

ADB Safeguard Policy Review Update – Phase 2 Regional Consultation Summary: Lessons from Accountability Mechanism

24, 25, 28 February and 1 March 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).¹ 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).² The update will build off the findings and recommendations of the IED report, which ADB Management 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 further reviews, policy development and meaningful stakeholder engagement. As part of this process, ADB is undertaking a series of brief analytical studies, which will benchmark ADB's current SPS against the policies of selected multilateral financial institutions (MFIs) and also briefly consider implementation experience.³ The studies will inform the development of the new safeguard policy and will be provided for stakeholder review and consultations.⁴ Stakeholder engagement and consultation will have 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, currently being conducted, 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 Lessons from Accountability Mechanism.

II. PROCEEDINGS

3. The online regional consultations for the Lessons from Accountability Mechanism were conducted on 24, 25, 28 February and 1 March 2022. Five sessions were organized in various 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.⁵ A total of 93 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 is English and simultaneous interpretations were provided.⁶ Consultation materials were provided to the participants in advance, and these were translated into various languages.⁷

4. The agenda for the five sessions followed a similar format, starting with a welcome 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 Warren Evans, ADB's Special Project Facilitator (SPF) and Elisea Gozun, Chair, ADB's

¹ ADB. 2009. [Safeguards Policy Statement](#). Manila.

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

³ The studies are intended to complement the evaluation completed by IED in May 2020 and will not duplicate IED's work on the overall effectiveness of the SPS.

⁴ The update process is guided by a [Stakeholder Engagement Plan](#).

⁵ 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.

⁶ Languages available for simultaneous interpretations were Hindi, Urdu, Russian, Bahasa Indonesia, Chinese, Khmer, Lao, and Vietnamese

⁷ The analytical study and presentations are available in English, Hindi, Russian, Chinese, and Bahasa Indonesia.

Compliance Review Panel (CRP). They presented the lessons learned from the problem-solving and compliance review function of the Accountability Mechanism (AM), respectively. A moderated discussion followed where participants were provided space to ask questions and give their inputs for the policy update. The session ended with a brief event evaluation and a synthesis by Bruce Dunn.

5. In his welcome message, Bruce Dunn introduced the objectives of the regional consultations and explained how the experiences and good practices from the AM were documented as lessons that concern safeguard issues. He highlighted the role of the AM for the current initiatives of updating the Safeguards Policy Statement, and how the SPS update can benefit from lessons accruing from successes and challenges faced in projects that went through the Mechanism.

6. Warren Evans, in his presentation, underscored the importance of consultation with affected people during project preparation and implementation, the need to delegate authority to handle certain category of complaints to field staff, the use of social mobilization to enhance project and grievance redress mechanism (GRM) awareness, and the value of developing manuals on communication that can be easily accessed by affected people, among others.

7. Elisea Gozun presented the lessons learned from the compliance review function of the AM. Some of the lessons identified were the importance of establishing comprehensive baseline data, the need to include assessment of capacity of borrower to implement safeguards and identifying the gaps between ADB's safeguards and borrowing country's legal framework, ensuring adequate resources are allocated for safeguard implementation monitoring, the importance of meaningful participation and consultation, and framing compliance review as instrument to improve ADB's development effectiveness.

III. KEY TAKEAWAYS AND DISCUSSION

8. In the discussion moderated by Irum Ahsan, Advisor, Office of the Compliance Review Panel (ADB), participants were encouraged to share perspectives or recommendations for improving ADB safeguard policy and implementation, drawing from the lessons from the AM.

9. The discussion elicited the following important issues from the participants: (i) what is the scope and coverage of the AM; (ii) how do we let project affected people (PAP) know about the AM; (iii) how does the Mechanism monitor subprojects by financial intermediaries and technical assistance (TA); (iv) how do we strengthen GRM; (v) how do we make governments institutionalize GRM and make it work at the project level; (vi) how do we manage stakeholders' expectations in light of evolving project design; (vii) how do we incorporate human rights issues, risks of reprisals and remedies in the safeguards policy update; (viii) how do we prevent persons with vested interest from misusing the AM; and (ix) some recommendations to review the AM itself in anticipation of the new and updated SPS.

