Draft for Consultation

Summary of the Analytical Study for the Safeguard Policy Review and Update: Stakeholder Engagement, Grievance Redress and Information Disclosure

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I. INTRODUCTION

A. 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 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). 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 for ADB Board for consideration in March 2023, following a process of further review, policy development and meaningful stakeholder engagement. To inform this process, ADB is undertaking a series of brief analytical studies.³ The studies will benchmark ADB’s current SPS against the policies of selected MFIs 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 developing member countries (DMCs) and civil society organizations (CSOs); focus groups on specific topics; and consultations with people affected by ADB projects.⁵ This

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
document provides a summary of the analytical study on Stakeholder Engagement, Grievance Redress and Information Disclosure.

B. IED Findings on Stakeholder Engagement, Grievance Redress and Information Disclosure

3. The IED Report identified gaps in the scope of Stakeholder Engagement and Disclosure (SEID) requirements between DMC and the SPS requirements. The study found weaknesses in stakeholder engagement, meaningful consultation, documentation, timely disclosure, and functioning of project level grievance redress mechanisms (GRM). Limited SPS guidance on how to make GRMs effective and insufficient use of technologies was also noted. It mentioned that non-sovereign operations (NSO) performed better in project monitoring and documentation but had lower rates of disclosure due to client confidentiality.

4. The study recommended the adoption of a separate policy standard for stakeholder engagement, with provisions aligned with the recently updated MFI safeguard frameworks. The standard should provide more detailed treatment of stakeholder engagement, meaningful consultation, GRM and information disclosure. It further mentioned that the revised SPS should consider having provisions on shorter disclosure requirements, particularly for NSOs. The need for improved guidance and systematic training to staff, borrowers and clients was emphasized.

II. PURPOSE AND SCOPE OF THE STUDY

5. **Objective.** Unlike other updated MFI policies, ADB does not have a stand-alone policy standard on SEID. Current requirements for SEID are instead diffused throughout the SPS. An analysis has been undertaken to compare ADB’s current SPS policy provisions and procedures on Stakeholder Engagement, Disclosure and GRM with those of other MFIs. The objective of the analytical study is to understand where there are similarities and differences, particularly comparing those with a stand-alone SEID policy standard, and benchmarking key themes where ADB is aligned with other MFIs and where it needs to go further to meet the safeguards needs of evolving different financing modalities.

6. **Methodology.** The analysis took the IED Report and ADB’s Management Response as its starting point and undertook a documentation review of SEID in SPS and other relevant ADB policies and procedures of selected MFIs. A desk review was also undertaken of: (i) ADB’s Accountability Mechanism (AM) annual reports and a small number of selected AM cases, (ii) findings from a draft ADB GRM study; and (iii) documented stakeholder feedback provided to date as part of the safeguard policy updated process. The findings from the study have been used to identify key SEID issues and to develop recommendations for further consideration during consultation with the internal and external stakeholders.
III. BRIEF OVERVIEW OF CURRENT SPS POLICY PRINCIPLES AND KEY SEID REQUIREMENTS

A. Key Policy Principles and Requirements

7. The SPS applies to all ADB finances and administered projects, including sovereign and non-sovereign operations (NSO) and co-financed projects. The SPS embeds SEID principles throughout consultation and participation, due diligence, monitoring and reporting, use of local grievance redress mechanisms, and access to ADB’s Accountability Mechanism. In addition, the SPS indicates that information disclosure for safeguard should be consistent with ADB’s Public Communications Policy (2005).6

8. The Safeguard Requirement (SR1-3) on environment, involuntary resettlement and Indigenous Peoples safeguards require the borrower to address the concerns, complaints, and grievances of stakeholders. It mentions that GRMs should address concerns in a transparent manner, that is culturally appropriate, gender responsive, understandable, and accessible to the affected people at no cost and without retribution. SR 1-3 also provide details on requirements for disclosure the on the ADB website for environmental and social safeguard documents. It requires disclosure of project information to affected people in a manner and form that is understandable to them, and with continuing stakeholder consultation throughout project implementation.

B. ADB and Client Responsibilities

9. A borrower/client is required to conduct meaningful consultation with stakeholders at the earliest opportunity in the project cycle and reflect comments and concerns from affected people and address them in the environmental and social due diligence reports/plans. They are responsible for establishing a well-functioning GRM, to submit environmental and social due diligence and monitoring reports to ADB for disclosure on ADB’s website, and to disclose relevant project information to affected people throughout project preparation and implementation.

10. ADB commits to working with Borrowers to put meaningful consultation process into practice and ensure that clients comply with the SPS during project preparation and implementation. It requires the borrower/clients to engage with communities, groups, or people affected by proposed projects, and with civil society through information disclosure, consultation, and informed participation in a manner commensurate with the risks to and impacts on affected communities. For projects with significant adverse impacts, ADB project teams participate in consultation activities to understand the concerns of the affected people and ensure that such concerns are addressed in the project design and safeguard plans.

