



**Comments on the ADB's
Draft Safeguard Policy Statement – 2nd Draft**

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Submitted by:

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Thank you for this opportunity to comment on the second draft of the ADB safeguard policies. While there are some improvements over the last draft, ***these draft policies are still very weak and will not adequately protect the rights of communities affected by ADB-financed projects. These draft policies would weaken existing policies.***

I will use the following abbreviations in these comments:

SPS	-Safeguard Policy Statement
Objectives-IR	-SPS Objectives, Scope and Policy Principles on the Involuntary Resettlement Safeguards
Objectives-IP	-SPS Objectives, Scope and Policy Principles on the Indigenous Peoples Safeguards
Objectives-Env	-SPS Objectives, Scope and Policy Principles on the Environmental Safeguards
SR	-Safeguard Requirements
SR-Env	-SR – Environment
SR-IR	-SR – Involuntary Resettlement
SR-IP	-SR – Indigenous Peoples
OM	-Operations Manual

ADB Responsibility

The draft Safeguard Policy Statement (SPS) and safeguard requirements (SR) continue to put most of the responsibility for complying on the borrower/client. The ADB needs to maintain primary responsibility for implementing the safeguard policies.

Confusing

I continue to find the combination of documents confusing. For example, in order to understand the environmental screening/environmental assessment process, one must consult: the SPS (Policy Delivery Process), Objectives-Env, the SR-Env, and the OM. To understand the same process under World Bank policies, one only needs to consult the appropriate Operational Policy and Bank Procedure.

Inconsistencies

Not surprisingly, I continue to find inconsistencies when I compare all the documents that one needs to consult to understand any issue. For example, to determine what type of environmental assessment is needed for a project, I find the following, sometimes conflicting, sometimes ambiguous, information:

One document, the SPS, states that an environmental assessment will be undertaken for each proposed project. Objectives-Env (2). This environmental assessment, required for each project, must include such things as assessing “potential trans-boundary and global

impacts, including climate change.” Objectives-Env (2). Later in the same document it states that for a Category C project, no environmental assessment will be needed beyond screening and desk review. SPS (58). Referring to the same projects, the OM states that no environmental assessment action is needed after screening (no longer noting the need for a desk review). OM (6)(iii).

EA Policies Weaker than World Bank Policies

The World Bank EA policies are stronger than those proposed by the ADB in several significant ways. Below I outline a few examples.

Independent Experts

The World Bank requires the borrower to retain “independent EA experts not affiliated with the project to carry out the EA” for category A projects. World Bank OP 4.01(4). A footnote to this policy further explains that the borrower needs to avoid any conflict of interest in carrying out EA activities. The ADB policy only requires the expert to be qualified and experienced. The ADB policy should require independence from the proposed project.

EA for Financial Intermediary Projects

There is a *critical* difference between the draft ADB policy related to FI projects and World Bank policy. Both institutions pass responsibility for carrying out environmental risk management on to the FI, *but* the World Bank policies explicitly require environmental assessment of FI projects while the ADB policies do not seem to require this.

The World Bank requires the FI to “screen proposed subprojects and ensure the subborrowers carry out appropriate EA for each subproject.” World Bank OP 4.01 (10). The World Bank policy further requires the FI to verify “that the subproject meets the environmental requirements of appropriate national and local authorities and is consistent with [Bank EA policy] and other applicable policies of the Bank.” World Bank OP 4.01 (10).

The ADB’s draft SPS does require the ADB to conduct safeguard due diligence over FI projects, but it is unclear whether the projects must apply the same environmental assessment, consultation, and information disclosure rules as other projects. The draft SPS states that the ADB “has responsibility for conducting safeguard due diligence to assess the potential environmental and social impacts and risks.” SPS (74). It is unclear whether the assessment here refers to the formal environmental assessment required for other ADB-financed projects that have a risk of impact. Other language in the SPS leads me to believe that no formal assessment (with consultation and information disclosure) is required. The SPS states that FI projects that may have an impact will be required to

“maintain an appropriate environmental and social management system.” SPS (75). The SPS does state that FI projects that are likely to have an impact are required to meet “ADB’s safeguard requirements in addition to national laws and standards.” SPS (76). It is unclear whether this includes formal assessment including consultation and information disclosure.

Further evidence that the ADB does not intend to require the same level of assessment can be found in the OM. In listing the categories for environmental assessment, the OM says which type of assessment is needed (“a full scale Environmental Impact Assessment (EIA) is required” for category A projects). However, under the FI category, the OM states only that the FI needs to “establish and maintain an environmental and social management system (ESMS) to address environmental issues” for projects that are anticipated to have an impact. OM (6)(iv).

ADB policies should specifically require a formal assessment for FI projects that are likely to have environmental and social impacts.

