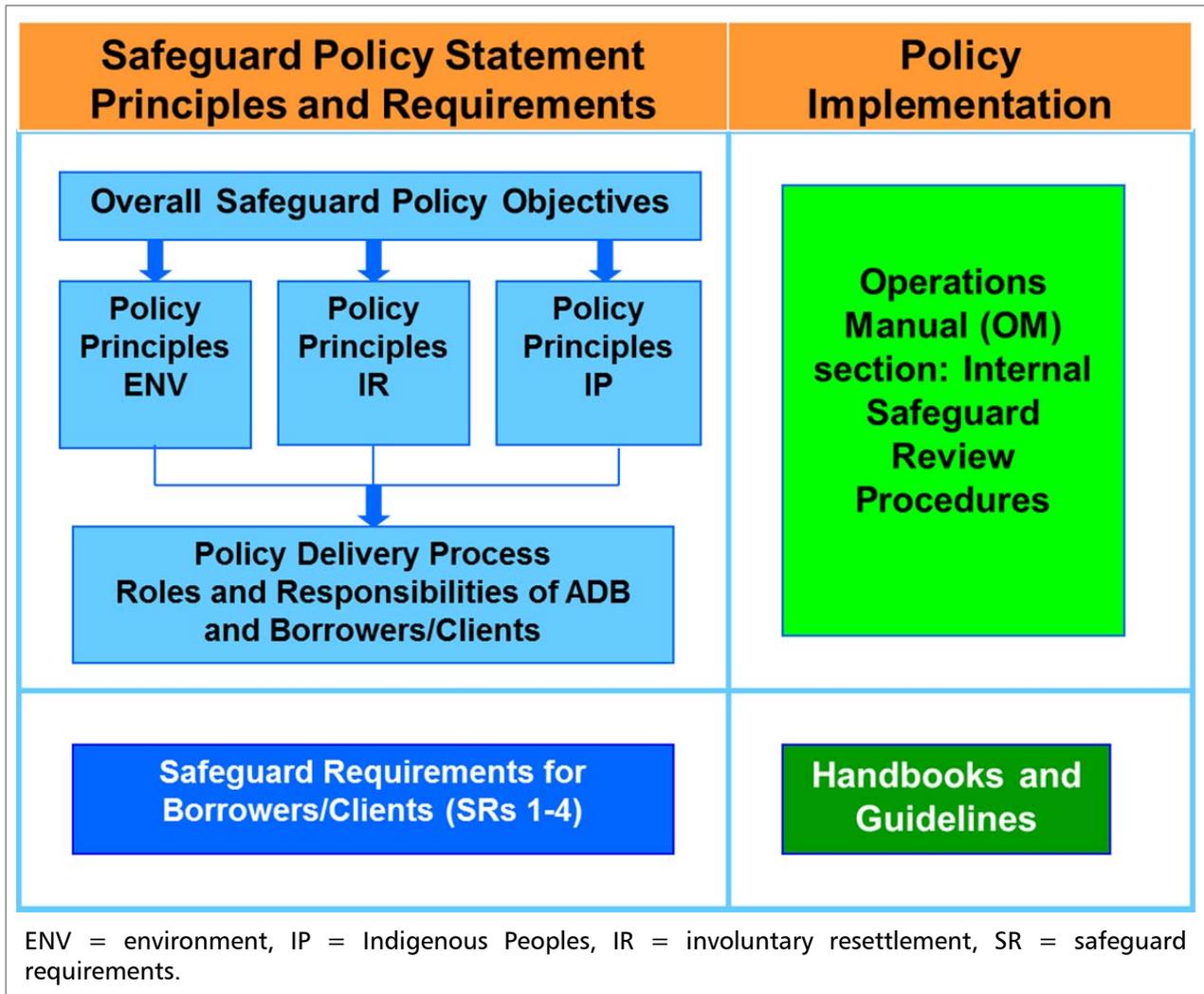


## COMPARISON BETWEEN SAFEGUARD REQUIREMENTS BEFORE AND AFTER THE SAFEGUARD POLICY STATEMENT

### A. Major Changes in the Safeguard Policy Statement

1. This section lists major changes that were communicated to ADB staff after the Safeguard Policy Statement (SPS) came into effect. The diagram below shows the overall structure of SPS implementation. Principles and general requirements were stipulated in the SPS main text and accompanying Appendixes 1 to 4, and in the Operations Manual (OM F1) and handbooks,<sup>1</sup> which were published in subsequent years and, according to the Environment and Social Safeguards Division (RSES), “elevated to the same level as the SPS.”



