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ADB Safeguards Policy Update:

In-Country Stakeholder Consultation with Government

Philippines, 16 November 2022



**SAFEGUARD
POLICY REVIEW
AND UPDATE**

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Technical Announcements and Acknowledgement of Participants



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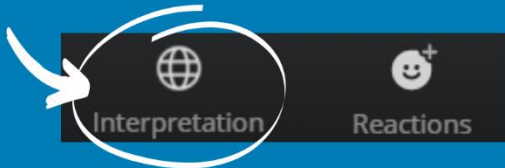
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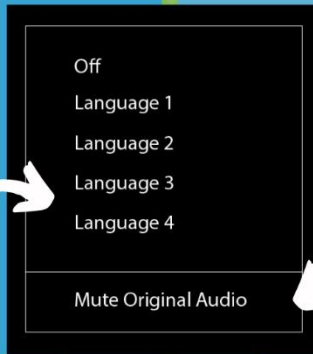
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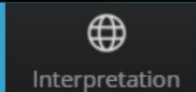


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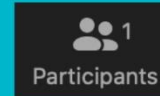


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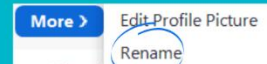
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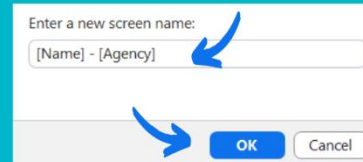
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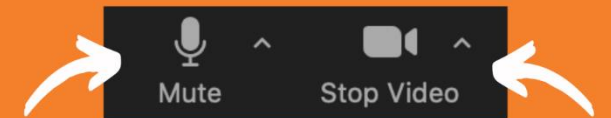
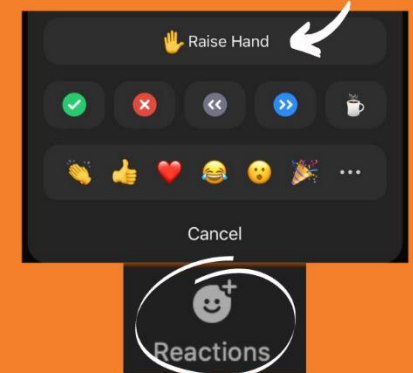


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The Safeguard Policy Review and Update Phase 2 consultations provide opportunities for stakeholders to express their views and opinions on ADB's environmental and social safeguards in the most meaningful and safest manner possible.

All stakeholders are encouraged to articulate their inputs and concerns during these consultation sessions. By joining (and as noted in paragraph 47 of the Stakeholder Engagement Plan) stakeholders are consenting to the video and audio recording of these consultations. ADB will prepare consultation summaries for internal use. These will not be disclosed publicly. The purpose of the recordings is only to ensure the accuracy and transparency of proceedings.

Stakeholders wishing to exclude themselves from such recordings are asked to contact the Safeguards Policy Review and Update Secretariat at safeguardsupdate@adb.org within 2 weeks of this session to share their exceptions and exclusions.



All types of feedback are welcome. These will not be used for the purposes of retaliation, abuse, or any other kind of discrimination.

If you have any issues or concerns on the disclosure, recording, confidentiality, potential risks, abuse, or any kind of discrimination during the consultations, or wish to exclude yourself from the recording of events and discussions, please contact the Secretariat at safeguardsupdate@adb.org.

Agenda



- I. Technical Announcements and Acknowledgement of Participants** (10 mins)
- II. Session 4: Land Acquisition, Resettlement and Involuntary Restriction of Access to Land** (30 mins)
Madhumita Gupta, Principal Social Development Specialist (Safeguards), Safeguards Division (SDSS), Sustainable Development and Climate Change Department (SDCC)
- III. Questions, Answers and Discussion** (60 mins)
- IV. Break** (10 mins)
- V. Session 5: Labor and Working Conditions** (30 mins)
Jay Wagner, International Labour Advisor (Consultant)
- VI. Questions, Answers and Discussion** (60 mins)
- VII. Lunch break** (60 mins)

Agenda

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VIII. Session 6: Safeguards for Indigenous Peoples (30 mins)

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

IX. Questions, Answers and Discussion (60 mins)

X. Wrap Up and Closing Remarks (10 mins)

Bruce Dunn, Director, Safeguards Division (SDSS), Sustainable Development and Climate Change Department (SDCC)

XI. Event Evaluation (5 mins)

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Safeguards Division (SDSS)

Session 4: Land Acquisition, Resettlement and Involuntary Restriction of Access to Land

Madhumita Gupta, Principal Social Development Specialist (Safeguards),
SDCC



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ADB Safeguards Policy Statement, 2009 (SPS): Overview



