

## MANAGEMENT RESPONSE TO IED'S CORPORATE EVALUATION OF THE EFFECTIVENESS OF THE 2009 SAFEGUARD POLICY STATEMENT

On 15 May 2020, the Director General, Independent Evaluation Department, received the following response from the Special Senior Advisor to the President on behalf of Management:

1. Management welcomes the IED Corporate Evaluation of the Safeguards Policy Statement (SPS 2009). The evaluation provides timely and useful inputs for further strengthening the SPS and its implementation. Building on previous IED studies in 2014<sup>1</sup> and 2016<sup>2</sup>, the evaluation considers a broad range of issues, including the policy construct and guidance, portfolio trends and lending instruments, institutional arrangements, staffing and capacity, and implementation results. Furthermore, it considers external influences, such as developing member country (DMC) safeguards and capacity, and safeguard policies of other multilateral development banks (MDBs). Such an evaluation is therefore a complex undertaking, and we would like to commend and thank IED for the constructive dialogue with staff and Management during its preparation.

### A. Comments on Key Findings

2. Generally, the evaluation findings are in line with Management's understanding of the key safeguard areas that require strengthening. When first approved in 2009, the SPS was widely considered to be a progressive policy and its objectives are proven to remain relevant today.<sup>3</sup> Furthermore, the evaluation finds that safeguard processes have generally been satisfactory in supporting the avoidance, minimization, and mitigation of adverse project impacts related to the environment and involuntary resettlement. Notwithstanding the above, identified weaknesses include: (i) limited tailoring of the policy for nonsovereign operations (NSO), Fragile and Conflict Affected States (FCAS), and Small Island Developing States (SIDS); (ii) limited guidance for different lending modalities (such as financial intermediation [FI] and general corporate finance); (iii) weak integration between environmental and social safeguards; (iv) insufficient focus on the management of risks to vulnerable groups and Indigenous Peoples (IP); (v) poor functionality of project level grievance redress mechanisms; and (vi) insufficient use of technologies and innovation for assessment, monitoring, consultation, and disclosures.

3. While recognizing the above, Management believes that the SPS 2009 still remains largely 'fit for purpose' given that the core elements of the policy (such as key requirements for environmental assessment, involuntary resettlement and IP safeguards) remain relevant, functioning and consistent with the practices of other MDBs. While other MDBs<sup>4</sup> have updated their safeguard policies more recently (with additional standards related to stakeholder engagement, gender equality, labor and working conditions, and climate change), the evaluation

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<sup>1</sup> IED. 2014. Safeguards Operational Review: ADB Processes, Portfolio, Country Systems, and Financial Intermediaries. Manila: ADB.

<sup>2</sup> IED. 2016. Real-Time Evaluation of ADB's Safeguard Implementation Experience Based on Selected Case Studies. Manila: ADB.

<sup>3</sup> The objectives of ADB's safeguards are to: (i) avoid adverse impacts of projects on the environment and affected people, where possible; (ii) minimize, mitigate, and/or compensate for adverse project impacts on the environment and affected people when avoidance is not possible; and (iii) help borrowers/clients to strengthen their safeguard systems and develop the capacity to manage environmental and social risks.

<sup>4</sup> Recent policy updates by MDBs include the World Bank (2016), the European Bank for Reconstruction and Development (2014 and 2019), and the Inter-American Development Bank (draft 2019).

could have elaborated in more detail the links between safeguards and other ADB policies.<sup>5</sup> Critically, there are opportunities for ADB to strengthen implementation by better coordinating safeguards with these policies. For example, current assessment processes can be strengthened by defining the scope of risk and sharing information among separate poverty and social, gender, environment, involuntary resettlement and IP assessments, and bringing this information together to inform integrated project design. In addition, Management recognizes that there are some real gaps in emerging areas such as sexual exploitation, abuse and harassment (SEAH), and the management of supply chain risks that should be addressed, while being mindful to make distinctions between compliance and aspirational goals. Interim guidance on these areas can be developed prior to the update of the SPS.

4. With respect to IP safeguards, it should be clarified that while ADB does consider if IPs have been mainstreamed in the wider community and if they have distinct vulnerabilities relative to the rest of the community, ADB does not have a policy, practice, or intent to promote mainstreaming of IPs or to exclude IPs as project beneficiaries. At the same time, Management recognizes that the application of IP safeguards can be strengthened. This can include strengthening social impact assessment and meaningful consultation with IP communities, increasing ADB's dialogue and engagement with IP communities and their representatives, and supporting more projects with IPs as target beneficiaries.

