



Policy Paper

June 2009

Safeguard Policy Statement

Asian Development Bank

ABBREVIATIONS

ADB	–	Asian Development Bank
CSS	–	country safeguard systems
DMC	–	developing member country
EBRD	–	European Bank for Reconstruction and Development
EIA	–	environmental impact assessment
EMP	–	environmental management plan
ESMS	–	environmental and social management system
FI	–	financial intermediary
IEE	–	initial environmental examination
IFC	–	International Finance Corporation
IPP	–	Indigenous Peoples plan
IPPF	–	Indigenous Peoples planning framework
MFF	–	multitranche financing facility
MFI	–	multilateral financial institution
NGO	–	nongovernment organization
OCR	–	ordinary capital resources
OED	–	Operations Evaluation Department
SES	–	special evaluation study
SIA	–	social impact assessment
SPS	–	safeguard policy statement
SPU	–	safeguard policy update
UNDRIP	–	United Nations Declaration on the Rights of Indigenous Peoples

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GLOSSARY

Biodiversity. The variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

Consent of Affected Indigenous Peoples Communities. For the purpose of policy application, this refers to a collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives, of broad community support for the project activities. Such broad community support may exist even if some individuals or groups object to the project activities.

Country Safeguard Systems. A country's legal and institutional framework, consisting of its national, subnational, or sectoral implementing institutions and relevant laws, regulations, rules, and procedures that pertain to the policy areas of environmental and social safeguards.

Critical Habitat. A subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity value, including habitat required for the survival of critically endangered or endangered species; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or that are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic, or cultural importance to local communities.

Displaced Persons. In the context of involuntary resettlement, displaced persons are those who are physically displaced (relocation, loss of residential land, or loss of shelter) and/or economically displaced (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.

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.

External Experts. Experts not involved in day-to-day project implementation or supervision.

Highly Complex and Sensitive Projects. Projects that ADB deems to be highly risky or contentious or involve serious and multidimensional and generally interrelated potential social and/or environmental impacts.

Meaningful Consultation. A process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) 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.

Natural Habitat. Land and water areas where the biological communities are formed largely by native plant and animal species, and where human activity has not essentially modified the area's primary ecological functions.

Physical Cultural Resources. Movable or immovable objects, sites, structures, groups of structures, and natural features and landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic, or other cultural significance. Physical cultural resources may be located in urban or rural settings and may be above or below ground or under water. Their cultural interest may be at the local, provincial, national, or international level.

Physical Displacement. Relocation, loss of residential land, or loss of shelter 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.

Significant Conversion or Degradation. (i) the elimination or severe diminution of the integrity of a habitat caused by a major, long-term change in land or water use; or (ii) the modification of a habitat that substantially reduces the habitat's ability to maintain viable populations of its native species.

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I. BACKGROUND AND INTRODUCTION

1. The operational policies of the Asian Development Bank (ADB) include three safeguard policies: the *Involuntary Resettlement Policy* (1995), the *Policy on Indigenous Peoples* (1998), and the *Environment Policy* (2002). All three safeguard policies are due for revision. ADB needs to address emerging environmental and social challenges of development in its developing member countries (DMCs), respond to lessons learned from its experience with its current safeguard policies, and adapt to its new lending modalities and financing instruments. In addition, ADB policies need to reflect changing best practices of other multilateral financial institutions (MFIs) and of private sector institutions such as the equator principles financial institutions.¹ In December 2004, ADB management approved a concept paper for a safeguard policy update (SPU) to enhance the effectiveness of ADB's safeguard policies and to ensure that these policies remain relevant to changing client needs and to new business opportunities.

2. The SPU has sought to (i) better articulate the safeguard policies to improve their clarity, coherence, and consistency; (ii) balance a front-loaded procedural approach with one also focused on results during implementation; (iii) adapt policy implementation to an evolving range of lending products and innovative financing modalities; (iv) work toward greater harmonization with safeguard practices across MFIs and tailor safeguard approaches to different clients with varying capacities; and (v) improve internal processes and resource allocation.

3. The SPU has resulted in a consolidated policy with the following structure:

- (i) A safeguard policy statement (SPS) that describes common objectives of ADB's safeguards, lays out policy principles, and outlines the delivery process for ADB's safeguard policy. The SPS is designed for application to current and future lending modalities and caters to the varying capacities and needs of DMC clients in both the public and private sectors.
- (ii) A set of specific safeguard requirements that borrowers/clients are expected to meet when addressing social and environmental impacts and risks. Through their due diligence, review, and supervision ADB staff will ensure that borrowers/clients comply with these requirements during project preparation and implementation. Over time ADB may adopt additional safeguard requirements or update existing requirements to enhance effectiveness, respond to changing needs, and reflect evolving best practices.
- (iii) A consolidated *Operations Manual* section that specifies ADB's internal review procedures for due diligence and for supervision throughout the project cycle.

4. Once approved by the ADB Board of Directors, the SPS and the safeguard requirements for borrowers/clients will supersede the three current safeguard policies and the new OM section will supersede the existing OM Sections F1, F2, and F3. ADB will update its *Handbook on Resettlement*² and *Environment Assessment Guidelines* (2003) and prepare a handbook on Indigenous Peoples to provide detailed technical guidance and recommend good practices.

5. A consultation draft of the SPS was posted on ADB's website in October 2007 for external consultations. During the consultation period (November 2007 through April 2008), ADB received extensive comments and detailed suggestions through the 14 multistakeholder consultation workshops held in the region and outside. ADB also received feedback from

¹ These are financial institutions that have adopted the equator principles, a financial industry framework for addressing environmental and social risks in project financing.

² ADB. 1998. *Handbook on Resettlement: A Guide to Good Practice*. Manila.

numerous written submissions, thematic discussions, and informal meetings and teleconferences. All comments received before the close of the consultation period were posted on ADB's website. To be responsive to the wide range of comments, ADB management decided to prepare a second draft of the SPS based on the comments and suggestions received from external consultations and hold another consultation workshop in Manila for stakeholders to have an opportunity to review the revised documents.

6. The second draft of the SPS was made available for public comments on ADB's website from 3 October to 4 December 2008. A detailed comments-response matrix was posted on ADB SPU website on 9 October 2008, which includes comments received from the 14 country/subregional consultations and written submissions during the comment period of 12 October 2007–30 April 2008. The preliminary draft safeguard review procedures (draft Operations Manual) were made available on 24 October 2008. In addition, as requested by many stakeholders, a draft glossary of terms was also posted on the web. Consultation workshops on the second draft SPS were held 18–21 November 2008 in Manila, to allow a comprehensive and substantive discussion of the second draft SPS with an emphasis on ADB's response to stakeholder comments on the consultation draft of the SPS (see ADB SPU website for a report on the stakeholder consultations).

7. The working paper of the SPS was prepared and circulated to the ADB Board for consideration and guidance in January 2009, and the Board discussion was held in February 2009. This R-paper is the result of the internal and external consultation process in which ADB Board and staff, and external stakeholders, including governments, civil society organizations, private sector, and academia, took part.

II. CHANGING CONTEXT

8. Asia and the Pacific, the most populated and fastest-growing region in the world, is undergoing dramatic social and environmental changes. Concerns have grown about the long-term sustainability of development in many Asian countries. Rapid industrialization and urbanization, coupled with increased demand for natural resources, are triggering changes in land use and human settlement, declining water quality and quantity, loss of biodiversity, deforestation and desertification, elevated pollution levels, and negative impacts on human health. These threats tend to disproportionately affect the poor. High population densities and rising demand for land for urban development and infrastructure have increased the risks associated with involuntary resettlement of people and the adverse impacts on such vulnerable groups as the poor and Indigenous Peoples. Of the 250 million Indigenous Peoples in the world, some 70% are in Asia and the Pacific. Some 120 languages have become either endangered or extinct, demonstrating the threats to the culture and integrity of Indigenous Peoples. The challenge of preventing further impoverishment resulting from environmental degradation and involuntary resettlement, acknowledging the special needs and respecting the rights of Indigenous Peoples and other vulnerable groups, and improving the policies and building the capacity of DMCs to manage these impacts is acute.

9. DMCs have been responding to emerging social and environmental challenges to varying extents. Some DMCs have improved their environmental and social safeguard policies and regulatory frameworks, while others continue to have less developed systems and often rely on donor agencies' policies and procedures. The development processes in the region have altered the roles and responsibilities of public and private entities, civil society, and local communities in favor of socially and environmentally sustainable development and higher expectations in relation to transparency and citizen participation. Similarly, the roles of the

commercial banking industry and financial intermediaries have expanded in line with growing pressure for corporations to take their social and environmental responsibilities seriously. DMCs increasingly recognize the need to raise their standards towards international good practice, develop the capacity to respond to global and regional environmental and social risks, and promote social and environmentally sustainable growth. In addition, private sector project proponents are increasingly willing to adopt progressive investment practices that are socially and environmentally responsible and they may go beyond mere compliance with regulations if they have a clear business case for doing so.

10. MFIs have been updating their environmental and social safeguard policies to ensure the relevance of these policies to changing needs. In 2005, the World Bank launched a program to pilot the use of country systems to address social and environmental safeguards in Bank-supported operations.³ In January 2008, the World Bank issued an evaluation report of the initial phase of the Pilot Program for Use of Country Systems.⁴ Based on this report, the World Bank approved a continuation of the program to incrementally scale up the initiative from the project level to the country level to engage borrowers and other development partners in applying a greater range of safeguards and to build borrower capacity on a more sustainable basis than is feasible at the project level. The World Bank also revised its safeguard policies on Indigenous Peoples in 2005 and on physical cultural resources in 2006 to reflect changing circumstances. In 2006, the International Finance Corporation (IFC) adopted its *Policy and Performance Standards on Social and Environmental Sustainability*,⁵ to introduce results-based requirements and good practices for the private sector. More than 60 commercial financial institutions have adopted the new IFC performance standards for project finance. Also in 2006, the Inter-American Development Bank issued its *Environment and Safeguards Compliance Policy*⁶ which also provides for selective use of country systems. In May 2008, the European Bank for Reconstruction and Development (EBRD) adopted its *Environmental and Social Policy*,⁷ along with 10 performance requirements, which replaces its 2003 environmental policy. The new EBRD policy and performance requirements provide similar safeguards to those of the IFC but reflect the specific characteristics of the EBRD's region of operations and its commitments under the European principles for the environment, to which the EBRD is a signatory.

11. Emphasis on donor harmonization and alignment with country systems has been growing. In 2005, the Paris Declaration on Aid Effectiveness established global commitments for donors and partner countries to improve the management and effectiveness of aid in reducing poverty and inequality, increasing growth, building capacity, and accelerating achievement of the Millennium Development Goals. The declaration has five principles: assuring country ownership; aligning donor programs with countries' development strategies, priorities, and procedures; having donors harmonize their approaches and actions; managing for development results; and having mutual accountability. These principles provide a powerful impetus for donors to help foster better integration of social and environmental considerations into developing country partners' strategies and priorities and to continue and intensify their efforts in relation to harmonizing approaches toward addressing social and environmental issues. The Accra Agenda for Action, adopted in 2008, reaffirmed these principles and further emphasized the importance of country systems. Consultations undertaken in the context of ADB's efforts to enhance support to ordinary capital resources (OCR) borrowers have shown that clients in the

³ World Bank. 2005. *Piloting the Use of Borrower System to Address Environmental and Social Safeguard Issues in Bank-Supported Projects*. Washington, DC.

⁴ World Bank. 2008. *Evaluation of the Initial Phase of the Pilot Program for Use of Country Systems for Environmental and Social Safeguards*. Washington, DC.

⁵ IFC. 2006. *Policy and Performance Standards on Social and Environmental Sustainability*. Washington, DC.

⁶ Inter-American Development Bank. 2006. *Environment and Safeguards Compliance Policy*. Washington, DC.

⁷ EBRD. 2008. *EBRD Environmental and Social Policy*. London.

public sector generally agree with ADB's safeguard objectives and principles, although some OCR clients believe that shared safeguard principles could be upheld better through their own country systems than through ADB procedures.

12. The nature of ADB's business is also changing. In response to the anticipated economic growth and significant shifts in the development, aid, and financial landscape in the Asia and Pacific region, ADB will transform itself to meet the challenges while remaining dedicated to its overarching goal: reducing poverty in the Asia and Pacific region. ADB will pursue its vision and mission by focusing on inclusive growth, environmentally sustainable growth, and regional integration. ADB's long-term strategic framework 2008–2020 (Strategy 2020)⁸ focuses on five drivers of change: (i) private sector development and operations, (ii) good governance and capacity development, (iii) gender equity, (iv) knowledge solutions, and (v) partnerships. ADB will also refocus its operations into five core specializations: (i) infrastructure; (ii) environment, including climate change; (iii) regional cooperation and integration; (iv) financial sector development; and (v) education. With an expanding private sector program, diversifying investments and clients in the financial sector and capital markets, and an increasing number of large-scale infrastructure projects whose social and environmental impacts can be highly complex and sensitive, safeguard policies need to be updated to ensure projects' social and environmental sustainability. This is an important component of positive development outcomes.

13. In August 2004, ADB adopted a comprehensive reform agenda and introduced new lending modalities and instruments to enhance the development effectiveness of its operations. Recent ADB initiatives—managing for development results, innovation and efficiency initiative, and enhancing ADB support to middle-income countries and borrowers from OCR—evolved in tandem with international consensus on the need for increased aid effectiveness. The current generation of safeguard policies was designed when direct project lending was the dominant modality for development assistance. Safeguard policies need to cater to the evolving range of ADB's lending products and innovative financing modalities, which often are not well-served by the traditional project-level safeguard approach. New lending modalities and financing instruments, such as the multitranche financing facility (MFF), have increased the complexity of applying safeguard policies and ensuring compliance. The new modalities and the likelihood of continued innovation, as well as changing client circumstances, suggest a need to enhance the relevance and effectiveness of ADB's safeguards.

III. CURRENT SAFEGUARD POLICIES AND EXPERIENCE

A. ADB's Current Safeguard Policies

14. **ADB's Safeguard Policy Framework.** Safeguard policies are generally understood to be 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. ADB's safeguard policy framework consists of three operational policies on the environment,⁹ Indigenous Peoples, and involuntary resettlement. These are accompanied by *Operations Manual* sections on Environmental Considerations in ADB Operations;¹⁰ Involuntary Resettlement;¹¹ and Indigenous Peoples.¹² ADB's *Handbook on*

⁸ ADB. 2008. *Strategy 2020: The Long-Term Strategic Framework of the Asian Development Bank 2008–2020*. Manila.

⁹ The *Environment Policy* contains five main elements, but only the fifth is concerned with the environment as a safeguard issue (Integrating Environmental Considerations in ADB Operations, paras. 30 and 50–70).

¹⁰ ADB. 2006. *Operations Manual*. Section F1: Environmental Considerations in ADB Operations. Manila.

¹¹ ADB. 2006. *Operations Manual*. Section F2: Involuntary Resettlement. Manila.

¹² ADB. 2006. *Operations Manual*. Section F3: Indigenous Peoples. Manila.

Resettlement (footnote 2) and *Environmental Assessment Guidelines* (2003) provide information on good practice approaches to implementing safeguards. In addition to the three safeguard policies, several sector policies have environmental safeguard elements, for example, those pertaining to water, energy, and forestry.

15. **Safeguard Requirements.** All three safeguard policies involve a structured process of impact assessment, planning, and mitigation to address the adverse effects of projects throughout the project cycle. The safeguard policies require that (i) impacts are identified and assessed early in the project cycle; (ii) plans to avoid, minimize, mitigate, or compensate for the potential adverse impacts are developed and implemented; and (iii) affected people are informed and consulted during project preparation and implementation. The policies apply to all ADB-financed projects, including private sector operations, and to all project components. The internal procedural requirements are detailed in the *Operations Manual* sections (footnote 10–12) and involve similar implementation processes as follows: (i) screening and scoping of the main issues start as soon as potential projects for ADB financing are identified and continue throughout the project cycle; (ii) impacts are assessed, safeguard plans summarizing mitigation measures, monitoring program, and institutional arrangements are prepared, and arrangements are made to integrate safeguards into project design and implementation; (iii) affected people are consulted during project preparation and implementation and information is disclosed in a form, manner, and language accessible to them; and (iv) safeguard plans are disclosed to the general public and the information is updated at various stages in the project cycle.¹³ ADB's safeguard policies require that both ADB's and DMCs' safeguard requirements are complied with.

16. **Roles and Responsibilities.** A basic principle of the three existing safeguard policies is that implementation of the provisions of the policies is the responsibility of the borrower/client. Borrowers/clients are required to undertake social and environmental assessments, carry out consultations with affected people and communities, prepare and implement safeguard plans, monitor the implementation of these plans, and prepare and submit monitoring reports. ADB's role is to explain policy requirements to borrowers/clients, help borrowers/clients meet those requirements during project processing and implementation through capacity-building programs, ensure due diligence and review, and provide monitoring and supervision. Considerable attention is devoted to the project processing and approval phase of the project cycle, although ADB's role in monitoring safeguard compliance continues during project implementation. ADB's project completion reports and project performance evaluation reports include review of the implementation of safeguards.

B. Compliance Oversight

17. **Compliance System.** Upon its reorganization in 2002,¹⁴ ADB established arrangements for monitoring projects' compliance with its safeguard policies. With the support of the Environment and Social Safeguard Division, ADB's Chief Compliance Officer is responsible for advising management and operations departments on safeguard compliance and related operational procedures and guidelines. Compliance with the safeguard policies is monitored throughout the project cycle. If a project poses risks of noncompliance, actions to ensure compliance are recommended at the Management Review Meeting, and project compliance is reviewed again at a Staff Review Committee meeting. Operations departments take steps to ensure that outstanding safeguard requirements are met before Board approval. Review

¹³ ADB's *Public Communications Policy* (2005) sets out disclosure requirements for various ADB activities, including safeguards.

¹⁴ ADB. 2001. *Reorganization of the Asian Development Bank*. Manila.

missions are undertaken during project implementation to monitor compliance with safeguard provisions in the legal agreements and to take appropriate actions if projects are at risk of noncompliance.

18. **Accountability Mechanism.** In May 2003, ADB adopted a new accountability mechanism¹⁵ whereby people adversely affected by ADB-financed projects can express their grievances; seek solutions; and report alleged violations of ADB's operational policies and procedures, including safeguard policies. The accountability mechanism replaced ADB's *Inspection Function* (1995).¹⁶ ADB's accountability mechanism comprises two separate, but related, functions: (i) consultation, led by ADB's special project facilitator, to assist people adversely affected by ADB-assisted projects in finding solutions to their problems; and (ii) providing a process through which those affected by projects can file requests for compliance review by ADB's Compliance Review Panel.

C. Experience with ADB's Safeguard Policies

19. **Environment.** ADB formally introduced environmental assessment into its lending operations in 1979.¹⁷ By the time the current *Environment Policy* was adopted in 2002, ADB had accumulated more than two decades of environmental assessment and management experience. During that period, the policy principles and scope of environmental safeguards evolved from an initial focus on undertaking technical assessment and mitigation measures to an emphasis on developing and implementing a comprehensive environmental management plan (EMP). Key elements of EMPs are mitigation measures, monitoring programs, cost estimates, budgets, and institutional arrangements for implementation. In addition, the environmental assessment process emphasizes public consultation, information disclosure, and consideration of alternatives. While procedural compliance has improved over time, the substantive aspects of compliance—integration of findings and recommendations of environmental assessment into project design, borrower/client ownership of EMPs, and effective implementation of EMPs—remain challenging.

20. The 2006 Operations Evaluation Department (OED) *Special Evaluation Study (SES) on Environmental Safeguards*¹⁸ concluded that the safeguard element of ADB's environmental policy is relevant and has been effective in avoiding major adverse environmental impacts from ADB-financed projects, although its transaction costs have decreased the efficiency of project processing. The study recommended revision of the *Environment Policy* to (i) refocus efforts "from front-end loan processing and approval to results delivery," (ii) better integrate and align country systems and procedures with the policy for environmental assessment, (iii) broaden the focus of policy application from the project to capacity building, and (iv) better integrate environmental and social safeguards for a stronger focus on sustainable development. The study also recommended that ADB consider (i) strengthening the environmental expertise of resident missions; (ii) giving nongovernment organizations (NGOs) a greater role in monitoring; (iii) reviewing the application of the environmentally sensitive category B project classification and the 120-day disclosure rule for category A projects; (iv) strengthening country systems; and (v) developing an action plan for implementing the revised environment policy, including paying specific attention to ensuring an appropriate match between ADB's capacity and policy requirements.

¹⁵ ADB. 2003. *Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism*. Manila.

¹⁶ ADB. 1995. *Establishment of an Inspection Function*. Manila.

¹⁷ ADB. 1979. *Environmental Considerations in ADB Operations*. Manila.

¹⁸ ADB. 2006. *Special Evaluation Study on Environmental Safeguards*. Manila.

21. **Involuntary Resettlement.** The *Involuntary Resettlement Policy* was formulated in 1995 based on the World Bank's policy on involuntary resettlement. As ADB-financed projects became more complex, they had to address their impacts on property, assets, and loss of livelihood without physical relocation, particularly in urban areas, where many informal settlers live. Experience with implementation of this policy suggests that many of its aspects could be improved, including (i) treatment of those without clear land titles (for example, squatters or other informal settlers); (ii) scope of resettlement compensation covering appropriate replacement costs, restoration and/or rehabilitation, and livelihoods; (iii) unambiguous definition of affected versus displaced persons; and (iv) capacity development of DMCs for impact assessment and resettlement planning and implementation.

22. The 2006 OED SES on involuntary resettlement safeguards¹⁹ concluded that the *Involuntary Resettlement Policy* has been broadly effective in achieving outcomes for affected persons and creating resettlement capacity in many DMCs. However, its inputs and processes were assessed as being less than efficient and the current policy approach was assessed as less likely to be sustainable given the transaction costs to ADB and its borrowers/clients. Consequently, the SES recommends that during the SPU, ADB should (i) reconcile the differences between the 1995 *Involuntary Resettlement Policy* and the *Operations Manual* and clarify whether the scope of the policy covers both physical and economic displacement; (ii) clarify ambiguous key terms and implementation modalities, including replacement costs, compensation and relocation assistance, entitlements of squatters, and land acquisition procedures; (iii) develop a results-based framework with a set of performance standards; (iv) increase DMCs' capacity and reliance on country systems for land acquisition and resettlement safeguards; and (v) provide clear guidelines and procedures for involuntary resettlement operations. The SES also identified a mismatch between policy requirements and available staff resources and recommended that the SPU include a policy implementation plan.

