

Significant progress made in R-paper at risk if remaining dilutions not addressed

Comments of the NGO Forum on ADB
on
The Review Paper of Safeguard Policy Statement of
The Asian Development Bank

July 14, 2009

Overall, we welcome the R-paper, and we believe that **the ADB is close to achieving President Kuroda's goal of "no dilution" from existing policy, with some significant exceptions, most of which can be corrected by simple language clarifications in the OM and some small changes to the R-paper.** The R-paper represents significant progress in eliminating much of the vague and unclear language in earlier drafts. In certain important areas, the Bank has taken welcome steps to improve its existing policies, which will contribute to the ADB's goals of poverty reduction and sustainable development. However, there are still a few significant areas in the R-paper with key dilutions of existing policy, contradicting the President's commitment to avoid any policy dilution with remaining or newly-introduced vague or inconsistent language (detailed below).

We urge you to insist that any changes to the OM are brought to the Board's attention, at the very least on a no-objection basis. As the OM is considered a Management document, it is problematic to shift requirements into the OM, as the Management can change the OM at any time.

The following section lays out an analysis based on four categories: 1) Strengths of the R-Paper; 2) Important retentions of existing policy, 3) Remaining dilutions; and (4) Remaining weaknesses of the Policy.

1. Strengths

- i. *Gender*: Stronger gender considerations have been mainstreamed throughout the R-paper and the three policy areas. The R-paper sets an example for other IFIs in regard to explicitly requiring gender sensitive and responsive application of the safeguards policies.
- ii. *Consultation*: Definition of consultation is explicit. This represents an advance over the existing safeguard policies, and sets the basis for ensuring a meaningful participatory process for ADB operations. The R-paper documents the ADB's laudatory commitment to "understand the concerns of affected people and ensure that such concerns are addressed in project design and safeguard plans" for environmental, IR and IP impacts. (pg 20, para 54) We find that the implementation measures for these requirements are inconsistent across the three policies but this can be easily remedied through OM language.
- iii. *Involuntary Resettlement*: Improvement of the livelihoods of poor and vulnerable affected people is now required. We are also pleased to see new language emphasizing the importance of creating benefit-sharing arrangements and development opportunities for affected people. These improvements will contribute significantly to preventing impoverishment among people displaced by ADB-supported projects.
- iv. *Indigenous Peoples*: Recognition of the need to protect Indigenous Peoples and the commitment not to finance projects in the absence of broad community support. This commitment is an advance over the existing Indigenous People's policy.

- v. *Subprojects/financing modalities*: Rules pertaining to many of the different finance modalities have been significantly improved over earlier versions of the draft SPS and much of the protective language from the existing policy has been re-instated. In some cases, language has been improved over existing policy. Requirements pertaining to the category of Financial Intermediaries has been significantly strengthened and now requires subprojects with the potential for significant environmental or social impacts financed by FIs *whether through credit-line, loan, equity, guarantee, or other financing instrument* to submit category A projects for ADB clearance, subject to the 120 day disclosure required by existing policy. There are a few significant issues of deep concern which, fortunately, can be addressed by OM language, to ensure that this policy remains a significant step forward and that apparent loopholes are closed.
- vi. *Prohibited Investment List*: We welcome the clearly-stated application of a Prohibited Investments List to all ADB activities.
- vii. *Country Safeguards System*: Improved clarity in how ADB intends to implement its CSS policy, especially with regard to disclosure and consultation, as well as ensuring that gap-filling measures are in place prior to project implementation. Areas where clarity might be further improved are discussed below.

2. Retention of key provisions in existing policy

The R-paper has eliminated a substantial number of the policy dilutions proposed in earlier drafts of the SPS and has re-instated much of the protective language of existing ADB policy such as:

- i. *Categorization*: We welcome the retention of the categorization of impacts for all three policy areas, consistent with the provisions in the existing policies.
- ii. *Disclosure*: We welcome the retention of the 120 day disclosure requirement for environmental impact assessments (EIAs) for projects that are classified category A under environment. However, we note that the disclosure of Initial Evaluations (IEE) for environment category B projects appears to have been dropped. (see Section 4: Dilutions to be addressed in the OM).

