

In-Country Consultation on ADB's Draft Environmental and Social Framework (ESF)

Government Stakeholders from the Philippines

24-25 January 2024 | Manila



SAFEGUARD
POLICY REVIEW
AND UPDATE



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ICC Session Objective

1. Provide background and introduction to the draft Environmental and Social Framework (ESF):
 - Background and overview of the draft ESF
 - Overview of the proposed Environmental and Social Standards
 - Overview of E&S Requirements for Financing Modalities and Products and Prohibited Investment Activities List (PIAL)
2. Seek feedback on the draft ESF including implementation challenges

Agenda

Day 1: 24 January 2024

09:10 am Opening Message

09:30 am Session 1: Overview of Safeguard Policy Review and High-Level Feedback Received in Previous Philippines Consultation; Overview of ESF and ESP

11:00 am Session 2: Overview of ESS 1 and ESS 10

01:30 pm Session 3: Overview of ESS 5

03:15 pm Session 4: Overview of ESS 6 and ESS 8

Day 2: 25 January 2024

09:15 am Session 5: Overview of ESS 2 and ESS 4

11:00 am Session 6: Overview of ESS 3 and ESS 9

01:30 pm Session 7: Overview of ESS 7

03:15 pm Session 8: Overview of E&S Requirements for Financing Modalities and Products and PIAL

04:35 pm Recap of Key Feedback, Closing Message, and Next Steps

Opening Message

Pavit Ramachandran
Country Director, Philippines Country Office,
ADB



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Message and Impressions from Philippine Government

Department of Finance



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Session 1: Overview of Safeguard Policy Review and High-Level Feedback Received in Previous Philippines Consultation; Overview of ESF and ESP

Zehra Abbas

Principal Environment Specialist, Office of Safeguards (OSFG), ADB

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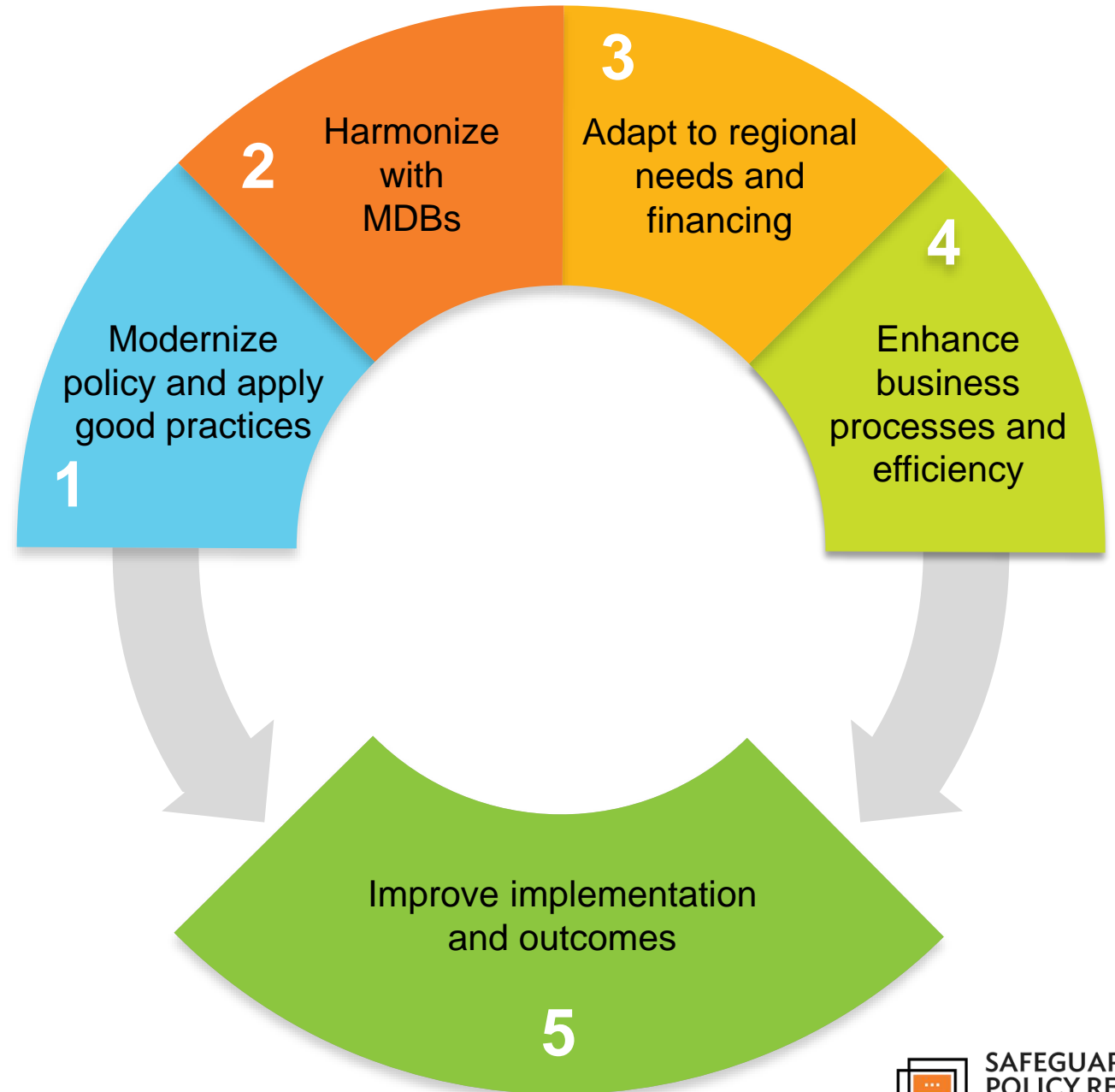
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IED's Recommendations on SPS Effectiveness

1. **Modernize the SPS, increasing its relevance and customizing it for both sovereign and private sector financing**, by building on evidence from the SPS implementation experience and recent safeguard policy updates at other MFIs.
2. **Adopt a new approach in the policy to strengthening borrower systems**, with a view to a more systematic improvement and pragmatic use of country systems.
3. **Introduce a new safeguard implementation framework**, including an updated oversight structure and reporting lines that are strengthened and contribute to more consistent safeguard outcomes across ADB.
4. **Underpin the safeguards policy and implementation framework with sufficiently detailed policy guidance** (e.g., Operations Manual and Staff Instructions) **and a range of operational guidance documents and good practice notes** with established mechanisms for regular reviews and updates.
5. **Assess the necessary staffing complement** to deliver the safeguards implementation framework and **strengthen skills**, empowering staff to deliver better safeguard outcomes.

Objectives of Safeguard Policy Review and Update



Policy Preparations Undertaken

1. 18 thematic studies completed

- ✓ Policy architecture, environment, social and gender issues.
- ✓ Benchmarking ADB and MDBs
- ✓ Implementation experience and challenges

2. Stakeholder engagement

- ✓ **3600+** individuals consulted in total
- ✓ **80** online consultation events on thematic studies
- ✓ **10 DMCs** visited/participated for in-country consultations
- ✓ **56** private sector clients consulted
- ✓ **9** project consultations with directly affected people
- ✓ **10+** focus group discussions on gender/SOGI issues
- ✓ **Established Indigenous People's Advisory Group**
- ✓ **Dialogue with other MDBs**

3. ADB Staff and Board Engagement

- ✓ Steering Committee, Lead Coordination Group & Technical Working Groups
- ✓ Informal Board Seminar (2020), Deep-Dives (2021 and 2022), bilateral meetings



Developing Member Country (DMC) in-country consultation

1. Tonga
2. Papua New Guinea
3. Mongolia
4. People's Republic of China
5. Pakistan
6. Republic of Marshall Islands
7. Philippines
8. India
9. Indonesia
10. Georgia

Stakeholder Engagement and Consultation



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High Level Summary of Stakeholder Feedback

DMCs

- Recognize the importance of safeguards.
- Still some implementation challenges with the SPS
- Avoid unnecessary transaction costs
- Support closer alignment with country safeguard systems (CSS)
- Greater consistency between MFI policies and procedures would reduce transaction costs
- Need improved guidance & enhanced capacity support from early stages for country and project

CSOs

- Don't weaken / water down safeguards
- Concerns on gaps and potential use of CSS
- Enhance stakeholder engagement and disclosure.
- Ensure safe space and address risks of retaliation.
- Concerns on safeguards for financial intermediaries
- Enhance focus on climate change, biodiversity, gender, vulnerable groups, sexual orientation and gender identity, labor issues, Indigenous People
- Include human rights due diligence

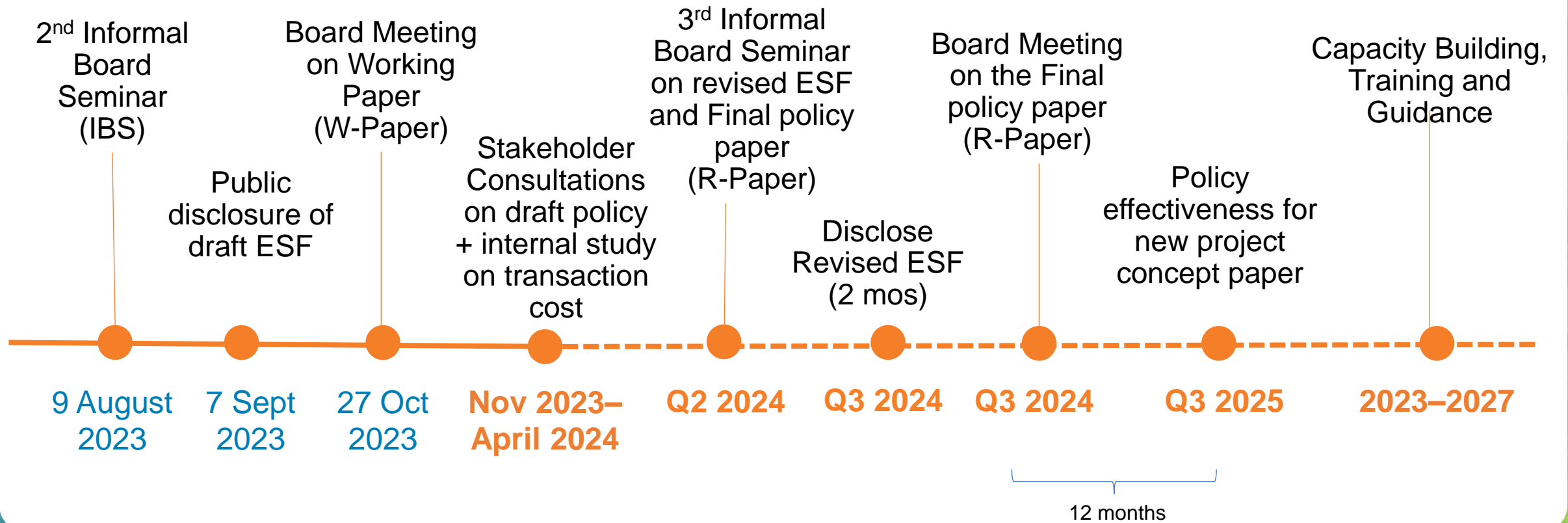
Private sector

- Convergence with International Finance Corporation (IFC) Performance Standards and Equator Principles.
- Closer alignment with CSS and national requirements
- Align disclosure requirements with IFC and other multilateral financing institutions (MFIs) (e.g., reduce 120-day disclosure for EIAs to 60 days)
- Greater clarity & guidance on requirements; provide technical support during preparation and implementation