23. **Indigenous Peoples.** ADB adopted its *Policy on Indigenous Peoples* in 1998. The broad definition of Indigenous Peoples in the policy follows the international consensus that has been emerging in recent decades, the general classification of Indigenous Peoples by international institutions such as the United Nations and the International Labour Organization, and the status of Indigenous Peoples as recognized by international law. Application of the policy poses particular 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. Experience with policy implementation has been mixed and key challenges remain, including the following: (i) recognition of Indigenous Peoples' cultural identity and rights to their ancestral lands and resources, (ii) fair sharing of development benefits among affected Indigenous Peoples communities and the rest of society, and (iii) meaningful and culturally appropriate consultation with Indigenous Peoples communities in planning and implementing projects that are likely to affect their lives.

24. The 2007 OED SES on Indigenous Peoples safeguards²⁰ concludes that the policy is relevant to ADB and its borrowers/clients, but is less effective. ADB-financed projects have generally avoided or mitigated any adverse impacts, but this has largely been a result of implementation of resettlement plans and environmental management plans rather than of Indigenous Peoples plans. According to the SES, the lack of value added of Indigenous Peoples plans when other safeguard plans exist makes the current policy approach less efficient and less likely to be sustainable given the transaction costs to ADB and its borrowers/clients. The

¹⁹ ADB. 2006. *Special Evaluation Study on Involuntary Resettlement Safeguards*. Manila.

²⁰ ADB. 2007. *Special Evaluation Study on Indigenous Peoples Safeguards*. Manila.

SES recommends that during the SPU, ADB (i) clarify those areas in the *Policy on Indigenous Peoples* that are misunderstood or ambiguous, including the definition of Indigenous Peoples; (ii) integrate Indigenous Peoples' issues in resettlement plans or EMPs where risks to Indigenous Peoples are primarily related to resettlement or to environmental damage; (iii) clarify requirements regarding the consultation process during project preparation and implementation; (iv) develop a sequential approach for capacity building in the application of the Indigenous Peoples safeguard; and (v) develop a plan for implementing the safeguard policy on Indigenous Peoples. Responses by ADB management and recommendations by the Board's Development Effectiveness Committee to the special evaluation study on Indigenous Peoples safeguards, as well as to the evaluation studies on environment and involuntary resettlement safeguards, are posted on ADB's website.²¹

25. **Crosscutting Issues.** In recent years, internal reviews of the implementation of ADB environmental and social safeguard policy have also highlighted the need for improved performance. Issues relevant to project preparation and processing include (i) quality of consultation and disclosure, (ii) adequate assessment of DMCs' frameworks and capacities, (iii) optimal sequencing of safeguard planning during the project cycle, and (iv) variable quality of safeguard documents. Also critically important is the adequacy of budgetary allocations for safeguards. Implementation issues have centered on (i) budgeting for safeguard requirements (design changes, compensation payments, and the like); (ii) implementing mitigation measures; (iii) ensuring that safeguard plans are updated based on detailed engineering design and changes in scope; (iv) improving agency oversight at the contractor level; and (v) ensuring adequate ADB supervision and compliance monitoring, especially oversight on the ground.

IV. KEY POLICY ISSUES AND CONSIDERATIONS

A. Policy Articulation and Scope

26. **Improving Clarity, Consistency, and Coherence.** Even though the three safeguard policies share common elements and principles, some ambiguity, duplication, and inconsistency is apparent. For example, (i) the coverage of social elements in environmental assessment needs to be clarified; (ii) some elements of the *Policy on Indigenous Peoples* are also covered in the *Involuntary Resettlement Policy*; (iii) all three policies require disclosure and consultation, but the requirements and processes are not aligned; (iv) the extent to which the policies cover different lending instruments and the procedural responses they prescribe differ; (v) the procedural requirements are currently mixed in with key policy principles, sometimes giving undue emphasis to compliance with procedures that are not necessarily critical to achieving the objectives of the policies; and (vi) the current policies and operational procedures also mix instructions to ADB staff with requirements for borrowers/clients in one place, often making the boundaries of responsibilities and accountabilities unclear. Greater coherence among the safeguard policies and full clarity of their policy principles, requirements for borrowers/clients, and internal implementation procedures would help ADB staff and borrowers/clients better understand what needs to be done to achieve the objectives of safeguard policies, as well as their differentiated roles and responsibilities in enhancing the quality of development outcomes.

27. **Distinguishing Safeguards from Aspirational Development Objectives.** Safeguard "do no harm" elements are currently mixed with aspirational development objectives to varying extents in the three safeguard policies. For instance, ADB's *Environment Policy* contains five main elements: (i) promoting environmental interventions to reduce poverty, (ii) mainstreaming

²¹ ADB. OED Undertakes Independent Evaluation of ADB's Safeguard Policies.
<http://www.adb.org/Evaluation/safeguard-policies.asp>

environmental considerations into economic growth, (iii) maintaining global and regional life-support systems, (iv) building partnerships, and (v) integrating environmental safeguards into ADB operations. However, the first four elements deal with ADB's corporate environment strategy and only the fifth element addresses environmental safeguard issues and assessment at the project level. Separating cross-cutting, thematic environmental issues of an aspirational nature from the safeguard requirements would allow each issue to be addressed in a way that enhances the focus on and attention to appropriate implementation. In parallel, the aspirational elements of the *Environment Policy* would be delivered through a corporate-level environment strategy. Similarly, addressing the developmental aspirations of the *Policy on Indigenous Peoples* at a wider strategic level would be more effective than doing so in the more limited context of safeguard compliance. The SPS's specific focus on safeguards, and not broader aspirational objectives, is therefore considered appropriate.

28. Addressing Environmental Safeguard Elements in Other Policies and Strategies.

Several safeguard requirements addressing environment-related issues are currently scattered across several ADB sector and thematic policies and strategies.²² In relation to these other policies and strategies, safeguard requirements are dealt with in a piecemeal fashion and rely partly on the implementation processes of ADB's *Environment Policy*. The resulting compartmentalization reduces opportunities for a holistic understanding of project impacts. In addition, the safeguard component of the existing *Environment Policy* focuses on principles and procedures of environmental assessment. The policy does not explicitly set out policy principles and requirements addressing project impacts and risks in relation to pollution prevention and abatement (including greenhouse gas emissions), biodiversity and natural resource management, and physical cultural resources. Environmental assessments of projects address these issues in an ad hoc manner. Therefore ADB should consolidate environmental safeguard elements currently covered by other ADB sector policies and strategies. The environmental safeguard principles and requirements need to be articulated explicitly to include sectoral issues and cover (i) environmental assessment, (ii) pollution prevention and abatement, (iii) biodiversity and natural resource management, (iv) occupational and community health and safety, and (v) physical cultural resources.

29. Incorporation of Social Dimensions such as Core Labor Standards and Gender Issues.

Some stakeholders have called for the introduction of policy provisions on core labor standards and gender issues as part of the safeguard policy statement. Core labor standards and broader social protection issues are already included in ADB's *Social Protection Strategy* (2001). Social dimensions are also handled through *Operations Manual* section on incorporation of social dimensions into ADB operations.²³ Gender issues already receive specific and focused attention in ADB operations through the implementation of ADB's *Policy on Gender and Development* (1998) and the accompanying *Operations Manual* section on gender and development.²⁴ However, it is recognized that gender considerations need to be reflected also in the safeguard policies where these are specifically related to safeguard aspects.

30. Improving the Clarity of Policy Scope and Triggers.

ADB's experience with implementing the *Involuntary Resettlement Policy* and the *Policy on Indigenous Peoples* indicates that further clarification of the scope and triggers of each policy is needed. As pointed out by the special evaluation study (footnote 19), clarification is needed to explain that the *Involuntary Resettlement Policy* is triggered by involuntary acquisition of land and land-based

²² This includes such policies as *the Bank's Policy on Forestry* (1995); *the Bank's Policy Initiatives for the Energy Sector* (1995); and *the Water Policy of the Asian Development Bank* (2001).

²³ ADB. 2007. *Operations Manual*. Section C3: Incorporation of Social Dimensions into ADB Operations. Manila.

²⁴ ADB. 2006. *Operations Manual*. Section C2: Gender and Development. Manila.

assets, restrictions on land use, and restrictions on access to legally designated protected areas. Clarification is also needed to explain that the current policy covers both physical and economic displacement, and these terms need to be clearly defined. Projects can sometimes lead to restricted access to natural resources, such as loss of access to downstream fishing grounds, and decreasing water supply. The safeguard policies need to cover such impacts that may not arise from land acquisition. There is a need to clarify that these impacts will be avoided, minimized, mitigated, or compensated.

31. In its current form, the *Policy on Indigenous Peoples* does not provide a clear operational definition of Indigenous Peoples. The complexities involved in identifying Indigenous Peoples for the purposes of policy application are exacerbated by the need for situational analysis and by different perceptions among indigenous communities regarding their ancestral domain and communal rights, thus the characteristics used to identify Indigenous Peoples need to be clarified. In addition, the triggers of the policy need to be identified as impacts on Indigenous Peoples' dignity; human rights; livelihood systems; culture; ancestral domains; communal assets; and territorial, natural, and cultural resources.

32. **Enhancing Consultation and Participation.** Consultation and participation are central to the achievement of safeguard policy objectives. ADB's existing safeguard policies have varying consultation requirements. They all imply the need for prior and informed consultation with affected persons and communities in the context of safeguard planning and for continued consultation during project implementation to identify and help address safeguard issues that may arise. ADB needs to be explicit that it will require the borrower/client to carry out meaningful consultation with affected persons and communities in the implementation of all three safeguard policies. In addition, ADB needs to clarify what "meaningful consultation" means. For policy application, it would refer to a process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) 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.

33. In September 2007, the United Nations 61st General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which refers to "obtaining Indigenous communities' free, prior, and informed consent prior to the approval of any project affecting them." This non-binding declaration was supported by many countries in Asia and the Pacific. In recognition of the rights of Indigenous Peoples to direct the course of their own development, and taking into account discussion by ADB Board, ADB's safeguard policy should include the following: Ascertain the consent of affected Indigenous Peoples communities to the following project activities where Indigenous Peoples groups are deemed to be particularly vulnerable: (i) commercial development of the cultural resources and knowledge of Indigenous Peoples; (ii) physical relocation of Indigenous Peoples from traditional or customary lands; and (iii) commercial development of natural resources within customary lands under use that would impact the livelihoods or on cultural, ceremonial, or spiritual uses of the lands that define the identity and community of Indigenous Peoples. For the purposes of policy application, it is proposed that 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 the project activities. Such broad community support may exist even if some individuals or groups object to the project activities.

B. Policy Application and Delivery Issues

34. **Balancing Front-Loaded Procedural Requirements with Implementation.** The current safeguard policies place considerable emphasis on meeting procedural requirements and milestones during project processing. The policies pay less attention to supervision and to achieving results during project implementation. The timing and sequencing of front-loaded procedural requirements are not always optimal, and simply achieving these requirements does not ensure satisfactory safeguard outcomes. For instance, during project processing and before project appraisal, significant effort is expended to prepare draft resettlement plans on the basis of project feasibility reports, but the most important resettlement planning and implementation activities might need to be done as part of detailed design activities that may take place later during project implementation. Similarly, significant staff input is expended on preparing draft summary environmental impact assessment reports to satisfy disclosure procedures for environmentally sensitive projects, but the finalization and implementation of robust EMPs, which are the basis for project implementation, receive substantially less attention. ADB's experience with safeguard implementation and the recent OED SESs have observed that substantially more attention needs to be paid to safeguards during project implementation. Policy requirements should include provisions on increased supervision by safeguard specialists, establishment of local grievance redress mechanisms, use of external experts for verification of monitoring reports, and use of independent advisory panels.

35. **Strengthening Safeguard Frameworks.** Safeguard frameworks as currently applied to sector loans and MFFs (namely, the environmental assessment and review framework, the resettlement framework, and the Indigenous Peoples planning framework) provide guidance on safeguard screening, assessment, institutional arrangements, and processes to be followed for subprojects or subsequent tranches that are prepared after Board approval. Safeguard frameworks also specify the criteria for eligibility that ensure that quality subprojects are identified and delivered. However, the current *Involuntary Resettlement Policy* and *Policy on Indigenous Peoples* do not have explicit provisions on the use of frameworks, while none of the safeguard policies address MFF requirements. In addition, there are no formal provisions for the use of frameworks for non-sensitive components of projects, where detailed design takes place after Board approval. These policy gaps have been addressed in the policy update. In addition, a key issue related to this approach is to ensure that borrowers/clients will apply the safeguard frameworks properly when preparing and implementing safeguard plans to subprojects after Board approval. To ensure that the safeguard frameworks are effectively implemented, greater attention is needed in relation to assessments of the institutional capacity of borrowers/clients, and mechanisms and measures for capacity building need to be developed and integrated into project design. Furthermore, more attention needs to be paid to monitoring and supervising subprojects to avoid the risk of noncompliance with safeguard policies.

36. **Managing Environmental and Social Risks in Financial Intermediation.** ADB has a growing portfolio of projects with financial intermediaries, mainly in the context of its private sector operations. Financial intermediation projects present special challenges from a safeguard perspective: ADB does not have direct oversight of or strong leverage in relation to subprojects, because subprojects are often unknown when a financial intermediary (FI) is appraised and funds are dispersed widely to many subprojects and financial intermediation financing can entail several layers of intermediation that complicate social and environmental risk management. While the current *Environment Policy* does have some provisions on financial intermediation, the *Involuntary Resettlement Policy* and the *Policy on Indigenous Peoples* are silent. There is a need to address the policy gaps. In addition, there is need to clarify and elaborate (i) requirements at the FI level and the subproject level, and (ii) roles and responsibilities of ADB

and the FI client. It would be desirable to tailor requirements for financial intermediaries based on potential social and environmental impacts and/or risks. This will require strengthened ADB due diligence and review of financial intermediaries' business activities and their capacity for social and environmental management. In addition, financial intermediaries may consider an integrated environmental and social management system (ESMS) to be more useful than three separate systems. Finally, although ADB does not currently require a prohibited investment list, it would be useful to introduce such a requirement.

C. Responding to Changing Client Requirements and Long-Term Sustainability of Safeguard Systems

37. **Strengthening and Use of Country Safeguard Systems.** Consultations undertaken in the context of ADB's efforts to enhance support to OCR borrowers have shown that many borrowers/clients believe that the transaction costs of complying with ADB's safeguards policy are excessive, and representatives of middle-income countries believe that shared safeguard principles could be upheld better through their own country systems than through ADB's procedures. They believe that ADB's procedures and approaches could be improved to better reflect different clients' needs and DMCs' widely divergent capacities to implement safeguards. ADB has recognized that DMCs have their own systems for delivering safeguards and that supporting DMCs' efforts to strengthen and use their own systems would enhance country ownership, extend development impacts, and reduce transaction costs. This is also in line with the increasing trend toward country ownership and greater alignment with country systems under the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action. ADB needs to develop its approach toward strengthening country safeguard systems (CSS) and using them in ADB projects, taking into account the World Bank's experience in piloting the use of CSS. There is a need to ensure that ADB's safeguard principles are not compromised and that risks associated with CSS are managed. The approach would therefore be gradual and would include the following attributes: (i) conditions for applying CSS, (ii) methodology of CSS assessments, (iii) consultation and validation processes, (iv) ADB's and borrowers' roles and responsibilities, (v) procedures and other related requirements such as gap filling, and (vi) resource implications.

38. **Harmonizing with Other MFIs' Safeguard Policies.** Over the last 5 years or so, a number of other MFIs have updated their safeguard policies or are currently doing so. The policy advances made and the best practices adopted by these institutions are relevant to ADB operations. Harmonizing ADB's safeguard policy principles and requirements with those of other MFIs is also required to enhance development impacts, reduce transaction costs, and encourage collaborative behavior. MFIs have made some progress in defining a common framework of principles for environmental assessment²⁵ and continued harmonization of safeguard practices across MFIs is needed. ADB believes that it should harmonize its safeguard policies with those of other MFIs, especially in relation to key policy principles, whereas procedures across MFIs need to cater to a variety of clients and situations. Therefore the SPU has ensured that policy principles and requirements on the environment, involuntary resettlement, and Indigenous Peoples are articulated in a manner consistent with the policies of other MFIs, in particular, the World Bank, IFC, and the EBRD.

39. **Working with Private Sector Clients.** ADB's private sector investment program has expanded rapidly over the last 5 years. Private sector clients are a diverse group with varying environmental and social awareness and capabilities, and the projects they finance can vary considerably in size and nature, for example, from small and medium-sized energy efficiency or

²⁵ Multilateral Financial Institutions Working Group on Environment. 2005. *A Common Framework for Environmental Assessment: A Good Practice Note*.

renewable energy enterprises to large companies in extractive industries, energy, and infrastructure. The operation cycle is typically much shorter than that for public sector projects, and safeguard due diligence typically needs to be undertaken within tight time frames. Complex financing structures, such as special purpose vehicles for securitization or multitiered financial intermediation, raise difficult questions pertaining to how ADB safeguards should be applied. While existing safeguard procedures remain relevant for traditional infrastructure finance, the ever-changing business environment, the availability of diversified financial products, and the increasing complexity of ADB interventions in the financial sector and capital markets may require different approaches. The safeguard policy principles should apply equally to public and private sector projects, while recognizing that project processing procedures may differ.

40. Developing ADB's Capacity and Optimizing Resource Allocation. Improvements in safeguard effectiveness will require enhanced ADB capacity, in particular, devoting greater efforts to project implementation, CSS assessment, and capacity development in DMCs. This will require building ADB's capacity to better understand DMCs' own safeguard frameworks, monitor safeguard implementation, and engage with borrowers/clients in addressing the realities of safeguard implementation. In particular, project teams must have a firm grasp of the objectives and principles of the safeguard policies, as they are on the front line in ensuring that policies are applied. For the past several years, ADB has provided staff training programs on all three safeguard policies, and such training needs to continue both at headquarters and in resident missions. At the same time, staff resources for safeguard implementation in operations departments and the Regional and Sustainable Development Department need to be optimized to ensure that adequate attention is paid to project implementation and supervision while also dealing with project processing needs and due diligence requirements. A critical need is to ensure that resident missions are properly equipped with relevant safeguard expertise, especially in DMCs with extensive portfolios of complex and sensitive projects. Optimal allocation of resources to policy implementation and monitoring will remain central to improved safeguard delivery.

41. Reducing Transaction Costs. While the effectiveness of ADB-supported projects has substantially improved as a result of attention to safeguard policies, some borrowers/clients have questioned whether the transaction cost to comply with ADB's safeguard policies has become too high, or unnecessary costs have been introduced because of parallel requirements of ADB and host countries. Studies examining the costs and benefits of implementing safeguard policies have concluded that these policies are constructive instruments for ensuring project sustainability.²⁶ Where the implementation of safeguard policies has been ineffective and has generated unnecessary costs, this is caused primarily by (i) requirements being introduced that are beyond the capacity of the borrower to implement, (ii) ambiguity in key policy requirements, (iii) indecision and delay in approving safeguard plans, (iv) rigidity in application ("legalistic" policy interpretation rather than professional judgment), and (v) capacity depletion (arising from a "ring-fenced" approach). Recommendations have centered on a more strategic approach to enhance the development impact of the policies and to reduce the costs by (i) clarifying responsibilities between MFI and borrower, with special attention to high-risk operations; (ii) addressing ambiguities in policies; (iii) harmonizing policies with other MFIs to reduce confusion; (iv) ensuring adequate resources for internal skill enhancement and expanded project supervision; (v) providing incentives to move safeguard analysis upstream; and (v) building borrower capacity and using of country systems. Similar findings and recommendations were provided in OED's special evaluation studies on ADB's safeguard policies. These considerations have been taken into account in the SPU, and have been addressed through the five thrusts of the SPU (para. 2).

²⁶ World Bank. 2001. *Cost of Doing Business*. Washington, DC.

V. SAFEGUARD POLICY STATEMENT

A. Overarching Statement on ADB's Commitment and Policy Principles

42. ADB affirms that environmental and social sustainability is a cornerstone of economic growth and poverty reduction in Asia and the Pacific. ADB's Strategy 2020 therefore emphasizes assisting DMCs to pursue environmentally sustainable and inclusive economic growth. In addition, ADB is committed to ensuring the social and environmental sustainability of the projects it supports. In this context, the goal of the SPS is to promote the sustainability of project outcomes by protecting the environment and people from projects' potential adverse impacts.

43. The objectives of ADB's safeguards are to:

- (i) avoid adverse impacts of projects on the environment and affected people, where possible;
- (ii) minimize, mitigate, and/or compensate for adverse project impacts on the environment and affected people when avoidance is not possible; and
- (iii) help borrowers/clients to strengthen their safeguard systems and develop the capacity to manage environmental and social risks.

44. ADB adheres to the objectives of the safeguards and their delivery. ADB assumes the responsibility for conducting due diligence and for reviewing, monitoring, and supervising projects throughout the ADB's project cycle in conformity with the principles and requirements embodied in the SPS. By adhering to its social and environmental safeguards, ADB enhances the predictability, transparency, and accountability of its actions and decision making; helps borrowers/clients manage social and environmental impacts and risks; and promotes the long-term sustainability of investments. Transforming this commitment into results on the ground depends on shared, but differentiated, efforts by ADB and its borrowers/clients.

45. ADB's SPS sets out the policy objectives, scope and triggers, and principles for three key safeguard areas:

- (i) environmental safeguards,
- (ii) involuntary resettlement safeguards, and
- (iii) Indigenous Peoples safeguards.

