

assessments conducted by the World Bank, IADB, and NGOs, and reviews relevant ADB project performance reports (PPRs), PCRs, and OED studies. Chapter V briefly reviews the country contexts and country safeguard systems in the four case study countries selected, including the level of convergence with ADB's IP policy. ADB's TA portfolio on IP, which focuses on both policy and capacity development, is also reviewed. Chapter VI reviews the findings of the case study projects in terms of level of consultation and findings of sector projects, and assesses the impact on IP, as well as the value added of ADB support to IP. The last chapter assesses the policy in terms of relevance of the policy and procedures; effectiveness of outcomes on IP and on EA capacity; efficiency of inputs, processes, and systems; and sustainability of the policy's approach. It concludes with recommendations for ADB's consideration.

II. ADB AND INDIGENOUS PEOPLES SAFEGUARDS

A. Indigenous Peoples' Rights

11. The broad context for ADB's IP policy is summarized in this section. The United Nations (UN) estimates IP to number from 300 million to 370 million in the world,¹⁴ composing over 5,000 distinct groups in 70 countries on five continents. Over 150 million IP live in Asia; 68 million of these are scheduled tribes in India, or Adivasis. These numbers correspond to the more restrictive definition of IP, as comprising mainly cultural groups that have a historical continuity or association with a given region, or parts of a region, and that formerly inhabited the region either before its subsequent colonization or annexation, or alongside other cultural groups during the formation of a nation-state, or currently inhabit the region; or that are independently or largely isolated from the influence of the claimed governance by a nation-state, and have maintained at least in part their distinct linguistic, cultural, and social or organizational characteristics, and in doing so remain differentiated in some degree from the surrounding populations and dominant culture of the nation-state.¹⁵ By this definition, IP constitute around 5% of the population in of Asia and the Pacific. The number could be larger if other types of vulnerable ethnic minorities who identify themselves as indigenous were included, as they are in the more expansive definition of the World Bank and ADB. For instance, the PRC recognizes 55 ethnic minorities comprising over 123 million people.

12. IP are among the poorest people on earth, and many are threatened with marginalization or extinction of their lives, livelihoods, cultures, and languages. IP issues include cultural and linguistic preservation, land rights, ownership and exploitation of natural resources, political determination and autonomy, environmental degradation, poverty, health, and discrimination. The need for special protection of the rights of IP has long been recognized internationally. There is a highly active movement for the rights of IP and many NGOs, including international NGOs like the International Work Group on Indigenous Affairs. Discussions on the rights of IP have been held in the UN for the past 21 years, and in 1993 a Declaration on the Rights of Indigenous Peoples was drafted. The draft was, however, debated and then abandoned for several years. Although it was eventually adopted 13 years later by the Human Rights Council on 29 June 2006, it is yet to be ratified by the UN General Assembly.¹⁶ The

¹⁴ Available: <http://www.iwgia.org/>

¹⁵ Available: http://en.wikipedia.org/wiki/Indigenous_peoples#_note-2

¹⁶ Ratification was deferred in December 2006, but a vote on the adoption needs to be taken before September 2007.

Declaration has 46 articles, among which is an article that states the right of IP to self-determination, autonomy, or self-government in matters relating to their internal and local affairs, and articles providing that IP shall not be forcibly removed from their lands or territories, and that relocation shall take place only with the free, prior, and informed consent of the IP concerned and after agreement on just and fair compensation and, where possible, with the option of return. Many commentators feel that if the General Assembly were to adopt the Declaration in 2007, that could well be a major step toward improved human rights for the around 6% of the world population that can be labeled as IP.¹⁷ Added legitimacy would then also be given to an ADB policy that relies on special consultations and informed consent by IP for projects.

B. Indigenous Peoples and Infrastructure Projects

13. IP issues raised for development projects are in practice often intimately connected with land acquisition, resettlement, and environmental degradation, but may go well beyond these in the sociocultural domain. Large dams are discussed in the SES on IR as among the most invasive in resettlement impact. Dams may cause not only the resettlement of some communities in, and immediately around, the reservoir area, but also other adverse impacts on communities and individuals in the upstream and downstream areas. As most IP depend directly on natural resources, changes in the ecosystem that forms the basis for the livelihoods of other IP communities surrounding the dam can destroy their identity. Communities uprooted lose not only homesteads and villages, but also all natural resources (communal lands), cultural resources (places of religious worship or symbols, ancestral lands or domains), and income and employment resources. Particular attention to IP issues is needed in the design and implementation of projects that induce massive and sudden changes in factors that affect IP.

