

**ADB's Safeguard Policy Update (SPU)
Post-Consultation Dialogue
ADB Headquarters, Manila, 21 November 2008**

Post-Consultation Dialogue Report

This Report was prepared by a team of documenters contracted by ADB, through the Lead Facilitator, to capture the participants' written and verbal outputs. These were then reviewed by the Lead Facilitator for accuracy using best professional judgment to interpret any unclear comments and fairly highlight plenary discussions. The report should not be interpreted as an expression of a collective position or consensus since in some group reports, several or many participants may have agreed with a statement, while in others this may not have been the case.

The views expressed in this document do not necessarily reflect the views and policies of the Asian Development Bank (ADB) or its Board of Governors or the governments they represent.

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Contents

I. PURPOSE OF THE CONSULTATION REPORT	3
II. PARTICIPATION	3
III. INTRODUCTION TO THE WORKSHOP	3
A. Welcome	3
B. Objective, Ground Rules, and Agenda	3
C. Instructions and Initial Responses	4
IV. MAIN TOPICS DISCUSSED	4
A. Highlights of the Plenary Discussion - First Round	5
B. Highlights of the Plenary Discussion - Second Round	6
V. REFLECTIONS & CLOSING REMARKS	8
A. Reflections	8
B. Closing Remarks	8

Attachments

- A List of Participants
- B Agenda

I. PURPOSE OF THE REPORT

1. As part of its Safeguard Policy Update process, the ADB held a second set of multistakeholder consultation workshops 18 – 20 November 2008. This week included an Indigenous Peoples Consultation workshop on 18 November, with a pre-consultation meeting the afternoon of 17 November, and a Multistakeholder Consultation Workshop on 19 – 20 November followed by an optional Post-Consultation Dialogue held on the morning of 21 November. These workshops occurred to provide ADB's various stakeholders in government, the private sector, academe and civil society, as well as other multilateral financial institutions and development agencies, an opportunity to share comments and recommendations on the Second Draft of the Safeguard Policy Statement as input to ADB's preparation of a Working Paper for discussion by its Board of Directors anticipated for First Quarter 2009. These workshops are only one forum for stakeholders to provide comments. ADB is also received written submissions from stakeholders and their organizations.

2. The purpose of this Report is to present the observations, recommendations, and highlights of discussion that occurred during the Post-Consultation Dialogue. This draft report was sent to stakeholder participants and participating ADB staff for corrections. The revised draft report is being posted on ADB's Safeguard Policy Update website <http://www.adb.org/Safeguards/about.asp>.

II. PARTICIPATION

3. Thirty-two participants representing different stakeholders such as government, civil society organizations, specific indigenous peoples groups, academe, private sector and development agencies attended the Post-Consultation Dialogue to continue discussion on specific issues pertaining to ADB's Second Draft Safeguard Policy Statement. A list of participants follows (**Attachment A**).

III. INTRODUCTION TO THE WORKSHOP

A. Welcome

4. The lead facilitator thanked the participants for joining the post-consultation workshop. He reiterated participants' attendance to the post-consultation was of their own choice. Then he went on to explain the day's activities.

B. Objective, Ground Rules, and Agenda

5. The facilitator repeated the formal objective of the workshop:

To discuss specific topics and issues arising from the prior multistakeholder workshop in greater depth.

6. He asked the participants to agree on basic ground rules for process to help the group reach the objective. He also assured participants that a team of independent documenters was capturing their comments, suggestions, and questions in this workshop. The participants were assured a forum for open and constructive discussion. Each was encouraged to use the

opportunity to articulate remaining issues and concerns regarding the Second Draft Safeguard Policy Statement. As a multistakeholder consultation, the facilitators emphasized the importance of drawing out diverse opinions. Groups were specifically instructed not to seek consensus as that was not the purpose, nor would time allow to reach agreement on points. The Agenda was then presented to participants. (**Attachment B**).

C. Instructions and Initial Responses

7. The Facilitator asked two questions as the basis for the day's discussion:

- What topics or issues were adequately discussed during the two-day discussion?
- Which require more time and space to discuss in greater depth?

