

# We Have Rights

A Community Guide for  
Indigenous Peoples on the 2009  
ADB Safeguard Policy Statement  
and Accountability Mechanism



2013



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WE HAVE RIGHTS: A COMMUNITY GUIDE FOR INDIGENOUS PEOPLES ON THE 2009 ADB SAFEGUARD POLICY STATEMENT AND ACCOUNTABILITY MECHANISM

Asia Indigenous Peoples' Pact (AIPP)

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## Foreword

The Asia Indigenous Peoples' Pact (AIPP) is proud to offer this community guide as a response to the continuing need to produce resource materials useful for advocacy work and community actions. In addition, the materials can contribute in strengthening the capacity of member-organizations for local, national and regional engagements. The Guide also hopes to contribute in building a fully-informed network of indigenous communities and advocates that actively addresses the multi-faceted challenges confronting the world's indigenous peoples, particularly in Asia where majority of indigenous communities are found.

This Guide focuses on the Asian Development Bank Safeguard Policy Statement of 2009 (ADB 2009 SPS) particularly its safeguard requirements for Indigenous Peoples. In addition, it features the ADB Accountability Mechanism of 2012. It also contains the principles and process of the Free, Prior and Informed Consent (FPIC). Understanding the subject areas covered in this Guide is especially urgent amidst the continuing implementation of development projects by governments funded or assisted by ADB and other Multilateral Development Banks (MDBs) that impact on indigenous communities. In addition, there is a need to challenge the prevailing development model that does not fully account for the recognition and protection of indigenous peoples' rights and welfare.

In particular, the Association of Southeast Asian Nations (ASEAN) Investment Plan supporting the economic integration of this sub-region under free trade has serious implications to millions of indigenous peoples. The avowed rhetoric of the ASEAN of sustainable development as people-centered and for environment protection is merely a lip service for indigenous peoples. There are no specific policies and measures for legal and environment protection of indigenous peoples' rights over their lands, territories and resources. Likewise, the drive for more power generation through large dams and related facilities as clean energy is already leading to massive displacements of indigenous peoples in Northeast India, Malaysia, and along the Mekong River, among others. Many large dams constructed in the 60's to the 90's were implemented without the FPIC of the affected communities as affirmed by the report of the World Commission on Dams (WCD) in 2000 entitled, "Dams and Development: A New Framework for Decision Making".

This Guide has been developed collectively by the Regional Secretariat of the AIPP through the guidance of its Secretary General, Joan Carling and contribution of its staff, Ashok Chakma, Robeliza Halip and Bernice See. Acknowledgement is also given to Maria Teresa C. Dominguez for the simplification of the community guide, Arnold M. Azurin for the copy editing work and Potchie Lazaro for the layout design and illustrations.

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*AIPP Secretariat*

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## **Abbreviations**

ADB	Asian Development Bank
AIPP	Asia Indigenous Peoples' Pact
CRO	Complaints Receiving Officer
CRP	Compliance Review Panel
CSS	Country Safeguard Systems
DMC/DMCs	Developing Member Country/Countries
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
ESMS	Environmental and Social Management System
FI	Financial Intermediary
FPIC	Free, Prior and Informed Consent
IEE	Initial Environmental Examination
IFI/IFIs	International Financial Intermediary/ies
IPOs	Indigenous Peoples Organizations
IPP	Indigenous Peoples Plan
IPPF	Indigenous Peoples Planning Framework
IR	Involuntary Resettlement
MDB	Multilateral Development Bank
NGOs	Non-governmental Organizations
OCRP	Office of Compliance Review Panel
OSPF	Office of the Special Project Facilitator
RP	Resettlement Plan
SIA	Social Impact Assessment
SPF	Special Project Facilitator
SPS	Safeguard Policy Statement
TA	Technical Assistance
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
WB	World Bank

## **BACKGROUND OF THE COMMUNITY GUIDE**

In many developing countries, international financial institutions (IFIs) including the World Bank (WB) and the Asia Development Bank (ADB) have been actively funding development projects that have had adverse impacts to many indigenous communities. Many of the projects are large scale dams and infrastructure projects that led to forced relocation, displacement and severe human rights violations of indigenous peoples, particularly in the Asia and Pacific regions where about 70% of the world's 400 million indigenous peoples live.

With these experiences, indigenous peoples had criticized IFIs for their lack of policies and mechanisms for the recognition and protection of their rights and welfare. A particular target of criticism was the ADB, the third largest donor to developing countries in Asia and Pacific. The strong lobby and advocacy work of indigenous peoples with the ADB led to the formulation of ADB's Policy on Indigenous Peoples in 1998. ADB likewise formulated two safeguard policies- Involuntary Resettlement Policy in 1995 and Environment Policy in 2002 which were also relevant to indigenous peoples. From 2007 to 2009, the ADB conducted a safeguard policy update resulting to the formulation and approval of the Safeguard Policy Statement (SPS) in 2009 which built upon the three existing safeguard policies. With its approval, the SPS superseded these three existing safeguard policies and their respective operations manuals. ADB has also revised its Accountability Mechanism in 2012.

However, at the community level and perhaps even in many indigenous peoples networks and advocates, the existence of safeguard policies and accountability mechanism of the ADB, let alone the new SPS and the revised Accountability Mechanism, is hardly heard of or understood, much less optimized in the exercise of people's rights. In addition, the SPS is written in technical format and language that are not easily understood by lay people, especially grassroots communities. On the other hand, indigenous communities and advocates should be forewarned that the SPS is not an infallible guarantee of safety for indigenous communities from potential risks and impacts of ADB projects. The many experiences of indigenous communities on development projects and violations of their rights serve as serious testimonies. In addition, stories and case studies abound on how borrowing countries trivialize, circumvent or even violate the ADB SPS.

Still, there is a need to raise awareness of indigenous communities and advocates on the ADB, SPS and Accountability Mechanism. Further, the SPS and the Accountability Mechanism can also be used to demand deeper and more comprehensive review of the ADB's development intervention within the framework of sustainable development underpinned with the respect, recognition and protection of human rights. Unless IFIs adhere to international human rights standards, their social safeguard policies will remain very weak, and indigenous peoples and marginalized sectors will end up at the fringes of development if not the victims of development aggression.

In addition, there is a continuing necessity to disseminate information on the entitlement to Free, Prior Informed and Consent (FPIC) as a collective undertaking for decision-making of indigenous communities, particularly on multilateral-funded development projects like the ADB. The SPS still does not embody the genuine principles, processes and intent of the FPIC. Nonetheless, this Guide will come in handy for grassroots communities and leaders in using the ADB SPS and the FPIC in responding to the many challenges in their localities and the world. It is also important to draw the lessons learned in the conduct of FPIC in order to strengthen the protection of the collective rights of indigenous peoples and their effective participation in sustainable development initiatives.

## Objectives

The objectives of this community guide are:

- To help indigenous communities and leaders understand ADB's Safeguard Policy Statement (SPS) with focus on the Safeguard Requirements for Indigenous Peoples;
- To provide practical guidance to indigenous communities and leaders on how they can engage at all stages of the ADB-funded projects and in the redress of grievances and adverse impacts; and
- To instill among indigenous communities the true essence of their right to Free, Prior and Informed Consent.

## Target Users

This Guide is designed for indigenous peoples in general. Specially, this Guide will be useful for:

- Indigenous communities who are affected or going to be affected by projects funded by the ADB;
- Indigenous peoples organizations (IPOs) and leaders who are currently (or in the future) doing lobby and advocacy on ADB projects at grassroots and policy-making levels;
- Any individuals or organizations that need to enhance understanding about the ADB safeguard policies affecting indigenous peoples and on the FPIC.

## Structure of the Guide

This Guide is divided into the following parts:

- **Background of the Community Guide** - presents the rationale, objectives and target users of the Guide;
- **Section 1: The Asian Development Bank and Its Safeguard Policy Statement (SPS)** – introduces the ADB to familiarize the users on its founding, functions and operations. It also provides an overview on the ADB safeguard policies, especially the 2009 SPS to situate the succeeding sections on the safeguard requirements. It also contains selected country experiences on implemented ADB projects;
- **Section 2: The Indigenous Peoples Safeguard Requirements** – explains various ADB requirements, processes and tools embodied in the SPS for indigenous peoples that borrowing countries must comply with;
- **Section 3: The Environmental Safeguard Requirements and Indigenous Peoples**—describes pertinent ADB environmental safeguard requirements, processes and tools pertinent to indigenous peoples that borrowing countries must conform with;
- **Section 4: The Involuntary Resettlement Safeguard Requirements and Indigenous Peoples** – contains pertinent ADB safeguard requirements, processes and tools for communities in danger of or already experiencing involuntary displacement including indigenous communities that borrowing countries must abide by;
- **Section 5: How to Hold the ADB and Government Accountable**—expounds on mechanisms, tools and processes that indigenous communities, organizations and individuals can use to hold the ADB and government accountable for funded projects adversely affecting their communities and rights; and
- **Section 6: The Right to Free Prior and Informed Consent (FPIC) of Indigenous Peoples** - elaborates on the principles and processes in the exercise of FPIC of indigenous communities. It also includes selected country experiences and lessons on the practice of FPIC.

The Guide also includes the references and annexes on important ADB planning and reporting formats, tools and other information to complement the discussions in the main sections. In addition, these materials will help the users become familiar with the documents that they have to scrutinize. The Guide also contains a glossary of terms for easy reference.



# 1 SECTION

## The Asian Development Bank and Its Safeguard Policy Statement

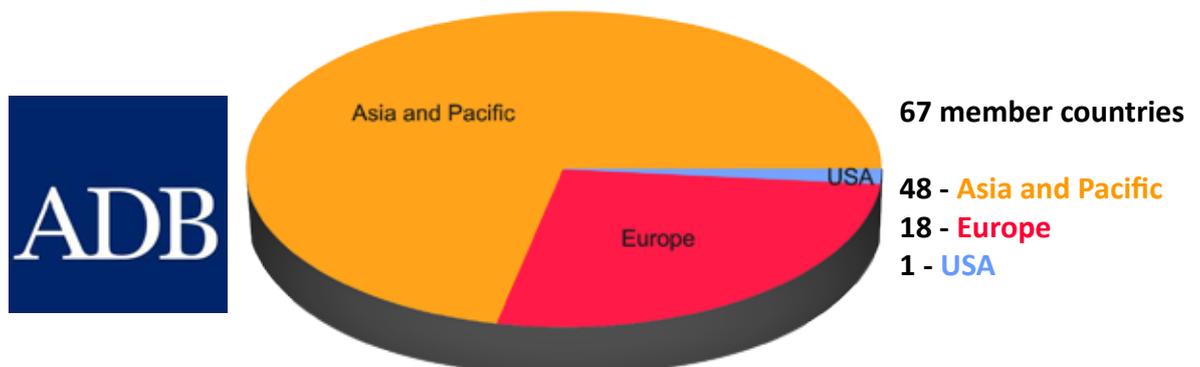
### 1.1 What is the Asian Development Bank?

The Asian Development Bank (ADB), is a multilateral development bank (MDB) founded in 1966. Its mission is to reduce poverty and promote economic development in the Asia-Pacific region. It is owned by many countries who pay contributions as members and shareholders.

At present, there are 67 member countries- of which 48 are from Asia and the Pacific and 19 are from Europe and the United States. These member-countries are categorized into two – Regional and Non-regional (See Annex 1). Each member country is represented in the ADB through its Ministry of Finance or the Governor/President of its Central Bank. The voting power of a member-country is based on its wealth and contribution to the Bank. In addition, countries which are large borrowers also have major leverage as large borrowings means more business to the Bank.<sup>1</sup> The main headquarters of ADB is in Manila, Philippines. It also has a country office in each member-country.

The ADB aims for an Asia and Pacific free from poverty.<sup>2</sup> This aim of poverty reduction is far from being achieved though as the ADB applies a top down approach of development and imposes the western model of development which have led to greater marginalization of indigenous peoples. In many of the projects funded or assisted by the ADB, the affected indigenous communities were subjected to displacement, loss of their traditional livelihoods and systematic human rights violations.

### 1.2 What support does the ADB provide to its member countries?



Members, especially developing countries (poor countries) , commonly referred to as Developing Member Countries (DMCs) receive financial support from the ADB for the implementation of various economic and social development projects in their own countries—such as dams, agricultural development and other big infrastructure projects. The financial support is given in the form of low-interest long-term loans and grants, and technical or professional advice. Loans, unlike grants, have to be paid back by the borrower. The ADB also provides information, advice and technical assistance to the governments.

Only the governments and private companies are eligible to receive the ADB’s support. Individuals are not qualified for ADB assistance.

### 1.3 What types of financial assistance are provided by the ADB to borrowing countries?

ADB provides loans or grants on the following:

- Loans for public sector project: For projects primarily large infrastructure initiatives--such as energy, transportation, communication and agriculture. Common examples of this type of projects are construction of bridges, hydroelectric dams, power transmission facilities, and oil and gas projects;
- Program loans: For public sector policy reforms that aims to bring about reforms in a particular sector towards ensuring management efficiency. In practice, these loans have paved the way for greater involvement of private sectors in the management of sectors previously run by the government such as water and power utilities.
- Loans for private sector projects: For private companies engaging in development projects in a DMC primarily on infrastructure and financial sector projects.
- Technical assistance grants or loans: For the formulation of development strategies, identification or preparation of projects/programs. Technical assistance can be extended for the preparation of feasibility studies and other assessments; consulting services for project implementation and initial operation, including the training of project personnel. These grants or loans also support institutional strengthening, policy studies, human resource development. The loans or grants also address issues of interest to the region or a sub-region or a group of individual developing member countries.<sup>3</sup>



## **1.4 Why should we know more about the ADB, its projects and the Safeguard Policy Statement?**

According to the NGO Forum on the ADB and Bank Information Center, MDBs, such as the ADB are the largest sources of development finance in the world, providing billions of US dollars in loans to low and middle income countries a year. In Asia and the Pacific, ADB, the third biggest donor, next to the Japanese government and the World Bank, is shaping the regional development agenda and development priorities of member-countries. This is shown in the active role that the ADB plays in the ASEAN particularly in targeted integration of the ASEAN markets by 2015. One in particular is the Greater Mekong Sub-region (GMS) project of the ADB which involves construction of regional roads, railways and transmission lines across the Mekong countries (Thailand, Vietnam, Myanmar and Laos).

The ADB-funded projects have most often been implemented without the free prior and informed consent (FPIC) of affected indigenous communities who continuously suffer from the adverse impacts of these projects.

The existence of ADB safeguard policies has not guaranteed the affected communities' protection from harm and fair share of benefits or entitlements. Concerned groups and communities have also raised concern on the fundamental loopholes in the SPS (as in past safeguard policies) which could further undermine the interest of indigenous peoples, along with other communities where ADB and its member countries are implementing their projects.

ADB has been criticized for its weak safeguard policy frameworks, inadequate governance structure and loan assistance to governments that are mostly unaccountable to their citizens. It has increasingly focused on financing the private sector and has signaled a strong interest in increasing support to large infrastructure projects which produce the most severe impacts on vulnerable communities and the environment. ADB has also been criticized for lack of transparency and meaningful participation with stakeholders especially affected communities. In addition, it has not helped attain poverty reduction and economic development in the region with the projects that it funded. And by its own internal evaluations, ADB recognized that many of its projects have failed to meet or sustain their objectives.

Under these circumstances, indigenous peoples must know the ADB projects and its safeguard policies so that they can monitor the ADB itself and the borrowing countries in their adherence to their own safeguard policies. By knowing about their projects, indigenous communities can voice out issues and grievances to seek solutions to problems caused by these projects. At the same time, indigenous communities can lobby for the recognition and respect of their rights, customs and traditions with the ADB and its Developing Member Countries, and in other local and international platforms.

## Case Study 1

### Impacts of Hydro-energy Dams on the Vietec People of Laos

The government of Lao PDR considers hydro-energy as the main thrust of growth and economic development. It aims to transform the country to be “the battery of Southeast Asia” by harnessing their water resources. In its power development, the government of Lao PDR targeted to build 55 large dams, seven of which are now under construction and nearly 15 more are in their advanced planning stages. The rest are expected to be completed by 2020. Among the said dams are the Nam Theun 2 (NT 2) and the Nam Ngum 3 (NN 3) where the affected indigenous communities suffered serious economic and social dislocations.

The NT 2 dam in Khammouane province directly affected more than 110,000 people, destroying their livelihood options, fisheries and riverbank gardens and caused water quality problems. The Vietec people, the most vulnerable indigenous peoples in Laos, in the Nakai plateau (6,200 of them) had been forcefully relocated in resettlement villages to accommodate the reservoir. It is reported that many of them have died as a result of living in resettlement villages, owing to psychological and physical causes. As of today, affected indigenous families in the resettlement villages have not gotten the promised land and other forms of compensation for the loss of their properties.

Food security has remained a major concern of the affected indigenous peoples. Although the material needs for housing, electricity, roads, schools and health centers are provided at the resettlement villages, there is no guarantee that the people’s livelihoods will be recovered and become sustainable. The poor quality of the land in the resettlement sites continues to cause problems for villagers who are unable to grow sufficient food for their families, and to pay for their electric bills.

Source: Asia Indigenous Peoples Pact (AIPP), Development Aggression as Economic Growth: A Report by the Asia Indigenous Peoples Pact, Thailand: AIPP Printing Press, 2012, 53.

## Case Study 2

### Lafarge Cement in South Asia: Violators of ADB Safeguards

“Natural resources needed by tribal people for their survival—water, trees, forests and land for cultivation—will soon be completely lost if the limestone mining operation by the Lafarge Umium Pvt. Ltd is allowed to continue by authorities”, said an elderly man (name withheld upon request) living in the Shella village in the East Khasi Hills of Meghalaya in North East India ...”

The Lafarge Surma Cement (LSC) project is operated by Lafarge Group of France and Cementos Molins of Spain. It is funded by an international consortium of financiers led by the ADB and the International Finance Corporation (IFC) of the World Bank Group and five others. The consortium helped Lafarge Group of France and Cementos Molins of Spain set up a cement plant in Bangladesh with limestone and siltstone supplied from Meghalaya, India. Extractive activities are undertaken in the Shella Confederacy in the East Khasi Hills and are being ferried by a conveyor belt to Chhatak in Sunamgonj province, Bangladesh. LSC is the first ADB private sector project in North east India under the Bank’s South Asia Sub-regional Economic Cooperation (SASEC) program.

Despite the review missions conducted in April, 2008 by the ADB, major violations by the project proponents regarding national, traditional and international laws and principles continue unabated.

... A detailed impact assessment has not been conducted to date. .. ADB has not prepared a resettlement plan as well as an Indigenous Peoples Development Plan as required under its own policies... Community groups have charged that the ADB did not conduct proper preliminary assessments nor did they evaluate properly the existing land conflicts in LSC project areas. The ADB and Lafarge have meddled in the local affairs and have aggravated local conflicts...

Source: excerpts from an article written by Ramananda Wangkheirakpam, Coordinator of the North East People's Alliance on Trade Finance and Development. The article was made possible through Panos South Asia. (refer to <http://www.forum-adb.org/News/20080829.htm> for the full write-up)

### **1.5 What are ADB Safeguard Policies?**

The ADB defines “Safeguard Policies” as “operational policies that seek to avoid, minimize or mitigate adverse environmental and social impacts, including protecting the rights of those likely to be affected or marginalized by the development process”.<sup>4</sup>

In other words, safeguard policies are rules that a borrower/client and the ADB must follow in planning and implementing a project so that negative impacts on the people and environment can be avoided, mitigated or minimized.

### **1.6 What is the ADB Safeguard Policy Statement?**

The SPS consolidates the three previous safeguard policies on the environment (2002), indigenous peoples (1998) and involuntary resettlement (1995) into one single policy that enhances consistency. In addition, the consolidation of these policies enhances coherence and more comprehensively addresses environmental and social impacts and risks.

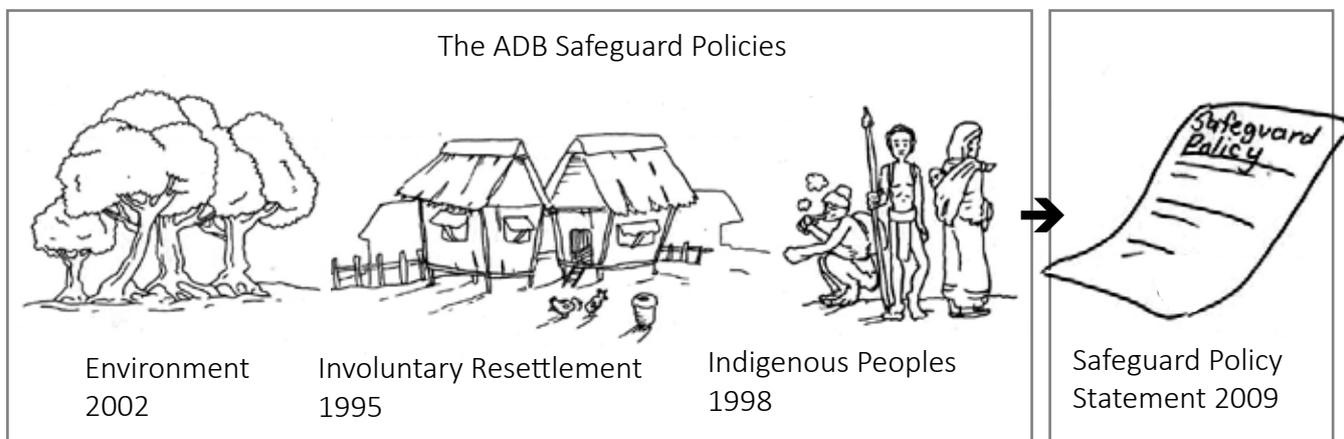
In the SPS, ADB sets out the policy objectives; scope, principles and when these three safeguard areas will start (see Boxes 2, 10, 13 for the policy principles). The Indigenous Peoples Safeguards are initiated if a project directly or indirectly affects the dignity, human rights, livelihood systems, or culture of Indigenous Peoples or affects the territories or natural or cultural resources of these peoples. The Environment Safeguards are used or triggered if a project is likely to have potential environmental risks and impacts. The Resettlement Safeguards cover physical and economic displacement. Resettlement Safeguards cover physical and economic displacement.

To achieve policy objectives and deliver the policy principles, the ADB carries out the policy delivery process by undertaking actions or activities for the three safeguard areas.

Finally, the ADB sets safeguard requirements that borrowing countries must comply with and these requirements will be elaborated in Sections 2 to 4. As will be evident later, the activities in the policy delivery process below are particularized to reflect the specific requirements in each of the above-mentioned safeguard areas that ADB and borrowing countries must comply with.

