

**ASIAN DEVELOPMENT BANK**

**SAFEGUARD POLICY UPDATE**

**A DISCUSSION NOTE**

October 2005

### Abbreviations and Acronyms

ADB	–	Asian Development Bank
CCO	–	Chief Compliance Officer
CSO	–	civil society organization
DMC	–	developing member country
EA	–	environmental assessment
EA	–	executing agency
EMP	–	environmental management plan
IAP	–	independent assessment panel
IEI	–	Innovation and Efficiency Initiative
INRM	–	India Resident Mission
IP	–	indigenous peoples
IPDP	–	indigenous peoples' development plan
IR	–	involuntary resettlement
MDB	–	multilateral development bank
MFF	–	multitranches financing facility
MFI	–	multilateral financial institutions
MIC	–	Middle Income Countries
MRM	–	Management Review Meeting
NGO	–	nongovernmental organization
NPL	–	non-performing loans
OCO	–	Office of Cofinancing Operations
OCR	–	Ordinary Capital Resources
OD	–	Operations Department
OGC	–	Office of the General Counsel
OM	–	operations manual
RRP	–	Report and Recommendation of the President
RSDD	–	Regional and Sustainable Development Department
RSES	–	Environment and Social Safeguard Division
SEIA	–	summary environmental impact assessment
SIEE	–	summary initial environmental examination
SPCM	–	Safeguard Policy Compliance Memorandum
SPD	–	Strategy and Policy Department
SRC	–	staff review committee

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<b>CONTENTS</b>		<b>Page</b>
I.	Introduction	4
II.	ADB's Safeguard Policy Framework	4
III.	Emerging Safeguard Issues	9
IV.	Strengthening the Relevance and Effectiveness of ADB's Safeguards	12
V.	The Update Process	15
VI.	Benefits, Costs, and Risks	17

### **Appendixes**

1. ADB Safeguard Policies: Objectives and Operational Principles
2. Safeguard Policy Compliance Flowchart

## I. INTRODUCTION

1. The Asian Development Bank (ADB) has three safeguard policies: the Policy on Involuntary Resettlement (1995); the Policy on Indigenous Peoples (1998); and the Environment Policy (2002). Pursuant to ADB's reform agenda, there is recognition of the need to enhance the effectiveness and outcome orientation of ADB's safeguard policies, while at the same time streamlining procedures and reducing transactions costs. Consultations in the context of the Middle Income Countries (MIC) and Ordinary Capital Resource (OCR) Country Partnership Framework<sup>1</sup> and the Innovation and Efficiency Initiative,<sup>2</sup> have also highlighted the need to introduce procedural flexibility in the application of safeguard policies while increasing country ownership/capacity in delivering safeguard outcomes. Ongoing multilateral development bank (MDB) harmonization efforts<sup>3</sup> have placed emphasis on the desirability for development partners to harmonize their practices and procedures around country systems, including country safeguard systems.

2. Against this backdrop, a safeguard policy update is being undertaken to enhance the effectiveness of ADB's safeguard policies, and ensure that the policies remain relevant to changing client needs and to new lending modalities and instruments. While each of the individual safeguard policies is due for review at different times over the next two years, there is merit in synchronizing the three reviews to allow one unified consultation process and to identify opportunities for policy integration where appropriate. This note is intended to provide a discussion of key considerations to be taken into account in the safeguard policy update.

## II. ADB'S SAFEGUARD POLICY FRAMEWORK

3. "Safeguard policies" are generally understood to be those operational policies that seek to avoid, minimize, or mitigate adverse environmental impacts, social costs to third parties, or marginalization of vulnerable groups that may result from development projects. The major multilateral development banks have all adopted safeguard policy frameworks, although these differ in their extent and coverage.<sup>4</sup> Although ADB has had environment assessment requirements for more than 20 years, ADB's own safeguard policy framework is currently taken to consist of three operational policies, namely the Environment Policy (2002), the Policy on Indigenous Peoples (1998), and the Policy on Involuntary Resettlement (1995),<sup>5</sup> together with their respective operations manual sections<sup>6</sup> and guidelines (Guidelines on Environment Assessment 2003, Handbook on Resettlement, and the forthcoming Handbook on Indigenous

<sup>1</sup> Under the Reform Agenda, ADB is conducting a strategic exercise, *Enhancing Partnership Framework with Middle Income and Ordinary Capital Resource Countries*, which proposes the adoption of a new business model to maximize the relevance and effectiveness of OCR operations.

<sup>2</sup> The Innovation and Efficiency Initiative (IEI), a special reform mandate launched in late 2003, aims to modernize ADB's business model and is one of the core initiatives of ADB's Reform Agenda. IEI is tasked to identify and propose changes in areas that include procurement of goods, works, and services, cost sharing and expenditure eligibility, financial instruments and modalities, business processes related to country strategy formulation, and project processing and implementation.

<sup>3</sup> 2005. *Paris Declaration on Aid Effectiveness*. Paris High Level Forum, 28 February – 2 March 2005.

<sup>4</sup> The World Bank has 10 safeguard policies: (i) environmental assessment, (ii) natural habitats, (iii) pest management, (iv) forestry, (v) safety of dams, (vi) projects in international waterways, (vii) indigenous peoples, (viii) involuntary resettlement, (ix) cultural property, and (x) projects in disputed areas.

<sup>5</sup> There is no formal definition of ADB safeguard policies. However, three policies are identified as safeguard policies in the Accountability Mechanism Paper (p. 60).

<sup>6</sup> Operations Manual (OM) F1, *Environmental Considerations in ADB Operations*; OM F2, *Involuntary Resettlement*; OM F3, *Indigenous Peoples*.

Peoples Policy). A distillation of the main objectives and operational principles of ADB's existing safeguard policies is presented in Appendix 1. In addition to the three safeguard policies, several sector policies (e.g. water, energy, and forest policies) also include safeguard elements.<sup>7</sup>

4. The safeguard policies are central to achieving sustained development impact and poverty reduction. It is the safeguard policies that are at the front line of ADB's accountability mechanism<sup>8</sup> and compliance review process, since these policies, if properly implemented, help ensure that third parties do not incur material damages, either directly or through environmental media, and thus have no basis for complaint.

