

Corporate
Evaluation Study

Safeguards Operational Review

ADB Processes, Portfolio, Country Systems,
and Financial Intermediaries



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October 2014

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In this report, "\$" refers to US dollars.

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Independent Evaluation observed its guidelines on avoiding conflict of interest in the preparation of this report. Jean Foerster was reassigned from being team leader when he applied for a safeguard position in another department in ADB. Consultant Bernard Baratz, involved in the financial intermediary safeguards review and to some extent the review of country safeguards systems, had another ADB contract to review environmental impact assessments. None of the reviews he conducted under that contract or under any other ADB contract prior to this were in any way related to financial intermediary projects or to the use of country safeguard systems. Consultant Lizandro Racoma worked for ADB operations on the processing of micro-hydropower project safeguards in 2014, but the project was not part of any sample for this review.

In preparing any evaluation report, or by making any designation of or reference to a particular territory or geographic area in this document, the Independent Evaluation Department does not intend to make any judgment as to the legal or other status of any territory or area.

Abbreviations

CCO	–	chief compliance officer
CoP	–	community of practice
CPS	–	country partnership strategy
CSR	–	country safeguard review
CSS	–	country safeguard systems
DMC	–	developing member country
EA	–	environmental assessment
EMP	–	environmental management plan
EMS	–	environmental management system
ESMS	–	environmental and social management system
ESSF	–	environmental and social safeguards framework
FI	–	financial intermediary
IEE	–	initial environmental examination
IED	–	Independent Evaluation Department
IEG	–	Independent Evaluation Group (World Bank)
IFC	–	International Finance Corporation
IP	–	Indigenous Peoples
IPF	–	Indigenous Peoples framework
IPP	–	Indigenous Peoples plan
IR	–	involuntary resettlement
IRF	–	involuntary resettlement framework
MFF	–	multitranche financing facility
MFI	–	multilateral financial institution
OM	–	Operations Manual
OP	–	operational procedures
PIAL	–	prohibited investment activities list
PPTA	–	project preparatory technical assistance
QAE	–	quality at entry
RETA	–	regional technical assistance
RRP	–	report and recommendation of the President
RSES	–	Environment and Safeguards Division, Regional and Sustainable Development Department
SPS	–	Safeguard Policy Statement, 2009

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SUPPLEMENTARY APPENDIX (not public)

Detailed Review of Environmental Management Systems, Environmental and Social Management Systems, and Environmental and Social Safeguard Frameworks, 2007–2012

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Foreword

The Asian Development Bank (ADB) and other multilateral development banks (MDBs) use safeguard measures as conditions of their loans to shield against collateral damage to communities and the environment that projects can cause, notably in transport, energy, and urban services. Without such shields, roads can hurt habitats, dams displace communities, and urban renewal damage livelihoods.

The crucial rationale for safeguards is that public and private investors do not automatically and voluntarily mitigate damages that spill over from their actions. In redressing these collateral injuries, sound economics and ADB's experience make the case clear for MDBs to have safeguard regulations and compliance on the one side, and improvements in the efficiency and effectiveness of their application on the other.

When ADB consolidated its safeguard policies into the Safeguard Policy Statement (SPS) in 2009, it asked Independent Evaluation to carry out an operational review after 3 years. This was intended to be limited in its scope, but has gained in importance, given two recent shake-ups in development banking—a review of the World Bank Group's safeguards policy, and the arrival of two new lenders, the Asian Infrastructure Investment Bank, and a BRICS bank—which could affect the strength of the shields.


The operational review used various data sources and triangulated its findings with interviews with ADB project staff and safeguard specialists. Its conclusions indicate that a proper system for avoiding or mitigating the environmental and social risks of ADB-supported projects is in place, and that there have been more careful procedures and also needed increases in staffing since 2010, which help ADB and countries in avoiding major environmental and social problems.

Appropriately, the SPS covered additional investment modalities and additional environmental and occupational health and safety areas. With important improvements in efficiency and effectiveness, the safeguard system at ADB would be the type that can be trusted to care for social and environmental outcomes in countries.

This review contains proposals for improvements. First, ADB needs to pay more attention to the design as well as implementation and supervision of safeguard measures for all risky projects—not only those with high risks but also with substantial risks. Second, follow up is needed to support the use of country safeguard systems if and when they can move to full equivalence with ADB standards; accordingly, developing country capacity is in order. Third, ADB should provide better reports on the due diligence for financial intermediary projects, do more field monitoring, and more generally, third party verification.

A difficult underlying issue across the board is how greater due diligence for safeguards can be squared with ADB's intention to keep the time for project preparation relatively short. Actions planned by ADB for assigning safeguard staff to more resident missions, and making realistic project implementation schedules using readiness filters, can help.

The next, fuller evaluation of safeguards in 2015 will have a greater focus on field verification of safeguard results. The additional evidence on impacts from that assessment would lie on the path for strengthening safeguards in their key dimensions—scope, coverage and categories; design, implementation and supervision; country systems, equivalence and capacity; monitoring, and third party verification.



Vinod Thomas
Director General
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Executive Summary

The Asian Development Bank's (ADB's) Safeguard Policy Statement (SPS) was adopted in June 2009. The SPS mandated Independent Evaluation Department (IED) to review the policy's effectiveness in achieving ADB's safeguard objectives 5 years after its effective date (20 January 2010), and further requested that an operational review take place after 3 years, with a particular emphasis on assessing: (i) progress on the use of country safeguard systems (CSS) and the effectiveness of CSS; and (ii) implementation of safeguard requirements for financial intermediary (FI) projects, and the effectiveness of such requirements.

This report is the operational review requested in the SPS and it covers these two particular issues. In addition, the degree and changes in safeguard risk in ADB's project portfolio and more general issues pertaining to the progress of SPS implementation are also reviewed, focusing on major changes and including resources and safeguard quality at entry. The latter topic was undertaken, in part, to address the Asian Development Fund's (ADF) shareholders' request that IED review ADB's safeguard implementation for the ADF midterm review in November 2014. The evaluation of the SPS's effectiveness, which will start in 2015, is scheduled for completion in 2016.

This review, limited in scope, supports the sense that the SPS struck a good balance between seeking efficiency gains in the use of safeguards and maintaining a compliance-based regulatory system to achieve positive environmental and social outcomes. Progress on safeguard preparation for projects has been adequate, although not enough is known yet about results on the ground. Within this context, there are important areas where policy implementation needs to strengthen, including in CSS and FI projects.

Safeguard Policy Statement of June 2009

The SPS combined and superseded ADB's three separate safeguard policies: Involuntary Resettlement (IR) Policy (1995), Policy on Indigenous Peoples (IP) (1998), and Environment Policy (2002). Integrating the three policies was a lengthy process taking four and a half years, and involving a significant number of internal and external consultations. The resulting document retained all the key aspects of ADB's safeguard policies and introduced several additional requirements that raised the bar. For instance, for environmental safeguards new requirements were specified relating to worker and community health and safety, biodiversity conservation, greenhouse gas emissions, and physical cultural resources.

Importantly, ADB's due diligence requirements were more clearly specified in the SPS. For instance, ADB is required to confirm that the borrower/client understands ADB's safeguard policy and has the necessary commitment and capacity to manage the environmental and social risks. ADB needs to ensure that the role of third parties is appropriately defined in safeguard plans. Moreover, for projects with potentially significant adverse environmental impacts, ADB is to ensure that the borrower/client engages qualified and experienced external experts or qualified nongovernment

organizations (NGOs) to verify safeguard-related monitoring information. ADB's due diligence is required to ensure that consultations with affected people are in line with SPS requirements. Some flexibility has remained, where the policy principles refer to preferred solutions but say they need to be applied "where possible;" however, this has also sometimes given rise to ambivalence and uncertainty.

Requirements were specified for various alternative financing modalities, such as the multitranche financing facility (MFF). While ADB had already abolished its special subcategory B-sensitive, the SPS retained the main three safeguard risk categories of A through C based on their potential for adverse impacts (from high to low), and extended its category FI requirements to include IR and IP in addition to environmental safeguards. A more elaborate format for environmental and social management systems (ESMS) was introduced for FI projects, replacing the earlier environmental management system (EMS). A final major addition was the articulation of an approach for strengthening and using CSS in ADB-supported projects, including the setting of targets through an action plan. In summary, the new requirements the SPS introduced meant a significant strengthening of ADB's tool box for adding value to its operations.

Method

For each of this operational review's three core components—general delivery of the SPS, strengthening and use of CSS, and safeguard delivery in FI projects—various assessments were undertaken. The information was triangulated with feedback and consultations, given the absence of systematic monitoring data and time management information available at ADB. A portfolio review was done first, based on an analysis of ADB project databases, documents, and project completion reports (PCRs).

The review of the general delivery of the SPS involved an examination of ADB's internal documentation complemented by: (i) interviews and focus group discussions with 35 senior safeguard specialists and six divisional directors; (ii) administration of a structured questionnaire face-to-face to 81 project team leaders responsible for 100 (of the 108) projects approved under the SPS from 2010 to 2012 and associated with environmental and social risks; (iii) review of 285 internal ADB checklists filled out post-approval to assess the quality of category B project documentation; and (iv) staffing resources analysis. This approach is consistent with the requirements of a review; a full-fledged evaluation (such as the one to follow in 2015–2016) would also call for field visits and validation of the PCRs for a larger set of projects completed since SPS.

ADB's support for strengthening CSS and promoting their use in ADB projects was investigated through a desk review of all 15 TA projects (for \$26 million) focusing on CSS and safeguards more widely, interviews with staff involved in capacity development, and safeguard capacity assessments. Short country visits were undertaken to People's Republic of China (PRC), Indonesia, Sri Lanka, and Viet Nam.

The review of safeguard implementation in FI projects was based largely on documentation analysis relating to safeguards for all 40 FI projects approved in the first 3 years of the SPS (2010–2012), comparing them with the situation of all 26 FI projects approved in the 3 years preceding SPS adoption (2007–2009). Complementary interviews were held with ADB staff and short visits made in 2013 to 10 FI projects in the PRC, India, Indonesia, the Philippines, Sri Lanka, and Viet Nam. Safeguard monitoring reports were reviewed for all 14 FI projects that submitted such reports.

Review of the Portfolio, 2007–2013

Taking into account those projects categorized as FI for safeguards, the percentage of projects with environmental-safeguard-related risk grew from 73% to 82% following adoption of the SPS. Involuntary resettlement category A or B also grew, but more modestly from 47% to 51%. Interestingly, the percentage of Indigenous Peoples category A or B projects fell from 32% to 16%. The review concludes that the main reason for the growing proportion of projects with environmental and social risks is changes in the country, sector, and urban–rural composition of the portfolio.

The years immediately following the adoption of the SPS (2010–2012) saw a somewhat smaller share of category A projects (15% versus 18% in 2007–2009). The share of category B projects increased (55% versus 39%) over the same period. A review of projects approved under the SPS indicates that factors after Board approval, such as detailed design, did not change the safeguard risk categorization for the large majority of projects. The few changes that did take place either involved downgrading projects from category A or B to category B or C or upgrading them from category B or C to category A or B. This increases the confidence that projects are not under-categorized at the project preparation stage.

However, there is a need for ADB to scrutinize the large share of category B, given the wide range of potential impacts anticipated—sometimes minor—and the volume of work that is mandated through initial environmental examinations (IEEs). Some of these IEEs could make use of framework-like approaches for light cases and more guidance on this could be useful. Appropriate scrutiny is also needed taking into account that category B projects are no longer independently reviewed in detail and endorsed by the central safeguards unit in ADB, as their preparation and due diligence has been delegated fully to operations departments since 2010.

It is too early to assess the outcomes of SPS procedures and practices for the vast majority of projects approved under the SPS. Although over 80% of all projects approved since 2010 have a safeguard classification of either A, B, or FI for any one or more of the three safeguard areas, only 4% had construction works contracts with 40% or greater disbursement as of April 2014. This will present a challenge for IED’s planned evaluation of the SPS’ effectiveness scheduled to take place in 2015–2016.

ADB’s recent PCRs were mainly positive about the results of safeguard compliance in category A projects approved pre-SPS, although 15% reported unsatisfactory results on some types of mitigation measures during implementation or even at completion. It was also encouraging that 75%–80% of these PCRs had one or more appendixes on safeguard implementation. But given their variable quality, this review suggests that ADB should spend more effort on such reports and ensure they follow the Operations Manual guidelines.

Progress of Safeguards Delivery under the Safeguard Policy Statement

The review found that ADB has taken a number of meaningful measures to ensure the effective delivery of safeguards in general and of the SPS in particular. Processing procedures and demarcation of responsibilities between ADB and its clients are now clearer than before. Most projects are also receiving more support for safeguard implementation, due to the recruitment and strategic deployment of 42 new environment and social development specialists following the adoption of the SPS, bringing the total to 107 positions. This development, mandated to a large extent by

SPS specifications, was helped by ADB's Fifth General Capital Increase (GCI V), which led to an increase in ADB's administrative budget. The growth in safeguard staff also coincided with a large increase in the volume of project approvals – connected with the same GCI V – so the net positive effect of support per project is moderate.

Operations departments have further developed innovative arrangements and tools to support SPS implementation, including for the preparation of safeguard delivery for category B projects. Many of the staff interviewed stated that ADB takes safeguards more seriously than in the past. Meanwhile, this review assesses the cost of specialist staff for addressing safeguard risk to be modest and justified when compared with the potentially very large cost (that is likely avoided) of significant environmental and social damage.

Overall, good progress has been made. ADB's systems in place have considerable merit, and important efforts have been made to follow procedures relating to the SPS. This experience provides valuable lessons in the application of safeguards by multilateral development banks.

At the same time, financing large-scale infrastructure projects on the one hand and ensuring that potentially adverse environmental and social impacts associated with their implementation are either avoided or appropriately mitigated on the other, remains challenging, even with the approval of the SPS and the increase in ADB's capacity. There are five areas where important improvements need to be made along the path from procedural compliance to the realization of positive safeguard results.

- (1) *Improving the quality of safeguards processing for category B projects.* Internal ADB reviews of safeguards documentation for a sample of category B projects were studied for this review and this corroborated the existence of several quality or best practice gaps at Board approval stage. These included omissions or insufficient detail with respect to the identification of key potential impacts, the specification of appropriate mitigation measures, and the allocation of sufficient budget to ensure sound implementation of such measures. While the category B projects may have been in procedural compliance, as has been reported annually by the Chief Compliance Officer to the President, the findings on the above-mentioned gaps were corroborated by many safeguard specialists during meetings. It is unclear whether staff and executing agencies were able to address such quality and best practice issues after the project's approval.
- (2) *Ensuring monitoring and supervision that is both sufficiently frequent and commensurate with the level of risk.* Currently, there is no guidance on *specific* minimum requirements for the intensity of ADB-led safeguard supervision, except that it should be commensurate with the project's risks and impacts. Given that at project approval the detailed project design has often yet to take place, this could be seen as sensible. But project team leader responses to a questionnaire reported ADB-led field supervision of safeguard delivery during project implementation as being infrequent for many projects. The questionnaire found that safeguard specialist support tended to be more limited in (i) implementation than in processing for environmental safeguards (particularly category A) and in (ii) processing than in implementation for social safeguards. For the environmental safeguards in particular, it is clear that ADB has not balanced its front-loaded approach better with the needed supervision, as is called for by the SPS.

- (3) *Improving the quality and focus of safeguards monitoring reports and updated plans.* Project team leaders reported that the safeguard specialists supporting their projects spend, on average, about half of their time on the project reviewing and commenting on updated plans and monitoring reports produced primarily by consultants. Several of the interviewed safeguard specialists suggested that the primary reason for this was that this documentation is often of poor quality (a lack of good guidance documents may play a role here). Significant time is, therefore, needed to both decipher what has been written and work with these consultants to make the required improvements prior to posting on ADB's website (which is mandatory upon receipt).
- (4) *Making projects more ready for safeguard plan implementation.* In practice, significant safeguard-related work done before Board approval often needs to be re-done or further elaborated during implementation. Concerns have also been voiced about insufficient time for consultation with stakeholders in some cases, and the assurance of government ownership of the safeguard measures. The reasons for the problem are (i) ADB's streamlined business process which focuses on quick approvals to serve client needs, and (ii) lack of ADB or client resources to finance detailed design before Board approval. Both factors lead many projects to postponing their detailed design until after Board approval. The needed work later, particularly for social safeguards, can result in lengthy project implementation delays. Several interviewees stated that the adherence to this business model may facilitate quick loan approvals, but can lead to insufficient project readiness and insufficiently detailed safeguard measures.
- (5) *Ensuring the timely disclosure of environmental and social monitoring reports.* While improvements have been made in recent years, the timely disclosure of environmental social and monitoring reports was found to be problematic for a large number of projects, on account of the need to improve the report quality prior to disclosure.

Strengthening and Use of Country Safeguard Systems

The use of country safeguard systems (CSS) in donor-assisted development projects was promoted and even mandated as default option by the 2005 Paris Declaration on Aid Effectiveness and the 2008 Accra Agenda for Action. The SPS stipulates that ADB needs to ascertain whether environmental and social regulatory systems of borrowing countries meet ADB's safeguard requirements. The focus is on assessing the *equivalence* and *acceptability* of the CSS in question; this can be done for the country as a whole, for one or more sectors, areas, or for individual government agencies. The assessment of equivalence checks the congruence between ADB's safeguard policy requirements and local laws and regulations, while the assessment of acceptability establishes whether the borrower has the capacity to implement its own regulatory framework. The approach also aims to enable the identification of actions to strengthen the CSS, should this be needed.

ADB has done much work on *strengthening elements of CSS* over the years through dedicated TA, for instance by preparing draft legislation or by improving capacity. It has also worked on preparing for the *use of CSS in ADB funded projects*, mainly through a corporate priority TA directed at equivalence and acceptability assessments.

The outcomes of the TA focused on strengthening CSS are emerging slowly and are becoming more tangible over the years. Social and environmental-safeguard-related

legislation is gradually aligning with international good practices in Bangladesh, Cambodia, Mongolia, Nepal, the Philippines, Solomon Islands, Sri Lanka, Timor-Leste, and Viet Nam. Relevant domestic legislation now applies to all projects in all sectors, regardless of whether they are assisted by ADB or not. Nevertheless, gaps with ADB's standards have remained, even in environmental safeguards, where national standards have been relatively closer to ADB requirements.

TA projects to assess the equivalence and acceptability of CSS have so far led to one request, from Indonesia, to use CSS in ADB-supported projects. The July 2013 application was to use CSS in ADB funded infrastructure projects. ADB is now organizing assessments for their equivalence and acceptability through assigned TA.

This review appreciates the merits of a nationwide approach as opposed to a project-specific approach such as has been favored by the World Bank, and it also acknowledges the long-term nature of CSS work. However, ADB could have promoted the equivalence and acceptability assessments more actively and made country safeguard reviews a fixed part of the preparation of each new CPS. This would have been useful particularly given that (i) capacity building of CSS is one of ADB's three safeguard objectives, and (ii) the SPS calls for a more strategic approach to strengthen and use CSS more systematically.

Improving CSS is key to more sustainable environmental and social project results; a country- and agency- wide approach is crucial. However, the approach taken relied mainly on the approval of some TAs, and the more systematic and phased approach is emerging only recently, with efforts now being made to map the equivalence of country systems Asia wide. Still, operations departments are not in the driving seat, and the CPS preparation and consultation process is not mobilized for such efforts.

Safeguard Implementation in Financial Intermediary Projects

All 40 FI projects approved from 2010 to 2012 were reviewed to determine the due diligence exercised by ADB and FIs. The quality of the ESMSs and ESSFs in place at the FIs to avoid or minimize and mitigate adverse project impacts was also examined. To assess the changes following the adoption of the SPS, these projects were compared with all 26 FI projects approved from 2007 to 2009 which had EMSs.

The review concluded overall that ADB has made progress under the SPS with the implementation of safeguards by FIs, while it indicates several areas for improvement. Based on a review of reports and recommendations of the President (RRPs) and their linked documents, the review concluded that the depth of ADB's due diligence was not clear as it was at times not well summarized with respect to (i) assessing potential environmental and social impacts of the FI's portfolio and (ii) the FI's safeguard implementation capacity. Based on a study of ESMSs, the review concluded that FIs were generally appropriately committed to assessing whether subprojects adhered to SPS requirements as well as national laws and rules, and whether the subproject would pursue activities prohibited as per an ADB list. Further improvements could, however, be made. ESMSs were reviewed in five ways, with regard to the presence of discussions on (i) the environmental and social policy statement; (ii) screening, categorization, and review; (iii) organization structure and staffing; (iv) training requirements; and (v) performance monitoring and reporting. FI training requirements and monitoring and reporting were new areas in the ESMS as compared with the EMS.

Over half of the ESMSs reviewed could improve in their descriptions and prescriptions of the screening and categorization procedures under the SPS. This is the first and most important step in subproject safeguard processing, given that the outcome of the screening and categorization process sets the trajectory for all other safeguard activities. These include the analytical depth of the safeguard analysis, the detail of safeguard documentation review, and the intensity of monitoring and reporting.

The review found that the documents signed by ADB and FIs contained good coverage of the environment and social conditions of subproject areas. More than half of ESMSs paid too little attention to the organizational structure and staffing arrangements for safeguards. Loan and project agreements generally did better in their reflection of the safeguard agreements. Most agreements had appropriate safeguard covenants, but a quarter of those reviewed did not specify the need for annual safeguard monitoring reports to be submitted to ADB. This could be improved.

It was found that the private sector operations department does not have a practice to actively monitor safeguard implementation by FI projects in the field (except for category A subprojects), but relies mainly on FI monitoring reports, which come reasonably regularly. Nevertheless, the department could do more, because the quality of the FI safeguard monitoring reports is rather variable. The review deemed over half of the reports studied not satisfactory with regard to two or more of the standard elements that should be reported well.

ADB field monitoring of public sector FI safeguard implementation was found to be of better quality, and also the quality of the FI safeguards monitoring reports was better, probably in part due to the effects of project preparatory TA (private sector projects do not benefit from this facility). The review found that not all public sector FI safeguard monitoring reports were uploaded to the ADB website and that none of the private sector FI reports had been uploaded, not even in a redacted form. Confidentiality may be a concern, but ADB needs to clarify how the absence of any public reporting squares with both the SPS (which mandates uploading to the ADB website on receipt), and ADB's Public Communications Policy.

Recommendations

Given its limited scope, this review's five recommendations are directional and they will be followed up in the next evaluation of the effectiveness of the SPS. This next, fuller evaluation of safeguards will have a greater focus on field verification of the results of the safeguard measures, particularly for category A investment projects, and to a lesser extent also some types of category B projects and some FI projects. The findings and recommendations here could be useful inputs for the World Bank's safeguards update process, which in turn could influence the fuller evaluation at ADB.

Some of the design and implementation issues are connected with ADB's business model, which leads to problems with the depth and efficiency of the preparation process for safeguard measures. This review refers to ongoing actions as part of the ADB Action Plan on the 2014 Medium-Term Review of Strategy 2020, on the use of safeguard staff for smaller country offices, and on project implementation readiness. But a more substantial potential recommendation as to adjusting the business process would need to wait for the next evaluation on the subject.

- 1. ADB's work on the design of safeguard measures and their quality control for category B investment projects and category FI for FI projects is adequate from a procedural compliance perspective but needs to (for higher risk projects) improve in quality, and become more efficient.**

In regular investment projects, whether public or private sector, more attention needs to be given to projects with potentially more substantial or unknown risks at approval stage. Others with modest risks could benefit from standard or framework-like approaches. Quickly identifying these cases and giving some further guidance on this would be helpful, as a large number of projects are currently in environmental category B.

This review suggests that operations departments should pay close attention to having the category B projects peer reviewed well within their departments and perhaps outside, as some quality problems have surfaced that could lead to problems later. This applies especially to the more substantial or unknown risk projects. Institutional arrangements may need to be further worked out.

ADB staff needs further training in biodiversity conservation safeguards, greenhouse gas emission quantification and a diverse range of other safeguard areas. There is a lot of variation in the quality of outputs on safeguard consultants, and better performance evaluation of such consultants and creating a pool of accredited safeguard consultants would help.

ADB should review the training required for FI safeguard staff in more detail and should work with FIs to include more information on training in the ESMS. FI training in ESMS procedures and documentation should be an element of ADB safeguard supervision. Operations departments need to improve their review of the capacity of FIs to apply the subloan screening checklists and prohibited investment activities list, and on how they are applied in the course of project implementation, in the absence of a periodic reporting requirement.

Lastly, many FI projects are expected to have only category C subprojects or subloans; hence they are not required to have ESMSs. Some FIs are engaged in providing many hundreds or thousands of subloans to micro, small and medium-sized enterprises, some of which (e.g., tanneries and paint shops) may have environmental impacts. Pollution control and occupational health and safety issues relevant to small clients of the FIs need to be watched, but are unlikely to receive the proper attention if the project as a whole is treated as category C. Capacity to implement the prohibited investment activities list, with its attention on core labor standards and many other safety aspects, also needs to be ensured even for category C subprojects.

- 2. ADB supervision of the implementation of safeguard measures and/or plans by executing agencies should improve, in line with the intention of the SPS that ADB should move away from a frontloaded approach.**

Operations departments need to review the frequency of safeguard missions, particularly for category A investment projects, as for some projects it seems low (particularly environmental category A projects). Whether this has adverse consequences could not be verified without field missions, which this review has not carried out.

The private sector operations department has to integrate reviews of the working of the ESMS during FI project administration missions, and follow up closely on safeguards monitoring reports submitted.

ADB needs to ensure more timely submission of FI safeguard monitoring reports, and the ADB responses to the reports, as their quality is variable.

3. ADB's reporting and disclosure of progress and results of safeguard measures should improve.

Operations departments can improve the safeguard sections of RRP for all category A and B projects by briefly stating the expected minimum frequency of ADB-led safeguards monitoring and supervision missions that will take place during project administration, with specific details documented in their respective project administration manuals. ADB should be clearer about its safeguards reporting requirements and develop specialized reporting guidelines relevant to the different types of projects it commonly finances, with its staff ensuring that these are part of the project administration manual and consultants' terms of reference.

For all completed category A projects, the departments should discuss the safeguard planning, implementation and results in the main text of their project completion report (PCR), supported by one or more appendixes. ADB should consider elaborating the instructions given in the OM FI/OP in its Project Administration Instructions for PCRs. A safeguard discussion also needs to be included in PCRs for category B projects.

Operations departments should intensify current efforts to improve the timely disclosure of environmental and social monitoring reports, with the development of stronger reporting guidelines.

For FI projects, the due diligence as to the portfolio risks and the FI's capacity to address these needs to be better summarized in the RRP. Support for ESMS design for new FIs or FI projects can improve, as many documents studied were not clear about several elements that the SPS indicates as essential. The review acknowledges that the ESMS for long-standing FIs with well-established procedures cannot be fully rewritten or reorganized for ADB purposes.

4. ADB's program to strengthen CSS should continue but the program to promote use of CSS in ADB-supported projects should be made more systematic and phased as was originally intended by the SPS.

ADB needs to continue its useful work to strengthen CSS, particularly in the development of legislation and systems, and build up implementation capacity, mainly through its flexible TA instrument, which can respond to needs and windows of opportunity.

Mapping the equivalence of CSS across Asia should continue and intensify and lead to a second phase in ADB's promotion of the use of CSS in ADB projects. Almost 5 years have passed since the SPS was approved; testing for equivalence and acceptability has been carried out for over 8 years. ADB may wish to take stock, build on its experience so far, put in place a more systematic and iterative process and stick to the concepts of best practice and capacity. It should synthesize the lessons that have been learned and produce an overview. Agencies and sectors that can provide potential support should be identified.

In this second phase, ADB could focus on those agencies with the best track record and countries with suitable agencies could be actively encouraged to ask for the use of CSS. ADB could begin with agencies with good environmental records. After a review, if equivalence and capacity are found to be adequate, the Board of Directors could decide to grant use of the CSS in a project. If successful, the agencies could become the models for the next group, and give other agencies incentives to also upgrade their practices and capacity. Operations departments should also discuss a country safeguard review in one or more areas with the government during the preparation of a country partnership strategy.

Whenever use of country systems in ADB projects is granted for a certain agency in a certain sector, ADB must review the functioning of the safeguard system for that agency as a whole, to check its continuing compliance with the highest safeguard standards. Monitoring of the functioning of the CSS in the particular sector or for the particular agency needs to be regular and include credible and appropriate third-party verification, and full disclosure of results.

Since many development partners have policies promoting the use of country systems, more coordination with them is needed, including on efforts to develop safeguard capacity. This is particularly important for co-financed projects. The recent commitment to the Joint Safeguards Practitioners Community of Practice to prepare a CSS mapping exercise for all countries in the region is welcome, and may be part of the move to a second phase.

5. **ADB needs to explore the adequacy of guidance notes to staff and executing agencies for its many requirements, and to make improvements where needed.**

For investment projects there is a need for more and clearer guidance on the preparation and review of monitoring reports. For FI projects, there is a need for guidance notes for the different categories of such projects, first of all for ADB staff, on the due diligence needed, and its reporting in project documents in a structured and explicit fashion. These guidance notes should also elaborate on the types of FIs and the ESMSs or framework documents needed for them. They should elaborate the supervision needed, both of ESMS performance and of category A subprojects. Guidance notes are also needed for FIs and FI safeguard consultants on ESMS preparation and monitoring of FI safeguard performance. These notes should distinguish between different requirements and details for the major groups of FIs: commercial banks, investment funds, leasing companies, insurance companies, and corporates that invest in subprojects by establishing subsidiary companies or acquiring equity of companies.

Management Response

General Comments

We appreciate the corporate evaluation study (CES) on ADB's Safeguards Policy Statement (SPS). The study shows that overall, ADB has done well in terms of SPS delivery, that "ADB's systems in place have considerable merit", and that "ADB's approach can be viewed as international good practice". The CES submits several recommendations moving forward.

We agree that continued professional development and training among ADB staff and clients, including in the resident missions and executing agencies is an important success factor. Timely disclosure of safeguard monitoring reports is also important. Similarly, we recognize the importance of building capacity among financial intermediaries (FIs), basically to increase their capabilities to manage environment and social risks. Lastly, we acknowledge the need to understand better country safeguard systems, and as needed, to provide the correct help to countries to strengthen these.

