

ASIAN DEVELOPMENT BANK

THE SAFEGUARD POLICY STATEMENT

(Second Draft)

October 2008

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ABBREVIATIONS

ADB	–	Asian Development Bank
AP	–	affected persons
CAP	–	corrective action plan
CSO	–	civil society organization
CSS	–	country safeguard systems
DMC	–	developing member country
EARF	–	environmental assessment review framework
EBRD	–	European Bank for Reconstruction and Development
EIA	–	environmental impact assessment
EMP	–	environmental management plan
EPFI	–	Equator Principles Financial Institution
ESMS	–	environment and social management system
FI	–	financial intermediary
GHG	–	greenhouse gas
IEE	–	initial environmental examination
IFC	–	International Finance Corporation
IP	–	Indigenous Peoples
IPP	–	Indigenous Peoples plan
IPPF	–	Indigenous Peoples planning framework
IR	–	involuntary resettlement
MFF	–	multitranche financing facility
MFI	–	multilateral financial institution
MRM	–	Management Review Meeting
NGO	–	nongovernment organization
OCR	–	ordinary capital resources
OED	–	Operations Evaluation Department
OM	–	operations manual
PCR	–	physical cultural resources
PIL	–	prohibited investment activities list
RF	–	resettlement framework
RP	–	resettlement plan
SEA	–	strategic environmental assessment
SES	–	special evaluation study
SIA	–	social impact assessment
SPS	–	Safeguard Policy Statement
SPU	–	Safeguard Policy Update
SR	–	safeguard requirements
UN	–	United Nations

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I. BACKGROUND AND INTRODUCTION

1. The operational policies of Asian Development Bank (ADB) include three safeguard policies: the Policy on Involuntary Resettlement (1995), the Policy on Indigenous Peoples (1998), and the Environment Policy (2002). All three safeguard policies are due for review. There is a need to address emerging environmental and social challenges of development in ADB's developing member countries (DMCs), respond to lessons learned from ADB's experience with safeguards, and adapt to new ADB lending modalities and financing instruments. There is also a need to reflect changing best practices of other multilateral financial institutions (MFIs) and private sector institutions, such as the Equator Principles Financial Institutions (EPFI).¹ In October 2004, Management approved a concept paper for a safeguard policy update (SPU) to enhance the effectiveness of ADB's safeguard policies, and ensure that these policies remain relevant to changing client needs and to new business opportunities.

2. The SPU is intended to: (i) articulate the safeguard requirements to improve their clarity, coherence and consistency; (ii) balance a front-loaded procedural approach with one more focused on results during implementation; (iii) make policy implementation more adaptable in practice to match an evolving range of lending products and innovative financing modalities; (iv) work towards greater harmonization with safeguard practices across MFIs and tailor safeguard approaches to different clients with different capacities; and (v) improve internal processes and resource allocation.

3. The SPU is expected to result in a consolidated policy with the following structure:

- (i) A Safeguard Policy Statement (SPS) that describes common objectives of ADB's safeguards, lays out policy principles, and outlines ADB's safeguard policy delivery process. The policy statement is geared for application to a wide range of present and future lending modalities and caters to the varying capacities and needs of DMC clients in the public and private sector. The ADB Board will approve the SPS.
- (ii) A set of specific safeguard requirements that borrowers/clients are expected to meet when addressing social and environmental impacts and risks. ADB staff, through their due diligence, review, and supervision, will ensure that the borrowers/clients comply with these requirements during project preparation and implementation. Over time ADB may adopt additional safeguard requirements or update existing requirements to enhance effectiveness, respond changing needs and reflect evolving best practice. Board approval of such changes would follow a summary procedure on a non-objection basis.
- (iii) Consolidated operations manual sections (OM) that specifies ADB's internal review procedures for due diligence and supervision through out the project cycle. The OM will be approved by the President of ADB, and will be subject to compliance review under the ADB accountability mechanism.

4. Once approved by ADB Board, the SPS and the safeguard requirements for borrowers/clients will supersede the three current safeguard policies. ADB will update its Handbook on Involuntary Resettlement and Environment Assessment Guidelines, and formulate a Handbook on Indigenous Peoples to provide detailed technical guidance and recommend good practices. A "Policy Implementation Plan" will also be formulated.

¹ EPFIs are financial institutions that have adopted the Equator Principles. Equator Principles is a financial industry framework for addressing environmental and social risks in project financing.

5. A Consultation Draft of the SPS was posted on ADB's website in October 2007 for external consultations. During the consultation period between November 2007 and April 2008, ADB received extensive comments and detailed suggestions through the 14 multi-stakeholder consultation workshops held in its developing and developed member countries. Feedback was also received from numerous written submissions, thematic discussions, and informal meetings and teleconferences. All comments received before the close of the consultation period at the end of April 2008 have been posted on the ADB website. In order to be responsive to the wide range of comments, ADB Management has decided to introduce an additional step to prepare a second draft of the SPS, based on the comments and suggestions received from external consultations, and hold another consultation workshop in Manila for stakeholders to have an opportunity to review the revised documents. This paper presents a second draft of SPS for ADB stakeholders further review. Based on feedback received on this draft, a draft policy paper (W-Paper)² on the SPS will subsequently be prepared for the consideration of ADB Management and Board. Finally, on the basis of comments received on the W-Paper, a restricted paper (R-Paper) will be prepared for submission to the ADB Board for consideration and approval.

II. CHANGING CONTEXT

6. Asia and the Pacific, the most populated and fastest growing region in the world, is undergoing dramatic social and environmental changes. Concerns have grown about the long-term sustainability of development in many Asian countries. Rapid industrialization and urbanization, coupled with increased demand for natural resources, are triggering changes in land use, human settlement, declining water quality and quantity, loss of biodiversity, deforestation and desertification, elevated pollution levels and negative impacts on human health. These threats tend to impact the poor severely. High population density and rising demand for land for urban development and infrastructure have increased risks associated with involuntary resettlement of people and adverse impacts on vulnerable groups such as the poor and Indigenous Peoples. Of the 250 million Indigenous Peoples in the world, some 70% are in the Asia and Pacific. Some 120 languages have become either endangered or extinct. The challenge of preventing further disparity and impoverishment caused by environmental degradation and involuntary resettlement, acknowledging the special needs and respecting the rights of Indigenous Peoples and other vulnerable groups, and improving the policies and building the capacity of DMCs to manage these impacts is particularly acute.

7. DMCs have been responding to emerging social and environmental challenges to varying extents. Some DMCs have improved their own environmental and social safeguard policies and regulatory frameworks, while others continue to have less developed systems, often relying on the policies of aid agencies to process and implement development projects. The development processes in the region also have altered the roles and responsibilities of public and private entities, civil society, and local communities in favor of socially and environmentally sustainable development and higher expectation for transparency and citizen participation. Similarly, the roles of the commercial banking industry and financial intermediaries have expanded, with growing pressure for corporate social and environmental responsibilities. DMCs increasingly recognize the need to raise standards and develop capacity to respond to global and regional environmental and social risks, and promote social and environmentally sustainable growth. In addition, private sector proponents are increasingly willing to adopt

² Working papers and restricted papers are draft policy documents prepared at certain stages of ADB's policy formulation cycle.

progressive investment practices that are socially and environmentally responsible, and they may wish to go beyond mere compliance if there is a clear business case.

8. MFIs have been updating their environmental and social safeguard policies to ensure relevance to changing needs. In 2005, the World Bank launched a program on the pilot use of country systems to address social and environmental safeguards in Bank-supported operations. In December 2007, the World Bank issued an evaluation report of the initial phase of the Pilot Program for Use of Country System (2005-2007), based on which the World Bank Management proposes to incrementally scale up the initiative from the project to the country level to engage borrowers and other development partners to apply a greater range of safeguards and build borrower capacity on a more sustainable basis than is feasible at the project level. The World Bank also revised its safeguard policies on Indigenous Peoples and Physical Cultural Resources in 2005 and 2006, respectively, to reflect best international practice. In 2006, the International Finance Corporation (IFC) adopted its Policy on Social and Environmental Sustainability, along with eight Performance Standards, to introduce results-based requirements and best practice for the private sector. The new IFC Performance Standards have been adopted by over 60 large commercial financial institutions for project finance. In the same year, the Inter-American Development Bank issued its Environment and Safeguards Compliance Policy (2006) that also provides for the selective use of country systems. In May 2008, the European Bank for Reconstruction and Development (EBRD) adopted its Environmental and Social Policy, along with ten Performance Requirements, which replaced its 2003 Environmental Policy. The new EBRD Policy and Performance Requirements provide the same level of safeguards as those of the IFC in general, whilst reflecting EBRD's region of operation with its specific characteristics and its commitment under the European Principles for the Environment to which EBRD is a signatory.

9. There has also been a growing emphasis on donor harmonization and alignment with country systems. In 2005, the Paris Declaration on Aid Effectiveness established global commitments for donors and partner countries to improve the management and effectiveness of aid in reducing poverty and inequality, increasing growth, building capacity, and accelerating achievement of the Millennium Development Goals. The declaration has five important principles: country ownership; alignment with country development strategies, priorities and procedures; harmonization of approaches and actions among donors; managing for development results; and mutual accountability. These principles provide a powerful impetus for donors to help foster the better integration of social and environmental considerations into developing country partners' strategies and priorities, and continue and deepen their efforts towards harmonized approaches in addressing social and environmental issues. These have been recently reaffirmed in the Accra Agenda for Action adopted in 2008. Consultations undertaken in the context of ADB's efforts to enhance support to Ordinary Capital Resources (OCR) borrowers have shown that clients in the public sector generally agree with ADB's safeguard objectives and basic principles. However, some OCR clients believe that shared safeguard principles could be upheld better through their own country systems than through ADB's own procedures.

10. The nature of ADB's business is changing. In response to the anticipated rapid economic growth and significant shifts in the development, aid, and financial landscape in the Asia and Pacific region, ADB will transform itself to meet the challenges, while remaining dedicated to reducing poverty in Asia and Pacific region—its overarching goal. ADB will pursue its vision and mission by focusing on inclusive growth, environmentally sustainable growth, and regional integration. The Long-Term Strategic Framework of the ADB 2008-2020 will focus on five drivers of change: (i) private sector development and operations; (ii) good governance and

capacity development; (iii) gender equity; (iv) knowledge solutions; and (v) partnerships. It will also refocus its operations into five core specializations: (i) infrastructure; (ii) environment including climate change; (iii) regional cooperation and integration; (iv) financial sector development, and (v) education. With a rapidly expanding private sector program, diversifying investments and clients in the financial sector and capital markets, and an increasing number of large-scale infrastructure projects where social and environmental impacts could be highly complex and sensitive, safeguard policies need to be updated to ensure the social and environmental sustainability of projects. This is an important component of positive development outcomes based on ADB's mission and mandate. ADB has also adopted a reform agenda³ and introduced new lending modalities and instruments to enhance the development effectiveness of its operations. Recent ADB initiatives—Managing for Development Results (MfDR),⁴ Innovation and Efficiency Initiatives, and Enhancing ADB Support to Middle-Income Countries and Borrowers from OCR—evolved in tandem with international consensus on the need for increased aid effectiveness. The current generation of safeguard policies was designed when direct project lending was the dominant modality for development assistance. Safeguard policies need to cater to the evolving range of ADB lending products and innovative financing modalities, which often are not well served by the traditional project-level safeguard approach. New lending modalities and financing instruments, such as the Multitranches Financing Facility (MFF), have increased the complexity in applying safeguard policies and ensuring compliance. The new modalities and the likelihood of continued innovation, as well as changing client circumstances, suggest the need to enhance the effectiveness and relevance of ADB's safeguards.

III. CURRENT SAFEGUARD POLICIES AND EXPERIENCE

A. ADB's Current Safeguard Policies

11. **ADB's Safeguard Policy Framework.** Safeguard policies generally are understood to be those operational policies that seek to avoid, or where avoidance is not feasible, minimize, or mitigate adverse environmental and social impacts, including the protection of the rights of those affected or likely to be marginalized by the development process. ADB's safeguard policy framework consists of three operational policies on the environment,⁵ Indigenous Peoples, and involuntary resettlement. These are accompanied by OM F1, Environmental Considerations in ADB Operations; OM F2, Involuntary Resettlement; and OM F3, Indigenous Peoples. ADB's Guidelines on Environmental Assessment (2003), the Handbook on Resettlement (1998), and the forthcoming Handbook on Indigenous Peoples provide information on good practice approaches for safeguard implementation. In addition to the three safeguard policies, several sector policies (e.g., water, energy, and forestry) have environmental safeguard elements.

12. **Safeguard Requirements.** 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) plans to avoid, minimize, mitigate or compensate for the potential adverse impacts are developed and implemented; and (iii) affected people are informed and consulted during project preparation and implementation. The policies

³ On 25 August 2004, ADB adopted a comprehensive reform agenda to enhance its development effectiveness.

⁴ MfDR requires a constant focus on outcomes and systems for monitoring and reporting on performance. (<http://www.adb.org/MfDR/default.asp>).

⁵ The Environment Policy contains five main elements, but only the fifth is concerned with the environment as a safeguard issue (through its policy element 5: Integrating Environmental Considerations in ADB Operations, paras. 30 and 50–70).

apply to all ADB-financed projects, including private sector operations, and to all project components, whether financed by ADB, the government, or cofinanciers. The internal procedural requirements are detailed in the OM F1, F2 and F3 sections, and involve similar implementation processes: (i) screening and scoping start as soon as potential projects for ADB financing are identified, and continue throughout the project cycle; (ii) impacts are assessed, safeguard plans summarizing mitigation measures, monitoring program, and institutional arrangements are prepared, and arrangements are made to integrate safeguards in project design and implementation; (iii) affected people are consulted during project preparation and implementation, and information is disclosed in a form, manner and language accessible to them; and (iv) safeguard plans are disclosed to the general public, and the information is updated at various stages in the project cycle.⁶ ADB's safeguard policies require that both ADB and DMC safeguard requirements must be met.

13. **Roles and Responsibilities.** A basic principle of the three existing safeguard policies is that implementation of the provisions of the policies is the responsibility of the borrower or project sponsor. Borrowers/clients are required to undertake social and environmental assessments, carry out consultation with affected people and communities, prepare and implement safeguards plans, monitor the implementation of these plans, and prepare and submit progress reports. ADB's role is to explain policy requirements to the borrower/client, help the borrower/client meet those requirements during project processing and implementation through capacity building program, and ensure due diligence and review, and monitoring and supervision. Although considerable attention is placed on the project processing and approval phase of the project cycle, ADB's role in monitoring safeguard compliance continues during project implementation. ADB's project completion reports and project performance evaluation reports include review of the implementation of safeguards.

B. Compliance Oversight

14. **Compliance System.** Upon reorganization in 2002,⁷ ADB established a safeguard policy compliance system to monitor compliance of projects and their implementation with ADB safeguard policies. ADB's Chief Compliance Officer, with the support of the Environment and Social Safeguard Division, is responsible for advising Management and operational departments (ODs) on safeguard compliance, and related operational procedures and guidelines. Compliance with the safeguard policy is reviewed and monitored throughout the project cycle. If a project poses risks of noncompliance, actions are recommended at the Management Review Meeting (MRM) to ensure compliance, and project compliance is reviewed again at a Staff Review Committee meeting. ODs take steps to ensure that outstanding safeguard requirements are met before Board approval. Review missions are undertaken during project implementation to monitor compliance with safeguard provisions in the legal agreements and take appropriate actions if there are risks of noncompliance.

15. **Accountability Mechanism.** In May 2003, ADB approved a new accountability mechanism through which people adversely affected by ADB-financed projects can express their grievances and seek solutions, and also report alleged violations of ADB's operational policies and procedures, including safeguard policies.⁸ The accountability mechanism replaced the *Inspection Function* (1995) at ADB. ADB's accountability mechanism comprises two separate but related functions: (i) consultation, led by ADB's Special Project Facilitator, to assist

⁶ ADB's *Public Communications Policy*, approved on 22 April 2005, sets out disclosure requirements for various ADB activities, including safeguards.

⁷ *Reorganization of the Asian Development Bank*, 18 September 2001.

⁸ The accountability mechanism replaced the *Inspection Policy* (1995) functions at ADB.

people adversely affected by ADB-assisted projects in finding solutions to their problems; and (ii) compliance review, to establish ADB's accountability in its operations by providing a forum in which project-affected people can file requests for compliance review. ADB's Compliance Review Panel is responsible for the second function.

C. Experience with ADB's Safeguard Policies

16. **Environment.** ADB formally introduced environmental assessment into its lending operations in 1979.⁹ By the time the current Environment Policy was adopted in 2002, ADB had accumulated more than two decades of environmental assessment and management experience. In that period, the policy principles and scope of environmental safeguards evolved from an initial focus on technical assessment and mitigation measures to an emphasis on development and implementation of a comprehensive environmental management plan (EMP). The key elements of the EMP are mitigation measures, monitoring program, cost estimates, budget and institutional arrangements for implementing the EMP. In addition, public consultation and information disclosure, and consideration of alternatives, are emphasized in the environmental assessment process. While procedural compliance has improved over time, the substantive aspects—integration of findings and recommendations of environmental assessment into the project design, borrower/client ownership of EMPs, and the effective implementation of EMPs—remain challenging.

17. The 2006 Operations Evaluation Department (OED) Special Evaluation Study (SES) on Environmental Safeguards (Attachment 1) concluded that the safeguard element of ADB's environmental policy is relevant and has been effective in avoiding major significant adverse environmental impacts from ADB-financed projects, though transaction costs have decreased efficiency of project processing. The study recommended revision in the Environment Policy to (i) refocus efforts "from front-end loan processing and approval to results delivery," (ii) better integrate and align country systems and procedures with the policy for environmental assessment; (iii) broaden the focus of policy application from the "project" to "capacity building"; and (iv) better integrate environmental and social safeguards for a stronger focus on sustainable development. The study also recommend among other things considering (i) strengthening the environmental expertise of Resident Missions; (ii) giving nongovernment organizations (NGOs) a greater role in monitoring; (iii) reviewing the application of environmentally sensitive Category B project classification and the 120-day disclosure rule for Category A projects; (iv) strengthening country systems; and, (v) developing an action plan for implementing the revised environment policy, including specific attention to ensuring an appropriate match between ADB capacity and policy requirements.

18. **Involuntary Resettlement.** The Policy on Involuntary Resettlement (IR) was formulated in 1995 based on the World Bank's policy on involuntary resettlement. As ADB-financed projects became more complex, ADB projects had to address their full and partial impacts on property and assets as well as loss of livelihood without physical relocation, particularly in urban areas where many informal dwellers live. Experience with the implementation of the policy suggests that many aspects of the IR policy implementation could be improved, including: (i) treatment of those without clear land title (e.g., squatters or other informal settlers); (ii) scope of resettlement compensation, covering appropriate replacement costs, restoration and/or rehabilitation, and livelihoods; (iii) unambiguous definition of "affected" versus "displaced" persons; and (iv) capacity development of DMCs for impact assessment and resettlement planning, and implementation.

⁹ *Environmental Considerations in ADB Operations* (December 1979).

19. The 2006 OED SES on IR Safeguards (Attachment 1) concluded that the IR Policy has been broadly effective in achieving outcomes for affected persons and creating resettlement capacity in many DMCs. However, its inputs and processes are assessed as being less than efficient, and the current policy approach as less likely to be sustainable, given the transaction costs to ADB and its borrowers/clients. Consequently, the SES recommends that during the safeguard policy update, ADB needs to (i) reconcile the differences between the 1995 IR Policy and the OM and clarify whether the scope of the policy covers both physical and economic displacement; (ii) clarify ambiguous key terms and implementation modalities, including replacement cost, compensation and relocation assistance, entitlements of squatters, and land acquisition procedures; (iii) develop a “results-based” framework with a set of performance standards; (iv) increase DMC capacity and reliance on country systems for land acquisition and resettlement safeguards; and (v) provide clear guidelines and procedures for IR operations. The SES also identified a mismatch between policy requirements and available staff resources, and recommended that the SPU include a policy implementation plan.

20. **Indigenous Peoples.** ADB's Policy on Indigenous Peoples was adopted in 1998. The broad definition of “Indigenous Peoples” in the policy follows the international consensus that has been emerging in the past decades, the general classification of Indigenous Peoples by international institutions (such as the United Nations and International Labour Organization) and the status recognized by international law. The application of the policy poses particular challenges in the region due to the huge variation in national history, cultures, ideologies, economic resources, demography, and politico-institutional frameworks. A country's national legislation and definitions of Indigenous Peoples, if any, seldom correspond fully to ADB's policy. Experience with policy implementation has been mixed and key challenges remain, including: (i) recognition of Indigenous Peoples' cultural identity and rights to their ancestral lands and resources; (ii) fair sharing of development benefits among affected Indigenous Peoples' communities and the rest of society; and (iii) meaningful and culturally appropriate consultation with Indigenous Peoples' communities in planning and implementing projects that are likely to affect their lives.

21. The 2007 OED SES on Indigenous Peoples Safeguards (Attachment 1) concludes that the policy is relevant to ADB and its borrowers/clients but “less effective.” Adverse impacts of ADB-financed projects have generally been avoided or mitigated, but this was largely a result of the implementation of resettlement plans and environmental management plans, rather than Indigenous Peoples plans. According to the SES, the lack of added value of Indigenous Peoples plans, when there are also other safeguard plans, make the current policy approach less efficient and less likely to be sustainable, given the transaction costs to ADB and its borrowers/clients. The SES recommends that during the safeguard policy update, ADB (i) clarify the areas in the Policy on Indigenous Peoples (1998) that are misunderstood or ambiguous, including the definition of “Indigenous Peoples”; (ii) integrate Indigenous Peoples issues in an RP or an EMP where risks to Indigenous Peoples are primarily related to resettlement or environmental damage; (iii) clarify requirements regarding the consultation process during project preparation and implementation; (iv) develop a sequential approach for capacity building in the application of the Indigenous Peoples safeguard; and (v) develop an Indigenous Peoples Policy Implementation Plan. Responses of ADB Management and recommendations of the Development Effectiveness Committee of ADB's Board to the independent evaluations of environment, involuntary resettlement, and Indigenous Peoples safeguards are posted on ADB's website.¹⁰

¹⁰ Visit: <http://www.adb.org/Evaluation/safeguard-policies.asp>

22. Over the last few years, internal review of ADB environmental and social safeguard policy implementation has highlighted the need for improved performance. Issues during project preparation and processing include: (i) quality of consultation and disclosure; (ii) adequate assessment of DMC frameworks and capacity; (iii) optimal sequencing of safeguard planning during the project cycle; and (iv) variable quality of safeguard documents. The adequacy of budgetary allocations for safeguards has also been recognized as critically important. Implementation issues have centered on budgeting for safeguard requirements (design changes, compensation payments, etc.), implementing mitigation measures, ensuring the update of safeguard plans on the basis of detailed engineering design and changes in scope, improving agency oversight at the contractor level, and ensuring adequate ADB supervision and compliance monitoring, especially oversight on the ground.