46. To achieve the policy objectives and deliver the policy principles, ADB carries out the actions described in the following subsection ("B. Policy Delivery Process"). To help borrowers/clients and their projects achieve the desired outcomes, ADB adopts a set of specific safeguard requirements that borrowers/clients are required to meet in addressing environmental and social impacts and risks. ADB staff, through their due diligence, review, and supervision, will ensure that borrowers/clients comply with these requirements during project preparation and implementation. These safeguard requirements are as follows:

- (i) Safeguard Requirements 1: Environment (Appendix 1),
- (ii) Safeguard Requirements 2: Involuntary Resettlement (Appendix 2),
- (iii) Safeguard Requirements 3: Indigenous Peoples (Appendix 3), and
- (iv) Safeguard Requirements 4: Special Requirements for Different Finance Modalities (Appendix 4).

47. ADB will not finance projects that do not comply with its safeguard policy statement, nor will it finance projects that do not comply with the host country's social and environmental laws and regulations, including those laws implementing host country obligations under international law. In addition, ADB will not finance activities on the prohibited investment activities list (Appendix 5).

48. This safeguard policy statement applies to all ADB-financed and/or ADB-administered sovereign and non-sovereign projects, and their components regardless of the source of financing, including investment projects funded by a loan; and/or a grant; and/or other means, such as equity and/or guarantees (hereafter broadly referred to as projects).

1. Environmental Safeguards

<p>Objectives: To ensure the environmental soundness and sustainability of projects and to support the integration of environmental considerations into the project decision-making process.</p>
<p>Scope and Triggers: Environmental safeguards are triggered if a project is likely to have potential environmental risks and impacts.</p>
<p>Policy Principles:</p> <ol style="list-style-type: none"> 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. 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.

2. Involuntary Resettlement Safeguards

<p>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.</p>
<p>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.</p>
<p>Policy Principles:</p> <ol style="list-style-type: none"> 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. 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.

3. 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.
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.

B. Policy Delivery Process

1. General Requirements

49. **Screening and Categorization.** ADB will carry out project screening and categorization at the earliest stage of project preparation when sufficient information is available for this purpose. Screening and categorization is undertaken to (i) reflect the significance of potential impacts or risks that a project might present; (ii) identify the level of assessment and institutional resources required for the safeguard measures; and (iii) determine disclosure requirements.

50. **Environment Categorization.** ADB uses a classification system to reflect the significance of a project's potential environmental 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. Each proposed project is scrutinized as to its type, location, scale, and sensitivity and the magnitude of its potential environmental impacts. Projects are assigned to one of the following four categories:

- (i) **Category A.** A proposed project is classified as category A if it is likely to have significant adverse environmental impacts that are irreversible, diverse, or unprecedented. These impacts may affect an area larger than the sites or facilities subject to physical works. An environmental impact assessment is required.
- (ii) **Category B.** A proposed project is classified as category B if its potential adverse environmental impacts are less adverse than those of category A projects. These impacts are site-specific, few if any of them are irreversible, and in most cases mitigation measures can be designed more readily than for category A projects. An initial environmental examination is required.
- (iii) **Category C.** A proposed project is classified as category C if it is likely to have minimal or no adverse environmental impacts. No environmental assessment is required although environmental implications need to be reviewed.
- (iv) **Category FI.** A proposed project is classified as category FI if it involves investment of ADB funds to or through a FI (paras. 65-67).

51. **Involuntary Resettlement.** ADB will screen all projects to determine whether or not they involve involuntary resettlement. For a project involving involuntary resettlement, a resettlement plan will be prepared that is commensurate with the extent and degree of the impacts. The degree of impacts shall be determined by (i) the scope of physical and economic displacement, and (ii) the vulnerability of the affected persons. For FI projects, see paras. 65-67.

52. **Indigenous Peoples.** ADB will screen all projects to determine whether or not they have potential impacts on Indigenous Peoples. For projects with impacts on Indigenous Peoples, an Indigenous Peoples plan will be prepared. The plan's level of detail and comprehensiveness will be commensurate with the degree of impacts. The degree of impacts is determined by evaluating (i) the magnitude of the impact on Indigenous Peoples' customary rights of use and access to land and natural resources; socioeconomic status; cultural and communal integrity; health, education, livelihood systems, and social security status; or indigenous knowledge; and (ii) the vulnerability of the affected Indigenous Peoples. For FI projects, see paras. 65-67.

53. **Information Disclosure.** In line with ADB's Public Communications Policy, ADB is committed to working with the borrower/client to ensure that relevant information (whether positive or negative) about social and environmental safeguard issues is made available in a timely manner, in an accessible place, and in a form and language(s) understandable to

affected people and to other stakeholders, including the general public, so they can provide meaningful inputs into project design and implementation. ADB will post the following safeguard documents on its website:

- (i) for environment category A projects, draft environmental impact assessment reports at least 120 days before Board consideration;
- (ii) draft environmental assessment and review framework, draft resettlement frameworks and/or plans, and draft Indigenous Peoples planning frameworks and/or plans before project appraisal;
- (iii) final or updated environmental impact assessments and/or initial environmental examinations, resettlement plans, and Indigenous Peoples plans upon receipt;
- (iv) environmental, involuntary resettlement, and Indigenous Peoples monitoring reports submitted by borrowers/clients during project implementation upon receipt.

54. **Consultation and Participation.** ADB is committed to working with borrowers/clients to put meaningful consultation processes into practice. For policy application, meaningful consultation is a process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) 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. ADB will require borrowers/clients to engage with communities, groups, or people affected by proposed projects, and with civil society through information disclosure, consultation, and informed participation in a manner commensurate with the risks to and impacts on affected communities. For projects with significant adverse environmental, involuntary resettlement, or Indigenous Peoples impacts, ADB project teams will participate in consultation activities to understand the concerns of affected people and ensure that such concerns are addressed in project design and safeguard plans.

55. In addition, ADB recognizes that Indigenous Peoples may be particularly vulnerable in certain project circumstances. Therefore, consent of affected Indigenous Peoples communities, through meaningful consultation, will be ascertained for the following project activities: (i) commercial development of the cultural resources and knowledge of Indigenous Peoples; (ii) physical relocation from traditional or customary lands; and (iii) commercial development of natural resources within customary lands under use that would impact the livelihoods or cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples. For the purposes of policy application, 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. The borrower/client will ascertain whether the affected Indigenous Peoples communities provide their broad support to the project activities, and where such broad community support exists, the IPP will clearly document the consultation process. ADB will review the borrower's/client's documentation of the engagement process, and in addition, through its own investigation, will assure itself that broad community support for the project activities has been demonstrated by the affected Indigenous Peoples communities. ADB will not finance the project if such broad community support does not exist.

56. **Due Diligence and Review.** For projects proposed for financing, ADB will conduct safeguard reviews, including reviews of the borrower's/client's safeguard documents, as part of its overall due diligence. ADB's safeguard due diligence and review emphasizes environmental and social impact assessments and the planning process, in addition to safeguard documentation. Due diligence and review involves field visits as well as desk reviews. Through such due diligence and review, ADB will confirm (i) that all key potential social and environmental impacts and risks of a project are identified; (ii) that effective measures to avoid, minimize, mitigate, or compensate for the adverse impacts are incorporated into the safeguard plans and project design; (iii) that the borrower/client understands ADB's safeguard policy principles and requirements as laid out in Safeguard Requirements 1–4 and has the necessary commitment and capacity to manage social and environmental impacts and/or risks adequately; (iv) that the role of third parties is appropriately defined in the safeguard plans; and (v) that consultations with affected people are conducted in accordance with ADB's requirements. In cases where the assessment and planning process, or the safeguard documents, do not meet ADB's safeguard requirements, the borrower/client will be required to undertake additional assessment and/or improve the safeguard plans. When the borrower/client has inadequate capacity to carry out safeguard plans for a proposed project, the project will include component(s) to strengthen that capacity. For projects that are deemed by ADB to be highly complex and sensitive,²⁷ ADB will require the borrower/client to engage an independent advisory panel during project preparation and implementation.

57. **Monitoring and Reporting.** Both the borrower/client and ADB have their own separate monitoring responsibilities. The extent of monitoring activities, including their scope and periodicity, will be commensurate with the project's risks and impacts. Borrowers/clients are required to implement safeguard measures and relevant safeguard plans, as provided in the legal agreements, and to submit periodic monitoring reports on their implementation performance. ADB will require borrowers/clients to:

- (i) establish and maintain procedures to monitor the progress of implementation of safeguard plans,
- (ii) verify the compliance with safeguard measures and their progress toward intended outcomes,
- (iii) document and disclose monitoring results and identify necessary corrective and preventive actions in the periodic monitoring reports,
- (iv) follow up on these actions to ensure progress toward the desired outcomes,
- (v) retain qualified and experienced external experts²⁸ or qualified NGOs to verify monitoring information for projects with significant impacts and risks,
- (vi) use independent advisory panels to monitor project implementation for highly complex and sensitive projects, and
- (vii) submit periodic monitoring reports on safeguard measures as agreed with ADB.

58. ADB reviews project performance against borrowers'/clients' commitments as agreed in the legal documents. The extent of ADB's monitoring and supervision activities will be commensurate with the project's risks and impacts. Monitoring and supervising of social and environmental safeguards is integrated into the project performance management system. ADB will monitor projects on an ongoing basis until a project completion report is issued. ADB will carry out the following monitoring actions to supervise project implementation:

²⁷ Highly complex and sensitive projects are projects that ADB deems to be highly risky or contentious or involve serious and multidimensional and generally interrelated potential social and/or environmental impacts.

²⁸ External experts mean experts not involved in day-to-day project implementation or supervision.

- (i) conduct periodic site visits for projects with adverse environmental or social impacts;
- (ii) conduct supervision missions with detailed review by ADB's safeguard specialists/officers or consultants for projects with significant adverse social or environmental impacts;
- (iii) review the periodic monitoring reports submitted by borrowers/clients to ensure that adverse impacts and risks are mitigated as planned and as agreed with ADB;
- (iv) work with borrowers/clients to rectify to the extent possible any failures to comply with their safeguard commitments, as covenanted in the legal agreements, and exercise remedies to reestablish compliance as appropriate; and
- (v) prepare a project completion report that assesses whether the objective and desired outcomes of the safeguard plans have been achieved, taking into account the baseline conditions and the results of monitoring.

59. **Local Grievance Redress Mechanism.** ADB requires that the borrower/client establish and maintain a grievance redress mechanism to receive and facilitate resolution of affected peoples' concerns and grievances about the borrower's/client's social and environmental performance at project level. The grievance redress mechanism should be scaled to the risks and impacts of the project. It should address affected people's concerns and complaints promptly, using an understandable and transparent process that is gender responsive, culturally appropriate, and readily accessible to all segments of the affected people.

60. **Accountability Mechanism.** Project-affected people can also submit complaints to ADB's Accountability Mechanism. The Accountability Mechanism provides an independent forum and process whereby people adversely affected by ADB-financed projects can voice, and seek a resolution of their problems, as well as report alleged violations of ADB's operational policies and procedures. The Accountability Mechanism comprises two separate, but related, phases, namely: (i) a consultation phase, led by ADB's special project facilitator who reports directly to the ADB President, to assist project-affected people in finding solutions to their problems; and (ii) a compliance review phase, led by a three-member panel that reports to the Board of Directors. The Compliance Review Panel investigates alleged violations of ADB's operational policies and procedures, as defined by the Board of Directors, including safeguard policies, that have resulted or are likely to result in direct adverse and material harm to project-affected people and recommends how to ensure project compliance with those policies and procedures.

2. Special Requirements

61. In addition to standard project loans that follow the general requirements stipulated in paras. 49–60, a number of specific cases require tailored approaches to address social and environmental impacts and risks. Appendix 4 specifies additional requirements for program lending, sector lending, multitranche financing facilities, emergency assistance loans, existing facilities, financial intermediaries, and general corporate finance. If and when new lending modalities are developed, Appendix 4 will be updated to address these.

a. Safeguard Frameworks

62. Safeguard frameworks apply to projects delivered through sector loans, MFFs, emergency assistance loans or other lending modalities including projects where subprojects or project components are prepared after Board approval. The purpose of a safeguard framework is to ensure that the subprojects or project components implemented under the framework

comply with ADB safeguard objectives, principles and requirements. Safeguard frameworks (including environmental assessment and review frameworks, resettlement frameworks, and Indigenous Peoples planning frameworks) need to be in place prior to project approval to provide guidance on screening and categorization, assessment, planning, institutional arrangements, and processes to be followed for subprojects and/or components that are prepared after Board approval. Impact assessments and safeguard plans are prepared during subproject or component preparation in conformity with the safeguard frameworks agreed to by ADB and the borrower/client. Safeguard frameworks will not be used for highly complex and sensitive subprojects of sector loans or of sector loan tranches of MFFs.

63. Safeguard frameworks will be prepared for each safeguard area and will:

- (i) reflect fully the policy objectives and relevant policy principles and safeguard requirements governing preparation and implementation of subprojects and/or components;
- (ii) explain the general anticipated impacts of the subprojects and/or components to be financed under the proposed project;
- (iii) 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;
- (iv) describe implementation procedures, including budgets, institutional arrangements, and capacity development requirements;
- (v) specify monitoring and reporting requirements; and
- (vi) 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.

64. To determine whether the application of safeguard frameworks is appropriate, ADB will assess the borrower's/client's capacity to manage environmental and social impacts and risks and to implement national laws and ADB's requirements. If gaps exist between ADB's requirements and countries' laws, or where gaps in borrowers' capacity are apparent, the safeguard frameworks should include the details of the specific gap-filling requirements to ensure that policy principles and safeguard requirements are achieved.

b. Financial Intermediaries

65. For projects involving investment of ADB funds to or through financial intermediaries (FI), ADB conducts safeguard due diligence to assess the potential environmental and social impacts and risks associated with the FI's existing and likely future portfolio, and its commitment and capacity in social and environmental management. All FIs will ensure that their investments are in compliance with applicable national laws and regulations and will apply the prohibited investment activities list (Appendix 5) to subprojects financed by ADB. Where the FI's investments have minimal or no adverse environmental or social risks, the FI project will be treated as category C project and need not apply any other specific requirements. All other FIs will be required to have in place or establish an appropriate environmental and social management system (ESMS) commensurate with the nature and risks of the FI's likely future portfolio to be maintained as part of the FI's overall management system.

66. The ESMS will incorporate the following elements: (i) environmental and social policies; (ii) screening, categorization, and review procedure; (iii) organizational structure and staffing including skills and competencies in environmental and social areas; (iv) training requirements; and (v) monitoring and reporting. The system will be documented and agreed upon by ADB and the FI. Where the FI's subprojects to be funded by ADB, either through credit-line, other loans, equity, guarantee, or other financing instruments, have potential for significant environmental or social impacts, the FI will be required to ensure that such subprojects meet ADB's safeguard policy requirements, including those specified in Safeguard Requirements 1-3. ADB may also set additional requirements for the FI's activities more generally depending on the FI's portfolio and the host country's safeguard systems. ADB will monitor the FI's performance on the basis of its environment and social management system.

67. ADB will assess the adequacy of the FI's capacity to manage environment and social impacts and risks. Where there are gaps in the FI's capacity, the ADB and FI will establish a time-bound plan to address identified gaps. ADB will work with clients to improve their overall capacity to address environmental and social risks more generally.

c. Strengthening and Use of Country Safeguard Systems

68. ADB recognizes that DMCs have developed their own systems for delivering safeguards in varying degrees, and that supporting DMCs' efforts to strengthen and effectively use their own systems would enhance country ownership, reduce transaction costs, and extend development impacts over the long term. ADB is committed to supporting the strengthening and effective application of the DMCs' country safeguard systems (CSS) with a focus on the capacity development of borrowers. At the same time, ADB needs to ensure that application of country safeguard systems (CSS) in ADB projects does not undermine the achievement of ADB's policy objectives and principles. ADB's overall strategy for strengthening and using CSS has the following attributes and emphasizes a phased approach:

- (i) **Definition.** CSS refers to a country's legal and institutional framework, consisting of its national, subnational, or sectoral implementing institutions and relevant laws, regulations, rules, and procedures that pertain to the safeguard policy areas.
- (ii) **Prerequisites for the use of country safeguard systems—equivalence and acceptability assessments.** Application of CSS in ADB-financed projects is not automatic or mandatory. ADB may consider application of a borrower's CSS to identify and manage the social and environmental risks associated with ADB-financed projects at the national, subnational, sector, or agency level provided that (a) the CSS is equivalent to ADB's (equivalence assessment), that is, the CSS is designed to achieve the objectives and adhere to the policy scope, triggers, and applicable principles set out in this SPS (page 16-18); and (b) the borrower has the acceptable implementation practice, track record, and capacity (acceptability assessment), and commitment to implement the applicable laws, regulations, rules, and procedures in the country, specific sector, or agency concerned.
- (iii) **Addressing the needs to strengthen CSS and develop capacity.** If the borrower has to strengthen its CSS to meet the objectives and adhere to the policy scope, triggers, and applicable principles set out in this SPS (page 16-18), and commits to doing so by implementing an action plan with specific measures, ADB may, when determining equivalence, take account of these measures. Similarly, if the borrower needs to strengthen its implementation practice and

capacity, and commits to doing so by implementing an action plan with specific measures, ADB may, when determining acceptability, take account of these measures. Such measures are to be carried out before the borrower undertakes implementation of the relevant project activities, and may include ADB-supported efforts.

- (iv) **Scope of country safeguard systems application.** Because the extent of equivalence and acceptability is safeguard specific, a country, sector, or agency may qualify for a CSS approach for one, two, or all three safeguard areas depending on the result of the CSS assessments.
- (v) **Exclusion of country safeguard systems.** CSS will not be applied to highly complex and sensitive projects financed by ADB.
- (vi) **Disclosure and consultation.** Upon completion, draft equivalence and acceptability assessments (including gap-filling measures, if any) at the national, subnational, sector, or agency level will be documented and disclosed on ADB's website for public comment. ADB will organize in-country consultation workshops to solicit comments and feedback from stakeholders, including governments and NGOs. Upon completion, final equivalence and acceptability assessment reports will be disclosed on ADB's website. Disclosure and consultation related to acceptability assessments at the project level will follow the normal safeguard document disclosure and consultation process undertaken for project preparation as specified in paras. 53–55.
- (vii) **Role and responsibilities of ADB.** ADB is responsible for assessing and determining the equivalence of the CSS and the adequacy of the borrower's implementation practice and capacity. ADB coordinates closely with other possible development partners when preparing the equivalence and acceptability assessments.²⁹ For projects that use CSS, ADB's responsibilities for safeguard review and due diligence will remain the same as for any other ADB-financed project. The due diligence and review will be based on the requirements under the CSS and the agreed action plan (rather than ADB's requirements). After the Board approves a project that uses CSS, ADB supervision will follow the same procedures as for any other ADB-financed project.
- (viii) **Role and obligations of borrower.** The borrower is responsible for achieving and maintaining equivalence as well as developing acceptable implementation practices, track record, and capacity, in accordance with ADB's assessments. For a specific project, the borrower identifies those provisions of the CSS that are necessary to ensure that the policy objectives and principles set out in this SPS are met. These provisions may vary from project to project, depending on such factors as the structure of the CSS and the type of operation. In all cases, these provisions and any additional measures that the borrower needs to undertake to achieve and maintain equivalence and acceptable implementation capacity become part of the borrower's contractual obligations to ADB's normal contractual remedies.
- (ix) **ADB accountability mechanism.** The use of CSS will not alter the role of ADB accountability mechanism.
- (x) **A phased approach.** Use of CSS will include a limited number of DMCs with a focus on subnational, sector, or agency levels during the first 3 years after this policy becomes effective. An operational review of the effectiveness of the application and use of CSS will be undertaken 3 years after the policy becomes effective.

²⁹ Recent analytical work and diagnostic assessments by other development partners, updated as required, can be used. Joint assessments with other development partners will be encouraged.

69. Appendix 6 provides details of the approach for strengthening and use of CSS.

d. Projects with Cofinancing

70. ADB will make efforts to collaborate with the borrower/client and cofinanciers to adopt a single social and environmental assessment and planning process and unified safeguard documentation, consultation, and disclosure requirements to satisfy the safeguard principles and requirements of ADB and the cofinanciers.

C. Roles and Responsibilities

1. ADB's Roles and Responsibilities

71. ADB is responsible for screening projects to specify ADB's safeguard requirements; undertaking due diligence; and reviewing the borrower's/client's social and environmental assessments and plans to ensure that safeguard measures are in place to avoid, wherever possible, and minimize, mitigate, and compensate for adverse social and environmental impacts in compliance with ADB's safeguard policy principles and Safeguard Requirements 1–4; determining the feasibility of ADB financing; helping the borrower/client in building capacity to deliver the safeguards; and monitoring and supervising the borrower's/client's social and environmental performance throughout the project cycle. ADB discloses safeguard plans and frameworks, including social and environmental assessments and monitoring reports, on its website.

72. If a borrower/client fails to comply with legal agreements on safeguard requirements, including those described in the safeguard plans and frameworks, ADB will seek corrective measures and work with the borrower/client to bring it back into compliance. If the borrower/client fails to reestablish compliance, then ADB may exercise legal remedies, including suspension, cancellation, or acceleration of maturity, that are available under ADB legal agreements. Before resorting to such measures, ADB uses other available means to rectify the situation satisfactory to all parties to the legal agreements, including initiating dialogue with the parties concerned to achieve compliance with legal agreements.

2. Roles and Obligations of Borrowers/Clients

73. The borrower/client is responsible for assessing projects and their environmental and social impacts, preparing safeguard plans, and engaging with affected communities through information disclosure, consultation, and informed participation following all policy principles and safeguard requirements. The borrower/client will submit all required information, including assessment reports, safeguard plans/frameworks, and monitoring reports, to ADB for review. The borrower/client must comply with host country laws, regulations, and standards, including host country obligations under international law. Furthermore, the borrower/client must implement safeguard measures agreed with ADB to deliver the policy principles and meet the requirements specified in Safeguard Requirements 1–4. To ensure that contractors appropriately implement the agreed measures, the borrower/client will include the safeguard requirements in bidding documents and civil works contracts. Where national safeguard policies and regulations differ from ADB's safeguard policy statement including Safeguard Requirements 1–4, ADB and the borrower/client will formulate and agree on specific measures to ensure that ADB's safeguard policy principles and requirements are fully complied with.