11. In cases, where a project triggers the provision of broad community support (BCS) for Indigenous Peoples (IP) safeguards, ADB through its own investigation, will assure itself that BCS for the project has been demonstrated by the IP communities. ADB will not finance the project if such BCS does not exist. ADB has an important and continuous oversight role in reviewing project performance against client commitments as agreed

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6 The Public Communications Policy, 2005, was replaced by the ADB Access to Information Policy, September 2018. Access to Information Policy | Asian Development Bank (adb.org)
in the legal documents and the safeguard plans, corrective action plans during the entire project cycle.

IV. SUMMARY OF BENCHMARKING STUDY FOR SEID

A. Main Differences and Convergence

12. **Scope & application.** All MFIs including ADB make provisions for meaningful consultation and good faith negotiations, documentation, disclosure, grievance redress and monitoring and evaluation. ADB does not have a stand-alone SEID standard, its aims and objectives, scope of application and general requirements are embedded in the SPS, diffused throughout the document, and not always clearly stated. Other MFIs, except IFC\(^7\) and IDB Invest, have separate Stakeholder Engagement standards, in which the aims, objectives and scope of application are described in the vision statement and with detailed provisions in the specific standard.

13. Cross cutting and thematic overlaps between SEID and other policy areas are not clearly covered in SPS. This also leads to gaps in overall environmental and social safeguards planning and implementation. Other MFIs include references to other policy standards with which the SEID standard must be read in conjunction, thereby recognizing these cross-cutting policy issues.

14. **Stakeholder Engagement Planning (SEP).** There is no specific requirement for the preparation of a SEP in the SPS. Other MFIs, the European Bank for Reconstruction and Development (EBRD), the International Finance Corporation (IFC) and the World Bank (WB) have requirements for the preparation of a SEP. It can be integrated into other plans, such as Environment Impact Assessment, Resettlement Plans, Indigenous Peoples Plans and Communication and Participation Plan. For Example, the World Bank (WB) requires through its Stakeholder Engagement and Information Disclosure Standard (ESS10) the preparation of an SEP “proportionate to the nature and scale of the project and its potential risks and impacts.” WB and IFC have joint template for an SEP as well as a Guidance Note (GN) on undertaking SE and disclosing information. While not required under the SPS, ADB private sector projects may prepare a SEP if they are co-financed with other MFIs, or through financial intermediaries (FIs) that have a SEP requirement.

15. **Information Disclosure.** All MFI safeguard policies request the borrower to disclose relevant project information in local languages in an accessible and culturally appropriate manner. The Inter-American Development Bank (IDB), IFC and WB further detail the type of information required. However, with the exception of ADB, none of the MFI policies explicitly require full disclosure of resettlement documents on their websites. EBRD, IDB, IFC, and WB, also have separate Access to Information Policies (AIP) which go into more detail concerning disclosure timing and requirements. For ADB the disclosure requirements are included in the safeguard requirements for environment, involuntary resettlement and Indigenous Peoples (SR1-3). SR1 has a requirement for draft environmental impact assessment reports for environment category A projects to

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\(^7\) IFC includes stakeholder planning in its PS1, GRM in PS1, PS2, PS4, PS5 and information disclosure in PS1, PS4, PS5 and PS7.
be disclosed on ADB’s website at least 120 days before Board consideration. For IFC the disclosure timeline is 60 days prior to consideration by the IFC Board of Directors for category A investments. 8 Other MFIs include information disclosure in their SEID standard, with the exception of IFC. 9

16. **Establishment of GRM.** All MFIs including ADB require the establishment of GRMs that are accessible, gender responsive and have a transparent process of resolution of affected people’s grievances. 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. WB, ADB and IFC state that the grievance mechanism may not impede access to judicial remedies. The provision of GRM is included in the SEID standard of other MFIs, together with linked accompanying and separate Guidance Notes. ADB requires GRMs to be established but does not provide adequate guidance on formation and effective functioning of GRMs. Good practice principles for GRMs are provided in ADB’s Good Practice Sourcebooks.