3. Remaining dilutions and shortcomings need to be addressed in OM:

- i. *Reduced Scope of the Involuntary Resettlement Policy*: Our primary concern in the area of Involuntary Resettlement continues to be that the R-Paper shifts responsibility for non-land-acquisition impacts to the Environmental Safeguards (para. 6). This is a dramatic dilution from existing standards, which ensure that all displaced people—regardless of the project activities causing their displacement—receive the full entitlements and protections under the Involuntary Resettlement Safeguards. The R-Paper's shift of coverage to the Environmental Safeguards is problematic because the language, structure and implementation protocols for the Environmental Safeguards are not designed to address the unique risks associated with displacement. This will result in people who are displaced by activities other than land acquisition being left without adequate safeguard protections, even though they are facing the same risks as those displaced by land acquisition. Of particular concern are the thousands displaced by upstream and downstream impacts of large hydropower, and those affected by de-watering impacts of large mines, among other groups.

We welcome the language improvements made to paragraph 6 over earlier drafts, but the changes remain inadequate. We also note that the OM includes language which further dilutes the definition of

displacement found in the R-paper glossary and SR2; specifically, the definition of significant impacts must be updated to ensure consistency within the R-Paper.

SOLUTION: Revise language in the OM to ensure appropriate categorization and project preparation; ensure that the definition of displacement impacts in the OM is consistent with that now found in the R-paper, eliminate the new and problematic usage of the term “income” in the OM re-definition of impacts, and add a provision clarifying the procedural requirements pertaining to para. 6 of the Safeguard Requirements on Involuntary Resettlement, insert the language of para 6 also into the Environmental Safeguard Requirements to ensure consistency among these two areas in their response to and management of significant displacement impacts.

- ii. *Dilution of entitlements for displaced people.* While we appreciate the improved clarity on certain entitlements guaranteed to affected people, we note with concern that there are three areas that reflect dilution from existing standards: 1) the R-Paper and accompanying OM lack any explicit mention of common property assets and others, which are defined in detail in the existing OM; 2) the R-Paper appears to guarantee fewer entitlements to affected people who lack legally recognizable title/claims to land (creating inappropriate discrimination, which would be a significant dilution from existing standards, and also creates inconsistency within the R-Paper); and 3) there is no explicit guarantee that acquisitions done through negotiated settlements will ensure that affected people receive entitlements at least equal to those guaranteed for involuntary acquisitions.

SOLUTION: In the appendix 1 in the last page of this submission we identify simple insertions of clarifying language into the OM that will remedy these dilutions and inconsistencies.

- iii. *Minor inconsistencies/weaknesses in consultation, implementation and disclosure requirements for IR*

SOLUTION: The attached matrices also outline small insertions of clarifying language needed to remedy the following in the OM: Lack of consistent requirements for participation of affected people in project monitoring; need to extend meaningful consultation to exploration of project alternatives; remedy dilutions/inconsistencies among requirements for timely and time-bound implementation; and ensure consistency of requirement for disclosure of draft resettlement plans prior to project (and subproject) appraisal.

- iv. *Inadequately Specific Language.* The R-paper uses much less specific language than the current policy and operations manual employs. This creates a higher degree of ambiguity as to the responsibilities of the borrower/clients and less predictability in what specific protections an affected population will receive. This, in turn, will undermine efficiency and consistency of implementation across projects and nations. As such, it must be considered a dilution of the protections within the current policy.

SOLUTION: In our attached short matrices, we have highlighted specific places throughout the new OM where clarifying language should be inserted.

- v. *Environment: (See Environment Matrix for details http://forum-ADB.org/docs/Attachment_to_Forum%5C%27s_submission_-_draft_July_14.pdf)* We are concerned that there is a weakening of aspects of environment policy because some of the environmental policy requirements have been shifted to OM and a significant effort has been made to differentiate the Board-

approved SPS from the OM, which is not approved by the Board and which may be changed without Board consent.

SOLUTION: require Board approval of the OM and of any changes to the OM.

1. *Significant Dilution/Repeal of Forestry Policy, Energy and Water Policies.* In response to civil society concerns about the apparent repeal of the forestry policy, including the ban on the construction of roads in old growth forests, earlier drafts of the SPS included the following statement: “*The SPS and Safeguard Requirements for Borrowers/Clients will not supersede the policies on Energy (1997),; Forestry (1995); and Water (2001), but will complement them.*” (i.e. 2nd Draft SPS pg 10, para 29).

SOLUTION: This statement has been removed from the R-paper. It could easily be re-inserted in the R-paper (see Environment matrix for details -http://forum-adb.org/docs/Attachment_to_Forum%5C%27s_submission_-_draft_July_14.pdf) or included in the OM to avoid substantial policy dilution.