<sup>1</sup> ADB. 2012. *Environment Safeguards: A Good Practice Sourcebook* (Draft Working Document). Manila.  
 ADB. 2012. *Involuntary Resettlement Safeguards: A Planning and Implementation Good Practice Sourcebook* (Draft Working Document). Manila.  
 ADB. 2013. *Indigenous Peoples Safeguards: A Planning and Implementation Good Practice Sourcebook* (Draft Working Document). Manila.

2. The major changes in the safeguard categories were as follows.

**Table 1: Safeguard Categories Before and After the Safeguard Policy Statement**

Pre-SPS	SPS
<b>Environment</b>	
Includes explicit requirements on (i). No equivalent requirements on (ii)-(v). In practice, these were examined by environmental assessment reports.	Includes explicit policy principles and requirements on: <ul style="list-style-type: none"> <li>(i) environmental assessment process</li> <li>(ii) biodiversity protection and natural resources management</li> <li>(iii) pollution prevention and abatement</li> <li>(iv) occupational and community health and safety</li> <li>(v) physical and cultural resources.</li> </ul>
No explicit requirements. In practice, covered by environmental assessment.	Sets out specific requirements on habitat and biodiversity protection (legally protected areas, critical habitat, natural habitat, and modified habitat).  Requires the borrower or client to demonstrate the sustainable management of natural resources.
In determining appropriate environmental standards and emission level, ADB followed the standards and approaches laid out in the World Bank's Pollution Prevention & Abatement Handbook (PPAH).	Applies pollution prevention and control technology and practices that are consistent with internationally recognized standards such as World Bank Group's Environment, Health, and Safety (EHS) Guidelines.  Emphasizes promotion of greenhouse gas (GHG) reduction, and quantification and monitoring of GHG emissions of > 100,000 tons per annum.
On health and safety: No equivalent provision.	Borrower or client to provide workers with safe and healthy working conditions and to take measures to prevent accidents, injuries and disease.  Borrower or client to establish preventive and emergency preparedness and response measures to avoid and minimize adverse impacts and risks to the health and safety of local communities.
<b>Involuntary Resettlement</b>	
(i) Avoid involuntary resettlement wherever feasible; and (ii) minimize resettlement where population displacement is unavoidable, and ensure that displaced people receive assistance, preferably under the project, so that they would be at least as well-off as they would have been in the absence of the project.	Avoid involuntary resettlement whenever possible; minimize involuntary resettlement by exploring project and design alternatives; enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and <i>improve</i> the standards of living of the displaced poor and other vulnerable groups.
1995 involuntary resettlement policy did not clearly define policy scope and triggers.	Involuntary resettlement covers physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to asset, income sources and means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas.
Requirements not clear.	If potential adverse economic, social, or environmental impacts from project activities other than land acquisition are identified, they should be avoided, or at least minimized, mitigated, or compensated for, through the environmental assessment process. If these impacts are found to be significantly adverse at any stage of the project, the borrower or client will be required to develop and implement a management plan to restore the livelihood of affected persons to at least pre-project levels or better.

Pre-SPS	SPS
No equivalent provision.	Two other changes are: (i) the mandatory requirement for a final resettlement plan based on detailed design; and (ii) semi-annual monitoring for all social safeguards (regardless of whether the project is category A or B). The latter is now required up to project completion report.
<b>Indigenous Peoples</b>	
For projects involving Indigenous Peoples, initiatives should be conceived, planned, and implemented, to the maximum extent possible, with the informed consent of affected communities. However, there were no specific provisions on how to operationalize this concept.	The borrower and ADB will obtain the consent of affected Indigenous Peoples communities to the following three types of project activities: <ul style="list-style-type: none"> <li>- commercial development of the cultural resources and knowledge of Indigenous Peoples;</li> <li>- physical displacement from traditional or customary lands; and</li> <li>- commercial development of natural resources within customary lands under use that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples.</li> </ul>
No equivalent provision.	For the purposes of policy application, the consent of affected Indigenous Peoples communities refers to a collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives of broad community support for such project activities. Broad community support may exist even if some individuals or groups object to the project activities. <p>ADB will ensure that broad community support is demonstrated. ADB will not finance the project if such broad support does not exist.</p>
<b>Financial Intermediary/Private Sector Operations Department Product</b>	
Definition: Credit line or an equity investment. <sup>2</sup>	Credit-line, other loans, equity, guarantee, or other financing instruments <p>Includes financing instruments other than credit lines and equity investments.</p>
Environmental assessment requirements: environmental management system (EMS). <sup>3</sup>	Integrated environmental and social management system rather than three separate safeguard requirements or systems <p>Includes social safeguards (involuntary resettlement and Indigenous Peoples)—previously, only the Environment Policy of 2002 had provisions for financial intermediaries</p>
<b>Financial Intermediary Not Categorized as C</b>	
Coverage: equity investment and credit line.	Credit-line, other loans, equity, guarantee, or other financing instruments <p>Includes financing instruments other than equity and credit lines</p>
National laws and regulations: compliance with all state environmental law, regulations and requirements.	Compliance with applicable national laws and regulations related to environment, resettlement and indigenous people
Prohibited list: none.	Apply a prohibited investment activities list (PIAL) <sup>4</sup> to subprojects financed by ADB. SPS contains a PIAL

