

# ADB Safeguard Policy Review Update – Phase 2 Regional Consultation Summary: Indigenous Peoples Consultations

22-24 November 2021

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## I. BACKGROUND

1. The Asian Development Bank (ADB) is undertaking a comprehensive review and update of its 2009 Safeguard Policy Statement (SPS).<sup>1</sup> The update process has been initiated by ADB Management following a Corporate Evaluation of the SPS by ADB's Independent Evaluation Department (IED), completed in May 2020 (IED Report).<sup>2</sup> The update will be based on the findings and recommendations of the IED report, which ADB Management has endorsed. Overall, the policy update will seek to strengthen safeguard implementation effectiveness and efficiency, in ways that will enhance beneficial safeguards outcomes for the environment and affected people.

2. The revised safeguard policy is expected to be ready for ADB Board consideration in 2024, following a process of reviews, policy development and meaningful stakeholder engagement. As part of this process, ADB is conducting a series of brief analytical studies, which will benchmark ADB's current SPS against the policies of selected multilateral financial institutions (MFIs) and will include consultations with and recommendations from both internal and external stakeholders. The studies will inform the development of the new safeguard policy and will be disclosed on the safeguard policy review and update (SPRU) website.<sup>3</sup> Stakeholder engagement and consultation has three main phases: Phase I - preliminary information and outreach on the overall approach for the policy update and stakeholder engagement plan; Phase II - consultation on the analytical studies; and Phase III - consultation on the draft policy paper. The objective of Phase II consultations is to obtain a better understanding of the views of stakeholders on safeguards implementation challenges and good practices, as well as recommended policy directions. This document provides a summary of the consultations for the analytical study on Indigenous Peoples (IPs) safeguards.

## II. PROCEEDINGS

3. The online regional consultations for the IPs' safeguards were conducted on 22-24 November 2021. Five sessions were organized in different time zones to allow participation of ADB's developing member countries (DMCs), other ADB regional and non-regional members, as well as civil society organizations (CSOs) and non-governmental stakeholders.<sup>4</sup> A total of 90 non-ADB stakeholders participated in the five sessions, where each session ran for more than two hours, providing ample time for discussion. The main language used in all sessions was English and simultaneous interpretations were provided.<sup>5</sup> Consultation materials were provided to the participants in advance, and these were translated into various languages.<sup>6</sup>

4. The agenda for the five sessions followed a similar format, starting with a welcoming message from Bruce Dunn, Director of the Safeguards Division (SDSS) of the Sustainable Development and Climate Change Department (SDCC). It was proceeded by presentations from Tulsi Bisht, Senior Social Development Specialist, SDSS, on the overview of ADB Indigenous Peoples (IPs) Safeguards and Sam Johnston, ADB Consultant, on the summary of the analytical study. A moderated discussion followed where participants were provided space to ask questions and give their input for the policy update. The session ended with a brief event evaluation and synthesis by Bruce Dunn.

<sup>1</sup> ADB. 2009. [Safeguards Policy Statement](#). Manila.

<sup>2</sup> ADB. 2020. [Evaluation Document: Effectiveness of the 2009 Safeguard Policy Statement](#). Manila.

<sup>3</sup> The update process is guided by a [Stakeholder Engagement Plan](#).

<sup>4</sup> The five sessions were for: (i) DMCs in South, Central and West Asia, (ii) DMCs in East and Southeast Asia and the Pacific, (iii) CSOs and non-governmental stakeholders in South, Central and West Asia, (iv) CSOs in East and Southeast Asia and the Pacific, and (v) CSOs in North America and Europe.

<sup>5</sup> Languages available for simultaneous interpretations were Hindi, Urdu, Russian, Bahasa Indonesia, Chinese, Khmer, Lao, and Vietnamese

<sup>6</sup> The analytical study and presentations are available in English, Hindi, Russian, Chinese, and Bahasa Indonesia.

