

# ADB Safeguard Policy Review Update – Phase 2 Regional Consultation Summary: Summary of Phase 2 Stakeholder Consultations

June 2021-March 2023

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## ABBREVIATIONS

ADB	Asian Development Bank
AGL	– Adjaristsqali Hydropower Project
AWTIP	– Angat Water Transmission Improvement Project
BATUMI	– Batumi Bypass Road Project
BCS	– broad community support
COSH	– community and occupational health and safety
CSS	– country safeguard systems
DMC	– developing member country
EIA	– environmental impact assessment
ESAP	– environmental and social action plan
FCAS-SIDS	– fragile and conflict-affected situations/small island developing states
FGDs	– focus group discussions
FI	– financial intermediary
FPIC	– free prior and informed consent
GBV	– gender-based violence
GADIP	– Ulaanbaatar Urban Services and Ger Area Development Investment Program-Tranche 1
GRM	– grievance redress mechanism
IP	– indigenous peoples
NN1	– Nam Ngiep 1 Hydropower Project
LARP	– land acquisition and resettlement plan
LGBTQ	– lesbian, gay, bisexual, transgender and queer or questioning
LMP	– labor management plan
LWC	– labor and working conditions
MDB	Multilateral development bank
MCRP	– Malolos-Clark Railway Project
PAPs	– project affected peoples
PCR	– physical cultural resources
RSTDSP	– Rajasthan Secondary Towns Development Sector Project
SEAH	– sexual exploitation, abuse, and harassment
SEID	– stakeholder engagement and information disclosure
SIA	– social impact assessment
SOGIESC	– sexual orientation, gender identity, gender expression and sex characteristics
SPS	Safeguard Policy Statement
SUDIP	– Sustainable Urban Development Investment Program
NUSDP	– Nuku'alofa Naku'alofa Urban Development Sector Project
UNDRIP	– United Nations Declaration on the Rights of Indigenous Peoples

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## EXECUTIVE SUMMARY

### Background

The Asian Development Bank (ADB) is undertaking a comprehensive review and update of its Safeguard Policy Statement, 2009 (SPS) following a Corporate Evaluation of the SPS by ADB's Independent Evaluation Department (IED), completed in May 2020 (IED Report). The update will seek to modernize the policy, considering the changing development context and evolving developing member country (DMC) and client needs and capacities; as well as opportunities for greater harmonization with the policy principles and standards of other multilateral financial institutions (MFI). To inform this process, ADB carried out 18 analytical studies and background papers on the policy architecture and thematic issues that reviewed the implementation of 2009 SPS provisions for the thematic areas and to carry out a benchmarking exercise that compares the 2009 SPS provisions and other related ADB policies with those of selected MFIs including the Asian Infrastructure Investment Bank (AIIB), African Development Bank (AfDB), European Bank for Reconstruction and Development (EBRD), European Investment Bank (EIB), Inter-American Development Bank (IDB), International Finance Corporation (IFC) and the World Bank with a view to identify opportunities for harmonization with these MFIs in the revised safeguards policy.

ADB convened a series of stakeholder consultations that were informed by benchmarking and analytical studies on the safeguards policy architecture and 18 thematic issues. The consultations engaged stakeholders from member governments, private sector clients, civil society organizations (CSOs), project-affected peoples (PAPs), international organizations and peer multilateral financial institutions (MFIs) to discuss their experiences and views in the implementation of the 2009 Safeguard Policy Statement, and recommendations for policy directions. The consultations were carried out from November 2021 to March 2023 and involved 145 consultation events, 10 in-country consultations in developing member countries (DMCs) and project-affected people's (PAPs) consultations in 9 ADB-supported projects. This report consolidates and provides a summary of feedback from Phase 2 consultations.

**Policy Architecture.** The architecture study found that most MDBs have adopted and adapted a "performance standard model" developed by the International Finance Corporation. The model sets out policy requirements for each institution, complemented by 8–10 standards with policy objectives and requirements for borrowers and clients. Governments welcome the shift from principles-based model to a Performance Standards model which, in their view, will harmonize the ADB safeguards policy with peer MFIs, and bring greater clarity and consistency of requirements including for co-financed projects, and improve efficiency. CSOs reiterated that the shift to the performance standards model should strengthen and not result in the dilution of the content of the Safeguard Policy Statement (SPS). CSOs added that the revised policy should strike a balance between front loaded requirements and compliance over time; improve risk screening and categorization, clarify responsibilities between the ADB and the borrowers, and cover other thematic topics including broad gender issues, supply chain, zero tolerance for discrimination and reprisals, and clear instruction to consultants and contractors.

**Assessment and Management of Environmental and Social (E&S) Risks and Impacts.** The analytical studies highlighted ADB's current approach to E&S risk classification which has separate classification for the three safeguards (environment, involuntary resettlement and Indigenous Peoples) and recommended that a more integrated approach be considered. This would be consistent with other MDBs, which have developed more integrated E&S risk assessment processes. The studies also noted that DMCs do not have separate classification systems for E&S risks. Governments welcome the shift to an integrated E&S risk assessment

that will enable a more holistic approach than the SPS and aligns with the policies of peer MFIs. CSOs also welcomed the integrated risk assessment while keeping the current reference to the principle of precautionary principle. Multiple stakeholders also highlighted the need for clear methods and indicators for E&S classification, noting that it should be evidence-based and proportionate to the nature and scale of risks and impacts. Distinct E&S risks should be identified and documented and there should be caution in “weighting” environmental versus social risks. CSOs and some international organizations also suggested that ADB strengthen its risk assessments by including references to disadvantaged or vulnerable groups, as well as consideration of human rights, including reference to the UN Guiding Principles on Business and Human Rights. Assessing and managing potential risks of reprisals against project-affected persons and complainants was also raised, as were risks associated with the deployment of military and security forces. Stakeholders also highlighted the integration of more emerging risks, such as climate, SEAH, and digital risks.

**Labor and Working Conditions.** Most comparator MDBs have a separate standard on labor and working conditions in their E&S frameworks. It was recommended that ADB align with this approach, consolidating the provisions in the SPS and the Social Protection Strategy (2001). Governments and CSOs welcomed the standalone standard on labor and working conditions (LWC). Many stakeholders, including some DMCs and CSOs, requested that ADB align its new labor standard with the core labor standards (or fundamental conventions) of the International Labor Organization (ILO). As part of requirements for labor and working conditions, stakeholders, especially CSOs, recommended that the policy include (i) employment impact assessments and labor management plans; (ii) consultation process between employers and labor representatives; (iii) guidelines to prevent and mitigate SEAH and gender-based violence; (iv) provisions specific to women; and (v) project-level grievance mechanisms for workers, taking into account sensitivities related to SEAH and gender-based violence. CSOs also recommended that nondiscrimination and equal opportunity be provided for workers of diverse SOGI. Stakeholders expressed a range of views with respect to managing risks, including forced labor risks in supply chains. While most MDBs include due diligence for the workers of primary suppliers, some stakeholders underscored the need for supply chain mapping, greater traceability, and due diligence for higher levels of supply chains. Challenges with extending due diligence beyond the level of a project and contractual relationships with suppliers were seen as constraints. Limitations with risk assessments, data verification, and capacity constraints were also highlighted. More broadly, the need for enhanced monitoring and reporting and the extension of requirements to contractors and subcontractors were also recommended.

**Pollution Prevention and Resource Efficiency.** While most DMCs have ambient noise, air, and water quality standards and pollution discharge limits, stakeholders highlighted several areas for more attention. Governments requested ADB to expand the definition of pollution to include medical and other hazardous wastes, noise pollution from waterway vessels and traffic affecting floating communities, and waste from oil. CSOs proposed ADB to consider the inclusion of requirements that: (i) address the persistent organic pollutants and mercury; (ii) exclusion for all types of asbestos and other chemicals that are dangerous, including agricultural pesticides. Governments asked if they could follow national standards in assessing and mitigating pollutants as part of the project due diligence. However, CSOs noted that national standards vary between countries and may have gaps, and thus recommended the application of good international practice standards such as the World Health Organization 2021 Air Quality Guidelines. Questions were also raised on the link between ADB’s Energy Policy and safeguards, including whether the safeguards would include prohibitions on financing of oil, gas, and coal.

**Community and Occupational Health and Safety (COSH).** Governments welcomed a separate standard for community and occupational health and safety but added that it should outline clear requirements for planning, implementation, and independent monitoring. Meanwhile, CSOs stressed the importance of aligning with the ILO standards on occupational health and safety and relevant sectoral conventions dedicated to OSH. CSOs also welcomed the proposal to include asbestos in the prohibited investment list where the procurement and financing of any materials with asbestos will not be supported. Governments also suggested that ADB adopt the European Bank for Reconstruction and Development (EBRD) and IFC's best practices on data disclosure that expand reporting that cover deaths, injuries, and health. They also proposed that ADB pay attention to the workers in the supply chain including subcontracted workers for infrastructure projects and sub-projects exposed to accidents and other health and safety issues. CSOs asked ADB to consider stronger safeguards in dams and linear infrastructure projects.

**Land Acquisition, Land Use Restriction, and Involuntary Resettlement.** Government agencies shared challenges faced during project implementation, including the difficulties when ADB requirements are different from national requirements. This is often the case with respect to informal settlers. DMCs and CSOs raised issues with the current numerical threshold of 200 or more affected people to determine the significance of impacts which form the basis for an involuntary resettlement risk classification. Governments also called for clearer guidelines for land valuation, to determine compensation and replacement costs that meet the principle of fair market value. Governments and other stakeholders also commented on securing adequate resources for the implementation of land acquisition, including financing compensation or livelihood restoration programs from ADB financing. This is to address financial constraints and prevent slow compensation payments, which could result in project-affected persons having to take out personal loans or sell portions of the lands to cover gaps. Expansion of the standard to cover social impacts not related to involuntary land acquisition received mixed responses from stakeholders, especially from governments. Governments also asked ADB to provide clearer guidelines on stakeholder mapping and in preparing a stakeholder engagement plan. Governments also support engaging third-party entities for monitoring compliance to the agreed resettlement plans. CSOs, meanwhile, called for more stringent due diligence by ADB when reviewing the credibility of baseline data, which must factor the project's contextual risks, and not merely rely on client reports and the engagement of external monitoring for Involuntary Resettlement Category A projects.

**Biodiversity and Natural Resource Management.** Stakeholders highlighted the accelerated loss of biodiversity and carbon-rich ecosystems as a driver of climate change. More effort is therefore needed to avoid biodiversity impacts, especially for critical habitats and other priority biodiversity features. Governments asked ADB to strengthen guidance for mitigation measures in critical habitats. CSOs asked ADB to use international standards for biodiversity areas as these have very strong scientific basis and specific thresholds. CSOs also asked ADB to consider expanding the "off-limits" sites for development projects to sites such as Indigenous Peoples reserves, free-flowing rivers, protected or at-risk coastal ecosystems, and the iconic ecosystems which are natural habitats with cultural value. CSOs reiterated their call to prohibit the use of biodiversity offsets and that offsets should not be permitted in critical habitats. CSOs also asked ADB to move from "no net loss" to "no loss" to align with the policies of peer MFIs. On the social dimension of biodiversity protection or loss, governments asked ADB if there are compensatory measures provided to people whose livelihoods are affected by the loss of biodiversity and the damage to natural resources because of the project. Both governments and CSOs stressed the importance of valuation of ecosystem services in projects. CSOs also asked ADB to align the new policy with the Taskforce on Nature-related Financial Disclosures Nature-Related Risk and Opportunity Management and Disclosure Framework to disclose investments in projects that are

dependent on ecosystem services. CSOs also asked ADB to consider stronger safeguards, claiming that 85% of the decline in freshwater species in the last 30 years can be attributed to the building of dams; have clear safeguards in projects located in critical habitats that overlap with indigenous territories and ancestral domains; and integrate animal welfare and impacts across climate, biodiversity and human health and zoonotic diseases. Biodiversity assessments and management should be considered in upstream activities such as strategic environmental assessments or country systems assessments.

**Indigenous Peoples (IP).** Discussions highlighted the challenges with the identification criteria for triggering the Indigenous Peoples safeguards. IED had highlighted this as a constraint. Governments asked ADB for clear criteria to identify IPs and triggers for the application of IP policy, but that such criteria should not contradict national laws. They emphasized the importance of a clear process of identification to avoid the faking of identities or forging signatures and other documentation. CSOs, on the other hand, stressed that the criteria should be aligned with the established right to self-identification under international laws such as the United Nations Declaration on the Rights of the Indigenous People (UNDRIP of 2007 and the ILO Convention 169). On the identification of IPs, CSOs argued that the process should not be based on how IPs view themselves but on their collective way of life and attachment to the land. Relying on country safeguard systems, especially in relation to IPs, can be challenging. ADB should, instead, support the strengthening of DMCs' policies on the recognition for the collective land rights of IPs, whether they are called by different names such as ethnic minorities, scheduled tribes, or forest dwellers. There should be a clear procedure on how the IP policy applies to countries that do not officially recognize IPs or in areas where the IPs are not actually the minority in the population or are not considered vulnerable. CSOs also welcome the move from broad community support (BCS) to free, prior and informed consent (FPIC) as the latter was established in ILO 169 and the UNDRIP, adding that this has been their long-term advocacy to MFIs. CSOs also commented that grievance redress mechanisms (GRM) for affected IPs should be culturally appropriate and accessible and respects indigenous knowledge and justice systems.

**Cultural Heritage.** All stakeholders recognized the importance of protecting and managing cultural heritage. Both governments and CSOs stressed the importance of involving and consulting communities in identifying cultural heritage because they are the knowledge holders and can fill the information gaps on cultural sites. The determination of cultural heritage and resources cannot be left to outside experts. Governments pointed out the importance of not just the tangible cultural resources but also the intangible ones because these are vital for Indigenous Peoples who protect their indigenous knowledge systems and customary laws. CSOs underscored there is no dichotomy between cultural and natural heritage, especially in Asia where people strongly believe that conserving culture and nature is based on tradition or culture and therefore should not be treated separately when planning for development. Governments remarked that the use of geographic information systems (GIS) to store huge datasets on cultural heritage will be useful to identify problems, monitor change, respond to events, set priorities, and further understand situations of cultural heritage. For CSOs, the data generated using GIS and other technologies should be shared with the local communities so that they can use it for protecting lands, territories, and resources.

**Climate Change.** Both governments and CSOs emphasized that for a standalone climate change standard, fundamental issues should be considered including (i) how the commitment to net-zero GHG emissions commitment in the Paris Agreement will be reflected in safeguards; (ii) the approach to climate risk categorization and consideration of double materiality to be covered in environmental and social assessments; and (iii) inclusion of carbon intensity limits in the exclusion list. On updating the greenhouse gas (GHG) emissions threshold, governments asked the ADB

to explain the factors considered in setting the GHG emissions threshold of 100,000 tons per year for a project. CSOs asked how such a target will be computed, how real time monitoring will be done and if there is an annual increase on the cap to achieve the 1.5-degree Celsius climate target. They also suggested that it should be mandatory for high GHG emitting projects to have a risk assessment at the decommissioning stage. This should apply to ADB infrastructure projects including renewable energy projects. CSOs also called for harmonizing climate change and safeguards commitments by greater integration of resilience, adaptation, and mitigation into the safeguard policy so that safeguards and just transition are managed in a holistic manner. CSOs specifically asked for integrating and harmonizing safeguards with the upcoming policy developments including the Climate Change Action Plan 2023, the Climate and Disaster Risk Screening 2024, Assessing and Reporting ADB's Carbon Footprint 2023, and the 2021 Energy Policy. CSOs also cautioned about the potential conflict between safeguards objectives and some climate change commitments related to financing large scale renewables and low-carbon investments as they can have serious impacts on groundwater use, and threats to communities' rights to livelihood and water access.

### **Stakeholder Engagement, Information Disclosure, and Grievance Redress Mechanisms.**

Most comparator MDBs have a separate standard for stakeholder engagement in their updated E&S frameworks. Governments and CSOs supported a standalone stakeholder engagement standard with a guidance note to improve consistency, the quality of implementation and monitoring of the requirements. While most government stakeholders recognized the importance of meaningful consultation with project-affected persons, CSOs highlighted the need for more inclusive approaches that are gender-responsive and customized to the needs of disadvantaged or vulnerable groups. Early and continual engagement throughout the project cycle was also highlighted. This can be supported through early stakeholder mapping and preparation of stakeholder engagement plans (SEPs) for projects. The new policy also should have clear inclusivity and non-discriminatory provisions, which require consultations with the youth sector, informal workers, and persons with disabilities so that mitigation measures to protect their human rights can be developed. CSOs reiterated their call to keep the 120-day disclosure for Environment Category A projects prior to Board approval, given the challenges they encountered when accessing project information such as the failure of borrowers and clients to fully disclose environmental impact assessment documents in a timely manner and that these documents are not easily accessible to affected people. CSOs asked that the new policy must have explicit commitment to zero tolerance for intimidation and reprisals and have provisions for a safe space for consultation, one that is free of any military presence and the police. Project-level GRMs should be effective vehicles for communities to access relevant and timely project information and to provide an appropriate response to community concerns and demands for better project design and consultations. CSOs also called for ADB to adopt a consistent approach to assessing the effectiveness of GRM as indicated under the UN Guiding Principles on Business and Human Rights (UNGPR) which offers a set of criteria including factors such as legitimacy, transparency, and predictability.

**Safeguards in different financing modalities.** Since the approval of the SPS in 2009, new financing modalities and products have emerged. The Board papers for these new lending modalities and products have contained E&S requirements without updating the SPS. Further, the limited details in the SPS section on the requirements for financing modalities has led to some policy interpretation and implementation challenges, especially for financial intermediation and corporate finance transactions. All stakeholders, including private sector clients, recommended that ADB provide more clarity and guidance on requirements for financial intermediation and other financing modalities. CSOs highlighted that the disclosure requirements for financial intermediaries should be more specific and should be subject to similar safeguards and disclosure



requirements as other modalities. CSOs also suggested that ADB disclose all relevant assessment and monitoring reports. However, other stakeholders, including private sector clients, noted challenges with disclosure of some commercial and confidential information about their portfolios and investments. Capital market regulations can also affect the timing of public disclosures for certain equity investments and bond market transactions.