The CES faced time and budgetary constraints and most projects approved under the SPS have not yet progressed into the stage where meaningful assessments can be done. Given these limitations, we appreciate the CES treating its five recommendations as directional rather than final. More ideas can be shared during the full evaluation on the effectiveness of the SPS, of which work will begin in 2015. In this regard, we do urge the Independent Evaluation Department (IED) to set aside the right time and resources to do this work. We very much hope that IED will include in the evaluation team experienced safeguards specialists. It would also be extremely helpful to seek the views of ADB's clients, as well as other stakeholders.

Comments on Recommendations

Recommendation (1): *ADB's work on the design of safeguard measures and their quality control for category B investment projects and category FI for FI projects is adequate from a procedural compliance perspective but needs to (for higher risk projects) improve in quality, and become more efficient.* Recommendation 1 also proposes to pay more attention to projects with potentially more risks at approval stage, to tighten up peer review arrangements for category B projects, and to focus more on staff and consultant training, including FI staff, especially on environment and social management systems (ESMS). There is also a call to increase the supervision of FI projects classified as environment category C.

This is a directional recommendation in nature and we agree broadly with it. However, we would like to emphasize that we are already delivering on these fronts. All projects are subjected to a rigorous screening and classification process, beginning at the earliest stages of the cycle. Higher risk projects (category A) are subjected to detailed, multi-stage technical reviews by project teams and RSDD. This due diligence is carried

out before Board approval. For all projects, including category B projects, safeguard assessments and planning involves a detailed scoping of issues so that safeguard plans are prepared in proportion to the nature of risks. We must caution against suggesting changes to the current safeguard classification system, especially in the absence of evidence that this arrangement is not working.

Operations departments have put in place arrangements for the review of safeguard plans that are tailored to their operational needs, portfolio characteristics, and country circumstances. Nevertheless, we agree that the quality of safeguard documentation for category B projects has been variable. In this regard, RSDD will continue to work with all operational departments to ensure that appropriate reviews of category B projects are carried out in all cases. In addition, both teams will continue to execute regular training programs for safeguard specialists, mission leaders and other staff, including consultants. The Environment Community of Practice and the Social Safeguards Network are already active in this area and will continue to hold regular training sessions covering technical and quality issues. Either alone or through joint activities with other MFIs and bilateral agencies, more training and capacity development will be provided to executing agencies and their consultants in this area.

Training FI staff in the implementation of ESMSs is good practice. ADB due diligence in support of FI projects will continue to cover ESMS screening procedures for sub loans. While we agree on the need to build up the capacity of FI safeguards teams, we disagree that there should be closer supervision of FI sub-projects classified as category C. Once the due diligence process has established that the FI will be providing sub-loans only for activities with zero or minimal impacts, such projects can be treated in the same way as all category C projects.

Recommendation (2): *ADB supervision of the implementation of safeguard measures and/or plans by executing agencies should improve, in line with the intention of the SPS that ADB should move away from a front loaded approach.* Recommendation 2 also discusses the frequency of safeguard missions (as does Recommendation 3), the suggestion that PSOD should integrate reviews of the working of the ESMS during FI project administration missions, and to follow up on safeguards monitoring reports submitted by FIs to ensure timely submissions and better quality.

We agree that appropriate supervision of safeguards plans is essential. This work is often supported by supervision consultants, and where relevant by external experts or qualified NGOs. The frequency of ADB supervision missions is addressed in our response to Recommendation 3. With regard to the recommendations on FI projects, we agree it is appropriate to review the ESMS during FI project administration missions, as is already being done by PSOD, and that timely submission of implementation reports should be ensured.

Recommendation (3): *ADBs reporting and disclosure of progress and results of safeguard measures should improve.* Recommendation 3 covers the frequency of safeguard monitoring and supervision missions (as does recommendation 2), clarity in safeguard reporting requirements and disclosure, coverage of safeguards in project completion reports (PCRs), improving the timely disclosure of monitoring reports and the summarization of due diligence of FIs in RRs.

We do not support specifying upfront a given number of project-specific supervision missions in RRP. Projects differ from one another and circumstances can change during the implementation phase. Project teams must undertake as many missions as necessary, first to support safeguard implementation, and secondly, and as required, to put projects back into compliance if they are not so. Being prescriptive with respect to the number of missions does not help. But taking safeguards compliance issues seriously does. OM J1 on loan administration and PAI 6 on project administration already state that review missions should take place at least twice a year and that these should review safeguards implementation.

On the other hand, we agree that safeguard reporting requirements should be clear and consistently included in project administration manuals and consultants' terms of reference. As noted by the CES, efforts have been made to improve the timely disclosure of monitoring reports since the SPS became effective, and further efforts will be made to ensure this.

For the recommendation on PCRs of category A projects, OM Section F1 and PAI 6.07, already state that PCRs of both category A and B projects should provide a general assessment of the project's safeguard related impacts, including number of affected persons, and a general evaluation of the effectiveness of safeguard measures, lessons learned for future projects, and other key information. The status of each covenant is also reported, and the inclusion of a supplementary appendix may complement the summary provided in the main text.

The summaries of FI due diligence presented in RRP are compiled to meet the requirements of OM F1. The summary in the RRP is necessarily succinct, but it is the linked documents that contain more detailed information on the ESMS and the due diligence process.

Recommendation (4): *ADB's program to strengthen CSS should continue but the program to promote use of CSS in ADB-supported projects should be made more systematic and phased as was intended by the SPS.* This recommendation also covers the mapping of CSS equivalence, and provides suggestions to advance CSS work. It suggests that CSS discussions are included in the CPS process. It also recognizes that it is desirable to continue to work closely with other development partners to strengthen CSS.

Further support to strengthen CSS will be subject to DMC demand and the availability of resources. We agree that the mapping of CSS equivalence across Asia and the Pacific could be useful. Regional workshops on CSS have also proven useful for exchanging lessons and experiences. ADB has established the Joint Safeguards Practitioners Community of Practice, with DFAT Australia, JICA, and the World Bank, which provides a platform for coordination across development partners. With regard to the use of CSS in ADB projects, we are bound by the provisions of the SPS. Where SPS criteria are met, then the Board may approve the use of CSS for a particular project. Inclusion of discussions on strengthening and use of CSS in the CPS process would be helpful to ensure that these provisions are understood and acted upon where DMCs so wish.

Recommendation (5): *ADB needs to explore the adequacy of guidance notes to staff and executing agencies for its many requirements, and to make improvements where*

needed. This recommendation focuses on guidance for monitoring reports, and guidance notes on FIs.

This is already being done. A large amount of guidance notes and training materials already exists for FI projects, both from ADB and other MFIs. Consultation on joint training of FIs and guidance material is being pursued through the MFI Working Group on Environment and Social Standards. Additional guidance on the contents of monitoring reports will be circulated, as will links to online material on ESMS.

Chair's Summary: Development Effectiveness Committee

The Development Effectiveness Committee (DEC) discussed the Safeguards Operational Review, which Independent Evaluation Department (IED) conducted in compliance with provisions in the Safeguard Policy Statement (SPS) of 2009. The review reported overall progress on ADB's safeguards delivery, and paid special attention to two new aspects of SPS: (i) new procedures and conditions allowing the use of country safeguard systems (CSS) in ADB projects in certain circumstances, and (ii) new safeguard requirements for financial intermediary (FI) projects. A fuller evaluation of the safeguards' effectiveness, with more attention for results on the ground is envisaged to be completed in 2016.

The safeguard operational review observed, amongst other things: (i) a small decrease in the proportion of category A projects and a larger increase in the share of category B projects over the review period, (ii) improved support for safeguard planning and implementation with the recruitment and strategic deployment of an extra 48 additional environment and social development specialists since 2010, (iii) variable quality of the design of safeguard measures particularly in environmental category B projects, (iv) indications of possible insufficient field visits of environmental category A projects, (v) an impressive program of TAs strengthening safeguard systems and capacity in many countries, (vi) a very low uptake of the intention in the 2009 SPS Policy to introduce greater use of CSS in ADB projects, and (vii) improved implementation of safeguards by FIs. Given the limited scope of the review, the nature of IED's recommendations were directional rather than final, such as the need to: (i) improve design and quality control of safeguard measures for category B investment projects and category FI for FI projects, (ii) enhance ADB supervision over implementation of safeguard measures by executing agencies, (iii) improve reporting and disclosure of progress and results of safeguard measures, (iv) present a plan for the use of CSS in ADB-supported projects, and (v) explore the need for issuing guidance notes for staff and executing agencies on FI implementation.

DEC took note that there is adequate staff in ADB to undertake safeguards work, that systems are largely being followed, and that the TA on strengthening CSS was beginning to deliver tangible results. However, DEC members noted that the current approach of undertaking equivalency assessments has not worked well as many countries seem to find it easier to follow SPS in ADB projects than fulfill all the requirements to allow them to apply for the full use of CSS in the projects. Staff added that developing member countries (DMCs) may view the needed assessments as intrusive. While supportive of strengthening country systems, a DEC member was questioning the effectiveness of undertaking a comprehensive gap analysis across DMCs, since these systems evolve and change as new rules and policies are enacted. He

felt that efforts should be intensified in: (i) building capacity in sectors and government agencies, including multitranche financing facility clients, and/or (ii) addressing safeguards systems and capacity building needs at the country partnership strategy stage. DEC members shared staff's view that the use of CSS should be selective and demand-driven, taking into account costs and country capacity. IED responded that if the SPS section on the use of CSS was to be entirely on standby demand basis then this might require ultimately a revision of SPS.

The DEC Chair welcomed the new requirements under the SPS (e.g., biodiversity conservation, occupational safety and community health and safety, greenhouse gas emissions) but urged staff to also consider whether DMCs can "afford" ADB standards. He cited the importance of striking a balance by not setting the bar too high so as to discourage DMCs to engage with ADB. Citing World Bank figures, a DEC member inquired whether IED had arrived at a cost-benefit estimate of safeguards implementation. IED estimated that safeguards implementation may comprise 5% of the project cost, while noting the difficulty in obtaining accurate data on time spent for dedicated safeguards work. Benefits were difficult to estimate in many cases but particularly environmental benefits could be considerable. A DEC member was of the view that while implementing safeguards constitutes additional staff costs, anticipating and mitigating externalities ultimately results in better projects that positively impact communities. He supported the strengthening of the implementation of SPS, particularly on carbon emissions and core labor standards.

DEC members acknowledged that safeguards work is labor intensive and noted the report's observation that half of staff's work on a project is spent reviewing documents and reports rather than devoting time in the field for monitoring and supervision. In this regard, a DEC member asked if the volume of safeguards documents could be rationalized. The DEC Chair was also of the view that more staff should be deployed in the field to help DMCs build capacity. IED underscored the need for additional staff training on biodiversity and occupational health and safety. Staff responded that safeguards work is an iterative process and agreed that the best way to address the quality issue is through staff training and capacity development among executing agencies and consultants. While staff acknowledged that the quality of category B safeguard plans varies, they did not see a need to establish another layer of peer review since plans are reviewed by operational departments and RSDD. Staff added that safeguard plans are prepared to a level of detail commensurate to the nature of the project and its likely impact and risks both on the environment and affected communities.

Despite recent improvements, DEC members noted that the disclosure of safeguard monitoring reports remains inadequate. One DEC member expressed disappointment that disclosure has not reached 100%, and another DEC member inquired why PSOD hasn't uploaded FI monitoring reports in the website. Staff responded that they are working with operations departments to fulfill disclosure requirements. In regard to FI reports, staff shared that FIs submit an annual report on environment and social management systems (ESMS) implementation to ADB, but that the SPS and the Public Communications Policy do not prescribe disclosure of ESMS implementation reports for individual projects, whether private or public sector. Staff added that category A sub loans should be disclosed, but since PSOD has not had any such cases, the provision has yet to be applied. Staff also cited that the SPS is clear on which documents need to be disclosed and that FIs are unlikely to provide information about how they operate internally, further adding that this is not industry practice. The Managing Director General assured DEC that management will do its best to overcome structural issues

affecting timely disclosure, if any. IED maintained that by excluding ESMS implementation reports from disclosure there is little information available to the public on safeguard issues related to private sector FI projects. IED asked for clarification of the disclosure rules surrounding ESMS implementation reports¹.

DEC noted the report's recommendations to improve supervision and monitoring of safeguards implementation, but was of the view that IED's findings were not conclusive. A DEC member cited the comparison between a similar report on the World Bank and asked IED why its report used more stringent criteria focusing on ADB-led supervision, when some review missions are also undertaken by consultants or third party auditors. Staff disagreed with IED's recommendation to include the frequency of project specific supervision missions in RRP, stating that there is sufficient guidance in the operations manual, and as part of regular implementation review missions are mandated to look at safeguard issues. Staff asserted that the number of loan review missions is within the range of the target and they prefer to maintain flexibility on the number of missions needed to either support safeguards implementation or implement corrective action if projects are non-compliant. A DEC member shared the same view, stating that the frequency of missions should be determined by management and that the imperatives of zero budget growth may impact the frequency of business trips.

Responding to the report's recommendation to improve quality control and efficiency for category B investment projects and category FI for FI projects, staff assured DEC that such projects are prepared in accordance with the SPS policy and subjected to quality at entry assessments (validated by subject matter specialists). While classification may change over time during implementation, the Managing Director General assured DEC that staff gives close attention to safeguards, because non-compliance may cause further project delays. Staff cautioned against changing the classification system in the absence of evidence suggesting that it is inadequate or lacking.

Regarding FI due diligence, a DEC member inquired if the IFC's model is better suited to private sector operations and if so, would ADB likely adopt a similar model. Staff shared that requirements across multilateral development banks are harmonized and differ only on the delivery schedule. IFC is perceived as more flexible in the sense that they implement a corrective action plan to bring clients in compliance over time. In ADB's case, requirements are front loaded and should be complied with prior to approval. Staff also maintained that adequate resources have been allocated for due diligence, including staff training, and reported improvements in the linked documents in recently prepared RRP. Staff underscored that category C classified projects have benign safeguard implications, and should not require extraordinary supervision arrangements.

¹ ADB's Safeguard Policy Statement (SPS) specifies which safeguard documents and reports should be disclosed on ADB website and when such disclosure should take place. As relate to environment safeguards, these documents are the following: draft full EIA [120-day], final EIA/IEE, a new or updated EIA/IEE, corrective action plan, and the environmental monitoring reports. For social safeguards, it is mandatory to disclose draft RP/RF/IPP/IPPF, final RP/IPP, new or updated RP/IPP, and corrective action plan and monitoring reports. As such, the SPS requires neither the ESMS nor the subsequent report on implementation of ESMS to be disclosed on ADB website.

ADB's Public Communication Policy (PCP) has provisions for disclosure of Project Safeguard Documents in Chapter 6, paragraphs 49-55, which disclosure details follow consistently the disclosure provisions prescribed in the SPS. Such provisions only reveal and confirm that neither SPS nor PCP requires the disclosure of the ESMS or the subsequent report on the implementation of ESMS.

There was discussion regarding the timing of the full review of the SPS. Staff representatives posited that the SPS may have prescribed a minimum of five years before a full review takes place, but that the actual review itself need not take place on the fifth year of the policy's effectivity. The DEC Chair agreed with the staff's view that IED should consider whether the sample of operations approved after SPS' adoption is sufficiently mature and allows observation of project outcomes on the ground. The DEC Chair mentioned that IED's work program could be adjusted accordingly if needed. DEC would conduct some further consultation on this.

CHAPTER 1

Introduction

1. The Asian Development Bank (ADB) is institutionally committed to safeguard against potentially adverse impacts of ADB-supported projects on people and the environment and to ensure they are avoided or, if that is not possible, appropriately minimized and mitigated. It further seeks to build safeguard capability of its borrowers and clients. This is reflected in ADB's three overarching safeguard objectives:

- (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 their capacity to manage environmental and social risks.¹

2. The rationale for the important role safeguards play in investments—in developed and developing countries alike—is basic. Investors do not automatically address the collateral damages of their actions that spill over and hurt others. Water pollution from an industrial plant or displacement of homes from a hydropower facility represents public harm arising from a business activity. The multilateral development banks (MDBs) have long used safeguards against such damage as conditions for loans and guarantees they provide.

3. ADB has had safeguard policies in place since the mid-1990s. The first was the Involuntary Resettlement Policy (1995),² which was later followed by the Policy on Indigenous Peoples (1998),³ and the Environment Policy (2002).⁴ In July 2009, following several years of internal and external consultations, these three policies were combined and superseded by ADB's Safeguard Policy Statement (SPS) (footnote 1). While the ADB Board of Directors (hereafter the Board) approved this new consolidated policy, it wanted reassurance that it would prove more effective than the policies that had previously been in place. Consequently, para. 82 of the SPS mandated ADB's Independent Evaluation Department (IED) to review the SPS's effectiveness in achieving ADB's safeguard objectives 5 years after its effective date (20 January 2010).

4. It further stated that an operational review would take place after 3 years, with a particular emphasis on assessing: (i) progress on the use of country safeguard systems (CSS) and effectiveness of CSS; and (ii) implementation of safeguard requirements for financial intermediary (FI) projects, and the effectiveness of such requirements. Taking into account the recommendations of the 3-year review and the views of Board's Development Effectiveness Committee, Management would then

ADB is committed to safeguard against potentially adverse impacts of ADB-supported projects

ADB has had safeguard policies in place since the mid-1990s

¹ Asian Development Bank (ADB). 2009. *Safeguard Policy Statement*. Manila.

² ADB. 1995. *Involuntary Resettlement Policy*. Manila.

³ ADB. 1998. *Policy on Indigenous Peoples*. Manila.

⁴ ADB. 2002. *Environment Policy*. Manila.

submit a paper to the Board on the application of CSS and the implementation of safeguard requirements for FI projects for Board approval.

5. In another development, the Asian Development Fund's (ADF) shareholders requested that IED evaluate safeguard implementation, as part of the preparation for the ADF XI Midterm Review Meeting to be held in November 2014. Given this and to avoid a duplication of effort, IED initially planned to undertake the more comprehensive evaluation of the SPS's effectiveness 1 year ahead of schedule, i.e., in 2014, thereby, enabling it to meet the needs of both ADF's shareholders and ADB's Board simultaneously. However, following discussions between IED and ADB Management early in 2014, it was decided that the preferred option would be to expand the operational review's scope to also cover broader issues pertaining to safeguard implementation under the SPS and to carry out the fuller evaluation of the SPS's effectiveness in 2015 (with delivery of the report in 2016).

6. The expanded scope resulting from the ADF shareholders' request increases the relevance and usefulness of this review's coverage of more general issues pertaining to SPS implementation on the one hand and its more specific focus on safeguard delivery in FI projects and the strengthening of CSS on the other. In particular, it enables ADB's internal and external stakeholders to assess the extent to which the organization's efforts are likely to be on the right track towards achieving positive safeguard results in general. This would enable corrective measures to be undertaken, if necessary, to strengthen the SPS's overall implementation and, in turn, its ultimate effectiveness. At the same time, this operational review's scope remains to probe more deeply into the earlier CSS and FI safeguard implementation issues that were of a particular concern at the time of the policy's adoption. The next two sections give some background on these two issues.

Special attention will be paid to changes made since the SPS

7. While assessing safeguard delivery more broadly, special attention will be paid to changes made since the SPS, notably the increase in staffing, the associated attempt to shift the balance from safeguard planning to implementation, and the delegation to operations departments of the responsibility for reporting on the status of safeguard planning for category B projects to Management before Board consideration of the project. This operational review does not seek to assess the SPS's overall relevance and effectiveness. That will be done by the fuller evaluation of the SPS's effectiveness in 2015. As such, policy concerns such as those relating to human rights, core labor standards (issues for ADB's social strategy), and climate change (save for greenhouse gas emissions covered by the SPS) are not covered here. Nor does this review directly address the consultation started by the World Bank in July 2014 for its proposed Environmental and Social Framework and the associated debate on the merits of standards versus requirements. However, in the areas it covers, ADB's approach can be viewed as international good practice.

A. Strengthening and Use of Country Safeguard Systems

8. CSS is a construct introduced by the World Bank in the early 2000s and later adopted by ADB. Most countries do not have fully integrated systems with the specific purpose of avoiding, mitigating, or compensating for harm to the environment or people as a result or byproduct of investment projects and other development interventions of multilateral development institutions. However, they may have specific laws, regulations and practices which can offer relevant protection. The SPS defines CSS as a country's legal and institutional framework, consisting of its national, subnational,

or sector-based implementing institutions and relevant laws, regulations, rules, and procedures that pertain to safeguard policy areas.

9. A major new element in the SPS was its endorsement of the use of CSS in individual ADB-financed projects, albeit after CSS assessments. The SPS noted that these assessments should pertain to *equivalence* (legal and policy) and *acceptability* (capacity). If identified gaps between the CSS and ADB's safeguard requirements are deemed bridgeable, the country or national agency needs to prepare a time-bound action plan to be approved by ADB. The plan should include remedial measures and capacity building initiatives to ensure compliance with the SPS. The results of the ADB assessments are to be included in the report and recommendation of the President (RRP), along with the proposal to use CSS in the project. Once the Board approves the use of CSS in the project, actions to bridge the gaps between the CSS and the SPS are undertaken during project implementation.

A major new element in the SPS was its endorsement of the use of CSS in individual ADB-financed projects

10. Reviewing the effectiveness of the use of CSS, as required under para. 82 of the SPS would normally entail investigating whether ADB-funded operations using CSS did indeed manage to avoid, minimize and mitigate negative project impacts on people or the environment. However, at the time of the operational review, no approved projects used CSS in this way, and the only country to request the use of CSS in ADB-supported projects was Indonesia (in July 2013).⁵ All ADB-supported projects are obliged to follow ADB's safeguards requirements rather than those of the CSS, although in practice ADB safeguard enforcement often makes use of national legislation.

11. This review's CSS component assesses what ADB has done to test and refine the methodology involved in assessing CSS for their use in ADB projects and to promote the use of CSS. It also explores why only the Government of Indonesia has so far requested the use of CSS. The review was mindful that the SPS stipulated a phased approach: "Use of CSS will include a limited number of developing member countries (DMCs) with a focus on subnational, sector, or agency levels during the first 3 years after this policy becomes effective" (footnote 1).

12. In addition, the CSS component of the review focuses on ADB's third safeguard objective (para. 1), namely the strengthening of borrowers/clients' safeguard systems and their capacity to manage environmental and social risks. This relatively new objective is reviewed mainly by assessing safeguard technical assistance (TA) projects and other activities that were geared to strengthen national safeguard systems from 2010 to 2012 (Appendix 1, Linked Document A, Table 1).

B. Safeguard Implementation by Financial Intermediaries

13. The review assesses the application of safeguard requirements for 66 FI projects (Appendix 1, Linked Document A, Table 2) approved by the ADB Board between 2007 and 2012.⁶ Of these, 26 were approved before the SPS became effective in 2010. Although the primary focus is on the 40 FI projects approved after 2009, it was considered instructive to compare the due diligence before and after the SPS.

The review assesses the application of safeguard requirements for 66 FI projects

⁵ ADB. 2013. *Technical Assistance to Indonesia for Aligning Asian Development Bank and Country Systems for Improved Project Performance*. Manila.

⁶ Some FI projects did not receive a safeguards FI categorization; some were safeguard category C and a few were environmental safeguard category A or B. These were not taken into account (23 were in the public sector, and 43 in the private sector).

14. The review focuses on two new systems that emerged after the SPS's adoption: (i) the environmental and social management system (ESMS) and (ii) the environmental and social safeguard framework (ESSF) for multitranche financing facilities (MFFs) and sector loans handled by FIs. These two systems replace the earlier environmental management system (EMS), adding social risk assessment and expanding the scope of the environmental assessment. In addition, the SPS updated the existing environmental policy, including screening of subprojects against certain prohibited activities. A comparison of the pre- and post-SPS adoption safeguard requirements is presented in Appendix 1, Linked Document B.

15. The review assesses compliance of both EMS and ESMS with ADB's safeguard policy requirements, for all FI projects with an ESMS (20 pre-SPS and 18 post-SPS approval) and 11 FI MFFs or sector loans (5 pre-SPS and 6 post-SPS approval) approved for 2007–2012. Fourteen FI projects with an FI safeguard categorization carried no safeguard risks and no EMS or ESMS was pursued.

16. In addition, the review examined a sample of legal agreements associated with 27 FI projects approved between 2007 and 2012. Lastly, the review assessed the safeguard monitoring reports for all 14 FI projects approved from 2010 to 2012 that submitted such reports.

C. Methodology of the Review

Various evaluative exercises were carried out

17. Various evaluative exercises were carried out under the operational review, as briefly outlined below. More detail is presented in the report's specific chapters.

18. Reviewing the progress of SPS delivery, first involved carrying out exploratory interviews with 15 senior safeguard specialists (primarily from the front offices of their respective departments) and six divisional directors. This was followed by completion of a structured questionnaire by 81 project team leaders responsible for nearly all ADB-supported projects approved under the SPS with environmental and social risks that became effective prior to July 2012. Internal data pertaining to the quality of safeguard plans were also analyzed, particularly for category B projects—with the caveats about their tentative nature and the need to triangulate them with other information—to assess safeguard quality at entry (QAE).

19. Safeguard staffing resources analysis was carried out to assess whether ADB has sufficient numbers of safeguard specialists to ensure safeguard due diligence and to provide appropriate support to project teams and ADB clients. The key findings associated with the above exercises were then reviewed during three focus group discussions with 20 safeguard specialists from various operational divisions and ADB's Environment and Safeguards Division (RSES).

20. The review of ADB's work to strengthen CSS and to use them in ADB-supported projects was based on a review of all TA on CSS, and on safeguards more widely, and interviews with staff involved in capacity development and safeguard capacity assessments. Fifteen meetings on CSS were held with borrower representatives during the field visits to the PRC, Indonesia, Sri Lanka, and Viet Nam for the FI review.

21. The review of safeguard implementation in FI projects was based largely on document analysis related to safeguards for the 66 FI projects mentioned earlier (para. 13). Document analysis was complemented by interviews with ADB staff and short visits to 10 FI projects in the countries with the biggest portfolios of FI projects: the

PRC, India, Indonesia, the Philippines, Sri Lanka, and Viet Nam. Seven public sector FIs were visited, and three private sector FIs. Various practical problems were encountered. The FIs visited were mostly in the capital cities or within a day trip. FI loans were selected that had disbursed against subprojects and would presumably have had experience in implementing their EMS or ESMS. This eliminated a number of more recent FI loans.

D. Structure of the Report

22. To provide context for the three core chapters of the report, Chapter 2 provides a review of how the SPS came about at ADB, and summarizes some of its main differences with the earlier policies, as well as assessments made of it by others. It reviews the SPS action plan and ADB's own assessment of progress made. An analysis of relevant project portfolio developments is presented, to assess whether safeguard risks have increased or decreased over time. This culminates in a brief review, indicating progress recently reported in project completion reports for projects with high risks initiated before the SPS.

23. Chapter 3 reviews the general progress of safeguard implementation under the SPS, paying particular attention to institutional and staffing arrangements and safeguard quality control processes.

24. Chapter 4 reviews efforts undertaken thus far by ADB to strengthen CSS and explores the extent to which the option provided in the SPS for their application in ADB-supported projects has been pursued. The study mainly reviewed TA projects that aimed to (i) develop or apply the methodology for use of CSS, and (ii) strengthen CSS or general safeguard implementation without the explicit purpose of direct use of CSS in ADB projects. The chapter examines how country partnership strategies (CPSs) have addressed the strengthening and use of CSS.

25. Chapter 5 takes a closer look at how effectively safeguards are being assessed for FI projects, with a focus on ADB due diligence, FI due diligence, and the integrity and operation of the FIs' ESMSs. ESSFs were also assessed for eight MFFs and two sector loans implemented by FIs.

26. Chapters 3, 4 and 5 all end with conclusions and issues; however, recommendations are reflected only in the report's executive summary.

*Recommendations
are reflected only
in the report's
executive
summary*

CHAPTER 2

Safeguards after the Adoption of the SPS

27. Like the SPS, the previous safeguard policies subscribed to the principles of avoidance, minimization, or mitigation of adverse environmental and social impacts, and the operational procedures associated for each were laid out in ADB's Operations Manual (OM). The latest iteration of this document, dated September 2006, included three separate sections: Environmental Considerations in ADB Operations (OM F1), Involuntary Resettlement (OM F2), and Indigenous Peoples (OM F3).⁷ The Handbook on Resettlement (1998)⁸ and ADB Environmental Assessment Guidelines (2003)⁹ were also used to support implementation of the requirements of these policies.

A. Adoption of the SPS

In December 2004, ADB Management approved the safeguard policy update

28. In December 2004, ADB Management approved a concept paper to revise these policies through a process referred to as the safeguard policy update (SPU). Several reasons were given to explain the need for the update, including newly emerging environmental and social challenges, changes in international safeguard practice, streamlining procedures and reducing transaction costs, increased attention for country systems, the introduction of new lending modalities and financial instruments, and various lessons associated with the delivery of the three existing policies.

29. The updating process included a large number of internal and external consultations, and involved the ADB Board and staff, governments, civil society organizations, private sector entities, and members of academia. A consultation draft of the new policy was posted on the ADB website in October 2007 and became the target of considerable campaigning on the part of civil social organizations, such as the NGO Forum on ADB. There was a concern, in particular, that efforts were being made to "dilute" the organization's existing safeguard policies, primarily due to borrower pressure for less stringent financing conditions. A second consultative draft was posted in October 2008, followed by a three-day multi-stakeholder consultation event in November of that year. This culminated in the working paper on the SPS—which was, again, extensively reviewed both internally and externally—and finally in the policy paper and, in turn, the SPS itself, approved in June 2009.

The process took four and a half years

30. The process took four and a half years, and also incorporated time set aside for evaluations of the safeguards by the then Operations Evaluation Department of ADB

⁷ ADB. 2006. *Operations Manual*. Sections F1 to F3. Manila.

⁸ ADB. 1998. *Handbook on Resettlement: A Guide to Good Practice*. Manila.

⁹ ADB. 2003. *Environmental Assessment Guidelines*. Manila.

