Draft for Consultation

Summary of the Analytical Study for the Safeguard Policy Review and Update: Safeguards for Fragile and Conflict-Affected Situations and Small Island Developing States

March 2022
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 on 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 the effectiveness and efficiency of safeguard implementation in ways that will enhance beneficial safeguards outcomes for the environment and affected people.

2. The updated 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 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 developing member countries (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 safeguards for FCAS and SIDS.

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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](https://www.adb.org/who-we-are/safeguards/safeguard-policy-review)
II. METHODOLOGY

3. **Objective.** This consultation draft has four objectives: (i) review ADB’s current safeguard policy framework, and safeguard practices and challenges in FCAS and SIDS; (ii) undertake a broad comparison of the requirements of other relevant safeguard frameworks utilized by other MFIs; (iii) look at other related ADB and MFI policies; (iv) briefly discuss current implementation challenges; and (v) present initial findings of this assessment for further development and discussion with various stakeholders for inclusion in the revised safeguards framework.

4. **Methodology.** A desk review was undertaken to compare how selected publicly available MFI safeguard policies and the SPS and associated ADB documents address the topic of FCAS and SIDS. In addition, current ADB practices and implementation experience were reviews and documented. This was based on internal review with ADB safeguards staff and other staff working on FCAS and SIDS and will be further supplemented by additional review and inputs by other stakeholders. The study considered comparisons of five MFIs in addition to ADB, namely: Asian Infrastructure Investment Bank (AIIB); European Bank for Reconstruction and Development (EBRD); International Finance Corporation (IFC); Inter-American Development Bank (IDB); and World Bank (WB). These were selected as major peer MFIs with similar business models and which have more recently updated their safeguard policies or associated policies and guidance related to FCAS and SIDS.

III. ADB’S POLICY CONTEXT FOR FCAS AND SIDS

A. ADB’s Overall Strategy and Approach

a. ADB’s FCAS and SIDS Approach

5. **Defining FCAS and SIDS.** The most vulnerable ADB DMCs fall under the classifications of FCAS and/or SIDS, where fragility refers to a spectrum of situations ranging from chronic structural fragility to active conflict. These DMCs face unique development challenges that hamper their growth and make ADB and other development partner operations difficult. In 2021, ADB classified 11 DMCs as FCAS, and 16 DMCs self-identified as SIDS. Of them, 8 – Federated States of Micronesia, Kiribati, Republic of the Marshall Islands, Nauru, Papua New Guinea, Solomon Islands, Timor-Leste, and Tuvalu – are FCAS SIDS (See Figure 1).

6. FCAS-classified countries are generally characterized by political instability, weak governance and institutional capacity, economic and social insecurity, and greater vulnerability to the effects of climate change, disasters, and natural hazards. The designation of FCAS is typically ascribed to a country, but sometimes describes a subnational territory, that has been destabilized due to fragility, conflict, and violence. Since 2013, ADB has used a quantitative FCAS classification system harmonized with other multilateral development banks (MDBs).

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7. The SIDS are a distinct group of DMCs with specific vulnerabilities, including geographic remoteness, small size (micro-states), dispersed populations and markets, narrow based economies, and increasing exposure to natural hazards and climate change impacts among other issues. SIDS in Asia and the Pacific are affected by extreme fragility that can threaten lives, strain state capacity, and exacerbate local tensions over scarce resources. In the Pacific, eight countries are classified as both FCAS and SIDS; the Maldives and Timor-Leste also identify as SIDS and sit in the South Asia and Southeast Asia regions respectively.

8. Performance of the FCAS and SIDS portfolio. ADB’s portfolio performance and the development outcomes in FCAS and SIDS are lower than the average in non-FCAS and non-SIDS. While an overall 70% of ADB operations were rated as successfully completed during 2018–2020, this is proportionally smaller for SIDS (56%) and for FCAS (50%). The FCAS and SIDS problem analysis identifies constraints and challenges such as inadequate responsiveness of standards ADB processes and procedures to specific FCAS and SIDS needs, contexts, and risks; inadequate application of knowledge and tools; ADB institutional capacity constraints; and DMCs’ contextual constraints in FCAS, SIDS, and in pockets of fragility and poverty at subnational level.

9. The FCAS and SIDS Approach. In Strategy 2030, ADB called for differentiated approaches to development work in FCAS, SIDS, and subnational pockets of poverty and fragility to address the challenges of the low performing portfolio. The publication of the FCAS and SIDS Approach (FSA) in June 2021 institutionalizes these approaches and further defines them, as tailored, nuanced approaches that seek to understand the complexity of the development environment in FCAS or SIDS in order to provide effective solutions. Under the FSA, ADB actions comprise a push to initiate institutional change to apply a differentiated approach; the revision of ADB processes and procedures to streamline operations and increase flexibility; and, capturing knowledge and creating tools to enhance the development effectiveness in FCAS and SIDS.

10. **How does the FSA consider safeguards?** The FSA intends to develop and strengthen links with the review and update of the SPS. It acknowledges the need for more technical and specialist support in FCAS and SIDS, including in safeguards. The FSA, under Pillar 1 - Business Process and Procedure Reform, requires an FCAS and SIDS-specific contribution to the review of the SPS, including the elaboration of related procedures, along with enhanced guidance and support through risk-based tools at the country or sector level to enhance safeguards planning, preparatory work, and implementation.