#### **A. Current Safeguard Requirements**

5. All three safeguard policies involve a structured process of impact assessment, planning and mitigation to address the adverse effects of projects and programs throughout the project cycle. The safeguard policies require that: (i) impacts are identified and assessed early in the project cycle; (ii) adverse impacts are avoided, minimized, or mitigated; and (iii) affected people are consulted. The requirements are detailed in the OM F1, F2 and F3 sections. The policies share similar implementation processes that: (i) start as soon as potential projects for ADB financing are identified and continue throughout the project cycle; (ii) apply to all projects, including private sector operations and to all project components whether financed by ADB, Government or co-financiers; (iii) require affected people be consulted during project preparation and implementation, and that information is disclosed in a language and form appropriate to them; (iv) involve assessment of impacts and preparation of safeguard documents that summarize impacts and mitigation measures, and arrangements for safeguard integration in project design and implementation; and (v) provide for disclosure to the general public by placing safeguard documentation on the web at various stages in the project cycle.<sup>9</sup>

#### **B. Developing Member Country (DMC) Safeguard Frameworks**

6. In addition to meeting ADB's own safeguard requirements, ADB projects operate in the context of each DMC's own framework of safeguard laws, policies, regulations, procedures, and administrative mechanisms to support implementation of ADB safeguard policies. ADB DMCs have adopted, in varying degrees, safeguard policy, regulatory and administrative frameworks that seek to ensure the sustainability of development activities. The development of such country safeguard frameworks is still evolving and requires substantial technical support and guidance in adopting international best practices and reaching across all sectors and activities. However, the capabilities of the DMCs in development, application, and implementation of safeguard systems differ considerably. In countries that have limited resources and institutional capacities, the structured development of national safeguard policies and institutional mechanisms requires significant policy adjustments, followed by institutional and administrative frameworks that enhance awareness, understanding, and enforcement of those safeguards. ADB's safeguard policies require that both ADB's and the DMC's requirements must be met.

<sup>7</sup> Conversely, the Environment Policy is only partially concerned with environment as a safeguard issue (through its policy element 5, Integrating Environmental Considerations in ADB Operations, paras. 30, 50–70), and also treats environment as a thematic crosscutting issue (policy elements 1–4 on tackling poverty-environment linkages; mainstreaming environment in economic growth; addressing regional and global environment issues; and building partnerships).

<sup>8</sup> *Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism*, May 2003.

<sup>9</sup> ADB's *Public Communications Policy*, approved on 22 April 2005, sets out disclosure requirements for various ADB activities, including safeguards.

### C. The Safeguard Policy Compliance System: Roles and Responsibilities

7. A basic principle of the three safeguard policies is that implementation of the provisions of each policy is the responsibility of the borrower or project sponsor. ADB's role is to explain policy requirements to the borrower, and help the borrower meet those requirements during project processing and implementation. Within ADB, the Operations Departments (ODs) are accountable for safeguard policy compliance and responsible for assisting borrowers to implement the safeguard policies during project preparation and implementation. With the exception of the Private Sector Department,<sup>10</sup> the ODs have been staffed with safeguard specialists (social safeguards, environment) to help them meet safeguard policy requirements. The Environment and Social Safeguard Division (RSES) assists ODs to interpret the policy requirements for specific projects, provides operational support to ODs, and monitors and reports on compliance. It is also responsible for overall policy development, training and capacity building and dissemination of best practices in the form of guidelines handbooks.

8. Based on the mandate assigned to the Regional and Sustainable Development Department (RSDD) in the reorganization of ADB,<sup>11</sup> RSDD established a safeguard policy compliance system in 2002 to monitor compliance with ADB's Safeguard Policy Framework (see Appendix 2 for a flow chart describing the safeguard policy compliance system). ADB's Chief Compliance Officer (CCO), supported by RSES, is responsible for advising Management and ODs on compliance with safeguard policies, and related operational guidelines. Safeguard policy review and compliance monitoring is undertaken throughout the project cycle. At the project identification stage, safeguard risks are identified by classifying projects according to the significance of environmental, involuntary resettlement (IR) and indigenous peoples (IP) impacts. The classification is done by the ODs, and then endorsed by RSES and approved by the CCO. Guidance in the form of instructions, checklists, and guidelines are also provided to project teams to facilitate compliance with ADB safeguard policies. A dialogue is initiated with project team leaders, OD safeguard specialists, and RSES to confirm safeguard measures recommended in the early stages of project preparation. These are discussed with DMC executing agencies (EAs) at early stage of the project cycle.

9. During the project preparation phase, draft environmental assessment reports, resettlement action plans or frameworks, and indigenous peoples planning instruments are prepared by the borrower with the assistance of project teams. These are reviewed by safeguard specialists so that these can be finalized in accordance with ADB policy requirements and DMC's own safeguard requirements. Draft Reports and Recommendations of the President (RRPs) are reviewed to ensure that safeguard plans are properly reflected in project design and costs. At the Management Review Meeting (MRM), a Safeguard Policy Compliance Memorandum (SPCM) is issued by the CCO to advise Management of the status of project compliance. In case a project poses risks of noncompliance, actions are recommended to assure compliance before loan approval. Appropriate covenants are agreed to ensure that safeguard measures are properly reflected in loan agreements. The status of safeguards is again reviewed at a Staff Review Committee (SRC) meeting and ODs take steps to ensure that all requirements are met before loan negotiations and approval.

10. Although the safeguard policy compliance system focuses considerable attention to the project processing and approval phase of the project cycle, ADB's role in monitoring safeguard

<sup>10</sup> The private sector department draws upon safeguard expertise across ADB, primarily from RSES.

<sup>11</sup> *Reorganization of the Asian Development Bank*, 18 Sep. 2001, Appendix 4

compliance continues during project implementation. Supervision missions review project implementation and status of loan covenants, including safeguard provisions. Safeguard planning documentation is finalized on the basis of detailed engineering design. Executing agencies are required to produce environment or social monitoring reports for sensitive projects. Safeguard review missions are fielded, particularly for sensitive or high-risk projects, to ensure proper implementation of safeguard policies. Project Completion Reports and Project Performance Assessment Reports review the actual implementation of safeguards. Lessons learned on safeguards are disseminated to staff in the form of guidelines, handbooks, and best practice papers.

11. In May 2003, ADB approved a new accountability mechanism to provide better access for people adversely affected by ADB-assisted projects to voice and seek solutions to their problems and also report alleged violations of ADB's operational policies and procedures. The mechanism is also an effort to enhance ADB's development effectiveness and project quality. The ADB Accountability Mechanism consists of two separate but related functions: (i) Consultation Phase, led by ADB's Special Project Facilitator – to assist people who are adversely affected by ADB-assisted projects to find solutions to their problems; and (ii) Compliance Review Phase – to establish ADB's accountability in its operations by providing a forum in which project-affected people can file requests for compliance review. The Compliance Review Panel is responsible for this phase. There has been one case reviewed under the current system.<sup>12</sup>

#### **D. Lessons**

12. While the safeguard policy compliance system is still evolving, recent reviews have suggested that it is generally working in terms of ensuring procedural compliance during project processing.<sup>13</sup> The experience of ADB on safeguard compliance have highlighted several issues: (i) unlike procedural compliance, substantive compliance is proving more difficult to achieve; (ii) inadequate attention is being placed on monitoring safeguards during project implementation; (iii) ambiguities exist in the scope and coverage of the safeguard policies; (iv) definitional issues hamper the implementation of the IP policy; (v) where ADB staff and DMC capacities are weak, safeguards can present challenges for project processing and implementation; (v) more clarity is required on what constitutes meaningful consultation and disclosure to affected people.

