

agencies. This makes project design and implementation more complex, and sometimes requires EAs to build up expertise outside of their core business areas. Many EAs view this as a transaction cost, as they need to invest in IP-related capacity building solely for the project. However, without countrywide social safety nets or effective government programs in the area, ADB sometimes sees no alternative to this, and regards capacity building for mitigating IP-related risks in infrastructure agencies as an added long-term benefit. ADB also needs to take into account also (i) the reputational risks involved in not dealing carefully with IP issues, and (ii) the transfer of the social costs of not implementing safeguards to others in society, who then need to deal with the resulting impoverishment and cultural alienation at a later stage. When considering these factors, a good amount of attention to IP issues in project design and implementation is well worth pursuing.

## VII. ASSESSMENT AND RECOMMENDATIONS

158. This chapter assesses the relevance of the IP policy to ADB operations, its effectiveness in terms of outcomes for IP and DMC capacity, the efficiency of inputs, processes and systems, and the sustainability of the policy's approach. The SES uses a scale of four possible ratings for each criterion.<sup>122</sup> The assessments of relevance, efficiency, and sustainability are based on the analysis undertaken for this evaluation, complemented by the results of interviews and questionnaire surveys. The assessment of effectiveness is based on (i) analysis of the seven case studies selected from a portfolio of a few hundred projects approved since 1994, complemented by (ii) PCRs and other ADB reports, and (iii) NGO studies.

### A. Assessment of the Indigenous Peoples Policy

159. As the policy was approved in 1998 and changes in its nature and enforcement have been made later, it is difficult to rate the overall on the ground impact of IP operations that have been informed by it. Very few such operations have been completed and are at a stage where a good evaluation can be done. When a somewhat longer time perspective is taken, starting from the year that the President issued instructions to ADB staff to follow World Bank guidelines on IP in 1994, it has to be concluded that the policy, like that of the World Bank, was inconsistently applied up to at least 2001. Only when a new safeguard compliance mechanism was created in 2002 was a more comprehensive and inclusive approach enforced. The IP policy and its current enforcement mechanisms, particularly the SPCM and in the background the threat of the compliance review mechanism, have helped raise the profile of IP issues in ADB's operations and in the development process. Much experience has been gained with the designation of groups as IP or non-IP, and with resettlement issues in particular. However, the policy was reinterpreted, and this led to IPDPs becoming mandatory even for projects that had only positive impacts. The SES questions the need for IPDPs when only positive impacts of projects on IP are anticipated. In cases where project objectives are not primarily oriented toward area development, where there are asymmetrical costs and benefits, and where there are clear risks, the stricter application of the policy can be considered a positive step for IP. Fortunately, there were only a few handfuls of such cases. In a number of other cases, the projects included major "added" components to implement national IP programs in specific areas (e.g., combining

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<sup>122</sup> The various factors assessed were rated as follows: (i) highly relevant, relevant, partly relevant, and irrelevant; (ii) highly efficient, efficient, less efficient, and inefficient; (iii) highly effective, effective, less effective, and ineffective; and (iv) most likely sustainable, sustainable, less likely sustainable, and unsustainable.

expressway construction with rural road improvements). In the view of this SES, some add-ons make sense if they can be made central to the project's overall objectives and do not disturb the simplicity and efficiency of the project's implementation model. However, in other cases, add-ons, including those sometimes promoted in IPDPs, make less sense (e.g. highway construction with microcredit or water supply components). Such additional components seem to serve mostly to protect ADB's reputation and complicate project design rather than help to significantly achieve development results. Complex projects often experience difficulties during implementation. In the IPDPs for exclusively area development projects, the IP-oriented measures were central to the overall project design, and were, in fact, summarized from the RRP. In such cases, there was little added value from presenting such material in a separate plan and in some cases organizing a separate consultation process for this. The existing material on the significance of impacts on IP in the SPRSS should be sufficient for purposes of communication and disclosure.