Phase 2 ICC Feedback Highlights: PH Government Agencies

1. **Budget** has been a cross-cutting issue. ADB should work more closely on the procurement side of project safeguards, especially in implementing the E&S Commitment Plan.
2. **Address gaps between CSS and ADB policy** inc. on project land acquisition in ancestral domains and in conflict-affected areas. Alignment and gap filling measures entail policy reform at the country level.
3. Underscore the value, inc. the **development benefits of good practices for safeguards**.
4. **How much of the documentation can be frontloaded?** There can never be an absolute and final resettlement plan. RAP is bound to change depending on the status of bigger infrastructure development.
5. Have a **clear guidance in identifying affected people** qualified for compensation and livelihood support inc. dealing with professional squatters' issue on entitlements.
6. **Job security** is the most critical challenge for labor groups due to contractual arrangements and restriction to form a union, preventing them from pushing CBA.
7. **IPRA sets a good standard for FPIC**, while also noting the implementation challenges.
8. **Mainstream protection for gender** and sexual orientation and gender identity and expression (SOGIE) in the revised policy.
9. **Assess the risks and costs** of natural disasters on projects, including impacts on women.
10. **Invest in the comprehensive capacity building** of government agencies to increase readiness and ensure guidance notes for policy implementation.

Preparation Schedule



Overview of the ESF

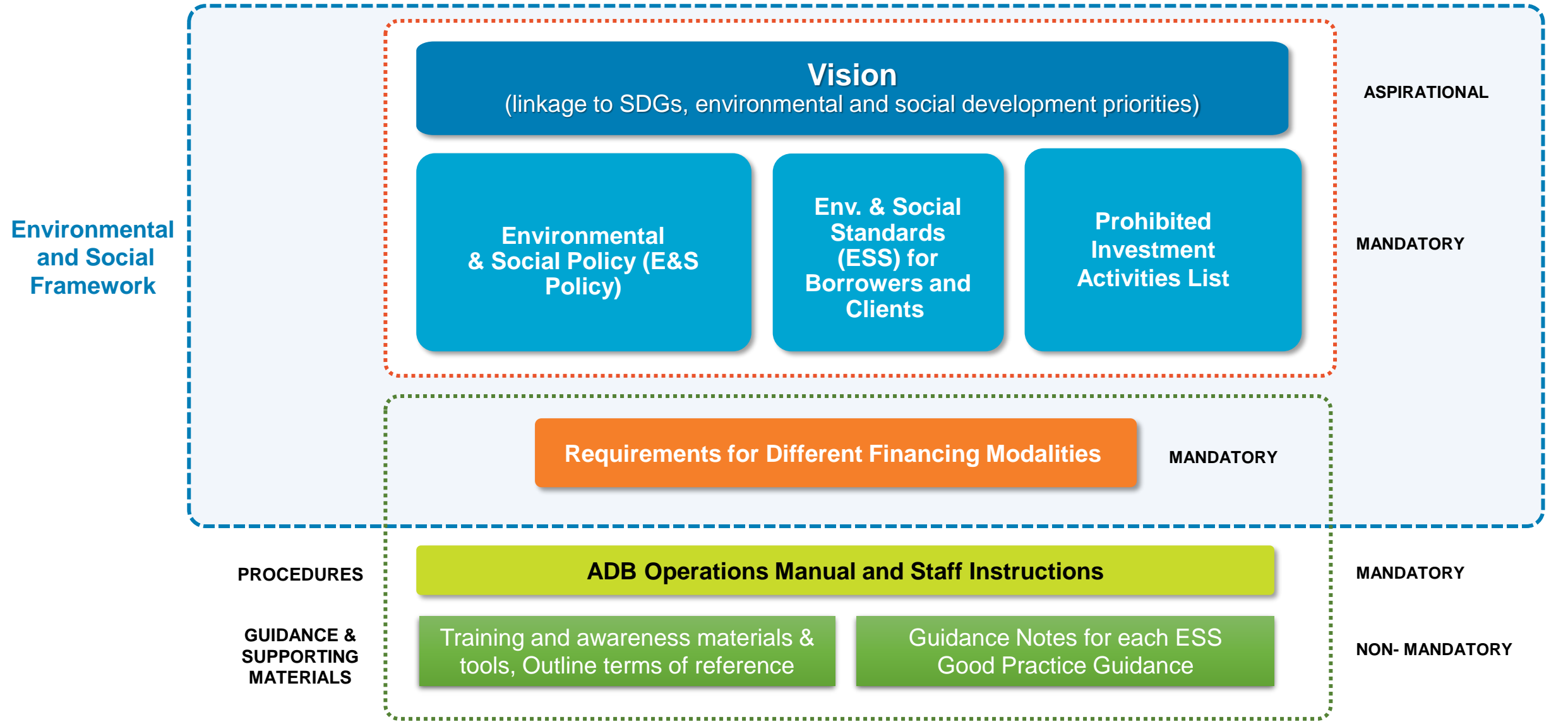


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Proposed Policy Architecture

Environmental and Social Framework



INTERNAL. This information is accessible to ADB Management and staff. It may be shared outside ADB with appropriate permission.

Environmental and Social Policy Standards (ESS)



10 proposed standards build off the current requirements of the Safeguard Policy Statement (SPS)

1
Assessment & Management of Environment and Social Risks and Impacts

2
Labor and Working Conditions

3
Resource Conservation and Pollution Prevention

4
Health, Safety and Security

5
Land Acquisition and Land Use Restriction

6
Biodiversity and Sustainable Natural Resources Management

7
Indigenous Peoples

8
Cultural Heritage

9
Climate Change

10
Stakeholder Engagement and Information Disclosure

Environmental and Social Standards (ESS)

Incremental enhancements to Environment Safeguards

1
E&S Risks and Assessment

- More integrated E&S assessment
- Enhance risk assessment
- Greater focus on gender, vulnerable groups
- Enhanced monitoring

ENV	IR	IP
✓	✓	✓

Integrates and enhances existing Environment (ENV), Involuntary Resettlement (IR), and Indigenous People's (IP) requirements

6
Biodiversity and Natural Resources Management

- Priority for avoidance of impacts
- Update critical habitat criteria
- Criteria for use of biodiversity offsets
- Natural resource supply chains
- Ecosystem services

ENV	IR	IP
✓		

Builds on the ENV Safeguards

3
Resource Conservation and Pollution Prevention

- Clearer requirements on hazardous and on pesticide management
- Minimize intensity of resource use: energy, water, soil raw materials

ENV	IR	IP
✓		

Builds on the ENV Safeguards

8
Cultural Heritage

- Cultural heritage assessment and management
- Intangible cultural heritage

ENV	IR	IP
✓		

Builds on the ENV Safeguards

4
Health, Safety and Security

- Worker and community security risks
- Sexual exploitation abuse and harassment
- Incident reporting & management

ENV	IR	IP
✓		

Builds on the ENV Safeguards

9
Climate Change

- Lower threshold for assessment and monitoring of GHG
- Climate change risks assessment and resilience

ENV	IR	IP
✓		

Builds on the ENV safeguards, and ADB procedures for risk screening on climate change.

Environmental and Social Standards (ESS)

Incremental enhancements to Social Safeguards

2 Labor and Working Conditions

- Core labor standards in safeguards
- Safe and healthy working conditions
- Coverage on different types of workers
- Primary suppliers

ENV	IR	IP
✓		

Builds on: (i) ADB Social Protection Strategy, 2001; (ii) SPS ENV safeguards & Prohibited Investment Activities List; and (iii) CLS requirements in civil works contracts.

7 Indigenous Peoples

- Criteria for IPs (removal of vulnerability criteria)
- Free, prior and informed consent (FPIC)

ENV	IR	IP
		✓

Builds on IP Safeguards

5 Land Acquisition and Land Use Restriction

- Enhanced provisions on SPS land acquisition requirements
- Increased focus on vulnerability and livelihood restoration
- Coverage of voluntary land transactions
- Enhanced linkage with procurement and implementation of civil works

ENV	IR	IP
	✓	

Builds on IR Safeguards

10 Stakeholder Engagement and Information Disclosure

- Stakeholder engagement planning and disclosure
- Inclusion of disadvantaged or vulnerable groups
- Ensure no-retaliation against affected people
- Grievance mechanism optimized for different affected peoples and workers

ENV	IR	IP
✓	✓	✓

Integrates meaningful consultation, disclosure & grievance mechanisms from ENV, IR and IP safeguards

Environment and Social Policy (E&S Policy)