13. The difficulties encountered in achieving substantive compliance with the safeguard policies are centered on the rigorous application and enforcement of safeguard requirements in the field. The problems associated with enforcement of safeguards during implementation have been noted in the context of loan administration and supervision missions, and have also been highlighted in inspection reports. Identification of impacts, degree of consultations with affected persons and understanding of their needs and priorities, adequate discussions with civil society organizations (CSOs), consistency with country policies and regulatory and administrative systems, monitoring and enforcement of safeguard provisions in loan covenants, adequate reflection of safeguard issues in documentation include tender and contract documents, capacity of institutions tasked with applying those provisions - all those not only represent part of the challenge of applying the safeguards with due diligence and consistency, but also meeting the

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<sup>12</sup> ADB. 2005. *Compliance Review Panel Request No. 2004/1 for the Southern Transport Development Project – ADB Loan 1711-SRI (SF): CRP Final Report*. Corrigendum 1. Manila.

<sup>13</sup> ADB. 2003. *Implementation of the Reorganization of the Asian Development Bank*. Manila; *Report of the Independent Assessment Panel on the Reorganization*, November, 2004.

evolving needs of clients, which include governments and affected persons, with pragmatic and effective responses.

14. Among the safeguard policies, the environment policy has made the most progress in terms of responsiveness to safeguard requirements due to the (i) increased awareness of and capacity to deal with environmental issues, (ii) development of regulatory and institutional structures on both country policy and operational fronts, and (iii) a growing body of implementation experience gained over the last two decades. Nonetheless, while environmental policies and procedures in the DMCs have evolved significantly, institutional capacity remains weak in many countries, and the enforcement and monitoring of environmental management plans during project implementation continue to present particularly important challenges.

15. On resettlement, the general experience has been mixed. ADB resettlement evaluation studies<sup>14</sup> observe that the policy elements remain comprehensive and relevant and adequately address the safeguard concerns in the context of providing fair treatment to people affected by projects. However, there is room for considerable improvement in many practical aspects of resettlement implementation, including: (i) lack of appropriate and compatible national resettlement policy in most DMCs; (ii) lack of funding for resettlement activities; (iii) weak supervision and monitoring of resettlement implementation at both ADB and EA levels; and (iv) lack of adequate disclosure and consultative processes both in preparation and implementation of resettlement plans.

16. As indigenous peoples<sup>15</sup> form a significant part of the population in the region served by ADB in its DMCs (estimated at about 150 million), the need to ensure that development interventions do not disadvantage those groups in project areas is an integral part of operational work. ADB's experience with the application of the indigenous peoples policy has shown that there have been problems in, for example, properly identifying indigenous peoples issues, fully recognizing the appropriateness of livelihood restoration options, the extent of negative impacts associated with increased accessibility, the time needed for communities to adapt to new economic mechanisms and environments, the development of capacities in government agencies, the degree of consultative processes required for effective participation with communities in setting out and implementing agreed development directions, and consistency with the other ADB safeguards in project planning and implementation.<sup>16</sup>

17. In recent years, the growing role of private sector operations as well as the widening range of lending modalities and instruments have increasingly tested the relevance of the safeguard policies and ADB's capacity to respond flexibly and creatively.<sup>17</sup> There are new and emerging financing instruments in ADB operations that have presented particular challenges in both policy interpretation and operational application, such as the approach to safeguard applications in ADB-financed equity investments, securitization, guarantee operations, and complex financial intermediation.

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<sup>14</sup> *Special Evaluation Study on the Policy Impact of Involuntary Resettlement*, September 2000. *Report and Recommendations on Improving Environmental Protection and Supervision of Resettlement Operations During Implementation of ADB Projects*, May 2000.

<sup>15</sup> Defined in the IP Policy as "those with a social or cultural identity distinct from the dominant or mainstream society, which makes them vulnerable to being disadvantaged in the process of development," para. 12.

<sup>16</sup> There were 9 ADB-funded projects requiring indigenous peoples development plans (IPDPs) during 2002–2004. Twelve projects in the 2005–2006 project portfolio are classified as category A projects requiring an IPDP.

<sup>17</sup> Private sector projects increased from 5 in 2002 to 36 in 2004. During 2002–2004, there were 19 private sector projects classified as Category A or B out of a total of 58 projects.

### III. EMERGING SAFEGUARD ISSUES

#### A. Improving Coherence and Clarity

18. Although ADB's safeguard policies share common elements and involve similar implementation processes, some duplication, differences, and inconsistencies among those policies have been observed. For example, the environment assessment process has historically covered all significant environmental impacts and some social impacts, while the coverage of social safeguards is now addressed separately. The policies also differ in their provisions for information disclosure and public consultation, in the manner in which various lending modalities are addressed, and in the level and type of guidance provided for project implementation. In terms of policy coverage, ambiguities exist on the manner and extent to which a project's associated facilities not financed by ADB should be covered, which differs under each of the three safeguard policies. In addition, there are miscellaneous safeguard requirements scattered across several ADB policy and non-safeguard sector policies.<sup>18</sup> A more holistic view of safeguard issues or comprehensive treatment of project impacts is required to address ambiguities and inconsistencies, which thereby strengthen the ability of project teams and EAs in their efforts to ensure that all safeguard provisions are met.

#### B. Balancing Procedural Requirements with a Focus on Implementation

19. The current safeguard policies, and corresponding OM Sections, place considerable emphasis on meeting procedural requirements and milestones during project processing, without a corresponding emphasis on achieving satisfactory safeguard outcomes during project implementation. The timing and sequence of those procedural requirements are not always optimal, and the requirements in themselves do not ensure satisfactory safeguard outcomes. For example, significant effort is expended to prepare draft resettlement plans based on feasibility studies before the MRM, while the most important resettlement planning and implementation activities take place after detailed design, usually during project implementation. Similarly, considerable efforts are placed on refining summary environmental impact assessments (SEIA) reports to meet ADB's 120-day disclosure requirement for category A projects,<sup>19</sup> while substantially less effort is placed on finalizing and implementing robust environment management plans that are the bases for project implementation. In addition, where environmental assessments are weak, the SEIA or summary initial environmental examination (SIEE) is sometimes used as the vehicle for correcting deficiencies without corresponding attention to addressing shortcomings in the underlying assessment undertaken by the borrower. Several reviews have observed that substantially more attention needs to be directed toward safeguards during project implementation.