IR Safeguard Objectives

- 1 **Avoid** involuntary resettlement wherever possible
- 2 **Minimize** involuntary resettlement by exploring project and design alternatives
- 3 **Restore and enhance** the livelihoods of all displaced persons in real terms relative to pre-project levels
- 4 **Improve** the standards of living of the displaced poor and other vulnerable groups

Key Requirements

- **Triggers:** physical and economic displacement related to involuntary land acquisition, involuntary land use restriction, and involuntary restriction of access to resources/legally designated parks and protected areas; impacts can be full/partial, permanent or temporary.
- **Key requirements:**
 - Screening, categorization and assessment of IR impacts
 - IR planning: prepare/update and disclose resettlement plans
 - Stakeholder consultations with displaced persons and GRM
 - Restoration of livelihoods through replacement/compensation for lost assets at replacement cost; no displacement prior to compensation
 - Provision of assistance and support (cash and non-cash)
 - Protections for displaced persons without recognizable legal rights to land
 - Monitoring of resettlement outcomes and disclosure of reports

Independent Evaluation Department (IED): Findings and Recommendations for IR



- 1. Maximize the value added of the IR safeguard beyond compensation.** IED evaluation finds ADB's involuntary Resettlement (IR) safeguards performance to be generally satisfactory; however, it notes a primary reliance on compensation of affected persons with a simultaneous weakness of livelihood restoration and improvement, especially for severely affected poor and vulnerable households. Recommends clearer livelihood restoration provisions and mitigation approaches. Notes weaknesses in stakeholder consultations and disclosure of resettlement plans, and further recommends improved disclosure of safeguards documentation in local languages and improved participation of government staff in consultations.
- 2. Recommends a new integrated approach to risk assessment and categorization.** The use of a numerical threshold of 200 severely affected persons for IR category A projects is judged inadequate and insufficiently risk oriented, as it does not appropriately assess the variable risks within the socio-economic, institutional, and country contexts.
- 3. Recommends enhanced mechanisms to assess social risks in projects and impacts on communities, people and their livelihoods** which do not originate from involuntary land acquisition but may still lead to physical and economic displacement.

Analytical Study Methodology and Processes:



Analytical Study Objective:

- Study objective is to provide informed recommendations for the update of requirements related to land acquisition, land use restriction, and involuntary resettlement.

Analytical Study Methodology:

- Desk based document review - IED Report and ADB Management Response, project documents related to IR safeguards
- Benchmarking with other MFI policies - Comparative analysis with EBRD, IFC, IDB, World Bank
- Stakeholder consultations and workshops - ADB staff, developing member countries (DMCs), Private Sector clients and organizations, civil society organisations.

Findings of Benchmarking of ADB IR Safeguard with MFIs



Objectives and Scope of Application

- ADB shares with other MFIs the objectives of avoiding and minimizing adverse IR impacts.
- Other MFIs include among the policy objectives avoidance of forced eviction, compensation at replacement cost and stakeholder engagement.
- Some MFI include requirements for voluntary land transactions, such as voluntary land donations.
- Some MFIs allow application of the IR standard to livelihood impacts not resulting from land acquisition.

Risk classification and categorization

- Except for ADB, all MFIs adopted a risk-based integrated environmental and social assessment.

Findings of Benchmarking of ADB IR Safeguard with MFIs



Mitigation plans

- All MFIs require preparation of varying types of resettlement planning documents commensurate with the level of displacement.
- All MFIs permit the use of resettlement frameworks for projects without impact assessments prepared before project approval
- ADB limiting the use of frameworks to four finance modalities.

Stakeholder engagement

- All MFIs require disclosure of relevant information about displacement impacts and mitigation measures in local languages and an accessible culturally appropriate manner.
- Some MFIs detail the kind of information required.
- Except for ADB, none of the MFIs explicitly require full disclosure of resettlement documents on their websites.

Findings of Benchmarking of ADB IR Safeguard with MFIs



Monitoring and implementation

- ADB explicitly mandates the public disclosure of monitoring reports on its website.
- To ensure verification of the completion of RP implementation, especially for IR category A, other MFIs may require land acquisition IR completion reports and/or external compliance reviews.
- ADB does not require standalone IR completion audits and reports but mandates ongoing M&E and discloses completion of RP implementation in project completion reports.

Roles and responsibilities

- The division of responsibilities is comparable to ADB.
- MFIs undertake screening, due diligence, supervision, support and capacity building.
- Borrowers implement all requirements for safeguard management of the standards.