14. Examples of other potentially invasive development projects are those dealing with extractive industries (minerals, oil, gas) in remote areas. How invasive these projects can be was analyzed by the World Bank's Independent Evaluation Group in an evaluation report that was released in 2005.¹⁸ ADB, however, has financed only a few such projects over the past 15 years or so. More importantly, only two have affected IP significantly. Of the three projects that ADB financed between 1998 and October 2006, only the Tangguh Liquefied Natural Gas (LNG) Project in Indonesia,¹⁹ a private sector project, was invasive.²⁰ From 1990 to 1995, ADB financed five public sector projects and extended two investment facilities to a mining company in the Philippines. Of these projects, only the Third Natural Gas Development Project in Bangladesh²¹ was located in an area with IP.

¹⁷ While the Declaration is not binding on governments, it can put pressure on them to live up to the objectives of the Declaration and would serve to reinforce such universal principles as justice, democracy, respect for human rights, equality, nondiscrimination, good governance, and good faith. The Declaration does not create new rights. It elaborates on existing international human rights norms and principles as they apply to IP.

¹⁸ World Bank, International Finance Corporation and Multilateral Investment Guarantee Agency. 2005. *Extractive Industries and Sustainable Development. An Evaluation of World Bank Group Experience*. Washington, D.C. Available: <http://ifcln1.ifc.org/ifcext/oeg.nsf/Content/EIE>

¹⁹ Loan 2214-INO and EI 7224-INO: *Tangguh Liquefied Natural Gas Project*, for \$350.0 million, approved 14 December 2005).

²⁰ IP were not significantly affected by the other two projects: Loans 2188/2189-BAN: *Gas Transmission and Development Project*, for \$230.0 million, approved 27 October 2005; and Loan 2146-PRC: *Coal Mine Methane Development Project*, for \$117.4 million, approved 20 December 2004.

²¹ Loan 1293-BAN: *Third Natural Gas Development Project*, for \$107.0 million, approved 21 December 1993.

15. Most other types of public sector infrastructure projects do not usually invoke large-scale resettlement, but can be environmentally invasive. In transport projects, the protection and preservation of indigenous communities is somewhat more straightforward, as their proximity to places of worship, work, communal lands, and employment nodes can often be retained. Although the projects can dislocate many IP, good project planning and implementation can mitigate many negative impacts. However, there can still be significant indirect adverse impacts, such as those caused by in-migration of groups of people with different customs that may be in a position to exploit the IP or the resources on which they rely, increased exposure to communicable diseases, or additional claims from new arrivals on limited natural and agricultural resources. Forestry projects, in turn, may have adverse implications for IP if they change the ecological balance and deplete the forest resources essential for IP to maintain their traditional way of life. Agriculture projects may alter the land and water resources and power relations on which fragile ecological agriculture systems are based. Even projects introducing schools and clinics may affect IP lives adversely in some aspects if they ignore indigenous knowledge systems.

C. ADB's IP Policy Framework: A Summary and Some Observations

1. Assessment of Need for Social Development Action in Projects

16. ADB's operational policies have mandated the conduct of initial social assessments during the preparation of projects since 1991; earlier these were recognized as good practice but were not required for all projects. In 1993 and 1994, comprehensive social impact guidelines were issued.²² In 1994, ADB issued an instruction that World Bank IP guidelines were to be followed in operations. From that year onwards, reports and recommendations of the President (RRPs) started having appendixes with IPPs. ADB's IP policy was applied from 1999 onward: it confirmed and specified the earlier informal guidelines. Since 1999, specific poverty analysis has been added to the required assessments. The initial poverty and social assessment (IPSA) during project preparation became mandatory. RRP's now routinely contain appendixes on social assessments such as a summary initial poverty and social analysis, and a summary poverty reduction and social strategy (SPRSS), apart from those on IR and IP. Addressing project impacts on vulnerable people is a key aspect of all these analyses. In addition to IP and people to be affected by land acquisition or resettlement, the assessments may include people affected by projects economically, female-headed households, households of elderly people without family support, orphaned and street children, child laborers, disabled people without supporting families, squatters, landless and casual laborers, as well as immigrants and international refugees. However, unlike IP, there are no special safeguard procedures for the latter groups.