IV. KEY POLICY ISSUES AND CONSIDERATIONS

23. The following key policy issues were identified and discussed in the Consultation Draft of the SPS. Comments and suggestions on these issues received from external stakeholders converged in some areas and diverged in others. Regardless of the perspectives of various stakeholders, every comment received has helped ADB improve the policy documents by identifying areas that requires further clarity and strengthening. This draft has updated the key policy issues to reflect external stakeholders' concerns and ADB's response. For comments and ADB response on other policy issues, refer to the comments-response matrix.

A. Policy Articulation and Scope

24. **Improving Clarity, Consistency and Coherence.** Although the three safeguard policies share common elements and principles, there is some ambiguity, duplication, and inconsistency among them. For example, the coverage of social elements in environmental assessment needs to be clarified. Some elements of the Policy on Indigenous Peoples are also covered in the Policy on Involuntary Resettlement. All three policies require disclosure and consultation, though the requirements and processes are not in alignment. They also differ in the extent to which they cover different lending instruments, and the procedural responses they prescribe. In addition, procedural requirements are currently mixed with key policy principles, sometimes giving undue emphasis to compliance with procedures that are not necessarily critical to achieving the objectives of the policies. The current policies and operational procedures also mix instructions to ADB staff with requirements for borrowers/clients in one place, often making the boundaries of responsibilities and accountabilities unclear. Greater coherence among the safeguard policies and full clarity in their policy principles, the requirements for borrowers/clients, and internal implementation procedures would help ADB staff and borrowers/clients better understand what needs to be done to achieve the objectives of safeguard policies, as well as their differentiated roles and responsibilities in enhancing the quality of development outcomes.

25. Most stakeholders support the proposed consolidated policy framework that covers the three safeguard policies, the delineation of role and responsibilities of ADB and borrowers/clients, and the separation of key policy principles and procedural requirements. While the general response to the policy structure is positive, some suggested that the proposed policy structure should be clearly introduced at the beginning of the policy paper. The proposed policy structure is described in paragraph 3 and 4 of this draft.

26. **Distinguishing Safeguards from "Aspirational" Elements.** Safeguard "do no harm" elements are currently mixed with "aspirational" development objectives to varying extent in the

three safeguard policies. For instance, ADB's Environment Policy contains five main elements: (i) promoting environmental intervention to reduce poverty; (ii) mainstreaming environmental considerations into economic growth; (iii) maintaining global and regional life-support systems; (iv) building partnerships; and (v) integrating environmental safeguards into ADB operations. However, only the fifth element addresses environmental safeguard issues. The first four elements deal with ADB's corporate environment strategy, while the fifth element focuses on environmental safeguards and assessment at the project level. Separating crosscutting, thematic environmental issues of an aspirational nature from the safeguard requirements would allow each issue to be addressed with enhanced focus and attention for appropriate implementation. In parallel, the aspirational elements of the environment policy would be delivered through a corporate level environment strategy. Similarly, addressing the issue of the developmental aspirations of the Policy on Indigenous Peoples at a wider strategic level would be more effective than it might in the more limited context of safeguard compliance. It is therefore considered appropriate that the scope of the SPS will focus specifically on safeguards, and not the broader aspirational elements.

27. Many stakeholders also agreed that policy elements, such as the first four elements in the existing Environment Policy, do not address safeguard issues. Therefore, it is more appropriate for the SPS to focus on safeguard policies. But they suggested that the use of the term *aspirational elements* may cause confusion. In addition, some suggested that ADB's safeguard policies should go beyond "do no harm" policy and also should emphasize the need for financing projects that have the potential to realize additional environmental and social benefits. Considering that the proposed SPS and Safeguard Requirements for Borrowers/Clients have covered elements for promoting projects with additional environmental and social benefits, the presentation of the SPS will avoid the use of terms '*aspirational elements*' or '*do no harm*'.

28. **Environmental Safeguard Elements in Other Policies and Strategies.** Several safeguard requirements addressing environment-related issues are currently scattered across several ADB sector/thematic policies and strategies.¹¹ Such requirements in other policies and strategies are dealt with in a piecemeal fashion and rely partly on the implementation processes of ADB's Environment Policy. The resulting compartmentalization reduces opportunities for a holistic understanding of project impacts. In addition, the safeguard component of the existing Environment Policy (2002) focuses on principles and procedures of environmental assessment. The Policy does not explicitly set out policy principles and requirements addressing project impacts/risks on pollution prevention and abatement (including greenhouse gas emissions), biodiversity and natural resources management, and physical cultural resources. Environmental assessments of projects address these issues in an ad hoc manner. Therefore, ADB should adopt an enhanced approach to consolidate environmental safeguard elements currently covered in other ADB sector policies/strategies. The environmental safeguard principles and requirements will need to be explicitly articulated to include sectoral issues and comprise (i) environmental assessment, (ii) pollution prevention and abatement, (iii) biodiversity and natural resources management, and (iv) physical cultural resources.

29. Many stakeholders consulted supported the proposed coverage of environmental safeguards. Some suggested that the requirements on health and safety issues need to be strengthened, although these issues were addressed in the environmental assessment process. In view of the generally positive feedback, the coverage of environmental safeguards remains unchanged, and additional detailed requirements of addressing project impacts on occupational

¹¹ This includes such policies as *Energy (1997)*; *Forestry (1995)*; and *Water (2001)*.

and local community health and safety have been introduced in the Safeguard Requirements for Borrowers/Clients. Several stakeholders requested to clarify whether the SPS would supersede the ADB existing policies on energy, forestry and water. The SPS and Safeguard Requirements for Borrowers/Clients will not supersede the policies on Energy (1997); Forestry (1995); and Water, (2001), but will complement them.

30. **Improving Clarity of Policy Scope and Triggers.** ADB's experience in implementing the Policy on Involuntary Resettlement and the Policy on Indigenous Peoples shows that further clarification on the scope and triggers of each policy is needed. There is frequent debate as to whether the IR policy is triggered only by land acquisition. There is a need to clarify that the policy is triggered by involuntary acquisition of land and land-based assets, restriction on land-use, and restricting access to common land and legally designated protected areas. In addition, there is a need to clarify that the current policy covers both physical and economic displacement and these terms need to be clearly defined. The Indigenous Peoples policy in its current form does not provide a clear operational definition of Indigenous Peoples. The complexities involved in identifying "Indigenous Peoples" for the purposes of policy application are exacerbated by the need for situational analysis and by different perceptions among indigenous communities regarding ancestral domain and communal rights. There is a need to clarify the characteristics that will be used to identify Indigenous Peoples. There is also a need to identify the triggers of the policy as those impacts on Indigenous Peoples' dignity, human rights, livelihood systems, culture, ancestral domains, communal assets, and territorial, natural and cultural resources.

31. Stakeholders generally supported the SPS approach to cover in the scope of involuntary resettlement both economic and physical displacement. Some suggested that the trigger of involuntary resettlement policy should also cover the restriction of access to natural resources such as loss of access to downstream fishing grounds, and decreasing water supply. The Safeguard Requirements for Borrowers/Clients on Involuntary Resettlement cover such impacts through the following provisions in the Consultation Draft: in the event of potential adverse economic, social or environmental impacts from project activities other than land acquisition, these impacts will be avoided, minimized, mitigated or compensated through the social and environmental assessment process; and if these impacts are found significantly adverse at any stage of the project, the policy principles and safeguard requirements on involuntary resettlement will apply, even where no initial land acquisition is involved. In view of the general support, the scope of involuntary resettlement policy remains the same.

32. The proposed triggers of Indigenous Peoples policy will remain the same, as many stakeholders supported the proposed policy triggers. While there is general support to the proposed operational definition of 'Indigenous People', some suggested that a definition of Indigenous Peoples to reflect the ground realities in DMCs is required. This is an impossible task given the variety of DMCs situations, but it is believed that the proposed definition is sufficiently broad to identify indigenous peoples in Asia and Pacific region. Therefore the operational definition of indigenous peoples will remain the same.

33. **Project Screening and Classification.** The project classification system has been considered important in reflecting the significance of expected impacts and setting the level of due diligence and supervision. The current classification system requires each project be categorized, respectively, for environment, involuntary resettlement, and Indigenous Peoples. However, having three separate categorization processes for a single project may not be efficient, and sometimes promotes a piecemeal approach to safeguards. In addition, the classification may not reflect the actual scope of impacts or have a material impact on the level of due diligence undertaken on a particular project in practice. For example, there may be little

difference in the scope and detail of safeguard planning and due diligence undertaken between an involuntary resettlement category 'A' and 'B' project.¹² ADB is the only MFI that introduces a classification system for involuntary resettlement and Indigenous Peoples, and subdivides the environmental category 'B'. OED's special evaluation study on environmental safeguards recommends that ADB eliminate the 'B-sensitive' category, as it is not clearly defined and may overlap with category 'A' projects. It is proposed that environmental category 'B-sensitive' be eliminated, and project classifications for involuntary resettlement and Indigenous Peoples be eliminated in line with the practice of other MFIs.

34. Many supported the proposed elimination of the environmental category 'B-sensitive', while mixed feedback was received on whether the project classification for involuntary resettlement and Indigenous Peoples should be maintained. Considering the overall benefit of eliminating the project classification in case of involuntary resettlement and Indigenous Peoples, the originally proposed approach will be retained.

35. **Consultation and Participation.** Consultation and participation is central to the achievement of safeguard policy objectives. ADB's existing safeguard policies have varying consultation requirements. They all imply the need for prior and informed consultation with affected persons and communities in the context of safeguard planning, and for continued consultation during project implementation to identify and help address safeguard issues that may arise. ADB needs to be explicit that it will require free, prior, and informed consultation with affected persons and communities in the implementation of all three safeguard policies. Furthermore, the current Policy on Indigenous Peoples includes in its section on Policy Objectives (para. 31) a statement that projects should be conceived, planned and implemented, to the maximum extent possible, with the informed consent of affected communities. Taking into account the practice at other MFIs, it was proposed in the Consultation Draft to consider the formulation of *ascertaining, through a process of free, prior and informed consultation, that indigenous communities provide their broad support to the project*, which is consistent with the World Bank and IFC's approach. In September 2007, the United Nations (UN) 61st General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples which requires *obtaining Indigenous communities' free, prior, and informed consent prior to the approval of any project affecting them*. Noting this development, the Consultation Draft proposed that this issue would be further discussed during the internal and external consultations.

36. Indigenous Peoples groups and civil society stakeholders strongly recommended that ADB bring the Indigenous Peoples Policy in line with the UN Declaration on the Rights of Indigenous Peoples by replacing "ascertain broad community support through free, prior and informed consultation" with "free, prior and informed consent" (FPIC). Some concerns were expressed regarding how ADB would apply the principle of FPIC in practice. In response, this draft proposes to adopt the principle of FPIC. For the purposes of policy application, it is proposed that consent refers to "a collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives, of broad community support for the project activities. Such broad community support may exist even if some individuals or groups object to the project activities." In addition, FPIC would apply in the following three project circumstances, where IP groups are deemed to be particularly vulnerable: (i) commercial development of the cultural resources and knowledge of Indigenous Peoples, (ii) physical relocation of Indigenous Peoples from traditional or customary lands, and (iii) commercial development of natural resources on lands used by Indigenous Peoples with

¹² As currently defined, a category 'A' project means 200 or more people will experience major impacts, which are defined as being physically displaced from housing, or losing 10% or more of their productive assets.

impacts on the livelihood, or cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples.

B. Policy Application and Delivery Issues

37. **Balancing Front-loaded Procedural Requirements with Implementation.** The current safeguard policies place considerable emphasis on meeting procedural requirements and milestones during project processing. The policies give less attention to supervision and achieving results during project implementation. The timing and sequencing of front loaded procedural requirements are not always optimal, and the achievement of these requirements alone does not ensure satisfactory safeguard outcomes. For instance, during project processing and before the MRM, significant effort is expended to prepare draft resettlement plans on the basis of project feasibility reports. However, the most important resettlement planning and implementation activities might need to be done later as part of detailed design activities that may take place later during project implementation. Similarly, significant staff input is expended on preparing draft Summary Environmental Impact Assessment report to satisfy disclosure procedures for environmentally sensitive projects. However, the finalization and implementation of robust EMPs, which are the basis for project implementation, receive substantially less attention. ADB's experience with safeguard implementation and the recent OED special evaluation studies have observed that substantially more attention to safeguards is needed during project implementation.

38. There is broad support for the proposed approach of balancing front-loaded procedural requirements with implementation. Some suggested that ADB's supervision during the project implementation needs to be further strengthened. This comment has been incorporated in this draft of SPS that includes an additional requirement that safeguard missions with detailed reviews will be conducted by ADB safeguard specialists or consultants for projects with significant environmental or social impacts.

39. **Strengthening Safeguard Frameworks.** Safeguard frameworks as currently applied to sector loans and MFF (i.e., Environmental Assessment and Review Framework, Resettlement Framework, or Indigenous Peoples' Framework) provide guidance on safeguard screening, assessment, institutional arrangements, and processes to be followed for subprojects or subsequent tranches that are prepared after Board approval. The criteria for eligibility which ensures that quality subprojects are identified and delivered are also specified in safeguard frameworks. A key issue related to this approach is to ensure that the borrower/client will appropriately apply the safeguards frameworks in preparing and implementing appropriate safeguard plans to subprojects after Board approval. To ensure the safeguard frameworks are appropriately implemented, greater attention is needed on the assessment of institutional capacity of the borrower/client, and mechanisms and measures for capacity building need to be developed and integrated in the design of projects. In addition, monitoring and supervision of the subprojects need to receive more attention to avoid the risk of noncompliance with safeguard policies.

40. While many stakeholders consulted understood that the application of safeguard frameworks are appropriate for sector investments and MFFs, as well as non-sensitive components of projects, there is general concern and objection to the tentatively proposed wider application of the safeguard framework to standard projects where detailed design takes place after Board approval. In response to stakeholders concerns and based on ADB's internal discussions and analysis of implementation risks, ADB has decided that the earlier proposed

wider application of the safeguard framework to standard projects where detailed design takes place after Board approval is no longer appropriate.

41. **Financial Intermediation.** ADB has a growing portfolio of projects with financial intermediaries (FIs), mainly in the context of its private sector operations. FI projects present special challenges from a safeguard perspective. ADB does not have direct oversight or strong leverage on subprojects, because subprojects are often unknown when an FI project is appraised and funds are dispersed widely to many subprojects. The FI financing can entail several layers of intermediation that also complicates social and environmental risk management. Under the current environment policy, safeguard requirements are determined based only on ADB's financing modality (equity or credit line), and all investments are subject to the same level of analysis, i.e., all FI projects (unless otherwise treated as a category 'C' project) are required to adopt an environmental management system, an involuntary resettlement framework, and an Indigenous Peoples safeguard frameworks of the kind used for sector loans. It is desirable that requirements for FIs are based on potential social and environmental impacts/risks in addition to the financing modality of ADB's investment, which will require strengthened ADB due diligence and review of FI business activities and borrower/client's capacity for social and environmental management. Requirements for FIs should be also proportional to the level of potential impact/risk. In addition, FIs may find it more operationally useful to introduce involuntary resettlement and Indigenous Peoples concerns in an integrated environmental and social management system (ESMS).

42. In response to the comments on the need to improve clarity and provide more detailed requirements for FI projects, the revised SPS and Safeguard Requirements for Borrowers/Clients include provisions on (i) requirements at FI level and subproject level; (ii) specific requirements for FI projects under different finance modalities; and (iii) roles and responsibilities of ADB and the FI client.

C. Responding to Changing Client Requirements and Long-Term Sustainability of Safeguard Systems

43. **Strengthening and Use of Country Safeguard Systems (CSS).** Consultations undertaken in the context of ADB's efforts to enhance support to OCR borrowers have shown that many borrowers/clients believe that the transaction costs of complying with ADB safeguards policy are excessive, and middle-income countries believed that shared safeguard principles could be upheld better through their own country systems than through ADB's own procedures. They believe procedures and approaches could be improved to better reflect different client needs and widely divergent capacities of DMCs to implement safeguards. ADB has recognized that DMCs have their own system to deliver safeguards, and that supporting DMCs' efforts to strengthen and use their own systems would enhance country ownership, extend development impacts, and reduce transaction costs. This is also in line with the increasing trend towards country ownership and greater alignment with country systems under the Paris Declaration on Aid Effectiveness. ADB needs to develop its approach for the strengthening and use of CSS in ADB projects, taking into account the World Bank's experience in piloting the use of country system in 2005-2007. The approach would include the following attributes: (i) conditions for CSS application, (iii) methodology of CSS assessments, (iv) ADB's and the borrower's roles and responsibilities, (v) procedures and other related requirements such as gap filling, and (vi) resource implications.

44. Divergent feedback on this policy issue was received. There is a strong support from DMC governments to the proposed approach for strengthening and use of CSS. Some CSOs

recommended that CSS be applied with caution, and suggested that CSOs have a role in the assessment of CSS equivalence and acceptability. Several other CSOs commented that the experience with the World Bank's pilot project showed a reduction in safeguard standards, and voiced an objection to the use of CSS. Some developed member country governments consider it premature for ADB to design such a program. Some others suggested the need for MFIs to have a harmonized approach on CSS. In response to the feedbacks and based on the findings of ADB's on-going technical assistance on CSS and continued communication with the World Bank, this draft emphasizes a phased approach of the strengthening and use of CSS. In addition, a provision on consultation process of CSS assessments has also been incorporated.

45. **Harmonizing with Safeguard Policies of Other MFIs.** Over the last five years or so, a number of other MFIs have updated or are in the process of updating their safeguard policies. The policy advances and best practice adopted by these institutions have relevance to ADB operations. Harmonizing ADB's safeguard policy principles and requirements with other MFIs' is also required to enhance development impacts, reduce transactional cost, and encourage collaborative behavior. MFIs have made some progress in defining a common framework of principles for environment assessment.¹³ Continued harmonization of safeguard practices across MFIs is needed. Through the SPU, ADB is seeking to ensure that its safeguard policy objectives, principles, and requirements bear a close relationship to those of other MFIs. In particular, the World Bank Group's safeguard policies and their implementation experience in the following areas would be taken as reference for the SPU: (i) the World Bank's Piloting the Use of Borrower System to Address Environmental and Social Safeguard Issues; (ii) the World Bank safeguard policies and IFC's Sustainability Policy and Performance Standards on involuntary resettlement, Indigenous Peoples, environmental assessment, pollution prevention and abatement, biodiversity and natural resources management, and physical cultural resources; and (iii) the World Bank Group's Environmental, Health, and Safety Guidelines. Attachment 2 provides an overview of recent policy updates at other MFIs.

46. Many realized the importance of continued harmonization across MFIs and recommended that ADB should further harmonize its safeguards policy principles and requirements with good international practices that are being adopted by other MFIs. Some cautioned that harmonization should not be pursued for its own sake, but for enhancing effectiveness of safeguard policies. ADB believes that it should harmonize its safeguard policies with other MFIs' where relevant, especially around key policy principles, while procedures tend to change across MFIs and need to cater to different clients and situations. Therefore, this draft adds several policy principles and requirements on environment, involuntary resettlement, and Indigenous Peoples, which bring forth further harmonization with other MFIs', in particular the World Bank, IFC, and EBRD.

47. **Private Sector Clients.** ADB's private sector investment program has expanded rapidly over the past 5 years. Private sector clients are a diverse group with varying environmental and social awareness and capabilities, and the projects they finance can vary considerably in size and nature, e.g., from small and medium-sized energy efficiency or renewable energy enterprises to large companies in extractive industries, energy and infrastructure. The operation cycle is typically much shorter than that for public sector projects, and safeguard due diligence typically needs to be undertaken within tight time frames. Complex financing structures—for example, special purpose vehicles for securitization or multi-tiered financial intermediation raise difficult questions on the way in which ADB safeguards should be applied. While existing

¹³ *A Common Framework for Environmental Assessment: A Good Practice Note*, Multilateral Financial Institutions, Working Group on Environment. February 28, 2005.

safeguard procedures remain relevant for traditional infrastructure finance, the ever-changing business environment, diversified financial products, and increasing complexity of ADB interventions in the financial sector and capital markets, may require new and innovative approaches. In addition, some private sector clients might be willing to adopt progressive investment practices that are socially and environmentally responsible, and they may wish to go beyond compliance if there is a clear business case. Taking into account of the new IFC Performance Standards that have been adopted by over fifty large commercial financing institutions for project finance (“Equator Principles”), and will become an important reference point for many private sector clients, it may be useful to consider the potential role of IFC’s Performance Standards in private sector operations.

48. Some stakeholders suggested that ADB identify appropriate provisions where public and private sector clients could be differentiated, as they possess different abilities and constraints. Moreover, it was suggested that ADB has an opportunity to strengthen the overall implementation of safeguards through complementary activities with public entities that regulate private clients. ADB believes that the safeguard policy principles should apply to public and private sector projects equally, while certain procedural requirements may be tailored to suit different situations. For example, as a principle, disclosure of safeguard documents before the decision of project funding must be applied to both public and private sector projects, but procedural requirements in terms of the number of days of disclosure before project approval could be differentiated.

49. **Developing ADB’s Capacity and Optimizing Resource Allocation.** Improvement in safeguard effectiveness will require enhanced ADB capacity, particularly to devote greater efforts to project implementation, CSS assessment, and capacity development in DMCs. This will require building ADB’s capacity to better understand DMCs’ own safeguard frameworks, manage safeguard implementation monitoring, and engage with borrowers/clients in addressing the realities of safeguard implementation. In particular, project teams must have a firm grasp of the objectives and principles of the safeguard policies, as they are on the front line in ensuring that policies are applied. For the past several years, ADB has provided staff training programs on all three safeguard policies and such training needs to continue both at headquarters and in Resident Missions. At the same time, staff resources requirements for safeguard implementation in ODs and the Regional and Sustainable Development Department need to be optimized to ensure that adequate attention is placed on project implementation and supervision while also meeting urgent project processing needs and due diligence requirements. A critical need is to ensure that Resident Missions are properly equipped with relevant safeguard expertise, especially in DMCs with extensive portfolios of complex and sensitive projects. It is evident that optimal allocation of resources to policy implementation and monitoring will remain central to improved safeguard delivery.

50. A number of stakeholders commented that ADB’s own capacity and the adequacy of resources for safeguard policy implementation is a concern. ADB will address these issues in the context of the safeguard implementation plan to be developed at the W-paper stage.

V. THE DRAFT SAFEGUARD POLICY STATEMENT

A. Overarching Statement on ADB's Commitment and Policy Principles

51. ADB affirms that environmental and social sustainability are prerequisites for economic growth and poverty reduction in Asia and the Pacific. ADB is therefore committed to ensuring social and environmental sustainability of the projects it supports. In this context, the goal of the Safeguard Policy Statement (SPS) is to promote the sustainability of project outcomes by protecting the environment and people from potential adverse impacts of projects.