VI. IMPLEMENTATION ARRANGEMENTS AND RESOURCE IMPLICATIONS

A. Implementation and Monitoring

74. The implementation of the SPS at the corporate level will be guided by 3-year medium-term action plans, beginning with the period 2010–2012. The action plans should be developed based on the following key elements: (i) supporting capacity development of borrowers/clients for safeguard delivery; (ii) developing and maintaining the tools and instruments (such as guidelines and handbooks) to assist in implementing the SPS; (iii) ensuring ADB's organizational capacity and resources for SPS implementation; and (iv) improving and maintaining ADB's internal review and compliance monitoring system. The 2010–2012 action plan, including proposed actions, associated results and required resources are set out in Attachment 2.

75. ADB will monitor and evaluate its overall safeguard performance against the objectives of the SPS. ADB will maintain an internal review and compliance monitoring system to assess bank-wide and project-level performance with regard to ADB's safeguard policy statement.

B. Resource Implications

76. ADB will allocate appropriate resources to ensure effective implementation of the SPS. In optimizing resource utilization and allocation, various options are being examined in the context of the following considerations: (i) efficient and effective apportionment of incremental resource requirements across internal administrative budgets, technical assistance, and loans, determined by the demarcation between ADB and borrower/client responsibilities; (ii) efficiencies and streamlined internal procedural requirements that achieve ADB's safeguard objectives and adhere to the principles of the SPS; and (iii) efficiency measures, which will include improving skill mixes and competencies, optimizing the number of safeguard specialists at headquarters and at resident missions, and increasing sector specialization and pooling of specialist resources.

77. The SPS places major emphasis on the need to assist DMC's to strengthen their own safeguard systems and develop capacity to implement these. Such capacity development will be pursued together with bilateral and multilateral partners, based on demand from DMCs. Targeted resources of \$80-100 million, through establishment of a trust fund to mobilize external resources, will be sought in the medium term to (i) support DMCs to strengthen their safeguard policies, legal frameworks, regulations, rules and procedures; (ii) support capacity development of DMC government agencies, borrowers/clients and civil societies at national, subnational, sector, agency and project-level; and (iii) work with DMCs to conduct CSS equivalence and acceptability assessment, and diagnostics on a demand-driven basis.

78. ADB has made systematic progress in recruiting safeguard specialists during the past years. Since the *Environment Policy* was approved in 2002, when ADB already had 19 environmental specialists (18 professional staff and 1 national officer), there has been a net increase of 14 environmental specialists (8 professional staff and 6 national officers). Since the *Involuntary Resettlement Policy* was approved in 1995 and the subsequent approval of the *Policy on Indigenous Peoples* in 1998, the number of staff with social safeguard expertise has increased from only 1 professional staff to 22 professional staff and 9 national officers by May 2009. Currently, ADB has a total of 48 professional staff positions for safeguard review work,

including 26 environmental specialist positions and 22 social development specialist positions.³⁰ ADB has additional 17 local staff positions working on safeguards, including 8 environmental officer positions, and 9 social safeguard officer positions, 12 positions of which are allocated in 7 resident missions.

79. Resource implications have been examined in the context of internal surveys and application of staff-week coefficients for safeguard due diligence, review and supervision tasks within ADB. The estimates suggest that incremental staff resources ranging from 1253-1749 person-weeks per year will be required for safeguard review work in the immediate to medium term (2010–2012).³¹ The estimated increase in safeguard staff resources requirement is mainly due to the rapid increase of operational volume in the last few years as well as in the context of the fifth General Capital Increase. These estimates are dependent on assumptions concerning internal safeguard review procedures, redeployment of staff resources within ADB, actual staff time inputs on safeguards, as well as the composition and mix of project pipeline.³² The additional resources will be filled over the 3-year medium-term timeframe by a combination of staff positions (both professional staff and national officers) and staff consultants. Where appropriate, priority to increase staff capacity can be given to resident missions. The role of national officers will be expanded with appropriate training programs. They will be required to correspond to three major areas: (i) enhancing the implementation of the existing policy requirements that will be retained under the SPS; (ii) implementing new requirements on community engagement; and (iii) undertaking additional safeguard review missions during project implementation for projects with significant impacts and risks. In addition, there may be a need for additional resources for legal expertise in the Office of the General Counsel to address legal aspects of safeguard policy implementation and to review equivalence assessments of CSS.

80. In the medium term, there will be incremental costs associated with CSS. Additional professional staff weeks may be required each year for conducting equivalence assessment of CSS on a demand-driven basis. This may include 5–12 staff weeks for each equivalence assessment, and additional staff-weeks for acceptability assessment. The potential increased resources requirements can be partially met by engaging staff consultancy on a need basis. In addition, the World Bank is playing a significant role in developing and applying methodologies for CSS diagnostics and there is strong interest in joint work in this area. Working with partner institutions such as the World Bank will also allow improved effectiveness and ensure additional resource efficiencies.

C. Effective Date and Transitional Period

81. The SPS and Appendixes 1–6 shall become effective 6 months after the date of approval by the Board of Directors. For projects that initiate preparation after the policy's effective date, the SPS and Appendixes 1–6 shall apply. Projects that have already completed the Management Review Meeting, or any tranche under an existing MFF for which Management review of periodic financing request has been completed at the time of the effective date will be

³⁰ These staff do not work exclusively on safeguards, and allocation of their time on safeguards ranges from 30% to 90%.

³¹ The estimation of staff resources required is based on an analysis which was conducted to (i) assess the adequacy of staff resources to implement the existing safeguard requirements that will retain in the new policy; (ii) identify the resource implications of the safeguard policy update; and (iii) identify options that offer optimal use and allocation of existing human resources for safeguard work.

³² The anticipated number of projects in pipeline used for resource estimates is based on Project Processing Information System (PPIS) data.

subject to the application of the ADB's *Involuntary Resettlement Policy* (1995), *Policy on Indigenous Peoples* (1998), and *Environment Policy* (2002).

D. Policy Review

82. A review will be conducted 5 years after the effective date of the Safeguard Policy Statement to assess its effectiveness in achieving ADB's safeguard objectives. In addition, an operational review will be undertaken 3 years after the policy becomes effective, with particular emphasis on assessing (i) progress on the use of CSS and effectiveness of CSS; and (ii) implementation of safeguard requirements for FI projects, and the effectiveness of such requirements. Both the 3-year and 5-year reviews will be conducted by the Independent Evaluation Department, and the resulting reports will be submitted to the Board of Directors and ADB Management. Taking into account the recommendations of the 3-year review and the views of Board's Development Effectiveness Committee, Management will submit a paper to the Board on the application of CSS and the implementation of safeguard requirements for FI projects for Board approval. Management would also submit a paper to the Board taking into account the 5-year review.

VII. RECOMMENDATION

83. The President recommends that the Board approve the ADB Safeguard Policy Statement as described in this paper, including Chapter V and VI, and Appendixes 1–6, which will supersede the *Involuntary Resettlement Policy* (1995), the *Policy on Indigenous Peoples* (1998), the *Environment Policy* (2002), and the second sentence of para. 73, paras. 77–85, and 92 of the *Public Communications Policy* (2005).

SAFEGUARD REQUIREMENTS 1: ENVIRONMENT

A. Introduction

1. Safeguard Requirements 1 outlines the requirements that borrowers/clients are required to meet when delivering environmental safeguards for projects supported by the Asian Development Bank (ADB). It discusses the objectives and scope of application, and underscores the requirements for undertaking the environmental assessment process. These requirements include assessing impacts, planning and managing impact mitigations, preparing environmental assessment reports, disclosing information and undertaking consultation, establishing a grievance mechanism, and monitoring and reporting. The document also includes particular environmental safeguard requirements pertaining to biodiversity conservation and sustainable management of natural resources, pollution prevention and abatement, occupational and community health and safety, and conservation of physical cultural resources. The applicability of particular requirements is established through the environmental assessment process and compliance with the requirements is achieved through implementation of environmental management plans agreed to by ADB and the borrower/client.

B. Objectives

2. The objectives are to ensure the environmental soundness and sustainability of projects, and to support the integration of environmental considerations into the project decision-making process.

C. Scope of Application

3. The requirements apply to all ADB-financed and/or ADB-administered sovereign and non-sovereign projects, and their components regardless of the source of financing, including investment projects funded by a loan; and/or a grant; and/or other means, such as equity and/or guarantees (hereafter broadly referred to as projects).

D. Requirements

1. Environmental Assessment

4. Environmental assessment is a generic term used to describe a process of environmental analysis and planning to address the environmental impacts and risks associated with a project. At an early stage of project preparation, the borrower/client will identify potential direct, indirect, cumulative and induced environmental impacts on and risks to physical, biological, socioeconomic, and physical cultural resources and determine their significance and scope, in consultation with stakeholders, including affected people and concerned NGOs. If potentially adverse environmental impacts and risks are identified, the borrower/client will undertake an environmental assessment as early as possible in the project cycle. For projects with potentially significant adverse impacts that are diverse, irreversible, or unprecedented, the borrower/client will examine alternatives to the project's location, design, technology, and components that would avoid, and, if avoidance is not possible, minimize adverse environmental impacts and risks. The rationale for selecting the particular project location, design, technology, and components will be properly documented, including, cost-benefit analysis, taking environmental costs and benefits of the various alternatives considered into account. The "no project" alternative will be also considered.

5. The assessment process will be based on current information, including an accurate project description, and appropriate environmental and social baseline data. The environmental assessment will consider all potential impacts and risks of the project on physical, biological, socioeconomic (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 an integrated way. The project's potential environmental impacts and risks will be reviewed against the requirements presented in this document and applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental matters, including host country obligations under international law.

6. Impacts and risks will be analyzed in the context of the project's area of influence. This area of influence encompasses (i) the primary project site(s) and related facilities that the borrower/client (including its contractors) develops or controls, such as power transmission corridors, pipelines, canals, tunnels, access roads, borrow pits and disposal areas, and construction camps; (ii) associated facilities that are not funded as part of the project (funding may be provided separately by the borrower/client or by third parties), and whose viability and existence depend exclusively on the project and whose goods or services are essential for successful operation of the project; (iii) areas and communities potentially affected by cumulative impacts from further planned development of the project, other sources of similar impacts in the geographical area, any existing project or condition, and other project-related developments that are realistically defined at the time the assessment is undertaken; and (iv) areas and communities potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location. The area of influence does not include potential impacts that might occur without the project or independently of the project. Environmental impacts and risks will also be analyzed for all relevant stages of the project cycle, including preconstruction, construction, operations, decommissioning, and postclosure activities such as rehabilitation or restoration.

7. The assessment will identify potential transboundary effects, such as air pollution, increased use or contamination of international waterways, as well as global impacts, such as emission of greenhouse gases and impacts on endangered species and habitats.

8. The environmental assessment will 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, in particular, the poor, women and children, and Indigenous Peoples. Where such individuals or groups are identified, the environmental assessment will recommend targeted and differentiated measures so that adverse environmental impacts do not fall disproportionately on them.

9. Depending on the significance of project impacts and risks, the assessment may comprise a full-scale environmental impact assessment (EIA) for category A projects, an initial environmental examination (IEE) or equivalent process for category B projects, or a desk review. An EIA report includes the following major elements: (i) executive summary, (ii) description of the project, (iii) description of the environment (with comprehensive baseline data), (iv) anticipated environmental impacts and mitigation measures, (v) analysis of alternatives, (vi) environmental management plan(s), (vii) consultation and information disclosure, and (viii) conclusion and recommendations. The annex to this appendix provides further details. An IEE, with its narrower scope, may be conducted for projects with limited impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures.

10. When the project involves existing activities or facilities, relevant external experts will perform environmental audits to determine the existence of any areas where the project may cause or is causing environmental risks or impacts. If the project does not foresee any new major expansion, the audit constitutes the environmental assessment for the project. A typical environmental audit report includes the following major elements: (i) executive summary; (ii) facilities description, including both past and current activities; (iii) summary of national, local, and any other applicable environmental laws, regulations, and standards; (iv) audit and site investigation procedure; (v) findings and areas of concern; and (vi) corrective action plan that provides the appropriate corrective actions for each area of concern, including costs and schedule.

11. When the project involves the development of or changes to policies, plans, or programs that are likely to have significant environmental impacts that are regional or sectoral, strategic environmental assessment will be required. A strategic environmental assessment report will include (i) an analysis of the scenario, (ii) an assessment of long-term and indirect impacts, (iii) a description of the consultation process, and (iv) an explanation of option selection.

2. Environmental Planning and Management

12. The borrower/client will prepare an environmental management plan (EMP) that addresses the potential impacts and risks identified by the environmental assessment. The EMP will include the 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, and performance indicators. Where impacts and risks cannot be avoided or prevented, mitigation measures and actions will be identified so that the project is designed, constructed, and operated in compliance with applicable laws and regulations and meets the requirements specified in this document. The level of detail and complexity of the environmental planning documents and the priority of the identified measures and actions will be commensurate with the project's impacts and risks. Key considerations include mitigation of potential adverse impacts to the level of "no significant harm to third parties", the polluter pays principle, the precautionary approach, and adaptive management.

13. If some residual impacts are likely to remain significant after mitigation, the EMP will also include appropriate compensatory measures (offset) that aim to ensure that the project does not cause significant net degradation to the environment. Such measures may relate, for instance, to conservation of habitat and biodiversity, preservation of ambient conditions, and greenhouse gas emissions. Monetary compensation in lieu of offset is acceptable in exceptional circumstances, provided that the compensation is used to provide environmental benefits of the same nature and is commensurate with the project's residual impact.

14. The EMP will define expected outcomes as measurable events to the extent possible and will include performance indicators or targets that can be tracked over defined periods. It will be responsive to changes in project design, such as a major change in project location or route, or in technology, unforeseen events, and monitoring results.

15. At times, a third party's involvement will influence implementation of the EMP. A third party may be, inter alia, a government agency, a contractor, or an operator of an associated facility. When the third-party risk is high and the borrower/client has control or influence over the actions and behavior of the third party, the borrower/client will collaborate with the third party to

achieve the outcome consistent with the requirements for the borrower/client. Specific actions will be determined on a case-by-case basis.

16. The borrower/client will use qualified and experienced experts to prepare the environmental assessment and the EMP. For highly complex and sensitive projects, independent advisory panels of experts not affiliated with the project will be used during project preparation and implementation.

3. Information Disclosure

17. The borrower/client will submit to ADB the following documents for disclosure on ADB's website:

- (i) a draft full EIA (including the draft EMP) at least 120 days prior to ADB Board consideration, and/or environmental assessment and review frameworks before project appraisal, where applicable;
- (ii) the final EIA/IEE;
- (iii) a new or updated EIA/IEE and corrective action plan prepared during project implementation, if any; and
- (iv) the environmental monitoring reports.

18. The borrower/client will provide relevant environmental information, including information from the documents in para. 17 in a timely manner, in an accessible place and in a form and language(s) understandable to affected people and other stakeholders. For illiterate people, other suitable communication methods will be used.

4. Consultation and Participation

19. The borrower/client will carry out meaningful consultation with affected people and other concerned stakeholders, including civil society, and facilitate their informed participation. Meaningful consultation is a process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle;¹ (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) 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. Consultation will be carried out in a manner commensurate with the impacts on affected communities. The consultation process and its results are to be documented and reflected in the environmental assessment report.

5. Grievance Redress Mechanism

20. The borrower/client will establish a mechanism to receive and facilitate resolution of affected peoples' concerns, complaints, and grievances about the project's environmental performance. The grievance mechanism should be scaled to the risks and adverse impacts of the project. It should address affected people's concerns and complaints promptly, using an understandable and transparent process that is gender responsive, culturally appropriate, and

¹ For environment category A projects, such consultations will necessarily include consultations at the early stage of EIA field work and when the draft EIA report is available during project preparation, and before project appraisal by ADB.

readily accessible to all segments of the affected people at no costs and without retribution. The mechanism should not impede access to the country's judicial or administrative remedies. The affected people will be appropriately informed about the mechanism.

6. Monitoring and Reporting

21. The borrower/client will monitor and measure the progress of implementation of the EMP. The extent of monitoring activities will be commensurate with the project's risks and impacts. In addition to recording information to track performance, the borrower/client will undertake inspections to verify compliance with the EMP and progress toward the expected outcomes. For projects likely to have significant adverse environmental impacts, the borrower/client will retain qualified and experienced external experts or qualified NGOs to verify its monitoring information. The borrower/client will document monitoring results, identify the necessary corrective actions, and reflect them in a corrective action plan. The borrower/client will implement these corrective actions and follow up on these actions to ensure their effectiveness.

22. The borrower/client will prepare periodic monitoring reports that describe progress with implementation of the EMP and compliance issues and corrective actions, if any. The borrower/client will submit at least semiannual monitoring reports during construction for projects likely to have significant adverse environmental impacts, and quarterly monitoring reports for highly complex and sensitive projects. For projects likely to have significant adverse environmental impacts during operation, reporting will continue at the minimum on an annual basis. Such periodic reports will be posted in a location accessible to the public. Project budgets will reflect the costs of monitoring and reporting requirements.

7. Unanticipated Environmental Impacts

23. Where unanticipated environmental impacts become apparent during project implementation, the borrower/client will update the environmental assessment and EMP or prepare a new environmental assessment and EMP to assess the potential impacts, evaluate the alternatives, and outline mitigation measures and resources to address those impacts.

8. Biodiversity Conservation and Sustainable Natural Resource Management

24. The borrower/client will assess the significance of project impacts and risks on biodiversity² and natural resources as an integral part of the environmental assessment process specified in paras. 4–10. The assessment will focus on the major threats to biodiversity, which include destruction of habitat and introduction of invasive alien species, and on the use of natural resources in an unsustainable manner. The borrower/client will need to identify measures to avoid, minimize, or mitigate potentially adverse impacts and risks and, as a last resort, propose compensatory measures, such as biodiversity offsets, to achieve no net loss or a net gain of the affected biodiversity.

a. Modified Habitats

25. In areas of modified habitat, where the natural habitat has apparently been altered, often through the introduction of alien species of plants and animals, such as in agricultural areas, the

² The variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

borrower/client will exercise care to minimize any further conversion or degradation of such habitat, and will, depending on the nature and scale of the project, identify opportunities to enhance habitat and protect and conserve biodiversity as part of project operations.

b. Natural Habitats

26. In areas of natural habitat,³ the project will not significantly convert or degrade⁴ such habitat, unless the following conditions are met:

- (i) No alternatives are available.
- (ii) A comprehensive analysis demonstrates that the overall benefits from the project will substantially outweigh the project costs, including environmental costs.
- (iii) Any conversion or degradation is appropriately mitigated.

27. Mitigation measures will be designed to achieve at least no net loss of biodiversity. They may include a combination of actions, such as postproject restoration of habitats, offset of losses through the creation or effective conservation of ecologically comparable areas that are managed for biodiversity while respecting the ongoing use of such biodiversity by Indigenous Peoples or traditional communities, and compensation to direct users of biodiversity.

c. Critical Habitats

28. No project activity will be implemented in areas of critical habitat⁵ unless the following requirements are met:

- (i) There are no measurable adverse impacts, or likelihood of such, on the critical habitat which could impair its high biodiversity value or the ability to function.
- (ii) The project is not anticipated to lead to a reduction in the population of any recognized endangered or critically endangered species⁶ or a loss in area of the habitat concerned such that the persistence of a viable and representative host ecosystem be compromised.
- (iii) Any lesser impacts are mitigated in accordance with para. 27.

29. When the project involves activities in a critical habitat, the borrower/client will retain qualified and experienced external experts to assist in conducting the assessment.

³ Land and water areas where the biological communities are formed largely by native plant and animal species, and where human activity has not essentially modified the area's primary ecological functions.

⁴ Significant conversion or degradation is (i) the elimination or severe diminution of the integrity of a habitat caused by a major, long-term change in land or water use; or (ii) the modification of a habitat that substantially reduces the habitat's ability to maintain viable populations of its native species. Significant conversion may include, for example, land clearing; replacement of natural vegetation (for example, by crops or tree plantations); permanent flooding (by a reservoir for instance); drainage, dredging, filling, or canalization of wetlands; or surface mining.

⁵ Critical habitat is a subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity value, including habitat required for the survival of critically endangered or endangered species; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or that are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic, or cultural importance to local communities. Critical habitats include those areas either legally protected or officially proposed for protection, such as areas that meet the criteria of the World Conservation Union classification, the Ramsar List of Wetlands of International Importance, and the United Nations Educational, Scientific, and Cultural Organization's world natural heritage sites.

⁶ As defined by the World Conservation Union's Red List of Threatened Species or as defined in any national legislation.

d. Legally Protected Areas

30. In circumstances where some project activities are located within a legally protected area, in addition to the requirement specified in para. 28, the borrower/client will meet the following requirements:

- (i) Act in a manner consistent with defined protected area management plans.
- (ii) Consult protected area sponsors and managers, local communities, and other key stakeholders on the proposed project.
- (iii) Implement additional programs, as appropriate, to promote and enhance the conservation aims of the protected area.

e. Invasive Alien Species

31. The borrower/client will not intentionally introduce any new alien species (that is, species not currently established in the country or region of the project) unless carried out in accordance with the existing regulatory framework for such introduction, if such a framework is present, or unless the introduction is subject to a risk assessment (as part of the environmental assessment) to determine the potential for invasive behavior. Under no circumstances must species known to be invasive be introduced into new environments. The borrower/client will undertake assessment of the possibility of accidental or unintended introduction of such invasive alien species and identify measures to minimize the potential for release.

f. Management and Use of Renewable Natural Resources

32. Renewable natural resources will be managed in a sustainable manner. Sustainable resource management is management of the use, development, and protection of resources in a way, or at a rate, that enables people and communities, including Indigenous Peoples, to provide for their current social, economic, and cultural well-being while also sustaining the potential of those resources to meet the reasonably foreseeable needs of future generations. This includes safeguarding the life-supporting capacity of air, water, and soil ecosystems. Where possible, the borrower/client will demonstrate the sustainable management of resources through an appropriate system of independent certification.