## **1. Relevance of the Policy and Its Procedures**

160. The IP policy predated ADB's 1999 poverty reduction strategy, which made poverty reduction ADB's overarching objective. As many IP are poor and vulnerable, the policy is consistent with ADB's current focus on poverty reduction. ADB's focus on infrastructure development and on private sector development also warrant special safeguards for IP (the latter particularly regarding forestry and extracting industries). The IP policy is furthermore consistent with an internationally recognized need to pay special attention to IP issues in development work. The current IP policy is written mostly as a safeguard policy, and focuses on mitigating adverse impacts and the risk that IP will not have the same access to project benefits as other groups. As a consequence, the policy places considerable attention on IP due diligence during project preparation in areas where IP reside. This is appropriate.

161. This SES regards an approach that focuses on safeguards but does not similarly stress an IP development strategy as incomplete. A clear statement of the broader attention ADB wishes to give to IP in its operations is missing. Such a statement could be elaborated in the policy or in ADB long-term strategy documents. The strategy statement would specify the preferred level of attention to be given to IP issues and areas, and the nature of projects to be prioritized. Country partnership strategy documents should elaborate the approach when, or if, it is appropriate for the circumstances in the country and the selected focus of ADB operations. Such a strategy would place safeguard measures in their proper light, as these would be seen as complementary to operations that have IP development as a primary or secondary objective. Perhaps this would reduce the tendency to include enhancement measures in IP projects that are unrelated to the primary project objective.

162. The IP policy is most relevant as a safeguard policy if it (i) enforces a structured planning and implementation process that pays systematic attention to IP issues, (ii) applies a limited definition of IP and links it clearly with vulnerability, and (iii) clearly defines IP risks and can formulate good risk mitigation measures. In the assessment of this SES, the policy is clear on the first requirement but less so on the second and third. A number of unclear areas in the 1998 IP Policy have been discussed in chapter II, and also a number of areas in which the policy has drifted, witness the differences between the 1998 IP Policy and the 2004 OM section F3 and IP practice. In the view of this SES, a truly relevant policy must be accompanied by clear directions as to the human and financial resources needed to implement it. Consistent with other policies drafted at the time, the IP policy did not estimate the resources needed for implementation.

163. In summary, this SES deems the current IP policy as relevant due to its compatibility with ADB's poverty reduction strategy and the institution of a compliance system since 2002. A rating of highly relevant would have been provided if (i) a number of unclear areas had been clarified by the OM rather than exacerbated, (ii) a developmental IP strategy had complemented it, and (iii) the policy had better addressed the lack of resources for effective implementation.

## **2. Effectiveness of Outcomes for IP and for DMC/EA Capacity**

164. This evaluation reviewed instances where ADB-supported projects were reported to have had serious negative impacts on IP, including some that NGOs have highlighted. The SES concluded that most of these impacts mainly resulted from land loss and resettlement of IP, or environmental impacts on livelihoods, when the environment was insufficiently protected, and/or compensation and assistance provided were insufficient to enable restoration of IP livelihoods. As the SES on IR safeguards concluded, most cases dealing with adverse IR impacts concerned projects approved relatively longer ago, and the SES assessed that there were likely to be fewer such cases in the recently approved portfolio. Thus, it concluded, tentatively, that the IR policy was broadly effective in its outcomes for affected people. The SES on environmental safeguards concluded that the current environmental safeguard procedures have been generally effective in avoiding significant adverse environmental impacts. Beyond such cases related to resettlement and environment (particularly the use of forest), this SES finds few instances of other negative effects and cultural displacement of ADB-supported projects on IP. In part this may be related to the institution of a preparation process with more structured attention to the three types of safeguards, leading to project designs with due attention to social and environmental aspects. For another part, it may be due to the fact that cultural displacement is difficult to define and gauge, while other negative impacts, such as related to communicable diseases, may take longer to manifest themselves. This then makes it difficult to conduct the assessment. Overall, it is not clear that the IP policy contributed significantly to identifying and mitigating other adverse impacts on IP.