#### C. Responding to Changing and Diversified Client Requirements

20. Implementation procedures currently prescribed in the safeguard policies represent a "one size fits all" approach. The current safeguard procedures and approaches do not distinguish among the various frameworks, implementation capacities, and track record in different DMCs. Those could be improved to better reflect and accommodate different client needs and widely varying capacities of DMCs to implement safeguards. Consultations undertaken in the context of the OCR Partnership have shown that clients in the public sector

<sup>18</sup> *Gender and Development*, June 1998; *Energy*, June 2000; *Fisheries*, September 1997; *Forestry*, February 1995; *Water*, October 2001; *Health*, February 1999; *Disaster and Emergency Assistance*, May 2004.

<sup>19</sup> Projects are categorized as "A" if they could have significant adverse environmental impacts.

generally agree with ADB's safeguard objectives and principles, but believe that those principles could best be achieved through their own country systems rather than through ADB's own procedures. There is a need to ensure better consistency and convergence in the way in which ADB and DMC safeguard requirements are being met for ADB-financed projects. The application of safeguards needs to take into account the wide range of capacities across EAs in DMCs.

#### **D. Responding to New Lending Instruments and Financing Modalities**

21. There is a need to cater to an evolving range of ADB lending products and innovative financing modalities that are often not well served by the traditional project-level safeguard approach. The current generation of safeguard policies was originally designed at a time when direct project lending was the dominant modality for development assistance. Since the adoption of the policies, the safeguard requirements have been adapted with varying degrees of success to sector loans, financial intermediation loans, program loans, equity investments and guarantee operations. Safeguard requirements designed for new or "greenfield" projects are also not always the most appropriate for existing or "brownfield" projects. In the case of IR and IP, the underlying policies do not specifically address those lending modalities which are covered only in the respective OMs. Thus, the OM requirements go beyond the requirements of the policies. For example, in some cases, such as certain types of equity investments or complex financial intermediation operations, existing resettlement planning instruments are not always appropriate or even relevant.

22. In the context of new instruments, ADB recently approved the pilot application of multitranches financing facility (MFF) under the IEI.<sup>20</sup> The MFF involves the establishment of a debt financing facility to target (i) discrete, sequential components of large stand-alone projects; (ii) slices (or tranches) of sector investments over a longer time frame than the current norm; (iii) financial intermediary credit lines; and (iv) guarantees. In taking the programmatic approach toward investments that such a financing facility would require, it is intended that ADB safeguard policies should not be compromised. However, ensuring that the policies are applied properly might require a new approach to due diligence for safeguard planning and implementation, with a concomitant increase in capacity of staff and agencies that will have to deliver and monitor those safeguards. Such an approach, which is intended to allow more time to develop complete safeguard plans, may justify a safeguard framework approach, but one which also requires greater accountability in downstream implementation.

#### **E. Private Sector**

23. ADB's private sector clients in the financial sector face significant difficulties in ensuring that the safeguards are fully accepted and applied by their borrowers. While for specialized financing institutions in the infrastructure sector the ADB safeguard policies may be appropriate, this may be perceived as less relevant, for example, in the case of microfinance or small and medium enterprises. Other more complex financing structures—for example, the securitization of mortgages or the financing of non-performing loans (NPLs)—raise even more difficult questions on the way in which ADB safeguards should be applied. In the case of mortgages and NPLs that have been extended already, the financial intermediary used is a special purpose vehicle that does not involve a financial intermediary per se, and which represents a unique challenge in the application of safeguards. Therefore, while for traditional infrastructure finance (or project finance), the safeguards remain relevant, the ever-changing business environment,

<sup>20</sup> R194-5: *Pilot Financing Instruments and Modalities*, approved 25 August 2005.

diversified financial products, and increasing complexity of ADB interventions in the financial sector and capital markets, require new and innovative approaches to ensuring that the safeguards are adopted and applied. While the Environment Policy has provisions that are tailored to the needs of financial intermediaries, it provides no modality for dealing with some private sector operations, including special purpose vehicles.

## **F. Harmonization and Capacity Building**

24. There remains a need for continued harmonization of safeguard practices across multilateral financial institutions (MFIs) and their clients. ADB is an active member of the MFI working group on environment which has sought to coordinate safeguard policies and procedures over the last 10 years. In the past two years, progress has been made toward defining a common framework of principles for environment assessment. There has also been convergence on the desirability of adopting more integrated approaches to environmental and social safeguards. MFIs have also recognized the need to go beyond harmonizing approaches amongst themselves, toward harmonizing those with country safeguard systems. The recent Paris Declaration on Aid Effectiveness was endorsed in March 2005, with about 60 partner countries and more than 50 development institutions agreeing to partnership commitments that include working toward greater use of country systems where such capacity exists.

25. The continuing importance of capacity building is a key issue for ADB in meeting its commitment to ensuring adequate understanding by staff and DMCs at both government/agency and civil society levels. Since the policies were developed, there have been several initiatives by ADB to train officials and ensure that the policies are applied consistently in ADB operations. Recognizing that understanding the safeguard policies is particularly important for ADB mission leaders, who are responsible for application of the policies during both project processing and implementation, RSES has been providing structured staff training programs on all three safeguards over the past few years.<sup>21</sup>

## **G. Country Safeguard Systems**

26. In consultations and feedback from operational activities, DMCs have indicated that although ADB's safeguard objectives and principles are generally acceptable, they believe that the desired outcomes could be achieved through reliance on their own country safeguard systems rather than on parallel ADB procedures, which in being applied uniformly across sectors and projects, do not adequately distinguish among the various frameworks, implementation capacities, and track record in different DMCs. The DMCs consider that application of a safeguard systems approach based on country-specific frameworks would not only reduce transaction costs in project processing and implementation, but also enable the countries to build institutional capacity and responsiveness to external financing requirements across sectors, and national and subnational levels.

27. The application of "country systems" involves greater dependence on a country's existing policies and practices when those are equivalent in intent, spirit, and content to ADB policies. The basic rationale for application of country systems includes: (i) scaling up development impact beyond the confines of the individual "ring-fenced" project; (ii) increasing country ownership and sustainability; (iii) facilitating harmonization; and (iv) simplifying and reducing transactions costs. ADB policies do not explicitly refer to the use of country safeguard

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<sup>21</sup> RSES conducted two training seminars on ADB's Environment and Social Safeguards in 2002, and since 2003 has been carrying out three training seminars each year.

systems, but efforts are made during project processing to ensure general consistency between the policy applications (resettlement plans, indigenous peoples plans, environment management plans) and the laws, policies, procedures, and practices of the country in which the project is located. To determine the approach and applicability of country systems, it will be necessary to analyze (i) the degree of commonality (“equivalence”) between country safeguard systems and ADB safeguard policies; and (ii) the DMC’s capacity (“acceptability”) to implement country safeguard systems in terms of implementation practices, track record, and capacity of relevant national, subnational, and sector institutions.