(conducted in 2006–2007¹⁰) and a TA project in 2005¹¹ to develop the methodology for the use of CSS in projects.

31. Partly due to the external pressure described above, ADB did not pursue any change that could be construed as a dilution of the previous safeguard policies. This was despite a number of internal objections, particularly on the application of some requirements to private sector operations. The requirement pertaining to the disclosure of environmental impact assessment (EIA) documentation 120 days prior to management review is perhaps the most controversial example of this (at the International Finance Corporation [IFC] the period was only 60 days). In the end, little of the intent and substance of ADB's three previous safeguard policies was modified. In addition to no dilution and a lot of clarifications and specifications, the updating process introduced a number of additional requirements. This was particularly the case for environmental safeguards. These are elaborated below.

B. What was New in the Safeguard Policy Statement?

32. Under the SPS, responsibilities for safeguard delivery by ADB and its client were more clearly demarcated than in the previous policies. ADB's roles and responsibilities are indicated in paras. 71 and 72 of the SPS and were elaborated in a significantly modified OM section (OM F1) issued on 4 March 2010 that replaced the three earlier sections. OM F1 on internal safeguard procedures delineated the responsibilities and procedures of ADB departments to guide consideration and documentation of safeguard issues and decisions made during the project cycle. Responsibilities for clients, on the other hand, were elaborated in safeguard requirements (SRs) detailed in four appendixes of the SPS itself: SR 1–Environment; SR 2–Involuntary Resettlement; SR 3–Indigenous Peoples; and SR 4–Special Requirements for Different Finance Modalities (which were new modalities or modalities for which requirements had not been clear). The substantive changes introduced in the SPS are well described in a recent paper ADB presented to shareholders of the Asian Development Fund in May 2013.¹²

33. The terminology of the requirements makes it clear that ADB adopted a compliance (“must do”) approach vis-à-vis its clients—an approach justified by the nature of the negative externalities that are being addressed. This differs from the IFC's more aspirational performance standards approach and the World Bank's current safeguard reform proposal,¹³ which also adopts a standards approach, although mixed with elements of a requirements approach. ADB's approach also characterizes itself as flexible, as it sees safeguard delivery as risk-based where the depth of safeguard plans is proportional to the likely potential significance of the impacts, and the level of effort for safeguard due diligence, monitoring and supervision are commensurate with potential risks. The SPS policy principles sometimes express preferred solutions, such as land-based resettlement strategies when affected livelihoods are land based “where possible,” the use of benefit sharing schemes “where possible,” and refer to “meaningful consultation.” The SPS also sanctioned the use of framework approaches.

¹⁰ Operations Evaluation Department (OED). 2006. *Special Evaluation Study: Involuntary Resettlement Safeguards*. Manila: ADB. OED. 2006. *Special Evaluation Study: Environmental Safeguards*. Manila: ADB. OED. 2007. *Special Evaluation Study: Indigenous Peoples Safeguards*. Manila: ADB.

¹¹ ADB. 2010. *Technical Assistance for Strengthening and Use of Country Safeguard Systems*. Manila.

¹² ADB. 2013. *Progress Report on the Asian Development Bank's Safeguard Policy Statement* (April 2013), prepared for the Asian Development Fund Donors Annual Consultation on 2 May 2013 in Delhi, India.

¹³ World Bank. 2014. *Environmental and Social Framework. Setting Standards for Sustainable Development* (first draft for consultation). July 30. Washington, D.C.

34. For environmental safeguards, the SPS introduced explicit policy principles and borrower requirements on biodiversity protection and natural resources management, pollution prevention and abatement, occupational and community health and safety, and physical cultural resources. The old OM section on the environment included only requirements on the environmental assessment process (which were retained) and referred to a handbook for substantive guidance.

35. The SPS further introduced a mitigation hierarchy for biodiversity conservation: no net loss requirements for projects located in or near natural habitats, and more stringent requirements for projects in areas associated with critical habitats and legally protected areas. It also included provisions on quantification of project-related greenhouse gas emissions, evaluation of feasible and cost-effective options to reduce greenhouse gas, and pursuing appropriate options for this. Most of these issues were already examined in EIAs and initial environmental examinations (IEEs) before the SPS, but they were sharpened and brought in to the main policy as borrower requirements.

36. For social safeguards, the scope and triggers were more clearly defined.¹⁴ For instance, additional definitions for meaningful consultations with affected people and other stakeholders were introduced. Particular emphasis was given to gender-inclusive consultation, as well as requirements for all category A and B projects to have a gender-responsive grievance redress mechanism. The requirement for obtaining consent from Indigenous Peoples in particular is now stipulated, in recognition of their unique vulnerabilities.¹⁵ Although this had, in fact, already been included in the 2006 OM, the SPS codified higher standards for livelihood restoration. Rather than simply requiring that displaced people be at least as well-off as they would have been in the absence of the project, requirements were introduced to improve the standards of living of the displaced poor and other vulnerable groups.

ADB's due diligence requirements were more clearly specified

37. In addition, ADB's due diligence requirements were more clearly specified. For instance, ADB is required to confirm that the borrower/client understands the SPS requirements and has the necessary commitment and capacity to address the environmental and social risks of the project in question. ADB also needs to confirm that the role of third parties is appropriately defined in safeguard plans. Moreover, for projects with potentially significant adverse safeguard impacts (environment, IR, and IP), ADB is to confirm that the borrower/client has engaged qualified and experienced external experts or qualified nongovernment organizations (NGOs) to verify safeguard-related monitoring information. Finally, ADB due diligence is required to confirm that consultations with affected people are in line with SPS requirements.

38. An organizational change was the delegation of full responsibility for reporting to Management on the status of category B and category FI project compliance at preparation stage from the Chief Compliance Officer (CCO) to operations departments (OM Section F1/OP of 4 March 2010, para. 23). For all projects, the operations departments (not the CCO) would have to henceforth confirm to Management that all applicable safeguard requirements have been met before Management can approve circulation of the RRP or the Board paper to the Board.

¹⁴ IR safeguards cover physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources and means of livelihoods) as a result of involuntary acquisition of land or involuntary restrictions on land use or on access to legally designated parks and protected areas.

¹⁵ This would happen for in case of (i) commercial development of IP cultural resources and knowledge; (ii) displacement from traditional or customary lands, and (iii) commercial development of natural resources within customary lands being used by IP.

39. Borrower/client due diligence requirements were also more clearly specified: for instance, the borrower/client needs to include the safeguard requirements in bidding documents and civil works contracts in the form of legal agreements. Monitoring and reporting requirements are made more explicit, e.g. ADB requires borrowers/clients to retain qualified and experienced external experts or qualified NGOs to verify monitoring information for projects with significant impacts and risks, use independent advisory panels to monitor project implementation for highly complex and sensitive projects, and submit periodic monitoring reports on safeguard measures as agreed with ADB.

Borrower/client due diligence requirements were also more clearly specified

40. The document introduced more elaborate requirements for safeguards in FI projects, a special subject in this review. A final major change introduced by the SPS concerns another special subject of this review: the articulation of a strategy for strengthening and using CSS in ADB-supported projects.¹⁶

C. External Assessments of the SPS

41. At least two independent assessments have compared the safeguard policies and requirements of the MDBs. ADB did well in both. The Global Environment Facility (GEF) published a review in 2013¹⁷ of the safeguard standards of nine of its partner agencies, ADB included. It was found that ADB's SPS and the relevant procedures meet all of the GEF minimum standards. It was the only one of the nine to do so (the World Bank was not assessed), and hence no action plan was recommended.

Two independent assessments have compared the safeguard policies and requirements of the MDBs

42. The German government also analyzed safeguard frameworks of major MDBs including ADB in 2013, in order to recommend reforms to the World Bank.¹⁸ ADB came out of the review well. The report found that the World Bank's current safeguard framework was more difficult to comprehend and apply than the fully integrated performance standards or requirements used by the IFC, the European Bank of Reconstruction and Development, the African Development Bank, and ADB. It found that the rules regarding supervision and monitoring of projects when using country systems were the same for the World Bank and ADB. Neither relinquished its responsibility for supervision and both adhered to the same rules as when their own systems were used. ADB rules were found to be more explicit and therefore more easily understood and applied. ADB's regular accountability mechanism applied even when a project used CSS. The report found differences in the way the World Bank and ADB interpret and implement their approaches to the use of country systems. While the World Bank is more focused on using country systems, ADB focuses on strengthening country systems before using them.

43. A more critical report about ADB's 2009 policy was written for Oxfam Australia in 2010.¹⁹ It acknowledged strengths, such as the mainstreaming of gender and use of country systems in the safeguards, the requirement for EIAs to evaluate transboundary and cumulative impacts of ADB projects, the acknowledgment of the need for improved standards of living for poor and vulnerable groups, broad community support needed from IP and explicit reference to the United Nations Declaration on the

A more critical report was written for Oxfam Australia in 2010

¹⁶ It is perhaps ironic that the introduction of new requirements in practice often meant a move away from CSS. For instance, all FI projects are to follow ADB requirements. Before SPS, FI equity loans were allowed to follow national laws.

¹⁷ Global Environment Facility. 2013. *Review of GEF Agencies on Environmental and Social Safeguards and Gender Mainstreaming*. Washington, D.C.

¹⁸ J. von Bernstorff and P. Dann. 2013. *Reforming the World Bank's Safeguards, A Comparative Legal Analysis*. Bonn and Eschborn, Germany: GLZ.

¹⁹ J. Rosien. 2010. *Understanding the Asian Development Bank's Safeguards Policy*. Victoria, Australia: Oxfam.

Rights of Indigenous People. However, it found the following shortcomings (several of which are disputed by ADB):

- (i) No explicit provision for amendment or discontinuation of the use of country systems approach “if the findings from the review scheduled for 2013 demonstrate that the country systems lead to non-compliance with the ADB’s safeguard policy provisions.”
- (ii) Acceptance of the borrower/client’s right to not comply with international good practice in pollution prevention in specific project circumstances, without defining these circumstances.
- (iii) Exclusion of people from the policy affected by economic displacement from compensation under the Involuntary Resettlement provisions, if the economic displacement has not been caused directly by land acquisition.²⁰
- (iv) Negotiated agreement with affected people superseding policy provisions.
- (v) Limited protection for affected people without legal title.
- (vi) No consistent integration of the principle of free, prior, informed consent as enshrined in the United Nations Declaration on the Rights of Indigenous People.
- (vii) Limited scope for broad community support, applying only in certain circumstances, rather than for all projects impacting on Indigenous Peoples.
- (viii) Failure to clearly define financial intermediaries, thus allowing for arbitrary application of the requirement for financial intermediaries.

D. SPS Medium-Term Action Plan, 2010–2012

44. ADB incorporated a medium-term action plan (2010–2012) into the SPS to support its implementation. This had four action areas: (i) developing the capacity of borrowers/clients for safeguard delivery, (ii) developing and maintaining the tools and instruments to assist in implementing the Policy, (iii) ensuring ADB’s organizational capacity and resources for policy implementation, and (iv) improving and maintaining ADB’s internal review and compliance monitoring system.

Many activities have been carried out over 2010–2012

45. Although several actions were not given quantitative baselines and/or targets, it is clear that many activities have been carried out over 2010–2012. As mentioned above, ADB’s operational procedures were updated in 2010,²¹ new good safeguard practice sourcebooks were issued in 2012, and numerous training events were carried out for staff, clients, and other development partners. The medium-term action plan was to be followed by another plan, but this has not happened.

46. The action plan stated that ADB was to carry out three to five CSS equivalence and acceptability assessments and gap-filling action plans at the subnational, sector and/or agency levels over 3 years to strengthen the borrower’s/client’s institutional capacity to implement safeguards. An additional output relates to the preparation of guidelines and handbooks to support CSS strengthening processes. While both of these outputs were achieved, the review finds the targets to be very modest, particularly given the ambitious tone of the SPS on the need for a systematic approach to CSS.

²⁰ The SPS does not limit compensation to those who are affected by land acquisition; it says that compensation required for impacts due to land acquisition will be addressed through resettlement plans. For example, there may be livelihood impacts for downstream fishers affected by a hydropower project. The minimization, avoidance, or compensation of livelihood impacts will not be through the resettlement plan because the impacts are not due to land acquisition. Rather, it will be through the environmental management plan.

²¹ ADB. 2010. Safeguard Review Procedures. *Operations Manual F1/OP*. Manila. Updated 1 Oct. 2013.

47. Relevant to this review's assessment of safeguards in FI projects, the action plan did not include requirements for the implementation of the new FI project regulations, most pertinently the rollout of the new ESMS. More general sections relevant for this objective included: (i) safeguard training for the borrower and ADB staff in-country and at ADB headquarters; (ii) client capacity assessment; (iii) disseminating the SPS in different languages; (iv) the provision of implementation advice; (v) the development of handbooks, guidelines and operations manuals; (vi) the delivery of seminars; (vii) recruitment of staff; (viii) disclosure and screening; and (ix) supervision and reporting. These activities have been generally carried out, although this review sees scope for some further training in the FI context.

48. Although there has been no final report on the action plan, Management's positive views on the implementation of the SPS are expressed in both internal and external documents, such as official memorandums of the CCO and a progress report provided to shareholders of the Asian Development Fund in 2013 and available on the ADB website (footnote 12).

49. In these documents, ADB views all projects approved as complying with SPS procedural requirements at the time of Board approval, but flags a few substantive issues, such as the collection of baseline data on biodiversity and developing offset measures to achieve "no net loss" in biodiversity.²² Category A projects are considered to be generally adequately prepared, although some areas needed strengthening, such as alternatives analysis, borrower capacity gap assessments, and indicators. For category B projects (approval of whose safeguard plans was decentralized to operations departments in 2010), the quality of environmental assessments is found to vary and inadequate quantitative data and generic mitigation measures remain concerns, while greenhouse gas emissions reporting needs to be improved.

ADB views all projects approved as complying with SPS procedural requirements at the time of Board approval

50. For resettlement planning, several areas are viewed as in need of strengthening, such as using cost-effective methods to document losses of the affected persons and to support livelihood restoration measures. An ADB database shows that about 250,200 persons were likely to be affected by the 2012 projects, compared with 350,000 in 2010 and 190,000 in 2011.

51. ADB views the disclosure of safeguard documents as satisfactory, although in IED's view there is room for improvement as the policy sets high standards here. ADB viewed disclosure of monitoring reports as improved in 2012, particularly for environmental reports (from 40% in 2011 to 62%). Disclosure of resettlement monitoring reports, on the other hand, increased from 42% to 48%, and only 25% of IP monitoring reports were disclosed, fewer than before, requiring follow up by responsible departments.²³

52. The 2013 Asian Development Fund paper sketches a number of implementation challenges and responses for moving forward, but essentially expresses Management's preliminary view that the SPS is effective, helps to enhance project sustainability and contributes to CSS improvement. The ADF document sees the transition to the SPS period as having been smooth, the internal safeguard review system as stronger and functioning well, the 42 new staff positions created since 2009 as appropriate, demand

²² It seems that particularly for biodiversity conservation, the new requirements have created more work. At least five project proposals were prepared with significant work in this area; one of which was even stopped at a relatively late stage when it was verified that no special arrangement could easily prevent the critical habitat from being affected.

²³ ADB. 2013. *Annual Report on the Implementation of the Public Communications Policy in 2012*. Manila.

from countries for ADB to strengthen CSS as strong, and the activities in the medium-term action plan (2010–2012) for SPS implementation as successful.

E. ADB Accountability Mechanism

53. Another indicator of progress with safeguard implementation is the extent to which safeguard problems have come to a head and complaints have been received from stakeholders. Publicly available reports from the Special Project Facilitator (SPF) and the Compliance Review Panel (CRP) of ADB are instructive here. The SPF focuses on problem solving and finding satisfactory solutions to problems caused by ADB-assisted projects. The CRP investigates alleged noncompliance by ADB with its operational policies and procedures in designing and implementing ADB-financed projects.

54. From 2007 to 2014, the Office of the SPF registered 38 safeguard-related complaints; 15 in the 3 years before 2010 and 23 in the 4.5 years after 2009, the period of the SPS.²⁴ Five of the complaints before 2010 were assessed to be eligible, as were another five in the period from 2010 to 2014. This indicates an overall limited level of potential noncompliance with the SPS, and also that there was perhaps not much change in the level of potential noncompliance after approval of the SPS.²⁵ From a wider angle, the increased number of complaints itself and the careful consideration given to them can be seen as an indication that the accountability mechanism is working well. The eligible complaints involved projects in transport, water supply and sanitation, energy, education, and multisector projects. Five were from the Central and West Asia region, four were from the Southeast Asia region, and one was from the East Asia region. The eligible complaints revolved around resettlement (4), information (2), consultation (1), compensation (2) and land acquisition (1) issues.

55. Since 2007, ADB's CRP has investigated complaints for six projects, mostly after the adoption of the SPS (Table 1). However, all projects were designed before 2010. For several, the complaints were found to be justified and action plans rectifying the situation were put in place. So although this performance is not excellent, the proportion of projects leading to cases remains well below 5%. Nevertheless, the case of Cambodia in particular has been serious, revealing serious lapses in ADB's and the borrower's due diligence in this case. However, limited conclusions can yet be drawn as to safeguard implementation performance under the SPS.

The accountability mechanism is working well

Table 1: Compliance Review Registry of Complaints, 2007–2014

Date Received*	Country	Sector	Project Name (Approval Year)
03-Jun-09	PRC	Water	Fuzhou Environmental Improvement Project (2005)
23-May-11	KGZ	Transport	CAREC Transport Corridor I (Bishkek-Torugart Road) Project 1 (2008)
25-May-11	PHI	Energy	Visayas Base-Load Power Development Project (2009)
30-Jan-12	INO	Multisector	Integrated Citarum Water Resources Management Investment Program - Project 1 (2010; the management review meeting took place in 1999)
28-Aug-12	CAM	Transport	Rehabilitation of the Railway in Cambodia Project (2007) – Supplementary (2012)
17-Oct-13	IND	Energy	Mundra Ultra Mega Power Project (2008)

CAM = Cambodia, CAREC = Central Asia Regional Economic Cooperation, CWRD = Central and West Asia Department, IND = India, INO = Indonesia, KGZ = Kyrgyz Republic, PHI = Philippines, PRC = People's Republic of China.

* With requisite information. Source: <http://compliance.adb.org/dir0035p.nsf/alldocs/BDAO-7XGAWN?OpenDocument>

²⁴ <http://www.adb.org/site/accountability-mechanism/problem-solving-function/complaint-registry-year>

²⁵ ADB views the increase in registered complaints as an indication of the improvement in monitoring and reporting on ADB projects, and also an indication that SPS system is working well.

F. Environmental and Social Risks in ADB-Supported Projects

56. It is pertinent to see whether the risk profile of ADB's portfolio of approved projects has changed since the SPS was introduced. Table 2 shows how ADB classifies projects with environmental and social risks. The SPS confirmed the earlier abolition of the B-sensitive category, and retained ADB's earlier safeguard categorization system, including the institutional arrangement under which the CCO issued a safeguard memorandum establishing the categories for the three safeguard areas and clearing each project presented for board consideration.

57. Although this categorization system is convenient, some concerns remain. In the case of environmental safeguards, there remains scope for interpreting what constitutes a significant impact. The interpretations can be helped by guidelines and standards in handbooks for practitioners, such as what have been issued by IFC or the World Bank. But often, an element of judgment is still required. For instance, a project should not lead to a net reduction in the global and/or national or regional population of any critically endangered or endangered species over a reasonable period of time. The timeframe in which clients must demonstrate "no net reduction" of such species will then be determined *in consultation with external experts*. While it is appropriate that critical experience is built up with the use of such standards in the beginning, the room that remains for interpretation can affect the effectiveness of the process.

58. In the social safeguard domain, ADB retained the 200 affected persons cut-off rule of its previous IR policy, to determine the IR classification for category A or B. Although the SPS says that IR plans are commensurate with the risks, this cut-off remains somewhat arbitrary and simplistic. Should a project that requires 150 people to be resettled from one place to another be given less attention than a project in which 250 people resettled? Finally, Table 2 shows that social impacts—other than those triggered by land acquisition or restrictions on land use—only fall under the SPS SR-1 if the affected people are vulnerable.

The SPS confirmed the earlier abolition of the B-sensitive category

Although this categorization system is convenient, some concerns remain

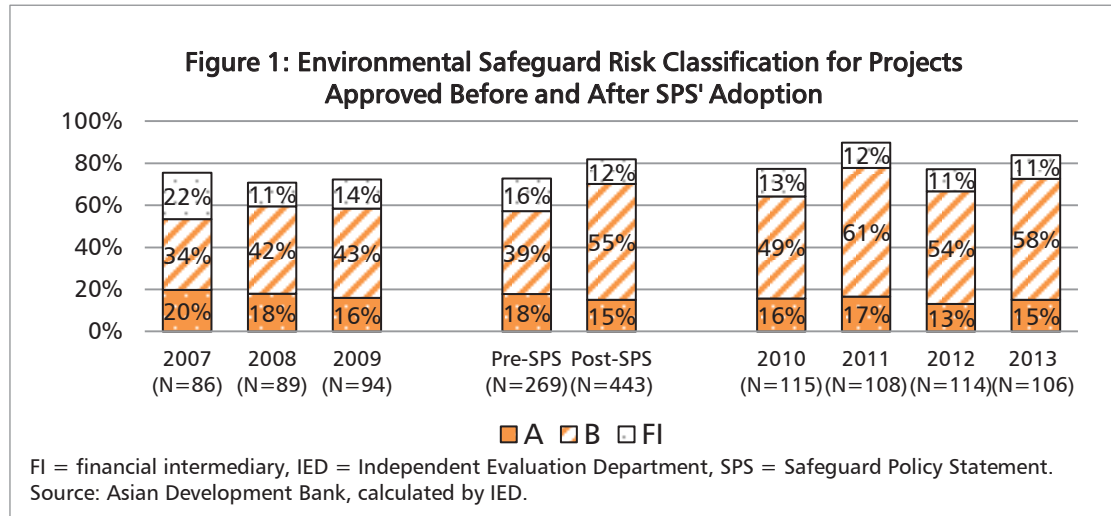
Table 2: Summary of Project Safeguard Risk Categorization System

Class	Environment	Involuntary Resettlement	Indigenous Peoples
A	Likely to generate significant impacts that are irreversible, diverse, or unprecedented.	200 or more people face major impacts, defined as being physically displaced or losing more than 10% of their productive assets, e.g., agricultural land.	Likely to significantly affect the (i) customary rights to land/natural resources, (ii) socioeconomic status, (iii) cultural and communal integrity, (iv) health, education, livelihood, and social security, and/or (v) indigenous knowledge of IP.
B	Potential of generating impacts less significant than category A (impacts are site-specific, likely reversible, and straightforward to mitigate).	People affected as above, but less than 200.	Likely to have limited impacts on IP in ways defined above.
C	Likely to have minimal or no adverse impacts.	No land acquisition or restrictions on land use, so IR related impacts not generated.	No expected impacts on IP.
FI	Involves investment of funds through an FI.	Involves investment of funds through an FI.	Involves investment of funds through an FI.

FI = financial intermediary, IR= involuntary resettlement, IP= Indigenous Peoples.

Source: ADB. 2012. Safeguard Review Procedures. *Operations Manual F1/OP*. Manila.

59. Bearing in mind its inherent limitations, ADB's risk classification system for safeguards can be used in this review to gain insights—albeit crudely—into the current levels of safeguard-related risk associated with ADB's current portfolio of projects and how this has changed in recent years, particularly following the adoption of the SPS. Figure 1 shows how ADB's project portfolio for environmental safeguards has changed from 2007 to 2013 in general and 3 years before and 4 years under SPS in particular (refer to Appendix 1, Linked Document A for more portfolio information).



60. Overall, while the post-SPS period is associated with a slightly lower proportion of category A projects compared to before, there is a significantly higher proportion of category B projects, indicating an increased share of projects classified as carrying some level of environmental risk. By volume of lending, category A is higher at around 25% and this has not reduced from before SPS; lending volume for category B increased from 29% to 48% after SPS adoption (Appendix 1, Linked Document A, Figure 1).

61. Whether the change is a result of increasingly cautious categorization in recent years or denotes a more real change in the type of projects ADB is dealing with is difficult to judge. The latter seems more likely. The bulk of the increase in category B projects for the environment are those in infrastructure, and during the period the number of energy and water projects in particular increased (Appendix 1, Linked Document A, Table 6). A greater share of infrastructure projects (in energy, transport and water) should not normally lead to expect a lower share of category A projects in the whole ADB portfolio. However, a growing proportion of energy projects coupled with a change to more environmentally friendly projects may be one reason. More risk aversion by borrowers or ADB in terms of big environmentally sensitive projects, such as dams which receive an almost automatic category A classification may be another. The review knows of at least one dam project under preparation that was ultimately not financed by ADB due to environmental concerns.

62. With over half of all projects categorized as B for environmental safeguards, consideration may be given to breaking down this category into projects with more risks and those with fewer. However, reinstatement of the "B-sensitive" category that existed before the SPS does not seem a viable option.²⁶ OED's 2006 environmental

²⁶ OM F1 of 25 September 2006 defined category B-sensitive as projects deemed by ADB's CCO to be environmentally sensitive for the purposes of the 120-day rule, and having characteristics such as (i) location near environmentally sensitive areas; (ii) involving deforestation or loss of biodiversity; (iii) involving involuntary resettlement issues; (iv) involving the processing, handling and disposal of toxic

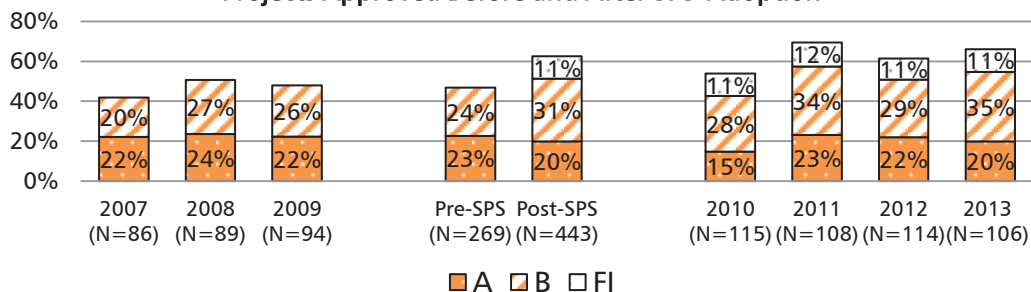
safeguards evaluation (footnote 10) recommended abolishing this category, as it seemed to lead to a tendency to categorize projects as B-sensitive rather than, more appropriately, category A. However, deleting the “B-sensitive” category has not led to more category A projects, in fact there are now fewer rather than more such projects. Meanwhile, during 2007–2009, there was only one case of a project categorized as B-sensitive for the environment (in 2005 there were four cases and in 2006 three).

63. At the other end of the scale, some staff have commented that there are many cases with limited environmental risks, where an IEE is seen as an overkill. Therefore staff should consider clearly distinguishing between category B projects with very limited environmental impacts and projects with potentially adverse impacts requiring a more elaborate IEE; for the former, a more framework-like approach to the IEE could be conceived, while for the latter, the IEE work needs to remain detailed.

64. A question is whether a large number of infrastructure projects initially categorized as B are later converted to A. An investigation of all such cases of change in category after approval between 2007 and 2013 did not confirm this: while one project categorized at approval as B was later converted to category A, and seven category C projects were converted to category B, this did not seem to be a very large number, compared with the total number of projects approved over the period. However, three category A projects were downgraded to B and two projects from B to C (Appendix 1, Linked Document A, Table 5). All these findings point to reasonably reliable environmental risk appraisal, and categorization before Board consideration.

All these findings point to reasonably reliable environmental risk appraisal, and categorization before Board consideration

Figure 2: Involuntary Resettlement Safeguard Risk Classification for Projects Approved Before and After SPS' Adoption



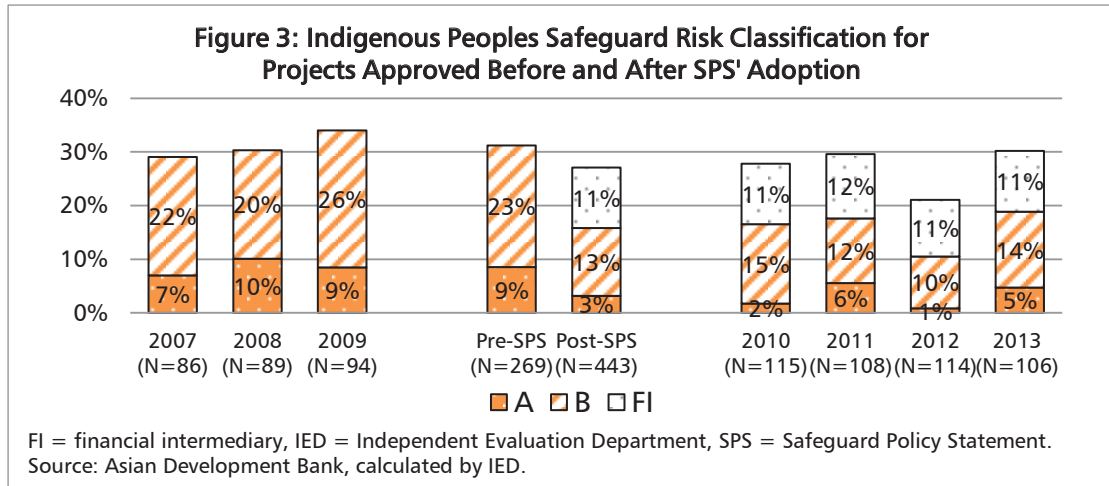
FI = financial intermediary, IED = Independent Evaluation Department, SPS = Safeguard Policy Statement.
Source: Asian Development Bank, calculated by IED.

65. Figures 2 and Figure 3 present the statistics for the IR and IP safeguard areas, respectively. As category FI did not exist in the pre-SPS period for IR and IP, the percentage of FI projects jumps from zero in the pre-SPS period to over 10% under the SPS.²⁷ Category A for IR fell slightly from 23% to 20%, similar to the trend for environmental category A. By volume there was hardly any change (29% and 28%). The main observation is that projects classified as IR category A or B grew slightly from 47% to 51%, while projects classified as IP categories A or B fell significantly from 32% to

and hazardous substances; or (v) involving other environmentally sensitive activities also of concern to a wide group of external stakeholders.