10. Observation was made on the increasing ineligible cases under the AM because of the lack of proof of engagement with project level/operations department and not due to substance of the alleged violations. Most complainants had to elevate the complaint to AM because local processes failed when GRM is not working at the project level, project information is not accessible, or there is threat or intimidation.

11. Based on the cases raised with the AM, the top issues that were raised are displacement, consultation, disclosure, and livelihood issues. ADB needs to adopt human rights

standards throughout the ADB's Environmental and Social Policies and safeguards need to be informed by experiences of people who are most affected by unintentional negative impacts of ADB-financed projects.

12. Many PAP are not aware of AM, its role, function, and scope. There were recommendations to develop the capacity of PAP on how to access the GRM and the AM and making them aware that a project is funded by ADB and that it should comply with its safeguard policies. ADB also needs to include in the safeguards policy and in contractual agreements a requirement for clients and sub-clients to raise awareness about the AM. Moreover, the safeguards should require ADB clients and staff to engage in good faith with the AM process. A question was also raised on what would trigger the AM under the revised policy which has about 16-17 themes compared to three themes of the 2009 policy.

13. The discussion also focused on the difficulty in filing complaints on non-sovereign projects, financial intermediaries, and their subprojects, given that very limited information is available on these projects. Recommendations were made to require time bound disclosure of project information in advance of approval in line with best practices; ensure disclosure of the name, sector and location of higher risk sub-projects financed by financial institutions, easily accessible on ADB and client's website; and that ADB must disclose its involvement in sub-projects at the project sites, ensuring that is clearly visible and understood by affected communities.

14. A question was also raised on the applicability of the SPS and the AM to TA given that some TAs have ramifications on local communities. The AM covers TAs, but the 2009 safeguards policy does not. In the new policy, there is still a need to consider how TA is covered since there are different types of TA. Transactional are those design projects where safeguards are fully applied. There are also those for knowledge and capacity support, which are usually consulting services to assist clients.

15. There were also discussions on how complaints are tracked and monitored, what happens to ineligible complaints and how will the issues be resolved outside of AM. There should also be a definite timeline for complaints to get resolved.

16. Concerns about risks of retaliation and that this should be assessed as part of the contextual risk analysis, supply chain risk, and incorporating human rights issues in safeguards were also raised. Reframing mitigation hierarchy was also recommended to provide a broader range of reparations including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition rather than only compensation and offsetting. The establishment of reserve funds for remediation of adverse impacts were also suggested during the discussions.

17. Consultation participants noted that the GRM is not effective, invisible, and not being taken seriously by governments. There were recommendations made to strengthen it by making the GRM accessible, visible, and customized to local context. There was also a suggestion to make GRM child-friendly and responsive to the needs of the vulnerable groups or persons with disabilities. A question was also asked on how ADB can influence implementing agencies and governments to implement GRM at the project level, especially when GRM is not legally mandated in some jurisdictions.

18. Strengthening baseline assessments, stakeholder engagement, information disclosure, meaningful consultation and employing framework approach were seen as effective measures that can reduce complaints from project affected people. Sharing of experiences in the risks and mitigation strategies was also suggested concerning environmental risks especially among Pacific Countries.

19. Ensuring that meaningful consultation happens requires that ADB reviews its business process. It is seen as a constraint and inconsistent to meaningful consultation. It overburdens the borrower and the PAPs, it is done repetitively or multiple times, and raises expectations as the consultation is required to commence even before the final design. Moreover, the gap between the first and second consultation on the resettlement plan affects the mental health of the PAPs.

20. ADB acknowledged the issues raised and made assurances that these are being addressed. Only a few complaints have reached the CRP or the SPF because the complaints are being addressed at the local level. On GRM, ADB is currently working on stipulating in the loan covenant that the borrower is responsible for raising awareness on the GRM and the independent AM. Focal persons were also directed to help with raising awareness in every resident mission. On tracking complaints, an Integrated Safeguards Monitoring System (ISMS) is being developed to manage workflows and safeguards.

21. There was also a commitment made to make a clear and explicit position against reprisals in the new and updated SPS, including the conduct of contextual risk analysis to assess borrower's capacity, commitment, and track record on other broader issues.

22. ADB also recognized the need to shorten the gap between the first and second consultation on the resettlement plan to reduce anxieties and impact on the livelihood of affected persons. It also acknowledged the inefficiency of preparing a full draft resettlement plan and draft census studies when there is no final alignment yet.