2. The Environmental Policy Principles commit to the disclosure of draft environmental assessment documents in a timely manner before project appraisal. Yet the SPS fails to meet this standard and lacks any commitment to timely **public release** (and web posting) **of the draft IEE**. The SPS is silent on the timing and nature of distribution of the draft IEE and the OM language sharply reduces public availability of draft IEE.

SOLUTION: Changes to OM language to make this draft assessment document available in the same manner as other draft assessment documents such as EARF and IR and IP plans and frameworks.

3. *Dilution of Greenhouse Gas language* made public in earlier drafts and the W-paper has been significantly weakened in the R paper. This language was weak to start with and was aimed primarily at monitoring a limited portion of GHG emissions associated with projects. The dilution occurred by adding vague terms (which have been stripped out of the rest of the R-paper) – “technically and financially feasible” and by deleting the requirement that borrowers document their analysis of options to reduce their carbon footprint and pursue appropriate options. In addition, the caveat that offsets were to be used as a “last resort” was deleted.

SOLUTION: Introduce the deleted language into the OM and remove the newly introduced vague phrases.

4. *Concerns about categorization.* The R-paper language on categorization does not specify that, in all cases, the ADB’s system of categorization is to be utilized for all projects and their components (including subprojects) and is required to be part of legally binding documents. This is a result of vague language, including in SR4, which can be easily clarified in the OM.

SOLUTION: Add clarifying language to the OM (on pg 2, para 5) indicating that “The ADB’s system of categorization (page 19, paragraph 50 of the SPS and paragraphs 6 – 11 of the OM) shall be utilized for all projects and their components (including subprojects) regardless of their source of funding and shall be documented in the legal agreement.”

5. *Technical correction*: The section on Hazardous Materials in SR 1 is inconsistent with the ban on the use of such materials in the PIL.

SOLUTION: A simple language change to SR1 to bring it into compliance with the PIL.

6. *Other significant environmental concerns*: SR1 continues to introduce substantial dangerous loopholes pertaining to pollution, including:

- allowing ADB to fund projects that do not even meet “good international practice” requirements for pollution control;
- allowing ADB funding for projects “with the potential to constitute a significant source of emissions in an already degraded area”;

In addition, SR1 still does not require environmentally sound disposal of hazardous waste, allows significant environmental impacts to remain after mitigation, and allows ADB funding for high risk projects in “locations where their failure or malfunction may threaten the safety of communities.”

SOLUTION: these dangerous loopholes should be eliminated by language changes to SR1. (See matrix - http://forum-adb.org/docs/Attachment_to_Forum%5C%27s_submission_-_draft_July_14.pdf)

- vi. *Different Finance Modalities*: There are a few significant issues of deep concern which, fortunately, can largely be addressed by OM language. See the SR4 Matrix for details - http://forum-adb.org/docs/Attachment_to_Forum%5C%27s_submission_-_draft_July_14.pdf

1. Despite verbal assurances from ADB staff, there is no language specifying that all financial intermediaries supported by the ADB, regardless of mode of ADB finance -- loan, equity, credit-line, guarantee or other financing instrument -- are to be classified as FI and thus subject to FI requirements. There are substantial concerns -- in the absence of such language -- that, given the vague definition of “General Corporate Finance”¹, a category which does not have similarly stringent requirements -- about the confusing possibility that a financial intermediary with ADB loans/investments “not earmarked for specific subprojects” (such as Indonesia’s Bank Mandiri) could be classified as “General Corporate Finance” and thus avoid being subject to the newly robust rules pertaining to FIs.

SOLUTION: Insert language into the OM (i.e. pg 12, para 53) indicating that “Any financial intermediary supported by the ADB regardless of mode of ADB finance (loan, equity, credit-line, guarantee or other financing instrument) is classified as a Financial Intermediary and is thus subject to FI requirements of SR4.”

2. Vague language leading to substantial concerns, easily corrected through language changes to OM
 - a) *Lack of mandatory SEA, inconsistency between SR1 and SR4*: SR1 makes strategic environmental assessment (SEA) mandatory for policy actions supported by a program loan likely to have significant direct or indirect environmental impacts. The W-paper included this mandatory language in SR4, but this language has now been removed from SR4 in the R-paper

¹ General Corporate Finance: “loans and/or investments to a corporate entity that are not earmarked for implementing specific subprojects”

and replaced with vague language indicating that an SEA “may be usefully applied where appropriate.”