Information Disclosure and Timing

The Objectives-Env requires disclosure of draft environmental assessments “before” project appraisal. SPS Policy Delivery Process states that the ADB will publish draft EIA reports for public sector Category A projects at least 120 days before Board consideration. This is a significant improvement over the last draft. However, the ADB only commits to publishing documents on the web site 60 days in advance of board consideration for private sector projects. There is no good reason for this distinction. Communities and the environment will be impacted the same whether a project is a public sector project or a private sector project. The complexity of the documents will depend on the complexity of the project, not on the project sponsor. There should be a 120-day comment period for all category A projects.

Draft resettlement plans must also be available for review at least 120 days before board consideration.

Draft Indigenous Peoples Plan must be available for review at least 120 days before board consideration.

The social assessments that must be prepared under the Involuntary Resettlement and Indigenous Peoples policies must be available to the local communities and available on the ADB web site.

Prohibited Investment Activities List

The SPS states that “the ADB will screen *all* projects against the PIL” (Prohibited Investment Activities List) SPS (57) (emphasis added). In a later provision, the SPS

inconsistently states: “Where the FI’s business activities have minimal or no adverse environmental or social impacts and risks, the FI project need not apply any other specific requirements. All *other* FIs [sic] will apply the PIL” SPS (74). This implies that if the FI determines a project of the type that is included on the PIL will not have adverse impacts, it can move ahead with the project. The PIL must be applied to all projects for it to have any meaning.

Greenhouse Gas Emissions

The SPS-Env requires projects to avoid greenhouse gas emissions where feasible. SPS-Env (8). This should be strengthened by requiring the avoidance “where possible.” The SR-Env attempts to dilute the requirement to avoid these emissions by stating that “[t]he borrower/client will *promote the reduction* of project-related anthropogenic greenhouse gases (GHGs) emissions in a manner appropriate to the nature and scale of project operations and impacts. . . . In addition, the borrower/client *will evaluate technically feasible and financially viable options to reduce* project-related GHG emissions during the design and operation of the project.” SR-Env (38) (emphasis added).

Further, the SR-Env states that “[d]uring the development or operation of projects that are expected to or currently produce significant quantities of GHGs” which is defined to be generally a project that emits 100,000 tons CO₂ equivalent per year. The ADB should not be financing projects with significant GHG emissions.

Physical Cultural Resources

The SR-Env states that the “borrower/client will identify appropriate measures for avoiding or mitigating” adverse impacts on physical cultural resources. SR-Env (46). The requirements go on to say that when the resource will be lost, documentation of the resource may be appropriate mitigation. SR-Env (47). Adverse impacts to these resources must be avoided. No project should be approved that will adversely impact these resources.

Analysis of Alternatives

The SPS-Env (Outline of an Environmental Impact Assessment Report) only requires analysis of “financially and technically feasible” alternatives. The alternatives discussion should not be limited by financial and technical feasibility.

Grievance Mechanism

The Objectives-Env requires establishment of a grievance mechanism. Objectives-Env (5). The SR-Env only requires the borrower to establish a grievance mechanism (called a grievance “redress” mechanism here) *if* “ongoing risks to or adverse impacts on the environment and affected people are anticipated.” SR-Env (18). These statements are

inconsistent. The ADB should keep the more reasonable requirement found in the Objectives-Env because grievances may arise even where risks or impacts are not anticipated.

The OM does not seem to include anything related to the grievance redress mechanism. It seems that the ADB staff should work with the borrower/client to establish the mechanism.

The SR-Env states (appropriately) that the mechanism will not impact access to domestic judicial or administrative remedies. The SPS implies that affected people must use the grievance mechanism before using the ADB Accountability Mechanism. The grievance mechanism cannot impact access to the ADB's Accountability Mechanism. The SPS states, "In cases where grievances are not resolved at the project level, project-affected people can submit complaints to the ADB Accountability Mechanism." SPS (69). The Accountability Mechanism *must* be available to affected people without requiring them to use the borrower's grievance mechanism first.

Country Safeguard Systems

It is inappropriate for the ADB to use the Country Safeguard Systems (CSS) approach. It is important that the ADB continue to require borrower/client compliance with both the appropriate domestic legislation and ADB safeguard policies. If compliance with the ADB safeguard policies is burdensome to the borrower/client, that implies that the country's laws are not equivalent to the ADB safeguard policies. The policies are not overly burdensome.

Involuntary Resettlement

The stated objective of the Objectives-IR is to avoid resettlement "wherever feasible." Resettlement should be avoided wherever possible.

Any project that will require any resettlement must be automatically categorized as a category A project to ensure full assessment of the environmental and social impacts.

The social assessment report that is required for projects that involve resettlement (under SR-IR (C)(1)), must be prepared by qualified, experienced, independent experts. The SR-IR does not require the experts to be independent. SR-IR (22).

The actual dollar amounts (or the amounts in local currency) of the costs associated with resettlement and the compensation proposed must be disclosed publicly.

Indigenous Peoples

Any project that will impact indigenous peoples must be automatically categorized as a category A project to insure full assessment of the environmental and social impacts.