5. With regards to country safeguard systems (CSS), Management agrees that the SPS's objective of strengthening borrower systems remains a priority. ADB has approved close to \$50 million in technical assistance (TA) since 2009, supporting DMCs with assessing legal and policy gaps; preparing good practice guidance; conducting capacity-building; and developing regional safeguards learning centers. It is recognized, however, that the use of CSS, which was included in the SPS as possible modality—and not as a policy objective—has had limited uptake. As highlighted, this may be at least partly attributable to the requirements for the country systems to be equivalent to the SPS. Moving forward, a more pragmatic approach to the use of country system can be considered, balancing opportunities and risks, and linking the use of CSS to different lending modalities. The update of the policy in this regard can also be informed by lessons from the use of CSS by other MFIs.

6. While agreeing that further strengthening can be undertaken to improve delivery mechanisms, Management believes existing structures are functioning appropriately. Under the current system, each of the six operational departments have established structures and processes to ensure quality control and oversight across the project cycle. There are, however, differences between the structures established at operational department (OD) levels due to the nature of operations (sovereign versus NSO), and regional factors (such as geographic, demographic, political and logistic issues). Importantly however, systems have been strengthened over time to enhance quality control and to avoid conflicts of interest. For example, EARD, SARD, and SERD have dedicated staff within front offices who undertake independent quality review for projects prior to management appraisal. CWRD and PSOD have a central pool of safeguard staff that are independent of project teams and are deployed to projects. PARD has also recently established a Portfolio, Results and Quality Unit in the front office which provides dedicated support to safeguard risk identification, management, and implementation support. In addition, SDCC, through SDSS and the Chief Compliance Officer, maintains compliance oversight on operations, including: policy interpretation; approval of safeguard categorization; review of all projects with safeguard risks; conduct of peer review meetings for all category A

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<sup>5</sup> This includes ADB's Access to Information Policy (2018), Social Protection Strategy (2009), Gender and Development Policy (1998), and ADB's Climate Risk Management Framework (2014).

environment projects; issuance of safeguard compliance memos before projects proceed to Management appraisal; and conduct of periodic country portfolio reviews and safeguard monitoring missions for high risk projects.

7. In addition, each of the ODs have established safeguard monitoring systems to track project preparation and implementation issues, including monitoring data, complaints management and corrective actions. The systems are, however, at different levels of sophistication and work is ongoing between SDCC and ODs to review the systems and establish an integrated safeguard management system (ISMS) at the corporate level. Linked to this, further changes have been made to the Project Performance Rating (PPR) system, with expanded safeguard indicators. Work is also ongoing to integrate these indicators into the online Operations Performance Metrics (OPM) Dashboard. These systems together support improved risk-based monitoring and supervision and enhanced problem-solving capacity.

8. With respect to risk management, the evaluation noted that the share of category A projects in the portfolio has dropped.<sup>6</sup> This was attributed to a perception of lack of appetite by ADB for projects with high safeguard risks which may lead to reduced DMC development opportunities. While Management agrees that the avoidance of impacts and risks, as well as streamlined business processes, will have influenced the portfolio, there are a range of other factors that should be considered. This includes changes in lending instruments (e.g., increases in NSO, sovereign-FIs, and RBL programs) and changing dialogue with DMCs on the strategic fit and value added of ADB financing.

9. A related issue is the application of the SPS requirement to disclose category A draft environmental impact assessments (EIAs) 120 days before Board consideration. IED has rightly identified that this disclosure requirement is inconsistent with the practices of other MFIs, particularly when applied to the private sector.<sup>7</sup> This requirement, which has been in place since 1991 (prior to the wide-spread use of the internet) reduces the amount of time available for project preparation, and in some cases, may be a disincentive for ADB to finance category A projects.

10. Management welcomes the consideration given to FCAS and SIDS issues in the evaluation. Overall, we agree that there is a need to adapt safeguards for FCAS (e.g., managing security risks and access restrictions) and SIDS contexts (e.g., adapting the policy to customary land tenure issues in the Pacific), based on further review of lessons from implementation experience. Further consideration to this will be given within the FCAS and SIDS Strategic Approach Paper that is being prepared this year. Additional guidance can then be developed.

11. Finally, while Management appreciates IED's efforts to address factual errors and inconsistencies, several issues identified by ODs remain unaddressed in the final evaluation. These will be shared with IED for further consideration.

## **B. Management Response to the Recommendations**

12. **Recommendation 1:** Modernize the Safeguard Policy Statement, increasing its relevance and customization for both sovereign and private sector financing, by building on evidence from the SPS implementation experience and recent safeguard policy updates at other MFIs.

