



Information Paper

November 2020

Background Information Paper for the Review and Update of the ADB Safeguards Policy Statement

This document is being disclosed to the public in accordance with ADB's Access to Information Policy.

Asian Development Bank

Background Information Paper for the Review and Update of the ADB Safeguards Policy Statement

Date: 26 November 2020

(Updated from the October version as submitted to the ADB Board)

Prepared by: Sustainable Development and Climate Change Department

I. INTRODUCTION

1. The Asian Development Bank (ADB) is undertaking a comprehensive review and update of its Safeguard Policy Statement (SPS).¹ The policy was approved by the ADB Board in July 2009 and has been under implementation since January 2010. The update process has been initiated by ADB Management following a Corporate Evaluation of the SPS by ADB's Independent Evaluation Department (IED), completed in May 2020.² This paper provides background information on the overall scope of issues to be considered and an outline of the methodology and timeline for the update process and stakeholder engagement.

II. RATIONALE

2. The IED evaluation recommended that ADB: (i) modernize the policy, building off ADB implementation experiences and recent updates by other multi-lateral financial institutions (MFIs), including customization to both public and private sector operations; (ii) adopt a new approach in the policy to strengthening borrower systems, with improvement and pragmatic use of country systems; (iii) introduce a new safeguards implementation framework including an updated oversight structure and reporting lines; (iv) underpin the safeguards policy and implementation framework with sufficiently detailed policy guidance and good practice notes; and (v) assess the necessary staffing complement and skills needed to deliver the safeguards implementation framework. ADB Management has endorsed the IED recommendations and will prepare a policy update over a 2-year period from September 2020 to September 2022.

3. When first approved in 2009, the SPS was widely considered to be a progressive policy and the core elements of the policy and the assessment processes for environment, involuntary resettlement and indigenous peoples remain relevant, functioning and largely consistent with the practices of other MFIs. Over the past five or so years, a number of MFIs and bilateral partners³ have updated their safeguard policy frameworks. While these frameworks are consistent in terms of the core environmental and social policy principles, some have expanded the scope of safeguard principles or standards in areas like stakeholder engagement, labor and working conditions, cultural heritage, primary supply chains and climate change. Recently greater consideration of vulnerabilities such as disability, sexual exploitation, abuse, and harassment (SEAH) and sexual orientation and gender identity (SOGI) issues are also being given more specific focus within and outside of safeguards. ADB addresses many of these issues fully or

¹ ADB. 2009. Safeguards Policy Statement. Manila. <https://www.adb.org/documents/safeguard-policy-statement>

² Independent Evaluation Department. 2020. *Evaluation Document: Effectiveness of the 2009 Safeguard Policy Statement*. ADB: Manila. <https://www.adb.org/documents/effectiveness-2009-safeguard-policy-statement>

³ African Development Bank: [Integrated Safeguards Systems \(2013\)](#); [EBRD: Environment and Social Policy \(2014/2019\)](#); [Equator Principles Financial Institutions \(2019\)](#); [IDB: Environment and Social Policy Framework \(September 2020\)](#); [IFC: Policy and Performance Standards \(2012\)](#); [World Bank: Environment and Social Framework \(2018\)](#).

partially through a range of existing policies and strategies⁴, including ADB's Strategy 2030.⁵ However, these cover a mix long-term development objectives and aspirational goals, as well as risk management measures, so their relationship with safeguards needs to be more carefully considered. In addition, updated MFI safeguard frameworks have differing implementation arrangements and delivery processes, which need to be considered in terms of the optimum mix of efficiency, effectiveness, and results delivery.

4. The update will seek to modernize the policy, considering the changing development context and evolving developing member country (DMC) and client needs and capacities; as well as opportunities for greater harmonization with the policy principles and standards of other multilateral financial institutions (MFI). In addition, the update will consider the current diversity of ADB lending modalities and increase in private sector operations. Furthermore, the suitability of the existing safeguard policy framework for fragile and conflict affected situations and small island developing states will be examined. Overall, the policy update will seek to strengthen safeguard implementation effectiveness and efficiency, in ways that enhance beneficial safeguard outcomes for the environment and affected people.