52. The objectives of ADB's safeguards are to:

- (i) avoid adverse impacts of a project on the environment and affected people, where feasible;
- (ii) where avoidance is not feasible, minimize, mitigate, and/or compensate for adverse project impacts on the environment and affected people; and
- (iii) help borrowers/clients to strengthen their safeguard systems and develop capacity to manage environmental and social risks.

53. ADB adheres to the objectives of the safeguards and their delivery. ADB assumes responsibility to conduct due diligence, review, monitor, and supervise projects throughout the project cycle against the principles embodied in the SPS. By adhering to its social and environmental safeguards, ADB enhances the predictability, transparency, and accountability of its actions and decision-making; helps borrowers/clients manage social and environmental impacts and risks; and promotes the long-term sustainability of investments. Transforming this commitment into results on the ground depends on the shared but differentiated efforts of ADB and its borrowers/clients.

54. ADB's SPS sets out policy objectives, scope and principles, covering three key safeguard areas:

- (i) Environmental Safeguards
- (ii) Involuntary Resettlement Safeguards
- (iii) Indigenous Peoples Safeguards

55. To achieve the policy objectives and deliver the policy principles, ADB carries out the actions described in Section B on policy delivery process. To help borrowers/clients or their projects achieve the desired outcomes, ADB adopts a set of specific safeguard requirements (SRs) as listed below that borrowers/clients are expected to meet in addressing environmental and social impacts and risks. ADB staff, through their due diligence, review, and supervision, will ensure that the borrowers/clients comply with these requirements during project preparation and implementation:

- SR1 - Environment
- SR2 - Involuntary Resettlement
- SR3 - Indigenous Peoples
- SR4 - Special Requirements for Different Finance Modalities

56. The policies apply to all projects including ADB-financed and/or ADB-administered sovereign and non-sovereign investment projects funded by a loan, and/or a grant, and/or other means, such as equity and/or guarantee (hereafter broadly referred to as projects).

1. Objectives, Scope and Policy Principles on Environmental Safeguards

Objectives	To ensure the environmental soundness and sustainability of projects, and support integration of environmental considerations into the project decision making process.
Scope	The Policy applies to all projects.
Policy Principles	<ol style="list-style-type: none"> 1. Use a screening process for each proposed project, as early as possible, to determine the appropriate extent and type of environmental assessment, so that appropriate studies are undertaken commensurate to the significance of potential impacts and risks. 2. Conduct an environmental assessment for each proposed project to identify potential impacts and risks on physical, biological, socio-economic (including health and safety), and physical cultural resources in the context of the project's area of influence. Assess potential trans-boundary and global impacts, including climate change. Use strategic environmental assessment where appropriate. 3. Examine financially and technically feasible alternatives to the project location, design, technology and components, their potential environmental and social impacts, and document the rationale for selecting the particular alternative(s) proposed, where relevant. The no project alternative will be also considered. 4. Avoid and, where avoidance is not feasible, minimize, mitigate and/or offset for adverse impacts and enhance positive impacts through environmental planning and management. Prepare an environmental management plan (EMP) or equivalent planning document(s) that includes the proposed mitigation measures, environmental monitoring and reporting requirements, related institutional or organizational arrangements, capacity development and training measures, implementation schedule, cost estimates and performance indicators. 5. Carry out free, prior and informed consultation with affected people and facilitate their informed participation. Ensure women's participation in consultation. Involve stakeholders, including project-affected people and concerned NGOs early in the project preparation and ensure that their views and concerns are made known and understood by decision makers and taken into account. Continue consultations with stakeholders throughout project implementation as necessary to address environmental assessment-related issues. Establish a grievance mechanism to receive and facilitate resolution of the affected people's concerns and grievances regarding the project's environmental performance. 6. Disclose draft environmental assessments (including EMP) before project appraisal, in a form, manner and language(s) accessible to affected people and other stakeholders. 7. Implement the EMP and monitor its effectiveness. Document monitoring results, including development and implementation of corrective actions, and disclose periodic progress reports. 8. Do not implement project activities that involve or are likely to result directly or indirectly in the significant conversion or degradation of critical habitats. If a project is located within a legally protected area, implement additional programs to promote and enhance the conservation aims of the protected area. If the project has the potential to adversely impact non-critical habitats, proceed only if there are no technically and financially feasible alternatives, overall benefits from the project substantially outweigh the environmental costs, and any conversion or degradation is appropriately mitigated. Use a precautionary approach to the use, development and management of renewable natural resources. 9. Apply pollution prevention and control technologies and practices consistent with international good practice, as reflected in internationally recognized standards such as the World Bank Group's Environmental, Health and Safety (EHS) Guidelines. Adopt cleaner production processes, and good practices of energy efficiency where financially and technically feasible, Avoid or, when avoidance is not feasible, minimize or control the intensity or load of pollutants emissions and discharges, including direct and indirect greenhouse gases emissions, waste generation, and release of hazardous material from their production, transportation, handling and storage. Avoid the use of hazardous materials subject to international bans or phase-outs. Use, purchase and manage pesticides based on integrated pest management approaches and reduce reliance on synthetic chemical pesticides. 10. Provide workers with safe and healthy working conditions, and prevent accidents, injury, and disease. Establish preventive and emergency preparedness and response measures to avoid, and where avoidance is not feasible, to minimize the adverse impacts and risks to the health and safety of the local communities. 11. Conserve physical cultural resources (PCR) and avoid their destruction or damage by using field based surveys with qualified and experienced expert(s) during environmental assessment. Provide for the use of "chance find" procedures that include a pre-approved management and conservation approach for materials that may be discovered during project implementation.

2. Objectives, Scope and Policy Principles on the Involuntary Resettlement Safeguards

Objectives	To avoid involuntary resettlement wherever feasible, and minimize involuntary resettlement through exploring project and design alternatives, and enhance, or at least restore the livelihoods of all affected persons in real terms relative to pre-project levels and improve the standards of living of the affected poor and other vulnerable groups.
Scope	The Policy covers physical displacements (relocation or loss of shelter) and economic displacements (loss of assets, access to assets, or income sources or means of livelihoods) as a result of (i) involuntary acquisition of land, (ii) involuntary restriction on land use or access to legally designated parks and protected areas. It covers them whether such losses and involuntary restrictions are full or partial, and permanent or temporary.
Policy Principles	<ol style="list-style-type: none"> 1. Screen the project early to identify its past, present and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through survey/census of the affected persons, including a gender analysis, specifically related to resettlement impacts and risks. 2. Carry out free, prior, informed consultations with all affected persons, host communities and concerned NGOs. Inform all affected persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially of those below the poverty line, the landless, the elderly, women and children, Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support social and cultural institutions of affected persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a 'social preparation' phase. 3. Improve, or at least restore, livelihoods of all affected households through (a) land-based resettlement strategies when affected livelihoods are land-based where feasible, or cash compensation at replacement value for land when the loss of land does not undermine livelihoods; (b) prompt replacement of assets and access to assets of equal or higher value; (c) prompt compensation at full replacement cost for assets that can not be restored, and (d) where feasible, additional revenues and services through project benefit sharing schemes. 4. Those affected by physical displacements will receive in addition (a) assistance to relocate, secure tenure of relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, civic infrastructure and community services, as required; and (b) transitional support and development assistance, such as land development, credit facilities, training or employment opportunities. Integrate resettlers economically and socially into their host communities, and extend project benefits to host communities. 5. Improve the standards of living of the affected poor and other vulnerable groups at least to the national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas with appropriate income sources and legal and affordable access to adequate housing. 6. If land acquisition is through negotiated settlements, procedures will be developed in a transparent, consistent and equitable manner to ensure the persons who enter into negotiated settlements will maintain the same or better income and livelihood status. 7. Displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance, and compensation for loss of non-land assets. 8. Prepare a resettlement plan, or equivalent planning document(s), elaborating affected persons entitlements, the income and livelihood restoration strategy, institutional arrangement, monitoring and reporting framework, budget, and time-bound implementation schedule. 9. Disclose draft resettlement plan, including documentation of the consultation process before the project appraisal and in a form, manner and language(s) accessible to affected persons and other stakeholders. The final resettlement plans and their updates will also be disclosed to the affected persons and other stakeholders. 10. Involuntary resettlement should be conceived and executed as part of a development project or program. The full costs of resettlement will be included in the presentation of the costs and benefits of the project. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand alone operation. 11. Pay compensation and provide other entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout the project implementation. 12. Monitor and assess resettlement outcomes, their impacts on the standards of living of the affected persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring.

3. Objectives, Scope and Policy Principles on the Indigenous Peoples Safeguards

Objectives	To design and implement projects in a way that fosters full respect for Indigenous Peoples' identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by the Indigenous Peoples themselves, so that they (i) receive culturally appropriate social and economic benefits; (ii) do not suffer adverse impacts of projects; and (iii) are able to participate actively in projects that affect them.
Scope	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. "Indigenous Peoples" is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: (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) a distinct language, often different from the official language of the country or region. A group that has lost "collective attachment to geographically distinct habitats or ancestral territories in the project area" (item [iii]) because of forced severance remains eligible for coverage under this Policy.
Policy Principles	<ol style="list-style-type: none"> 1. Screen early to determine (a) whether Indigenous Peoples are present in, or have collective attachment to, the project area, and (b) whether there are likely project impacts on Indigenous Peoples. 2. Undertake a culturally appropriate and gender sensitive social assessment or use similar methods to assess potential project impacts, both positive and adverse, on Indigenous Peoples. Give full consideration to options preferred by the affected Indigenous Peoples in the provision of project benefits and in designing of mitigation measures. Identify social and economic benefits for affected Indigenous Peoples that are culturally appropriate, and gender and inter-generationally inclusive and develop measures to avoid, minimize and/or mitigate adverse impacts on Indigenous Peoples. 3. Undertake free, prior and informed consultations with affected communities and concerned Indigenous Peoples' organizations to solicit their participation (a) in designing, implementing, and monitoring measures to avoid adverse impacts, or, when avoidance is not feasible, to minimize, mitigate, or compensate for such effects; and (b) in tailoring project benefits for them in a culturally appropriate manner. To enhance Indigenous Peoples' active participation, the projects affecting them will provide for culturally-appropriate capacity development. Establish a culturally appropriate grievance mechanism to receive and facilitate resolution of the Indigenous Peoples' concerns. 4. Apply the principle of free, prior, informed consent of affected Indigenous Peoples to the following project activities: (i) commercial development of the cultural resources and knowledge of Indigenous Peoples, (ii) physical relocation from traditional or customary lands, and (iii) commercial development of natural resources on lands used with impacts on the livelihood, or cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples. For the purposes of policy application, consent refers to a collective expression by the affected Indigenous Peoples communities through individuals and/or their recognized representatives, of broad community support for such project activities. Such broad community support may exist even if some individuals or groups were to object to the project activities. 5. Prepare an Indigenous Peoples Plan (IPP) or equivalent planning document(s) that is based on the social assessment, with the assistance of qualified and experienced expert(s), and draws on indigenous knowledge and the participation of the affected Indigenous Peoples communities. The IPP includes a framework for continued consultation with the affected Indigenous Peoples communities during project implementation; specifies measures to ensure that Indigenous Peoples receive culturally appropriate benefits; identify measures to avoid, minimize, mitigate or compensate for any adverse project impacts; and include culturally-appropriate grievance procedures, monitoring and evaluation arrangements, and a time-bound actions and budget for implementing the planned measures. 6. Disclose a draft IPP including documentation of the consultation process and the results of the social assessment, before project appraisal, in a form, manner and language(s) accessible to affected communities and the public. The final IPP and its updates will also be disclosed to the affected communities and other stakeholders. 7. Put in place an action plan for the legal recognition of customary rights to lands and territories, or ancestral domain, when the project involves (a) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples traditionally owned, or customarily used or occupied; or (b) the involuntary acquisition of such lands. 8. Avoid, to the maximum extent possible, any restricted access to and relocation from protected areas and natural resources. Where such avoidance proves not to be feasible, ensure that the affected

	<p>Indigenous Peoples' communities participate in the design, implementation, monitoring and evaluation of management arrangements for such areas and natural resources and that their benefits are equitably shared.</p> <p>9. Monitor the implementation of the IPP, using qualified and experienced expert(s), and adopting a participatory monitoring approach, wherever possible, and prepare a project completion report that assesses if the objective and desired outcome of the IPP have been achieved, taking into account the baseline conditions and the results of IPP monitoring.</p>
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B. Policy Delivery Process

1. General Requirements

57. **Screening and Classification.** ADB will carry out screening at the earliest stage of project preparation when sufficient information is available for this purpose. Screening is undertaken to (i) determine the significance of potential impacts or risks that a project might present; (ii) identify the level of assessment and institutional resources required for the safeguard measures; and (iii) determine disclosure requirements. In addition, ADB does not finance several types of activities that are listed in the Prohibited Investment Activities List (PIL) (Appendix 1). ADB will screen all projects against the PIL.

58. **Environment Categorization.** ADB uses a classification system to reflect the significance of potential environmental impacts of a project. A project's environmental assessment category is determined by the category of its most environmentally sensitive component, including direct, indirect, and cumulative impacts. Each proposed project is scrutinized as to its type, location, scale, sensitivity and magnitude of its potential environmental impacts. Projects are assigned to one of the following four categories:

Category A: A proposed project is classified as Category A if it is likely to have significant adverse environmental impacts that are irreversible, diverse, or unprecedented on human populations, biodiversity, or natural resources. These impacts may affect an area broader than the sites or facilities subject to physical works. A full scale environmental impact assessment (EIA) is required.

Category B: A proposed project is classified as Category B if its potential adverse environmental impacts are less adverse than those of Category A projects. These impacts are site-specific, few if any of them are irreversible, and in most cases mitigation measures can be designed more readily than for Category A projects. An initial environmental examination (IEE) is required.

Category C: A proposed project is classified as Category C if it is likely to have minimal or no adverse environmental impacts. Beyond screening and desk review, no further environmental assessment action is required.

Category FI: A proposed project is classified as Category FI if it involves investments of ADB funds to or through a financial intermediary (FI). See paragraph 74 through 76.

59. **Involuntary Resettlement.** ADB will screen all projects to determine whether or not they involve involuntary resettlement. For project involving involuntary resettlement, a resettlement plan (RP) will be prepared commensurate with the extent and degree of the impacts. The degree of impact shall be determined by (i) scope of physical and economical displacement, and (ii) the vulnerability of the affected persons. For FI projects, see paragraph 74 through 76.

60. **Indigenous Peoples.** ADB will screen all projects to determine whether or not they have potential impacts on Indigenous Peoples. For projects with impacts on Indigenous Peoples, an Indigenous Peoples Plan (IPP) will be prepared. The level of detail and comprehensiveness of such IPP will be commensurate with the degree of impacts. The degree of impact is determined by evaluating (i) the magnitude of the impact on Indigenous Peoples' customary rights of use and access to land and natural resources; socioeconomic status; cultural and communal integrity; health, education, livelihood systems and social security status; or recognition of indigenous knowledge; and (ii) the vulnerability of the affected Indigenous Peoples. For FI projects, see paragraph 74 through 76.

61. For projects that are highly complex and sensitive,¹⁴ ADB will require the borrower/client to engage an independent advisory panel during the preparation and implementation of projects.

62. **Information Disclosure.** ADB is committed to working with the borrower/client to ensure that relevant information (whether positive or negative) on social and environmental safeguard issues is made available, in a form, manner, and language(s) accessible to the affected people and accessible to other stakeholders, including the general public, for them to provide meaningful inputs into project design and implementation. ADB will post on its website the following safeguard documents:

- (i) ADB will disclose on its website (i) for category A projects, draft EIA reports at least 120 days before Board consideration for public sector projects, and at least 60 days before Board consideration for private sector projects; and (ii) draft environmental assessment and review frameworks (EARF), draft resettlement frameworks (RF)/plans and draft Indigenous Peoples Planning Frameworks (IPPF)/plans before the project appraisal. ADB will post on its website the final or updated EIA/IEE, RP, IPP upon receipt.
- (ii) Environmental, involuntary resettlement and Indigenous Peoples monitoring reports submitted by borrower/clients during project implementation will be disclosed.

63. **Consultation and Participation.** ADB is committed to working with the borrower/client to put into practice processes of free, prior and informed consultation and participation. ADB will require the borrower/client to engage with the communities, groups, or persons affected by the proposed projects and civil society through information disclosure, consultation and informed participation, in a manner commensurate to the risks and impacts on the affected communities. Such consultation and participation is an ongoing process and will be carried out as early as possible in the project cycle so that all relevant concerns of affected communities or persons are taken into account in the design of the project and its mitigation measures. For projects with significant adverse environmental or social impacts, ADB project teams will participate in consultation activities to understand the concerns of affected people and ensure such concerns are appropriately addressed in project design and safeguard plans.

64. In addition, ADB recognizes that as Indigenous Peoples may be particularly vulnerable in certain circumstances, the principle of free, prior and informed consent of affected Indigenous Peoples will be applied to: (i) commercial development of the cultural resources and knowledge of Indigenous Peoples, (ii) physical relocation from traditional or customary lands, and (iii)

¹⁴ Highly complex and sensitive projects are those deemed by ADB to be highly risky, or contentious or involve serious and multidimensional and generally inter-related potential social and/or environmental impacts.

commercial development of natural resources on lands used with impacts on the livelihood, or cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples. For the purposes of policy application, consent refers to a collective expression by the affected Indigenous Peoples communities through individuals and/or their recognized representatives, of broad community support for such project activities. Such broad community support may exist even if some individuals or groups object to the project activities. The borrower/client will ascertain whether the affected Indigenous Peoples communities provide their broad support to the above project activities, and where there is such support the consultation process will be clearly documented in the safeguard documents. ADB will review the borrower/client's documentation of the engagement process, and in addition, through its own investigation, assure itself that broad support has been demonstrated for the project activities within the affected Indigenous Peoples communities. ADB will not finance the project if such broad support does not exist.

65. Due Diligence and Review of Safeguard Assessments and Plans. For projects proposed for financing, ADB will conduct safeguard review, including review of the borrower/client's safeguard documents as part of its overall due diligence. ADB's safeguard due diligence and review emphasizes the process of safeguard assessments and planning, in addition to producing quality safeguard documents. Due diligence and review involves field visits as well as desk review. Through such due diligence, ADB will confirm that (i) all key potential social and environmental impacts/risks of the project are identified; (ii) adequate measures to avoid, minimize, mitigate, or compensate for the adverse impacts are incorporated into the safeguard plans; (iii) the borrower/clients understand ADB's safeguard policy principles and requirements laid out in SRs 1-4, and have the necessary commitment and capacity to adequately manage social and environmental impacts/risks; (iv) the role of third parties is appropriately defined in the safeguard plans; and (v) consultation with affected people are conducted in accordance with ADB's requirements. In cases where such safeguard documents do not meet ADB's safeguard requirements, the borrower/client will be required to undertake additional assessment or improve the safeguard plans. ADB will not finance projects that do not comply with ADB safeguard requirements, or the host country social and environmental laws and regulations.

66. Monitoring and Reporting. Both the borrower/client and ADB have their own separate responsibilities for monitoring. The extent of monitoring activities, including their scope and periodicity, should be commensurate with the project's risks and impacts. Borrowers/clients are required to implement safeguard measures and relevant safeguard plans, as provided in the legal agreements, and to submit periodic monitoring reports on their implementation performance. ADB will require the borrower/client to:

- (i) establish and maintain procedures to monitor and measure the effectiveness of the safeguard implementation;
- (ii) verify compliance and progress of the safeguard measures toward the intended outcomes;
- (iii) document and disclose monitoring results, and identify necessary corrective and preventive actions in the periodic monitoring reports;
- (iv) follow up on these actions to ensure progress toward the desired outcomes;
- (v) for projects with significant impacts and risks, retain qualified and experienced external expert(s) or qualified NGO(s) to verify its monitoring information;
- (vi) for highly complex and sensitive projects, use independent advisory panels during project implementation;
- (vii) submit periodic monitoring reports on safeguard measures as agreed with ADB.

67. ADB reviews project performance against the borrower/client's commitments as agreed in the legal documents. Monitoring of social and environmental safeguards is integrated into the project performance management system. ADB will monitor projects on an on-going basis as long as ADB maintains a financial interest in the project. ADB will carry out the following monitoring actions to supervise project implementation:

- (i) conduct periodic site visits of projects with adverse environmental or social impacts;
- (ii) conduct monitoring missions with detailed review by ADB's safeguard specialists or consultants for projects with significant adverse social and environmental impacts;
- (iii) review periodic monitoring reports submitted by borrowers/clients to ensure that adverse impacts and risks are mitigated as planned and as agreed with ADB;
- (iv) work with the borrower/client to rectify to the extent possible any failures to comply with its safeguard commitments, as covenanted in the legal agreements; and exercise remedies to reestablish compliance as appropriate; and
- (v) prepare a project completion report that assesses if the objective and desired outcome of the safeguard plans have been achieved, taking into account the baseline conditions and the results of monitoring.

68. **Derogation.** For any particular project where adoption of alternative approaches to those described in Section B or SR1-4 may be recommended to best reflect national or local conditions, such approaches will be subject to Board consideration on a project-by-project basis. In these situations, alternative approaches must be compliance with the policy principles, and detailed justification will be provided in relevant project documents. In deciding whether to approve any derogation to this policy statement, the Board will balance the proposed approach against the overall environmental and/or social costs and benefits of the project.

69. **Accountability Mechanism.** The SPS requires that the borrower/client establish and maintain grievance mechanisms to receive and facilitate resolution of affected peoples' concerns and grievances about social and environmental performance of projects. In cases where grievances are not resolved at the project level, project-affected people can submit complaints to the ADB Accountability Mechanism. The Accountability Mechanism provides an independent forum where people adversely affected by ADB-financed projects can voice and hopefully resolve their problems, as well as report alleged violations of ADB's operational policies and procedures. The ADB Accountability Mechanism comprises two separate but related phases: (i) a consultation phase, led by ADB's Special Project Facilitator who reports directly to the ADB President, to assist project-affected people in finding solutions to their problems; and (ii) a compliance review phase, led by a three-member panel which reports to the Board of Directors. The Compliance Review Panel investigates alleged violations of ADB's operational policies and procedures, as defined by the Board of Directors, including safeguard policies, that have resulted or are likely to result in direct adverse and material harm to project-affected people, and recommends how to ensure project compliance with those policies and procedures.

2. Special Requirements

70. In addition to standard project loans that follow the general requirements specified in paragraphs 57 to 67, there are a number of specific cases that need tailored approaches to address social and environmental impacts and risks.

a. Application of Safeguard Framework

71. Safeguard frameworks apply to projects delivered through sector loans, MFFs, or other lending modalities where subprojects or project components are prepared after Board approval. Safeguard frameworks (including environmental assessment and review framework, resettlement framework, Indigenous Peoples planning framework) need to be in place prior to the project approval to provide guidance on screening, assessment, planning, institutional arrangement and processes to be followed for subprojects and/or component that are prepared after Board approval. Impact assessments and safeguard plans are prepared during the subproject or component preparation, in conformity with the safeguard frameworks agreed by ADB and the borrower/client. The application of safeguard framework is not appropriate for sector loans which are highly complex and sensitive, including sector loan tranches of MFFs or components of sector loans which are highly complex and sensitive.