The objectives<sup>5</sup> of the SPS are:

1. “To avoid adverse impacts of projects on the environment and affected people, where possible;
2. To minimize, mitigate, and/or compensate for adverse project impacts on the environment and affected people when avoidance is not possible; and
3. To help borrowers/clients to strengthen their safeguard systems and develop the capacity to manage environmental and social risks.”



### What challenges did ADB face in the implementation of the 1998 Policy on Indigenous Peoples?

According to ADB, “Application of the 1998 Policy on Indigenous Peoples poses challenges in the region because of the huge variation in countries’ history, cultures, ideologies, economic resources, demography, and politico-institutional frameworks. Countries’ national legislation and definitions of indigenous peoples, if any, are seldom fully aligned with ADB’s policy. Experiences with policy implementation have been mixed and key challenges remain, including the following:

1. Recognition of indigenous peoples’ cultural identity and rights to their ancestral lands and resources,
2. Fair sharing of development benefits among affected indigenous peoples communities and the rest of the society, and
3. Meaningful and culturally appropriate consultation with indigenous peoples communities in planning and implementing projects that are likely to affect their lives.”

Source: 2009 SPS:7

The policy delivery process and activities<sup>6</sup> are as follows:

**A. General Requirements:**

- 1. Screening and Categorization.** ADB will screen and categorize projects at the earliest stage of project preparation when sufficient information is available. The screening and categorization is done to determine the significance of potential impacts or risks, level of assessment and institutional resources required for the safeguard measures and disclosure requirements;
- 2. Occurrence of Involuntary Resettlement.** ADB will determine if an involuntary resettlement is present;
- 3. Presence of Indigenous Peoples.** ADB will determine if the project will have potential impact on indigenous peoples;
- 4. Information Disclosure.** ADB will ensure that relevant information about environmental and social safeguard issues are made available in a timely manner, in an accessible place, and in a form and language understandable to affected people and stakeholders, including the general public;
- 5. Consultation and Participation.** ADB will make sure that meaningful consultation processes are practiced with affected people and that consent of affected indigenous peoples through meaningful consultation (for the ADB definition, see Section 2) is sought in special project activities that will affect their cultural resources and knowledge, natural resources, or their stay in traditional or customary lands;
- 6. Due Diligence and Review.** ADB will conduct review of safeguards, social and environmental assessments and planning process through field visits and desk reviews to ensure that key potential environmental impacts and risks are identified. Moreover, effective measures for adverse impacts are incorporated into the safeguard plans and project designs, and consultations with affected peoples are done. If a borrowing country failed to meet ADB's safeguard requirements, additional assessments or improvement in the safeguard plans, and capacity building component can be done.
- 7. Monitoring and Reporting.** Both the ADB and a borrowing country will set up their respective monitoring systems. ADB will require the borrowing country to submit and disclose periodic monitoring reports and other documents.

- 8. Local Grievance Redress Mechanism.** ADB will require the borrowing country to set up and maintain a grievance redress mechanism at the project-level to receive and facilitate resolution of affected peoples' concerns and grievances on the project. The process in addressing the peoples' concerns should be understandable and transparent, gender responsive, culturally appropriate and readily accessible to affected people.
- 9. Accountability Mechanism.** Affected people can also use the Accountability Mechanism of ADB in submitting their complaints on the project. This mechanism will be discussed in Section 5.

## **B. Special Requirements**

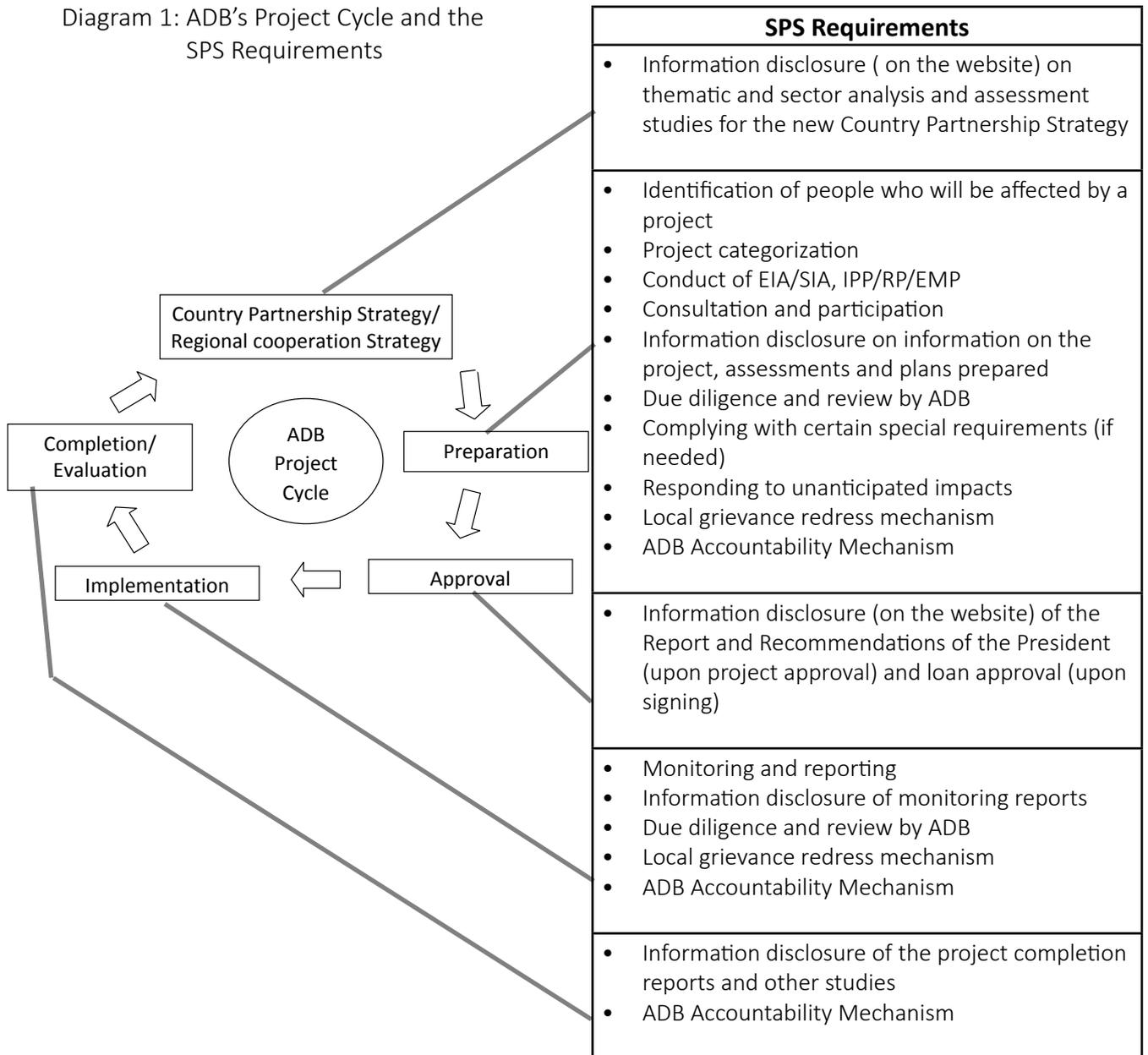
For specific cases that require tailored approaches to address social and environmental impacts and risks, there are special requirements that borrowing countries must comply with. Some examples of these projects are for program lending, sector lending, emergency assistance loans, financial intermediaries, multitranches financing facilities, and general corporate finance.

A particular document to submit to ADB prior to project approval is the Safeguard Framework to ensure that the sub-project or project components implemented comply with the ADB safeguard objectives, principles and requirements. The Safeguard Framework will provide guidance in screening and categorization, assessment, planning, institutional arrangements and other processes to be followed. Within the three safeguard areas of the SPS, the following Safeguard Frameworks may be required—Environmental Assessment and Review Framework, Resettlement Framework, Indigenous Peoples Planning Framework (See Annexes 2-5 for the contents of these safeguard frameworks).

For projects involving investment of ADB funds to or through financial intermediaries (FI), one requirement is to establish an appropriate environmental and social management system (ESMS) which incorporates the following: environmental and social policies; screening, categorization and review procedures; organizational structure and staffing; training requirements; and monitoring and reporting.

Also, as will be explained in Section 2 (Item 2.12), there are certain types of projects affecting indigenous peoples which require borrowing countries to fulfill special requirements.

Diagram 1: ADB's Project Cycle and the SPS Requirements



### Case Study 3

#### North East Capital Cities Development Infrastructure Project (NERCCDIP) Phase-I In Shillong, Meghalaya, India

##### Background

A loan agreement has been signed in October, 2009 between ADB and Ministry of Urban Development (MoUD), Government of India (GOI) and the five states of Sikkim, Nagaland, Tripura, Meghalaya and Mizoram in India's North East to implement the Capital Cities Development Investment Program (NERCCDIP) Phase 1. The objectives of NERCCDIP include achieving sustainable urban development in the project sites of Agartala, Aizawl, Kohima, Gangtok and Shillong through investments in urban infrastructure sectors and service improvement in the sectors of water supply, sewerage and sanitation, and solid waste management. The project aims to reduce disparities between the North East Region

(NER) and the developed regions of India through municipal reforms to develop legislative and institutional frameworks for Urban Legislative Bodies (ULBs), accompanied with reforms that will create revenue sources by introducing and rationalizing user charges and urban-based taxes. The estimated date of project completion is 31 December 2015. The project is financed through Multi-tranche Financing of ADB. The NERCCDIP is indeed part of ADB's loan initiatives in India's North East under the South Asia Subregional Economic Cooperation (SASEC) which includes investment in a range of sectors-- trade, road, tourism, power, agribusiness, etc.

### **NERCCDIP Sub-project in Shillong, Meghalaya and Indigenous Peoples**

For Shillong, the NERCCDIP sub-projects are Solid Waste Management and Sewerage and Sanitation projects. The primary objective outlined under Solid Waste Management is to introduce house-to-house waste collection, improvement of primary and secondary collection and transportation system, development of short-term sanitary landfill and transfer station, and permanent landfill. The Sewerage and Sanitation Sub-project financing includes service connections to households, laying of primary and secondary networks along the existing roads or routed along the natural streams and nullahs, and construction of a Sewerage Treatment Plant at western side of Mawlai village using aerated lagoon system followed by up-flow settling tank.

The indigenous peoples affected by the project in Meghalaya include the Khasis, Jaintia and Garos. The greater Shillong area is mostly inhabited by Khasi people. The Durbar Shnongs, traditional political setup of Khasi people in each locality, though without constitutional or state recognition, is the most powerful and active body at the local level and the headmen of the Durbar Shnongs look after (i) certain administrative, municipal and financial functions, (ii) law and order, and common properties of the village, and (iii) conventional municipal services like water supply, sanitation, management of roads, footpaths and water sources.

### **Issues and Challenges**

**ADB's Urban Reform Agenda and impact on Khasi Peoples' traditional institutions.** In a clear cut case of undermining traditional institutions of Khasi people, project proponents insist on holding municipal elections under 74th Constitutional amendments (CAA) in Shillong and under the new Meghalaya Community Participation Bill, 2010 without the consent of Khasi peoples' traditional institutions. Accordingly, project proponents and ADB plans to transfer functions from state government to the Urban Local Bodies (ULBs) in Shillong from early 2011 and to install an elected urban local body in SMB and integrate the traditional governance into the urban governance

framework. Traditional institutions of Khasi people, the Durbar Schnongs of Shillong Municipality Area have already objected to the new bill and plan to organize elections.

**Absence of Holistic Impact Assessment and Misrepresentation of Facts.** A holistic impact assessment on the entire range of impacts of the two sub-projects concerning social, economic, environmental, health, etc. on Khasi people in Meghalaya is still absent. Though three broad framework documents on indigenous people, Environment, Resettlement and Rehabilitation for NERCCDIP-1, including an initial environmental examination for Shillong Solid Waste Management have been prepared, there is serious misrepresentation of facts and non-disclosure of information. No social impact assessment, indigenous peoples development plan, rehabilitation and resettlement framework were prepared for each sub-project as required under Multitranch Financing Facility as project proponents misrepresent ADB's project classifications based on impacts.

**Land Acquisition and Displacement.** The forest and farmland proposed for waste disposal site is the only source of livelihood for the villagers of Tynring. The forest in and around is also source of their water. The creation of waste disposal site will lead to serious pollution and contamination of ground water and increase in diseases and rodents, which will further destroy crops and other food sources and will increase their poverty. Displacement from their land and source of livelihood will only lead to their impoverishment, marginalization and conflicts.

**Information Disclosure.** There is serious lack of dissemination of timely information on the two subprojects of NERCCDIP. While ADB attempts to upload some of the basic and necessary document in its websites, certain information, more specific to Sewerage and Sanitation are missing. Information on the two sub-projects have not been informed to the Durbar Shnongs and the people. Secondly, existing information has not been translated into Khasi languages. The Durbar Shnongs in Shillong Municipal Area are not provided with the holistic plan of ADB and the project proponents. There is no clear information on other ADB-funded urban projects such as the Jawaharlal Nehru National Urban Renewal Mission (JnNURM) vis-à-vis NERCCDIP-1 under which municipal elections are planned.

**No Technology Transfer and Ideas and Overlapping Initiatives.** There are no efforts to integrate the traditional community-based management of waste in Meghalaya (Mawlynnong village in Meghalaya was declared as the cleanest village in Asia by Discover India Magazine in 2003). The Australian Aid Agency recently concluded its project for water and sanitation in Shillong and waste collection facilities and many of the infrastructures created and allied machinery for proper sanitation remained defunct. So, the ADB will be used again for the same purpose, in a series of overlapping initiatives.

*Excerpts from the report written by Jiten Yumnam, A Brief Assessment of Solid Waste Management and Sewerage and Sanitation Sub Projects under ADB's North Capital Cities Development Infrastructure Project (NERCCDIP) Phase-I in Shillong, Meghalaya, 2010.*

### 1.7 What ADB projects is the SPS applicable?<sup>8</sup>

The SPS applies to all ADB-financed and/or ADB-administered projects and their components. These projects include both government and private sector operations.

ADB will not finance projects that do not comply with the SPS, nor with the host country's social and environmental laws and regulations, including those laws implementing host country obligations under international law.

### 1.8 Who are responsible in the implementation of the ADB SPS?

According to the 2009 SPS, both the ADB and the borrowing countries or clients are responsible in implementing the SPS. The borrowing country or private company must fulfill the requirements of the SPS while the ADB must supervise and make sure that the SPS are followed by the borrower. In particular, the following are their respective roles and responsibilities:<sup>9</sup>

#### ROLES AND RESPONSIBILITIES OF THE ADB:

1. Screens projects to specify ADB's safeguard requirements;
2. Undertakes due diligence; and reviewing the borrower's social and environmental assessments and plans to ensure that safeguard measures are in place to avoid, minimize, mitigate and compensate for adverse social and environmental impacts;
3. Determines the feasibility of ADB financing;
4. Helps the borrowing country build its capacity to deliver the safeguards;
5. Monitors and supervises the borrowing country's social and environmental performance throughout the project cycle;
6. Seeks corrective measures and work with the borrowing country to bring it back into compliance;
7. Exercises legal remedies that are available under ADB legal agreements, including suspension, cancellation, or acceleration of maturity;
8. Discloses safeguard plans and frameworks, including social and environmental assessments and monitoring reports on its website;
9. Formulates with borrowing country and mutually agree on specific measures to ensure that ADB's safeguard policy principles and requirements are full complied with (in case national safeguard policies and regulations of borrowing country differ from the ADB's SPS).

## **ROLES AND RESPONSIBILITIES OF BORROWING MEMBER COUNTRY:**

1. Assesses projects and their environmental and social impacts;
2. Prepares safeguard plans and engage with affected communities through information disclosure, consultation, and informed participation following all policy principles and safeguard requirements;
3. Submits all required information, including assessment reports, safeguard plans/frameworks, and monitoring reports, to ADB for review;
4. Complies with host country laws, regulations, and standards, including host country obligations under international law.
5. Implements safeguard measures agreed with ADB to deliver the policy principles and meet the requirements specified in the Safeguard Requirements 1-4;
6. Includes the safeguard requirements in the bidding documents and civil works contracts;
7. Formulates with ADB and mutually agree on specific measures to ensure that ADB's safeguard policy principles and requirements are full complied with (in case national safeguard policies and regulations of borrowing country differ from the ADB's SPS).

Table 1

Project Categorization based on Impacts				
Country/Project Title	Location	Safeguard Category		
		Envi.	Res.	IP
<b>A. Bangladesh</b>				
1. Chittagong Hill Tracts Rural Development II	CHT	B	A	A
Technical Assistance Second Chittagong Hill Tracts Rural Development Project (CHTRDP II)	Rangamati, Khagrachari and Bandarban	B	B	A
2. Bangladesh India Electrical Grid Interconnection Project (for approval August 2010)	Cross border between Bangladesh and India	B	A	C
3. Crop Diversification II (for approval June 2010)		C	C	B
4. Public Private Infrastructure Development Facility		FI	A	A
<b>B. Cambodia</b>				
1. Greater Mekong Subregion: Cambodia Northwest Provincial Road Improvement Project	Northwestern Cambodia	B	A	C
2. Rural Roads Improvement project	7 provinces around Tonle Sap Basin	B	B	B
<b>C. India</b>				
1. State Tourism Development Project (for approval August 2010)	4 participating States including Himachal Pradesh, Punjab, Tamil Nadu and Uttarakhand	B	C	C
2. Bihar Power System Improvement Project (for approval October 2010)		B	B	C
3. MFF Rural Roads Sector II Investment Program	Assam, Orissa and West Bengal	B	C	B
4. MFF Northeastern States Roads Investment Program (Facility Concept) (for approval in August 2010)	States of Assam, Arunachal Pradesh, Meghalaya, Manipur, Mizoram, Nagaland Sikkim and Tripura			
5. MFF Assam Power Sector Enhancement Investment Program-Project 1		B	B	B

Table 1 (continuation)

Country/Project Title	Location	Safeguard Category		
		Envi	IR	IP
D. Indonesia				
1. Regional Roads Development (for approval September 2010)	Northern Kalimantan and Southern Java	A/B	A/B	B
E. Laos				
1. Greater Mekong Subregion Nam Ngum 3 Hydropower Project		A	A	A
2. Northern Rural Infrastructure Development Sector Project	Bokeo, Luang Namtha, Oudomxay, and Phongsaly provinces	B	B	B
F. Nepal				
1. Support for Targeted and Sustainable Development Programs for Highly Marginalized Groups		C	C	A
2. Secondary Towns Urban Environment Improvement (for approval June 2010)		B	B	B
3. Subregional Transport Enhancement Project	Salleri-Okhaldunga-Harkapur' Khadbari-Chainpur; Bhairahawa; Nepalgunji-Kohalpur; Belbari-Chauharwa	B	B	B
4. School Sector Program		B	C	B
5. Building Climate Resilience of Watersheds in Mountain Eco-Regions (proposed for approval in March 2013)		B	C	B
6. High Mountain Agribusiness and Livelihood Improvement (HIMALI) Project		B	C	B

Table 1 (continuation)

Country/Project Title	Location	Safeguard Category		
		Envi	IR	IP
<b>G. Philippines</b>				
1. Integrated Natural Resources and Environmental Management Sector Development Program	Luzon, Visayas and Mindanao	B	C	A
2. Integrated Natural Resources and Environment Management (proposed in 31 August 2012)		B	C	A
<b>H. Thailand</b>				
1. Greater Mekong Subregion Highway Expansion Project	Highway 12 (Phitsanulok-Lom Sak); Section 2: Highway 2042 (Ban Nakrai - Kamcha-e); Section 6: Highway 359 (Phanom Sarakham - Sa Kaew Highway)	B	B	B
<b>I. Vietnam</b>				
1. Sustainable Rural Infrastructure Development Project in Northern Mountain Provinces	15 northern provinces are: Bac Giang, Bac Kan, Cao Bang, Dien Bien, Ha Giang, Hoa Binh, Lai Chau, Lang Son, Lao Cai, Phu Tho, Son La, Thai Nguyen, Tuyen Quang, Vinh Phuc, and Yen Bai	B	B	B
2. Transport Connections in Northern Mountainous Provinces Project		B	B	A
3. Development of the Northern Chu and Southern Ma Rivers Irrigation System Project		B	A	A
4. Phuoc Hoa Water Resources Management (Supplementary)	Phuoc Hoa	A	A	B

Note (\*) Envi. means environment; IR is Involuntary Resettlement; IP means Indigenous Peoples. The letters are the project categorization of ADB which will be explained in the next sections.

## 2 SECTION

### The Indigenous Peoples Safeguard Requirements

#### 2.1 What is the objective of the Indigenous Peoples Safeguard Requirements?

The objective of the Indigenous Peoples Safeguard Requirements is “to design and implement projects in a way that fosters full respect for indigenous peoples’ identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by the Indigenous Peoples themselves so that they:

- (i) Receive culturally appropriate social and economic benefits,
- (ii) Do not suffer adverse impacts as a result of projects, and
- (iii) Can participate actively in projects that affect them.”<sup>10</sup>

In other words, the indigenous peoples safeguard requirements hopes to ensure that the projects that ADB supports will result in upholding full respect for indigenous peoples’ rights, dignity and culture, in order to bring about culturally-appropriate social and economic benefits to these communities and to create avenues for people’s participation. In addition, the safeguard requirements hope to protect affected communities against negative impacts of introduced projects.

#### 2.2 How are the impacts of ADB projects on indigenous peoples categorized?

The impacts of an ADB-supported project on indigenous peoples are determined by assessing the following:

- “Magnitude of impact in terms of:
  - o customary rights of use and access to land and natural resources;
  - o socioeconomic status;
  - o cultural and communal integrity;
  - o health, education, livelihood, and social security status; and
  - o the recognition of indigenous knowledge;
- Level of vulnerability of the affected Indigenous Peoples community”<sup>11</sup>

#### 2.3 How are projects classified based on the impacts to indigenous communities?

All projects are classified into the following four categories:

- **“Category A.** A proposed project is likely to have significant impacts on indigenous peoples. An indigenous peoples plan (IPP), including assessment of social impacts, is required.
- **Category B.** A proposed project is likely to have limited impacts on indigenous peoples. An

IPP, including assessment of social impacts, is required.

- **Category C.** A proposed project is not expected to have impacts on indigenous peoples. No further action is required.
- **Category FI.** A proposed project involves the investment of ADB funds to or through a financial intermediary. The financial intermediary must apply and maintain an environmental and social management system, unless all of the financial intermediary's business activities are unlikely to have impacts on indigenous peoples."<sup>12</sup>

### What are Financial Intermediaries?

Financial Intermediaries (FI) are financial institutions, i.e., commercial banks, used by developing member countries to manage funds received from the government. They provide loans and equity contributions to public or private sector organizations.