28. The World Bank’s Board has approved a pilot phase to test the use of country safeguards systems in World Bank projects, in close consultation with other MFIs. This will involve 14 selected pilot operations over the next two years. Four issues are central to this process: (i) the policy framework that will govern World Bank’s use of country systems, (ii) the methodology and tools for assessing country systems, (iii) World Bank and borrower accountabilities, and (iv) short and long term incremental costs of the transition to country systems.

#### **IV. STRENGTHENING THE RELEVANCE AND EFFECTIVENESS OF ADB’S SAFEGUARDS**

##### **A. Updating the Safeguard Policy Framework**

29. The safeguard policy update is being undertaken to increase the effectiveness and results orientation of the existing safeguard policies. There is considerable scope to consolidate safeguard requirements currently scattered across various sector and safeguard policies, rationalize safeguards documentation at different stages of the project cycle, optimize ADB’s internal resources for safeguard review and compliance, avoid unnecessary duplication between ADB and borrower processes, and strengthen incentives to build DMCs’ own capacities and ownership to deliver safeguards.

30. The safeguard policy update will explore several possibilities, including:

- Better integrating the three safeguard policies, and various safeguard elements in sectoral policies, to improve coherence, clarity, and internal consistency, and exploit streamlining possibilities. This will include the possibility of adopting a single safeguard policy statement instead of three separate policies each with their own separate implementation procedures and processes.
- Balancing emphasis on procedural requirements during project processing with greater attention to satisfying safeguard requirements during project implementation. This could include adopting a framework approach to resettlement planning where key policy elements, institutional arrangements, and process issues are embodied in a framework agreed with borrower/sponsor before Board approval, with full resettlement plans being prepared on the basis of detailed engineering design.
- Providing opportunities to tailor safeguard approaches to different clients with different capacities, including allowing selective use of country safeguard systems in those countries (or sectors or regions within countries) where there is an appropriate policy and regulatory framework, adequate implementation capacity, and established track record to deliver on safeguard requirements.

- Building institutional capacity and optimizing ADB's internal safeguard implementation and compliance review processes, including allocation of safeguard resources to critical points in project cycle (e.g., to ensure integrity of safeguard process during implementation).

31. The safeguard policy update is expected to result in a simple and straightforward policy statement on safeguards. This safeguard policy statement would clearly describe the purpose of the safeguard policies and their role in promoting quality and development impact. It would also set out general operational principles for achieving safeguard policy objectives. It would not include detailed procedural requirements which would instead be addressed separately in revised OM Section(s) and the relevant guidelines/handbooks.<sup>22</sup> The policy statement could encompass either a fully integrated *suite* of separate, but consistent safeguard policies, or a single unified policy covering all safeguards. The policy statement would not dilute the spirit or intent of the current set of policies, but seek to distinguish policy directions and operational applications to ensure that there is clarity and consistency in implementation of the policies.

32. A crucial first step in the update process is to achieve consensus around the key objectives and operational principles of ADB's safeguard policies that would form the core of ADB's safeguard policy statement. The essence of the safeguard policies is in ensuring that the planning and implementation of ADB projects does not result in adverse social and environmental impacts, as well as looking to development effectiveness of those policies. The initial distillation of the objectives and operational principles presented in Appendix 1 represents the core concepts around which the policy statement will be developed. It is expected that the policy objectives and operational principles could be applied across the full range of lending operations and client countries, while the actual procedures to be followed could be tailored to different circumstances.

33. The safeguard framework approach may be a particularly useful way of dealing with varied circumstances and the uncertainties that are inherent in the planning processes associated with safeguards, and allow greater focus on ensuring that basic tenets are reflected in more detailed instruments developed during project implementation. For example, in sector projects, detailed designs are not prepared during project processing, with the result that resettlement plans are formulated on the basis of inadequate, and sometimes, imprecise information contained in feasibility reports. Agreement on a framework that sets out the policy applications clearly at an early stage ensures commitment by governments and agencies to the preparation of more complete resettlement plans after detailed designs are completed. This is especially useful as it also allows for more participation by affected persons in the process of selecting among alternatives.

## **B. Immediate Measures**

34. As an integral part of the safeguard policy update process as it evolves over the next several months (see Section V: The Process Update), some immediate measures have been identified that will help improve the overall effectiveness of safeguards, but which do not require changes to the underlying policies. During the update process, diagnostic assessments of issues associated with implementation of the three safeguard policies will be prepared and recommendations made on actions that can be implemented in parallel with the update process.

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<sup>22</sup> RSES is currently preparing a revised *Handbook on Involuntary Resettlement* as well as a *Handbook on Indigenous Peoples*. The environment assessment guidelines are already in modular format with a view to continuous refinement.

## 1. Procedural Measures

35. The current OM Sections F1, F2, F3 will need to be revised and re-issued after the proposed safeguard policy statement is considered by the Board in November 2006. However, during the update process, it is possible to issue revised OM sections on an interim basis without amending the underlying policies, particularly for IR and IP, in which there are considerable “policy plus” procedural requirements introduced in the respective OM F2 and F3. The key changes for OM F2 and F3 will consist of including prescriptive detail in the forthcoming Handbooks on Resettlement and Indigenous Peoples, and providing procedural and definitional clarity to be consistent with the existing IR and IP policies, and ADB operations.

## 2. Internal Processes

36. Opportunities exist to optimize and streamline the internal safeguard compliance processes within ADB. Such improvements could be applied in parallel with the policy update, for example, in project categorization, internal compliance documentation, involvement of safeguard specialists at various stages of the project cycle, and allocation of safeguard resources.

37. In recent years, one of the major concerns in implementing the safeguard provisions in projects has been the optimal allocation of safeguard specialists across ADB. Safeguard staff at ADB often face great difficulty in meeting the demands of an increasingly complex and demanding portfolio. Staff members in RSES need to be increasingly involved in operations support in the context of complex/sensitive projects, while safeguard specialists in ODs can take greater responsibility or compliance monitoring of routine projects. It is clear that presence of safeguard staff at resident missions, in close proximity to issues and stakeholders, can help achieve results. Safeguard specialists should assist in developing and implementing safeguard plans, and be readily available to respond to requests for advice on policy application and operational situations. The presence of such field staff would allow for perceptible improvement in addressing such issues as ensuring structured consultations and participatory processes and clear documentation based on field realities. A first step toward meeting such demands could be to have more safeguard staff deployed at Resident Missions or national staff recruited to take on the expanded role in oversight of safeguard policies at all stages of the project cycle and in supporting client capacity building. The role would include reviewing and approving safeguard plans and monitoring safeguard application during project implementation, and area in which proximity and ability to provide timely response would be decidedly valuable. The process would include training of field-based staff combined with mentoring by safeguard specialists at HQ.<sup>23</sup>

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<sup>23</sup> For example, during 2003-2005, the India Resident Mission (INRM) engaged, for a period of 18 months, a Resettlement and Social Development Specialist to review projects and assist processing missions involved in transport and energy projects. INRM also used the services of an Environment Specialist, who although engaged as coordinator for a cluster technical assistance, also assisted processing missions and reviewed project under implementation in infrastructure. INRM also conducted training programs at the request of some executing agencies (Indian Railways, Power Finance Corporation), on ADB involuntary resettlement and environmental policies and procedures. Another example is the PRC Resident Mission, which has also recruited a full-time resettlement specialist.