<sup>2</sup> OM Section F1/OP, Issued on 29 October 2003, page 3.

<sup>3</sup> OM Section F1/OP, Issued on 29 October 2003, page 4.

<sup>4</sup> Indicated in Appendix 5 of SPS, 2009.

Pre-SPS	SPS
<p>Elements:</p> <ul style="list-style-type: none"> <li>(i) policy;</li> <li>(ii) procedures;</li> <li>(iii) capacity ;</li> <li>(iv) capacity strengthening of financial intermediary or relevant executing agency to deal with environmental issues.</li> </ul>	<ul style="list-style-type: none"> <li>(i) Environmental and social policies;</li> <li>(ii) screening, categorization, and review procedure;</li> <li>(iii) organizational structure and staffing including skills and competencies in environmental and social areas;</li> <li>(iv) training requirements; and</li> <li>(v) monitoring and reporting.</li> </ul> <p>In addition, the SPS created a new financing modality, "General Corporate Finance", by which some types of projects that had been categorized as financial intermediaries have been categorized in SPS Safeguard Requirement 4 (paras 17–20). This SPS new financing modality has provided significant impacts on the types of financial intermediary category projects under SPS.</p>
Specific requirements	
If equity: adopt an appropriate EMS, comprising policy, procedures, and capacity, that complies with all relevant state environmental regulations and requirements in its operations. <sup>5</sup>	<p>For category A subprojects, ensure that such subprojects meet ADB's safeguard policy requirements, including those specified in Safeguard Requirements 1-3. For category B subprojects, other ADB requirements may be required on a case-to-case basis.</p> <p>Additional safeguard requirements 1-3, detailed in the SPS (pp. 16–18).</p>
If credit line: financial institution must adopt an appropriate EMS that will cover the environment assessment process of all subprojects <sup>6</sup> to be financed with ADB funds.	Same requirements as for equity.
In case of other loans, guarantees, or other financing instruments: none.	<p>Same requirements as for equity.</p> <p>Expanded to include other financing instruments other than equity and credit line.</p>
Financial intermediary's capacity to manage environment and social impacts and risks: ADB may also address any need to strengthen the capacity of the financial intermediary or the relevant environmental agency to deal with the environmental issues	<p>ADB and the financial intermediary will establish a time-bound plan to address identified gaps to improve the capacity of the latter to address environmental and social risks</p> <p>Expanded scope for a time-bound plan to address environmental <i>and</i> social requirements gaps</p>
<b>Financial Intermediary Categorized as C</b>	
No requirement to adopt an environmental management system or prepare an environmental assessment report.	Need not apply any other specific requirements
National laws and regulations: Compliance with all state environmental law, regulations and requirements	Compliance with applicable national laws and regulations related to environment, resettlement and Indigenous Peoples
Prohibited list: None	Apply PIAL <sup>7</sup> to subprojects financed by ADB SPS provides PIAL

Source: Environment Policy (2002) and Safeguards Policy Statement (2009).

<sup>5</sup> If required, ADB may also address any need to strengthen the capacity of the financial intermediary or the relevant environmental agency to deal with the environmental issues.

<sup>6</sup> This means that category A and environmentally sensitive category B subprojects must be cleared by ADB, and that the summary environmental impact assessment (SEIA) and summary initial environmental examination (SIEE) must be disclosed to the public 120 days prior to Board approval. ADB will likewise review the environmental assessment requirements as well as consultation and information disclosure requirements.

<sup>7</sup> Indicated in Appendix 5 of SPS 2009.