## 2.4 What are the Indigenous Peoples Safeguard Requirements?

The Indigenous Peoples Safeguard Requirements outline the requirements that borrowers/clients must meet in delivering Indigenous Peoples Safeguards to projects supported by ADB. It discusses the objectives and scope of application, and underscores the requirements pertaining to:

- (i) "Undertaking the social impact assessment and planning process;
- (ii) Preparing social impact assessment reports and planning documents;
- (iii) Disclosing information and undertaking consultation, including ascertaining consent of affected Indigenous Peoples community to selected project activities;
- (iv) Establishing a grievance mechanism; and
- (v) Monitoring and reporting."<sup>13</sup>

This set of policy requirements will safeguard Indigenous Peoples' rights to maintain, sustain, and preserve their cultural identities, practices, and habitats and to ensure that projects affecting them will take the necessary measures to protect these rights.

At the early stage of the project the ADB will already identify the presence of indigenous peoples in the project area and the likely impacts of the project – components, subprojects and activities.

The Indigenous Peoples Safeguard Requirements include TWO types of requirements:

1. General Requirements- applicable for all projects;
2. Special Requirements- necessary in particular situations where indigenous peoples are or may be more vulnerable.

Box 1

List of Indigenous Safeguard Requirements	
General Requirements	Special Requirements
<ol style="list-style-type: none"> <li>1. Consultation and participation</li> <li>2. Social Impact Assessment</li> <li>3. Indigenous People's Planning</li> <li>4. Information Disclosure</li> <li>5. Grievance Redress Mechanism</li> <li>6. Monitoring and Reporting</li> <li>7. Unanticipated Impacts</li> </ol>	<p>For the following cases:</p> <ul style="list-style-type: none"> <li>• Affecting close ties of indigenous peoples to their lands and natural resources</li> <li>• Commercial development of cultural resources and knowledge of indigenous peoples</li> <li>• Physical displacement</li> <li>• Commercial development of natural resources</li> <li>• A member country needing technical support for the development of policies and strategies to strengthen their own indigenous safeguard policy</li> </ul>

The succeeding parts will explain each of the requirements listed in Box 1. In addition, Box 2 provides the policy principles of the indigenous peoples safeguards.



“Affected Indigenous Peoples must know if the requirements are being fulfilled by the borrower/client and supervised by the ADB.”

## Box 2 Policy Principles of the Indigenous Peoples Safeguards

**Objectives:** To design and implement projects in a way that fosters full respect for Indigenous Peoples' identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by the Indigenous Peoples themselves so that they (i) receive culturally appropriate social and economic benefits, (ii) do not suffer adverse impacts as a result of projects, and (iii) can participate actively in projects that affect them.

**Scope and Triggers:** The Indigenous Peoples safeguards are triggered if a project directly or indirectly affects the dignity, human rights, livelihood systems, or culture of Indigenous Peoples or affects the territories or natural or cultural resources that Indigenous Peoples own, use, occupy, or claim as an ancestral domain or asset. The term Indigenous Peoples is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and (iv) a distinct language, often different from the official language of the country or region. In considering these characteristics, national legislation, customary law, and any international conventions to which the country is a party will be taken into account. A group that has lost collective attachment to geographically distinct habitats or ancestral territories in the project area because of forced severance remains eligible for coverage under this policy.

### Policy Principles:

1. Screen early on to determine (i) whether Indigenous Peoples are present in, or have collective attachment to, the project area; and (ii) whether project impacts on Indigenous Peoples are likely.
2. Undertake a culturally appropriate and gender-sensitive social impact assessment or use similar methods to assess potential project impacts, both positive and adverse, on Indigenous Peoples. Give full consideration to options the affected Indigenous Peoples prefer in relation to the provision of project benefits and the design of mitigation measures. Identify social and economic benefits for affected Indigenous Peoples that are culturally appropriate and gender and intergenerationally inclusive and develop measures to avoid, minimize, and/or mitigate adverse impacts on Indigenous Peoples.
3. Undertake meaningful consultations with affected Indigenous Peoples communities and concerned Indigenous Peoples organizations to solicit their participation (i) in designing, implementing, and monitoring measures to avoid adverse impacts or, when avoidance is not possible, to minimize, mitigate, or compensate for such effects; and (ii) in tailoring project benefits for affected Indigenous Peoples communities in a culturally appropriate manner. To enhance Indigenous Peoples' active participation, projects affecting them will provide for culturally appropriate and gender inclusive capacity development. Establish a culturally appropriate and gender inclusive grievance mechanism to receive and facilitate resolution of the Indigenous Peoples' concerns.

**Box 2 (continuation)**

4. Ascertain the consent of affected Indigenous Peoples communities to the following project activities: (i) commercial development of the cultural resources and knowledge of Indigenous Peoples; (ii) physical displacement from traditional or customary lands; and (iii) 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. 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.
5. Avoid, to the maximum extent possible, any restricted access to and physical displacement from protected areas and natural resources. Where avoidance is not possible, ensure that the affected Indigenous Peoples communities participate in the design, implementation, and monitoring and evaluation of management arrangements for such areas and natural resources and that their benefits are equitably shared.
6. Prepare an Indigenous Peoples plan (IPP) that is based on the social impact assessment with the assistance of qualified and experienced experts and that draw on indigenous knowledge and participation by the affected Indigenous Peoples communities. The IPP includes a framework for continued consultation with the affected Indigenous Peoples communities during project implementation; specifies measures to ensure that Indigenous Peoples receive culturally appropriate benefits; identifies measures to avoid, minimize, mitigate, or compensate for any adverse project impacts; and includes culturally appropriate grievance procedures, monitoring and evaluation arrangements, and a budget and time-bound actions for implementing the planned measures.
7. Disclose a draft IPP, including documentation of the consultation process and the results of the social impact assessment in a timely manner, before project appraisal, in an accessible place and in a form and language(s) understandable to affected Indigenous Peoples communities and other stakeholders. The final IPP and its updates will also be disclosed to the affected Indigenous Peoples communities and other stakeholders.
8. Prepare an action plan for legal recognition of customary rights to lands and territories or ancestral domains when the project involves (i) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied, or (ii) involuntary acquisition of such lands.
9. Monitor implementation of the IPP using qualified and experienced experts; adopt a participatory monitoring approach, wherever possible; and assess whether the IPP's objective and desired outcome have been achieved, taking into account the baseline conditions and the results of IPP monitoring. Disclose monitoring reports.

Source: 2009 SPS, page 18.

## 2.5 How are the requirements on Consultation and Participation met?

Before starting an ADB financed project, the borrowers/clients must initiate meaningful consultation (see Box 3) with the affected people to discuss the project and its real and potential impacts. The meaningful consultation aims to ensure the community's informed participation in:

- “Designing, implementing, and monitoring measures to avoid adverse impacts on themselves or, when avoidance is not possible, to minimize, mitigate, and compensate for such effects; and
- Tailoring project benefits that accrue to them in a culturally appropriate manner.”<sup>14</sup>

In the conduct of meaningful consultation with affected people, the borrowing country will ensure an inclusive and participatory consultation appropriate to the context or specific situations of affected people, including approaches of identifying appropriate indigenous peoples representatives and consultation methods. The borrower/client will pay special attention to the concerns of indigenous women and youth.

If there are serious differences or disagreements on the project between the borrower/client and the affected community, the borrower/client has to initiate negotiation in good faith (see Box 4) with affected communities to resolve differences and disagreements.<sup>15</sup>

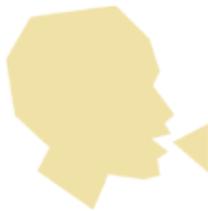


### Box 3

#### What is Meaningful Consultation?

The ADB defines “meaningful consultation” as a process that:

- “Begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle;
- Provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people;
- Is undertaken in an atmosphere free of intimidation or coercion;
- Is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and
- Enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues.”<sup>16</sup>



### **What must indigenous communities do during the conduct of meaningful consultations?**

- Ask all relevant information (e.g. project proposal, social and environmental assessment reports) from the responsible project officials about the project. If you do not understand the project documents, ask them to supply you with documents in simple language;
- Read all necessary documents and discuss among yourselves to decide on your position and strategies;
- Tell your views to project officials without fear. If necessary, select your representatives who can explain the issues very well;
- Make sure that proceedings of consultation is documented properly;
- Exercise your right to agree or disagree with the project being planned.

Box 4

#### **What is Good Faith Negotiations?**

Good faith negotiations<sup>17</sup> means:

- That both parties are willing to engage in an extended process of negotiation;
- That there is provision of information necessary for informed participation;
- That there is mutually-acceptable and culturally appropriate procedures;
- That there is willingness to change initial position; and
- That the community is given allowance for sufficient time for decision making.

Box 5

#### **How is “Broad Community Support” Defined by the ADB?**

Broad Community Support<sup>18</sup> :

- Is “a collective expression by the affected Indigenous Peoples’ communities, through individuals and/or their recognized representatives, of support for such project activities”;
- Is ADB’s perception for consent of affected indigenous communities acquired through meaningful consultation;
- May exist even if some individuals or groups object to the project activities.



### **What are the reactions on ADB's definition of meaningful consultation and broad community support or consent?**

Indigenous peoples assert that consultation only is not enough and broad community support is not in line with the principles of free, prior and informed consent right of indigenous peoples as enshrined in the United Nations Declaration on Rights of Indigenous Peoples (UNDRIP) and other international human rights laws, e.g., ILO 169. Development agencies must seek consent of indigenous peoples in all projects and activities that will affect them and their lands and territories. Indigenous leaders demand that the ADB must follow the principles of FPIC.

## **2.6 How are the requirements on Social Impact Assessment met?<sup>19</sup>**

Based on the project screening, social impact assessment (SIA) will be conducted either as part of the feasibility study or an activity on its own. The borrower/client will use qualified and experienced experts to prepare the SIA and if impacts are identified, the borrower/client will prepare the SIA with the feasibility study and Indigenous People's Plan (explained in 2.7). Box 6 contains the information needed for the SIA.

For highly complex and sensitive projects, independent advisory panels of experts not affiliated with the project will be tapped during project preparation and implementation. Any highly complex and sensitive projects affecting indigenous peoples will require an indigenous peoples expert on the advisory panel.



### **What must indigenous communities do during the conduct of Social Impact Assessment (SIA)?**

- Ensure that they are consulted in the conduct of the SIA;
- Provide the right information on the data required;
- Tell their concerns to the SIA team on how they may be affected by the project;
- Ensure the participation of their representatives in the conduct of the SIA.

## Box 6

**Information to Gather for the SIA<sup>20</sup>**

- Identify the project-affected Indigenous Peoples and the potential impacts of the proposed project on them;
- Baseline socioeconomic profile of the indigenous groups in the project area and project impact zone;
- Assess the access to and opportunities of the indigenous groups to avail themselves of basic social and economic services;
- Assess the short- and long-term, direct and indirect, and positive and negative impacts of the project on each group's social, cultural, and economic status;
- Assess and validate which indigenous groups will trigger the Indigenous Peoples policy principles;
- Assess the subsequent approaches and resource requirements for addressing the various concerns and issues of projects that affect them.

## **2.7 How are the requirements of coming up with an Indigenous People's Plan (IPP) met?<sup>21</sup>**

If the screening of the project and SIA indicate that the proposed project will have impacts, positive and/or negative, on indigenous peoples, the borrower/client will prepare an IPP (see Box 7) in the context of the SIA and through meaningful consultation with the affected indigenous peoples communities. The elements of the IPP will be integrated in the project design.

The IPP will set out the measures whereby the borrower/client will ensure that:

1. Affected indigenous peoples receive culturally appropriate social and economic benefits; and
2. When potential adverse impacts on indigenous peoples are identified, these will be avoided to the maximum extent possible. If this avoidance is proven to be impossible, based on meaningful consultation with indigenous communities, the IPP will outline measures to minimize, mitigate, and compensate for the adverse impacts.

The borrowing country will tap qualified and experienced expert to prepare the SIA and IPP. If an Indigenous Peoples Planning Framework (see Box 8) is required, it will be added in the IPP.

Box 7

Outline of an Indigenous People's Plan (IPP)	Major Elements of the IPP:
<ul style="list-style-type: none"> <li>A. Executive summary of the IPP</li> <li>B. Description of the Project</li> <li>C. Social Impact Assessment</li> <li>D. Information Disclosure, Consultation and Participation</li> <li>E. Beneficial Measures</li> <li>F. Mitigation Measures</li> <li>G. Capacity Building</li> <li>H. Grievance Redress Mechanism</li> <li>I. Monitoring, Reporting and Evaluation</li> <li>J. Institutional Arrangement</li> <li>K. Budget and Financing</li> </ul> <p>(for details, please refer to Annex 6)</p>	<ul style="list-style-type: none"> <li>✓ Consultation procedures with the affected indigenous peoples communities;</li> <li>✓ Measures for (culturally) appropriate benefits to affected people;</li> <li>✓ Measures on how to minimize, mitigate or compensate for any adverse project impacts;</li> <li>✓ Appropriate grievance procedures how the affected indigenous community can seek remedies;</li> <li>✓ Time-bound action plan; and</li> <li>✓ Budget</li> </ul>

### What must affected indigenous communities do during the preparation of the Indigenous Peoples Plan?

Affected communities must:

- Know when the Project official or project consultants will come to consult with them;
- Ask the project official/consultant to provide them the relevant project documents, for example, 'meaningful consultation' outcomes and social impacts assessment (SIA) reports in understandable languages, if possible, in local language;
- Organize themselves to discuss the relevant project documents and see if the right procedures of "meaningful consultation" and gaining of broad community support have been followed or not.
- Decide on what they want to tell the project official/consultant and select their representative/s to present their demands.
- Know the positive and negative impacts of the project and the mitigation measures that the project official/consultant will propose in the IPP before they will give out their opinion;
- Ask project official/consultants what compensation they will get for the loss of their property and other things. They should make sure that the project official/consultants document their demands clearly.

## Box 8

**Outline of the Indigenous Peoples Planning Framework**

- A. Introduction
- B. Objectives and Policy Framework
- C. Identification of Affected Indigenous Peoples
- D. Social Impact Assessment for sub-projects and/or components
- E. Consultation and Participation
- F. Disclosure
- G. Grievance Redress Mechanism
- H. Institutional and Implementation Arrangement
- I. Monitoring and Reporting Arrangement
- J. Budget and Financing

(For details, refer to Annex 3)

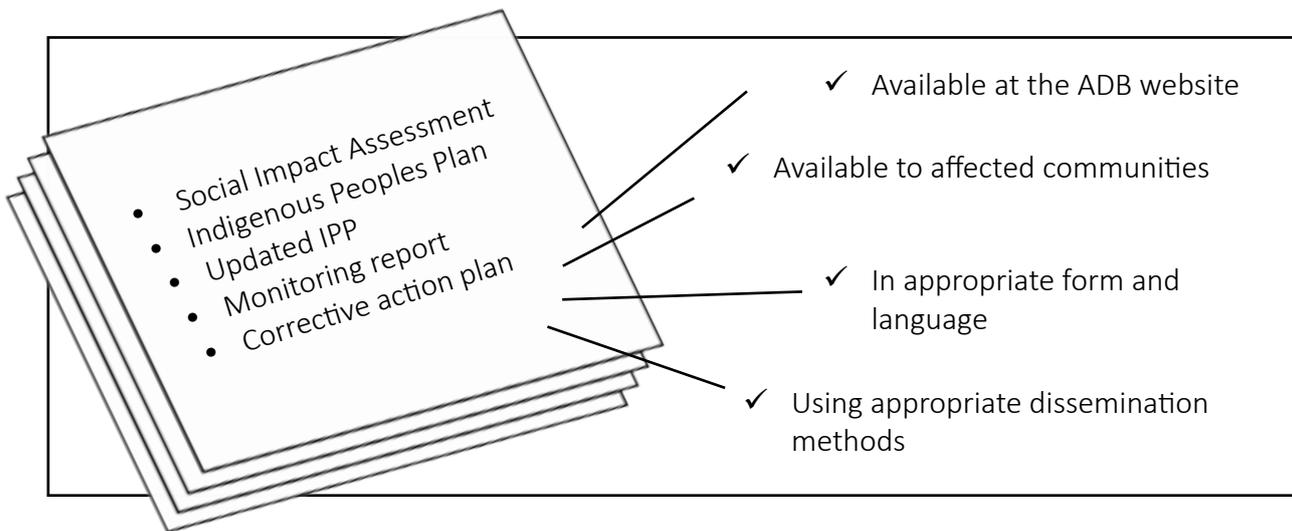
**2.8 How are the requirements on Information Disclosure met?<sup>22</sup>**

By its policy obligation, the ADB and the borrower/client have to disclose and provide the following information to the affected indigenous peoples' communities:

- Social impact assessment (SIA) report;
- Indigenous Peoples Plan (IPP)/Indigenous Peoples Planning Framework (IPPF);
- Monitoring report on the implementation of the IPP;
- A new or updated IPP and a corrective action plan prepared during implementation, if any;

Such information must be made accessible and available to the public as well through the following:

- Make available on ADB's website;
- Shared to the affected indigenous communities in a timely manner;
- Provided in a form and language intelligible to the affected communities;
- Disseminated widely using appropriate communication methods in case the community people cannot read



Affected indigenous peoples communities have the right to know the relevant information of the project that may affect them. This information disclosure policy should be utilized by affected communities for them to be able to come up with an informed decision.

## 2.9 How is the Grievance Redress Mechanism established?<sup>23</sup>

The borrower/client will establish a mechanism to receive and facilitate resolution of concerns and grievances of affected indigenous communities. The mechanism will be scaled to the impacts of the project and should address concerns and complaints promptly using an understandable and transparent process that is culturally appropriate, gender responsive, and accessible to the affected indigenous communities at no cost and without retribution.

In addition to this mechanism, affected indigenous communities can still access available redress mechanisms in their country and available grievance mechanisms within the ADB (see Section 5).

## 2.10 How is Monitoring and Reporting done?

The borrower/client is required to monitor and measure the progress of the implementation of the IPP. The borrower/client will prepare periodic monitoring reports on the progress of IPP implementation, highlighting compliance issues and corrective actions, if any. Reports from this monitoring will be submitted to the ADB and will be part of the documents that will be disclosed to the affected community.<sup>24</sup>



### How should affected communities monitor the project?

- Get the views and opinions of people affected by the project
- Collect information on what is happening in the project
- Ask questions about the project
- Take pictures on the project's activities and results
- Participate in consultations called by the project implementers and/or ADB
- Check compliance to the SPS requirements
- Exercise your right to access to information and reports about the project
- Monitor the implementation of the IPP

### 2.11 How are Unanticipated Impacts addressed?

If unanticipated impacts on indigenous peoples happen during project implementation, the borrower will conduct a SIA and update the IPP or make a new one.<sup>25</sup>

### 2.12 How are the special requirements of indigenous safeguards met?<sup>26</sup>

In cases where the ancestral domains, lands and natural resources, as well as cultural resources of indigenous peoples are affected by the ADB project, the borrower/client has to comply with certain special requirements. These cases pertain to the following:

- **When a project affects the close ties of indigenous peoples to their lands, forest, water, wildlife and other natural resources;**

#### **Special Requirements:**

In the conduct of the social impact assessment and preparation of the Indigenous Peoples Plan, pay particular attention to the customary rights (both individual and collective) of the indigenous peoples on these natural resources, protection of these resources against illegal intrusion, cultural and spiritual values attributed to these resources, indigenous practices in natural resource management, and the need to rehabilitate the livelihood systems of indigenous peoples who have been evicted from their lands.

To conduct a meaningful consultation with affected people.

- **When a project involves activities that are dependent on establishing legally recognized rights to lands and territories traditionally owned, occupied or used by indigenous peoples, such as land titling projects or acquisitions of such lands**

**Special Requirements:**

Integrate an action plan in the Indigenous Peoples Plan for the legal recognition of customary rights to such lands, territories and ancestral domains, or of perpetual or long-term renewable custodial or user rights.

- **When a project involves the commercial development of the cultural resources and knowledge of indigenous peoples**

**Special Requirements:**

Ensure that affected communities are informed of their rights to such resources; of the scope and nature of the proposed commercial development, and the parties involved in such development; and of the potential effects of such development on their livelihood, environment and use of these resources. Reflect in the Indigenous Peoples Plan the nature and content of agreements and arrangements to ensure that the indigenous peoples will receive an equitable share of the benefits from the commercial development in a culturally appropriate way.

Broad community support is sought. Good faith negotiation is done to resolve differences and disagreements.

- **When a project involves commercial development of natural resources (such as minerals, forests, hunting or fishing grounds) within customary lands being used which will affect their livelihoods, cultural ceremonies and spiritual use of these resources**

**Special Requirements:**

Ensure that affected communities are informed of their rights to such resources; of the scope and nature of the proposed commercial development, and the parties involved in such development; and of the potential effects of such development on their livelihood, environment and use of these resources. Include in the Indigenous Peoples Plan arrangements on equitable sharing of the benefits from such commercial development of natural resources.

Broad community support is sought. Good faith negotiation is done to resolve differences and disagreements.

- **When a project involves physical displacement from traditional or customary lands**

**Special Requirements:**

If physical displacement of indigenous peoples is unavoidable, the borrower will prepare an Indigenous Peoples Plan combined with a resettlement plan. If possible, the plan will allow the people to return to their customary lands when the reasons for relocation cease to exist, and if needed, will include provisions for the rehabilitation of the lands.

Broad community support is sought. Good faith negotiation is done to resolve differences and disagreements.

- **In case a borrowing member country needs technical support for development of policies and strategies related to strengthening the indigenous safeguard policy domestically**, it can ask for ADB's support. ADB can provide financial assistance for a wide range of activities, including strengthening local legislation; recognizing traditional or customary land tenurial system; institutional capacity building of indigenous peoples organisations and government agencies; and increasing participation of the indigenous peoples in development process etc.

#### Box 9

#### **How does ADB verify if broad community support has been achieved?<sup>27</sup>**

To determine if the affected indigenous communities have given their broad community support to the project, ADB reviews the following documents, among others:

- Findings of the social impact assessment (SIA) report;
- Outcomes of the process of meaningful consultation with affected indigenous communities ;
- Recommendations for meaningful consultations with the affected indigenous communities;
- Proposed measures including the project design if it is culturally appropriate;
- Formal agreement with affected indigenous peoples' communities.



#### **What must affected indigenous peoples' communities do before giving their broad community support or consent?**

The ADB policy clearly says ADB will NOT FINANCE the project if the affected indigenous peoples' communities do not give broad support to it. Therefore, affected indigenous communities must:

- Discuss and analyze the impacts of the projects together;
- Make sure that all discussions and agreements during the consultations are properly documented by the project staff;
- Ensure that all questions regarding the project are properly addressed and all community members understand the pros and cons of the project;
- Seek the help of support organizations in cases where they need to get additional information about the project or they need help to scrutinize and analyze the project documents; and
- Ensure that the outcome or decision of the community will not lead to divisions among the members of the community.