9. Pollution Prevention and Abatement

33. During the design, construction, and operation of the project the borrower/client will apply pollution prevention and control technologies and practices consistent with international good practice, as reflected in internationally recognized standards such as the World Bank Group's *Environment, Health and Safety Guidelines*.⁷ These standards contain performance levels and measures that are normally acceptable and applicable to projects. When host country regulations differ from these levels and measures, the borrower/client will achieve whichever is more stringent. If less stringent levels or measures are appropriate in view of specific project circumstances, the borrower/client will provide full and detailed justification for any proposed alternatives that are consistent with the requirements presented in this document.

⁷ World Bank Group, 2007. *Environmental, Health, and Safety General Guidelines*. Washington, DC.

a. Pollution Prevention, Resource Conservation, and Energy Efficiency

34. The borrower/client will avoid, or where avoidance is impossible, will minimize or control the intensity or load of pollutant emission and discharge. In addition the borrower/client will examine and incorporate in its operations resource conservation and energy efficiency measures consistent with the principles of cleaner production. When the project has the potential to constitute a significant source of emissions in an already degraded area, strategies that help improve ambient conditions, such as evaluating alternative project locations and considering emissions offsets, will be introduced.

b. Wastes

35. The borrower/client will avoid, or where avoidance is not possible, will minimize or control the generation of hazardous and nonhazardous wastes and the release of hazardous materials resulting from project activities. Where waste cannot be recovered or reused, it will be treated, destroyed, and disposed of in an environmentally sound manner. If the generated waste is considered hazardous, the client will explore reasonable alternatives for its environmentally sound disposal considering the limitations applicable to its transboundary movement.⁸ When waste disposal is conducted by third parties, the borrower/client will use contractors that are reputable and legitimate enterprises licensed by the relevant regulatory agencies.

c. Hazardous Materials

36. The borrower/client will avoid the manufacture, trade, and use of hazardous substances and materials subject to international bans or phaseouts because of their high toxicity to living organisms, environmental persistence, potential for bioaccumulation, or potential for depletion of the ozone layer⁹ and will consider the use of less hazardous substitutes for such chemicals and materials.

d. Pesticide Use and Management

37. The environmental assessment will ascertain that any pest and/or vector management activities related to the project are based on integrated pest management approaches and aim to reduce reliance on synthetic chemical pesticides in agricultural and public health projects. The borrower/client's integrated pest/vector management program will entail coordinated use of pest and environmental information along with available pest/vector control methods, including cultural practices, biological, genetic and, as a last resort, chemical means to prevent unacceptable levels of pest damage. The health and environmental risks associated with pest management should be minimized with support, as needed, to institutional capacity development, to help regulate and monitor the distribution and use of pesticides and enhance the application of integrated pest management.

38. The borrower/client will not use products that fall in World Health Organization Recommended Classification of Pesticides by Hazard Classes Ia (extremely hazardous) and Ib (highly hazardous) or Class II (moderately hazardous), if the project host country lacks restrictions on distribution and use of these chemicals, or if they are likely to be accessible to personnel without proper training, equipment, and facilities to handle, store, apply and dispose

⁸ Consistent with the objectives of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes.

⁹ Consistent with the objectives of the Stockholm Convention on Persistent Organic Pollutants and the Montreal Protocol on Substances that Deplete the Ozone Layer.

of these products properly. The borrower/client will handle, store, apply and dispose of pesticides in accordance with international good practice such as the Food and Agricultural Organization's International Code of Conduct on the Distribution and Use of Pesticides.

e. Greenhouse Gas Emissions

39. The borrower/client will promote the reduction of project-related anthropogenic greenhouse gas emissions in a manner appropriate to the nature and scale of project operations and impacts. During the development or operation of projects that are expected to or currently produce significant quantities of greenhouse gases,¹⁰ the borrower/client will quantify direct emissions from the facilities within the physical project boundary and indirect emissions associated with the off-site production of power used by the project. The borrower/client will conduct quantification and monitoring of greenhouse gas emissions annually in accordance with internationally recognized methodologies.¹¹ In addition, the borrower/client will evaluate technically and financially feasible and cost-effective options to reduce or offset project-related greenhouse gas emissions during project design and operation, and pursue appropriate options.

10. Health and Safety

a. Occupational Health and Safety

40. The borrower/client will provide workers¹² with a safe and healthy working environment, taking into account risks inherent to the particular sector and specific classes of hazards in the borrower's/client's work areas, including physical, chemical, biological, and radiological hazards. The borrower/client will take steps to prevent accidents, injury, and disease arising from, associated with, or occurring during the course of work by (i) identifying and minimizing, so far as reasonably practicable, the causes of potential hazards to workers; (ii) providing preventive and protective measures, including modification, substitution, or elimination of hazardous conditions or substances; (iii) providing appropriate equipment to minimize risks and requiring and enforcing its use; (iv) training workers and providing them with appropriate incentives to use and comply with health and safety procedures and protective equipment; (v) documenting and reporting occupational accidents, diseases, and incidents; and (vi) having emergency prevention, preparedness, and response arrangements in place.

41. The borrower/client will apply preventive and protective measures consistent with international good practice, as reflected in internationally recognized standards such as the World Bank Group's *Environment, Health and Safety Guidelines* (footnote 7).

b. Community Health and Safety

42. 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 decommissioning of the project, and will establish preventive measures and plans to address them in a manner commensurate with the identified risks and impacts. These measures will favor the prevention

¹⁰ Even though the significance of a project's contribution to greenhouse gas emissions varies between industry sectors, the significance threshold to be considered for these requirements is generally 100,000 tons of carbon dioxide equivalent per year for the aggregate emissions of direct sources and indirect sources associated with electricity purchased for own consumption.

¹¹ Estimation methodologies are provided by the Intergovernmental Panel on Climate Change (IPCC), various international organizations, and relevant host country agencies.

¹² Including nonemployee workers engaged by the borrower/client through contractors or other intermediaries to work on project sites or perform work directly related to the project's core functions.

or avoidance of risks and impacts over their minimization and reduction. Consideration will be given to potential exposure to both accidental and natural hazards, especially where the structural elements of the project are accessible to members of the affected community or where their failure could result in injury to the community. The borrower/client will avoid or minimize the exacerbation of impacts caused by natural hazards, such as landslides or floods, that could result from land use changes due to project activities.

43. The borrower/client will inform affected communities of significant potential hazards in a culturally appropriate manner. The borrower/client will be prepared to respond to accidental and emergency situations. This preparation will include response planning document(s) that addresses the training, resources, responsibilities, communications, procedures, and other aspects required to respond effectively to emergencies associated with project hazards. Appropriate information about emergency preparedness and response activities, resources, and responsibilities will be disclosed to affected communities.

44. When structural elements or components, such as dams, tailings dams, or ash ponds, are situated in high-risk locations and their failure or malfunction may threaten the safety of communities, the borrower/client will engage qualified and experienced experts, separate from those responsible for project design and construction, to conduct a review as early as possible in project development and throughout project design, construction, and commissioning.

11. Physical Cultural Resources

45. The borrower/client is responsible for siting and designing the project to avoid significant damage to physical cultural resources.¹³ Such resources likely to be affected by the project will be identified, and qualified and experienced experts will assess the project's potential impacts on these resources using field-based surveys as an integral part of the environmental assessment process specified in paras. 4–10.

46. When a project may affect physical cultural resources, the borrower/client will consult with affected communities who use, or have used them within living memory, for long-standing cultural purposes to identify physical cultural resources of importance and to incorporate the views of the affected communities on such resources into the borrower's/client's decision-making process. Consultation will also involve relevant national or local regulatory agencies that are entrusted with protecting physical cultural resources. The findings are disclosed as part of, and in the same manner as, the environmental assessment report, except when such disclosure would compromise or jeopardize the safety or integrity of the physical cultural resources.

47. When the project is likely to have adverse impacts on physical cultural resources, the borrower/client will identify appropriate measures for avoiding or mitigating these impacts as part of the environmental planning process specified in paras. 12–16. These measures may range from avoidance to full site protection to selective mitigation, including salvage and documentation, in cases where a portion or all of the physical cultural resources may be lost.

48. When the proposed location of a project is in areas where physical cultural resources are expected to be found as determined during the environmental assessment process, chance finds procedures will be included in the EMP. Chance finds shall not be disturbed until an

¹³ Defined as movable or immovable objects, sites, structures, groups of structures, and natural features and landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic, or other cultural significance. Physical cultural resources may be located in urban or rural settings and may be above or below ground or under water. Their cultural interest may be at the local, provincial, national, or international level.

assessment by a competent specialist is made and actions consistent with these requirements are identified.

49. The project will not remove any physical cultural resources unless the following conditions are met:

- (i) No alternatives to removal are available.
- (ii) The overall benefits of the project substantially outweigh the anticipated cultural heritage loss from removal.
- (iii) Any removal is conducted in accordance with relevant provisions of national and/or local laws, regulations, and protected area management plans and national obligations under international laws, and employs the best available techniques.

OUTLINE OF AN ENVIRONMENTAL IMPACT ASSESSMENT REPORT

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

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:
 - (a) describes monitoring measures with technical details, including parameters to be measured, methods to be used, sampling locations,

- frequency of measurements, detection limits and definition of thresholds 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.

SAFEGUARD REQUIREMENTS 2: INVOLUNTARY RESETTLEMENT

A. Introduction

1. ADB experience indicates that involuntary resettlement under development projects, if unmitigated, could give rise to severe economic, social, and environmental risks: production systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable, and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost. ADB therefore seeks to avoid involuntary resettlement wherever possible; minimize involuntary resettlement by exploring project and design alternatives; enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and improve the standards of living of the affected poor and other vulnerable groups.

2. Safeguard Requirements 2 outlines the requirements that borrowers/clients are required to meet in delivering involuntary resettlement safeguards to projects supported by the Asian Development Bank (ADB). It discusses the objectives, scope of application, and underscores the requirements for undertaking the social impact assessment and resettlement planning process, preparing social impact assessment reports and resettlement planning documents, exploring negotiated land acquisition, disclosing information and engaging in consultations, establishing a grievance mechanism, and resettlement monitoring and reporting.

B. Objectives

3. 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 persons¹ in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups.

C. Scope of Application

4. The requirements apply to all ADB-financed and/or ADB-administered sovereign and non-sovereign projects, and their components regardless of the source of financing, including investment projects funded by a loan; and/or a grant; and/or other means, such as equity and/or guarantees (hereafter broadly referred to as projects). The requirements also cover involuntary resettlement actions conducted by the borrower/client in anticipation of ADB support.

5. The involuntary resettlement requirements apply to full or partial, permanent or temporary 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) resulting from (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. Resettlement is considered involuntary when displaced individuals or communities do not have the right to refuse land acquisition that results in displacement. This occurs in cases 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 of negotiation.

¹ In the context of involuntary resettlement, displaced persons are those who are physically displaced (relocation, loss of residential land, or loss of shelter) and/or economically displaced (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.

6. If potential adverse economic, social, or environmental impacts from project activities other than land acquisition (including involuntary restrictions on land use, or on access to legally designated parks and protected areas) are identified, such as loss of access to assets or resources or restrictions on land use, they will be avoided, or at least minimized, mitigated, or compensated for, through the environmental assessment process. If these impacts are found to be significantly adverse at any stage of the project, the borrower/client will be required to develop and implement a management plan to restore the livelihood of affected persons to at least pre-project level or better.

D. Requirements

1. Compensation, Assistance and Benefits for Displaced Persons

7. Displaced persons in a project area could be of three types: (i) persons with formal legal rights to land lost in its entirety or in part; (ii) persons who lost the land they occupy in its entirety or in part who have no formal legal rights to such land, but who have claims to such lands that are recognized or recognizable under national laws; and (iii) persons who lost the land they occupy in its entirety or in part who have neither formal legal rights nor recognized or recognizable claims to such land. The involuntary resettlement requirements apply to all three types of displaced persons.

8. The borrower/client will provide adequate and appropriate replacement land and structures or cash compensation at full replacement cost for lost land and structures, adequate compensation for partially damaged structures, and relocation assistance, if applicable, to those persons described in para. 7(i) and 7(ii) prior to their relocation. For those persons described in para. 7(iii), the borrower/client will compensate them for the loss of assets other than land, such as dwellings, and also for other improvements to the land, at full replacement cost. The entitlements of those under para. 7(iii) is given only if they occupied the land or structures in the project area prior to the cutoff date for eligibility for resettlement assistance.

9. Preference will be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based. These strategies may include resettlement on public land, or on private land acquired or purchased for resettlement. Whenever replacement land is offered, displaced persons are provided with land for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the land taken. If land is not the preferred option of the displaced persons, or sufficient land is not available at a reasonable price, non-land-based options built around opportunities for employment or self-employment should be provided in addition to cash compensation for land and other assets lost. The lack of land will be demonstrated and documented to the satisfaction of ADB.

10. The rate of compensation for acquired housing, land and other assets will be calculated at full replacement costs. The calculation of full replacement cost will be based on the following elements: (i) fair market value; (ii) transaction costs; (iii) interest accrued, (iv) transitional and restoration costs; and (v) other applicable payments, if any. Where market conditions are absent or in a formative stage, the borrower/client will consult with the displaced persons and host populations to obtain adequate information about recent land transactions, land value by types, land titles, land use, cropping patterns and crop production, availability of land in the project area and region, and other related information. The borrower/client will also collect baseline data on housing, house types, and construction materials. Qualified and experienced experts will undertake the valuation of acquired assets. In applying this method of valuation, depreciation of structures and assets should not be taken into account.

11. In the case of physically displaced persons, the borrower/client will provide (i) relocation assistance, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, and civic infrastructure and community services as required; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) opportunities to derive appropriate development benefits from the project.

12. In the case of economically displaced persons, regardless of whether or not they are physically displaced, the borrower/client will promptly compensate for the loss of income or livelihood sources at full replacement cost. The borrower/client will also provide assistance such as credit facilities, training, and employment opportunities so that they can improve, or at least restore, their income-earning capacity, production levels, and standards of living to pre-displacement levels. The borrower/client will also provide opportunities to displaced persons to derive appropriate development benefits from the project. The borrower/client will compensate economically displaced people under paragraph 7(iii) for lost assets such as crops, irrigation infrastructure, and other improvements made to the land (but not for the land) at full replacement cost. In cases where land acquisition affects commercial structures, affected business owners are entitled to (i) the costs of reestablishing commercial activities elsewhere; (ii) the net income lost during the transition period; and (iii) the costs of transferring and reinstalling plant, machinery, or other equipment. Business owners with legal rights or recognized or recognizable claims to land where they carry out commercial activities are entitled to replacement property of equal or greater value or cash compensation at full replacement cost.

13. Involuntary resettlement should be conceived of and executed as part of a development project or program. In this regard, the best strategy is to provide displaced persons with opportunities to share project benefits in addition to providing compensation and resettlement assistance. Such opportunities would help prevent impoverishment among affected persons, and also help meet the ethical demand for development interventions to spread development benefits widely. Therefore borrowers/clients are encouraged to ascertain specific opportunities for engaging affected persons as project beneficiaries and to discuss how to spread such opportunities as widely as possible among affected persons in the resettlement plan.

14. The borrower/client will ensure that no physical displacement or economic displacement will occur until (i) compensation at full replacement cost has been paid to each displaced person for project components or sections that are ready to be constructed; (ii) other entitlements listed in the resettlement plan have been provided to displaced persons; and (iii) 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 incomes and livelihoods. While compensation is required to be paid before displacement, full implementation of the resettlement plan might take longer. If project activities restrict land use or access to legally designated parks and protected areas, such restrictions will be imposed in accordance with the timetable outlined in the resettlement plan agreed between the borrower/client and ADB.

2. Social Impact Assessment

15. The borrower/client will conduct socioeconomic survey(s) and a census, with appropriate socioeconomic baseline data to identify all persons who will be displaced by the project and to assess the project's socioeconomic impacts on them. For this purpose, normally a cut-off date will be established by the host government procedures. In the absence of such procedures, the borrower/client will establish a cut-off date for eligibility. Information regarding the cutoff date will be documented and disseminated throughout the project area. The social impact assessment (SIA) report will include (i) identified past, present and future potential social impacts, (ii) an

inventory of displaced persons² and their assets,³ (iii) an assessment of their income and livelihoods, and (iv) gender-disaggregated information pertaining to the economic and sociocultural conditions of displaced persons. The project's potential social impacts and risks will be assessed against the requirements presented in this document and applicable laws and regulations of the jurisdictions in which the project operates that pertain to involuntary resettlement matters, including host country obligations under international law.

16. As part of the social impact assessment, the borrower/client will identify individuals and groups who may be differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status. Where such individuals and groups are identified, the borrower/client will propose and implement targeted measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in relation to sharing the benefits and opportunities resulting from development.

3. Resettlement Planning

17. The borrower/client will prepare a resettlement plan, if the proposed project will have involuntary resettlement impacts. The objective of a resettlement plan is to ensure that livelihoods and standards of living of displaced persons are improved, or at least restored to pre-project (physical and/or economic) levels and that the standards of living of the displaced poor and other vulnerable groups are improved, not merely restored, by providing adequate housing, security of land tenure and steady income and livelihood sources. The resettlement plan will address all relevant requirements specified in Safeguard Requirements 2, and its level of detail and comprehensiveness of the resettlement plan will be commensurate with the significance of involuntary resettlement impacts. An outline of resettlement plan is provided in the annex to this appendix.

18. A resettlement plan will be based on the social impact assessment and through meaningful consultation with the affected persons. A resettlement plan will include measures to ensure that the displaced persons are (i) informed about their options and entitlements pertaining to compensation, relocation, and rehabilitation; (ii) consulted on resettlement options and choices; and (iii) provided with resettlement alternatives. During the identification of the impacts of resettlement and resettlement planning, and implementation, the borrower/client will pay adequate attention to gender concerns, including specific measures addressing the need of female headed households, gender-inclusive consultation, information disclosure, and grievance mechanisms, to ensure that both men and women receive adequate and appropriate compensation for their lost property and resettlement assistance, if required, as well as assistance to restore and improve their incomes and living standards.

19. The borrower/client will analyze and summarize national laws and regulations pertaining to land acquisition, compensation payment, and relocation of affected persons in the resettlement plan. The borrower/client will compare and contrast such laws and regulations with ADB's involuntary resettlement policy principles and requirements. If a gap between the two exists, the borrower/client will propose a suitable gap-filling strategy in the resettlement plan in consultation with ADB.

² A population record of all displaced persons by their residence based on the census. If a census is not conducted prior to project appraisal and the resettlement plan is based on a sample survey, an updated resettlement plan will be prepared based on a census of displaced persons after the detailed measurement survey has been completed but before any land acquisition for the project.

³ The asset inventory is a preliminary record of affected or lost assets at the household, enterprise, or community level.

20. All costs of compensation, relocation, and livelihood rehabilitation will be considered project costs. To ensure timely availability of required resources, land acquisition and resettlement costs may be considered for inclusion in ADB financing. Resettlement expenditure is eligible for ADB financing if incurred in compliance with ADB's safeguard policy statement and with ADB-approved resettlement planning documents. If ADB funds are used for resettlement costs, such expenditure items will be clearly reflected in the resettlement plan.

21. The borrower/client will include detailed measures for income restoration and livelihood improvement of displaced persons in the resettlement plan. Income sources and livelihoods affected by project activities will be restored to pre-project levels, and the borrower/client will make every attempt to improve the incomes of displaced persons so that they can benefit from the project. For vulnerable persons and households affected, the resettlement plan will include measures to provide extra assistance so that they can improve their incomes in comparison with pre-project levels. The resettlement plan will specify the income and livelihoods restoration strategy, the institutional arrangements, the monitoring and reporting framework, the budget, and the time-bound implementation schedule.

22. The information contained in a resettlement plan may be tentative until a census of affected persons has been completed. Soon after the completion of engineering designs, the borrower/client will finalize the resettlement plan by completing the census and inventories of loss of assets. At this stage, changes to the resettlement plan take the form of revising the number of displaced persons, the extent of land acquired, the resettlement budget, and the timetable for implementing the resettlement plan. The entitlement matrix of the resettlement plan may be updated at this stage to reflect the relevant changes but the standards set in the original entitlement matrix cannot be lowered when the resettlement plan is revised and finalized. The borrower/client will ensure that the final resettlement plan (i) adequately addresses all involuntary resettlement issues pertaining to the project, (ii) describes specific mitigation measures that will be taken to address the issues, and (iii) ensures the availability of sufficient resources to address the issues satisfactorily.

23. Projects with significant involuntary resettlement impacts will need adequate contingency funds to address involuntary resettlement impacts that are identified during project implementation. The borrower/client will ensure that such funds are readily available. Moreover, the borrower/client will consult with displaced persons identified after the formulation of the final resettlement plan and inform them of their entitlements and relocation options. The borrower/client will prepare a supplementary resettlement plan, or a revised resettlement plan, and will submit it to ADB for review before any contracts are awarded.

24. The borrower/client will use qualified and experienced experts to prepare the social impact assessment and the resettlement plan. For highly complex and sensitive projects, independent advisory panels of experts not affiliated with the project will be used during project preparation and implementation.

4. Negotiated Land Acquisition

25. Safeguard Requirements 2 does not apply to negotiated settlements, unless expropriation would result upon the failure of negotiations. Negotiated settlements help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly. The borrower/client is encouraged to acquire land and other assets through a negotiated settlement wherever possible, based on meaningful consultation with affected persons, including those without legal title to assets. A negotiated settlement will offer adequate and fair price for land and/or other assets. The borrower/client will ensure that any negotiations with displaced

persons openly address the risks of asymmetry of information and bargaining power of the parties involved in such transactions. For this purpose, the borrower/client will engage an independent external party to document the negotiation and settlement processes. The borrower/client will agree with ADB on consultation processes, policies, and laws that are applicable to such transactions; third-party validation; mechanisms for calculating the replacement costs of land and other assets affected; and record-keeping requirements.

5. Information Disclosure

26. The borrower/client will submit the following documents to ADB for disclosure on ADB's website:

- (i) a draft resettlement plan and/or resettlement framework endorsed by the borrower/client before project appraisal;
- (ii) the final resettlement plan endorsed by the borrower/client after the census of affected persons has been completed;
- (iii) a new resettlement plan or an updated resettlement plan, and a corrective action plan prepared during project implementation, if any; and
- (iv) the resettlement monitoring reports.