17. Like IR concerns, some IP concerns were also addressed in environmental impact assessments (EIAs). In fact, EIAs used to pay special attention to both IR and IP before the IR and IP policies were approved and mandated the preparation of the related plans. The IP concerns in EIAs referred to potential impacts of projects on cultural heritage, religious, sacred, or other traditional sites, graves and burial sites, and traditional housing structures. Such impacts, in fact, continue to be taken into account in EIAs and summary environmental impact assessments, and are, as will be seen in this report, taken into account much less in IPPs, which focus more on IP economy and sociocultural and political issues. In all, the 1980s and

²² ADB. 1993. *Guidelines for the Incorporation of Social Dimensions in Bank Operations*. Manila.

1990s witnessed the follow-up of the EIAs and the social assessments by a variety of plans, such as community development plans, social development action plans (SDAPs), land acquisition plans, resettlement plans (RPs), as well as IPDPs. The amount of effort that ADB devoted to such matters during project processing increased substantially.

2. The IP Policy Analyzed

18. The IP policy has integrated IP concerns in ADB operations and laid down objectives, definitions, and procedures that are designed to help safeguard the interests of IP. Nevertheless, this SES report argues that some of the statements are not very clear and some of the interpretations made and procedures progressively adopted after 1998 have not all had the intended effect and improved the efficiency of policy implementation and overall ADB operations. As this report will argue later, the problem is not that ADB has missed out on important negative impacts on IP, but that the use of the policy's main instrument, the IPDP, has been overextended. Furthermore, ADB's definition of IP in the policy and in the later OM F3 of 2004²³ has complicated decisions on IP impact mitigation or enhancement plans for project officers and EAs. The concept of IP originated in Latin America, in most parts of which the descendants of immigrants to the continent and *mestizos* are in the majority. The vast majority of the people in the Asia Pacific Region have been native to the land from time immemorial. Peoples of Asia can be subdivided into groups and nations, and may have stronger or weaker bonds as groups, and longer or shorter histories of living in areas together. There are few examples of non-IP ruling over IP as a result of a colonial legacy in Asia. The Philippines may be the closest parallel to the Latin American context, and thus the notion of indigenous tribal groups makes sense in this country. But even in the case of the Philippines, it could be argued that the current majority populations have intermingled with the earliest residents of the archipelago for so many centuries that it is difficult to sort out which group is indigenous and which is not. Well-known IP such as the Aetas in Central Luzon originally inhabited the plains but colonialism resulted in their withdrawal into the mountains over the past few hundred years. These IP are now associated with the mountains, but whether they identify themselves with the mountains is less straightforward; they see themselves as nomadic. In regions such as the Pacific, the vast majority of the people are indigenous but the concept of minority population, under the second part of the definition (identity and institutions separate from the mainstream population), does not apply. Appendix 1 reflects key paras. 7–13 of the 1998 IP Policy regarding the definition of IP. Below are some of the sources of misunderstandings that could arise from the policy in its current formulation.

²³ ADB. 2004. *Operations Manual. Section F3/BP: Indigenous Peoples*. Manila (13 May), paras. 2 and 3:

ADB defines 'indigenous peoples' as groups with social or cultural identities distinct from that of the dominant or mainstream society. 'Indigenous peoples' is a generic concept that includes cultural minorities, ethnic minorities, indigenous cultural communities, tribal people, natives, and aboriginals. Two significant characteristics of indigenous peoples are (i) descent from population groups present in a given area before modern states or territories were created, and (ii) maintenance of cultural and social identities separate from mainstream or dominant societies or cultures. Additional characteristics include (i) self-identification and identification by others as being part of a distinct indigenous cultural group, and the display of the desire to preserve their cultural identity; (ii) a linguistic identity different from that of the mainstream or dominant society; (iii) social, economic, and political traditions and institutions distinct from the mainstream society; (iv) an economic system oriented more toward a traditional system of production than toward the mainstream production system; and/or (v) a unique tie with and attachment to traditional habitat and ancestral territory and its natural resources.

19. **ADB Definition and National Law on IP.** Para. 12 states:

Indigenous peoples should be regarded as those with a social or cultural identity distinct from the dominant or mainstream society, which makes them vulnerable to being disadvantaged in the processes of development. Determination of a distinct identity for indigenous peoples would be based in the requirements of applicable national law *and the applicability of characteristics described in paras. 8–11 of the Policy* [italics added].

However, ADB's definition seems to include and, if necessary, override national definitions. The policy also recognizes that national legislation on IP may be absent, incomplete, or deficient.²⁴ The OM F3/BP sections of 13 May 2004 and 25 September 2006²⁵ mention that the national legislation "usually provides a basis for defining indigenous people, to the extent that the legislation covers the main points of ADB indigenous peoples policy."