III. SCOPE OF SAFEGUARDS POLICY UPDATE

5. The approach of the review and update of the SPS will be based on a series of background analytical studies to identify the directions for improving the elements of the SPS. This will be supported through an inclusive, transparent consultative process, which will be adopted to solicit stakeholder feedback and share information throughout the policy update stages. The studies will build on the findings of the IED evaluation of the SPS, inputs from ADB staff, consultation with relevant internal and external stakeholders, including ADB clients, affected people, civil society organizations (CSOs) and MFI partners. Findings from the studies will be used to inform deliberations on the merits of feasible options of each policy element. After the revised policy provisions and procedures is developed and agreed upon, and a policy roll-out and implementation plan will be prepared.

Background Studies

6. **Policy Architecture.** Currently ADB has one umbrella safeguard policy statement which sets out the scope and objectives of the policy and provides policy principles and requirements for three separate safeguard areas covering environment, involuntary resettlement, and indigenous peoples. The review process will undertake a comprehensive study to assess the various safeguards policy architectures currently in use by other MFIs. The study will provide recommendations for the best possible model of safeguards architecture that ADB can adopt, taking into consideration ADB financing in both the public and private sectors. This will include careful consideration of the International Finance Corporation (IFC) Performance Standards, which have increasingly been used or adopted as the benchmark model for MFIs, including Equator Principle Banks.⁶ The policy architecture for this model includes: (i) a stand-alone Policy on Environmental and Social Sustainability, which defines the MFIs institutional commitment to

⁴ [Climate Change Operational Framework 2017–2030: Enhanced Actions for Low Greenhouse Gas Emissions and Climate-Resilient Development](#) (2017); [Energy Policy](#) (2009); [Incorporation of Social Dimensions in ADB Operations](#) (2010); [Policy on Gender and Development](#) (2003)

⁵ ADB. 2018. *Strategy 2030: Achieving a Prosperous, Inclusive, Resilient, and Sustainable Asia and the Pacific*. Manila.

⁶ The [Equator Principles](#) (EPs) is a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects and is primarily intended to provide a minimum standard for due diligence and monitoring to support responsible risk decision-making.

environmental and social sustainability; and (ii) Performance Standards, which define client responsibilities for managing their environmental and social risks.

7. Safeguards Classification. The SPS was originally intended as an integrated policy, however in the policy delivery process, it uses a separate categorization process for each of its three safeguards. Environmental and social impact assessment is also generally undertaken as separate processes, and while ADB is giving increased consideration to integration, assessment processes and management planning are largely fragmented. Over time, other MFIs have however adopted more holistic approaches, with integrated classification, assessment, and management of social and environmental risks. A review of how other MFIs approach safeguards classification will therefore be undertaken to provide recommendations for revising and strengthening the current classification system and assessment approaches.

8. Thematic and cross-cutting issues. There are several existing ADB policies and strategies that cover thematic and cross-cutting issues -- like poverty, gender, social protection, and climate change. Overall, these tend to focus on supporting wider development and Sustainable Development Goals at the DMC level. However, there are some risk elements that could be considered within safeguards. The review will include consideration of thematic policy gaps and other emerging issues to inform ADB in considering the extent of their possible integration into the revised safeguard policy. The key areas include labor and working conditions, community health and safety, cultural heritage, primary supply chain risks, meaningful consultation, gender diversity and inclusion, treatment of vulnerable groups, sexual abuse, exploitation and harassment, indigenous peoples issues, livelihood restoration, stakeholder engagement, biodiversity, noise and vibration, occupational health and safety (including asbestos) and pollution prevention. The review will provide a clear distinction between longer term aspirational elements that needs to be addressed at the country level and aspects that can be addressed as project level safeguards. Consultations with other MFIs and stakeholders will also be undertaken to better understand emerging implementation experiences related to these topics.