27. The borrower/client will provide relevant resettlement information, including information from the documents in para. 26 in a timely manner, in an accessible place and in a form and language(s) understandable to affected persons and other stakeholders. For illiterate people, suitable other communication methods will be used.

6. Consultation and Participation

28. The borrower/client will conduct meaningful consultation with affected persons, their host communities, and civil society for every project and subproject identified as having involuntary resettlement impacts. Meaningful consultation is a process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) 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. Consultation will be carried out in a manner commensurate with the impacts on affected communities. The borrower/client will pay particular attention to the need of disadvantaged or vulnerable groups, especially those below the poverty line, the landless, the elderly, female headed households, women and children, Indigenous Peoples, and those without legal title to land.

7. Grievance Redress Mechanism

29. The borrower/client will establish a mechanism to receive and facilitate the resolution of affected persons' concerns and grievances about physical and economic displacement and other project impacts, paying particular attention to the impacts on vulnerable groups. The grievance redress mechanism should be scaled to the risks and adverse impacts of the project. It should address affected persons' concerns and complaints promptly, using an understandable and transparent process that is gender responsive, culturally appropriate, and readily accessible to the affected persons at no costs and without retribution. The mechanism should not impede

access to the country's judicial or administrative remedies. The borrower/client will inform affected persons about the mechanism.

8. Monitoring and Reporting

30. The borrower/client will monitor and measure the progress of implementation of the resettlement plan. The extent of monitoring activities will be commensurate with the project's risks and impacts. In addition to recording the progress in compensation payment and other resettlement activities, the borrower/client will prepare monitoring reports to ensure that the implementation of the resettlement plan has produced the desired outcomes. For projects with significant involuntary resettlement impacts, the borrower/client will retain qualified and experienced external experts or qualified NGOs to verify the borrower's/client's monitoring information. The external experts engaged by the borrower/client will advise on safeguard compliance issues, and if any significant involuntary resettlement issues are identified, a corrective action plan will be prepared to address such issues. Until such planning documents are formulated, disclosed and approved, the borrower/client will not proceed with implementing the specific project components for which involuntary resettlement impacts are identified.

31. The borrower/client will prepare semiannual monitoring reports that describe the progress of the implementation of resettlement activities and any compliance issues and corrective actions. These reports will closely follow the involuntary resettlement monitoring indicators agreed at the time of resettlement plan approval. The costs of internal and external resettlement monitoring requirements will be included in the project budget.

9. Unanticipated Impacts

32. If unanticipated involuntary resettlement impacts are found during project implementation, the borrower/client will conduct a social impact assessment and update the resettlement plan or formulate a new resettlement plan covering all applicable requirements specified in this document.

10. Special Considerations for Indigenous Peoples

33. The borrower/client will explore to the maximum extent possible alternative project designs to avoid physical relocation of Indigenous Peoples that will result in adverse impacts on their identity, culture, and customary livelihoods. If avoidance is impossible, in consultation with ADB, a combined Indigenous Peoples plan and resettlement plan could be formulated to address both involuntary resettlement and Indigenous Peoples issues. Such a combined plan will also meet all relevant requirements specified under Safeguard Requirements 3.

OUTLINE OF A 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.

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

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:

- (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.

SAFEGUARD REQUIREMENTS 3: INDIGENOUS PEOPLES

A. Introduction

1. The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly in September 2007. Many countries in Asia and the Pacific have voted in favor of this nonbinding declaration. The Asian Development Bank (ADB) recognizes the rights of Indigenous Peoples to direct the course of their own development. Indigenous Peoples do not automatically benefit from development, which is often planned and implemented by those in the mainstream or dominant population in the countries in which they live. Special efforts are needed to engage Indigenous Peoples in the planning of development programs that affect them, in particular, development programs that are supposedly designed to meet their specific needs and aspirations. Indigenous Peoples are increasingly threatened as development programs infringe into areas that they traditionally own, occupy, use, or view as ancestral domain.

2. Safeguard Requirements 3 outlines the requirements that borrowers/clients are required to 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. 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.

B. Objectives

3. The objective 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.

C. Scope of Application

4. The requirements apply to all ADB-financed and/or ADB-administered sovereign and non-sovereign projects, and their components regardless of the source of financing, including investment projects funded by a loan; and/or a grant; and/or other means, such as equity and/or guarantees (hereafter broadly referred to as projects). The requirements also cover actions conducted by the borrower/client in anticipation of ADB projects.

5. Within Asia and the Pacific, individual indigenous communities reflect tremendous diversity in their cultures, histories, and current circumstances. The contexts in which such peoples live are varied and changing and no universally accepted definition of Indigenous Peoples exists. Indigenous Peoples may be referred to in different countries by such terms as indigenous ethnic minorities, indigenous cultural communities, aboriginals, hill tribes, minority nationalities, scheduled tribes, or tribal groups. Such groups can be considered Indigenous Peoples for operational purposes when they possess the characteristics listed in para. 6.

6. For operational purposes, 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.

7. In considering these characteristics, national legislation, customary law, and any international conventions to which the country is a party will be taken into account.

8. 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.

9. 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 their ancestral domain.

D. General Requirements

1. Consultation and Participation

10. The borrower/client will undertake meaningful consultation with affected Indigenous Peoples to ensure their informed participation in (i) designing, implementing, and monitoring measures to avoid adverse impacts on them or, when avoidance is not possible, to minimize, mitigate, and compensate for such effects; and (ii) tailoring project benefits that accrue to them in a culturally appropriate manner. Meaningful consultation is a process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) 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. Consultation will be carried out in a manner commensurate with the impacts on affected communities. The consultation process and its results will be documented and reflected in the Indigenous Peoples plan (IPP).

11. To carry out meaningful consultation with affected Indigenous Peoples, the borrower/client will establish a context-specific strategy for inclusive and participatory consultation, including approaches of identifying appropriate Indigenous Peoples representatives, and consultation methods appropriate to the social and cultural values of the affected Indigenous Peoples communities. The borrower/client will pay special attention to the concerns of indigenous women and youth.

12. When the borrower/client and the affected Indigenous Peoples have serious differences and disagreements in relation to the project, its components, or the IPP, the borrower/ client will undertake good faith negotiations to resolve such differences and disagreements.

2. Social Impact Assessment

13. When screening by ADB confirms likely impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced experts to carry out a full social impact assessment (SIA), and if impacts on Indigenous Peoples are identified, the borrower/client will prepare an IPP in conjunction with the feasibility study. The project's potential social impacts and risks will be assessed against the requirements presented in this document and applicable laws and regulations of the jurisdictions in which the project operates that pertain to Indigenous Peoples matters, including host country obligations under international law.

14. Based on the screening, a field-based SIA will be conducted either as part of the feasibility study or as a stand-alone activity. The SIA will, in a gender-sensitive manner, in consultation with Indigenous Peoples communities, identify the project-affected Indigenous Peoples and the potential impacts of the proposed project on them. The SIA will provide a baseline socioeconomic profile of the indigenous groups in the project area and project impact zone; assess their access to and opportunities 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; and assess the subsequent approaches and resource requirements for addressing the various concerns and issues of projects that affect them.

15. The level of detail and comprehensiveness of the SIA will be proportional to the complexity of the proposed project and commensurate with the nature and scale of the proposed project's potential effects on Indigenous Peoples, whether positive or negative.

3. Indigenous Peoples Planning

16. If the screening and SIA indicate that the proposed project will have impacts, positive and/or negative, on Indigenous Peoples, the borrower/client will prepare an IPP in the context of the SIA and through meaningful consultation with the affected Indigenous Peoples communities. The IPP will set out the measures whereby the borrower/client will ensure (i) that affected Indigenous Peoples receive culturally appropriate social and economic benefits; and (ii) that when potential adverse impacts on Indigenous Peoples are identified, these will be avoided to the maximum extent possible. Where 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 level of detail and comprehensiveness of IPPs (annex to this appendix) will vary depending on the specific project and the nature of impacts to be addressed. The borrower/client will integrate the elements of the IPP into the project's design.

17. If Indigenous Peoples are the sole or the overwhelming majority of direct project beneficiaries,¹ and when only positive impacts are identified, the elements of an IPP could be included in the overall project design in lieu of preparing a separate IPP. In such cases, the project document will include a summary of about how the project complies with Indigenous Peoples safeguards. In particular, it will explain how the requirements for meaningful

¹ This may be the case in certain developing countries such as Pacific island nations.

consultation are fulfilled and how the accrual of benefits has been integrated into the project design.

18. The borrower/client will update the IPP following the completion of detailed engineering design and detailed measurement surveys. The updated IPP will closely follow the award of contract packages and the implementation time schedules of each project component or subproject. Mitigating measures to avoid adverse impacts on Indigenous Peoples and measures to enhance culturally appropriate development benefits will be adjusted, but the agreed outcomes as specified in the draft IPP will not be lowered or minimized. If new groups of Indigenous Peoples are identified prior to submission of the final IPP to ADB, meaningful consultation will be undertaken with them also.

19. The borrower/client will use qualified and experienced experts to prepare the social impact assessment and IPP. For highly complex and sensitive projects, independent advisory panels of experts not affiliated with the project will be used during project preparation and implementation. Any highly complex and sensitive projects affecting Indigenous Peoples will require an Indigenous Peoples expert on the advisory panel.

4. Information Disclosure

20. The borrower/client will submit to ADB the following documents to disclose on ADB's website:

- (i) a draft IPP and/or Indigenous Peoples planning framework, including the social impact assessment, endorsed by the borrower/client, before appraisal;
- (ii) the final IPP upon completion;
- (iii) a new or updated IPP and a corrective action plan prepared during implementation, if any; and
- (iv) the monitoring reports.

21. The borrower/client will provide relevant information, including information from the above documents in a timely manner, in an accessible place and in a form and language(s) understandable to the affected Indigenous Peoples and other stakeholders. If the Indigenous Peoples are illiterate, other appropriate communication methods will be used.

5. Grievance Redress Mechanism

22. The borrower/client will establish a mechanism to receive and facilitate resolution of the affected Indigenous Peoples communities' concerns, complaints, and grievances. The grievance mechanism will be scaled to the impacts of the project. It should address concerns and complaints promptly, using an understandable and transparent process that is culturally appropriate, gender responsive, and accessible to the affected Indigenous Peoples communities at no cost and without retribution. The mechanism should not impede access to the country's judicial or administrative remedies. The affected Indigenous Peoples communities will be appropriately informed about the mechanism.

6. Monitoring and Reporting

23. The borrower/client will monitor and measure the progress of implementation of the IPP. The extent of monitoring activities will be commensurate with the project's risks and impacts. In addition to recording information to track performance, the borrower/client should use dynamic mechanisms, such as inspections and audits, to verify compliance with requirements and

progress toward achieving the desired outcomes. For projects with significant adverse impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced external experts or qualified NGOs to verify monitoring information. The external experts engaged by the borrower/client will advise on compliance issues, and if any significant Indigenous Peoples issues are found, the borrower/client will prepare a corrective action plan or an update to the approved IPP. The borrower/client will implement the corrective actions and follow up on these actions to ensure their effectiveness.

24. The borrower/client will prepare periodic monitoring reports on the progress of IPP implementation, highlighting compliance issues and corrective actions, if any. The borrower/client will submit semiannual monitoring reports. The costs of monitoring requirements will be reflected in project budgets.

7. Unanticipated Impacts

25. If unanticipated impacts on Indigenous Peoples become apparent during project implementation, such as a change in the project's footprint, the borrower/client will carry out a social impact assessment and update the IPP or formulate a new IPP covering all applicable requirements specified in this document.

E. Special Requirements

1. Ancestral Domains and Lands and Related Natural Resources

26. Indigenous Peoples are closely tied to land, forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties. In this situation, when carrying out the social impact assessment and preparing the IPP, the borrower/client will pay particular attention to the following:

- (i) the customary rights of the Indigenous Peoples, both individual and collective, pertaining to ancestral domains, lands, or territories that they traditionally own or customarily use or occupy, and where access to natural resources is vital to the sustainability of their cultures and livelihood systems;
- (ii) the need to protect such ancestral domains, lands, and resources against illegal intrusion or encroachment;
- (iii) the cultural and spiritual values that the Indigenous Peoples attribute to such lands and resources;
- (iv) the Indigenous Peoples' natural resources management practices and the long-term sustainability of such practices; and
- (v) the need to rehabilitate the livelihood systems of Indigenous Peoples who have been evicted from their lands.

27. If the project involves activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied, such as land titling projects, or the acquisition of such lands, the borrower/client will integrate an action plan for the legal recognition of customary rights to such lands, territories, and ancestral domains in the IPP. The action plan is normally carried out before project implementation, but in some cases it may need to be formulated concurrently with the project itself. Such legal recognition may take the following forms:

- (i) full legal recognition of existing customary land tenure systems of Indigenous Peoples, or

- (ii) conversion of customary usage rights to communal and/or individual ownership rights.

28. If neither option is possible under national law, the IPP will include an action plan for legal recognition of perpetual or long-term renewable custodial or user rights.

29. In addition, for projects with potential impacts on Indigenous Peoples, the borrower/client will ensure their meaningful consultation and facilitate their informed participation on matters affecting them directly, such as proposed mitigation measures, sharing of project benefits and opportunities, and implementation arrangements.

2. Consent of Affected Indigenous Peoples Communities

30. Indigenous Peoples may be particularly vulnerable when project activities include (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 that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples. In deciding whether to proceed with a project involving such project activities, the borrower/client will seek the consent of affected Indigenous Peoples communities.

31. For purposes of policy application, 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 the project activities listed in para. 30. Such broad community support may exist even if some individuals or groups object to the project activities.

32. Where broad community support has been ascertained, the borrower/client will provide documentation that details the process and outcomes of consultations with Indigenous Peoples and Indigenous Peoples' organizations, including (i) the findings of the SIA; (ii) the process of meaningful consultation with the affected Indigenous Peoples communities; (iii) the additional measures, including project design modification, that may be required to address adverse impacts on the Indigenous Peoples and to provide them with culturally appropriate project benefits; (iv) the recommendations for meaningful consultation with and participation by Indigenous Peoples communities during project implementation, monitoring, and evaluation; and (v) the content of any formal agreements reached with Indigenous Peoples communities and/or Indigenous Peoples' organizations. The borrower/client will submit documentation of the engagement process to ADB for review and for ADB's own investigation to assure itself of the existence of broad community support for the project activities. ADB will not finance the project if such support does not exist.

33. When the borrower/client and the affected Indigenous Peoples have major disagreements relating to the design, the IPP, or the implementation of the activities relating to commercial development of the cultural resources, physical displacement of Indigenous Peoples, and/or to commercial development of natural resources, the borrower/client will adopt a process of good faith negotiations for resolving such differences and disagreements.

34. **Commercial Development of Cultural Resources.** If the project involves the commercial development of Indigenous Peoples' cultural resources and knowledge, the borrower/client will ensure that the affected communities are informed of (i) their rights to such resources under statutory and customary law; (ii) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (iii)

the potential effects of such development on Indigenous Peoples' livelihoods, environment, and use of such resources. The IPP will reflect the nature and content of agreements and will include arrangements to ensure that Indigenous Peoples receive an equitable share of the benefits to be derived from such commercial development in a culturally appropriate way.

35. Physical Displacement of Indigenous Peoples. The borrower/client will explore to the maximum extent possible alternative project designs to avoid physical displacement of Indigenous Peoples that will result in adverse impacts on their identity, culture, and customary livelihoods. In exceptional circumstances, when avoidance is impossible, the borrower/client will prepare an IPP that could be combined with a resettlement plan. Such a combined plan needs to be compatible with the Indigenous Peoples' cultural preferences and will include a land-based resettlement strategy. Where possible, the plan will allow the affected Indigenous Peoples to return to the lands and territories they traditionally owned or customarily used or occupied if the reasons for their relocation cease to exist. The plan should include provisions to rehabilitate such lands, if needed.

36. Commercial Development of Natural Resources. If the project involves the commercial development of natural resources (such as minerals, hydrocarbons, forests, water, or hunting or fishing grounds) within customary lands under use by Indigenous Peoples, the borrower/client will ensure that the affected communities are informed of (i) their rights to such resources under statutory and customary law; (ii) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (iii) the potential effects of such development on the Indigenous Peoples' livelihoods, environment, and use of such resources. The borrower/client will include in the IPP arrangements to enable the Indigenous Peoples to receive in a culturally appropriate manner an equitable share of the benefits to be derived from such commercial development that is at least equal to or higher than that of any other affected landowners.

3. Indigenous Peoples and Development

37. In furtherance of the objectives to benefit Indigenous Peoples, developing member countries can ask ADB to support them in their development planning and poverty reduction strategies by providing financial assistance for a variety of initiatives, such as the following:

- (i) strengthen local legislation to establish legal recognition of the customary or traditional land tenure systems of Indigenous Peoples;
- (ii) enhance participation by Indigenous Peoples in the development process by incorporating their perspectives into the design of development programs and poverty reduction strategies and providing them with opportunities to benefit more fully from development programs through policy and legal reforms, capacity building, and meaningful consultations, participation, and empowerment;
- (iii) support the development priorities of Indigenous Peoples through programs developed by governments in cooperation with Indigenous Peoples;
- (iv) address the gender and intergenerational issues that exist among many Indigenous Peoples, including the special needs of indigenous women, youth, and children;
- (v) prepare participatory profiles of Indigenous Peoples to document their culture, demographic structure, gender and intergenerational relations, and social organization, institutions, production systems, religious beliefs, and resource use patterns;
- (vi) strengthen the capacity of Indigenous Peoples communities and Indigenous Peoples' organizations to prepare, implement, monitor, and evaluate

- development programs;
- (vii) strengthen the capacity of government agencies responsible for providing development services to Indigenous Peoples;
- (viii) preserve and respect indigenous knowledge, including strengthening intellectual property rights; and
- (ix) facilitate partnerships among the government, Indigenous Peoples' organizations, civil society organizations, and the private sector to promote Indigenous Peoples' development programs.

OUTLINE OF AN INDIGENOUS PEOPLES PLAN

This outline is part of the Safeguard Requirements 3. An Indigenous Peoples plan (IPP) is required for all projects with impacts on Indigenous Peoples. Its level of detail and comprehensiveness is commensurate with the significance of potential impacts on Indigenous Peoples. 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 Indigenous Peoples receive culturally appropriate benefits under the project.

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;
- (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.

SAFEGUARD REQUIREMENTS 4: SPECIAL REQUIREMENTS FOR DIFFERENT FINANCE MODALITIES

A. Introduction

1. Various lending modalities and financial products are key instruments for ADB to promote inclusive growth and sustainable development in its developing member countries. In addition to standard project loans, ADB provides a variety of investment instruments, including program loans, sector finance, multitranches financing facilities (MFFs), emergency assistance loans, financial intermediaries and corporate finance. Safeguard Requirements 4 outlines the special requirements for different finance modalities that borrowers/clients are requested to meet.

B. Program Lending

2. The borrower/client will evaluate potential direct or indirect environmental or involuntary resettlement impacts or impacts on Indigenous Peoples associated with policy actions to be supported by program loans, identify appropriate mitigation measures to address these impacts, and integrate the mitigation measures into the program's design. A matrix of potential impacts of each policy action, together with appropriate mitigation measures, will be prepared, with a qualitative indication of the likely order of magnitude of each impact, and brief reasons for the judgment. Strategic environmental assessment (SEA) may be usefully applied where appropriate.

C. Sector Lending

3. For sector investments with potential environmental or involuntary resettlement impacts or impacts on Indigenous Peoples, before project approval by the Asian Development Bank (ADB), the borrower/client will agree with ADB on an environmental assessment and review framework, a resettlement framework, or an Indigenous Peoples planning framework (IPPF) to guide subproject selection, screening and categorization, social and environmental assessment, and preparation and implementation of safeguard plans of subprojects and to facilitate compliance with the requirements specified in Safeguard Requirements 1–3.

4. The environmental assessment and review framework, resettlement framework, and IPPF will (i) describe the project and its subprojects and/or components; (ii) explain the general anticipated environmental and/or social impacts of the components or subprojects to be financed under the proposed project; (iii) specify the requirements that will be followed in relation to subproject screening and categorization, assessment, and planning, including arrangements for meaningful consultation with affected people and other stakeholders and information disclosure requirements and, where applicable, safeguard criteria that are to be used in selecting subprojects and/or components; (iv) assess the adequacy of the borrower's/client's capacity to implement national laws and ADB's requirements and identify needs for capacity building; (v) specify implementation procedures, including the budget, institutional arrangements, and capacity development requirements; (vi) specify monitoring and reporting requirements; and (vii) describe the responsibilities of the borrower/client and of ADB in relation to the preparation, implementation, and progress review of safeguard documents of subprojects.

5. In addition to the elements listed in para. 4, the resettlement framework will outline the social impact assessment and census methodologies. Where applicable, the IPPF will specify

the process and documentation requirements for ascertaining broad support from the affected communities for the project activities specified in Section E(2) of Safeguard Requirements 3. Annexes 1, 2, and 3, to this appendix outline the recommended contents of an environmental assessment and review framework, a resettlement framework, and an IPPF. Note that the recommended content serves as a guide for reporting. The level of effort, the amount of analysis, the comprehensiveness, and the level of detail will depend on the nature of the project and the magnitude of the potential impacts and risks.

6. One or more sample subprojects will be identified and appraised prior to the approval of the sector investment project. For these subprojects, the borrower/client will prepare relevant documentation, including environmental and social impact assessment reports, environmental management plans, resettlement plans, and Indigenous Peoples plans.

7. The requirements specified in Safeguard Requirements 1–3 apply to all subprojects and components identified during project implementation.

8. If the sector investment involves development of or changes to sector policies, plans, or programs that are likely to have significant environmental and involuntary resettlement impacts or effects on Indigenous Peoples, the requirements specified in para. 2 will apply.