20. **IP and Ethnic Minorities.** The 1998 IP Policy states:

The application of any definition of indigenous peoples should work to differentiate between indigenous peoples and other cultural and ethnic minorities for which indigenous status is not an issue; the broader protection of vulnerable groups is an issue addressed in other policies and practices of the Bank [italics added].

More guidance on the indigenous status being an issue as a way of distinguishing between groups would have been helpful. The relevance of the policy toward IP and ethnic minorities in urban contexts also requires more guidance.

21. **IP and Vulnerable Minorities.** The first line of the 1998 IP Policy states: "Indigenous peoples can be regarded as one of the largest vulnerable segments of society." ADB's IP policy interweaves the concepts of IP and ethnic minorities with the concept of people "vulnerable to being affected by projects" or "vulnerable to being disadvantaged in the processes of development." However, as the quotation in the previous paragraph implies, the IP concept is not deemed fully synonymous with the "vulnerable groups" concept. In Afghanistan and Pakistan, there are both ethnic and tribal groups but none of the larger ones would be labeled as either indigenous or vulnerable. The question then arises whether they should be covered by the IP policy. In other parts of south Asia, religious and linguistic differences between groups are as important, and the terms "scheduled tribes" and "scheduled castes" are used for populations that are regarded as different, for either anthropological or religious reasons. ADB is treating the former as IP but not the latter. This SES report regards a high level of economic, political, or sociocultural vulnerability of IP a better criterion for the triggering of a safeguard policy than the existence of IP as such.

²⁴ IP policy para. 19: "Few countries have enacted laws that recognize any rights of indigenous peoples to ancestral lands, or that support indigenous peoples regaining and strengthening their social, cultural, and legal institutions. In many cases, enforcement of laws that may exist has been inadequate." Para. 21: "At the national level, in some cases, new laws, policies, and other measures may be necessary to reconcile competing demands and conflicting interests, especially if interests of indigenous peoples are to be protected."

²⁵ This new OM version added requirements arising from ADB's 2005 Public Communications Policy (ADB. 2005. *The Public Communications Policy of the Asian Development Bank: Disclosure and Exchange of Information*. Manila).

22. **Lack of IP Development Strategy.** The IP policy is formulated mainly as a safeguard policy in individual projects; less emphasis is placed on the larger issue of development of IP in Asia and the Pacific and how ADB sees its role in that area.²⁶ If the policy were to include also an IP development strategy or refer to this, it would have required more explicit attention from ADB for areas with IP and choices as to types of projects and TA that address IP development best. The policy and procedures do not require that country poverty assessments assess IP issues explicitly and that country partnership strategies consider presenting a country IP development strategy or plan. The IP policy focuses on how development projects should deal with IP when these are encountered in the project impact zone. ADB should ensure that adverse impacts of projects are mitigated and make sure IP benefit from the project. The safeguard focus of the IP policy is similar to that of the IR policy. The environment policy is different in that it more comprehensively addresses the wider issue of environment development; safeguards in projects are only one element of the environment policy. The lack of a wider aspirational strategy to guide the choice of ADB supported projects may have contributed to the somewhat ambivalent interpretation later of the policy's "significant and adverse impacts" that trigger the application of the policy's central instrument, the IPP, and the focus of the latter on "enhancement measures" to improve the status of IP as separate from the primary objective of the project at hand.

23. **Overlap with Other Safeguard Policies.** As the IR policy explicitly addresses the mitigation of adverse effects on vulnerable people, including IP, there is considerable overlap between the IP policy and the two other safeguard policies, the IR policy and the Environment policy. Neither the 1998 IP Policy nor the 2004 OM Section F3 discusses the overlaps in detail. Neither specifies what to do when the significant adverse impact of a project on IP is confined to land access or livelihood loss or resettlement of IP. The IP policy and the OM imply that an IPDP will automatically need to be prepared, irrespective of whether the RP or the EIA also addresses the same issues. This necessarily leads to duplication of effort, inefficiency and some confusion among ADB staff and EAs. A practice seems to have grown in ADB: the RP takes precedence during implementation, but an IPDP is prepared as well, although in some cases the IP procedure can apparently be confined to designating IP-relevant actions in the RP or the environmental management plan as SpAs. It is not stated that, in such cases, the IPDPs are to focus on other impacts deemed significant and adverse.

3. Stretching of ADB's IP Policy

24. There has also been a measure of creep in the application of the IP policy over the years, especially when comparing the 2004 OM Section F3 with the 1998 IP Policy. This is not unlike the policy drift that occurred after the issuance of the 1995 IR policy, and may in part be a consequence of experiences with ADB's accountability mechanism and the later compliance review mechanism. Some elements are justifiable and improve the policy; others complicate it. The SES hypothesizes that, as with the IR policy, fear of being out of compliance has led to a propensity in ADB to err on the safe side and to interpret the IP policy in as wide a sense as possible, to protect against the inclusive interpretation generally made of procedures by inspection and compliance review panels when investigating cases.

