

**BOARD OF DIRECTORS
DEVELOPMENT EFFECTIVENESS COMMITTEE**

**CHAIR'S SUMMARY OF THE COMMITTEE DISCUSSIONS
ON 27 SEPTEMBER 2006 AND 9 OCTOBER 2006**

Independent Evaluations of ADB's Safeguard Policies

1. In November 2005, in the process of reviewing the proposed work program of the Operations Evaluation Department (OED) for 2006–2008, the Development Effectiveness Committee (DEC) recommended that an independent evaluation by OED precede Management's planned review of ADB's safeguard policies. OED had originally proposed evaluation of the safeguard policies in 2008, after updates of the policies had been considered by the Board in 2006. DEC argued that the value and impact of independent evaluation would be greater *before* rather than after Management review of the policies. The findings of the evaluations could thus be fed into the Management review and the Board's consideration of updated or revised policies. Accordingly, the evaluations were advanced to 2006.

2. Furthermore, DEC recommended that sufficient time be allowed between completion of the evaluations and preparation of the Board W-paper (the working paper to be discussed by the Board, after being posted on the ADB website for public consultation for a 90 day period, and before a final policy paper with Management's recommendations, or R-paper, is considered by the Board). This way an effective feedback process involving further consultation could take place. It was likely that some fundamental issues would be identified in the consultation process and through the evaluation, that would require more than a "fine tuning" of the policies. At the same time, Board consideration of Management proposals for safeguard policy revisions should not be delayed beyond 2007 given their importance to ADB operations.

3. Management agreed with DEC's recommended approach and process. Consequently, OED has completed its evaluations of the safeguard policies for the environment and involuntary resettlement. Given their potentially contentious nature and that various stakeholders are known to have differing views on the policies, DEC decided to discuss the evaluations individually at separate meetings. The goal set by DEC members for themselves was to identify the most central issues and to try to narrow differences of views through an objective consideration of the issues.

Special Evaluation Study on Environmental Safeguards

4. On 27 September 2006, DEC discussed OED's independent assessment of the effectiveness of ADB's Environment Policy. On 21 September, Management had given its response to the evaluation. The evaluation focused on safeguards with respect to actual environmental impacts of ADB-supported projects and any positive catalytic impact in non-ADB funded projects. Based on its review of the report, DEC considered that the process it had recommended—to allow time for an independent evaluation to feed into Management's review of the policy—had yielded useful results: it served to raise many of the right questions for the review; the issues identified and recommendations made addressed not only implementation of the policy but also provisions in the policy itself; and, by its response to the evaluation, Management started the critical corporate-level dialogue that would lead to the policy review.

5. DEC members found the Management response comprehensive and many of Management's reservations about certain report findings reasonable. However, DEC advised Management not to find fault in the methodology used for the evaluation, which had to be accomplished under severe time constraints, and not to adopt a defensive stance on some of the report's recommendations since these were "directional" rather than firm, intended to suggest areas for priority consideration in the policy review.

6. DEC affirmed that, especially in the light of the critical state of the environment in the region, the objectives and principles of the policy on environmental safeguards could not be compromised. Rather the debate should revolve around the key issue of effective policy implementation under the resource constraints faced by ADB. The current imbalance between policy requirements and resource availability has, as documented in the evaluation, impeded satisfactory implementation of the policy in some ADB-assisted projects. How this imbalance can be resolved remains the key consideration in moving forward.

7. DEC also takes this opportunity to respond to the formal memorandum issued by a Board director, not a member of DEC, expressing concern about a recommendation in the OED study to reduce the present requirement for the posting of SEIAs for category A projects and SIEEs for B sensitive projects on the ADB website at least 120 days before Board consideration of loan approval. DEC understands the reasons for the concern and has forwarded the full memorandum as an input to the Management review. It is DEC's understanding, however, that the evaluation study's recommendation is only for the upcoming policy review to consider any potential or perceived issues in relation to the disclosure rule and that an outright reduction in the disclosure period is not necessarily put forward as a recommendation. Indeed, several Board as well as staff participants at the DEC meeting made the point that, rather than the length of the disclosure period, it may be the *timing and timeliness* of the SEIA/SIEE that may pose difficulties in relation to the project consideration process. In this context, the director general of the Regional and Sustainable Development Department (RSDD) informed the DEC that a modified document management system, to be administered by the Department of External Relations (DER), will collect full IEE and EIA reports as well so that these may be available upon request.