165. Recent projects in IP areas that were of an extractive nature or those with a particularly asymmetrical distribution of benefits and costs were few in number, although they may have significant impacts where they occur. ADB has treated these cases (Nam Theun II, Tangguh LNG) with a great deal of attention to IP issues. Some older projects such as the Chashma Right Bank Irrigation (Stage III) Project in Pakistan (approved in 1991) and the Lao Industrial Tree Plantation project (approved in 1993) however got less attention and consequently harmed IP interests. ADB has increasingly tried to make "asymmetrical" projects more inclusive, sometimes losing goodwill with clients that have a more limited concept of a project. In many expressway projects in the PRC, for example, ADB added rural road components and otherwise broadened the project objectives so that project benefits were spread to local IP. ADB has done this, although not all EAs appreciated these initiatives.

166. The experience with ADB's IP TAs has been mixed. Such TAs have often had value in building EA capacity. But specialized agencies whose main focus is not IP development are unlikely to apply separate consultation processes and provide for additional mitigation measures for IP when ADB financing is not involved. ADB, for its part, could have done more to help improve the policy context for IP issues. Lack of specialist staff to prepare and administer such ambitious and specialized TAs has undoubtedly been one reason for this. On the other hand, special poverty reduction funds, like the JFPR, have promoted IP development in recent years. But this is not strictly to do with IP safeguards.

167. This SES assesses the IP policy as less effective in terms of improving the outcomes for IP and DMC/EA capacity. This assessment necessarily takes into account aspects of implementation, and thus judges the policy in a wider sense, including in it the resources ADB has made available for implementing the policy directives (footnote 1). The SES notes that there are a considerable number of projects which have not caused severe trauma, and have appeared to have had positive results for IP overall, as per their PCRs and validated by some case studies undertaken for this SES. The SES assumes that the mandatory attention during preparation for (i) the incorporation of social dimensions, (ii) IR and environment safeguards, and (iii) targeted poverty interventions, has improved overall quality of the project design. Nevertheless, this SES is not convinced that the IP safeguard processes as such made much difference in many cases. A greater focus in the use of scarce staff resources on the projects with real and significant risks, including resettlement and environmental risks, and less on projects in IP areas that do not carry such risks, might have safeguarded IP interests better.

### **3. Efficiency of Inputs, Processes, and Systems**

168. Progress has been made since 2000 with the categorization of IP in different country contexts and with the screening for IP impacts. In written comments on a draft of this study, some specialists have stated that they now know better how to define and address risks through IPDPs, have more actions and better budgets, and are therefore able to add value. This is positive. However, this SES identified at least five problems: (i) many staff remain confused about how to write IPDPs for area development–type projects that mainly benefit IP; (ii) there is insufficient guidance on how to handle resettlement and environmental impacts in the context of IPDPs; (iii) there is insufficient guidance on the level of consultation needed for different types of projects; (iv) some policy tools are not yet fully absorbed by staff (e.g., some SpAs turned out to be IPDPs, and vice versa); and (v) typical mitigation and enhancement measures are not well defined and therefore there is wide variation in the way that these are employed in IPPs across regions, countries and types of projects. The lack of specificity in the types of potential impacts is a serious shortcoming in the application of the IP policy in the IPPs. The absence of a good handbook for many years did not help in this regard, although progress is now being made to produce it in partnership with the World Bank and IADB.

169. The three safeguard policies can all be invoked separately in IP areas for different reasons. This can easily lead to three consultation processes, different surveys, and separate documents. A more integrated safeguard approach would be to demand a single report in cases of risks in two or three areas of focus. This move saves costs, has efficiency gains, and may mean different specialists operating as one team.

170. Projects were not always administered efficiently enough by ADB. Projects with few risks may get too much attention, others with more serious risks too little. The special evaluations of the environment and resettlement safeguards documented the inadequacy of ADB supervision and monitoring arrangements during implementation. Operations departments need to ensure that EAs have project performance management systems that cover IP issues for all projects with IP in the project impact zone, and that they monitor IP issues during implementation. The SES noted that PPRs include insufficient information on the implementation of the IPPs. Special monitoring arrangements for IP safeguards, such as those involving third parties, could well be adding little value in cases where actually few risks exist, while in other cases with more risks they are not done or are insufficient. The actual performance of third party monitoring is unclear. Very few social monitoring reports have been collected so far and also very few have been posted on the website since 2005 as required by ADB's public communications policy. Although the IP review missions undertaken by RSDD are helpful, they cover only one project per year at

the most. More such missions are required. Lack of implementation of safeguard measures sometimes results in tension between affected people and civil society and ADB and EAs, or between ADB and EAs.