ADB's Responsibilities

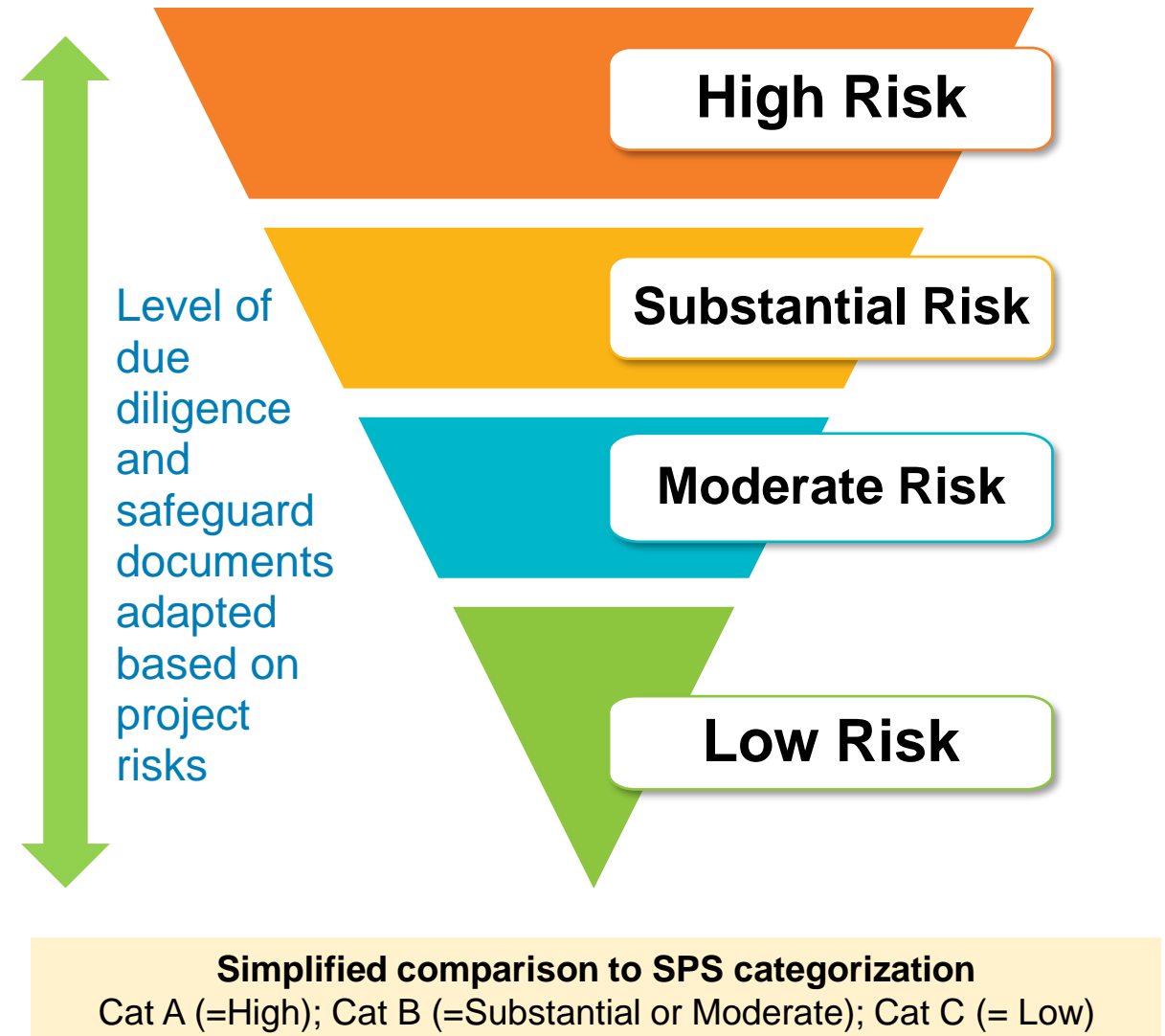
The E&S Policy sets out: (i) policy objectives; (ii) scope; and (iii) ADB responsibilities, including:

1. Preparing **environmental and social (E&S) risk classification** in consultation with borrowers/clients
2. Reviewing of **E&S assessments** undertaken by a borrower/client, proportionate to the nature and scale of risks
3. Assisting borrowers/clients in identifying **assessment and management tools** appropriate to the E&S risks
4. Supporting borrowers/clients with **strengthening of their E&S systems and performance**
5. Agreeing with borrowers/clients on the **conditions** under which ADB will consider financing a project, which will be set out in an Environmental and Social Commitment Plan and/or Environmental and Social Action Plan (ESCP/ESAP)
6. Supporting borrowers/clients to carry out **early and continuing meaningful consultation** with relevant stakeholders and provide project-level grievance mechanisms, consistent with the Environmental and Social Standards (ESSs)
7. Reviewing and **monitoring the E&S performance** of a project throughout a project life cycle in accordance with the ESSs and the ESCP/ESAP

Environment and Social Policy

A New Approach to Risk Classification

- » **Risk screening determines standards triggered**, risks to focus on, and resource needs. Not all standards may be triggered by a project
- » **Integrated environmental and social risk screening and classification:**
 - **Direct, indirect and cumulative** impacts
 - **Inherent** risk factors in different sectors
 - **Vulnerability and sensitivity** of people and environment
- » Also considers other risks (New)
 - **Contextual risk factors**
 - **Performance / capacity related risk**
- » There will be one risk classification assigned to a project (no longer a separate classification for ENV, IR and IP)
- » Safeguard documents will present the basis for risk classification, including risks related to individual standards



Environment and Social Policy

New Provisions and Requirements



1. *Information disclosure:*

- ✓ All disclosure requirements subject to ADB's Access to Information Policy (2018)
- ✓ Disclose documents and information relating to High, Substantial and Moderate Risk projects prior to project appraisal or final credit approval
- ✓ Limited exceptions for documents prepared by a borrower/client post-ADB approval, as reflected in an environmental and social action plan/ environmental and social commitment plan (ESCP/ESAP)

2. *Consultation and participation - ADB will require a borrower/client to:*

- ✓ Engage with stakeholders through information disclosure, and **meaningful consultation** in an inclusive manner, without discrimination throughout the project cycle
- ✓ Identify and undertake early engagement with **disadvantaged or vulnerable people and groups**

3. *Grievance redress - ADB will require a borrower/client to:*

- ✓ Provide a project-level grievance mechanism to receive and facilitate resolution of concerns and grievances of **project-affected persons** arising in connection with a project

4. *Monitoring:*

- ✓ ADB will monitor borrower's/client's environmental and social policy (E&S) performance of a project in accordance with the requirements in the ESCP/ESAP in a manner proportionate to the potential E&S risks and impacts of a project

5. *Capacity support:*

- ✓ ADB will help borrowers/clients strengthen their E&S systems and improve their capacity to manage E&S risks

Disadvantaged or Vulnerable Groups

Individuals or groups by virtue of their age, gender, ethnicity, religion, disability, social, civic or health status, sexual orientation, gender identity, economic disadvantages or indigenous status, and/or dependence on unique natural resources, may be more likely to be at risk of being adversely affected by project impacts, and/or more limited than others in their ability to take advantage of a project's benefits, and/or excluded from/unable to participate fully in consultation processes and benefit sharing

- 1. Disadvantaged or vulnerable groups** should not be disproportionately impacted by a project
- 2. Projects should promote non-discrimination & ensure “disadvantaged or vulnerable”** groups benefit equally from a project
- 3. Vulnerability is multifaceted and intersectional relationships should be considered.** E.g., relationships between poverty, gender, and disability
- 4. Differentiated measures** should be designed to address impacts on the disadvantaged or vulnerable
- 5. The design of assessments and measures should adopt a sensitive approach, tailored to country context and legal frameworks,** as well as the project specific context and level of risk
- 6. Safeguard measures will focus on managing risk and addressing potential harm** to affected people, **to the extent possible and as determined with ADB.** Project measures do not imply or suggest the need for wider legal reforms
- 7. Approaches should not increase risk exposure of disadvantaged or vulnerable groups** that could occur as a result of the project
- 8. Provide appropriate forms of stakeholder engagement and grievance mechanisms** at the project level that are safe and accessible

Session 2: Overview of ESS 1 and ESS 10

Zehra Abbas

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Zaruhi Hayrapetyan

Social Development Specialist (Safeguards), OSFG, ADB



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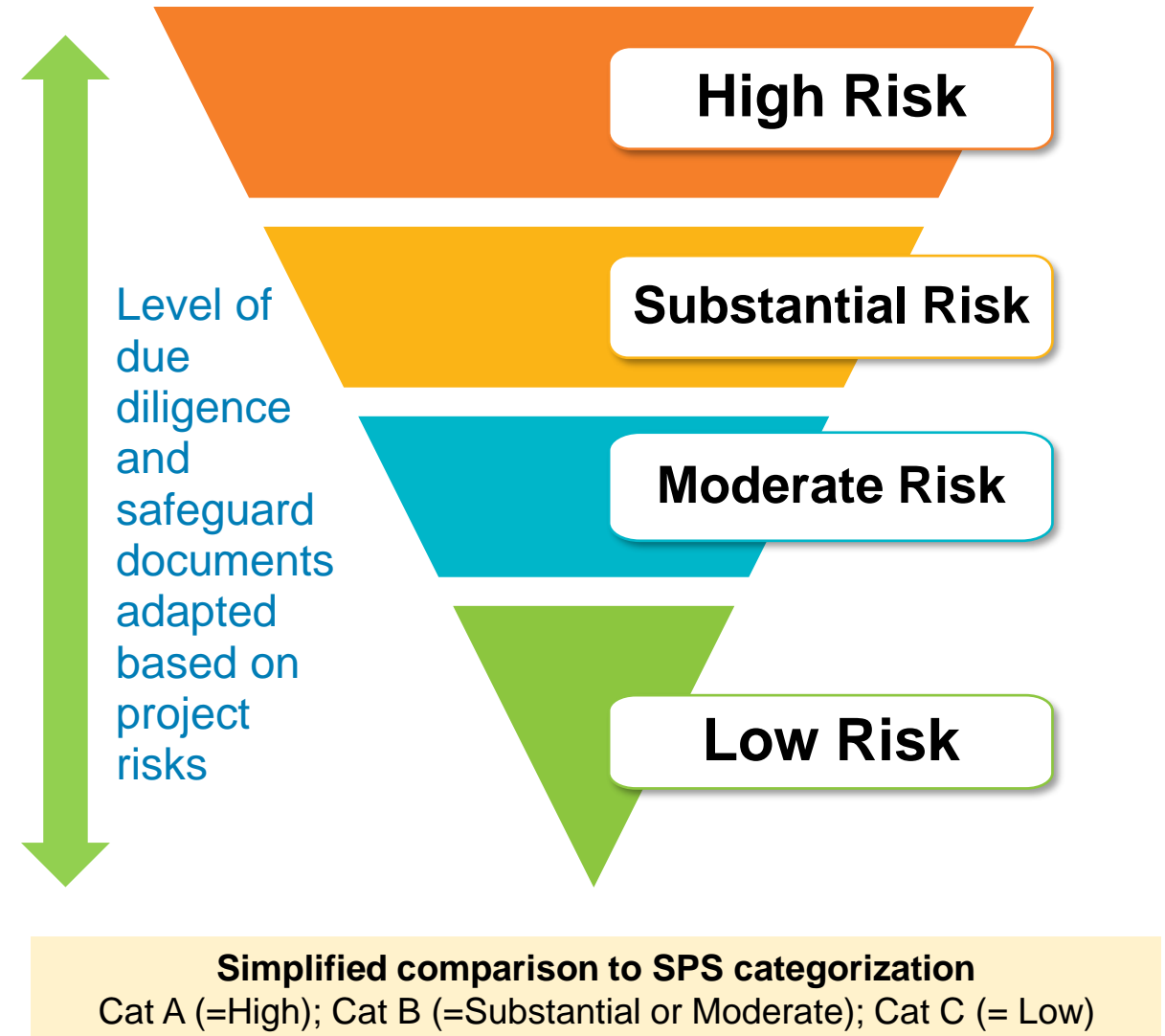


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- » There will be one risk classification assigned to a project (no longer a separate classification for ENV, IR and IP)
- » Safeguard documents will present the basis for risk classification, including risks related to individual standards





Assessment & Management of Environmental & Social Risks

New Provisions and Improved Requirements

- 1. Integrated E&S assessment:** address all direct, indirect, and cumulative E&S risks and impacts, integrating environmental and social factors
- 2. Environmental and social factors:** lists issues to be considered consistent with the ESS and issues triggered for the project
- 3. Scope:** establish scope of the assessment & relevant ESSs and requirements triggered
- 4. E&S assessment:** level of assessment to be proportionate to the E&S risks and impacts and the applicable ESSs
- 5. Disadvantaged or vulnerable groups:** identified through E&S assessment and differentiated measures designed based country context, nature of project and E&S risks
- 6. E&S readiness:** enhanced by requiring that all E&S assessment requirements under the relevant ESSs are identified and undertaken to the extent possible to the satisfaction of ADB
- 7. Environment and Social Commitment/Action Plan (ESCP/ESAP):** provides adaptive management process with measures needed to meet the requirements of the ESSs over a specified timeframe. Include measures to bring a project into compliance or to be undertaken during project implementation
- 8. Monitoring:** semi-annual for high and substantial risks, and at least annual for moderate and low risks, or as per ESCP/ESAP
- 9. Management of contractors:** contractors and sub-contractors to fulfill requirements of the relevant ESSs and ESCP/ESAP



Stakeholder Engagement and Information Disclosure

New Standard and Improved Requirements

Develop a Stakeholder Engagement Plan: outlines requirements on meaningful consultation, promoting participation in a manner that is safe and accessible for all stakeholders.