²⁶ IP policy para. 6: "This policy initiative is undertaken in parallel with specific development interventions of the Bank that would address the needs and concerns of indigenous peoples—projects designed to provide specific developmental support to indigenous peoples." A strategy for the latter interventions could be envisioned.

25. From Groups for Which Indigenous Status Is an Issue, to All Ethnic Minorities. OM Section F3 states that “indigenous peoples” is a generic concept that includes cultural minorities, ethnic minorities, indigenous cultural communities, tribal people, natives, and aboriginals. This concept seems somewhat more inclusive than that used in the 1998 IP Policy itself, which excluded ethnic groups and minorities “for which indigenous status is not an issue,” and whose socioeconomic vulnerability was not a sufficient criterion for their inclusion as IP (para. 12). The IP impact categorization form for the chief compliance officer (CCO) asks only if IP or ethnic minorities are present in the area, and whether they maintain distinctive customs or economic activities that would make them vulnerable to hardship, before checking the potential impact of the project in various aspects.

26. From Adverse and Significant Impacts to Adverse and Positive Impacts. The definition of IP impacts “triggering” the preparation of IP documents and actions has widened over the years. The 1998 IP Policy did not categorize projects as to the severity of their impacts on IP beyond these being (i) adverse and significant, or (ii) not adverse and significant. Operational Procedure 53 issued 21 December 2000 clarified: “When the entire project is targeted at directly benefiting the indigenous peoples’ community, the concerns over the indigenous peoples will be addressed by the project, which will serve as an IPDP.”²⁷ This implied that in the case of positive impacts and in the absence of negative impacts, no separate IPDP would need to be prepared. With the introduction of the safeguard policy compliance memorandum (SPCM) in 2002, such a separate IPDP is now required also for projects with only positive impacts on IP. A mandatory screening process categorizes projects on three levels of significance of impact. Projects are in category A if impacts are significant enough to require an IPDP or an IPDF or both.²⁸ Projects are in category B if the impacts are limited but require *specific actions* for IP.²⁹ According to OM F3/OP para. 14, these actions may take the form of (i) incorporating IP (who might be excluded from the project) into the project beneficiary group, (ii) incorporating IP-specific needs (that may not be addressed by the project) into the project plan, and (iii) drawing up a common community action plan where IP groups live with the nonindigenous people in the same location. Projects are in category C if no impacts on IP that require special provisions are foreseen. ADB’s 2004 OM Section F3 codified this emphasis on the significance of impacts as the criterion for IPDPs and IPDFs rather than adverse impacts per se, clarifying that:

The impacts of ADB’s projects on indigenous peoples will be considered significant if they *positively or negatively* (i) affect their customary rights of use and access to land and natural resources; (ii) change their socioeconomic status; (iii) affect their cultural and communal integrity; (iv) affect their health, education,

²⁷ Operational Procedure 53 also stated in para. 5: “In some restricted cases, where multiple indigenous groups live in the same region or community and where targeting specific indigenous groups is not possible, general community action plans are substituted for IPDPs. In general, the government or executing agency is expected to prepare such plans.”

²⁸ ADB. 2004. Operations Manual. Section F3/OP: Indigenous Peoples. Manila (13 May), para. 10: “An IPDP/IPDF is needed when (i) an IP community is the main beneficiary of a development project, (ii) a project component may significantly benefit the community, and/or (iii) the project or project component may have significant adverse impacts on IP.” An IPDF is a policy and procedural framework that is developed for subprojects, components, or investments, and that is the basis for more detailed IPDPs prepared and approved during loan implementation. An IPDF sets out the IP policy together with the screening and planning procedures for subprojects, components, or investments that are approved during implementation.

²⁹ A borrower or project sponsor prepares a specific action for IP when a project is expected to have limited impacts on IP or when there is a risk that the project may not bring the intended benefits to the affected IP.

livelihood, and social security status; or (v) alter or undermine the recognition of indigenous knowledge (para. 5) [italics added].

Even when positive and negative impacts are included, the criterion for determining the significance has remained unclear. In the view of this SES, points (iii), (iv), and (v) are, to a large extent, a matter of perspective and judgment. The perception of the significance of these impacts will inevitably vary between observers.