Architecture and Integration

1. Adoption of a performance standard approach, with binding requirements for Borrowers and ADB, including for staff, with clarification of differential roles and responsibilities for the management of land acquisition and land use restriction (LA/LUR).
2. Adoption of a risk-based approach to screening, scoping and categorization of LA/LUR without a numerical threshold for impact significance.
3. Adoption of an integrated environmental and social impact assessment as an overarching assessment tool to cover all anticipated social risks and impacts of a project, with specific requirements for LA/LUR.

Key issues for further consideration



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Scope of Application

1. To cover both involuntary and voluntary forms of LA/LUR, improve implementation practices and provide clearer guidance
2. To clarify provisions related to land use restriction and restriction on access (regarding both infrastructure and natural resource management related impacts)
3. To clarify provisions for the social impacts of associated facilities, existing facilities, legacy issues and cumulative impacts and their mitigation.
4. To clarify provisions for mitigation of livelihood impacts & asset losses not caused by land acquisition.



Strengthening of other provisions

1. To link LA/LUR planning with the readiness of the technical design through either
 - implementation ready land acquisition plans, or
 - a framework approach coupled with enhanced scoping
2. To further clarify LA/LUR related provisions for
 - valuation of lost assets
 - livelihood restoration
 - relocation of non-titled displaced persons
 - vulnerability
 - gender
 - mitigation measures for host communities
 - strengthening of the Borrower's capacity for LA/LUR management
 - external and third-party monitoring and verification

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Questions, Answers and Discussion



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10:00

Screen Break



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Session 5: Labor and Working Conditions

Jay Wagner, International Labour Advisor (Consultant)



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Background

- ADB is updating the 2009 Safeguard Policy Statement (SPS)
- Labor and Working Conditions (LWC) is one of studies being conducted to feed into the Safeguard Policy Review and Update (SPRU).
- ADB commissioned Plexus Energy consultant Jay Wagner to review policy requirements on LWC and benchmark against peer MFIs (WB, AIIB, IFC, EBRD, and IDB)



Purpose and Scope



- Review ADB documents and policies incl. the 2009 SPS, Social Protection Strategy, Strategy 2030, Handbook for Poverty and Social Analysis, Handbook on Core Labor Standards (CLS), etc.
- Conduct comparative review of key similarities and differences on LWC standards/policies and implementation arrangements (guidance materials and requirements) of ADB and peer MFIs.
- Identify: best industry practices, standards and guidance; gaps, areas of convergence; strengths and weaknesses; critical issues to be addressed; and make recommendations.
- LWC includes: the core labor standards (child labor, forced labor, nondiscrimination, and freedom of association), health and safety, supply chain, other labor issues such as retrenchment.



Process and Deliverables



1. Document Review and Stakeholder Interviews

2. Draft Report

3. Final Report containing:

- A gap analysis of LVC in 2009 SPS and a comparative analysis of MFIs safeguard policies, implementation requirements and practices
- Recommendation for ways forward on LVC for ADB's updated Safeguard policy





- **Safeguard Policy Statement (2009)**
- **Social Protection Strategy (2001)**
 - » Social Protection Operational Plan
 - » Operation Manual C3: Incorporation of Social Dimensions into ADB Operations
 - » Initial Poverty and Social Assessment (IPSA) and Summary Poverty Reduction and Social Strategy (SPRSS) reports on Core Labor Standards due diligence
 - » Loan Covenant, Project Administration Manual and Contract Agreements

Key Findings

No. 1



- **ADB LWC Provisions are scattered**

- LWC provisions scattered over multiple documents – CLS Handbook, Handbook on Poverty and Analysis, etc.
- MDB peers (except AIIB) have a consolidated, stand-alone LWC Safeguard Standard

- **Lack of Clarity and Accessibility**

- A stand-alone LWC safeguard and associated specific guidance, like some ADBs peers have adopted, has proved beneficial in terms of clarity and accessibility for both staff and borrowers

- **Aspirational vs Practical**

- ADB provisions worded such that they aspire more to an overall development objective whereas other MFIs approach is more practical and applied
- No specific details on how to implement the CLS
- ADBs peers have defined clear, practical and auditable requirements for their clients, supported by operations-focused guidance notes

- **Policy Principles vs Performance Standards (PS)**

- PS approach is seen as better suited to address LWC issues and to require compliance by borrowers
- Clear and binding safeguard requirements would likely enhance developmental outcomes

- **Absence of Guidance and Operationalisation**

- ADB lacks project-specific guidance
- LWC requirements are not implementation-focused and not operationalized

- **Loan Modalities**

- LWC transcend the different loan modalities and are equally applicable to private sector project finance as well as public sector lending

