Draft for Consultation

November 2021
I. INTRODUCTION TO THE SAFEGUARD POLICY UPDATE

1.1. Rationale for Review and Update of the ADB Safeguard Policy Statement

1. The Asian Development Bank (ADB) is undertaking a comprehensive review and update of its Safeguard Policy Statement, 2009 (SPS).1 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 (IED Report).2 The update will build off the findings and recommendations of the IED Report, which ADB Management endorsed. The update will seek to modernize the policy, considering the changing development context and evolving needs and capacities of developing member countries (DMCs) and private sector clients; as well as opportunities for greater harmonization with the policy principles and standards of other multilateral financial institutions (MFI). The update will consider the diversity of ADB lending modalities and operations, including the private sector, as well as requirements for different contexts such as fragile and conflict affected situations (FCAS), small island developing states (SIDS) and emergency assistance. Overall, the policy update will seek to strengthen safeguard implementation effectiveness and efficiency, in ways that will enhance beneficial safeguards outcomes for the environment and affected people.

2. The revised safeguard policy is expected to be ready for ADB Board consideration in March 2023, following a process of further reviews, policy development and meaningful stakeholder engagement. As a part of this process, ADB is undertaking a series of brief analytical studies.3 These studies will benchmark ADB’s current SPS against the policies of selected MFI and briefly consider implementation experience.4 The studies will inform the development of the new safeguard policy and will be provided for stakeholder review and consultations. Initial summaries will be disclosed first to gather initial stakeholder views. The analytical studies themselves will then be updated and disclosed in full. Stakeholder engagement and consultation will have three main phases: (i) preliminary information and outreach on the overall approach for the policy update and stakeholder engagement plan; (ii) consultation on the analytical studies; and (iii) consultation on the draft policy paper. There will be multiple opportunities for stakeholder engagement, including regional consultations; “deep dive” sessions with ADB DMCs and civil society organizations (CSOs); focus groups on specific topics; and consultations with people affected by ADB projects.5 This document provides a summary of the analytical study on involuntary resettlement safeguards.

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4 The studies are intended to complement the evaluation completed by IED in May 2020 and will not duplicate IEDs work on the overall effectiveness of the SPS.
5 Please refer to the ADB website and Stakeholder Engagement Plan for further details. https://www.adb.org/who-we-are/safeguards/safeguard-policy-review
1.2. IED Findings and Recommendations Specific to Involuntary Resettlement

3. While the evaluation finds ADB’s Involuntary Resettlement (IR) safeguard performance to be generally satisfactory, it noted a primary reliance on compensation of affected persons. In addition, it found weaknesses with livelihood restoration and improvement, especially for severely affected poor and vulnerable households, as well as of stakeholder consultation and disclosure of resettlement plans. Furthermore, the use of a numerical threshold of 200 severely affected persons for IR category A projects is judged inadequate and insufficiently risk oriented, as it does not appropriately assess the variable risks within the socio-economic, institutional, and country contexts. The evaluation also highlights a lack of safeguard requirements for and attention to social risks and impacts on communities that are not displaced due to involuntary land acquisition.

4. The evaluation recommends that ADB rethink its approach to and policy provisions for livelihood restoration and improvement by mandating adequate resources, collection of proper baseline information on the socio-economic condition of affected persons, adequate market assessments and consideration of the preferences of affected persons. It suggests that clients’ organizations should outsource livelihood restoration programs to agencies and organizations with requisite competencies. The evaluation also indicates a need for improved adherence to the requirements for meaningful consultations by ensuring full disclosure of safeguard documentation in local languages and better eliciting feedback about the project and its safeguards impacts from affected persons. A need for the active participation of government staff in consultations, to ensure adequate ownership of the management of IR safeguards, is highlighted. Moreover, a shift to integrate more risk-oriented project categorization is proposed.