Can be a stand-alone document or as part of another safeguards document

Disadvantaged or vulnerable groups identified through stakeholder engagement and ensure their needs and concerns are recognized and accounted for in the stakeholder engagement and information disclosure process and in grievance mechanism

Establish accessible grievance mechanisms at the earliest stages to ensure timely response and management of grievances.

Clear requirements to address allegations of reprisal, abuse, intimidation, or discrimination, and take appropriate remedial measures. Provision for handling anonymous complaints

Disclose project information as early as possible in project preparation and in a timeframe that enables meaningful consultations with stakeholders on project design, but no later than ADB's project appraisal or final credit approval

Allocate sufficient financial and human resources to ensure the implementation of the stakeholder engagement plan, including information disclosure and grievance mechanisms

Qualified experts may be engaged based on the complexity of the project to monitor and report on the implementation and recommendations to resolve identified gaps and concerns

Session 3: Overview of ESS 5

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Land Acquisition and Land Use Restriction (LA/LUR)

New Provisions and Improved Requirements

Scope: covers (i) Involuntary land acquisition/land use restriction, (ii) due diligence requirements for voluntary land transactions and land use restriction, (iii) activities carried out prior to a project, but which were undertaken or initiated in anticipation of, or in preparation for a project.

Risk Assessment and Classification: Integrated ESIA, no stand-alone numerical threshold for involuntary resettlement categorization (ESIA now considers overall impacts/risks). LA/LUR impacts may further be classified for the purpose of ESS5 application.

Coverage: ESS1 and ESS5 Associated facilities/cumulative social impacts/existing facilities require mitigation of LA/LUR risks and impacts, within the borrower/client's influence and control; past LA/LUR impacts in anticipation and in preparation of the project.

LA/LUR Impacts: (i) covers full, partial, permanent, and/or temporary economic and physical displacement; (ii) covers affected persons without formal, traditional, or recognizable property and use rights under host country laws who occupy or utilize land.

Assessment of Impacts: prepare land acquisition plan (LAP) proportionate to impacts, pay particular attention to disadvantaged or vulnerable and gender, ensure stakeholder engagement, grievance mechanisms and information disclosure.



Land Acquisition and Land Use Restriction (LA/LUR)

New Provisions and Improved Requirements

Compensation/Assistance: provide compensation and entitlement for project affected persons. Provide adequate housing with security of tenure and safety at resettlement sites for physically displaced persons.

Land Acquisition Frameworks (LAF): if final engineering design or full assessment are not available at ADB approval of a project, and impacts are uncertain, a LAF may be prepared after providing justification based on detailed scoping and tentative budget.

LAP monitoring: ensure implementation of the LAP prior to start of civil works through conformation review, and completion monitoring at the time of project closure.

Disclosure: ensure disclosure of all LA/LUR instruments.

Session 4: Overview of ESS 6 and ESS 8

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Principal Environment Specialist, OSFG, ADB



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Biodiversity and Sustainable Natural Resource Management

New Provisions and Improved Requirements

- 1. Classification of habitat types:** Habitat will be classified as **modified** or **natural**, and assessment will identify potential **priority biodiversity features** which will determine the presence of **critical habitat**
- 2. Conservation of habitats:** strengthens the conservation of biodiversity and the management of living natural resources
- 3. Addressing impacts on biodiversity:**
 - (i) No net loss for modified and natural habitats,
 - (ii) preference for net gain of priority features,
 - (iii) Net gain for critical habitats
- 4. Primary suppliers:** risk-based sustainable resource procurement, management and verification procedures to evaluate primary suppliers of natural resources or suppliers engaged by them
- 5. No go zones:** prohibits developing a project in Alliance for Zero Extinction Sites (AZEs), UNESCO Natural and Mixed World Heritage Sites, and free flowing rivers of >500km in length
- 6. Biodiversity offsets as a last resort:** clarifies that biodiversity offsets should be considered only as a last resort and all viable project alternatives will need to have been previously explored and the 'offsetability' of the project will need to be established



- 1. Intangible cultural resources and visual impacts:** manage the direct and cumulative project specific risks and impacts to both **tangible** and **intangible** cultural heritage
- 2. Indigenous people:** provides requirements for coverage over areas with cultural heritage that overlaps with areas with Indigenous Peoples. If cultural heritage is identified in Indigenous Peoples areas, FPIC may be required in accordance with ESS7
- 3. Specific Requirements for Different Types of Cultural Heritage:** includes archaeological sites and materials, underwater cultural heritage, burial sites & human remains, built heritage, landscapes or natural resources, and movable cultural heritage
- 4. Stakeholder engagement:** requires meaningful consultation to identify cultural heritage, its significance, assess risks and impacts, explore methods for avoidance, mitigation, and monitoring and reporting options

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04:35 pm Recap of Key Feedback, Closing Message, and Next Steps

Session 5: Overview of ESS 2 and ESS 4

Felix Oku

***Senior Social Development Specialist (Safeguards), OSFG,
ADB***



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Labor and Working Conditions

New Standard and Improved Requirements

1. This standard builds on and updates ADB's commitment to the core labor standards that are currently set out in the SPS Prohibited Investment Activities List, Social Protection Strategy (2001), the Core Labor Standards Handbook, associated loan covenants in project legal agreements between ADB and borrower, and civil works contracts of the borrowers for the project.
2. The **scope of application** of the requirements depends on the type of employment and the nature of employment relationship between the borrower and project workers.
3. The **focus of labor related risks** is at the project-level and the requirements apply to all sectors and all project workers.

Applies to all types of employment relationships including:

- **direct workers** – workers engaged or employed directly by a borrower to work on a project.
- **contracted workers** – workers engaged or employed by a third party to perform work related to a project, regardless of location.
- **primary supply workers** – workers engaged or employed by a borrower's primary suppliers.

Primary suppliers are suppliers who provide directly to a project goods or materials essential for production and/or service processes that are necessary for a specific project activity and without which a project cannot continue.

- **community workers** – workers engaged or employed by a borrower from a community or communities in a project-affected area who contribute their labor to a community development project through different working arrangements.

❖ **Labor Management Plan (LMP)** – A new instrument to set out a systematic approach to management of labor issues in projects and reflect the requirements of national law, applicable collective agreements, and requirements of ESS2. The amount of detail set out in the **LMP** reflects the type of project; the type, size, and location of the workforce; and the extent to which national law satisfies the requirements of ESS2.



Labor and Working Conditions

New Standard and Improved Requirements

4. Objectives

- a. **Promotion of fair treatment, non-discrimination, and equal opportunity for project workers:** the employment of project workers is based on the principle of equal opportunity and fair treatment, with no discrimination with respect to any aspects of the employment, such as recruitment and hiring, compensation, working conditions and terms of employment
- b. **Prevent and address any forms of violence, harassment, bullying, intimidation and exploitation against project workers, including SEAH:** borrowers will take appropriate measures to prevent and address in a project context any forms of violence.
- c. **Support the principles of freedom of association and collective bargaining:** requires borrowers to not prohibit freedom of association and collective bargaining. Takes into account the legal context of the host country. E.g., current loan covenant in legal agreement with PRC already provides the following: "...do not restrict workers from developing a legally permissible means of expressing their grievances and protecting their rights regarding working conditions and terms of employment."
- d. **Prevent the use of forced labor and child labor:*** prohibits child or forced labor for all workers, including at the level of the primary supply worker and their suppliers.
- e. **Promote, develop and maintain transparent project worker management relationships:** identify different types of project workers and set out how they will be managed based on the employment relationships and in accordance with the requirements of the ESS and applicable host country laws
- f. **Provide project workers with accessible means to raise workplace concerns:** project-level grievance mechanism will be designed to address labor and working conditions, as well as to provide for confidential complaints and special protection measures for SEAH concerns.

