

124. The five most important factors related to ADB contributing to better IP outcomes were (i) more training for EA staff (67%), (ii) ADB funding of land acquisition costs¹⁰⁹ (54%), (iii) ADB following country or agency IP systems (42%), (iv) more IP consultants assigned (38%), and (v) more streamlined ADB safeguard policies. The two most important country- or agency-related factors identified as contributing to better IP results were (i) the creation of more capacity in EAs (88%), and (ii) greater availability of EA counterpart funds (67%).

125. **Effectiveness of the Safeguards.** The EA respondents were somewhat more positive than ADB staff about ADB's IP involvement, but still the views were mixed and noncommittal (but the number of responses either way was also low, because so many IPDPs were only in the early stages). Half of the respondents reported that the IP safeguard procedures improved some or all components of the project. Noticeable improvements in projects included (i) more due diligence and transparency (38%), (ii) more experience in EA (38%), and (iii) less adverse effects on the environment and on the affected people than would otherwise be the case without ADB involvement (33%). Almost half of the respondents believed that the IP safeguard policy had been, or was going to be, effective in mitigating adverse impacts on IP. Problems encountered were mainly related to delays in implementation, which were caused primarily by the difference between the ADB and country systems, and a lack of capacity in the EA.

V. COUNTRY SAFEGUARD SYSTEMS AND CAPACITY BUILDING

A. Review of Country IP Safeguard Systems

126. This section briefly reviews the extent to which some country safeguard systems are compatible with the ADB IP policy. This review covers the four case study countries: the PRC, India, the Philippines, and Viet Nam. The review will demonstrate that, given ADB's present IP policy, there may be no DMC system that meets ADB's criteria in all respects and that projects funded by ADB would thus need complementary safeguards of a varying nature in most DMCs.

127. **People's Republic of China.** The PRC's 1954 constitution promotes equality and protects the rights of all minority nationalities to develop and use their own language and characters, and to promote their customs, beliefs, and development. The rights of ethnic minorities have been gradually expanded. By 2003, the PRC had established 155 autonomous governments including five autonomous regions,¹¹⁰ on the basis of the concentration of ethnic minorities in the area. The areas have a higher degree of autonomy in decision making regarding the preferred kind of development, the use of local finances, type of schooling, and ethnic culture. Forty-four out of the 55 ethnic groups and 71% of the IP in the PRC live in the autonomous areas.

128. The Government provides special assistance to support the development of autonomous areas and provides special training for minority cadres.¹¹¹ The assistance includes (i) border affairs allowance, to support infrastructure projects in frontier areas, especially those dominated by minorities; (ii) a special minority development fund to support infrastructure projects; and (iii) poverty reduction funds for minority poverty counties, such as funds for small and medium-

¹⁰⁹ ADB has been allowed to finance land acquisition costs since 2005.

¹¹⁰ Guangxi (Zhuang), Inner Mongolia (Mongolia), Ningxi (Hui), Tibet (Tibetan), and Xinjiang (Uygur).

¹¹¹ The head of the county can appoint a cadre from a dominant minority group in every minority autonomous county.

sized enterprises for minorities, clothing-and-food funds addressing particular problems of minority areas, and work-for-loan funds, which focus on middle, western, and minority poverty areas. Other privileges for officially recognized ethnic groups include tax subsidies for autonomous areas and the permission to set up their own tax regulation and tax collection. The national Government has given IP other special benefits such as (i) an additional score in university entrance examinations; (ii) permission given to rural minority couples to have up to three children, while Hans may have only one to two; and (iii) special capacity-building programs. Because of these benefits, some Hans convert to ethnic minority status in or from mixed marriages or when an ancestor belonged to an ethnic minority.

129. The PRC does not mandate the holding of special consultation processes to obtain prior and informed IP consent for individual projects from ethnic minorities regarding development projects in their areas. The PRC relies on its autonomous area governments, local government poverty bureaus, and ethnic minority bureaus to work out the arrangements. They are also charged with monitoring and grievance redress. PRC seems to have relatively fewer problems in providing financing for IP projects than some other countries like India and the Philippines, although there is still a need for follow up on commitments from the side of projects and ADB. Substantial funds are committed to ethnic minority programs and autonomous regions and a larger proportion gets spent. ADB-supported projects in areas with ethnic minorities could coordinate with these programs and support their role. IPDPs would then need fewer special measures and could be more integrated with the Government's own programs. However, there remain some disparities between ADB's IP policy and public disclosure policy, and the PRC's procedures. The IP policy would require ADB to institute some special consultation processes and disclosure arrangements, and to strengthen the monitoring system to pursue commitments made and the spending of the allocations.

