

## EXECUTIVE SUMMARY

This report presents the findings of a special evaluation study (SES) of the Policy on Indigenous Peoples (IP) (1998) of the Asian Development Bank (ADB). The evaluation was one of three that were included in the 2006 work program of the Operations Evaluation Department (OED) at the request of the Development Effectiveness Committee (DEC) of ADB's Board of Directors. The other two evaluations concerned (i) involuntary resettlement safeguards, and (ii) environmental safeguards. The studies were done to provide DEC with an independent assessment of, and to contribute to ADB's safeguard policy review, which will lead to a proposal by Management to the Board for consideration of a policy update in 2007.

This SES report (i) provides an overview of the scale and nature of IP safeguards in ADB operations; (ii) examines the extent of application of the IP policy; (iii) reviews trends; (iv) makes some comparisons with other multilateral banks; (v) gives OED's assessment of the IP policy's relevance, effectiveness, efficiency, and sustainability on the basis of evidence gathered; and (vi) provides recommendations that should be considered in the update of the safeguard policies. Given the need to complete the evaluation in time to feed into the safeguard policy update, the study had to be completed within a tight time frame. The amount of field work and consultations that could be undertaken was therefore limited.

**Nature of the Indigenous Peoples Policy.** The 1998 IP Policy required that a series of safeguard principles be upheld in preparing and implementing ADB-supported projects in areas with IP: (i) ensure that development interventions are compatible in substance and structure with the affected IP's social, cultural, and economic institutions, and that the interventions are consistent with the needs and aspirations of those peoples; (ii) design and implement projects to ensure that IP and populations are at least as well-off as they would have been without development interventions; and (iii) ensure that IP benefit from interventions. Fixed procedures were to be followed; these included screening, consultation, in certain cases the preparation of IP plans (IPPs) before the appraisal of the loan, and the establishment of monitoring and evaluation arrangements during project implementation. The procedures were set in motion when a mandatory initial social assessment identified IP that might be adversely and significantly affected.

**Expanded Scope of Policy.** Like the findings of the involuntary resettlement (IR) safeguard policy, OED assesses that decisions taken by Management expanded the scope of the original IP policy, especially since ADB's reorganization in 2002, which brought with it the safeguard compliance mechanism and the May 2004 Operations Manual (OM) Section F3 on IP safeguards. The OM provisions consolidated the emerging practices in IP planning, which had emphasized addressing all impacts of ADB-supported projects on IP. With the new de facto policy in the OM Section F3, ADB now prepares separate plans and budgets for projects that are foreseen to have either positive or adverse impacts on IP. The focus in the 1998 IP Policy on "adverse and significant" impacts has been reinterpreted to cover "adverse or significant" impacts. The procedures have also become more elaborate over the years. Whereas the 1998 IP Policy discussed only significant impacts, the OM distinguishes between significant and limited impacts (apart from "no impacts"). Significant impacts were to lead to IP development plans (IPDPs) or IP development frameworks (IPDFs), limited impacts to IP-specific actions. Formal compliance with this expanded interpretation of the IP policy has been pursued more rigorously as a result of a new safeguard policy compliance memorandum, which requires a sign-off by ADB's chief compliance officer on the quality of IP planning before loan appraisal. A fear among ADB staff of being "out of compliance," generated by two inspections since 2002 and a compliance review in 2005, has raised the profile of safeguard compliance.