11. **ADB institutional capacity constraints in FCAS and SIDS.** ADB has limited technical experts adequately trained on operations in FCAS and SIDS in either HQ or the resident missions and field offices concerned, and while numbers of staff with FCAS and SIDS expertise is increasing, shortfalls in field staffing remain. This is compounded by weak organizational coordination of FCAS and SIDS operations, a lack of incentive structures to retain staff with FCAS and SIDS expertise, and insufficient structured training for ADB staff working in FCAS and SIDS environments. Given these constraints, more technical specialist support is required in key thematic areas, including climate change, gender, and safeguards.

b. **Pacific Approach**

12. The Pacific Approach, 2021–2025 (Pacific Approach) serves as the country partnership strategy for 12 ADB SIDS developing member countries in the region and is closely aligned with the country partnership strategies (CPSs) prepared for Fiji and Papua New Guinea. As such, the Pacific Approach and Pacific CPSs complement and support the FSA through their focus on supporting ADB DMCs build resilience and sustainable development outcomes in FCAS and SIDS, and by applying context-specific analytics and differentiated approaches to investment and technical assistance programming. All ADB Pacific DMCs are SIDS, with seven also classified as FCAS, and they all experience varying degrees of fragility (paras 5-7). The Pacific Approach identifies chronic capacity constraints, including the understanding and application of safeguards, in both public and private sectors as one of the factors requiring heightened procedural flexibilities across the project preparation and implementation life cycle. While ADB’s safeguard policy requirements apply to all projects, flexible and differentiated procedures and approaches are necessary to ensure that standard ADB policies, processes, and procedures may be tailored, as appropriate, to respond in a fit-for-purpose manner to the context-specific needs of ADB’s Pacific DMCs. Reflecting the need to use differentiated approaches in FCAS and SIDS, the Pacific Approach applies an integrative approach to safeguards, country knowledge, project design, implementation, and portfolio management. Preparation of rigorous context-specific fragility and resilience assessments that include analysis of comprehensive risk factors, governance, and the political economy will inform ADB’s integrative approach to safeguards.

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10 Flexibilities and differentiated approaches applied in the Pacific include: (i) coordinating climate action nationally and regionally, as well as at individual project or technical assistance level; (ii) strong emphasis on capacity support, including capacity supplementation and substitution, where appropriate; and (iii) procurement and other process-related innovations such as detailed procurement review studies to assess capacity and resource needs and different procurement methods, a stronger ADB role in the selection of consultants, including through joint selection with executing and implementing agencies, establishing a pool of project implementation, safeguard, or procurement consultants to provide ad hoc support, and greater flexibility in contract packaging (including unbundling projects) to encourage the participation of local contractors.
13. ADB’s Papua New Guinea CPS likewise prioritizes the need to improve implementation of and compliance with social and environmental safeguards to address issues around complex traditional land ownership structures, weak bureaucratic capacities, inconsistently applied country safeguards, and poor contract enforcement. In the private sector, ADB aims to work directly with commercial and financial institutions to build the capacity for safeguards to enhance lending to small and medium-sized enterprises.

14. It is noted that a key innovation for Pacific operations commenced with the establishment of the Pacific Region Infrastructure Facility (PRIF). Key mandates of the PRIF include to develop and maintain critical economic infrastructure, and to promote and support harmonized business practices among its bilateral and multilateral development partners, whose differing business practices impose high transactional costs and burden on SIDS, in relation to the scale of their economies and populations, when they seek to obtain development support.

c. Common approach for management of environmental and social risks and impacts in the Pacific.

15. **Collaboration for safeguards harmonization in the Pacific.** While the objectives of minimizing environmental and social risks are broadly similar for both SIDS and their development partners, there are gaps between: (i) SIDS ability to manage the increased activity surrounding infrastructure projects (including the layers of external requirements); and (ii) development partners different internal requirements (rules and frameworks) to manage these risks. This includes safeguards. Following several years of consultation between development partners and in response to many SIDS request for a harmonized approach to safeguards across MFI operations in the region, PRIF established a working group to provide a platform for PRIF partner safeguard experts to share knowledge and good practice and work collaboratively to build capacity for improved safeguard implementation in the Pacific. The working group also examined opportunities for collaboration and shared approaches to support institutional strengthening and capacity building for the management of environmental and social issues in the public and private sectors in the Pacific.

16. After preparatory work led by ADB and World Bank (WB) in 2014, the working group convened a regional workshop in 2015 attended by 47 representatives from nine Pacific countries, the Secretariat for Pacific Regional Environment Program, ADB, WB, and the Australian Department of Foreign Affairs and Trade. All workshop participants noted the significant challenges encountered in implementing their policies for the management of environmental and social risks and impacts on the ground in Pacific DMCs. It was agreed that convergence among the PRIF members on the approach to the management of environmental and social risks and impacts is central to improvement of project level performance on these issues in the SIDS. In this context, the workshop participants expressed their commitment to strengthen their collaboration to improve development outcomes related to the environmental and social soundness of the projects they support in the SIDS.

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11 The PRIF is a forum for cooperation and coordination between its members and the Pacific DMCs. Membership includes: ADB, World Bank, Japan International Cooperation Agency, Australian Department of Foreign Affairs and Trade, European Union, European Investment Bank, New Zealand Ministry of Foreign Affairs and Trade, and United States Department of State. PRIF covers 13 of the 14 countries covered in ADB’s Pacific Department portfolio (Papua New Guinea is currently not covered by PRIF).
17. **Development of the Shared Approach.** A key focus of the working group was the development of a common/shared approach to address the transactional issues in both self-financed and co-financed operations in SIDS. During 2015-2019, the working group continued to develop the approach and consulted on drafts of the shared approach. The document was finalized in 2020 and published by PRIF in June 2021 as 'A Shared Approach for the Management of Environmental and Social Risks and Impacts in Pacific Island Countries (the Shared Approach)'. The Shared Approach was developed to provide guidance on ways to address environmental and social safeguard issues and challenges in the Pacific, particularly those that are unique to the SIDS and FCAS SIDS. Its purpose is to provide PRIF development partners with an agreed, robust approach to effectively manage environmental and social risks and impacts of infrastructure development in the SIDS. Improving project level safeguard performance, raises the efficiency of PRIF development partners and the SIDS to collaboratively manage the application of environmental and social safeguards in infrastructure projects. The Shared Approach does not replace development partners policies but seeks to adopt common terminologies and a lexicon more suitable to procedures understood and used in the SIDS and establish common methods and procedures suitable to the SIDS context. This is intended to enhance a Pacific application of each development partners safeguard policies.