3. The general changes under the SPS were as follows. The SPS:
- (i) sets out policy principles and requirements that are consistent with those of other multilateral development banks, in particular with those of the World Bank and the International Finance Corporation;
  - (ii) includes tailored requirements for various financing modalities (in Safeguard Requirement 4 on program, sector, multitranche financing facility, emergency financing facilities, emergency assistance loans, existing facilities, financial intermediaries and general corporate finance);<sup>8</sup>
  - (iii) emphasizes results during implementation by strengthened monitoring and supervision (particularly on resettlement plans and environment management plan updates);
  - (iv) introduces a strategy to strengthen and use country safeguard systems (CSSs) in line with the Paris Declaration and Accra Agenda for Actions; and
  - (v) emphasizes ADB's assistance in developing member country's capacity development, including continued support with ADB's own resources and the establishment of a trust fund.

4. With regard to the application of CSSs, ADB Management and the Regional and Sustainable Development Department emphasized there would be a gradual, phased approach, including provisions for stakeholder consultations in the assessments of equivalence and capacity. Concerns over resource constraints for equivalence and capacity assessment would be addressed by additional technical assistance resources. It was explained that the CSS application would be piloted and that the continuation of the process would be subject to an IED evaluation after 3 years (i.e., which this IED report is fulfilling). If and when that assessment is done, and if the equivalence and capacity are assessed to be adequate, for any project that uses CSSs, ADB's responsibility for safeguard due diligence and review will not be removed even before Board approval. After Board approval, ADB's supervision will follow the same procedures as for any other ADB-financed projects.

## **B. Issues Raised at Consultations before SPS Approval**

5. The consultations during the preparation of the SPS took place during three rounds of discussions: (i) an initial ADB internal discussion, (ii) external consultations,<sup>9</sup> and (iii) final internal consultation with Management and the Board.

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<sup>8</sup> As of 1 July 2014, there are only two loans (under same project), Sri Lanka Education Sector Development Program and Project (SRI-3008/3009) that were approved under the new modality: Results-Based Lending. Staff guidance was issued in November 2013: *Staff Guidance for Piloting Results-Based Lending for Programs*. ADB: Manila.

<sup>9</sup> ADB's consultation process was open for comments throughout 2007–2009 on its website.

**Table 2: Major Points of Consultation During Preparation of the Safeguard Policy Statement**

Main Fundamental Issues	Final State or Understanding
<b>Initial ADB Internal Consultation (2007)</b>	
1. SPS as consolidation or integration	Consolidation of three existing policies, not “integration” (which implies there is no attempt to dilute, merge or relax requirements).
2. Policy vs. procedure	The SPS lays out principles. Procedures would be laid out in auxiliary documents, including OMs, the Handbook on Resettlement, Environmental Assessment Guidelines (2003), and sector policies on water, energy and forestry (SPS, para. 14)
3. Do-no-harm or aspiration stance	Basically the SPS maintains a “do-no-harm” stance. SPS is not laying out aspirational targets (giving basic requirement to mitigate risks, but not at a higher ideal target.)
4. Financial and Issues regarding human resources	A staff increase as a result of the general capital increase occurred from around late 2008. The SPS said: “At the same time, staff resources for safeguard implementation in operations departments and RSDD need to be optimized to ensure that adequate attention is paid to project implementation and supervision while also dealing with project processing needs and due diligence requirements. A critical need is to ensure that resident missions are properly equipped with relevant safeguard expertise ... Optimal allocation of resources to policy implementation and monitoring will remain central to improved safeguard delivery” (SPS, para. 40).
<b>External Stakeholder Consultation (2007–2008)</b>	
5. Grievance mechanism	The SPS makes references to the Office of the Special Project Facilitator and the Compliance Review Panel (SPS, para. 60).
6. Gender	The SPS referred to its Policy on Gender and Development (1998) and did not introduce new elements: “Gender issues already receive specific and focused attention in ADB operations through the implementation of ADBs’ Policy on Gender and Development (1998) and the accompanying OM. However, it is recognized that gender considerations need to be reflected also in safeguard policies where these are specially related to safeguard aspects” (SPS, para. 29).
7. Financial intermediary application	The SPS stated that: “Financial intermediaries may consider an integrated environmental and social management system (ESMS) to be more useful than three separate systems. Finally, although ADB does not currently require a prohibited investment list, it would be useful to introduce such a requirement.” (SPS, para. 36). A prohibited investment list was attached as Appendix 5 of the SPS. An ESMS was subsequently made a requirement in OM FI (para. 56).
8. Subproject requirement at processing stage	The SPS applied the safeguard frameworks when preparing and implementing safeguard plans to subprojects after Board approval (SPS, para. 35). Safeguard frameworks (including IEE and review frameworks, RF, and Indigenous Peoples planning frameworks) need to be in place prior to project approval (SPS, para. 62). Environmental impact assessments and safeguard plans are prepared during subproject or component preparation in conformity with the safeguard frameworks. Safeguard frameworks will not be used for highly complex or sensitive subprojects of sector loans or of sector loan tranches of MFFs.
<b>Final Internal Consultation (2009)</b>	
9. Country safeguard systems (CSS) pace of implementation	CSS were only to be piloted before the 3-year Operational Review, although this was not explicitly stated in the SPS, which stated: “CSS to be used in ADB projects, taking into account the World Bank’s experience in piloting the use of CSS” (SPS, para. 37). There was further prudent language in the same paragraph: “There is a need to ensure that ADB’s safeguard principles are not compromised and that risks associated with CSS are managed.” On the phased approach, the SPS said, “Use of CSS will include a limited number of DMCs with a focus on subnational, sector, or agency levels during the first 3 years after this policy becomes effective. An operational review of the effectiveness of the application and use of CSS will be undertaken 3 years after the policy becomes effective” (SPS, para. 68).
10. Disclosure requirements for private sector projects	For the requirement that a draft environmental impact assessment be posted on the ADB website 120 days before Board consideration, no differentiation was made between private and public sector operations (SPS, para. 53).

