

**Asian Development Bank's (ADB) Safeguard Policy Update (SPU)
CONSULTATION with SOUTH ASIA CIVIL SOCIETY ORGANIZATIONS
Taj Palace Hotel, New Delhi, India, 18 January 2008**

Civil Society Organizations: South Asia Consultation Report

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**Asian Development Bank's (ADB) Safeguard Policy Update (SPU)
CONSULTATION with SOUTH ASIA CIVIL SOCIETY ORGANIZATIONS
Taj Palace Hotel, New Delhi, India, 18 January 2008**

1 Purpose of the Consultation Report

As a core part of its Safeguard Policy Update (SPU) process, the ADB is holding 10 country / sub regional stakeholder consultation workshops. These workshops are occurring to provide the ADB's various stakeholders in government, the private sector, academe, affected people and civil society, as well as other multilateral financial institutions and development agencies, an opportunity to seek clarification and provide comments on the Consultation Draft of the Safeguard Policy Statement (SPS). These workshops are only one forum for stakeholders to provide comments. ADB is also expecting to receive written submissions from its stakeholders and their organizations. Participants of the workshops are invited to provide additional comments to ADB.

The purpose of this Consultation Report is to provide a summary of the comments and discussions that occurred during the recent Consultation for South Asia Civil Society Organizations. A draft report was circulated to stakeholder participants and participating ADB staff for comment and verification. Their contributions have been incorporated into this final report, which is posted on the SPU website (<http://www.adb.org/Safeguards/about.asp>).

2 Workshop Participation

The Consultation for South Asia Civil Society Organizations (CSOs) is the fourth of a series of workshops involving external stakeholders of ADB. Representatives of CSOs in South Asia were the target participants for this consultation. Because of the large number of CSOs that communicated their interest and could not be accommodated in the New Delhi Consultation, and having experienced success with the single-stakeholder consultation involving the Indigenous People's group in November 2007, ADB opted to provide a special consultation venue for South Asia CSOs on 18 January, 2008.

A total of eighteen (18) participants, from non-government organizations (16 NGOs) and academe (2) from Bhutan, India and Sri Lanka participated. This less than expected number may be attributed to the call for non-participation in the ADB Safeguard Policy Update consultations issued just prior to the New Delhi workshop by CSO networks. (Attachment A provides the List of Participants)

3 Introduction to the Workshop

Mr. Nessim J. Ahmad, Director, Environment and Social Safeguard Division, RSES, ADB, welcomed the participants and informed them that the India Consultation was the fourth in an ongoing series of Consultations for ADB's Safeguard Policy Update. He stated that the first two days (16-17 January 2008), involved a multi-stakeholder consultation while the third day (18 January 2008) was a single-stakeholder meeting dedicated to civil society organizations to accommodate prior requests from NGO networks to provide greater opportunities to participate in the SPU discussion process.

He stated ADB's vision is that of a region, which is free from poverty and its mission, is to reduce poverty and improve the quality of life in Asia. He stressed that safeguards are central to

the mission of ADB in poverty eradication, and related the present review of ADB's long term strategic framework with the safeguard policy update.

According to him, these consultation workshops have three goals:

- Enhance ADB's understanding of stakeholders' perspectives.
- Establish shared understanding of safeguard objectives, principles, and requirements.
- Inform the formulation of the updated policies.

The main expected output of the SPU, he said, is a consolidated Safeguard Policy Statement (SPS), which would bring together the existing three safeguard policies and various safeguard elements currently scattered across sector and thematic policies such as the water policy, the forest policy and the energy policy. (Attachment B provides the provides the Rationale, Objectives and Scope of SPU presentation)

This introduction was followed by a discussion of the day's activities and schedule by the Facilitator, after a brief round of introduction amongst the participants. (Attachment C provides the Agenda)

4 Overview of the Proposed Safeguard Policy Structure, Policy Statements and Policy Delivery Process

Ms. Xiaoying Ma, SPU Task Manager, provided an overview of the Consultation Draft of the Safeguard Policy Statement by emphasizing key differences on the policy structure, principles requirements, and delivery process. She emphasized that the document is in draft form for consultation purposes and will continue to evolve based on the comments and suggestions of stakeholders. The consultation draft provides a basis for developing a W-paper (draft policy), followed by an R-paper (final policy). (Attachment D provides the Overview of Safeguard Policy Statement presentation)

The presentation was followed by a clarifications and comments:

Language of the Consultation Draft:

- It was remarked that that language in the document is very important. One observation was that the government would prefer general language while NGOs like specific language. It was suggested to make the language more clear.
- Especially on the issue of disclosure - Language is important. It must be clear for whom is the disclosure meaningful: Government, NGO or local communities. It was noted that for many, the website cannot be accessed. There is huge gap between what is written in policies and documents and what we understand. One should ensure that messages reach down to grassroots. Monitoring inclusiveness and exclusiveness need to be specified and the role of community institutions in information dissemination and feedback need to be defined as part of the policy.

Information Disclosure

- Some suggested that free and prior sharing of project information with the IP and the community be included. Before financial support is approved for the project, how would the proponent share the information with the local community? And how can ADB assure that processes would make the people understand the logic/rationale (pros and cons) of the project in their language?

Broad Community Support

- A concern raised was how to ensure that the term Broad Community Support is not manipulated.

NGO Participation in Monitoring

- Some stated that limiting the involvement of NGOs in monitoring to only highly complex and sensitive projects is not desirable. NGOs participation in monitoring of other projects is essential.
- A suggestion was to establish a sustained mechanism for consultations at various levels of CSO.

Grievance Mechanism

- The grievance mechanism was supported. There were comments that it is important to accommodate and articulate local voices of people and their concerns/grievances.