72. Safeguard frameworks will be prepared for each relevant safeguard area and will

- (i) fully reflect the policy objectives, and relevant policy principles and SRs;
- (ii) explain the general anticipated impacts of the subprojects and/or components to be financed under the proposed project;
- (iii) specify the requirements that will be followed in subproject screening, assessment, and planning, including arrangements for free, prior and informed consultation with affected people and other stakeholders and information disclosure requirements, and where applicable, safeguard criteria that are to be used in selecting subprojects and/or components;
- (iv) describe implementation procedures (including budget, institutional arrangements and capacity development requirements);
- (v) specify monitoring and reporting requirements; and
- (vi) specify the responsibilities and authorities of the borrower/client and ADB in the preparation, submission, review, and clearance of safeguard documents.

73. In order to determine whether application of safeguard framework is appropriate, ADB will assess the adequacy of the borrower/client's capacity in managing environmental and social impacts and risks and in implementing national laws and ADB's requirements. If there are gaps between ADB's requirements and country's procedural requirements, or where there are gaps in borrowers' capacity, the safeguard frameworks should identify the specific gap-filling requirements to ensure that policy principles are achieved.

b. Financial Intermediaries

74. The very nature of intermediated financing means that ADB will delegate to the FI responsibility for subproject due diligence and monitoring including environmental and social risk management. Nevertheless, by virtue of its relationship with the FI, ADB has responsibility for conducting safeguard due diligence to assess the potential environmental and social impacts and risks associated with the FI's existing and likely future portfolio, and its commitment and capacity in environmental and social management. The extent of delegation and ADB oversight will depend on level of potential impacts and risks associated with the FI's business activities, its capacity of environmental and social management, and the financing modality provided by ADB.

75. Where the FI's business activities have minimal or no adverse environmental or social impacts and risks, the FI project need not apply any other specific requirements. All other FIs will apply the PIL and will be required to establish and maintain an appropriate environmental

and social management system (ESMS) as part of their overall management system. ESMS will be documented and agreed between ADB and the FI. ADB will monitor the FI's performance on the basis of its management system.

76. When the FI provides finance under an ADB loan, equity or guarantee for targeted subprojects with potential significant social or environmental impacts and risks, the ESMS will incorporate relevant provisions to ensure that such subprojects will be required to meet ADB's safeguard requirements in addition to national laws and standards. Where ADB funds will not finance specific targeted subprojects, the FI will adopt the ESMS that covers the entire FI's portfolio of subprojects originated from the time when ADB provides finance, and will ensure that all subprojects comply with national laws and standards pertaining to social and environmental safeguards. ADB may set additional requirements, depending on the FI's portfolio and country safeguard systems.

c. Strengthening and Use of CSS

77. ADB recognizes that DMCs have developed in varying degrees their own safeguard systems to deliver safeguards, and supporting DMC efforts to strengthen and use their own systems would enhance country ownership, reduce transaction costs and extend development impacts. On the other hand, ADB needs to ensure that application of CSS in ADB projects does not undermine the achievement of ADB policy principles. ADB's overall strategy for the strengthening and use of CSS has the following attributes and emphasizes a phased approach:

- (i) **Definition.** "Country safeguard systems" is used to mean a country's legal and institutional framework, consisting of its national, sub-national, or sectoral implementing institutions and relevant laws, regulations, standards, and procedures, which pertain to the safeguard policy areas.
- (ii) **Criteria for the Use of CSS.** Application of CSS in ADB-financed projects is not automatic or mandatory. ADB may consider application of a borrower's CSS to identify and manage the social and environmental risks associated with ADB-financed projects at national, subnational, sector, or agency level, provided that (a) the CSS is equivalent to ADB's, i.e. the CSS is designed to achieve the objectives and adhere to the applicable policy principles set out in ADB's SPS; and (b) the borrower/client has relevant capacity to implementing the applicable laws, regulations, rules, and procedures in the country or specific sector concerned.
- (iii) **Phase I: Country/Sector/Agency Level Assessment—Determining Equivalence.** ADB will be responsible for assessing and determining the equivalence through CSS assessment at national, subnational, sector, or agency level. If the assessments reveal that gaps can be addressed reasonably, ADB and the borrower will agree on specific gap-filling measures to be included in an action plan. The assessments will need to be updated as required to reflect changes in CSS. Recent analytical work and assessments of other MFIs, updated as required, can be used. Joint assessments with other MFIs will be encouraged. At this phase, ADB will not consider application of CSS to any specific project and ADB's safeguard policies and requirements will apply. If the equivalence assessments conclude that gaps at country/sector/agency level cannot be addressed within a reasonable timeframe, ADB will not move into the second phase of acceptability assessment.
- (iv) **Phase II: Project Level Assessment—Determining Acceptability.** Once ADB has determined that the CSS is equivalent to ADB's, it may consider the

application of CSS to ADB-financed projects at the national, sub-national, sector or agency level. For each project, ADB will conduct an acceptability assessment (including capacity, track record and practice of executing agency and implementing agencies) before actually introducing the use of CSS into the project. The assessment will be done as part of the project design process during the project preparation. The project team will also assist the borrower to develop an Action Plan for capacity building as needed.

- (v) **Scope of CSS Application.** As the extent of equivalence and acceptability is safeguard specific, a country/sector/agency may thus qualify for a CSS approach for one, two or for all safeguard areas, i.e. environment, involuntary resettlement, and Indigenous Peoples, depending on the result of the CSS assessments.
- (vi) **Disclosure and Consultation.** Draft equivalence assessments at country/sector/agency level will be documented and disclosed on ADB's website for public comments upon completion. ADB may organize in-country consultation workshops to solicit comments and feedback from stakeholders including governments and NGOs . Final equivalence assessment reports will be disclosed on ADB's website upon completion. Issues related to the acceptability assessments at project level will be an element of the normal safeguard consultation process undertaken for project preparation.
- (vii) **Project Implementation.** For projects that use CSS, ADB's responsibilities for safeguard review before the Board approval will not be removed. The review will be based on the requirements under CSS and agreed Action Plan (rather than ADB's requirements). After the Board approves a project that uses CSS, ADB supervision will follow the same procedures as for any other ADB-financed project.
- (viii) **Exclusion to CSS.** CSS will not be applied to highly complex and sensitive projects financed by ADB.

78. Appendix 2 provides details of the proposed approach for strengthening and application of CSS.

d. Projects with Cofinancing

79. In the context of a cofinancing transaction that requires project-specific contractual commitment by ADB to facilitate mobilization of cofinancing and/or administration of the financing partner's funds,¹⁵ ADB's safeguard policy requirements will apply. In the case of a guarantee or cofinancing transaction with active coordination under formal arrangements with a financing partner to facilitate the processing and implementation of the project,¹⁶ where ADB has satisfied itself that the safeguard policies of a MFI, bilateral institution, or other public/private financing partner are at least equivalent to ADB's safeguard objectives and policy principles, and that such financing partner has the capacity to implement its policies, the safeguard policies of such financing partner may apply. This approach will not remove ADB's responsibilities for due diligence and safeguard review during project preparation. Unless otherwise approved by the ADB Board, ADB's oversight responsibilities for monitoring and supervision during project implementation will also not be removed. In the context of a cofinancing transaction in which the financial partner's funds are provided in parallel to ADB's, without formal arrangements between the parties,¹⁷ ADB's safeguard policy requirements will apply to all ADB financed components.

¹⁵ This refers to ADB-administered direct, value-added (DVA) cofinancing in ADB's Cofinancing Strategy.

¹⁶ This refers to Collaborative Cofinancing in ADB Cofinancing Strategy.

¹⁷ This refers to Third-party Financing (Non-DVA Cofinancing) in ADB's Cofinancing Strategy.

In any context, ADB will make efforts to collaborate with the borrower/client and cofinanciers to adopt a single social and environmental process and unified safeguard documentation, consultation and disclosure requirements, in compliance with the principles of this SPS.

C. Roles and Responsibilities

1. ADB's Roles and Responsibilities

80. ADB is responsible for screening projects to specify ADB's safeguard requirements; undertaking due diligence and reviewing the borrower/client's social and environmental assessments and plans to ensure that safeguard measures are in place to avoid wherever feasible, and minimize, mitigate, or compensate for adverse social and environmental impacts in compliance with ADB safeguard policy principles and SRs 1-4; determining the feasibility of ADB financing; helping the borrower/client in building capacity to delivery the safeguards; and monitoring and supervising the borrower/client's social and environmental performance throughout the project cycle. ADB also discloses safeguard plans/frameworks, including social and environmental assessments, and monitoring reports on its website.

81. If a borrower/client fails to comply with legal agreements on safeguard requirements, including those described in the safeguard plans and frameworks, ADB will seek corrective measures and work with the borrower/client to bring it back into compliance. If the borrower/client fails to reestablish compliance then ADB may exercise legal remedies including suspension, cancellation, or acceleration of maturity, which are available under the legal agreements. Before resorting to such measures, ADB uses available means to rectify the situation satisfactory to all parties to the legal agreements, including initiating dialogue with the parties concerned to achieve compliance with legal agreements.

2. Roles and Obligations of Borrowers/Clients

82. The borrower/client is responsible for assessing projects and their environmental and social impacts, preparing safeguard plans, and engaging with affected communities through information disclosure, consultation and informed participation, following all applicable policy principles and SRs. The borrower/client will submit to ADB for review all required information, including the assessment reports, safeguard plans/frameworks, and monitoring reports. The borrower/client must comply with host country laws, regulations, and standards. Further, the borrower/client must implement safeguard measures agreed with ADB to deliver the policy principles and meet the requirements specified in SRs 1-4. To ensure that the agreed measures are appropriately implemented by contractors where relevant, the borrower/client will include the safeguard requirements in bidding documents and civil work contracts. Where national safeguard policies and regulations (i.e., country safeguard systems) differ from ADB safeguard policy requirements, ADB and the borrower/client will agree on specific measures to ensure that ADB's safeguard policy principles and requirements are fully complied with.

VI. RESOURCE IMPLICATIONS

83. It is important to ensure that the updated safeguard requirements are appropriately resourced and that resource constraints are taken into account in defining the SPS. The OED SES on the three current safeguard policies all identified an important mismatch between current policy requirements and available staff resources. While the issue of qualified and adequate resources remains central to effective safeguard delivery, it is considered premature to provide quantitative data on the resources requirements at this stage of policy formulation.

Accordingly, this section will be updated to provide a more detailed discussion when the results of the analyses become available at the W-paper stage.

84. In optimizing resource utilization and allocation, various options will be examined in the context of the following considerations: (i) the efficient and effective apportionment of incremental resource requirements across internal administrative budget, TA and loans, determined by the demarcation between ADB and borrower/client responsibilities; (ii) efficiencies and streamlined internal procedural requirements that achieve ADB's objectives and adhere to the principles of the SPS; and (iii) efficiency measures, which will include improving skills mix and competencies, optimizing number of safeguard specialists at Headquarters and at Resident Missions, and increasing sector specialization and pooling of specialist resources.

85. A draft policy implementation plan, and an analysis on resource implications, will be developed at the time of W-paper formulation.

VII. TRANSITION

86. The SPS and SRs 1-4 shall become effective six months after the date of approval by the Board of Directors. For projects that will start preparation after the Policy's effective date, the SPS and SRs 1-4 shall apply. Projects that have completed MRM or any tranche under an existing MFF for which Management Review of PFR has been completed at the time of the effective date will be subject to the application of the ADB's Policy on Involuntary Resettlement (1995), the ADB's Policy on Indigenous Peoples (1998), and the Environment Policy of ADB (2002).

VIII. CONCLUSION

87. It will be recommended that the Board approve the ADB Safeguard Policy Statement and the Safeguard Requirements for Borrowers/Clients. The ADB Safeguard Policy Statement and Safeguard Requirements for Borrowers/Clients will supersede the ADB's Policy on Involuntary Resettlement (1995), the ADB's Policy on Indigenous Peoples (1998), and Environment Policy of ADB (2002).

ADB PROHIBITED INVESTMENT ACTIVITIES*

The following are not qualified for ADB financing:

- (i) production or activities involving harmful or exploitative forms of forced labor¹/harmful child labor;²
- (ii) production of or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements, or subject to international phase-out or bans, such as (a) pharmaceuticals,³ pesticides/herbicides,⁴ (b) ozone-depleting substances⁵, (c) polychlorinated biphenyls⁶ and other hazardous chemicals,⁷ (d) wildlife or wildlife products regulated under CITES,⁸ and (e) transboundary trade in waste or waste products.⁹
- (iii) production of or trade in weapons and munitions, including paramilitary materials;
- (iv) production of or trade in alcoholic beverages (excluding beer and wine);¹⁰
- (v) production of or trade in tobacco;¹⁰
- (vi) gambling, casinos, and equivalent enterprises;¹⁰
- (vii) production of or trade in radioactive materials, including nuclear reactors and components thereof;¹¹
- (viii) production of or trade in or use of unbonded asbestos fibers;¹²
- (ix) commercial logging operations or the purchase of logging equipment for use in primary tropical moist forests or old-growth forests;
- (x) marine and costal fishing practices, such as large scale pelagic drift net fishing and fine mesh net fishing, harmful to unwanted vulnerable and protected species in large numbers and damaging to the marine biodiversity and habitats.

* A reasonableness test will be applied when the activities to be financed would have a significant development impacts but circumstances of the country require adjustments to this Prohibited Investment Activities list.

¹ Forced labor means all work or service not voluntarily performed, that is extracted from an individual under threat of force or penalty.

² Harmful child labor means the employment of children that is economically exploitive, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health, or physical, mental, spiritual, moral, or social development,

³ A list of pharmaceutical products subject to phase-outs or bans is available from www.who.int.

⁴ A list of pesticides and herbicides subject to phase-outs or bans is available from www.pic.int.

⁵ A list of the chemical compounds that react with and deplete stratospheric ozone, resulting in the widely publicized ozone holes is listed in the Montreal Protocol, together with target reduction and phase out dates. <http://www.unep.org/ozone/montreal.shtml>.

⁶ A group of highly toxic chemicals, polychlorinated biphenyls, are likely to be found in oil-filled electrical transformers, capacitors, and switchgear dating from 1950 to 1985.

⁷ A list of hazardous chemicals is available from www.pic.int.

⁸ CITES: the Convention on International Trade in Endangered Species of Wild Fauna and Flora. A list of CITES is available from www.cites.org.

⁹ As defined by the Basel Convention. See www.basel.int.

¹⁰ This does not apply to project sponsors who are not substantially involved in these activities. "Not substantially involved" means that the activity concerned is ancillary to a project sponsor's primary operations.

¹¹ This does not apply to the purchase of medical equipment, quality control (measurement) equipment, and any equipment where ADB considers the radioactive source to be trivial and/or adequately shielded.

¹² This does not apply to the purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20%.

Approach for Strengthening and Use of Country Systems to Address Environmental and Social Safeguard Issues in ADB Operations

I. Introduction

1. ADB safeguard policies are central to achieving sustained development impacts of projects and poverty reduction, which are major development goals of ADB. ADB recognizes that its developing member countries (DMCs) have their own policies, legal framework, institutional arrangements, and administrative procedures for delivering safeguards, and that the development of the capacity and track record of the governments, project sponsors, executing agencies, and other stakeholders is important to implement these policies and framework effectively. ADB also recognizes that further development of such country safeguard systems (CSS) will promote socially and environmentally sustainable development in the Asia and Pacific region. In October 2004 ADB Management approved a concept paper for a safeguard policy update (SPU) with a provision for potential strengthening and use of CSS in project processing and implementation. In December 2005 ADB approved TA6285 for Strengthening Country Safeguard Systems, with the main objective of formulating ADB's overall strategic approach for strengthening and use of CSS, and developing methodology and tools for assessing CSS.

2. Section II provides the definition and rationale for the strengthening and use of CSS; Section III presents the proposed overall strategic approach for strengthening and use of CSS; Section IV and V discuss ADB's and borrower's roles and responsibilities, respectively; Section VI presents the methodology for CSS assessments; and Section VII, the last section, discusses resource implications.

II. Terminology and Rationale

3. **Definition.** "Country safeguard system" is used to mean a country's legal and institutional framework, consisting of its national, sub-national, or sectoral implementing institutions and relevant laws, regulations, rules, and procedures, which pertain to the policy areas of environmental and social safeguards.¹

4. **Rationale.** Operational experience, evaluation, and studies inside and outside ADB show that the effectiveness of development agencies' safeguard policies depends largely on the degree to which the safeguard policy principles and requirements are rooted in DMCs' culture and socio-economic context of decision making, and development agencies can increase the impacts of their development assistance if they support efforts to strengthen the DMCs' legal frameworks, policies, and institutions that are already in place and work more directly with them.

5. In the last decade, many DMCs have upgraded and/or adopted new national policies, laws, and procedures on environmental assessment, involuntary resettlement, and Indigenous Peoples. The legal framework and procedures in some DMCs may well be equivalent to ADB's safeguard policy principles and requirements. In some DMCs policies and institutional capacities remain weak and require significant efforts toward policy improvement and capacity development. Establishment of partnership with DMCs in strengthening and using CSS can help to enhance the DMCs' ownership of and to scale up the development impacts. When accompanied by suitable measures for capacity development, the use of CSS can reduce risks by improving quality and timeliness in project implementation.

¹ This definition is largely consistent with the World Bank's definition of "country system" for environmental and social safeguards.

6. The OED special evaluation studies on ADB's three safeguard policies pointed out that ADB's existing safeguard policies and implementation procedures follow a "one-size-fits-all" approach and do not distinguish among various legal/institutional frameworks, implementation capacities and track records across different DMCs. They recommended that the SPU explore opportunity and develop a strategic approach to increase the capacity of and reliance on country systems for environmental and social safeguards.

7. The World Bank and Inter-American Development Bank have already made efforts toward using CSS.² Development of ADB's strategic approach and methodology for assessing CSS will facilitate harmonization with its development partners, streamline and speed up procedures for improved investment services, and reduce transaction costs as the borrowers would not need to operate parallel processes or duplicate work for donor projects.

8. **ADB's Experience with Assessment and Use of CSS.** ADB has been assessing DMCs' legal requirements and institutional capacities in the context of project processing, but implicitly and not in a rigorous manner. Under normal project preparation and review process, for instance, ADB does due diligence to identify gaps between DMC's and ADB's safeguard requirements; and assess implementation capacities of executing agencies to arrive at the social and environmental plans, draft loan covenants, and develop targeted capacity building measures. However, such assessments are usually limited at the project level, and often lack systematic and rigorous analysis of CSS.

9. While the CSS-like approach at the project level may provide useful experience, it has been carried out in an informal and inconsistent way. In order to respond to the ongoing developments in the region in which DMCs have increasingly established their own systems and are willing to further strengthen them for environmental and social safeguards, there is a need to develop rigorous and transparent methodologies for CSS assessments, and adopt a strategic approach for strengthening and using CSS more systematically.

III. Overall Approach for the Strengthening and Use of CSS in ADB Supported Operations

10. The borrower/client may propose the use of its own safeguard system to ADB financed projects on a national, subregional, sectoral, or agency level. ADB may consider to apply a borrower's CSS to identify and manage the social and environmental impacts/risks associated with ADB-supported projects in such country, subregion, or sector, including those sponsored by the agency, provided that (i) the CSS is equivalent to ADB's safeguard policy principles, and (ii) the borrower has relevant capacity and necessary commitment to implementing the applicable laws, regulations, rules and procedures in the country and specific sector concerned.

11. **Equivalence and Acceptability.** Equivalence and acceptability are two criteria for deciding on the use of CSS. ADB would consider a borrower's CSS to be equivalent to ADB's, if the borrower's system is designed to achieve the objectives and adhere to the applicable policy principles set out in ADB's safeguard policies. ADB also assesses the acceptability of borrower/client's implementation capacity, including track record and practices, before deciding on the use of the borrower's system.

² In 2004, the World Bank launched a two-year program on the pilot use of CSS for 20 projects in 14 countries. Since December 2007 when the World Bank issued an evaluation report of its 2-year pilot program, the pilot program has been extended for another 3 years. In 2006, IADB approved its Environment and Safeguards Compliance Policy that provides for considering the use of "in-country systems."

Phase I: Country/Sector/Agency Level Assessment—Determining Equivalence.

ADB will be responsible for assessing and determining the equivalence through CSS assessment at national, subnational, sector, or agency level. If the assessments reveal that gaps can be addressed reasonably, ADB and the borrower will agree on specific gap-filling measures to be included in an action plan. The assessments will need to be updated as required to reflect changes in CSS. Recent analytical work and assessments of other MFIs, updated as required, can be used. Joint assessments with other MFIs will be encouraged. At this phase, ADB will not consider application of CSS to any specific project and ADB's safeguard policies and requirements will apply. If the equivalence assessments conclude that gaps at country/sector/agency level cannot be addressed within a reasonable timeframe, ADB will not move into the second phase of acceptability assessment.

Phase II: Project Level Assessment—Determining Acceptability. Once ADB has determined that the CSS is equivalent to ADB's, it may consider the application of CSS to ADB-financed projects at the national, sub-national, sector or agency level. For each project, ADB will conduct an acceptability assessment (including capacity, track record and practice of executing agency and implementing agencies) before actually introducing the use of CSS into the project. The assessment will be done as part of the project design process during the project preparation. The project team will also assist the borrower develop an Action Plan for capacity building as needed.

12. **Addressing Gaps to Strengthen CSS.** Where the borrower/client has to make changes in its legal/institutional framework to meet the objectives and deliver the principles of ADB's SPS, and is committed to doing so, ADB may, when determining equivalence, take account of measures to improve CSS. Similarly, if the borrower/client needs to strengthen its implementation capacity to be ready for effectively delivering safeguards, and is committed to doing so, ADB may, when determining acceptability, take account of measures to strengthen the borrower/client's implementation capacity and practices. Action plans addressing such types of needed changes will be prepared by the borrower/client in an agreed timeframe, with the assistance of ADB and other partners. The Action Plan for equivalence will focus on how to enhance the alignment of CSS with ADB's policy principles through necessary improvements in the policy or regulatory framework. The Action Plan for capacity building will address relevant capacity development issues of the borrower/client and across key institutions at project level.

13. **Disclosure and Consultation.** To the extent possible, the proposal for the strengthening and use of CSS, together with its justification, is presented in the country partnership strategy (CPS) or CPS progress reports.³ CSP-related documents are disclosed in conformity with the requirements of ADB's Public Communications Policy (2005). Draft equivalence assessments at country/sector/agency level will be documented and disclosed on ADB website for public comments upon completion. ADB may organize in-country consultation workshops to solicit comments and feedbacks from stakeholders including governments and NGOs. Final equivalence assessment reports will be disclosed upon completion on ADB website. Issues related to the acceptability assessments at project level will be an element of the normal safeguard disclosure and consultation process undertaken for project preparation.