5. In his welcome message, Bruce Dunn introduced the objectives of the regional consultations and discussed the context for the session on IPs. He then provided an overview of the 2009 SPS, as well as the key findings of the IED report that are guiding the SPS update. Finally, he presented brief details on the overall approach and methodology for the policy update.

6. Tulsi Bisht, in his presentation, gave an overview of the IPs Safeguard that included its objectives, scope or application, IP identification criteria, IP safeguard triggers and requirements. He then discussed ADB's SPS requirement for broad community support (BCS) from the project-affected indigenous communities under three specific circumstances and mentioned its documentation requirements laid out in the SPS. He finally presented the IED Report outcomes on IP Safeguard implementation, noting that the outcomes have been less than satisfactory.

7. Sam Johnston presented the summary of the analytical study on IPs Safeguards. He provided information on the objective of the study and methodology. He presented a brief review of ADB's implementation experience based on an initial round of consultations with ADB safeguards staff in ADB operations departments, citing identification of IPs, resource constraints, and the need for a robust and culturally sensitive social impact assessments as among the key issues and challenges that were identified. Furthermore, he shared the findings of benchmarking IP Safeguards with other MFIs in the following areas: (i) General structure, (ii) IP policy objectives, (iii) IP policy scope of application and triggers, (iv) Scope of the standards, (v) Social impact assessment, (vi) Stakeholder engagement, (vii) Roles and responsibilities, (viii) Special requirements, (ix) Relationship between national and international standards, (x) Grievance redress mechanism, (xi) Promoting benefits and well-being of IPs, (xii) Monitoring, reporting, and institutional support, and (xiii) Voluntary isolation. Finally, he brought up key issues for further consideration, that include developing clarity for technical terms, concepts, and safeguard requirements, IP identification and triggers, improving the IP safeguards requirements and processes, and additional requirements.

### III. KEY TAKEAWAYS AND DISCUSSION

8. In the discussion moderated by Bruce Dunn for the sessions with DMCs, and Jelson Garcia, Senior Stakeholder Engagement Specialist, for the sessions with CSOs, participants were encouraged to share perspectives or recommendations for improving ADB IP safeguard policy and implementation. A set of questions were posed to guide participants in formulating their views or questions, including: (i) How can MFI safeguard policies support better projects and development outcomes?; (ii) Are there challenges with legal and regulatory frameworks and implementation capacities? How can these be addressed?; and (iii) How can we ensure that IPs more effectively participate in projects that affect them?

9. The discussions elicited important issues from the participants like: (i) the application of free, prior and informed consent (FPIC) versus BCS; (ii) addressing project impacts on IP cultures; (iii) identification of affected IPs based on existing policy criteria; (iv) recognition of IP rights as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP 2007)<sup>7</sup>; (v) capacity building not just for borrowers and relevant ADB staff but also for affected IP communities; (vi) addressing IED Report findings pertaining to IPs; (vii) making Grievance Redress Mechanism (GRM) effective and considering the use of indigenous justice system; (viii) improving stakeholder engagement; and (ix) enhancing IP Safeguards Policy implementation, citing specific projects/cases.

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<sup>7</sup> United Nations. 2007. [United Nations Declaration on the Rights of Indigenous Peoples](#).

10. A significant number of stakeholders encouraged the ADB to adopt FPIC in its updated policy to protect the IPs' rights, instead of the current BCS approach where concerns on its effectiveness were raised by IP groups. Besides, peer MFIs have adopted FPIC in their recently updated safeguards standards. In adopting FPIC, there were suggestions to ensure that the FPIC process should be genuinely implemented with adequate monitoring mechanisms provided. Furthermore, there were suggestions to look at how other multilateral development banks (MDBs) have integrated FPIC in their safeguards in terms of specific policy provisions and good stakeholder engagement processes in projects for seeking consent (FPIC).