8. Three areas that require further discussion among DEC members before clearer directions for a consensus can be reached are the following:

- a) While there is full agreement with the Paris Declaration on moving toward adoption of harmonized country systems for environmental safeguards, there remains a range of views on how this should be accomplished. Some DEC members feel that the existing project-based standards were designed more to protect ADB than the environment. They question whether it is reasonable to ask developing member countries (DMCs) to meet standards in ADB projects that arguably they could not meet in domestically financed activities. They believe that stronger overall environmental outcomes could be achieved more efficiently if the focus changed to upgrading country systems for overall environmental management. Other members envision a more cautious, sequential, and evolutionary process, integral to which is building country capacity to deliver and enforce its own safeguard requirements in order to achieve results equivalent to those aimed at by ADB policy.
- b) While there is broad agreement on the need to strengthen collaboration among all stakeholders, there remains some disagreement on the degree and depth of continuous partnership with NGOs, including use of NGOs for third party monitoring.

- c) DEC agrees with Management's view that, while there is merit in ensuring consistency and synergies across the safeguard policies and procedures, the issue of "integration" of environmental and social safeguards, what this means in practice and what the advantages and disadvantages would be needs to be further debated in the DEC, with supporting analysis by staff.

9. Nevertheless, based on the DEC discussion, there are certain key directions on which DEC members have reached agreement to recommend to Management in moving forward on the policy review. These are as follows.

- i) While DEC notes the concerns of the DMCs regarding the transaction costs of policy implementation, it must be understood from the onset that the driving objective of the policy review must be that of achieving the desired results of a sustainable environment through implementation of an appropriate environment policy and not that of reducing perceived constraints brought about by the policy on the competitiveness of ADB products.
- ii) In relation to Recommendation 1 of the OED report, DEC considers that, rather than a "refocusing" in the environment policy, it is a balancing between the dual objectives of compliance to safeguards and achievement of positive environmental results that is called for. This implies a balance of attention between loan processing and project implementation, and between project level interventions and country level system capacity development. In this context, DEC was reminded by staff that, in a previous classification system, ADB had initiated inclusion of a category 'D' to capture and credit projects that contributed to positive environmental benefits, but this was later abandoned in the process of harmonization with other MDB systems. DEC recommends that a new business model incorporating such overall balance should replace the business model dwelling on compliance in the current policy.
- iii) In relation to Recommendation 2, DEC considers the strengthening of the environmental capability in resident missions to be critical.
- iv) In relation to Recommendation 5, DEC considers that the primary responsibility for achieving the desired environmental results rests with the country. What is needed is a practical and agreed framework for stakeholder collaboration in applying safeguards to achieve optimum, sustainable results. DEC recommends that the updated policy define such a framework with the objective of ultimately relying on the country system.
- v) In relation to Recommendation 6, DEC recommends that the revised policy incorporate a "flexible" implementation approach that distinguishes between medium-term steps and milestones and the desired long-term standards so that a progressive achievement of sustainable results becomes more realistic for ADB, given its resource constraints, and for the country, given resource and capacity constraints.

10. Finally, DEC recommends that between now and the time a W-paper is circulated to the Board, staff consultation with Board members and other key stakeholders be undertaken through an iterative, instead of one-time, process. DEC considers such a process critical to achievement of stakeholder agreement on, and ownership of, an updated or revised policy.

Special Evaluation Study on Involuntary Resettlement Safeguards

11. On 9 October 2006, DEC discussed OED's independent assessment of the effectiveness of ADB's 1995 Policy on Involuntary Resettlement (IR). On 5 October, Management had given its response to the evaluation. The evaluation has identified issues and

made recommendations for consideration in the proposed update of the IR safeguard policy. Based on its review of the report, DEC considers that, as in the case of the environmental safeguards policy, the process it had recommended—allowing time for an independent evaluation to feed into Management’s review of the policy—has yielded useful results.