**Approach to country safeguard systems (CSS).** Governments highlighted the importance of capacity building and gap-filling measures in their recommendations. Specifically, ADB should provide comprehensive training to key ministries, regulatory agencies, implementing units and contractors on their roles and responsibilities in rolling out the new policy. ADB should also provide governments with more technical assistance focused on building expertise and designing systems to support implementation. Although CSOs recognize the importance of retaining CSS equivalence and capacity assessment and strengthening and the eventual use of CSS under the new policy, they believe that this should not lead to the dilution of the current language on CSS. Other considerations in the approach to CSS are the long years it takes to reform and strengthen national laws, the short regime of governments which may or may not be supportive of CSS strengthening, and the issues of systemic corruption at different government levels.

**Safeguards in fragile and conflict affected situations and small island developing states.** CSOs asked how the contextual risk analysis will cover reprisal risks and proposed that ADB should secure an independent assessment of assessments by the client to ensure that reprisal risks such as restrictions to civil space are assessed. Governments asked ADB for flexibility in the application of safeguards due diligence requirements when emergency situations caused by natural disasters happen. Governments also stressed that the current project procurement process creates constraints as Pacific countries have limited pool of safeguards specialists. ADB may provide professional development training for safeguard specialists.

**Gender and safeguards.** Governments and CSOs pointed out that gender is both an element and part of the overarching principle of safeguards. As a safeguard element, it looks at how women/girls and men/boys are differently affected by, for instance, involuntary resettlement. As the effects could be long-term, it is important that actions should go beyond the “do no harm” (usually within the project timeframe) approach but should be sustainable, progressive, and gender transformative. Hence, project safeguards should have gender action plan (GAP).

**Addressing sexual exploitation, abuse, and harassment (SEAH) and gender-based violence (GBV).** Governments suggested that SEAH and gender inclusion requirements should be integrated in all phases of the project, especially during the procurement stage in bidding documents, so that these concerns are not dealt with as secondary issues where supplementary requirements will only be required as deemed necessary. In CSOs experience, the usual support that project-affected people access comes from NGOs that are well trained to handle SEAH-related cases and have good referral pathways to medical centers. However, while these people are in high demand, they usually struggle with funding. Given their critical role in SEAH risk mitigation, they asked how ADB would support service providers.

**Safeguards for sexual orientation, gender identification, gender expression and sex characteristics (SOGIESC).** For sexual and gender minorities, including members of the Lesbian, Gay, Bisexual, Transsexual, Queer, and Intersex (LGBTQI) community, they are disproportionately affected in health, education, and work and continue to face stigma and discrimination due to their SOGIESC. CSOs suggested that the new ADB safeguard policy should (i) have explicit provisions for SOGIESC to ensure visibility of data in tools, processes, and mechanisms; (ii) have explicit reference for SOGIESC inclusion in the safeguard policy as an

overarching statement and a standalone instrument on SOGIESC; (iii) reflect on being increasingly or progressively inclusive; and (iv) consider greater research on understanding contextual, community-specific, and sector-specific vulnerabilities and how violence and discriminations manifest.

**Accountability Mechanism (AM).** CSOs underscored that given the revision of safeguards policy, the AM policy and implementing procedures should also be updated. The AM review should (i) include an examination of ADB requirements for complainants to discuss the issues in good faith before it can be deemed eligible for the AM process and (ii) include FI subprojects and TAs in the projects where complaints can be raised. Governments raised instances where people with vested interests (or those who are not directly linked to the project) used the accountability mechanism to make false claims about a project which has led to project implementation delays and additional costs to the borrowers.

**Private Sector Operations.** Private sector clients remarked that the new policy must have greater clarity and guidance on safeguard requirements with respect to E&S risk and impact assessment, environmental and social management systems, documentation, and monitoring and reporting. Clients also requested ADB to provide capacity building for private sector companies for those who have no prior experience with ADB safeguard policies. Several private sector clients agreed that it would be mutually beneficial for them, the ADB and co-financiers if the institution aligns with the requirements with MFIs using the performance standards model as this would result in one common set of safeguard requirements and information, which can be easily supplied to the different reporting templates of co-financiers. Several participants commented that the current requirements are frontloaded but lack technical support and timely guidance during the implementation. This results in a delay in delivering the required documents and affects the work schedule. ADB was also asked to provide specific guidance on approaching specific climate change challenges in projects such as measuring and reporting on GHG emissions and how to integrate environmental and social government and climate change in their operations given the government incentives to invest in these types of projects. CSOs asked that ADB align the revised policy with the UNGP as it is the authoritative set of global standards to address the business impacts on human rights and that recent national and regional regulatory developments, with respect to reporting and mandatory human rights due diligence build on the UNGP.

**Feedback from selected Project-affected Peoples' (PAPs) consultations.** PAPs provided feedback on ways to strengthen stakeholder engagement, information disclosure and grievance redress mechanisms. Greater clarity was suggested in the process of valuation and determining the basis for compensation. PAPs also underscored the importance of disclosing and discussing adequate information on project design and its anticipated impacts such as noise, air pollution during consultations and appropriate mitigation measures. PAPs noted that projects that affect natural resources should be conserved and protected as these are important sources of livelihood. The ecosystem services they provide such as non-timber forest products should be high in the environmental management plan so that PAPs can continue their access to such resources. Engaging PAPs in ecosystem protection programs through a collective forest patrol, reforestation, crop diversification, and other sustainable livelihood practices training can be a viable option to mitigate livelihood loss and replacement of income when a provision of direct compensation is not adequate. On IPs, it was emphasized that FPIC is crucial to achieving IPs' rightful claim for protection and benefits from projects.

## I. BACKGROUND

1. The Asian Development Bank (ADB) is undertaking a comprehensive review and update of its Safeguard Policy Statement, 2009 (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 build on the findings and recommendations of the IED Report, which ADB Management endorsed. The update will seek to modernize the policy, considering the changing development context and evolving developing member country (DMC) and client needs and capacities; as well as opportunities for greater harmonization with the policy principles and standards of other multilateral financial institutions (MFI).

2. **Analytical and Benchmarking Studies.** To inform this process, ADB carried out [18 analytical studies and background papers](#) on the policy architecture and thematic issues for stakeholder review and consultations that will feed into the development of the new safeguard policy. The analytical studies reviewed the implementation of 2009 SPS provisions for the thematic areas and the related ADB policies and provisions related to labor and working conditions. A benchmarking exercise was also carried out to compare the 2009 SPS provisions and other related ADB policies with those of selected MFIs including the Asian Infrastructure Investment Bank (AIIB), African Development Bank (AfDB), European Bank for Reconstruction and Development (EBRD), European Investment Bank (EIB), Inter-American Development Bank (IDB), International Finance Corporation (IFC) and the World Bank with a view to identify opportunities for harmonization with these MFIs in the revised safeguards policy. Emerging issues for each of the thematic areas were also identified. The outputs of the analytical studies were a set of recommendations for the revised safeguards policy.

3. **Stakeholder consultations.** The consultations were carried out from November 2021 and March 2023 and involved 145 consultation events, 10 in-country consultations in developing member countries (DMCs) and project-affected people's (PAPs) consultations in 9 ADB-supported projects.<sup>3</sup> The consultations engaged over 3,600 stakeholders from 56 member countries including 1,352 government representatives, 188 representatives from 56 private sector clients, and 1,458 CSO leaders. The policy review also heard from 622 PAPs who shared their safeguard implementation experiences in ADB projects. Annex 1 provides the details of the stakeholder consultations.

4. This report provides highlights of the stakeholders' feedback drawn from consultations with government and civil society stakeholders. Part II summarizes the comments on the policy architecture and ten (10) environmental and social standards (ESS). Part III focuses on stakeholder feedback on private sector operations and Part IV on the feedback from consultations with PAPs. The next steps in the SPRU process are discussed in Part V.

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<sup>1</sup> ADB. 2009. *Safeguard Policy Statement*. Manila. <https://www.adb.org/documents/safeguard-policy-statement>

<sup>2</sup> Independent Evaluation Department. 2020. *Evaluation Document: Effectiveness of the 2009 Safeguard Policy Statement*. Manila: ADB. <https://www.adb.org/documents/effectiveness-2009-safeguard-policy-statement>.

<sup>3</sup> The analytical studies are: 1. Policy Architecture; 2. Indigenous Peoples; 3. Resource Efficiency and Pollution Prevention; 4. Labor and Working Conditions; 5. Community and Occupational Health & Safety; 6. Land Acquisition, Restriction of Access and Involuntary Resettlement; 7. Biodiversity and Natural Resource Management; 8. Cultural Heritage; 9. Stakeholder Engagement, Information, and Grievance Redress Mechanisms; 10. Lessons from Accountability Mechanisms; 11. Environmental and Social Impacts and Risk Assessment; 12. Safeguards in Fragile and Conflict-Affected Situations and Small Island Developing States ; 13. Country Safeguard Systems; 14. Climate Change; 15. Gender and Safeguards; 16. Sexual Abuse and Sexual Harassment (SEAH); 17. Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics (SOGIESC); 18. Safeguards in Different Financing Modalities.

## II. FEEDBACK ON POLICY ARCHITECTURE AND SAFEGUARDS THEMATIC TOPICS

### A. Policy Architecture

5. The draft SPS architecture study reviewed ADB's current safeguard architecture, undertook a broad comparison of the architecture models of other multi-lateral financial institutions and provided initial recommendations for ADB's updated safeguard policy architecture. The study found that most MDBs have adopted and adapted a "performance standard model" developed by the International Finance Corporation. The model sets out policy requirements for each institution, complemented by 8–10 standards with policy objectives and requirements for borrowers and clients.

6. **Shift to Performance Standards model.** Governments generally welcomed the shift from principles-based model to a Performance Standards (PS) model. In their view, it will harmonize the ADB safeguards policy with those of peer MFIs and will bring greater clarity and consistency of requirements, especially for co-financed projects. They also believe that it will improve efficiency by reducing the burden on governments to prepare different reports for co-financiers for the same project. Governments expressed that a capacity building program for borrowers will be needed to support the implementation of the policy.

7. CSOs, in general, do not object to the move to the PS model. However, they reiterated that the shift should strengthen and not result in the dilution of the content of the existing policy. CSOs recommended that the new policy will (i) strike a balance between front loaded requirements and compliance over time; (ii) revisit the effectiveness of risk screening and categorization; (iii) clarify responsibilities between the ADB and the borrowers; (iii) include safeguard provisions for other thematic topics including the core labor standards, climate change, sexual exploitation, abuse and harassment (SEAH), gender-based violence (GBV) and sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC); (v) strengthen requirements for community and occupational health and safety (COSH), Involuntary Resettlement (IR), Indigenous Peoples (IP), associated facilities, and project-level grievance redress mechanism (GRM); (vi) address safeguards in the supply chain; (vii) have a clear policy statement on zero tolerance for discrimination and reprisals; (viii) allocate financial and human resources to overcome the current implementation challenges and provide clear instruction to borrowers, consultants, and contractors; and (ix) apply safeguards to emergency lending in a post-disaster situation (e.g., recovery from COVID-19).

8. **Safeguards in different financing modalities.** Both governments and CSOs raised other issues and recommendations for inclusion in the revised policy including human rights and strengthened safeguards for financial intermediaries (FIs) and other financing modalities. Governments asked ADB to use lessons from the implementation of FI projects to strengthen the requirements and procedures for the FIs. CSOs, on the other hand, reiterated their longstanding position that FIs and other financing instruments should be subject to similar safeguards and disclosure requirements as those for projects, and that ADB must ensure it has the leverage to enforce and monitor compliance with safeguards, including the core labor standards (CLS).

9. **Approach to country safeguard systems.** One of the objectives of the SPS is to help borrowers and clients strengthen their safeguard systems and develop capacity to manage environmental and social risks. ADB has supported this objective, which is also highlighted as a

priority under Strategy 2030, through capacity building activities.<sup>4</sup> The SPS provides opportunities to use a country safeguards system (CSS) when the CSS is “equivalent” and implementation capacity is “acceptable.” Governments highlighted the importance of capacity building and gap-filling measures. Specifically, they recommended that ADB provide comprehensive training to key ministries, regulatory agencies and implementing units in the governments and contractors on their roles and responsibilities to roll out the new policy. ADB should also provide governments with more technical assistance focused on building expertise, designing systems, and supporting implementation. CSOs recognize the importance of retaining CSS equivalence and believe that capacity assessment and strengthening and the eventual use of CSS under the new policy should not lead to the dilution of the current language on CSS. Other considerations raised by CSOs on the approach to CSS are the time it takes to strengthen national laws, the short regime of governments which poses risks that CSS reform measures will not be supported, and issues of systemic corruption at certain levels of government.

10. **Procedural flexibility in the context of fragile and conflict-affected situations and small island developing states (FCAS/SIDS).**<sup>5</sup> Governments asked ADB to consider relaxing the safeguards due diligence requirements as FCAS/SIDS often face emergency situations caused by natural disasters. Governments also underscored that the current project procurement process creates constraints as Pacific countries have very limited pool of safeguards specialists, and it is a challenge to build the capacity of new specialists due to some requirements in procurement documents (e.g., 5-8 years of experience required, when in some cases, governments believe that 2-3 years would be sufficient). On many occasions, Pacific specialists are not given the opportunity to gain experience or build their skills as they are oftentimes excluded from the procurement process because they do not satisfy the eligibility requirements for the job. They recommended the ADB to provide online safeguards training (including tests) similar to continuing professional development training for Project accountants.

11. **Gender and safeguards.** Governments and CSOs recognize that gender is both a key element and an overarching principle of safeguards. As an element of safeguards, it looks at how women/girls and men/boys are differently affected by, for instance, involuntary resettlement when it is triggered in the project. As the effects could be long-term, it is important that actions should go beyond the “do no harm” (usually within the project timeframe) approach but should be sustainable, progressive, and gender transformative. Hence, the gender aspects of the safeguards should be considered as a key part of the overall gender action plan (GAP) of the project.

12. **Addressing SEAH and gender-based violence (GBV).** Governments suggested that SEAH and gender inclusion requirements should be integrated in all phases of the project, especially during the procurement stage, so that these concerns are not dealt with as a secondary or ancillary issues where supplementary requirements will only be required as deemed necessary. CSOs asked regarding ADB’s motivation to incorporate SEAH in the new safeguards given that it is a social, cross-sectoral issue. If the risk of SEAH or GBV is imminent, they asked if ADB would provide funding support that can help victims of sexual harassment and abuse. In their experience, the usual support services that project-affected people access come from NGOs that

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<sup>4</sup> ADB has approved more than \$50 million as technical assistance since 2009, helping DMCs assess legal and policy gaps, prepare good practice guidance; conducting capacity-building; and developing regional safeguards learning centers.

<sup>5</sup> The most vulnerable ADB developing member countries (DMCs) fall under the classifications of Fragile and Conflict Assessment Situations (FCAS) and/or Small Island Developing States (SIDS), where fragility refers to a spectrum of situations ranging from chronic structural fragility to active conflict. These DMCs face unique development challenges that hamper their growth and make ADB and other development partner operations difficult.

are well trained to handle SEAH-related cases and have good referral pathways to medical centers. However, while these people are in high demand, they usually struggle for funding. Given their critical role in SEAH risk mitigation, they asked how ADB would support service providers.

**13. Safeguard provisions for sexual orientation, gender identification, gender expression and sex characteristics (SOGIESC).** For sexual and gender minorities, including members of the Lesbian, Gay, Bisexual, Transexual, Queer, and Intersex (LGBTQI) community, by nature of their SOGIEESC, they are disproportionately affected in health, education, and work. Which are related to stigma and discrimination. The CSOs believe that ADB safeguard policy should have explicit provisions for SOGIEESC to ensure visibility of data in tools, processes, and mechanisms for inclusion and protection. The LGBTQI community is not traditionally covered in social impact assessment or stakeholder mapping for project consultations. CSOs also proposed explicit reference for SOGIEESC inclusion in the safeguard policy as an overarching statement and a standalone instrument on SOGIEESC. They also believe that ADB should reflect on being increasingly inclusive, if not progressively inclusive. CSOs argued that there is exclusion in service provisions experienced by LGBTQI and this was highlighted during COVID-19 pandemic. In the design of projects, LGBTQI are not included as they are not traditionally considered as families, and they will not be able to access services because of documentary requirements, and some do not have documents that align with their identities. CSOs encouraged the ADB to further strengthen its work and commitment towards sustainability and inclusion. There was a general acknowledgment by the CSOs that there is a need for greater research on understanding contextual, community-specific, and sector-specific vulnerabilities and how violence and discriminations manifest. A potential collaboration of CSOs with the ADB on research was expressed by CSOs and ADB.

**14. Accountability Mechanism.** Governments raised instances where people with vested interests (or those who are not directly linked to the project) used the accountability mechanism to make false claims about a project which has led to delays and additional costs. CSOs, on the other hand, underscored that given the revision of safeguards policy, the AM policy and implementing procedures should also be updated. The AM review should (i) include an examination of ADB requirements for complainants to discuss the issues in good faith before it can be deemed eligible for the AM process and (ii) include FI subprojects and TAs in the projects where complaints can be raised. CSOs also shared that ADB's AM has received 208 complaints, with the vast majority coming from infrastructure projects and followed by energy projects. CSOs believe that top complaints received by ADB pertain to displacement, consultation, disclosure, and livelihood issues. For CSOs, this data highlights the need to adopt human rights standards throughout the ADB's environmental and social policies. They argued that it is important for safeguards to be informed by experiences of people mostly affected by the unintended negative impacts of ADB-financed projects.

**15. ADB response.** Harmonization of ADB's SPS with other MFIs would provide greater clarity, less transactions costs for borrowers, and increased collaboration across MFIs including on safeguards capacity building. On the approach to CSS, ADB is preparing an analysis of its past work on CSS and a dedicated consultation for CSS will be organized. ADB sees Fis as a very important modality because it provides opportunities to channel financing in a wider scope of a project and fund a range of enterprises—from micro, small, to medium enterprises—as well as cover a wide range of sectors. ADB will do a further study on Fis and how safeguards can be strengthened, responsibilities for implementation cascaded, and to ensure the quality and consistency of monitoring and performance reports and disclosure of information. The concerns regarding human rights, climate change, involuntary resettlement and compensation, gender, and

indigenous peoples will all be taken into consideration and subjected to rigorous stakeholder engagement, country dialogues as well as focus group discussions.