9. Policy directions for Country Safeguards Systems. The review will assess the effectiveness of ADB's past efforts in the strengthening and use of country safeguard systems (CSS). ADB has approved close to \$50 million TAs 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 a possible modality had limited uptake. The current policy requirement that "use of CSS" can be considered when the CSS is "equivalent" to the SPS, and there is "acceptable" implementation capacity, has been challenging to establish in practice. 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 of the use of CSS. The review will recommend options for a more pragmatic approach for the use of CSS and will revisit the current approach to equivalence and acceptability assessments.

10. Safeguards for new financing instruments and new modalities. Since 2009, some new lending modalities have emerged and are becoming popular due to their flexibility. Currently, the SPS does not provide sufficient clarity on safeguards requirements for modalities such as: financial intermediaries, general corporate finance, and private equity investment. Hence, better tailored safeguard provisions and guidance for a range of financing instruments will be designed for sovereign and non-sovereign financing.

11. Lessons learned from safeguard implementation and accountability experiences. Over the past 10 years ADB has made significant progress in the implementation of safeguards

across its projects. While this has provided some rich experience, there are lessons that could be gleaned from the learnings of the accountability mechanism process. Under the Accountability Mechanism Policy since 2010, six complaints have been found eligible by the compliance review function, and sixteen by the office of the special facilitator. The 2018 joint learning report⁷ emphasized that ADB in partnership with borrowers, needs to adopt a system for improved risk assessment and complaint tracking at the project level; strengthen meaningful consultation, and the project level grievance redress mechanism (GRM). A study to examine the working of GRMs and provide recommendations for improving its efficiency is currently underway.

12. **Safeguards procedures and borrowers requirements.** Building on the findings and recommendations from the analytical studies, detailed implementation and procedural elements for the revised safeguards policy will be developed and specified through revised operations manuals, staff instructions, and technical guidance materials. This will provide greater clarity and distinction on ADB and borrowers/clients responsibilities and requirements.

13. **Revised safeguards policy paper.** Building on the analytical studies and institutional reviews, feedback from stakeholders' consultations and recommendations of the technical working groups, a draft policy paper will be prepared. The draft paper will be made available for external consultations and further revised based on feedback received. The policy paper will include but not be limited to (i) the safeguards policy objectives and scope; (ii) detailed policy requirements; and (iii) roles and responsibilities of ADB and the borrowers/clients. Draft guidelines will be prepared as part of the policy update and will be finalized prior to policy effectiveness. The final policy paper will be submitted for Board approval.

14. **Enhanced oversight framework for safeguards.** An institutional analysis will be undertaken to provide recommendations on safeguards oversight, institutional arrangements, staffing, and resources required to implement the revised safeguard policy. The analysis will recommend strengthened safeguards oversight for policy interpretation, problem solving and capacity building and streamline reporting lines in the operations departments to achieve greater consistency in safeguard outcomes. It will propose the staff complement needed to deliver the revised safeguard policy. The institutional analysis will target further skills enhancement for safeguards staff.

15. **Preparatory measures for policy roll-out.** Based on the detailed requirements of the revised policy a detailed implementation plan will be designed. The plan will comprise of: (i) general information and awareness raising materials; (ii) training materials and e-learning modules corresponding to the policy principles and requirements; (iii) technical guidance on specific policy implementation issues and standards; and (iv) long-term capacity development plan. This will be prepared to guide roll-out within ADB as well as for borrowers and clients. A draft implementation plan will be developed with the final policy paper and will be updated and finalized prior to policy effectiveness.

IV. STAKEHOLDER ENGAGEMENT AND COMMUNICATION.

16. DMCs and CSOs have actively participated in the design and review of all major ADB policies. Stakeholder consultations will be undertaken which will cover project affected people, CSOs, government officials, and private sector representatives from both DMCs and non-DMCs to ensure ADB incorporates a range of different perspectives into the policy review. Civil society

⁷ 2018- A collaborative Report by the Office of the Special Project Facilitator (OSPF) and Office of the Compliance Review Panel (OCRPF) of the Accountability Mechanism together with the Independent Evaluation Department (IED) and the Sustainable Development and Climate Change Department (SDCC).

representing a broad range of issues and sector-interests and covering varied demographic groups will be the focus of the stakeholder engagement plan.