12. At the outset, DEC made it clear that it considers the stretch of 11–12 years before a formal policy review is submitted to the Board for consideration to be excessive and failing to comply with the requirements in the original policy. The 1995 IR Policy, as approved by the Board, required annual progress reports for the Board and a policy review, including recommended modifications, after 2 years. While progress reports on policy implementation were submitted by Management in 1997 and 1999, which included reporting of significant expansion of the requirements of implementation of the 1995 policy, no policy review with recommended policy modifications was submitted to the Board for approval, even when ADB reorganized its business processes in 2002. DEC considers this a lapse in internal good governance in relation to the IR policy. Such lapse is further highlighted by the highly controversial perceptions among stakeholders—including affected persons—surrounding ADB IR policy implementation. In this light, the upcoming policy review Board paper is expected to clearly specify the changes proposed in reference to the 1995 policy, the reason and purpose for each proposed change, and the resource implications.

13. As in the case of environment policy implementation, the key issue facing IR policy implementation is that of binding constraints in ADB, the staff resource constraint in particular. The policy review needs to address this issue fully and realistically.

14. The three areas specified in paragraph 8 in reference to the environment safeguard policy, which require further discussion in the DEC before some consensus can be reached, similarly hold in the case of IR safeguard policy. However, there appears to be significantly less divergence of view on engaging affected persons and civil society persons to assist in IR monitoring in addition to consultants.

15. Specific to IR considerations, DEC members share a view that while the policy should correctly set high standards, its application in country and project specific contexts involves a complicated social process that requires time and common sense, and by which standards and results may be achievable only in a progressive manner. This means that the policy is not necessarily compromised by an approach that explicitly follows a roadmap with progressive milestones that, in the medium term, leads to satisfactory results for affected persons. While DEC is concerned about the transaction costs of policy implementation, it is also concerned about the opportunity costs of countries and ADB shying away from good projects that involve IR and the marginal costs of “reaching the last affected person” in implementing the policy. Some DEC members propose replacing the “no one worse off” requirement with a less onerous provision.

16. DEC generally endorses the directions set out in the recommendations of the evaluation report. In particular, DEC recommends that the revised policy paper:

- (i) recast the IR policy in a comprehensive results framework covering both the country-level safeguard system and the impact on affected persons at project level, clearly defining what ADB wants to achieve and how this is envisioned to be achieved;
- (ii) within such a framework, provide clear guidelines on the principles, degree, and approaches by which flexibility may be exercised in application of the policy. Such guidelines should in particular address the issue of how results of the “no person

- worse off” aspiration are to be measured in practice or replace this provision with a more workable undertaking that advances the broad intent of the policy less rigidly;
- (iii) given the evaluation’s finding that ADB technical assistance (TA) may have found a niche in IR policy development and capacity building in client countries, enhance the role of TA as a matter of good practice by defining a framework for such TA in the country partnership strategy (CPS) ;
 - (iv) provide an agreed policy and practical guidelines on squatter rights, incorporating a small number of widely agreed basic principles with sufficient flexibility to allow local regulations and provisions to apply in the majority of cases; and
 - (v) specify how ADB will assist in the transaction costs incurred by countries to implement the IR policy.

17. The review of the IR policy, to which the independent evaluation report feeds into, should be undertaken by ADB as a delayed but nonetheless prime opportunity to make further headway toward better results on this highly charged development issue. DEC believes that a necessary condition for effective use of this window for improvement is to carry out a reasonable process of open and inclusive dialogue involving *all* stakeholders particularly on issues that are not clear cut. Management is encouraged to ensure such a dialogue, which may require an iterative process exceeding ADB’s conventional consultation activities.

Comments of NGO Forum on ADB

18. After the DEC meetings, on 3 November 2006, committee members received and, by this Chair’s Summary, publicly acknowledge the comments of the NGO Forum on ADB on the two evaluation reports, respectively entitled “Safeguarding Safeguards” and “Stocktaking ADB’s Role in Displacement”. These stakeholder comments have been forwarded to the staff directly involved in the policy review and, with the agreement of the NGO Forum, have also been publicly posted on the ADB website, accompanying the evaluation reports.

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 22 December 2006