## **B. Assessment and Management of Environmental and Social Risks and Impacts**

16. The study sought to identify international good practices in the area of environmental and social risk assessment and management among MFIs. It compared ADB's SPS with the risk frameworks of other MFIs and proposed ways in which ADB can incorporate current and emerging good practices in its new policy framework. The study highlighted how ADB's approach to E&S risk classification is fragmented and recommended that a more integrated approach be considered. This would be consistent with other MDBs, which have developed more integrated E&S risk assessment processes. The study also noted that DMCs do not have separate classification systems for E&S risks.

17. **Integrated E&S risk assessment and categorization.** Governments welcome the shift to an integrated E&S risk assessment for it enables a more comprehensive approach than the current environmental assessment in the SPS and aligns ADB with the more recently adopted approach of peer MFIs. CSOs also welcomed the proposed integrated risk assessment but said that the current SPS's reference to the fundamental principle of precautionary approach must be kept. CSOs pointed out that the process and checks for categorization should be improved, particularly for high-risk projects and for changes in risk categorizations, and that this new approach be applied consistently to FI projects including its subprojects. Other questions raised were on the indicators and methodology for risk classification and whether the environmental and social management plan would be proportionate to the level of project risks.

18. **Clarity in responsibilities for assessing and managing risks.** Governments pointed out that the proposed scope of environmental and social risks is wide, which may challenge the limited capacity of government agencies to assess and manage those risks. There should be clarity between the ADB and the borrower on the responsibilities of managing such risks and in doing the assessments. Meanwhile, CSOs argued that from a local community perspective and CSOs that work with them, they must clearly know the different responsibilities between the ADB and the borrowers/clients when it comes to preparing and reviewing environmental and social impact assessments and the information being disclosed so they know who is accountable. CSOs also noted that the functionally illiterate, remote, and non-English-speaking local communities cannot be expected to understand the policy requirements and processes for big infrastructure projects that would affect them.

19. **Application of integrated risk assessment to cross-cutting themes.** CSOs recommended that human rights analysis should refer to UN guiding principles on business and human rights<sup>6</sup> and should cover expected risks including projects in conflict-affected areas with

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<sup>6</sup> United Nations. 2011. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. New York and Geneva.

[https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf).

the deployment of military forces, and risks of reprisals. Climate change risk assessment should apply the concept of double materiality for climate change risk assessment, i.e., assess both the risk of climate change to the project and how the project can induce climate risks to project affected people and surrounding communities. On digital technology risks, CSOs stated that projects with digital dimensions often lack deliberative planning and wider stakeholder consultation which leads to little consideration of the real footprint of projects or which communities are going to be impacted and how exactly they are going to be impacted. Clarity was also sought on the application of risk assessment to associated facilities.

20. **Provide explicit references to vulnerable stakeholders.** CSOs recommended for a technical guidance to assess specific project risks to vulnerable groups which have an explicit reference to groups who might be disproportionately impacted such as persons with disabilities and children, etc. According to CSOs, this is to enable differentiated impacts on them that can be incorporated into various assessments reports. They also requested that data on children be disaggregated by age to identify the differentiated impacts and to improve development outcomes. CSOs also recommended to include an assessment of gender-based violence, sexual exploitation and harassment and the harm to children in the development process.

21. **Capacity building, implementation, and monitoring.** Governments emphasized the importance of training on E&S risk assessment and the management system for staff of implementing agencies and contractors. Governments also stated that a continuous and robust monitoring system of social and environmental safeguards is critical, and that health and safety plans should be monitored at various levels of implementation and focusing on identified issues. CSO comments were essentially the same as those from governments. Given their local presence or proximity within the project's area of influence, CSOs proposed that there should be a provision in the policy that recognizes the crucial role of affected communities and civil society on the ground in monitoring the implementation of E&S risk management plan and in providing feedback for corrective action. Governments asked that E&S reporting requirements of co-financing institutions be harmonized to minimize duplication of efforts. CSOs, on the other hand, cited the limited disclosure of monitoring reports especially in national languages, whether by ADB or by its co-financiers. They stated that often, there is little information about the findings in the monitoring report, which is difficult to access not only for the affected communities but also for international organizations that monitor the implementation of public projects. There were also misunderstandings about the concerns being raised since there are no available monitoring reports; only information from the ground is accessible. It is important to disclose this information, especially in local languages.

22. **ADB response.** ADB acknowledged the recommendations of stakeholders and highlighted the need to look at (i) strengthening the whole approach to risk assessments including additional focus on contextual risk analysis; (ii) strengthening the integration between the environmental and social issues; (iii) strengthening focus on considering risks to vulnerable and disadvantaged groups and pros and cons of taking a more adaptive and flexible approach; and (iv) highlighting distinctions on the identification of risks and management of risks.

### **C. Labor and Working Conditions**

23. Most comparator MDBs have a separate standard on labor and working conditions in their E&S frameworks. It was recommended that ADB align with this approach, consolidating the provisions in the SPS and the ADB's Social Protection Strategy (2001). Governments and CSOs welcomed the standalone standard on labor and working conditions (LWC).



24. **New standard on labor and working conditions (LWC).** CSOs asked ADB to go beyond the standards of other MFIs and aspire to set best practices in LWC that adhere to International Labor Organization (ILO). This would mean for example, requiring the use of ILO's core labor standards (CLS), not the national standards. The standalone standard must also (i) cover all workers in the supply chain; (ii) state that occupational health and safety as a fundamental workers right; (iii) carry out employment impact assessments in project planning and evaluation; (iv) promote dialogue in the consultation process between the government and labor representatives; (v) include guidelines to prevent and mitigate sexual exploitation, abuse and harassment (SEAH), gender-based violence (GBV) and discrimination based on sexual orientation and gender identification; and (vi) include provisions specific to women in work place.
25. **Linkages of LWC and occupational health and safety (OHS).** Both governments and CSOs asked ADB not to lump labor and working conditions with community health and standards since the risks, concerns and regulations are very different in these contexts. The two should be clearly delineated and should be aligned with the more stringent and relevant standards.
26. **Role of trade unions.** CSOs recommended that ADB provide consultants who will work with relevant trade unions throughout the project cycle to identify risks and violation of rights of workers. ADB should also have a mechanism like the IFC's labor portal for trade unions to be part of the accountability mechanism.
27. **Grievance redress mechanism for workers.** CSOs also emphasized the need for a project-level GRM mechanism especially for non-unionized or unorganized workers and to ensure protection against retaliation and reprisal. The GRM should be available to all workers in the supply chain. Quick and decisive actions are crucial for labor because it is easy for employers to create intimidating situations against workers.
28. **Remediation for worker grievances and addressing reprisals.** On the issue of non-payment of workers by some contractors and subcontractors in ADB-financed projects, CSOs recommended that ADB include provisions for financial safeguards through specific policies on financial support. This is to ensure proper payment of wages and other benefits for workers when contractors default on payments. This could be through the creation of a special fund or any other measures for exceptional cases. ADB may establish a performance bond system for contractors to remedy the instances of contractual violations. On reprisals, there is a concern regarding the IFC standards where the reprisals cover only the direct clients of IFC (the equivalent in ADB would be the main contractor) while subcontracted workers are not protected through the safeguards, especially to address reprisals.
29. **Capacity building for the LWC standard.** CSOs proposed that ADB should conduct training for ADB staff and borrowers/clients on LWC safeguards. The lack of adequate staffing with expertise in labor should be addressed as it is crucial to effective implementation. CSOs also pushed for the adoption of a labor management plan as part of the mandatory disclosure of project documents.
30. **ADB response.** In doing a benchmarking exercise with other MFI LWC standards, ADB aimed to increase the institutional understanding of the requirements and practices of their peers with the goal of upward harmonization, while recognizing the implementation challenges and evolving issues. There is a need to consider the wider remit of international standards in the policy update, as well the implementation capacity of DMCs and what is in the existing national legal frameworks. ADB also recognized that there is a need for the updated safeguard policy to cover different types of workers in the supply chain including contractors and subcontractors. ADB noted

the need to enhance the capacity and skills of staff, the DMCs and private sector clients. ADB recognized that there is a need for a GRM including a grievance process for workers to address workplace level-issues. ADB will require the borrower/client to implement all pertinent labor laws in full and where there are gaps, the core labor standards are to be applied.

31. ADB acknowledged the important role of workers and trade unions and noted that ADB has actively engaged with trade organizations in the past two years that cover topics such as compliance with labor standards in the context of infrastructure and the role of MFIs in positively influencing labor and working conditions. ADB encouraged the involvement of governments and the private sector to facilitate tripartite discussions and social dialogues in the country context. ADB recognized the strong link between LWC and OHS issues but there is also a need to establish project boundaries and separating the responsibilities that can be addressed through safeguards from those wider community issues that are beyond the scope of a project.

#### **D. Pollution Prevention and Resource Efficiency**

32. **Broaden the definition of pollution.** While most DMCs have ambient noise, air, and water quality standards and pollution discharge limits, stakeholders highlighted several areas for more attention. Governments proposed to expand the definition of pollution to include medical waste and other hazardous wastes, noise pollution from waterway vessels and traffic affecting floating communities, and oil wastes. CSOs proposed the inclusion of requirements that: (i) address the persistent organic pollutants and mercury; and (ii) exclusion for all types of asbestos and other chemicals that are dangerous, including agricultural pesticides.

33. **Zero tolerance exclusion for asbestos.** CSOs recommended that ADB adopt a zero-tolerance for asbestos, which means ADB cannot finance any materials that contain asbestos. It was recommended that any reference to an acceptable amount or percentage for asbestos containing materials in the policy should be deleted. ADB's current approach on asbestos use is two-staged—an interim precautionary approach in terms of good practice in the short term, and then a more comprehensive response once the safeguards review is completed.

34. **Use of international and national standards on pollutants.** Governments mentioned that they follow national standards in assessing and mitigating pollutants, and asked if ADB can consider these for project due diligence. CSOs noted that the WB EHS 2007 Guidelines<sup>7</sup> is outdated as it has not been updated with the latest standards such as WHO 2021 Air Quality Guidelines<sup>8</sup>, among others, and that the most stringent standards should be used.

35. **Updating the greenhouse gas (GHG) emissions threshold.** Governments asked ADB to explain the factors considered in setting the GHG emissions threshold of 100,000 tons per year for a project. CSOs went further by asking how such a target will be computed, how real time monitoring will be done and if there is an annual increase on the cap to achieve the 1.5 C climate target. They also suggested that it should be mandatory for high GHG emitting projects to have a risk assessment at the decommissioning stage. This should apply to ADB infrastructure projects including renewable energy projects.

36. **Linkages between Safeguards and new Energy Policy.** Some CSOs also asked for clarity on how the new safeguards policy will complement or guide the implementation of the

<sup>7</sup> World Bank Group. 2007. *General Environmental Health and Safety (EHS) Guidelines*. Washington, USA.

<sup>8</sup> World Health Organization. 2021. WHO Global Air Quality Guidelines: Particulate Matter (PM2.5 and PM10), Ozone, Nitrogen Dioxide, Sulfur Dioxide and Carbon Monoxide. World Health Organization.

recently approved energy policy of ADB. For example, the development of liquefied natural gas (LNG) terminals, discharges of contaminated water from coal-fired and petroleum-driven power systems, risks related to large asphyxiant gases within Carbon Capture, Usage and Storage (CCUS) projects, metal leachate risks from floating solar panels, and e-waste from solar and wind projects in local communities have safeguards elements. CSOs also raised concern that as the ADB Energy Transition Mechanism (ETM) platform involves supporting coal retirement initiatives in Indonesia, Philippines, and Viet Nam, these will have safeguard implications such as the protection of community livelihood and restoring environmental health in the transition process that need to be considered.

37. **Circular economy and waste-to-energy (WTE) projects.** CSOs cautioned on the treatment of waste-to-energy (WTE) projects that ADB's Energy Policy supports.<sup>9</sup> They argued that WTE is not part of the circular economy. Under the European Commission Action Plan, waste incineration hampers the development of the circular economy because WTE burns all resources that could have been recycled in the first place. The international agreements on circular economy do not confine pollution abatement to the treatment of waste. They have shifted priorities to waste reduction and product design. CSOs then asked how the mitigation hierarchy of safeguard will be linked to the energy policy. CSOs stated that the current SPS does not have screening criteria and indicators to ensure that the mitigation hierarchy will not be stepped over or bypassed.

38. **Compliance of contractors with safeguard requirements.** Governments suggested including a section that contains all safeguard requirements in the contract between the client and contractor and its sub-contractors given some instances where local companies do not seriously implement safeguards. Other issues raised were (i) incentives for contractors that duly comply with safeguard requirements since this leads to timely project implementation based on contract; and (ii) contractors' responsibilities for use of poor equipment quality.

39. **ADB response.** ADB will review the suggested list of pollutants in the context of the safeguard revision process and the prohibited investment activities list. On the GHG emissions quantification, the methodology is being discussed with technical groups under the United Nations Framework Convention on Climate Change (UNFCCC) and other MFIs. In addition, ADB will examine the underlying assumptions of the existing tools and approaches to assessing GHG emissions and carbon dioxide equivalence.

40. ADB clarified that the World Bank EHS Guidelines will remain the main reference in the revised policy. Regarding performance levels, however, it was noted that the WB EHS needs revision. Greater clarity will be provided on the application of the WB EHS guidelines, especially with respect to air quality interim targets and to the revised performance levels. This will help DMCs to gradually transition to less polluting technologies. ADB also stated that the borrowing countries will continue to be required to comply with all national regulations and laws in addition to the SPS. This approach will not change in the revised policy and should there be a difference in standards, the more stringent requirements will apply.

41. On the implication of ADB's recently approved energy policy, the impacts resulting from energy project financing will be largely addressed under the environmental and social risk assessment process in the new safeguards. Regarding waste-to-energy or incineration solutions, they should not be the first choice when there are other options available. There is a need to look

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<sup>9</sup> ADB. 2021. *2021 Energy Policy of the Asian Development Bank: Supporting Low-Carbon Transition in Asia and the Pacific*. Manila.

for feasible solutions that can work in a particular country's circumstance or a particular location's circumstance. ADB is developing specific guidance for the energy policy.

## **E. Community and Occupational Health and Safety**

**42. Improve the clarity and guidance for Occupational Safety and Health (OSH) requirements.** Governments welcome a separate standard for community and occupational health and safety but call for clear requirements for planning, implementation, and independent monitoring of compliance. Meanwhile, CSOs stressed the importance of aligning OSH with the ILO standards and relevant sectoral conventions dedicated to OSH.<sup>10</sup> CSOs also welcomed the proposal to include asbestos in the prohibited investment activities list where the procurement and financing of any materials with asbestos and asbestos containing materials would not be supported.

**43. Reporting of incidents.** Governments suggested that ADB adopt the European Bank for Reconstruction and Development (EBRD) and International Finance Corporation (IFC) best practices on the disclosure of data where they go further than merely reporting deaths. They now expand disclosure that includes injuries and health as well. They also proposed that ADB form an OSH team that will advise on improving data gathering and disclosure. Meanwhile, CSOs proposed a provision that requires contractors to submit periodic or annual reports containing data on the occurrences of OSH issues, how these were prevented from happening and what corrective actions were done with supporting documentation.

**44. Attention to subcontracted and supply chain workers.** CSOs highlighted their research on the importance of paying attention to workers in the supply chain including subcontract workers in infrastructure projects and sub-projects who face workplace accidents and are often exposed to health and safety issues. These tend to be overlooked by the main contractor and the borrower. The CSOs highlighted that even issues of gender pay gap among subcontracted workers, sexual abuse and sexual intimidation, and access to social security and health are becoming recurrent challenges.

**45. Implementation requirements, capacity building and stakeholder engagement.** Governments proposed that ADB build a capacity building program that supports implementing agencies for policy compliance. They also proposed a contingency plan for calamities like pandemic outbreaks. During COVID-19, many workers and employers faced different health and safety issues. CSOs urged ADB to engage qualified occupational health and safety officers, strengthen the monitoring system of standard compliance at the project level, and strengthen the OHS committee with trade union and management representatives. While the new policy may have acceptable requirements and clear guidance, the impact would be poor if ADB lacks focus on implementation.

**46. ADB response.** ADB acknowledged the recommendations of stakeholders to strengthen mechanisms for screening, assessment, planning, implementation, and monitoring of COSH provisions in ADB-supported projects. ADB is already developing training modules and good practice notes on COSH to strengthen the capacity of its borrowers and clients. However, ADB highlighted that some of the issues raised can only be addressed through introduction of national legislation and improvement of country systems, and not through safeguard requirements at the

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<sup>10</sup> ILO. International Labor Standards on Occupational Safety and Health. <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm> (accessed 23 May 2022).

project level. This is also an area where ADB and other MFIs can provide technical assistance to support country members on policy and legal reforms.

47. On data disclosure, ADB is developing an IT based solution intervention called the integrated safeguard management system (ISMS) as part of the rollout of the SPS to enable reporting on key COSH provisions at project level in a timely manner in line with ADB's Access to Information Policy. The ISMS will track the performance of key COSH indicators in relevant project documents including legal agreement or loan covenants.

## **F. Land Acquisition, Land Use Restriction, and Involuntary Resettlement**

48. **Update safeguards categorization for involuntary resettlement (IR).** Governments and CSOs proposed to revise the three-tier categorization which is vague when dealing with the differentiated livelihood impacts. For example, the IR Category A project which has a threshold of 200 physically displaced affected people or who lost more than 10% of productive assets does not capture households who are partly losing residential land but have existing land plots. CSOs asked for details on the removal of the numerical threshold of 200 affected people – whether ADB will consider removal of such threshold or substitution with some other threshold. For them, a complete removal of any type of threshold may lead to a risk of mis-categorization or under-categorization.

49. **Strengthen due diligence and resettlement planning.** CSOs highlighted key challenges in the preparation and execution of land acquisition and resettlement plan (LARP). The first challenge is the need for more stringent due diligence especially for ADB reviewing the credibility of baseline data, factoring in the project's contextual risks, and not merely relying on client reports. Second is that the least cost option is not best suited for affected communities because it does not ensure the appropriate benefits and protections for PAPs.