27. The already mentioned IP impact categorization form to be used in categorizing each project proposal at the start has further widened the definition. The form has been amended several times over the years, and the current version assigns the following characteristics to this category A listing that triggers an IPDP or IPDF:

- (i) impacts may preclude customary behaviors or undermine customary institutions;
- (ii) project will be located in, or pass through, areas of significant indigenous peoples' settlement or use; and
- (iii) project proposes to specifically target indigenous peoples in one or more of its main activities, or is anticipated to have significant negative effects on indigenous peoples.

28. The current practice of IPDPs being triggered by both positive and negative impacts exceeds the original intentions of the IPP as indicated in the 1998 IP Policy. The original policy had more emphasis on adverse impacts triggering an IPP. Para. 35 states:

If the ISA determines that indigenous peoples are likely to be affected significantly by a Bank intervention or that indigenous peoples are disadvantaged or vulnerable in an intervention because of their social or cultural identity, a specific indigenous peoples plan addressing indigenous peoples and their concerns, that is time bound and that has appropriate budget provisions, must be developed (see paras. 37–40).

Subsequently, para. 37 states:

For a Bank-assisted development project that affects indigenous peoples adversely and significantly, an indigenous peoples plan acceptable to the Bank must be prepared. Beyond addressing indigenous peoples populations and relevant social issues, the indigenous peoples plan must include specific measures and approaches to be taken to address issues affecting indigenous peoples. A project negatively affecting indigenous peoples must be appropriately redesigned to mitigate negative effects, or include an acceptable compensation plan; the provision of compensation should not be a substitute for efforts to avoid or mitigate negative effects a project may have.

The question here is what is significant and what the verb “affect” means. The policy gives somewhat ambiguous guidance. This SES views the safeguards to be ensured within IPPs as focusing on adverse impacts and “issues.” According to the interpretation adhered to later in the OM of 2004, the focus was on both adverse and beneficial impacts: even a project *only positively affecting IP significantly* would require an IPDP. This interpretation has increased the number of projects requiring the preparation of IPPs and, as evident from interviews held, caused confusion among ADB staff.

29. **From Consultation of IP to Consent from IP.** The appendix in the 1998 IP Policy states that “Consultation with indigenous peoples groups is key to developing an effective, accurate, responsive indigenous peoples development plan.” A passage in the main text reads: “Initiatives should be conceived, planned, and implemented, *to the maximum extent possible* [italics added], with the informed consent of affected communities, and include respect for indigenous peoples’ dignity, human rights, and cultural uniqueness.” This SES notes that the proviso “to the maximum extent possible” in practice does not endorse informed consent by IP as mandatory. One of the contentious points has been that the policy requires that IP are consulted adequately before and during implementation. The policy states that: “those preparing the project should promote the formation or strengthening of indigenous peoples’ organizations to facilitate their participation in project identification, planning, execution, and evaluation.” Where available, traditional representative IP institutions should be involved. Furthermore, qualified professionals would need to be involved in the formulation of plans and mitigation measures.

30. OM Section F3/OP para. 23 has sharpened the requirement of consultation to the level of the need for a formal “informed consent” (approval) by IP for an IPP: “When serious differences between project sponsors and affected indigenous peoples are evident with regard to project design and implementation, adequate time must be allowed for the government or the project sponsor to resolve these differences, before ADB commits its support for the project.” Numbers or proportions of dissenting IP are not specified, neither is specified what to do in cases that hundreds of thousands of IP are involved. The World Bank’s IP policy as revised in 2005 also comes close to requiring consent for projects from IP.³⁰ Agencies like the International Finance Corporation (IFC) require that IP give “broad community support,” which is to be demonstrated and documented. The IADB’s new IP policy³¹ requires, for cases of particularly significant potential adverse impacts, that the project sponsor demonstrate that it has, through a good-faith negotiation process, obtained agreements regarding the operation and measures to address the adverse impacts as necessary to support the sociocultural viability of the operation. Many NGOs active in the field strongly advocate that projects affecting IP should go ahead with full informed prior consent of the affected people, including negotiated agreements. This can be at odds with the decision-making processes in many DMCs. ADB’s OM of 2004 is in line with these more recent and more inclusive interpretations of the various IP policies of other multilateral banks, but is more stringent in the level of consultations required than the original policy implied. This should be reconciled in the safeguard policy update, given some other public statements ADB has made (Box 1). The IP policy update should provide more guidance on the level of consultation that is necessary, ADB’s position on full, informed prior consent, and the methods to be used to verify the level of consent from IP through a census or comprehensive survey. These issues are both important and contentious and need to be decided by the Board and not Management and staff.