8. A few of the participants shared their reflections on what they thought were significant issues emerging from the consultation on 19 & 20 November that needed more discussion. Their responses were:

- Discussion on “dilution” and “weakening”
- Financing modalities, Involuntary Resettlement and their implications on the Safeguard Policy Statement (SPS)
- Issues on Gender
- Topics on Environment and Involuntary Resettlement that were not thoroughly discussed during the previous two days
- Country Safeguard Systems (CSS) were thoroughly discussed
- The concern of every nation on their CSS. To have a discussion more on the CSS and implementation of this in countries
- Country ownership of CSS especially in countries with higher or lower CSS than ADB
- Climate change
- Requirements for financial intermediary projects

IV. MAIN TOPICS DISCUSSED

9. The Facilitator asked participants to identify specific issues / topics they want to discuss in greater depth. He asked them to write them on pieces of paper and to stick them on a time-space matrix on the main wall. He explained the open space rule (“Law of Two Feet”)-- participants were not confined to a specific discussion table. If they find the discussion uninteresting, they could transfer to other tables. The time-space matrix then became the agenda for two rounds of table discussions with four tables each (a total of eight issues / topics).

10. The agreed topics for the first round of discussion were:

- Framework and process of the CSS
- CSS Gap-filling and Compliance with ADB's safeguard policy approval of project.
- What is “dilution” of policy? Is there “dilution” or weakening in SPS?
- “Conservation of nature and natural resources” as integrating factor for SPS; principles/conservation with “development for the people”

11. The agreed topics for the second round of discussion were:

- Involuntary Resettlement
- Capacity Development for Implementation; CSS

- Special Requirements for different financing modalities (program loans, sector loans, multi-tranche financing facility (MFF), emergency loans, and others)
- Climate change, Gender and Externalities

A. Highlights of the Plenary Discussion – First Round

12. Each table group, representing eight separate discussions, agreed to allow participants from two differing stakeholder groups to present perceived highlights of each discussion. These perspectives, shared in the plenary session are highlighted below.

Framework and process of the Country Safeguard System (CSS)

- (i) Country safeguard systems should be used and strengthened.
- (ii) There has been a strong opinion that ADB should not interfere with national laws and change national laws. This is a general consensus in reaching agreements with ADB and government and other organizations.
- (iii) Look at the difference in words and practice of standards, and the difference between agreements and actual practice.
- (iv) A question was raised on how to go forward with CSS.
- (v) A recommendation for “gap-filling” of CSSs was made. Use the framework approach in gap filling; consultation with countries and their civil societies, especially those with CSS that are higher or lower than ADB’s standard.

CSS Gap-filling and Compliance with ADB’s safeguard policy, and approval of project.

- (i) There are gaps that needed to be filled.
- (ii) There is a need for country-level grievance mechanisms. As ADB has its own, the host country should also have one.
- (iii) There are a lot of issues with resettlement policies; getting the view of all peoples is a hard thing to do. Consultation with all stakeholders is practically not possible.
- (iv) Urgent need for capacity-building which should be done in different ways in different counties in different levels.
- (v) If the policy is different with countries, make compromises in some way. Continuous dialogue with ADB and the countries would be of great help.
- (vi) In Article 2 of the policy, those who are not titleholders, but would be affected, should also be entitled the same privileges as the titleholders.

Dilution and Weakening of Policy in 2nd Draft SPS

- (i) Concerns were expressed regarding the dilution of existing ADB safeguard policy in the 2nd Draft SPS, including detailed changes to language and wording. Many words are vague. Vague words are open to misunderstanding, especially when translated. The English language version should be very clear so that when translated it would be better understood. Concern was expressed regarding the paragraph on derogation and the recommendation for its elimination was reiterated.
- (ii) The VP statement (during the closing of the November 20 session) regarding dilution being “not only about words” is alarming. What came out in the discussion is that *dilution refers to wording*. The process of dilution can be a

process of death by thousand small cuts, small changes to words and phrases. Concern was also expressed about the process of “false harmonization” noticed throughout the document where policies of other institutions were cited as references but were not fully utilized.

- (iii) There was a question whether it would be more efficient to correct the sentences in the 2nd Draft SPS or just return to the existing policies. Is it worthwhile to spend the time correcting the draft document? Or is it simply better to return to existing policy?
- (iv) Derogation: There has been a proposal to delete paragraph 68 on derogation. The reason is that the next inclusions might appear inconsistent.
- (v) In the Operation Manual (OM), the fact of combining three policies into one is not working. There were discussions on the implementation of policies, how they are implemented and who would implement them. There is a false harmonization, only a part of the policy is used but not the whole policy.

Conservation with Development for the People

- (i) Some view, though the SPS is a consolidation, there was not enough effort in combination. Have equal systems dimension / perspective as an option.
- (ii) Include management of ecosystem resources in the environmental policy as well. Make an effort to include new scientific approaches, such as landscapist approaches, in projects.
- (iii) Make “biodiversity” on Page 14 more explicit, as much as possible.
- (iv) Both ADB and the International Finance Corporation (IFC) should work on not just confining systems and capacity building.