²⁷ The SPS created a new financing modality, “General Corporate Finance,” by which some types of projects that had been categorized as FI have been treated separately in SR-4 (paras. 17–20). This new financing modality has had an impact on the types of FI category projects under the SPS.

16%.²⁸ A memorandum prepared for ADB management states that this drop is primarily due to there being fewer transport projects in the PRC and Southeast Asia, which historically had a large share of the portfolio with potential impacts on IP. A rising share of projects is being implemented in urban areas, where fewer IPs are present (but where IR impacts are more likely). There were also 33% and 50% increases in projects classified as IR and/or IP category B in water and energy, respectively, in 2010–2013. As with environmental safeguards, a check on the reclassification after approval did not indicate serious under or over categorization (Appendix 1, Linked Document A, Table 5), again leading to the conclusion of reasonable project preparation and social risk assessment and categorization work in ADB.



East Asia has the greatest share of category A projects, but this share decreased considerably

66. It is of further interest to see how safeguard-related risk is distributed and has changed among ADB's six operations departments and various financing modalities.²⁹ For environmental safeguards, East Asia has the greatest share of category A projects, but this share decreased considerably following the adoption of the SPS. The Pacific Department's share of such projects dropped from 9% in the pre-SPS period to 0% in the post-SPS adoption period. South Asia increased its share of category B projects by 19%, making it the region that assumed the most additional environment risk under the SPS (Appendix 1, Linked Document A, Figure 2). There was a strategic shift in ADB operations department to focus more on environmentally friendly projects which, in effect, changed the safeguard categories.

A major decrease in IP category A and B projects took place

67. For IR safeguard risk, a similar trend exists for East Asia and the Pacific. East Asia has the highest share of category A projects, but this decreased following the SPS, while the Pacific's small share of category A projects dropped to zero. In addition, while South Asia took on some additional risk, the IR risk was more significant in Central and West Asia. As mentioned, a major decrease in IP category A and B projects took place in the SPS period, probably linked to the growth in urban projects at the expense of rural projects (there are more IP-sensitive issues in rural areas). This was particularly in the regions of the Pacific, South Asia, and—less so—East Asia.

68. In terms of financing modalities, any differences between the period before and after the SPS, are not as big as between the modalities themselves. Project,

²⁸ As with environmental safeguards, there were upgrades and downgrades after approval, but not many. Seven IR category C projects were upgraded to B and one B project to A. Two projects were downgraded from IR category A to B and 4 from A or B to C.

²⁹ Pre-SPS, the Private Sector Operations Department (PSOD) projects were mostly FI for environment and category C for IR and IP.

multitranche financing facility (MFF), and sector loans are associated with the most environmental risk, but there has been a slight drop since the SPS in the number of category A projects associated with each, probably indicating that borrowers are more risk-averse in terms of the projects they offer for financing to ADB and perhaps that ADB itself is also more risk-averse.

69. Unsurprisingly, almost all sector projects (i.e., projects which develop 15–30 subprojects after their approval) are categorized as environment category B. However, many have a stipulation that if a subproject surfaces that requires a category A classification, it should not be entertained (the same applies to social safeguards). This kind of risk aversion may be another reason why the proportion of category A projects has not increased—there was a significant drop in category A sector loans.

70. Private sector loan projects may have experienced most change. The proportion of environmental category A projects increased from 7% pre-SPS to 15% under SPS; category B projects, from 23% to 44%, and category FI projects dropped from 59% to 38%³⁰ (Appendix 1, Linked Document A, Figure 3). But private sector projects still have a limited share in the overall number of projects, so the private sector trend does not change the overall trend.

71. Surprisingly perhaps, MFF tranches have a lower proportion of environmental category A projects than investment projects (15% against 20%). ADB's Board has expressed a concern to IED that there was perhaps a practice that many of the later MFF tranches approved by Management and not by the Board were given a higher risk category, with an intention to understate the risks at Board approval stage. The review looked at all MFFs since 2007 where the first tranche was categorized as B for any of the three policies. There were as many subsequent tranches that were of a higher category as there were tranches of a lower category. Some MFF documents indicated subsequent tranches would have a higher risk category, showing transparency, enabling the Board to take an informed decision.

Private sector loan projects may have experienced most change

MFF tranches have a lower proportion of environmental category A projects than investment projects

G. Implementation Progress of Projects Approved Under SPS

72. Implementation progress made by projects approved in the post-SPS period would enable the effectiveness of the SPS on the ground to be gauged. However, very limited progress of relevance to this review has been made since 2010. From January 2010 to December 2013, ADB approved 443 projects. Of these, 84% were categorized as either A, B or FI in any of the three safeguards areas. The review found that only 19 (4%) of these had civil works contracts with disbursement rates of 40% or more by April 2014 (Appendix 1, Linked document A, Table 13).³¹ When supplementary loans for which the mother loans had been approved prior to the SPS are excluded, the number of projects drops even further to only 12 (3%). The main conclusion, therefore, is that it would be very early to make any observations regarding the effectiveness of safeguards under the SPS at this stage, and this will remain the case even in 2015 and 2016, when the full evaluation of the effectiveness of the SPS is to take place.

Very early to make any observations regarding the effectiveness of safeguards under the SPS at this stage

73. Most of the more mature projects are associated with road construction, apart from an agricultural project in PRC and a water supply project in Azerbaijan. The

³⁰ Overall, the number of FIs slightly decreased. The number of infrastructure projects under FI classification also decreased.

³¹ Even for involuntary resettlement safeguard implementation, which often needs to be completed before the construction phase, the review would be early, as construction contracts are often staggered, while livelihood restoration measures in particular can take a long time to implement.

implementation status of all ADB's ongoing projects was deemed satisfactory by the operations departments at the end of 2013, as per ADB's eOperations system.³² The other common feature across the 12 more advanced projects is that they are all in middle income countries. Many of these are experienced in safeguard enforcement in infrastructure projects such as (particularly) the PRC, but also Bangladesh, India, and Sri Lanka. However, there were no advanced projects in Southeast Asia on the list (e.g., projects in Cambodia, Indonesia, Philippines or Viet Nam) nor in the Pacific. Of the relatively more advanced projects, only two are category A (in the PRC), while all other high-disbursing projects are category B or C. The list has no IP category A projects.

H. Safeguard Results of Pre-SPS Category A Projects

74. Some insights on the types of results generally achieved may be gained from a review of impacts reported by recent project completion reports (PCRs) for category A projects approved before the SPS. While there were some changes post-2009 and more safeguard staff have been mobilized, safeguard results may not transform completely, as the executing agencies will remain the same. All 47 PCRs of projects categorized A issued between 2010 and July 2014 were reviewed with respect to safeguard implementation, and the results are reflected in Table 3.

Positive impacts were reported much more than negative impacts

75. Overall, positive impacts were reported much more than negative impacts, although for four projects (12%) some negative environmental impact was reported or implied, and for six (19%) a negative social impact was reported. These findings have not been independently checked through field observations. IED's own project performance evaluation reports (PPERs) were generally for projects initiated and implemented too long ago to yield relevant findings for this review, which concentrates on recent developments. The few that were done for more recent projects did not report serious impacts that warrant concern.

Table 3: Safeguard Impacts in Recent Project Completion Reports Issued (Category A)

Sector	Projects with Environment Category A - Impact					Projects with IR/IP Category A - Impact				
	1 ^a	2 ^b	3 ^c	4 ^d	Total	1 ^a	2 ^b	3 ^c	4 ^d	Total
Agriculture and Natural Resources				2	2	2			2	4
Energy				2	2				1	1
Multisector				2	2			1	6	7
Transport	2	1	3	14	20	3	4		8	15
Water and Other Municipal Infrastructure and Services			1	6	7			1	4	5
Total	2	1	4	26	33	5	6	21	32	32

IP = indigenous peoples, IR = involuntary resettlement, PCR = project completion report (issued 2010–2014).

^a Environmental/social impact not discussed.

^b Environmental/social safeguards discussed but it is not clear whether anything positive or negative happened.

^c One or more negative environmental/social impacts were reported/implied (and not avoided/mitigated).

^d One or more positive environmental/social impacts were reported/implied as a result of safeguards

Source: 47 PCRs for projects categorized as A for any of the three areas, out of all 293 PCRs circulated from January 2010 to July 2014.

76. Some indication of the types of impacts recorded may be useful to the reader. Of the 33 PCRs reviewed for projects categorized A for environmental safeguards, one for a unsuccessful urban project reported that sewage collected was still being

³² The Development Effectiveness Review in 2013 does not give exact figures, but reports that safeguard dimensions received substantially higher ratings than contract award and disbursement, with 80% of the total ongoing ADB portfolio rated on track.

disposed of untreated in natural drains; similarly, the collected solid waste was disposed of through open dumping, impacting ground water and air quality. A road project reported environmental damage in the initial stages because geological hazards had not been sufficiently mitigated prior to excavation. Slope protection had not been undertaken. The problems were reported as gradually mitigated successfully through proactive measures for safety management and environmental preservation.

77. Another road project reported a negative impact due to insufficiently regular maintenance of ditches, and insufficient prevention of soil erosion and landslides. The PCR of a Tsunami Emergency Assistance Project reported a lack of environment and safety officers; unsound disposal of construction debris and dredged sand and soil; and problematic housekeeping practices at construction sites. A railway PCR reported problems with the quality and timing of restoration of embankments.

78. Of the 32 PCRs reviewed for projects categorized A for social safeguards, one for a project in PRC reported that inadequate time had been available for resettlement implementation; damage had been done to houses; and there had been some interruption in the community water supply, irrigation and drainage systems. One road project in Afghanistan suffered delays in resettlement because it was the first project to implement a land acquisition and resettlement plan and the project unit did not have capacity in this area. Although this was not elaborated, the delay must have caused problems for affected persons, but the PCR mentioned that the situation improved after consultants were appointed. A PCR for a railway project in PRC reported a serious delay in construction at some sites and hence a prolonged transition period for affected households. Another road project had a significantly larger number of people affected by land acquisition than anticipated (they were compensated).

79. The Fuzhou Environmental Improvement Project, which became a compliance review case, involved seven affected households. A court case had affected project implementation and required much higher staff resources both at ADB headquarters and at the resident mission. In 2010, it was decided to readjust the river channel to avoid house demolition of these affected households. In a project in Pakistan, the affected population registered a complaint against unequal assessment of land values and missing data on non-land assets in the resettlement plan. ADB intervened and most of the non-land asset issues were resolved, but the case for unequal land evaluation is still pending in court.

80. These cases do not relate directly to results for projects approved in the post-SPS approval period but they do give an indication of the types of results usually reported. It is commendable that about 80% of the PCRs for environmental category A projects had separate appendixes on safeguard delivery, 77% of PCRs for IR category A projects had an appendix, and 57% of PCRs for IP category A projects had an appendix. Even for 'higher end' category B projects this was usually not found. The use of an appendix to assess the process and the impacts of category A projects could be made mandatory for PCRs and also for category B projects with more substantial risks. Their quality could be improved. In many cases, the appendixes were not very specific as to source of data, and whether a survey had been conducted.

81. This chapter presented some basic information on the SPS, and aspects of categorization and portfolio progress. Chapter 3 further examines aspects of due diligence and reviews further aspects of general progress of SPS implementation.

The use of an appendix to assess the process and the impacts of category A projects could be made mandatory for PCRs

CHAPTER 3

Progress of Safeguards Delivery under the SPS

82. This chapter reviews the extent to which ADB's safeguard efforts under the SPS are likely to be on track towards achieving positive safeguard results in the projects it finances. The content is primarily informed by three evaluative exercises—presented as linked documents—that IED carried out as part of this operational review. These were: (i) the administration of a questionnaire to 81 project team leaders (Appendix 1, Linked Document C); (ii) analysis of ADB safeguards quality at entry (QAE) data; and (iii) an assessment of staff resources to support SPS delivery (Appendix 1, Linked Document D). Additional information was drawn from semi-structured interviews IED conducted with safeguard specialists and divisional directors, as well as from focus groups with safeguard specialists from several operations departments and RSES. Various internal safeguard delivery documents, including those relating to the systems of ADB's operations departments, were also reviewed.

ADB lacks important data sources that could have aided the review

83. It is important to note that ADB lacks important data sources that could have aided the review. Examples are the use of timesheets for tracking of safeguard-related support received by projects and a centralized database capturing the inputs of safeguard consultants.

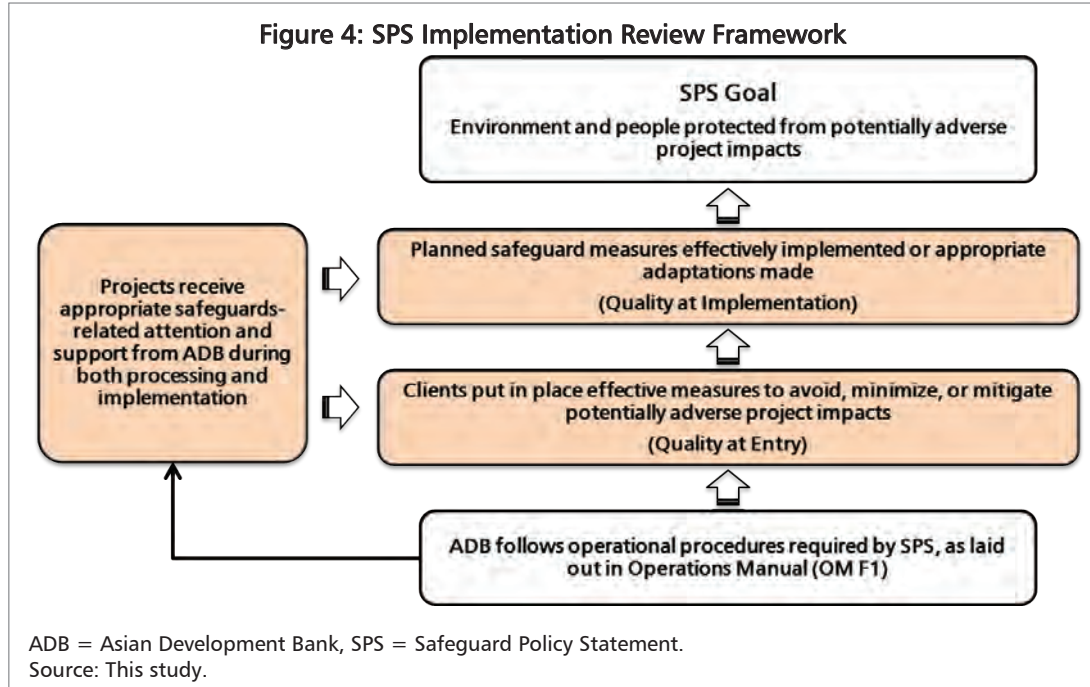
A. Scope and Methodology

84. Given that most projects approved under the SPS have not advanced very far in implementation, it is too early to assess the effectiveness of their respective safeguards measures. However, examining how well such measures are being designed and implemented is both feasible and yields insights. Obviously, poorly designed measures, even if implemented properly, will fail to bring about positive safeguard results, as will the poor implementation of properly designed measures. Consequently, the review sought to assess the extent to which ADB and its clients are likely to be on track toward achieving positive safeguard results by examining issues associated with safeguard-related project processing and implementation.

85. Figure 4 presents the framework used to structure the review of general safeguard delivery under the SPS. The policy's operational procedures seek to ensure that effective safeguards measures are built into project design (i.e., quality at entry [QAE]) and that these measures are either effectively implemented or that appropriate adaptations are made during the course of project implementation (i.e., quality at implementation). ADB also recognizes that both project teams and clients need support to effectively deliver safeguards. Hence, the framework also includes the provision of such support, particularly from safeguard specialists, to ensure both quality at entry and at implementation—and, ultimately, the realization of the goals of the SPS. This study's review is primarily focused on the shaded areas. The following section of this

The review sought to assess the extent to which ADB and its clients are likely to be on track toward achieving positive safeguard results

chapter describes what ADB is doing to ensure the effective delivery of safeguards under the SPS, which inevitably necessitates that attention be given to its operational procedures relevant to implementing the policy.



86. In the absence of time and budgetary constraints, this review would have—ideally—independently examined how the above framework is being carried out for all projects approved to date under the SPS, or, at the very least, for a statistically representative sample. However, given the existence of such constraints, other means were pursued. First, 15 senior safeguard specialists from ADB’s operations departments and six sector directors were interviewed, and relevant departmental and organization-level documentation pertaining to safeguards delivery was reviewed. This enabled examination of delivery processes, organizational arrangements, as well as challenges.

87. The review further took advantage of the fact that internal reviews of safeguards QAE were already being carried out on a sample of projects approved under the SPS. RSES staff annually fill out a number of “ex-post” review checklists on the quality of safeguards documentation for selected category B projects. The checklists for projects approved from 2010 to 2012 were obtained from RSES and analyzed.³³ While this source is limited in its statistical generalizability, it yet provides important insights on safeguards QAE. The results of the analysis are summarized in Section D.

88. In addition, the review assumed that project team leaders from ADB’s operations departments possess relevant information on how safeguards have been implemented in their projects. Efforts were therefore made to tap into their insights by directly interviewing them using a structured questionnaire. Given that most of the questions focused on the delivery of the SPS during project implementation, only projects approved under the SPS with significant potential impacts and which had been under implementation for some time (i.e., became effective before July 2012) were considered eligible. This resulted in 108 eligible projects. There would have been be

³³ RSES took the initiative to review a number of category B projects to assess their quality after loan approval. RSES calls such reviews “ex-post” because they take place *following* Board approval.

little value in drawing a sample from this relatively small number, so efforts were made to interview the team leaders responsible for all 108 projects. Further details of the interviewing process, including the questionnaire itself and the results, are presented in Appendix 1, Linked Document C. Despite its self-reported nature, the information generated from the exercise provides insights into: (i) the attention that projects receives from safeguard specialists during both processing and implementation; and (ii) safeguard delivery during the course of project implementation.

The study also examined the current number and distribution of safeguard specialists across the organization

89. ADB safeguard specialists are expected to play a critical role in supporting both project teams and the organization's clients to meet SPS requirements. Given their importance in ensuring the effective delivery of the policy, and as a complement to the project team leader questionnaire, the study also examined the current number and distribution of safeguard specialists across the organization. This included a review of the initial calculations ADB made to estimate the number of safeguard specialists that would be required to support the delivery of the SPS, as well as revisiting these calculations based on ADB's actual portfolio of projects approved in 2010 to 2013. The full assessment can be found in Appendix 1, Linked Document D.

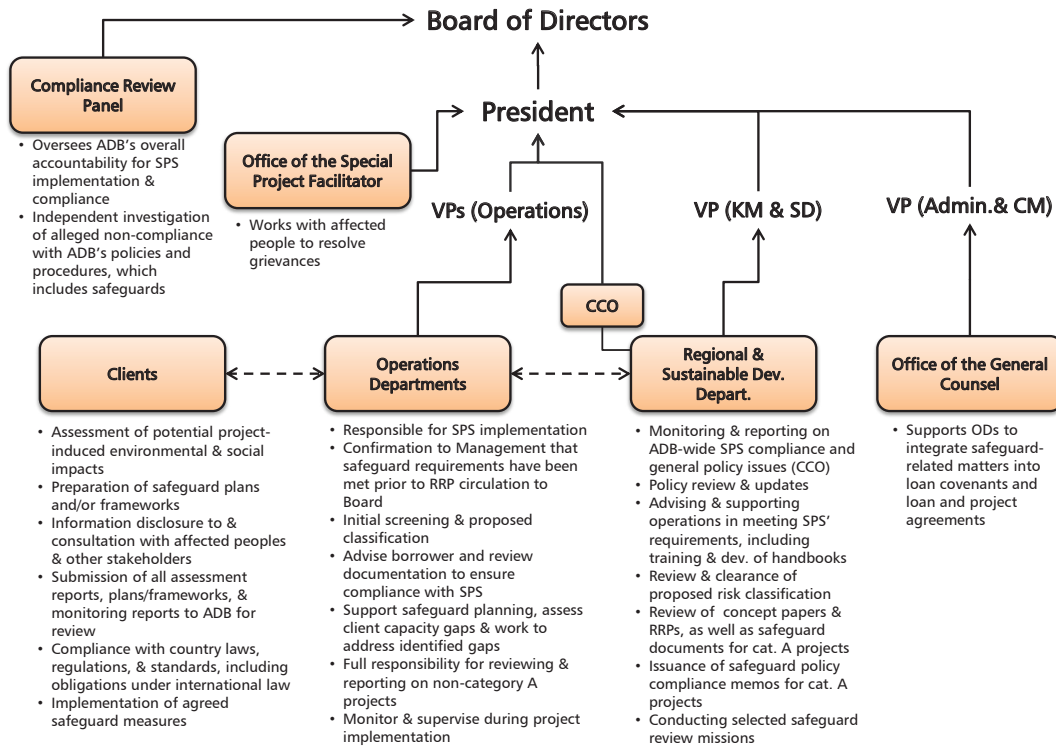
90. The five primary evaluation methods reviewed above provide insights on how ADB is progressing on the path from safeguard procedural compliance to positive safeguard outcomes. The review also found it important to discuss the key initial results that were generated with a number of safeguard specialists from ADB's operations departments and RSES. Three separate meetings were held with a total of 20 safeguard specialists. These included six departmental social safeguard specialists, six departmental environmental safeguard specialists, and eight safeguards specialists from RSES. The purpose was not only to review the initial results but also to explore ways of improving SPS implementation. The insights generated informed the recommendations for improving the general delivery of safeguards under the SPS.

B. Organization of Safeguard Delivery under the SPS

91. Figure 5 summarizes the institutional responsibilities of ADB and its clients to ensure that clients fulfill the SPS requirements. The Regional and Sustainable Development Department (RSDD)—primarily through RSES—and ADB's six operations departments share institutional responsibility for safeguards delivery, with the President being ultimately accountable (footnote 12). A senior manager in RSDD assumes the role of the CCO and reports directly to the President on ADB-wide SPS compliance. As discussed in the previous chapter, the Office of the Special Project Facilitator (OSPF) and the Office of Compliance Review Panel (OCRP) jointly make up ADB's Accountability Mechanism, which includes safeguards delivery.³⁴ A final key actor in safeguard delivery under the SPS is the Office of the General Counsel, which supports operations departments to incorporate safeguard matters into loan covenants and other legally binding agreements.

³⁴ ADB. 2012. Accountability Mechanism. *Operations Manual*. OM L1/BP. Manila. Affected people and other concerned stakeholders are encouraged to work through the project in question's grievance redress mechanism and/or the responsible ADB operations department. Failing this, they can request the Office of the Special Project Facilitator and/or the Compliance Review Panel to broker a solution.

Figure 5: Primary Responsibilities of ADB Units and Clients in Delivering SPS



ADB = Asian Development Bank, CCO = Chief Compliance Officer, CM = Corporate Management, KM = Knowledge Management, OD = operations department, SD = Sustainable Development, SPS = Safeguard Policy Statement VP = Vice President.

Source: This study from a review of ADB documentation.

92. A detailed flowchart depicting the specific safeguard review procedures that are to be followed by both RSES and the operations departments under the SPS is in Appendix 2. A brief overview is provided here. During the project’s concept phase, operations departments first propose safeguard risk categories for each of the three safeguard areas—the environment, IR, and IP. This and the project’s concept are then reviewed by RSES, with the CCO approving the proposed safeguard risk categorization. Following clearance of the project’s concept, more detailed project planning takes place, which includes more thorough safeguard-related studies (e.g., environmental and social impact assessments) and the development of safeguard plans (e.g., environmental management and involuntary resettlement plans). These are reviewed by safeguard specialists in ADB’s operations departments, as well as by RSES for category A projects,³⁵ and draft iterations are disclosed on ADB’s website prior to final appraisal.

93. For category A projects, RSES first issues a safeguard policy compliance memorandum to the management review meeting at which the CCO informs ADB Management of the project’s safeguards compliance status. Prior to presentation of the RRP to ADB’s Board for consideration, operations departments then (i) work to ensure that relevant safeguards matters are reflected in the project’s legal agreements; and (ii) confirm that all applicable safeguard requirements for the project have been met.

For category A projects, RSES first issues a safeguard policy compliance memorandum to the management review meeting

³⁵ In practice, RSES also reviews safeguard documentation for many category B projects as well, and the operations departments often request it to do this.

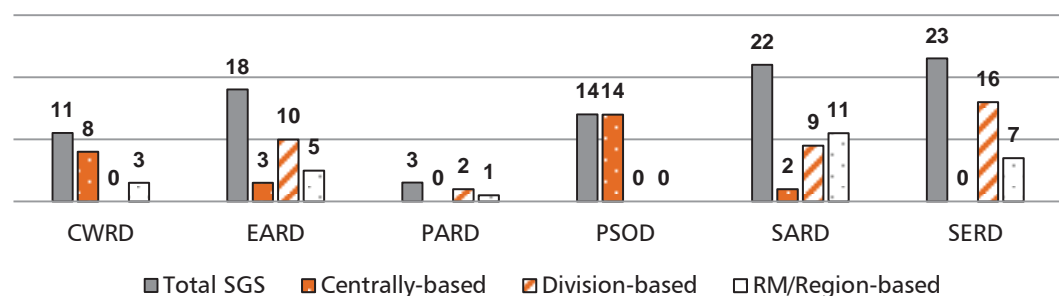
The main findings are subsequently documented in the project's RRP, as well as in its legal agreements and project administration manual. Following Board approval, the safeguard categorization of the project, the updated safeguard studies and plans, and monitoring reports are to be disclosed on ADB's website, and the operations departments are to carry out safeguard-related review missions, with detailed review by safeguard specialists and/or consultants for category A projects.

94. This review finds that the above procedural steps are generally being followed properly, particularly those pertaining to project processing. However, as will be seen in the following subsections, improvements can be made with respect to: (i) the quality of safeguard studies and plans for category B projects; (ii) the quality and disclosure of safeguard monitoring reports; and (iii) the regularity of field-based supervision.

ADB's six operations departments are set up differently

95. This review notes that ADB's six operations departments are set up differently to fulfill their responsibilities for implementing safeguards, and no specific models have been centrally imposed. Full discretion lies with each department's director general. The rationale is that each region is unique, each department's structure is different, and, consequently, each is best placed to decide on its own model. While these points have merit, this subsection assesses the different departmental safeguards delivery structures that are in place and the strengths and shortcomings associated with each.

Figure 6: Number of Safeguard Specialist Positions by Operations Departments



CWRD = Central and West Asia Department, EARD = East Asia Department, PARD = Pacific Department, PSOD = Private Sector Operations Department, RM = resident mission, SARD = South Asia Department, SERD = Southeast Asia Department, SGS = safeguards specialist.

Note: As of May 2014, 11 positions were vacant.

Source: Budget, Personnel, and Management Systems Department, Unit for Institutional Coordination (BPOD-UIC).

There is significant variation in how safeguard specialists are deployed

96. Figure 6 shows that there is significant variation in how safeguard specialists are deployed within the various operations departments. Central and West Asia Department (CWRD) and PSOD, for instance, have centralized models where most, or all, safeguard specialists are based in a central coordinating office. While these specialists are assigned to work in specific project teams, they do not report to the divisional directors responsible for the projects in question. This model's primary advantage—at least in theory—ensures a degree of independence in satisfactorily addressing the safeguard issues identified. This is particularly relevant for category B projects, which account for the largest share of ADB projects and are not subjected to RSES's second-tier review process.³⁶ CWRD's safeguard specialists, in particular, are also

³⁶ RSES reviews all project proposals including category B and C cases (first tier), but stopped subjecting category B projects to a more detailed review (second tier) for the safeguard policy compliance memorandum in 2010.

each assigned to support a limited number of countries, thereby, enabling them to develop country-specific knowledge and, in turn, enhance their effectiveness.

97. The disadvantage of the centralized model, however, is that it may take some of the ownership and oversight of safeguards delivery away from project teams and divisional directors. Indeed, one divisional director directly stated that he has no formal authority over those safeguard specialists who support his project teams. Moreover, during the project team leader interview process, the study found that project team leaders from departments with such centralized models were less able to provide specific information pertaining to the work of safeguard specialists on their projects, such as the number of review missions they have carried out.

98. PSOD reviews safeguards processing and implementation centrally, through its Operations Coordination Office. Each project is assigned a main safeguard specialist and an alternate. Although the project team leader bears overall responsibility, there is regular communication with safeguard specialists. These specialists also accompany the team leaders on missions and conduct their own assessments. Safeguard specialists typically spend 1–5 mission days per project, depending on the level of risk in question.

99. At the other end of the spectrum are the Pacific Department (PARD)³⁷ and the Southeast Asia Department (SERD). These departments have no safeguard specialists in their front offices; all work as part of project teams under the authority of divisional directors or are based in resident missions.³⁸ With no specialists based in a central coordinating office, proportionally more have been deployed to the divisional, regional, and/or resident mission levels. The disadvantage, particularly for category B projects, is the absence of an independent review function by a specialist who is not part of the project team. While this is important—again, at least in theory—the safeguard specialists that participated in the focus group discussions said that this was not an issue in practice. In particular, they said they had never felt under pressure to compromise on safeguards from either team leaders or divisional directors. On the contrary, the issues that they identify are taken very seriously. Nevertheless, the possibility of safeguard specialists being subjected to such pressure does exist.

100. In addition, several stated that they appreciate when an appropriate specialist reviews their work with fresh eyes and offers constructive suggestions for improvement. This review agrees that additional review can only improve the quality of safeguard work. This is particularly important given that the quality of safeguard processing documentation can be improved in a number of ways, as is presented in Section D.

101. The models of the East Asia Department (EARD) and the South Asia Department (SARD) lie in middle of the spectrum. While safeguard specialists operate at the divisional and resident mission levels, several are also based in the front office. The primary role of the latter is to review and support the work of the former, similar to that played by RSES for category A projects. The advantage of this model is the assurance of independent review for category B projects by a senior safeguard specialist.

³⁷ One of the two headquarters-based positions was out-posted to the Sydney office in early 2014.

³⁸ It is important to point out that PARD's three safeguard specialists all work in this department's Transport, Energy, and Natural Resources Division (PATE), and this is the main division that undertakes projects with potentially significant environmental and social impacts.