II. PURPOSE AND SCOPE OF THE STUDY

5. Guided by an interest in addressing operational challenges in the implementation of the SPS, ADB’s Sustainable Development and Climate Change Department (SDCC) and ADB’s Regional Departments held a workshop in late 2018, which analyzed several problems and so-called ‘grey areas’ in the IR policy provisions through the presentation and discussion of case studies from across Asia. Critical themes emerged, as for example voluntary land transactions, associated facilities, or livelihood restoration, among others, which have informed the studies and reviews undertaken since. Thereafter SDCC undertook a detailed comparison between all key statements in the IR policy provisions of selected multilateral financial institutions, such as the European Bank for Reconstruction and Development (EBRD), the International Finance Corporation (IFC), and the World Bank (WB) with the ADB IR safeguards policy principles and requirements, as well as the ADB Operations Manual (OM) Section F1 and the preceding OM Section F2. The IR Performance Standard of the Inter-American Development Bank’s (IDB) Environmental and Social Policy Framework (ESPF) and provisions of the IUCN’s Environmental and Social Management System (ESMS) were also reviewed for specific topics. The desk review identified convergences and differences, as well as strengths and weaknesses, and highlighted many critical issues involving operational and conceptual challenges. These findings have been used to develop recommendations for consideration during the consultations with internal and external stakeholders for the SPS review and update process.

6. The outcomes and conclusions of the ongoing internal and external stakeholder consultations will inform the drafting of the updated safeguard policy principles and requirements for land acquisition and land use restriction. Stakeholder consultation for
the SPS update is an iterative process of gaining understanding and building consensus among its participants. All statements and considerations, including the policy related papers, discussion summaries and the respective policy drafts, are preliminary and subject to ongoing review and revisions.

III. OVERVIEW OF CURRENT SPS POLICY PRINCIPLES & REQUIREMENTS FOR INVOLUNTARY RESETTLEMENT

3.1. Key Policy Principles

7. Involuntary Resettlement safeguards are one of the three sets of policy principles covered by SPS, in addition to environment and Indigenous Peoples. The policy sets out the objectives, scope and triggers, and 12 policy principles for IR safeguards. Roles and obligations of the Borrower/Client are set out in Appendix 2 of the SPS under Safeguard Requirements 2: Involuntary resettlement (SR2).

8. The SPS requires Borrowers and ADB staff to seek to avoid and minimize IR and to screen and assess unavoidable impacts. The Borrower is obliged to prepare and disclose resettlement plans. Consultation and participation of displaced persons and other stakeholders and the establishment of a grievance redress mechanism need to be ensured. Giving preference to land-based resettlement strategies, lost assets are to be restored and/or compensated at full replacement cost together with appropriate assistance. The SPS stipulates the restoration and enhancement of the livelihoods of displaced persons and the improvement of the standard of living of the poor and vulnerable. Displaced persons without land titles are to be compensated for the loss of nonland assets. Procedures for negotiated settlements need to be developed in a transparent, consistent, and equitable manner. All resettlement entitlements need to be provided before the displacement of affected persons and the implementation and impacts of IR are to be monitored.

3.2. Safeguard Requirements

9. The severity of IR impacts of projects needs to be screened and categorized. Projects with more than 200 persons affected by physical displacement from housing, or loss of more than ten percent of their productive assets are classified as significant (category A). A social impact assessment with an inventory of lost assets and gender-disaggregated socio-economic baseline data will be conducted for all projects. Disadvantaged and vulnerable affected persons are to be identified to ensure that adverse impacts do not affect them disproportionately. A cut-off date for eligibility to compensation entitlements is to be established.

10. A resettlement plan based on the social impact assessment will be prepared and affected persons are to be informed and consulted about compensation and rehabilitation options, paying adequate attention to gender concerns. National laws and regulations pertaining to land acquisition will be reviewed, gaps with the requirements of the SPS identified and a suitable gap filling strategy proposed. Detailed measures for income restoration and livelihood improvement must be included. The resettlement plans are to be finalized in accordance with a project’s final detailed engineering design, and if unanticipated IR impacts occur during project implementation the resettlement plans are to be updated. A resettlement framework for specific types of projects and programs for which IR impacts cannot be assessed before loan approval may be

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6 Please refer to page 17 of the SPS for details.
adopted. The SPS encourages land acquisition through negotiated settlement and requires agreement between ADB and the Borrower on procedures for consultation, third-party validation, calculation of replacement cost and documentation.