18. The SIDS will benefit from implementation of the approach in the following ways: (i) more efficient and effective project preparation and implementation by employing methods and procedures that are common among PRIF development partners and appropriate to a number of unique conditions in the SIDS; (ii) use of the same terminology for environmental and social documents that are used by PRIF development partners and counterparts; and (iii) an improved counterpart understanding of development partner processes. In addition, the Shared Approach seeks to strengthen and assist the SIDS to apply their country safeguard systems (CSS).

19. Under the Shared Approach, three principles determine the manner in which development partners agree to undertake actions, these are:

   (i) build upon capacity in the region
   (ii) a focus on shared and consistent approaches
   (iii) efforts proportional to risks and impacts

20. The Shared Approach recognizes three closely linked factors that are likely to influence the effectiveness, and consequences, of development activities in the Pacific. They are (i) the scarcity of, and deep attachment to, land and natural resources; (ii) the importance of traditional leadership and decision-making practices; and (iii) the importance of community in designing and implementing development projects. Accordingly, the Shared Approach:

   (i) supports collaborative decision making by all involved parties;
   (ii) analyzes and assesses potential risks and impacts;
   (iii) identifies actions to avoid, minimize, mitigate and/or offset negative impacts;
   (iv) identifies measures to extend the reach of project benefits, or to confirm that they are culturally appropriate;
   (v) integrates management and monitoring measures into design and implementation of projects; and
   (vi) includes provisions for public consultation, disclosure of information, and culturally appropriate channels for raising and resolving local grievances.
21. The Shared Approach is primarily intended for use in infrastructure development projects (e.g., energy, telecommunications, transport, water and sanitation, and urban development sectors) that: (i) are either stand-alone projects or are sub-projects or projects that are part of a larger program for one or multiple countries, and (ii) involve civil works, for example, works relating to power and water supply, coastal protection, or transport (including roads, airports, and ports).

22. There may be cases where PRIF partners decide to apply the Shared Approach to private sector operations. The Shared Approach will support improved environmental and social safeguards implementation in the Pacific region through a series of measures set in the tables included in the document (including identification of safeguard procedures by project phase and provision of detail on activities at each phase of the project cycle and how the Shared Approach can be operationalized, and broad roles and responsibilities in implementation of the Shared Approach).

23. **Early experiences with implementation.** The Shared Approach can be applied by PRIF development partners to assist with the majority of projects they support in the SIDS. While the Shared Approach does not contain guidance for every type of project, it does provide for: (i) consideration of special issues in relation to stakeholder/community engagement, land ownership and Indigenous Peoples; and (ii) consideration of environmental and social management issues throughout the project cycle, including increased reliance on contractors given existing capacity limits.

24. During development of the document ADB and WB piloted application of the Shared Approach in co-financed projects in Fiji, Kiribati, and Solomon Islands.12 This included (i) agreeing the approach to environmental and social risk and impact management and key steps to ensure compliance with their policies while ensuring increased emphasis on, as well as much earlier entry for, and implementation of CSS; and (ii) agreeing procedures for shared review and clearance of documents and conducting joint review missions, and sharing capacity development inputs and activities. Compared with other projects, implementation and regulatory agencies for the projects using the Shared Approach have increased engagement. This is because it is their CSS, rather than development partner requirements, driving the safeguards due diligence and documentation processes. Joint involvement in the provision of training also supported the process. Benefits to the ADB and WB has been increased efficiencies derived from sharing review and clearance responsibilities and sharing the capacity development.

25. **Importance of Knowledge Sharing.** An important role for PRIF and its development partners is to collect, assess and disseminate knowledge, including examples of good practice. The sharing of knowledge is viewed as a priority activity both between PRIF and its development partners, and between those parties and the SIDS. A key priority is the identification of examples of good practice in different phases or aspects of environmental and social risk management, across a representative set of SIDS.

26. **Strengthening country safeguard systems.** PRIF development partners are encouraged to support a collaborative approach to building capacity and institutional strengthening for implementation of CSS. While the Shared Approach recognizes the need to implement CSS, it also recognizes that additional measures may be necessary to meet the requirements of PRIF development partner policies, such as the use of gap-filling measures. The Shared Approach seeks to build capacity to address implementation difficulties and weaknesses inherent in application of CSS in many

12 This included for projects in the transport (roads, bridges, wharves), water supply and sanitation, and energy sectors.
SIDS. To support this objective, a series of regional and country-level studies to understand laws, regulations, capacity, and performance is being undertaken by PRIF development partners and other parties through parallel assistance, to better target any strengthening activities.  

**d. Common approach for management of environmental and social risks and impacts in the Pacific.**

27. **Policy requirements in the existing SPS for FCAS and SIDS.** The SPS does not define or include specific language on fragile and conflict affected situations, except for allowance for simplified procedural approaches in conflict affected areas. Specifically, para 11 of Appendix 4 of the SPS states, “for projects in conflict areas where the completion of standard environmental assessments, environmental management plans, resettlement plans, and IPPs may not be possible before Board approval, the safeguard frameworks may also be considered for application.” ADB’s Operations Manual, Section F1 on Safeguards further elaborates on this point by saying that “the EIA, IEE, resettlement plan, and/or IPP prepared based on the approved frameworks are formulated and approved before any project-related physical activities start.” There is a further requirement to justify the use of the framework approach as part of the project appraisal process.