IV. EVALUATION AND WRAP UP

23. The moderated discussions were followed by quick evaluation sessions. In all five sessions, most of the participants gave a rating of 4 (effective) or 5 (highly effective), on a scale of 1 to 5, and only very few rated ADB lower than 3. Written comments to improve the consultations are documented in Menti.com.

24. 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. 24 February 2022: CSOs and other Non-Governmental Stakeholders in South Asia and Central and West Asia
<https://events.development.asia/node/66726>
2. 25 February 2022: CSOs and other Non-Governmental Stakeholders in East Asia, Pacific, and Southeast Asia
<https://events.development.asia/node/66731>

3. 25 February 2022: CSOs and other Non-Governmental Stakeholders in North America and Europe
<https://events.development.asia/node/66736>
4. 28 February 2022: Government Stakeholders in South Asia and Central and West Asia
<https://events.development.asia/node/66741>
5. 01 March 2022: Government Stakeholders in East Asia, Pacific, and Southeast Asia
<https://events.development.asia/node/66746>

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. Challenges in the implementation of the Accountability Mechanism

- What would trigger the accountability mechanism (AM) in terms of identifying violations for each of the proposed standards? With the 2009 Safeguard Policy Statement (SPS) policy, it was easy to identify compliance and noncompliance issues because there were only three pillars, resettlement, environment, and indigenous peoples (IPs), to look at. The proposed revision in the SPS, however, multiplied the three pillars to 16-17 themes.
- There seems to be an unending process with no definite timelines in the AM.
- A concern was raised about the increasing number of ineligible cases due to some procedural lapses (e.g., proof of engagement with project level/ operations department) and not due to substance of the alleged violations. Most complainants had to elevate the complaint to AM because local processes failed, such as cases when grievance redress mechanism (GRM) is not working at the project level, project information is not accessible, or there is threat or intimidation.
- The issue of the high percentage of complaints that were found ineligible was raised. Only 16% of complaints were found eligible.
- What happens to ineligible complaints after they are turned over to the operations department? Does the AM office have statistics on how many of these ineligible complaints have actually been resolved by the relevant operations department? How would ADB address problems that emerged after the project closure? Based on experience from the ground, sometimes people need time to realize the negative impacts of a project, and these happen after project closure.
- Has the allocation of resources for corrective measures been institutionalized as part of ADB financing? Is there a specific percentage prescribed exclusively for addressing corrective measures?
- There were instances where people with vested interests (or those who are not directly linked to the project) used the AM to make false claims about a project. It has caused delays and additional costs. Is this aspect being considered in the policy review?
- More elaboration was sought on the concept of delegation of authority as part of the GRM.
- Clarification was sought on the statistics that there were only around 140 complaints that reached ADB over a period of 20 years. Is there a trend analysis of the complaints raised over the years?

- The GRM process does not function properly in practice on the ground. How can ADB influence implementing agencies and governments to implement GRM at the project level, especially when GRM is not legally mandated in some jurisdictions?

2. Meaningful participation

- A policy brief⁸ was shared where it called for ADB to address specific risks of bank-financed projects to vulnerable groups such as children and persons with disabilities. The following were recommended: (i) make GRM child-friendly and more accessible to persons with disabilities in the format that they require, for a more meaningful participation; and (ii) disaggregate baseline data by age and vulnerabilities to improve outcomes for children. Issues were raised on reprisals across GRM that include incorporating contextual risk assessment into the project and informing the stakeholders of the independence of the mechanism. There are cases in Sri Lanka where most project affected communities do not know who the funder of the project is.
- Local GRMs are not working because they are not visible. Most of the complaints can be attributed to a lack of both meaningful consultation and information disclosure. Although the 2009 SPS requires the release of project information in a timely manner and the conduct of meaningful consultation to the most vulnerable groups, the same provision has been removed in the new information disclosure policy and moved to the operational guidelines. For a layperson, it will take more effort to find these provisions, figure them out, and then file a complaint for noncompliance.
- How can ADB ensure that inadequate baseline studies will be addressed? In the Tata Mundra case, fisherfolks were not identified as stakeholders because of a lack of a baseline study.
- How can local governments be encouraged to engage in effective partnerships with non-government organizations (NGOs) and people's organizations?
- ADB should look at its business process on project level participation and consultation, especially if multiple consultations are required. This could be an overburden for both the borrower as well as the affected people. It can be confusing and inefficient to undertake any meaningful consultation for the following reasons: (i) a draft resettlement plan is required prior to loan approval; (ii) census and inventory of affected assets are undertaken at the project processing stage; and (iii) consultation cannot be meaningful if there is incomplete information since the detailed engineering design is not yet available, and the project impacts are also not known. There is a gap of at least two years between the first and second consultation. It has a disastrous impact on the mental health of the affected people as they remain in suspense about what would happen to their land or whether they will be affected. The draft resettlement plan is required to be disclosed but it is not yet the accurate representation of the land acquisition resettlement impacts. There can be no meaningful consultation and engagement with the affected people until the detailed design is ready.
- How can AM be meaningful for the IPs?