50. **Improve guidance for valuation.** Governments called for clearer guidelines for land valuation to determine the compensation and replacement costs that meet the principle of fair market value. CSOs asked to expand the guidelines for land valuation to cover other groups of affected people with undocumented rights to land and resources such as those with customary tenure, communal tenure, and people with a lack of legal documentation of land ownership.

51. **Ensure adequate resources for LARP.** Governments asked ADB to consider using ADB project funds to finance compensation or livelihood restoration programs for affected persons instead of using government budget given the fiscal tightening or limited budget appropriation from the national government. This is to address financial constraints and prevent slow compensation payments which could result in project affected persons having to take, out personal loans or sell portions of the lands to cover gaps.

52. **Expand the scope of application to include indirect impacts.** Governments do not support expanding the IR policy to cover social impacts not related to involuntary land acquisition. They asserted that the IR policy should be limited to livelihood impacts only, given that it is extremely difficult to verify other losses not caused by land acquisition. For example, if a road project affects nearby businesses that leads to income losses, this can add further costs for LARP implementation, and may render the project costs to be economically unjustified. In the Pacific, governments expected that having more time and resources for social mapping and landowner identification studies during the early stages could result in significant improvement in anticipating and estimating the indirect impacts. Specific to customary land, more guidance is needed on land scoping, land framework, and land management plan with guidance for contractors at specific

stages of the project cycle. Further, a land scoping study at feasibility stage would identify risks and unknowns (including anticipating the indirect impacts) to give the government and ADB common data sets about what can be included in the resettlement budget. CSOs also asked how LARP applies to people impacted by financial intermediary (FI) lending.

**53. Stakeholder engagement and addressing retaliation for involuntary resettlement.** Governments asked ADB to provide clearer guidelines on stakeholder mapping and setting stakeholder engagement plan (SEP) that include: (i) conducting a more in-depth analysis of project affected persons and their vulnerabilities at a very early stage of project preparation; (ii) approaching issues concerning indirect impacts of land acquisition; (iii) conducting focus group discussions (FGD) during the consultations and including CSO engagement as a requirement for resettlement plan preparation and implementation, especially for category A and B projects; and; (iv) a capacity building for ministries and project implementation units (PIU) involved in vulnerability assessments.

**54. GRM for land acquisition and land use restriction.** For CSOs, the grievance redress mechanism should be part of a more holistic stakeholder engagement that should continue throughout the project. They cited how important this is for hydropower projects that affect the ecosystems of IPs and rivers, and that a LARP should consider impacts on their agriculture, fishing, fuel wood and fodder collection. How this is embedded in LARP and how it is being rolled out should be part of stakeholder engagement. CSOs also asked that the new policy should include the risks and responses to retaliation when preparing the resettlement plan for projects. When land acquisition happens, they stressed that it should truly be voluntary and implemented without threats of violence and coercion. A voluntary means of land acquisition, when done properly, is a good way of avoiding conflict, and a prerequisite to make this happen is a prior informed process of stakeholder participation.

**55. Enhanced oversight and third-party monitoring.** Governments urged ADB to include stricter monitoring measures for policy compliance and address the capacity constraints of the implementing units in undertaking involuntary resettlement and land acquisition. Governments also support engaging third-party entities for monitoring compliance to the agreed resettlement plans. CSOs also support the engagement of external monitoring for IR Cat A projects while optional for Cat B. CSOs are concerned that removal of a threshold may become a reason to under-classify the IR impact to avoid the need for external monitoring, which in turn, may lead to the degradation of the quality of entitlements. Internal monitoring, not being independent by its nature, cannot be a complete substitute for an external monitor.

**56. ADB response.** ADB acknowledged that the lack of continuity in client's capacity and staffing in the field may create problems in project implementation. It was also pointed out that the designation of adequate project staff and making sure that they can effectively carry out their roles and responsibilities are primarily the responsibility of the implementing agencies. While ADB's preparatory and supervision teams flag capacity issues at the screening or scoping stage, capacity building support through technical assistance projects can be provided only upon the request of the borrower. In addition, it was indicated that the updated policy will further clarify the roles and responsibilities of borrowers and clients.

**57.** ADB is working to provide greater clarity in the new safeguard policy on valuation, replacement cost, risk assessment and categorization and to strengthen due diligence, assessment and implementation of land acquisition, restriction of access, and involuntary resettlement in projects. In cases where DMCs face budgetary constraints to finance land acquisition and resettlement costs, the updated policy and guidelines may include additional

clarifications on the use of ADB funds to augment government resources used for involuntary land acquisition mitigation measures. On the issue of measures aimed to bridge the gaps between the ADB's and national mitigation requirements, ADB's experience in many countries indicates that this concern can be resolved by looking into government policies and decrees, either at the national or agency level, that may allow for formalizing such gap-stopping measures to be implemented.

58. On monitoring, ADB mentioned that it is in the process of developing an integrated safeguards management system which will enable capturing and reporting on safeguards data across its portfolio and to manage project safeguard issues more effectively. Moreover, provisions on circumstances for the need of external and/or third-party monitoring and verification will be further clarified in the new safeguard policy.

## **G. Biodiversity and Natural Resource Management**

59. **Use of biodiversity offsets and requirements for no loss.** CSOs reiterated their call to prohibit the use of biodiversity offsets as available literature including the IED study (see footnote 2) shows no existing evidence to prove that offsets are effective in protecting biodiversity and should not be permitted in critical habitats. CSOs also expressed their consistent message to ADB to move to “no loss”, instead of “no net loss”, to be aligned with the policy direction taken by peer MFIs such as the IADB and EIB.

60. **Critical habitat, endangered species, No-Go zones.** Governments asked ADB to provide borrowers sufficient guidance on mitigating project impacts on critical habitats. Meanwhile, CSO asked ADB to use established international standards for biodiversity areas as these standards have very strong scientific basis and specific thresholds. For example, the new global biodiversity framework can guide ADB's member countries towards a 30 by 30 protection standard.<sup>11</sup> The definition and criteria for what constitutes critical habitats should be uniformly applied across all projects and governments should use these when designating the sites. CSOs also asked ADB to consider expanding the “off-limits” sites for development projects to sites such as Indigenous Peoples reserves, free-flowing rivers, protected or at-risk coastal ecosystems, and the iconic ecosystems which are natural habitats with cultural value.

61. **Valuation of ecosystem services and the social dimension of biodiversity protection.** Governments stressed the importance of resource valuation as part of the ecosystem services assessments for proposed projects. It is important to use software that quantifies such services and explores the sensitivity of certain habitats. On the social dimension of biodiversity protection or loss, governments asked ADB if there are compensatory measures for people whose livelihoods are affected by loss of biodiversity and damage to natural resources because of the project. CSOs likewise asked ADB to consider putting a monetary value to ecosystem services and to reflect this in the environmental impact assessment (EIA). CSOs also asked ADB to align the new policy with the Taskforce on Nature-related Financial Disclosures (TNFD) to disclose investments in projects that are dependent on ecosystem services as well as those with impacts on these services.

62. **Compensation measures for biodiversity impacts.** CSOs noted that even if there are compensation measures, implementation is a challenge. They underscored the importance of

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<sup>11</sup> The 30 by 30 is a worldwide initiative for governments to designate 30% of Earth's land and ocean areas as protected areas by 2030. It is the third of 23 global biodiversity targets for 2030 in the [Kunming-Montreal Global Biodiversity Framework](#), adopted in December 2022.

providing compensation immediately when there are already indications that the project will have biodiversity offsets, and before actual impacts are observed on-site. To strengthen the social dimension of the biodiversity protection, particularly those with high dependency on natural resources, CSOs proposed to ADB to consider a new objective that focuses on supporting livelihoods and inclusive development of local communities through approaches that integrate conservation and development.

63. **Safeguards in dams and linear infrastructure projects.** CSOs asked ADB to consider stronger safeguards in these projects, claiming that 85% of the decline in freshwater species in the last 30 years can be attributed to the building of dams. CSOs also noted that most linear infrastructure projects that bring connectivity and development to countries traverse sensitive natural resources and private lands. Avoidance should be part of the options in project decision.

64. **Critical habitats in indigenous territories and ancestral domains.** CSOs noted that some critical habitats overlap with indigenous territories and ancestral domains, including those in the Philippines and these should undergo a due diligence process. Investment projects should ensure that the customary sustainable management systems of Indigenous Peoples are supported, not hindered.

65. **Zoonotic diseases, animal welfare and the impacts across climate, biodiversity, and human health.** CSOs proposed to ADB to integrate animal welfare and impacts across climate, biodiversity, and human health into the revised SPS and consider halting support to factory farming or industrial agriculture. CSOs also added that ADB should address the issue of zoonotic diseases or infections spread between people and animals via viruses, bacteria, fungi, or parasites, which can be mild or severe considering that infrastructure projects inherently drive the disruption of habitats and large-scale deforestation. The goal should be ensuring that ADB projects do not cause degradation of landscape immunity, or the kind of conditions of a landscape that prevent or reduce the risk of zoonotic spill-over. They also suggested treating the wildlife-human interface separately from animal welfare issues to make sure that the full aspect of landscape immunity is tackled in greater detail.

66. **Consideration of biodiversity assessment in upstream activities.** CSOs reiterated the inclusion of biodiversity assessment and management in upstream activities such as strategic environmental assessments (SEA) or country systems assessments. They also noted that ADB has done a huge amount of work on ecological connectivity in various projects, but it is still not yet explicit in the policy. In 2021, the first-ever UN General Assembly resolution on ecological connectivity was passed, and the other MFIs have already incorporated stronger elements on this in their respective policies. They expect the ADB to codify such connectivity in the new policy.

67. **Application of the mitigation hierarchy.** CSOs pointed out that the application of the mitigation hierarchy to risk management to ecosystem services (provisioning and regulating services) should be promoted with preference to avoidance instead of risk/impact minimization and/or compensation.

68. **ADB response.** ADB agreed that it will revisit the framework for exclusions and have greater clarity on no-go areas. On strategic planning, it is critical to define the key areas of biodiversity that should be protected and how these can be integrated into strategic, social, and economic development plans, and in sector-wide plans of governments so that impact avoidance is the first option. ADB also informed participants that it is proposing to develop guidance to accompany the updated policy to increase awareness about offset requirements and show that offsets are not only difficult to implement but also very costly. This is intended to support DMCs



to further consider taking alternative options during project feasibility assessment so that avoidance can be fully explored as part of the mitigation hierarchy, with more viable projects being approved.

69. ADB recognized the need for better guidance, assessments, and better coverage of ecosystem services in the new policy. ADB mentioned that the current policy has clear provisions around natural habitat and no-net loss requirements where there are impacts on critical habitat. However, ADB also considers requirements at a species level where natural and critical habitat are not triggered. On impact assessments that are not done well, ADB recognized that this is a common concern among DMCs and that to address this, ADB will consider providing the necessary technical assistance and capacity-building support.

70. On natural resource valuation, ADB acknowledged that it is something that needs to be improved in the future. ADB informed participants that it is currently using the integrated biodiversity assessment tool (IBAT)<sup>12</sup> for rapidly assessing the potential risks and impacts of projects on biodiversity. On information disclosure and stakeholder engagement, ADB said that a wider approach to do a comprehensive identification of stakeholders potentially affected by projects is being considered.

## H. Indigenous Peoples

71. **Identification of Indigenous Peoples.** CSOs argued that the process should not be based on how Indigenous Peoples view themselves but on their collective way of life and attachment to the land. Relying on country safeguard systems (CSS) especially in relation to Indigenous Peoples is "a bit problematic". ADB should, instead, support the strengthening of DMCs' policies on the recognition for the collective land rights of Indigenous Peoples, whether they are called by different names such as ethnic minorities, scheduled tribes, *Dalit*, or forest dwellers. There should be a clear procedure on how the IP policy applies to 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 PRC or are not considered vulnerable. CSOs reiterated their call for ADB to ground the policy on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) like EIB's policy because some governments do not recognize Indigenous Peoples' land ownership or customary right to land. In Asia, the recognition of IPs is political in nature and the non-recognition of many governments continues, especially on the collective rights to their land, territories, and resources. The non-recognition of IP land rights has caused tensions and conflicts when development activities happen without IP consent and the government uses the argument that the IP have no rights over the land. Many projects promoting benefit-sharing are silent on addressing land rights and pre-existing social discrimination against IPs. 'Piece-meal' and compartmentalized approaches are insufficient and fail to address indigenous people's issues and rights.

72. **Criteria to apply the Indigenous Peoples policy.** Governments asked ADB for clear criteria to identify IPs and to trigger the application of the IP policy, but the criteria must not contradict national laws. They emphasized the importance of a clear process of identification to avoid the faking of identities or forging signatures and other documentation. CSOs, on the other hand, stressed that the criteria should be aligned with the established right to self-identification under international laws such as the United Nations Declaration on the Rights of the Indigenous People (UNDRIP of 2007 and the ILO Convention 169). Most ADB members, they argued, have

<sup>12</sup> IBAT Alliance. Integrated Biodiversity Assessment Tool. <https://www.ibat-alliance.org/>.

signed these declarations; thus, these legal obligations should be transformed into the policies and actions of ADB.

**73. Move away from broad community support (BCS) to free, prior, and informed consent (FPIC).** For CSOs, the BCS requirement in the SPS deny IPs their rights. Indigenous Peoples and their allied CSOs reiterated their support for ADB's adoption of free, prior and information consent (FPIC) as established in ILO 169 and the UNDRIP, saying that this has been their long-term advocacy to MFIs. FPIC is not just a procedural matter and one-off process but a reiterative process that requires the full and effective participation of Indigenous Peoples in the whole project cycle and considers IP decision-making processes and governance system. This is the direction for many companies and there is available support for these efforts. There are 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's impact assessment, and having access to information in a timely manner that includes the full net costs and net benefits of all the scenarios of projects that are considered in any impact assessment.

**74. Developing Indigenous Peoples' Plan (IPP).** The preparation of IPP should be premised on the IP rights to participation and self-determination and should consider the voices of IPs and the alternatives they propose. Citing the Second Chittagong Hill Tracts Rural Development Project (CHTRDP-2) project in Bangladesh, the IPP and its implementation created tremendous positive impacts to IP systems and livelihoods.<sup>13</sup> Involvement of traditional regional councils in the development and implementation of the IPP shaped the land tenure recognition and livelihood support to IPs in Chittagong Hill Tracts (CHT).

**75. Culturally appropriate GRM and human rights risk analysis.** CSOs noted the need to strengthen GRM for affected IPs due to accessibility issues. ADB should develop a more culturally sensitive GRM, and the IPs should be made part of this. This is also to mitigate situations where a project-level GRM led by government bodies becomes very bureaucratic, rather than being a community-driven process that respects the traditional decision-making approaches of the indigenous communities. When the GRM is efficient, transparent, and responsive, ADB and the borrowers develop community trust. The provisions for GRM in the policy should be free of heavily technical and legalistic procedures. On human rights risk analysis, if findings show that the proposed projects cut across IP communities or territories with the risks of human rights violations and criminalization, that should be a no-go zone for projects.

**76. ADB response.** ADB is considering moving from BCS to FPIC and will review different stakeholders' points of view. The IP policy benchmarking study helps identify the best approach for ADB. ADB will consider, among others, (i) providing clarity on the current provision on the identification of IP; (ii) defining FPIC and the conditions for triggering this requirement; (iii) improving the stakeholder engagement process in project implementation; (iv) providing requirements for stakeholder engagement; and (v) assessing the necessary staffing skills or implementation support of the borrowers and within ADB. On the identification of IPs, the ADB noted that the SPS cites two criteria in identifying IPs—distinctiveness and vulnerability.

**77.** 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

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<sup>13</sup> A closed project, the project information summary on CHTRDP-2 is found at <https://www.adb.org/projects/42248-012/main>.

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. The borrower's capacity and assessment of contextual risks for projects will also be assessed.

## I. Cultural Heritage

78. **Involvement of communities in identifying cultural heritage.** Both governments and CSOs stressed the importance of the involvement of and consultation with communities in identifying cultural heritage given that they are knowledge holders and that there is usually very little information on cultural sites. The determination of cultural heritage and resources cannot be left to outside experts. Community consultation with elders is needed for developing a cultural heritage plan and the mitigation measures to address the project impacts on cultural heritage. There are unique protocols to follow when it comes to seeking community approval for project development that cuts across their natural and cultural heritage sites.

79. **Intangible and tangible cultural heritage.** CSOs also underscored that there is no dichotomy between cultural and natural heritage, especially in Asia where people strongly believe that conserving culture and nature is based on tradition or culture and therefore should not be treated separately when planning for development. This also applies to conserving not just physical cultural resources (PCR) but also intangible cultural heritage. Governments pointed out the importance of not just the tangible cultural resources but also the intangible ones because these are vital for Indigenous Peoples who protect their indigenous knowledge systems and customary laws. CSOs maintained that assessing intangibles should be part of social impact assessment and cultural heritage impact assessment.

80. **Use of technology and disclosure of data.** For governments, the use of geographic information systems (GIS) to store huge datasets on cultural heritage will be useful to identify problems, monitor change, respond to events, set priorities, and further understand situations of cultural heritage. For CSOs, the data generated using GIS and other technologies should be shared with the local communities so that they can use it for protecting lands, territories, and resources. Further, they believe that the use of technology such as drones can be beneficial but could also be intrusive. It makes public the long-hidden records of heritage sites.

81. **Implementation capacity and tools for knowledge sharing.** Many governments in Asia Pacific noted that cultural heritage is still a new subject and recognize that it covers many disciplines. Finding people with the right background and experience to engage in projects is not easy. There should be additional guidance in the policy for borrowers and contractors that undertake ESIA to do cultural heritage risk assessment and management systems the right way. For CSOs, contractors and subcontractors should also be trained on what to look for and how to recognize cultural heritage when they find it, especially those with local significance but not found in national registers.

82. **Risk assessment and accountability.** CSOs noted that there is no clear guidance on the assessment of risks to cultural heritage and how to mitigate those risks within the project cycle. Governments suggested that ADB provide clear guidance on conducting a CH impact assessment to ensure clarity of the steps that heritage specialists, borrowers and contractors must follow. ADB should also consider adjusting the use of policy by country due to the varied

nature of their PCR. The guidance should also include the triggers for additional impact assessments and updating of management systems in case of changes in the project.

