSS in ADB-financed projects in lieu of SPS requirements. Use of CSS can reduce transaction costs, enhance country ownership, and help ensure the long-term sustainability of development activities. This is neither automatic nor mandatory and must depend on results of assessments to determine that the DMC's legal framework is equivalent to SPS requirements and that their agencies have acceptable capacity and a good track record.

⁶ Footnote 5.

Figure 1: Selected Milestones in Support of Indigenous Peoples' Free, Prior, and Informed Consent



ADB and other multilateral financial institutions (MFIs) have been at the forefront of developing and applying Indigenous Peoples safeguards in development projects affecting them. In the context of implementing its 1998 Policy on Indigenous Peoples, ADB engaged in an extensive policy dialogue with its borrowers and clients. ADB's technical assistance (TA) to DMCs for raising awareness on and developing domestic capacity to address project impacts on Indigenous Peoples goes back to 2001 through a TA on Targeted Capacity Building for Mainstreaming Indigenous Peoples Concerns in Development in Cambodia, Indonesia, the Philippines, and Viet Nam.⁷ This first regional TA was endorsed by the First Indigenous Peoples Forum held in Thailand in conjunction with the 33rd Annual Meeting of ADB Governors. A second regional TA was approved in 2008 which focused on three DMCs: Bangladesh, the People's Republic of China (PRC), and the Philippines.⁸

Following the approval of the SPS in 2009, ADB approved the TA for Strengthening and Use of Country Safeguard Systems to provide support to DMCs in the three safeguard areas of the SPS.⁹ Despite the availability of resources, there have been very few requests to work on strengthening Indigenous Peoples safeguards, which may reflect limited demand and action from DMCs.¹⁰

Identifying Indigenous Peoples under the Asian Development Bank's Safeguard Policy Statement

For policy application purposes, "Indigenous Peoples" is used in a generic sense to refer to a distinct, vulnerable, social, and cultural group possessing the following four characteristics in varying degrees:

- (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;
- (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;
- (iii) customary, cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
- (iv) a distinct language, often different from the official language of the country or region.

Source: ADB. 2013. *Indigenous Peoples Safeguards: A Planning and Implementation Good Practice Sourcebook*. Manila.

⁷ ADB. 2001. *Technical Assistance for Capacity Building for Indigenous Peoples/Ethnic Minority Issues and Poverty Reduction*. Manila.

⁸ Footnote 1.

⁹ ADB. 2010. *Technical Assistance on Strengthening and Use of Country Safeguard Systems*. Manila.

¹⁰ Footnote 3, pp. 11–12.



Figure 2: Indigenous Peoples Safeguards Policy Principles

- 1** SCREEN early on to determine if project will affect Indigenous Peoples communities
- 2** ASSESS potential social project impacts & IDENTIFY expected benefits to Indigenous Peoples communities
- 3** Undertake MEANINGFUL CONSULTATIONS with affected Indigenous Peoples communities
- 4** Obtain CONSENT of affected Indigenous Peoples communities for certain project activities
- 5** Avoid RESTRICTED ACCESS to or PHYSICAL DISPLACEMENT from protected areas and natural resources
- 6** Prepare an INDIGENOUS PEOPLES PLAN (IPP)
- 7** DISCLOSE draft IPP
- 8** Prepare ACTION PLAN for legal recognition of customary rights to lands & territories or ancestral domains
- 9** MONITOR IPP implementation

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

Opportunities remain to strengthen CSS for Indigenous Peoples by improving DMC capacity to implement projects affecting them. Through the Joint Safeguards Community of Practitioners,¹¹ ADB is helping the Philippines and Viet Nam design and deliver training on Indigenous Peoples. ADB and the World Bank conducted a training of trainers workshop on ethnic minorities and Indigenous Peoples in Da Nang, Viet Nam, in November 2015. Twenty-one Viet Nam national safeguard practitioners, including

Project Management Unit staff, community organizers, representatives from nongovernment organizations, and national consultants trained in Indigenous Peoples safeguards, attended the workshop. Another Indigenous Peoples safeguards workshop was held in March 2016 in Davao, Philippines. Forty-eight practitioners from Philippine government line agencies, private companies in the energy, agriculture, and transport sectors, project implementation units, and consultants participated in the

workshop. Integrated into the training design are field visits to actual project sites that are expected to enhance the trainees' learning experience. Activities such as these help build in-country capacity to address impacts on indigenous communities and contribute to the necessary creation of a more enabling environment for recognizing Indigenous Peoples' participation in development in the region.

ADB is conducting equivalence assessments on the country policies and regulations of DMCs for safeguarding Indigenous Peoples. The preliminary results indicate that because of the landmark 1997 Indigenous Peoples Rights Act, the Philippine legal framework is the closest to the policy principles of the SPS: the framework is fully equivalent in four of the nine Indigenous Peoples safeguard policy principles, and partially equivalent in the remaining five. In comparison, other DMC assessments show significant gaps in Indigenous Peoples safeguards, including in the fundamental principles of meaningful consultation and consent.

Maximizing Benefits for Ethnic Minority Communities

Yunnan Province in the People's Republic of China (PRC) has an ethnic minority population of 14 million, one-third of the province's population. ADB's railway project in northwestern Yunnan¹² links the historic towns of Dali and Lijiang through a 167-kilometer single-track railway between the two cities and the expansion of the existing Guangton–

Dali railway line in anticipation of an increase in traffic. The railway project would bring about socioeconomic and cultural impacts on the local populations of Dali and Lijiang.

Ethnic minorities comprise 73% of the 1.1 million people who will directly benefit from and will be affected by the railway project. Of the 1.7 million people in the neighboring areas who are likely to benefit from induced project impacts and outcomes, about 70% are also ethnic minorities.

The project recognized considerable variations in the conditions of the different ethnic minority groups in Yunnan Province. Separate assessments were conducted to determine each group's overall economic situation, poverty level, markets and market access, transport accessibility, nonfarm skills and migrant work, landholding, and health and education. A vulnerability assessment determined that both the project area and the areas surrounding it have rich cultural resources that are vulnerable to economic development. It was considered important to prevent rapid urbanization and development from eroding the ethnic groups' cultural heritage and traditions.

The executing and implementing agencies worked with the Ethnic Affairs Commission to develop a plan for securing the consent of ethnic minorities. Consultations were carried out through village-wide meetings and household visits in the communities' local languages to ensure that local people could understand the information and express their concerns. The consultations caused planning modifications on the railway route, which demonstrated the project's respect for and willingness to address the villagers' concerns. Part of the railway was positioned in an area that was less populated, had poorer residents, and was visited by fewer tourists than another potential location, thereby promoting social equality.

¹¹ The Joint Safeguards Community of Practitioners was established in 2012 jointly by ADB, the Department of Foreign Affairs and Trade of Australia, the Japan International Cooperation Agency, and the World Bank.

¹² ADB. 2011. *Applying Ethnic Minorities in Transport Projects in the People's Republic of China, A Learning Process from Yunnan Province*. Consultant's report. Manila.



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