28. Under the existing policy, safeguards approach to projects in conflict-affected areas falls under the general umbrella of emergency assistance, which similarly allows for safeguards instruments to be prepared after Board approval with the subsequent application of all safeguards requirements. Overall, such clustering has been dictated by simplification of business processes and procedures for both FCAS and emergency assistance situations on the account of limited country capacities to carry out full safeguards due diligence within the project preparation timeline as well as the need for expeditiousness at project processing stage. ADB’s Revised Disaster and Emergency Assistance Policy and Revised Emergency Assistance Loan Policy adopted in 2021 have both maintained this earlier articulated approach to safeguards planning and implementation.

29. Intimidation and coercion risks may increase substantially in the FCAS and/or SIDS environments. While not explicitly linked to FCAS and/or SIDS contexts, SPS requires that meaningful consultation is undertaken in an atmosphere free of intimidation or coercion. Such requirement is cascaded through all three safeguards and is further replicated in the stipulations on grievance redress mechanism with the latter to be “readily accessible to all segments of the affected people at no costs and without retribution” (Safeguard Requirements 1: Environment (SR1), para 20; Safeguard Requirements 2: Involuntary Resettlement (SR2), para 29; Safeguard Requirements 3: Indigenous Peoples (SR3), para 22).

30. **Social risk management under ADB Operations Manual.** ADB Operations Manual Section C3 on Incorporation of Social Dimensions is also relevant for FCAS and/or SIDS context as it requires that all ADB operations should take into account the management of social risks, especially among vulnerable groups. ADB is required to identify “potential social issues during project preparation to ensure that the project design maximizes social benefits and avoids or minimizes social risks, particularly for vulnerable and marginalized groups.” The Initial Poverty and Social Analysis (IPSA)

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13 Sector Studies - Presented by Sector | Pacific Regional Infrastructure Facility (PRIF) (theprif.org)
14 EIA refers to Environment Impact Assessment, IEE – Initial Environmental Examination; and IPP – Indigenous Peoples Plan.
prepared as part of initial social risk screening for a project aims to identify a range of social risk areas, including those related to political instability, conflict, and fragility. Based on the social dimensions of the project as identified in the IPSA, a Poverty and Social Analysis (PSA) is conducted and summarized in the Summary Poverty Reduction and Social Strategy (SPRSS) of a project.

IV. IMPLEMENTATION EXPERIENCE

31. **Findings from IED Evaluation on Safeguards.** The SPS has been in effect since January 2010 and applies to all projects financed and/or administered by ADB. The IED Report states that environmental safeguard results have been generally satisfactory from the implementation of SPS. However, it also states that safeguard implementation in FCAS-classified countries was less satisfactory than in other countries in both the quality of project preparation and the implementation and supervision support. Major challenges found during the review were i) adequate screening, categorization, and disclosure at the country level during project preparation; ii) quality and frequency of reporting and monitoring during project implementation; iii) disclosure of information and consultation, especially with tribal or ethnic minorities in conflict areas; and iv) little evidence of adapting the SPS requirements to FCAS-classified country contexts.

32. The IED Report highlights that the SPS and other guiding documents, such as the ADB FCAS Operational Plan, do not provide explicit guidance on how ADB should adapt to the local context and the political economy, or on how to customize implementation arrangements to support countries in conflict and countries with weak institutional capacity. The SPS offers some flexibility in terms of frameworks for conflict-affected situations, but there has been little documented learning based on ADB’s experience or good practices for supporting capacity development to ensure safeguards are implemented. The only provision in the SPS for adaptation to country contexts is for use of Emergency Procedures for emergencies, but that is not sufficient to allow the SPS to be tailored to client capacities and country contexts in FCAS.

33. According to the IED Report, the principles of engagement for FCAS-classified countries are broadly similar in terms of the need to adapt to the country context and weak institutions, and more explicit guidance on how the SPS can be applied in FCAS as well as SIDS is required. In addition, especially for the PNG government, there is need for significant levels of ADB support for safeguard capacity development across executing and implementing agencies, with need for country systems strengthening, particularly in the areas of project management, financial management, procurement, environmental and social safeguards, and other critical operational skills.

34. **Experience in SIDS and FCAS SIDS.** There are significant challenges that are endemic to the Pacific, not least the number of FCAS SIDS and SIDS, as well as the frequency of natural disasters and the increasing fragility caused by climate change. For FCAS SIDS, greater geographic and economic fragility compound challenges already facing the countries and add to the complexity of implementing safeguards. The following is a summary of key issues affecting application of safeguards requirements in FCAS SIDS and SIDS:

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(i) **Constrained administrative and technical capacity of clients to conduct due diligence and implement safeguards requirements.** Government environmental and social agencies are typically small, understaffed, and under equipped. Existing staff and local consultants have limited familiarity with international standards and practices, and sometimes lack authority and/or resources. Weak governance and institutional capacity has the largest impact on assessments, planning and implementing safeguards, resulting in an over-reliance on consultant support, long-time frames required to plan and implement safeguards, project delays, increased grievances and unanticipated impacts, irregular monitoring reports, understaffed regulatory agencies, under-developed land registry systems and records. Lack of adequate expertise frequently extends to international consultants involved in safeguards due diligence who may not get enough exposure to projects in SIDS with ADB due to a comparatively small size of ADB’s portfolio in these countries. ADB staff underscore the importance of continued capacity building support and learning of safeguards requirements throughout the project cycle. Any capacity building and training must be seen as a continuous requirement due to brain drain, the benefits of a single program will quickly dissipate.