83. **ADB response.** ADB underscored that intangible cultural heritage will be addressed in the new safeguards policy as the analytical study has already identified this as a key gap. ADB welcomed the suggestion of creating country profiles as a potentially useful tool for screening and baseline studies. ADB agreed with participants that community and stakeholder engagement is critical for assessment, utilizing a people-centered approach and seeking the guidance of local experts, which is especially important as national registries are unlikely to contain comprehensive datasets of cultural heritage in any given DMC.

84. ADB recognized the need for dedicated cultural heritage experts in ADB. ADB is aware of the importance of policy convergence and harmonization with respect to comparator MFIs and sees potential benefits of consultation and dialogue with organizations such as UNESCO and International Council on Monuments and Sites (ICOMOS). ADB appreciated the vast array of benefits available through the application of technology (i.e., mapping cultural heritage), yet is aware of potential risks and unintended impacts upon communities. On data ownership, ADB clarified that data collected from baseline studies and assessments are essentially owned by project proponents—ADB's borrowers or clients from the public or private sector—but there are ongoing discussions on how such data can be shared publicly within the bounds of government regulations and freedom of information policies.

## J. Climate Change

85. **Considerations for a standalone climate change standard.** Several issues were discussed including (i) how the commitment to net-zero GHG emissions commitment in the Paris Agreement will be reflected in safeguards; (ii) the approach to climate risk categorization and related topics including consideration of double materiality to be covered in environmental and social assessments; and (iii) inclusion of carbon intensity limits in the exclusion list. CSOs suggested that ADB consider the World Bank's Decision Making Under Uncertainty<sup>14</sup> tool in doing environmental and social assessments amidst the changing climate. They also underscored that the direction of ADB should be towards identifying projects that have strong synergies between poverty alleviation and climate mitigation. For this purpose, climate risks should be managed under the resource efficiency and pollution prevention provisions of the environmental safeguards so that GHG will be treated with the same rigor as other pollutants. They also emphasized that energy efficiency should be a core strategy to avoid climate impacts, for projects to use the best available technology in their construction and procurement, and for more rigorous alternatives assessment for all high caliber projects should also cover guidelines on how to avoid carbon lock-in issues in the new safeguard. As an illustration, they cited an example in Maldives where the WTE project only reports fossil CO<sub>2</sub> and excludes those produced during the burning of waste products. It undermines the actual emission and creates an illusion that the project is low carbon. References were shared, specifically of a report by Eunomia on the issues of biogenic carbon loopholes when comparing landfill with WTE incinerators, and a report by Global Alliance for Incinerator Alternatives (GAIA) detailing how incinerators undermine clean energy goals.<sup>15</sup>

<sup>14</sup> World Bank. 2012. *Investment Decision Making Under Deep Uncertainty: Application to Climate Change*. Policy Research Working Paper 6193.

<https://openknowledge.worldbank.org/bitstream/handle/10986/12028/wps6193.pdf?sequence=1&isAllowed=y>

<sup>15</sup> Eunomia. 2020. *Greenhouse Gas and Air Quality Impacts of Incineration and Landfill*.

<https://www.eunomia.co.uk/reports-tools/greenhouse-gas-and-air-quality-impacts-of-incineration-and-landfill/>. And

86. **Harmonization of climate change and safeguards commitments.** CSOs expressed support for greater integration of resilience, adaptation, and mitigation into the safeguard policy. The Energy Policy has a whole section on just transition, as an example. By integrating resiliency, adaptation, mitigation, and safeguards, a just transition will be carried out at a holistic level. However, they asked how ADB will integrate and harmonize the new policy with all its relevant upcoming policy developments including the Climate Change Action Plan 2023, the Climate and Disaster Risk Screening 2024, Assessing and Reporting ADB's Carbon Footprint 2023, and the recently approved Energy Policy 2021. CSOs proposed for the inclusion of "climate or hydrometeorological disaster high-risk communities" as a vulnerable group. They also pushed for the inclusion of an assessment of the effects of climate change on children and people with disabilities.

87. **Linkages between climate and biodiversity commitments.** Governments asked whether soil ecosystems can be part of the mitigation plan to save biodiversity in soil as part of climate action. They also asked: Do carbon and biodiversity offsets have harmful biodiversity and climate impacts? Does the policy alignment with the Paris Agreement imply a commitment to net-zero GHG emissions? In their understanding, there was no commitment in the existing analytical study whether the safeguards will explicitly mention the commitment to net zero.

88. **Climate Change and Double Materiality.** CSOs cited large scale renewables as examples of projects with low carbon impact; but they have serious impacts on groundwater use and for subsistence of local communities. They also pose serious threats to communities' rights to livelihood and water access in a low-carbon investment. They asked if ADB has engaged with the new UN Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change to align SPS language on climate within a rights-based framework. In dealing with materiality (i.e., impacts of climate change on projects and wider systems and impacts of projects on climate change), CSOs proposed to add a third pillar, which is about the impacts of the project on the ability of local communities and ecosystems to thrive based on climatic changes (triple materiality rather than double materiality). ADB may consider the World Bank's Decision Making Under Uncertainty tool in doing environmental and social assessment amidst the changing climate. The direction of ADB should be towards identifying projects that have strong synergies between poverty alleviation and climate mitigation. Climate risks should be managed under the resource efficiency and pollution prevention provisions of the environment policy so that GHG will be treated with the same rigor as other pollutants, energy efficiency will be a core strategy to avoid climate impacts, for projects to use the best available technology in their construction and procurement, and for more rigorous alternatives assessment for all high caliber projects.

89. **GHG emissions and GHG accounting.** Governments pointed to the lack of guidelines at the country level to require service providers to record and collect data related to GHG emissions, citing sectors such as shipping land transport, and airlines. They asked ADB how the mitigation hierarchy will apply on GHG emissions. CSOs, on the other hand, asked ADB why it adopts the annual GHG cap of only 100,000 CO<sub>2</sub> equivalent per year while alluding to such figures as low carbon or Paris aligned.

90. **ADB response.** ADB stated that it was considering a separate climate change standard. ADB mentioned its consideration for an integrated process through multi-hazard assessment approach, both at the strategic/upstream and project levels, and looking at safeguards and climate change aspects in a more holistic framework. ADB recognized the critical importance of CSO participation beyond consultations. They have complementary roles as researchers, consultants, implementing partners and independent monitors. ADB reiterated its commitment to fully align with the Paris Agreement. It also clarified that it has not made a commitment yet to net zero.

## **K. Stakeholder Engagement, Information Disclosure, and Grievance Redress Mechanisms**

91. **A standalone stakeholder engagement standard.** Most comparator MDBs have a separate standard for stakeholder engagement in their updated E&S frameworks. Governments welcome this standalone standard but emphasized that it should not lead to additional administrative burden on the borrowers. A common guidance note should help improve consistency, the quality of implementation and monitoring of the SEID requirements. Social media platforms can be harnessed for informed consultations and continued stakeholder engagement as they make it easy for individuals to participate in interviews and surveys without fear of reprisal. Social media, however, is not a substitute for face-to-face consultations. Consultants should be required to coordinate properly with IAs, especially during project formulation. Very often resettlement consultants use different standards from what is required of the borrowers, which leads to lack of consistency.

92. **Risk of intimidation and reprisals.** CSOs asked that the new policy have explicit policy commitment and zero tolerance to intimidation and reprisals. It should also include detailed policy guidance for the staff and clients. CSOs noted the lack of community ownership of consultations because of the outsourcing of independent third-party consultants. This also creates trust issues with the affected community, especially when there are high turnover rates of consultants and staff of implementing agencies. Further, failing to show the detailed engineering design, not incorporating comments/feedback into the project detailed engineering design, and lack of participation from the project implementation consultants during the consultation leads to further distrust. The new policy should have provisions for a safe space for consultation, one that is free of any military presence and the police. They cited cases where the government employed military forces, installed barbed wires and other tactics to prevent participation of affected people in project consultations. Online platforms can be utilized if there are health and travel restrictions such as during COVID-19, but these should be done meaningfully especially for vulnerable groups such as the IPs. They emphasized that the new policy should consider clear inclusivity and non-discriminatory provisions, which require consultations with the youth sector (especially those from the IP communities), informal workers (waste workers, for example), and persons with disabilities so that avoidance and other mitigation measures that respect their human rights can also be identified beforehand. The consultation format and materials should also be accessible and have simpler language.

93. **Disclosure of project information.** CSOs reiterated their call to keep the 120-day disclosure prior to Board approval for Category A projects. They also outlined the main challenges they encountered when accessing project information including the failure of the government or even the ADB to fully disclose EIA documents in a timely manner. These documents are not easily accessible to affected people. They suggested that ADB requires that consultation reports, lending information, and results of monitoring be made public. CSOs also raised related issues on the lack of transparency of FI sub-projects, which is a big barrier to accountability, participation, and effective consultation and that project-affected people do not always know that a proposed

project is supported by ADB. The information may be available on the website in English, but it does not reach the affected people. CSOs disagreed with the proposed reduction of the number of days for project disclosure, arguing that reducing the disclosure timeline does not guarantee an improved stakeholder engagement. On the contrary, they advocate for increasing the number of days given that informal workers and indigenous peoples, for example, would require more time to grapple with the technicalities of the report.

94. **Grievance Redress Mechanism.** Governments observed that for projects seeking support from ADB or other MFIs, some states may restrict stakeholder engagement, expression of grievances, in seeking redress, or may not fully divulge all material information. MFIs like ADB, can make their project-level GRM an effective vehicle for communities to access relevant and timely project information and to provide an appropriate response to community questions, concerns and demands for better project design and consultations. CSOs called for ADB to adopt a consistent approach to assessing the effectiveness of GRM as indicated under the UN Guiding Principles on Business and Human Rights, Principle 31 which offers a set of effectiveness criteria including factors such as legitimacy, transparency, and predictability. The also added the following recommendations: (i) take stock of the wider landscape of grievance redress mechanisms that might be available at local level and other levels, including ADB's own role in making the remedy system work; (ii) GRM should be accessible, culturally and language appropriate, and most importantly, there should be mutually acceptable resolutions or actions taken; (iii) lift the prescriptive period in the ADB Accountability Mechanism to allow complaints to be heard and keep complaints (GRM) confidential, to involve the union representatives, and the use of online technologies; (iv) require clients and sub-clients to inform project-affected communities about ADB's own accountability mechanism, a simple way to improve the AMs accessibility to communities. They noted that other DFIs that had updated their policies included similar provisions. On remedy, they asked ADB to consider the recommendations in the report that UN Human Rights Office was about to publish.

95. **ADB response.** ADB underscored the fundamental importance of respecting human rights in projects. Although meaningful consultation under the existing safeguard policy is defined as one that is free of coercion or threat of intimidation the new policy is envisioned to include clear language around the assessment and management of risks and prohibition on the use of intimidation or retaliation to project-affected people.

96. Regarding concerns with the use of security forces, ADB acknowledged that there is a need to have clearer guidance where the use of security forces would be absolutely necessary (e.g., for peacekeeping purposes but not in the context of public consultations). ADB agreed on a need for a clear guidance for staff and to study the Inter-American Development Bank's reprisal risk management in the context of development finance projects.<sup>16</sup> ADB agreed that the current policy lacks the specific requirements and operational details to determine meaningful consultation. ADB is committed to developing guidance documents and toolkits for each one of the standards within the new policy.

97. On GRM, ADB relayed an ongoing joint outreach program between Accountability Mechanism and Safeguards Division that aims to build greater awareness of the continuum between the safeguards process and accountability. There is also an ongoing discussion to work more on outreach and require ADB clients, both sovereign and non-sovereign, as well as financial

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<sup>16</sup> Inter-American Development Bank. 2022. *Reprisal Risk Management Technical Note*. Washington, DC. <https://publications.iadb.org/en/reprisal-risk-management>

intermediaries to provide information and to support awareness raising with affected people and other stakeholders about the accountability mechanism.

## **L. Cross-cutting Issues**

98. ADB organized consultations on cross-cutting topics and thematic issues relevant to safeguard policy and implementation: different financing modalities, fragile and conflict-affected situations and small island developing states (FCAS/SIDS) and gender.

### **1. Safeguards in Different Financing Modalities**

99. Since the approval of the SPS in 2009, new financing modalities and products have emerged. The Board papers for these new lending modalities and products have contained E&S requirements without updating the SPS. Further, the limited details in the SPS section on the requirements for financing modalities has led to some policy interpretation and implementation challenges, especially for financial intermediation and corporate finance transactions.

100. **Financing for sovereign projects.** In addition to standard project loans, ADB provides a variety of investment instruments, including program loans, sector loans, multitranche financing facilities, emergency assistance loans, results-based lending, financial intermediaries, and corporate finance. Safeguard Requirements 4 outlines the special requirements for different finance modalities that borrowers/clients are required to meet. Governments noted that they can benefit from a more detailed discussion on different financing modalities (for instance, by comparing the requirements of sector loans with MFFs) during conceptual stage or the formulation of country partnership strategy (CPS) so they are well-informed of their best financing options.

101. On Multitranche Financing Facility (MFF), governments highlighted the benefits of implementing the safeguards requirements of MFF in a phased manner as it gives them sufficient time to comply with safeguard requirements and to deliver project outputs and outcomes more effectively. Extending the tenor of MFF to 15 years would be beneficial to allow for outstanding safeguard issues to be addressed sub-projects. For CSOs, they appreciated ADB's intent to include risk classification on the entire scale of the MFF investment since this will help in monitoring project impacts and how mitigation measures were carried out.

102. On Policy-based Lending (PBL), CSOs expressed support to ADB for including PBL in the new ESF. In their view, ADB should expand requirements that assess and monitor the social and environmental impacts of PBL, whether direct or indirect, and regardless of whether such impacts relate to involuntary resettlement and livelihood, IPs, or environment. CSOs recommended additional safeguard measures in PBL such as a) ensuring personal data protection when PBLs support policy reform in areas such as e-health, e-gov, e-IDs, etc. There appears to be no existing safeguards that address these points. They also suggested to expand the requirements for evaluating the social and environmental impacts of PBLs that include mandatory specific assessments on climate change, gender, and other priority areas that will further align the SPS with the Paris Agreement.

103. On Results-based lending (RBL), one government representative asked about the criteria to seek RBL support from ADB. CSOs pointed out that the verification process for safeguards compliance is challenging. They asked ADB to make the E&S risk tracking in RBL easier and the mitigation measures to be guided by the Performance Standard model.



104. On Financial Intermediaries (FIs), governments asked for a clear road map in addressing the gaps in E&S risk assessment and mitigation measures especially when ADB enters at a later stage of the projects. This road map is important because the borrower had already completed the environmental documentation such as detailed project report (DPR) and environmental impact assessment (EIA) that was based on the national guidelines on land acquisition, resettlement, and rehabilitation and not the ADB's standards. For CSOs, the financing scheme for private equity funds should be an entry point to encourage or introduce safeguards into the ecosystem like what ADB does with sovereign financing. Given the IED study finding, which mentioned that projects implemented through FIs have remained the weakest performers on safeguards compared to other types of financing by ADB, CSOs asked what ADB intends to do to address this implementation gap. CSOs mentioned the IFC Interpretation Note on FI safeguards; they asked if ADB plans to have a similar guidance note under the new policy.

105. On General Corporate Finance/Corporate Finance, CSOs asked ADB to look at green bond programs that have well-defined safeguards in their lending framework. The many potential risks in capital market investments should also be discussed in the policy update. Some environmental, social, and governance (ESG) frameworks have not been rigorous enough, and transparency is lacking in terms of where the investments actually go. CSOs also asked if ADB's private sector financing is being aligned with the Kampala Principles as it can guide ADB in ensuring that the private sector contributes to development effectiveness while not causing significant harm to people.<sup>17</sup>

106. On Trade Finance Program (TFP), CSOs asked if there is an examination of the actual materials, goods, and services being imported or facilitated by TFP. For example, does a letter of credit confirmed by the TFP back import of coal handling equipment or high impact greenhouse gas (GHG) refrigerants?

107. **ADB response.** There is a need for a more comprehensive and strategic risk assessment considering the bank's diverse lending modalities and operations. ADB shared that based on the findings of the analytical study, indirect project impacts were not being given much emphasis during screening, assessment, and categorization for certain financing modalities. In many cases, the assessment remains confined to direct impacts. For PBLs, this becomes extra challenging since assessment of the policy actions is not required as part of the due diligence process. Under the new policy, ADB will have clearer provisions and guidance for a more strategic environmental and social impact assessment in PBLs to assess more comprehensively the risks of policy actions and reforms to people and the environment, if appropriate for a particular project. In the case of RBLs wherein disbursement of funds is linked with the achievement of project results, ADB uses a different assessment approach to ensure that the borrower's systems are robust enough to deliver the program and capable enough to manage risks and implement safeguards. ADB also mentioned that there are a few programs that struggled to meet the complete implementation of financial disbursements within the 10-year period for MFFs. While this setup is outside the scope of safeguards, the possibility of extending the timetable for MFF up to 15 years may be considered.

108. On FIs, the updated policy will clarify the roles and responsibilities of both the ADB and the FIs. Relevant guidance notes for FIs will also be provided that covers the scope of application and risk screening of existing and planned portfolio, investment activities and subprojects, the

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<sup>17</sup> Global Partnership for Effective Development Co-operation. 2019. *Kampala Principles on Effective Private Sector Engagement in Developing Co-operation*. <https://effectivecooperation.org/content/kampala-principles-effective-private-sector-engagement-through-development-co-operation>.

level of safeguards assessment, planning, and extent of monitoring, reporting and, disclosure requirements at the level of the sub-projects. There will be stronger emphasis on the assessment of borrowers in terms of capacity and commitment to implement projects and comply with the necessary safeguard requirements.

## 2. Safeguards in Fragile and Conflict-Affected Situations and Small Island Developing States

109. Adopt an integrated E&S assessment and contextual risk analysis. Governments support the integrated environment and social impact assessment approach, which will produce a unified assessment of risks that come with any development project. CSOs, on the other hand, asked how the contextual risk analysis will cover reprisal risks, especially when ADB or its consultants rely exclusively on the information from the borrowers.