Main Fundamental Issues	Final State or Understanding
11. Demand for independent evaluation	IED would conduct an operational review in the third year of SPS implementation with a focus on CSS and financial intermediary projects. It would also conduct a 5-year review on the SPS's effectiveness in achieving ADB's safeguard objectives (SPS, para. 82).
12. Midterm action plan	A midterm action plan was added at the end of SPS for the span of 2010–2012, although milestones did not have specific dates and many did not have quantitative goals.

**Table 3: Key Issues Raised for the Three Safeguard Areas during the Consultations**

Environment	Involuntary Resettlement	Indigenous Peoples
<b>Initial ADB Internal Consultation (2007)</b>		
<ul style="list-style-type: none"> <li>SPS requirement vs. environment audit.</li> </ul>	<ul style="list-style-type: none"> <li>Framework approach requirement.</li> </ul>	<ul style="list-style-type: none"> <li>Free, prior and informed consent (FPIC)</li> </ul>
<b>External Stakeholder Consultation (2007–2008)</b>		
<ul style="list-style-type: none"> <li>Application of internationally recognized conventions.</li> <li>120-day disclosure requirement changes.</li> </ul>	<ul style="list-style-type: none"> <li>Definition of restoration of livelihood.</li> <li>Subproject resettlement framework requirements.</li> <li>Land replacement value.</li> <li>Livelihood restoration eligibility.</li> </ul>	<ul style="list-style-type: none"> <li>Definition of independent expert</li> <li>Internationally recognized conventions, including UNDRIP</li> <li>Pacific region's uniqueness</li> </ul>
<b>Final Internal Consultation (2009)</b>		
<ul style="list-style-type: none"> <li>For each proposed project, as early as possible, the appropriate extent and type of environmental assessment should be determined so that appropriate studies are undertaken commensurate with the significance of potential impacts and risks.</li> <li>Definition of associated and existing facility in private sector operations.</li> <li>Greenhouse gas treatment.</li> </ul>	<ul style="list-style-type: none"> <li>For a project involving involuntary resettlement, a resettlement plan will be prepared that is commensurate with the extent and degree of the impacts. The degree of impacts shall be determined by (i) the scope of physical and economic displacement, and (ii) the vulnerability of the affected persons. <ul style="list-style-type: none"> <li>Coverage of economic displacement.</li> <li>Land price increase during implementation and funds.</li> <li>Negotiated land.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>For projects with impacts on Indigenous Peoples, an Indigenous Peoples plan will be prepared. The plan's level of detail and comprehensiveness will be commensurate with the degree of impacts. The degree of impacts will be determined by evaluating (i) the magnitude of the impact on Indigenous Peoples' customary rights of use and access to land and natural resources; socioeconomic status; cultural and communal integrity; health, education, livelihood systems, and social security status; or indigenous knowledge; and (ii) the vulnerability of the affected Indigenous Peoples. <ul style="list-style-type: none"> <li>The phrase "broad community support" will be used in place of FPIC.</li> </ul> </li> </ul>