## Case Study 4

### Commercial Agriculture Development Project of the ADB and the Rais People of Nepal

The Commercial Agriculture Development Project (CADP) funded by the Asian Development Bank (ADB) aimed to reduce poverty through equitable and sustainable commercialization of agriculture and the project's outcome will be improved efficiency of production, marketing, and processing of high value crops (HVCs) such as vegetables, fruits, tea, and spices in the EDR. The project covers 11 districts in the Eastern Development Region (EDR) of Nepal-- five hill districts (Dhankuta, Ilam, Panchtar, Terhathum, and Udayapur), five terai (lowland) districts (Jhapa, Morang, Saptari, Siraha, and Sunsari), and one mountain district (Taplejung). It has been classified as Category-C in the initial social impact assessment which means that the project is not expected to have impacts on indigenous peoples, and therefore do not require special provisions for them thus no indigenous peoples plan was prepared.

The project though had adversely impacted the Rais, one of the indigenous groups in Nepal, who are residing in the project area. Their local calendar of ubhauri and udhauri that closely corresponds to the agricultural seasonality, festivals and rituals has been distorted with their engagement in the HVCs as they may be of different seasons too. The overwhelming component and sub-component-wise activities or actions undertaken by the project focused only on income generation to reduce the poverty level as the government's policy but the actions are not consistent with the needs and aspirations of affected indigenous peoples. Some of the activities like pest, seed, and soil management techniques are not compatible in substance and structure with the affected indigenous peoples' traditional systems.

In one of the project activities, the Commercial Agriculture Investment and Management and Subsistence and Semi-commercial Agriculture Stakeholders, the indigenous farmers have been using hybrid seeds, chemical fertilizers, pesticides and insecticides as imposed by the project instead of traditional seeds, fertilizer and pest management systems of indigenous peoples. The use of insecticides, pesticides and other harmful chemicals as fertilizers is directly related to the environmental degradation and destruction of the nature. The positive impact of using such chemicals is that the production and earning level can be raised but a serious concern is that the traditional way of soil fertility management system and environmental degradation, which is indigenous knowledge, is to disappear/vanish. With a complexity of relationship, nature is taken not only as ground for survival but also as basis for cultural identity in Rai culture. Therefore degradation of natural resources would mean degradation in cultural values and vice versa. Extinction of ritually and biologically significant wild animals, birds and plants or alienation from them would mean alteration in their way of life.

*Written by Yamphu, Indra Mani, An Assessment of Impacts on Indigenous Peoples by the Commercial Agriculture Development Project (CADP) of Asian Development Bank (ADB): A Case Study of Panchakanya and Fikkal VDCs of Ilam district, August 2010.*

# 3 SECTION

## The Environmental Safeguard Requirements and Indigenous Peoples

### 3.1 What are the objectives and requirements of the Environmental Safeguards?

According to the SPS, the objectives of the environmental safeguards are:

- ✓ “To ensure environmental soundness and sustainability of projects, and
- ✓ To support the integration of environmental considerations into project decision-making process.”<sup>28</sup>

This means that projects to be funded must be designed and implemented with the least possible damage to the environment.

The borrower/client is required to fulfill the following requirements :

- Environmental Assessment
- Environmental Planning and Management
- Information Disclosure
- Consultation and Participation
- Grievance Redress and Mechanism
- Monitoring and Reporting
- Biodiversity Conservation and Sustainable Natural Resource Management
- Pollution Prevention and Abatement
- Health and Safety
- Physical Cultural Resources

In the course of the project implementation, the borrower/client likewise has to look into unanticipated environmental impacts that the project might cause in the area.

Box 10 shows the policy principles of the environmental safeguards.

## Box 10 Policy Principles of Environmental Safeguards

**Objectives:** To ensure the environmental soundness and sustainability of projects and to support the integration of environmental considerations into the project decision-making process.

**Scope and Triggers:** Environmental safeguards are triggered if a project is likely to have potential environmental risks and impacts.

### Policy Principles:

1. Use a screening process for each proposed project, as early as possible, to determine the appropriate extent and type of environmental assessment so that appropriate studies are undertaken commensurate with the significance of potential impacts and risks.
2. Conduct an environmental assessment for each proposed project to identify potential direct, indirect, cumulative, and induced impacts and risks to physical, biological, socioeconomic (including impacts on livelihood through environmental media, health and safety, vulnerable groups, and gender issues), and physical cultural resources in the context of the project's area of influence. Assess potential transboundary and global impacts, including climate change. Use strategic environmental assessment where appropriate.
3. Examine alternatives to the project's location, design, technology, and components and their potential environmental and social impacts and document the rationale for selecting the particular alternative proposed. Also consider the no project alternative.
4. Avoid, and where avoidance is not possible, minimize, mitigate, and/or offset adverse impacts and enhance positive impacts by means of environmental planning and management. Prepare an environmental management plan (EMP) that includes the proposed mitigation measures, environmental monitoring and reporting requirements, related institutional or organizational arrangements, capacity development and training measures, implementation schedule, cost estimates, and performance indicators. Key considerations for EMP preparation include mitigation of potential adverse impacts to the level of no significant harm to third parties, and the polluter pays principle.
5. Carry out meaningful consultation with affected people and facilitate their informed participation. Ensure women's participation in consultation. Involve stakeholders, including affected people and concerned nongovernment organizations, early in the project preparation process and ensure that their views and concerns are made known to and understood by decision makers and taken into account. Continue consultations with stakeholders throughout project implementation as necessary to address issues related to environmental assessment. Establish a grievance redress mechanism to receive and facilitate resolution of the affected people's concerns and grievances regarding the project's environmental performance.

**Box 10 (continuation)**

6. Disclose a draft environmental assessment (including the EMP) in a timely manner, before project appraisal, in an accessible place and in a form and language(s) understandable to affected people and other stakeholders. Disclose the final environmental assessment, and its updates if any, to affected people and other stakeholders.
7. Implement the EMP and monitor its effectiveness. Document monitoring results, including the development and implementation of corrective actions, and disclose monitoring reports.
8. Do not implement project activities in areas of critical habitats, unless (i) there are no measurable adverse impacts on the critical habitat that could impair its ability to function, (ii) there is no reduction in the population of any recognized endangered or critically endangered species, and (iii) any lesser impacts are mitigated. If a project is located within a legally protected area, implement additional programs to promote and enhance the conservation aims of the protected area. In an area of natural habitats, there must be no significant conversion or degradation, unless (i) alternatives are not available, (ii) the overall benefits from the project substantially outweigh the environmental costs, and (iii) any conversion or degradation is appropriately mitigated. Use a precautionary approach to the use, development, and management of renewable natural resources.
9. Apply pollution prevention and control technologies and practices consistent with international good practices as reflected in internationally recognized standards such as the World Bank Group's Environmental, Health and Safety Guidelines. Adopt cleaner production processes and good energy efficiency practices. Avoid pollution, or, when avoidance is not possible, minimize or control the intensity or load of pollutant emissions and discharges, including direct and indirect greenhouse gases emissions, waste generation, and release of hazardous materials from their production, transportation, handling, and storage. Avoid the use of hazardous materials subject to international bans or phaseouts. Purchase, use, and manage pesticides based on integrated pest management approaches and reduce reliance on synthetic chemical pesticides.
10. Provide workers with safe and healthy working conditions and prevent accidents, injuries, and disease. Establish preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks to the health and safety of local communities.
11. Conserve physical cultural resources and avoid destroying or damaging them by using field-based surveys that employ qualified and experienced experts during environmental assessment. Provide for the use of "chance find" procedures that include a pre-approved management and conservation approach for materials that may be discovered during project implementation.

Source: 2009 SPS, page 16.



Affected communities must know if these requirements are fulfilled by the borrower and being supervised by the ADB

### 3.2 How are environmental projects classified?<sup>30</sup>

The ADB screens environmental projects according to type, location, scale and sensitivity and the magnitude of their potential environmental impacts, including direct, indirect, induced and cumulative impacts. A project's category is determined by the category of its most environmentally sensitive component, including direct, indirect, cumulative and induced impacts in the project's area of influence.

The following are the categories used in classifying projects:

**Category A:** a proposed project is likely to have significant adverse environmental impacts that are irreversible, diverse or unprecedented. The impacts may affect an area larger than the sites or facilities subject to physical works. In this category, an environmental impact assessment (EIA) is required.

**Category B:** a proposed project's potential adverse environmental impacts are less adverse than the projects in Category A and are site-specific, few if any of the impacts are irreversible, and in most cases, mitigation measures can be designed more readily than for Category A projects. Here, an initial environmental examination (IEE) is required.

**Category C:** a proposed project is likely to have minimal or no adverse environmental impacts. Here, environmental implications need to be reviewed but an EIA or IEE is not required;

**Category FI:** A proposed project involves the investment of ADB funds to or through a financial intermediary (FI) in which case, the latter must apply and maintain an environmental and social management system (ESMS), unless all of the FI's business activities have minimal or no environmental impacts or risks.



The categorization of projects is in the hands of the ADB and the project proponent, and without the participation of the affected communities. Therefore, the views of indigenous communities are not included in the screening process. Thus, there is a danger that the project category might not be appropriate or worse, might be downgraded. For example, a project which should have been a Category A will be classified as Category B, thus, instead of requiring the conduct of an environmental impact assessment, a mere initial environmental examination will be complied with. An example of this alleged downgrading of project category is illustrated in the NERCCDIP project in Shillong, India (Case Study 3).

### **3.3. How are the indigenous territories protected by the environmental safeguards and requirements?**

In the SPS, indigenous peoples, along with the poor, women and children were identified as having disadvantaged or vulnerable status, thus the differential or disproportionate adverse environmental impacts to these groups will be examined in the conduct of environmental assessment. Consequently, the environmental assessment will recommend targeted and differentiated measures so that adverse environmental impacts do not fall disproportionately on them.<sup>31</sup>

### **3.4 How are the requirements on Environmental Assessment met?<sup>32</sup>**

The environmental assessment is a process of conducting environmental analysis and planning to address the environmental impacts and risks associated with a project. In this requirement, the borrower/client should:

- ✓ Identify potential direct, indirect, cumulative and induced impacts and risks to physical, biological, socioeconomic and physical cultural resources in the context of the project's area of influence;
- ✓ Examine whether particular individuals and groups may be differentially or disproportionately affected by the project's potential adverse environmental impacts because of their disadvantaged or vulnerable status. Where such individuals or groups are identified, the environmental assessment will recommend targeted and differentiated measures to avoid disproportionate adverse environmental impacts;
- ✓ Identify potential trans-boundary effects such as air pollution, increased use or contamination of international waterways, emission of greenhouse gases, etc.;
- ✓ For a project with potentially significant adverse impacts that are diverse, irreversible or unprecedented, the borrower/client should examine alternatives to the project's location, design, technology, and components that would avoid, and if not possible to avoid, must then minimize adverse impacts;

The assessment may be a full-blown environmental impact assessment (EIA) or an initial environmental examination (IEE), depending on the significance of project impacts and risks.

Box 11

#### **Major Elements of an Environmental Impact Assessment Report**

1. Executive summary
2. Description of the project
3. Description of the environment (with comprehensive baseline data)
4. Anticipated environmental impacts and mitigation measures
5. Analysis of alternatives
6. Environmental management plan(s)
7. Consultation and information disclosure
8. Conclusion and recommendations

(For a full description of the EIA report, see Annex 7)

#### **What is an Initial Environmental Examination (IEE)?**

According to the SPS, an IEE has a narrower scope than an EIA and is conducted for projects with limited impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures.

### **3.5 How are the requirements on Environmental Planning and Management met?<sup>33</sup>**

In the environmental planning and management, the borrower/client is required to prepare an Environmental Management Plan (EMP) that addresses the potential impacts and risks identified by the environmental assessment.

The borrower/client will utilize the expertise of qualified and experienced experts to prepare the environmental assessment and the EMP (see Box 12 for the contents). For highly complex and sensitive projects, independent advisory panels of experts not affiliated with the project will be hired during project preparation and implementation.

## Box 12

**Important Contents of the Environmental Management Plan <sup>34</sup>**

- Proposed mitigation measures
- Environmental monitoring and reporting requirements
- Emergency response procedures
- Related institutional or organizational arrangements
- Capacity development and training measures
- Implementation schedule
- Cost estimates
- Performance indicators
- Compensatory measures (if some residual impacts are likely to remain significant after mitigation)
- Mitigation measures and actions (if impacts and risks cannot be avoided or prevented)

**3.6 How are the other requirements complied with?****• On Biodiversity Conservation and Sustainable Natural Resource Management<sup>35</sup>**

The borrower/client will assess the impacts and risks of its project on the natural resources and biodiversity or diversity of species and ecosystems, and will need to identify measures to avoid or minimize or mitigate these potential impacts and risks. Also, the borrower/client should exercise care to minimize further degradation or conversion of natural habitat, critical habitats, legally protected areas, and modified habitat (that is, the natural habitat has apparently been altered often through the introduction of alien species of plants and animals).

In addition, the borrower/client will not intentionally introduce any new alien species (or species not currently established in the country or region of the project) unless carried in accordance with the existing regulatory framework or the introduction is subjected to a risk assessment to determine potential invasive behavior. Lastly, the borrower/client should show that the renewable natural resources, including air, water and soil ecosystems, will be managed to enable people and communities to sustain their social, economic and cultural wellbeing.

**• Pollution Prevention and Abatement<sup>36</sup>**

The borrower/client will apply pollution prevention and control technologies and practices consistent with international good practices. If the regulations of the borrowing country differ from these international standards, whichever are more stringent should be applied, unless the less stringent measures are appropriate for a given project of which the borrowing country can justify. The borrower/client will avoid and if avoidance is impossible, will minimize or control the occurrence of pollutant emission and discharge, and hazardous and non-hazardous wastes.

It will avoid the manufacture, trade and use of hazardous substances and materials subject to international bans or phase-outs, and will consider the use of less hazardous substitutes for such chemicals and materials. In projects related to pest management program, the borrower/client will take efforts to minimize the health and environmental risks associated with pest management. It will not use products that are listed in the World Health Organization's Recommended Classification of Pesticides as extremely and moderately hazardous. Lastly, the borrower/client will promote the reduction or off-set of greenhouse gas emissions associated with the project.

- **Health and Safety<sup>37</sup>**

Aside from ensuring that the workers in the project have safe and healthy working environment, the borrower/client will identify and assess the risks to, and potential impacts on, the safety of affected communities during the design, construction, operation and decommission (that is, when operation is stopped or has ended) of the project. It will establish preventive measures and plans to address identified risks and potential impacts. The measures and plans prefer prevention and avoidance of risks and impacts, over reduction. The borrower/client will also be prepared to respond to accidental and emergency situations, including coming up with response planning documents that addresses training, communications, procedures and other concerns required to respond to emergency situations. It will also inform the affected communities about emergency preparedness and response activities.

- **Physical Cultural Resources<sup>38</sup>**

When physical cultural resources will be affected by a project, the borrower/client will consult with affected community who use or have used these physical cultural resources for long-standing cultural purposes . The borrower/client will also consult with relevant national or local regulatory agencies entrusted with protecting cultural resources. When the project is found to have adverse impacts on physical cultural resources, the borrower/client will identify appropriate measures ranging from avoidance to full site protection to selective mitigation, including salvage and documentation, in situations where a portion or all of the physical cultural resources may be lost. No physical cultural resources will be removed unless no alternatives to removal are available and if the overall benefits of the project substantially outweigh the anticipated cultural heritage loss from removal. Also, any removal is done in accordance with relevant national and/or local laws, regulations, protected area management plans, and national obligations under international laws, and using the best available techniques.

Like in the Indigenous Safeguard Requirements, in the Environmental Safeguard Requirements, the borrower/client must comply with the requirements of consultation and participation, grievance redress mechanism, monitoring and reporting, information disclosure, and unanticipated impacts.

# 4 SECTION

## The Involuntary Resettlement Safeguard Requirements and Indigenous Peoples

### 4.1 What are the objectives and requirements of the Involuntary Resettlement Safeguards?

According to the SPS, the objectives are “to avoid involuntary resettlement wherever possible; to minimize involuntary resettlement by exploring project and design alternatives; to enhance or at least restore the livelihoods of all displaced persons in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups.”<sup>39</sup>

In other words, communities or people who will be affected by an ADB-funded project should not be made poorer or worse-off because of the project and that the project must cause the least possible displacement. In fact, the government should help improve the standard of living of the displaced.

The safeguard requirements are as follows (to be discussed further in the succeeding parts):

1. Compensation and assessment and benefits for displaced persons
2. Social impact assessment
3. Resettlement planning
4. Negotiated land acquisition
5. Information disclosure
6. Consultation and participation
7. Grievance redress mechanisms
8. Monitoring and reporting
9. Unanticipated impacts
10. Special considerations for indigenous peoples

Box 13 shows the policy principles of the involuntary resettlement safeguards.

### Box 13 Policy Principles of Involuntary Resettlement Safeguards

**Objectives:** To avoid involuntary resettlement wherever possible; to minimize involuntary resettlement by exploring project and design alternatives; to enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups.

**Scope and Triggers:** The involuntary resettlement safeguards covers physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources, or 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. It covers them whether such losses and involuntary restrictions are full or partial, permanent or temporary.

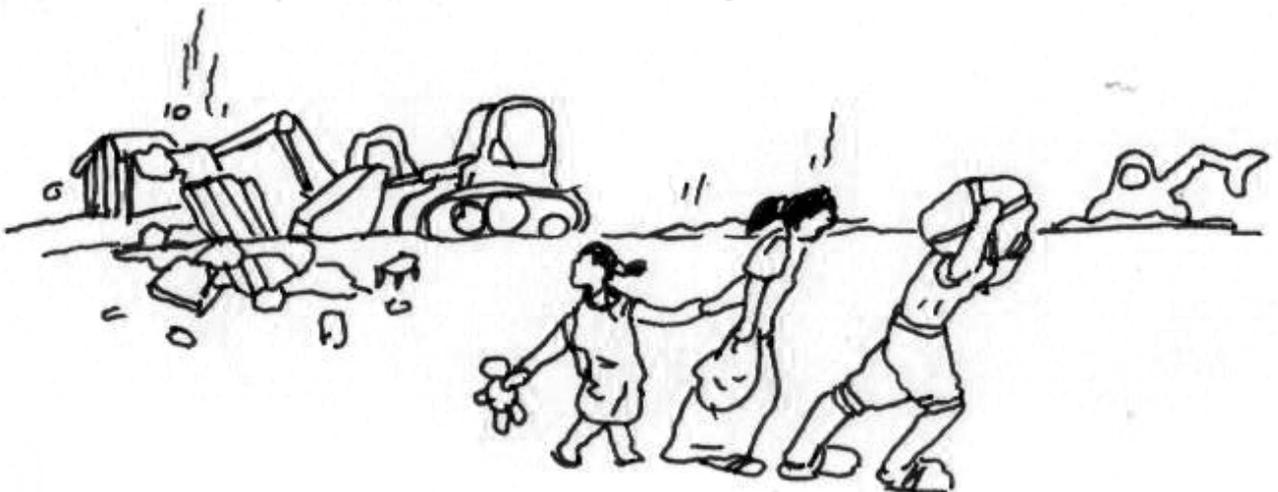
#### Policy Principles:

1. Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.
2. Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.
3. Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.
4. Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.

**Box 13 (continuation)**

5. Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.
6. Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.
7. Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of nonland assets.
8. Prepare a resettlement plan elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.
9. Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.
10. Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.
11. Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.
12. Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.

Source: 2009 SPS, page 17.



**Box 14****What is Involuntary Resettlement?**

In the SPS, “resettlement is considered involuntary when displaced individuals or communities do not have the right to refuse land acquisition that results in displacement. This occurs where (i) lands are acquired through expropriation based on eminent domain; and (ii) lands are acquired through negotiated settlements, if expropriation process would have resulted upon the failure to negotiate”.<sup>40</sup>

In other words, involuntary resettlement happens when the government takes the land that people are occupying or restricts the use of the land for shelter or livelihood. The people do not have the right to refuse to leave the land and be resettled in another place. The government takes the land by eminent domain or the power to take a private property for public use such as for government buildings, railroads and highways.

**4.2 What types of displacements are protected by the safeguard policy?**

Regardless of types of projects, two types of displacements are covered under the involuntary resettlement.

- ✓ Physical displacement – relocation, loss of residential land or home;
- ✓ Economic displacement – loss of land, assets, access to assets, income sources or means of livelihoods.

ADB defines “displaced persons” (or individuals or communities) in the context of involuntary resettlement as those who are physically displaced and/or economically displaced 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.<sup>41</sup>

Displaced persons are classified as:

- ✓ Persons with formal legal rights to land who lost the entire land they occupy or part of it;
- ✓ Persons with no formal legal rights but have claims to such land that are recognized or recognizable under national laws, but who lost the land they occupy in its entirety or in part;
- ✓ Persons who have no formal legal right nor recognized or recognizable claims to the land, who lost the land they used to occupy in its entirety or in part.<sup>42</sup>

### 4.3 How are projects having involuntary resettlement impacts classified?<sup>43</sup>

ADB considers involuntary resettlement impacts significant “if 200 or more persons will be physically displaced from home or lose 10% or more of their productive or income-generating assets.” The resettlement plan to be prepared should be “commensurate with the extent and degree of the impacts, the scope of physical and economic displacement and the vulnerability of the affected persons.”

The projects are classified according to the following:

**Category A:** a proposed project is likely to have significant involuntary resettlement impacts. Here, a resettlement plan, including assessment of social impacts is required;

**Category B:** A proposed project has involuntary resettlement impacts that are not deemed significant. Here, a resettlement plan, including assessment of social impacts is required;

**Category C:** a proposed project has no involuntary resettlement impacts, and thus, no further action is required;

**Category FI:** A proposed project involves the investment of ADB funds to or through a financial intermediary (FI), in which case the latter must apply and maintain an environmental and social management system (ESMS), unless all of the FI’s business activities are unlikely to generate involuntary impacts.

### 4.4 How does the ADB safeguard policy and requirements on involuntary resettlement protect indigenous communities in danger of being displaced?<sup>44</sup>

Part of the requirements of the involuntary resettlement safeguards is the special consideration for indigenous peoples which states that before starting any project on indigenous peoples’ lands and territories, the government must:

- ✓ Explore to the maximum extent alternative ways to avoid physical displacement or relocation of indigenous peoples that will result in adverse impacts on their identity, culture and customary livelihoods;
- ✓ Whenever physical displacement is not avoidable, the government, in consultation with ADB, has to prepare an IPP in combination with a resettlement plan (RP) to address both the issues of indigenous peoples and their displacement.