## V. THE UPDATE PROCESS

### A. Timeline for the Policy Update

38. The current timeline includes: (i) discussion note for circulation in October 2005; (ii) draft policy working paper (W-Paper) by December 2005; (iii) Board consideration of W-paper in April 2006; and (iv) Board consideration of the policy paper (R-Paper) in November 2006. Informal Board seminars will be scheduled at key points in the process.

### B. Consultation Process

39. The safeguard policy update will benefit from informed inputs from a wide range of stakeholders, including DMC clients, private sector, other development partners and civil society. It is likely to stimulate considerable interest among stakeholders with potentially divergent views on the future evolution of ADB safeguard policies. In view of the potential sensitivity of safeguard issues, the process will require significant consultation and consensus building. The consultative process will take place on three planes: internal consultations; external consultations with governments and development partners as well as with civil society, including nongovernmental organizations (NGOs); expert panel reviews.

40. The internal consultative process is crucial to ensuring that there is institutional commitment to the directions and outcomes of the update. A Steering Committee has been formed with Director General RSDD in the chair, and comprising the ODs, Office of the General Counsel (OGC), Strategy and Policy Department (SPD), and Office of Cofinancing Operations (OCO). The Committee will provide senior management guidance on the update paper. A Working Group has also been formed, with representatives from the OGC, ODs, SPD, and OCO that will review work in progress and liaise with operational staff on feedback and experiences in planning and applying the safeguards in operations. In addition, there will be informal consultations with staff across sectors that will further strengthen institutional consensus on the approaches taken. A high-level panel of experts covering the three safeguards will be invited to review the policy update paper.

41. The external consultations will be complex, involving agencies and institutions with different perspectives, and diverse development interests and objectives. However, the groups share a common interest in ensuring that development projects financed by ADB avoid or minimize adverse impacts caused by those projects and that appropriate mitigative measures are developed and agreed with the stakeholders, especially affected persons. The external consultations will involve governments of both developed and developing countries, NGOs, multilaterals, bilaterals, and agencies and institutions that are closely involved in processing and implementing ADB-financed projects. The consultations will also include representatives from the private sector who are involved in ADB-financed projects either directly or through financial intermediary routes.

42. Rather than embarking on the three separate external consultation processes for each of the safeguard policies, it is envisaged that a single combined consultation process will be undertaken. However, the consultative process will involve a two-stage process approach, in which a discussion paper will be posted and opened to discussion for a 90-day period of comments, based on which a policy working paper will be posted for discussion through various fora of stakeholders for a similar period. This will allow an evolving and fully interactive consultative process during which ideas can be exchanged on directions followed by structured comments on the proposed policy, thus allowing opportunities for policy integration to be

identified and exploited where appropriate. The proposed process recognizes that all consultations form part of an evolutionary approach, and that ADB missions, MDB discussions, exchanges with NGOs, meetings with governments and institutions—all represent continuing consultations that will contribute toward developing outcomes during the structured meetings in the second phase. In organizing the consultation process, considerable assistance will be required from apex institutions to ensure as wide and appropriate a representation as possible given that all countries cannot be visited, and all institutions may not be able to attend. All participants will receive discussion documents at least three weeks prior to any consultative workshops.

43. The external consultative process will involve electronic exchanges through e-mail and website discussions for which a safeguards website has been developed with links to the existing three policies, OM sections, and handbooks. At the consultation meetings, discussions will be structured around presentations by ADB on the proposed integrated policy statement, feedback sessions, and documentation of discussions that will then be posted on the web. The update discussion will be a dedicated session with modules that present the ADB strategy and recent experiences in each of the thematic areas; this will be followed by thematically based group discussions that will take into account CSO views and experiences. The plenary will present feedback and recommendations to ADB, followed by a meeting summation. Some CSOs may request special meetings to discuss specific thematic issues (these should be broad-based, not project-specific) and possibly, field visits where appropriate. Typically, the consultation workshops will be 1-2 days, with ADB providing support, on a limited basis, to participants who cannot finance their participation at country consultations.

44. The consultation process will include:

- five subregional consultations (Mekong, Southeast Asia, Central Asia, South Asia, Pacific).
- five or more country consultations – at least one from each of five subregions, with close involvement of Resident Missions (for example, India, People’s Republic of China, Indonesia, Kyrgyzstan, the Philippines, and Viet Nam).
- consultations in North America, Europe and Japan
- website, electronic and mail consultations, which will run in parallel with consultation workshops
- external expert reviews of the policy paper

45. The consultation process began with a short statement posted on ADB’s website announcing the policy update (18 July 2005) and eliciting views on key issues. The Discussion Note is being placed on the web in October for a 90-day comment period, following which a working paper (W-Paper) will be posted for discussion during another 90-day period. The W-Paper will be finalized and submitted to the Board of Executive Directors, with simultaneous web posting. A Restricted Paper (R-Paper) will be developed on the basis of comments and feedback on the W-Paper, to be submitted to the Board in November 2006, and simultaneously posted on the web.

## **VI. BENEFITS, COSTS, AND RISKS**

46. The costs and benefits of the policy update relate to the ability of ADB to respond to the new and changing socioeconomic context of the region with effective medium-term adaptations that set the basis for long-term evolution of safeguard policies and operational procedures. That

approach will allow a steady and informed institutional response that reflects best practices in safeguard planning and implementation with the full participation of stakeholders in the process.

## **A. Benefits**

47. The main benefit of the update and eventual policy statement with revised operational procedures would be to enhance the relevance and effectiveness of ADB's environmental and social safeguards. At the project level, the clear outcomes would be in seeing perceptible improvements in project implementation that would ensure that development objectives are met and that benefits reach the intended beneficiaries in a timely and constructive manner. A major benefit would be in achieving a more realistic approach to implementing the policies. A shared understanding of safeguard requirements would help improve country ownership, target capacity building efforts, and reduce transaction costs. Capacity building would be a significant focus during the update process, taking place not only at the client level, but also within ADB so that with policy and operational clarity, mission leaders are made more fully aware of their roles and responsibilities with respect to the safeguards, and are able to integrate issues and concerns more effectively.