14. **Levels of CSS.** ADB may consider application of CSS to various levels, such as agency, sector, subnational or national levels based on (i) discussions/dialogue with the borrower/client

³ Examples are Country Operations Business Plan and mid-term review reports.

on ADB's current knowledge of CSS, country/sector context, and expected operations of ADB in the DMC; and (ii) outcomes of assessments of equivalence and acceptability.

15. **Scope of CSS Application.** As the extent of equivalence and acceptability is safeguard specific, a country/sector/agency may thus qualify for a CSS approach for one, two, or for all safeguard areas, i.e., environment, involuntary resettlement, and Indigenous Peoples, depending on the result of the CSS assessments.

16. **Exclusion to CSS.** CSS will not be applied to highly complex and sensitive projects.⁴ These types of projects will be considered under ADB's normal project processing requirements.

17. **Changes in CSS.** If, during project implementation, the DMC amends applicable laws or regulations, but the project implementation is not adversely affected, ADB and the borrower/client could agree to amend the legal agreements to reflect the changes, or refrain from any action if it is determined by ADB that the changes are not significant enough to warrant an amendment. If, however, the CSS is changed, and such change adversely affects the achievement of the agreed objectives, ADB discusses with the borrower/client, as part of ADB-country dialogue, the implementation of additional measures (beyond the project level) to meet those objectives.

IV. ADB's Responsibility and Accountability

18. **Determining Equivalence.** ADB would be responsible for determining equivalence through CSS assessment. ADB will

- (i) in collaboration with the borrower/client, assess equivalence of CSS with ADB's policy objectives and principles, including identification of actions needed for CSS reform;
- (ii) help borrower/client prepare the Action Plan based on the results of the assessment; and incorporation of the Action Plan's provisions into the legal agreements for using CSS. The legal agreements would allow ADB to suspend the use of CSS and revert to its own, if the borrower/client stops implementing the Action Plan;
- (iii) be responsible, along with the DMC, for the conduct of consultation with stakeholders to discuss and validate the findings of the equivalence assessments and to seek agreement on the proposed measures outlined in the Action Plan; and
- (iv) provide necessary financial support to develop and implement the Action Plan through program loans and technical assistance, and supervise the Action Plan implementation.

19. Recent analytical work and assessments of other MFIs, updated as required, can be used. Joint assessments with other MFIs are encouraged.

20. **Project Level Assessment.** Once ADB has determined that the CSS is equivalent to ADB's, it may consider the application of CSS at the country, subregion, sector, or agency level.

⁴ Highly complex and sensitive projects are those deemed by ADB to be highly risky, or contentious or involve serious and multidimensional and generally inter-related potential social and/or environmental impacts.

For each such project, the ADB project team will conduct an acceptability assessment before actually introducing the use of CSS in the project, which includes analysis of capacity, and track record and practice of executing agency and implementing agencies. The assessment will be done as part of the project design process during the project preparation. The project team will also assist the borrower/client to develop an Action Plan for capacity building, as needed. The results of acceptability assessment will be documented and reflected in the RRP.

21. **Project Level Document Review and Supervision.** The use of CSS will not remove ADB's responsibilities for safeguard review before Board approval of proposed projects. The only difference is that the review will be based on the requirements under CSS and on the agreed Action Plan. After the Board approves a project that uses CSS, ADB supervision will follow the same procedures as for any other investment project.

22. The use of CSS will not alter the role of ADB's Office of the Special Project Facilitator, Compliance Review Panel, and Operations Evaluation Department.

V. Borrower/Client's Responsibility

23. **CSS Assessment and Action Plan Development.** The borrower/client will support and participate in the equivalence and acceptability assessments. The borrower/client will

- (i) facilitate sharing of all relevant documents, data, and information with the ADB assessment team, and conduct of seminars/workshops, as necessary;
- (ii) assist in organizing and conducting consultation with stakeholders to discuss and validate the findings of the assessments; and
- (iii) develop action plans outlining the measures addressing needed changes.

24. **Implementation.** The borrower/client is responsible for implementing the action plans, and achieving and maintaining equivalence as well as necessary commitment and capacity, in accordance with ADB's assessments. For each project that uses CSS, the specific provisions of CSS and any additional actions that the borrower/client needs to undertake would become part of the borrower/client's contractual obligations to ADB, and subject to ADB's normal contractual remedies.

VI. Methodology for CSS Assessments

25. The methodology, tools and guidance on ADB internal procedure and specific assessment schemes for each safeguard policy are being developed.

VII. Resource Implications

26. Although the processes involved in the strengthening and use of CSS will be resource intensive⁵ during upstream country/sector level assessment and project preparation, cost savings are expected in the medium and long term. This is because in the long run the equivalence and acceptability assessments are most likely to be incremental. Application of CSS to ADB projects will entail costs for (i) equivalence and acceptability assessments, including the consultation to be held after the assessments, (ii) medium to long-term capacity development activities to strengthen CSS; (iii) training of Bank staff, and (iv) monitoring and supervision of CSS-portfolio.

⁵ World Bank experience indicates high staff inputs/consultants time for the conduct of the assessments and public consultations, and preparation of the assessment reports.

27. Resource implications will be further examined, and resources such as (i) pre-CPS assessment; (ii) Project Preparatory Technical Assistance (PPTA) sources; (iii) advisory TA for assessment and capacity development at the national, subregional or sector level; and (iv) program loans and advisory TA for helping DMCs to strengthen national legal framework and institutional capacity need to be considered.

DRAFT SAFEGUARD REQUIREMENTS FOR BORROWERS/CLIENTS 1**ENVIRONMENT****A. Introduction**

1. This document outlines the requirements that borrowers/clients are expected to meet in delivering environmental safeguards for projects supported by ADB. The requirements underscore the important elements of environmental assessment process, including preparation of environmental assessment reports, planning and management, information disclosure and consultation, establishment of a grievance mechanism, and monitoring and reporting. It includes further particular environmental safeguard requirements on biodiversity conservation and sustainable use of renewable natural resources, pollution prevention and abatement, human health and safety, and conservation of physical cultural resources. The applicability of these particular requirements is established through environmental assessment process, and compliance with these requirements are achieved through adequate implementation of environmental management plans agreed upon by ADB and the borrower/clients.

B. Scope of Application

2. These environmental requirements apply to all projects including ADB-financed and/or ADB-administered sovereign and non-sovereign investment projects funded by a loan, and/or a grant, and/or other means (such as equity and/or guarantee).

C. General Requirements**1. Environmental Assessment**

3. Environmental assessment is a generic term to describe an ongoing process of environmental analysis and planning to address environmental impacts and risks associated with a project. The borrower/client will, at early stage of project preparation, identify potentially environmental impacts and risks on physical, biological, socio-economic (including health and safety) and physical cultural resources, and determine their significance and the scope. If potentially adverse environmental impacts and risks are identified, the borrower/client will undertake an environmental assessment as early as possible in the project cycle. For projects with potential significant adverse impacts that are diverse, irreversible or unprecedented, the borrower/client will examine technically and financially feasible alternatives to the project location, design, technology and components that would avoid, and, if avoidance is not feasible, minimize adverse environmental impacts and risks. The rationale for selecting the particular project location, design, technology and components will be properly documented, including, where appropriate, costs-benefits analysis taking into due account environmental costs and benefits of the various alternatives considered.

4. The assessment process will be based on current information, including an accurate project description, and appropriate environmental and social baseline data. The environmental assessment will consider all potential impacts and risks of the project on natural environment (physical and biological) and socio-economic aspects (e.g., human health and safety, physical cultural resources, and impacts on livelihood caused by project activities other than land acquisition¹) in an integrated way. The project's potential environmental impacts and risks will be reviewed against the requirements presented in this document, and applicable laws and

¹ See Paragraph 8, SR2, *Safeguard Requirements for Borrowers/Clients: Involuntary Resettlement*.

regulations of the jurisdictions in which the project operates that pertain to environmental matters, including host country obligations under international law.

5. Impacts and risks will be analyzed in the context of the project's area of influence. This area of influence encompasses (i) the primary project site(s) and related facilities that the borrower/client (including its contractors) develops or controls, such as power transmission corridors, pipelines, canals, tunnels, relocation and access roads, borrow and disposal areas, construction camps; (ii) associated facilities that are not funded as part of the project (funding may be provided separately by the borrower/client or by third parties), and whose viability and existence depend exclusively on the project and whose goods or services are essential for the successful operation of the project; (iii) areas and communities potentially impacted by cumulative impacts from further planned development of the project, or other sources of similar impacts in the geographical area, any existing project or condition, and other project-related developments that are realistically defined at the time the assessment is undertaken; and (iv) areas and communities potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location. The area of influence does not include potential impacts that would occur without the project or independently of the project. Environmental impacts and risks will also be analyzed for the relevant stages of the project cycle. These may include preconstruction, construction, operations, decommissioning and post-closure activities such as rehabilitation or restoration.

6. Where relevant, the assessment will identify potential transboundary effects, such as pollution of air, or increased use, changes in hydrology or pollution of international waterways, as well as global impacts, such as the emission of greenhouse gasses, and impacts on endangered species and habitats.

7. The environmental assessment will examine whether there are individuals and groups that may be differentially or disproportionately affected by the project's potential adverse environmental impacts because of their disadvantaged or vulnerable status (especially those of poor, women and children). Where such individuals or groups are identified, the environmental assessment will recommend targeted and differentiated measures so that adverse environmental impacts do not fall disproportionately on them.

8. Depending on the significance of project impacts and risks, the assessment may comprise a full-scale environmental impact assessment (EIA), an initial environmental examination (IEE) or equivalent process, or a desk review. A typical EIA report includes the following major elements: (i) Executive Summary, (ii) description of the project, (iii) description of the environment, (iv) anticipated environmental impacts and mitigation measures, (v) analysis of alternatives, (vi) environmental management plan(s), or equivalent planning document(s), (vii) consultation and information disclosure, and (viii) conclusion and recommendations. Annex 1 provides further details. An IEE with narrower scope may be conducted for projects with limited impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures.

9. When the project involves existing activities or facilities, environmental audits will be performed by relevant external experts to determine any areas of concern. In case the project does not foresee any new major expansion, the audit constitutes the environmental assessment for the project. A typical environmental audit report includes the following major elements: (i) Executive Summary; (ii) facilities description, including both past and current activities; (iii) summary of national, local and any other applicable environmental laws, regulations, and standards; (iv) audit and site investigation procedure; (v) findings and areas of concern; and (vi) Corrective Action Plan (CAP), providing the appropriate corrective actions for each area of

concern, including costs and schedule.

10. When the project involves development of or changes to policies, plans or programs that are likely to have environmental impacts that are regional or sectoral, strategic environmental assessment (SEA) will be required. A SEA report will include scenario analysis, assessment of long term and indirect impacts, consultation process, and option selection at strategic level.

2. Environmental Planning and Management

11. The borrower/client will prepare an environmental management plan (EMP) or equivalent planning document(s) that addresses the potential impacts and risks identified by the environmental assessment. The EMP will include the proposed mitigation measures, environmental monitoring and reporting requirements, emergency response procedures, related institutional or organizational arrangements, capacity development and training measures, implementation schedule, cost estimates and performance indicators. Where impacts and risks cannot be avoided or prevented, mitigation measures and actions will be identified so that the project is designed, constructed and operated in compliance with applicable laws and regulations, and meets the requirements specified in this document. The level of detail and complexity of the environmental planning documents and the priority of the identified measures and actions will be commensurate with the project's impacts and risks.

12. In case some residual impacts are likely to remain significant after mitigation, the EMP will also include appropriate compensatory measures (offset) that aim to ensure that the project does not cause significant net degradation to the environment. Such measures may relate for instance to habitat and biodiversity conservation, preservation of ambient conditions, and greenhouse gases emissions. Monetary compensation in lieu of offset is acceptable in exceptional circumstances, provided that the compensation is used to provide environmental benefits of same nature and commensurate to the project's residual impact.

13. The EMP or equivalent planning document(s) will define expected outcomes as measurable events to the extent possible, and include performance indicators, targets, or acceptance criteria that can be tracked over defined time periods. It shall be responsive to changes in project design such as major change in project location or route or in technology, unforeseen events, and the results of monitoring.

14. At times, the third party's role and interaction will influence implementation of the EMP. A third party may be a government agency, a contractor, or an operator of an associated facility. When the third party risk is high and the borrower/client has control or influence over the actions and behavior of the third party, the borrower/client will collaborate with the third party to achieve the outcome consistent with requirements for the borrower/clients. Specific actions will be determined on a case by case basis.

15. The borrower/client will use qualified and experienced expert(s) in the preparation of environmental assessment and management plan. For highly complex and sensitive projects, independent advisory panels during preparation and implementation of projects will be used.

3. Consultation

16. The borrower/client will carry out free, prior and informed consultation with affected people by the proposed project and facilitate their informed participation. The borrower/client will also consult with other concerned stakeholders, including civil society. The consultation should be carried out as early as possible in the project cycle so that views of affected people are taken

into account in the project design and its environment impact mitigation measures. The consultation process and its results are documented and reflected in the environmental assessment reports.

17. The borrower/client will carry out effective consultation through providing to the affected people relevant and adequate information on environmental and social issues associated with the project, the potential impacts and risks on health and livelihood of local community, and mitigation measures and actions to minimize or compensate the impacts. The information will be disclosed in a form, manner and language(s) accessible to affected people. The consultation will be carried out on an ongoing basis as impacts and risks arise. The consultation process will be undertaken in a manner that is inclusive and culturally appropriate. The borrower/client will ensure participation of women in all stages of consultation. The borrower/client will tailor its consultation process to the language preferences of the affected people, their decision-making process, and the needs of disadvantaged or vulnerable groups.

4. Grievance Redress Mechanism

18. If ongoing risks to or adverse impacts on the environment and affected people are anticipated, the borrower/client will establish a grievance mechanism to receive and facilitate resolution of the affected peoples' concerns, complaints and grievances about the project's environmental performance. The grievance mechanism should be scaled to the risks and adverse impacts of the project. It should address concerns promptly, using an understandable and transparent process that is gender responsive and culturally appropriate and readily accessible to all segments of the affected people, and at no cost and without retribution. The mechanism should not impede access to the country's judicial or administrative remedies. The affected people will be appropriately informed about the mechanism. The borrower/client will be encouraged to establish a joint grievance mechanism to comprehensively address social and environmental concerns and complaints.

5. Information Disclosure

19. The borrower/client will submit to ADB the following documents for disclosure on ADB's website:

- (i) a draft EIA/IEE, including the draft environmental management plan or equivalent planning document(s), and/or environmental assessment and review frameworks (EARF) where applicable;
- (ii) the final EIA/IEE;
- (iii) a new or updated EIA/IEE, and corrective action plan prepared during project implementation, if any;
- (iv) environmental monitoring reports.

20. The borrower/client will provide relevant environmental information from the above documents in a form, manner and language(s) accessible to affected people and other stakeholders. For non-literate people, suitable other communication methods will be used.

6. Monitoring and Reporting

21. The borrower/client will monitor the progress of implementation of the EMP or equivalent planning document(s), and the extent of compliance with its environmental commitments. The extent of monitoring will be commensurate with the project's risks and impacts. In addition to recording information to track performance, the borrower/client will undertake inspections to

verify compliance and progress toward the expected outcomes. For projects likely to have significant adverse environmental impacts, the borrower/client will retain qualified and experienced external experts² or qualified NGOs to verify its monitoring information. The borrower/client will document monitoring results, identify the necessary corrective actions and reflect them in the updated EMP or equivalent planning document(s). The borrower/client will implement these corrective actions, and follow up on these actions to ensure their effectiveness.

22. The borrower/client will prepare periodic progress reports that describe progress with implementation of the EMP or equivalent planning document(s), and, if any, compliance issues and corrective actions. For projects likely to have significant adverse environmental impacts, the borrower/client will submit, at the minimum, semiannual progress reports during construction and quarterly progress reports for highly complex and sensitive projects. For projects likely to have significant adverse environmental impacts during operation, reporting will continue at the minimum on an annual basis. Such periodic progress reports will be posted in a location accessible to the public. The costs of monitoring and reporting requirements will be reflected in project budgets.

7. Unanticipated Environmental Impacts

23. Where unanticipated environmental impacts become apparent during project implementation, the borrower/client will update the approved environmental assessment and EMP or prepare an additional environmental assessment and EMP, to assess the potential impacts, evaluate the alternatives, outline mitigation measures and resources to address those impacts.

8. Biodiversity Conservation and Sustainable Natural Resource Management

24. The borrower/client will assess the significance of project impacts and risks on biodiversity³ and natural resources as an integral part of the environmental assessment process specified in paragraphs 3 to 9. The assessment will focus on the major threats to biodiversity, which include habitat destruction and invasive alien species and on use of natural resources in an unsustainable manner. The borrower/client will need to identify measures to avoid, minimize or mitigate potentially adverse impacts and risk and, as a last resort, propose compensatory measures, such as biodiversity offsets, to achieve no net loss or a net gain of the affected biodiversity.

a. Modified Habitats

25. In areas of modified habitat, where there has been apparent alteration of the natural habitat, often with the introduction of alien species of plants and animals, such as agricultural areas, the borrower/client will exercise care to minimize any conversion or degradation of such habitat, and will, depending on the nature and scale of the project, identify opportunities to enhance habitat and protect and conserve biodiversity as part of their operations.

² External experts mean experts not involved in day to day project implementation or supervision.

³ An integrating concept that includes the ecosystems within which the people of the world live, as well as the multitude of species that are used by humankind for food, fiber, medicines, clothing and shelter. Biodiversity is the variety of life in all its forms, including genetic, species and ecosystem diversity.

b. Natural Habitats

26. In areas of natural habitat,⁴ the project will not significantly convert or degrade⁵ such habitat, unless the following conditions are met:

- (i) There are no technically and financially feasible alternatives
- (ii) A comprehensive analysis demonstrates that overall benefits from the project substantially outweigh the project costs including environmental costs, and
- (iii) Any conversion or degradation is appropriately mitigated

27. Mitigation measures will be designed to achieve at least no net loss of biodiversity, and may include a combination of actions, such as post-project restoration of habitats, offset of losses through the creation or effective conservation of ecologically comparable area(s) that is managed for biodiversity while respecting the ongoing usage of such biodiversity by Indigenous Peoples or traditional communities, and compensation to direct users of biodiversity.

c. Critical Habitats

28. No project activity will be implemented in areas of critical habitat⁶ unless the following requirements are met:

- (i) There are no measurable adverse impacts, or likelihood of such, on the critical habitat which could impair its high biodiversity value or the ability to function
- (ii) Taking a precautionary perspective, the project is not anticipated to lead to a reduction in the population of any recognized endangered or critically endangered species⁷ or a loss in area of the habitat concerned such that the persistence of a viable and representative host ecosystem be compromised
- (iii) Any lesser impacts are mitigated in accordance with paragraph 27

29. When the project involves activities in a critical habitat, the borrower/client will retain qualified and experienced external experts to assist in conducting the assessment.

⁴ Areas which are land and water areas where the biological communities are formed largely by native plant and animal species, and where human activity has not essentially modified the area's primary ecological functions

⁵ Significant conversion or degradation is: (i) the elimination or severe diminution of the integrity of a habitat caused by a major, long-term change in land or water use; or (ii) modification of a habitat that substantially reduces the habitat's ability to maintain viable population of its native species. Significant conversion may include, for example, land clearing; replacement of natural vegetation (e.g., by crops or tree plantations); permanent flooding (e.g., by a reservoir); drainage, dredging, filling, or canalization of wetlands; or surface mining.

⁶ Critical habitat is a subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity value, including habitat required for the survival of critically endangered or endangered species; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or which are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic or cultural importance to local communities. Critical habitats include those areas either legally protected or officially proposed for protection, such as areas that meet the criteria of the World Conservation Union (IUCN) classification, the Ramsar List of Wetlands of International Importance, and UNESCO's World Natural Heritage Sites.

⁷ As defined by the IUCN Red List of Threatened Species or as defined in any national legislation.

d. Legally Protected Areas

30. In circumstances where some project activities are located within a legally protected area, the borrower/client, in addition to the requirement specified in paragraph 28 above, will meet the following requirements:

- (i) Act in a manner consistent with defined protected area management plans.
- (ii) Consult protected area sponsors and managers, local communities, and other key stakeholders on the proposed project.
- (iii) Implement additional programs, as appropriate, to promote and enhance the conservation aims of the protected area.

e. Invasive Alien Species

31. The borrower/client will not intentionally introduce any new alien species (i.e. not currently established in the country or region of the project) unless carried out in accordance with the existing regulatory framework for such introduction, if such framework is present, or is subject to a risk assessment (as part of the environmental assessment) to determine the potential for invasive behavior. Under no circumstances must species known to be invasive be introduced into new environments. The borrower/client will exercise due diligence to prevent accidental or unintended introductions of such invasive alien species.

f. Management and Use of Renewable Natural Resources

32. Renewable natural resources will be managed in a sustainable manner. Sustainable resource management is the management of the use, development and protection of resources in a way, or at a rate, which enables people and communities, including Indigenous Peoples, to provide for their present social, economic and cultural well-being while also sustaining the potential of those resources to meet the reasonably foreseeable needs of future generations and safeguarding the life-supporting capacity of air, water and soil ecosystems. Where possible, the borrower/client will demonstrate the sustainable management of the resources through an appropriate system of independent certification.