11. Regarding the identification and definition of IPs, the current SPS criteria for determining IP needs to be examined as there are varying definitions and policies pertaining to IPs across countries. There were suggestions to clearly set the criteria and procedure in defining and determining IPs, support the strengthening of DMCs' policies on the recognition for the collective rights of IPs including rights to their lands or ancestral domains, and integrate international conventions in the updated policy, such as the International Labor Organization (ILO) Convention 169<sup>8</sup> and the UNDRIP 2007 (footnote 6).

12. Stakeholders suggested that resources should be allocated by ADB to strengthen capacities of executing and implementing agencies, as well as IPs organizations, to ensure that meaningful participation during social impact assessment (SIA), project implementation, and monitoring. Capacity building should also be provided to ADB staff and DMCs in the implementation of the IP safeguards in the revised safeguards policy.

13. Stakeholders pointed to the findings of the IED report on avoidance of project implementation in areas where IPs are present. Avoidance, being on top of the mitigation hierarchy, could leave a situation where IPs could be left behind in terms of development opportunities and other positive impacts that the project may bring. There were suggestions to review the current mitigation hierarchy as it applies to IP communities. Project safeguard requirements should consider not only the negative impacts but also the positive impacts.

14. The issues raised on the GRM include its accessibility to IPs, cultural sensitivity of the mechanism, and consideration for the use of indigenous justice system as it is being used in handling complaints. Technical and legal processes or procedures in the GRM that are often government-led should be lessened and instead use effective community-led processes in resolving project disputes.

15. ADB should improve stakeholder engagement in the context of projects that affect IPs by (i) conducting offline or face-to-face consultations with IPs and IP organizations; (ii) establishing partnerships with CSOs working with IPs at the grassroots level to improve information sharing and convene consultations; and (iii) translating the SPS into local language that IPs understand.

16. ADB responded that it is considering adopting FPIC, and such decision will consider different stakeholders' points of view. The IP policy benchmarking study will help identify the best approach for ADB. Before this, several steps will need to be undertaken including providing clarity on the current provision on the identification of IP, defining FPIC and the conditions in which it will be triggered, FPIC requirements, improving the stakeholder engagement process in project implementation, provisions in the policy about stakeholder engagement, and assessing the necessary staffing skills or implementation support of the borrowers and within ADB.

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<sup>8</sup> International Labour Organizations. 1989. [\*Indigenous and Tribal Peoples Convention No. 169\*](#).

17. On the identification of IPs, ADB responded that the SPS clearly cites two criteria in identifying IPs—distinctiveness and vulnerability. If these two criteria apply to a particular group of people, they do not need to be referred to or recognized within the country context as IP because ADB's IP policy already applies.

18. On avoidance of projects in areas where there are IPs, ADB clarified that avoidance in the mitigation hierarchy in the context of IPs should not be interpreted that areas where IPs are present should be avoided for fear that it would trigger safeguards. Safeguards should be seen as an instrument that helps facilitate inclusive development for IP communities. Finally, the ADB noted that it is also looking at moving towards a more integrated risk-based classification wherein the inter-relationships of both the environmental and social impacts and risks will be better addressed. There will also be an assessment of the borrower's capacity and assessment of contextual risks for projects.

#### **IV. EVALUATION AND WRAP UP**

19. The moderated discussions were followed by quick evaluation sessions. In all five sessions, most of the participants rated ADB IP consultations (covering content, managing the flow, logistical arrangement, responding to feedback) 4 or higher (in a scale of 1 to 5, with 5 being the highest), and only very few rated ADB lower than 3. Written comments in Menti.com to improve the consultations are documented.

20. The synthesis for each consultation includes a summary of key points and questions raised by participants. An overview of the next steps and a reminder on how to send ADB further suggestions and recommendations are also mentioned.