In addition, in meeting the requirement of Consultation and Participation in the context of involuntary resettlement, the SPS says that the borrowing country will pay particular attention to the needs of disadvantaged or vulnerable groups during the conduct of meaningful consultation. The indigenous peoples are identified as among these vulnerable or disadvantaged groups, together with the landless, the elderly, female-headed households, women, children and people below the poverty line.<sup>45</sup>



**What must indigenous communities affected by displacement do before giving their broad community support or consent?**

- ✓ Study thoroughly the impacts and benefits that their community may derive from the project;
- ✓ Tell the borrower/client or the project consultants their ideas about how to avoid displacement;
- ✓ Give their opinions about how to minimize the impacts, if displacement is unavoidable.
- ✓ Make sure that the borrower/project consultants incorporate affected indigenous peoples' views into the IPP and resettlement plan (RP).

#### 4.5 How are the requirements on Compensation, Assistance and Benefits for displaced persons fulfilled?<sup>46</sup>

##### For Physical Displacement

Entitlements vary according to the types of legal ownership or possession over the lands that the displaced persons have. The ADB involuntary resettlement policy says that compensation package for physical displacement will be based on the criteria listed in Box 15 below.

Box 15

<b>Entitlements and Compensations for Physical Displacement</b>	
<b>Types of Displaced Persons</b>	<b>Entitlements and Compensations</b>
With formal legal rights to land	<ul style="list-style-type: none"> <li>✓ appropriate replacement or cash compensation at full cost for land and structures lost;</li> <li>✓ adequate compensation for partially damaged structures;</li> <li>✓ Relocation assistance.</li> </ul>
With recognized or recognizable claims to the land under national laws but no formal legal rights to land	<ul style="list-style-type: none"> <li>✓ appropriate replacement or cash compensation at full cost of land and structures lost;</li> <li>✓ adequate compensation for partially damaged structures;</li> <li>✓ Relocation assistance.</li> </ul>
With neither formal legal rights nor recognized or recognizable claims to the land	<ul style="list-style-type: none"> <li>✓ compensation for loss of assets (except the land) such as houses, and improvements to the land at full replacement cost;</li> <li>✓ No payment for land.</li> </ul>

The ADB policy on involuntary resettlement says that the costs will be computed based on fair market value, transaction costs, interest accrued, transitional and restoration costs, and other applicable payments, if any. The government will appoint qualified and experienced experts to calculate the value of the assets.



Since having legal land titles is the prevailing evidence for land ownership, those who do not have land titles are often paid little or cannot negotiate for fair compensation. More often than not, indigenous communities do not hold legal titles to their ancestral domains and lands, and the state does not recognize the right of indigenous peoples to their ancestral domains which they have occupied since time immemorial.

Likewise, as experienced by communities, such as the San Roque Dam project in the Philippines, compensation payments are sources of corruption in the government bureaucracy and among project implementers.

#### For Economic Displacement

Whether the persons are physically displaced or not, the borrower/client will undertake the following:

- Compensate for the loss of income or means of livelihood at full replacement cost;
- Provide assistance such as credit facilities, training and employment opportunities to restore or improve their income-generating capacity, productive levels and standard of living while they were still not yet displaced;
- Identify opportunity for engaging persons as project beneficiaries and to discuss how to spread such opportunity as widely as possible among affected persons;
- For displaced persons with no legal rights nor recognized claims to the land, compensate for lost assets such as crops, irrigation system and other improvements to the land at full replacement cost.

## Box 16

**When should displaced persons get their compensation and benefits?<sup>47</sup>**

The ADB policy says that no displacement – physical or economic-- shall happen until and unless:

- ✓ Compensation at full replacement costs has been paid to each displaced persons for project components that are ready for construction;
- ✓ Other entitlements listed in the resettlement plan (RP) have been provided to displaced persons;
- ✓ A comprehensive income and livelihood rehabilitation program supported by an adequate budget is in place to help displaced persons improve or at least restore their income and livelihoods.

While compensation is required to be paid before displacement, full implementation of the resettlement plan might take longer.

**4.6 How are the requirements on Social Impact Assessment met?**

In coming up with the social impact assessment, the borrower/client will conduct socio-economic survey and census to identify all persons who will be displaced by the project and to assess the socio-economic impacts on them. The report will include identified past, present and future potential social impacts, an inventory of displaced persons and their assets, an assessment of income and livelihoods and gender-disaggregated information on the socio-economic and cultural conditions of displaced persons. In addition, the social impact assessment will pay attention to vulnerable or disadvantaged individuals and groups who may be differentially or disproportionately affected by the project.<sup>48</sup>

**4.7 How are the requirements on Resettlement Planning complied with?<sup>49</sup>**

According to the SPS, if there are potential impacts and risks of an ADB-funded project on the involuntary resettlement, the borrower/client will prepare a resettlement plan (refer to Annex 11 for the outline). The objective of a resettlement plan is to ensure that livelihoods and standards of living of displaced persons and other vulnerable groups are improved or at least restored to the physical and/or economic levels when the project has not yet been implemented. In addition, the resettlement plan will be based on the social impact assessment and will be undertaken through meaningful consultation. A resettlement plan will also include measures to make sure that affected persons will be informed about their options, entitlements, resettlement options and choices, and that gender concerns are given attention to. The information in the resettlement plan may be tentative and will be finalized upon the completion of the census of affected persons, inventories of loss of assets, and engineering designs.

The borrower/client will tap qualified experts in preparing the social impact assessment and resettlement plan. For highly complex and sensitive projects, the borrower/client will use independent advisory panels of experts not connected with the project during project preparation and implementation.

## Box 17

### Outline of the Resettlement Plan (RP)

1. Executive Summary
2. Project Description
3. Scope of Land Acquisition and Resettlement
4. Socio-economic information and profile
5. Information Disclosure, Consultation and Participation
6. Grievance Redress Mechanism
7. Entitlements, Assistance and Benefits
8. Relocation of Housing and Settlements
9. Income Restoration and Rehabilitation
10. Resettlement Budget and Financing Plan
11. Institutional Arrangement
12. Implementation Schedule
13. Monitoring and Reporting

*(for details, refer to Annex 8)*

Like in the Indigenous Safeguard Requirements, in the Involuntary Resettlement Safeguard Requirements, the borrower/client must comply with the requirements of consultation and participation, grievance redress mechanism, monitoring and reporting, information disclosure, and unanticipated impacts.

### Case Study 5

#### Chittagong Hill Tracts (CHT) Rural Development Plan, Bangladesh

The CHT Rural Development Plan was afloat to work towards poverty reduction, employment creation and capacity building following the CHT Accord, signed to ensure peace, justice and limited self-rule in the post strife-torn region. The beneficiaries of the

project include jummas (shifting cultivators), landless farmers, mostly belonging to 11 indigenous peoples of the CHT. The project originally planned for seven years, became operational in 2002 although work did not commence until 2005 due to several delays.

The project has four major components: (i) Upgrading and Rehabilitation of Rural Infrastructure (small sub-projects on rural roads, bridges and culverts); (ii) Community Development (mini-irrigation works, mini-civil works, solar energy panels, village health posts, community water schemes, literacy centers, community centers, etc.); (iii) Microenterprise Development (small capital to the poor to enable them take up small farm and off-farm business); and (iv) Project Management Support (enhance capacities of the rural communities, local organizations and the project office).

The positive part of the CHTRDP is that Free, Prior and Informed Consent was reflected in it particularly in the case of community development. Moreover, it carried a supportive analysis on the CHT Accord with focus on its partial implementation. However its beneficiary groups such as the (i) poor shifting cultivators who are unable to meet their basic consumption needs and dependent on the sale of manual labor as the main source of income, (ii) poor landless farmers having less than 0.5 acres of cereal production land, including homesteads and dependent on the sale of manual labor as the main source of income and (iii) the absolutely poor marginal farmers with 0.5 to 1.0 acres of cereal production land, were totally excluded from the ambit of the program. The project, actually served relatively well-off farmers.

It failed further to ensure indigenous participation in the monitoring system in compliance with the Bank's Indigenous Policy. On the other hand, the capacities of the CHT institutions, GOB (Government of Bangladesh), the MCHTA (Ministry of the CHT Affairs) seem to be lacking the necessary experience. The role of the HDCs (Hill District Councils) in project implementation remains impeded. The micro-credit program with its negative impacts on the beneficiary groups clearly contravenes the ADB's indigenous people's policy. With regard to the Rural Infrastructure, the IPDP fails to identify the likely difficulties faced by the loss of lands donated for the roads and the risks that the new roads unlock for the exploiters to capitalize. ICDP also fails to activate the links between and among indigenous leaders to various levels (village and union level communities, members of the RCC (Regional Coordination Committee) and NPSC (National Project Steering Committee).

Excerpts from the Draft Case Study on the Chittagong Hill Tracts (CHT) Rural Development Plan (2010) written by Prof. Mongsanu Chowhury.

<b>Table 2: Safeguard Policy Requirements at a Glance</b>			
<b>Requirements</b>	<b>Indigenous Safeguards</b>	<b>Environmental Safeguards</b>	<b>Involuntary Resettlement Safeguards</b>
A. GENERAL			
1. Consultation and Participation	meaningful consultation in an inclusive and participatory manner; Initiates good faith negotiation to resolve differences and disagreements.	Meaningful consultation; informed participation; results to be included in the EIA report;	Meaningful consultation; if involving IPs, will pay particular attention to the needs of disadvantaged groups.
2. Assessment	SIA	EIA/IEE; If involving IPs, differential or disproportionate environmental impacts to the IPs will be included.	SIA (SE survey and census); If involving IPs, will pay attention to vulnerable or disadvantaged individuals or groups who may be differentially affected by the project.
3. Planning	IPP	EMP If involving IPs, EMP + IPP	RP If involving IPs, RP + IPP
4. Information Disclosure	Disclosure on the SIA report, IPP/IPPF, monitoring report on the implementation of IPP, updated IPP and corrective action plan (if any)	Disclosure of the EIA/IEE report, EMP, environmental monitoring reports in a timely manner, accessible place, appropriate form and language	Disclosure on RP (draft, updated or new) and corrective action plan (if any) and/or resettlement framework; resettlement monitoring reports
5. Grievance Redress Mechanism	Complaints addressed in an understandable and transparent process that is culturally appropriate, gender responsive and accessible to the affected communities; mechanism should be scaled to the impacts of the project;	Same as in the indigenous safeguard requirement.	Same as in the indigenous safeguard requirement
6. Monitoring and Reporting	Progress of implementation of the IPP monitored and reported periodically.	Progress of implementation of the EMP, submit monitoring report periodically;	Progress of implementation of the RP, submit monitoring report periodically.

**Table 2 (continuation)**

Requirements	Indigenous Safeguards	Environmental Safeguards	Involuntary Resettlement Safeguards
7. Unanticipated Impacts	conduct SIA and update the IPP or make a new one	Update the EMP or prepare a new one;	Conduct a SIA and update or formulate a new RP
B. SPECIAL	<p>Project affecting close ties of IPs to their lands- in the conduct of the SIA and IPP, make special attention to customary rights, protection, and cultural and spiritual values, and indigenous practices attributed to these resources, and rehabilitation of livelihood system;</p> <p>Establishing legally-recognized rights to lands and territories, integrate in the IPP;</p> <p>Commercial development of cultural resources and knowledge- broad community support and good faith negotiation;</p> <p>Commercial development of natural resources- broad community support and good faith negotiation; include equitable sharing arrangement in IPP;</p> <p>If physical displacement- broad community support and good faith negotiation; prepare IPP and RP.</p>	If physical cultural resources will be affected, consult with affected community, relevant national or local regulatory agencies entrusted with protecting cultural resources.	Entitlements for displaced communities or individuals due to physical displacement and economic displacement

# 5 SECTION

## How to Hold the ADB and Government Accountable

### 5.1 What existing mechanisms and processes can indigenous peoples use to hold ADB and the government accountable?

If ADB or the borrower country (or company) does not follow the ADB SPS and other safeguard policies, affected indigenous peoples can make use of the following mechanisms and tools to hold ADB and the borrower/client transparent and accountable to the people:

- Tools that are built-in within the SPS
- ADB Accountability Mechanism
- Country Safeguard Systems (CSS)



Other platforms and instrumentalities outside the ADB SPS that affected indigenous peoples can challenge unwanted development projects include the UNDRIP. Affected communities and advocates can also conduct advocacy campaigns, community organizing and the like to raise their concerns about ADB-supported projects that violate their rights.

### 5.2 What tools are provided within the SPS to hold ADB and governments accountable?

As explained in Sections 2-4, there are three basic tools in place within the SPS and in particular, the Indigenous Safeguard Policy that can be used:

#### ✓ **Access to information**

By its policy obligation, ADB has to disclose all relevant information and reports on the project, such as the SIA and EIA reports, IPP/IPPF, EMP and RP. The right to information is a powerful tool for the affected indigenous community to exercise prior and informed decision about the project and critical involvement in project implementation.



Affected indigenous peoples and organizations have the right to have access to information and documents on the ADB projects so that they can protect their rights.

### ✓ **Monitoring of the ADB project**

The ADB safeguard policy obligates the government to undertake measures to track the progress of the IPP/IPPF. These measures include preparation of periodic monitoring report, verification of monitoring information and compliance processes, and progress of the IPP by external experts; and preparation of a corrective IPP, if significant adverse impacts are identified in the monitoring report. Thus, monitoring the progress of the project may be another important tool for affected indigenous communities to hold the government and ADB accountable.

The affected indigenous peoples, especially representatives of IPOs can regularly monitor the findings of periodic monitoring reports that the government submits. At the same time, they can also independently monitor the activities of the project at all stages-- from preparation and approval to implementation and completion, and evaluation.

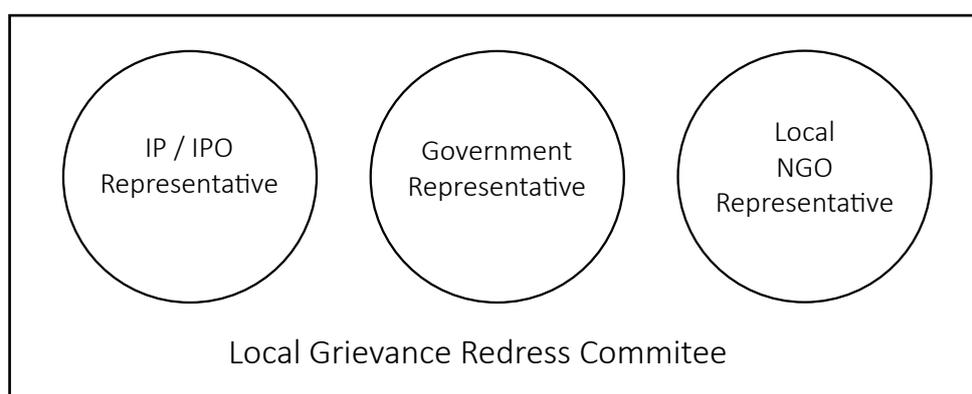


IPs and IPOs can form their own monitoring team or committee so that community residents will know what is happening to the ADB project in their locality to protect their collective rights.

### ✓ **Grievance Redress Mechanism**

The ADB policy says that the borrowing country has to establish a transparent, culturally appropriate and easily understandable mechanism. This mechanism will receive and facilitate resolution of issues, complaints and grievances from affected indigenous peoples. Usually this grievance mechanism takes the form of a Grievance Redress Committee (GRC) which can comprise members from the government, indigenous people's organization or local NGOs.

The indigenous people can utilize the grievance mechanism by lodging the complaints with the GRC or some other form of grievance mechanism established.





Affected Indigenous communities and IPOs must be concerned about the composition, selection process and performance of the local grievance redress committee to ensure that this committee truly serves its purpose.

### 5.3 How does the ADB Accountability Mechanism operate?

#### Aims of the 2012 Accountability Mechanism

- “To provide an independent and effective forum for people adversely affected by ADB-assisted projects to voice their concerns and seek solutions to their problems; and
- To request compliance review of the alleged con-compliance by ADB with its operational policies and procedures that may have caused or is likely to cause them direct and material harm.”<sup>50</sup>

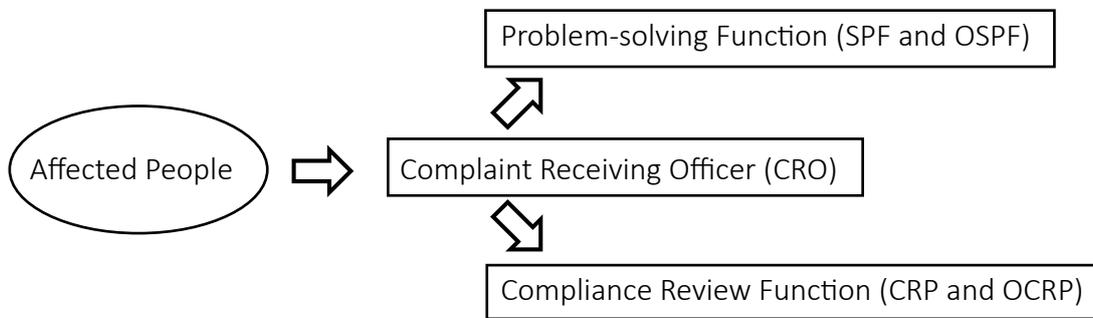
#### Two Functions of the Accountability Mechanism<sup>51</sup>

- Problem-solving Function- will respond to problems of local people affected by ADB-assisted projects through a range of informal and flexible methods. It is led by the Special Project Facilitator (SPF) with a support staff comprising the Office of Special Project Facilitator (Box 18);
- Compliance Review Function - will investigate alleged noncompliance by ADB with its operational policies and procedures that has caused, or is likely to cause, direct and material harm to project-affected people. It is led by the Compliance Review Panel (Boxes 19 and 20) with a support staff composing the Office of Compliance Review Panel.

This two-pronged structure will be supported by the Complaints Receiving Officer (CRO) who will receive all complaints from people who are seeking access to the ADB Accountability Mechanism. The CRO (Box 21) is a single-point entry point for affected people seeking solutions to problems brought about by the ADB-assisted projects or compliance review of ADB operational policies and procedures.

The Accountability Mechanism will be a last resort mechanism since ADB strives to prevent the occurrence of problems by strengthening its project design, implementation and learning mechanisms and ensuring compliance at the outset, and to respond to the concerns of affected people at the project and operational levels.

The Accountability Mechanism of the ADB has been established as early as 1995 (through the Inspection Function); was revised in 2003 (and called the Accountability Mechanism) and in 2012.



## Two Functions of the Accountability Mechanism and Structures Involved

Box 18

### What is the Office of the Special Project Facilitator (OSPF)?<sup>59</sup>

The Office of the Special Project Facilitator (OSPF) provides support to the Special Project Facilitator in assisting people resolve problems caused by ADB-assisted projects and in strengthening the overall internal problem-solving functions of ADB.

Among other functions, the OSPF:

1. Processes complaints requesting problem solving;
2. Engages with all relevant parties, including the complainants and the borrower to gain a thorough understanding of the issues to be examined during the problem-solving;
3. Facilitates consultative dialogue, promote information sharing, undertake joint fact-finding, and/or facilitate the establishment of a mediation mechanism;
4. Monitors the implementation of the remedial actions agreed upon during the problem-solving process;
5. Conducts outreach programs, within ADB and with the public that will include a holistic introduction to the Accountability Mechanism while focusing on specific projects.

Box 19

### What is the Compliance Review Panel?<sup>60</sup>

The Compliance Review Panel is a three-member fact-finding body which investigates alleged non-compliance by ADB with its operational policies and procedures in any ADB-assisted projects. It is supported by the Office of Compliance Review Panel and is supervised by the Board Compliance Review Committee.

Among other functions, the CRP:

1. Processes complaints requesting compliance review;
2. Engages with all relevant parties and stakeholders to gain a thorough understanding of the issues to be examined during the compliance review;
3. Conducts thorough and objective reviews of compliance by ADB;
4. Engages all stakeholders concerned throughout the compliance review process;
5. Monitors the implementation of decisions made by the Board and produce annual monitoring reports.

## Box 20

**What is the scope of investigation of the Compliance Review Panel?<sup>52</sup>**

The Compliance Review Panel will investigate alleged non-compliance by ADB with its operational policies and procedures in any ADB-assisted project in the course of the formulation, processing, or implementation of the project that directly, materially, and adversely affects local people. A compliance review will not investigate the borrowing country, the executing agency or the private sector client. The conduct of these other parties will be considered only to the extent that they are directly relevant to an assessment of ADB's compliance with its operational policies and procedures.

## Box 21

**What are the functions of the Complaint Receiving Officer (CRO)?<sup>61</sup>**

Among other functions, the CRO:

1. Receives all complaints from people seeking access to the Accountability Mechanism and promptly acknowledge them;
2. Provides information to complainants;
3. Forwards complaints to the OSPF or CRP based on the choice of complainants; or to other relevant departments and offices of ADB, if the complaints are beyond the scope of the Accountability Mechanism;
4. Registers the complaints;
5. Informs the complainants about whom to contact after complaints have been registered.

**Who Can File a Complaint**

- For both the problem-solving and compliance review functions, a complaint may be filed by the following:<sup>53</sup>

- Any group of two or more people in a borrowing country where the ADB-assisted project is located or in a member country adjacent to the borrowing country who are directly, materially and adversely affected;
- Local representative of affected people, the latter clearly identified and providing evidence of authority to the former to represent them;
- Non-local representative of affected people, in exceptional cases where local representation cannot be found and the SPF or CRP agrees.

In addition, for the compliance review, a complaint may also be filed by any one or more ADB Board members, after first raising their concerns with Management.

## **How to File a Complaint**

The following are the requirements<sup>54</sup> in filing a complaint using the Accountability Mechanism:

- ✓ Must be filed in writing and preferably addressed to the CRO;
- ✓ Must be written in English but may also be in any of the official or national languages of ADB's Developing Member Countries;
- ✓ Must contain the following:
  1. Name, designations, addresses and contact information of the complainants and their representatives;
  2. If a complaint is made through a representative, identification of the project-affected people on whose behalf the complaint is made and evidence of the authority to represent them;
  3. Whether the complainants choose to keep their identities confidential;
  4. Whether the complainants choose to undergo problem solving with the OSPF or compliance review with the CRP;
  5. A brief description of the ADB-assisted project, including the name and location;
  6. A description of the direct and material harm that has been, or is likely to be caused to the complainants by the ADB-assisted project;
  7. A description of the complainants' good faith efforts to address the problems first with the operations department concerned, and the results of these efforts; and
  8. If applicable, a description of the complainants' efforts to address the complaint with the OSPF, and the results of these efforts.