However, a challenge raised during the focus group discussions with safeguard specialists is that it requires the front office specialist in question to have substantive expertise in the subject matter being reviewed. This is not always the case with environmental safeguards. Here, potential impacts can range from those related to worker health and safety and physical cultural resources to water pollution, habitat degradation, and biodiversity loss. Given its diverse pool of expertise, RSES has greater flexibility in overcoming this challenge. Subjecting category B projects to a first-tier front office review was also reported as an additional, unnecessary bureaucratic layer. The counter argument, however, is that these particular projects, by definition, have the potential to generate severe impacts. As such, subjecting them to two rounds of independent review is clearly advantageous.

This review does not recommend a uniform model for safeguard delivery for ADB's operations departments

102. This review does not recommend a uniform model for safeguard delivery for ADB's operations departments; much depends on the availability of appropriate safeguard specialists, client capacity, and the number of projects to be processed. However, the EARD and SARD models capture the advantages of the centralized and decentralized approaches. Nevertheless, and at a minimum, measures should be pursued to mitigate the key shortcomings of both the centralized and decentralized models. In the case of the centralized departments, divisional directors in general and project team leaders in particular should have oversight and responsibility for the safeguard efforts pursued under their projects.

103. Moreover, while the "mini-RSES" model (the model used by EARD and SARD) does not necessarily need to be adopted for departments employing the decentralized model, they would certainly benefit from the institutionalization of a peer review function for category B projects with higher risks, particularly in cases where the specialist in question lacks relevant experience and/or substantive expertise. This is particularly relevant in light of the fact that some quality at entry shortfalls were identified for a number of such projects (see Section D).

104. The World Bank has had in place a system for management of environmental and social safeguard policies since 2000 with a central unit responsible for policy development and interpretation, advisory support on complex projects and training. This central unit is currently located in the vice presidency with bank-wide responsibility for policy issues. This central unit is complemented by a system of regional safeguards advisors who each have a team of 3–4 staff. They provide safeguard policy oversight, guidance and clearance for lending operations in the six regions. The regional safeguards advisors undertake their work in coordination with the central unit. They have the authority to delegate, on a case by case basis, clearance authority for safeguards for lower risk projects to the sector units.

More attention should be given to the peer review function in each department

105. As a result of ongoing reorganizations, since July 2014 the advisors and their staff now report directly to the central unit. They remain physically located within the regions to support close daily coordination, and continue to have a clearance function for riskier projects. This review does not necessarily favor a similar solution in ADB but recommends that more attention should be given to the peer review function in each department to ensure more risky category B projects also receive a better review.

106. Several interviewees in ADB further stated that the deployment of safeguard specialists to resident missions is advantageous, particularly with respect to enhancing the intensity of safeguard implementation supervision and client capacity development. A number of departments already have significant numbers of such specialists based in resident missions, and the interviewees stated that further decentralization of

safeguard specialists and particularly the empowerment of national officers (possibly their accreditation) to go on field trips should be encouraged where appropriate.

107. The staff numbers presented in Figure 6 do not take into account the numerous staff consultants that the operations departments deploy to support safeguards delivery. ADB's systems do not allow the precise number to be extracted, but a number of safeguard specialists reported that staff consultants are essential for the effective delivery of the SPS. This shows that safeguard delivery remains a labor-intensive process, with little indication currently of ADB staffing being in excess of need.

C. Safeguard Attention Received by Projects

108. Understanding the amount, types, and quality of safeguard support that projects receive from safeguard specialists is important in reviewing the progress of safeguards delivery under the SPS. To shed light on this, this section presents the results of this report's review of safeguard staff resource analysis carried out by ADB and the results of the project team leader questionnaire.

1. Summary of IED's Review of Safeguard Specialist Deployment

109. This subsection asks whether ADB has sufficient human resources in place to ensure the effective implementation of the SPS (see Appendix 1, Linked Document D).

110. Prior to SPS adoption, ADB made two attempts³⁹ to estimate the new policy's human resource requirements. These are presented in summary form in Table 4. Both estimates first calculated the available number of safeguard specialist staff-weeks per year by multiplying the number of safeguard specialists by the number of weeks they spend, on average, supporting safeguards. As indicated in Table 4, the number of available staff-weeks differs in the two estimations. This is because the initial estimate did not include national staff, while the second did.

111. Both estimates further calculated the number of staff-weeks required to implement ADB's safeguard policies at the time, as well the incremental number of weeks required to support the SPS's new requirements. This was done by first estimating the number of staff-weeks of safeguard specialist input required for category A and B projects in the three safeguard areas (i.e., staff coefficients). These coefficients were then multiplied by an estimated number of projects to be supported. The primary reason why the estimated numbers of staff-weeks differ is because the second estimate factored in ADB's impending fifth general capital increase (GCI V) in 2009. GCI V was expected to significantly increase the number of ADB-supported projects in general and more than double the numbers of category A and B projects requiring safeguard special input across all three safeguard areas in particular. The second reason for the difference is due to a computational error made in the second estimate,⁴⁰ while the third is that initial analysis did not include non-sovereign projects.

112. In both estimates, the number of additional safeguard specialists required to implement both ADB's existing safeguard policies and the SPS's additional requirements was calculated by subtracting the available number of staff-weeks from

Does ADB have sufficient human resources in place to ensure the effective implementation of the SPS?

³⁹ The estimates are recorded in two documents prepared jointly by RSES and the Budget, Personnel and Management Systems Department (BPMSD): (1) December 2008, Technical Note on the Staff Resource Implications of ADB's Safeguard Requirements (so called W-paper estimate); and (2) June 2009, Technical Note on the Staff Resource Implications of ADB's Safeguard Policies.

⁴⁰ In the second estimate, the additional staff-weeks associated with SPS's new requirements were double-counted in calculating the staff coefficients for category A projects.

those currently available and, in turn, the number of new specialists needed. The second estimate, even following this study's correction, is greater than the actual number of newly recruited safeguard specialists following GCI V, i.e., 42 as of May 2014 (Table 4). However, the actual number of projects processed per annum under SPS has never reached 166 (see footnote d in Table 4), and has ranged from 106 to 114. While an allowance can be made for some safeguard specialists supporting the processing of a project that was not approved, it is questionable whether the number would come close to 50 per year, particularly in the case of sovereign operations.

Approximately 106 safeguard specialists are required to support safeguard delivery under the SPS

113. Nevertheless, this study calculated the number of safeguard specialists that would be needed based on the *actual number* of projects ADB's Board approved in 2010 to 2013. In doing so, it used the same staff coefficients used in the two initial estimations. However, FI projects were also factored in to the analysis, on the assumption that these would require, on average, the same level of safeguard specialist attention as category B projects. This analysis estimates that, for ADB's overall portfolio, approximately 106 safeguard specialists are required to support safeguard delivery under the SPS, against the 107 safeguards specialist positions existing as of May 2014. If correct, this would imply that ADB has a sufficient number of safeguard specialists.

Table 4: Primary Estimates on Numbers of Safeguard Specialists Required for the Safeguard Policy Statement

Safeguard Area	Baseline Staff		Initial Estimate			Second Estimate			
	IS	NS	Available staff-weeks/year ^a	Required staff-weeks/year ^b	Specialist Gap	Available staff-weeks/year ^c	Required staff-weeks/year ^d	Specialist Gap: uncorrected	Specialist Gap: corrected ^e
Environment	15	8	396	386.5	0	634.8	952	11.5	8.77
Social	11	15	363	694.7	10.05	897.0	2,329	41.5	36.15

IS= international staff, NS= national staff, SPS = Safeguard Policy Statement.

^a Assumption that environment and social development specialists spend 60% and 75% working on safeguards, respectively, in a 44-working-week year (estimated from 2006–2007 staff surveys). National staff not included in the calculation.

^b Based on average number of category A and B environment, IR, and IP projects approved in 2005–2007, with estimated required specialist input for each during processing, implementation, and closing (existing requirements + SPS's estimated incremental requirements). Specialist support for PSOD, category C, and financial intermediary projects not included.

^c Assumption that environment and social development specialists spend 60% and 75% working on safeguards, respectively, in a 46-working-week-year (estimated from 2006–2007 staff surveys). National staff included in the calculation.

^d Based on the estimated number of category A and B environment, IR, and IP projects to be approved in 2011 (166 in total), as per ADB's project processing information system (PPIS). The same BPHR baseline staff coefficients were used in the estimate, but with incremental SPS coefficients more clearly defined and presented. However, mistakes made in computing overall coefficients for category A projects, resulting in inflated estimates for the required number of staff-weeks and, in turn, the required number of specialists. IED's corrected estimate is presented in the last column. Specialist support for category C and financial intermediary projects is not included.

^e The detailed analysis of the staff number estimate is available in Appendix 1, Linked Document D, which uses the coefficients used at the time. In this chapter, IED added this column presenting the corrected coefficients as additional information.

Source: This study, based on Asian Development Bank internal documentation.

114. However, before concluding this firmly, it is important to critically examine the assumptions underlying the calculations presented above. For example, it is assumed that the average category A environment project requires approximately 8.6 weeks of specialist input during processing (ranging from 1.4 to 3 years) and 6.1 weeks during project administration (ranging from 5.5 to 6.5 years, including closing). Consequently, in any given year, a specialist would both support the processing of a number of new projects, while providing others that had been approved in previous years with

approximately one week of implementation-related support each. Such a minimalist approach to supporting safeguards is inconsistent with the SPS's purported movement away from a front-loaded approach to safeguard delivery. IED's re-analysis of ADB's safeguard staffing needs based on the actual number of financed projects, therefore, does not confirm that ADB has sufficient numbers of safeguard specialists.

115. Moreover, the external peer reviewers for this report, who have both worked in the World Bank system for many years, question the time coefficients used by ADB for safeguard specialist support in both project processing and supervision. They view them as low in comparison with World Bank standards. In particular, in 2001, when the World Bank undertook its Cost of Doing Business review, the coefficients used were 3–4 staff-weeks per year for the supervision of category A projects, and 1–2 staff-weeks for per year for category B projects. Even taking the lower estimate over the cumulative life of a project, this would be equivalent to 6 staff-weeks for category B projects.

116. Furthermore, as was raised repeatedly during the interviews and focus groups with safeguard specialists themselves, the only way they are actually able to cope with the high demand for their services, other than working very long hours, is through the use of staff or TA consultants. Indeed, many categorically stated that they could not get by without them. Furthermore, a number of the operations departments have creatively used TA project funds to put in place structures and ways of working that ensure both effective provision of support to clients and development of their capacity. ADB should recognize that consultants are an important part of the organization's safeguard delivery apparatus and ensure that this aspect is appropriately resourced, particularly if it does not wish to create additional safeguard specialist staff positions.

2. Project-specific Safeguard Specialist Support

117. The interviewed project team leaders reported that over 95% of category A and B projects in all three safeguard areas received relevant safeguard specialist support during their processing and have, consistent with the project in question's safeguards risk classification, an environmental and/or social safeguards specialist assigned to the team specifically to support safeguard plan implementation (see also Appendix 1, Linked Document C). They were further asked to estimate the amount of time these specialists spend supporting safeguards on their particular projects, during both project processing and implementation. The full results are presented in Appendix 1, Linked Document C. However, Figure 7 presents the percentage of projects that were reported as having had received at least 1 month of safeguard special input during both of these phases of the project cycle. The sample of projects was restricted to those approved under the SPS which (i) became effective before July 2012 and (ii) where construction and/or IR/IP plan implementation had been underway for at least 12 months. This was to ensure that the projects being analyzed were sufficiently mature, enabling an examination of the extent to which the time of safeguards specialists is split between supporting project processing and implementation.

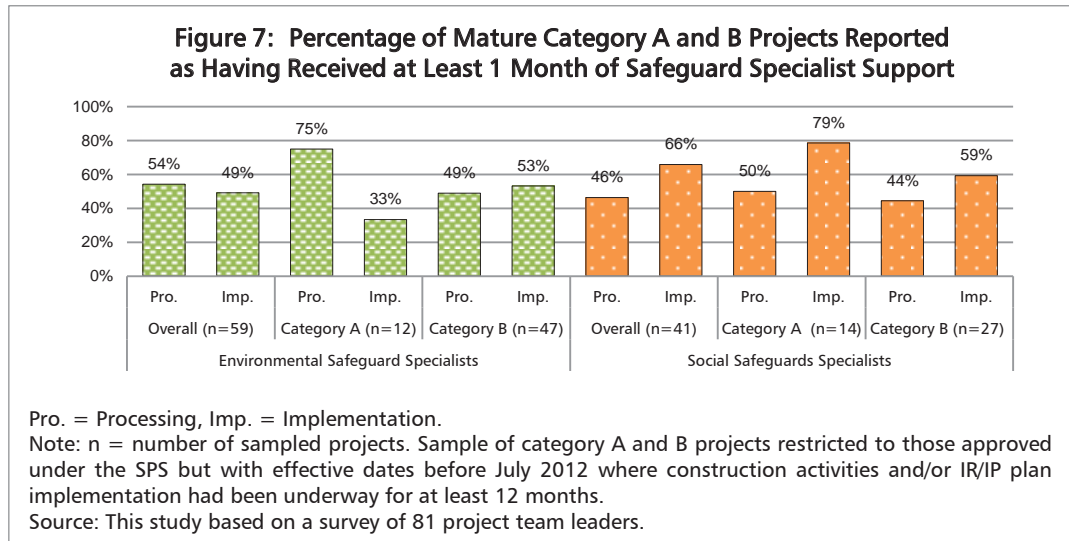
118. Approximately half of the sampled category A and B projects were reported to have received at least 1 month of environmental safeguard specialist input during both processing and implementation (Figure 7). This trend holds true when the sample is restricted to category B projects. For category A projects, however, the time of environmental safeguards specialists is biased towards processing: 9 out of the 12 sampled projects had received at least 1 month of such support during their processing, while this is only the case for 4 projects when the focus shifts to implementation. The results are different for social safeguard specialists: more of their

A minimalist approach to supporting safeguards is inconsistent with the SPS

Over 95% of category A and B projects received relevant safeguard specialist support during their processing

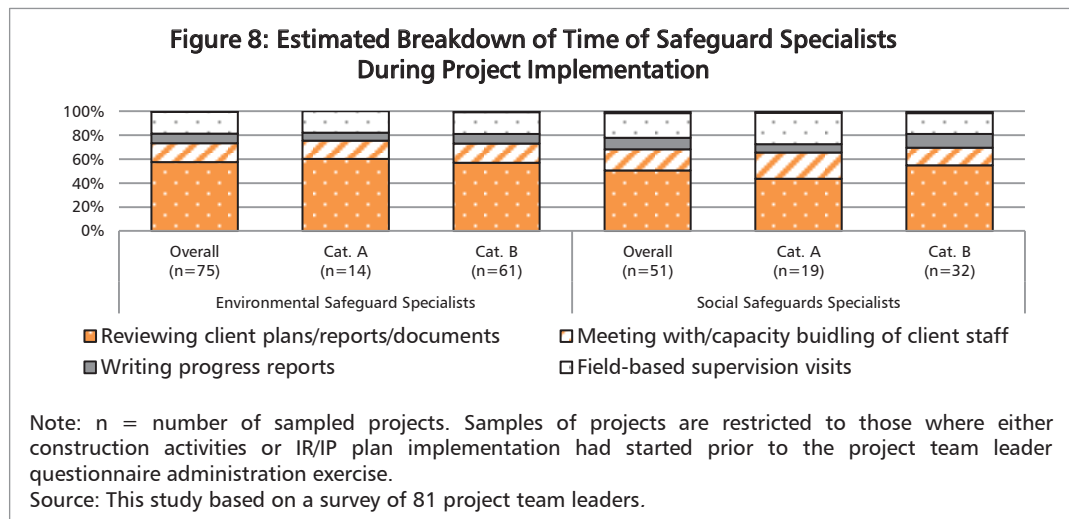
For category A projects, the time of environmental safeguards specialists is biased towards processing

time was devoted to supporting safeguard delivery during project implementation as opposed to processing. For the overall sample, 46% of the projects had received 1 month or more of such support during processing, compared with 66% during implementation. This pattern holds when the results are decomposed by type of risks.⁴¹



Over half of the time of the safeguard specialists supporting them had been focused on reviewing and commenting

119. Project team leaders estimated that, on average, over half of the time of the safeguard specialists supporting them had been focused on reviewing and commenting on safeguard-related documentation for their projects, e.g., updated safeguard plans and monitoring reports (Figure 8). Most of the remainder of the time was reported as being about evenly split between meeting with and building the capacity of clients and carrying out supervision visits. Very little time was reported to be spent on writing progress reports. This may be understandable, given that this is the client's responsibility.



⁴¹ The analysis was only focused on ADB safeguard specialists. For many projects, staff consultants and external monitoring agencies also support safeguard implementation and/or supervision, in addition to the country in question's own staff, consultants, and systems.

120. These results were presented during the three focus groups carried out with ADB's safeguard specialists. Those from the operations departments stated that the results generally reflect the reality of the situation. They further suggested that the primary reason for this is that safeguard monitoring reports—typically produced by project implementation consultants (and sometimes subjected to third party verification by NGOs or university groups)—are often of poor quality. The safeguard specialists therefore needed to spend significant time deciphering what had been written and working with these consultants to make the required improvements prior to posting on ADB's website. All three groups of safeguards specialists agreed that this situation is far from ideal, given that those based in the operations departments should ideally be spending more time conducting field-based monitoring and building the safeguard capacity of ADB's clients.

121. Suggested solutions were: (i) developing more focused and detailed reporting formats and guidelines for various types of projects typically supported by ADB; (ii) providing clearer and more specific directions on reporting responsibilities, e.g., in the consultants' terms of reference and/or in the project administration manual; and (iii) strengthening measures to ensure capable implementation consultants are recruited in the first place, including reviewing ADB's consultant rating system.

122. While difficult to estimate, the benefits of environmental and social protection typically exceed the costs of taking the needed actions. The safeguard implementation efforts under SPS, as expected, saw an increase in the costs, mainly in terms of the recruitment of more safeguard staff. Of ADB's total international and national staff of 1,868 in 2014, 107 were for safeguard specialist positions, of which 96 were filled in June—noting that they are not necessarily working full time on safeguards. The full complement represents 5.7% of budgeted staff expense in 2014 compared to a figure of 4.5% in 2009.⁴² Separate is the cost of staff consultants for safeguards, which may not be more than 0.1% to ADB's administrative expenses. Separate also is the costs of safeguard consultants that contribute to project preparatory TA and in some cases other TA.⁴³

123. Importantly from the point of view of development effectiveness, these costs are modest in comparison with the significant potential gains in avoiding sometimes irreversible environmental and social damage. Modeling done by the 2010 evaluation of safeguards in the World Bank shows that the benefits can far outweigh the costs especially for environmental safeguards.⁴⁴

124. While the amount and types of safeguard support provided to projects are important factors in determining both safeguard quality at entry and at implementation, so too is the quality of this support. A rigorous assessment of this would involve subjecting the work of an appropriate sample of safeguard specialists to detailed expert review. Unfortunately, this was beyond the scope of this operational review. However, the results presented in the following section on safeguard QAE and, to a lesser extent, the section which follows on safeguard issues encountered during project implementation can proxy for this. In addition, while the bias is acknowledged,

Under SPS, administrative costs have risen in recent years

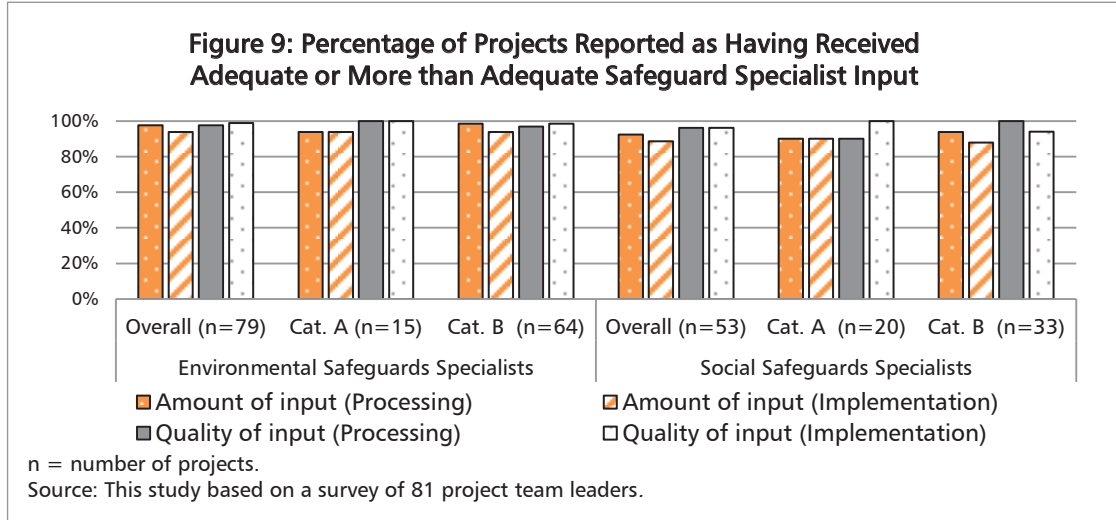
These administrative costs are modest

⁴² Sources: ADB budget documents for 2010 and 2014, and the Budget, Personnel, and Management Systems Department.

⁴³ It may not be right to lump TA costs with ADB administrative expenses. The time spent by project officers on safeguards can be seen as a further cost adding to the total, but can also be seen as part and parcel of good project management, and value addition.

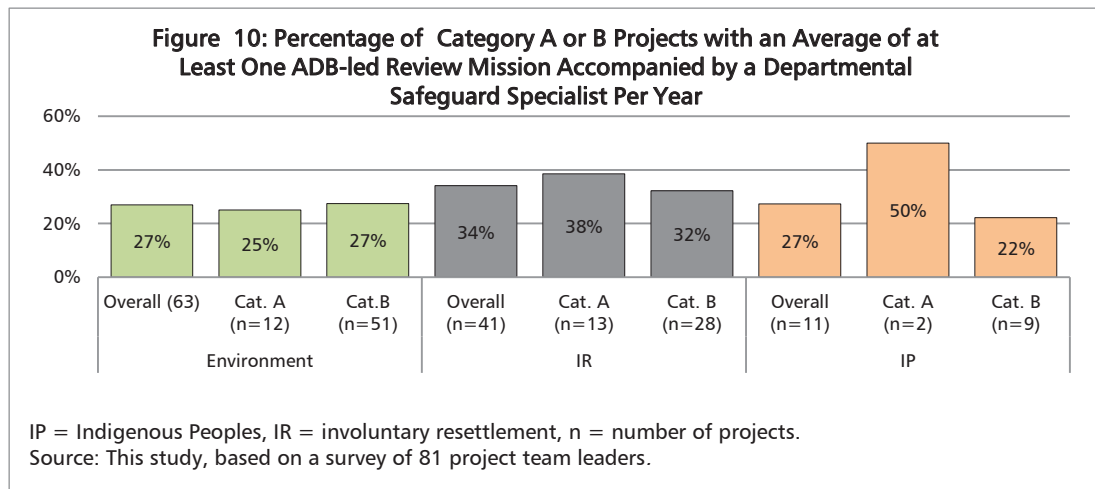
⁴⁴ Independent Evaluation Group. 2010. *Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience*. Washington, DC: World Bank. The administrative costs of safeguard specialists in the World Bank as reported seem comparable to ADB's.

the project team leaders were asked to rate both the level and quality of departmental-level environmental and social safeguard specialist attention their projects had received during both their processing and implementation. The results are presented in Figure 9. As is clear, the work of most safeguard specialists was rated positively on both counts.



3. ADB-led Review Missions Focusing on Safeguards Implementation

125. During the administration of the project team leader questionnaire, interviewees were asked how many ADB-led general review missions had been carried out since the project in question became effective and, out of these, in how many (i) was the monitoring of environmental and social safeguards at least one of the mission’s key objectives, and (ii) was the mission accompanied by a relevant ADB safeguard specialist. The sample of projects was restricted to those where relevant implementation had taken place for at least 1 year. In addition, the effective date for each project was used to compute the average number of the various types of review missions that had taken place per year. The full results are presented in Appendix 1, Linked Document C. Figure 10 presents the percentage of the sample of projects that had been visited by an ADB review mission accompanied by a safeguard specialist at least once on average per year.



126. Most category A and B environment and IR or IP projects were reported to have had, at the very least, an average of one review mission per year. However, there are a number where ADB-led safeguard monitoring in general and ADB safeguard specialist presence in missions in particular (Figure 10) was reported as being infrequent. This is more so for environmental safeguards, as compared with IR and IP safeguards. In particular, 8 out of the 12 projects in these categories were reported to have not yet been visited by an ADB environment safeguard specialist. It is important to bear in mind, however, that many ADB-financed projects have external monitoring arrangements and staff consultants that can play a key role in supporting safeguards implementation and supervision.

Most category A and B environment and IR or IP projects have had one review mission per year

D. Quality at Entry of Safeguard Assessments and Plans

127. This operational review did not carry out its own safeguard QAE analysis of individual projects. Rather, it reviewed 285 checklists of the safeguard processing documentation of category B projects approved over 2010–2012. These checklists were completed by RSES staff following Board approval and shared with the review team for its use. While they are referred to in memorandums, the checklists were not officially validated, may contain errors, and are not based on a random sample of category B projects.⁴⁵ Consequently, statistics cannot be presented with confidence in this report.

8 out of the 12 projects were reported to have not yet been visited by an ADB environment safeguard specialist

128. RSES’s checklists comprise dozens of parameters. For example, in the IR checklist, they included parameters such as consultation and participation of displaced persons and other stakeholders, gender analysis and provisions for women, and land-based resettlement for land-based livelihoods. The reviewers would have to rate the responsiveness of these parameters to the SPS as “yes,” “no,” or “not applicable.” In an effort to better make sense of this information, this review compiled the parameter ratings into 4 components and 12 subcomponents. Table 5 presents the specific components and subcomponents used for environmental safeguards, and similar ones were used for IR and IP safeguards.

Table 5: Components in Category B Initial Environmental Examinations

Component	Subcomponent	Gap?
1. Pertinent Background Information	a. Relevant policy, legal, and administrative framework of country	
	b. Description of relevant project components	
	c. Description of aspects of the environment potentially affected	
2. Impact Identification	a. Potential construction related impacts	
	b. Potential operational impacts	
	c. Other impacts, e.g., cumulative, induced, associated facilities	
3. Mitigation Measures & Implementation	a. Mitigation measures	
	b. Implementation and monitoring arrangements	
	c. Emergency response and occupational health & safety	
4. Information Disclosure and Consultation	a. Information disclosure	
	b. Consultation with affected people and other stakeholders	
	c. Grievance redress mechanism	

RSES = Regional and Sustainable Development Department, Environment and Safeguards Division.
 Source: This study, based on compilation of data points in ex-post checklists of RSES.

⁴⁵ RSES has stated that the sampled projects were purposively chosen based on perceived DMC and sectoral risks, and to achieve some balance in DMC and sector representation.

Reviewers identified one or more shortfalls with respect to safeguards processing of category B projects

129. While this report takes into account the limitations of the completed checklists, it is clear that the RSES reviewers identified one or more shortfalls (gaps) with respect to the safeguards processing documentation for a large percentage of category B projects. This finding was supported by feedback from safeguard specialists in further discussions of the initial findings. Many of the identified issues are acknowledged as being reflective of shortfalls in preferred practice, rather than strict violations of SPS compliance per se. In some of the cases, approximately 5–10%, the safeguard assessment or plan did not meet minimum requirements of the SPS. For instance, the document presented insufficient information on stakeholder consultation. It is possible that this may have been addressed post approval, but the review did not look into this.

130. The gaps did not appear to be particular to any of ADB's major sectors of operation (transport, energy, water and multisector), but clearly fewer were identified for other operations (e.g., agriculture, education, and health).

131. For environmental safeguards, the review's analysis identified an average of 3.5 gaps (out of 12 possible gap areas) for the sample of 89 reviewed projects. A relatively high percentage of projects, in particular, did not sufficiently detail the specific project activities and components that could potentially generate adverse environmental impacts and, to an even greater extent, baseline environmental conditions. Shortfalls were also found in relation to the identification of potential construction, operational, and other impacts. The specific shortfalls identified include: (i) absence of quantified impact estimates (e.g., greenhouse gas emissions); (ii) information on risks to occupational and community health and safety, impacts on physical and cultural resources, and operational, cumulative, and induced impacts; and (iii) insufficient information presented on the specific mitigation measures.

132. Fewer QAE shortfalls were identified for the sample of 65 reviewed IR category B projects (1.2 gaps, on average, out of a possible 12 gap areas). However, many project documents did not follow or investigate SPS' preference of land-for-land based compensation and/or specify appropriate institutional arrangements and budget. Other areas for improvement included the specification of benefit sharing arrangements and analysis of how women and men could each be uniquely impacted by the project's land acquisition and/or resettlement activities.

133. For IP safeguards, the average number of QAE gaps was higher at 3.1, on average, for the 12 reviewed projects. Key shortfalls included the absence of information on the IP potentially affected by the project, IP-related capacity development, and IP participation in monitoring activities.

134. ADB has made important progress in upfront due diligence and has, by and large, followed the procedures required by the SPS. At the same time, the study's close review of the many checklists indicates that, while safeguard documentation may meet minimum requirements of compliance with the SPS for category B projects, its quality and adherence to good practice and discussion of preferred solutions are important areas for improvement.