#### **Session recordings can be accessed here:**

1. 22 November 2021: Government stakeholders in East Asia, Pacific, and Southeast Asia:  
<https://youtu.be/UFYJ-YWuJ5o>
2. 22 November 2021: Government stakeholders in South Asia, and Central and West Asia:  
<https://youtu.be/iODNDvFePD4>
3. 23 November 2021: Civil Society and other non-Governmental stakeholders in East Asia, Pacific, and Southeast Asia:  
<https://youtu.be/QnmZxcbQX6k>
4. 23 November 2021: Civil Society and other non-Governmental stakeholders in North America and Europe:  
<https://youtu.be/hLTExn393to>
5. 24 November 2021: Civil Society and other non-Governmental stakeholders in South Asia, and Central and West Asia:  
<https://youtu.be/cthugLvSbmY>

## FEEDBACK FROM STAKEHOLDERS

Disclaimer: In view of transparency, the feedback was documented based on the manner of delivery or sharing of the stakeholders, though some feedback was edited for brevity and clarity. They are categorized by topic and reflect questions, comments, conclusions, and recommendations of stakeholders. All the feedback is discussed in the interactive session that is part of the consultations.

### 1. Identification of Indigenous Peoples (IPs)

- The IP policy of ADB and other international financial institutions (IFIs) needs to adopt a clearer definition and identification criteria for determining IPs. The IP policy was created for providing additional protection of a special type of vulnerable groups of population; however, it has been misinterpreted due to the extremely vague criteria proposed for determining the IPs. For example, the IP policy was not created to protect the entire local (or entire rural) and autochthonous population, as in the case of Georgia these concepts often coincide. So, there is a need to have clearer definition and identification criteria for IPs.
- There are situations where the flaws in the IPs policy are often used by interest groups to disrupt and complicate the implementation of large projects and create additional divide between the different groups of population. To avoid this, there is a need to formulate clearer goals, develop clear set of criteria that match the goals and procedures for assessing the risks.
- Identification of IPs should not be based on how IPs view themselves but on their collective way of life and attachment to the land. Relying on the country safeguard systems (CSS) of states especially in relation to IPs is "a bit problematic" and ADB should support the strengthening of developing member countries' (DMCs) policies on the recognition for the collective land rights of IPs.
- How does ADB distinguish ethnic minorities from scheduled tribes, *dalit*, and forest dwellers? How does ADB get a consensus in project planning and review?
- How will ADB identify IP in India since there are laws that give them the authority and self-government, but the government has not yet made any rules and regulations to implement them and what ends up happening is the village council decisions are faked, signatures are taken under false pretenses, and these are presented as documentation that permissions have been obtained? On the definition of IPs, their identity is getting lost based on the definition of the government as well as the definition accepted by international institutions.

### 2. Enhancing IPs Safeguards policy implementation

- There is a case where a subproject was dropped even though the IP impact categorization was B having positive impact; involuntary resettlement and environment was categorized as C for the subproject. This happened because the loan covenant stated that no impacts on involuntary resettlement and IPs and category C within the meaning of the 2009 Safeguards Policy Statement (SPS).
- The implementation of safeguard policies must also consider and look into the diversity of IPs current political and decision-making systems. There are different levels of

persistence and disintegration of traditional socio-political systems in the different indigenous groups.