***more details included in subsequent slides**

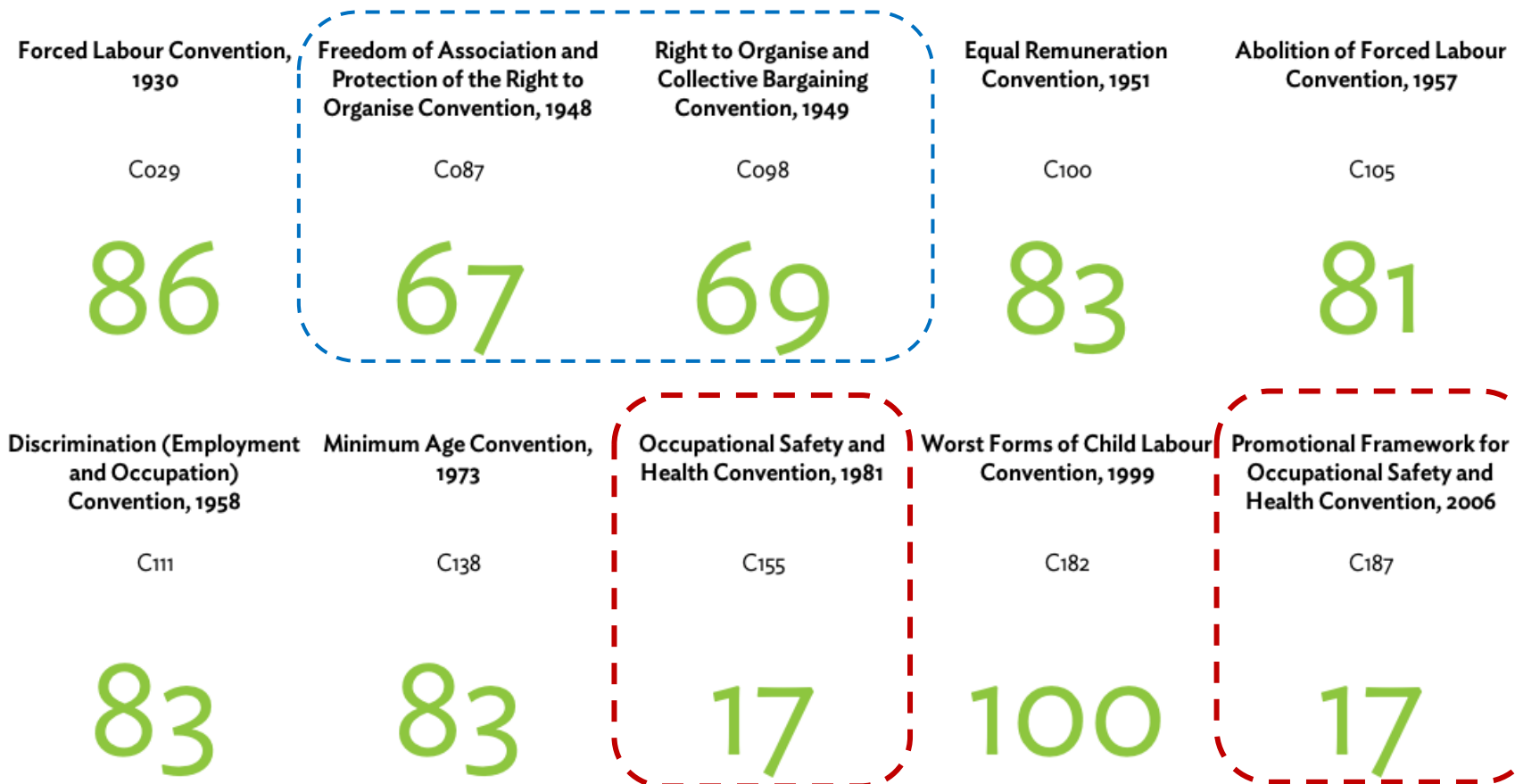


Labor and Working Conditions

New Standard and Improved Requirements

Alignment with ILO Core Labor Standards and other Multilateral Development Financing Institutions

% Spread of Fundamental ILO Conventions Ratified by ADB DMCs



*NB: As of 19/01/2024

Labor and Working Conditions

New Standard and Improved Requirements

Child Labor Approach (consistent with ILO C138 and C182): Borrower will not employ or engage:

- Under age 15 (or higher under host country labor law)- no employment under the age of completion of compulsory schooling
- Under age 18- no employment if economically exploitative or is likely to be hazardous or interfere with the child's education, or harmful to the child's health, or physical, mental, spiritual, moral, or societal development
- Exceptions: Ages 13-15 permitted for light work that will not (i) be harmful to their health or development and (ii) prejudice their attendance at school, their participation in vocational orientation or training programs if host country laws allows such work, consistent with the applicable international convention.

Forced Labor Approach (consistent with ILO C029 and C105)

Definition

“All work or service which is exacted from any person under the threat of a penalty and for which the person has not offered themselves voluntarily.” (definition from ILO C029 on Forced Labor)

- If forced labor or other exploitative form of labor practices are identified, the borrower will promptly take corrective actions to eliminate such practices from a project.
- Borrower will not engage any trafficked persons.

Ratification Status of ILO conventions on Forced labor and child labor (out of 39 ADB DMCs who are members of the ILO)*

Forced labor		Child labor	
C029	C105	C138	C182
36	32	35	40



Health, Safety and Security

New Standard and Improved Requirements

- 1. Safety and security of communities and project workers:** Assessment, planning, management and monitoring of safety and security related risks and impacts, including risks to community and project workers, traffic and road safety, and natural hazards
- 2. Incident reporting and management**
- 3. Sexual exploitation abuse and harassment (SEAH):** requires that the borrower identifies, addresses and manage project related SEAH risks for workers and affected communities
- 4. Emergency preparedness and response:** risk hazard assessment for projects that could potentially cause an emergency, and prepare an emergency response plan
- 5. Responsible security personnel:** where security personnel are hired to protect workers or property, they should not become a threat to the communities and workers
- 6. Infrastructure design and safety:** ensure structural elements of a project comply with host country safety requirements, or good industry practice, and consider appropriate features for users age, ability or disability
- 7. Dam safety:** for new or existing dam projects, apply dam safety requirements

❖ **Health & Safety Management Plan (HSMP)** – Will set out a systematic approach to the management of health, safety and security risks in projects. Could include **OHS**, **Community H&S** and/or **Security Management plan** base on the type of project; the type, size, and location of the workforce and risks to surrounding communities.



Resource Conservation and Pollution Prevention

New Provisions and Improved Requirements

- 1. Resource conservation:** implement measures to improve resource conservation, minimize the intensity of resource use for energy, water, soil, and all types of raw materials
- 2. Circular economy:** integrate the principles of circular economy into all aspects of a project
- 3. Waste and chemicals:** clear requirements around the direct or indirect generation of hazardous and non-hazardous wastes, and the manufacture, trade, and use of hazardous chemicals, substances and materials
- 4. Pesticides:** updated requirements to ensure pesticide use minimization and management
- 5. Pollution prevention guidelines:** World Bank Group's Environmental Health and Safety Guidelines, continue to apply, along with national standards, and/or good industry practice (GIP). (Where there are inconsistencies the more stringent standard will apply)



Current ADB approach to Climate Change

- **ADB portfolio and project level alignment** with the goals of the Paris Agreement
- **SPS environmental safeguards** requires project level GHG emissions assessment and management (with threshold of 100,000 t/CO²eq/yr.)
- **ADB undertakes project-level climate risk screening** and climate risk and adaptation assessment

GHG Mitigation

- Project related GHG Emissions: Estimate, monitor and report project-related GHG emissions
- Undertake ex-ante estimation of absolute and relative GHG emissions of a project
- Threshold: 20,000 tCO²e/yr- absolute and relative GHG emissions between -20,000 tons and +20,000 tCO²e/yr
- >20,000 tCO²e/yr monitor absolute GHG emissions annually and report to ADB

Climate Risk

- **Climate risk screening:** undertake climate risk screening at the project level.
- **Assessment of Climate Risks:** assess climate and develop climate change adaptation and resilience measures

Note: tCO²e/yr = tonnes of carbon dioxide equivalents per year

INTERNAL. This information is accessible to ADB Management and staff. It may be shared outside ADB with appropriate permission.

Session 7: Overview of ESS 7

Tulsi Bisht

***Senior Social Development Specialist (Safeguards), OSFG,
ADB***



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AND UPDATE



Introduction

- ESS 7 builds on the existing IP safeguards in the SPS 2009 and continues to recognize that **Indigenous Peoples** are often among the most marginalized and vulnerable segments of the population. Their economic, social, and legal status limit their capacity to defend their rights to lands and natural and cultural resources and restrict their ability to participate in and benefit from development in ways that are in accordance with their worldview.
- Within Asia and the Pacific, Indigenous Peoples may be referred to in different countries by such terms that include indigenous ethnic minorities, indigenous cultural communities, aboriginals, hill tribes, minority nationalities, scheduled tribes, tribal groups, forest dwellers, hunter-gatherers, pastoralists, or other nomadic groups.

Objectives

1. Ensure that **Indigenous Peoples** do not suffer adverse impacts as a result of projects or, where avoidance is not possible, to minimize, mitigate, and/or compensate for such impacts;
2. Design and implement projects in a way that fosters full respect for Indigenous Peoples' identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by the Indigenous Peoples themselves;
3. Ensure that Indigenous Peoples receive **culturally appropriate** social and economic benefits and can participate actively in projects that affect them;
4. Promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner;
5. Ensure free, prior, and informed consent (FPIC) in the three circumstances described in this ESS7;
6. Recognize, respect, and preserve the culture, knowledge, and practices of Indigenous Peoples where possible in a project context, and consider opportunity to adapt to changing conditions in a manner and in a time frame acceptable to them, as appropriate.



IP identification based on 4 distinctiveness criteria (i) self-identification, (ii) collective attachment to land, (iii) customary institutions and laws and (iv) distinct language. (The “vulnerability” criterion is dropped)

Broad Community Support replaced by Free Prior and Informed Consent (FPIC) : FPIC required under three circumstances: (i) when project has adverse impacts on IP land and natural resources; (ii) causes relocation of IPs from these lands; (iii) significant impacts on IPs’ cultural heritage that is material to their identity and culture, and/or to ceremonial and/or spiritual aspects of their lives.

Participation and meaningful consultation: inclusive process, allowing sufficient time for collective decision-making process of IPs with special attention to disadvantaged or vulnerable.

Social Impact Assessment: requires assessment of intangible impacts, contextual risks, biodiversity and ecosystem services linkages

IPs Living In Voluntary Isolation: Establish appropriate measures to recognize, respect, and protect the lands, territories, culture of such IPs and avoid all undesired contact with them that could result from a project.

Projects when IP as sole beneficiaries and when not sole beneficiaries:

Indigenous Peoples Plan: prepared based on the impact assessment and meaningful consultation, proportionate to the assessed project impacts on IP communities

Budget: Adequate resources to compensate IP communities and for mitigation measures

Grievance Mechanism: Establish a mechanism that integrates IP customary dispute settlement mechanisms where appropriate, and that ensures complainants are protected from retaliation

Monitoring and reporting: proportionate to the project’s risks and impacts. projects with significant adverse impacts required qualified and experienced external monitor

Indigenous Peoples Advisory Group (IPAG)

Provide advice and support with reference to international good practices to formulate a balanced and applicable IP Performance Standard that will benefit IP communities from development interventions in an informed and culturally appropriate manner and will help avoid or mitigate adverse impacts on IP communities without depriving them of development intervention benefits.

Structure:

16 members from IP CSOs: 2 - Bangladesh, 1 - Cambodia, 2 – India, 2 – Indonesia, 1 – Malaysia, 1- Myanmar, 2 – Nepal, 4 – Philippines, 1– Thailand.

Independent body based on self-selection and nomination criteria among the IP CSO leaders.