Boxes 22 and 23 show the ADB Accountability Mechanism Complaint Form and sample complaint letter.

Other optional information which can be included in the complaint letter are:

- "An explanation of why the complainants claim that the direct and material harm alleged or will be, caused by the alleged failure by ADB to follow its operational policies and procedures,
- A description of the operational policies and procedures that have not been complied with by ADB,
- A description of the complainants' efforts to address the problems with the project-level grievance redress mechanisms and results of these efforts;
- The desired outcome or remedies that the complainants believe ADB should provide or help; and other relevant information with supporting documents."<sup>55</sup>

## Box 22 ADB Accountability Mechanism Complaint Form



### ADB Accountability Mechanism Complaint Form

The ADB Accountability Mechanism aims to provide an independent and effective forum for people adversely affected by ADB-assisted projects to voice their concerns and seek solutions to their problems, and to request compliance review of alleged noncompliance by ADB with its operational policies and procedures that may have caused, or is likely to cause them direct and material harm.

The Accountability Mechanism is a “**LAST RESORT**” Mechanism and covers only ADB-assisted projects. As such, it is encouraged that complainants first seek a fair resolution of their case with available grievance mechanisms at the project level or within the relevant Operations Department of ADB.

#### A. Complainants’ Choice and Contact Information

<b>1. Complainants’ Choice</b>					
a. Please forward complaint to: <i>(Please choose only one and DO NOT leave this BLANK)</i>					
<input type="checkbox"/> <b>Special Project Facilitator</b> <i>(Assists people directly, materially, and adversely affected by specific problems caused by ADB-assisted projects through informal, flexible, and consensus-based methods with the consent and participation of all parties concerned)</i>					
<input type="checkbox"/> <b>Compliance Review Panel</b> <i>(Investigates alleged noncompliance by ADB with its operational policies and procedures in any ADB-assisted project in the course of the formulation, processing, or implementation of the project that directly, materially, and adversely affects local people.)</i>					
b. Do you want your identities to be kept confidential?					
<input type="checkbox"/> Yes			<input type="checkbox"/> No		

<b>2. Information on the Complainants</b> <i>(The identities of complainants will be kept confidential unless the complainants agree to disclose their identities, but anonymous complaints will not be accepted.)</i>					
Names and designations (Mr., Ms., Mrs.)	Signatures	Positions/Organizations <i>(If any)</i>	Addresses	Contact numbers	E-mail addresses

<b>3. Information on Authorized Representative</b> <i>(If any). (The identities of representatives who are not at the same time complainants will be disclosed to ensure transparency).</i>					
<b>Please provide evidence of the authority to represent the complainants.</b>					
Names and designations	Signatures	Positions/Organizations <i>(If any)</i>	Addresses	Contact numbers	E-mail addresses

**Box 22 (continuation)****B. Project Information**

Project name	
Project location	
Brief description of the project	

**C. The Complaint**

<p>1. What direct and material harm has the ADB-financed project caused to the complainants?</p>
<p>2. Have the complainants made prior good faith efforts to solve the problem(s) and issue(s) with the concerned ADB operations department?</p> <p><input type="checkbox"/> <b>Yes</b> If YES, please provide the following: when, how, by whom, and with whom the good faith efforts were made.</p> <p>Please describe any response the complainants may have received from or any actions taken by ADB</p> <p><input type="checkbox"/> <b>No</b></p>
<p>3. Have the complainants contacted the Office of the Special Project Facilitator or the Compliance Review Panel about their concerns?</p> <p><input type="checkbox"/> <b>Yes</b>, Office of the Special Project Facilitator      <input type="checkbox"/> <b>Yes</b>, Compliance Review Panel</p> <p><input type="checkbox"/> <b>No</b></p> <p>If YES, please provide information on when the contact was made, how, by whom and with whom.</p>

**Box 22 (continuation)**

Please describe any response the complainants may have received or actions taken by the Office of the Special Project Facilitator or the Compliance Review Panel.

4. Please include any other information that you consider relevant.

**D. Optional Information** (*The following information is not mandatory, but would be helpful in processing your complaint*)

1. Have the complainants contacted the grievance redress mechanism of the project concerned?

**Yes** If YES, please provide the following: when, how, and with whom the contact was made.

Please describe any response the complainants may have received or any actions taken.

**No** If NO, why not?

2. What is the complainants' desired outcome from the ADB's Accountability Mechanism?

3. Why do complainants believe that the alleged direct and material harm is the result of ADB's failure to follow its operational policies and procedures?

4. Please describe the operational policies and procedures that have not been complied with by ADB.

5. Do the complainants have any other relevant matters or facts (with supporting documents) that the complainants would like to share with us?

**Name of the person who completed this form:**

**Signature:**

**Date:**

Please send the complaint to:

**Complaint Receiving Officer (CRO)**

Accountability Mechanism  
ADB Headquarters  
6 ADB Avenue  
Mandaluyong City 1550  
Philippines

Telephone number: +63-2-6324444 local 70309

E-mail: amcro@adb.org

Complaints may be submitted by mail, facsimile, e-mail, or hand delivery to any resident mission of ADB or to the CRO at ADB headquarters.

**Box 23 Sample Complaint Letter**

(Date)  
 Complaint Receiving Officer  
 Accountability Mechanism  
 Asian Development Bank  
 6 ADB Avenue, Mandaluyong City  
 1550 Metro Manila, Philippines

Dear Sir:

We, who have signed this letter, are residents of (COMMUNITY OR ADDRESS OF COMPLAINANTS) and would like to file a complaint regarding the (NAME OF PROJECT), an ADB-assisted Project.

We believe that due to this Project, we have suffered or are likely to suffer the following:  
 (LIST DOWN ALLEGED DIRECT, MATERIAL OR ADVERSE EFFECT OF PROJECT TO COMPLAINANTS)

\_\_\_\_\_

We would like ADB to remedy the harm in the following manner:  
 (LIST DOWN REQUESTED ACTION FROM ADB)

\_\_\_\_\_

We have previously raised our concerns with the Operations Department of ADB, but are not satisfied with the results. Below is a brief summary of what happened:

(INSERT SUMMARY OF EVENTS)

We request that you keep our identities confidential.

(If complaint is being filed by a person or group different from the complainants, kindly include the following text along with a copy of the authorization letter duly signed by the complainants)

We have authorized Mr./Ms. \_\_\_\_\_ to represent us in this complaint.

Please get in touch with us through the following contact details:

Mailing Address: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Sincerely,  
 Signature  
 Name of Complainant  
 Signature:  
 Name of Complainant  
 Signature:  
 Name of Representative

**Where to Send the Complaint**

- ✓ Must be submitted by mail. Fax, email or hand delivered to the CRO;
- ✓ May also be accepted at ADB headquarters or to any ADB office such as a resident mission or representative office which will forward them to the CRO;

**Length of Time for Processing the Complaint**

A complaint seeking problem-solving is expected to take 180 days from the registration of the complaint to an agreement on the remedial actions. This excludes time for translation into English the complaint written in local language, request for extension to provide information or file documents, and the time needed by the participants to facilitate the resolution of their problems.<sup>56</sup>

Complainants seeking compliance review will be informed about whether the Board of Directors has authorized the compliance review they have requested about 70 days after receipt of the CRO's notification of registration of the complaint. They will be informed of the outcome of the Board decision on the CRP final report about 200 days after the receipt of the notification of registration of the complaint. These periods exclude time for translation, request for extension to provide information or file documents, and the time for conducting the compliance review, which is not time-bound.<sup>57</sup>

Box 24

**How will the complainants know about the status of their complaints?<sup>58</sup>**

Within two days of receiving the complaint, the CRO will acknowledge receipt of the complaint and send an Accountability Mechanism information packet to the complainants. The complainants will be informed of the progress of their complaint throughout the various steps being undertaken by the SPF or by the CRP.

As part of its information disclosure requirements, the ADB will make available on its Accountability Mechanism website information and documents on the complaints (such as the complaint letter, problem solving completion report, CRP's final compliance review report) filed under the Accountability Mechanism.

## 5.4 How can the Country Safeguard Systems (CSS) be used in raising accountability of ADB and governments?<sup>62</sup>

According to the ADB, DMCs have developed their own systems in carrying out safeguards in varying degrees. ADB terms this as the Country Safeguard Systems (CSS) which means “a country’s legal and institutional framework, consisting of its national, sub-national or sectoral implementing institutions and relevant laws, regulations, rules and procedures that pertain to the safeguard policy areas.” ADB would like to support the DMCs in strengthening and using their CSS effectively. However, it also needs to ensure that the application of the CSS in ADB-assisted projects does not weaken the achievement of ADB policy objectives and principles.

A borrowing country which wants to use its own CSS must subject its CSS to equivalence and acceptability assessments by the ADB. In conducting the equivalence assessment, the ADB must determine if the CSS is equivalent to ADB’s SPS. In undertaking the acceptability assessment, ADB must find out if the borrowing country has acceptable capacity and commitment to implement the applicable laws, regulations, rules and procedures. Where gaps have been identified, ADB may take measures to help a borrowing country strengthen its CSS and implementation capacity. For each ADB-assisted project in the country, ADB will also conduct an acceptability assessment before the CSS can be introduced into the project.

The CSS can qualify for any or all of the safeguard areas covered by the SPS. However, “CSS will not be applied to highly complex and sensitive projects financed by ADB.” This means that there are certain ADB-funded projects of a country wherein the CSS cannot be used.

The role and functions of ADB’s Accountability Mechanism still apply when the CSS is used by the borrower country. The results of the equivalence and acceptability assessments (both the draft and updated document) will be disclosed in the ADB website for public comment. ADB will also organize in-country consultations with stakeholders to solicit feedbacks on the findings of the assessments and on the measures identified to improve the CSS and implementation capacity of the borrowing country.



IPs must find out what relevant policies, laws, regulations, rules and procedures in their respective countries and localities can hold the ADB and their governments accountable. In doing so, they need to critically study how these legal instrumentalities affect their rights—both the positive and negative aspects-- so that they can be guided accordingly. As shown by various experiences of indigenous communities, rather than protect the rights of indigenous peoples, there are laws and policies which further disenfranchise their collective interests.

# 6 SECTION

## The Right to Free Prior and Informed Consent of Indigenous Peoples

### 6.1 What is FPIC?

The Free, Prior and Informed Consent (FPIC) is a right, a process and a mechanism.

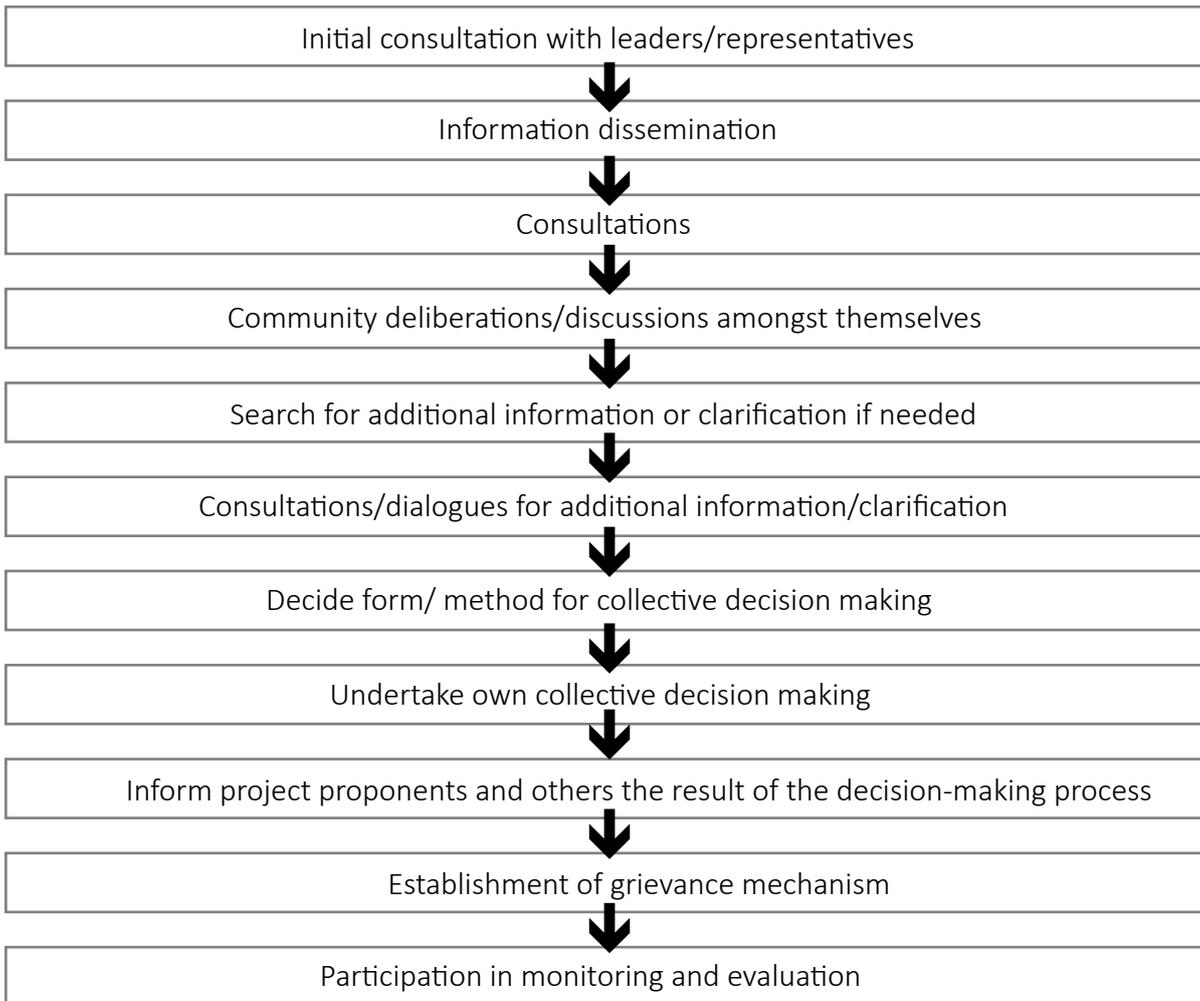
As a right, the FPIC is specific right for indigenous peoples and recognized in international laws and declarations.

As a process of collective decision making, FPIC is an essential component in the exercise of indigenous peoples' rights to their lands, territories and resources, and their right to self-determination and cultural integrity. The engagement of indigenous peoples with external entities is not simply a matter of consultation but of accounting for and responding to the views, issues and concerns of indigenous peoples, and respecting their collective decision.

As a mechanism, indigenous peoples can independently take their collective decision on matters that may affect them. They live as a collective and thereby rely on each other for their collective survival and development.

There are many intergovernmental organizations, international bodies, conventions and international human rights laws which at varying degrees, have recognized indigenous peoples' right to FPIC, especially in relation to externally-introduced development initiatives that affect their rights and territories. Among the major international legal instruments which have clearly addressed and enjoined governments to recognize the right to exercise FPIC are the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), International Labor Organization Convention - 169 (ILO 169), and the Convention on Biological Diversity (CBD). Annex 9 contains the specific provisions of these international instruments.

**Diagram 2: The FPIC and Project Implementation**



Source: AIPP and IWGIA. *Training Manual on FPIC in REDD+ for Indigenous Peoples*. Chiang Mai, 2012. p. 62.

## 6.2 What are the key elements of FPIC?

### **FREE: Independent process of decision-making**

- Implies absence of any manipulation, coercion or intimidation from other groups, bodies and entities in the decision-making process of indigenous peoples.
- Implies absence of external influence that hinders self-determination in the process of decision making and the outcome of their decision.

### **PRIOR: Right to undertake the decision-making process before the start of project/programme implementation**

- Means that consent must be sought first as a precondition before conducting or implementing any activity and project;
- Denotes respecting the duration of time for indigenous peoples to undertake their decision-making process according to their pace, circumstances and requirements.

### **FPIC and Timeline for Consultation By the State**

While national legislations and the state may contain provisions and timeline for the notice of information and the conduct of consultations, this should not preempt the self-defined process of decision making of indigenous peoples, including the time they need to deliberate the information provided to them.

### **INFORMED: Right to have sufficient information for decision making**

- Requires full access to information about the project in a manner and form understood by indigenous peoples. If necessary, information should be translated to the local language and put in forms that can facilitate their better understanding;
- Means that indigenous peoples are satisfied with the sufficiency of information provided to them as well as with the answers to the questions they raise to help them comprehensively understand all matters affecting them;
- Means having the freedom to secure additional information from other sources besides the project proponent, as well as to have the means to verify the accuracy of information provided to them.

**CONSENT: Collective and independent decision of affected communities after undergoing their own process of decision-making**

- Connotes the right to set their terms and conditions, to say NO based on their own considerations and decision-making processes, or to WITHHOLD or WITHDRAW consent if conditions are not met or if in their judgment the project will adversely affect their community. It also means having the right to SANCTION project proponents based on due process. Moreover, NO CONSENT decision must be respected;
- Does not mean unanimity. Based on the traditional systems of decision-making of indigenous peoples, consensus is always the desired outcome of a collective decision-making process in upholding the collective voice, common good and the collective interest and welfare of the community. Even if there are views or positions that run counter to those of the majority, as long as those with opposing views agree to abide or respect the position of the majority, this is considered as a consensus and a consent decision. Strong division with opposing views within indigenous communities means the absence of consent;
- Necessitates measures that foster transparent, inclusive and well-informed consultation processes, and accountability of leaders in collective decision-making. The independence of the decision-making process and the outcome must be verifiable with community members;
- Includes series of consultations as needed, and allowing enough time for indigenous communities to undertake their own internal deliberations prior to making their collective decision;
- Cannot be valid if consent is taken from the authority or group that is not recognized by the indigenous communities or not accountable to them;

**6.3 What are the characteristics of FPIC?**

- FPIC as a holistic and interrelated set of principles and elements
  - The principles and substance of each element of FPIC should not be taken or treated as separate elements. In particular, the first three elements (FREE, PRIOR and INFORMED) qualify and set the conditions for a CONSENT decision-making process.
- FPIC as an iterative process
  - Requires the conduct of series of consultations, dialogues, exchanges and interaction between indigenous peoples and those requiring the consent and agreement of indigenous peoples;
  - Requires continues engagement in the whole project cycle, and not only before project implementation;
  - Is undertaken in good faith to ensure mutual respect and meaningful participation in decision-making.

- FPIC as an avenue to exercise self-determination
  - FPIC allows indigenous peoples to exercise their control and management of their territories and to uphold their cultural integrity;
  - FPIC provides for the mechanism for indigenous peoples to undertake their own collective decision-making as an exercise of self-determination on matters that affect them, especially on their own development as distinct peoples;
  - FPIC is essential for ensuring the full and effective participation of indigenous peoples in policy making and decision-making processes.
- FPIC as a mechanism to uphold the common good and welfare
  - The collective decision of indigenous peoples is not simply an aggregation of individual decisions but rather an outcome of collective deliberations in upholding the common good and welfare over individual interest and benefit.
- FPIC as a right to exercise the collective rights of indigenous peoples.
  - FPIC is not merely a procedural process but a substantive mechanism to ensure the respect of indigenous peoples' collective rights.
- FPIC as a mechanism to safeguard against externally-imposed development initiatives
  - FPIC establishes conditions for exercising the fundamental rights of the indigenous peoples to be well-informed about a project, and to negotiate and define the terms of externally imposed policies, programmes and activities that directly impact their day to day lifestyles and livelihoods;
  - FPIC serves as a safeguard in ensuring that the perspectives of indigenous peoples on potential social and environmental impacts of any project are considered in deciding to allow or reject any project.

#### **6.4 Why are Indigenous Peoples entitled to FPIC?**

The history of indigenous peoples across the globe has clearly demonstrated the systematic exploitation, discrimination and oppression of indigenous peoples through the violation of their rights to their territories, cultural heritage, dignity, and self-governance. This was brought about by the formation of states that have taken over the land, territories and resources of indigenous peoples, which resulted in the ethnocide, marginalization and disempowerment of indigenous peoples. In order to rectify this condition, and provide for social justice, the collective rights of indigenous peoples have to be respected and recognized in order to ensure their collective survival and development as a matter of self-determination.

Along this line, the application of FPIC provides for the need to seek the CONSENT of indigenous peoples on matters that affect them and in the promulgation of policies and implementation of programmes that may have serious implications to their identity, survival and collective wellbeing.

Even with all these guidelines and policies being developed by governments and other agencies, it is important that Indigenous Peoples themselves uphold and assert their customary decision making processes in all matters affecting them and not be totally subsumed in the step by step bureaucratic processes stipulated in various FPIC guidelines.

### **6.5 What system of decision-making must be applied in the FPIC process?**

Indigenous peoples have their own traditional systems of governance in managing their own affairs, lands, territories and resources. These systems include their socio-political systems, customary laws and practices, resource management systems and other traditional knowledge and practices that make them distinct from the dominant society. The self-governance of indigenous peoples has been seriously eroded and undermined by colonization, subjugation and forced assimilation. In spite of this, indigenous peoples continue to assert, practice and defend their collective identity, lifestyles and traditional systems of governance as part of their right for self-determination, including their right to determine their own path for development.

In the conduct of the FPIC, the traditional decision-making system of indigenous communities, often in the form of consensus is practiced. In this consensual decision-making, community members actively participate in both formal and informal structures. Issues and concerns of community members are handled in various ways including continuous deliberations to arrive at a consensus.

### **6.6. Where does FPIC apply to?**

The FPIC defines the relationship and level of engagement of indigenous peoples with outside entities that intend to implement activities, projects and programmes that may have serious implications and impacts on their health, territorial integrity, collective identity, cultural integrity, livelihoods, social cohesion, among others.

This principle also applies to policy formulations or adoption of legislative and administrative decisions that directly affect indigenous peoples. Any external entity, such as governments, corporations, institutions, organizations and project proponents, needs to obtain the consent of indigenous communities as right-holders before implementing any project or activity.

## 6.7 What are the lessons learned in the implementation of FPIC?

### Case Study 6: Philippines

The enactment of the Indigenous Peoples Rights Act of 1997 (Republic Act 8371) was a milestone for indigenous peoples in the Philippines for it was the only one in Asia that recognizes the rights of indigenous peoples. Stipulated in this law is the requirement to seek an FPIC from indigenous peoples before any project or program will be implemented in their territories.

However, as noted in the 2011 Report of the Chairperson of the National Cultural Communities Committee of the 15th Congress, majority of the FPIC processes implemented have been manipulated by companies with vested interests on indigenous territories, sometimes in connivance with the government agency implementing the FPIC process. In addition, these interest groups resort to bribery and cooptation of key indigenous leaders and regulating agencies to bypass the FPIC requirement. Examples of manipulation of consent that have been observed are the creation of fake tribal councils, misrepresentation of affected indigenous communities by non-indigenous organizations with vested interests, and bribery of indigenous leaders.