17. ADB will prepare a three-phase stakeholder engagement plan for the policy review process to ensure streamlined implementation of this approach. In the first phase, ADB will launch the review, share the consultation and communications plan, and lead a first round of external consultations to discuss the consultation plan and understand their main concerns. During the second phase, ADB will discuss the findings of the analytical studies with stakeholders and its implications on policy revision policy. The final stage will look at outstanding issues and areas where ADB needs additional information and solicit comments on the working paper. A variety of views and feedback are likely to follow the wide stakeholder consultation on policy review and update. This may be a constraint to building consensus around new policy provisions and efforts will need to be made to match the interests of diverse stakeholders. ADB will have a dedicated webpage on www.adb.org for the SPS policy review and update process. This will disclose the policy review timeline, consultation schedule, summary of consultations, and the W-paper (when available). The site will also include a link for submitting comments on any aspect of the policy at any time (see Appendix 1 for more details)

V. IMPLEMENTATION ARRANGEMENTS

18. ADB will undertake the policy review process through SDCC with the support of safeguards staff from the operations departments, relevant sector and thematic groups, and non-operations departments. A high level Interdepartmental Steering Committee chaired by the Director General, concurrently Chief Compliance Officer, SDCC comprising of relevant heads of departments; a Lead Coordination Group chaired by the Director, SDSS; supported by an advisory sub-group, and Technical Working Groups to advise the analytical studies, non-operations departments including the Independent Evaluation Department, Office of the Compliance Review Panel and Office of the Special Project Facilitator will be consulted for their feedback and advice. The implementation arrangements for the review are summarized below in Table 1.

Table 1: Implementation Arrangements

Working Group	Roles and Responsibility
Interdepartmental Steering Committee (ISC) – HODs from ODs, SDCC, OGC, SPD, PPF and DOC (Chaired by DG SDCC)	ISC will provide overall guidance to the policy update process and will advise the lead coordination group. ISC will meet at least bi-annually.
Lead Coordination Group (LCG) – SDSS, NGOC, OD safeguard focal points, and OGC (Chaired by Director SDCC) <i>Supported by Advisory Sub-Group (ASG)</i>	LCG will lead the SPS update process, advise the technical working groups, prepare the W-paper and the R-paper. LCG will provide quarterly updates to the ISC.
Technical Working Groups (TWGs) – various thematic topics.	TWGs (8 -10 nos.) will undertake studies on thematic, cross cutting and emerging issues, and will ensure technical and operational consensus in each area studied. TWG will update LCG regularly.

Secretariat – SDSS team members and consultants + NGOC + DOC	Coordinate and support the SPS review and update.
---------------------------------------------------------------------	---------------------------------------------------

DOC = Department of Communications, HOD = heads of department, NGOC = NGO and Civil Society Center, OD = operations department, OGC = Office of the General Counsel, PPF = Procurement, Portfolio and Financial Management Department, SDCC = Sustainable Development and Climate Change Department, SDSS = Safeguards Division, SPD = Strategy, Policy and Partnerships Department

19. The policy review will be undertaken over a period of two years. The indicative schedule for this review is summarized below in Table 2.

Table 2: Key Milestones

No	Key Milestones	Time	Board Engagement	Stakeholder Consultation
1.	Preparation for policy review and update initiated	Jun 2020		Consultation Phase 1 Jun 2020 – Mar 2021
2.	Preparation of proposed approach to the policy review and update and issues of concern	Jun 2020	First Informal Board Seminar 31 August 2020 (completed) Share proposed approach to the policy review and update and issues of concern	
3.	Initial consultation and stakeholder outreach Initiated	Jun 2020		
4.	Background studies Initiated	Sept 2020		Consultation Phase 2 Apr – Jul 2021
5.	Stakeholder engagement plan prepared	Dec 2020		
6.	Consultation on the findings of key analytical studies Initiated Draft policy direction	Jan 2021	Deep Dive with the Board April 2021 Share the findings of key analytical studies and draft policy direction	
7.	Stakeholder consultation initiated on revised policy provisions and procedures Draft W paper prepared	Aug 2021 Nov 2021	Second Informal Board Seminar October 2021 Share and discuss the revised policy provisions and the draft W paper	Consultation Phase 3 Aug 2021 onwards
8.	Consultation on draft W-Paper prepared	Nov 2021	Board meeting on W-Paper Dec 2021/Jan 2022	
9.	Preparation of R Paper initiated	Jan 2022		
10.	R Paper prepared	Apr 2022	Board meeting on R Paper Aug/Sept 2022	