110. Addressing reprisal risks. CSOs proposed that ADB should secure an independent assessment of what the client has disclosed to ensure that reprisal risks such as restrictions to civic space (freedom of expression, association, security of defenders and journalists) are assessed. If these risks exist, they could weaken or hamper CSOs and community leaders' effective engagement in ADB projects in FCAS. CSOs added that specific guidelines be developed on how to do a reprisal risk assessment. They asked ADB to consider the proposal they laid out in the Human Rights Due Diligence Toolkit they developed.<sup>18</sup> CSOs also underscored the importance of keeping anonymity to protect people and facilitate participation in consultations without fear of reprisals. Journalists also be covered in anti-reprisal policy for they bring to light the stories from conflict zones even if they face constant threat from authorities. CSOs underscored that a proactive outreach to journalists in FCAS is integral so that ADB knows the reality and contextual risks of projects it finances.

111. **Flexibility in implementing safeguards and other requirements.** Governments asked ADB to consider relaxing the safeguards due diligence requirements when emergency situations linked with the onset of natural disasters happen. Climate change is an implementation challenge within the Pacific context as it impacts the timely and effective delivery of ongoing development projects.

112. **Tailor capacity building and implementation support.** On procurement, governments noted that the current project procurement process creates compliance constraints as Pacific countries have limited pool of safeguards specialists, and it is a challenge to build the capacity of new specialists when procurement rules effectively eliminate local hires who cannot satisfy the eligibility criteria. On many occasions, Pacific specialists are not given the opportunity to gain experience or build their skills as they are oftentimes excluded. They recommended ADB to provide customized online safeguards training (including tests) similar to continuing professional development (CPD) training for Project Accountants. For CSOs, there is a serious need to develop the capacity of CSOs to ensure transparency and accountability of programs.

113. **On involuntary resettlement, governments asked for financial resources for IR requirements such as funds required for providing resettled people with lands, employment, and training.** They suggested simplifying the process since there may be challenges in complying with all requirements. In their view, land acquisition issues may be a result of ADB-driven procedures and timeframes that do not always consider the extended

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<sup>18</sup> Coalition for Human Rights in Development. Human Rights Due Diligence Toolkit.  
<https://rightsindevelopment.org/human-rights-due-diligence-project/human-rights-due-diligence-toolkit/>

timeline required for proper consultation on land required in the Pacific. Governments proposed that the SPS update should give better guidance on voluntary land donation. The current SPS largely assumes that land is a private ownership issue. It appears to be alienating to the Pacific Island people because they felt it does not apply to them.

114. **ADB response.** ADB underscored its ongoing initiatives to improve stakeholder engagement such as revising civil society engagement indicators, operations manual and sourcebook, and requiring a fragility and resilience assessment for FCAS countries. Under the revised policy, ADB is considering having a standalone standard and related guidance that encompasses stakeholder engagement, meaningful consultation, information disclosure, and grievance redress mechanisms, linking it across other standards, and across the stages of the project. It will also provide clear requirements for the preparation of stakeholder analysis and stakeholder engagement plans. ADB will examine different types of land transactions that may be more relevant in the context of the Pacific, including lands which are in customary use but are not registered as customary ownership.

### 3. Gender, SEAH, SOGIESC and Safeguards

115. ADB organized dedicated consultations on gender and safeguards and related topics on sexual exploitation, abuse, and harassment (SEAH), and sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC).<sup>19</sup>

116. **Integrate gender in the environmental and social (E&S) risk assessments.** Governments recommended that the E & S assessments must integrate gender considerations such as gender-differentiated impacts and risks and constraints that limit women's participation in projects and access to and control of resources. Governments noted, for example, the challenges in recruiting women in the transportation and road infrastructure sector as these projects require heavy construction and backbreaking work, which could expose women to occupational and health hazards and safety risks. In the implementation phase, many institutions have their safeguard policies but lack the capacity to cascade them at the local level or project level. They suggested that ADB should (i) link safeguards with the UN Conventions on the Rights of Persons with Disabilities; (ii) make the policy more inclusive in terms of accessibility to information in accessible format (i.e., sign language); and (iii) improve the visibility and engagement of women and girls with disabilities. Government also suggested to reconsider the requirement of having 30-40% of women participation in different aspects of the project as this is very difficult to achieve, according to governments.

117. **Expand gender definition to include sexual orientation, gender identification and expression (SOGIE).** CSOs pointed out that given the growing recognition of the issues on individuals with diverse sexual orientation, gender identification and expression (SOGIE), they asked if ADB is considering revisiting its current binary definition of gender and gender inequality, and if a non-binary definition of gender and gender equality is being included in the updated SPS. They added that ADB should be proactive in considering SOGIE and safeguards in defining gender. They also asked how ADB is engaging with the Lesbian, Gay, Bisexual and Transgender (LGBT) communities, particularly the most marginalized transgender people and transgender women because they are among the affected populations in ADB-supported projects.

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<sup>19</sup> ADB. 2022. *Analytical Studies: Gender and Safeguards, Sexual Exploitation, Abuse and Harassment (SEAH) and Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics (SOGIESC)*. Manila

118. **Protect women from occupational health and safety hazards.** CSOs proposed that there should be gender-specific occupational health and safety (OHS) safeguard provisions in ADB funded projects that include adequate gender specific project facilities on the work site (e.g., toilet for women), a 30-day maternity leave and social security, protection from extreme heat during summer, a time to rest in between summer (April – May), adequate toilet facilities for women, and adequate gender specific or gender-neutral personal protective equipment (PPE) provisions. There should be a gender-friendly policy for more job opportunities for women and girls in ADB-funded projects.

119. **Adopt robust measures to combat SEAH and gender-based violence (GBV).** Governments suggested that ADB should integrate measures against SEAH and GBV in all phases of the project, especially in bidding documents so that these concerns are not dealt with as secondary or ancillary issues where supplementary requirements will only be required as deemed necessary. A formal cooperation arrangement with concerned government agencies can be made when the borrowing country lacks robust law or policy implementation measures that address the risks of SEAH in ADB-financed infrastructure projects. The provisions against SEAH in the new policy will form the basis for cooperation, which may include conducting SEAH risk assessment as part of the due diligence and monitoring requirements. The assessment can also benefit from future guidance notes that list possibly high-level risks to SEAH depending on the nature and context of project operation. There should also be gender officers or focal points to oversee the design and implementation of Gender Action Plan (GAP) under ADB-funded projects.

120. In the experience of CSOs, project-affected people usually access support from NGOs that are well trained in handling SEAH-related cases. While these people are in demand, they often struggle with funding that limits their ability to sustain their services. Given their critical role in SEAH risk mitigation, they asked ADB to consider providing funding for service providers. Further, CSOs suggested hiring SEAH specialists instead of delegating the task to environmental officers. Alternatively retraining the existing safeguard officers and deploying them at the country missions can work. ADB should have a clear oversight of the contractors' performance in dealing with the incidence of SEAH during project development, which includes a reporting of such incidence and how it has been addressed. Failure to report and address them appropriately may result in further investigation, payment penalties or a reconsideration of contracts; and to adopt a contract disqualification mechanism like the World Bank if contractors and sub-contractors fail to follow SEAH policies.

121. **Recognize in the new policy the vulnerabilities and legal barriers to SOGIESC and its intersectionality with safeguard standards.** For CSOs, the ADB's benchmarking study highlighted the need for SOGIESC provisions in the safeguards as LGBTQI people are disproportionately affected in health, education and work due to stigma and discrimination. Such discrimination is also reinforced by the legal framework in many Asia Pacific countries where there are many policy limitations to protect SOGIESC. As the safeguard policy review continues, CSOs called for: (i) more dedicated country consultations with local LGBT organizations and further research to address the legal barriers to SOGIESC protection in the context of ADB's project financing; (ii) explicit provisions for the protection of SOGIESC as part of the overarching statement of the ESF and their inclusion in the E&S risk assessment and impact mitigation measures; (iii) refer to the UN human rights systems in appraising development projects as they are applicable to ADB projects given the latter's impacts to LGBTQ; (iv) consider the intersectionality of gender, SOGIESC and other E&S standards. CSOs underscored that issues of violence, harassment, health, and labor are SOGIESC issues, and (v) ensure that the grievance redress mechanism (GRM) is accessible for and effective in handling gender-based violence and SOGIESC related incidents.

122. **ADB response.** ADB acknowledged that gender is a fundamental issue for ADB operations as evidenced by key operational priorities under Strategy 2030 and linked to a corporate results framework. ADB also acknowledged additional issues and recommendations from stakeholders for further internal discussions and reflection: (i) the need for clearer principle requirements and indicators focused on enhancing implementation and monitoring gender action plan; (ii) recognize that gender is not binary and consider people with different sexual orientation and gender identities; (iii) mainstreaming gender at the early stage of project design and integrating them across key standards like the environmental and social assessment to strengthen the contextual risk analysis and link them to critical issues like climate change, labor, community health and safety, and resettlement; and (vi) the importance of building awareness, capacity building and deployment of staff with gender expertise.

123. ADB is preparing to pilot the draft Good Practice Note on addressing SEAH issues and concerns in ADB-financed projects to try out and test its operational approaches to prevent, mitigate, and respond to SEAH in their operations, as well as build capacity of stakeholders, private partners, EAs/IAs and ADB staff during the pilot phase. The Note can then be updated following the pilot period to reflect lessons learned and according to emerging good practices. A toolkit will likewise be developed to provide good practice examples and guide country stakeholders, borrowers, and staff of EAs/IAs on establishing grievance redress mechanisms, case handling and reporting tailored for SEAH incidents.

124. ADB will also develop e-learning training programs on prevention, mitigation, and response to SEAH in ADB financed projects for staff and DMC stakeholders. Partnerships with peer MFIs on safeguards training and capacity building for DMCs can assist in building capacity of country level stakeholders, leveraging off harmonized systems and existing materials, and replicating past collaboration in establishing safeguards learning centers in selected DMCs. During the project design process, ADB has introduced a set of screening questions to assess, survey, and consult with vulnerable subjects affected by SEAH issues related to the project. It is included in the tender and other documents for implementation during the project.

125. ADB acknowledged that gender and SOGIESC are important and emerging issues for ADB operations with links to the operational priorities under Strategy 2030 and the corporate results framework. ADB recognized that SOGIESC is a sensitive issue in some countries and one in which significant capacity building is still required. ADB recognized the suggestions and comments raised during the regional consultation and added the following key items: (i) there are good models to consider from peer MFIs in integrating SOGIESC with safeguards; (ii) considerations on advancing LGBTQI issues with governments, taking into account inputs from CSOs; and (iii) consideration of SOGIESC issues in ADB's future safeguard frameworks, looking closely at implementation arrangements, including screening and categorization processes.

126. ADB is strengthening its poverty and social analysis guidance which provides an analytical framework to understand the range of people and different groups in project areas which will be the basis for further detailed work on the social impact assessment and project design. Further, ADB recognized the need to work actively to promote equality and non-discrimination across the region and its role in promoting awareness by conducting studies on areas such as understanding the legal barriers and supporting where appropriate legal and institutional reforms as well as other analytical work on social and economic impacts of discrimination and the benefits of inclusion. In terms of meaningful consultation, ADB responded that it recognizes the need to include SOGIESC-focused consultations as part of the policy update and consider further focus groups or in-country consultations.

### III. FEEDBACK ON PRIVATE SECTOR OPERATIONS

127. **Greater clarity and guidance on safeguard requirements.** Private sector clients underscored that the lack of clarity of safeguard requirements often leaves room for interpretation that results in requests for more guidance from ADB. These include the E&S risk and impact assessment, environmental and social management systems (ESMS), documentation, “transitional arrangements”, and monitoring and reporting. Participants also requested ADB to provide capacity building for private sector companies especially those who may have no prior experience with ADB safeguard policies and implementation guidance notes.

128. **Contextual risk analysis and a more risk-based approach.** For the private sector, the new policy should consider the local context, including the national and local regulations or requirements without compromising the project objectives. When ADB requirements do not match the country context, it becomes challenging for clients as they struggle to comply with often different or even contradictory requirements, that then affect the implementation schedule of the project.

129. **Harmonize with other multilateral financing institutions (MFIs).** Several private sector clients agreed that it would be mutually beneficial for them, the ADB and co-financiers if the institution aligns with the requirements of peer MFIs, which have adopted the performance standard model. This would result in one common set of safeguard requirements and information, which can be easily supplied to the different reporting templates of co-financiers. The standard harmonization would make the process less onerous and less burdensome for clients.

130. **Streamlining loan and business processes, risk assessment, monitoring, and reporting.** Several private sector clients commented that the current requirements are frontloaded but lack technical support and timely guidance during the implementation. This results in the delay in delivering the required documents and affects the work schedule. They asked whether there is a possibility that compliance can be accomplished over time. They also asked if ADB could review the length of time allocated for loan approval (and the timeline in general). They made several suggestions including having a lighter analysis done by ADB when an external expert has already been engaged from a pre-selected list of due diligence experts and establishing a memorandum of understanding to aid institutional memory since the due diligence process takes place over an extended period and most likely through staff transitions. Participants also noted how ADB's SPS is divided into three safeguard areas and would like to see more integration and complimentary actions or collaboration between environmental and social policies in all phases.

131. **Consideration of climate change issues.** Several private sector clients suggested considering climate change as its wide-ranging real threats affect the sustainability of projects. Participants pointed out that some central banks have recently launched the Sustainable Finance Roadmaps which outline governments' financial institutions' guidelines for banks and non-banks to take environmental, social and governance (ESG) considerations into account when making investment decisions in the financial sector, leading to more long-term investments in sustainable economic activities and projects. For them, this provides policy incentives to invest in climate-supportive investments as countries continue to roll out their Nationally Determined Contributions (NDCs). Some participants mentioned that they have made significant strides in integrating ESG and climate change in their operations. They asked ADB to provide specific guidance on

approaching specific climate change challenges in projects such as measuring and reporting on GHG emissions, among others.

**132. Information disclosure and flexibility for different financing modalities.** Civil society participants agreed that the SPS is best suited to traditional infrastructure financing but not to other financing modalities. They called for more flexibility in the revised policy and greater consideration of the unique and sometimes challenging governance contexts of the private sector clients. For example, the information disclosure requirement was an issue for several financial intermediaries (FIs) and private equity funds because they signed confidentiality agreements with their clients. By putting such commercial and financial information to the public domain, they are in effect weakening themselves to their competitors, which could lead to losing transactions. They expressed willingness to work with ADB to find a way to address the issue of information disclosure without causing significant problems to their sub-project clients.

**133. Aligning the revised policy with the UN Guiding Principles on Business and Human Rights (UNGP).** CSOs reiterated their call for aligning the new policy with the UNGP as it is the authoritative set of global standards to address the business impacts on human rights. There are many different standards and regulatory developments that clients need to consider, but at the core, many of these developments are aligned or based on the UN Guiding Principles framework. A few examples are the Organization for Economic Cooperation and Development (OECD) guidelines for enterprises, the International Labor Organization (ILO) Multinational Enterprises (MNE) Declaration, ISO 26000 and the Equator Principles that have been adopted by 139 financial institutions that are headquartered in 39 countries. The recent national and regional regulatory developments, with respect to reporting and mandatory human rights due diligence may apply to Asian private sector operations and can build on the Guiding Principles. By integrating the UN Guiding Principles in the ADB Safeguards, clients can be confident that complying with standards and safeguards means that they will be well-positioned to comply also with other requirements.

**134. Areas where the UNGP can strengthen due diligence and environmental and social (E&S) risk management.** Based on research and consultations with development finance institutions, due diligence can be strengthened in the approach to (i) conducting human rights due diligence; (ii) strengthening the scope of due diligence to cover value chains and encouraging clients to build and exercise leverage; and (iii) assessing the institution's involvement in impacts (involvement framework) and corresponding responsibilities, all of which will can enhance safeguard outcomes for the environment and affected people

**135. Anticipate the future of ADB operations and related safeguards.** In the context of ADB's commitment to align with the Paris Agreement principles, CSOs noted that ADB should look at both climate change impacts and sustainability impacts and should embed these in the safeguard requirements for bank-financed projects. Policy adjustment should look towards the future demands, scale, and scope of the private sector operations. An example is to look at the projects proposed under energy transition mechanism (ETM) in Indonesia particularly those that might have both high environmental and social impacts (both positive and negative). ADB could also help those institutions to evolve their principles to be Paris-aligned and/or aligned with the nationally determined contributions of a given country.

**136.** ADB is considering a policy structure that is similar to IFC where there is an E&S policy and a set of individual standards or performance requirements as well as a guidance note for each standard. These will provide much-needed guidance for borrowers or clients. Internally, staff instructions will also define the roles and responsibilities of ADB staff, including in monitoring and

supervision. Capacity building activities will also be undertaken in the rollout of the revised policy. ADB is looking at simplifying and streamlining the due diligence process without removing clear conditions and requirements for E&S safeguards. ADB is also considering a new approach in project classification where the environmental and social impact assessments are integrated, and contextual risks incorporated.

137. **ADB response.** Climate risk, vulnerability, and greenhouse gas (GHG) emissions will be elaborated further in the new policy. ADB is also considering having a standard on labor and working conditions like other MFIs as well as discussing how just transition can be operationalized. ADB is assessing GHG emissions from projects through quantification and monitoring. The current policy also includes pollution prevention aspects that are likely to be maintained. ADB undertakes climate risk and vulnerability assessments, which consider the broader context of changing climate that could affect a project. On climate financing, ADB is providing support with a commitment of \$100 billion towards 2030. ADB also updated its energy policy recently with two key things: ADB will no longer be providing any support for coal and support for gas as a transitional fuel will only be on a limited basis based on criteria being developed by those in the energy sector. ADB has also made commitments in 2021 around alignment with the Paris Agreement for ADB operations and is targeting that 100% of its sovereign operations will be aligned with the Paris Agreement by July 2023. The target for the non-sovereign projects is 85% by 2023 and a move to 100% by 2024. There will be screening for consistency with the Paris Agreement and NDCs but what it would mean for FIs is still not determined.