Involuntary Resettlement

- A comment given was that socio-cultural displacement, which is different from physical and economic displacement, should be mentioned. If a community is displaced from its socio-cultural setting to a new one, serious consequences must be acted upon.
- An observation was that with respect to the IR policy in the draft, the term “compensation” pertains to monetary compensation based on titles and assets. But tenants’ rights to cultivation is not recognized, similar is the case of artisan group, who do not have assets. Social networks, socio cultural settings are their basis of livelihood, so in new locations these never regenerate. The update must consider this aspect.
- A question raised was how safeguards address the psychological impact of road building; and what are the processes involved in explaining how the anticipated economic boom will impact on the community. It was put forward that there may be a need to provide social counseling and psychological counseling
- An opinion shared was that the reluctance of some to be resettled was due to fears they will lose their livelihood. It was suggested that skills development and capacity building programmes are made part of livelihood restoration and rehabilitation. This would guarantee that people are better off and lifestyles restored. The next generation can be prepared for future participation, when industry could provide services if not direct jobs.

Country Safeguard Systems

- There was an opinion that country safeguard systems are not a bad option. But given the history in democracies where we work in aggregate terms, when some people object, and they are a minority, their objections get disregarded. The borrower may be responsible but development governance is also the responsibility of ADB.
- The current requirement of the Government of India to conduct Social Assessment and Social Audit can be applied right from preparation stage of the project. Before allowing any project, all the social assessments need to be done.

Environment Impact Assessment

- A question raised was whether there is a time frame for reviewing and updating the EIA or social impact assessment. If there are delays in the project, and social disruption results, how is this factored in the impact assessment?
- Another question was whether the policy addresses consequent future changes, such as vehicular traffic related pollution or socio cultural changes such as building of structures on the roadside, etc.

Policy Implementation

- It was remarked that for India, at the present time, there are sufficient resources for the Government to fund their own projects. In this situation, ADB loans, which require safeguard compliance, become unattractive.
- A concern raised was on accountability of borrowers - how do you hold them accountable and if they do damage, how to penalize?

Other concerns

- A participant mentioned about the boycott call given by groups of the Civil Society Organizations to this meeting and termed it as unfortunate. He stressed that this workshop should be taken seriously and mechanisms should be worked out to get their inputs.
- Another expressed serious concern that this CSO consultation should have maximum representatives. The reduced participation of CSOs should be taken into account and ADB should take note of it.
- Some remarked that two stakeholders are missing from the consultation: (i) the contractors and (ii) the implementing agencies.
- It was also observed that two aspects need stronger emphasis (i) gender analysis and (ii) peace, conflict and ethnic issues.
- Some observed that it is good to have Safeguard policies and Safeguard Systems as Government may not always be pro-poor and pro-citizens. However, the current approach is project based and often does not translate down to strategies. There must be consistency in the principles promoted through the ADB safeguards and the assistance ADB extends to help shape the country strategy.
- One observation that referred not only for ADB but for other multilateral projects was that projects generally ignore the traditional water or resources conservation measures, thereby raising questions on sustainability. It is essential for ADB to ensure the safeguard policy update addresses this concern.
- In addition, some noted that adequate attention should also be given to the working environment. This refers to ensuring occupational safety in relation to employment opportunities and income generation programs that may be introduced in conjunction with ADB assisted projects.

5 Preliminary Results of Assessments of Country Safeguard Systems

- Mr. Prasad Modak, ADB Consultant, presented the Preliminary Results of Assessments of Country Safeguard Systems conducted in five countries namely: Kyrgyz Republic, Philippines, India, People's Republic of China, and Vietnam as part of the Regional Technical Assistance (RETA) No 6285 - Strengthening Country Safeguard Systems (CSS). He also explained the methodological framework followed for the study. (Attachment E provides the Preliminary Results of Assessments of Country Safeguard Systems presentation). The following lists the questions and points of interest raised in the ensuing discussion:
 - How were the comparisons among the 5 countries done?
 - There are positive practices and instruments in some countries worthwhile sharing. How can these can be accessed and shared?
 - For a country wanting to develop its country system, what are specific steps to follow? There is a need to outline the procedure and a suggestion was to provide a checklist describing the process. During consultation process how is ADB going to address CSS related issues with implementers and local NGOs?

- One good practice to monitor gap-filling measures that was shared involved the use of a matrix for assessment measurement compliance. Some NGOs have developed the same for tracking compliance to their declarations.

6 Wrap Up

ADB thanked everyone for participating in the day-long deliberations. It was stated that civil societies are independent watchdogs and voices of the people. ADB is drawing inputs from this vibrant group across the region to firm up its safeguard policy.

It was informed that the draft workshop report would be shared with all participants and it would be finalized after incorporating comments and feedbacks received. Each one was encouraged to use the SPU website and post their comments up anytime throughout the Consultation period. It was ensured that each comment would be taken into account and a matrix would be developed in which the comments and staff response would be recorded. The W-paper formed after the comments are received would be kept in the website for 30 days for comment before Board consideration.

The workshop was concluded by once again thanking everyone for participating and contributing to the discussions.

Attachment A – List of Participants

ADB's SAFEGUARD POLICY UPDATE (SPU)
Consultation with Civil Society Organizations
Taj Palace Hotel, New Delhi, India, 18 January 2008

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ADB's SAFEGUARD POLICY UPDATE (SPU)
Consultation with Civil Society Organizations
Taj Palace Hotel, New Delhi, India, 18 January 2008

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ADB's SAFEGUARD POLICY UPDATE (SPU)
Consultation with Civil Society Organizations
Taj Palace Hotel, New Delhi, India, 18 January 2008

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ADB's SAFEGUARD POLICY UPDATE (SPU)
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Taj Palace Hotel, New Delhi, India, 18 January 2008

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Attachment B – Agenda

**ADB's Safeguard Policy Update (SPU)
CIVIL SOCIETY ORGANIZATIONS CONSULTATION
Taj Palace Hotel, 18 January 2008**

AGENDA

18 January 2008

- 8:30 - 9:00 Registration
- 9:00 – 9:20 Opening Remarks: Rationale, Objectives and Scope of SPU
Mr. Nessim Ahmad, Director, Environment and Social Safeguard Division (RSES), ADB
- 9:20 – 9:30 Agenda and Ground Rules for Consultation
Ms. Suki Feliciano, Facilitator
- 9:30 – 10:45 Overview
- ADB's Proposed Safeguard Policy Structure,
 - Proposed Policy Objectives, Principles, Requirements and Delivery Process
- Ms. Xiaoying Ma, SPU Team Leader, ADB*
- 10:045 –11:00 Tea Break
- 11:00 - 12:30 Plenary Clarification/ Discussion on Proposed Safeguard Policy Statement
Ms. Suki Feliciano, Facilitator
- 12:30 - 2:00 LUNCH
- 2:00 - 3:30 Presentation and Discussion:
Preliminary Results of Assessments of Country Safeguard Systems
Mr. Prasad Modak, ADB Consultant
- 3:30 – 3:45 Closing Remarks
Mr. Nessim J. Ahmad, Director, RSES, ADB

Thank you for your valuable feedback. We wish you safe travels back home!