VI. CONCLUSION

20. A revised policy will result in delivering more effective safeguards implementation, wider coverage with modernized environmental and social safeguards provisions, and improved

capacity of borrowers. While a revised policy will result in improved safeguards outcomes it also poses certain challenges due to varied stakeholder interests and constraints.

21. Recommended by the IED review and initial feedback from stakeholders, it has become evident that there is a need that the ADB safeguards policy be harmonized with the safeguards policies of comparator MFIs. During the various stages of the consultation process there is a possibility that the revised policy with new provisions, scope of coverage, and procedures may raise conflicting opinions, making consensus building difficult. This review will take a close look and will discuss how existing, thematic and emerging issues can be best addressed. This may be accomplished through policy options, such as: policy provisions and procedures; or, through non policy options such as: policy dialogue, Country Partnership Strategy discussions, and regional technical assistance programs. ADB will undertake robust internal and external consultations with all stakeholders to arrive at an informed decision on the scope and provisions of the revised policy that strike the right balance of the objectives of strategy 2030 and its implementation considerations.

APPENDIX 1

Stakeholder engagement and consultation for the Safeguard Policy Statement Review

1. **Background.** Developing member countries (DMCs), private sector clients and civil society organizations (CSOs) have actively participated in the design and review of all major ADB policies. Strategy 2030 commits ADB to engaging civil society in the review of all of its policies. Seeking meaningful inputs from a wide range of perspectives is essential to ensuring the updated policy reflects a changing context, the needs of the people the policy affects, and that the policy will remain relevant moving forward. ADB is developing a meaningful and effective consultation plan that will help ensure that ADB uses suitable consultation approaches- particularly in light of the global pandemic- and reaches key stakeholders.

2. Stakeholder consultations will be undertaken using a variety of methods such as online or face to face meetings with small groups or larger regional workshops. Consultations will cover project-affected people, CSOs, government officials, private sector representatives from both DMCs and non-DMCs, ADB staff, management and the Board of Directors, comparator MFIs to ensure ADB incorporates a range of different perspectives into the policy review. Civil society representing a broad range of issues and sector-interests, covering varied demographic groups will be the focus of the stakeholder engagement plan. Organizations representing groups such as the elderly, youth, disabled, and sexual and gender minorities will be consulted. Vulnerable groups including Indigenous Peoples who continue to be marginalized across the region will be consulted. ADB will reach out to community-based organizations from affected communities to engage them during the safeguards policy review process in a meaningful way. This appendix focuses on the external consultation process.

3. **Three phases.** ADB will prepare a three-phase stakeholder engagement plan for the policy review process to ensure streamlined implementation of this approach. In the first phase, beginning in September 2020, ADB will launch the safeguard policy statement review process, share the consultation and communications plan, and lead a first round of external consultations to discuss the consultation plan. The initial phase aims to understand the main issues observed by stakeholders requiring attention during the review, and to identify stakeholders representing niche aspects of the policy's review. ADB expects that because of the pandemic, all of these consultations will take place online. ADB intends to use a range of technologies for these consultations. For example, in some cases when ADB wants to share information about the policy review timeline, ADB may use a webinar, which is largely one-way sharing of information and potential for participants to submit questions to the moderators. Alternatively, ADB may use Teams meetings for focus group discussions when the event is highly interactive and participatory.