SOLUTION: The W-paper language should be reinstated in SR4 to make it consistent with SR1 and should be added to the OM. If changes to SR4 are problematic, it would suffice to add this language to the OM. (see matrix for details - http://forum-adb.org/docs/Attachment_to_Forum%5C%27s_submission_-_draft_July_14.pdf)

- b) *FI Compliance with ADB SPS:* Language in the FI section states that compliance must be assured with “national laws **and/or** ADB’s requirements for FI projects”. Yet, elsewhere in the SPS, the ADB commits to ensuring compliance of all projects with ADB safeguards.

SOLUTION: (1) Eliminate the word “or” in para 13, pg 68 of SR4 and. (2) insert clarifying statement in OM (pg 13, para 55) stating that “All FI investments must comply with ADB safeguard objectives, principles and requirements.”

- vii. *Consultation and Participation:* While the R-paper provides a clear definition of meaningful consultation, it fails to go the whole way in ensuring that consultation is in fact meaningful. The Bank must commit not to finance any projects for which it cannot secure agreement by people affected by all types of project impacts. While we believe the definition of broad community support remains problematic, it is a step forward for the Bank to commit not to funding projects without determining BCS, be it for indigenous people or other affected people. This is consistent with the IFC’s provision that requires broad community support for the project within the affected communities, without limiting this requirement to Indigenous Peoples.

The R-paper documents the ADB’s laudatory commitment to ‘understand the concerns of affected people and ensure that such concerns are addressed in project design and safeguard plans’ for environmental, IR and IP impacts. (pg 20, para 54) Such consultation and participation requirements should demonstrate consistency across the three safeguard areas, with additional protections for the consent of indigenous peoples. The Draft OM/OP para 20 pg 6 requires for IP impacts that : « The project team reviews the consultation process documentation of the borrower/ client, and also through its own investigation, verifies that broad community support for the project activities has been demonstrated. ADB does not proceed further with project processing if it is unable to determine that such broad support by affected indigenous Peoples communities exists.” There is no equivalent language to ensure that the concerns of people affected by environmental or IR impacts will be met despite the requirement for this in the SPS. This inconsistency can easily be corrected via OM language.

SOLUTION: to achieve consistency, utilize the language (below in bold) from OM/OP para 20, pg 6 in para 19, pg 5, as follows:

- For projects classified as category A for environment, involuntary resettlement or Indigenous Peoples, the project team participates in consultations in order to understand the main concerns of the project-affected people so that their concerns and recommendations can be adequately addressed in project design. The project team reviews the consultation process documentation of the borrower/client, and also through its own investigation, verifies that broad community support for the project activities has been demonstrated. ADB does not proceed further with project processing if it is unable to determine that such broad support by affected communities exists.
- Lack of Legally-binding Covenants for SPS requirements. The R-paper refers to borrower’s safeguard commitments “as agreed in the legal documents” or “as covenanted in the legal agreements” but

details of the contents of the legal documents are not provided in the R-paper. The OM provides a very limited description of requirements for legal agreements (pg 7, para 24) which only includes the EMP, EARF and IR, IP plans and frameworks. **The OM must specify that the legal agreements shall include “the SPS policy principles, objectives and requirements”** as well as adequate covenants to address implementation of the various plans and frameworks. (See Matrix - http://forum-adb.org/docs/Attachment_to_Forum%5C%27s_submission_-_draft_July_14.pdf)

- **ADB’s Role and Responsibility** The R-paper description of the ADB’s Roles and Responsibilities commits the ADB solely to ensuring (pg 26, para 71) “compliance with the ADB’s safeguard policy principles and Safeguard Requirements 1 – 4.” Key language pertaining to categorization and consultation² and participation is found only in the General Requirements section of the R-paper, which lies outside of the policy principles and SRs 1 – 4.

SOLUTION: It is of vital importance that in para 71, the phrase “compliance with the ADB’s safeguard policy principles and Safeguard Requirements 1 – 4” is changed to “compliance with the ADB’s safeguard **policy statement.**”

- **Access to legal remedies in case of non-compliance:** Vague language (pg 26, para 72) appears to interfere with the ADB’s right to use legal remedies. A clarifying statement should be added to the OM (pg7, para 24) as follows: “Nothing in the SPS is intended to prevent, interfere with or postpone the ADB’s use of available legal remedies in the case of non-compliance.”
- **Categorization concerns:** IR and IP categorization systems are solely described in the OM, while the environmental categorization system is described in the SPS. Provide equivalent stature for all classifications systems by adding IR and IP systems to paragraphs 51 and 52 of R-paper.

viii. Unclear procedures for CSS harmonization and review: While the R-paper improves the clarity of many aspects of the CSS policy, several key issues remain unexplained. In particular, how will the 3-year “operational review”/“interim review” be conducted?