**Attachment C – *Rational, Objectives and scope
of the SPU*, Presentation by
Mr Nessim J. Ahmad, Director,
Environment and Social Safeguard Division,
RSDD, ADB**

Safeguard Policy Update

Civil Society Organizations
South Asia Consultation
18 January 2008

Nessim J. Ahmad
Director
Environment and Social Safeguard Division,
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Outline

- About ADB
- About Safeguard Policies and Why Update
- Objectives & Scope of Safeguard Policy Update
- Goals of the Consultations
- SPU Timeline



About ADB

- ADB is a multilateral development financial institution
- Owned by 67 members, 48 from the region and 19 from other parts of the globe
- ADB's vision: a region free of poverty
- ADB's mission: help its developing member countries (DMCs) reduce poverty and improve the quality of life of their citizens

The ADB logo consists of the letters "ADB" in a white, sans-serif font, centered within a solid black square.

3

About ADB (cont.)

- Ongoing review of ADB Long-Term Strategic Framework
- Innovation and Efficiency Initiative
- ADB's Policies & Strategies, and Works in Progress

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4

About Safeguard Policies

- ADB has three safeguard policies
 - Environment Policy (2002)
 - Indigenous Peoples Policy (1998)
 - Involuntary Resettlement Policy (1995)
- Objectives of the safeguard policies
 - to avoid, minimize, or mitigate adverse environmental impacts, social costs to third parties, or marginalization of vulnerable groups that may result from development projects

5



Why Update?

- Changing circumstances in DMCs
- Emerging best practices in public and private sectors, and across MFIs
- New ADB lending modalities/financing instruments beyond current policies
- Lessons learned from ADB's experience

6



Objectives/Scope of SPU

Enhance the relevance and strengthen the effectiveness of ADB's safeguard policies by

- Improving clarity, coherence and consistency
- Balancing a front-loaded procedural approach with one more focused on results during implementation
- Adapting policies to match an evolving range of lending products and innovative financing modalities
- Working towards greater harmonization with safeguard practices across MFIs and tailoring safeguard approaches to different clients with different capacities and
- Improving internal processes and resource allocation.

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Current Status

- ADB announced the safeguard policy update (SPU) in July 2005
- A Discussion Note on the SPU was posted on website for comments in October 2005
- Special Evaluation Studies done during 2006/2007 and posted on website along with Management responses
- A Consultation Draft of the Safeguard Policy Statement was posted for comments in October 2007
- Consultation Workshops (Nov 2007 to March 2008)

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Consultation Workshops

Consultation Workshop	Date
Central and West Asia (Bishkek)	14-15 November 2007
Indigenous Peoples (Manila)	26-27 November 2007
Southeast Asia–Philippines (Manila)	28-29 November 2007
South Asia (New Delhi)	16-17 January 2008
East Asia (Beijing)	To be announced
Pacific (Sydney)	30-31 January 2008
Civil Society Organizations (Manila)	February 2008
Mekong (Hanoi) + Indonesia	Early March 2008 (tentative)
Japan, Europe, and North America	To be announced

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Goals of the Consultation Workshops

- Enhance ADB's understanding of stakeholders' perspectives
- Establish shared understanding of safeguard objectives, principles, and requirements
- Inform the formulation of the updated policies

10



General Questions for Consultations

- Are the stated objectives and scope for each safeguard area appropriate?
- Are the principles stated clearly and critical to achieving the objectives?
- Are the requirements for borrowers/clients likely to deliver the principles?
- What implementation challenges do you foresee?
- Any gaps or areas for improvement?
- What concepts or terms need further elaboration?

11



After the Consultations

- Consultation Workshop Reports and formal comments – compilation ongoing
- Policy Working Paper - mid 2008 (web posting, additional 30-day comment period)
- W-paper (Draft Policy) for Board consideration – 3rd Quarter 2008
- R-Paper (Final Policy) for Board consideration – 4th Quarter 2008

12



Thank You

For more information, please visit
<http://www.adb.org/Safeguards/about.asp>



Attachment D – Overview: *Proposed Safeguards Policy Statement*, Presentation by Ms Xiaoying Ma, SPU Team Leader, ADB

Safeguard Policy Update

Civil Society Organizations South Asia Consultation

New Delhi
18 January 2008

Xiaoying Ma
Senior Environment Specialist, RSDD



Outline

- Key Features of the Consultation Draft
- What's New and Key Differences:
current vs. proposed
 - (i) safeguard policy structure
 - (ii) policy scope, principles and requirements
 - (iii) policy delivery process



Consultation Draft of the Safeguard Policy Statement

- Is in draft form for consultation purposes
- Will continue to evolve based on comments and suggestions of stakeholders
- Provides a basis for developing a W-paper (draft policy) followed by an R-paper (final policy)

Key Features

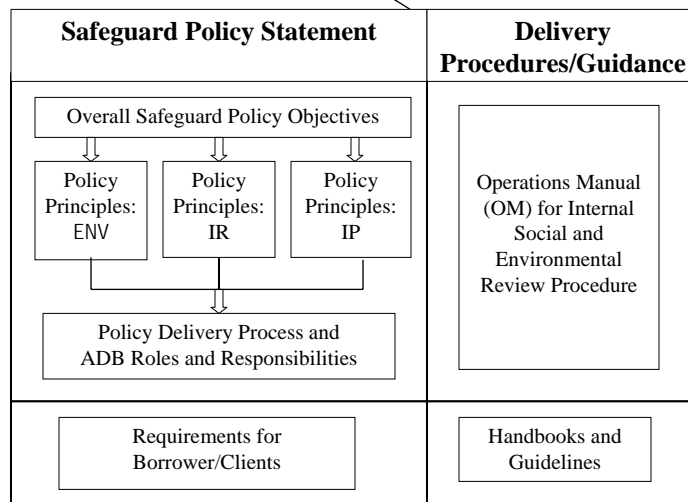
- Principle based, not rule based
- Emphasis on results delivery, not front-loaded procedural approach
- Focus on country priorities and capacities, not ADB centered
- Harmonized with other MFIs' best practices, not inconsistent approach
- Consolidated and explicit, not fragmented and ad hoc