4. The second phase, beginning in January 2021, during which ADB will triangulate the information collected through reports it commissioned with its stakeholders, will focus on discussions around multiple proposed options for changes to the SPS. ADB hopes to be able to conduct many of these consultations in person, if possible. If not, then ADB will continue to use a range of approaches suitable to the type of consultation.

5. The final stage, from about July 2021, will look at outstanding issues and areas where ADB needs additional information and will include soliciting comments on the working paper (W-paper). ADB expects this round of consultations to be with groups with specialized focus who can provide niche expertise; this phase will not include widespread consultations with the public, although ADB will continue to accept comments through its website. Technical assistance will support the participation of under-represented stakeholders, independent facilitators, communication and meeting costs, and translation of relevant documents into selected local

languages throughout all three phases. Consultation materials, as well as means to submit comments and view ADB's responses, will all be available on the ADB website.

6. **Consultation methodology.** ADB's stakeholder consultation process builds upon experience from ADB's previous policy reviews as well as from the experience of other multilateral development banks who have recently reviewed their own safeguard policies. ADB's approach follows international good practice for safeguard policy reviews and will seek to ensure that, given the challenges presented by the pandemic, the stakeholder engagement and consultation process will maintain high standards. ADB will plan consultations appropriate to each stakeholder group. Some considerations that will be included in the planning for the meaningful consultations include the following: ensuring there are clear objectives for the consultation and that participants are clear on what type of feedback ADB is seeking; allowing ample advance notice before consultations to ensure participants have time to prepare for (and possibly travel to attend) the consultation; disseminating relevant background material in an appropriate format (including language, electronic/paper, etc.) in advance; considering the methodology of the consultation such as if it is appropriate to include men and women or only women, or what the ideal size is for the topic, or what time of day ensures maximum participation; providing independent facilitators to lead consultations to ensure all voices are heard; documenting the event as appropriate, noting that in some situations participants may request to stay anonymous; and sharing feedback on how ADB used the inputs received during the consultation process. The consultation methodologies will be adapted to online formats as needed and will incorporate suitable technologies. ADB will benefit from the opportunities that online consultations afford as well as to address the challenges it presents.

7. **Web page.** ADB will maintain a webpage on www.adb.org dedicated to the SPS policy review and update process. The page, similar to the level of detail maintained during the preparation of Strategy 2030, will include the policy review timeline, the consultation schedule, a link to submit comments at any time about any aspect of the policy, summaries of all consultations, and, when available, the W-paper. ADB will also upload comment matrices that respond to comments received during the review process.

8. **Communications.** The communications strategy has two functions: (i) communicate and tailor ADB's engagement process to meet the needs of stakeholders and (ii) provide visibility to the broader SPS review process and communicate the results. To strengthen the stakeholder engagement process, the communications strategy will incorporate a range of methods to ensure that approaches are participatory and customized to fit contexts, and information is packaged and delivered in a manner and channel best understood and accessible for even by hard-to-reach stakeholder groups. Using its media and social media presence, ADB will regularly communicate information about the policy review and processes to give a high level of visibility to a wide range of stakeholders.

9. **Preliminary consultations.** In June 2020, ADB initiated an online consultation with the NGO Forum on ADB, an advocacy group monitoring ADB and its projects, particularly its adherence to its safeguards policies. The meeting, which the NGO Forum on ADB welcomed, provided an opportunity to begin a dialogue about the policy review and for the NGO Forum on ADB to highlight some of the issues that it wanted to ensure were included in the review. In July 2020, ADB convened a group of Washington, DC-based international NGOs including the Bank Information Center, Human Rights Watch, the International Accountability Project, and Gender Action, to discuss the upcoming policy review.

10. **Next steps.** ADB will engage a set of expert consultants to finalize the stakeholder analysis and stakeholder consultation plan, which will be completed by December 2020 Given

the highly dynamic operating environment because of the pandemic, ADB will continue to revise the stakeholder engagement plan to ensure that it is relevant to the reality of how best to seek meaningful inputs from stakeholders on the safeguard policy update process and implement it effectively.