SOLUTION: Provide clarity on who will conduct this review, whether the reviewer will have explicit authority to recommend to the Board whether to continue the CSS policy, and whether the ADB will publicly disclose draft and final review reports to the public. Additionally, provide greater clarity on how ADB intends to harmonize its CSS policy with the World Bank and Inter-American Development Bank.

ix. No differentiation of women from definition of affected people and affected persons: Due to the gender role women are not part of decision making in family and public: *land* title and other ownership document, compensation list are not on women’s names to name a few. No differentiation will trigger a risk that women will be left out from any benefit from the project.

SOLUTION: make a differentiation of women from project affected people and affected persons in the OM

x. No requirement on gender expert for project implementation and on borrower’s capacity on gender: There is a remaining risk of implementation of strong gender considerations in safeguard policy without a requirement of gender expert because direct, indirect and cumulative impacts of changing environmental and socio-economic situation and involuntary resettlement to

² For example, the requirement that the ADB must “ensure that [the] concerns [of affected people] are addressed in project design and safeguard plans.”

affected women and indigenous women will be not adequately addressed. Similarly will happen if there is no requirement to borrowers/clients to have capacity on gender issues.

SOLUTION: require gender experts in OM in implementing safeguard policy and capacity on gender issues to the borrowers/clients

4. Remaining weaknesses of the Policy.

FPIC: It is very disappointing that the R-paper has failed to incorporate the principle of free, prior, informed consent as defined by the United Nations Declaration on the Rights of Indigenous Peoples. The redefinition of consent/consultation as “broad community support” remains unacceptable for indigenous peoples. It is incumbent on the Bank to respect and integrate the demands of indigenous peoples.

Caveat: Assessment dependent on implementation

If the remaining dilutions are rectified, then the R-paper constitutes, at a minimum, equivalence to the existing policy and policy improvement in certain key areas. However, our full assessment will depend on the implementation of the Policy. This is particularly vital, as some of the language in the R-paper still contains inbuilt flexibility and depends on interpretation. We are ready to accept in good faith that the Bank and borrowers will implement the spirit as well as the law of the policy in a manner that ensures no policy dilution. However, because the implementation is the key factor that will determine the SPS’s success or failure, we call for a implementation review with a consultative process of external stakeholders after three years. The results of this review should determine whether the review of the policy itself needs to be brought forward from the 5 year review schedule.

Appendix

Pg#	Para-graph	Language of R-Paper SPS	Analysis and Comparison with existing policy: identification of improvements and dilutions	Possible to resolve via OM?
Ensure no dilution of entitlements for affected people				
OM /OP 3	9	OMISSION	<p>CONCERN: Dilution of existing standards by failure to include definition of land and assets, or to require compensation and replacement for common property resources. Whereas the existing OM has detailed language on these areas, there are no similar guarantees or language in the R-paper or its associated operations manual. As such, the R-paper and associated documents lack specific guarantees that the loss of community and public resources will be covered. The past decade of research on resettlement has demonstrated the central importance of compensating and replacing such resources, as a critical component of preventing impoverishment.</p> <p>SOLUTION: Insert language from the existing OP/BP footnote 3³ and the entirety of para. 15 of the existing OP/BP, to insert a new paragraph following para. 9 in the R-Paper OM:</p> <p>Land and assets include residential, commercial, agricultural, forest, and/or grazing land, water resources, and any other moveable or fixed assets acquired, possessed, restricted or otherwise adversely affected, in full or in part, permanently or temporarily; and/or (iii) business, occupation, place of work or residence, or habitat adversely affected. This also includes community and public resource losses. Community and public resource losses to be considered as eligible for compensation include:</p> <ul style="list-style-type: none"> (i) common property resources, including water bodies, forest, woodland, pasture, and community recreation, and cultural sites; (ii) public structures such as markets, health and educational facilities, water and washing points, and meeting houses; and (iii) infrastructure such as roads, bridges, and other transport lines; power facilities; telecommunication lines; and water sanitation and drainage facilities. 	yes

³ ADB OP/BP, *supra* note 1, Footnote 3.