17. **Non-Sovereign Operations.** The SPS applies to all sovereign lending and non-sovereign financing; however, there is limited guidance on how SEID applies to NSOs in cases where the type and timing of ADB financing is different compared to sovereign operations. Guidance is also limited on how SEID applies to projects being processed as corporate finance, particularly those involving bond issuances or investments in an initial public offering. The SPS requirements for ADB participation in consultation and disclosure activities for projects pose difficulties in situations where these activities as part of the regulatory EIA process have been completed, or where construction has already started prior to ADB involvement. EBRD has a standalone performance requirement (PR9) for Financial Intermediaries (FIs), while IFC notes that all direct investment, including for FIs, must apply its Performance Standards, and has a separate Interpretation Note for clarification. IDB Invest describes commitments in its Environment and Social Sustainability Policy (ESSP) for direct investments and FIs, requiring both initial risk analysis and due diligence on potential E&S impacts, client capability, and in-country requirements.

18. **Monitoring.** The SPS requires ADB staff to monitor application of its policies and project progress under SR1-3, and to assess borrower/client implementation capacity, including monitoring capacity. However, it has insufficient operational guidance on safeguard monitoring requirements specific to SEID. Updated MFI policies and standards for SEID require clients to have sufficient capacity to properly monitor their projects. EBRD, IDB and WB include further SEID requirements, such as designation of specific monitoring personnel or soliciting external help to support routine monitoring activities, while IFC embeds its requirements within each performance standard (1-7). Monitoring GRM progress is given special attention within the WB’s ESS10. EBRD, IDB Invest, IFC and WB all include checklists, templates and guidance notes to guide borrowers/clients how to integrate SEID results into monitoring reports and thus provide evidence of satisfactory safeguards compliance.

19. **Guidance on SEID.** SPS SEID requirements are stated, and additional requirements are provided in ADB’s Operational Manual. Additional good practice guidance is provided in ADB’s Sourcebooks for Safeguards. However, the scattered nature of the

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8 IFC’s AIP went into effect on January 1, 2012,
9 IFC’s PS1 establishes the need for disclosure to affected communities, while PS4, 5 and 7 reflect specifics for those standards. The AIP 2012 goes into further details, including where exceptions apply.
information does not make it easy for quick and clear reference. Other MFIs have more clearly linked guidance notes and templates. Many MFIs, including ADB have endorsed a Joint Publication of the Multilateral Financial Institutions Group on Environmental and Social Standards on Meaningful Stakeholder Engagement, which provides further good practice guidance.\textsuperscript{10}

\textbf{B. Key Issues for Further Consideration during Consultations}

20. IED recommendations and the benchmarking analysis identify specific opportunities for ADB both in updating its SPS to provide clearer direction for SEID and with clarified guidance notes on SEID components. The main issues for further consideration include:

- \textbf{A stand-alone SEID policy standard} to align with other MFI safeguard frameworks, consider overlaps with cross-cutting and thematic areas; provide clearer provisions on stakeholder engagement, documentation, disclosure and GRM requirements for sovereign and non-sovereign operations.

- Preparation of a stakeholder engagement plan (SEP) proportionate to the nature and scale of the project and its potential risks and impacts. The SEP to include: (i) statement of purpose and scope; (ii) stakeholder identification and analysis, interest, and risk analysis; (iii) information disclosure and communication methods; (iv) meaningful and continuous consultation; (v) establishment and implementation of project GRMs; (vi) monitoring and database management system; (vii) roles and responsibilities of different stakeholders, budget and resource requirements for staffing, training, and project implementation.

- \textbf{Information disclosure} requirements to be considered for alignment with other MFIs for sovereign and non-sovereign operations, among other issues, how to strengthen disclosure for project affected people, as well as taking into account availability of improved communication and outreach methods.

- \textbf{Grievance Redress Mechanisms included in the SEID policy standard} and established proportionate to the potential risks and impacts of the project; customized in a culturally appropriate way for different types of affected people (for example project workers, Indigenous People, as well as in cases of sexual exploitation, abuse, and harassment); and where possible, utilize acceptable and traditional dispute resolution methods.

- \textbf{Monitoring}. Consider clarifying requirement for reviewing a client’s performance in implementing an SEP (including GRM), and in making adjustments and updates as appropriate; strengthen ADB’s safeguard oversight and resources for monitoring safeguard implementation.

- \textbf{Guidance materials}: Provide updated and improved guidance, toolkits, templates and good practice notes specific to SEID themes to clarify requirements for both sovereign and non-sovereign sectors of ADB’s activities.

\textsuperscript{10} Kvam, R. 2019. \textit{Meaningful Stakeholder Engagement: A Joint Publication of the Multilateral Financial Institutions Group on Environmental and Social Standards}. Inter-American Development Bank
V. NEXT STEPS

21. This summary on stakeholder engagement is prepared as background material for the ongoing stakeholder consultations, to provide information on the benchmarking of SEID provisions in ADB policy in comparison to the provisions of other MFIs. It also summarizes key issues for further consideration in the SPS review and update process. 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 SEID. The analytical study will be finalized based on stakeholder feedback and will be disclosed on ADB’s website for further public consultation, review, and comments.