9. Pollution Prevention and Abatement

33. During the design, construction, and operation of the project the borrower/client will apply pollution prevention and control technologies and practices consistent with international good practice, as reflected in internationally recognized standards such as the World Bank Group's Environment, Health and Safety Guidelines. These standards contain the performance levels and measures that are normally acceptable and applicable to projects. When host country regulations differ from the levels and measures presented in these standards, the borrower/client will achieve whichever is more stringent. If less stringent levels or measures are appropriate in view of specific project circumstances, the borrower/client will provide full and detailed justification for any proposed alternatives that is consistent with requirements presented in this document.

a. Pollution Prevention, Resources Conservation and Energy Efficiency

34. The borrower/client will avoid, or where it is not possible to avoid, minimize or control the intensity or load of pollutants emission and discharge. In addition the borrower/client should examine and incorporate in its operations resource conservation and energy efficiency

measures consistent with the principles of cleaner production. When the project has the potential to constitute a significant source of emissions in an already degraded area, strategies that contribute to the improvement of ambient conditions, such as evaluation of project location alternatives and emissions offsets, will be introduced.

b. Wastes

35. The borrower/client will avoid, or where it is not possible to avoid, minimize or control the generation of hazardous and non-hazardous wastes as far as practicable, and release of hazardous materials resulting from project activities. Where waste cannot be recovered or reused, it will be treated, destroyed, and disposed of in an environmentally sound manner. If the generated waste is considered hazardous, the client will explore reasonable alternatives for its environmentally sound disposal considering the limitations applicable to its transboundary movement.⁸ When waste disposal is conducted by third parties, contractors that are reputable and legitimate enterprises licensed by the relevant regulatory agencies will be used.

c. Hazardous Materials

36. The borrower/client will avoid the manufacture, trade, and use of hazardous substances and materials subject to international bans or phase-outs due to their high toxicity to living organisms, environmental persistence, potential for bioaccumulation, or potential for depletion of the ozone layer,⁹ and consider the use of less hazardous substitutes for such chemicals and materials.

d. Pesticide Use and Management

37. The environmental assessment should ascertain that pest management activities related to the project are based on integrated approaches and aim to reduce reliance on synthetic chemical pesticides in agricultural and public health projects. Health and environmental risks associated with pest management should be minimized with support, as needed, to institutional capacity development to help regulate and monitor the distribution and use of pesticides and enhance the application of integrated pest management. No formulated products that are in WHO Classes IA and IB, or formulations of products in Class II will be procured unless there are no alternatives or restrictions denying use or access to lay personnel and others without training or proper equipment. The recommendations and minimum standards described in the UN Food and Agriculture Organization (FAO) International Code of Conduct on the Distribution and Use of Pesticides (Rome, 2003) should be followed and only procurement of those pesticides that are manufactured, labeled, handled, stored, applied and disposed of according to acceptable standards is permitted.

e. Greenhouse Gases Emissions

38. The borrower/client will promote the reduction of project-related anthropogenic greenhouse gases (GHGs) emissions in a manner appropriate to the nature and scale of project operations and impacts. During the development or operation of projects that are expected to or currently produce significant quantities of GHGs,¹⁰ the borrower/client will quantify direct

⁸ Consistent with the objectives of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes.

⁹ Consistent with the objectives of the Stockholm, Convention on Persistent Organic Pollutants and the Montreal Protocol on Substances that Deplete the Ozone Layer.

¹⁰ Though the significance of a project's contribution to GHG emissions varies between industry sectors, the significance threshold to be considered for these requirements is generally 100,000 tons CO₂ equivalent per year

emissions from the facilities within the physical project boundary and indirect emissions associated with the off-site production of power used by the project. The borrower/client will conduct quantification and monitoring of GHG emissions annually in accordance with internationally recognized methodologies. In addition, the borrower/client will evaluate technically feasible and financially viable options to reduce project-related GHG emissions during the design and operation of the project. The environmental assessment report will document that a detailed analysis of such options that would achieve the same development objectives but with a reduced carbon footprint or intensity has been carried out in line with requirements in para. 4, and that appropriate options will be pursued. As a last resort in case residual GHGs emissions remain significant, the borrower/client will propose compensatory measures, such as emissions offset.

10. Health and Safety

a. Occupational Health and Safety

39. The borrower/client will provide the workers¹¹ with a safe and healthy working environment, taking into account inherent risks in its particular sector and specific classes of hazards in the borrower/client's work areas, including physical, chemical, biological, and radiological hazards. The client will take steps to prevent accidents, injury, and disease arising from, associated with, or occurring in the course of work by: (i) identifying and minimizing, so far as reasonably practicable, the causes of potential hazards to workers; (ii) provision of preventive and protective measures, including modification, substitution, or elimination of hazardous conditions or substances; (iii) provision of appropriate equipment to minimize risks, and requiring and enforcing its use; (iv) training of workers, and provision of appropriate incentives for them to use and comply with health and safety procedures and protective equipment; (v) documentation and reporting of occupational accidents, diseases and incidents; and (vi) emergency prevention, preparedness and response arrangements.

40. The borrower/client will apply preventive and protective measures consistent with international good practice, as reflected in internationally recognized standards such as the World Bank Group's Environment, Health and Safety Guidelines.

b. Community Health and Safety

41. The borrower/client will identify and assess the risks and potential impacts to the safety of the affected community during the design, construction, operation, and decommissioning of the project and will establish preventive measures and plans to address them in a manner commensurate with the identified risks and impacts. These measures will favor the prevention or avoidance of risks and impacts over minimization and reduction. Consideration will be given to potential exposure to both accidental and natural hazards, especially where the structural elements are accessible to members of the affected community or where their failure could result in injury to the community. The borrower/client will avoid or minimize the exacerbation of impacts caused by natural hazards, such as landslides or floods that could result from land use changes due to project activities.

for the aggregate emissions of direct sources and indirect sources associated with purchased electricity for own consumption.

¹¹ Including non-employee workers engaged by the borrower/client through contractors or other intermediaries to work on project sites or perform work directly related to the core functions of the project.

42. The borrower/client will inform affected communities of significant potential hazards in a culturally appropriate manner. The borrower/client will be prepared to respond to accidental and emergency situations. This preparation will include response planning document(s), which addresses the training, resources, responsibilities, communications, procedures and other aspects required to effectively respond to emergencies associated with project hazards. Appropriate information on emergency preparedness and response activities, resources and responsibilities will be disclosed to affected communities.

43. When structural elements or components, such as dams, tailings dams or ash ponds, are situated in high-risk locations and their failure or malfunction may threaten the safety of communities, the borrower/client will engage qualified and experienced expert(s), separate from those responsible for the design and construction, to conduct a review as early as possible in project development and throughout the stages of project design, construction, and commissioning.

11. Physical Cultural Resources

44. The borrower/client is responsible for siting and designing a project to avoid significant damage to physical cultural resources (PCR).¹² PCR likely to be affected by the project will be identified and the project's potential impacts on these resources assessed by using field based surveys with qualified and experienced expert(s) as an integral part of the environmental assessment process specified in paragraphs 3 to 9.

45. When a project may affect PCR, the borrower/client will consult with affected communities who use, or have used within living memory, the PCR for long-standing cultural purposes to identify PCR of importance and to incorporate into the borrower/client's decision-making process the views of the affected communities on such PCR. Consultation will also involve the relevant national or local regulatory agencies that are entrusted with the protection of PCR. The findings of PCR are disclosed as part of, and in the same manner as, the environmental assessment report, except when such disclosure would compromise or jeopardize the safety or integrity of the PCR.

46. When the project is likely to have adverse impacts on PCR, the borrower/client will identify appropriate measures for avoiding or mitigating these impacts as part of the environmental planning process specified in paragraphs 10 and 14. These measures may range from avoidance to full site protection to selective mitigation, including salvage and documentation, in cases where a portion or all of the PCR may be lost.

47. When the proposed location of a project is in areas where PCR are expected to be found as determined during the environmental assessment process, chance finds procedures will be included in the EMP or equivalent planning document(s). Chance finds shall not be disturbed until an assessment by a competent specialist is made and actions consistent with these requirements are identified.

48. The project will not remove any PCR unless the following conditions are met:

¹² Movable or immovable objects, sites, structures, groups of structures, and natural features and landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic, or other cultural significance. Physical cultural resources may be located in urban or rural settings, and may be above or below ground, or under water. Their cultural interest may be at the local, provincial or national level, or within the international community.

- (i) There are no technically feasible or economically viable feasible alternatives to removal.
- (ii) The overall benefits of the project substantially outweigh the anticipated cultural heritage loss from removal.
- (iii) Any removal is conducted in accordance with relevant provisions of national and/or local laws, regulations and protected area management plans, national obligations under international laws and by the best available techniques.

Annex 1

OUTLINE OF AN ENVIRONMENTAL IMPACT ASSESSMENT (EIA) REPORT

A typical EA report includes the following major elements (not necessarily in the order shown):

A. Executive Summary

This section concisely describes the critical facts, significant findings and recommended actions.

B. Policy, Legal, and Administrative Framework

This section discusses the policy, legal, and administrative framework within which the environmental assessment is carried out. Identifies project-relevant international environmental agreements to which the country is a party.

C. Description of the Project

This part describes the proposed project, its major components and its geographic, ecological, social, and temporal context, including any associated facility required by and for the project (e.g., access roads, power plants, water supply, quarries and borrow pits, and spoil disposal). Normally includes drawings and maps showing project layout and components, the project site and the project's area of influence.

D. Description of the Environment (Baseline Data)

This section describes relevant physical, biological, and socioeconomic conditions within the study area. Also takes into account current and proposed development activities within the project's area of influence including those not directly connected to the project. Indicates the accuracy, reliability, and sources of the data.

E. Anticipated Environmental Impacts and Mitigation Measures

This section predicts and assesses the project's likely positive and negative impacts in the project's area of influence, in quantitative terms to the extent possible. Identifies mitigation measures and any residual negative impacts that cannot be mitigated. Explores opportunities for enhancement. Identifies and estimates the extent and quality of available data, key data gaps, and uncertainties associated with predictions, and specifies topics that do not require further attention. Examines global, transboundary, and cumulative impacts as appropriate.

F. Analysis of Alternatives

This segment systematically examines financially and technically feasible alternatives to the proposed project site, technology, design, and operation—including the 'no project' alternative—in terms of their potential environmental impacts; the feasibility of mitigating these impacts; their capital and recurrent costs; their suitability under local conditions; and their institutional, training, and monitoring requirements. States the basis for selecting the particular project design proposed and, where appropriate, justifies recommended emission levels and approaches to pollution prevention and abatement.

G. Consultation, Disclosure, and Grievance Mechanism

This part describes the process undertaken during the project design and preparation for engagement of stakeholders, including affected people; information disseminated and the method of dissemination; and summarizes comments received from stakeholders and how these comments have been addressed in project design. It also describes the planned information disclosure measures (including type of the information to be disseminated and the method of dissemination) and process of consultation with affected people during project implementation. This part should describe the grievance redress framework (informal and formal channels), setting out the time frame and mechanisms for resolution of complaints about resettlement.

H. Environmental Management Plan(s)—or Equivalent Planning Documents

This section consists of the set of mitigation and management measures to be taken during implementation of the project to avoid, reduce, mitigate, or compensate for adverse environmental impacts, in the order of priority. May include multiple management plans and actions. Includes the following key components (level of detail commensurate with the project's impacts and risks):

- (i) Mitigation
 - (a) identifies and summarizes anticipated significant adverse environmental impacts and risks;
 - (b) describes with technical details each mitigation measure, including the type of impact to which it relates and the conditions under which it is required (e.g., continuously or in the event of contingencies), together with designs, equipment descriptions, and operating procedures, as appropriate; and
 - (c) where appropriate provides linkage with any other mitigation plans (e.g. for involuntary resettlement, Indigenous Peoples or emergency response) required for the project.
- (ii) Monitoring
 - (a) describes with technical details monitoring measures, including the parameters to be measured, methods to be used, sampling locations, frequency of measurements, detection limits (where appropriate), and definition of thresholds that will signal the need for corrective actions; and
 - (b) describes monitoring and reporting procedures to (i) ensure early detection of conditions that necessitate particular mitigation measures, and (ii) document the progress and results of mitigation.
- (iii) Implementation Arrangements
 - (a) specifies implementation schedule showing phasing and coordination with overall project implementation;
 - (b) describes institutional or organizational arrangements, i.e. who is responsible for carrying out the mitigation and monitoring measures. To strengthen environmental management capability, such arrangements may include one or more of the following additional topics: (i) technical assistance programs, (ii) training programs, (iii) procurement of

- equipment and supplies related to environmental management and monitoring, and (iii) organizational changes; and
- (c) estimates capital and recurrent costs and describes sources of funds for implementing the EMP(s).

(iv) Performance Indicators

describes the desired outcomes as measurable events to the extent possible, such as performance indicators, targets or acceptance criteria that can be tracked over defined time periods.

I. Conclusion and Recommendation

This section provide the conclusions drawn from the assessment and recommendations.

DRAFT SAFEGUARD REQUIREMENTS FOR BORROWERS/CLIENTS 2

INVOLUNTARY RESETTLEMENT

A Introduction

1. This document outlines the requirements that borrowers/clients are expected to meet in delivering involuntary resettlement safeguards to projects supported by ADB. It discusses the scope of application, and underscores the important requirements on social assessment and planning process, preparation of social assessment reports and resettlement planning documents, negotiated land acquisition, information disclosure and consultation, establishment of a grievance mechanism, and monitoring and reporting.

B. Scope of Application

2. Involuntary resettlement (IR) requirements apply to all projects including ADB-financed and/or ADB-administered sovereign and non-sovereign investment projects, funded by a loan, and/or a grant, and/or other means (such as equity and/or guarantee). They also cover resettlement planning and/or implementation conducted in anticipation of ADB support.

3. The involuntary resettlement requirements apply to full or partial, permanent or temporary physical displacement (relocation or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources or means of livelihoods) resulting from (i) involuntary acquisition of land, (ii) involuntary restriction on land use or access to legally designated parks and protected areas, and (iii) negotiated settlement. Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition that results in displacement. This occurs in cases of: (i) lawful expropriation or restrictions on land use based on eminent domain; and ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.

4. There could be three types of physically displaced persons in a project area: (i) persons with formal legal rights to the land they fully or partially lost; (ii) persons who fully or partially lost the land they occupy without formal legal rights, but with claims to such lands, which are recognized or recognizable under the national laws; and (iii) persons who partially or fully lost land they occupy for which they neither have formal legal rights nor recognized or recognizable claims. The IR requirements apply to each type of displaced persons.

5. The borrower/client will provide adequate and appropriate replacement land and structures or cash compensation at full replacement cost for lost land and structures, adequate compensation for partially damaged structures, and relocation assistance, if applicable, to those persons under paragraph 4(i) or (ii), prior to their relocation. For those persons under paragraph 4 (iii), the borrower/client will compensate them for the loss of assets other than land, such as dwellings, and also for other improvements to the land, at full replacement cost. The entitlements of those under paragraph 4 (iii) is given only if they occupied the land or structures in the project area prior to the cut-off date for resettlement assistance eligibility.

6. If resettlement impacts extend to loss of income or livelihood sources, regardless of whether or not the affected persons are physically displaced, the borrower/client will promptly compensate loss of assets or access to assets¹ at full replacement cost. In cases where land

¹ Including common property resources, public structures, and public infrastructure.

acquisition affects commercial structures, affected business owners are entitled to (i) the cost of re-establishing commercial activities elsewhere, (ii) lost net income during the transition period, and (iii) the costs of the transfer and reinstallation of the plant, machinery or other equipment. Business owners with legal rights or recognized or recognizable claims to land where commercial activities are carried out are entitled to replacement property of equal or greater value or cash compensation at full replacement cost. The borrower/client will compensate economically displaced people under para 4 (iii) for lost assets such as crops, irrigation infrastructure and other improvements made to the land (but not for land) at full replacement cost.

7. The borrower/client will rehabilitate displaced people by providing assistance such as credit facilities, training and employment opportunities so that they could improve or at least restore their income-earning capacity, production levels, and standard of living to the pre-project levels.

8. If potential adverse economic, social or environmental impacts from project activities other than land acquisition such as loss of access to assets or resources or restrictions on land use are identified, they will be avoided or at least minimized or mitigated or compensated for through the environmental assessment process. If these impacts are found significantly adverse at any stage of the project, the borrower/client will consider applying the policy principles and safeguard requirements on involuntary resettlement, even though no land acquisition was involved.

C. General Requirements

1. Social Assessment

9. The borrower/client will conduct a full census and socioeconomic survey(s) to identify all affected persons and affected assets, and also to assess socioeconomic impacts of the project. The social assessment report of the project will include (i) identified social impacts; (ii) an inventory of affected persons² and their assets;³ (iii) an assessment of their income and livelihoods; and (iv) gender-disaggregated information regarding economic; socio-cultural conditions of affected persons (APs).

10. As part of the social assessment, the borrower/client will identify individuals and groups that may be differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status. Where groups are identified as disadvantaged or vulnerable, the borrower/client will propose and implement differentiated measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in sharing development benefits and opportunities.

2. Formulation of Resettlement Planning Documents

11. The borrower/client will prepare a resettlement plan, or equivalent planning document(s), in consultation with affected persons. The objective of a resettlement plan (RP) is to ensure that livelihoods and standards of living of affected persons are improved or at least restored to pre-displacement (physical/economic) levels and that the standards of living of vulnerable affected

² Population record of all APs by their residence, based on the census. If a census is not conducted prior to project appraisal and the RP is based on a sample survey, an updated RP will be prepared based on a census of APs after the detailed measurement survey completed but before any land acquisition for the project.

³ The asset inventory is a preliminary record of affected or lost assets at the household, enterprise, or community level.

groups are improved (not merely restored) by providing adequate housing, security of land tenure, and steady income and livelihood sources. A RP will also include measures to ensure that the displaced people are (i) informed about their options and entitlements pertaining to compensation, relocation and rehabilitation; and (ii) consulted on options and choices, and (iii) are provided with technically and economically feasible resettlement alternatives.

12. A RP provides detailed socioeconomic information of the project area and APs, scope and significance of resettlement impacts, policy and legal framework, entitlements of all APs, institutional framework, budget, monitoring and evaluation requirements and the time-frame for implementing the RP. During resettlement impact identification, resettlement planning, and implementation adequate attention will be paid to gender concerns including gender-inclusive consultation, information disclosure, and grievance mechanism in order to ensure that women get adequate compensation for their lost property and resettlement assistance, if required, as well as assistance in restoring and improving of their income and living standards.

13. The borrower/client will analyze and summarize national laws and regulations pertaining to land acquisition, compensation payment, and relocation of APs in the RP. The borrower/client will compare and contrast such laws and regulations with the ADB's IR policy principles and requirements. If there is a gap between the two, the borrower/client in consultation with ADB will propose a suitable gap-filling strategy in the RP.

14. The information contained in a RP will be tentative until a census of APs is completed. All costs of compensation, relocation, and livelihood rehabilitation will be considered as project costs. To ensure timely availability of required resources, land acquisition and resettlement costs may be considered for inclusion in ADB financing. Resettlement expenditure is eligible for ADB financing, if incurred in compliance with the ADB Safeguard Policy Statement and with ADB-approved resettlement planning documents. If ADB funds are used for resettlement costs, such expenditure items will clearly be reflected in the RP.

15. The payment of replacement cost for assets acquired such as land, structures, trees, and crops consists of five key elements: (i) fair market value, (ii) premium or mark up, (iii) transaction costs, (iv) interest accrued, and (v) restoration costs. In situations where market conditions are absent or in a formative stage, the borrower/client will consult with APs and host populations (if present) to obtain adequate information about recent land transactions, land value by types, land titles, land use, cropping pattern/production, availability of land in the project area/region, and other related information. Similarly, baseline data on housing, house types, construction materials will also be collected.

16. The valuation of acquired assets will be done by qualified and experienced expert(s). The rate of compensation for lost assets should be calculated at full replacement costs. In applying this method of valuation, depreciation of structures and assets should not be taken into account.

17. Involuntary resettlement should be conceived and executed as part of a development project or program. In this regard, the best strategy is to provide APs with opportunities to share project benefits in addition to providing compensation and resettlement assistance. Such opportunities would ensure preventing potential risk of impoverishment among APs, and also help meet the ethical demand on development interventions to spread development benefits widely. Therefore borrowers/clients are encouraged to find out specific opportunities to engage APs as project beneficiaries, and to discuss in RP how to spread such opportunities as widely as possible among APs for their benefit.

18. The borrower/client will ensure that no physical or economic displacement of APs occurs until (i) compensation at full replacement cost is fully paid to each AP; (ii) all other entitlements listed in the entitlement matrix of the RP are provided to APs; and (iii) a comprehensive income and livelihood rehabilitation program, supported by an adequate budget, is in place to assist APs to improve or at least restore their income and livelihood. If a project activities restrict land use or access to legally designated parks and protected areas, such restrictions will be imposed in accordance with the timetable outlined in the approved RP.

19. The borrower/client will include a detailed strategy for income restoration and improvement of APs in the RP. Income sources and livelihood affected by project activities will be restored to the pre-project level and every attempt will be made by the borrower/client to improve the incomes of APs so that they could benefit from the project. For vulnerable persons and households, the project will provide extra assistance to APs and their households whose income sources and livelihood were affected, so that they could improve their incomes compared to the pre-project level. The RP will specifically state the income and livelihood restoration strategy, institutional arrangement, monitoring and reporting framework, budget, and time-bound implementation schedule.

20. The borrower/client will finalize the RP soon after the completion of detailed engineering designs, by conducting a census or additional surveys and inventory of loss of assets. If necessary, additional surveys will be conducted to collect required data and information. At this stage, the changes to the RP take the form of revising the number of APs, the extent of land acquired, resettlement budget, and the RP implementation timetable. The entitlement matrix of the RP may be updated at this stage to reflect the relevant changes. However, the standards set in the original entitlement matrix cannot be lowered when the RP is revised and finalized. The borrower/client will ensure that the final RP (i) adequately addresses all IR issues of the project; (ii) describes specific mitigation measures that will be taken to address the issues; and (iii) ensures the availability of sufficient resources to address the issues satisfactorily.

21. Projects with significant involuntary resettlement impacts will need adequate contingency funds to address involuntary resettlement impacts that are identified during project implementation. The borrower/client will ensure such fund is available. Moreover, the borrower/client consult the APs identified after the formulation of the final RP, and inform them of their entitlements and relocation options. The borrower/client will prepare supplementary RPs, addendums to RPs, and revised RPs, if necessary, and will submit them to ADB for review before any contracts are awarded.

22. The borrower/client will use qualified and experienced expert(s) in the preparation of social assessment and resettlement plan. For highly complex and sensitive projects, independent advisory panels during preparation and implementation of projects will be used.

3. Negotiated Land Acquisition

23. The borrower/client is encouraged to acquire a minimum amount of land and other assets, if such acquisitions are unavoidable, through a negotiated settlement, based on a free, prior and informed consultation with APs including non-title APs. A negotiated settlement will offer adequate and fair cost of land and/or other assets to the seller, who is an AP. The borrower/client will ensure that any negotiations with APs will openly address the risks of asymmetry of information and bargaining power of the involved parties to such a transaction. For this purpose, the borrower/client will engage an independent external party to document the processes of negotiations and the settlement. The borrower/client will agree with ADB the participatory processes, policies and laws that are applicable to such transactions, third party validation,

mechanisms of calculating replacement cost of land and other assets affected, and record-keeping requirements.

4. Information Disclosure

24. The borrower/client will submit the following documents to ADB for disclosure on ADB's website:

- (i) a draft RP and/or Resettlement Framework (RF) endorsed by the borrower/client before project appraisal;
- (ii) the final RP endorsed by the borrower/client after the census of APs is completed;
- (iii) a new RP or an addendum to the approved RP, and corrective action plan prepared during project implementation, if any;
- (v) resettlement monitoring reports.

25. The borrower/client will provide relevant resettlement information in brochures, leaflets, or booklets in a form, manner and language(s) accessible to APs and other stakeholders. For non-literate people, suitable other communication methods will be used.