**Misunderstood Policy.** The IP policy is misunderstood by ADB staff and clients, for a number of reasons. First, the distinction between IP and ethnic minorities is not always clear, and differs somewhat between the policy and the 2004 OM. The 1998 IP Policy states that only ethnic minorities for whom indigenous status is an issue are within its purview. The OM does not refer to this statement. Second, the policy is somewhat ambiguous about whether the definition provided by national legislation or a different, more expansive definition that can be derived from the ADB policy is to be followed. Third, there is overlap with the IR policy and environment policy. The most clearly adverse impacts of ADB-supported projects on IP relate to induced environmental change, loss of land and related livelihood, and resettlement. These are also the subject of the IR and environment policies and are primarily addressed in the resettlement plan and the environmental management plan. ADB's IR policy includes the need for mitigating negative impacts especially on vulnerable affected people, which could include IP. But if environment, land and livelihood loss, and resettlement impacts were discounted, then the impacts that trigger the IP policy would be less straightforward adverse impacts, related to cultural change, and perhaps integration into the economic mainstream and/or competition with non-IP when an area is opened up or developed. Neither the IP policy nor the OM give guidance on this potential duplication of effort in mitigation measures related to the three safeguard policies. Fourth, the need to prepare for IPDPs for projects with significant benefits to IP, and specific actions for projects with limited positive or negative impacts on IP, has left unclear the nature of these IPDPs and special actions. In practice, an acceptable scope for a separate IPDP in projects with an overall positive impact on IP has therefore proven difficult for ADB staff to define. Fifth, the required consultation of IP seems to have been expanded by the OM of 2004 to something very close to their full consent to the project. Little advice is given to ADB staff and Executing Agencies (EAs) on how to define an acceptable level of consent or how to document and measure it. The 1998 IP Policy was less ambitious in this respect. This is a major policy change, which is advocated as best practice by many civil society organizations. Some governments have different views on this subject. This major change should have been better defined in operational terms and approved by the Board rather than ADB Management.

Some executing agencies (EAs) find the policy difficult to deal with because they believe that the attention to be given to IP through IPPs is somewhat separate from the project design itself. Many specialized agencies are also ill equipped for activities other than their business. These activities are sometimes seen as interference with the core business of other organizations, sometimes giving rise to interagency conflict. In ADB-supported projects, EAs must implement a whole set of plans in addition to the main project (such as resettlement plans [RPs], environmental management plans, gender plans, and, in some cases, IPPs) that are outside their core area of business. This requirement, they find, complicates implementation.

## Findings

The study drew on information available from ADB databases and documents; questionnaire surveys of ADB staff and EA staff; country visits to the People's Republic of China (PRC), India, Philippines, and Viet Nam; and seven case studies by consultants of ongoing and completed projects.

Relatively few IPDPs are prepared each year, and these vary in nature and quality. An assessment of the contents of 31 IPDPs on ADB's website for projects approved from 1998 to 2005 generally confirmed the problems of the policy—its inclusive nature and the resultant duplication of work related to other safeguard policies:

- (i) IPDPs have been prepared for a relatively small proportion of ADB supported projects. Until 2005, only 2–4 IPDPs and 4–6 IPDFs were issued yearly. IPDPs were prepared for only 5–10% of projects approved each year. Perhaps as a result of stricter enforcement of safeguard compliance and the issuance of the 2004 OM, the numbers more than doubled in 2005: nine IPDPs and 14 IPDFs were issued. In 2006, however, only two IPDPs and nine IPDFs were prepared. The growing attention for IP issues is demonstrated more clearly by the increasing numbers of IPDFs and Specific Actions since 2002. The IPDFs can in principle lead to a proliferation of IPDPs for individual subprojects during project implementation.
- (ii) One third of the IPDPs were for project areas in which IP were the majority of the population and for which IP issues should already have been fully taken into account in the central project design.
- (iii) Only three of the 31 projects with IPDPs were primarily for purposes other than the development of the area itself. These three country-focused projects required a plan to “compensate for the intrusion” and mitigate the predominantly negative impacts on IP. Much attention was paid to these IPDPs. Two of them were merged with the RPs and environment management plans. The same could also have been done, in fact, with the third IPDP, as the major mitigation measures required had to do with coping with land loss and resettlement. The other 28 projects with IPDPs were either area development projects or nationally oriented projects that included the development of the surrounding area. For example, some expressway projects extending the national road grid were complemented by sizable rural road and approach road components designed to spread the benefits of such projects in the road influence area.
- (iv) At least nine of the 31 IPDPs identified no risk mitigation measures, and in 19 of the other 22 cases, the risk mitigation was mainly about environmental change, land and livelihood loss, and resettlement, which are primarily covered by resettlement plans and environmental management plans. Only in 10 IPDPs were other risks identified. These 10 IPDPs covered 2% of the 464 projects approved from 1998 to 2005. Mitigation measures for serious risks other than land and livelihood loss, environmental change (including the preservation of cultural heritage), and resettlement were hard to find, and varied in nature between plans, even for similar projects. Some of these risks were related to the prevention of the spread of HIV/AIDS in an area, or the effect of not translating schoolbooks into the local language. Such impacts could be addressed by relatively simple add-on project components, and sometimes by loan covenants. Others were harder to address; these included the risk of the loss of indigenous knowledge systems, the dilution of culture, or increased competition for land and resources when new in-migrants follow a newly constructed road. The value added of risk mitigation in most IPDPs was small.
- (v) Few IPDPs fully documented the consultation process. The extent of the IP support for the project and the influence this had on project design were not always clear. This is a major weakness of the documentation process since, based on the record, it is not independently verifiable whether IP support the project and the proposed mitigation measures.
- (vi) As resettlement and environmental management budgets were already covered by RPs and environmental management plans, and many IPDPs did not define mitigation measures, very few IPDPs included a specified budget although this was required in the policy and OM. Many IPDPs seemed to function mostly as a public statement on how IP would be handled by the project and the national and

local governments. Very few were plans in the traditional sense of the word, with statements of goals, outcomes, and outputs; time-sequenced activity plans; budgets; and task assignments for various agencies.

**Expanded Use of IPDFs and IP-Specific Actions.** A review of the nature of IPDFs and the so-called IP Specific Actions (SpAs) reinforced the conclusion that the policy is misunderstood by ADB staff and EA staff. The use of IPDFs and SpAs has expanded since 2002, indicative of more inclusive and systematic review of IP issues in projects. However, the OM rules were not always followed to the letter. Some IPDFs were prepared even for projects that were foreseen to have limited impacts on IP, and SpAs were announced for projects even when the significant impacts on IP noted in the RRP were mainly positive. Some IPDFs for sector projects did not lead to IPDPs for subprojects, but little evidence was found to support the conclusion that IPDFs are sometimes used to avoid preparing IPDPs for core subprojects before loan approval. In the case of two IPDFs, after these were issued, ADB decided the exclusion of components during the implementation, on the grounds that IPDPs would take too much time to prepare and would delay project implementation. This transaction cost of the current IP policy has a perverse effect. The incentives for both ADB staff and EAs are to lessen ADB's involvement in challenging areas related to IP, with dubious consequences for IP. While the extent of the phenomenon could not be investigated entirely, ideally EAs should welcome ADB's involvement in addressing challenging issues related to IP.

**Limited Coverage of Outcomes for IP by PCRs.** Although at least 40 project completion reports (PCRs) for projects approved since 1994 noted that the project area included IP, only nine PCRs were for projects with IPDPs. Further, only three of the PCRs examined IP issues in more detail. When IP results were described, generally favorable results were reported, although these did not always directly result from the IPDP activities. Only nine of the 40 PCRs made one or more critical observations, but some mitigation of risks for IP, to enable them to cope with environmental changes, land or livelihood loss, or resettlement, was usually alleged to have been achieved even in those cases. The lack of detailed reporting on IP issues in PCRs, particularly on issues other than those related to the impact of environmental degradation and resettlement, is a weakness of ADB's monitoring and reporting systems.