Session 8: Overview of E&S Requirements for Financing Modalities and Products and PIAL

Takako Morita

Principal Counsel, Office of the General Counsel, ADB



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Requirements for Different Financing Modalities and Products

Scope of application: consolidates the E&S requirements of ADB and borrower/client for all the financing modalities and products:

- sector lending, emergency assistance, multitranche financing facility (MFF)
 - policy-based lending (PBL) and sector development programs
 - results-based lending (RBL)
 - project readiness financing, small expenditure financing facility, technical assistance (TAs)
 - financial intermediaries (FI) and corporate finance
- E&S Policy and ESS1 set out high level E&S assessment and management approach to help guide future financing modalities and products
 - Policy principles are supplemented by a standalone document that sets out both ADB responsibilities and borrower/client requirements to manage E&S risks and impacts that are applicable to different types of financing modalities and products
 - Coverage for **TAs** limited to pilot activities and policy reforms with E&S risks
 - Provides more details for Financial Intermediaries and Corporate Finance

Safeguards Application Across Financing Modalities

New Provisions and Improved Requirements



Policy Based Lending

- The focus of environmental and social assessment and management is on the policy actions—not on the specific expenditures that will be financed from budget support

ADB's responsibilities:

- Prior to finalization of policy matrix, undertake risk classification of the proposed **policy actions** based on the likely E&S risks and impacts resulting from the policy actions
- Factor in contextual or sector specific risks
- ADB will review proposed mitigation measures proposed by the borrower

Borrower requirements:

- Identify and assess potential **direct** and **indirect E&S risks and impacts** associated with the proposed **policy actions**
- Integrate mitigation measures proportionate to the risks and impacts into the design of the final policy actions to **achieve objectives materially consistent with the relevant ESSs**.
- If any significant strategic, geographic, and/or sector-wide E&S risks related to the scope and nature of the PBL operation are identified, the borrower will undertake further assessment, such as **strategic environmental and social assessment**, to inform the design of the policy actions and associated E&S management.

Results Based Lending

- The focus of environmental and social assessment and management is on the adequacy of the **RBL program system** to achieve the objectives consistent with the ESSs

ADB's responsibilities:

- Undertake risk classification of the proposed **RBL program** supported by ADB financing, factoring in risks associated with the implementation capacity of the borrower and other contextual risks
- Require borrower to achieve the objectives of the ESSs applicable to the RBL program
- Undertake a Program Safeguard Systems Assessment (PSSA) of the RBL program systems, proportionate to the nature, scope and the risk classification of the RBL program.
- PSSA will include assessment of the borrower's capacity and commitment to manage and mitigate unanticipated impacts or existing impacts. It will also identify programmatic, institutional, and contextual risks that may adversely affect the borrower's ability or capacity to implement the E&S requirements applicable to the RBL program.
- ADB will disclose the PSSA prior to ADB's project appraisal and undertake consultations with RBL program stakeholders.
- All activities are eligible under the RBL program **unless they are assessed to be classified as High Risk.**

Results Based Lending

Borrower's requirements:

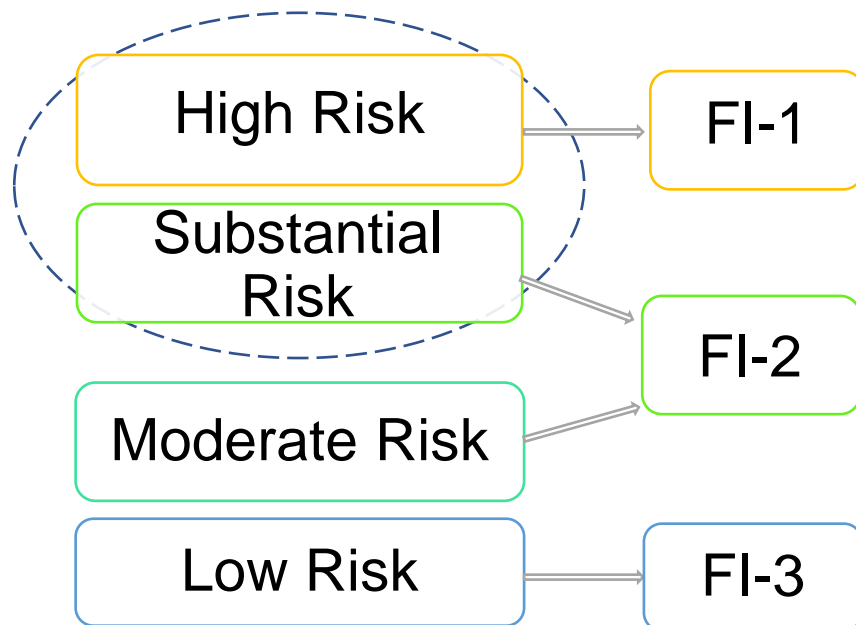
- Using the RBL program system to comply with the applicable objectives of the ESSs for the RBL program
- Agree with ADB on measures and actions to address gaps identified by ADB in a PSSA that are included in an integrated risk management plan and a program action plan (PAP)
- Borrower will assess RBL program activities supported by ADB and will exclude activities that are likely to be classified as **High Risk** and those that are included in the ADB Prohibited Investment Activities List
- Borrower will monitor implementation of the integrated risk management plan and the PAP and submit monitoring reports to ADB
- Borrower will develop and agree with ADB on a time-bound corrective action plan if any non-compliance is found to bring the RBL program back into compliance with the E&S requirements.

Safeguards Application Across Financing Modalities

Risk Classification of Financial Intermediaries

All transactions involving FIs are classified as “FI” with the following sub-classification based on the E&S risk profile of the proposed portfolio of transactions supported with ADB’s financing:

Higher Risk Transactions



FI-1: financial exposure to business activities with potential significant adverse E&S risks and impacts that are diverse, irreversible, or unprecedented

FI-2: potential limited adverse E&S risks and impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures; or includes a very limited number of business activities with potential significant adverse environmental or social risks or impacts that are diverse, irreversible, or unprecedented

FI-3: financial exposure to business activities that predominantly have minimal or no adverse environmental or social impacts

Higher Risk Transactions- For FIs with portfolio and/or proposed activities and transactions that present high to substantial E&S risks (part or all of FI-1 and FI-2 portfolio). These transactions supported by ADB financing will apply the ESSs

Financial Intermediaries (FI)

ADB's responsibilities:

- Undertake due diligence, determine the E&S risk classification, review and provide guidance on the need and adequacy of an ESMS to be used by an FI
- Review and disclose relevant FI information (e.g., summary of ESMS, monitoring reports, relevant assessment and management tools)
- ADB will review all *higher risk transactions* financed by ADB

FI requirements:

- Require FI-1 and FI-2 to develop an EMS, proportionate to the nature and scale of the E&S risks and impacts associated with activities and transactions supported by ADB financing. For FI-3, E&S screening procedures need to confirm minimal or no adverse E&S risks or impacts
- **Higher risk transactions:** refer all such transactions financed for ADB's review, clearance and disclosure; monitoring reports will contain details of each activity and transaction supported by ADB financing
- Require stakeholder engagement and grievance mechanism, and provide safe and healthy working environment for workers

Corporate Finance

ADB's responsibilities:

- Undertake due diligence, determine the E&S risk classification
- Review and provide guidance on the need and adequacy of an ESMS to be used by a corporate finance clients,
- Review and disclose relevant information (e.g., summary of ESMS, monitoring reports, relevant assessment and management tools).

Corporate finance client requirements:

- Develop an ESMS for activities and transactions supported by ADB financing that present high, substantial or moderate E&S risks and impacts, proportionate to the nature and scale of the E&S risks and impacts.
- Requirements for earmarked activities and transactions, and for equity and general purposes.
- Require stakeholder engagement and grievance mechanism, and provide safe and healthy working environment for workers.

Prohibited Investment Activities List

New Provisions and Improved Requirements

- The prohibited investment activities list (PIAL) is a list of activities that do not qualify for ADB's financing.
- MDBs have different approaches with respect to exclusions; some do not have an explicit list, while others have a more extensive list of exclusions.
- The proposed policy maintains the same list of activities but adds new prohibitions from **ADB's Energy Policy (2021)**. These relate to (i) coal-fired power generation and coal-fired heating plants; (ii) coal mining, processing, storage, or transportation; (iii) upstream or midstream oil projects; and (iv) natural gas exploration or drilling.
- Financing production of, or trade in, or use of asbestos fibers is fully prohibited under the new policy. This is a change from the current SPS, which allows the use of bonded asbestos cement sheeting with asbestos content of less than 20%. This prohibition does not apply to projects involving disposal of existing asbestos, provided a suitable asbestos management plan is adopted for disposal.

Common Approach

ADB and other multilateral or bilateral agencies can agree on a common approach for E&S assessment and management acceptable to ADB, provided that such an approach will enable a project to achieve objectives materially consistent with the ESSs

MDB policies, standards and their implementation procedures will be considered

Main Features

1. Common approach will apply to the project, including associated facilities, financed by the same co-financier if agreed by ADB and the borrower/client
2. Possible to disclose one set of project information and documentation for stakeholder engagement.
3. Decision to use common approach to be made early, latest by project appraisal or final credit approval.
4. E&S performance will be measured against the common approach.
5. In the case of differences between MDB standards, an approach will be agreed upon such a project achieves objectives materially consistent with the ESSs.
6. Complemented by policy provisions on mutual reliance on due diligence undertaken by other multilateral/bilateral agencies.

Environment and Social Policy/ ESS1

Use of Borrower Systems in ADB Projects

What are 'Borrower E&S Systems'

The borrower's environmental and social system will include those aspects of the host country's **policy, legal, regulatory and institutional framework**, consisting of its national, subnational, or sectoral implementing institutions and applicable laws, regulations, rules and procedures and implementation capacity relevant to the E&S risks and impacts of a project

- 1. Material Consistency:** Borrower's E&S systems may be used provided they address the risks and impacts of the project and enable the project to achieve objectives materially consistent with the ESSs
- 2. Assessment:** ADB to undertake an assessment to establish material consistency for the project with the applicable ESSs
- 3. Environmental and Social Commitment Plan/Action Plan:** sets out any gap filling measures and timeframes for their completion and sets out the E&S performance measures for a project

SPS 2009 methodology for use of Country Safeguard Systems

- Under the SPS, the use of CSS determined through establishing equivalence and acceptability
- IED Corporate Evaluation of the SPS (2020) recommended a new approach to strengthening borrower systems, with 'pragmatic use' of CSS

Plenary Discussion



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Impressions from Government



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Closing Message and Next Steps

Bruce Dunn

***Director, Policy and Technical Division, OSFG,
ADB***



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Supporting Environment and Social Framework (ESF) Implementation

Balancing and supporting increased scope and with efficiency gains

ESF has a wider scope across new ESSs and cross cutting areas. How will this be balanced?