- There is a need for very robust baseline studies in project preparation and the types of projects should cover not just railroads and other infrastructure development, but also projects with financial intermediaries, since many function in indigenous areas and information is not easy to find. The same should be done for technical assistance projects in programs that may have consequences in the longer run for IPs, which should also be evaluated.
- It would be good advice to have external agencies conduct the monitoring and reporting, like the procedure for conducting social impact assessment (SIA).
- In projects where civil society organizations (CSOs) or other local IPs programs are involved, independent monitoring and reporting should be done by an international non-governmental organization (NGO) to ensure transparency and honest involvement.
- How does ADB intend to improve its project documentation in general? In the Tanahu hydropower project in Nepal, the indigenous peoples plan (IPP) and the resettlement plan stated there was no impact on their traditional and ancestral lands, which the Magar community strongly disapproved of.
- In two communities, the Tanahu hydropower project and the Nepal electricity supply distribution management project, the affected communities were not aware that SIA was or is being done. SIA should be a standard requirement since it has become a tick-box exercise wherein environment impact assessment (EIA) is done with very little consideration of the social impacts. Some ADB technical assistance projects in Nepal that support feasibility studies and EIAs ultimately lead to impacts on IPs because the government uses those studies and constructs development projects that directly impact the indigenous communities on their own without taking loan from ADB. Whenever the issue is taken up to ADB, ADB would say that they could not do anything about the government project resulting from the technical assistance. The scope of the safeguards should be expanded to include technical assistance projects. The community is currently in conflict with the Nepal army because they are constructing an express bridge, based on a feasibility study and EIA conducted by ADB 10 years ago.
- Ensure participation of IPs in the development, implementation, monitoring, and evaluation of policies.
- IPs in Nepal need ADB's safeguard policy to be strongly implemented. ADB safeguard policy should recognize the voices of IPs in the implementation of projects through their direct consultation and participation in accordance with international human rights standards.

### **3. Free, Prior, and Informed Consent (FPIC) vs. Broad Community Support (BCS)**

- Based on experience, the basic issue that IP communities face is the violation of their right to FPIC. The banks that finance a certain project do not seem to have a concrete mechanism to monitor and verify the information they receive from their clients in relation to communities' consent. Most FPIC process is manipulated, hence it does not reflect the decision of the community.

- IPs will support the recommendation for ADB to adopt FPIC (instead of broad consultations). IPs had pushed this for other MFIs to adopt. How will ADB ensure the implementation of the policy by the borrowers, once adopted?
- ADB should use FPIC (consent and not consultation) as opposed to BCS. FPIC, although it may appear straightforward on the surface, can be a very complex concept when it comes to operationalization. A much more in-depth analysis of FPIC, e.g., in terms of how some other multilateral financial institutions (MFIs) have incorporated it into their policies and practices, should merit further discussions on ADB's new SPS.
- It's important that the full principle of FPIC is integrated in the SPS. Not as a procedural matter and one-off process but a reiterative process that requires the full and effective participation of IPs in the whole project cycle. Where decision-making process and indigenous governance system is not written, a validation process is needed on the documentation if done externally. For example, indigenous communities in Cambodia and Nepal have developed community protocols for decision making.
- The primary recommendation would be to ensure that the standard of FPIC is adopted by ADB within a stand-alone mandatory IPs policy and strengthened to comply with international law. Recommended that ADB adopt FPIC as the internationally guaranteed standard for the protection of IPs' rights rather than BCS, which is currently in the policy. This is because the language around BCS denies the IPs right to FPIC as established in International Labour Organizations (ILO) 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Other MFIs have already adopted FPIC, and IPs had already comprehensively rejected BCS in the UN Permanent Forum on Indigenous Issues as well as other forums. There is a review of international finance corporation (IFC) policies on IPs that found BCS not to be an effective mechanism to establish certainty of support for a given project. Echoing the points raised by IPs representatives during the last ADB policy review in 2008, who provided the following formulation of FPIC requirements to the ADB policy review: "For the purposes of policy application, consent refers to a collective agreement by the affected IPs communities, through an independent and self-determined decision-making process undertaken with sufficient time and in accordance with their cultural traditions, customs and practices." ADB's 2009 policy on IPs states that the ADB requires borrowers to seek the consent of affected IPs and would not fund projects without such consent, a positive step. However, the ADB defined "consent" as "broad community support," a formulation that was firmly rejected by IPs. Any repetition of this formulation by ADB during this latest ongoing policy review would almost certainly face the same condemnation by IPs.
- The recommendation to adopt FPIC was agreed, but not free, prior and informed consultation (FPICon), which is what the Asian Infrastructure Investment Bank (AIIB) did. Many case studies have already proven that FPICon is not efficient in protecting the rights of IPs' communities. This is especially true in areas where civil society spaces are not well-developed, which makes it difficult to obtain BCS for everybody in the community.
- ADB should take a serious look at the recommendations for FPIC. In the investment sector, many companies are going in the direction of getting FPIC up and running with some uniformity across their operations. Companies have been publishing environmental, social, and governance (ESG) reports and have employed the needed expertise to work together and adopt some criteria to be able to provide reports that illustrate how sustainability has become a huge part of what the companies' future looks like. ADB's move toward FPIC makes good sense. There are plenty of willing hands and resources out there to support that effort.