D. Multitranche Financing Facilities

9. For MFFs with potential environmental or involuntary resettlement impacts or impacts on Indigenous Peoples, the borrower/client will agree with ADB on an environmental assessment and review framework, a resettlement framework, or IPPF before ADB approves the MFF. These frameworks will clarify safeguard principles and requirements governing screening and categorization, social and environmental assessment, and preparation and implementation of safeguard plans of components, projects, and subprojects to be prepared after MFF approval. These frameworks will be prepared following the requirements specified in paras. 4 and 5.

10. ADB requirements specified in Safeguard Requirements 1–3 apply to all components, projects, and subprojects identified during preparation and implementation of an MFF.

E. Emergency Assistance Loans

11. For emergency assistance loans, the completion of standard environmental assessments, environmental management plans, resettlement plans, and Indigenous Peoples plans may not be possible before Board approval. In such cases, an environmental assessment and review framework, a resettlement framework, and an IPPF as specified in paras. 4 and 5 will be prepared. Components and subprojects identified during project implementation will follow the requirements specified in Safeguard Requirements 1–3. For projects in conflict areas where the completion of standard environmental assessments, environmental management plans, resettlement plans, and IPPs may not be possible before Board approval, the safeguard frameworks may also be considered for application.

F. Existing Facilities

12. For projects involving facilities and/or business activities that already exist or are under construction, the borrower/client will undertake an environment and/or social compliance audit, including on-site assessment, to identify past or present concerns related to impacts on the environment, involuntary resettlement, and Indigenous Peoples. The objective of the compliance audit is to determine whether actions were in accordance with ADB's safeguard

principles and requirements for borrowers/clients and to identify and plan appropriate measures to address outstanding compliance issues. Where noncompliance is identified, a corrective action plan agreed on by ADB and the borrower/client will be prepared. The plan will define necessary remedial actions, the budget for such actions, and the time frame for resolution of noncompliance. The audit report (including corrective action plan, if any) will be made available to the public in accordance with the information disclosure requirements of the Safeguard Requirements 1–3. For environment category A projects involving facilities and/or business activities that already exist or are under construction, the borrower/client will submit the audit report to ADB to disclose on ADB's website at least 120 days prior to ADB Board approval. If a project involves an upgrade or expansion of existing facilities that has potential impacts on the environment, involuntary resettlement, and/or Indigenous Peoples, the requirements for environmental and social impact assessments and planning specified in Safeguard Requirements 1-3 will apply in addition to compliance audit.

G. Financial Intermediaries

13. Where investments of the financial intermediary (FI) have minimal or no adverse social or environmental risks, the FI project will be treated as category C project and need not apply any other specific requirements. All other FIs will be required to have in place or establish an appropriate environmental and social management system (ESMS) to be maintained as part of their overall management system to meet national laws and/or ADB's requirements for FI projects. The ESMS will incorporate the following elements: (i) environmental and social policies; (ii) screening, categorization, and review procedure; (iii) organizational structure and staffing including skills and competencies in environmental and social areas; (iv) training requirements; and (v) monitoring and reporting. The ESMS will be documented and agreed on by ADB and the FI.

14. The screening procedure established under the ESMS will ensure that all subprojects are screened against the prohibited investment activities list (Appendix 5). Subprojects involving business activities included in the prohibited investment activities list do not qualify for FI support using ADB funds and applications involving such activities will be rejected. Depending on the size of the FI and its business activities, the FI should appoint a member of its management or one or more staff responsible for day-to-day implementation of the ESMS to have overall responsibility for environmental and social matters.

15. Where the subprojects financed by the FI using ADB funds, through either credit-line, other loans, equity, guarantee, or other financing instruments, have potential for significant environmental or social impacts, the FI will be required to ensure that such subprojects meet ADB's requirements specified in Safeguard Requirements 1–3, including information disclosure and consultation. In such cases, the FI will refer these subprojects to ADB early in its due diligence process. ADB will assist the FI with the appraisal of these subprojects. ADB will review the due diligence information collected by the FI, determine any additional information needed, assist with determining appropriate mitigation measures, and specify conditions under which the subprojects may proceed. For such subprojects, the borrower/clients will submit EIA, resettlement plan and/or IPP to ADB for clearance before subproject approval. ADB may also set additional requirements for the FI's activities more generally depending on the its portfolio and the host country's safeguard systems. ADB will monitor the FI's performance on the basis of its environment and social management system.

16. Except for FIs whose subprojects have minimal or no adverse environmental and social impacts or risks, the FI will prepare and submit periodic reports at least annually on the

implementation status of its ESMS. If the reports or ADB's reviews conclude that the ESMS is not functioning, the FI will prepare and submit a corrective action plan agreed to with ADB and implement it.

H. General Corporate Finance

17. Where clients with multisite operations are seeking general corporate finance,¹ working capital, or equity financing from ADB, the borrower/client will commission qualified and experienced external experts to conduct a corporate audit of its current ESMS and the company's past and current performance against the objectives, principles, and requirements of ADB's safeguard policy statement. The audit will:

- (i) assess the client's ability to manage and address all relevant social and environmental risks and impacts of its business and operations, in particular, the issues identified in the Safeguard Requirements 1–3;
- (ii) assess the client's compliance record with applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental and social matters, including those laws implementing host country obligations under international law; and
- (iii) identify the company's main stakeholder groups and current stakeholder engagement activities.

18. The exact scope of the corporate audit will be agreed on with ADB on a case-by-case basis.

19. A corrective action plan will address any issues identified during the corporate audit by specifying time-bound measures to achieve and maintain compliance with the objectives, principles, and requirements of ADB's safeguard policy statement within a reasonable time frame. This action plan will be incorporated into the client's corporate ESMS.

20. If the investment includes rehabilitation, modernization, or expansion of existing facilities, the requirements for existing activities specified in para. 12 will apply.

¹ For the purpose of these requirements, general corporate finance refers to loans and/or investments to a corporate entity that are not earmarked for implementing specific subprojects. For corporate finance related to the implementation of specific subprojects, the Safeguard Requirements 1–3 apply, in addition to establishing and maintaining ESMS.

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.

OUTLINE OF A 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.

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.

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

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.

ADB PROHIBITED INVESTMENT ACTIVITIES LIST

The following do not qualify for Asian Development Bank financing:

- (i) production or activities involving harmful or exploitative forms of forced labor¹ or child labor;²
- (ii) production of or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements or subject to international phaseouts or bans, such as (a) pharmaceuticals,³ pesticides, and herbicides,⁴ (b) ozone-depleting substances,⁵ (c) polychlorinated biphenyls⁶ and other hazardous chemicals,⁷ (d) wildlife or wildlife products regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora,⁸ and (e) transboundary trade in waste or waste products;⁹
- (iii) production of or trade in weapons and munitions, including paramilitary materials;
- (iv) production of or trade in alcoholic beverages, excluding beer and wine;¹⁰
- (v) production of or trade in tobacco;¹⁰
- (vi) gambling, casinos, and equivalent enterprises;¹⁰
- (vii) production of or trade in radioactive materials,¹¹ including nuclear reactors and components thereof;
- (viii) production of, trade in, or use of unbonded asbestos fibers;¹²
- (ix) commercial logging operations or the purchase of logging equipment for use in primary tropical moist forests or old-growth forests; and
- (x) marine and coastal fishing practices, such as large-scale pelagic drift net fishing and fine mesh net fishing, harmful to vulnerable and protected species in large numbers and damaging to marine biodiversity and habitats.

¹ Forced labor means all work or services not voluntarily performed, that is, extracted from individuals under threat of force or penalty.

² Child labor means the employment of children whose age is below the host country's statutory minimum age of employment or employment of children in contravention of International Labor Organization Convention No. 138 "Minimum Age Convention" (www.ilo.org).

³ A list of pharmaceutical products subject to phaseouts or bans is available at <http://www.who.int>.

⁴ A list of pesticides and herbicides subject to phaseouts or bans is available at <http://www.pic.int>.

⁵ A list of the chemical compounds that react with and deplete stratospheric ozone resulting in the widely publicized ozone holes is listed in the Montreal Protocol, together with target reduction and phaseout dates. Information is available at <http://www.unep.org/ozone/montreal.shtml>.

⁶ A group of highly toxic chemicals, polychlorinated biphenyls are likely to be found in oil-filled electrical transformers, capacitors, and switchgear dating from 1950 to 1985.

⁷ A list of hazardous chemicals is available at <http://www.pic.int>.

⁸ A list is available at <http://www.cites.org>.

⁹ As defined by the Basel Convention; see <http://www.basel.int>.

¹⁰ This does not apply to project sponsors who are not substantially involved in these activities. Not substantially involved means that the activity concerned is ancillary to a project sponsor's primary operations.

¹¹ This does not apply to the purchase of medical equipment, quality control (measurement) equipment, and any equipment for which ADB considers the radioactive source to be trivial and adequately shielded.

¹² This does not apply to the purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20%.

STRENGTHENING AND USE OF COUNTRY SAFEGUARD SYSTEMS TO ADDRESS ENVIRONMENTAL AND SOCIAL SAFEGUARD ISSUES

A. Introduction

1. The Asian Development Bank's (ADB's) safeguard policy is central to achieving social and environmental sustainability of projects and poverty reduction, which are major development goals of ADB. ADB recognizes that its developing member countries (DMCs) have their legal frameworks, institutional arrangements, and administrative procedures for delivering safeguards, and that developing the capacity and track records of governments, project sponsors, executing agencies, and other stakeholders is important for implementing such policies and frameworks effectively. ADB also recognizes that further development of such country safeguard systems (CSS) will promote socially and environmentally sustainable development in the Asia and Pacific region.

B. Terminology and Rationale

2. **Definition.** Country safeguard systems means a country's legal and institutional framework, consisting of its national, subnational, or sectoral implementing institutions and relevant laws, regulations, rules, and procedures that pertain to the policy areas of environmental and social safeguards.¹

3. **Rationale.** Operational experience, evaluations, and studies by both ADB and other development agencies show that the effectiveness of development agencies' safeguard policies depends largely on the degree to which the safeguard policy principles and requirements are rooted in DMCs' culture and socioeconomic context of decision making. They also show that development agencies can increase the impacts of their development assistance if they support efforts to strengthen the DMCs' legal frameworks, policies, and institutions that are already in place and work more directly with them.

4. In the last decade, many DMCs have upgraded and/or adopted new national policies, laws, and procedures on environmental assessment, involuntary resettlement, and Indigenous Peoples. In some DMCs, the legal frameworks and procedures may well be equivalent to ADB's safeguard policy principles and requirements. In other DMCs, legal framework and institutional capacities remain weak and require significant improvement and capacity development efforts. The establishment of partnerships with DMCs for strengthening and using CSS can help enhance their ownership of safeguards and scale up development impacts. When accompanied by suitable capacity development measures, the use of CSS can reduce risks by improving the quality and timeliness of project implementation.

5. The special evaluation studies of ADB's three safeguard policies carried out by the Operations Evaluation Department pointed out that ADB's existing safeguard policies and implementation procedures follow a one-size-fits-all approach and do not distinguish between different legal and institutional frameworks, implementation capacities, and track records across DMCs. The department recommended that the safeguard policy update explore opportunity to develop a strategic approach for increasing the capacity of and reliance on CSS for environmental and social safeguards.

¹ This definition is largely consistent with the World Bank's definition of country system for environmental and social safeguards.

6. The World Bank and the Inter-American Development Bank have already made efforts in the direction of using CSS.² Development of ADB's strategic approach and methodology for assessing CSS will facilitate harmonization with its development partners, streamline and speed up procedures for improved investment services, and reduce transaction costs because borrowers/clients would not need to operate parallel processes or duplicate work for projects.

7. **ADB's Experience with Assessment and Use of Country Safeguard Systems.** ADB has been assessing DMCs' legal requirements and institutional capacities in the context of project processing, but not in a rigorous manner. For example, for normal project preparation and review processes, ADB undertakes due diligence to identify gaps between the DMC's and ADB's safeguard requirements and assesses the implementation capacities of executing agencies to prepare social and environmental plans, draft loan covenants, and develop targeted capacity-building measures. However, such assessments are usually limited to the project level and systematic and rigorous analysis of CSS is often lacking.

8. While this approach at the project level may provide useful experience for DMCs and ADB, it has been carried out in an informal and inconsistent way. To respond to ongoing developments in the region whereby DMCs have increasingly established their own systems of environmental and social safeguards and are willing to further strengthen them, ADB needs to develop rigorous and transparent methodologies for assessing CSS and to adopt a strategic approach for strengthening and using CSS more systematically.

C. Overall Approach to the Strengthening and Use of Country Safeguard Systems in ADB-Supported Operations

9. ADB is committed to supporting the strengthening and effective application of the DMCs' country safeguard systems (CSS) with a focus on the capacity development of borrowers. At the same time, ADB needs to ensure that application of country safeguard systems (CSS) in ADB projects does not undermine the achievement of ADB's policy objectives and principles. ADB may consider using a borrower's CSS to identify and manage the social and environmental impacts and risks associated with ADB-supported projects at national, subnational, sector, or agency level, provided that (i) the CSS is equivalent to ADB's; and (ii) the borrower has acceptable capacity and commitment to implement the applicable laws, regulations, rules, and procedures.

10. **Equivalence and Acceptability.** Equivalence and acceptability are two prerequisites for deciding on the use of CSS. ADB would consider a borrower's CSS to be equivalent to ADB's if the former's system is designed to achieve the same objectives and adhere to the policy scope, triggers, and applicable principles set out in ADB's Safeguard Policy Statement (page 16-18). ADB also assesses the acceptability of borrower's implementation practice, track record, and capacity, before deciding on the use of the borrower's system. The following assessment approach will be adopted:

- (i) **National/subnational/sector/agency level assessment.** ADB is responsible for assessing and determining the equivalence of the CSS and the adequacy of the borrower's implementation capacity at the national, subnational, sector, or

² In 2004, the World Bank launched a 2-year pilot program on the use of CSS for 20 projects in 14 countries. In December 2007, the World Bank issued an evaluation report of this program and extended it for another 3 years. In 2006, the Inter-American Development Bank approved its environment and safeguards compliance policy, which provides for consideration of the use of "in-country systems."

agency level. If the assessments reveal that gaps can be addressed reasonably, ADB and the borrower will agree on specific gap-filling measures to be included in an action plan. Recent analytical work and assessments by other development partners, updated as required, can be used for CSS assessments. Joint assessments with other development partners will be encouraged. During this phase, ADB will not consider application of CSS to any specific project financed by ADB, and ADB's safeguard requirements specified in the Safeguard Policy Statement (SPS) will apply.

- (ii) **Project level assessment.** Once ADB has determined that the CSS is equivalent to ADB's and borrower's implementation practice and capacity is acceptable at national, subnational, sector or agency level, it may consider the application of CSS to ADB-financed projects in the country, subregion, sector, or projects sponsored by the agency. For each project, ADB will also conduct an acceptability assessment (including capacity, track record, and practice of executing and implementing agencies) before actually introducing use of the CSS into the project. The assessment will be done as part of the project design process during project preparation. ADB will also help the borrower develop a program for capacity building and integrated it into project design as required. The results of acceptability assessment will be documented and reflected in the ADB's report and recommendation of the President.

11. **Addressing Gaps to Strengthen Country Safeguard Systems.** Where the borrower has to strengthen its CSS to meet the objectives and adhere to the policy scope, triggers, and applicable principles set out in the ADB's SPS (page 16-18) and commits to doing so, ADB may, when determining equivalence, take measures to strengthen CSS into account. Similarly, if the borrower needs to strengthen its implementation practice and capacity to be ready for effectively delivering safeguards and commits to doing so, ADB may, when determining acceptability, take measures to strengthen the borrower's implementation capacity and practices into account. Such measures are to be carried out before the borrower undertakes implementation of the relevant project activities, and may include ADB-supported efforts. The borrower will prepare action plans with such measures in an agreed time frame with the assistance of ADB and other partners. The action plan for equivalence will focus on how to enhance the alignment of CSS with ADB's safeguard policy objectives, scope, triggers and principles through necessary improvements to the legal and regulatory framework. The action plan for capacity building will address relevant capacity development issues pertaining to the borrower and across key institutions.

12. **Levels of Country Safeguard Systems.** ADB may consider the application of CSS to various levels, such as the national, subnational, sector, or agency level, based on (i) discussions and dialogue with the borrower on ADB's current knowledge of specific CSS, the country, sector, or agency context, and the expected operations of ADB in the DMC; (ii) outcomes of the assessments of equivalence and acceptability; and (iii) the borrower's commitment to implement the gap-filling action plans.

13. **Scope of Country Safeguard Systems Application.** As the extent of equivalence and acceptability is safeguard-specific, a country, sector, or agency may qualify a CSS approach for one, two, or all three safeguard areas (the environment, involuntary resettlement, and Indigenous Peoples), depending on the result of the CSS assessments.

14. **Disclosure and Consultation.** To the extent possible, the proposal for the strengthening and use of CSS, together with its justification, is presented in the country

partnership strategy or in country partnership strategy progress reports.³ Documents pertaining to the country partnership strategy are disclosed in conformity with the requirements of ADB's *Public Communications Policy* (2005). On completion, draft equivalence and acceptability assessments at the national, subnational, sector, or agency level will be documented and disclosed on ADB's website for public comment. ADB will organize in-country consultation workshops to solicit comments and feedbacks from stakeholders, including governments and NGOs. Final equivalence and acceptability assessment reports will be disclosed on ADB's website on completion. Updated assessments to reflect changes in CSS, if any, will be also disclosed on ADB's website on completion. Issues related to acceptability assessments at the project level will be an element of the normal safeguard disclosure and consultation process undertaken for project preparation.

15. **Exclusion of CSS.** CSS will not be applied to highly complex and sensitive projects. These types of projects will be considered under ADB's normal project processing requirements.

16. **A Phased Approach.** Use of CSS will include a limited number of countries with a focus on subnational, sector or agency level during the first three years after the policy becomes effective. An interim review of the effectiveness of the application and use of CSS will be undertaken three years after the policy becomes effective.

17. **Changes in Country Safeguard Systems.** If, during CSS application, there are changes in applicable legislation, regulation, rules or procedures at national, subnational, sector, or agency level, ADB assesses the effect of those changes and discusses them with the borrower. If, in the judgement of the ADB, the changes reflect a further improvement in the CSS, and if the borrower so requests, ADB may agree (i) to revise the legal agreement applicable to the operation to reflect these improvements, and to amend the legal agreement as necessary; and (ii) to update the equivalence and acceptability assessments. Management documents, explains, and justifies any changes to such agreement, and submits them for Board approval (normally on a no-objection basis). If the CSS is changed in a manner inconsistent with the legal agreement between the borrower and ADB, ADB's contractual remedies apply.

D. ADB's Responsibility and Accountability

18. **Equivalence Assessment and Acceptability Assessment.** ADB will be responsible for assessing and determining the equivalence of the CSS and the acceptability of the borrower's implementation practice and capacity. ADB will undertake the following actions:

- (i) Assess the equivalence of CSS with ADB's safeguard policy objectives, scope, triggers and principles and acceptability of the borrower's implementation practice, track record, and capacity, including identifying the measures and actions needed for strengthening CSS in collaboration with the borrower.
- (ii) Help the borrower prepare the action plans based on the results of the assessments and incorporate the action plan's provisions into the legal agreements for using CSS. The legal agreements would allow ADB to suspend the use of CSS and revert to its own if the borrower stops implementing the action plan.

³ Examples are country partnership strategies, country operations business plans and midterm review reports.

- (iii) Conduct consultations, along with DMC representatives, with stakeholders to discuss and validate the findings of the equivalence assessments and to seek agreement on the proposed measures outlined in the action plan.
- (iv) Provide the necessary technical and financial support to develop and implement the action plan through program loans and technical assistance and supervise implementation of the action plan.

19. **Project-Level Document Review and Supervision.** The use of CSS will not obviate ADB's responsibilities for safeguard review before Board approval of proposed projects. The only difference is that the review will be based on requirements under the CSS and on the agreed action plan. After the Board approves a project that uses CSS, ADB supervision will follow the same procedures as for any other investment project.

20. **Accountability Mechanism.** The use of CSS will not alter the role and function of ADB's accountability mechanism, including the role of ADB's Office of the Special Project Facilitator, and Compliance Review Panel. In the event of a claim, the Compliance Review Panel could examine ADB's assessment of the equivalence between ADB's policy scope, triggers, and applicable principles with the CSS (and any additional measures agreed upon to achieve equivalence) in materially achieving the objectives of the SPS, as well as ADB's project supervision. The use of CSS will not alter the role of ADB Independent Evaluation Department.

E. Borrower's Responsibility

21. **Country Safeguard Systems Assessment and Action Plan Development.** The borrower will support and participate in the equivalence and acceptability assessments. The borrower/client will

- (i) facilitate the sharing of all relevant documents, data, and information with the ADB assessment team and the conduct of seminars and/or workshops, as necessary;
- (ii) assist in organizing and conducting consultations with stakeholders to discuss and validate the findings of the assessments; and
- (iii) develop action plans outlining measures to address needed changes.

22. **Implementation.** The borrower is responsible for achieving and maintaining equivalence as well as developing acceptable implementation practices, track record, and capacity, in accordance with ADB's assessment, including the implementation of the action plans. For each project that uses CSS, the borrower identifies those provisions of the CSS that are necessary to ensure that the policy principles set out in this SPS are met. These provisions may vary from project to project, depending on such factors as the structure of the CSS and the type of operation. In all cases, these provisions and any additional measures that the borrower needs to undertake to achieve and maintain equivalence and acceptable implementation become part of the borrower's contractual obligations to ADB's normal contractual remedies.

F. Resource Implications

23. Although the processes involved in strengthening and using CSS will be resource intensive⁴ during upstream national-, subnational- or sector-level assessments and project

⁴ World Bank experience indicates a need for high levels of staff inputs and consultants' time to conduct the assessments and public consultations and to prepare the assessment reports.

preparation, cost savings are expected in the medium and long term. This is because in the long run, the equivalence and acceptability assessments are likely to be incremental. Application of CSS to ADB projects will entail costs for (i) undertaking equivalence and acceptability assessments, including the consultations to be held after the assessments; (ii) organizing medium- to long-term capacity development activities to strengthen CSS; (iii) training ADB staff; and (iv) monitoring and supervising the CSS portfolio.