Efficiency gains from proposed ESF

1. Integrated risk-based and adaptive management approach

- ✓ Encourages early-stage screening of risks to determine requirements and resource needs
- ✓ ESS to be triggered with assessment requirements and documents based on impacts and risk
- ✓ Balance focus on preparation and implementation, with use of ESCP/ESAPs

2. Use of borrower systems where systems are materially consistent, and capacity can manage project risks

3. Use of a “common approach” with co-financiers, where policies are materially consistent

ADB business processes, staffing and capacity enhancements

1. **Streamlining of business processes through the New Operating Model** will enhance efficiency of project processing
2. **Development of new safeguards Knowledge Hub and Safeguards Knowledge Management Action Plan (KMAP)** to enhance staff skills
3. **Additional safeguard staffing** to address incremental skills gaps and to increase support for project implementation through the Work Program and Budget Framework process in areas including labor, vulnerable groups, climate etc.
4. **Decentralization plan** for safeguard staff will increase ADB staff in resident missions to be closer to clients
5. **Increased technical assistance for DMCs/client capacity support** proposed to support country safeguard systems, and capacity support at country, sector and project levels (linked to country knowledge plans)

Environmental and Social Framework

Capacity Development and Roll-out Plan

Objectives:

- **Ensure ADB staff and borrowers/clients have required skills, capacity and supporting guidance and tools to fully implement the ESF**

Program timing:

- **ESF will be effective 12 months after Board approval** of policy (expected by Q2 2025)
- Implementation of the policy roll-out plan will start in 2023 and continue for 3 years after Board approval

Program activities:

- **Formulation of a comprehensive 3-year capacity building plan** for DMCs and private sector clients to facilitate seamless transition
- **Implementation procedures for staff** - Operations Manual and Staff Instructions
- **Guidance notes** for each ESS and selected topics
- **Training materials** - for DMCs, private sector clients and other stakeholders to implement the requirements of the ESSs (with e-learning, videos, training programs, templates etc.)
- **Accreditation** of staff and certification programs for other stakeholders

Engagement process

- Training programs available online, as well as training delivery at DMC level
- Targeting executing and implementing agencies and private sector clients
- Orientation programs for other stakeholders
- Additional project by project support
- Linkage with country programming and wider capacity support

Partnerships:

- Collaboration with existing regional and DMC resources, including safeguard learning centers
- Collaboration with MDBs capacity-building programs

Ways To Provide Feedback



**Regional and In-Country
Consultations, and Other
Meetings**



Email
safeguardsupdate@adb.org



**Online Feedback
Form in the ADB website**

What will happen to your feedback?

- Due to the expected high number of feedback, ADB will not be able to respond individually to all comments.
- Stakeholder inputs from the consultations, and feedback received through various platforms will be documented.
- The stakeholder consultations summaries will be disclosed on the website.

Next Stage Consultations on Draft ESF

Regional Consultations with Governments

- Cover Central and West Asia, East Asia, South Asia, Southeast Asia and Pacific
- Events to be held in Fiji, Pakistan, Philippines and India
- In-person sessions with high level government representatives

In-Country Consultations with Governments and CSOs

- In-person meetings with government representatives in 7 DMCs (PRC, Fiji, Pakistan, Indonesia, Philippines, India, Cambodia)
- Separate hybrid format for CSOs

CSO-focused Regional Consultations

- Design is a work-in-progress
- Online format

Private Sector Consultations

- 3 online focus group discussions (FGDs), organized by types of transactions

Other Consultations

- Non-regional member countries
- Peer MFIs and international organizations

Timeline

November 2023 to May 2024

Preliminary Schedule

Host Country	Regional Consultations	In-Country Government Consultations	In-Country CSO Consultations
Philippines	East & Southeast Asia Governments 22-23 Jan 2024	24-25 Jan 2024	26 Jan 2024
India	South Asia Governments 12-13 Feb 2024	14-16 Feb 2024	19 Feb 2024
Fiji	Pacific Governments 4-5 Mar 2024	6 Mar 2024	7 Mar 2024
Cambodia	-	Mar 2024 (TBD)	-
Tajikistan	Central West Asia Governments May 2024 (TBD)		

- CSO-focused Regional Consultations – February and April 2024
- Private Sector Consultations – April 2024

Closing Message

Nianshan Zhang
Head, OSFG, ADB



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Additional Slides



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ADB Independent Evaluation Department (IED)

Evaluation on Effectiveness of the 2009 Safeguard Policy Statement (SPS)

- **The Environment and IR results were positive.** They were largely focused on direct construction related environmental (e.g., noise and vibration) and IR (e.g., compensation and resettlement) impacts. **IP results were limited** due to presumed mainstreaming or confined to IR impacts.
- **NSO projects performed best**, MFFs performed on par with stand-alone investment projects; and **FI performance was the weakest.**
- **Safeguards due diligence in project preparation has been satisfactory while client monitoring and ADB implementation supervision less satisfactory.**
- **There has been a decline in risk profile of the portfolio**, based on a narrow application of the policy, and front loading of effort.
- **ADB projects did not effectively support wider country safeguard system strengthening.** The use of national, subnational and sectoral systems did not succeed, only one case at the agency level materialized in 10 years.



ADB Accountability Mechanism Complaints



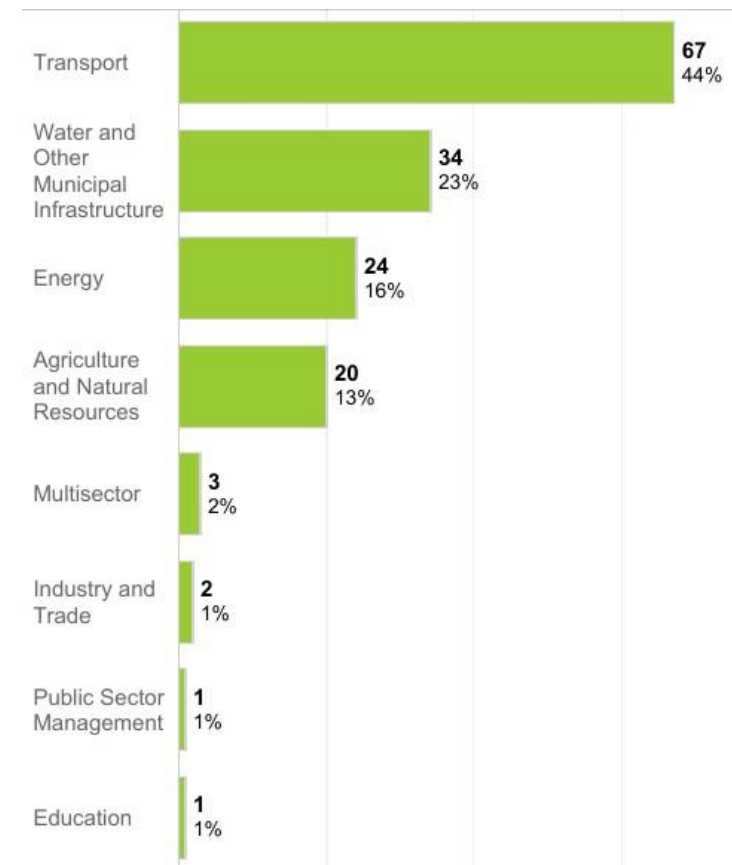
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Problem-Solving Function 2004-2023*

Subject of Complaints	Problem-Solving	Share (%)
Resettlement, compensation, land acquisition, and valuation	103	36.4
Information, consultation, and participation	65	23.0
Environment ¹	40	14.1
Community and social issues ²	25	8.8
Village infrastructure ³	22	7.8
Others ⁴	15	5.3
Livelihood	13	4.6
TOTAL	283	100

Sectoral Distribution of Complaints 2004-2023*



¹ Includes biodiversity conservation and sustainable management of natural resources, pollution prevention and abatement, occupational and community health and safety, and conservation of physical cultural resources.

² Includes gender, health, social uplift program, environmental studies, social impact assessment, grievance redress, customary land, and indigenous people.

³ Includes school and road reconstruction and rehabilitation, bus stops, multipurpose hall, toilets and cowsheds, bridges, beaten tracks, underpass for agricultural machinery, cattle pass, and distributary links.

⁴ Includes issues on high electricity rates, grid network fee, power sector reform, procurement, loans and contract matters, project monitoring, etc.

* As of 30 September 2023

Environmental and Social Policy Standards (ESS)

Comparison of policy coverage with the Safeguards Policy Statement, 2009 (SPS)



Environmental and Social Standards (ESS)	Equivalent SPS Policy Areas			
	ENV	IR	IP	Notes
ESS 1: Assessment & Management of Environmental and Social Risks and Impacts	✓	✓	✓	Integrates Environment (ENV), Involuntary Resettlement (IR), and Indigenous People's (IP) requirements
ESS 2: Labor and Working Conditions	✓			Builds on: (i) ADB Social Protection Strategy, 2001; (ii) SPS ENV principles for occupational health and safety; and (iii) Prohibited Investment Activities List.
ESS 3: Resource Conservation and Pollution Prevention	✓			
ESS 4: Health, Safety, and Security	✓			
ESS 5: Land Acquisition and Land Use Restriction		✓		
ESS 6: Biodiversity and Sustainable Natural Resources Management	✓			
ESS 7: Indigenous Peoples			✓	
ESS 8: Cultural Heritage	✓			
ESS 9: Climate change	✓			ENV safeguards, plus ADB procedures for risk screening on climate change.
ESS 10: Stakeholder Engagement and Information Disclosure	✓	✓	✓	Integrates meaningful consultation, disclosure & grievance mechanisms from ENV, IR and IP safeguards

ESS5 Objectives

1. Avoid **economic** and **physical displacement** or, when unavoidable, minimize such displacement by considering feasible alternative project designs and sites.
2. Avoid **forced eviction**.
3. Mitigate unavoidable adverse social and economic risks and impacts from **LA/LUR** by (i) providing timely compensation for loss of assets at full **replacement cost**, and (ii) assisting **affected persons** in their efforts to improve or at least restore their **livelihoods** and standards of living in real terms relative to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.
4. Improve livelihoods and living conditions of **disadvantaged or vulnerable** persons, including by providing adequate housing with essential services, utilities, and **security of tenure** to those who are physically displaced.
5. Ensure that LA/LUR activities are planned and implemented through appropriate **stakeholder** engagement, including information disclosure, **meaningful consultation**, and grievance management.

ESS5 Scope

1. Involuntary LA/LUR.

2. **Voluntary LA/LUR transactions** with exception of Willing Buyer Willing Seller (legally recorded market transactions: e.g., purchase & sale to be handled under ESS1).

*** Application to associated facilities (via ESS1)

*** Transactions undertaken prior to a project initiated in anticipation and in preparation for the project (retroactive time limit, benchmark is ESS5).

*** Does not apply to impacts on incomes and livelihoods that are not a direct result of LA/LUR => assessed and mitigated under ESS1.