- There is no question that FPIC should be implemented. The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) had already done a study on implementing FPIC on reducing emissions from deforestation and forest degradation (REDD) projects. ADB should apply FPIC but should ask whether or not and how is FPIC changing the situation for engaging IPs. The SPS already confers certain negotiation rights to IPs but how operational is the understanding of the concept of good faith negotiation in practice? There are a lot of good practice examples in the private sector that have elevated the standard and understanding for the right to negotiate, including having access to impartial technical advice about the options available, having a right to do one's own impact assessment if not comfortable with a project proponent led impact assessment, and having access to information in a timely way that includes the full net costs and net benefits of all the scenarios of projects that are considered in any impact assessment. Often, these are not available to communities that have the right to give consent, but don't necessarily have the power, for it to mean something substantial. This is a useful avenue for further exploration in developing not only the requirement for FPIC but the procedural requirements for it to be meaningful in practice.
- The current policy does not go into detail how ADB ascertains that BCS has been achieved, having no documentation required in the IPP to showcase that the affected IPs consented to land expropriation and all the other impacts either verbally, ceremonially, or in writing. How does ADB determine this for projects implemented on IPs' land?
- BCS has some problematic aspects and can imply a one-time one-off agreement. It is highly problematic in the context of constrained spaces for civil society groups. FPIC is not a one-time decision, but it needs to be verified every step of the way, even at the initial field visit screening. Throughout the project cycle, it should be clear to communities that they have the option to withhold FPIC. Also, from the very initial stages, there needs to be clear information coming through about alternative project designs and that there is access to GRM, as opposed to just being development.
- The revised IPs safeguard policy of ADB should require obtaining FPIC as required by the IFC, the World Bank, and many other development banks.
- The written submission sent in April 2021 to ADB was referred, particularly the recommendations on FPIC and the circumstances in which it is required under international human rights law. The UN Office of the High Commissioner for Human Rights (OHCHR) welcomes the reference in the ADB SPS to the objective of respecting IP's rights and encourage ADB to go further in its new safeguards policy to give substance to this commitment in creating a condition to FPIC. The OHCHR notes that national laws on IPs rights vary in strength and rigor and that international human rights standards should be the reference point in the new safeguards policy when it comes to assessing and addressing IPs' rights concerning FPIC. The OHCHR promotes consultation with IPs and recommends that IPs' rights and project management should not be limited to the concept of BCS, which is a far cry from FPIC. Acknowledged the recommendation of most of the stakeholders to move toward FPIC and away from BCS and said that a consensus has to be obtained from partners and DMCs for this to happen. The team recognizes not just the importance of the discussion around FPIC vs. BCS but also of determining how to operationalize it in ADB projects. With respect to ADB's consultation with government ministries, ADB should go beyond the ministries of finance and planning to inform ADB's position on FPIC. OHCHR stands ready to support ADB's efforts and provide further comments concerning other key issues that require further attention or clarity.