⁸ Bank Information Center. 2021. [Why does the Asian Development Bank need to strengthen child rights in its Safeguard Policy Statement?](#)

3. Risk of reprisals

- What would happen if reprisal took place during the AM investigation process?
- How will ADB respond to reprisal issues in terms of the safeguards?
- The Office of Anticorruption and Integrity (OAI) is not covered by the AM and a case in Uzbekistan was cited. The case illustrated how raising issues of reprisals can be challenging and problematic.
- Reprisal response should be under the safeguards to allow for compliance review on how the bank is responding to reprisals.
- Currently, the risk of retaliation may be triggered once a complaint has been filed. Are there efforts to embed reducing retaliation risks at the safeguards policy itself? There should be a clear language in the policy so that filing a complaint will not trigger retaliation risk.
- Does the ADB recognize the imbalance of power between project authorities and the complainants? How will ADB reduce this gap and make sure that complainants will not face retaliation for bringing up complaints?

4. Financial intermediaries, private sector operations, and technical assistance

- The financial intermediaries (FIs) have not been responsible in self-reporting their safeguard requirements and the concern raised is how will safeguard violations be identified if the FIs do not report. How is ADB's experience in dealing with FI and problem solving around FI issues? Are there any cases where the Office of Special Project Facilitator (OSPF) was triggered around FI subprojects? An experience was shared where there was an intent to file a complaint with the Compliance Review Panel (CRP), but it took them a lot of time to trace it back to ADB and the borrower because of lack of available information. The eligible period to file a complaint has lapsed. It was observed that the lack of complaints raised around FIs is due to lack of available information.
- Does the 2009 SPS and AM cover technical assistance (TA) projects? The Samoa Project on land acquisition and the incinerator investment in the Philippines were shared, where the TA projects have ramifications on local communities.
- The ADB was asked how it took lessons from the Samoa case in terms of being responsive to the potential direct systemic harm of TA projects. There are TA projects that propose policy advice for the entry of incineration in countries that ban incineration.
- AM does not investigate private sector operations. The background note of the consultation also failed to recognize that private sector operation is laden with lack of information disclosure, especially the FIs. A case in the People's Republic of China (PRC) was cited where a private sector operation was allegedly engaged in forced labor.⁹ How will ADB make sure that project affected peoples are aware of the AM?

⁹ ADB. [People's Republic of China: Jointown COVID-19 Pharmaceutical Distribution Expansion Project.](#)

- The complexities of FI subprojects were raised. Will there be an improvement in the monitoring of FI projects in terms of information disclosure, transparency, and accountability?
- Sharing of experiences on environmental risks and mitigation strategies, especially among Pacific countries, was suggested.