171. In sector projects in IP areas, or with IP as main beneficiary, the attention paid under the present guidelines to IPDPs beyond RPs, environmental management plans, gender plans, and possibly other more appropriate community and social development action plans is leading to plan congestion. The Provincial Road Improvement Sector Project in Viet Nam produced 40 IPDPs apart from 79 RPs and 90 initial environmental examinations for 90 rural road rehabilitation jobs, with much consultation but very limited budget and limited action under the IPDPs themselves. In some sector projects (e.g., the Rural Road Sector I Project in India), the rules were being interpreted to avoid the need for many IPDPs. Such practices may well be defensible in certain cases but whether they would be regarded as admissible under the compliance review mechanism is unclear. The experience to date is that inspections and compliance reviews that focus on projects where things have gone wrong generally follow a very inclusive line in the procedures to be followed. A more consistent approach to IP issues in sector projects is required.

172. Many current IPDPs are devoid of concrete actionable points, and address only enhancement measures, but without a clear system and budget for implementation. In some IPDPs, many measures are highlighted; in others, very few. Many SpAs reflected on the website did not reflect actionable points either. Overall, the inputs, processes, and systems for implementing the IP policy are assessed as less efficient.

#### **4. Sustainability of the IP Policy's Approach**

173. ADB's current approach to initiating and implementing IPDPs for (i) projects without serious risks, (ii) projects with IP risks that are mainly related to resettlement and environmental change, but that also have RPs and environmental plans, and (iii) sector projects, has created incremental costs and transaction costs that do not result in significant value added. The use of resources in a way that does not help to achieve better development results raises questions about the sustainability of the IP policy. Transaction costs for projects without clear risks but with extensive IPDP preparation processes are apparent in longer preparation times for projects, delays in implementation due to special arrangements, extra costs due to contract extensions, and higher commitment charges for OCR loans and interest payments. Ultimately, these translate into lower economic and financial returns for projects, with uncertain gains in social returns. Transaction costs are also apparent in some risk-averse behavior by ADB staff and a tendency to add on small IP enhancement components to projects with uncertain benefits but complicating project implementation. This may lead clients to avoid ADB when considering ways to mobilize financing for challenging projects that impact on IP.

174. This SES assesses the IP policy in its present form as less likely to be sustainable. In the absence of ADB involvement, EAs are unlikely to apply it, neither are they likely to apply it for locally funded projects. To make the IP policy more sustainable, ADB must clarify its scope, and recognize that sociocultural change induced by projects in IP communities is inherently difficult to control, because of the variable secondary effects in the short and the long term. Ultimately, the updated policy will become more sustainable as a result of greater clarity on identifying and assessing adverse sociocultural impacts.

## B. Recommendations

175. The recommendations below are intended to feed into the RSDD safeguard review. Rather than being prescriptive, the SES is designed to raise issues for consideration as RSDD undertakes more country and civil society consultations and consider future policy options.

176. **The safeguard policy update should clarify the areas that cause misunderstanding in the 1998 IP Policy and address the policy drift related to OM Section F3 and IP practice in ADB.** Areas where clarification is needed include: (i) the definition of IP and the role of the vulnerability criterion in it; (ii) the overlap with other ADB safeguards; (iii) the type of risks and expected impacts that “trigger” various instruments of the policy, such as IPDPs, IPDFs, and SpAs; (iv) the difference between risk mitigation and IP enhancement measures; and (v) the extent of consultation and consent required from IP for projects or project approaches.