A case in point is that of the Subanens on Midsalip, Zamboanga del Sur in Mindanao wherein the National Commission on Indigenous Peoples (NCIP) was alleged to have committed irregularities in the conduct of the FPIC and in the selection of indigenous representatives in seeking consent for a mining application to operate in Subanen ancestral domain. The NCIP is a government agency in charge of indigenous peoples concerns. Allegedly, due to the Subanen's strong and sustained opposition to mining, a new indigenous organization, Midsalip United Subanen Association (MUSA) was established and represented the affected community despite the absence of community support through customary decision-making process.

During the on-site hearing conducted in May, 2011 by the National Cultural Communities (NCC) Committee of the 15th Congress, it was established that the people of Midsalip were divided on their position on the application of GAMI (Geotechniques and Mines Inc.) in their area. This case was also submitted to the Committee on the Elimination of Racial Discrimination (CERD) of the UN and to the Special Rapporteur on the Rights of Indigenous Peoples.

### Case Study 7: Central Sulawesi, Indonesia

One of UN REDD's (Reducing Emissions from Deforestation and Forest Degradation) pilot provinces in Indonesia for the implementation of the REDD+ project is Central Sulawesi. The provincial government of Central Sulawesi appointed the Provincial Forestry Service as the focal point for the REDD+ project and established several working groups, among which was the Working Group on FPIC, Capacity Building and Community Empowerment.

This working group developed an FPIC guideline and piloted it in two villages. The first village rejected the planned program of the Forest Management Unit on REDD+ because prior

to the meeting, the community received information that their lands will allegedly be taken from them if they allowed the project to be implemented. The FPIC process was discontinued in this village. The second village agreed to the proposed program of the Forest Management Unit after several consultations and discussions were exhausted at the sub-village level. The consent for a forest rehabilitation program was given by the community with a commitment from the project proponent to undertake environment conservation and settlement of their problem on land borderlines, and to provide additional information.

In this pilot FPIC implementation, the Working Group gleaned the following lessons:

- The FPIC guideline should include coordination with other agencies such as the District Forestry Service and the Sub-district authority among others.
- Information dissemination/awareness raising should involve forest-related Technical Implementation Units
- A platform for complaints management between the community and the Forest Management Unit needs to be developed.

The Working Group will be conducting the FPIC Trial Implementation 2 but only after they have evaluated the first trial, and review and refine the FPIC guideline based on the lessons learned from the initial trial.

### **Case Study 8: Vietnam**

Among the 42 UN-REDD partner countries, Vietnam has pioneered the conduct of FPIC on REDD+ on the ground. The FPIC process was carried out in 78 villages in Lam Ha and Di Linh districts in the pilot province of Lam Dong from January-June 2010. The pilot province is inhabited by 30 of the 53 ethnic minority groups in Vietnam. Most of the peoples who were consulted in this process said it was their first time to get involved in any consultation process. The conduct of FPIC in Vietnam suffered from substantial gaps and weaknesses. However, the good faith engagement of the UN-REDD and the government of Vietnam with the ethnic minorities in the pilot districts is commendable (UN-REDD, 2010).

In the conduct of the FPIC on REDD+, the following were the key lessons:

- The inclusion of the indigenous facilitators in the FPIC team was appreciated. However in the future, they should be well-trained and knowledgeable on REDD+, FPIC, IP rights and indigenous livelihood systems in order to be able to deliver consistent information to the communities.

- The implementation of the FPIC in the pilot province used effective forms of communication like posters, booklets, brochures among others. However, the information provided to the villagers were substantively lacking on indigenous peoples rights and natural resource management, and benefit sharing;
- The information was mainly focused on the forest conservation and the economic benefits of REDD+, but lacked information on potential risks and implications associated with the land tenure, livelihood systems and identity of indigenous peoples among others, which were vital in reaching a consensus on whether to give or withhold consent;
- The allocation of sufficient time for the communities to internally discuss their understanding, views and concerns on REDD+, as well as to gather alternative sources of information to be able to reach a decision should be guaranteed in the conduct of FPIC process in the future in Vietnam and beyond;
- The mechanism to review any complaint lodged by the community was starkly lacking;
- The local facilitators should ensure that during the FPIC process, complaints and concerns on the issues of climate change and REDD, and on the FPIC process itself are voiced out by the communities, and that these discussion are included in their reports so that appropriate steps can be taken to address these issues and concerns.

The UN-REDD in Vietnam is planning to implement the FPIC Phase 2 incorporating the lessons learned from Phase 1.

## GLOSSARY

### **ADB Accountability Mechanism**

A mechanism within the ADB which aims to provide a forum for affected communities to voice their concerns and seek solutions or request for a compliance review of ADB with its operational policies and procedures pertaining to an ADB-financed project.

### **Borrower/Client**

A country or private company that receives loans or financial support from the ADB for public sector projects, public sector policy reforms or technical assistance.

### **Borrowing Country**

A country that receives financial assistance from the ADB.

### **Broad Community Support**

According to ADB, it is a collective expression by the affected indigenous peoples' communities, through individuals and/or their recognized representatives, of support for such project activities. It is ADB's perception of consent from affected indigenous communities acquired through meaningful consultation. It may exist even if some individuals or groups object to the project activities.

### **Compliance Review Panel**

A three-member fact-finding body which investigates alleged non-compliance by ADB with its operational policies and procedures in any ADB-assisted projects. It is supported by the Office of Compliance Review Panel and is supervised by the Board Compliance Review Committee.

### **Complaints Receiving Officer**

Receives all complaints from people/communities who are seeking access to the ADB Accountability Mechanism.

### **Country Safeguard Systems**

It is a country's legal and institutional framework, consisting of its national, sub-national or sectoral implementing institutions and relevant laws, regulations, rules and procedures that pertain to the policy areas of environmental and social safeguards.

### **Displaced persons**

According to ADB, these are people who are physically displaced and/or economically displaced as a result of involuntary acquisition of lands, involuntary restrictions on land use or on access to legally designated parks and protected areas.

### **Environmental Impact Assessment**

A process of conducting environmental analysis to address the environmental impacts and risks associated with a project.

### **Environmental Management Plan**

Contains how potential impacts and risks identified by the environmental assessment will be addressed.

### **Free, Prior and Informed Consent**

A right, a mechanism and a process essential in the exercise of indigenous peoples' rights and collective decision-making on matters affecting them.

### **Good Faith Negotiation**

Both parties are willing to engage in an extended process of negotiation; that there is provision of information necessary for informed participation; that there is mutually-acceptable and culturally appropriate procedures; that there is willingness to change initial position; and that the community is given sufficient time for decision making.

### **Grievance Redress Mechanism**

A local mechanism that receives and facilitates resolution of issues, complaints and grievances from people/communities affected by ADB-assisted projects. Usually, a Grievance Redress Committee or some other form of grievance mechanism is established.

### **Indigenous Peoples Planning Framework**

A document submitted to ADB prior to project approval as a special requirement to serve as guidance in screening and categorization, assessment, planning and other processes to ensure that the sub-component or project components implemented in indigenous peoples' community do comply with the ADB safeguard objectives, principles and requirements.

### **Indigenous Peoples Plan**

Contains the measures whereby affected indigenous peoples receive culturally appropriate and economic benefits, and potential adverse impacts on indigenous peoples are avoided and if unavoidable would be addressed.

### **Information Disclosure**

Relevant information about a project is disclosed or shared with affected people and others in a timely manner, in an accessible place, and in a form and language understandable.

### **Initial Environmental Examination**

Has a narrower scope than the EIA and is conducted for a project with limited impacts, site-specific, largely reversible and readily addressed through mitigation measures.

**International Financial Intermediary/Financial Intermediary**

Financial institutions, i.e., commercial banks, used by developing member countries to manage funds received from the government. They provide loans and equity contributions to public or private sector organizations.

**Involuntary Resettlement**

According to ADB, involuntary resettlement happens when displaced individuals or communities do not have the right to refuse land acquisition that results in their displacement.

**Involuntary Resettlement Framework**

Similar to the IPPF but applied in communities with involuntary resettlement concerns.

**Meaningful Consultation**

A process that enables the incorporation of all relevant views of affected people and other stakeholders in decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues.

**Monitoring and Reporting**

Periodic gathering of information about an on-going project and submission of the results of monitoring.

**Multilateral Development Banks**

Institutions created by several countries (such as the ADB and WB) that provide financial and technical assistance to borrowing countries.

**Office of the Special Project Facilitator**

Provides support to the Special Project Facilitator in assisting people resolve problems caused by ADB-assisted projects and in strengthening the overall internal problem-solving functions of ADB.

**Resettlement Plan**

A plan to minimize and mitigate adverse negative impacts of the project and to address the issues of displacement.

**Safeguard Policies**

According to ADB, they are operational policies that seek to avoid, minimize or mitigate adverse environmental and social impacts, including protecting the rights of those likely to be affected or marginalized by the development process.

**Safeguard Policy Statement**

Consolidation of three previous safeguard policies on environment, indigenous peoples and involuntary resettlement into one single policy to comprehensively address environmental and social impacts and risks of an ADB-funded project. It took effect in 2009.

**Social Impact Assessment**

A process of assessing the short and long-term, direct and indirect, and positive and negative impacts of an ADB-assisted project on the affected community/people.

**Special Project Facilitator**

Leads in responding to problems of local people affected by ADB-assisted projects through a range of informal and flexible methods.

## ENDNOTES AND REFERENCES

These endnotes reflect the specific provisions in the SPS, the Accountability Mechanism Policy 2012 and other materials which were either paraphrased or quoted in the sections. The endnotes will also help the readers cross-validate the information contained in this Guide with the original documents.

### Endnotes

- |  |  |  |
|--|--|--|
| <p>1 2008 NGO Forum and Bank Information Center, pages 7-8.</p>  | <p>15 SPS, pages 56-57.</p>  | <p>36 SPS, pages 36-38</p>   |
| <p>2 Asia Development Bank. Overview. <a href="http://www.adb.org/about/overview">http://www.adb.org/about/overview</a>. Accessed November 30, 2012</p>  | <p>16 SPS, pages, 20, 33, 49, 56.</p>  | <p>37 SPS, pages 37-39</p>   |
| <p>3 2008 NGO Forum and Bank Information Center, pages 13-14.</p>  | <p>17 IFC Guidance Note 7 Indigenous Peoples, International Finance Corporation, page 9. visit <a href="http://www1.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated_GN7-2012.pdf?MOD=AJPERES">http://www1.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated_GN7-2012.pdf?MOD=AJPERES</a></p> | <p>38 SPS, pages 39-40.</p>  |
| <p>4 SPS, page 4.</p>  | <p>18 SPS, pages 20 and 60.</p>  | <p>39 SPS, page 44.</p>  |
| <p>5 SPS, page 14.</p>   | <p>19 SPS, page 57.</p>  | <p>40 SPS, page 44.</p>  |
| <p>6 SPS, pages 19-23.</p>   | <p>20 SPS, page 57</p>   | <p>41 Quoted from the Glossary of the SPS.</p>   |
| <p>7 SPS, pages 22-24.</p>   | <p>21 SPS, pages 57-58.</p>  | <p>42 SPS, page 45.</p>  |
| <p>8 SPS, page 15.</p>   | <p>22 SPS, page 58.</p>  | <p>43 Asian Development Bank. "Safeguard Categories". [online]. <a href="http://www.adb.org/safeguards/safeguard-categories#Section2">http://www.adb.org/safeguards/safeguard-categories#Section2</a> (accessed May 23, 2012).</p> |
| <p>9 SPS, page 26.</p>   | <p>23 SPS, page 58</p>   | <p>44 SPS, page 50.</p>  |
| <p>10 SPS, page 55.</p>  | <p>24 SPS, page 59.</p>  | <p>45 SPS, page 49.</p>  |
| <p>11 Quoted from Asian Development Bank. "Safeguard Categories". [online]. <a href="http://www.adb.org/safeguards/safeguard-categories#Section2">http://www.adb.org/safeguards/safeguard-categories#Section2</a> (accessed May 23, 2012).</p> | <p>25 SPS, page 59.</p>  | <p>46 SPS, pages 45-46.</p>  |
| <p>12 Same source as in endnote 11.</p>  | <p>26 SPS, pages 59-62.</p>  | <p>47 SPS, page 46.</p>  |
| <p>13 SPS, page 55.</p>  | <p>27 SPS, page 60.</p>  | <p>48 SPS, pages 46-47.</p>  |
| <p>14 SPS. Page 56.</p>  | <p>28 SPS, page30.</p>   | <p>49 SPS, pages47-48.</p>   |
|  | <p>29 SPS, pages 30-40.</p>  | <p>50 Accountability Mechanism Policy 2012/AMP 2012, page 21.</p>  |
|  | <p>30 SPS, page 19 and Asian Development Bank. "Safeguard Categories". [online]. <a href="http://www.adb.org/safeguards/safeguard-categories#Section2">http://www.adb.org/safeguards/safeguard-categories#Section2</a> (accessed May 23, 2012).</p>  | <p>51 AMP 2012, page 21.</p>   |
|  | <p>31 SPS, page 31.</p>  | <p>52 AMP 2012, pages 25-26.</p>   |
|  | <p>32 SPS, pages 30-31.</p>  | <p>53 AMP 2012, page 28.</p>   |
|  | <p>33 SPS, page 32.</p>  | <p>54 AMP 2012, pages 30-31; items 1-8 were quoted.</p>  |
|  | <p>34 SPS, page 32.</p>  | <p>55 AMP 2012, page 31.</p>   |
|  | <p>35 SPS, pages 34-36.</p>  | <p>56 AMP 2012, page 33.</p>   |
|  |  | <p>57 AMP 2012, page 34.</p>   |
|  |  | <p>58 AMP 2012, pages 32 and 38.</p>   |
|  |  | <p>59 AMP 2012, pages 24-25.</p>   |
|  |  | <p>60 AMP 2012, page 26.</p>   |
|  |  | <p>61 AMP 2012, page 24.</p>   |
|  |  | <p>62 SPS, pages 24-26, 77-81.</p>   |

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For further reading:

"A Community Action Guide to the Asian Development Bank: How to Use ADB Safeguard Policies to Protect Your Human Rights" (online) <http://www.accountabilityproject.org/section.php?id=77>

## **Annex 1 Member Countries of the ADB**

### **Developing Member Countries (DMCs)**

Afghanistan (1966)  
Armenia (2005)  
Azerbaijan (1999)  
Bangladesh (1973)  
Bhutan (1982)  
Cambodia (1966)  
China, People's Republic of (1986)  
Cook Islands (1976)  
Fiji Islands (1970)  
Georgia (2007)  
Hong Kong, China (1969)  
India (1966)  
Indonesia (1966)  
Kazakhstan (1994)  
Kiribati (1974)  
Korea, Republic of (1966)  
Kyrgyz Republic (1994)  
Lao People's Democratic Republic (1966)  
Malaysia (1966)  
Maldives (1978)  
Marshall Islands, Republic of the (1990)  
Micronesia, Federated States of (1990)  
Mongolia (1991)  
Myanmar (1973)  
Nauru (1991)  
Nepal (1966)  
Pakistan (1966)  
Palau (2003)  
Papua New Guinea (1971)  
Philippines (1966)  
Samoa (1966)  
Singapore (1966)  
Solomon Islands (1973)  
Sri Lanka (1966)  
Taipei, China (1966)  
Tajikistan (1998)  
Thailand (1966)  
Timor-Leste (2002)  
Tonga (1972)  
Turkmenistan (2000)  
Tuvalu (1993)  
Uzbekistan (1995)  
Vanuatu (1981)  
Viet Nam, Socialist Republic of (1966)

## **Annex 1 (continuation)**

### **Countries within the Asia and Pacific Region**

Afghanistan (1966)	Mongolia (1991)
Australia (1966)	Myanmar (1973)
Azerbaijan (1999)	Nauru (1991)
Bangladesh (1973)	Nepal (1966)
Bhutan (1982)	New Zealand (1966)
Brunei Darussalam (2006)	Pakistan (1966)
Cambodia (1966)	Palau (2003)
China, People's Republic of (1986)	Papua New Guinea (1971)
Cook Islands (1976)	Philippines (1966)
Fiji Islands (1970)	Samoa (1966)
Georgia (2007)	Singapore (1966)
Hong Kong, China (1969)	Solomon Islands (1973)
India (1966)	Sri Lanka (1966)
Indonesia (1966)	Tajikistan (1998)
Japan (1966)	Taipei, China (1966)
Kazakhstan (1994)	Thailand (1966)
Kiribati (1974)	Timor-Leste (2002)
Korea, Republic of (1966)	Tonga (1972)
Kyrgyz Republic (1994)	Turkmenistan (2000)
Lao People's Democratic Republic (1966)	Tuvalu (1993)
Malaysia (1966)	Uzbekistan (1995)
Maldives (1978)	Vanuatu (1981)
Marshall Islands, Republic of the (1990)	Viet Nam, Socialist Republic of (1966)
Micronesia, Federated States of (1990)	

### **Countries outside the Asia and Pacific Region**

Austria (1966)	The Netherlands (1966)
Belgium (1966)	Norway (1966)
Canada (1966)	Portugal (2002)
Denmark (1966)	Spain (1986)
Finland (1966)	Sweden (1966)
France (1970)	Switzerland (1967)
Germany (1966)	Turkey (1991)
Ireland (2006)	United Kingdom (1966)
Italy (1966)	United States (1966)
Luxembourg (2003)	

*Source: ADB members, <http://www.adbi.org/adbmembers/> (Accessed May 25, 2012).*

## Annex 2 Contents of a Safeguard Framework

- Reflect fully the policy objectives and relevant policy principles and safeguard requirements governing preparation and implementation of subprojects and/or components;
- Explain the general anticipated impacts of the subprojects and/or components to be financed under the proposed project;
- Specify the requirements that will be followed for subproject screening and categorization, assessment, and planning, including arrangements for information disclosure, meaningful consultation with measures to involve vulnerable groups including women, grievance redress mechanism, and where applicable, safeguard criteria that are to be used in selecting subprojects and/or components;
- Describe implementation procedures, including budgets, institutional arrangements, and capacity development requirements;
- Specify monitoring and reporting requirements; and
- Specify the responsibilities and authorities of the borrower/client, ADB, and relevant government agencies in relation to the preparation, submission, review, and clearance of subproject safeguard documents, and monitoring and supervision of safeguard plan implementation.

Source: 2009 SPS, page 23.

## **Annex 3 Outline Of An Indigenous Peoples Planning Framework**

### **A. Introduction**

This section briefly describes the project and its subprojects and/or components likely to be proposed for financing and explains why the Indigenous Peoples plans of some subprojects cannot be prepared before project appraisal.

### **B. Objectives and Policy Framework**

This section:

- (i) clarifies the principles and objectives governing the preparation and implementation of Indigenous Peoples plans, and demonstrates how they are consistent with Asian Development Bank requirements; (ii) compares applicable national laws and regulations and the safeguard policy statement, and describes measures to fill gaps, if any; and (iii) describes the criteria for screening and selecting components, projects, and/or subprojects.

### **C. Identification of Affected Indigenous Peoples**

This section (i) describes how the ADB SPS criteria for identifying groups that are considered Indigenous Peoples will be applied in the project; (ii) provides information on the Indigenous Peoples most likely to be affected by the project or subprojects; and (iii) delineates the potential positive and adverse effects of the project or subprojects on Indigenous Peoples.

### **D. Social Impact Assessment and IPP for Subprojects and/or Components**

This section sets out a plan for carrying out a social impact assessment for subprojects and/or components (see section C of Annex to Appendix 3), and requirements and schedules for (i) screening and classification; and (ii) preparation of an IPP.

### **E. Consultation and Participation**

This section outlines the mechanisms and strategy that will be adopted to conduct meaningful consultation with the affected Indigenous Peoples at each stage of subproject preparation and implementation. For project activities requiring broad community support, this section will also outline the mechanisms and procedure for documentation of the consultation process that ascertains such broad support from affected Indigenous Peoples communities.

### **F. Disclosure**

## **Annex 3 (continuation)**

The section outlines disclosure arrangements, such as the information to be disseminated and the method and form of dissemination, to both affected Indigenous Peoples and the public.

### **G. Grievance Redress Mechanism**

This section discusses measures to establish culturally appropriate and gender-sensitive grievance redress mechanisms for affected Indigenous Peoples.

### **H. Institutional and Implementation Arrangements**

This section describes institutional arrangements, including capacity building where necessary for screening and categorization, social impact assessment and preparation of IPPs, and monitoring.

### **I. Monitoring and Reporting Arrangements**

This section identifies the steps taken to establish mechanisms and benchmarks appropriate for monitoring and reporting.

### **J. Budget and Financing**

This section provides an indicative budget, and identifies funding sources and responsibilities for allocating, approving, and delivering funds, including contingency arrangement.

Source: 2009 SPS, page 74-75

## **Annex 4 Outline of an Environmental Assessment and Review Framework**

### **A. Introduction**

This section briefly describes the project, its subprojects, and/or its components, and explains why the environmental assessment and plans of some subprojects and/or components cannot be prepared before project approval.

### **B. Assessment of Legal Framework and Institutional Capacity**

This section assesses the adequacy of the applicable national and local laws, regulations, and standards on environmental assessment and management, including applicable international environmental agreements. This section clarifies the objective and relevant principles governing subproject and/or component preparation and implementation. This section also assesses the adequacy of the borrower's/client's institutional capacity in implementing national laws and Asian Development Bank (ADB) requirements and identifies capacity development needs.

### **C. Anticipated Environmental Impacts**

This section provides information on project activities to be supported, and their anticipated impacts on the environment.

### **D. Environmental Assessment for Subprojects and/or Components**

The section provides a plan for carrying out environmental assessment and planning for subprojects and/or components, including requirements and schedules for (i) screening and classification; and (ii) preparation of environmental assessments and environmental management plans (see Annex to Appendix 1). This section may also outline specific environmental criteria to be used for subproject selection, for example, exclusion from environmentally sensitive areas or negative lists for procurement.

### **E. Consultation, Information Disclosure, and Grievance Redress Mechanism**

This section establishes a framework for ensuring meaningful consultation with affected people during project preparation and implementation. It discusses information disclosure arrangements, including disclosure of subproject EIAs to be prepared under this framework. This section also discusses arrangement for addressing grievances.

### **F. Institutional Arrangement and Responsibilities**

This section specifies the responsibilities and authorities of the borrower/client, ADB, and government agencies in relation to the preparation, submission, review, and clearance of environmental assessment reports of subprojects and/or components. This section estimates the staffing requirements, and recommends a capacity development program, where necessary. It also provides the cost estimates for implementing the environmental assessment and review framework, and budgetary requirements.