Outline

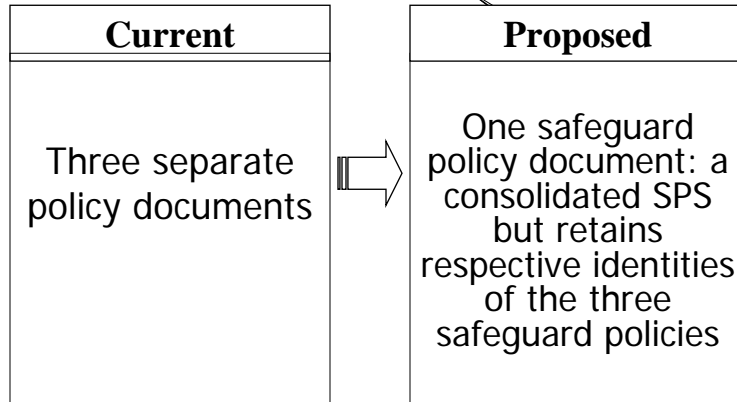
- Key Features of the Consultation Draft
- What's New and Key Differences: current vs. proposed
 - (i) safeguard policy structure
 - (ii) policy scope, principles and requirements
 - (iii) policy delivery process



Proposed Safeguard Policy Structure



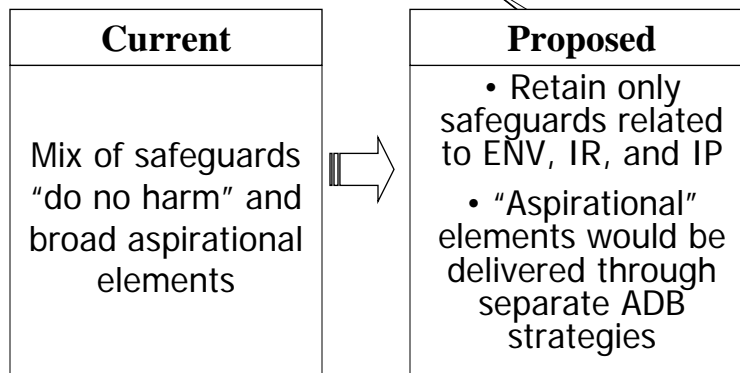
Key Difference: *Policy Integration*



7

ADB

Key Difference: *Scope – Focusing on Safeguards*



8

ADB

Outline

- Key Features of the Consultation Draft
- What's New and Key Difference: current vs. proposed
 - (i) safeguard policy structure
 - (ii) policy scope, principles and requirements
 - (iii) policy delivery process

The proposed Principles & Requirements on Environmental Assessment:

- Generally consistent with the principles and requirements on environmental assessment of the current policy
- Requires more comprehensive scope for environmental assessment by clearly defining project area of influence that includes the (i) primary project site(s) and related facilities, (ii) associated facilities, (iii) cumulative impacts, and (iv) induced impacts
- Requires assessment of trans-boundary and global impacts including climate change

The proposed Principles & Requirements on Environmental Assessment (Cont.):

- Requires early and ongoing engagement with affected people and communities by carrying out free, prior and informed consultation and facilitating participation
- Requires establishment of a grievance mechanism

Key Difference: *Principles & Requirements on Environment Safeguards*

Current	Proposed
Mix of principles and procedural requirements on <ul style="list-style-type: none">• environmental assessment	A clear and comprehensive set of principles and requirements for borrowers on <ul style="list-style-type: none">• environmental assessment• biodiversity and natural resources• pollution prevention and abatement• physical cultural resources

The proposed Principles & Requirements on Involuntary Resettlement:

- Generally consistent with the principles and requirements set out in the current policy
- More clearly defines economic and physical displacement
- Adds the coverage of restricted access to legally designated parks and protected areas



13

The proposed Principles & Requirements on Involuntary Resettlement (Cont.):

- Requires that projects screen at early stage to identify their past, present and future involuntary resettlement impacts
- Emphasizes protection to the poor and vulnerable groups by improving the standards of living of affected vulnerable groups to comply at least with national minimum standards and provide those in rural areas with legal and affordable access to land and resources, and those in urban areas with legal and affordable access to adequate housing.



14

The proposed Principles & Requirements on Involuntary Resettlement (Cont.):

- Requires ongoing engagement with affected people and communities by carrying out free, prior and informed consultation, informing affected people of their rights and options, and facilitating informed participation
- Requires establishment of a local independent grievance mechanism



15

Key Difference: *Scope - Policy on Involuntary Resettlement*

Current	Proposed
Loss of land, means of livelihood, social support systems, or way of life as a result of the project intervention	Policy Scope is clearly defined as: <ul style="list-style-type: none"> • <u>physical displacements</u> (loss of residential land, shelter or relocation) • <u>economic displacements</u> (loss of lands, assets, access to assets, income sources and means of livelihoods) • as a result of involuntary acquisition of land, involuntary restriction on land use, and involuntary restriction of access to legally designated parks and protected areas



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The proposed Principles & Requirements on Indigenous Peoples:

- Generally consistent with the principles and requirements set out in the current policy
- Clarifies the operational definition of Indigenous Peoples
- Clarifies the policy triggers
- Requires early and on-going engagement of affected communities by obtaining their broad community support to the project, through a process of free, prior, and informed consultation



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The proposed Principles & Requirements on Indigenous Peoples (Cont.):

- Requires that commercial development of the cultural resources and knowledge of Indigenous Peoples is conditional upon their prior agreement to such development
- Requires establishment of a grievance mechanism