- **Descriptive vs Prescriptive**

- ADB focuses on a “what is”, explaining the LWC issue and how ADB can help address it
- Other MFIs chose a more prescriptive, “how to” approach for clients and projects
- Language of peer MFI LWC provisions is more binding. Absence of more binding language gives the impression that compliance with the CLS is optional, with national LWC provisions prevailing

- **Allocating Responsibility**

- IFC, VWB, EBRD and IDB put onus of managing and monitoring LWC on borrowers / projects
- ADB does not allocate clear responsibility to borrowers - where it is mentioned, it falls mainly to ADB/ADB staff

- **Gaps and Omissions**

- Compared to other MFIs, ADB has key gaps on cross-cutting and emerging issues, such as vulnerability, grievance mechanism, labor influx / migrant workers, supply chain, gender and gender-based violence etc.
- These themes reinforce the importance of LWC as a core issue in project finance and sustainable development
- Implicit reference to the CLS in the safeguards is not sufficient

- **Harmonisation with MDB Peers**

- The absence of a consolidated and up-to-date safeguard addressing LWC is becoming an obstacle to co-financing with other MFIs.
- Increased harmonization between MFIs would lower transaction costs and makes it easier for staff to evaluate and oversee projects and for borrowers to comply with LWC requirements

Recommendations

No. I



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Key Recommendation: Update SPS and adopt a LWC Performance Standard

- **R1 – Adopt a Stand-Alone LWC Performance Standard**
 - Consolidate LWC provisions and provide greater clarity for staff and borrowers
 - Understand the resource requirements involved
- **R2 – Safeguards Oversight and Quality Assurance**
 - Review the arrangements and steps needed to implement and oversee the roll-out of a LWC PS
 - Consider the kind of indicators needed
- **R3 – Tighten the Language of LWC Provisions**
 - Ensure that provisions are based on more definitive language such as "must" or "should"

Recommendations

No. 2



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- **R4 – Guidelines and Tools**
 - Develop, in parallel to a stand-alone LWC PS, operationally-focused LWC guidelines, guidance notes and tools for borrowers
- **R5 – Strengthen Bank Expertise in LWC**
 - Carry out a review of the technical expertise needed
 - Develop a capacity building and training program, learning lessons from other MFIs
- **R6 – Review CLS Implementation Status**
 - Review the extent to which the CLS are ratified and implemented in key ADB operating countries and establish where gaps exist

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Questions, Answers and Discussion



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Lunch Break



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Session 6: Safeguards for Indigenous Peoples

Tulsi Charan Bisht, Senior Social Development Specialist (Safeguards),
SDCC



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Safeguards Requirement 3: Indigenous Peoples Safeguards



1. Safeguard Requirements 3 (SR 3): Indigenous Peoples (SPS 2009)
2. Independent Evaluation Department (IED) Review Finding on SR 3
3. Analytical Study:
 - Objective and Methodology
 - Benchmarking with other MFIs
 - Key Finding and Recommendation
4. Potential Changes in the New IP Standard

1. Safeguard Requirements 3: Indigenous Peoples

Objectives of Indigenous Peoples Safeguard:

Design and implement projects in a way that fosters full respect for Indigenous Peoples' identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by Indigenous Peoples themselves so that they (i) receive culturally appropriate social and economic benefits, (ii) do not suffer adverse impacts as a result of projects, and (iii) can participate actively in projects that affect them.

Application of Indigenous Peoples Safeguard:

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

Indigenous Peoples Identification Criteria:

The term Indigenous Peoples is used in a generic sense to refer to distinct, vulnerable, social and cultural group possessing in varying degree four characteristics

- (i) Self-identification as a distinct group that is also recognized by others;
- (ii) collective attachment to distinct habitats or ancestral territories;
- (iii) separate and customary cultural, economic, social or political institution; and
- (iv) distinct language.

Indigenous Peoples Safeguard Triggers:

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

Indigenous Peoples Safeguard General Requirements:



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

Indigenous Peoples Safeguard Specific Requirements: Broad Community Support (BCS):



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

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

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

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

2. IED Report Outcomes on IP Safeguard Implementation:



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

3. Analytical Study Summary:



Objective: to provide informed recommendations for the update of IP Safeguards.