(ii) **Significant gaps between country safeguard systems (CSS) and MFI’s requirements.** Issues with, and gaps between, CSS and international standards create problems for project implementation and cause delay. On the other hand, ADB staff also acknowledge their limited knowledge of the client’s CSS in some instances, of discrepancies between application of SPS and CSS, and how such discrepancies can be resolved. While the objectives of minimizing environmental and social risks are broadly similar for both SIDS and development partners, there are gaps between: (i) SIDS ability to manage the increased activity surrounding infrastructure projects (including the layers of external requirements); and (ii) development partners different internal requirements (rules and frameworks) to manage these risks. There may be significant issues related to involuntary land acquisition due to outdated/rudimentary/non-existent valuation systems and major gaps in requirements for livelihood restoration and application of replacement cost. Implementation experience indicates that voluntary transfer of land without transfer of title may work for rehabilitation projects where the government was not able to acquire the land. This approach also highlights contribution of the community to local development.

(iii) **Geographic remoteness, climate change and natural hazards risk** have direct effect on client’s capacity to implement safeguards in projects and ADB’s capacity to do project supervision. Geographic remoteness contributes to increased costs of safeguards assessments, consultations, planning and implementation of safeguards for the implementing agency (IA) or the project. Remoteness may further contribute to insufficient safeguards monitoring. **Narrow economies and high import and export costs** contribute to increased project costs and challenges to use latest equipment for safeguards assessments and monitoring, and result in challenges in implementing successful livelihood restoration activities or activities to improve livelihoods. Ensuring regular supplies of reagents, calibration of testing equipment and maintenance of machinery are difficult. Relying on the local institutions to undertake this role faces the same problems.

(iv) **Political instability, economic and social insecurity.** Localized civil unrest has impacts on planning and implementation activities, with inability to field consultants, conflict with project or consultant staff resulting in injuries, avoidance
behavior of IAs towards implementing meaningful consultations. Government counterpart funds may be unavailable when required to pay compensation due to cash flow issues of IAs and complex government budgeting processes, which results in limited budget recourses available for mitigation measures and high dependency on donor funds for meeting safeguards requirements overall. Land disputes could be a deal breaker in ADB projects given that it takes a very long time in most cases to resolve disputes which could go back generations, while putting funds in escrow accounts is not always applicable or feasible.

(v) Diversity of indigenous and social structures, and complex land tenure systems. The SIDS countries have varying histories of colonization and conflict, along with differing local traditions and customs, which have left legacies that affect and shape institutional and regulatory arrangements regarding land and marine tenure. Varying forms of customary tenure, coupled with land scarcity, parallel use of both formal and customary systems, frequently complicate the process of obtaining access to land for development projects. There are various risks related to elite capture. For example, consultations are challenging in the Pacific as tribal chiefs are powerful and determine how the community will decide and get involved in consultation. There may be situations where ADB cannot access community members without the chief deciding who will be engaged. In-kind support rather than cash compensation for land may work better given that lands are communal and so compensation benefits should be accessible to the community of landowners. However, this needs to be implemented with caution to avoid chiefs/influential community members having the upper hand in deciding the nature and distribution of the in-kind compensation. Equitable development interventions may be an important element in project implementation to ensure that project benefits clearly reach a wider range of communities and affected persons.

(vi) Security and safety concerns related to conflict-affected situations which affect project supervision and interaction with affected communities. ADB staff may experience difficulties when conducting due diligence and validation missions due to security issues. In some cases, there can also be sensitive gender issues which also affect supervision and participation in such activities as field missions and consultations. During missions, project staff can be heavily monitored and there may also be potentially unpleasant consequences for the communities visited. Means to help overcome this constraint can vary but may include use of locally based entities, third party monitors/consultants with their own security arrangements, or non-government organizations (NGOs). However, ultimately planning and monitoring has to proceed under the acceptance that information will be limited and presented through an intermediary lens.

35. **ADB’s experience in conflict-affected situations.** Implementation of and full compliance with ADB’s SPS in FCAS contexts have been particularly challenging in various aspects. Many of the constraints are very similar to issues listed above and related to capacity constraints, weak governance and fragile institutions, lack of a comprehensive regulatory environment and limited scope of CSS. Capacity constraints are amplified by typically frequent turnover of key institutional stakeholders. Consequently, capacity building and training needs to be continuous and repetitive, as well as limited.

36. But first and foremost, in the situations of active conflict or community-level violence, as well as immediate post-conflict environment ADB’s staff ability to conduct field visits and closely monitor implementation of relevant safeguards requirements is limited due to the lack of security. This results in relying on reports from the implementing agencies
which may not be sufficient in determining compliance with ADB’s SPS requirements. To overcome this in countries with extensive and chronic absence of access to project sites, ADB has started a practice of engaging third-party monitors (e.g., in Afghanistan). Such monitors were recruited directly by ADB to verify whether construction was taking place prior to payment of compensations and entitlements, as the information coming from implementing agencies who themselves faced access difficulties proved unreliable.

37. Difficulties with consultations with beneficiaries and affected communities can be a major challenge, even when access is possible. There may be a higher risk of reprisals and intimidation in communities affected by or located in active conflict areas. Conflict will also constitute a particular barrier for vulnerable persons in the project area to be involved in consultations or have access to grievance redress mechanisms (GRMs). Due to violence and lack of safety, project-affected communities and persons may become internally displaced and move out of the area of the project. Locating mobile population will present challenges in payment of compensation. By the time a resettlement plan is approved, the intended recipients of the compensation may be already displaced. Prompt and streamlined approval and implementation of involuntary resettlement mitigation measures are essential.

38. Dissolution of governance institutions and basic administrative systems under conditions of conflict further exacerbates challenges related to land acquisition and indigenous peoples. Opaque property market (especially in relation to land) creates issues for land valuation. Non-registration of property transactions can further frustrate efforts to determine fair replacement cost for compensation, as can limited or no formal data on land ownership. In such cases there are proxy methods available to value land assets, and non-formal consultative means to determine ownership need to be applied. Typical logistics, such as availability of bank accounts, may not be feasible. Provision of cash compensation to APs without bank accounts needs to be accommodated.

