ADB

ADB Safeguards Policy Update:

In-Country Stakeholder Consultation with Civil Society Organizations

Indonesia, 02 December 2022

SAFEGUARD POLICY REVIEW AND UPDATE

Sustainable Development and Climate Change Department (SDCC)
Safeguards Division (SDSS)

Technical Announcements

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Session Reminders

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✓ For online participants:
  - ✓ If possible, join from a quiet, distraction-free area
  - ✓ Put your microphone on mute when you are not speaking

✓ Raise your hand to raise a point or question

✓ Be respectful to everyone

✓ Be conscious of time as per the agreed agenda

Meeting Safety Protocol

The Safeguard Policy Review and Update 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. Our session today is for CSOs only and will not involve any government representative in person or online. ADB follows this protocol:

1. Participants are encouraged to articulate their inputs and concerns in our sessions. There will be no video recording, and cameras set up in the hall will be used for visibility in Zoom only.

2. All types of respectful feedback are welcome and there is a mechanism to provide feedback anonymously. These will not be used for the purposes of retaliation, abuse, or any other kind of discrimination. ADB has a "no tolerance" policy for retaliation in this consultation process.

3. A written summary of the meeting will be prepared and shared with participants after the event. ADB will not attribute specific comments to individuals. However, if you would like a specific comment or statement attributed to you, you may inform us.

4. If you have any issues or concerns on the confidentiality, potential risks, abuse, or any kind of discrimination during the consultations, please contact the Secretariat at safeguardsupdate@adb.org.

Agenda

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TIME	SESSION	RESOURCE PERSON
9:00 – 9:20 am	Technical Announcement	
9:20 – 11:30 am	**Session 5. Land Acquisition, Resettlement and Involuntary Restriction of Access to Land** • Presentation (20 min) • Small group discussion (40 min) • Plenary reporting (20 min) • Responses and plenary discussion (50 min)	Irina Novikova, Principal Social Development Specialist, SDCC, ADB
11:30 – 1:30 pm	Lunch break	
1:30 – 3:30 pm	**Session 6. Safeguards for Indigenous Peoples** • Presentation (20 min) • Small group discussion (40 min) • Plenary reporting (20 min) • Responses and plenary discussion (40 min)	Tulsi Bisht, Senior Social Development Specialist , SDCC, ADB
3:30 -5:20 pm	**Session 7. Labor and Working Conditions** • Presentation (20 min) • Small group discussion (40 min) • Plenary reporting (20 min) • Responses and plenary discussion (40 min)	Haidy Ear-Dupuy, Unit Head, NGO and Civil Society Center
5:20 – 5:30 pm	Wrap Up	Bruce Dunn, Director, Safeguards Division, ADB

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Session 5: Standard on Land Acquisition and Land Use Restriction

Irina Novikova, Principal Social Development Specialist, SDCC

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ADB Safeguards Policy Statement, 2009 (SPS): Overview

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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

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 polices - 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.

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.

Objectives and Scope of Application

- Other MFIs include among the policy objectives avoidance of <u>forced eviction</u>.

- Some MFI include requirements for <u>voluntary land transactions</u>, such as voluntary land donations.

- Some MFIs allow application of the IR standard to livelihood impacts <u>not</u> resulting from <u>land acquisition</u>.

Risk classification and categorization

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

Mitigation plans

- All MFIs permit the use of <u>resettlement frameworks</u> for projects without impact assessments prepared before project approval

Stakeholder engagement

- All MFIs require <u>disclosure of relevant information</u> about displacement impacts and mitigation measures in local languages and an accessible culturally appropriate manner.

Monitoring and implementation

- To ensure <u>verification</u> 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.

Roles and responsibilities

- MFIs undertake screening, due diligence, supervision, support and capacity building.

- Borrowers implement all requirements for safeguard management of the standards.

LA/LUR
standard direction

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Architecture and Integration

1. Adoption of a <u>performance standard</u> 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 beyond the numerical threshold for impact significance.

3. Adoption of an <u>integrated</u> environmental and social impact <u>assessment</u> as an over-arching assessment tool to cover all anticipated social risks and impacts of a project, with specific requirements for LA/LUR.

Scope of Application

1. To cover both <u>involuntary</u> and <u>voluntary</u> forms of LA/LUR, improve implementation practices and provide clearer guidance

2. To clarify provisions related to <u>land use restriction and restriction on access</u> (regarding both infrastructure and natural resource management related impacts)

3. To clarify provisions for the social impacts of <u>associated facilities, existing facilities, legacy issues and cumulative impacts</u> and their mitigation.

4. To clarify provisions for mitigation of livelihood impacts & asset losses <u>not</u> <u>caused by land acquisition.</u>

Strengthening of other provisions

1. To link LA/LUR <u>planning</u> with the <u>readiness</u> of the technical design through either
   - implementation ready land acquisition <u>plans,</u> or
   - a <u>framework</u> 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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Discussion

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Lunch Break

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.

Indigenous Peoples Identification Criteria:

The term Indigenous Peoples is used in a generic sense to refer to distinct, <u>vulnerable</u>, 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.

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

Specific Requirements:

Broad Community Support – a collective expression by the affected IP communities through the individuals or representatives of support for the project.

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

ADB will 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

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

Stakeholder consultations

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 Safeguards are aligned with those of the comparator MFI to a large extent – Objectives, Impact Assessment, Consultation & Information Disclosure, Grievance Redress Mechanism, Monitoring and Reporting, Benefit Sharing.

Major Differences:

IP Identification: SPS shares the criterion of 'distinctiveness' based on four characteristics like other MFIs. The difference is ADB approach also requires social groups to be 'vulnerable' too.

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.

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.

Analytical Study Recommendation:

- IP identification – 'Distinctiveness' only

- Adopting FPIC

- Improving IP Safeguards requirements and processes:

  Improving SIA to assess IP impacts (tangible/intangible)

  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) in three specific circumstances.

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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Screen Break

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Session 7: Standards on Labor and Working Conditions

Haidy Ear-Dupuy, Unit Head, NGO and Civil Society Center

- 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)

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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.

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Process and Deliverables

1. **Document Review and Stakeholder Interviews**

2. **Draft Report**

3. **Final Report containing:**
   - A gap analysis of LWC in 2009 SPS and a comparative analysis of MFIs safeguard policies, implementation requirements and practices
   - Recommendation for ways forward on LWC for ADB's updated Safeguard policy

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Current ADB Practice

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- **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

- **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, WB, 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

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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"

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- **R4 – Guidelines and Tools**
  - o 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**
  - o Carry out a review of the technical expertise needed
  - o Develop a capacity building and training program, learning lessons from other MFIs

- **R6 – Review CLS Implementation Status**
  - o 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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Wrap Up and Closing Remarks

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

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Event Evaluation

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