5. Consultation

26. The borrower/client will conduct free, prior, and informed consultation with APs, their host communities, and the civil society regarding each project and subproject which is identified as having IR impacts. The borrower/client will tailor the consultation processes to the language preferences of the APs, and pay particular attention to the needs of disadvantage or vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, Indigenous Peoples, and those without legal title to land. Such consultations are an on-going process which begins as early as possible so that views, concerns and suggestions of APs and other stakeholders could be considered in the formulation of resettlement planning instruments.

6. Grievance Redress Mechanism

27. The borrower/client will establish a grievance mechanism to receive and facilitate the resolution of APs' concerns and grievances about physical and economic displacement and other project impacts, pay particular attention to the impacts on vulnerable groups among those displaced. Its members include representatives of APs and it will address APs' concerns, complaints and grievances promptly and impartially, using a transparent process that is culturally appropriate and easily accessible to APs without any cost to them. The decisions of the grievance mechanism will not supersede or usurp the country's judicial or administrative arbitration processes, remedies, but supplement them. The borrower/client will inform APs about the mechanism, its terms of reference, membership, and the location where it will hold consultations. The grievance mechanism should be scaled to the risks and adverse impacts of the project. The borrower/client will be encouraged to establish a joint grievance mechanism to comprehensively address social and environmental concerns and complaints.

7. Monitoring and Reporting

28. The borrower/client will monitor the progress of implementing the RP. In addition to recording the resettlement information, the borrower/client will use resettlement audits, where relevant, to verify whether the implementation of the RP has produced the desired outcomes. For projects with significant involuntary resettlement impacts, the borrower/client will retain

qualified and experienced external expert(s) or qualified NGOs to verify monitoring information of the borrower/client. The external experts engaged by the borrower/client will advise on safeguard compliance issues, and if any significant IR issues are found, an addendum to the approved RP will be prepared to address such issues. Until such planning documents are formulated, disclosed, and approved, the borrower/client will not proceed with implementing the specific project components, where IR impacts are identified.

29. The borrower/client will prepare semi-annual progress reports that describe the progress of implementing resettlement activities and of compliance issues and their corrective actions, if any. These reports will closely follow the IR monitoring indicators agreed at the time of the RP approval. The costs of both internal and external RP monitoring requirements will be included in the project budget.

8. Unanticipated Impacts

30. If unanticipated IR impacts are found during project implementation, the borrower/client will either formulate an additional RP or revise and update the approved RP, outlining the measures and estimated resources to address those additional IR impacts. If IR impacts are not significant, specific mitigation measures are included in an addendum to the approved RP.

9. Special Considerations for Indigenous Peoples

31. If a project affects Indigenous Peoples, a combined Indigenous Peoples Plan/RP could be formulated to address both involuntary resettlement and indigenous peoples issues with the consent of ADB.

OUTLINE OF A RESETTLEMENT PLAN

Executive Summary

This section concisely describes the critical facts, significant findings and recommended actions.

A. Project Description

- (i) General description of the project - discussion on project components that result in land acquisition or involuntary resettlement or both, and identification of the project area.
- (ii) Describe the alternatives considered to avoid or minimize resettlement. Include a table with quantified data and provide a rationale for the final decision.

B. Scope of Land Acquisition and Resettlement

- (i) Discuss the Potential impacts of the Project. Include maps of the areas or zone of impact of such components or activities
- (ii) Describe scope of land acquisition (use maps), and why it is necessary for the main investment project
- (iii) Summarize the key effects in terms of assets acquired and affected persons.
- (iv) Provide details of any common property resources that will be acquired

C. Socioeconomic Information/Profile

Results of social impact assessment, census survey and other studies – with information/data disaggregated by gender, vulnerability and other social groups.

- (i) Define, identify and enumerate the persons and communities to be affected
- (ii) Describe the likely impacts of land and asset acquisition on the persons and communities affected, taking into account social, cultural, and economic parameters
- (iii) Discuss project impacts on the poor, indigenous/ethnic minorities, and other vulnerable groups.
- (iv) Identify gender and resettlement impacts. Identify the socio-economic situation, impacts, needs, and priorities of women.

D. Information Dissemination, Consultation, Participatory Approaches and Disclosure Requirements

- (i) Identify project stakeholders, specifically primary stakeholders
- (ii) Describe the mechanisms for consultation to be conducted during the different stages of the project cycle.
- (iii) Describe the activities undertaken to disseminate project and resettlement information
- (iv) Summarize the results of consultations with affected persons (including host communities) and discuss how concerns raised and recommendations made were addressed in RP.
- (v) Confirm disclosure of draft resettlement plan to affected people and include arrangements to disclose any subsequent plans.

E. Grievance Redress Mechanisms

- (i) Mechanisms for resolution of conflicts and appeals procedures

- (ii) Description of the grievance redress framework (informal and formal channels), setting out the time frame and mechanisms for resolution of complaints about resettlement.

F. Policy and Legal Framework

- (i) Describe the national and local laws and policies that apply to the project and prepare a gap analysis indicating how the gaps will be addressed.
- (ii) Principles, legal and policy commitments from executing agency for different categories of project impacts. Principles and methodologies used for determining valuation and compensation rates at replacement costs for assets, incomes and livelihoods. Compensation and assistance eligibility criteria and how and when compensation will be paid.
- (iii) Describe the land acquisition process and prepare a schedule for meeting key procedural requirements.

G. Entitlements

- (i) Define entitlement and eligibility of affected persons. Ensure all resettlement assistance, including, transaction costs are included.
- (ii) Assistance to vulnerable groups and other special groups should be included

H. Relocation of Housing and Settlements

- (i) Description of options for relocation of housing and other structures, including replacement housing, replacement cash compensation, and/or self-selection. Ensure gender concerns and support to vulnerable groups are identified and integrated when preparing replacement housing programs.
- (ii) Description of the alternative relocation sites considered, community consultations conducted and justification for selected sites including details on location, environment assessment of site, and development needs.
- (iii) Timetables for site preparation and transfer. Measures to assist APs with transfer and establishment at new sites.
- (iv) Legal arrangements to regularize tenure and transferring titles to resettlers including provision of joint titles as well as plot allocation to adult children as relevant.
- (v) Transition housing should be avoided
- (vi) Measures to assist with transfer and establishment at new sites.
- (vii) Ensure location specific considerations to protect livelihood access to public services etc.,
- (viii) Plans to provide civic infrastructure
- (ix) Integration with host populations

I. Income Restoration and Rehabilitation

- (i) Identify livelihood risks, prepare disaggregated tables based on a demographic data and livelihood sources
- (ii) Description of income restoration programs—include multiple options to restore all types of livelihoods. A few examples include: (a) project benefit-sharing, (b) revenue sharing arrangements, (c) joint-stock for equity contributions such as land, (d) discuss sustainability and safety nets.
- (iii) Social safety net through social insurance / project special funds
- (iv) Special measures to support vulnerable groups
- (v) Gender considerations
- (vi) Training programs should be supported by skills analysis and needs assessment

J. Resettlement Budget and Financing Plan

- (i) Itemized budget for all resettlement activities, including, budget for resettlement unit, staff training, M&E, and preparation of RPs during loan implementation.
- (ii) Describe the flow of funds. The annual resettlement budget should show the budget-scheduled expenditure for key items.
- (iii) Include a justification for all assumptions made in calculating compensation rates and other cost estimates (taking into account both physical and cost contingencies), plus replacement cost.
- (iv) Include information about the source of funding for the RP budget.

DRAFT SAFEGUARD REQUIREMENTS FOR BORROWERS/CLIENTS 3

INDIGENOUS PEOPLES

A. Introduction

1. Nearly three-quarters of the world's Indigenous Peoples live in the Asia and Pacific region. ADB recognizes the rights of Indigenous Peoples to development. In practice, however, Indigenous Peoples do not automatically benefit from development, which often planned and implemented by those in the mainstream or dominant population in the respective countries they reside. Special efforts are needed to engage Indigenous Peoples in the planning of development programs which affect them, in particular those development programs which are supposedly designed to meet their specific needs and aspirations. Indigenous Peoples are more and more threatened as development programs infringe into areas which they traditionally own, occupy or use or consider as ancestral domain.

2. This document outlines the requirements that borrowers/clients are expected to meet in delivering Indigenous Peoples safeguards to projects supported by ADB. It discusses the scope of application, and underscores the important requirements on social assessment and planning process, preparation of social assessment reports and planning documents, information disclosure and consultation including application of the free, prior, informed, consent principle to selected project activities, establishment of a grievance mechanism, and monitoring and reporting. This set of policy requirements aims to safeguard Indigenous Peoples' rights to maintain, sustain and preserve their cultural identities, practices and habitats, and ensure that projects affecting them will take into consideration necessary measures to protect these rights.

B. Scope of Application

3. These requirements for Indigenous Peoples safeguards apply to all projects including ADB-financed and/or ADB-administered sovereign and non-sovereign investment projects funded by a loan, and/or a grant, and/or other means (such as equity and/or guarantee). They also cover actions conducted in anticipation of ADB projects.

4. There are varied and changing contexts in which Indigenous Peoples live and there is no universally accepted definition of "Indigenous Peoples." Indigenous Peoples may be referred to in different countries by such terms as "indigenous communities," "ethnic minorities," "indigenous cultural communities," "aboriginals," "hill tribes," "minority nationalities," "scheduled tribes," or "tribal groups."

5. For operational purposes, the term "Indigenous Peoples" is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:

- (i) self-identification as members of a distinct indigenous cultural group 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) distinct customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
- (iv) an indigenous language, often different from the official language of the country or region.

6. A group that has lost “collective attachment to geographically distinct habitats or ancestral territories in the project area” (paragraph 5 [ii]) because of forced severance, transhuman, and mobile people remain eligible for coverage under the Policy.

7. The Policy on Indigenous Peoples 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 their ancestral domain.

C. General Requirements

1. Consultation and Participation

8. The borrower/client will undertake free, prior and informed consultation with affected Indigenous Peoples to ensure their informed participation in (a) designing, implementing, and monitoring measures to avoid adverse impact on them, or when avoidance is not feasible, to minimize, mitigate, and compensate for such effects; and in (b) tailoring project benefits that accrue to them in a culturally appropriate manner. Free, prior and informed consultation is an ongoing process and will be started as early as possible in the project cycle so that views of affected Indigenous Peoples can be taken into account in the project design.

9. To carry out free, prior and informed consultation, the borrower/client will:

- (i) establish a strategy for inclusive consultation to take place on a level playing field on which all participants (affected Indigenous Peoples’ communities and Indigenous Peoples organizations if any, and other local civil society organizations) have the same say and are able to voice their concerns without facing any pressure;
- (ii) use consultation methods appropriate to the social and cultural values of the affected Indigenous Peoples’ communities, giving special attention to the concerns of indigenous women, and the youth; and
- (iii) provide the affected Indigenous Peoples, prior to actual consultation, all relevant information from draft documents and plans, including an assessment of potential impacts that may arise during and after project implementation, in local language accessible to the affected people.

10. When the borrower/client and the affected Indigenous Peoples have serious differences and disagreements on the project, its components, or IPP, the borrower/ client will adopt good faith negotiations for them to resolve such differences and disagreements.

2. Social Impact Assessment

11. When screening by ADB confirms likely impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced expert(s) to carry out a full social impact assessment (SIA), and if impacts on Indigenous Peoples are identified, prepare an IPP in conjunction with the feasibility study.

12. Based on the screening, a field-based SIA will be conducted either as part of the feasibility study or as a stand-alone activity. The SIA will, in gender sensitive manner, identify the project affected Indigenous Peoples and the potential impacts of the proposed project on them. The SIA will provide the baseline socioeconomic profile of the Indigenous groups in the project area and project impact zone, assess their access to and opportunities to avail of basic

social and economic services, assess the short and long-term, direct and indirect as well as positive and negative impacts of the project on each ethnic group's social, cultural and economic status, assess and validate which Indigenous groups will trigger the Indigenous Peoples policy principles, and assess the subsequent approaches and resource requirements to address the various concerns and issues of projects that affect them.

13. The level of detail and comprehensiveness of the SIA will be proportional to the complexity of the proposed project and commensurate with the nature and scale of the proposed project's potential effects on the Indigenous Peoples, whether positive or negative.

3. Indigenous Peoples Planning

14. If the screening and SIA indicate that the proposed project will have impacts, positive and/or negative, on Indigenous Peoples, the borrower/client will prepare an Indigenous Peoples Plan (IPP), or an equivalent planning document(s), in the context of the SIA and in free, prior informed consultations with the affected Indigenous Peoples' communities. The IPP, or an equivalent planning document(s), will set out the measures through which the borrower/client will ensure that (a) affected Indigenous Peoples receive culturally appropriate social and economic benefits; and (b) when potential adverse impacts on Indigenous Peoples are identified, these will be avoided to the maximum extent possible. Where this avoidance is proven to be infeasible, the IPP will prepare based on free, prior and informed consultations with Indigenous communities, and with measures to minimize, mitigate, and compensate for the adverse impacts. The level of detail and comprehensiveness of IPPs (Annex 1) will vary depending on the specific project and the nature of impacts to be addressed. The borrower/client will integrate the elements of the IPP into the project design.

15. If Indigenous Peoples are the sole or the overwhelming majority of direct project beneficiaries and when only positive impacts are identified,¹ the elements of an IPP will be included in the overall project design, and a separate IPP will not be required. In such cases, the project document will include a summary of how the project complies with the Policy on Indigenous Peoples Safeguards, in particular, will explain how the requirements for free, prior and informed consultations are fulfilled and how accrual of benefits has been integrated into the project. The project design and legal covenants will also explicitly specify how benefits accrue to Indigenous Peoples in the project area and how free, prior and informed consultations will be done during implementation.

16. The borrower/client will update IPPs after the completion of detailed engineering design, and detailed measurement surveys. Addendums to the updated IPPs will be prepared closely following the award of contract packages, and the implementation time schedules of each project component or subproject for implementing IPPs. Both mitigating measures to avoid adverse impact on IPs as well as measures to enhance benefits will be adjusted but the agreed outcomes of the draft IPP will not be lowered or minimized. If new groups of Indigenous Peoples are identified prior to submission of the final IPP to ADB, free, prior and informed consultation, will be undertaken.

17. The borrower/client will use qualified and experienced expert(s) in the preparation of social impact assessment and IPP. For highly complex and sensitive projects, independent advisory panels during preparation and implementation of projects will be used. Any highly

¹ Parallel circumstances may also arise in certain DMCs, particularly for Pacific Island nations, where the overwhelming majority of the national population may be indigenous.

complex and sensitive projects affecting Indigenous Peoples will require an Indigenous Peoples expert in the advisory panel.

4. Information Disclosure

18. The borrower/client will submit to ADB the following documents to disclose on ADB's website:

- (i) a draft IPP and/or Indigenous Peoples Planning Framework (IPPF) including social impact assessment, endorsed by the borrower/client, before appraisal;
- (ii) the final IPP upon completion of such documents;
- (iii) a new or updated IPPs or addendums to IPPs, and corrective action plan prepared during implementation, if any;
- (v) monitoring reports.

19. The borrower/client will provide relevant key information on the projects and the IPPs in a form, manner and language(s) accessible to key stakeholders, especially the affected Indigenous Peoples. In case of nonliterate Indigenous Peoples, other appropriate communication methods will be utilized.

5. Grievance Redress Mechanism

20. If ongoing risks to or adverse impacts on affected Indigenous Peoples' communities are anticipated, the borrower/client will establish a grievance mechanism to receive and facilitate resolution of the affected communities' concerns, complaints and grievances. The grievance mechanism will be scaled to the impacts of the project. It should address concerns promptly, using an understandable and transparent process that is culturally appropriate, gender responsive, and accessible to the affected communities, and at no cost and without retribution. The mechanism should not impede access to the country's judicial or administrative remedies. The affected Indigenous Peoples communities will be appropriately informed about the mechanism. The borrower/client will be encouraged to establish a joint grievance mechanism to comprehensively address social and environmental concerns and complaints.

6. Monitoring and Reporting

21. The borrower/client will monitor and measure the progress of implementation of IPP. In addition to recording information to track performance, the borrower/client should use dynamic mechanisms, such as inspections and audits, where relevant, to verify the compliance with the requirements and the progress toward achieving the desired outcomes. For projects with significant adverse impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced external expert(s) or qualified NGOs to verify monitoring information of borrower/client. The external experts engaged by the borrower/client will advise on compliance issues, and if any significant Indigenous Peoples issues are found, an additional IPP or an addendum to the approved IPP will be prepared.

22. The borrower/client will prepare periodic progress reports on progress of IPP implementation highlighting compliance issues and corrective actions, if any. The borrower/client will submit semiannual progress reports. The costs of monitoring requirements will be reflected in project budgets.

7. Unanticipated Impacts

23. If unanticipated impacts on Indigenous Peoples become apparent during project implementation, such as change in alignment and footprint, the borrower/client will carry out a social impact assessment, and as relevant, prepare an IPP or an addendum to the IPP.

D. Special Requirements

1. Ancestral Domains, Lands and Related Natural Resources

24. Indigenous Peoples are closely tied to land, forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties. In this situation, when carrying out the social impact assessment and preparing the IPP, the borrower/client will pay particular attention to

- (i) the customary rights of the Indigenous Peoples, both individual and collective, pertaining to ancestral domains, lands or territories that they traditionally owned, or customarily used or occupied, and where access to natural resources is vital to the sustainability of their cultures and livelihood systems;
- (ii) the need to protect such ancestral domains, lands and resources against illegal intrusion or encroachment;
- (iii) the cultural and spiritual values that the Indigenous Peoples attribute to such lands and resources;
- (iv) Indigenous Peoples' natural resources management practices and the long-term sustainability of such practices, and
- (v) the need to rehabilitate the livelihood systems of Indigenous Peoples who have been evicted from their lands.

25. If the project involves (a) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied (such as land titling projects), or (b) the acquisition of such lands, the borrower/client will integrate in the IPP an action plan for the legal recognition of customary rights to such lands, territories, and ancestral domain. Normally, the action plan is carried out before project implementation but in some cases, it may need to be formulated concurrently with the project itself. Such legal recognition may take the following forms:

- (i) full legal recognition of existing customary land tenure systems of Indigenous Peoples; or
- (ii) conversion of customary usage rights to communal and/or individual ownership rights.

26. If neither option is possible under national law, the IPP will include action plan for legal recognition of perpetual or long-term renewable custodial or user rights.

27. In addition, for projects with potential impacts on Indigenous Peoples, the borrower/client will ensure their free, prior, and informed consultation and facilitate their informed participation on matters affecting them directly, such as proposed mitigation measures, sharing of project benefits and opportunities, and implementation arrangements.

2. Free, Prior and Informed Consent

28. Indigenous Peoples may be particularly vulnerable when project activities include: (i) commercial development of the cultural resources and knowledge of Indigenous Peoples; (ii) physical relocation from traditional or customary lands; and (iii) commercial development of natural resources on lands used or claimed which has impacts on the livelihood, or cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples. If such activities occur, the following special requirements will also apply in addition to the requirements above. Common to these requirements is the need for the borrower/client to apply the principle of free, prior, and informed consent of Indigenous Peoples before starting with such activities.

29. For purposes of policy application, consent refers to a collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives, of broad community support for those three project activities. In deciding whether to proceed with a project involving such activities, the borrower/client will ascertain whether the affected Indigenous Peoples communities provide their broad support to such activities.

30. Where there is such broad community support, the borrower/client will provide documentation that details the process and outcomes of consultations with Indigenous Peoples and Indigenous Peoples organizations, including (i) the findings of the SIA; (ii) the process of free, prior and informed consultation with the affected Indigenous Peoples' communities; (iii) additional measures including project design modification, that may be required to address adverse impacts on the Indigenous Peoples and to provide them with culturally appropriate project benefits; (iv) recommendations for free, prior, and informed consultations with and participation by Indigenous Peoples' communities during project implementation, monitoring and evaluation; and (v) any formal agreements reached with Indigenous Peoples communities and/or the Indigenous Peoples organization. Where there is such broad community support, the consultation process will be clearly documented in the safeguard documents. The borrower/client will submit to ADB the documentation of the engagement process for review, and in addition, for ADB's own investigation to assure itself that there is broad community support for the project activities. The project will not be financed by ADB if such broad support does not exist.

31. **Commercial Development of Cultural Resources.** If the project involves the commercial development of Indigenous Peoples' cultural resources and knowledge, the borrower/client will ensure that the affected communities are informed of (a) their rights to such resources under statutory and customary law; (b) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (c) the potential effects of such development on Indigenous Peoples' livelihoods, environments, and use of such resources. The borrower/client will submit to ADB the documentation of the engagement process for review, to assure itself that there is broad community support for the proposed activities involving commercial development of cultural resources and knowledge. The IPP will reflect the nature and content of such agreements and will include arrangements to ensure that Indigenous Peoples receive in a culturally appropriate way an equitable share of the benefits to be derived from such commercial development.

32. **Physical Relocation of Indigenous Peoples.** The borrower/client will explore to the maximum extent possible alternative project designs to avoid physical relocation of Indigenous Peoples which will result in adverse impacts on their identity, culture, and customary livelihoods. In exceptional circumstances, when avoidance is proven to be impossible, the borrower/client

will document the results of the consultation process for that particular Indigenous Peoples community. The borrower/client will submit to ADB the documentation of the engagement process for review, to assure itself that there is broad community support to such physical relocation of Indigenous Peoples. The borrower/client will prepare an IPP that could be combined with a resettlement plan. Such a combined plan needs to be compatible with the Indigenous Peoples' cultural preferences, and will include a land-based resettlement strategy. Where possible, the plan will allow the affected Indigenous Peoples to return to the lands and territories they traditionally owned, or customarily used or occupied, if the reasons for their relocation cease to exist.

33. Commercial Development of Natural Resources. If the project involves the commercial development of natural resources (such as minerals, hydrocarbon resources, forests, water, or hunting/fishing grounds) on lands or territories used or claimed by Indigenous Peoples, the borrower/client will ensure that the affected communities are informed of (a) their rights to such resources under statutory and customary law; (b) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (c) the potential effects of such development on the Indigenous Peoples' livelihoods, environments, and use of such resources. The borrower/client will submit to ADB the documentation of the engagement process for review, to assure itself that there is broad community support to the proposed commercial development of natural resources. The borrower/client will include in the IPP, arrangements to enable the Indigenous Peoples to receive in a culturally-appropriate manner an equitable share of the benefits to be derived from such commercial development which is at least equal or higher than any other affected landowner.

34. When the borrower/client and the affected Indigenous Peoples have serious differences or major disagreements about the design, IPPs, or the implementation of the activities relating to commercial development of the cultural resources, relocation of indigenous peoples and commercial development of natural resources mentioned above, the borrower/client will adopt good faith negotiations for them to resolve such differences and disagreements.