39. Furthermore, budgetary constraints are extreme in these contexts, in form of government’s inability to fulfil its commitment towards allocating and disbursing counterpart financing for the project and to cover land acquisition and resettlement (LAR) costs. Budgetary constraints hinder efforts to fully implement SPS. ADB may considers assisting the government by sharing LAR costs. Here, financing the land and non-land assets compensation from the grant/loan proceeds may help ensure timely implementation of LAR and avoid delays.

40. Social unrest, conflict and violence may exert strong negative impacts on the project’s ability to equitably address the needs of ethnic and indigenous minorities in the area, particularly in situations where there are challenges in recognizing land ownership and land use rights for such minorities. It may also be challenging to design and sustain livelihood restoration measures in such communities. Some projects were able to demonstrate success when they involved bottom-up community development programs and had an emphasis on broad-based participation and project benefit sharing.

41. Furthermore, there is a set of challenges related to the cross section of procurement and safeguards. In particular, there is an appreciation that civil works contractors engaged in conflict environment may need to possess relevant experience in working with communities under similar circumstances, to understand contextual risks related to violence and the project’s own potential to contribute to insecurity, to have adequate staff and resources to support environmental and social mitigation measures. In some conflict situations, civil works contractors may be performing some of the implementing agency functions such as delivery of compensations to affected persons and provision
of jobs and small contracts to local people. In such a case, commitments to the delivery of environmental and social mitigation and management measures should be incorporated into contracts, and fully budgeted for.

V. ANALYTICAL STUDY FINDINGS

A. Preliminary Key Findings of the Benchmarking Analysis

42. **MDB Approaches to FCAS and/or SIDS contexts.** As part of the FSA preparation, ADB reviewed approaches to fragility and conflict adopted by other MFIs. Most MFIs have a strategic document defining their engagement in conflict-affected and fragile environments. The FSA notes the following three strategic approaches: African Development Bank’s (AfDB) Addressing Fragility and Building Resilience in Africa 2014-2019; the Islamic Development Bank’s (IsDB) Fragility and Resilience Policy (2019), and the WB Group’s Strategy for Fragility, Conflict, and Violence 2020-2025 which also covers IFC operations. IDB and the European Investment Bank (EIB) are in the process of developing their fragility and conflict strategies. Overlapping areas of MDB’s engagement in fragile and conflict-affected contexts include the focus on conflict prevention, provision of relief during active periods of conflict, building resilience in post-conflict environments, and investing in core institutional capacities.

43. **Approach to comparative analysis of MDBs’ safeguards requirements in relation to FCAS and/or SIDS.** The detailed desk review for this comparative analysis includes safeguards requirements of four MDBs (EBRD, IDB, IFC, and WB), with analysis of selected provisions of AIIB. The review covers the main policy statement of the MDBs’ safeguards frameworks, as well such key standards imbedding FCAS and/or SDIS-relevant provisions as integrated environmental and social assessment, community health and safety, and stakeholder engagement. Standards on labour and working conditions, land acquisition, indigenous peoples, and gender (relevant for IDB only) are also canvassed to check for any special treatment of fragility and conflict as well as other related risks (vulnerability, intimidation and coercion, violence, retaliation, retribution, and reprisals, etc.). As opposed to country and sector fragility assessments, provisions imbedded in safeguards frameworks and requirements aim to address project-level risks related to fragility, conflict, and security.

44. **MFIs’ shift towards assessment of contextual risk factors.** Contextual risk factors are risks which are exogenous to project and are neither caused by it nor being contributed to by a project. Conflict and fragility are considered part of this risk factor group, and many MFIs have recently shifted towards acknowledging the importance of contextual risks and incorporating them into project assessment and mitigation strategies. The WB and IDB elevate the importance of contextual risk analysis and classification related to fragility, conflict or security to the level of the policy statement and include risks of conflict or violence as part of the general criteria for environmental and social risk identification. Furthermore, the WB specifically highlights social risks.

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16 Here and elsewhere in this paper, MFIs standards are not cited by their direct titles, but thematically as the exact names vary across institutions.


18 However, the WB explicitly excludes emergency assistance due to disaster (natural and man-made) and conflict, or where the borrower has capacity constraints because of fragility being a small state from ESF application; special provisions stipulated in OP 10.00 apply in this case which defer the application of safeguards requirements till the implementation stage.
related to “threats to human security through the escalation of personal, communal or
interstate conflict, crime or violence,” conflicts and contestations over land and natural
resources, and safety and security of project workers and project-affected communities
(para 4 (b)). IDB further stresses no tolerance for retaliation, including “threats,
intimidation, harassment, or violence,” and its sensitivity to reprisals (para 7.2.).

45. **Integration of conflict and fragility considerations into the requirements for
integrated environmental and social impact assessment (ESIA) and risk
categorization.** As noted earlier, ADB’s SPS does not specifically address risks of
conflict or violence; however, the IPSA does include some general conflict risk
screening questions. ADB does not have a requirement for an integrated ESIA. Among
other MFIs with such a requirement, the WB\(^{19}\) and IDB have the most extensive
treatment of risks related to fragility, conflict, and violence. The WB reiterates the
inclusion of social risks noted in the policy statement and introduces a social and
conflict analysis tool to assess whether the project may increase existing tensions in
project communities or have an amplifying effect on stability and human security, or
may in fact itself be negatively affected by existing contextual risks of conflict and
instability. IDB highlights largely similar social risks, but then also adds a potential need
for the Borrower to include a specific (context-based) human rights due diligence if
there is a presence of internally displaced persons (IDPs), or conflict situation. IDB
further adds gender-based violence and emphasis on vulnerabilities related to refugee
and IDP status, and natural resource-dependency to the list of potential risks to be
assessed. IFC and EBRD do not include general provisions for conflict risks; however,
IFC notes that risks and project impacts may be heightened in conflict and post-conflict
countries. In the context of fragility, both IFC and IDB put a strong emphasis on
emergency preparedness and response within the purview of ESIA, as well as reiterate
relevant disclosure, consultations and GRM requirements.