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<sup>6</sup> For environment, category A projects have declined from 13% (pre-SPS) to 9% (2015–2018); for IR they declined from 17% (pre-SPS) to 11% (2015–2018), and for IP from 8% (pre-SPS) to less than 1% (2015–2018).

<sup>7</sup> The International Finance Corporation, the African Development Bank and EBRD all have 60-day EIA disclosure rules for the private sector.

*Management agrees.* In response to the evolving circumstances, Management plans to initiate a safeguard policy update starting in July 2020, with an expected timeframe of 2 years to allow sufficient time for stakeholder consultations. Considerations will include: (i) adapting the policy for sovereign and nonsovereign operations, different lending modalities, and FCAS and SIDS contexts; (ii) better integration of environmental and social safeguards; and (iii) filling gaps related to emerging policy issues such as SEAH. Further review of recent policy updates by other MFIs will be undertaken, considering opportunities for greater policy convergence, while balancing potential costs and benefits for ADB and DMCs.

13. **Recommendation 2:** Adopt a new approach in the policy to strengthening borrower systems, with a view to a more systematic improvement and pragmatic use of country systems.

*Management agrees.* Consistent with Strategy 2030, ADB will continue to support the strengthening of CSS. Efforts will be coordinated with the Development Partners Community of Practice on Safeguards to increase effectiveness.<sup>8</sup> For the use of CSS, Management will consider more pragmatic options for assessment and use. Policy-based lending could be considered as an instrument to support DMCs with safeguard related policy reforms. Results-based lending could be used as a programmatic tool to incrementally strengthen sector capacities. Strengthening and use of CSS can also be explored through sector lending and multitranche financing facilities (MFF) given that these provide longer-term engagement opportunities. This will be informed by experiences with the use of CSS by other MFIs.

14. **Recommendation 3:** Introduce a new safeguards implementation framework including an updated oversight structure and reporting lines that are strengthened and contribute to more consistent safeguard outcomes across the Bank.

*Management agrees.* Overall, Management agrees that the central role of the Sustainable Development and Climate Change Department (SDCC) can be further strengthened in terms of oversight, policy interpretation, problem solving, and capacity development. While these roles are already undertaken, current resources will be reviewed taking into consideration increased lending volumes and skills needs. With respect to the structure and reporting lines of ODs, Management agrees that greater consistency is needed, while retaining some flexibility given the operational difference between ODs. With regards to the recommendation of establishing a corporate safeguard monitoring system, this aligns with the Management's ongoing efforts to establish integrated safeguard management system (ISMS), which is expected to be operational in 2021. This will build on existing OD systems as well as ADB's Project Performance Rating System, which was strengthened with revised safeguard indicators developed in 2019.

15. **Recommendation 4:** Underpin the safeguards policy and implementation framework with sufficiently detailed policy guidance (e.g., Operations Manual and staff instructions) and a range of operational guidance documents and good practice notes with established mechanisms for regular reviews and updates.

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<sup>8</sup> The Development Partners Community of Practice on Safeguards was established in 2013 with ADB, World Bank, the Australian Department of Foreign Affairs and Trade, and Japan International Cooperation Agency as founding members. The partnership focuses on CSS issues, including good practices, alignment of methodologies, and support for regional safeguard learning centers.

*Management agrees.* Updates to the SPS and its implementation framework will be accompanied by more detailed guidance. In the meantime, SDCC is already working to develop additional guidance notes through a recently approved TA on “Strengthening Safeguards Implementation in ADB Projects”. This includes guidance for FIs, livelihood restoration planning, occupational health and safety, and grievance redress mechanisms. More integrated assessment approaches will be developed through collaboration between SDSS and the social development, gender, and climate change and disaster risk management thematic groups. Additional guidance for FCAS and SIDS will also be developed.

16. **Recommendation 5:** Assess the necessary staffing complement to deliver the safeguards implementation framework and strengthen skills, empowering staff to deliver better safeguard outcomes.

*Management agrees.* Further analysis will be undertaken on staffing requirements to implement an updated policy and institutional framework, including the balance of safeguard staff focused on policy and compliance review, project preparation and monitoring and supervision roles. With respect to training, SDCC will continue to expand its existing training program, which already includes e-learning, safeguard orientation, and specialized training courses. In addition, SDCC, together with BPMSD, will: (i) pilot an accreditation program for mission leaders on safeguard requirements and accountability; and (ii) for safeguard staff, develop an approach for quality recruitment, performance review and accountability, and continuous skills development.