Methodology:

Desk based document review - IED Report and ADB Management Response, project documents related to IP safeguards such as selected Indigenous Peoples Plans (IPPs), Monitoring Reports and relevant reports from ADB Accountability Mechanism

Benchmarking with other MFI policies - Comparative analysis with AfDB, AfDB, EBRD, EIB, IDB, IFC, NDB, World Bank

Stakeholder consultations -ADB staff, developing member countries (DMCs), Private Sector clients and organizations, civil society organizations, Indigenous Peoples and IP Organizations (IPO) and Representatives

Implementation Challenges of SR 3:



- Identification of IPs: Complex and need further clarification
- Vulnerability as one criterion of IP Identification: Helps focus on those who need help but causes misalignment with MFIs, results in mainstreaming
- Conflating involuntary resettlement impacts with SR3 specific impacts: Results in involuntary resettlement issues getting priority over the SR3 impacts
- IP safeguard is complex: Rigorous and distinct requirements and takes longer to prepare and implement projects
- Resource constraints: Monetary resources, time and skills in ADB, DMCs, IPOs and clients
- Requires robust and culturally sensitive Social Impacts Assessment
- Alignment with other multilateral finance institutions (MFI) on IP policies

Benchmarking of ADB IP Safeguards with the MFIs:



Comparative textual assessment of IP safeguards of ADB with other MFIs to assess the extent of harmonization and alignment.

IP Policy Objectives - ADB shares with other MFIs the objectives of avoiding and minimizing the potential adverse impacts on IP. Some MFIs have more detailed objectives such as FPIC, support for women, girls and other groups within IP communities.

IP Policy Scope of Application & Triggers - SPS shares the criterion of 'distinctiveness' based on four characteristics like other MFIs in the process of IP identification. There is a marked difference in ADB's approach that requires social groups to be 'vulnerable' too. Other MFIs like IFC, WB only require 'distinctiveness'.

Social Impact Assessment - ADB has similar requirements of conduct of SIA. Other MFIs (IFC, WB, EBRD) require an integrated approach to environment and social impact assessment (ESIA), while ADB requires separate SIA and EIA.

Stakeholder Engagement (Information Disclosure & Consultation) - ADB shares the meaningful consultation and disclosure requirement with other MFIs.

Roles and responsibilities – Provisions defining roles and responsibilities of both borrower and the MFI are similar across the institutions.

Assessing SR 3 with National Standards -ADB requires a gap assessment between SPS requirements and national safeguard policies and identified gaps need to be addressed to comply with ADB requirements. Some MFIs such as IFC, IDB have similar requirements, while WB does not have such specific references.

Grievance Redress Mechanism -All MFIs including ADB have requirements related to GRM. Some MFIs such as EBRD, IFC, IDB have more details on GRM requirements. All MFIs require early establishment, accessibility, impartiality and transparency in GRM.

Promoting Benefits and Wellbeing of IPs - All MFIs share the objective that IP benefit from development interventions in a culturally appropriate manner.

Monitoring, Reporting and Institutional Support – All MFIs share the requirement of monitoring and reporting. Though MFIs require assessment of borrowers' capacity and commitment, not all provide for implementation support, while ADB does offer capacity building support.

Voluntary Isolation - ADB does not have any requirement for IP's living remotely or in voluntary isolation, MFIs like WB, IFC, IDB, EBRD have such requirements.

Special Requirements (Broad Community Support vs Free Prior and Informed Consent)- there is a divergence as ADB requires seeking BCS, other MFIs such as EBRD, EIB, WB, IFC, IDB have adopted FPIC.

Analytical Study Recommendation:



- IP identification – ‘Distinctiveness’ only or both ‘Distinctiveness and Vulnerability’
- Adopting FPIC
- Improving SR3 requirements and processes:
 - Improving SIA to assess IP impacts (tangible/non-tangible)
 - Developing IP specific mitigation measures
 - Improving consultation procedures
 - Making GRM more inclusive
 - Monitoring and reporting to include non-tangible indicators
 - Promoting capacity building for ADB staff and borrowers
- Addressing political sensitivities
- Developing clarity for technical terms, concepts and safeguard requirements

Potential Changes in the New IP Standard:



1. Scope of Application: ESS 7 will apply if Indigenous Peoples are present in, or have collective attachment to, a proposed project area.
2. Changes in IP identification criteria: “Vulnerability” requirement for IP identification dropped.
3. Introducing “Free, Prior, and Informed Consent” (FPIC) in place of existing “Broad Community Support” (BCS); the special circumstances requirements broadened from “commercial development of natural resources” to “adverse impacts on”; from “commercial development of cultural resources” to “significant impacts” and from “physical displacement of IP” to “relocation of IP”.
4. Compensating IP communities for adverse impacts clarified and will also be cross-referenced with IR PS.
5. Minor Changes:
 - Clarifying objectives
 - GRM: Inclusion of IP dispute resolution system

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Questions, Answers and Discussion



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Wrap Up and Closing Remarks

Bruce Dunn, Director, Safeguards Division (SDSS),
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