#### 4. Avoidance of Projects where there are IP impacts

- On the findings of the IED report on the tendency to avoid implementing projects where IPs are present requested a change in the requirement in the SIA process. The general understanding of an SIA is that it mainly deals with the negative impacts when in fact, ADB projects have many positive impacts such as economic benefits, gender equality, poverty alleviation, natural resource management, etc. and that the project outcomes are actually beneficial to the local people. SIA should be changed to the following: social analysis, stakeholders' analysis, social acceptance analysis, social acceptance and associate risk analysis, and sustainability analysis. These five will then serve to highlight the positive impacts of the projects and aid in the development of the social management plan.
- Clarity was requested on the findings of the IED report that indicated how areas with IPs are being avoided to prevent projects from having negative impacts on IPs. IPs are also not benefiting from the positive impacts of the project and are being left behind in terms of development opportunities.
- The OHCHR agrees with one of the key findings of the analytical study, that clarity for technical terms, concepts, and safeguard requirements is critical as the rights of persons belonging to national or ethnic groups and linguistic minorities differ from those of IPs under international human rights law.

#### 5. Recognition of IPs' rights

- How does ADB apply the IPs safeguards policy on countries that do not officially recognize IPs, such as in Pakistan, or in areas where the IPs are not actually the minority in the population such as the Zhuangs and the Hans in the People's Republic of China (PRC) or are not considered vulnerable.
- The different legal and regulatory frameworks on the recognition of IPs in each country will really be challenging. How will ADB help and ensure the implementation of the adopted policy by the borrower countries?
- In Asia, the recognition of IPs is political in nature and non-recognition of many governments in Asia of IPs continues, especially of the collective rights to their land, territories, and resources. On the assimilation of IPs in mainstream society, there is a need to recognize the historical injustices committed against them. Even if governments consider that IP groups have become part of the mainstream, it is still necessary to look at the historical context of what happened to them—they may have been impacted by projects or displaced, or the government may have attempted to assimilate them into mainstream society because of the thinking that IPs are backward. Policy dialogue for states in recognizing the collective rights of IPs as enshrined in the UNDRIP is needed.
- Is there is a discussion of land rights in the SPS? This issue is important and needs to be addressed especially in the context of Asia where, in many countries, IPs are not recognized, much less their rights. This non-recognition of IPs land rights has caused tensions and conflicts when development activities happen without the consent and the government uses the argument that the IPs have no rights over the land. The issue of land rights should take a more central role in the discussion and formulation of the new safeguard policy.
- There is limited recognition of IPs in particular contexts, and in some places, they are referred to as ethnic minorities without any regard for political sensitivities or tensions.

There is a need to invest in efforts to better understand these types of contexts. Many projects focus on benefit-sharing but are silent on addressing certain issues such as pre-existing social discrimination against IPs, etc. What is ADB's perspective on how to go beyond project level in addressing injustice and other aspects of IPs rights? Shared one example of how existing projects (adaptation in this case) are focused on one element of justice (i.e., benefit-sharing, and distributive justice) while other intricate issues regarding IPs like pre-existing socio-cultural discrimination, historical injustice, issues of recognition and procedural aspects are often ignored. These piece-meal, and compartmentalized approaches are insufficient and fail to address IP's issues and rights.

- ADB needs a clear reference to all international laws and UN documents that apply to IPs such as the ILO 169, the UNDRIP, etc. since most of the ADB members have signed one or all these declarations and thus these legal obligations should be transformed into the politics and actions of ADB.
- The revised IPs safeguard policy should be grounded on the UNDRIP, like the European Investment Bank (EIB). In many ADB projects in Nepal, land acquisition is left to the government as based on Nepal law and the government does not recognize IP lands or rights and even nationalities. They only recognize titled lands as eligible for compensation, and not ceremonial sites, or grazing, forest, or untitled land. When land is acquired by the government, there is also impact on IPs and ADB cannot say that it is not responsible for the negative impacts for, say, a dam that it is helping to build.
- The OHCHR notes the different positions of governments in the region in the recognition of IPs, with several countries that still define Indigenous communities as ethnic minorities, contradicting a well-established right to self-identification under international law. The rights of minorities as individuals were affirmed in the 1992 declaration of persons belonging to minorities, the UNDRIP of 2007 and ILO Convention 169, which seek to protect, in addition to individual rights, the collective rights of IPs because recognition of such rights is necessary to ensure the continuing existence and development of IPs as distinct peoples whether or not they are in a vulnerable situation.