46. **Fragility, conflict and security considerations in MFI standards on community
health and safety.**\(^{20}\) ADB’s community health and safety requirements indicated under
SR1 do not include any specific reference to risk associated with fragility and conflict.
Most comparator MFIs have incorporated security concerns explicitly in the title and
detailed requirements of their corresponding standard on community health and safety
(IFC, EBRD, and IDB). Community health, safety and security risks and impacts on
project-affected communities are required to be assessed, avoided and minimized; IFC
and IDB further acknowledge the compounding effects of the risks of climate change
and natural hazards to communities and the project itself; both MFIs go on to highlight
that in conflict and post-conflict areas risks to community health, safety and security
may be greater and that the project may in fact exacerbate fragile local situations and
contribute to them.

47. In terms of fragility, IFC, the WB and IDB have explicit requirements for identification
of project’s impacts on local ecosystem services that may negatively affect community
health, safety and security and make them more vulnerable to the effects of climate
change, and develop related mitigation measures. While ADB and all reviewed MFIs
contain provisions related to emergency preparedness in the context of the project’s
hazards, the WB, EBRD and IDB incorporate more detailed requirements and tools
(e.g., risk hazard assessment and emergency response plan in WB). IDB goes further

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\(^{19}\) The WB’s risk assessment may also lead to development of specific project supervision arrangements for
fragility, conflict, and violence-affected areas where access to project sites is limited due to security concerns.
See the WB’s Good Practice Note on Third-Party-Monitoring (2018).

\(^{20}\) Community health, safety, and security requirements are housed under standard 4 in safeguards frameworks of
the reviewed MFIs.
by highlighting the need to explicitly assess the project’s exposure to natural hazards and climate change to improve project and community resilience.

48. A particular set of well-aligned requirements in standard 4 of the comparator MFIs concerns the risks related to the use of security personnel to affected communities and workers on project sites.21 These requirements call for a proportionate use of such personnel, the need for public disclosure of security arrangements, the need for proper screening and training of security personnel, and availability of a mechanism to review and redress allegations of abuse and unlawful use of security mandate by such personnel. EBRD and IDB explicitly require a grievance mechanism to be available to project-affected people (IDB), communities and workers (EBRD) in relation to security personnel concerns.

49. **Treatment of gender-based violence (GBV), forced and child labour, and trafficking in persons in projects.** Fragility and conflict are associated with a greater risk of gender-based violence, forced and child labour and trafficking in persons; therefore, assessing such risks becomes an ever more important task in the context of violence, conflict, and fragility. All reviewed MFIs have a high level of alignment on policy provisions and/or guidance related to GBV risks in projects. EBRD and IDB have explicit and detailed requirements to address GBV risks of sexual harassment, sexual exploitation and abuse to project-affected persons and communities. Both MFIs have adopted the most extensive cascading of GBV requirements in their safeguards policy documents and standards, including the main policy document, standard 1 on environmental and social impact assessment, standard 2 on labour and working conditions, and standard 4 on community health, safety and security. IDB has further detailed provisions under its stand-alone standard 9 on gender. IFC and the WB, while not singling out GBV risks in their safeguards requirements, link GBV risks to the assessment and mitigation of overall gender risks, and issued extensive guidance materials on the topic and operation of a designated grievance mechanism.22 ADB’s SPS does not have explicit requirements related to GBV risks, but ADB is in the process of developing guidelines to prevent, mitigate, and respond to sexual exploitation, abuse and harassment (SEA/H) in projects. All four MFIs have detailed stipulations on prohibitions related to trafficking in persons and prohibited forms of labour, such as forced and child labour (under standard 2), with ADB having a limited coverage of assessment and mitigation requirements under its SPS.23

50. **Requirements for consultations and GRM.** Fragility, conflict, and lack of security may have a direct impact on effectiveness of consultations with key stakeholders, project-affected people and communities. ADB and all comparator MFIs24 have provisions that require meaningful consultation to be undertaken in an atmosphere free of intimidation or coercion, as well as free of manipulation, interference, discrimination, and reprisals (for comparator MFIs). Similar standards are applied towards the

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22 See the WB’s Good Practice Note on Addressing Sexual Exploitation and Abuse and Sexual Harassment (SEA/SH) in Investment Project Financing involving Major Civil Works (2020, second edition), and CDC, EBRD, and IFC’s Good Practice Note on Addressing Gender-Based Violence and Harassment: Emerging Good Practice for the Private Sector (2019)


24 For IFC, consultations requirements are housed under standard 1; for the WB, EBRD, and IDB such requirements are contained in standard 10 on stakeholder engagement and information disclosure.
establishment and functioning of GRM in projects, with an additional requirement for the mechanism to be available to affected persons (and workers covered under standard 2 for comparator MFIs) without the risk of retribution. IDB further requires the Borrower to address any “allegations of retaliation, abuse, or discrimination and take appropriate remedial measure” (para 28, standard 10). Selected MFIs also issued specific guidance materials on the issue of retribution and reprisals in projects such as EBRD’s internal Guidelines for EBRD Personnel on Handling Allegations of Retribution for Criticism and Complaints (2018); IDB Invest and IFC issued their own Good Practice Note for the Private Sector: Addressing the Risks of Retaliation Against Project Stakeholders (2021). AIIB includes broad anti-retaliation provision in policy requirements, covering expression of stakeholder views on project E&S risks and impacts. It will require clients to develop measures to protect stakeholders who may be at risk. AIIB will promptly review credible allegations of retaliation and discuss appropriate measures with client.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Key Areas for Further Consideration

51. Based on ADB’s internal consultations, the following key areas are being proposed for further consideration:

a. Enhanced policy requirements and guidance

- The need for adoption of an integrated risk-classification and integrated environmental and social impact assessment to avoid separation between the key safeguard areas of environment, land acquisition, and indigenous people and consider other social risks and impacts (e.g. labor). As part of this, greater attention is needed on climate risks and biodiversity conservation, including within marine environment. This is especially highlighted for Pacific SIDS where a holistic approach to screening and assessment of project risks and impacts better reflects the reality of ‘tangata Pasifika’ (people of the Pacific) and their home.