³⁰ One of the requirements of the World Bank IPP is: “a summary of results of the free, prior, and informed consultation with the affected Indigenous Peoples’ communities that was carried out during project preparation (Annex A) and that led to broad community support for the project” (OP 4.10, Annex B).

³¹ Inter-American Development Bank. 2006. *Operational Policy on Indigenous Peoples*. Washington, D.C. (22 February).

Box 1: Full, Prior, and Informed Consent

For some projects, there is an asymmetrical distribution between the project benefits and adverse impacts. For dams, for example, the benefits in terms of a more reliable supply of electricity are received by businesses and households far from the dam site. Potential adverse environmental resettlement and livelihood impacts are born by the people living in the project area, often IP. Such projects are often contentious, with one group of stakeholders arguing that the project should go ahead and others that the project should not be implemented. Resolving such divergent opinions is a major challenge for all stakeholders.

When the World Commission on Dams recommended the use of Full, Prior and Informed Consent as the measure of full approval for dams from those affected by them, ADB's initial response as published on its website by January 2002 was that all projects affecting IP must have an IPDP, and that this rarely involved substantive involvement by IP in deciding whether a project was to proceed. ADB viewed such decisions as a matter of national sovereignty and thus the government's responsibility. A related World Commission on Dams recommendation was that demonstrable public acceptance of all key decisions was to be achieved through agreements negotiated in an open and transparent process conducted in good faith and with informed participation of all stakeholders. ADB responded that formal agreements are entered into with individuals or communities only in terms of resettlement and compensation, not in overall agreement to the project itself. It was however also recognized that ADB increasingly supports mediation by a mutually accepted third party, respected for their independence, to achieve informed consent.

The issue was further considered during the review of ADB's Water Policy in 2004. The Policy at the time read (para. 32): "ADB will adopt a cautious approach to large water resource projects—particularly those involving dams and storage—given the record of environmental and social hazards associated with such projects. All such projects will need to be justified in the public interest, *and all government and nongovernment stakeholders in the country must agree on the justification* [italics added]. Where the risks are acceptable and ADB's involvement necessary, ADB will ensure that its environmental and social impact assessment procedures are rigorously applied. Any adverse environmental effects will be properly mitigated, the number of affected people in the project area will be minimized, and those adversely affected will be adequately compensated in accordance with ADB's policy on involuntary resettlement. In line with its energy sector policy, ADB will continue to extend its support for technically and economically feasible hydropower projects that form part of a country's least-cost energy development plan, provided their environmental (including impact on fisheries) and social effects can be satisfactorily managed in accordance with ADB policies."

Due to the different views of various stakeholders and concerns among some that the passage in bold might not be practical, it was proposed, after the consultation process, to replace it as follows: "and stakeholders must be provided with the opportunity to comment on the justification with their views considered. The ADB will promote the informed participation of government, civil society, and other stakeholders in the country in an open and inclusive manner towards this end." ADB's Board approved this revision of the Water Policy on 18 January 2005.

ADB = Asian Development Bank, IP = indigenous peoples, IPDP = indigenous peoples development plan.
Sources: ADB. 2002. *ADB's Planned Responses to the World Commission on Dams. Strategic Priorities, Good Practices, and Institutional Responses*. Manila. Available: http://www.adb.org/NGOs/adb_responses.asp; and ADB. 2004. *Proposed Revision of the Water Policy of the Asian Development Bank*. Manila. Available: <http://www.adb.org/Documents/Policies/Water/revision-water.pdf>. See also Nuera, A. 2005. *The Asian Development Bank and Dams*. NGO Forum on ADB. Manila.

31. Appendix 2 presents more information on how ADB's IP policy compares with that of the World Bank, International Finance Corporation, IADB, and African Development Bank.

32. In addition to the policy drift, formal approval of other policies in ADB has raised the bar for IP planning. Notable among these is the approval of the Public Communications policy in 2005. Standards for public disclosure of IPPs increased (Box 2): before IPDPs are posted, their drafts will also need to be posted for comments. The 2005 policy also requires the disclosure of schedules of project preparation consultations (including, presumably, those with IP), draft design and monitoring frameworks before the appraisal of projects, IPSAs upon their completion, project administration memorandums, and social and environmental monitoring reports required by loan agreements. Even before the approval of the policy, the trend toward formally stated and reflected endorsements of IPDPs by governments (if they had not been prepared by the EAs themselves), was already under way. These are positive developments, but require more attention, i.e., time and resources, from ADB staff, which can be realized only if there is an appropriate level of staff resources.