11. Submission to ADB of draft, final and updated resettlement plans or frameworks and monitoring reports for disclosure is required. Relevant resettlement information must be provided in an accessible place and in a form and language(s) understandable to affected people and other stakeholders. Meaningful consultations with affected persons and other stakeholders need to be conducted, paying particular attention to the needs of women and disadvantaged or vulnerable groups, and a grievance redress mechanism to address affected persons’ concerns and complaints is to be established. The monitoring of the progress of implementation of resettlement plans and the preparation of semi-annual monitoring reports is required. Experienced external experts will be engaged for projects with significant impacts to verify the Borrower’s monitoring information and to prepare corrective action plans if significant involuntary resettlement issues are identified.

3.3. ADB and Borrower Responsibilities

12. Social impact assessments, information disclosure and consultations, establishment of grievance redress mechanisms, preparation and implementation of resettlement plans, and monitoring and evaluation of resettlement impacts, as well as compliance with relevant host country laws, regulations and standards, are the responsibility of the Borrower. The Borrower is required to include IR safeguard requirements in bidding documents and civil works contracts.

13. ADB commits to working with Borrowers to ensure that their responsibilities are carried out in accordance with the SPS and national requirements, and will conduct safeguard reviews, involving field visits as well as desk reviews, as part of its overall due diligence, supervision and monitoring activities. ADB is responsible for screening and categorization, providing capacity building measures to the Borrower and the disclosure of resettlement plans and monitoring reports on the ADB website. ADB project teams will conduct supervision missions for Category A and B projects and participate in consultation activities for IR category A projects.

IV. SUMMARY OF BENCHMARKING

4.1. Main Differences and Convergence

4.1.1. Objectives and Scope of Application

14. All MFIs share the objective of avoiding and minimizing displacement due to IR and make provisions for the restoration and/or improvement of living conditions of displaced and/or poor and vulnerable displaced persons. Except for ADB, other MFIs include avoidance of forced eviction, compensation of lost asset at replacement cost and stakeholder engagement among the policy objectives. Among all MFIs the IR policy provisions apply to physical and/or economic displacement resulting from expropriation, negotiated settlement within the purview of eminent domain legislation, and involuntary restrictions on land use. EBRD, IDB, IFC, and the WB explicitly include eligibility for mitigation of IR impacts on non-titled displaced land users among the scope of application, and ADB, EBRD and WB also cover displacement in anticipation or in preparation of a project. Voluntary land transactions are excluded from the scope of application among most MFIs. The WB allows for limited circumstances in which some
voluntary transactions may be covered, while the EBRD includes detailed provisions for voluntary land donations among its general requirements. Impacts on livelihoods not directly resulting from land acquisition are explicitly excluded from the application of their IR policy provisions by ADB and WB, while the EBRD, IDB and IFC allow for their application to significant respective impacts.

4.1.2. Key Findings of the Benchmarking Study

a. Classification

15. With the exception of ADB, all MFIs have adopted risk-based integrated impact assessment. ADB alone maintains separate impact classification for Environment, IR and Indigenous Peoples (IP). For IR a threshold of 200+ affected persons experiencing major IR related impacts is used to classify significant impacts (IR category A).

b. Due Diligence

16. All MFIs require a detailed IR impact assessment with a census and socio-economic baseline survey, inventory and valuation of lost assets, establishment of a cut-off date and clarification of persons eligible for compensation and assistance. Consideration of differential impacts due to the gender and vulnerability of affected persons is highlighted by ADB, EBRD and the WB.

c. Mitigation Plan

17. All MFIs require the Borrower to prepare varying types of resettlement planning documents commensurate with the project and its displacement impacts, which report on the findings of the impact assessment and determine all required compensation and rehabilitation measures. All MFIs permit the use of resettlement frameworks for projects where an impact assessment cannot be prepared before project approval, with ADB limiting the use of frameworks to four finance modalities.7