E. Issues Encountered During Project Implementation

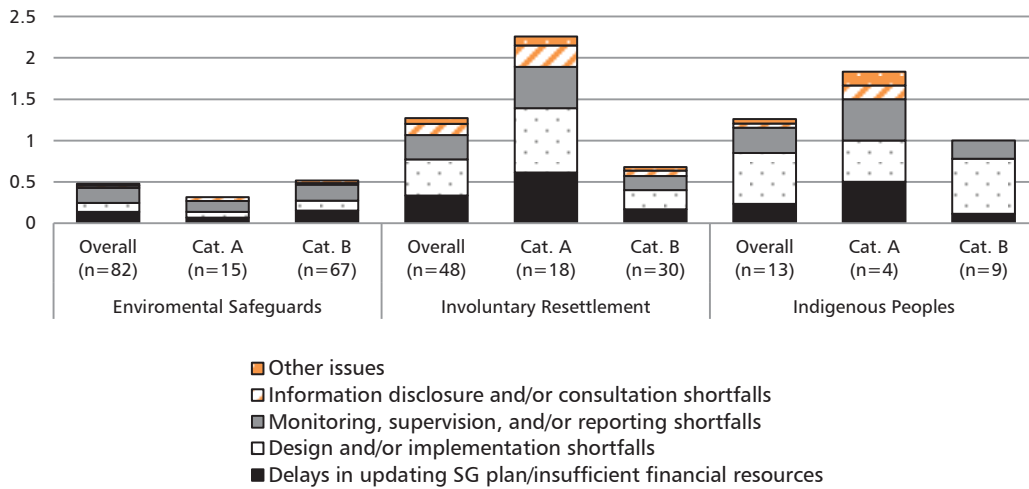
135. As summarized in Figure 11 and presented in more detail in Appendix 1, Linked Document C, the interviewed project team leaders reported more safeguard implementation problems for the IR and IP safeguard areas than for environmental

safeguards.⁴⁶ No significant difference in this trend was observed when the data were broken down by region, operations department, sector, or funding modality. More issues were reported for IR and IP category A projects, while the reverse is the case for environmental safeguards. One interpretation is simply that social safeguards—by their very nature—are more challenging to implement. Another is that environmental legislation and procedures—as well as corresponding capacity—are at relatively more advanced stages in many ADB developing member countries.

136. Several interviewees also stated that many of these implementation challenges, particularly for social safeguards, could be significantly mitigated, if not avoided altogether, through better preparation during project processing. One team leader stated that he encourages ADB’s clients to compensate displaced persons, as per SPS requirements, prior to Board approval. While this may not be feasible in all contexts, projects can be made more implementation-ready and thereby avoid both lengthy implementation delays and a repetition of the work first undertaken during processing following Board approval. Yet several interviewees reported that the streamlining of ADB’s business processes in 2010—which encouraged merging of project preparatory TA implementation and loan processing to reduce loan delivery time—can make this challenging to do. This particular issue would certainly benefit from further exploration.

Many challenges could be mitigated through better preparation during project processing

Figure 11: Indices for Average Number of Safeguard Implementation Issues Reported by Project Team Leaders



n = number of projects.
Source: This study, based on survey of 81 project team leaders.

F. Submission and Disclosure of Monitoring Reports

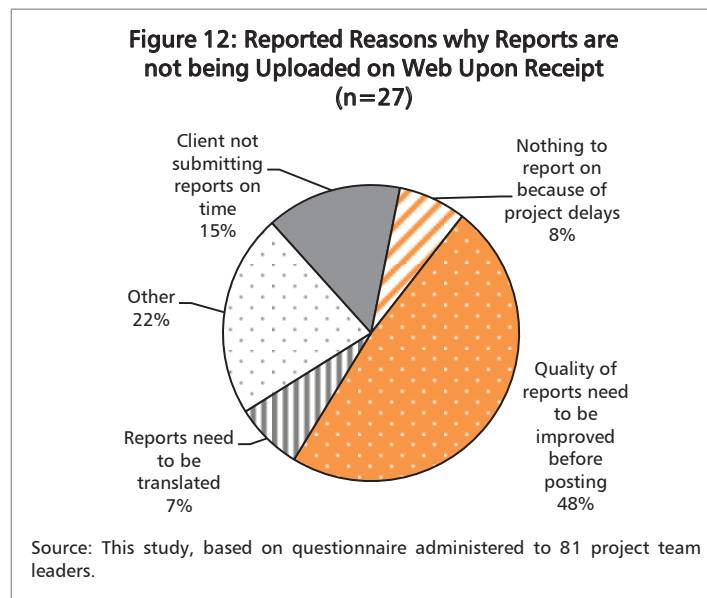
137. The project team leaders were also asked whether safeguard monitoring reports for their projects were being submitted on time and whether they were able to, in turn, readily disclose them on ADB’s website. For those projects where at least one official reporting deadline had passed, the interviewees stated that the reports were

⁴⁶ Specific checklists were used to ask team leaders whether their projects had experienced particular types of problems and, if so, what these were due to. To facilitate analysis and interpretation, indices were, again, constructed based on their responses. These indices indicate the average number of reported safeguard-related implementation challenges associated with the project sample under consideration.

The SPS requires posting of safeguards monitoring reports on ADB's website upon receipt

submitted on time for 75% of the sampled projects. However, there was considerable variation among the five regions. The SPS and ADB's Public Communications Policy require the posting of safeguards monitoring reports on ADB's website upon receipt, i.e., within 14 days of submission. This was only reported to be the case for 58% of the projects. The study team further verified whether these reports actually existed on ADB's website. This was the case for 40% overall, again with considerable variation among departments, and suggesting considerable discrepancy with what the team leaders had said. On a more positive note, reporting by Management (footnote 12) reveals that the submission and disclosure has been improving over the years.

138. In cases where the timely posting of safeguard monitoring reports had not taken place, the interviewees were asked why this was the case. Their responses are summarized in Figure 12. As indicated, the main reason was that there was a felt need to improve the quality of the reports before posting them on the web. Delays experienced on the side of the client in submitting the reports on time in the first place and in the ADB safeguard review process itself were also cited as key reasons, as was the need to translate the reports before posting.



G. Conclusions and Issues

139. This chapter has examined the general progress of the implementation of the SPS since it became effective in January 2010, paying special attention to changes instituted since 2010, such as the decentralization of full review responsibility for category B projects to operations departments and increases in safeguard staffing. Using the framework presented in Figure 4, the focus has been on the extent to which ADB's safeguard efforts under the SPS are likely to be on track toward achieving positive safeguard outcomes in the projects it finances.

140. The study found that ADB has made a considerable effort to ensure the successful delivery of the SPS, and that safeguards are being taken increasingly seriously across the organization. This—coupled with the creation of 42 new safeguard specialist positions since SPS approval—increases the likelihood that more positive safeguard outcomes are being realized on the ground. The appropriate number of

safeguard specialists employed at present needs to be protected against possible erosion, given that proper safeguard implementation needs more rather than less attention. Redistribution of some safeguard staff may need to be looked into. Operations departments' innovative structures and tools for supporting SPS implementation are noted. In addition, ADB's arrangements for safeguard planning and implementation for category A projects seem appropriate and need to continue since the roles of the CCO and RSES are central to approvals and quality control. IED's forthcoming evaluation of the effectiveness of the SPS will look further into the delivery of safeguards on the ground. Overall, significant progress has been made.

Proper safeguard implementation needs more rather than less attention

141. However, financing large-scale infrastructure projects on the one hand and avoiding or minimizing and mitigating their potentially adverse environmental and social impacts on the other remains challenging and complex. There are areas where further improvements need to be made along the path from safeguard procedural compliance to the realization of positive safeguard outcomes:

There are areas where further improvements need to be made

- (i) The quality of safeguards processing documents (i.e., assessments and plans) is variable across category B projects.
- (ii) ADB-led safeguards-focused monitoring and supervision is infrequent for many projects. Currently, there are no *specific* minimum requirements for ADB-led safeguards monitoring and supervision, only that it should be "commensurate with the project's risks and impacts" (footnote 1). A significant proportion of the time of safeguard specialists—as they support safeguards delivery during project implementation—entails reviewing documents.
- (iii) In practice, significant safeguard-related work is duplicated during processing and implementation, with lengthy project implementation delays taking place, particularly in the case of social safeguards. This issue is complex and relates to how ADB is currently set up to provide loans and other types of financial support to countries.
- (iv) While improvements have been made in recent years, the timely disclosure of environmental social and monitoring reports is problematic for a large number of projects due to their poor quality and sometimes late dispatch to ADB.

CHAPTER 4

Strengthening and Using Country Safeguard Systems

142. This chapter reviews ADB support to strengthen and use country safeguard systems (CSS) since 2009. Fifteen TA projects approved during 2009 to 2014 were reviewed with reference to the SPS (Table 6).⁴⁷ One TA approved in 2005 was included because it developed and tested the methodology for the procedures connected with the use of CSS, broadly adopted in the SPS.⁴⁸ The chapter covers (i) ADB's approach to *strengthening* CSS in countries; (ii) ADB's approach to *using* CSS in ADB-funded projects; (iii) work done on CSS by partnering with other MDBs and conducting regional awareness events and consultations; and (iv) strengthening safeguard enforcement and capacity development in country partnership strategies (CPSs).

Table 6: Technical Assistance for Country Safeguard Systems 2009–2014

No.	Country	Technical Assistance Project Title	(\$'000)	Year
7038	INO	Enhancing the Legal and Administrative Framework for Land	800	2009
7386	PRC	Strengthening Enforcement of Environmental Laws and Regulations	300	2009
7433	REG	Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region	5,000	2009
7474	REG	Strengthening of Judicial Capacity to Adjudicate Upon Environmental Laws and Regulations	225	2009
7566	REG	Strengthening and Use of Country Safeguard Systems ^a	9,000	2010
7548	REG	Improving the Implementation of Environmental Safeguards in Central and West Asia	1,550	2010
7735	REG	Building Capacity for Environmental Prosecution, Adjudication, Dispute Resolution, Compliance, and Enforcement in Asia	2,705	2010
8309	PAK	Capacity Building for Enhanced Safeguards Management	550	2012
8274	REG	Improving the implementation of safeguard policy applications in selected South Asia Developing Member Countries	225	2012
8217	SOL	Strengthening Country Safeguard Systems in the Transport Sector	600	2012
8210	MON	Preparation of Regulations and Capacity Development Plan for Involuntary Resettlement	200	2012
8428	KIR	Strengthening Safeguard Capacity in the Urban Sector	220	2013
8569	REG	Improving Safeguard Policy Applications in South Asia Countries	1,500	2013
8548	INO	Aligning ADB Country Systems for Improved Project Performance	1,500	2013
8663	REG	Sustainable Environmental Management of Projects in CW Asia	1,500	2014
Total			25,875	

CW= Central and West, KIR = Kiribati, INO = Indonesia, MON = Mongolia, PAK = Pakistan, PRC = People's Republic of China, REG = regional, SOL = Solomon Islands.

^a As of October 2014, the TA supported 25 subprojects in 16 DMCs.

Source: This review.

⁴⁷ Appendix 1, Linked Document A, Table 1 lists four more TA projects approved in 2013 and 2014 up to the end of September: TA 8428, TA 8569, TA 8548, and TA 8663, for an amount of \$4.72 million.

⁴⁸ ADB. 2005. *Technical Assistance for Strengthening Country Safeguard Systems*. Manila (TA 6285-REG, approved for \$800,000, but later increased to \$1,529,000).

A. Background

143. The use of CSS in aid-funded development projects was inspired by the Paris Declaration on Aid Effectiveness in 2005 and the Accra Agenda for Action in 2008. In these documents member country ministers and leaders of aid organizations agreed to align their aid delivery. Paragraph 21 of the Declaration commits donor countries to “[u]se country systems and procedures to the maximum extent possible, and where use of country systems is not feasible, establish additional safeguards and measures in ways that strengthen rather than undermine country systems and procedures.”⁴⁹ Member countries and development agencies considered that the use of CSS for aid-funded projects would promote country ownership, reduce transaction costs, and sustain development impacts over the long-term. The World Bank has experimented with the “Use of Country Systems” (UCS) approach since 2005 (see Appendix 1, Linked Document E), although IEG’s 2010 evaluation concluded that, “...the piecemeal approach to UCS, which focused on individual projects and policies, appears unworkable and needs a major redesign for it to be successfully scaled up,” (footnote 44) and the earlier mentioned 2014 safeguard reform proposal for consultation (paras. 6 and 29) no longer mentions UCS anywhere.

The use of CSS in aid-funded development projects was inspired by the Paris Declaration

144. ADB’s methodology for strengthening and using CSS in ADB-supported projects can be gleaned from paras. 37 and 68 and Appendix 6 of the SPS.⁵⁰ These imply that countries have to request ADB to use CSS. This request will trigger an ADB response, detailing required actions for both ADB and the borrower/client.

Countries have to request ADB to use CSS

145. Justifying the approach to what it calls “strengthening and use of CSS” (in ADB-funded projects), the SPS states (Appendix 6, paras. 7 and 8):

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.

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.

146. Para 16 of Appendix 6 talks of 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 3 years after the policy

⁴⁹ <http://www.oecd.org/dataoecd/11/41/34428351.pdf>

⁵⁰ The methodology approach explained in SPS is derived from ADB. 2011. *Strengthening Country Safeguard Systems: Report on a Suggested Methodology for Assessing Country Safeguard Systems*. Consultant’s report. Manila (TA 6285-REG).

becomes effective. An interim review of the effectiveness of the application and use of CSS will be undertaken 3 years after the policy becomes effective.

147. ADB took clear responsibility for developing an approach to strengthening and promoting the use of CSS, and it identified the need for a possible new phase after the interim review (presumably to be carried out by IED). How ADB has performed to date is assessed in this chapter. Although OM F1 is about ADB's responsibilities, it is not indicated whether it has any responsibility for encouraging countries to apply for the needed assessments at the national, subnational, sector or agency levels for subsequent use of their CSS in ADB-supported projects. The policy however does require "to the extent possible" that the proposal for strengthening and use of CSS, together with justification, is presented in the CPS in question or in CPS progress reports (SPS, Appendix 6, para. 14).

B. Review of the Methodology Developed for the Use of CSS

Use of CSS entails comparing equivalence, as well as assessing acceptability

148. The methodology for strengthening and use of CSS entails comparing the environmental and social regulatory framework of a member country with the requirements of the SPS (*equivalence*), as well as assessing the country's implementation track record and capacity to apply the framework (*acceptability*). It was developed by the TA Strengthening Country Safeguard Systems (footnote 48), undertaken from 2005 to 2009, and also inspired by the World Bank's work.

149. ADB considers a borrower's CSS to be *equivalent* to ADB's policy principles if they enable the borrower to achieve the same objectives as ADB's safeguard policy. The second criterion of *acceptability* is met if the borrower/client's implementation practices and institutional capacity to implement CSS are sufficient to achieve the equivalence (Box 1). It is acknowledged that CSS may never be identical to ADB's safeguard policy, and the aim of ADB's CSS strengthening efforts is to have a greater correspondence between CSS and the SPS.

Box 1: ADB's Equivalence and Acceptability Assessments

The elements of equivalence and acceptability assessments are (i) review of the relevant national, subnational, or sector legislation, regulations, rules, and procedures (equivalence assessment); (ii) assessment of borrower implementation practices, track record, and institutional capacity, through discussion and consultation with experts and other stakeholders, and field visits (acceptability assessment); (iii) identification of areas of the proposed country safeguard systems (CSS) that would need to be strengthened to satisfy the policy objectives, scope, triggers and applicable principles set out in the SPS, and of aspects of implementation practices and institutional capacity that need to be improved to achieve acceptability; and (iv) specification of any actions required of the borrower to (a) achieve and maintain equivalence; (b) achieve and maintain acceptability with respect to relevant implementation practices, track record, and capacity; and (c) implement the action plan according to the timetable agreed upon with ADB. ADB's decisions on and support for the strengthening and use of CSS are based on the equivalence and acceptability assessments. ADB may provide technical assistance for the activities to strengthen CSS.

Source: ADB Operations Manual F1/OP, para. 67.

150. The SPS stipulates that the equivalence of a DMC's CSS and the adequacy of its implementation capacity can be assessed at one or more of four levels: national, subnational, sector, or agency. This is different from the World Bank, where tests of equivalence and acceptability have been tied to individual projects. This can lead to a proliferation of work, and repetitions and adjustments with every new project under

consideration. But ADB's work as demanded by the methodology is still substantial, especially if separate assessments are to be organized for each executing agency in each sector or each subnational area in a country. Based on the assessments, ADB is to identify the measures and actions needed to strengthen CSS in collaboration with the borrower. To the extent that there are equivalence and acceptability gaps, ADB is to help borrowers prepare time-bound action plans, before the use of CSS in projects financed by ADB can be agreed upon. ADB then provides technical and financial support to implement such action plans. The SPS specifies that use of CSS does not apply to highly complex and sensitive projects (footnote 26). Such projects will continue to require ADB's normal procedures and strict adherence to safeguard principles as specified in the SPS.

Separate assessments are to be organized for each executing agency in each sector or each subnational area

151. The final report⁵¹ of the TA Strengthening Country Safeguard Systems⁵² gives further guidance. The country safeguard review starts with the equivalence assessment, which is followed by the acceptability assessment. The equivalence assessment compares the country legal provisions to ADB's as contained in the SPS principles, objectives, scope, and triggers. It also rates equivalence elements as *full*, *partial*, or *not equivalent* categories. The subsequent acceptability assessment then looks at implementation practices, capacity, track record, performance, and commitment to implement laws. For instance, even if laws and policies are equivalent, the review would rightly require a check on whether DMCs implement their laws for their own funded projects to a sufficient standard.

152. This review sees the need for detailed and stringent assessments as essential given what is at stake. It also notes that the method developed and the process set out in the SPS have characteristics that seem to contribute to making progress towards the use of CSS challenging:

- (i) It needs to be conducted for potentially each client dealing with ADB investments which is exposed to one or more environmental and social risks. With over 30 client countries, many national and subnational agencies in each, many equivalence and acceptability assessment works are involved.
- (ii) It is technical but also subjective, especially with respect to acceptability assessments related to capacity (gaps). Even with respect to equivalence testing, there are many moving targets. National laws change over time. Moreover, safeguards are an evolving field, and ADB may well periodically update its guidelines and perhaps areas covered.
- (iii) The detailed methodology laid down in a TA consultant report in 2011 and which has a set of templates for the assessment has so far not been formally included in ADB's OMs and "...does not necessarily reflect the views of the ADB." (The approach was, however, also employed in a subsequent umbrella TA project in 2010 (footnote 11), with the objective of strengthening CSS to using it in ADB projects.)
- (iv) Guidance in the SPS or OM is not clear on ADB's role. Is it mostly passive, waiting for countries to request to go through the assessments, or should ADB staff be more proactive? How can the

⁵¹ It included five country case studies: the PRC, India, and Kyrgyz Republic on environment, the Philippines on Indigenous Peoples (IP), and Viet Nam on involuntary resettlement (IR). It also included the production of analytical papers on safeguard issues in the water sector and IR practices in the Republic of Korea and Hong Kong, China, and the conduct of a regional workshop on EIA.

⁵² ADB. 2011. *Strengthening Country Safeguard Systems: Report on a Suggested Methodology for Assessing Country Safeguard Systems*. Consultant's report. Manila (TA 6285-REG).

approach be simultaneously demand driven, systematic and strategic? The action plan to be completed for each project may give rise to project processing and start-up delays if there are snags.

- (v) From the countries' side, the incentives to use CSS in ADB-supported projects may seem limited. While ADB needs to keep an appropriate watch on the loan projects for which use of CSS is granted, from the countries' perspective, processes are not changed. ADB retains its role in safeguard quality control during project preparation and implementation. The reporting and external supervision requirements continue to apply, while use of CSS would also not alter the role of ADB's accountability mechanism. Furthermore, more challenging projects are exempted, and these are often the projects for which external support is desired.

The interest in the use of CSS may be hampered by the perceived requirements of the assessments

153. The interest in the use of CSS, in practice, may be hampered by the perceived requirements of the assessments. This could be in part a wording problem, and partly the public nature of the process. Some governments may not want to publicly aspire to *equivalence* of their country system with the ADB system, and neither may they be incentivized by an *acceptability* test the results of which will need to be reported publicly, along with an action plan. Lastly, some countries may have their reasons to prefer the current system of investment lending whereby safeguards of donors are used only in donor projects and national safeguards applied where donors are not engaged.

154. Much of the rest of this chapter reviews TA on CSS, first TA to promote use of CSS, then TA to strengthen CSS. TA attached to loan projects and loan funded consulting services to strengthen safeguard implementation will be looked at in phase 2 of the safeguard evaluation scheduled for 2015/2016.

C. Technical Assistance Directed to ADB's Use of CSS

155. In conjunction with developing the methodology, as part of the 2005 TA project, Strengthening Country Safeguard Systems (footnote 48), which was really about *use* of CSS, preliminary country safeguard reviews were conducted in India (environment), Kyrgyz Republic (environment), the Philippines (Indigenous Peoples), PRC (environment), and Viet Nam (involuntary resettlement). Although they were not intended to initiate the process towards the use of CSS, it is yet unfortunate that none of these reviews led any of the five countries to continue on the path of the country safeguard reviews and have not led ADB so far to consider the use of CSS in any of its new projects in those countries.⁵³

156. Subsequent work done by the 2010 TA project, Strengthening and Use of Country Safeguard Systems (footnote 11), and later diagnostic studies and country safeguard reviews have so far led to only one of the 16 countries involved in the 25 subprojects approved applying for full-fledged country safeguard reviews and use of CSS in a future ADB-financed projects. But perhaps it is early days. Most safeguard

⁵³ There were some special difficulties with the equivalence assessments in the country safeguard reviews. These were particular to the early stage that they were done (2007) and suffered somewhat because they were undertaken before the SPS was approved. With respect to acceptability, the TA used the generic criteria outlined in World Bank OP 4.00 and its Interim Guidance Note. The majority of the data gathered was, however, not based on field investigation. The TA paper mentions: "The set of questions used to assess an agency's implementation capacity was not vetted by the relevant stakeholders. While the results of the assessments were presented to government officials, these consultations were limited. However, despite these limitations, the suggested methodology [...] can be used to assess equivalence and implementation capacity in future CSS diagnostic work."

specialists in ADB regard the use of CSS as a very long-term goal, reachable within decades rather than years.

157. Nevertheless, the two true country safeguard reviews undertaken among the 25 subprojects—one for environmental safeguards in Papua New Guinea (at a cost of \$250,000) and one for supporting a CSS for involuntary resettlement system in Sri Lanka (\$250,000)—may have had positive effects on the evolution of the country system but have not led to a direct follow-up in terms of the use of CSS in ADB-financed projects. The CSS assessments for Papua New Guinea did not include an equivalence assessment as much as a legal review. The conclusion was that: “...neither current Papua New Guinea CSS procedures nor capacity meet ADB environmental safeguard requirements. It is unlikely that these will be rectified without the assistance of a well-resourced TA to build capacity and strengthen procedures within both Department of Environment and Conservation and PNG Power Ltd.”

158. In Sri Lanka, the \$250,000 subproject Supporting and Strengthening National-Level Capacity for a Country Involuntary Resettlement Safeguard System produced a draft report on supporting and strengthening national-level capacity for a country involuntary resettlement safeguard system. The report includes an equivalence assessment, an acceptability assessment for two road projects, and identification of gaps between ADB social safeguard policies and the country’s legal framework. The TA project officer interviewed felt that the national resettlement system is 70% equivalent to the SPS, and that implementation capacity is 80% acceptable.⁵⁴ The resulting recommendations for strengthening CSS and action plan were based on the acceptability assessment. A lot of consultation took place. However, it seems unlikely that this TA subproject will lead to a request for use of CSS in ADB projects in Sri Lanka.

159. This review notes that the 2010 TA project, Strengthening and Use of Country Safeguard Systems, already had a much broader approach than that of the 2005 TA project, which was more exclusively focused on testing the country safeguard review approach. The 2010 TA promoted at least three major types of activities: (i) needs assessments and diagnostic studies; (ii) support to strengthen safeguard policies, legal frameworks, regulations, rules, and procedures; and (iii) support for capacity development of government agencies, borrowers/clients, and civil society organizations at the national, subnational, sector, agency, and project levels. In spite of its title, which still sounds aligned with the SPS, this TA project veered away somewhat from an exclusive focus on applying the systematic methodology of the earlier TA project. It also separated, perhaps appropriately, some equivalence oriented assessments from (later) acceptability assessments.

160. The request for the use of CSS by the Government of Indonesia was the result of several factors, including (i) ADB work done earlier in Indonesia in the context of the 2010 TA on EIAs, land acquisition, and social safeguards in water resource management and energy; and (ii) the country’s significant progress in 2012 with the promulgation of the Land Acquisition Law and its implementing regulations. The latter brings the country closer to best practice in resettlement. The provisions of the law are

Most safeguard specialists in ADB regard the use of CSS as reachable within decades

The request for the use of CSS by the Government of Indonesia was the result of several factors

⁵⁴ One of the areas where there is a lack of equivalence is that the government’s resettlement policy applies only to land acquisition. There is no compensation to affected parties if unacquired land has restricted use after other lands have been acquired. Land acquisition for use as the base of a power line transmission tower is an example. The land underneath the power line would not be acquired, only the land needed for the tower footing. However, once the transmission line is constructed, the land underneath the power line, although not acquired, could not be used to grow coconut trees for example as this would interfere with the power line itself. Thus the unacquired land is now restricted in use, its market value has declined—ADB policy requires compensation for this loss of market value, the Government does not.

much more aligned with ADB's SPS than the previous government resettlement policy framework. Yet several gaps between the law and the SPS still remain.

The request from Indonesia came to ADB in July 2013

161. The request from Indonesia came to ADB in July 2013. ADB approved a \$1.5 million TA in December 2013 (footnote 5), which has three outputs, one of which is of interest here. The TA paper proposed to support the country safeguard review for the assessments and action plans to apply CSS for environment and resettlement in ADB-financed projects in energy, transport, water resources, and water supply and sanitation. First, the TA would support an equivalence assessment that examines the national, sector, and selected subnational legal, regulatory, and administrative frameworks for environment and resettlement CSS. Second, the TA would support the country safeguard review in an acceptability assessment to review the government's implementation practice, capacity, and track record in implementing existing CSS under national, sector, and selected subnational agencies. The TA would then prepare an action plan to be agreed by ADB and the government that will define measures, "...to ensure consistency between CSS and the SPS, and specify capacity development activities to ensure acceptable implementation." Consultations are to be held with government and other stakeholders (including civil society) "to validate the assessments and the subsequent action plan(s)." The TA is still being implemented.

The TA is still being implemented

162. Two more recent developments are of interest. In November 2012, another TA was approved, Strengthening Country Safeguard Systems in the Transport Sector in the Solomon Islands (\$600,000).⁵⁵ The TA follows the methodology developed by the earlier TA on strengthening CSS to a large extent but has, like the country safeguard review in Papua Guinea, shied away from the equivalence and acceptability test terminology. There was also no formal request to use CSS in ADB-supported projects. The TA will have four outputs: (i) a CSS review, including an analysis comparing the CSS framework with international best practice, and referencing ADB's the SPS as a benchmark; (ii) an institutional capacity assessment of some transport organizations to implement CSS; (iii) an action plan for strengthening CSS framework and implementation capacity; and (iv) training and capacity building initiatives. In August 2013, another TA project, Strengthening Safeguards Capacity in the Urban Sector in Kiribati (\$220,000), was also approved. One output of this TA project will be an environmental safeguards legal review and equivalence assessment in the urban sector (not the acceptability test of capacity).⁵⁶

163. In conclusion, the yield of the attempt to roll out country safeguard reviews systematically has been somewhat limited with a promising initiative in four sectors in Indonesia and another perhaps more for the long term ongoing in Solomon Islands. In practice, the approach applied over the past 5 years looks rather ad hoc, with several weaker countries ending up with the formal reviews. Sometimes the assessment is broken into two parts, beginning with a TA on legal reviews, followed later by another TA on capacity assessments. There has been no special effort to invite and convince the best public sector agencies in the most advanced countries where equivalence and acceptability may be more in reach. Recently, ADB has begun systematizing its approach somewhat, by a mapping exercise of the equivalence of CSS in a broader sense in some 9 countries and with the expression of a commitment to expand this to all countries in the region.

⁵⁵ ADB. 2012. *Technical Assistance to Solomon Islands for Strengthening Country Safeguard Systems in the Transport Sector*. Manila.

⁵⁶ ADB. 2013. *Strengthening Safeguards Capacity in the Urban Sector in Kiribati*. Manila.

164. In the countries visited for this review, the general feedback from government officials is that it is more cost-effective to use ADB's safeguards in ADB-funded projects than to proceed with the equivalence and acceptability testing of CSS. This applies even for environmental safeguards, where equivalence is often high, and where ADB could concentrate on filling the gaps in implementation capacity. It was mentioned that the political and financial cost of making all environment and social legislation compatible with the language of ADB's or international safeguards requirements would be high.

D. Technical Assistance for Strengthening CSS

165. ADB has rightly viewed the use of CSS in ADB-funded projects as a long-term objective. The equivalence criteria are appropriately stringent and this means that, realistically, only a few countries have agencies or practices in sectors that can hope to meet them in the near term. ADB's main efforts to date have concentrated on the objective of strengthening of country capacity and country legislation without the immediate objective of using these to replace ADB's safeguards systems in ADB supported projects. The relevant TA projects studied here at times used some elements of the earlier developed country safeguard review approach. However, they were, for the most part, formulated in entirely different terms. These TA efforts have been very important and substantial nevertheless, and are taking place in the majority of ADB's countries; strengthening CSS has been de facto more systematically implemented than work to bring closer the use of CSS (at least until recently).

Strengthening CSS has been de facto more systematically implemented than work to bring closer the use of CSS

166. ADB's 15 TA projects approved since 2009 and up to mid-2014 (Appendix 1, Linked Document A, Table 1) include three umbrella TA projects: (i) Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region approved in 2009 for \$5 million;⁵⁷ (ii) Improving the Implementation of Environmental Safeguards in Central and West Asia, approved in 2010 for \$1.55 million,⁵⁸ and (iii) and the 2010 TA project already referred to, Strengthening and Use of Country Safeguard Systems (footnote 11), which has so far had 25 subprojects in 16 countries outside Central and West Asia, its subprojects are in the four other main regions in which ADB operates: East Asia, South Asia, Southeast Asia and the Pacific. A few of these subprojects apply the methodology discussed in the previous section, and can be held to be intended to work more directly towards use of CSS in ADB-funded projects.

167. Four other TA projects were approved for individual countries, one in the PRC, one in Pakistan, one in Mongolia, and one in Solomon Islands (footnote 55), the last of which directly employed the new methodology. Lastly, two other regional TAs were approved, one on strengthening of judicial capacity to adjudicate upon environmental laws and regulations, and one on building capacity for environmental prosecution, adjudication, dispute resolution, compliance and enforcement in Asia.