B. Highlights of the Plenary Discussion – Second Round

Involuntary Resettlement

- (i) The group agreed the definition of Involuntary Resettlement (IR) needs further expansion.
- (ii) There was a lot of disagreement around IR. There was one recommendation to change its name to “Voluntary Resettlement”, which leads to the issue of free prior and informed consent (FPIC) and whether the state has a prerogative to take the people from homelands.
- (iii) There should be 3 rights for Affected Peoples included in the SPS or in the agreement of ADB and the host country. These rights are to agree, to disagree and to complain.

Capacity Development for Implementation; CSS

- (i) Proper implementation will give the outcome and the best policy result. The technical and financial capacity building of the CSS should be considered.
- (ii) There is a problem in the language of the CSS. Legal words are hard to understand; the recommendation is to change it.
- (iii) Recommendations to use local ways of capacity development. Have local consultants and local people given priority in planning tasks.
- (iv) For local experts, there should be management training to implement the project.

Special Requirements for Different Financing Modalities

- (i) A question was raised on whether ADB will apply its requirements to all modalities.
- (ii) Recommendation for full application of all ADB safeguards and full disclosure. To have an accountability mechanism for and a very open discussion with the staff.
- (iii) Concerns were raised about ADB's portfolio of Private Equity Funds (PEF) and the seeming lack of disclosure / information regarding implementation and compliance levels of PEFs and portfolio companies.
- (iv) Except for targeted sub-projects, the ADB safeguards do not seem to apply to sub-projects. Safeguards should apply to targeted and non-targeted subprojects alike.
- (v) Observation that some of ADB's financial intermediaries have been involved in environmentally devastating projects in Indonesia.
- (vi) Observation on the similarity of ADB and IFC practices has been noted. Applying IFC safeguard rules to ADB projects, given ADB's safeguards understaffing problems, could result in environmental and social harms.

Climate Change, Gender, and Externalities

- (i) On gender, while there was a numerical increase of the term 'gender' in the draft, the context was largely missing. The meaning of gender itself in the draft is not clear; improvement must begin with the glossary so it may be applied especially to Affected Peoples.
- (ii) There is a need to differentiate the role between men and women.
- (iii) The impacts on women, especially in environmental displacement, should be included.
- (iv) It was helpful that ADB staff mentioned areas where gender should be focused on: particularly in grievance mechanisms, women's health and safety concerns. There has been a strong consensus that a gender checklist should be attached and reference to the draft.
- (v) Reference on climate change is one of the strengths of the 2nd draft. The 2nd draft must refer to the 1995 policy of the ADB when climate change becomes an external cost.
- (vi) Look at climate change from the women's perspective.
- (vii) The current SPS does not comment on external costs. Questions were raised on what will happen to sector policies in relation to the SPS, and there have been varying answers. It would be helpful to have clarifications. The intention is to develop strategies from sector policies, but sector policies will stay operational.
- (viii) Recommendation that energy policy will be updated, but will remain operational and strategies will be added.

V. REFLECTIONS AND CLOSING REMARKS

A. Reflections

13. Mr. Nessim Ahmad, Director, RSES, ADB affirmed the workshop had been very successful in covering all aspects of the policies. There had been substantive discussion of issues and the participants have been able to gain a much better understanding of the policies.

14. He said there had been a long journey with the SPU. It started in 2005 with a discussion note that was posted on the web for 90 days comment, and the special evaluations studies that took place over 2006 and early 2007.

15. He had heard radically different views on many issues. One example was integration; like consolidating three OM sections into one OM section, and the question of whether it improves the policy or dilutes it. He stressed the importance of balancing between the benefits of better integration and making sure the identity of each safeguard is maintained.

16. Many of the policy issues are about achieving the right balance among competing demands or considerations. Our discussions over the last days further reinforced this. Just to take a few examples.

17. Take FPIC – we want to recognize the principle but we also want to operationalize it. FPIC is an evolving concept but at the same time policy application demands some clarity.

18. Take country systems. On the one hand you have the clear benefits - greater ownership, much higher likelihood for sustainability, lower transactions costs, and opportunities for donors to harmonize around borrower processes. On the other hand, you have to manage the risks - possible dilution, loss of accountability, less transparency and, perhaps, lower capacity than expected.

19. Take framework approaches, we recognize the need to apply approaches for subprojects identified and prepared after board approval. Here the balance is between what needs to be done before Board approval and what can be delivered after Board approval.