18

Key Difference: *Operational Definition of IP*

Current	Proposed
<ul style="list-style-type: none">(1) descent from population groups present in a given area, most often before modern states or territories were created and before modern borders were defined;(2) maintenance of cultural and social identities, and social, economic, cultural and political institutions separate from dominant societies and cultures.(3) self-identification and identification by others;(4) a linguistic identity different from that of the dominant society;(5) economic systems oriented more toward traditional systems of production than mainstream systems;(6) unique ties and attachments to traditional habitats and ancestral territories and natural resources;(7) Determination of a distinct identity based on applicable national law	<p>A distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:</p> <ul style="list-style-type: none">(i) self-identification and recognition of this identity by others,(ii) collective attachment to geographically distinct habitats or ancestral territories and to the natural resources in these habitats and territories,(iii) presence of distinct customary cultural, economic, social or political institutions, and(iv) indigenous language

19

ADB

Key Difference: *Scope – Policy on Indigenous Peoples*

Current	Proposed
No equivalent provision	The Policy is triggered if a project impacts directly or indirectly on the dignity, human rights, livelihood systems, or culture of Indigenous Peoples, or affects the territories, natural or cultural resources that Indigenous Peoples own, use, occupy or claim as an ancestral domain or asset.

20

ADB

Key Difference:
*Consultation with and Participation by
Indigenous Communities*

Current	Proposed
<ul style="list-style-type: none"> • Initiatives should be conceived, planned, and implemented, to the maximum extent possible, with the informed consent of affected communities (para 31). • The Policy must ensure that Bank interventions affecting IP are ... (iii) conceived, planned and implemented with the informed participation of affected communities ... (para. 58) 	<ul style="list-style-type: none"> • Undertake free, prior, and informed consultations with affected communities to solicit their participation (i) in designing, implementing and monitoring measures, and (b) in tailoring project benefits for them in a culturally appropriate manner. • In deciding whether to proceed with the project, ascertain that the Indigenous communities provide their broad support to the project



Key Difference:
*Consultation with and Participation by
Indigenous Communities (Cont.)*

Current	Proposed
<p>No equivalent requirements</p>	<ul style="list-style-type: none"> • Requires that the borrower/client ascertain whether the affected Indigenous communities provide their broad support to the project, and where there is such support, the borrower/client provide documentation that details the process and outcomes of consultation • ADB will, through review of the borrower/client's documentation and its own investigation, assure itself that there is broad community support for the project within the affected communities • ADB will not finance the project if it is unable to ascertain such support exists



The proposed Principles & Requirements on Indigenous Peoples (Cont.):

Broad community support (BCS) is a collective expression by the affected communities, through individuals and/or their recognized representatives, in support of the project. There may be broad community support even if some individuals or groups object to the project

23



Outline

- Key Features of the Consultation Draft
- What's New and Key Difference: current vs. proposed
 - (i) safeguard policy structure
 - (ii) policy scope, principles and requirements
 - (iii) policy delivery process

24

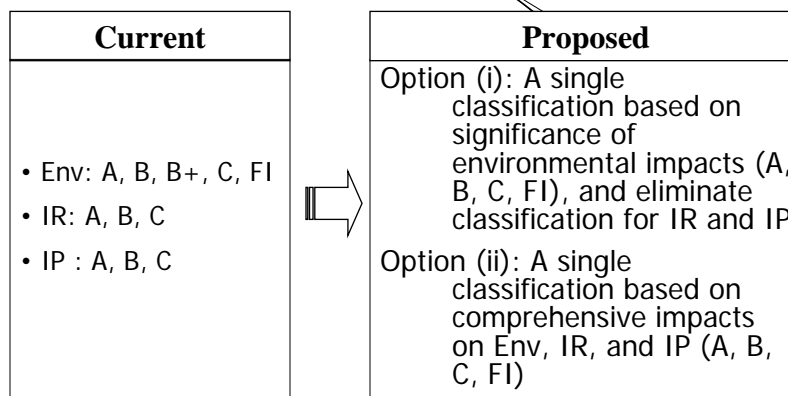


Policy Delivery Process *Screening and Scoping*

ADB will carry out screening at the earliest stage of project preparation

- to determine the significance of potential impacts or risks that a project might present
- to identify the level of assessment and institutional resources required
- to determine disclosure requirements

Policy Delivery Process *Screening and Scoping – Project Classification*



Policy Delivery Process ***Information Disclosure***

ADB will post on its website:

- Draft environmental assessment, involuntary resettlement plan, and Indigenous Peoples Plan before appraisal
- Monitoring reports submitted by borrowers/clients during project implementation



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Policy Delivery Process ***Information Disclosure (Cont.)***

ADB will require the borrower/client to disclose to key stakeholders:

- Draft environmental assessment, involuntary resettlement plan, Indigenous Peoples plan
- New or updated plans and corrective action plans during project implementation, if any
- Monitoring reports



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Policy Delivery Process ***Due Diligence and Review***

ADB will conduct safeguard due diligence and review the borrower/client's safeguard documents to confirm:

- all impacts are identified
- adequate measures to avoid, mitigate or compensate for adverse impacts incorporated
- the borrower/client understand ADB's requirements with the necessary commitment and capacity
- appropriate roles of third parties are defined
- consultation activities are undertaken



29

Policy Delivery Process ***Monitoring and Reporting***

ADB will require the borrower/client to:

- Establish monitoring procedure
- Verify compliance and progress of the safeguard measures toward the intended outcomes
- Document monitoring results and identify corrective actions, if any
- Retain qualified external experts or qualified NGOs to verify its monitoring information, for highly complex and sensitive projects
- Submit periodic monitoring reports and disclose to key stakeholders



30

Policy Delivery Process ***Monitoring and Reporting (Cont.)***

ADB will

- Conduct periodic site visits
- Review monitoring reports submitted
- Work with the borrower/client to rectify any failures
- Require appointment of independent environmental and/or social experts to verify monitoring reports for highly complex and sensitive projects

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Operational Definition: ***Highly Complex and Sensitive*** ***Projects***

Highly complex and sensitive projects are those deemed by ADB to have significant, complex, multi-dimensional and generally inter-related potential social and/or environmental impacts. Those projects tend to affect an area broader than the sites or facilities subject to physical works.