24. In the medium term, there will be incremental costs associated with CSS. Additional professional staff weeks may be required each year for conducting equivalence assessment of CSS on a demand-driven basis. This may include 5–12 staff weeks for each equivalence assessment, and additional staff-weeks for acceptability assessment. The potential increased resources requirements can be partially met by engaging staff consultancy on a need basis. In addition, the World Bank is playing a significant role in developing and applying methodologies for CSS diagnostics and there is strong interest in joint work in this area. Working with partner institutions such as the World Bank will also allow improved effectiveness and ensure additional resource efficiencies.

EXPERIENCE OF OTHER MULTILATERAL FINANCIAL INSTITUTIONS

1. Over the past 5 years or so, many multilateral financial institutions have revised or updated their environmental and social safeguard policies. The rationale, approach, and results of the policy revision were reviewed for the Asian Development Bank's (ADB's) safeguard policy update (SPU). The experiences of the World Bank and its private sector lending arm, the International Finance Corporation (IFC), as well as the experiences of the Inter-American Development Bank (IDB), the European Bank for Reconstruction and Development (EBRD), and Equator Principles financial institutions, are discussed below.

A. World Bank

2. The World Bank has 10 environmental and social safeguard policies,¹ and a separate policy framework for using country systems. These policies are complemented by an information disclosure policy (2002), which lays down the requirements for the disclosure of safeguard planning documents.

3. In 1998 the World Bank updated its Indigenous Peoples policy and in the process clarified, simplified, and strengthened the policy and made it more flexible. The revised operational policy on Indigenous Peoples (2005) (i) clarified some ambiguities related to social impact assessment, screening, and scope; (ii) simplified the project processing requirements; (iii) introduced the principle of proportionality and a planning framework (instead of an up-front plan) for projects that involve the preparation and implementation of annual investment programs and several subprojects; and (iv) required the World Bank to finance only those projects with broad community support from the affected Indigenous Peoples, based on free, prior, and informed consultation, and their prior agreement to the commercial development of their cultural resources and knowledge.²

4. In 2006 the World Bank updated its physical cultural resources policy. The policy applies to projects in or near recognized cultural heritage sites (archaeological, paleontological, historical, and sacred) and projects designed to support the management or conservation of physical cultural resources. It requires consultations with affected groups, government authorities, and nongovernment groups.

5. When it updated the foregoing policies, the World Bank also evaluated the use of country safeguard systems in its operations. Recognizing the changing relationship between development effectiveness and greater use of country systems, the World Bank explored further the use of borrower systems in addressing environmental and social safeguard issues. Its Board of Executive Directors approved in 2005 a 2-year pilot program for this purpose and a policy framework to govern the pilot program. The policy describes the approach to assessing country systems, and defines the roles of the borrower and the World Bank, and the documentation and disclosure requirements. The policy consists of a unified policy statement and a table summarizing the eight safeguard areas, as distilled from current World Bank safeguard policies

¹ The 10 policies pertain to (i) environmental assessment (OP/BP 4.01), (ii) natural habitats (OP/BP 4.04), (iii) pest management (OP 4.09), (iv) involuntary resettlement (OP/BP 4.12), (v) Indigenous Peoples (OP/BP 4.10), (vi) forests (OP 4.36), (vii) physical cultural resources (OP 4.11), (viii) safety of dams (OP/BP 4.37), (ix) projects on international waterways (OP/BP 7.50), and (x) projects in disputed areas (OP/BP 7.60). The last two policies relate mainly to international law, and hence were not included in the pilot program (OP 4.00) discussed in paras. 5 and 6.

² The Indigenous Peoples website of the World Bank is at:
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTINDPEOPLE/0,,menuPK:407808~pagePK:149018~piPK:149093~theSitePK:407802,00.html>

(OP 4.00, Table A1), each area with its statement of objectives and associated operating principles for achieving the stated objectives.

6. In January 2008 the World Bank issued a report evaluating its 2-year pilot program. According to the report, to achieve systemic and sustainable improvements in borrower capacity, the World Bank must move beyond the current project-based approach adopted in the pilot program. The report proposed that the initiative be incrementally scaled up from the project to the country level to engage borrowers and other development partners in applying a broader range of safeguards and thereby build borrower capacity on a more sustainable basis than is feasible at the project level. Other main conclusions of the report were as follows: (i) the use of the country system has helped to achieve World Bank policy objectives particularly in environmental assessment and physical cultural resources; (ii) the experience with the country safeguard systems for natural habitats, forests, pest management, and safety of dams, with measures to fill the gaps, presents encouraging prospects; (iii) for involuntary resettlement safeguards, however, the gaps between the World Bank requirements and the country system may be too substantial in most cases to be filled by measures that can be implemented in specific projects; (iv) although the requirements pertaining to Indigenous Peoples were not pilot-tested, a number of countries have updated their legal and policy framework for this issue, even if they have not done the same for involuntary resettlement; (v) the World Bank has learned enough lessons to justify the incrementally wider application of country safeguard systems for environmental and social safeguards, but not enough to support the full adoption of such systems across all World Bank lending.

7. In the longer term, the World Bank is considering a separate assessment of the potential use of a principles-based approach to safeguards for some types of operations, after it evaluates the lessons learned from the application of the IFC and Multilateral Investment Guarantee Agency (MIGA) safeguard policies.

8. The World Bank's operational policy on environmental assessment (OP 4.01) was updated in March 2007 to reflect its policy of rapid response to crises and emergencies (OP/BP 8.00).

B. International Finance Corporation

9. The safeguard policies of IFC were adopted from the World Bank's policy in 1998, with modifications to reflect the private sector focus of its operations. In 2003 IFC launched an update of its safeguard policies, following the findings and recommendations of its compliance advisor ombudsman and the results of IFC's internal monitoring and evaluation. The update was guided by the need to (i) have clear, simple, and easy-to-use requirements; (ii) address policy gaps; (iii) emphasize private sector considerations while ensuring compatibility with World Bank safeguard policies; and (iv) incorporate the concept of sustainability in IFC policies.

10. IFC's new sustainability policy framework, which was approved in 2006, clearly demarcates IFC responsibilities from those of its clients. The IFC requirements are specified in policies for the following: (i) social and environmental sustainability, (ii) disclosure,³ and

³ The IFC disclosure policy requires it to disclose the environmental and social review summary, a brief summary of IFC review findings and recommendations, no later than 60 days before Board consideration for category A projects and 30 days for category B projects. The performance standards specify the disclosure requirements for IFC clients. Performance standard 1 (social and environmental assessment management system) requires IFC to disclose the assessment document for projects with adverse impact before the start of project construction. The timing of disclosure of resettlement action plans or resettlement frameworks, and Indigenous Peoples development plans or community development plans, is not explicitly stated in the relevant performance standards.

(iii) environmental and social review procedure. The requirements for clients are outlined in the performance standards.⁴ In addition, guidance notes (companion documents to the performance standards), a glossary of terms, and environmental, health, and safety guidelines⁵ provide guidance to IFC clients and staff.

11. The new policy framework fully integrates social and environmental assessment; provides an approach to community engagement through free, prior, and informed consultation leading to broad community support; introduces a labor standards and working conditions policy, and a new performance standard for community health and safety; and requires the establishment and maintenance by clients of social and environmental management systems, among others. Formerly stand-alone policies such as those for pest management, safety of dams, forest, and international waterways were integrated into the eight new sets of performance standards.⁶ In November 2007 IFC management was to report to the board on how IFC clients perceive the performance standards.

C. Inter-American Development Bank

12. The safeguard policy framework of IDB is set out in a number of its sector policies, including the policies for environment and safeguards compliance (2006), disaster risk management (2007), Indigenous Peoples (2006), and involuntary resettlement (1998). The disclosure requirements are laid out in the information disclosure policy (2006).⁷

13. The environment and safeguards compliance policy, which supersedes the environment policy (1979), implements and reinforces IDB's environment strategy (2003). Consequently, it contains policy directives both for environmental mainstreaming and for environmental safeguards.⁸ Among others, the environmental safeguard directives cover the protection of critical natural habitats and cultural sites, the avoidance of hazardous materials, and pollution prevention and abatement. Furthermore, the environmental assessment process for high-safeguard-risk operations deals with issues relevant to health and safety. For cofinancing operations, the policy promotes collaboration with borrowers and other lenders in adopting a single environmental assessment process and unified documentation. Finally, for in-country safeguard systems, the policy lays down an approach similar to that of the World Bank. Country systems will be applied only where IDB has determined that the borrower system is equivalent or superior to IDB's. In 2009, the IDB management will report to the board its experience with the use of country systems.⁹

⁴ The eight performance standards cover the following: (i) social and environmental assessment and management system; (ii) labor and working conditions; (iii) pollution prevention and abatement; (iv) community health, safety, and security; (v) land acquisition and involuntary resettlement; (vi) biodiversity conservation and sustainable natural resource management; (vii) Indigenous Peoples; and (viii) cultural heritage.

⁵ See: http://www.ifc.org/ifcext/policyreview.nsf/Content/S_FAQs

⁶ IFC. 2005. *Performance Standards: What's New and Different*.

⁷ The information disclosure policy of IDB provides that for operations requiring environmental impact assessments or other relevant environmental analyses, these analyses will be made available to the public in the borrowing country and IDB headquarters before IDB conducts its analysis mission, in the case of public sector borrowers, or its due diligence mission, in the case of private sector borrowers. As necessary, IDB also prepares an environmental and social management report, which is made available to the public no later than the time at which the loan or guarantee proposal has been cleared by the executive vice president for distribution to the board of executive directors.

⁸ Under environmental safeguards, the policy requires integrated screening and classification based on environmental and associated social impacts that are direct, indirect, regional, or cumulative, including those of relevant associated facilities. IDB adopts a single project classification system.

⁹ IDB. 2006. *Environment and Safeguards Compliance Policy*. Washington, DC.

14. The disaster risk management policy (2007), which replaces the policy for natural and unexpected disasters (1999), requires a comprehensive approach to (i) the prevention and mitigation of disasters, and (ii) post-disaster response. The new policy requires project teams, through social and environmental screening and classification, to gauge the extent of exposure of projects to natural hazards or their potential to exacerbate risk; to assess the risk of natural hazards for projects that are found to be highly exposed to natural hazards or have high potential to exacerbate risk; to conduct an alternative analysis of prevention and mitigation measures; and to include appropriate structural and nonstructural mitigation measures in project design and implementation.

15. IDB's operational policy for Indigenous Peoples and strategy for indigenous development (2006) seeks both the development of Indigenous Peoples and the safeguarding of these peoples and their rights against adverse impact and exclusion in IDB-funded projects. This new approach complements the earlier focus of IDB on avoiding or mitigating the adverse impact of IDB projects on Indigenous Peoples. To further safeguard Indigenous Peoples' rights in projects with significant potential impact and risks, IDB requires the project proponent to obtain agreements regarding the project and mitigation measures, through good-faith negotiation with affected Indigenous Peoples or groups, and verifies that it has done so. The Indigenous Peoples policy also addresses the issue of un-contacted Indigenous Peoples in view of their exceptional nature, as well as their special vulnerability and the impossibility of applying prior consultation and good-faith negotiation mechanisms. It requires IDB to finance only those projects that respect the right of un-contacted Indigenous Peoples to remain in voluntary isolation and to live freely according to their culture.

16. The involuntary resettlement policy applies only to the involuntary physical displacement of people caused by an IDB project. The policy aims to minimize the disruption of livelihood of people living in the project's area of influence, by avoiding or minimizing the need for physical displacement, and ensuring that when people must be displaced they are treated equitably and, where feasible, can share in the benefits of the project that requires their resettlement. Where Indigenous Peoples will be displaced, IDB will support operations only if it determines that the resettlement component will result in direct benefits to these peoples relative to their prior condition, customary rights will be fully recognized and fairly compensated, compensation options will include land-based resettlement, and the affected Indigenous Peoples have given their informed consent to the resettlement and compensation measures.¹⁰

D. European Bank for Reconstruction and Development

17. In May 2008 EBRD adopted its new environmental and social policy, along with 10 performance requirements, replacing the 2003 environmental policy and applying to all new projects appraised after 12 November 2008. The environmental and social policy maintains the strategic directions set out in the 2003 policy and addresses the social dimensions of sustainable development in a more structured and comprehensive way. The social dimensions pertain to (i) labor standards and working conditions; (ii) involuntary resettlement; (iii) community health, safety, and security; (iv) Indigenous Peoples; and (v) cultural heritage.

18. EBRD's policy was modeled on IFC's approach, while reflecting EBRD's region of operation with its specific characteristics and its commitment under the European Principles for the Environment, to which EBRD is a signatory. EBRD, however, has two additional performance standards—those for (i) financial intermediaries, and (ii) information disclosure and stakeholder engagement.

¹⁰ IDB. 1998. *Operational Policy on Involuntary Resettlement*. Washington, DC.

19. Like other multilateral financial institutions, EBRD has a public information policy, which was updated and approved, together with the environmental and social policy, on 12 May 2008. The new public information policy sets out how EBRD discloses information and consults with its stakeholders to promote better awareness and understanding of its strategies, policies, and operations. At the same time, the policy establishes clear lines of demarcation to distinguish information that is made publicly available from information that is confidential and may not be disclosed. The public information policy includes disclosure requirements for environmental and social impact assessments.¹¹

E. Equator Principles Financial Institutions

20. Equator principles financial institutions are those that have adopted the Equator Principles, a financial industry framework for addressing environmental and social risks in project financing. Adopted in 2003 by 10 of the world's leading commercial banks, the Equator Principles are an offshoot of the desire of the banks to develop a common and coherent set of environmental and social policies and guidelines to be applied globally and across all industry sectors. Each of the financial institutions declares that it has or will put in place policies or business processes that are consistent with the Equator Principles. They commit not to lend to projects where the borrower will not or cannot comply with its social and environmental requirements.

21. The Equator Principles were revised in July 2006 to (i) reflect and be consistent with the IFC's performance standards for social and environmental sustainability, on which the original set of Equator Principles were based; and (ii) incorporate learning from implementation and comments from a variety of stakeholders. The new Equator Principles apply to all project financing with capital costs of \$10 million or more.¹² As of August 2008, persuaded by the argument that environmental and social corporate responsibility makes good business sense, more than 60 financial institutions from 24 countries and operating in more than 100 countries had adopted the new Equator Principles.¹³

¹¹ EBRD will make available environmental and social impact assessments on category A projects in its Business Information Centre in London and in the relevant EBRD resident office at least 60 days before the project is considered by its board of directors, in the case of private sector projects, and 120 days before board consideration, in the case of public sector projects. Notification of the documents' availability will be posted on the EBRD website.

¹² The original threshold was \$50 million. See the explanation for this change and other information on the Equator Principles at: <http://www.equator-principles.com/faq.shtml>

¹³ See: <http://www.equator-principles.com/join.shtml>

Medium-Term Action Plan (2010–2012)

Results	Performance Indicators	Activities	Responsible Parties	Resource Requirements	
Overall Objective					
ADB safeguard objectives, principles and requirements are met for all ADB-financed projects					
Action Area (i)					
Supporting capacity development of borrowers/clients for safeguard delivery					
Strengthened Borrower's/client's institutional capacity for implementing safeguard requirements	Training of borrowers/clients on the new policy provided at various levels before the effective date of the SPS and on an ongoing basis	<ul style="list-style-type: none"> ▪ Provide bank-wide orientations for all DMC borrowers (1 workshop before the effective date, and 1–2 times per year subsequently) ▪ Provide in country training to public and private sector borrowers/clients 	RDs/RSDD	<ul style="list-style-type: none"> ▪ In-house staff resource mobilization ▪ Technical assistance or a dedicated fund (\$80-100 million) on a need basis ▪ Staff consultancy ▪ Collaborative efforts by other international development agencies 	
	Timely technical advice and guidance provided at project level during project preparation	<ul style="list-style-type: none"> ▪ Disseminate copies of new policy to each borrower/client and explain new provisions ▪ Assess the borrower/client's capacity, and incorporate appropriate capacity building components into project design 	RDs/PSOD/RSDD		
			<ul style="list-style-type: none"> ▪ Disseminate copies of new policy to each borrower/client and explain new provisions 		RDs/PSOD
			<ul style="list-style-type: none"> ▪ Assess the borrower/client's capacity, and incorporate appropriate capacity building components into project design 		RDs/PSOD
			<ul style="list-style-type: none"> ▪ Support the preparation of social and environmental assessments and EMP, RP, IPP 		RDs/PSOD
	Timely advice and guidance provided at project level during project implementation	<ul style="list-style-type: none"> ▪ Provide support needed to address unanticipated issues during project implementation 	PDs/PSOD		
	Number and quality of CSS equivalence and acceptability assessments	<ul style="list-style-type: none"> ▪ Prepare 3–5 CSS equivalence and acceptability assessments, 	OGC/RSDD/RDs		

Results	Performance Indicators	Activities	Responsible Parties	Resource Requirements
	prepared Number of gap-filling action plans agreed upon between ADB and borrowers/clients, and implemented appropriately by borrowers/clients	and gap-filling action plans at subnational/sectoral/agency level.		
Action Area (ii) Developing and maintaining the tools and instruments to assist in implementing the Policy				
ADB staff, borrowers/clients and other stakeholders clearly understand ADB's safeguard requirements and are equipped with necessary knowhow	Guidelines and handbooks that provide further technical guidance, and reflect international good practice available before the effective date of the SPS Policy documents (SPS and Safeguard Requirements 1–4) and guidelines and handbooks translated on a timely basis and disseminated to borrowers/clients and other stakeholders	<ul style="list-style-type: none"> ▪ Update environmental assessment guidelines ▪ Update the Handbook of Involuntary Resettlement ▪ Prepare a handbook on Indigenous Peoples, including guidelines on determining consent of Indigenous Peoples communities ▪ Translation of the SPS, Safeguard Requirements 1–4 and guidelines and handbooks into widely-used languages and other local languages on a need basis, and printing and dissemination to relevant stakeholders 	RSDD RSDD RSDD RSDD/RDs/ PSOD	<ul style="list-style-type: none"> ▪ In-house staff resource mobilization ▪ Staff consultancy ▪ One-time cost for translation, printing and dissemination
Action Area (iii) Ensuring ADB's organizational capacity and resources for policy implementation				
Staff knowledge on social and environmental	Number of staff trained in a timely manner and on an	<ul style="list-style-type: none"> ▪ Provide bank-wide, structured in-house staff 	RSDD	<ul style="list-style-type: none"> ▪ In-house staff resource mobilization

Results	Performance Indicators	Activities	Responsible Parties	Resource Requirements
<p>safeguard requirements updated</p> <p>Institutional capacity for policy implementation strengthened</p>	<p>ongoing basis</p> <p>Increased staff position, and optimized allocation of staff resources</p> <p>Interdepartmental knowledge sharing network maintained</p>	<p>training to all HQ and RM safeguard specialists and team leaders (2 workshops before the effective date, and 2–3 times a year, subsequently)</p> <ul style="list-style-type: none"> ▪ Recruit additional professional specialists at RDs and national officers in RMs over the three year medium-term period ▪ Organize seminars/workshops on knowledge and experience sharing 	<p>BPHR/RDs</p> <p>RSDD/RDs/PSOD</p>	<ul style="list-style-type: none"> ▪ Technical assistance ▪ Additional internal administrative expenses budget
<p>Action Area (iv) Improving and Maintaining ADB's Internal Review and Compliance Monitoring System</p>				
<p>ADB's internal review and compliance monitoring system functions effectively and efficiently</p>	<p>Clear operational procedural for implementing the SPS established before the effective date of the SPS</p> <p>Project screening and categorization</p> <p>Disclosure</p>	<ul style="list-style-type: none"> ▪ Prepare a consolidated Operations Manual to specify ADB's internal safeguard review, monitoring and reporting procedures at each stage of project cycle ▪ Screen and categorize every project in a timely and appropriate manner ▪ Post EIAs for all environment category A projects on ADB website 120 	<p>RSDD</p> <p>RSDD/RDs/PSOD</p> <p>RDs/PSOD</p>	<ul style="list-style-type: none"> ▪ In-house staff resources

Results	Performance Indicators	Activities	Responsible Parties	Resource Requirements
	<p>Consultation</p> <p>Safeguard documents submitted in a timely manner and appropriately reviewed during project preparation</p> <p>Supervision and monitoring missions conducted in a timely manner, appropriate guidance provided, and results documented during project implementation</p>	<p>days before Board approval; post EARF before project appraisal, post RP/RF for all IR category A and B projects before project appraisal; post IPP/IPF for all IP category A and B projects before project appraisal</p> <ul style="list-style-type: none"> ▪ Participate in consultations for all projects with significant environmental, IR, and IP impacts; document the consultation results and incorporate them into project design ▪ Review all relevant safeguard documents against policy principles and requirements of SR1–4, provide appropriate advice to borrowers/clients for safeguard documents finalization to ensure compliance with ADB's requirements ▪ Field supervision and monitoring mission by safeguard specialists for all environmental, IR, and IP category A projects; agree with the 	<p>RDs/PSOD</p> <p>RDs/PSOD/RSDD</p> <p>RDs/PSOD RSDD</p>	

Results	Performance Indicators	Activities	Responsible Parties	Resource Requirements
	Bank-wide compliance status and performance timely documented and reported to Management	borrower/client to prepare and implement corrective plan where needed, and prepare detailed and quality monitoring reports ■ Prepare annual report on bank-wide performance and submit to Management	RSDD	

ADB = Asian Development Bank, BPHR = Human Resources Division, CSS = country safeguard systems, DMC = developing member country, EARF = environmental assessment and review framework, EIA = environmental impact assessment, EMP = environmental management plan, HQ = headquarters, IPF = Indigenous Peoples framework, IPP = Indigenous Peoples plan, IR = involuntary resettlement, OD = operational department, OGC = Office of the General Counsel, OM = Operations Manual, PSOD = Private Sector Operations Department, RD = regional department, RF = resettlement framework, RM = resident mission, RP = resettlement plan, RSDD = Regional and Sustainable Development Department, SPS = safeguard policy statement, SR = safeguard requirements.