138. ADB mentioned that the new SPS will cover ADB work on emerging bond markets that have no coverage at all in the SPS and have some flexibility for potential new areas in the next 5 years or so. There are limited exceptions to the policy on disclosure and they do cover areas of confidentiality including issues that would be commercially sensitive or in confidence. ADB has redacted information or kept some information confidential in practice; so, there is scope to do that in some of the safeguard documentations.

#### IV. FEEDBACK FROM PROJECT-AFFECTED PEOPLES' CONSULTATIONS

139. **Purpose.** As part of SPRU's extensive and robust stakeholder engagement plan, the consultations with the project-affected peoples (PAPs) were designed to understand their experiences with safeguard implementation by identifying the challenges, good practices, and recommendations on how to strengthen safeguards. It was underscored in the preparation with the implementing agencies concerned, project teams, and PAPs that the consultations would pay attention to what worked and what could be improved in the policy requirements and implementation practices. They were not designed to attempt to resolve existing disputes or reopen past grievances.

140. The key safeguard topics covered during consultations with PAPs include (i) stakeholder engagement, information disclosure and project-level GRM; (ii) land acquisition, land use restriction and involuntary resettlement; (iii) environmental issues including community and occupational health and safety, resource efficiency and pollution abatement, and sustainable natural resource management; (iv) labor and working conditions; and (v) impacts on Indigenous Peoples and cultural heritage.

141. **Project selection.** The consultations covered 9 projects (7 sovereign and 2 private sector projects), which were selected based on six criteria: (i) projects are subject to the 2009 Safeguard Policy Statement, whether closed or under implementation; (ii) geographical distribution to reflect



different challenges and experiences with safeguards in various regional operations as well as projects in fragile and conflict-affected situations (FCAS) and in small island developing states (SIDS); (iii) inclusion of sovereign and private sector projects spread over several sectors (e.g. energy, transport, urban and rural infrastructure, water and sanitation, and social sectors); (iv) projects that are categorized as A or B for environmental, involuntary resettlement and Indigenous Peoples' safeguards; and (vi) projects whose social assessments identified a sizable population of poor and vulnerable households such as IPs, women, elderly, and persons with disability. To the extent that they were affected by the selected projects, PAPs coming from economic and public institutions such as small and medium enterprises, schools and churches were also covered to reflect the diversity, contexts, and voices of those affected by projects.

142. **Methodology.** Preparation activities such as gathering project information and a preliminary outreach to target PAPs were done to understand their profile and define the appropriate consultation methodology. A questionnaire was prepared to guide local consultants who were facilitating and documenting the consultations. Information materials such as PAPs consultation brochures were translated into local languages. Local translators were also engaged during the consultations. The following projects were selected based on the criteria.

**Table 1: Projects Covered and Safeguards Categorizations.**

Region/ Country	Project Name	Safeguard Category		
		EN	IR	IP
CW/Armenia	Sustainable Urban Development Investment Program-Tranche 1 and 2 (ARM: SUDIP)	B	A	A
CW/Georgia	Adjaristsqali Hydropower Project Georgia: Batumi Bypass Road Project (GRM: AGL)	A	A	C
CW/Georgia	Batumi Bypass Road Project ( <b>private sector</b> ) (GEO: BATUMI)	A	A	C
SA/India	Rajasthan Secondary Towns Development Sector Project (IND: RSTDP)	B	B	B
EA/Mongolia	Ulaanbaatar Urban Services and Ger Area Development Investment Program-Tranche 1 (MON: GADIP)	B	A	C
SE/Lao PDR	Nam Ngiep 1 Hydropower Project ( <b>private sector</b> ) (LAO: NN1)	A	A	A
SE/Philippines	Angat Water Transmission Improvement Project (PHI: AWTIP)	B	C	B
SE/Philippines	Malolos-Clark Railway Project (PHI: MCRP)	A	A	B
Pacific/Tonga (SIDS)	Nuku'alofa Naku'alofa Urban Development Sector Project (TON: NUSDP)	B	B	C

CW=Central and West; Asia, EA=East Asia; SA=South Asia; SE=Southeast Asia; SIDS=Small Island Developing States. Source: ADB

143. **Profile of PAPs consulted.** Between May 2022 and March 2023, ADB engaged a total of 622 PAPs including 238 women (38%) and 384 men (62%), with the former having the most representation in 4 of 9 project consultations. PAPs' participation is broken down in Table 2.

**Table 2: Profile of Project Affected People Consulted**

Project	PAPs consulted	Methodology		Distribution by Gender		
		FGDs	HHs	Male (no.)	Female (no.)	Total (no.)
ARM: SUDIP	Small business owners, self-employed, relocated households, workers, PAPs facing pollution, noise, vibration and livelihood impacts	5	10	30	18	48
GEO: AGL	Relocated households, women, elderly, widow, small business owners, farmers, and other PAPs facing environmental, land access and livelihood impacts	7	4	65	21	86
GEO: BATUMI	Physically and temporarily relocated households, workers, small business owners, PAPs facing environmental, land access and livelihood impacts	5	12	38	10	48
IND: RSTDSP	Small vendors, female-headed households, elderly, people with disabilities, PAPs under poverty lines	6	9	77	7	84
LAO: NN1	Resettled IP households, farmers and women; host non-IP community households	7	2	54	24	78
MON: GADIP	Female headed households, elderly, persons with disability, unemployed and PAPs who lost plots and/or houses, non-titled households	4	6	18	24	42
PHI: AWTIP	IP elders and chieftain, IP organization leaders, farmers, fishermen, women, non-IP residents, household displaced during construction	5	2	35	46	81
PHI: MCRP	Farmers, homeowners, workers, informal settlers, women, elderly, business owners, school and Church leaders	5	7	40	42	82
TON: NUSDP	Small business owners, self-employed, women, workers, project beneficiaries	6	12	27	46	73
<b>Total</b>		<b>50</b>	<b>64</b>	<b>384</b>	<b>238</b>	<b>622</b>

ARM: SUDIP=Armenia: Sustainable Urban Development Investment Program-Tranche 1 and 2, FGDs=focus group discussions, GEO: AGL=Georgia: Adjariatsqali Hydropower Project, GEO: BATUMI= Georgia: Batumi Bypass Road Project, HH=household interviews, IND: RSTDSP=India: Rajasthan Secondary Towns Development Sector Project, IP=indigenous peoples, LAO: NN1= Lao PDR: Nam Ngiep 1 Hydropower Project, MON: GADIP=Mongolia: Ulaanbaatar Urban Services and Ger Area Development Investment Program-Tranche 1, PAPs=Project affected peoples, PHI: AWTIP=Philippines: Angat Water Transmission Improvement Project, PHI: MCRP=Philippines: Malolos-Clark Railway Project, TON: NUSDP=Tonga: Nuku'alofa Naku'alofa Urban Development Sector Project. Source: ADB

144. Below is a summary of PAPs' feedback on the challenges as well as good practices in the implementation of safeguards. Specific project experiences are mentioned to provide context for the feedback received.

#### **A. Stakeholder engagement, information disclosure, and grievance redress mechanisms**

145. **On information disclosure and stakeholder consultations.** PAPs appreciated that projects utilized various means to disseminate information including brochures or leaflets, face-

to-face meetings, house visits village consultations, social media, notice boards in public areas, and information drive in television and radio programs. However, some PAPs in the GEO: BATUMI project commented that as the construction started, they received little information about project design, the construction timeline and potential impacts. Only PAPs who were considered directly impacted were consulted while those who were indirectly affected were not. PAPs suggested that despite the different severity of impacts, all should be consulted with sufficient project information before and during the construction.

146. For MON: GADIP PAPs, they pointed out that there should be consistency in the information provided with actions taken. Many of the partially affected households agreed to vacate their land for the project because they were told that heating, water, and sewage networks will be installed on the affected land and connection would be accessible for a household. However, they claimed that none of these was fulfilled. For ARM: SUDIP, some PAPs asserted that more information should have been provided and consultations made during the construction phase. For GEO: BATUMI, PAPs had the impression that the project was not implemented according to the design that was presented to them. This is because they were not informed about the modifications and changes to the design. For PAPs, it is important that other stakeholders also get involved, including the implementing agencies, and provide information on the project and respond to questions on matters such as compensation, benefits, and impacts.

147. **Grievance redress mechanisms.** PAPs, in general, were aware of the mechanisms where they can raise concerns regarding project design and implementation, file complaints, and follow up with staff of concerned national or sub-national agencies. Their experiences also show that different structures and mechanisms were used by the project to address concerns, and clarity provided including the scope of the concerns that can be raised. However, PAPs in other projects such as in the GEO: AGL and ARM: SUDIP, said they had issues they wanted to raise with government agencies but did not know how to do them. PAPs noted that responses of agencies to their concerns were timely and effective such as compensation for non-landowners in the PHI: MCRP. For the PHI: AWTIP, grievances and IP concerns are channeled to the National Commission on the Indigenous People (NCIP), the main government agency mandated to protect and promote the rights of the IPs. For the project GRM to be accessible and responsive to vulnerable persons, workers and persons indirectly affected by the project, it is proposed that NCIP establish desks and contact points for faster response and better follow-up on the actions taken to address concerns. Additional capacity building of NCIP and adequate staffing were recommended to support the project activities.

148. **Proactive efforts to address affected peoples' concerns using existing government mechanisms.** Informal settlers and farmers affected by the PHI: MCRP appreciated the responsiveness of "case-handlers" in providing information and addressing their concerns. However, some affected landowners who are not yet compensated complained about the lack of clear information on compensation, timelines, and sometimes inconsistent information they receive from government agencies. In response, the project used local hotline and line agency structures (e.g., interagency committees, help desks, units dealing with informal settlers) who were already working to address resettlement issues and grievances. Engaging the local government units (LGUs) through the Local Inter-Agency Committee has ensured that project updates are properly communicated to the resettlement implementing partners for the relocation of PAPs in a timely manner and for handling their grievances or concerns. PAPs have the contact numbers of EA focal/s and local government unit (LGU) offices for their concerns. LGUs are part of the Project-GRM committee that coordinates with the EA and provides feedback to PAPs. If requested, LGUs helped PAPs to coordinate the release of documents from relevant agencies to

complete the documentation required for compensation. They also keep records of concerns raised by PAPs and do a tracking of actions taken based on the resolutions.

149. **Build on local institutions when consulting IPs.** For projects that affect IPs, it is important to build on their functioning local institutions and involve their traditional leaders who have a customary sphere of influence in the villages. Such leverage can assist in convening and obtaining broad community support. For example, the affected IPs in the PHI: AWTIP recalled how the executing agency, the Metropolitan Waterworks and Sewerage System (MWSS), with the implementation support of the National Commission on the Indigenous Peoples (NCIP) organized a series of community assemblies that built community awareness of the project and their entitlements. This was largely instrumental in the active participation of leaders and the formation of an Indigenous People's Organization (IPO). Considering the crucial role of an IPO in negotiating projects that would be covered in their Memorandum of Agreement (MOA) and in the roll out of MOA, MWSS invested significant staff time and resources to work with NCIP to help form the IPO and successfully obtain an FPIC that led to securing the Certificate Precondition (CP).

## **B. Land acquisition, land use restriction and involuntary resettlement**

150. The discussions focused on different aspects of the involuntary resettlement safeguards such as (i) how the processes were carried out (e.g., consultations, valuation, and determination of compensation rates); (ii) feedback on the quality of measures implemented under the project such as transition assistance, relocation sites, and livelihood restoration; and (iii) overall feedback on their experience with IR. The PAPs consulted included landowners, non-landowners (including informal settlers' families, renters), persons with restricted access to property, business owners, and representatives of affected institutions (e.g., church and school).

151. Some PAPs were satisfied with their experiences related to involuntary resettlement safeguards. Satisfaction was related to the valuation of their assets and the resulting compensation which allowed them to restore their living conditions and livelihood. Entitlements were also explained and given in accordance with the resettlement plan. Some PAPs who needed to be physically relocated said that they were able to restore their living conditions. Livelihood restoration measures for informal settlers, farmers and other vulnerable groups were also found to be satisfactory. However, most of the affected businesses found the valuation approach to their lost assets challenging.

152. Among the issues raised by PAPs who had challenges with the implementation of IR safeguards are the following:

- i. **On valuation and compensation, there should be clear communication on how "fair market value" and asset valuation are done.** PAPs underscored that there should be dedicated consultations on the valuation that explain the coverage and methods for calculating the rates. In GEO: BATUMI, PAPs found the formal asset valuation from the government to be lower than the prevailing market rates. When doing a valuation of acquired land, house damages, house removal, lost trees and other assets, PAPs emphasized that the eligibility criteria and the calculation that factors their fair market value should be part of the consultation. For non-titled PAPs, a clear explanation of what is covered in the compensation is important and that the payment be transferred directly to their bank accounts or their authorized representative's account. For other PAPs, they recommended that when the government acquires unused residual lands from PAPs, additional crop

compensation in cash at the market rate (corresponding to the gross crop value of expected harvest) should be considered.

- ii. **Impacts of inflation should be considered in the valuation process.** In ARM SUDIP, PAPs highlighted the importance of factoring inflation impacts into asset valuation. PAPs mentioned they felt the brunt of inflation in the prices of basic commodities, land, housing and the purchasing power of their currency. Even when the compensation was delivered within the timeframe, the compensation was not enough when the effects of inflation were not accounted for. They emphasized that failing to account the effect of inflation, the compensation will not be enough to cover the increasing costs of structural repair, reconnecting water and drainage, and heating system, of reconstructing house foundation or recovering from temporary loss of livelihoods during construction.
- iii. **Compensation should be delivered within a reasonable time.** Some PAPs in GEO: BATUMI mentioned several instances where compensation was paid only months or years after the valuation and agreement on the amount were made. As a result, the prices of land or housing property they wanted to obtain with their compensation have significantly increased, making their compensation inadequate. Many PAPs have already incurred debts while expecting to repay them once they receive their compensation payment. The process and timing for paying compensation should be the center of information drive to manage expectations and avoid creating frustrations among PAPs. The situation in IND: RSTDSP makes an interesting contrast with respect to the compensation delivery. PAPs who are mostly small vendors of fruits, vegetables, flowers, snacks, and household items recalled that a team of people was deployed by the implementing agency who did a detailed monitoring survey almost two years before civil works started. PAPs recall receiving their compensation 10-15 days ahead of the construction.
- iv. **Integrating the livelihood restoration and enhancement support in the watershed area conservation planning.** Through PAPs consultations, it became clear that this integration is crucial, particularly for ethnic groups or communities who have settled in the watershed and conservation areas for their traditional livelihood and land uses. For Indigenous Peoples affected by LAO: NN1, some claimed that their limited access to the upland area above flood level should be re-considered, as only having full access to the forest resources and land would restore their livelihoods. They said that they need forest resources for their long-term livelihood, as the lower income groups depend on forest land and non-timber forest products.
- v. **Retain provisions for livelihood restoration in the new policy.** Most PAPs find that the entitlement provisions in the current safeguard policy are good practices. Informal settlers appreciated that SPS requirements on IR require provision for their entitlements such as compensation for lost assets at fair market rates. This policy requirement allowed them to buy a house or land plot and save money, which they used to open a small business.

153. **Customize stakeholder engagement for affected institutional establishments such as schools and churches.** In the context of the PHI: MCRP, an elementary school and a church were facing imminent displacement because their building is in the project's right of way. The displacement of the school will impact more than one thousand enrolled students with 28 teachers and contractual administrative and utility employees while the church located in a government

property has been closed since April 2022 due to notice of demolition. For the affected stakeholders, timely information on project progress and a series of consultations to prepare their relocation are critical given how time and resource-intensive it is to relocate. They also see the associated emotional and social adjustments they will go through before and during civil works. A tailored approach to consulting church leaders and their churchgoers covered by the project's area of influence is also essential given the disruption and relocation it would cause.

154. **Use a differentiated but fair approach to resolving compensation issues for affected businesses.** For the affected business owners, it is not just the financial costs of disruption that are at stake; it is also the transition support for affected employees who are unable to perform their jobs for months. For them, the implementing agency and supervision consultants should be proactively involved in resolving affected business owners' grievances and in paying cash indemnity of net income for months of business disruptions as well as lost workers' wages equal to 3 months of minimum subsistence. There should also be clear guidance on handling land acquisition issues of businesses in terms of longer timeframe to restore operations.

**C. Community and occupational health and safety, labor and working conditions, other environmental issues**

155. Below is a summary of key points from PAPs on the challenges as well as good practices in the implementation of environmental safeguards. Specific project experiences are mentioned to elaborate on specific findings.

156. **Provide adequate information on project design, anticipated impacts, and mitigation measures during consultations.** In the GEO: BATUMI, some PAPs felt they were not provided with adequate information about the engineering design and how the planned construction work would cause disruption. Had they known about the level and frequency of noise, flooding, air and dust pollution, they feel that the design of the project and roadwork could have been adjusted. For example, construction activities during the night should have been limited or they could have been advised earlier to temporarily relocate to avoid inconveniences from noise, dust, and vibration. These were the types of information that were missing in the distributed leaflets and brochures. Some PAPs thought that at the consultation meetings, only positive information was provided while the potential adverse impacts from the project were intentionally hidden to avoid complaints. PAPs also claimed that they were promised that no blasts and explosions would be applied during tunnel construction. Only the drilling method would be used. However, PAPs recalled massive blasts and explosions, which caused significant damage to nearby houses and public buildings. These technical details were not presented during the consultation. If there were changes in the design, these should have been the subject of additional consultations, so PAPs knew what to expect and how to avoid exposure. They are not averse to changes but PAPs asked that they should be provided with timely updates on the construction.

157. In ARM: SUDIP, PAPs noted that for future consultations, they should be consulted before engineering design is finalized. This way, they can discuss how and in what manner they could be disrupted and if they could offer some design alternatives. PAPs felt that their opinions were not often accepted in court or by the municipal government when they filed complaints on the engineering plan. For them, there should have been larger consultations other than simply communicating technical details so that PAPs can be alerted of the required drilling, noise, dust pollution and other community health and safety issues in advance. Noise modelling should be done to consider the culture of driving in a particular country, not just based on allowable speed.