32



Policy Delivery Process ***Strengthening and Use of CSS***

ADB will consider application of CSS when

- The borrower/client proposes it at the national/sub-national/sectoral/agency level
- ADB's assessment verifies that
 - (i) CSS (objectives and principles) are equivalent to ADB's
 - (ii) The borrower/client has capacity to deliver the principles



33

Specific Requirements ***Strengthening and Use of CSS (Cont.)***

Determining Equivalence

- country, sector, or agency level assessment
- ADB is responsible for assessing and determining the equivalence
- ADB and the borrower/client agree on action plan for strengthening CSS as needed
- Joint assessment with other MDBs are encouraged and use of recent assessments of other MDBs are allowed



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Specific Requirements ***Strengthening and Use of CSS (Cont.)***

Determining Acceptability

- project level assessment
 - ADB is responsible for assessing and determining whether the borrower/client has capacity to deliver the applicable principles
 - ADB and the borrower/client agree on action plan for capacity building as needed
 - The assessment will be done as part of project design process

Specific Requirements ***Strengthening and Use of CSS (Cont.)***

Project Implementation

- For projects that use CSS, ADB's responsibility for safeguard due diligence and review will not be removed before Board approval
- After Board approval, ADB's supervision will follow the same procedures as for any other ADB-financed project

Specific Requirements

Strengthening and Use of CSS (Cont.)

Scope of CSS Application

- Use of CSS will be policy by policy – a borrower/client may qualify for a CSS approach for one, two or for all three safeguard policy areas

Exclusion

- CSS will not be applied to highly complex and sensitive projects

Thank You

ADB Safeguards Website:
<http://www.adb.org/Safeguards/about.asp>

Comments:
safeguards_update@adb.org

**Attachment E – *Preliminary Results of Assessments of Country Safeguard Systems*,
Presentation by ADB Consultants: Gregory
Guldin, Prasad Modak and Mohammad Zaman**

Country Safeguard Systems

(Preliminary Observations of Assessments in Select DMCs)

Regional Consultations: India

January 2008

ADB Consultants:

Prasad Modak, Gregory Guldin, Mohammed Zaman

1

Background

- October 2004, concept paper on updating of the Safeguard Policies (SP)
- Regional Technical Assistance (RETA) No 6285 --assess and develop approaches to strengthen Country Safeguard System (CSS), December, 2005

2

Objectives RETA 6285: Strengthening of CSS

Develop methodologies for:

- Assessment of equivalence of CSS at Developing Member Countries (DMC)
- Assessment of DMC's CSS Acceptability (implementation capacities)
- "Test" the methodologies developed in selected DMCs

3

Two Assessments

Equivalence

- Similarity with Policies and Objectives
- Follow Similar Operational Principles
- At national, sub-national, sectoral, agency levels

Acceptability (Implementation Capacity)

- Implementation track record
- Institutional capacity
- Commitment
- At project level

4

DMCs selected for CSS Assessment

- Environment Safeguard
 - INDIA
 - PEOPLES REPUBLIC OF CHINA
 - THE PHILIPPINES
 - KYRGYZSTAN
- Indigenous Peoples (IP) and Involuntary Resettlement (IR) Safeguards
 - INDIA
 - PEOPLES REPUBLIC OF CHINA
 - THE PHILIPPINES
 - VIETNAM

5

Approach

- Review of international practices and experience to develop International Good Principles, Procedures and Practices (IGP) on each Safeguard (viz. ENV, IP and IR) as guide-posts.
- Review of relevant key policies, legislation and institutional framework on CSS for each selected DMC
- Assistance of National Consultants in gathering DMC specific information

6

Approach *(continued)*

- Desk analyses of case studies, Review of past Special Evaluation Studies (SES) to understand implementation experience /track record
- Discussion meetings with key Ministries, Executing Agencies, Experts, Key stakeholders including NGOs
- In cooperation with DMCs/Other Donors
- Through Ongoing Country Partnership Strategy

7

Equivalence Assessment

- Comparison by Principle between DMC's key governing policy and IGP for each safeguard
- Identification of differences if any
- Recommendations on how to reduce the differences
- A matrix based presentation of assessment

8

Acceptability (Implementation Capacity) Assessment

- Comparison by principle between DMC's key governing policy and IGP for each safeguard, focusing on implementation or putting the principle into actual practice
- Application of checklist for identification of capacity related limitations (institutional, human resources, enabling framework etc.) if any, and drawing on implementation experience/track record, case studies
- Recommendations on how to strengthen requisite capacities
- A matrix based presentation of assessment

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Country Specific Preliminary Observations on CSS Assessments at Selected DMCs

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India – Environment, IP and IR Safeguards

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Environment: Equivalence Assessment

- National Environment Policy (2006) & EIA Notification (2006) close to IGP
- Differences in areas such as project categorization (screening) & in scoping – where stakeholder consultation is not adequately emphasized. Exemption of public hearing for certain projects can be a concern.
- The EC process does not provide for an independent EIA review if demanded or required.
- No requirements of site assessment as a part of EC
- Focused mainly on project level EAs and higher forms of EA such as regional EAs, programmatic EAs, sectoral and strategic EAs are not legislated

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Environment: Acceptability (Implementation Capacity) Assessment

- Limited capacity of experience and skills at the State Departments of Environment, SPCBs and the Appraisal Committees on scoping, preparation of TORs and review of EIAs.
- Monitoring & enforcement of EC conditions weak, problems of resources and coordination
- EMPs prepared in the EIA reports generally weak, with less details and project/site specificity to allow proper implementation and subsequent monitoring and audit. EMPs are also fraught with low budgets that are often unrealistic
- There is a dearth of trained EIA professionals in the country. There is no mandatory certification requirement for consultants and organizations for the conduct of EIA
- Data availability has been one of the major constraints in screening/categorization as well as in conducting quality EIAs. Presently, the project proponents and consultants need to compile secondary data from multiple sources and face considerable difficulties in its access.