177. **ADB should set goals for the development of IP and IP strategies for some DMCs where ADB’s forward program involves considerable interaction with IP.** ADB might also do these in the context of a general vulnerability strategy or an updated poverty reduction strategy that pays more attention to sociocultural issues, non-income poverty, and marginalization of IP than the present poverty reduction strategy does. These goals should guide the selection of projects and other operations of direct benefit to IP. Since IP are generally poor and score poorly on Millennium Development Goals and Human Development Indicators, they should be covered as part of country poverty analyses and the poverty reduction elements of ADB’s country strategies. If the DMC agrees that ADB’s program should, directly or indirectly, address IP needs, initiatives need to be undertaken to define and identify IP in the DMC, so that ADB-supported interventions can target IP and support can be given to strengthening the IP legal and policy framework and institution capacity with the long-term goal of developing systems for each country. This will require specific TA input. This SES recognizes that country strategies need to be focused and that not all DMCs would request ADB to play a leading role related to IP. One output should be an ADB IP website that includes an overview of the specific laws and definitions of IP in separate countries in the Asia Pacific Region (similar to that on IADB’s interactive website<sup>123</sup>). Such an easily accessible storehouse of IP-related information would be particularly useful given the wide variety of state policies that ADB and EAs must consider.

178. **If ADB maintains a stand-alone IP policy, it should include a results-based framework—distinguishing desired impact, outcomes, outputs, activities, and inputs, both at macro (country) and at micro (project) level.** This will allow ADB to set clear targets and make policy implementation better manageable and easier to monitor. At the macro level, the policy should then have the desired impact of IP that are treated fairly and equitably, with respect for their culture, traditions, and preferences, and able to sustain their livelihood and to develop themselves as IP. The outcome should be a country IP safeguard system, standards, and obligations, coupled with satisfactory implementation capacity, that are consistent with international conventions such as the ILO Convention 169 and the UN Declaration of the Rights of Indigenous Peoples. For most countries, this would be an outcome achieved only in the long term. The outputs of the IP policy would then be IP that are consulted properly and given the means and opportunities necessary to avoid harm and to benefit. At the individual project level, the application of the IP policy should have the desired impact of avoiding the adverse effects of

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<sup>123</sup> Available: [http://www.iadb.org/sds/IND/site\\_3152\\_e.htm](http://www.iadb.org/sds/IND/site_3152_e.htm)

projects, minimizing the disruption to livelihood and culture of those unavoidably affected, providing those affected with means for the restoration of their livelihoods and culture, and improving the standard of living of IP and their opportunities for cultural expression. The actual wording will depend on whether changes are going to be made in the current, very inclusive, OM on IR. If the new IR policy is less inclusive, more attention to livelihood loss may have to be given by the IP policy or a social safeguard policy. The outcome of the policy would be opportunities seized by IP, necessary for realizing the desired impact. The outputs of the policy would be a project that recognizes the special position of IP and has no adverse effects or mitigates these significantly and with consent of IP (or the majority of IP in case the population is large). Activities would have to be specified for ADB and EAs and other agencies involved. Among the activities to be conducted by the EA would be the pursuit of broad support for the project by clients, EAs, and IP regarding procedures and mitigation packages through a well-documented process. As in ADB's design and monitoring frameworks for projects, ADB and EA can only contribute to the desired impacts and outcomes. EAs are responsible for outputs; ADB and EAs, for an agreed set of inputs and activities.

179. **A sequential approach to policy development and capacity building in IP safeguards should be adopted, focusing on a few DMCs first.** This approach is needed because of the differing DMC systems and capacity, ADB's limited expertise, and the related resource implications. ADB should recognize that the same approach to IP safeguards is not appropriate for all DMCs. ADB should recognize country differences. Proposals for projects with risks for IP in some countries should continue to follow the full set of ADB's IP safeguard procedures, including improved ADB project administration and IP monitoring. In other DMCs, some aspects of the country system could be relied on. There is a need and a demand for more training of EA staff in social safeguards.