*** Covers third parties affected by WBWS.

ESS5: Improved Coverage of Concepts and Definitions

Land Use Restriction:

- ✓ Limitations or prohibitions imposed on the use: directly introduced and put into effect as a result of the project
- ✓ Repossession of public/private land
- ✓ Land/area rendered unusable or inaccessible
- ✓ Restriction on use of natural resources, parks and protected areas
- ✓ Restriction on the use of waterbodies/freshwater and marine environments
- ✓ Easements and safety zones

Livelihoods and Livelihood Resources :

- ✓ Full range of ways and means to derive a living
- ✓ Inclusive of informal sources of income and earnings
- ✓ Subsistence, self-consumption and self-production

*** Involuntary Resettlement: Not directly used in the title, reserved for physical displacement

ESS5: General Requirements for All Transactions

I. Stakeholder engagement and GRM

II. Assessment of LA/LUR impacts

- ✓ Census and baseline studies
- ✓ Cut-off date
- ✓ Inventory of lost assets, livelihood resources, access to assets
- ✓ Valuation

III. Planning

- ✓ LAP vs. LAF
- ✓ Budget

IV. Monitoring, Evaluation and Reporting

- ✓ Progress reporting, including on completion of LA/LUR activities prior to site possession
- ✓ Completion reporting/Evaluation reporting

V. Capacity, Project Design, Procurement and Contract Management

VI. Emphasis on Disadvantaged and Vulnerable

ESS5: Involuntary LA/LUR

Key Highlights:

- ✓ No major changes in requirements
- ✓ More clarifications added on treatment of security of tenure, temporary physical relocation, livelihood restoration and improvement
- ✓ Clarification added on forced eviction
- ✓ Clarification added on use of escrow and similar indexed accounts
- ✓ Negotiated settlement definition revised: now falls under involuntary LA/LUR

ESS5: Voluntary LA/LUR Transactions

Key Highlights:

- ✓ Criteria to distinguish between voluntary and involuntary transactions
- ✓ General criteria apply based on context
- ✓ Due Diligence (DD) differs based on the nature of the voluntary transaction (e.g., voluntary land donation)
- ✓ DD for market transactions is done under ESS1
- ✓ If WBWS affects third parties, ESS5 applies directly

ESS5: Use of Plan vs. Framework

Plan refers to an instrument:

- ✓ Which is based on Detailed Engineering Design (DED)
- ✓ Has a full assessment based on census and complete baseline for all affected persons (e.g., vulnerability and significance of impact) and meets all other requirements for inventory of assets and valuation

Framework refers to an instrument:

- ✓ Which does not meet full assessment requirements
- ✓ Employs a detailed scoping and budget

ESS 7: Introduction

- The E&S Policy gives particular consideration to IP as ADB continues to recognize that **Indigenous Peoples** may be particularly vulnerable in certain project circumstances. Indigenous Peoples are increasingly threatened as development programs infringe into areas that they traditionally own, occupy, use, or view as ancestral domain. They are closely linked to the lands where they live and the natural resources on which they depend. They are particularly vulnerable if their lands and resources are transformed, encroached upon, or significantly degraded.
- Within Asia and the Pacific, individual indigenous communities reflect tremendous diversity in their cultures, histories, and current circumstances. Indigenous Peoples may be referred to in different countries by such terms that include indigenous ethnic minorities, indigenous cultural communities, aboriginals, hill tribes, minority nationalities, scheduled tribes, tribal groups, forest dwellers, hunter-gatherers, pastoralists, or other nomadic groups.
- This ESS7 recognizes that **Indigenous Peoples** are often among the most marginalized and vulnerable segments of the population. In many cases, their economic, social, and legal status limits their capacity to defend their rights to lands and natural and cultural resources and may restrict their ability to participate in and benefit from development in ways that are in accordance with their worldview.

ESS 7: Introduction

- IP may also not receive equitable access to project benefits in **culturally appropriate** form, and they may not be adequately consulted about the design or implementation of projects that would profoundly affect their lives or communities.
- ESS7 recognizes that IP do not automatically benefit from development and special efforts are needed to engage Indigenous Peoples in the planning of development programs that affect them and their land and territories.
- Projects can create opportunities for Indigenous Peoples to participate in and benefit from project-related activities that may help them fulfill their aspiration for economic and social development.

ESS 7: Objectives

1. Ensure that **Indigenous Peoples** do not suffer adverse impacts as a result of projects or, where avoidance is not possible, to minimize, mitigate, and/or compensate for such impacts;
2. Design and implement projects in a way that fosters full respect for Indigenous Peoples' identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by the Indigenous Peoples themselves;
3. Ensure that Indigenous Peoples receive **culturally appropriate** social and economic benefits and can participate actively in projects that affect them;
4. Promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner;
5. Ensure free, prior, and informed consent (FPIC) in the three circumstances described in this ESS7;
6. Recognize, respect, and preserve the culture, knowledge, and practices of Indigenous Peoples where possible in a project context, and consider opportunity to adapt to changing conditions in a manner and in a time frame acceptable to them, as appropriate.

ESS 7: IP Identification

Indigenous Peoples refers to a distinct social and cultural group possessing the following characteristics in varying degrees:

1. self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others;
2. **collective attachment** to geographically distinct areas or ancestral territories or areas of seasonal use or occupation, including nomadic and transhumance routes in a project-affected area and to the natural resources in these areas and territories;
3. customary cultural, economic, social, or political institutions, laws, or regulations that are separate from those of the dominant society and culture; and
4. a distinct language or dialect, often different from the official language of the country or region.

ESS7 also applies to a group that has been assimilated, mainstreamed, lost distinct language or dialect, or lost **collective attachment** to distinct areas or ancestral territories in a project-affected area because of **forced severance**, conflict, government resettlement programs, dispossession of their land, natural disasters, or incorporation of such territories into an urban area.

This ESS7 will apply whenever **Indigenous Peoples** are present in, or have **collective attachment** to, a proposed project-affected area

It will apply regardless of whether Indigenous Peoples are affected positively or negatively, directly or indirectly, and regardless of the significance of any such impacts.

ESS 7: Borrower's Requirements

- Impact Assessment for Indigenous Peoples - assessment of direct, indirect and positive and negative impact (social, cultural, economic); host country's legal context with reference to IP; existing vulnerabilities; base-line of socio-cultural and economic status of affected IP.
- Meaningful consultation - inclusive and participatory consultation; identifying appropriate Indigenous Peoples' representatives; consultation methods appropriate to the social and cultural values; provides sufficient time for collective decision-making processes; pays special attention to the concerns of indigenous women, youth, people with disabilities, and people with other disadvantages or vulnerabilities.
- Indigenous Peoples Planning (Indigenous Peoples Plan)
- Remote groups of **Indigenous Peoples** with limited external contact, also known as peoples "in voluntary isolation," "isolated peoples", or peoples "in initial contact," the borrower/client will take appropriate measures to recognize, respect, and protect their land and territories, environment, health, and culture, and to avoid all undesired contact with them as a consequence of a project.
- Extending project benefits in a **culturally appropriate way**.

ESS 7: Borrower's Requirements

- When **Indigenous Peoples** are the sole or the overwhelming majority of direct project beneficiaries, and when only positive impacts are identified, the borrower/client may include the elements of an IPP in the overall project design in lieu of preparing a separate IPP.
- When IP are not the sole beneficiaries – IPP will be required but in some circumstances and with due justification, the borrower/client will prepare a broader community development plan addressing all beneficiaries of a project
- IPP are sufficiently budgeted.
- Establish a grievance mechanism as described in ESS10 - keep identities confidential, address threats of **reprisal**; interpretation/translation to overcome language barriers/limitations; availability of customary dispute settlement mechanisms and customary laws.
- Monitoring and disclosure

ESS 7: Borrower's Requirements

Free, Prior, and Informed Consent of Affected Indigenous Peoples

Indigenous Peoples may be particularly vulnerable to the loss of, alienation from, or exploitation of their land and access to natural and cultural resources. In recognition of this vulnerability, ADB will require a borrower/client to obtain the free, prior and informed consent (FPIC) of project-affected Indigenous Peoples when the circumstances described in ESS7 are present.

1. Have adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation;
 2. Cause relocation of Indigenous Peoples' communities from land and natural resources subject to traditional ownership or under customary use or occupation;
 3. Have significant impacts on Indigenous Peoples' **cultural heritage** that is material to their identity and culture, and/or to ceremonial and/or spiritual aspects of their lives.
- No universally accepted definition of FPIC.
 - Applies from the concept stage till the completion of project – through out the project cycle.
 - Builds on the process of meaningful consultation and established through good faith negotiation.
 - May require seeking expert support including IP organizations.
 - Needs to be ascertained at the time of appraisal. If FPIC cannot be ascertained for a particular component it will not be processed further.

ESS 7: Borrower's Requirements

- FPIC does not require unanimity and may be achieved even when individuals or groups within or among project-affected **Indigenous Peoples**' communities explicitly disagree.
- Consent refers to the collective support of project-affected Indigenous Peoples' communities for project activities that affect them, reached through a **culturally appropriate** process.
- Documentation of mutually accepted process to carry out good faith negotiations and the outcome including all agreements reached as well as dissenting views.
- During implementation ensure that necessary actions are taken and agreed benefits or improvements to services are delivered in a timely manner.
- IP land is often traditionally owned or under their customary use or occupation. They may not possess legal title to land as defined by the **host country's applicable laws**. Where a project involves (i) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied, or (ii) the acquisition of such lands, the borrower/client will prepare a plan for the legal recognition of such ownership. The objective of such a plan will be (i) full legal recognition of Indigenous Peoples' existing customary land tenure systems; or (ii) conversion of customary use to communal and/or individual ownership rights. If neither option is possible under the host country's applicable laws, the borrower/client will ensure that the plan includes measures for the legal recognition of Indigenous Peoples' perpetual or long-term renewable custodial or use rights.

ESS 7: Borrower's Requirements

- Project involving commercial development of **Indigenous Peoples'** land or natural resources, the borrower/client will offer compensation together with **culturally appropriate** sustainable development opportunities to project-affected Indigenous Peoples,
- The borrower/client will explore to the maximum extent possible alternative project designs to avoid relocation of **Indigenous Peoples'** communities from land that is communally held or occupied or land to which Indigenous Peoples have **collective attachment** and natural resources that are subject to traditional ownership or customary use or occupation. The borrower/client will not resort to **forced eviction**, and any relocation of Indigenous Peoples will meet the requirements of ESS5.
- In case of cultural heritage (tangible and intangible) priority will be given to the avoidance of such impacts. Where significant project impacts are unavoidable, the borrower/client will obtain the FPIC of the project-affected Indigenous Peoples and share equitably in the benefits.
- Requirements and provisions in case of private sector operations.
- ADB could be requested to provide finance directly related to the development of IP communities.