130. **India.** Several provisions in the constitution of India protect and safeguard scheduled tribes from social injustice and other forms of discrimination and exploitation such as the abolition of untouchability. The constitution also promotes the economic interests of scheduled tribes, and provides other special arrangements such as for education. India's Ministry of Tribal Affairs was constituted in October 1999. It promotes social security and is in charge of policy formulation, and the planning and coordination of development programs and projects for scheduled tribes. In 2005 it prepared a draft Scheduled Tribes (Recognition of Forest Rights) Bill that was cleared by the Law Ministry. The Ministry of Environment and Forests has concerns about the bill, namely that it will be detrimental to safeguarding forests and wildlife.

131. The objectives for promoting the welfare of scheduled tribes are to be achieved in India through the national Tribal Sub-Plan strategy. The plan allocates funds for development projects for the tribal areas proportionate to the population of scheduled tribes in the area, allotted from the budget of central ministries and Financial Institutions. In practice, allocated funds do not always materialize because of fiscal constraints on government. Because of this, ADB-supported projects may have to require inclusion of special funding arrangements through projects. India does not mandate special consultation processes and special disclosure and monitoring arrangements, such as promoted by ADB, or use the principle of prior and informed consent to gauge the interest of scheduled tribes in the project. India does not have a fixed process for recognizing ancestral domain rights. Land rights can be allocated to scheduled tribes living in forested areas, but the allocation is in practice hampered by scheduled tribes' fears of being taxed after land registration is completed.

132. **Philippines.** In Asia, the Philippines and Malaysia have the legislation that assigns the most rights to IP. The Indigenous People's Rights Act (Republic Act 8371, adopted in 1997)

recognizes and promotes the rights and best interests of IP in the Philippines. It goes farther than most similar legislation in Asia as it explicitly protects IP's rights to their ancestral domains, and recognizes their rights to self-governance. The act also emphasizes social justice and the human rights of indigenous cultural communities (ICCs), and provides a framework for preserving and protecting IP culture, traditions, and institutions. The National Commission on Indigenous Peoples (NCIP) was created under this act, to be the primary government agency tasked to carry out the policies set by the law. It employs some 1,400 staff at its headquarters and other offices.

133. The act requires IP communities to prepare an ancestral domain sustainable development protection plan (ADSDPP¹¹²) to provide a framework for the enforcement of their rights. NCIP supports the process of formulating the ADSDPPs. The plans elaborate on (i) the ancestral domain and community situationer (which also documents the indigenous knowledge systems and practices, and IP development needs); (ii) their development plans and programs; and (iii) implementation policies and mechanisms. When approved, the document prevails in case of conflict with other municipal, provincial, or national plans. In case of conflict with other plans, the ADSDPP shall prevail.

134. Any development-oriented project in the Philippines is required to undergo a field-based investigation to check whether the project site has ICCs or IP present or is covered by an ancestral domain, or land applied for as domain by an ICC. The NCIP requires projects within an ancestral domain area to follow the principle of free and prior informed consent (FPIC). The FPIC process is to be carried out and funded by the project sponsor. The FPIC process goes farther than the consultative processes required for projects supported by ADB (or the World Bank). The FPIC process has the following mandatory activities: (i) posting of notices of the date and venue of meetings in conspicuous places, (ii) validation of the list of elders or leaders of the IP community to secure genuine representation of the community, (iii) a preliminary consultative meeting, (iv) consensus building, and (v) community assembly. The council of elders or leaders of the whole domain are required to give their free and prior informed consent. As such, they can veto a proposed project, including large projects in the national interest, such as mining. However, the period allowed for the FPIC process has been reduced from 180 to 90 days over the years, to meet the pressures for speedy project approvals. The budget assigned to NCIP to further the interests of IP communities has remained limited. Consequently, it could be argued that there is still some role for ADB to ensure adequate due diligence in ADB-supported projects.