48. A greater emphasis on the achievement of policy objectives and operational principles would place emphasis on results rather than procedural requirements. This would allow innovation, and facilitate adaptation of safeguard processes to realities of DMCs on the ground. The need for demonstrable development effectiveness would drive project development and implementation. The policy update focus on development effectiveness will strengthen DMC capacities in implementing safeguards, the realization of which benefit must also require close involvement of communities and CSOs. The update will recognize that the safeguard process must continue to evolve in being responsive to changing circumstances. At ADB, a significant benefit would be that with greater policy and operational clarity, and understanding of safeguard applications using new financing instruments, there would be enhanced institutional capability to implement the safeguard policies. Strengthened institutional structures and resource allocation would allow more field-based responsiveness to project needs.

## **B. Costs**

49. Direct costs of the safeguard policy update process are currently estimated at 1 full-time professional staff for a period of 14 months, together with approximately 30 person-months of consultant inputs to assist in expert reviews and the policy consultations, and about \$250,000 for regional consultations.

50. The costs associated with implementing the updated safeguard framework will be determined with further analysis during the update process. The costs will have to be assessed from various perspectives. For example, in the countries in which ADB business processes associated with the updated policy and operational guidelines are improved, there may be a reduction in transaction costs owing to having more streamlined procedures in place. On the other hand, the assessments of commonality and capacity may demonstrate the need for greater capacity building efforts with concomitant increase in technical inputs and resources. At ADB itself, the costs of redeployment, staffing at Resident Missions, and realignment of skills to ensure more effective planning, monitoring, and capacity building in the DMCs will certainly vary from one country to another, and the overall budget implications will require careful analysis. However, it is clear that there will have to be a greater shift in resource concentration to the implementation phase. Although the resource implications will be reviewed during the update process, it is likely that there will need to be a strengthening of the safeguard supervision

process, particularly given the emphasis on making the downstream implementation effort more effective. Even with the potential to apply a country systems approach on a selective basis, ADB would remain accountable for due diligence, and as such, will have to have qualified staff to ensure that any development activities do indeed meet safeguard policy and procedural requirements. In addition, there may also be staff and cost implications associated with the need for increased upstream analytical and capacity development work

### **C. Risks**

51. The safeguard policy update is intended to strengthen the effectiveness of ADB's safeguard policies in delivering results. This will bring benefits, but the process will entail some risks. For example, there may be the perception that the safeguard policy update will dilute or undermine ADB's safeguard policies, or reduce ADB's accountability for ensuring that safeguards are implemented, particularly with selective application of country systems. There may also be substantial differences between the expectations of DMCs, developed country members, and civil society on the appropriate directions for the safeguard policy update. Further, some stakeholders, including within ADB, may consider that transaction costs may increase with the growing complexity of current operations.

52. The perception of dilution of ADB policy intent will be addressed by reaffirming through the update and consultative processes that the policy fundamentals of the three safeguards will be maintained. The overall risks will be managed by ensuring that the purpose and intent of the policy update is properly communicated, by conducting a fully transparent and substantive consultation process with all stakeholders, and by maintaining close coordination with the World Bank and other development partners in the context of harmonization and working toward adoption of a country safeguard systems approach. The perception of higher transaction costs will also be addressed in discussions on approaches to country systems. Internally, while ADB staff will be encouraged to discuss improvements to the current safeguards, and identify alternative business processes, they will be called upon to deliver the intent of development programs and improve the effectiveness of that delivery.

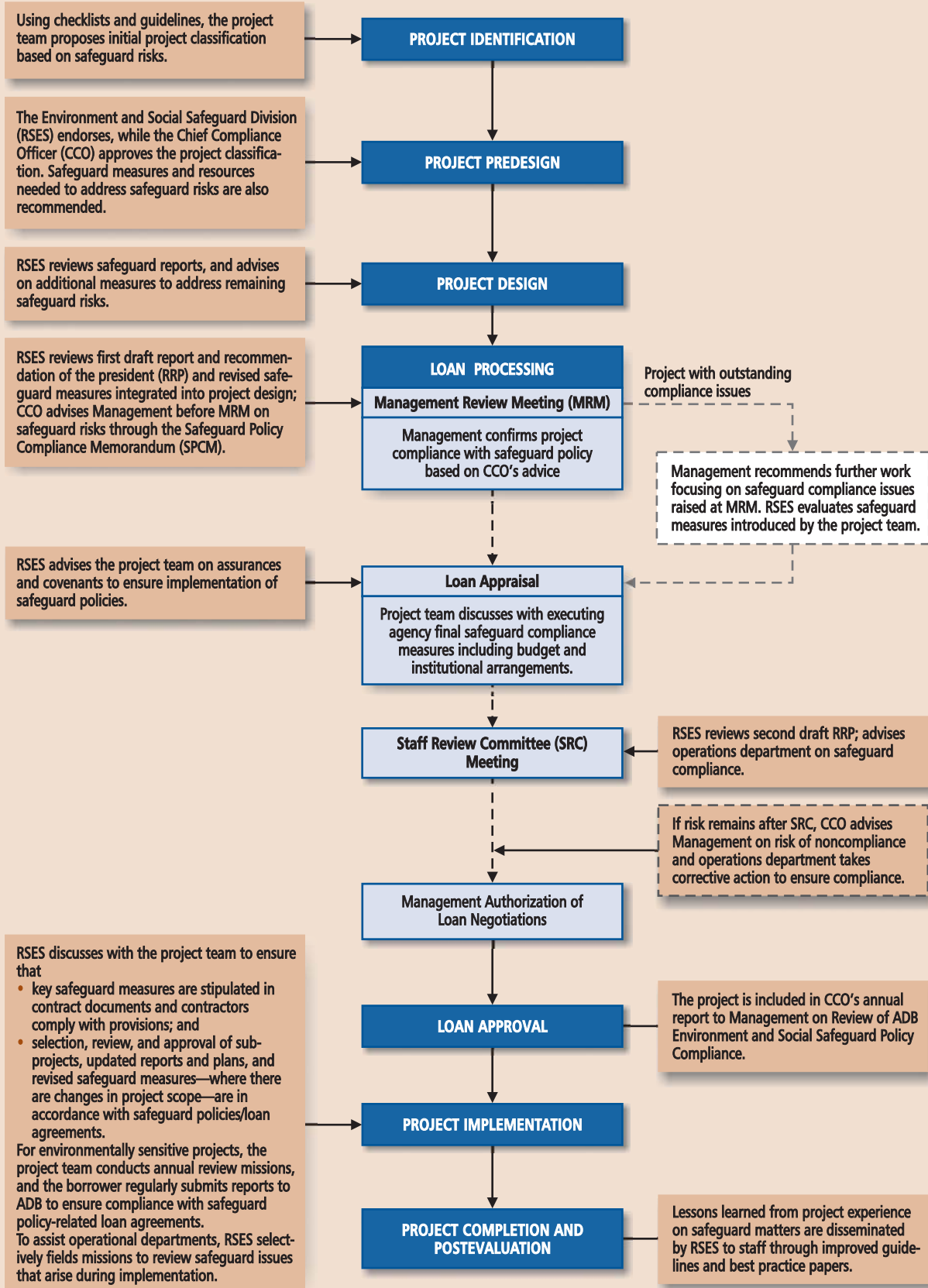
**ADB Safeguard Policies: Objectives and Operational Principles**  
**DRAFT**