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IP : Equivalence Assessment

Not yet equivalent but approaching it:

- Many safeguards already extant in legislation emphasizing tribal self-determination (e.g. PESA)
- Adequate consultation framework
- ST and Other Traditional Forest Dwellers Act (close to IGP re: Parks/PAs)
- Proposed Draft National Tribal Policy will bring CSS even closer to IGP

Indian Tribals CSS at odds with IGP requirements for:

- Tribal consent when commercial exploitation of cultural resources
- Social impact assessment for tribal development plans
- Equivalent of an IPDF
- Monitoring and evaluation of projects

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IP : Acceptability (Implementation Capacity) Assessment

Not yet acceptable; Needs strengthening:

- Low capacity among tribal organizations and government agency staff: insufficient human and financial resources
- Lack of coordination between GOI ministries responsible for tribal projects
- Absence of political will locally to implement policies
- Systems of monitoring and evaluation as well as consultation often not effective at local level
- Lack of information at local level regarding government programs; project benefits often bypass tribal communities
- Good sign: Dec 07 GOI announces intention to operational ST and Forest Dwellers Act of 2006

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IR: Equivalence Assessment

- National Resettlement and Rehabilitation Policy (NRRP, 2007) provides for avoidance, minimize and mitigations
- NRRP(2007) is not the only R&R Policy
- State-level and para-statal agencies have R&R policies
- Close to IGP

16

IR : Acceptability (Implementation Capacity) Assessment

- R&R Implementation capacity varies, but growing steadily
- Better R&R track record in certain apex agencies
- Lack institutionalization of R&R in many departments/agencies
- Lack trained personnel to handle R&R
- Poor coordination among agencies responsible for project delays
- Weak monitoring – lack of resources and public inputs

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Kyrgyzstan (KYG) – Environment Safeguard

18

Environment: Equivalence Assessment

- No explicit environment policy at KYG
 - *In October 2007: Concept of Ecological Security proposed to National Security Council*
- EA Procedures/Practices need to be better structured as well as defined compared to the IGP
- Moderate to poor procedural equivalence between the OVOS/SER in KYG and the IGP

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Environment: Acceptability (Implementation Capacity) Assessment

- Low level of public participation as well as access to information
- Major gap in EIA-related training and guidance manuals
- Availability and quality of data needed for EIA to be upgraded
- Lack of trained EA specialists

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Philippines – Environment, IP and IR Safeguards

21

Environment: Equivalence Assessment

- The EIA system is comprehensive and very close to IGP's at the level of project processing.
- It has to its credit several innovative elements (e.g. Concept of Multipartite Monitoring Team and Environmental Monitoring Fund, Social Acceptability etc)
- More clarity needed (procedures and guidance) in project screening (i.e. categorization), EIA review and implementation of EMPs
- The EIA system still project-centric and only beginning to address programmatic, sectoral and strategic levels.

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Environment: Acceptability (Implementation Capacity) Assessment

- Monitoring and enforcement is weak after Environmental Clearance Certificate
- Need to move from existing Implementation Rules & Regulations (IRR) framework to Law (There is currently a pending bill on EIS in the Philippine Congress).
- Operational ambiguities exist between agencies at local level during implementation.
- Limited financial resources at Environmental Management Bureau and more so at local provincial levels. At local provincial level there is a considerable weakness in technical expertise
- Quality of consultants/reviewers an issue.
- Absence of an organized system for managing and providing environmental data.

23

IP : Equivalence Assessment

- Equivalent
- Strong constitutional and legal framework, esp. landmark IPRA Act
- Philippine system surpasses that of IGP in some ways:
 - FPIC [free, prior, and informed consent]
 - Emphasis on benefit-sharing

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IP : Acceptability (Implementation Capacity) Assessment

- Key implementing agencies: inadequate staff, budget (NCIP and others)
- Lack of coordination between agencies in implementing, understanding
- Non-compliance with FPIC
- ADSDPP (Ancestral Domain Sustainable Development and Protection Plan) often poorly formulated, implemented
- Lack of knowledge, respect for IP cultures
- Conflicts with other Laws (esp. Mining) taking precedence

25

IR: Equivalence Assessment

- Not equivalent - Resettlement impact laws and regulations largely similar but not equivalent
- RA 8974 (land acquisition act) does not mandate “fair market value”
- Current government policies address more mitigation than avoidance of IR
- A harmonized National IR Framework necessary

26

IR : Acceptability (Implementation Capacity) Assessment

- Capacity varies, but growing, with IR units in some agencies – e.g., DPWH
- Long delays in adjudication of claims, beyond statutory requirements
- Documentation and record-keeping process often haphazard, incomplete
- Lack capacity in monitoring and evaluation

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PRC – Environment, IP and IR Safeguards

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Environment: Equivalence Assessment

- Overall, the environmental policy and regulatory framework in China close to IGP
- In the new EIA law (2003), Strategic Environmental Assessments are required for certain projects, although currently strategic EAs focus mainly on regional and sectoral/industrial development plans.
- There is still a gap between public involvement as per IGP and PRC's EIA system. The public involvement mandated by the EIA process is consultative but only at the most minimal levels of participation—information-sharing and opinion-gathering.

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Environment: Acceptability (Implementation Capacity) Assessment

Despite the good policy and procedural foundation, effective enforcement of the EIA Law is still uneven due to the following reasons:

- The vertical environmental administrative arrangements are weak. The level of financial/human resources of local Environmental Protection Bureaus (EPBs) is still dependent on local government, while State EPA does not have the authority to intervene in the process.
- The enforcement capacity at provincial EPBs is low.
- Some of the emission/ambient standards need to be updated and localized
- The public lacks experience in effectively participating, and the participation processes and procedures are not fully understood.
- Local monitoring centers under EPBs carry out impact monitoring work, but only for post-project monitoring (not evaluation) which assesses physical compliance with EMPs and not their effectiveness.
- Overall, monitoring budgets are inadequate. Hence, feedback on the effectiveness of EIA on the ground is low.