135. **Viet Nam.** Viet Nam's 1980 constitution protects and promotes the rights of all "nationalities," and allows the use of their own language and the maintenance and development of artistic traditions and traditional customs. Viet Nam's lead coordinating agency for ethnic groups, the Committee for Ethnic Minorities and Mountain Areas (CEMMA), has ministerial status. CEMMA develops and implements policy for Viet Nam's ethnic minorities. When interviewed, the agency clarified that Viet Nam has no IP as such; it therefore does not honor rights to ancestral domains. Viet Nam does not go through special consultations and due

¹¹² ADSDPPs consolidate the plans of ICCs and IP within an ancestral domain for the sustainable management and development of their land and natural resources, as well as of human and cultural resources, based on their indigenous knowledge, systems, and practices. Such plans are to be the basis of the Five-Year Master Plan for ICCs/IP (see National Commission on Indigenous Peoples [NCIP] Administrative Order No. 1, Series of 2004).

diligence processes for ethnic minorities when a project is located in their area. Viet Nam, however, has its own set of comprehensive national programs specifically for ethnic minorities:

- (i) Program 135: provides infrastructure projects such as roads, irrigation, schools, electricity, clinics, and water supply specifically targeted to ethnic minorities in difficult areas.
- (ii) Program 134: facilitates the allocation of land for ethnic minorities.
- (iii) Project 137 and the 5MHR Program: promotes reforestation.
- (iv) Program 139 or the health and education subsidies program: provides health cards to ethnic minorities for the delivery of free medical treatment and provides subsidized education programs, school supplies, and boarding schools for ethnic minorities in remote areas.
- (v) Hunger Eradication and Poverty Reduction Program: includes infrastructure projects, resettlement programs, agricultural extension, health, education, and job creation.

136. The Government supports area-targeted programs for the development of ethnic minority regions such as the Central Highlands, the Mekong Delta, and the Northern Mountains. They should normally reduce the need for designing special risk mitigation and enhancement packages in the context of individual projects supported by ADB. However, the Viet Nam country IP system does not mandate the conduct of special consultations that would flow from the recognition of a special status for ethnic minorities. ADB would need to undertake such consultations to gauge IP views on projects expected to have impact on IP. Also, the country system does not include special disclosure and monitoring arrangements for projects affecting ethnic minorities, although field offices of CEMMA play a role in monitoring projects and promoting the implementation of the special programs at the local level. Overall, there are differences between ADB's IP policy and Viet Nam's country safeguard system.

137. **Conclusion.** The countries differ considerably in their legal, policy, capacity, and physical infrastructure for IP. The culture and poverty status of IP also differ considerably between countries and parts of countries. As the policy has recognized, each country needs its own customized measures and systems to safeguard IP interests. The "triggering" of IPDPs in accordance with fixed criteria, reinforced by the OM F3 section of 2004 (and 2006), may have to take this into account. In some countries the IPDP instrument, and also other IP instruments, may have to be invoked more frequently than in other countries, or be of a different nature. Appropriate measures will need to be based on detailed equivalence analysis with the ADB IP policy and take into account not only national legislation and policy and practice, actual implementation and also international conventions to which the country is a signatory, which may emphasize certain rights of IP that are not yet formally enacted. They may have to include either more, or less, measures for risk mitigation. In some countries, specific actions added to the project design rather than full blown plans may be sufficient, even if impacts are expected to be significant. Given the above analysis, it is unlikely that any country safeguard system can be fully utilized in the short term in a way that would render ADB's safeguard system redundant.

B. ADB's TA and Trust Funds for Indigenous Peoples

138. **Trends in IP Technical Assistance.** ADB's IP policy, the more strict application of the safeguard compliance arrangements since 2002, and the greater availability of special funds for

poverty reduction all contributed to increasing IP-related TAs¹¹³ and regional TAs, especially after 2003. Eighteen advisory IP TAs, 13 project preparatory IP TAs, and 13 IP regional TAs, for a total of \$29.4 million, have been approved since then (Appendix 15). Given that many TAs are related to either capacity building in EAs or to IPDP preparation, it can be assumed that the rise was related to ADB's increased attention to safeguard compliance. The terms of reference for several project preparatory TAs specifically included the preparation of IPDPs. The importance of capacity development is highlighted in the 1998 IP Policy. However, most national advisory TAs have not had much focus on improving the policy and legal context for IP, although some regional TAs have addressed this issue.