18. Mitigation measures, such as compensation at replacement cost, compensation of non-land asset losses for non-titled persons, land-based compensation for land-based livelihoods, livelihood restoration and improvement measures, or relocation and transition assistance, are common among all MFIs, as well as the requirement to deliver compensation before displacement. The EBRD and WB require updating of the valuation of lost assets in case of extensive delays or high inflation between the date of valuation and the time of compensation delivery. All MFIs require the documentation of the valuation methodology in resettlement planning documents. The EBRD and WB include provisions for deposit of compensation funds in escrow accounts in specified circumstances preventing payment to affected persons before commencement of civil works.

d. Stakeholder Engagement

19. As part of their stakeholder engagement requirements, all MFIs request the Borrower to disclose relevant information about the project, and its displacement impacts and mitigation measures in local languages and in an accessible and

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7 Sector lending, multitranche financing facilities, emergency assistance loans, and project loans with subprojects or components prepared after Board approval (with limited anticipated environment, involuntary resettlement, and Indigenous Peoples impacts).
culturally appropriate manner. The IDB, IFC and WB further detail the type of information required. However, with the exception of ADB, none of the MFIs policies explicitly require full disclosure of resettlement documents on their websites.

20. All of the MFIs make provisions for meaningful consultation and participation of affected persons and other stakeholders throughout project planning, implementation, monitoring and evaluation, as well as for the establishment of a grievance mechanism. For the EBRD, IDB and the WB, these requirements are part of their standard for stakeholder engagement. All MFIs highlight the importance of inclusion of women and vulnerable groups in stakeholder engagement activities and specify detailed requirements, including consideration of and response to feedback, freedom from manipulation and coercion, as well as documentation and disclosure of consultation activities. For grievance redress the WB emphasizes the use of suitable existing formal and informal grievance mechanisms, while all MFIs stipulate early establishment, accessibility, impartiality and promptness. Requirements for the composition of members of a grievance mechanism are generally lacking. ADB and IFC state that the grievance mechanism may not impede access to judicial remedies.

e. Monitoring and Implementation Support

21. All MFIs require clearly established procedures, commensurate with a project’s risks and impacts, for the monitoring of planning and implementation of mitigation measures, including the consultation of affected persons and other stakeholders during monitoring. They emphasize the need for corrective actions in case of compliance issues. For projects with significant impacts, most MFIs stipulate the engagement of “competent resettlement professionals” to carry out monitoring, provide advice to Borrowers, verify the Borrower’s monitoring information and/or design corrective actions. ADB requires the engagement of “qualified and experienced external experts” to undertake verification, provide advice and design corrective actions. ADB explicitly mandates the public disclosure of monitoring reports on its website. To ensure the verification of the completion of resettlement plan implementation, especially for IR category A projects, the EBRD, IDB, IFC and WB may require land acquisition execution reports, internal or external completion audits, and/or external compliance reviews. ADB does not make provisions for standalone IR completion audits and reports. All MFIs offer scant information on requirements for the evaluation of the impacts and outcomes of the implementation of IR mitigation plans.

22. Although they state a general obligation for the assessment of Borrowers’ capacity and commitment and for providing requisite capacity building measures, the EBRD, IDB, and IFC do not provide for implementation support and capacity building specific to IR safeguards. Borrowers may request the WB to offer technical assistance to strengthen their and other responsible agencies’ IR related planning and implementation capacity. ADB stipulates in OM Section F1 and in the annex to SR2 that project teams assess Borrower capacity and offer capacity building support.

f. MFIs’ and Borrowers’ Roles and Responsibilities

23. ADB in general defines its safeguards related roles and responsibilities in the SPS section on the Policy Delivery Process, including screening and categorization, due diligence, supervision, support and capacity building for safeguard management, and the disclosure of safeguard planning instruments. ADB
stipulates the roles and responsibilities of the Borrower in the four Safeguard Requirements sections of the SPS. The specific IR-related roles and responsibilities are indicated above in section 3.3. The roles and responsibilities of the comparator MFIs are similarly defined in their overall policy statements, while Borrower roles and responsibilities are indicated in the various Environmental and Social Performance Standards. The IDB includes a dedicated section on the roles and responsibilities of the Borrowers and the IDB in its general policy statement. The division of responsibilities is comparable to ADB, with the MFIs assuming screening, due diligence, supervisory, support and capacity building roles, while the Borrowers are mandated to implement all safeguard management related requirements of the standards. IR specific roles and responsibilities of the MFI are not clarified in detail. The MFIs are held to a general commitment to ensure that the client implements the respective standards.