168. The investment of almost \$26 million over the past 5 years surely makes ADB the most active development partner in the region in the capacity building of CSS. The support is very well distributed across the region. Only a few countries are not included (and these may be helped by other donors). This work over the last 5 years builds on work before 2009 when ADB regularly approved country and regional TA dealing with safeguard systems and capacity development. Of the 15 TA projects approved since 2009, eight support the strengthening of all safeguards; another five support the

⁵⁷ ADB. 2009. *Technical Assistance for Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region*. Manila.

⁵⁸ ADB. 2010. *Improving the Implementation of Environmental Safeguards in Central and West Asia*. Manila.

strengthening of environmental adjudication, management, and monitoring; while the other two focus on strengthening land acquisition and resettlement safeguards.

169. The 2010 TA Project, *Strengthening and Use of Country Safeguard Systems* (footnote 11), attempted to strengthen CSS through subprojects that mostly did not make use of the formats and templates developed by the 2005 TA (footnote 48) on equivalence and acceptability testing, and on gap analysis and action plans. Most subprojects were oriented to improving domestic laws and regulations, working with institutions, and bringing best practice into the CSS in question. The 25 subprojects have so far utilized almost \$8 million, leaving about \$1 million to be committed to new TA subprojects. Eleven subprojects are finished and have final reports although these are not yet available on the website (Appendix 1, Linked Document A).

170. For the present review, all CSS TA outputs, including those of the 25 subprojects of *Strengthening and Use of Country Safeguard Systems*, have been classified according to the methodology adopted by ADB in the 2005 TA project and included in the SPS. These can be categorized as:

- (i) needs assessment/diagnostic studies (10 reports are finished);
- (ii) support to strengthen safeguard policies, legal frameworks, regulations, rules and procedures (eight reports are finished); and
- (iii) support for capacity development of government agencies, borrowers/clients and civil societies at national, subnational, sector, agency and project-level (seven reports finished).

171. **Needs assessment/diagnostic studies.** The results here are rather modest, and for several of the TA projects, the outcome is unknown. Nine subprojects of the 2010 TA project *Strengthening and Use of Country Safeguard Systems* have so far reported some outputs in terms of capacity needs, legal analysis, and needs assessment: (i) a capacity needs assessment and capacity development action plan in Lao People's Democratic Republic (PDR); (ii) two diagnostic reviews in Mongolia (\$500,000); (iii) one country safeguard review in Papua New Guinea (para. 157); (iv) a gap analysis and needs assessment of ESMS for selected private sector FIs with a time-bound capacity building plan that led to ADB training sessions; (v) subprojects developing IR safeguards capacity in transport (legislation awaiting approval) and strengthening the regulatory framework for EIA in Timor-Leste; (vi) a type of country safeguard review for Sri Lanka involuntary resettlement (para. 158, fate unknown); and (vii) a subproject to develop capacity to implement the new environment decree in Viet Nam which produced several reports documenting equivalence assessments (fate unknown).

172. **Support to strengthen safeguard systems.** Four subprojects of the TA project *Strengthening and Use of Country Safeguard Systems* produced some positive outputs in strengthening the country's safeguard policies, legal frameworks, regulations, rules and procedures, as well as streamlining processes. A TA subproject for Mongolia for IR helped in drafting the country's law on land acquisition and resettlement, and expropriation. A TA project in the Philippines made a contribution to improving the national EIA system. In the PRC, government officials reported to the review team that TA outputs on environmental safeguards have been absorbed into national legislation.

173. **Support for capacity development.** Six subprojects for *Strengthening and Use of Country Safeguard Systems* supported development of capacity of government agencies and civil societies at the national, subnational, sector, agency and project levels. These included building the capacity of the Water Resources and Environment

Agency to implement Lao PDR's resettlement policies, assessment of the implementation capacity of key agencies to implement safeguards policies in the case of PNG's country safeguard review, capacity building through ESMS training for FIs in different countries, supporting capacity for country involuntary resettlement safeguard system in Timor-Leste, strengthening environment safeguards capacity in some agencies in Timor-Leste, and capacity development for implementation of the new environment decree in the case of Viet Nam.

174. In Sri Lanka, guidelines were developed on land acquisition and implementation of the National Involuntary Resettlement Policy. These already seem to be in use, although legal change is still required. In Viet Nam, a new draft circular on strategic environmental assessment was formulated to harmonize environmental laws and regulations with the SPS. The operational review field mission confirmed that the Ministry of Natural Resources and Environment views the SPS as a significant contribution to the harmonization of Vietnamese EIA policies with international best practices. The TA had helped the ministry in getting Decree 29 on Strategic Environmental Assessment, EIA, and Environmental Protection Commitment, and Circular 26 promulgated. In all cases there were indications of modest to good results.

175. The large Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region,⁵⁹ approved for \$5 million in 2009, aimed to strengthen borrowing government agencies so they were able to apply land acquisition and resettlement safeguards to ADB projects. An environmental safeguards information kit and eBook on good practices on handling environmental safeguards operations is already being used by national agencies and consultants. Draft country safeguards frameworks (covering both environmental and social safeguards) were prepared for Afghanistan, Armenia, Azerbaijan, Georgia, and Pakistan, while a guidance note was prepared for the Kyrgyz Republic. For Pakistan, a special study was prepared on independent land valuation. While the final results of such TAS are often not materializing for a long time, the review believes the ADB work at country or agency level, even if ad hoc, is appropriate and of great benefit to strengthening CSS.

E. ADB Work on CSS as a Long-Term Initiative

176. ADB's strengthening of country systems is understood to be a long-term initiative, given that changes in regulatory systems have to go through administrative, political, economic, and cultural scrutiny. The review recognizes that ADB's work in strengthening CSS started long before the SPS, and is now leading to some results.

ADB's work in strengthening CSS is leading to some results

177. For instance, in PRC, the outcome of a 2002 TA on capacity building for resettlement risk management⁶⁰ contributed to new decrees and regulations. Based on interviews with PRC government officials, the rates of compensation have increased progressively, amounting to a 30% increase over the past 10 years. Legal reforms ensure that people who lose land to public or private sector operations in PRC will receive appropriate compensation and other support, and some social insurance such as pension, medical care and unemployment benefits. Studies conducted by the PRC government⁶¹ on livelihood restoration after land acquisition concluded that it requires long-term assistance. The reforms also improved land acquisition procedures. For

⁵⁹ ADB. 2009. *Technical Assistance for Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region*. Manila.

⁶⁰ ADB. 2002. *Technical Assistance for Capacity Building for Resettlement Risk Management*. Manila.

⁶¹ Studies referred to in discussions with the Ministry of Land and Resources (Land Surveying and Planning Institute).

example, informing affected people and verifying project impacts are now part of the land acquisition process (prior to project approval).

178. In Sri Lanka, a TA attached to an ADB loan for a road project led to the National Involuntary Resettlement Policy which Parliament approved in 2001. In 2008, the government added a new regulation to the existing land acquisition act which included the rights of non-titled land holders and full replacement value for any land taken. The TA project Strengthening and Use of Country Safeguard Systems included a country safeguards review in Sri Lanka that led to the publication of guidelines on land acquisition in 2013.⁶² The TA also led to drafting of amendments to the act.

179. In Indonesia, the land acquisition act was adopted in 2012 as a result of dialogue with World Bank and ADB, giving more rights of compensation to nontitleholders (para. 160). IPs now have legal rights to the land they occupy (these were adopted from UN policies). However, some differences between Indonesia and ADB on the definition of IPs remain. Interviews held with government representatives also pointed to continuing disagreements with ADB on the rights of squatters and the need for resettlement plans in cases where resettlement from public lands is needed. On environmental legislation, there is a large degree of equivalence with the SPS. In October 2009, Indonesia passed an act for the environment which represented a substantial improvement over the previous EIA system. Implementation capacity remains a problem, especially also since implementation of many projects has been shifted to subnational levels, where there is less such capacity, except in some areas, where the use of CSS in ADB projects would have some potential.

Table 7: Some ADB-Supported Results in Strengthening Safeguard Legislation in Asia

Country	Activity/Legislations
Bangladesh	EIA Guidelines for two sectors Preparation of National EIA Manual
Cambodia	Draft Subdecree on Involuntary Resettlement of Informal Settlers
Mongolia	Improve EIA regulations (for EIA Law) Draft Law on Land Expropriation Draft of the Capacity Assessment and Capacity Building Plan
Nepal	Technical Guidelines on Land Acquisition and Involuntary Resettlement for three key sectors
Philippines	Enhancement of the Philippine Environmental Impact Statement
Solomon Islands	Action plan for strengthening country safeguards system framework
Sri Lanka	Update and strengthen Land Acquisition Act Resettlement Manual
Timor-Leste	Improve regulatory framework for environmental assessment; Decree 05/2011 Environmental Licensing Law
Viet Nam	Decree 29 on Summary Environmental Assessment, EIA, and Environmental Protection Commitment and Circular 26
PRC	Environmental guidelines for selected sectors were approved

ADB = Asian Development Bank, DMC = developing member country, EIA = environmental impact assessment, PRC = People's Republic of China, TA = technical assistance.

Source: TA documents.

180. Overall, country systems for environmental safeguards and capacity to enforce them may be more advanced in many countries than the systems for social safeguards. This is the impression of many safeguard specialists interviewed. Nevertheless, both

⁶² Ministry of Land and Land Development. 2013. *Land Acquisition and Implementation of the National Involuntary Resettlement Policy: A Guide for Public Officials on Good Practices*. Colombo.

Country systems for environmental safeguards and capacity to enforce them may be more advanced in many countries than the systems for social safeguards

systems and capacity to enforce still have some gaps. Table 7 summarizes some important results generated by CSS TA projects.

F. Other Initiatives to Promote CSS

181. Interviews with ADB staff confirm that CSS initiatives are not restricted to TA projects and that a number of important activities have been undertaken in parallel.

182. **Regional workshops.** ADB significantly contributed to discussion of safeguards in the region by funding and organizing several key regional workshops on CSS. This is now triggering some important inter-agency coordination on work on strengthening CSS. A key initial workshop on CSS was held in April 2012. It examined the progress in implementing the use of CSS, discussed issues with DMCs, and promoted South–South cooperation. It emphasized the importance of identifying key international practices on safeguards which would provide a set of key principles for assessing and promoting CSS in DMCs. The workshop found that EIA regulations are often at par with international best practices, but also that there are often significant gaps in IR and IP policies. It was mentioned that a collaborative effort was needed among MDBs to enable them to coordinate their resources to prepare and implement common gap-filling action plans. DMC representatives stressed the role of ADB in developing knowledge sharing mechanisms, which include databases of laws and regulations, intra-DMC dialogue, and financing assistance through a multi-donor trust fund.

ADB significantly contributed to discussion of safeguards in the region by regional workshops on CSS

183. **Joint Community of Practice.** The World Bank and ADB held another workshop in May 2012 to initiate the coordination of their safeguard policies. Participants proposed that centers of excellence be established for learning, capacity building, and enhancing alignment of policies between development agencies. A Joint Safeguards Practitioners community of practice (CoP) was created, with a coordinating committee with members from ADB, Department of Foreign Affairs and Trade Australia, Japan International Cooperation Agency, and the World Bank with support from the United States Agency for International Development (USAID), China EXIM Bank, and Korea EXIM Bank. Three subsequent Joint CoP Meetings were held, one in June 2013 in Hanoi, Viet Nam, one in June 2014 in Yi Chang, PRC, and one in October 2014 in Manila. A Country Safeguards Partnership Framework approach is now agreed by the partners on the priorities of CSS. The partners have committed to working together to develop CSS in the region and share information. ADB has committed to preparing a CSS assessment for all countries in the region. Work on this mapping exercise is underway. These are significant successes, which point to some real progress being made with harmonization and the start of a new phase in the promotion of CSS.

A Country Safeguards Partnership Framework approach is now agreed by the partners

184. **Mentoring system for EIA implementation.** In addition to regional CSS workshops and the work on the joint CoP, ADB approved a subproject in TA 7566 to create a database of information and knowledge on implementation of EIAs, including EIA laws, regulations, procedural guidance, and enforcement actions. The PRC, Lao PDR, and Sri Lanka now share knowledge relating to EIA guidelines, their implementation, and strategic environment assessment.

185. The subproject is a response to a finding of the Asian Environmental Compliance and Enforcement Network (AECEN), established by ADB in 2005, that the implementation of EIA-derived management plans is often incomplete, resulting in poor mitigation of adverse project impacts. The AECEN has pointed out that this is a capacity issue which could be overcome by sharing knowledge on EIA implementation through a database of information and mentoring systems among countries. This

operational review agrees on the capacity issue for implementation of management plans derived from EIA and finds the TA well focused. Ongoing initiatives such as this TA that are based on South–South cooperation (twinning) can be very successful; groups of DMCs can face similar constraints on EIA implementation, and sharing these experiences and their solutions can lead to successful practices not envisaged by experts from more affluent countries that may be typically involved in trainings or preparing manuals.

ADB operations have actively encouraged their client countries through the CPS process to use their own CSS in ADB-supported projects

G. Review of Country Partnership Strategies, 2009–2012

186. The review team held many interviews with ADB staff, and also reviewed all 29 CPS documents for 26 countries approved since 2009,⁶³ in order to assess whether there were clear signs that ADB had indeed applied a more strategic approach than before the SPS was adopted. The SPS itself states that: “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.” One way of applying a strategic approach would be for ADB to commit to some sort of country safeguard review in the preparation of each new CPS. As indicated earlier, a main finding remains that it is not evident that ADB operations have actively encouraged their client countries through the CPS process to use their own CSS in ADB-supported projects, as encouraged by the SPS and its associated OM.⁶⁴

187. The CPSs reviewed mainly elaborated on the capacity building needs of the countries in question. This is also less controversial than the equivalence and acceptability assessments. Nine CPSs indicated the need for capacity building at executing and implementing agency levels to ensure safeguards are well applied.⁶⁵ Only a CPS for Timor-Leste confirmed that ADB will provide policy support for safeguards. The CPSs of Cambodia, Indonesia, and Pakistan only emphasized the need to build capacity at resident missions. This was to be done through the provision of additional safeguards staff and their training in safeguards.

H. Conclusions and Issues

188. The review found that ADB has done much to strengthen CSS in many of the countries ADB works with under the SPS (as it did before the SPS). TA has been the main instrument, but policy dialogue, networking with partners, and the involvement in projects in which safeguards have to be observed as per good international practice have surely been important as well. Having elevated safeguard capacity development to a central third objective of the SPS, ADB set the bar higher than before, and proceeded to step up its TA capacity and policy development work. It took the big step of allowing countries the use of their own CSS in ADB-supported projects, albeit appropriately under a set of strict conditions. Although it has some problems, the methodology was nevertheless better than that of the World Bank.

189. ADB has mobilized and invested significant resources to this effort, although perhaps not as much as was hoped for. The SPS targeted resources of \$80 million–\$100 million in the medium term, through the establishment of a trust fund to mobilize

⁶³ Bangladesh, Bhutan, Cambodia, People’s Republic of China, India, Indonesia, Kazakhstan, Kiribati, Lao PDR, Malaysia, Maldives, Mongolia, Myanmar, Nepal, Pakistan, Palau, Philippines, Papua New Guinea, Solomon Islands, Sri Lanka, Tajikistan, Thailand, Timor-Leste, Uzbekistan, Vanuatu, and Viet Nam.

⁶⁴ SPS (footnote 1) Appendix 6 argues this, for instance, paras. 4–8.

⁶⁵ This is reported in the CPSs of: the Bangladesh, PRC, India, Indonesia, Lao PDR, Nepal (2 CPSs), the Philippines, Timor-Leste, and Viet Nam.

external resources. This would have been used to mobilize external resources and would have 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.

190. The large resources so far committed through TA were not routed through a trust fund as envisaged, but nevertheless ADB has committed a substantial amount for strengthening and using CSS. ADB has taken the lead in coordinating and harmonizing donor support and recently in mapping of CSS in Asia.

191. The review concluded that ADB's strengthening of CSS has in recent years resulted in domestic legislation becoming more aligned with international safeguard best practices in Bangladesh, Cambodia, Mongolia, Nepal, Philippines, Solomon Islands, Sri Lanka, Timor-Leste and Viet Nam. In many countries, such legislation applies to all projects, regardless of their source of financing, which will make them more sustainable. The review therefore finds that the long-term objective of strengthening domestic legislation in DMCs is yielding good results with tremendous leverage value in terms of development.

192. With respect to ADB's initiative on the use of CSS in ADB projects, the review is appreciative of the patient TA work underway but nevertheless has some points of concern. First, only one country has requested that their CSS be used in ADB projects. ADB has also not been systematic in its approach for a long time, as it sought instead to apply the methodology on ad hoc demand basis to some countries and through TA experiments. ADB did not stimulate demand for use of CSS across the board. Nor did it use the opportunity new CPSs present to begin the dialogue with countries on CSS and to apply the needed equivalence and acceptability assessments. ADB did not have a good plan for this and, in fact, set very modest targets inconsistent with the objective to apply the approach in a phased and strategic fashion. At the rate of only 3–5 CSS reviews to be done in the first 3 years (these more or less started at the end of the period), it will take years before the first use of a CSS in an ADB project can be expected, and decades before some significant use of it.

ADB did not stimulate demand for use of CSS across the board

193. A second point of concern is that SPS is not very clear on how operations departments are to go about initiating the needed steps for the country safeguard reviews that would ultimately allow and enable borrowers/clients to request use of CSS in an ADB-funded project or projects. This is also not set out in the medium term action plan 2010–2012. More fundamentally, the SPS may ultimately be ambivalent on the use of CSS in ADB projects. On the one hand, it wants to, "...adopt a strategic approach for strengthening and using CSS more systematically." On the other, no direct reference is made to the wanted and needed integration of country safeguard reviews in CPS processes, notably CPS preparation processes. Such a development is obviously needed to make the process more systematic. The SPS states that "Additional professional staff weeks may be required each year for conducting equivalence assessments of CSS *on a demand-driven basis* [emphasis added]." This implies that operations departments were not intended to initiate these assessments as part of new CPSs.

CHAPTER 5

Safeguards for Financial Intermediary Projects

194. FIs typically include universal banks, investment banks, private equity funds, venture capital funds, microfinance institutions, specialized government funds, and leasing and insurance companies. The financial or government institution onlends the funds either for specific subprojects or to commercial banks that, in turn, onlend for specific subprojects. The latter operations are referred to as “multi-tier lending,” and are deemed by ADB to be a cost-effective and efficient means for it to finance many smaller projects in specific sectors (e.g., energy efficiency, small and medium-sized enterprises, renewable energy, and small-scale infrastructure). Specific investments are normally not identified at the time of loan approval. Consequently, ADB requires the borrower/client FI to have in place an ESMS which will be used for the entire subproject investment period.

FI projects provide a challenging context for the application of safeguards

195. FI projects provide a challenging context for the application of safeguards for three key reasons. First, ADB cannot perform detailed safeguard analysis of individual FI subprojects during project preparation because they are yet to be identified when the ADB loan to the FI in question is approved. Second, funds are dispersed widely to many subprojects, so direct ADB supervision would require resources beyond those available. Third, financing can entail several layers of intermediation that complicate institutional responsibility for social and environmental risk management.

196. This chapter reviews pre- and post-SPS FI investment projects, as well as FI-based multitranches financing facilities and sector loans implemented by FIs. For MFF and sector loan operations, the safeguard documentation requirement is an ESSF. For the FI investment projects, the requirement was an EMS before the SPS; since 2010 it has been an ESMS. The FI commits itself to implementing the procedures specified in the EMS or ESMS for the appraisal and financing of subprojects supported by the ADB loans. The chapter reviews the portfolio of FI projects, as well as the MFF or sector loan projects categorized as FI. As will be seen, safeguard implementation by financial intermediaries remains a grey area. This review is confined to a document review mainly, triangulated with observations from some visits to FI projects and interviews with relevant safeguard staff.

A. ADB and Financial Intermediary Due Diligence Exercised

197. As per the SPS and the OM, ADB conducts due diligence to assess all projects to be supported and the FI conducts due diligence to assess subprojects. Any subprojects categorized as A will also need to be appraised and monitored by ADB. For category C and B projects, national laws may be followed. For the main FI loan, the SPS specifies that the ADB project team “conducts safeguard due diligence to assess (i) potential environmental and social impacts and risks associated with a financial

intermediary's existing and likely future portfolios, as well as (ii) its commitment to and capacity for environmental and social management" (para. 65). This is also reflected in OM Section F1/OP (2013), para. 55. The SPS also sets out what is required in an RRP and states that "an RRP or Board Paper summarizes the results of the due diligence, as well as the agreed upon arrangements for the ESMS procedure for subproject review by ADB where applicable" (para. 59). Hence, this review looked into the RRP to find evidence of the two key elements of the due diligence.

198. After approval of an ADB loan, the SPS SR-4 (Appendix 4) requires that the FI's due diligence for any proposed subproject consists of a minimum of (i) checking compliance of the proposed subproject with national laws and regulations related to safeguards issues, and (ii) screening of the proposed subproject against ADB's prohibited investment activities list (PIAL).⁶⁶ The latter prohibits investment for such activities as those that involve child labor (Box 2). However, category A projects need to be referred to ADB. For any FI project that could lead to subprojects or subloans with moderate or significant safeguard risks (category B or A), annual or more frequent environmental and social monitoring reports need to be submitted to ADB.

Box 2: ADB Prohibited Investment Activities List

- (i) Production or activities involving harmful or exploitative forms of forced labor or child labor;
- (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, pesticides, and herbicides, (b) ozone-depleting substances, (c) polychlorinated biphenyls and other hazardous chemicals, (d) wildlife or wildlife products regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and (e) trans boundary trade in waste or waste products;
- (iii) production of or trade in weapons and munitions, including paramilitary materials;
- (iv) production of or trade in alcoholic beverages, excluding beer and wine;
- (v) production of or trade in tobacco;
- (vi) gambling, casinos, and equivalent enterprises;
- (vii) production of or trade in radioactive materials, including nuclear reactors and components thereof;
- (viii) production of, trade in, or use of unbonded asbestos fibers;
- (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.

Source: ADB. 2009. *Safeguard Policy Statement*. Manila (Appendix 5).

SPS requires the FI to submit annual reports on the implementation status of the ESMS to ADB

199. ADB supervision during implementation of the project focuses on the FI's compliance with requirements and procedures specified in the agreed upon ESMS. As mentioned, the SPS requires the FI to submit annual reports on the implementation status of the ESMS to ADB (except for projects which have minimal safeguard risks and are therefore rated category C for all ADB safeguard policies). ADB will assist the FI with the appraisal of category A subprojects.

⁶⁶ The SPS does not elaborate on the need for the FI to assess the clients' status of E&S liabilities (e.g., pollution violations, penalties assessed, health or safety legal claims), so this aspect was not investigated, although in IED's view it would be important, especially for clients not new in the business.

200. Prior to the SPS, ADB's safeguard requirements for sector and FI operations had specific procedures only for environment aspects. The 2002 Environment Policy required FIs to adopt an EMS, unless it was clear from the beginning that subprojects of the FI would result in insignificant safeguard-related impacts. For sector operations, an environmental assessment framework had to be put in place by the borrower/client and preparation of a strategic environmental assessment was suggested as part of the comprehensive sector study to address social and environmental issues.

201. For FI subprojects assigned environmental category A before SPS adoption, ADB would review and approve environmental impact assessments (EIAs). For FI subprojects assigned category B, initial environmental examinations (IEEs) needed to be prepared, but ADB did not review or approve these. The environmental assessment process would require public consultation and, for category A projects, 120-day public information disclosure of these documents before ADB subproject approval. ADB classified FI projects where all subprojects were expected to have minimal environmental impacts as category C. Such projects would then have no further safeguard procedural requirements. No EMS would have to be prepared or maintained. Most of this remains the case under SPS, but the SPS has given ADB some discretion, as it can now in some cases also require to review and approve category B subprojects.

B. Scope and Methodology

This review examined all 40 FI projects approved under the SPS

202. This review examined all 40 FI projects approved under the SPS over 2010–2012, 18 of which required ESMS documents and six of which required ESSF documents. The projects are listed in Appendix 1, Linked Document A, Table 2. Seven projects with neither an ESSF nor an ESMS were categorized as C for safeguards (since it was determined that the FI's subprojects would not carry environmental and social risks). Four FI projects were treated as category C, but have an ESMS. To determine the categorization of the projects and subprojects, project data sheets on ADB's website were reviewed and, for monitoring reports, ADB filing systems (for private sector projects) and the ADB website. The 18 FI projects that were found to have ESMS documents were assessed based on: (i) indications of due diligence conducted by ADB with respect to the FI (source: descriptions in the RRP and their linked documents); (ii) indications of the FI's due diligence with respect to safeguard requirements for subprojects (source: ESMS documents); and (iii) depth of discussion of required elements of the ESMS.

203. The ESMS was assessed for the presence of a discussion of the five ESMS elements required by the SPS and OM FI:⁶⁷ (i) E&S policy statement; (ii), screening, categorization, and review; (iii) organization structure and staffing; (iv) training requirements; and (v) performance monitoring and reporting. FI training requirements and monitoring and reporting were new areas in the ESMS as compared with the EMS.

204. For five MFFs and sector loans categorized as FI approved before the SPS, and six under the SPS, the review assessed the RRP and ESSFs with respect to: (i) reporting of ADB due diligence with respect to assessing the borrower's capacity; (ii) reporting of gap-filling measures undertaken by the FI; (iii) discussion of policy objectives; and (iv) reporting of subproject aspects (anticipated impacts, preparation and implementation requirements, document preparation, review, and approval, and monitoring and reporting). The analysis of individual ESSFs and ESMS is in

⁶⁷ SPS (para. 66 and para. 13 of Appendix 4), and OM (para. 55). The OM does not list the need to discuss training requirements in the ESMS, but it adds track record in environmental and social management. This review checked both track record and training requirements.

Supplementary Appendix 1, with highlights presented in this chapter.

205. The review checked whether the reports documented the due diligence conducted and used three categories: *present*, *not present*, and *partly present*. *Present* means that all criteria of the SPS or OM were met; *partly present* means that at least one of the criteria was not met or only partially met, and *not present* means that none of the criteria was met.

206. The review also assessed EMSs for 20 FI projects and five MFFs and sector loans approved over 2007 to 2009 (pre-SPS). This was done for comparison. It also assessed legal agreements and their safeguard covenants for a sample of 27 FI projects approved between 2007 and 2012; periodic safeguard monitoring reports submitted by FIs to ADB; and a selection of back to office reports (BTORs) by project officers and safeguard specialists. Lastly, it incorporated findings based on interviews with resident missions, executing agencies and FIs in the PRC, India, Indonesia, the Philippines, Sri Lanka, and Viet Nam. For 10 FI investments (seven projects initiated pre-SPS and three post-SPS) field visits were made to discuss with FI officials their experiences in meeting ADB safeguard policy requirements.

The review also assessed EMSs for 20 FI projects approved over 2007 to 2009

C. Pre- and Post-SPS Approval FI Management Systems

207. The FI projects that were reviewed are categorized in Table 8. Among the 40 category FI projects approved during 2010–2012 (at \$3,498 million), 15 were sovereign and 25 nonsovereign; the total loan amounts approved were \$1,874 million and \$1,624 million respectively. This was 9.2% of overall financing over the period. Twenty-eight were categorized as FI for both environment and social safeguards. The other twelve were categorized as C for safeguards: seven of those did not have an ESMS and were categorized as C for all three safeguard areas; one was categorized as C for environment and involuntary resettlement; three were categorized as C for all safeguards but had an ESMS nevertheless; and one was categorized as C for social safeguards only. Eighteen post-2009 FI projects had an ESMS document, and six an ESSF document. The data for projects with an FI categorization for environmental risks, approved during 2007–2009, are also included in the table. This is for comparative purposes.

208. One conclusion is that the number of FI projects initially categorized as A or B for social safeguards is low, with a quarter categorized as C for social safeguards and almost three quarters as FI for both environmental and social safeguards (with subprojects entirely undetermined at the time of loan approval). Other conclusions are that the number of FI projects in the public sector is growing, that the number of equity projects categorized as FI is growing as well, and that the number of FI MFFs and sector loans is not growing.

209. Twenty-six FI projects approved from 2007 to 2009 (at \$1,854 million in lending) were expected to carry some environmental risks, with \$989 million for sovereign operations and \$865 million for nonsovereign operations. This was 5.7% of overall financing over the period. The analysis of pre-SPS FI projects can be found in Appendix 1, Linked Document F, and is used here mainly to compare the situation in 2007–2009 with that of 2010–2012. Figure 13 shows the extent of ADB's due diligence as documented in RRP, Figure 14 shows the extent of FI due diligence based on a review of ESMS, and Figure 15 shows summary findings regarding ESMS quality for five required elements of the ESMS. The analysis of FI projects approved 2010–2012 with ESMS is in Appendix 1, Linked Document G.