SR 45	8	<p>The borrower/client will provide adequate and appropriate replacement land and structures or cash compensation at full replacement cost for lost land and structures, adequate compensation for partially damaged structures, and relocation assistance, if applicable, to those persons described in para. 7(i) and 7(ii) prior to their relocation. For those persons described in para. 7(iii), the borrower/client will compensate them for the loss of assets other than land, such as dwellings, and also for other improvements to the land, at full replacement cost. The entitlements of those under para. 7(iii) is given only if they occupied the land or structures in the project area prior to the cutoff date for eligibility for resettlement assistance.</p>	<p>DILUTION: Paragraph 7 and 8 is analogous to paragraphs 9, 10 and 11 of the current operations manual.⁴ However, when the two are compared, it is clear that para. 8 provides much reduced entitlements to type (iii) people: whereas the existing policy guarantees compensation for non-land assets, relocation assistance, “as well as economic and rehabilitation”⁵. The proposed new language only guarantees compensation for non-land assets.</p> <p>To wit, paragraph 9 of the existing policy starts by affirming “Lack of formal legal title to land by any affected people is not a bar to ADB policy entitlements.”⁶ This affirmation is not present in paragraph 7, which discriminates against affected people without legalizable title to land, and places this already-vulnerable group at great risk of further impoverishment.</p> <p>SOLUTION: Insert language at the end of para. 8 that states: The entitlements described in the following paragraphs 9 through 14 apply equally for all three types of displaced persons, except where explicitly noted otherwise.</p>	no
17 SR 48, 49	PP 6 25	<p>Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.</p> <p>Safeguard Requirements 2 does not apply to negotiated settlements, unless expropriation would result upon the failure of negotiations. Negotiated settlements help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly. The borrower/client is encouraged to acquire land and other assets through a negotiated settlement wherever possible, based on meaningful consultation with affected persons, including those without legal title to assets. A negotiated settlement will offer adequate and fair price for land and/or other assets. The borrower/client will ensure that any negotiations with displaced persons openly address the risks of asymmetry of information and bargaining power of the parties involved in such transactions. For this purpose, the borrower/client will engage an</p>	<p>CONCERN: Dilution because Principle 6 and SR para. 25 only guarantee a process for negotiated settlements, but fail to require a specific concrete result. Without a guaranteed minimum result, the disparity in bargaining power between borrowers/clients and affected populations could easily lead to unjust rehabilitation assistance packages.⁷ To ensure that all people are guaranteed the same floor of protections, the entitlements of this policy should apply equally for affected people, regardless of whether acquisitions were negotiated or involuntary.</p> <p>SOLUTION: Insert language into the SRs and the OM explicitly requiring that all negotiated settlements must be at least equal in benefit as what the affected population would have received were their land to be involuntarily acquired.⁸</p> <p>In the SRs on IR, pg. 48, para. 25, add clarifying language to the following two sentences:</p> <p>...A negotiated settlement will offer adequate and fair price for land and/or other assets, and will provide, at minimum, all entitlements that are guaranteed for involuntary acquisitions by the</p>	Both SRs & OM

⁴ ADB OP *supra* note 1 at ¶¶ 9, 10 & 11.

⁵ ADB OP ¶¶ 11, 12 & 13.

⁶ *Id.* at ¶ 9.

⁷ See e.g. ADB, Special Evaluation Study on the Policy Impact of Involuntary Resettlement, September 2000, ¶ 186 (recognizing the necessity for protections to account for the asymmetry of bargaining positions between affected populations and borrower/clients).

⁸ ADB OM *supra* note 1 at ¶ 13 (guarantees include the following: relocation and transfer expenses; assistance for transitional income and livelihood support; compensation for crop or business losses; reestablishment of agricultural or business production; assistance for income restoration; and assistance for restoring social services, social capital, community property, and resources.)

		<p>independent external party to document the negotiation and settlement processes. The borrower/client will agree with ADB on consultation processes, policies, and laws that are applicable to such transactions; third-party validation; mechanisms for calculating the replacement costs of land and other assets affected; and record-keeping requirements.</p>	<p>Policy Principles and Safeguard Requirements of the Policy.</p> <p>...The borrower/client will agree with ADB on consultation processes, policies, and laws that are applicable to such transactions; third-party validation; mechanisms for calculating the replacement costs of land and other assets affected; and record-keeping requirements, all of which must be at least equal to that which is required for involuntary acquisitions under the Policy Principles and Safeguard Requirements of this policy.</p> <p>In the OM, para. 9, in addition to the insertions described above, add a sentence that states: In cases of negotiated settlements pertaining to acquisition of land and assets, the entitlements and protections provided to affected people must be at least equal to those required for involuntary acquisitions under this policy.</p>	
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