158. For PAPs in MON: GADIP the construction period generated dust from gravel and other construction materials while the movement of heavy vehicles created bothersome noise, especially during the evening as construction was carried out around the clock. The movement of heavy machinery caused vibrations and damage to their houses and other built structures, and this forced some PAPs to move to rental apartments. They were, in due course, provided temporary assistance such as rental subsidy. One PAP, for example, detailed how his house developed cracks during bridge construction. He was compensated while being allowed to remain in another house on the same plot. Meanwhile, other PAPs who were partially affected recalled that their request for the project to acquire their entire land so they could be spared from disruptions was denied. PAPs whose land was being temporarily acquired during project construction agreed to vacate their land partially based on negotiation and mutual agreement with the PIU. However, feedback from these partially affected PAPs was that at the design stage, it should have been planned to avoid or minimize the impacts (e.g., noise and dust from the machinery) as much as possible; in case of unavoidable exposure, acquire the land fully. Some PAPs noted that while it is understandable that the project implementer was racing against time to complete the work within a short period in the summer, this proved difficult especially for families with young children to cope. PAPs thought that if the project implementer and contractors had been open to listening and discussing their suggestions on adjusting the engineering design and civil work, major inconveniences and the piling of complaints could have been reduced.

159. **Ensure community safety during project implementation.** PAPs requested that in the context of road widening, signs and bumpers should be installed to avoid overspeeding and install access features for persons with disabilities such as mini ramps. For partially affected PAPs, the removal of construction debris and waste from their vicinity should be monitored to ensure they are properly disposed of in designated areas. Also, they also requested to limit construction works during the night. It was emphasized that accurate information for affected households on working hours is necessary. Failing to do so can lead to multiple complaints, even protests, considering their disruption to business, work, or sleeping time. Contractors should manage the temporary relocation of residents who are severely affected by noise, dust, and vibration.

160. **Hire local skilled workers that meet the qualifications.** Workers of the PHI: MCRP cited their experience being engaged in skilled and semi-skilled labor during project construction. They appreciated such decisions given the benefits of being employed even if for a temporary period. This paid for household and school expenses of their children, and even used it as a start-up capital for their small business. IAs, contractors and clients working with the local governments and subnational government agencies in advertising job openings or offering technical training to make them job-ready was also considered an effective approach to obtain broad community support for the project. They noted, however, that the contractor should factor in the impacts of inflation when setting or adjusting workers' salaries. Settling into minimum standard for regional wages may not be enough. PPEs and health insurance should also be provided while in the workplace.

161. **Ensure the protection of the environment such as watersheds which are important sources of livelihood.** PAPs in LAO: NN1 emphasized that projects that cut across watersheds should ensure their conservation and protection as these are important sources of livelihood. These serve as supplementary sources of livelihood. The ecosystem services they provide such as non-timber forest products should be high in the environmental management plan so that PAPs can continue their access to such resources. Engaging PAPs in ecosystem protection programs through a collective forest patrol, reforestation, crop diversification, and other sustainable livelihood practices training can be a viable option to mitigate livelihood loss and replacement of income when a provision of direct compensation is not adequate.

## D. Indigenous Peoples Safeguards

162. **Below** is a summary of key points from PAPs on the challenges as well as good practices in the implementation of Indigenous Peoples safeguards.

163. **FPIC was crucial to achieving IPs' claim for protection and benefits from projects.** In the context of PHI: AWTIP, the existence of the Indigenous Peoples' Rights Act (IPRA) law that requires free, prior, and informed consent (FPIC) guided the requirements for the affected IPs' claim to co-benefits in the project that cuts across their ancestral domain. The preparation, construction and completion of the project embodied the principles and national procedures to obtain FPIC, which was also in line with the IP requirements under the SPS. The FPIC resulted in the issuance of IP Resolution of Consent (ROC) and the National Commission for Indigenous Peoples' (NCIP) issuance of Certificate Precondition (CP), which recognized IPs' rightful claim for co-development benefits. This was articulated in the FPIC Memorandum of Agreement (MOA) which outlines their 13 *kahilingan* (demands for IP development projects).<sup>20</sup> In this project, the organization of their Indigenous Peoples' Organization (IPO) as implementing arm of FPIC MOA became a tool to solidify the community. The IPO represents the voice of the affected IP communities that collectively own and protect their ancestral domain. The IPO has a mandate to work towards a step-by-step realization of IP demands. It was noted that continuous education and capacity building support to the IPO and their leaders are necessary to strengthen their capacity to implement. Support should focus on the effective management of IPs' development projects such as putting in place clear implementation arrangements, yearly monitoring and review of projects including disbursements, and addressing concerns or grievances during implementation.

164. **Support for livelihood restoration after project completion.** In the case of relocated IPs and vulnerable households PAPs in LAO: NN1, they appreciate the support of the government and ADB since relocation. However, they expressed concern about sustainability of livelihood support including rice subsidy when project is completed.<sup>21</sup> The IP resettlement and development plans should have a strategy to link IPs to local markets when producing and selling their artisanal weaving products, agricultural produce such as cassava and other high-value crops.

165. Livelihood sustainability needs continued capacity building support including education, skills training on good financial management and other support such as linking IPs to the market. In the case of relocated IPs and vulnerable households in LAO: NN1, they appreciate the support of the government and ADB since relocation. However, they expressed concern about the sustainability of livelihood support including the rice subsidy when the project is completed.

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<sup>20</sup> The MOA was executed on 17 December 2019 between the Kabayunan Dumagat Indigenous Cultural Communities, the MWSS and NCIP. The MOA sets out *kahilingan* or 13 demands for IP development projects are: 1) construction of 8 Tribal/Multi-Purpose Hall; 2) procurement of 8 tri-cycle or *kolong-kolong*; 3) provision for procurement of 60 solar panels; 5) procurement of 10 motorized boat; 6) provision of livelihood program for Indigenous People households; 7) procurement of 2 ambulances; 8) procurement of 10 water tanks for potable drinking water; 9) construction of 10 toilets; 10) construction of 1 bunkhouse for school children; 11) procurement of 9 motor engine for fishing boat; 12) procurement of 10 HP motor pump water pump for water supply; and 13) provision of budget support for 16 Forest Guards/((*Bantay Gubat*)). Support for forest guards was later realigned to funding the serious medical needs of IP individuals during COVID-19.

<sup>21</sup> The project continues to implement its Master Plan for Livelihood Restoration and ensures that PAPs including IPs) are linked to local markets. This Master Plan can be accessed via <https://www.adb.org/sites/default/files/project-documents/41924/41924-014-dpta-en.pdf>.



166. **Clarify expectations regarding the extent of livelihood support and other community assistance.** There is a need to clarify the extent of the livelihood support as part of the project commitments to assist the affected communities. The project should make clear its commitments during operations, including the programs that will continue or phase out during this stage. PAPs expect a long-term presence of the project, which should be addressed in the project's communication strategy.

#### **E. Feedback from project affected women**

167. The PAPs consultation design ensured that women were represented in the FGDs and interviews on various aspects of environment, IR and IP safeguards implementation. Short summaries of women's experiences and views are provided in the next paragraphs.

168. **Support to affected women in the resettlement planning and implementation.** In an FGD with Hmong Indigenous women in the LAO: NN1, they found that their concerns for compensation for the loss of their houses, residential and productive lands as well as livelihood restoration after relocation were addressed in the resettlement plan. They also participated in the inventory of their assets and the calculation of compensation and received payment according to what was presented in their meetings. Support was provided for their relocation to the resettlement site. In addition to the readiness of their new house, the newly built school and health center were functioning while connections to electricity and water supply had been installed. In addition, all households were given agricultural land suitable for rice and cash cropping. They were also allowed entry to forest areas that enabled collection of non-timber forest products. A transitory rice supply was provided for five years. For them, the delivery of such provisions in the resettlement plan was essential to restart a new life, a new way of life, in a different place. The adjustment did not happen overnight. However, with the implementation of gender-sensitive resettlement plan, they did not feel that gender disparities were exacerbated.

169. **Livelihood restoration and access to job opportunities programs.** In the context of PHI: MCRP PAPs, affected informal settlers that include women who work as small vendors and workers, the provision of small food carts during their relocation was helpful. However, due to the pandemic that constrained them from sustaining the capital for the small business, the business opportunity was not realized. For some PAPs, this livelihood option did not suit their preference and lifestyle (e.g., some had to stay home and take care of a sick spouse). Another informal settler PAP who received food cart for business did not prosper due to challenges in maintaining the capital and marketability of goods during the COVID 19 pandemic period. Meanwhile, an elderly PAP owning a junkshop attended a skills training that was provided in the Livelihood Restoration and Improvement Program (LRIP), hoping to get employed in the project during construction. This was made possible through the coordination among the EA, the contractors, the local government unit and the relevant government agencies that matched job requirements with skills training courses that can be availed by those whose livelihoods were affected by the project. PAPs, including qualified women, were directly employed by the contractor and sub-contractors.

170. **Use of compensation received.** In the case of ARM: SUDIP, several women shared how they utilized compensation to fully restore their living standards. At least two who physically relocated purchased a new house with a size larger than their previous property. Another woman bought a plot which she used to informally occupy to build a concrete house. Another PAP used compensation for renting a metal kiosk to sell fruits and vegetables and for purchasing a car for passenger use. One other female PAP who lost 10% of her agricultural income in a community-owned land used her compensation to build a two-story house on the same land. For them, the

project led to two major benefits: wider economic outcomes for their community and their city and financial capital to build their own houses and restart their business.

171. **Women's organization as partners in project implementation.** In the case of TON: NUDSP, where a second cell was constructed in the landfill, initially it was difficult to change the mindset of people from burning and throwing away waste, and to pay a monthly fee for waste collection and disposal. Tonga's Waste Authority Limited (WAL), which was established under Tonga's Waste Management Act 2005, conducted a series of consultations and public awareness programs on television and radio, to encourage people to participate in the weekly waste collection. They found that a local women's committee in the villages of Nuku'alofa has been active in community health and safety activities and can be mobilized to increase community uptake in the collection and proper disposal measures. WAL decided to contract the committee to distribute bills and collect fees for a monthly 10% commission. It was effective as the women explained the purpose and benefits of the waste collection fee in their local language. The lesson learned from this initial approach led to an improved billing system, where all households now settle their dues directly with the organization's cashier and not the women's committee as its contract had not been renewed. The women's committee is still engaged in different roles, which includes monitoring the quality of sanitation whose field reports are submitted to the Ministry of Health.

## V. NEXT STEPS

172. **Drafting and disclosure of the draft revised policy.** Feedback from stakeholder consultations has been considered in drafting the revised policy. ADB has disclosed the draft Environmental and Social Framework (ESF) on September 7, 2023 for public comments. The draft policy has 4 main components, which will collectively form the Environmental and Social Framework (ESF: (i) Vision; (ii) Environment and Social Policy (E&S Policy); (iii) 10 Environment and Social Standards for Borrowers and Clients (ESSs); and (iv) Prohibited Investment Activities List (PIAL). The 10 ESSs are: 1. Assessment & management of environment and social risks and impacts, 2. Labor and working conditions, 3. Pollution prevention and resource efficiency, 4. Health, safety, and security, 5. Land acquisition and land use restriction, 6. Biodiversity and sustainable natural resource management, 7. Indigenous Peoples, 8. Cultural heritage, 9. Climate change, 10. Stakeholder engagement and information disclosure.

173. **Public Comment and Stakeholder Consultations on the Environment and Social Framework.** The activities under preparation for Phase 3 include preliminary information sessions (virtual), regional and in-country consultations (in face-to-face, virtual and hybrid formats) with governments and CSOs, as well meetings with other stakeholders. Recent and upcoming consultation materials are posted on the [SPRU website](#).

## 1. Phase 2 Stakeholder Consultation Results

The data below represents the depth and breadth of the consultations, the diversity and inclusivity of stakeholder participation, as well as the feedback on the consultation process.



### WHAT ARE THE PHASES OF SAFEGUARD POLICY REVIEW AND UPDATE?



### RESULTS OF PHASE 2 CONSULTATIONS

#### WHO WERE CONSULTED?

**3,620 stakeholders**



joined a series of consultations over 17 months, including:

**1,352** government officials from **48 DMCs**

**188** participants from **56 private sector clients**

**1,458** CSO leaders from Asia Pacific, North America and Europe

**622** PAPs in **7 sovereign and 2 private sector projects**

With a balanced participation of

**49%** women **51%** men

from **56 member countries**



CSO=civil society organization; DMC=developing member countries; PAP=project-affected people; PS=private sector.

#### HOW DID THE STAKEHOLDERS GIVE FEEDBACK?



**80** regional consultation events

**34** in-country consultation sessions

**9** project-affected peoples' consultations



**22** focus group discussions



**56** written submissions

#### WHICH TOPICS WERE COVERED IN THE CONSULTATIONS?

**18 analytical studies** were published to inform **20 regional consultations and additional meetings**

- |   |   |  |
|---|---|--|
| <b>1</b> Policy Architecture                                      | <b>8</b> Cultural Heritage  | <b>14</b> Focus Group Discussions with Private Sector Clients                                      |
| <b>2</b> Indigenous Peoples                                       | <b>9</b> Stakeholder Engagement, Information Disclosure, and Grievance Redress Mechanisms                       | <b>15</b> Climate Change   |
| <b>3</b> Resource Efficiency and Pollution Prevention             | <b>10</b> Lessons from Accountability Mechanism   | <b>16</b> Gender and Safeguards  |
| <b>4</b> Labor and Working Conditions                             | <b>11</b> Environmental and Social Impacts and Risk Assessment  | <b>17</b> Sexual Exploitation, Abuse and Harassment (SEAH)   |
| <b>5</b> Community and Occupational Health and Safety             | <b>12</b> Safeguards in Fragile and Conflict-Affected Situations (FCAS) & Small Island Developing States (SIDS) | <b>18</b> Sexual Orientation and Gender Identity and Expression, and Sex Characteristics (SOGIESC) |
| <b>6</b> Land Acquisition and Involuntary Resettlement            | <b>13</b> Country Safeguard Systems (CSS)   | <b>19</b> Safeguards in Private Sector Operations  |
| <b>7</b> Biodiversity and Sustainable Natural Resource Management |   | <b>20</b> Safeguards in Different Financing Modalities   |

### WHICH COUNTRIES DID ADB HAVE DEEP DIVE CONSULTATIONS?

**10** in-country consultations with governments and civil society organizations

- Georgia
- India
- Indonesia
- Mongolia
- Pakistan
- Papua New Guinea
- People's Republic of China
- Philippines
- Republic of Marshall Islands
- Tonga



### HOW WERE GOVERNMENTS CONSULTED?

Governments provided substantive feedback in regional and in-country consultations and submitted written comments

**940** officials in regional consultations

**412** officials in in-country consultations

- Member Governments Represented**
- Central and West Asia
  - East Asia
  - Europe and North America
  - South Asia
  - Southeast Asia
  - Pacific

- Government stakeholders consulted**
- ✓ Key counterpart ministries and agencies
  - ✓ Executing and implementing agencies
  - Economic Development and Planning
  - Education
  - Energy
  - Finance
  - Health
  - Project management units (national and subnational levels)
  - Regulatory institutions
  - Environmental Regulatory Department
  - State-owned Enterprises
  - Public works
  - Road
  - Transportation
  - Water Supply and Sanitation
  - Land agency

### HOW WAS THE PRIVATE SECTOR CONSULTED?

**188** participants from **56** private sector companies joined **6** focus group discussions

- Clients shared feedback based on safeguard experiences in:
- » General Corporate Finance
  - » Project Finance
  - » Financial Intermediaries (banks and non-banks, and private equity funds)

### HOW WERE CIVIL SOCIETY ORGANIZATIONS CONSULTED?



**1,095** CSO leaders joined in regional consultations

**363** joined in in-country consultations, focus group discussions, and special meetings

**44** submitted written comments

- Participating CSOs:**
- » Academic institutions and think tanks
  - » Environmental and climate groups
  - » Gender advocacy groups
  - » Independent researchers and contractors
  - » Indigenous Peoples' organizations
  - » Labor groups and trade unions
  - » Social protection and human rights groups

**HOW WERE PROJECT-AFFECTED PEOPLE CONSULTED?**

ADB went to the field listening to  **238 (38%)** women  **384 (62%)** men affected by **7** sovereign and **2** private sector projects

 **PAPs shared their safeguard experiences via 50 focus group discussions, and 64 household interviews**

 <b>ARMENIA</b> Sustainable Urban Development Investment Program	 <b>INDIA</b> Rajasthan Secondary Towns Development Sector Project	 <b>PHILIPPINES</b> Angat Water Transmission Improvement Project
 <b>GEORGIA</b> Adjaristsqali Hydropower Project	 <b>LAO PEOPLE'S DEMOCRATIC REPUBLIC</b> Nam Ngiep 1 Hydropower Project	 <b>PHILIPPINES</b> Malolos-Clark Railway Project
 <b>GEORGIA</b> Batumi Bypass Road Project	 <b>MONGOLIA</b> Ulaanbaatar Urban Services and Ger Area Development Investment Program-Tranche 1	 <b>TONGA</b> Nuku'alofa Naku'alofa Urban Development Sector Project

**RESULTS FROM ZOOM POLL AND POST-EVENT SURVEY**  
FOR REGIONAL AND IN-COUNTRY CONSULTATIONS

**1,100 (60%)** participants in regional consultations responded to Zoom poll




**88%** were satisfied with online regional consultations

**Results from regional and in-country consultation post-event survey:\***

 <b>91%</b> Was able to meaningfully participate in the consultation	 <b>89%</b> Found the consultation materials sufficient and understandable
 <b>95%</b> Felt safe and secure to voice feedback during consultations	 <b>89%</b> Observed that ADB gave satisfactory response to comments

\*27% response rate or 717 out of 2,689 regional and in-country consultation participants responded to survey

 Background materials were translated into Bahasa Indonesia, Bengali, Chinese, Georgian, Hindi, Mongolian, Russian, and Urdu.

 Simultaneous interpretations in Bahasa Indonesia, Chinese, Georgian, Hindi, Khmer, Lao, Mongolian, Russian, Urdu, and Vietnamese were provided.



Feedback received from stakeholders fed into the drafting of the new Environmental and Social Framework (ESF), the focus of Phase 3 consultations beginning November 2023.



 SAFEGUARD POLICY REVIEW AND UPDATE