20. Take FI loans. The entire logic of financial intermediation is about delegating the management of financial resources to the intermediary... On the one hand you have delegation and on the other you have the need to ensure ADB policies are met.

21. There have also been clear messages on the need to ensure adequate resources for policy implementation both for ADB but also for borrowers and clients.

22. The basic policy issues are now well known and the various perspectives are also known, it is now time to submit a W-paper to the Board for its guidance on these.

23. He ended by thanking the participants for their engagement.

B. Closing Remarks

24. Mr. Nessim Ahmad reviewed the timeline for the paper to be released.

- (i) Finalization of workshop proceedings by the facilitator and the team.
- (ii) Deadline of formal comments on 2nd Draft SPS by December 4.
- (iii) Deliberation, preparation of W-Paper, finalization and submission to board in early January 2009.
- (iv) Web posting of W-Paper when it is submitted to the Board.

25. Mr. Xianbin Yao, Director General, RSDD, thanked the participants for their time and efforts especially in remaining for the post consultation. He said that they have all gathered together to achieve mutual help and support. He ended by noting the importance of language in the existing policies and how we must recognize this, while nevertheless improving clarity and coherence in the new policy.

26. After the closing, a representative from the Indigenous People's group read a statement summarizing their position on the SPS:

"We sincerely appreciate the space and openness of ADB. We have engaged in this process in good faith, and have presented and discussed our concerns, including putting forward concrete recommendations to strengthen the SPS. Since the objective of this consultation is to strengthen the Safeguard Policy (SP), we expect the inclusion of our core recommendations in the working paper. We expect explicit reference and commitment to United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and full recognition of free-prior and informed consent (FPIC), and removing the link to the Broad-Community-Support, we believe this is the only way forward. Otherwise we will be disappointed and will consider calling for the rejection of the Working Paper. We remain in good faith to continue having dialogues as we anticipate a much-improved and strengthened SP."

ATTACHMENT A: LIST OF PARTICIPANTS

GOVERNMENT

1. **Mr. M. Umer Marufi Kaleem**
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2. **Mr. P. Mohanadasan**
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3. **Dr. Prem Lata Ahujarai**
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4. **Mr. Jitendra Kumar**
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5. **Ms. Ruchira Pant**
Joint Secretary
Ministry of Tribal Affairs, Government of India
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6. **Mr. Tariq Pirzada**
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7. **Mr. Talathon Arifkhanov**
Head of the Department
Republican Nature Protection Fund
Uzbekistan
8. **Mr. Shavkat Sapayev**
Deputy of Chief, Labor Protection Department
Ministry of Labor and Social Protection
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9. **Ms. Le Thi Ngoc Quynh**
Deputy Director
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CIVIL SOCIETY ORGANIZATIONS

1. **Ms. Helen Leake**
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2. **Mr. Hemantha Withanage**
Executive Director
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3. **Mr. Yuki Tanabe**
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4. **Ms. Christina Suprpti**
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NADI
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5. **Ms. Maya Eralieva**
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Quezon City, Philippines
6. **Ms. Stephanie Fried**
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8. **Mr. Renato Redentor Constantino**
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Quezon City, Philippines
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10. **Mr. Sunardhi Yogantara**
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11. Dr. Yin Lun

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12. Mr. Anshuman Saikia

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13. Mr. Kirk Herbertson

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INDIGENOUS PEOPLES

1. Mr. Ramananda Wangkheirakpam

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2. Mr. Mrinal Kanti Tripura

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ACADEME

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ATTACHMENT B: AGENDA

Friday, 21 November 2008 Auditorium C (Plenary) and D (table groups)

8:00 – 8:30	Registration
8:30 – 9:00	Welcome <ul style="list-style-type: none">• Welcome• Reiteration that participants come here by their own choice• Explanation of this day's activities
9.00 – 9.15	Consultation Agenda and Norms – Facilitator QUESTIONS: What topics or issues were adequately discussed during the two-day discussion? Which require more time and space to discuss in greater depth?
9.15 – 9:45	Identification of main topics to be discussed *Instructions for pieces of paper <ol style="list-style-type: none">1. What topic/issue (SPU-related) would you like to discuss in greater depth?2. Title of Session and Name of convenor/sponsor on metacards3. Stick cards on time-space matrix4. Negotiate for time and space Round 1 of Table Group Discussion
10:15 – 10:30	Tea Break
10:30 – 11:15	Round 2 of Table Group Discussion
11:15 – 12:00	Reporting by Table Groups (Round 1 then Round 2)
12:00 – 12:30	Recap of Timeline and Closing Remarks
12:30 – 1:30	Lunch