Box 2: Indigenous Peoples in ADB's New Public Communications Policy, 2005

83. The borrower or private sector sponsor shall make available to affected people who are indigenous peoples/ethnic minorities:

- (i) before appraisal - a draft indigenous peoples development plan;
- (ii) after completion of the final indigenous peoples development plan - such indigenous peoples development plan; and
- (iii) following revisions to the indigenous peoples plan as a result of detailed technical design or change in scope in the program or project^a - the revised indigenous peoples development plan.

84. The information from the documents can be made available as brochures, leaflets, or booklets in local languages. For non-literate people, other communication methods will be appropriate.

85. ADB shall make publicly available:

- (i) before appraisal - a draft indigenous peoples development plan or framework (or both);
- (ii) upon receipt of the final indigenous peoples development plan - the final indigenous peoples development plan; and
- (iii) upon receipt of a revised indigenous peoples development plan - the revised indigenous peoples development plan.

ADB = Asian Development Bank.

^a Dissemination of the plan or framework may be limited to those people affected by the change in scope.

Source: ADB. 2005. *The Public Communications policy of the Asian Development Bank: Disclosure and Exchange of Information*. Manila.

D. Organizational Arrangements for IP Policy Enforcement

33. The organizational structure for social safeguard enforcement and changes after 2002 were discussed in the IR SES. Before the 2002 reorganization, safeguards were part of the broader responsibilities of the Office of Environment and Social Development, which controlled the social development specialists in ADB. The organizational changes in 2002 included arrangements as a result of the creation of the function of a new Environment and Social

Safeguard Division in the RSDD (RSES) with two social safeguard specialists, one for IP and one for IR, the dispersion of other social development specialists across operations departments, and the creation of a CCO within the new RSDD, as well as the subsequent issuance of an instruction on the SPCM and Related Procedures on 27 February 2002. The SPCM requires a sign-off from the CCO, based on advice from RSDD, on the existence of a satisfactory (i) environmental assessment, (ii) initial poverty and social analysis, (iii) IR planning, and (iv) IP planning. All project and program proposals have to receive the certification before the management review meeting (MRM). The memorandum has had the effect of increasing the attention of the operations departments to safeguards during project preparation.³²

34. In 2000, ADB had 12 social development specialists. In June 2006, there were 19. This would indicate growth in the IP-related staff resources. However, in 2000, there were 10 poverty reduction specialists in ADB's offices of the directors general (plus 1 in the Office of Environment and Social Development); in 2006, 4 remained. The overall number of specialists in poverty and social assessments does not seem to have increased over the years in spite of the greater emphasis on compliance with social safeguards. The 1998 IP Policy was rather general with respect to resource requirements (para. 52):

Processing of projects that affect indigenous peoples may require longer processing times and additional resources for processing. Also required might be consultant and technical assistance resources. In addition to resources and time that would be required in preparing projects that affect indigenous peoples, projects that affect indigenous peoples may also involve efforts that address and work to alleviate structural constraints on the borrowing country and executing agency side. It would be necessary that adequate resources be made available.

Para. 53 ends with a statement that "It would be desirable to recruit at least one staff with relevant operational experience and skills in matters related to indigenous peoples." Although this has been done, social development specialists interviewed have stated that the lack of growth in specific expertise in IP issues within ADB reduces the time for preparing, checking, and implementing and monitoring IP-sensitive project designs and IPPs. The growing IR work that social development specialists are involved in appears to crowd out the time-consuming IP work. The lack of growth in in-house expertise is not in line with the fact that ADB has devoted a whole policy toward IP, and has elevated the IP policy to one of the three safeguard policies. However, a full analysis of the workload of staff in Manila and resident missions on account of the IP policy is not attempted here, given that actual and supposed workloads will depend on the different views on the inclusiveness of the IP policy.

³² It is unclear why the three policies were singled out for the safeguard memorandum (it could be argued that the memo also regards the poverty reduction strategy [ADB. 1999. *Poverty Reduction Strategy*. Manila] as a safeguard policy, although the OMs issued since 1999 do not reflect this). The reason may have been the growing familiarity with the term "safeguards" as used by the World Bank. The three are among the more contentious of ADB's policies, although it could be imagined that a chief compliance officer would also sign for other compliance, e.g., the adequacy of anticorruption safeguards. By mid-2003, the then CCO in RSDD had been appointed secretary of the Office of the Compliance Review Panel, a function with the wider mandate to ensure the compliance of operations departments with all Board decisions. The responsibility of the CCO to sign the memo was transferred to the DG, RSDD.