**Positive Outcomes but also Transaction Costs Confirmed.** These findings were broadly confirmed in seven case studies conducted for the SES—four for ongoing projects, and three for completed projects. In most cases, the primary adverse impact was related to land and livelihood loss and resettlement. These impacts were generally mitigated by the application of the IR and environmental policies, rather than the IP policy. Seriously negative impacts involving cultural displacement were not observed.

**Country Safeguard Systems Different from ADB's IP Policy.** The SES briefly examined the extent to which the IP safeguards promoted by ADB were compatible with current systems and practices in the four case study countries: PRC, India, Philippines, and Viet Nam. Only the country system in the Philippines included requirements for consultations and special plans. Nevertheless, as in India, limited budgets and budgetary uncertainties reduced the likelihood of timely and adequate mitigation in the Philippines. Problems related to budgets were less critical in Viet Nam and especially the PRC, where there were elaborate programs for ethnic minorities, and more reliable implementation systems, but neither the consultation required under ADB's IP policy nor IPDPs were mandatory. Overall, ADB should approach IP safeguards in a manner that reflects the specific conditions in each developing member country (DMC). Some countries would need additional consultation, capacity building, and attention to

risk mitigation measures through the project. In others, consultation or mitigation could be left to the government, but with close monitoring of implementation.

**Expansion of Capacity-Building Activities.** ADB's technical assistance (TA) capacity-building program for IP development and safeguard issues has grown since the 1998 IP Policy, and especially after the 2004 OM, when safeguard compliance was more strictly enforced. IP-related TAs worth almost \$30 million were approved between 1998 and 2005. Part of the amount was used for the preparation of IPPs for individual projects. However, some useful EA capacity building has also been done. Since ADB has an IP policy, it could have given more attention to developing the legal and policy context for IP at the country level.

**More Attention to IP Development through ADB-Administered Grant Funds.** ADB has also administered more grant funds for special projects dealing with poverty reduction since the start of the new millennium, which is expected to benefit IP. The Japan Fund for Poverty Reduction has financed 11 projects dealing specifically with IP development, at a cost of \$20 million. At least 36 other projects in IP areas, costing \$80 million, have been designed to improve the lives of IP.

## Assessment

**Positive Outcomes for IP in Many ADB Projects.** Although the evidence base is weak because of insufficiently detailed project monitoring and PCRs and lack of in-depth studies, there is little reason to suspect that ADB-funded projects since 1994 have regularly had serious adverse impacts on IP, although some cases were found where ADB supported projects have caused harm. These cases have been widely reported by several international nongovernment organizations (NGOs), and often involved older projects. The issues largely related to livelihood, resettlement, and environmental change. These were covered by the other safeguard policies and have been assessed in the two other safeguards SESs. A considerable number of area development projects in such sectors as agriculture, health, education, and water supply are expected to improve the lives and livelihoods of IP.

This SES assesses the role of the IP policy and the particular procedures adopted. In many cases, it is not clear that the IP policy and IPDPs contributed to the positive outcomes. A distinction is made between the relevance of the policy; its effectiveness in terms of outcomes for IP; the efficiency of inputs, processes, and systems; and the sustainability of the approach.

**Relevance of the Policy to ADB and Its Clients.** The SES assesses the existence of a policy for IP issues as consistent with ADB's overarching goal of poverty reduction in Asia and the Pacific, and with an internationally recognized need to pay special attention to IP issues in development work. The policy ensures more attention to IP issues. The current approach, which focuses more on safeguards and less so on an IP development strategy, is incomplete. There is no clear policy statement of the broader attention ADB wishes to give to IP in its operations. As a policy enabling compliance with safeguards, there are some deficiencies. In addition, policy drift has led to differences between the IP policy document and later OMs, which can cause confusion among ADB staff and with clients and other stakeholders.