4.2. Key Issues for Further Consideration

24. During ADB’s internal consultations among social safeguard specialists, the consideration of operational and conceptual challenges arising from the application of the SPS for IR safeguards planning and implementation has emphasized the following critical issues and recommendations for the update of the Safeguard Policy. The main themes include (i) problems experienced in the safeguard management of projects, (ii) variance with comparator MFIs, and (iii) the clarity and cohesion of concepts and statements.

Architecture

- Adoption of a performance standard approach, with binding requirements for Borrowers and ADB, including for staff, with clarification of differential roles and responsibilities for the management of land acquisition and land use restriction (LA/LUR).
- A risk-based approach to screening, scoping and categorization of LA/LUR without a numerical threshold for impact significance.
- Adoption of a separate (linked) standard for stakeholder engagement (SE), including stakeholder engagement plans, information disclosure, consultation and participation, as well as grievance redress, and the strengthening and clarification of SE provisions in the proposed standard for LA/LUR.

Conceptual Clarity and Cohesion

- A shift of conceptual focus from 'resettlement' to 'land acquisition and land use restriction', recognizing resettlement as a form of mitigation of physical displacement.
- Conceptual clarification of the status of economic and physical displacement, recognizing that all physical displacement simultaneously constitutes economic displacement.

Scope of Application

- The scope of application and requirements to cover both involuntary and voluntary forms of LA/LUR, with the former involving expropriation, negotiated settlements and compulsory LUR, and the latter covering transactions between willing buyers and sellers, leases, land donations, and pooling and swapping of land, as well as LUR with the consent of affected persons.
• Clear separation of requirements for negotiated settlement under eminent domain legislation and voluntary sale of land and other assets.
• Expanded provisions for and improved clarification of land use restriction, with application to both, natural resource management and infrastructure projects.
• Consistent application of the Standard for LA/LUR to private sector finance.
• Clear provisions for the consideration of associated facilities, existing facilities, legacy issues and cumulative impacts in social impact assessments and mitigation.
• Inclusion of safeguard provisions for livelihoods impacts not caused by land acquisition.

Strengthened Provisions and Improved Clarification

• Replacement principle and valuation methodologies;
• Feasible livelihood restoration and improvement;
• Relocation of non-titled affected persons to facilitate the re-establishment of residences and livelihoods elsewhere;
• Safeguarding of host communities;
• Consideration of gender and vulnerability;
• Expanded framework approach with increased due diligence requirements, such as mandatory detailed scoping and frequent field missions by ADB;
• Strengthening of Borrower capacity;
• Monitoring of LA/LUR management, including LA/LUR compliance and completion reports, and the evaluation of its impacts on livelihoods, including the provision of adequate resources; and
• External and third-party monitoring and verification.

V. NEXT STEPS

25. This summary of the main outcomes of the consultation draft Analytical Study on involuntary resettlement safeguards has been prepared as background material for the ongoing stakeholder consultations, to provide concise information on the benchmarking of SR2 against the safeguard provisions for land acquisition and land use restriction of other MFIs. It also summarizes key issues for further consideration based on consultations among ADB safeguard staff. External stakeholders are encouraged to use this information in addition to their own observations and concerns to make meaningful recommendations for the updating of ADB’s safeguard policy provisions for LA/LUR. Recommendations and feedback received from external stakeholder consultations will be considered to update and finalize the Analytical Study that will include further recommendation on the form, structure and content of the revised SR2. Once prepared, the detailed Analytical Study will be published in draft form and will be disclosed on ADB’s website for public consultation, review and comments.