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IP : Equivalence Assessment

- Not yet equivalent
- Strong foundation for PRC IP safeguards such as good legal/administrative structure for Ethnic Minorities (EM) but often policies not operationalized
- PRC EM CSS at odds with IGP requirements for:
 - Sharing benefits of commercial exploitation of customary lands
 - EM consent for exploitation of cultural resources
 - Social assessments for projects affecting EM

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IP : Acceptability (Implementation Capacity) Assessment

Capacity not yet acceptable; Needs strengthening regarding:

- Ministry guidelines for implementing EM policies
- Consultation procedures and social assessment
- Monitoring and evaluation
- Staff capacity: lack awareness of need for EM special approaches and of EM cultures

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IR Equivalence Assessment

- PRC Land Law/IR safeguards close to IGP
- Noteworthy to mention are:
 - Equivalence with regard to Objective
 - Equivalence with regard to safeguard principles
 - Equivalence with regard to Procedures
- Resettlement is priority issues in PRC

IR : Acceptability (Implementation Capacity) Assessment

- Resettlement in China is largely “development-oriented”
- PRC has a strong record in resettlement management
- Strong institutional set up from central to provincial to county level
- Some gaps in operation aspects
 - Participation and consultation must explicate due process
 - Provision for “third-party” monitoring

Viet Nam – IP and IR Safeguards

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IP Safeguard – Equivalence Assessment

- Not yet equivalent
- Strengths of CSS: Many similarities Viet Nam (Ethnic Minorities) and IGP IP safeguards in terms of proactive anti-poverty development strategies
- Viet Nam EM CSS at odds with IGP requirements for:
 - Recognition of rights to customary lands
 - Benefits for commercial exploitation of lands
 - Consent for exploitation of cultural resources
 - Consultation, social assessment, monitoring

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IP Safeguard – Acceptability (Implementation Capacity) Assessment

Capacity not yet acceptable; Needs strengthening regarding:

- Participation of stakeholders
- Social assessment, monitoring and evaluation
- Staff capacity: on policies and EM cultures
- Inter-ministry cooperation to implement EM policies

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IR Safeguard – Equivalence Assessment

- Current Laws/Regulations concerning IR Safeguard close to IGP
- Land Law 2003 provides the framework for the IR Policy – complemented also by various decrees and circulars
- The process of identification, assessment, mitigation measures are equivalent to IGP
- Some elements – for example, consultation and evaluation of resettlement project impacts – are partially equivalent

IR Safeguard – Acceptability (Implementation Capacity) Assessment

- Apparent lack of working knowledge of the basics of land laws among District and communal level officials
- IR implementation capacity is somewhat uneven and needs strengthening
- Definite need for capacity building for implementation of Land Law for better management of resettlement in Viet Nam

Overall Observations on CSS Assessments at Selected DMCs

Environment Safeguard – Equivalence Assessment

- All CSS use Environmental Impact Assessment (EIA) as the tool for Environment safeguard.
- The EIA systems at selected DMCs close to IGP at the level of project processing. (except KYG)
- The extent of equivalence however varies. Differences primarily at the level of procedures, detail and timing.
- EIA system still project-centric. Considerations to programmatic, regional, sectoral and strategic aspect – that mainstream Environment safeguard - only emerging. (e.g. PRC)

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Environment Safeguard Acceptability (Implementation Capacity) Assessment

- Despite high equivalence with IGP, acceptability of CSS on implementation capacity across DMCs is not adequate
- Weak monitoring & enforcement, poor technical capacity & inadequate resources at key institutions – especially at regional/state/provincial levels, absence of an organized system for managing and providing environmental data, overlaps and ambiguities in jurisdiction, lack of commitment and political interference are some of the principal reasons

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Indigenous Peoples Safeguard Equivalence Assessment

- The DMCs mostly have strong constitutional and legal frameworks on Indigenous Peoples (IP) that are close to IGP
- In a few cases, CSS on Indigenous Peoples (IP) even surpass the IGP
- Most CSS, however, need strengthening in terms of consultation procedures, social assessment, monitoring and evaluation
- All DMCs lack IGP requirements for informed consent for the commercial exploitation of cultural resources

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Indigenous Peoples Safeguard Acceptability (Implementation Capacity) Assessment

- Overall, acceptability (implementation capacity) across DMCs is inadequate. Reasons are,
- Inadequate staff, budget at key implementing agencies:
- Lack of coordination between agencies in implementing, understanding
- IPDP/IDPF often poorly formulated, implemented
- Lack of knowledge, respect for IP cultures
- Conflicts with other laws taking precedence

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Involuntary Resettlement Safeguard Equivalence Assessment

- Resettlement related policies, laws and regulations close to IGP but not equivalent
- More emphasis is still on mitigation than avoidance of IR
- Differences remain in the interpretation of key definitions (e.g. "replacement cost", "market value")
- In some DMCs a harmonized National IR Framework necessary

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Involuntary Resettlement Safeguard Acceptability (Implementation Capacity) Assessment

- Overall implementation capacity across DMCs not acceptable
- Within DMCs capacity varies, but growing, especially at certain apex Executing Agencies
- Long delays in adjudication of claims, beyond statutory requirements
- Documentation and record-keeping process needs improvement
- Lack capacity in monitoring and evaluation

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Overall observations across Safeguards

- More close on Equivalence
- Efforts needed to improve acceptability (implementation capacity)
- Focal areas are awareness building, training, technical guidance, resource provision especially for monitoring & enforcement at local/provincial/regional/State levels
- harmonization & coordination between agencies,
- Conduct of evaluation studies on safeguard compliance & effectiveness

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Challenges

- CSS for each safeguard are complex, operate at various levels (national, sub-national, local), are driven by multiple institutions and not under a single policy, law or regulations
- There are insertions and updates that are constantly happening
- Growing interlinkages between Safeguards
- This makes assessment of CSS a difficult task.
- Assessments serve more of diagnostic tool mainly for targeted capacity development at DMCs.

- Present observations preliminary and tentative
- Need more detailed, on the ground, agency/project specific and periodic assessments

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Opportunities

- Overall, equivalence close to IGPs, Differences are gradually reducing
- Implementation experience getting better, especially at certain Executing Agencies at DMCs
- Some DMCs exceeding IGP, demonstrating innovation and contributing to international experience
- Mutual learning will work very well as some DMCs can become mentors to others. Regional cooperation and knowledge networking could go a long way

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Thank you

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