3. Indigenous Peoples and Development

35. In furtherance of the objectives to benefit Indigenous Peoples, DMCs could request ADB to support the country in its development planning and poverty reduction strategies by providing financial assistance for a variety of initiatives designed to

- (i) strengthen local legislation to establish legal recognition of the customary or traditional land tenure systems of Indigenous Peoples;
- (ii) enhance the participation of Indigenous Peoples in the development process by incorporating their perspectives in the design of development programs and poverty reduction strategies, and providing them with opportunities to benefit more fully from development programs through policy and legal reforms, capacity building, and free, prior, and informed consultations, participation, and empowerment;
- (iii) support the development priorities of Indigenous Peoples through programs developed by governments in cooperation with Indigenous Peoples;
- (iv) address the gender and intergenerational issues that exist among many Indigenous Peoples, including the special needs of indigenous women, youth, and children;
- (v) prepare participatory profiles of Indigenous Peoples to document their culture, demographic structure, gender and intergenerational relations and social

- organization, institutions, production systems, religious beliefs, and resource use patterns;
- (vi) strengthen the capacity of Indigenous Peoples' communities and Indigenous Peoples organizations to prepare, implement, monitor, and evaluate development programs;
 - (vii) strengthen the capacity of government agencies responsible for providing development services to Indigenous Peoples;
 - (viii) protect indigenous knowledge, including the strengthening of intellectual property rights; and
 - (ix) facilitate partnerships among the government, Indigenous Peoples' organizations, civil society organizations, and the private sector to promote Indigenous Peoples' development programs.

Annex 1

OUTLINE OF INDIGENOUS PEOPLES PLAN

- A. Executive Summary of the IPP
- B. Description of the Project
- C. Social Assessment
 - (i) A review of the legal and institutional framework applicable to Indigenous Peoples.
 - (ii) Baseline information on the demographic, social, cultural, and political characteristics of the affected Indigenous Peoples' communities, the land and territories that they have traditionally owned or customarily used or occupied, and the natural resources on which they depend.
 - (iii) Taking the review and baseline information into account, the identification of key project stakeholders and the elaboration of a culturally appropriate and gender sensitive process for free prior and informed consultation with the Indigenous Peoples at each stage of project preparation and implementation.
 - (iv) An assessment, based on free, prior, and informed consultation, with the affected Indigenous Peoples' communities, of the potential adverse and positive effects of the project. Critical to the determination of potential adverse impacts is a gender sensitive analysis of the relative vulnerability of, and risks to, the affected Indigenous Peoples' communities given their distinct circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to other social groups in the communities, regions, or national societies in which they live.
 - (v) A gender sensitive assessment of the affected IPs' perception about the project and its impact on their social, economic and cultural status.
 - (vi) The identification and evaluation, based on free, prior, and informed consultation with the affected Indigenous Peoples' communities and , of measures necessary to avoid adverse effects, or if such measures are not feasible, the identification of measures to minimize, mitigate, or compensate for such effects, and to ensure that the Indigenous Peoples receive culturally appropriate benefits under the project.
- D. The documentation of the free, prior, and informed consultation with the affected Indigenous Peoples' communities that was carried out during project preparation, and that led to their consent for the project activities and safeguard measures addressing impacts of such activities.
- E. A plan for ensuring free, prior, and informed consultation with the affected Indigenous Peoples' communities during project implementation.
- F. Measures to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate.
- G. When potential adverse effects on Indigenous Peoples are identified, measures to avoid, minimize, mitigate, or compensate for these adverse effects.

- H. Measures to strengthen social, legal, and technical capabilities of (a) government institutions to address Indigenous Peoples issues and (b) of Indigenous Peoples' organizations to represent Indigenous Peoples more efficiently.
- I. Accessible culturally appropriate and gender sensitive procedures appropriate to the project to address grievances by the affected Indigenous Peoples' communities arising from project implementation. When designing the grievance procedures, the borrower/client takes into account the availability of judicial recourse and customary dispute settlement mechanisms among the Indigenous Peoples.
- J. Mechanisms and benchmarks appropriate to the project for monitoring, evaluating, and reporting on the implementation of the IPP. The monitoring and evaluation mechanisms should include arrangements for the free, prior, and informed consultation with the affected Indigenous Peoples' communities, and mechanism for disclosure of information.
- K. Process of involving local organizations and nongovernment organizations with proven expertise in Indigenous Peoples development.
- L. The institutional arrangement and mechanism for implementing the IPP.
- M. The cost estimates and financing plan for the IPP.

DRAFT SAFEGUARD REQUIREMENTS FOR BORROWERS/CLIENTS 4
SPECIAL REQUIREMENTS FOR DIFFERENT FINANCE MODALITIES

A. Introduction

1. Various lending modalities and financial products are key instruments for ADB to promote inclusive growth and sustainable development in its DMCs. In addition to standard project loans, ADB provides a variety of investment instruments including, among others, program loan, sector finance, multitranche financing facility (MFF), emergency assistance loan, financial intermediary, and corporate finance. These special requirements aim to tailor the safeguards requirements for borrowers/clients to the specificities of various lending modalities.

B. Program Loans

2. If the policy actions to be supported by a program loan are likely to have direct or indirect relatively significant environmental impacts, the borrower/client will prepare a strategic environmental assessment (SEA) of such policy actions, including recommendation of appropriate policy action options and mitigation measures that will be integrated into the program design.

3. If the policy actions associated with a program loan are likely to have direct or indirect significant involuntary resettlement impacts or effects on Indigenous Peoples, the borrower/client will assess the impacts, identify appropriate mitigation measures and incorporate them into the program design.

4. If an investment component is included in the program loan and specific projects are identified, the general requirements specified in SRs 1-3 will apply to these projects.

C. Sector Finance

5. For sector investments with potential environmental or involuntary resettlement impacts, or impacts on Indigenous Peoples, the borrower/client will agree with ADB, before the project approval by ADB, on an Environmental Assessment and Review Framework (EARF), Resettlement Framework (RF), or an Indigenous Peoples Planning Framework (IPPF) to guide subprojects selection, their social and environmental assessment, preparation and implementation of safeguard plans of subprojects, and facilitate compliance with the general requirements specified in Safeguard Requirements for Borrowers/Clients on Environment, Involuntary Resettlement and Indigenous.

6. The EARF, RF and IPPF will (i) describe the project, its subprojects and/or components; (ii) explain the general anticipated environmental and/or social impacts of the components or subprojects to be financed under the proposed project; (iii) specify the requirements that will be followed in subproject screening, assessment, and planning, including arrangements for free, prior and informed consultation with affected people and other stakeholders and information disclosure requirements, and where applicable, safeguard criteria that are to be used in selecting subprojects and/or components; (iv) assess adequacy of the borrower/client's capacity to implement national laws and ADB's requirements, and identify the needs for capacity building; (v) specify implementation procedures (including budget, institutional arrangements and capacity development requirements); (vi) specify monitoring and reporting requirements; and (vii)

describe the responsibilities of the borrower/client and ADB in the preparation, implementation, and progress review of safeguard documents of subprojects.

7. In addition to the elements listed in paragraph 6, the RF will outline social impact assessment and census methodologies; and where applicable, the IPPF will specify the process and documentation requirements for ascertaining affected Indigenous Peoples communities' broad support to the project activities specified in Section D2 of SR3. Annex 1, 2 and 3 respectively outlines the recommended contents of an EARF, RF and IPPF.¹

8. To establish subproject selection criteria, one or subprojects will be identified and appraised prior to the approval of the sector investment project. For these subprojects, the borrower/client will prepare relevant documentation, including environmental and social assessment reports, environmental management plans, resettlement plans, and Indigenous Peoples plans.

9. The general requirements specified in SRs 1-3 apply to all subprojects and components identified during project implementation.

10. If the sector investment involves development or change to the sector policies, plans or programs that are likely to have significant environmental and involuntary resettlement impacts, or effects on Indigenous Peoples, the requirements specified in paragraph 2 and 3 will apply.

D. Multitranche Financing Facilities

11. ADB's safeguard requirements apply to all components, projects, and subprojects financed under an MFF. The general requirements specified in SRs 1-3 will apply to components, projects and subprojects identified during preparation and implementation of an MFF.

12. The borrower/client will agree with ADB on an EARF, RF, and IPPF as specified in paragraph 6 and 7.

E. Emergency Assistance Loans

13. For emergency assistance loans, the completion of standard environmental assessment, EMP, RP and IPP may not be possible before Board approval. In such cases, an EARF, RF, and IPPF as specified in paragraph 6 and 7 will be prepared. Components and subprojects identified during the project implementation will follow the general requirements specified in Safeguard Requirements for Borrowers/Clients on Environment, Involuntary Resettlement and Indigenous Peoples. For projects in conflict areas where the completion of standard environmental assessment, EMP, RP and IPP may not be possible before Board approval, the safeguard frameworks may also be considered.

F. Existing Facilities

14. For projects involving facilities and/or business activities that are existing or under construction, an environment and social compliance audit, including onsite environment and social due diligence, is required to identify past or present concerns related to impacts on the

¹ These recommended contents are to serve as a guide for reporting. The level of effort, amount of analysis, comprehensiveness, and level of detail are to be guided by nature of the project and the magnitude of the potential impacts.

environment, involuntary resettlement and Indigenous Peoples. The objective of the compliance audit is to determine whether actions were in accordance with ADB's safeguard principles and requirements for borrowers/clients, and to identify and plan appropriate measures to address outstanding compliance issues. Where non-compliance is identified, a corrective action plan (CAP) agreed between ADB and the borrower/client will be prepared. The plan will define necessary remedial actions, budget and timely resolution of non-compliance. The audit report and CAP will be made available to the public in accordance with the information disclosure requirements of the Safeguard Requirements for Borrowers/Clients.

G. Financial Intermediaries (FIs)

15. ADB's requirements for social safeguard and environmental assessment and management for the FIs will be commensurate to the level of potential impacts/risks associated with the FI's investments, the FI's capacity of environmental and social management, and the financing modality provided by ADB. For the purpose of this section, the word "project" is used in reference to the ADB transaction with the FI, whereas "subproject" is used to refer to the business activities financed by the FIs.

16. FIs with business activities that have minimal or no adverse environmental or social impacts and risks need not apply any other specific requirements. All other FIs will establish and maintain an appropriate environmental and social management system (ESMS) as part of their overall management system. The ESMS should incorporate the following elements: (i) environmental and social policies; (ii) screening and review procedure; (iii) organizational structure and staffing including skills and competencies in environmental and social areas; (iv) training requirements; and (v) monitoring and reporting. The ESMS will be documented and agreed between ADB and the FI.

17. The screening procedure established under the ESMS will ensure that all subprojects are screened against the Prohibited Investment Activities List (PIL) (Annex 4). Subprojects involving business activities included in the PIL are not qualified for FI support using ADB funds, and applications involving such activities must be rejected. Depending on the size of the FI and its business activities, the FI should appoint a member of management to have overall responsibility for environmental and social matters, or appoint one or more staff responsible for the day-to-day implementation of the ESMS.

18. Where the FI provides finance under an ADB loan, equity or guarantee for targeted subprojects, the ESMS should cover at a minimum all subprojects financed by ADB, and for those subprojects with potential significant social or environmental impacts and risks, the ESMS will incorporate relevant provisions to ensure that such subprojects will be required to meet ADB's safeguard requirements in addition to national laws and standards. In such cases, the FI will refer those subprojects to ADB early in its due diligence process. ADB will assist the FI with the appraisal of these subprojects. ADB will review the due diligence information collected by the FI, determine any additional information needed, assist with determining appropriate mitigation measures and, if necessary, specify conditions under which the subprojects may proceed.

19. Where ADB funds will not finance specific targeted subprojects, the FI must adopt the ESMS that covers the entire FI's portfolio of subprojects originated from the time when ADB provides finance. The ESMS will ensure that all subprojects comply with national laws and standards pertaining to social and environmental safeguards. ADB may set additional requirements, depending on the FI's portfolio and country safeguard systems.

20. Except for FIs that have minimal or no adverse environmental and social impacts or risk, the FI will prepare and submit periodic reports (at the minimum annually) on the implementation status of its ESMS. If the reports suggest that ESMS is not functioning, a CAP agreed with ADB will be developed and submitted by the FI.

H. General Corporate Finance²

21. In cases where clients with multi-site operations are seeking from ADB general corporate finance, working capital or equity financing, the borrower/client will commission a qualified and experienced, external expert(s) to conduct a corporate audit of their current environmental and social management system (ESMS) and the company's past and current performance against the objectives, principles and requirements of the ADB's Safeguard Policy Statement. The audit will

- assess the client's ability to manage and address all relevant social and environmental risks and impacts of its business and operations, in particular the issues identified in the Safeguard Requirements for Borrowers/Clients;
- assess the client's compliance record with applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental and social matters, including those laws implementing host country obligations under international law; and
- identify the company's main stakeholder groups and current stakeholder engagement activities.

22. The exact scope of the corporate audit will be agreed with ADB on a case-by-case basis.

23. A CAP will address any issues identified during the corporate audit by specifying time-bound measures to achieve and maintain compliance with the objectives, principles and requirements of the ADB's Safeguard Policy Statement within a reasonable time frame. This Action Plan will be incorporated into the client's corporate environmental and social management system.

24. In case the investment includes rehabilitation, modernization or expansion of existing facilities, requirements on the existing activities specified in paragraph 14 will apply.

² For the purpose of these requirements, general corporate finance means loans and/or investments to a corporate entity that are not earmarked for implementation of specific subprojects. In case of corporate finance related to implementation of specific subprojects, the general requirements specified in Section C applied.

OUTLINE OF AN ENVIRONMENTAL ASSESSMENT AND REVIEW FRAMEWORK

A. Introduction

This section outlines the objectives of the EARF.

B. Overview of Type of Subprojects/Components to be Assessed

This section provides a brief overview of the nature of the subprojects/components. It should provide information on the specific activities that may have potential for environmental impacts.

C. Assessment of Institutional Capacity

This section assess the adequacy of the borrower/client's institutional capacity in implementing the national laws and ADB's requirements, and identify the needs for capacity development.

D. Specific Environmental Assessment and Review Procedures for the Subprojects and/or Components

1. Responsibilities and Authorities

The section describes the responsibilities and authorities of (i) the borrower/client; (ii) third party roles (including local government agencies); and (iv) the ADB.

2. Environmental Criteria of Subproject Selection

This section outlines specific environmental criteria (e.g., exclusion from environmentally sensitive areas, negative lists for procurement) that are to be used in subproject selection.

3. Procedures for Environmental Assessment of Subprojects

This section includes procedures for (i) environmental classification (if necessary); (ii) preparation of environmental assessments; (iii) requirements for environmental management plans; (iv) requirements for consultation, information disclosure, and grievance mechanism; (v) review of environmental assessment reports by government environmental agencies; (vi) review of environmental assessment by ADB; and (vii) monitoring and reporting requirements.

E. Staffing and Capacity Development Requirements and Budget

This section estimates the staffing requirements, training and capacity development program and cost estimates for operation of the environmental assessment and review framework. It should also provide estimates of costs required for preparation of IEEs and EIAs for subprojects.

F. Confirmation that EARF conforms to ADB’s Safeguard Requirements for Borrowers/Clients

This section evaluates the adequacy of the environmental assessment and review framework in the context of ADB’s requirements for borrowers/clients.

OUTLINE OF A RESETTLEMENT FRAMEWORK

A. Introduction

This section briefly describes the project, its subprojects and/or components, general scope of anticipated involuntary resettlement impacts of the components or subprojects to be financed under the proposed project, and an explanation as to why RPs of some subprojects cannot be prepared before project appraisal.

B. Objectives, Policy Framework and Entitlements

- (i) Principles and objectives governing resettlement plan preparation and implementation consistent with ADB policy requirements. A comparison of the applicable national laws and policies and the SPS, and measures to fill the gaps, if any;
- (ii) Criteria for screening and selecting components, projects, or subprojects, including measures to avoid and minimize involuntary resettlement impacts;
- (iii) Estimated number of affected persons and likely categories of physically and economically displaced persons; and
- (iv) Eligibility criteria for defining various categories of affected persons.

C. Socioeconomic Information

- (i) Methodologies applicable to socioeconomic surveys, census, inventory of losses, land assessment for losses, and
- (ii) Methods of valuing affected assets
- (iii) Methods of determining replacement cost of acquired assets.

D. Consultation, Participation and Disclosure

This section outlines the mechanisms that will be adopted to conduct free, prior and informed consultation with APs and to enable their informed participation in preparing, implementing and monitoring resettlement plans. Moreover, this section will outline (i) institutional responsibilities, and (ii) disclosure arrangements, such as information to be disseminated, and the method of dissemination.

E. Compensation, Income Restoration and Relocation

- (i) Measures proposed for income restoration including, compensation and special measures to support vulnerable households to improve their living standards;
- (ii) Measures to provide land-for-land replacement, if planned; and
- (iii) Support to host populations.

F. Grievance Redress Mechanisms

This section discusses measures to establish independent and viable grievance mechanisms at the local level. The composition, powers, areas of jurisdiction, consultation arrangement and record keeping schedules, information dissemination methods will be outlined.

G. Institutional Arrangements and Implementation

- (i) A comprehensive assessment of institutional capacity and resource capability to prepare, implement, and monitor resettlement activities. Additional measures necessary to enhance institutional capacity including costs;
- (ii) Organizational procedures for the delivery of entitlements; and
- (iii) A description of the implementation process including how to link resettlement preparation, approval and implementation to contract awards and commencement of civil works of the project.

H. Budget and Financing

This section includes an indicative budget including flow of funds. Identification of funding sources and responsibilities for the allocation, approval, and delivery of funds including, contingency arrangements.

I. Monitoring and Evaluation

This section identifies steps to establish internal and external monitoring and evaluation of resettlement including disclosure and reporting requirements to the borrower/client and ADB. It will also include two lists of monitoring indicators for internal and external monitoring.

OUTLINE OF INDIGENOUS PEOPLES PLANNING FRAMEWORK

A. Introduction

This section briefly describes the project, its subprojects and/or components likely to be proposed for financing, and an explanation as to why IPPs of some subprojects cannot be prepared before project appraisal.

B. Objectives & Policy Framework

- a. Principles and objectives governing Indigenous Peoples Plan preparation and implementation consistent with ADB requirements. A comparison of the applicable national laws and policies and the SPS, and the measures to fill the gaps, if any;
- b. Criteria for screening and selecting components, projects, or subprojects.

C. Identification of affected Indigenous Peoples

- (i) Application of the SPS criteria for identifying groups that are considered as Indigenous Peoples in the context of the project;
- (ii) The information on Indigenous Peoples most likely to be affected by the project or subprojects;
- (iii) The potential positive and adverse effects of such project or subprojects on Indigenous Peoples.

D. Social Assessment

A set of activities for carrying out the social assessment (see Annex 1.C of SR3) for such programs or subprojects.

E. Consultation and Participation

This section outlines the mechanisms and strategy that will be adopted to conduct free, prior, informed consultation with the affected Indigenous Peoples at each stage of sub-project preparation and implementation. In the selected cases mentioned in SR 3 para 28, this section will also outline the documentation of consultation process that led to Indigenous Peoples' informed consent for the project activities and safeguard measures affecting them.

F. Disclosure

The section will outline disclosure arrangements, such as information to be disseminated, and the method and form of dissemination to both the affected Indigenous Peoples and the public.

G. Grievance redress mechanism

This section discusses measures to establish culturally appropriate and gender sensitive grievance redress mechanism both at project level and local level for the affected Indigenous Peoples.

H. Institutional and implementation arrangement

An assessment of institutional capacity and resource capability to prepare, implement and monitor the activities conducted under the IPP. Additional measures necessary to (i) enhance institutional capacity of the borrower/client for screening project activities, evaluating their affects on Indigenous Peoples, preparing IPPS, and addressing any grievances; and (ii) enhance the capacity of the Indigenous Peoples to participate in the project implementation and monitoring.

I. Monitoring, evaluation arrangements

This section identifies steps to establish mechanisms and benchmarks appropriate to monitor and evaluate the project.

J. Budget and Financing

This section includes an indicative budget including flow of funds, identification of funding sources and responsibilities for the allocation, approval and delivery of funds including contingency arrangements.

ADB PROHIBITED INVESTMENT ACTIVITIES*

The following are not qualified for ADB financing:

- (i) production or activities involving harmful or exploitative forms of forced labor³/harmful child labor;⁴
- (ii) production of or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements, or subject to international phase-out or bans, such as (a) pharmaceuticals,⁵ pesticides/herbicides,⁶ (b) ozone-depleting substances⁷, (c) polychlorinated biphenyls⁸ and other hazardous chemicals,⁹ (d) wildlife or wildlife products regulated under CITES,¹⁰ and (e) transboundary trade in waste or waste products.¹¹
- (iii) production of or trade in weapons and munitions, including paramilitary materials;
- (iv) production of or trade in alcoholic beverages (excluding beer and wine);¹²
- (v) production of or trade in tobacco;¹³
- (vi) gambling, casinos, and equivalent enterprises;¹³
- (vii) production of or trade in radioactive materials, including nuclear reactors and components thereof;¹³
- (viii) production of or trade in or use of unbonded asbestos fibers;¹⁴
- (ix) commercial logging operations or the purchase of logging equipment for use in primary tropical moist forests or old-growth forests;
- (x) marine and coastal fishing practices, such as large scale pelagic drift net fishing and fine mesh net fishing, harmful to unwanted vulnerable and protected species in large numbers and damaging to the marine biodiversity and habitats.
- (xi) production or activities that impinge on the lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples.¹⁵

* A reasonableness test will be applied when the activities to be financed would have a significant development impacts but circumstances of the country require adjustments to this Prohibited Investment Activities list.

³ Forced labor means all work or service not voluntarily performed, that is extracted from an individual under threat of force or penalty.

⁴ Harmful child labor means the employment of children that is economically exploitive, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health, or physical, mental, spiritual, moral, or social development,

⁵ A list of pharmaceutical products subject to phase-outs or bans is available from www.who.int.

⁶ A list of pesticides and herbicides subject to phase-outs or bans is available from www.pic.int.

⁷ A list of the chemical compounds that react with and deplete stratospheric ozone, resulting in the widely publicized ozone holes is listed in the Montreal Protocol, together with target reduction and phase out dates. <http://www.unep.org/ozone/montreal.shtml>.

⁸ A group of highly toxic chemicals, polychlorinated biphenyls, are likely to be found in oil-filled electrical transformers, capacitors, and switchgear dating from 1950 to 1985.

⁹ A list of hazardous chemicals is available from www.pic.int.

¹⁰ CITES: the Convention on International Trade in Endangered Species of Wild Fauna and Flora. A list of CITES is available from www.cites.org.

¹¹ As defined by the Basel Convention. See www.basel.int.

¹² This does not apply to project sponsors who are not substantially involved in these activities. "Not substantially involved" means that the activity concerned is ancillary to a project sponsor's primary operations.

¹³ This does not apply to the purchase of medical equipment, quality control (measurement) equipment, and any equipment where ADB considers the radioactive source to be trivial and/or adequately shielded.

¹⁴ This does not apply to the purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20%.

¹⁵ FIs will apply this item, when investing in microfinance activities.