139. **Regional TAs.** The first major IP regional TA was TA 5953-REG¹¹⁴ under which (i) a poverty assessment of IP in the four case study countries was conducted; (ii) the impact of ADB's interventions that address the vulnerability and poverty of IP in the countries concerned was evaluated and assessed; and (iii) capacity-building assistance was provided to governments, NGOs, and IP groups to allow them to participate in the formulation of action plans and ADB-sponsored projects. The regional TA led to workshops, monographs, and action plans, and thereby increased awareness of IP issues. Seven reports on the TA project were published in four Asian countries (Cambodia, Indonesia, Philippines, and Viet Nam) and the Pacific region. These provided useful summaries of IP information. One important point made was the interaction between law and policy, and the need for support for development of legal frameworks in the DMCs. The reports noted that in Asia, only the Philippines had a specific law for IP and identified the main challenges of policy implementation.¹¹⁵ The TA completion report rated the TA as highly successful. Although the TA outputs recognized the need to examine the implementation of ADB's policy in the individual countries, there was no follow-up TA, and no other DMCs were studied in the same way (e.g., the PRC and India were not studied).

140. A focus of IP-related TA has been the Mekong subregion. Six IP-related regional TAs have addressed or are addressing the following issues: (i) improving upland communities through improved forestry, (ii) instituting new policy paradigms for sustainable livelihood protection and natural resource management, (iii) promoting advances in agricultural science and technology, (iv) preventing trafficking of women and children and promoting safe migration, (v) controlling communicable diseases in the region, and (vi) providing for health and education needs. Three other regional TAs, all approved in 2005, have a wider coverage and address the following: (i) strengthening malaria control for ethnic minorities, (ii) providing legal empowerment to women and disadvantaged groups, and (iii) developing and implementing communication strategies to reduce HIV/AIDS vulnerability and risk among ethnic minority groups. Two IP regional TAs dealt with law development; one on policy familiarization and harmonization, and one on legal empowerment.¹¹⁶

¹¹³ The definition of a TA related to IP is not always clear from the title. This SES, for the most part, adopts the RSES definition, as reflected in the presence of the TA on ADB's IP website.

¹¹⁴ TA 5953-REG: *Indigenous Peoples/Ethnic Minority Issues and Poverty Reduction*, for \$400,000, approved 21 November 2000.

¹¹⁵ ADB. 2002. *Indigenous Peoples, Ethnic Minorities, and Poverty Reduction: Proceedings of a Regional Workshop*. Manila.

¹¹⁶ TA 5637-REG: *Regional Forum on Indigenous Peoples Policies for Development Assistance in Asia*, for \$100,000, approved 13 July 1995; TA 6248-REG: *Legal Empowerment for Women and Disadvantaged Groups*, for \$550,000, approved 19 July 2005.

141. **National TAs.** The 14 advisory IP TAs in the individual DMCs covered Lao PDR (five), PRC (four), Viet Nam (two), Afghanistan (one), Nepal (one), and Philippines (one). They dealt with a variety of issues and sectors, though principally for education, land tenure and administration, agriculture, and gender equality. Many were concerned with EA capacity building but few were concerned with policy development. The capacity-development efforts were reasonably well distributed across DMCs, but some populous countries such as Indonesia and Pakistan stand out as not having had advisory IP TAs.¹¹⁷ Only one TA for the capacity building of a government department specifically in charge of ethnic minorities—the Department of Ethnic Minority Education in the PRC—was approved. Most likely as a result of ADB's increasing safeguard compliance requirements, project preparatory TAs covering IP issues increased in 2003 and thereafter.

142. Only 17 (39%) of the 44 TAs on the IP website identified IP as the target beneficiary. Most of the IP TAs with IP as main target population were in the agriculture and natural resources (five), education (four), and health (four) sectors, not in infrastructure sectors such as transport, communications or energy. For the other 27 TAs, IP were only one of a number of target populations.

143. **TA Completion Reports.** Completion reports were available for only six IP-related TAs at the time of this SES. All of these were for TAs that were approved between 1995 to 2000. One was rated highly successful, four successful or satisfactory, and one partly successful. This follows the usual pattern of success rates registered from TA completion reports, which are based on views of operating departments implementing the TA; IP TAs seem to be no more or less successful than average.¹¹⁸ Lessons from TA completion reports included the following: (i) EAs' limited absorption capacity, and sometimes lack of ownership, in implementing programs; (ii) the need for the participatory approach to be long-term and to be built into the TA design; and (iii) the need for sustained efforts to attain the overall objective (usually capacity initiatives).