180. The present IP categorization system should be reviewed, with a view to enabling a different use of the main risk mitigation instruments. RPs and environment management plans should be included in the toolbox of the IP policy. While IP issues should be considered carefully in the design of all projects with IP living in the project impact zone, **IPDPs should be prepared for projects that have clear risks for IP, which are capable of being mitigated through project interventions.** An IPDP should contain the plan for implementation, agreed budget estimates, and the arrangements for third party monitoring. If the risks are primarily related to adverse impacts on livelihoods as a result of loss of access to land, resettlement, or environmental damage, then there is no need for an IPDP: the mitigation measures should be integrated in an RP or environmental management plan. The World Bank's IP policy of 2005 also prescribes the use of the RP to deal with physical relocation of IP or restrictions of their access to resources. Similarly it states that the IPP is to be prepared in a flexible and pragmatic manner, and that when IP are the sole or the overwhelming majority of direct project beneficiaries, the elements of an IPP should be included in the overall project design; a separate IPP would then not be required. IPDPs would be prepared only in cases where risks to IP are not covered in the resettlement and environment policies. This should help to reduce duplication and lower transaction costs. For each project, the SPRSS should include a statement that the project area does or does not include IP, plus a statement on the significance of the expected impacts and how the project's design has addressed these. This requirement is already provided for in the SPRSS and should be maintained; the discussion could, however, be more elaborate than it is at present. The SPRSS could also usefully be provided with hyperlinks to ADB's IP website. For each project with an impact zone that includes IP, at the very minimum the loan agreement should state the applicability of the IP policy. If a project includes an IPDP, IPDF, or SpA, the loan agreement should include a covenant referring to these.

181. **Conceptual work and case study work is needed to lay out the particular risks for IP associated with different categories of investments, as there is currently a high degree of divergence in approaches to the definition of these risks.** The impacts considered should include the relative marginalization of IP by the appropriation of project benefits by non-IP. The actions should include “measures to ensure project benefits accrue to IP.” These measures are not enhancements; they are part of the mitigation measures as they help avoid deterioration of the position of IP vis-à-vis the mainstream population. After the policy review, the IP handbook, which is under preparation, could usefully elaborate on typical actionable impacts by sector, especially beyond those related to land loss, resettlement, and environmental change.

182. **The safeguard policy update should describe the criterion to be used to determine whether the mount of consultation and broad communication support for a project and mitigation measures is adequate and in what circumstances ADB endorses the principle of free, prior and informed consent for the project from the side of IP.** Clear documentation of the consultation process during project preparation and implementation should be made mandatory. IFC’s broad community support concept may provide some guidance; its new policy excludes the funding of projects that impinge on lands owned or claimed under adjudication by IP without their full documented consent. The World Bank’s IP policy states that where physical relocation of IP cannot be avoided, the borrower will not carry out such relocation without obtaining broad support for it from the affected IP communities as part of the free, prior, and informed consultation process. An earlier response provided by ADB to World Commission on Dams proposals was that the approval of projects should essentially be a decision of the central government and that consent from the side of IP should concern mainly mitigation measures offered. Different consultation approaches to situations involving IP communities IP living scattered among mainstream population may need to be worked out. Thresholds for acceptable consent, reflecting broad community support, need to be established, e.g., 80% in favor of the mitigation measures proposed. Similar clarifications should be developed for the IR and environment safeguard policy updates. In case of project proposals that carry high risks for IP and are controversial and easily misunderstood, ADB may need to consider reputational risks. Similar clarifications should be developed for the IR and environment safeguard policy updates.

183. **To complement the safeguard policy update, there is a need for an IP policy implementation plan that reconciles the policy aspirations with organizational, budget, and human resources implications.** This must cover activities both during project preparation and monitoring during project implementation, and in the post construction phase for selected projects where there is evidence that the mitigation measures have not been fully effective. An implementation plan is especially necessary if ADB does not have the staffing required to implement the aspirations in the current IP policy and the requirements stated in the draft IP handbook being prepared in conjunction with the World Bank and IADB. Otherwise, ADB will have unfunded mandates that may, in the end, lead to adverse impacts on IP and to lost compliance review cases.