### **G. Monitoring and Reporting**

This section specifies monitoring and reporting arrangements, including mechanisms and report submissions to ADB, appropriate to the project.

Source: 2009 SPS, pages 70-72.

## Annex 5 Outline of the Resettlement Framework

### **A. Introduction**

This section briefly describes the project, its subprojects, and/or its components and any anticipated involuntary resettlement resulting from the subprojects and/or components to be financed under the proposed project; and explains why the resettlement plans of some subprojects cannot be prepared before project appraisal.

### **B. Objectives, Policy Framework, and Entitlements**

This section:

- (i) lays out the principles and objectives governing the preparation and implementation of the resettlement plan are consistent with the Asian Development Bank's policy requirements; and compares applicable national laws and regulations and the safeguard policy statement and delineates measures to fill gaps, if any;
- (ii) describes the criteria for screening and selecting subprojects and/or components, including measures to avoid and minimize involuntary resettlement;
- (iii) estimates the number of affected persons and the likely categories of physically and economically displaced persons; and
- (iv) describes the eligibility criteria for defining the three types of displaced persons.

### **C. Socioeconomic Information**

This section:

- (i) describes the methodologies to be used for socioeconomic surveys, censuses, inventories of losses, and assessments of land losses;
- (ii) explains the methods for valuing affected assets; and
- (iii) describes the methods for determining replacement costs of acquired assets.

### **D. Consultation, Participation, and Disclosure**

This section:

- (i) outlines the mechanisms that will be adopted for conducting meaningful consultation with affected persons and for enabling their informed participation in preparing, implementing, and monitoring resettlement plans;
- (ii) outlines institutional responsibilities; and
- (iii) describes disclosure arrangements, such as the information to be disseminated and the method of dissemination.

## **Annex 5 (continuation)**

### **E. Compensation, Income Restoration, and Relocation**

This section:

- (i) describes the measures proposed for income restoration, including compensation and special measures to help vulnerable households improve their living standards;
- (ii) explains measures to provide replacement land, if planned; and
- (iii) describes support to be provided for host populations.

### **F. Grievance Redress Mechanisms**

This section discusses measures to establish grievance redress mechanisms at the local level; and outline the composition, areas of jurisdiction, consultation arrangements, record keeping, and information dissemination methods of the mechanism.

### **G. Institutional Arrangements and Implementation**

This section:

- (i) provides a comprehensive assessment of institutional capacity and resource capability for preparing, implementing, and monitoring resettlement activities, and describes additional measures necessary to enhance institutional capacity, including their costs;
- (ii) describes the organizational procedures for delivering entitlements; and
- (iii) describes the implementation process, including how resettlement preparation, approval, and implementation will be linked to contract awards and the start of the project's civil works.

### **H. Budget and Financing**

This section provides indicative budget, including flow of funds; and identifies funding sources and responsibilities for allocating, approving, and delivering funds, including contingency arrangements.

### **I. Monitoring and Reporting**

This section identifies steps to establish internal and external monitoring and evaluation of resettlement; and provides monitoring indicators for internal monitoring and external monitoring.

Source: 2009 SPS, pages 72-73.

## Annex 6 Outline of the Indigenous Peoples Plan

The substantive aspects of this outline will guide the preparation of IPPs, although not necessarily in the order shown.

### **A. Executive Summary of the Indigenous Peoples Plan**

This section concisely describes the critical facts, significant findings, and recommended actions.

### **B. Description of the Project**

This section provides a general description of the project; discusses project components and activities that may bring impacts on Indigenous Peoples; and identify project area.

### **C. Social Impact Assessment**

This section:

- (i) reviews the legal and institutional framework applicable to Indigenous Peoples in project context.
- (ii) provides baseline information on the demographic, social, cultural, and political characteristics of the affected Indigenous Peoples communities; the land and territories that they have traditionally owned or customarily used or occupied; and the natural resources on which they depend.
- (iii) identifies key project stakeholders and elaborate a culturally appropriate and gender-sensitive process for meaningful consultation with Indigenous Peoples at each stage of project preparation and implementation, taking the review and baseline information into account.
- (iv) assesses, based on meaningful consultation with the affected Indigenous Peoples communities, the potential adverse and positive effects of the project. Critical to the determination of potential adverse impacts is a gender-sensitive analysis of the relative vulnerability of, and risks to, the affected Indigenous Peoples communities given their particular circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to those available to other social groups in the communities, regions, or national societies in which they live.
- (v) includes a gender-sensitive assessment of the affected Indigenous Peoples' perceptions about the project and its impact on their social, economic, and cultural status.
- (vi) identifies and recommends, based on meaningful consultation with the affected Indigenous Peoples communities, the measures necessary to avoid adverse effects or, if such measures are not possible, identifies measures to minimize, mitigate, and/or compensate for such effects and to ensure that the

### **D. Information Disclosure, Consultation and Participation**

This section:

- (i) describes the information disclosure, consultation and participation process with the affected Indigenous Peoples communities that was carried out during project preparation;

## **Annex 6 (continuation)**

- (ii) summarizes their comments on the results of the social impact assessment and identifies concerns raised during consultation and how these have been addressed in project design;
- (iii) in the case of project activities requiring broad community support, documents the process and outcome of consultations with affected Indigenous Peoples communities and any agreement resulting from such consultations for the project activities and safeguard measures addressing the impacts of such activities;
- (iv) describes consultation and participation mechanisms to be used during implementation to ensure Indigenous Peoples participation during implementation; and
- (v) confirms disclosure of the draft and final IPP to the affected Indigenous Peoples communities.

### **E. Beneficial Measures**

This section specifies the measures to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate, and gender responsive.

### **F. Mitigative Measures**

This section specifies the measures to avoid adverse impacts on Indigenous Peoples; and where the avoidance is impossible, specifies the measures to minimize, mitigate and compensate for identified unavoidable adverse impacts for each affected Indigenous Peoples groups.

### **G. Capacity Building**

This section provides measures to strengthen the social, legal, and technical capabilities of (a) government institutions to address Indigenous Peoples issues in the project area; and (b) Indigenous Peoples organizations in the project area to enable them to represent the affected Indigenous Peoples more effectively.

### **H. Grievance Redress Mechanism**

This section describes the procedures to redress grievances by affected Indigenous Peoples communities. It also explains how the procedures are accessible to Indigenous Peoples and culturally appropriate and gender sensitive.

### **I. Monitoring, Reporting and Evaluation**

This section describes the mechanisms and benchmarks appropriate to the project for monitoring, and evaluating the implementation of the IPP. It also specifies arrangements for participation of affected Indigenous Peoples in the preparation and validation of monitoring, and evaluation reports.

### **J. Institutional Arrangement**

This section describes institutional arrangement responsibilities and mechanisms for carrying out the various measures of the IPP. It also describes the process of including relevant local organizations and NGOs in carrying out the measures of the IPP.

### **K. Budget and Financing**

This section provides an itemized budget for all activities described in the IPP.

Source: 2009 SPS, page 63-65

## **Annex 7 Outline of Environmental Impact Assessment Report**

### **Introduction**

This outline is part of the Safeguard Requirements 1. An environmental assessment report is required for all environment category A and B projects. Its level of detail and comprehensiveness is commensurate with the significance of potential environmental impacts and risks. A typical EIA report contains the following major elements, and an IEE may have a narrower scope depending on the nature of the project. The substantive aspects of this outline will guide the preparation of environmental impact assessment reports, although not necessarily in the order shown.

### **A. Executive Summary**

This section describes concisely the critical facts, significant findings, and recommended actions.

### **B. Policy, Legal, and Administrative Framework**

This section discusses the national and local legal and institutional framework within which the environmental assessment is carried out. It also identifies project-relevant international environmental agreements to which the country is a party.

### **C. Description of the Project**

This section describes the proposed project; its major components; and its geographic, ecological, social, and temporal context, including any associated facility required by and for the project (for example, access roads, power plants, water supply, quarries and borrow pits, and spoil disposal). It normally includes drawings and maps showing the project's layout and components, the project site, and the project's area of influence.

### **D. Description of the Environment (Baseline Data)**

This section describes relevant physical, biological, and socioeconomic conditions within the study area. It also looks at current and proposed development activities within the project's area of influence, including those not directly connected to the project. It indicates the accuracy, reliability, and sources of the data.

### **E. Anticipated Environmental Impacts and Mitigation Measures**

This section predicts and assesses the project's likely positive and negative direct and indirect impacts to physical, biological, socioeconomic (including occupational health and safety, community health and safety, vulnerable groups and gender issues, and impacts on livelihoods through environmental media [Appendix 2, para. 6]), and physical cultural resources in the project's area of influence, in quantitative terms to the extent possible; identifies mitigation measures and any residual negative impacts that cannot be mitigated; explores opportunities for enhancement; identifies and estimates the extent and quality of available data, key data gaps, and uncertainties associated with predictions and specifies topics that do not require further attention; and examines global, transboundary, and cumulative impacts as appropriate.

### **F. Analysis of Alternatives**

## **Annex 7 (continuation)**

This section examines alternatives to the proposed project site, technology, design, and operation—including the no project alternative—in terms of their potential environmental impacts; the feasibility of mitigating these impacts; their capital and recurrent costs; their suitability under local conditions; and their institutional, training, and monitoring requirements. It also states the basis for selecting the particular project design proposed and, justifies recommended emission levels and approaches to pollution prevention and abatement.

### **G. Information Disclosure, Consultation, and Participation**

This section:

- (i) describes the process undertaken during project design and preparation for engaging stakeholders, including information disclosure and consultation with affected people and other stakeholders;
- (ii) summarizes comments and concerns received from affected people and other stakeholders and how these comments have been addressed in project design and mitigation measures, with special attention paid to the needs and concerns of vulnerable groups, including women, the poor, and Indigenous Peoples; and
- (iii) describes the planned information disclosure measures (including the type of information to be disseminated and the method of dissemination) and the process for carrying out consultation with affected people and facilitating their participation during project implementation.

### **H. Grievance Redress Mechanism**

This section describes the grievance redress framework (both informal and formal channels), setting out the time frame and mechanisms for resolving complaints about environmental performance.

### **I. Environmental Management Plan**

This section deals with the set of mitigation and management measures to be taken during project implementation to avoid, reduce, mitigate, or compensate for adverse environmental impacts (in that order of priority). It may include multiple management plans and actions. It includes the following key components (with the level of detail commensurate with the project's impacts and risks):

- (i) Mitigation:
  - (a) identifies and summarizes anticipated significant adverse environmental impacts and risks;
  - (b) describes each mitigation measure with technical details, including the type of impact to which it relates and the conditions under which it is required (for instance, continuously or in the event of contingencies), together with designs, equipment descriptions, and operating procedures, as appropriate; and
  - (c) provides links to any other mitigation plans (for example, for involuntary resettlement, Indigenous Peoples, or emergency response) required for the project.
- (ii) Monitoring:

## Annex 7 (continuation)

(a) describes monitoring measures with technical details, including parameters to be measured, methods to be used, sampling locations, that will signal the need for corrective actions; and  
(b) describes monitoring and reporting procedures to ensure early detection of conditions that necessitate particular mitigation measures and document the progress and results of mitigation.

(iii) Implementation arrangements:

(a) specifies the implementation schedule showing phasing and coordination with overall project implementation;

(b) describes institutional or organizational arrangements, namely, who is responsible for carrying out the mitigation and monitoring measures, which may include one or more of the following additional topics to strengthen environmental management capability: technical assistance programs, training programs, procurement of equipment and supplies related to environmental management and monitoring, and organizational changes; and

(c) estimates capital and recurrent costs and describes sources of funds for implementing the environmental management plan.

(iv) Performance indicators: describes the desired outcomes as measurable events to the extent possible, such as performance indicators, targets, or acceptance criteria that can be tracked over defined time periods.

### **J. Conclusion and Recommendation**

This section provides the conclusions drawn from the assessment and provides recommendations.

Source: 2009 SPS, pages 41-43.

## **Annex 8 Outline of Resettlement Plan**

This outline is part of the Safeguard Requirements 2. A resettlement plan is required for all projects with involuntary resettlement impacts. Its level of detail and comprehensiveness is commensurate with the significance of potential involuntary resettlement impacts and risks. The substantive aspects of the outline will guide the preparation of the resettlement plans, although not necessarily in the order shown.

### **A. Executive Summary**

This section provides a concise statement of project scope, key survey findings, entitlements and recommended actions.

### **B. Project Description**

This section provides a general description of the project, discusses project components that result in land acquisition, involuntary resettlement, or both and identify the project area. It also describes the alternatives considered to avoid or minimize resettlement. Include a table with quantified data and provide a rationale for the final decision.

### **C. Scope of Land Acquisition and Resettlement**

This section:

- (i) discusses the project's potential impacts, and includes maps of the areas or zone of impact of project components or activities;
- (ii) describes the scope of land acquisition (provide maps) and explains why it is necessary for the main investment project;
- (iii) summarizes the key effects in terms of assets acquired and displaced persons; and
- (iv) provides details of any common property resources that will be acquired.

### **D. Socioeconomic Information and Profile**

This section outlines the results of the social impact assessment, the census survey, and other studies, with information and/or data disaggregated by gender, vulnerability, and other social groupings, including:

- (i) define, identify, and enumerate the people and communities to be affected;
- (ii) describe the likely impacts of land and asset acquisition on the people and communities affected taking social, cultural, and economic parameters into account;
- (iii) discuss the project's impacts on the poor, indigenous and/or ethnic minorities, and other vulnerable groups; and
- (iv) identify gender and resettlement impacts, and the socioeconomic situation, impacts, needs, and priorities of women.

## **Annex 8 (continuation)**

### **E. Information Disclosure, Consultation, and Participation**

This section:

- (i) identifies project stakeholders, especially primary stakeholders;
- (ii) describes the consultation and participation mechanisms to be used during the different stages of the project cycle;
- (iii) describes the activities undertaken to disseminate project and resettlement information during project design and preparation for engaging stakeholders;
- (iv) summarizes the results of consultations with affected persons (including host communities), and discusses how concerns raised and recommendations made were addressed in the resettlement plan;
- (v) confirms disclosure of the draft resettlement plan to affected persons and includes arrangements to disclose any subsequent plans; and
- (vi) describes the planned information disclosure measures (including the type of information to be disseminated and the method of dissemination) and the process for consultation with affected persons during project implementation.

### **F. Grievance Redress Mechanisms**

This section describes mechanisms to receive and facilitate the resolution of affected persons' concerns and grievances. It explains how the procedures are accessible to affected persons and gender sensitive.

### **G. Legal Framework**

This section:

- (i) describes national and local laws and regulations that apply to the project and identify gaps between local laws and ADB's policy requirements; and discuss how any gaps will be addressed.
- (ii) describes the legal and policy commitments from the executing agency for all types of displaced persons;
- (iii) outlines the principles and methodologies used for determining valuations and compensation rates at replacement cost for assets, incomes, and livelihoods; and set out the compensation and assistance eligibility criteria and how and when compensation and assistance will be provided.
- (iv) describes the land acquisition process and prepare a schedule for meeting key procedural requirements.

### **H. Entitlements, Assistance and Benefits**

This section:

- (i) defines displaced persons' entitlements and eligibility, and describes all resettlement assistance measures (includes an entitlement matrix);
- (ii) specifies all assistance to vulnerable groups, including women, and other special groups; and.
- (iii) outlines opportunities for affected persons to derive appropriate development benefits from the project.

### **I. Relocation of Housing and Settlements**

## **Annex 8 (continuation)**

This section:

- (i) describes options for relocating housing and other structures, including replacement housing, replacement cash compensation, and/or self-selection (ensure that gender concerns and support to vulnerable groups are identified);
- (ii) describes alternative relocation sites considered; community consultations conducted; and justification for selected sites, including details about location, environmental assessment of sites, and development needs;
- (iii) provides timetables for site preparation and transfer;
- (iv) describes the legal arrangements to regularize tenure and transfer titles to resettled persons;
- (v) outlines measures to assist displaced persons with their transfer and establishment at new sites;
- (vi) describes plans to provide civic infrastructure; and
- (vii) explains how integration with host populations will be carried out.

### **J. Income Restoration and Rehabilitation**

This section:

- (i) identifies livelihood risks and prepare disaggregated tables based on demographic data and livelihood sources;
- (ii) describes income restoration programs, including multiple options for restoring all types of livelihoods (examples include project benefit sharing, revenue sharing arrangements, joint stock for equity contributions such as land, discuss sustainability and safety nets);
- (iii) outlines measures to provide social safety net through social insurance and/or project special funds;
- (iv) describes special measures to support vulnerable groups;
- (v) explains gender considerations; and
- (vi) describes training programs.

### **K. Resettlement Budget and Financing Plan**

This section:

- (i) provides an itemized budget for all resettlement activities, including for the resettlement unit, staff training, monitoring and evaluation, and preparation of resettlement plans during loan implementation.
- (ii) describes the flow of funds (the annual resettlement budget should show the budget-scheduled expenditure for key items).
- (iii) includes a justification for all assumptions made in calculating compensation rates and other cost estimates (taking into account both physical and cost contingencies), plus replacement costs.
- (iv) includes information about the source of funding for the resettlement plan budget.

### **L. Institutional Arrangements**

This section:

## Annex 8 (continuation)

- (i) describes institutional arrangement responsibilities and mechanisms for carrying out the measures of the resettlement plan;
- (ii) includes institutional capacity building program, including technical assistance, if required;
- (iii) describes role of NGOs, if involved, and organizations of affected persons in resettlement planning and management; and
- (iv) describes how women's groups will be involved in resettlement planning and management,

### **M. Implementation Schedule**

This section includes a detailed, time bound, implementation schedule for all key resettlement and rehabilitation activities. The implementation schedule should cover all aspects of resettlement activities synchronized with the project schedule of civil works construction, and provide land acquisition process and timeline.

### **N. Monitoring and Reporting**

This section describes the mechanisms and benchmarks appropriate to the project for monitoring and evaluating the implementation of the resettlement plan. It specifies arrangements for participation of affected persons in the monitoring process. This section will also describe reporting procedures.

Source: 2009 SPS, pages 51-54.

## **Annex 9 International Human Rights Instruments Recognizing the Right to FPIC**

### **A. The United Nations Declaration on Rights of Indigenous Peoples (UNDRIP)**

The UNDRIP (2008) has clearly defined the FPIC with strong wording regarding the rights of indigenous peoples in the following articles (UN, 2008; AIPP, 2010):

- **Article 10:** Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the FPIC of IPs concerned.
- **Article 11 (No.2):** States shall provide redress through their effective mechanisms, which may include restitution, developed in conjunction with IPs with respect to their cultural, intellectual, religious and spiritual property taken without their FPIC or in violation of their laws, traditions and customs.
- **Article 19:** States shall consult and cooperate in good faith with indigenous peoples concerned through their own representative institutions in order to obtain their FPIC before adopting and implementing legislative and administrative measures that may affect them.
- **Article 26 (Section 1):** Indigenous peoples have the full rights to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
- **Article 26 (Section 2):** Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use as well as those which they have otherwise acquired.
- **Article 28 (No. 1):** Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation for the lands, territories and resources which they have traditionally owned or otherwise occupied or used and which have been confiscated, taken, occupied, used or damaged without their FPIC.
- **Article 29 (No. 2):** States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their FPIC.
- **Article 32 (No. 2):** States shall consult and cooperate in good faith with the indigenous peoples concerned through their representative institutions in order to obtain their FPIC to any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

## Annex 9 (continuation)

### **B. International Labor Organization Convention on Indigenous and Tribal Peoples – 169**

The rights of indigenous peoples to the principle of FPIC have put a stronger requirement on the states to respect the rights of indigenous peoples to FPIC. The ILO 169 convention requires that land, including the concept of territory owned or occupied by IPs, shall not be removed arbitrarily. The convention has stressed on no relocation without consent; informed participation in the context of development, national institutions and programmes, lands and resources. The following three articles directly stressed on FPIC in the convention.

- **Article 14 (Point 1):** The rights to land ownership and land possession of the peoples that they traditionally occupy should be recognized. In addition, measures shall be taken in appropriate cases to safeguard the rights of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
- **Article 15 (Point 1):** The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
- **Article 16 (Section 2):** Relocation of these peoples is considered, if necessary, as an exceptional measure, which shall take place only with their free, prior and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries, where appropriate, which provide the opportunity for effective representation of the peoples concerned in the processes and procedures (<http://www.ilo.org>)

### **C. Convention of Biological Diversity (CBD)**

The CBD works on Access and Benefit Sharing (ABS), Programme of Work on Protected Areas – conduct of cultural, environmental and social impact assessment regarding developments proposed to take place on sacred sites, lands and waters of IPs. The CBD mentions in its Article 8 (j) of the convention that the traditional knowledge of indigenous peoples and local communities may be used only with their approval. This has subsequently been interpreted to mean that it can be used only with their prior and informed consent. Likewise, it requires governments (though subject to national legislation) to respect, preserve and maintain the knowledge and innovations of indigenous peoples, relating to biodiversity conservation and management.

Source: AIPP and IWGIA. Training Manual on Free, Prior and Informed Consent (FPIC) in REDD+ for Indigenous Peoples. Chiang Mai: AIPP Printing Press, 2012. 64-66.

## About Us

The Asia Indigenous Peoples Pact (AIPP) is a regional organization founded in 1988 by indigenous peoples' movements. AIPP is committed to the cause of promoting and defending indigenous peoples' rights and human rights, including advocacy work on issues and concerns of indigenous peoples in Asia. At present, AIPP has 47 members from 14 countries (in Asia) with 11 indigenous peoples' alliances/networks and 36 local and sub-national organizations. Of this number, 16 are ethnic based organizations, 5 are indigenous women's organizations and 4 are indigenous youth organizations.

## Our Vision

Indigenous peoples in Asia are fully exercising their rights, distinct cultures and identities, are living with dignity, and enhancing their sustainable management systems on lands, territories and resources for their own future and development in an environment of peace, justice and equality.

## Our Mission

AIPP strengthens the solidarity, cooperation and capacities of indigenous peoples in Asia to promote and protect their rights, cultures and identities, and their sustainable resource management systems for their development and self-determination.

## OUR Programmes

**Human Rights Campaign and Policy Advocacy. Regional Capacity Building. Environment. Indigenous Women .Research and Communication Development. Indigenous Youth**

AIPP is accredited as an NGO in special consultative status with the UN Economic and Social Council (ECOSOC) and as observer organization with the United Nations Framework Convention on Climate Change (UNFCCC), Convention on Biological Diversity, Green Climate Fund (GCF) and the World Intellectual Property Organization (WIPO). AIPP also recently received accreditation with the Global Environment Facility (GEF) NGO Network and the International Land Coalition (ILC).



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