- Incorporation of contextual risks in project risk categorization, to account for risks related to fragility, conflict, violence, and insecurity, and further linked to country fragility and risk assessment. Formalization of such risk-based approach and development of corresponding assessment tools may further be linked with the adoption of differentiated approaches to project design, resources needed to conduct safeguards due diligence and planning, and timing of delivery of such resources vis-à-vis constraints on the grounds and implementing agency’s capacity. Consideration for delivery of safeguards requirements in FCAS and/or SIDS environment may go beyond the existing procedural flexibility approach, and consider a range of mechanisms centered around identifiable safeguards readiness and risk criteria, and the use of different operational modalities\(^{25}\). The approaches will need to factor in safeguards planning and implementation timelines into the overall project cycle, capacity building for safeguards, project design readiness, and availability of resources for financing of mitigation costs, including the costs related to land acquisitions and resettlement and biodiversity offsets.

\(^{25}\) For example, framework approaches, Multi-Tranche Financing Facility (MFF) and time-slice financing arrangements, Project Readiness Financing (PRF), Small Expenditure Financing Facility (SEFF), and use of financial intermediaries, Results Based Lending (RBL).
• Developing tools and guidance on social risk analysis, the application of the replacement principle, the delivery of consultations and the GRM in FCAS and/or SIDS environment. Review applicability of other MFI's guidance on use of security personnel, and handling allegations of reprisals, retaliation, and retribution.

• Developing clear requirements on legacy issues on land acquisition and application of voluntary modes of land acquisition such as voluntary land donation, leases, land pooling and land swapping, and willing buyer-wiling seller arrangements to support land acquisition in SIDS.26

• Developing requirements to address fragility, conflict and security considerations under community health and safety to assess and mitigate risks to community health, safety and security; developing requirements for identification of project’s impacts on local ecosystem services which can make communities more vulnerable to the effects of climate change; and development of requirements and guidance on project-related impacts to communities related to GBV and SEAH.27

• Developing specialized guidance on meaningful consultations in the context of FCAS and SIDS, in particular, in relation to handling reprisals and retribution in projects.

b. Shared Approach

• Consistent and increased application of the Shared Approach including coordinated investment in, and delivery of, capacity development. The regional strategy for safeguards capacity building currently being developed through stakeholder engagement under TA 6597-REG: Sustainable Capacity Development for Safeguards in the Pacific will provide the road map for any development partner to contribute to regional capacity development in a planned and sustained, rather than ad hoc, manner. ADB may also consider formalizing in the new policy the development and use of shared approaches in other contexts beyond the Pacific.

c. Procurement

• Revisiting procurement arrangements, especially in the context of SIDS and FCAS SIDS. There are challenges for the Pacific on experience and pre-qualification performance criteria in the bidding process and contract stage. There is a recognition that lowest cost bid will not necessarily and based on lessons learned is highly unlikely to produce most efficient outcomes or best value for money for projects delivered in remote and logistically difficult sites in the SIDS. The small to medium scale of many is such that very large and international companies are not an appropriate mechanism for project delivery. Experience working in challenging environments of SIDS, full and robust understanding of the effects of seasonality and weather and implications for construction, and recognition of the need, and reasons for the need, for enhanced and sustained community engagement, all must feature more as evaluation and performance criteria. Increase opportunities for local and regional contractors and consider inclusion of weighted criteria for local


and regional Pacific contractors, rather than large international companies which might be Pacific based\textsuperscript{28}, to improve their ability to compete. The lack of a locally/regionally competitive contracting pool will not be addressed while large international contractors, which are often subsidized by parent companies or governments, continue to be able to out-bid regional competitors through application of bid criteria which do not truly reflect the project needs.

- Contract structure in civil works contracts. There is a need for a clear identification of, and inclusion of, social mediation costs as part of contract (which is not usually identified within the provisional sum amounts).

- Addressing capacity needs for civil works contractors: e.g., the need for community liaison and social specialists to be recruited to work with communities.

B. Next Steps

52. ADB will undertake further study and analysis on thematic areas that may be included in the revised safeguards framework, how these areas may be strengthened, and how new and emerging approaches can be integrated into the revised policy. Feedback on areas identified in this preliminary analysis will be incorporated into the ongoing discussion on the policy update. Stakeholder inputs and recommendations will be solicited to enhance the analysis. These studies are ongoing and will be integrated into future reports.

\textsuperscript{28} Despite establishing offices in Pacific countries, many large international companies still mobilize many (usually most) workers, equipment, and materials from their home countries and therefore the intended, and offered, efficiencies and economies suggested in bids are rarely realized. Delays encountered due to international contractors not anticipating need for robust community engagement undertaken with cultural sensitivity paired with lack of appreciation for the impacts of seasonality and weather, and long lead times when the criticality of these matters are recognized, often require project extensions, increased number of contract variations, and additional financing; projects are seldom delivered within original project budgets and do not represent value for money.
Key References:


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