144. **Japan Fund for Poverty Reduction and Other Trust Funds.** The Government of Japan approved the Japan Fund for Poverty Reduction (JFPR) with a grant of about \$90 million in 2000. Several new contributions have been made since, and the total commitment had reached \$344 million by the end of 2006. The ADB IP website lists 11 JFPR projects approved from 2001 to 2006, for a total cost of over \$20 million. At least 26 of the 89 approved JFPR projects, for a total cost of over \$70 million equivalent, were related to IP¹¹⁹ (Appendix 16).

145. ADB also used other new trust funds for TA for IP development. These trust funds included the Poverty and Environment Fund, the Gender and Development Cooperation Fund, the Poverty Reduction Cooperation Fund, and the Cooperation Fund for the Water Sector. The relevant TAs that these newer funds financed are included in the TAs listed in Appendix 15.

146. With the help of poverty-oriented trust funds, ADB has been able to look seriously at IP issues beyond mitigation aspects. This is particularly true for the countries more traditionally associated with IP, such as the PRC, countries in the Mekong Region, and the Philippines. ADB has done less IP work of this nature in the Central Asian republics, the Pacific region, and South

¹¹⁷ Indonesia was part of TA 5953-REG (footnote 114).

¹¹⁸ OED results, in general, suggest that TA completion report ratings have a positive bias.

¹¹⁹ Only 11 of these are reflected on ADB's IP website.

Asia, where group vulnerabilities differ from those that ADB identifies with IP. ADB has also done relatively little in the area of law and policy development related to IP. IP issues have been more systematically addressed in project preparatory TAs since the turn of the century.

VI. IMPACTS, TRANSACTION COSTS, AND ISSUES

147. This chapter supplements earlier findings from IPDPs and PCRs by presenting some relevant features of seven projects with IPDPs that were visited by the operations evaluation mission in the period March–April 2006. Local consultants prepared the case studies mostly for the SES on IR safeguards, but paid special attention to IP issues. The projects were at various stages of implementation or operation: four were ongoing at the time of field work for this SES, while three others had been completed (Table 8). The findings serve to illustrate the variety of processes and outcomes connected with IPDPs and to validate findings from other sources. Details are given in Appendix 17 and highlights are summarized below. The case study findings confirm positive outcomes but also highlight the transaction costs of sector projects.

Table 8: Seven Project Case Studies Conducted

Country	Loan No.	Approval Date	Project Title	Estimated Cost (\$ million)	Loan Amount (\$ million)	Project Status
PHI	1421/ 1422	Jan-96	Cordillera Highland Agricultural Resource Management	41.4	19.0	Completed
PRC	1626	Aug-98	Guizhou–Shuibai Railway	381.0	140.0	Completed
PHI	1668	Dec-98	Southern Philippines Irrigation Sector	102.0	60.0	Ongoing
PRC	1691	Jun-99	Southern Yunnan Road Development	770.3	250.0	Completed
VIE	1855	Nov-01	Second Red River Basin Sector	156.2	70.0	Ongoing
VIE	1888	Dec-01	Provincial Roads Improvement Sector	100.0	70.0	Ongoing
IND	2018	Nov-03	Rural Roads Sector I	571.0	400.0	Ongoing

IND = India, PHI = Philippines, PRC = People's Republic of China, VIE = Viet Nam.

Sources: Asian Development Bank databases.

A. Findings from Case Studies

148. **Positive Outcomes for IP, Limited Value Added of IPDPs.** In most of the non-sector projects studied, the primary adverse impact observed was related to land and livelihood loss and resettlement. Such impacts were generally mitigated by the application of the IR and environmental policies, rather than the IP policy. In many cases, external developments compensated for the negative impact of projects on IP. For example, for the Philippines' Cordillera Highland Agricultural Resource Management Project, which did not require land acquisition or resettlement, the effect on IP was positive because of the support for the legalization of six ancestral domains of IP of considerable size, following the approval of the national enabling legislation. This was mainly the result of proactive project management rather than the IPDP for the project, which had not anticipated the approval of the 1998 Indigenous People's Rights Act.

149. The Guizhou–Shuibai Railway project in the PRC also showed that most of the risk mitigation measures addressing IP concerns would have taken place even without the IPDP. The Government's own minorities peoples programs and to some extent the RP had mitigated