**Less Effective Outcomes for IP.** Earlier OED evaluations, an ADB inspection, and NGO reports have reported cases of projects which have had negative impacts on IP. When studying these cases, it was found that they mainly resulted from land loss and resettlement of IP or environmental impacts on livelihoods. This SES found few instances of other negative effects and cultural displacement of ADB supported projects on IP. Nevertheless, it is not clear

that the IP policy, rather than ADB's standard guidelines for social dimensions or for poverty assessment, contributed significantly to identifying and mitigating such other adverse impacts on IP. 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.

**Less than Efficient ADB Inputs, Processes, and Systems.** The IP and other safeguard policies have required a more structured approach during project processing to safeguard issues and the social dimensions associated with ADB supported projects. This is a positive finding. Nevertheless, too many IPDPs are prepared; the original policy intended these to focus on risk mitigation. The difference between risk mitigation measures and IP enhancement measures needs to be explained better, as they often represent different positions on a continuum. Many staff are confused about how IPDPs for area development projects that mainly benefit IP should be prepared. They lack guidance in handling expected adverse impacts other than resettlement and environmental impacts in IPDPs. Adverse impacts are variously identified and tackled in IPDPs. The three safeguard policies can easily lead to three consultation processes, different surveys, and separate documents. The OM of 2004 is not fully efficient in guiding operations, as it is not fully in line with the 1998 IP Policy. There were weaknesses in the project administration by ADB. Besides the duplicate coverage of IP issues in IPDPs and in resettlement and environmental planning, ADB provides inadequate supervision and monitoring of IPPs concerned with mitigation of serious risks during implementation and after construction. In sector projects, EAs sometimes pay excessive attention to IPDPs for subprojects beyond RPs, environmental management plans, and gender plans. At other times, the rules have been interpreted to avoid the need for many IPDPs. Although there may have been sensible reasons for this, it is unclear whether this is admissible under the compliance review mechanism.

**Policy Approach Less Likely to be Sustainable.** ADB's current approach to initiating and implementing IPDPs has created incremental and transaction costs that do not always result in significant value added. Transaction costs for projects without clear risks but with extensive IPDP preparation processes are apparent in longer preparation times for projects and delays in implementation, which in turn lead to extra costs due to frequent extensions of contractors and consultants, higher commitment charges for loans from ordinary capital resources, and higher interest payments. Ultimately, these translate into lower economic and financial returns for projects, with few gains in social returns. In two instances documented, the transaction costs created perverse incentives that led ADB staff to discourage the inclusion of components in a sector project involving IP. Transaction costs may be high in sector projects, especially if the present guidelines on the need for IPDPs in case of both negative and positive impacts on IP are enforced rigorously. In the absence of ADB involvement, EAs are unlikely to apply safeguards such as promoted by ADB, neither are they likely to apply these for locally funded projects. Hence, the assessment of less likely sustainability of the IP policy in its present form.

### **Key Recommendations for ADB**

The following are the main recommendations arising from the SES. They are summarized from more elaborate recommendations presented in the last chapter.

- (i) The safeguard policy update should clarify the areas in the 1998 IP Policy that are misunderstood and address the policy drift in the OM/F3 and IP practice in

- ADB. Resettlement- and environment-related safeguards for IP should be integrated in the IR and environment policies.
- (ii) ADB should set goals for the development of IP and IP strategies for some DMCs where ADB's program requires constant interaction with IP.
  - (iii) The IP policy should have a results-based framework—distinguishing desired impact, outcomes, outputs, activities, and inputs at macro (country) and micro (project) level.
  - (iv) A sequential approach to policy development and capacity building in IP safeguards, focusing on a few DMCs first, should be adopted.
  - (v) While IP issues should be considered 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 need to be mitigated. If the risks are primarily related to loss of access to land, resettlement or environmental damage, then no IPDP is needed: the mitigation measures should be integrated in an RP or environmental management plan.
  - (vi) The safeguard policy update should describe the criterion to be used to determine whether the amount 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. Similar clarifications should be developed for the IR and environment safeguard policy updates.
  - (vii) 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 resource 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.

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