5. Human rights and remedy

- A report from the United Nations Commission on Human Rights (UNHCR) was referenced where it identified potential gaps in safeguards across the board.¹⁰ Two recommendations were highlighted: (i) Safeguard policies sometimes fall short of people's needs and aspirations on remedy. Remedy should be added in the mitigation hierarchy; and (ii) ADB may consider complaints even after the lapse of two years since the project was completed. How does ADB effectively track data on environment and social safeguards implementation? How does the safeguards deal with accountability issues in relation to FIs and development policy loan (DPL)?
- ADB's AM has received 208 complaints, with the vast majority coming from infrastructure projects and followed by energy projects. The top issues or complaints pertain to displacement, consultation, disclosure, and livelihood issues. There is a need to adopt human rights standards throughout the ADB's Environmental and Social Policies. It is important for safeguards to be informed by experiences of people who are most affected by unintentional negative impacts of ADB-financed projects.
- Safeguards should enshrine a remedial environment consistent with the United Nations (UN) Guiding Principles. Ensuring that complainants are made whole if they are harmed is a key part of improving ADB's development effectiveness. It cannot simply stop at ensuring compliance with the bank policies, complainants also need to be made whole. There is a need to establish reserve funds for remediation of adverse impacts in the form of bonds and escrow account or performance funds for high-risk projects, citing the UN Report which says that the lack of remedy is a systemic issue among multilateral development banks (MDBs). It also means amending the mitigation hierarchies to provide a broader range of preparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, rather than only compensation and offsetting.

6. Supply chain risk

- The challenges around supply chain risk were raised (e.g., forced labor) because due diligence is only limited to primary suppliers. The European Bank for Reconstruction and Development's (EBRD) performance requirement was referenced which provides for requiring clients to require their supply chain suppliers to demonstrate compliance with safeguards.

¹⁰ Office of the United Nations High Commissioner for Human Rights (OHCHR). 2022. [Remedy in Development Finance: Guidance and Practice](#).

7. Transparency

- There is a need for ADB to include in the safeguards policy and in contractual agreements a requirement for clients and sub-clients to raise awareness about the AM. The safeguards should require ADB clients and staff to engage in good faith with AM process.
- There is a need for greater transparency, particularly for FI projects. Civil society organizations (CSOs) find it difficult to operate its watchdog function simply because there is a lack of information regarding sub-projects. There will be no meaningful consultation unless subprojects disclose relevant information to affected persons.
- The following recommendations were offered: (i) ADB should require time bound disclosure of project information in advance of project approval, in line with best practices; (ii) ADB must ensure disclosure of the name, sector and location of higher risk sub-projects financed by FIs, which are easily accessible on ADB and client's website; and (iii) ADB must disclose its involvement in sub-projects at the project sites, and ensure that information is clearly visible and understood by affected communities.

8. Revision of Accountability Mechanism policies

- AM procedures should be updated.
- The ADB requirement for complainants to discuss the issues in good faith before it can be made eligible to go through the AM should be reviewed on whether it is crucial or not. Other MDBs do not have such a requirement.

9. Resettlement

- What is the best way to level off with potentially affected communities and explain to them that the project design may still evolve? Consultations may raise expectations that they will be affected, and therefore, entitled to receive compensation. But the project design, as well as the affected communities, may change, and therefore, some will not be eligible for compensation or resettlement.
- The resettlement process can be a big challenge, citing the experience in the Cauvery Delta in Tamil Nadu. The project is in a delta area and there is no suitable land for the affected people and the construction of resettlement housing is piecemeal. Only when the affected persons have been resettled can the project commence, and it took a lot of time. There is also the disparity of compensation between the people affected by ADB projects and those affected by state projects. ADB should consider the government norms in implementing projects. There should be changes in the revised policy in this aspect.
- Clarification was sought on the presentation that mentioned "lack of capacity in terms of implementing resettlement and land acquisition from the case of Sri Lanka and Cambodia", referring to lessons learned in compliance review presentation (due diligence). The statement was disputed. Cambodia developed its standard operating procedures on land acquisition and resettlement, with a clear process for GRM. Agencies have also undergone several capacity buildings with relevant agencies at the national and local levels. The "lesson learned" in the presentation referred to a situation that happened 12 years ago and things had improved since then.

10. Others

- How is the gap in allocation of resources for safeguard capacity and project level GRM being characterized? It is challenging for outsiders to understand the issue because they lack information on the structure for budgeting to correctly identify the gaps in the macro and micro levels. Additional information should be presented in the context of developing an implementation plan.
- What was the evaluation method used in evaluating the safeguard policy?
- The inconsistencies between ADB safeguards policy and the national laws of the borrower-country were pointed out. How is ADB bridging this gap?
- In terms of environmental standards, will the ADB safeguards prevail, or will it be the national law of the borrower country?
- What does comprehensive baseline data mean? This is in reference to the presentation on compliance review, particularly on the lessons learned.