<b>Policy</b>	<b>Objectives</b>	<b>Operational Principles</b>
<b>Environment (2002)<sup>24</sup></b>	<p><u>Sustain</u>: Ensure the environmental soundness and sustainability of development projects.</p> <p><u>Integrate</u>: Integrate environmental considerations into the decision making process.</p>	<ol style="list-style-type: none"> <li>1. Screen each proposed project as early as possible to define the scope of Environmental Assessment (EA) covering all project components, whether or not financed by ADB.</li> <li>2. Assess potential impacts on physical, ecological, socio-economic, and cultural resources, taking into account direct, and, as relevant, indirect, cumulative and induced impacts.</li> <li>3. Assess feasible alternatives (e.g., technical and siting or routing, and other alternatives, as appropriate).</li> <li>4. Avoid, minimize, or mitigate adverse project impacts and enhance positive impacts through environmental management plans (EMPs) that include least-cost mitigation measures, environmental monitoring requirements, related institutional arrangements, and budget.</li> <li>5. Use the EA findings to influence the proposed project design.</li> <li>6. Achieve environmental standards, and justify deviations in the EA report when alternatives to the standards for the project or site are selected.</li> <li>7. Comply with applicable legal and other requirements that relate to the project's potential environmental impacts.</li> <li>8. Involve stakeholders including project-affected groups and local NGOs in the preparation process through early and continuing consultation.</li> <li>9. Disclose relevant information on the project's environmental issues to project-affected groups and local NGOs as early as possible in the project cycle in an appropriate form, manner, and language(s) accessible to those being consulted. Disclose the EA report to the general public.</li> <li>10. Ensure implementation of the provisions of the EMP agreed with the borrower during the EA process.</li> <li>11. Apply above principles to (i) subprojects, and (ii) any major change in project scope during implementation.</li> </ol>
<b>Involuntary Resettlement (1995)</b>	<p><u>Avoid</u>: Avoid involuntary resettlement wherever feasible.</p> <p><u>Minimize</u>: Minimize population displacement if resettlement is unavoidable by choosing alternative viable project options.</p>	<ol style="list-style-type: none"> <li>1. Assess at an early stage in the project cycle the potential involuntary resettlement impacts, identifying to the extent possible, all potential economic and social impacts caused by displacement, whether or not through land acquisition (maintaining the principle that lack of formal title to land should not be a bar to compensation and resettlement assistance), including numbers of affected persons, loss of productive assets, and restriction of access to traditional user rights, such as forests.</li> <li>2. Develop a resettlement plan on the basis of the assessment during project processing, with the intent that</li> </ol>

<sup>24</sup> The matrix addresses the fifth element of the Environment Policy, which concerns safeguard issues.

Policy	Objectives	Operational Principles
	<p><u>Mitigate</u>: Where involuntary resettlement is unavoidable, ensure that affected people receive assistance, preferably under the project, so that they would be at least as well off as they would have been in the absence of the project.</p>	<p>the plan will guide refinement of impact estimates and mitigative measures as project parameters are finalized.</p> <ol style="list-style-type: none"> <li>3. Explore viable alternative project designs to avoid and/or minimize involuntary resettlement.</li> <li>4. To reflect that their needs, priorities and preferences are adequately addressed, ensure that there are adequate consultations with and participation by affected persons—including the poor, vulnerable, and women—host communities, local authorities, and civil society on all aspects of involuntary resettlement, particularly in setting out entitlements and eligibility for compensation benefits and development assistance, grievance redress mechanisms, and alternative project design options.</li> <li>5. Disclose the resettlement plan and other relevant information in a form and language(s) accessible to key stakeholders, civil society, particularly affected groups and NGOs, and the general public.</li> <li>6. Ensure that in seeking compatibility of the policy with the legal, policy, administrative, and institutional frameworks of the country in which the project is located, resettlement practices are applied that reflect the intent and spirit of the policy.</li> <li>7. Assist in building capacity in DMCs on best practices in involuntary resettlement planning and implementation.</li> </ol>
<p><b>Indigenous Peoples (1998)</b></p>	<p><u>Recognize</u>: Ensure that development interventions are compatible in substance and structure with affected indigenous peoples' social, cultural, and economic institutions, and that the interventions are consistent with the needs and aspirations of those peoples.</p> <p><u>Mitigate</u>: Design and implement projects to ensure that affected persons and populations are at least as well-off as they would have been in the absence of development interventions.</p> <p><u>Benefit</u>: Ensure that indigenous peoples benefit from development interventions.</p>	<ol style="list-style-type: none"> <li>1. Screen at an early stage of project processing the potential impacts on indigenous peoples, who are identified through criteria that reflect their social and cultural distinctiveness, including indigenous language, self-identification and identification by others, presence of customary institutions, or collective attachment to land.</li> <li>2. Undertake meaningful consultations with affected indigenous peoples to solicit informed participation in designing and implementing measures, as well as considering pragmatic and feasible options, that will (i) avoid adverse impacts, or (ii) when avoidance is not feasible, minimize, mitigate, or compensate for such impacts in ways that are culturally appropriate, and gender and generationally inclusive.</li> <li>3. In situations in which significant adverse impacts on indigenous peoples have been identified, prepare an indigenous peoples plan that includes specific measures and approaches to address those impacts.</li> <li>4. Disclose the indigenous peoples plan and other relevant information in a form and language(s) accessible to key stakeholders, including civil society, particularly affected groups and NGOs, and the general public.</li> <li>5. Ensure that the policy is considered and applied within the context of national development policies and approaches of the country in which the intervention is located.</li> <li>6. Assist in building capacity in DMCs on ways in which economic development of indigenous peoples may be achieved using cross-country sharing of experiences and institutional development initiatives</li> </ol>

### Safeguard Policy Compliance\*



\* The flowchart describes the activities done for SPC review and monitoring for a typical project.