## **6. Improving Stakeholder Engagement**

- ADB should organize face-to-face consultations with IPs.
- Ensuring that the affected IPs understand ADB's IPs safeguard policy is crucial. ADB can work with NGOs working at the grassroots level in the target area to support this process and bring the information to the community. Increasing the information sharing especially from the developer to the community is also very important as is translating the safeguards policy into the local language, and in particular, the language that IP can understand. This is important so that IPs are aware of their rights and can demand or negotiate with the company and avoid any conflict in the development area.
- How can the process move away from a so-called tick-in-the-box exercise during pre-project approval consultation with IPs? Project-affected people should be part of the SPS review consultation.
- Is the ADB SPS universal or could it be tailored to the local and political context of each DMC? IPs are always excluded from policy and decision-making processes. Would this be addressed in some way?

- Would stakeholders be able to provide comments after the revised safeguards are made public? ADB should speak to the affected communities firsthand. Willing to arrange such opportunities for consultations as part of the review process.

## **7. Capacity Building**

- How does ADB plan to address the different legal contexts across the region where IPs and their rights are not equally addressed? In those countries with some legal recognition, implementation is woeful, or the interpretation is not in accordance with the intent of the policies. The Indigenous Peoples Rights Act (IPRA) in the Philippines is an example, the staff of the government agency tasked to implement its provisions just do not have the technical and budgetary means to carry out their tasks. Will there be ADB funds allocated for capacity building of both government and IPs organizations?
- Capacity building on the implementation of the SPS is needed for states and the ADB country teams. Translation and simplification of the ADB SPS is also needed for IPs to better understand the policy as well as capacity building. How can they be meaningfully involved, especially in the SIA and in the project implementation and monitoring?

## **8. Grievance Redress Mechanism (GRM)**

- The GRM in many ADB projects has been problematic due to accessibility gaps for IPs. ADB should develop a more culturally sensitive GRM, and members of the IPs community should be in place to achieve this.
- Would it be possible to consider integrating or respecting the indigenous justice system of affected communities? Making the GRM accessible to IPs is important. The section on GRM in the policy should be free of heavily technical and legalistic processes or procedures.
- GRM has become very bureaucratic and led by government bodies rather than a community-owned process that respects the traditional decision-making processes of the indigenous communities.

## **9. Cultural Impacts on IPs**

- Is living heritage being considered in impact assessments of projects? There is a wide gap between what is happening at the international level with the Convention on Cultural Heritage and on the ground—is there a way that the safeguards policy can bridge that gap?

## **10. Others**

- ADB has its gender policy but how does this address the specific situations of indigenous women noting the intersectionality of gender and IPs issues?
- How does ADB sanction those found to be committing human rights violations?
- It is critical for the policy to require ADB field staff and consultants to make it clear to communities that will be affected by the project at the very beginning of the project cycle and that the no-project option and that other alternatives for location or development can be considered.

- How is ADB implementing its IP safeguards in the Uyghur Autonomous Region and has ADB changed its approach since the atrocities against Uyghurs have been exposed? How can ADB's safeguards be applied in countries that are hostile to international protections for IPs? ADB should implement indigenous protections regardless of country laws or positions on indigeneity. This is critical in making the standard more universally applicable.
- There is a project in North Kalimantan discussed in a previous meeting that needs further discussion.
- With respect to cases wherein there are hostile situations against IPs, ADB should be crystal clear on the country's fulfillment of their international legal obligations.
- State governments do map exercises using satellites for land to be used in development projects to avoid having IPs who own those land from finding out and objecting to its use. On giving compensation to displaced communities, especially indigenous and tribal people, does ADB consider or calculate, in addition to the displacement of the people, the customary laws or the language and the environmental cost (the trees, animals, air, etc.)? In India, the correct compensation has not been followed, which has made things worse financially for indigenous communities.