Table 8: Financial Intermediary Projects and Multitranche Financing Facilities/Sector Loans with Financial Intermediary Safeguard Categorization, 2007–2012

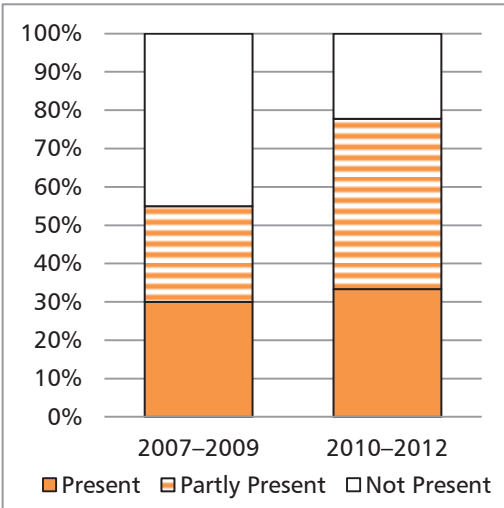
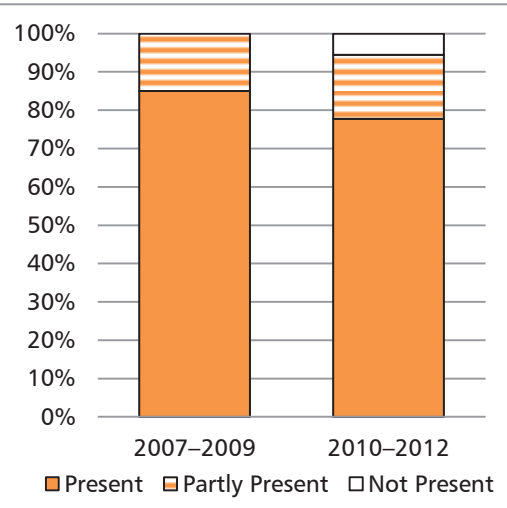
Description	Number Approved (2007–2009)	% Approved	Number Approved (2010–2012)	% Approved
Safeguard Categorization				
Projects categorized FI (treated as C for all safeguards)	0	0	10	25
Projects categorized FI for environment and C for social	20	77	2	5
Projects categorized FI for environment and A/B for social	6	23	0	0
Projects categorized as FI for both environment and social safeguards	0	0	28	70
Total	26	100	40	100
Public or Private Sector				
Public sector operations	8	31	15	38
Private sector	18	69	25	63
Total	26	100	40	100
Project Type				
Equity investment	4	15	9	23
Investment project/credit line	22	85	28	71
Other types (guarantee projects)	0	0	3	8
Total	26	100	40	100
Safeguard Document				
With EMS/ESMS at approval	21	81	18 ^a	45
With ESSF at approval	5	19	6 ^b	15
With neither ESMS nor ESSF at approval (indicated as category C)	0	0	8	20
With neither ESMS nor ESSF due to other reasons (cancelled, no counterpart, awaiting documents, breach of contract, etc.)	0	0	8	18
Total	26	100	40	100
Modality				
MFFs/sector loans implemented by FIs	5	19	6	15
Projects implemented by FIs	21	81	34	85
Total	26	100	40	100

EMS = environmental management system (pre-SPS), ESMS = environmental and social management system, ESSF = environmental and social safeguards framework, FI = financial intermediary, MFF = multitranche financing facility.

^a Five of the 18 were in the public sector, 13 in the private sector.

^b Five of the six were in the public sector, 1 in the private sector.

Source: Projects with FI safeguards categorization and multitranche financing facilities and sector loans approved between 2007–2012, for which EMS, ESMS, project data sheet, and reports and recommendations of the President of FI projects and MFFs/sector loans with FI safeguard categorization were studied.

Figure 13: Extent of ADB Due Diligence as Summarized in RRP**Figure 14: Extent of FI Due Diligence as Summarized in EMS and ESMS**

ADB = Asian Development Bank, EMS = environmental monitoring system, ESMS = environmental and social management system, FI = financial intermediary, RRP = report and recommendation of the President, SPS = Safeguard Policy Statement.

Note: For the ASEAN Investment Fund FI project, all subprojects financed would follow ADB procedures and SPS 2009 requirements hence no need for an ESMS.

Source: This study; review of 18 RRPs and ESMS (2010–2012) and 20 RRPs and EMSs (2007–2009).

1. ADB's Due Diligence and Monitoring

210. There was better ADB due diligence as documented in RRP after 2009 than before, although some RRP did not report on the assessment of either potential impacts or the FI's implementation capacity. Overall, ADB's assessment of (i) the potential environment and social (E&S) impacts and risks of FI's existing and likely future portfolio; and (ii) the FI's capacity to implement E&S policy, was documented in 50% of documentation pre-SPS, and 77% under SPS.⁶⁸ Not all RRP documented the assessment of the capacity of the FI. This was generally also consistent with the assessment of the discussion of training needs presented below. This suggests some limitations to the attention ADB project staff pay to assessment before FI project approval of borrower capacity and training needs, although ADB has in practice provided training to many FI staff and in other cases has been involved in approving the safeguard staff employed by the FI.

211. The OM FI specifies that the frequency of ADB supervision missions should be proportionate to the nature and potential impacts and risks (no lower or upper limit is given). In practice, safeguard supervision is conducted by safeguard staff and project officers. PSOD reported that it did not undertake on-site due diligence of the FI with respect to safeguard implementation unless a problem arose that was brought to its attention. Many of its projects are category C only.

212. For the three private sector projects visited for this review, one reported that the annual ADB supervision mission did not include a safeguard specialist. Instead, ADB had asked that the FI report on ESMS performance through a questionnaire. Sub-borrowers are expected to follow loan conditions which include the rules and policies

There was better ADB due diligence as documented in RRP after 2009 than before

⁶⁸ ADB's RSES has disputed the analysis, arguing that the OM FI/OP understands the requirement of a summary of due diligence differently. However, this report maintains the view that SPS para. 65 and OM FI paras. 55 and 59 together precisely define ADB due diligence, and this definition is used for the review.

of the FI relating to environmental and social issues. High to moderate risk would need an action plan. Another site visit in July 2013 for a 2007 private sector project in Indonesia pointed to weak follow-up by ADB to FI monitoring reports. The project appeared to have issues with sludge from a water treatment plant that was disposed of in a nearby river, and the FI had reported this to ADB through its monitoring reports, but ADB had not followed up.⁶⁹

Other sources of financing are used for projects that involve resettlement or IP

213. This review's field visits corroborated that two public sector projects in the PRC visited were well supervised by ADB project staff and safeguards staff; no problems were encountered. Two field visits to public sector FIs operating MFFs (four tranches) in India pointed to similar good supervision from the side of ADB. However, some prospective subprojects were reported to be redirected away from ADB resources to avoid the burden of the ESMS requirements. One other field visit to an FI project in the Philippines also found the project well supervised. However the same tactic with subprojects was reported here: other sources of financing are used for projects that involve resettlement or IP, as no clients were viewed as able to implement ADB requirements without TA.

214. In some discussions during the field visits FI staff indicated that visiting ADB safeguard staff focused on safeguard performance of client subprojects by making site visits and paid less attention to the FI's organizational structure and its performance when implementing the ESMS. While subproject site visits are always worthwhile, one important objective of an ADB safeguard implementation mission should be to ensure that the FI's ESMS is being implemented and to assess its performance. Documentation of FI screening and categorization decisions, due diligence findings, implementation of subloan agreements, review of subproject bid documents, contract clauses, and other documents need careful examination during such missions. The field visits for this review did not corroborate that the ADB missions focused on FI performance in implementing their ESMS responsibilities, and neither did the BTORs studied provide evidence of such discussions. This may require ADB to train its staff in such issues.

215. PSOD made the review team aware that ADB does not actively monitor in the field the status of the ESMS for private sector FI projects. Hence, BTORs for such projects would not discuss the ESMS, barring cases where category A subprojects were involved. Nevertheless, minutes of meetings and fund documents would normally include information on safeguards (not checked for this review). FI safeguard monitoring reports were the main instruments used by ADB to keep itself informed.

216. The situation was found different for public sector projects. BTORs obtained regarding missions to three public sector projects in Bangladesh and the Philippines corroborated the FIs' compliance in terms of screening and categorization, staff capacity, government requirements, and loan covenants. This pointed to the good effects of conducting such missions. One bank had prepared Environmental Risk Management Guidelines for local financial institutions, including a draft policy guideline for green banking in line with global development trends and in compliance with the SPS. To satisfy the requirements of the SPS, a public-private infrastructure facility strengthened its organization structure and staffing by partnering with an external contractor to conduct financial, legal, and environmental due diligence of sub-borrowers. One bank financing several health care clients was found to have fully complied with the loan covenants related to safeguard implementation, which had led in one case to the cancellation of one subproject. However, not many such BTORs could

⁶⁹ The private sector operations department has stated that they have followed up. The interview was held in July 2013.

be located, hence the recommendation that ADB train staff and devote further attention to monitoring of ESMSs still stands.

2. Financial Intermediaries' Due Diligence and Monitoring

217. The review found that due diligence is often apparent in the documentation in terms of PIAL and compliance of subprojects with national regulations, although there is scope for further improvement (Figure 14). The review found that only one of the 20 FI ESMS documents did not specify that subproject proposals would be checked for their compliance with the national regulatory framework; two did not state that subprojects would be screened against the PIAL.

218. With respect to the monitoring responsibilities of the FI, three parties are involved: the FI, the subproject client, and the client's contractor. All three should have their responsibilities clearly defined in the ESMS, while the guidance document should advise on the frequency of these activities, consistent with the level of safeguard risks and previous sub-borrower performance. No guidance was provided in many relevant ESMSs regarding contractor safeguard monitoring and reporting to the sub-borrower.

219. The borrowers mostly complied with the requirement to submit monitoring reports. Of the 16 FIs with ESMSs and provisions in their legal agreements to submit monitoring reports, 14 have submitted one or more environmental and social safeguard monitoring reports since 2012 (the other two FI projects were cancelled). Two FIs have yet to submit their first safeguards monitoring report to ADB, 2 and 4 years after project approval respectively.

220. The review rated only half of the 14 safeguards monitoring reports submitted as of satisfactory quality, meaning that the progress of at least 3 of the 5 required ESMS elements was discussed satisfactorily, without giving rise to further questions. Six reports did not make clear reference to their own environment and social policies, national laws and policies, or ADB's policies, or any issues or changes in these. Six reports did not clearly indicate how they followed their screening procedures as well as what were the results of the application of the ADB prescribed PIAL. Six monitoring reports did not report on developments in staffing and its sufficiency. Seven monitoring reports did not provide an update on the training needs for FI safeguards staff or on capacity building exercises held. Five monitoring reports had other problems, such as no indications what monitoring was actually conducted, or no indications of checks made on the compliance of subloan requests with national laws and regulations.

221. Only three - public sector - FIs had good reports on all counts, which was perhaps due to the fact that they had been supported earlier by project preparatory TA from ADB. This shows that ESMS implementation, and subsequently the quality of monitoring reports, will improve with good capacity building.

222. Of the four FI projects with ESMSs but categorized as C, three were required to submit monitoring reports to ADB, and have done so. One project, also an FI categorized as C, also required ESMS compliance, but has yet to submit a report.

223. However, out of the five FI public sector projects with monitoring reports, only two have monitoring reports disclosed on the ADB website. None of the 11 private sector FI projects had monitoring reports disclosed on the ADB website, not even redacted reports. ADB needs to clarify whether this is in violation of its OM F1 OP para. 29, which mandates disclosure of all monitoring reports upon receipt.

The borrowers mostly complied with the requirement to submit monitoring reports

The review rated only half of the 14 safeguards monitoring reports submitted as of satisfactory quality

3. ESMS Assessment

Quality of ESMS documents prepared at approval stage showed some improvements

224. The quality of ESMS documents prepared at approval stage showed some improvements compared with those prepared for its predecessor, the EMS (Figure 15). The improvements were greatest in the quality of the descriptions of the environmental and social policy statements (e.g. a clear reference to the SPS), and the required monitoring and reporting systems. One of the best ESMSs reviewed, a model perhaps for many others, is that for the Hebei Energy Efficiency Improvement and Emission Reduction Project in the PRC, which is clear, concise, easily understandable, and contains all the required aspects of subproject environmental safeguard procedures and documentation.

225. **Environmental and Social Policy Statement.** A satisfactory E&S policy statement about the objectives was found in 61% of the documents reviewed under the SPS, an improvement over the pre-SPS documents (40%). Satisfactory descriptions of monitoring and reporting requirements increased from 10% pre-SPS to 56% post-SPS. Nevertheless, all five requirements discussed still had some aspects that were not fully satisfactory.

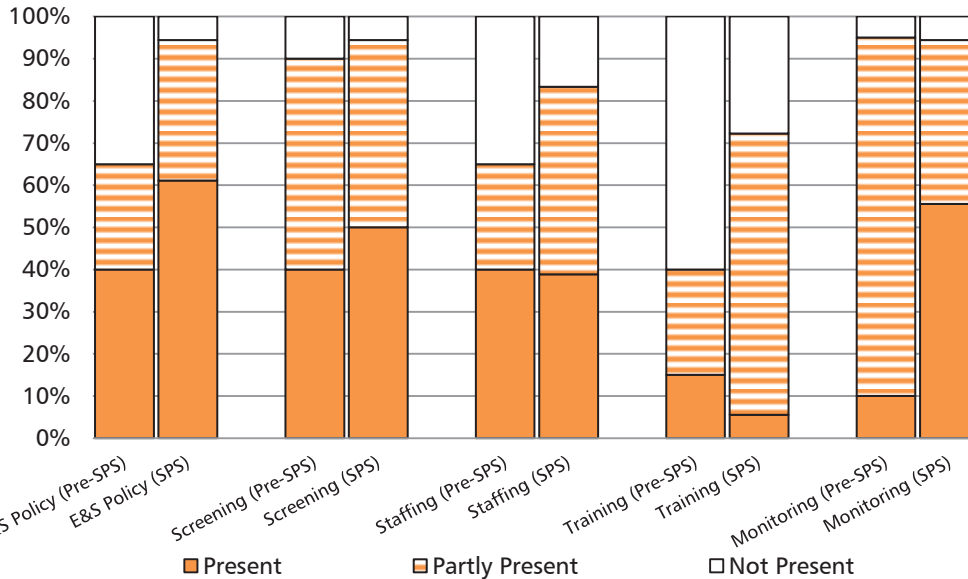
226. **Screening, categorization and review procedure.** Eight of the 18 FI projects approved after SPS adoption had ESMSs with detailed descriptions of the FI's screening and categorization procedures. These were found to be consistent with SPS requirements for EA, IR, and IP planning, and their review and approval procedures were clearly described. One FI project did not mention review and approval procedures in its ESMS documents, while 9 had discussions that the review assessed as being partial in nature.

227. Only eight out of 18 ESMSs documented specific safeguard requirements for subloan agreements between the FI and its clients. Nine contained limited discussion of FI safeguard obligations, and one was completely silent on this topic. This is a critical aspect of subloan processing. In particular, unless safeguard conditions of subloans are part of ESMS procedures, it is unlikely that such conditions will be included in FI or client subloan agreements, client bid documents, and client or subcontractor contract documents. Safeguard requirements can then not be legally enforced upon subproject contractors. With no opportunities for legal redress, the probability the client will pay proper attention to implementing subproject safeguards requirements diminishes. This is particularly the case if those safeguard obligations involve increased costs or are time-consuming. This presents a risk of safeguard noncompliance for the FI which, in turn, can become a reputational risk for ADB.

228. **Organizational structure and staffing.** Seven ESMS documents contained sufficient detail regarding how safeguard staff were to be incorporated into the organizational structure, while the other eight had little or no meaningful discussions of this. Eight projects with ESMSs had detailed discussions of safeguard staff skills. However, eight others had limited discussion on this aspect.

229. Organizational structure and quality of the staff would normally be an important consideration, particularly when an FI subproject assessed is to be assigned category A. FI operations in certain sectors (e.g., energy efficiency, micro, small and medium-sized enterprises) are highly unlikely to be presented with a category A subproject for consideration. Therefore, as long as the FI or sub-borrower includes staff with both responsibility and capacity for ESMS implementation, proper attention is likely to be given to safeguards in subproject assessment regardless of where they may be positioned in the organizational structure.

Figure 15: Assessment of Key Element Descriptions in the Environmental Management System (2007–2009) and Environmental and Social Management System (2010–2012)



E&S = environmental and social, EMS = environmental monitoring system, ESMS = environmental and social management system, SPS = Safeguard Policy Statement.

Note: For the ASEAN Investment Fund FI project, all subprojects financed would follow ADB procedures and SPS 2009 requirements hence no need for an ESMS.

Source: This study, based on review of 18 ESMSs and 20 EMSs.

230. The reasons for the limited attention given to safeguards skills may have been that FIs did not consider this to be very important. PSOD has assured the reviewers that it emphasizes in each case that a dedicated E&S safeguards officer is needed to handle the ESMS for all safeguard categories. Where there are budget constraints, FI staff working on risk management, project appraisal or health and safety are encouraged to hold the position of safeguard officer concurrently and to be provided with training. The underlying reason may be that most FI projects in the private sector consider it unlikely that a sub-borrower will request for financing of a category A subproject.

231. **Training requirements.** Eleven ESMS documents contained a brief reference to training and seven made no mention of it.⁷⁰ ESMSs reflect training requirements even less than the EMSs did in the period before the SPS. Only one ESMS contained details normally associated with a training program such as: (i) number and types of staff to be trained; (ii) type of training to be received and where (domestic or overseas); (iii) duration of training; (iv) schedule of training; and (v) costs.

232. The limited attention FIs appear to give to safeguard training requirements affects their ability to implement the safeguard procedures and activities prescribed in the ESMS to individual subprojects (in particular, screening and categorization). Without properly trained staff (especially in commercial banks⁷¹), subprojects are more

⁷⁰ One ESMS indicated that two consultants would be engaged to support the project management unit (PMU) safeguard issues, but it was unclear whether training was to be included.

⁷¹ The situation may be different for other FIs. In case of funds, the operation period is usually limited, say 5 years. Training of staff has less significance and safeguard expertise may be introduced through consultants. In such cases, there may not be an explicit description of the training need in the ESMS or RRP, but ADB and the FI may agree on special arrangements for the hiring of external expertise.

likely to be screened and categorized improperly, formulation of safeguard planning instruments to be deficient, and subproject supervision to be less thorough. In fact, several ESMS documents had virtually identical and somewhat perfunctory guidance such as: “Environmental and social safeguard manager should receive ADB-sponsored or approved training related to compliance and monitoring activities.” Meanwhile, RSES and PSOD have trained many relevant FI staff through short-term courses, so a foundation has been provided.

The requirement for the description of the FI reporting to ADB was not rigorously followed in the ESMS

233. **Monitoring and reporting responsibilities of the FI as described in the ESMS.** The SPS indicates that the FI needs to report on environmental and social performance on an annual basis (and sometimes more frequently) for projects with risks (i.e. projects with an ESMS). Based on the annual environmental and social monitoring report(s), the safeguard staff or the manager of the FI prepares an annual report to be submitted to the FI’s board of directors and to ADB. The review found that the requirement for the description of the FI reporting to ADB was not rigorously followed in the ESMS. ESMS documentation for 10 projects provided details of their reporting activities, both from the sub-borrower to the FI and from the FI to ADB. In seven other projects the ESMS described reporting from the borrower client to the FI but there was no adequate description of arrangements for reporting to ADB. One ESMS document did not mention monitoring and reporting responsibilities.

4. Conclusion

Quality at entry due diligence has improved after SPS approval, but gaps remain

234. The review found that ADB’s quality at entry due diligence has improved after SPS approval, but that gaps remain. FI due diligence as assessed from ESMSs was at about the same reasonable level before and after the SPS. Since ADB and FI due diligence are different in nature, the review cannot conclude that there was a shift in the ownership of the due diligence process from ADB to FIs (in fact, ADB performs reviews for all category A subprojects independently of the FI). An E&S policy statement was found in most of the documents reviewed under the SPS, which is a great improvement from pre-SPS documents. Screening, categorization, and reviewing also improved. Of the ESMS documents, 40% contained a discussion of FI organizational responsibilities for safeguards for SPS projects, which is about the same as before the SPS. However, the review did not find that training of FI staff was discussed well enough either before and after SPS approval. There was, however, an improvement in the monitoring and reporting arrangements under the SPS, with 56% of projects showing adequate documentation compared with 10% in pre-SPS projects.

ADB preparation processes need further improvement

235. Although it is clear from interviews with safeguard specialists that much time is invested in preparing the FI for working with ADB and with preparing and implementing the ESMS in particular, ADB preparation processes need further improvement.⁷² This includes more attention to training of FI staff charged with the responsibilities for ESMS implementation. Monitoring and reporting requirements by the sub-borrower to the FI, the contractor to the sub-borrower, and the FI to ADB should be described in greater detail in the ESMS documentation, especially if no ESMS exists at the time of project preparation. ADB staff members need to be clearer on how to monitor ESMS performance, and what this implies for field missions. More guidance on the contents of an ESMS document for different types of FIs is also needed.

⁷² A TA administered by the private sector operations department had developed templates for ESMSs, which outline all necessary elements and had produced training manuals to guide FI staff on implementing the ESMS provisions. However, staff still face constraints in detailing the ESMS to the level specified if it is not yet available in the FI. It was also argued that some requirements may not be in ESMS, but are still carried out because of other procedures in the FI.

236. A question can be raised on the significant number of FI projects that are treated as category C, presumably because the subprojects carry no environmental and social risk. These subprojects or subloans are often for micro, small and medium-sized enterprises. It may be well worth ADB investigating further such aspects as pollution control and occupational health and safety. Small enterprises may be home to abuses in worker health and safety because: (i) they can use an assortment of dangerous chemicals, e.g., leather tanning, electroplating, furniture and woodworking operations, and (ii) they tend to be under the radar of most regulatory authorities. In some countries, labor arrangements including forced labor or child labor may also be a concern. If no mini-ESMSs is required for the FIs dealing with such subprojects, and no safeguard expertise is involved, this is cause for concern.

D. Conditions in Agreements between ADB and the FI

237. The review looked at investment documents for FI category projects in both the public and private sectors. Fifty FI projects approved between 2007 and 2012 were taken into account, 23 public sector and 27 private sector. Public sector investment documents reviewed included loan agreements, project agreements, project administration manuals, and framework financing agreements. For loans, private sector investment documents included facility agreements, term facility agreements, subscription agreements, and credit agreements. For equity, the documents included shareholder agreements, fund agreements, limited partnership agreements, and subscription documents. Amendments to the documents, if any, were also considered.

238. In most ADB investment agreements with the FIs, the requirements to fulfill the ADB environmental and social safeguards policy were clearly stated. Definitions of the ESMS and the expanded relevant regulations were included. Although the documents were drafted by many different law firms in many countries, inclusion of the requirements was generally consistent, both before and under SPS. In a quarter of the relevant legal agreements, however, the FI safeguard reporting requirements to ADB were not specified. Although ESMSs could sometimes specify such requirements, a clause in the legal agreement is generally perceived to be more binding and effective.

In most ADB investment agreements with the FIs, requirements to fulfill the safeguards policy were clearly stated

E. Multitranche Financing Facilities and Sector Lending for FIs

239. The SPS makes a clear distinction between the content of an ESMS and the content of a framework document such as an ESSF. ADB should clarify how to reconcile the need for an ESMS for an FI, and a framework document for an FI that is to handle an MFF or a sector loan. The FI MFFs and the sector loans may need an ESSF since they are handled by project management units and, therefore, there is no compelling need for the creation of an ESMS, as there would be in a company or public institution. The conditions under which an ESSF or ESMS is needed should be further elaborated.

240. Five loans were reviewed that were approved before the SPS for sector operations and MFF operations classified as category FI (for a total of \$775 million) (Appendix 1, Linked Document H, Table). However, in one case, three of the loans used the same ESSF; in another, one ESSF was available for two sector loans composed of two tranches, where the latter tranche was approved under SPS, and one infrastructure development loan. In effect, only three ESSF documents were reviewed. However, for the sake of consistency, the unit of measurement is the project, not the ESSF. As previously mentioned, the pre-SPS policy only addressed the environmental safeguard issues and did so only for sector loans: MFF operations were not included in the earlier policy because they had only recently been introduced. As a consequence, it was decided (as was with FI operations) to utilize the same evaluation criteria specified in

the SPS, since these are generally recognized as key elements of an ESSF even before this policy was officially adopted.

241. Six loans were approved for sector loans or MFF operations under the SPS (for \$853 million). As before, several used the same ESSF. In total, six ESSF documents (three before and three under SPS) were evaluated. This makes it difficult to make robust distinctions between the two periods. Given the limited sample, the analysis is presented in Appendix 1, Linked Document H and Supplementary Appendix 1.

242. Nevertheless, MFFs and sector loans covered a significant portion of the total investment in projects categorized as FI (42% before SPS and 24% under SPS). Some discernable trends were as follows: (i) ADB due diligence of borrower/client capacity has improved since the SPS and all three ESSFs reviewed had some capacity assessment. (ii) The discussions of gap-filling measures for both legal systems and borrower/client capacity were however roughly at the same basic levels in both periods, and so was the presentation of policy objectives. Training by ADB is offered, and approval by ADB for category A subprojects is required. (iii) The inclusion and wording of ADB safeguard policy objectives in ESSFs has slightly improved over the years. (iv) The level of detail provided in ESSFs regarding subprojects improved considerably under the SPS.

243. The chief areas where improvements are needed include better descriptions in ESSFs of subproject preparation requirements, subproject implementation requirements, and safeguard document management. Monitoring and reporting discussions have somewhat improved since the SPS. ADB supervision and monitoring of FI MFFs is also better than for most other FI projects.

F. Conclusions and Issues

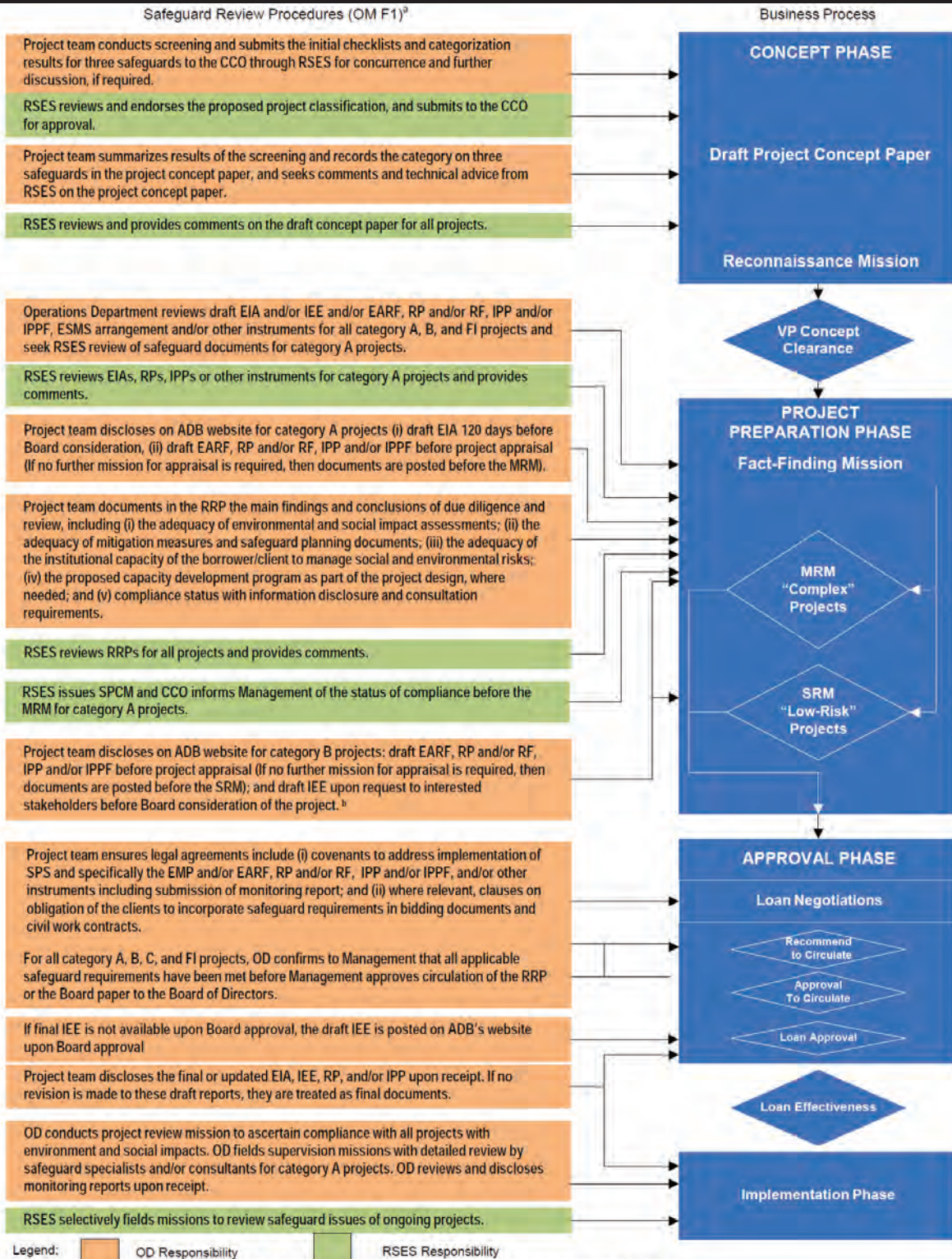
- (i) Overall, ADB has made progress with the promotion and supervision of safeguards enforcement and implementation in its FIs.
- (ii) The RRP summary of ADB due diligence on safeguards during FI project preparation can be improved.
- (iii) ADB field monitoring of safeguard enforcement by FIs through the ESMS is not standard practice for nonsovereign projects, except for category A subprojects.
- (iv) The submission of FI safeguard monitoring reports is not timely, and the quality is highly variable.
- (v) Specialists especially in the regional departments feel a need for more or better guidance notes, on the due diligence needed, and its reporting in project documents in a structured and explicit fashion. There is currently an absence of guidance on the types of FIs and the ESMSs needed for them, and the supervision needed, both of ESMS performance and of category A subprojects.
- (vi) SPS guidance is not clear whether an FI that handles an MFF or sector loan with safeguard risks needs an ESMS, or a framework document.
- (vii) The capacity of FIs to apply the subloan screening checklists and PIAL is unclear. Monitoring reports do not report consistently on their application. FI projects with category C subloans do not need to report on screening and use of the PIAL, but some FIs provide many hundreds or thousands of subloans to micro, small and medium-sized enterprises. Some of these (e.g., tanneries and paint shops) may have environmental impacts, others may have unwanted social impacts (textile workshops employing children, etc.). Pollution control and occupational health and safety issues relevant to many small clients of the FIs are also concerns that are less likely to receive attention if the project is treated as category C.

Appendixes

APPENDIX 1: LIST OF LINKED DOCUMENTS

- A Portfolio Analysis**
<http://www.adb.org/sites/default/files/linked-documents/A-Portfolio-Analysis.pdf>
- B Comparison between Safeguard Requirements Before and After the Safeguard Policy Statement**
<http://www.adb.org/sites/default/files/linked-documents/B-Comparison-Safeguard-Requirements.pdf>
- C Results from a Project Officer Questionnaire on Project-Specific Safeguard Issues**
<http://www.adb.org/sites/default/files/linked-documents/C-Results-Questionnaire-Safeguard-Issues.pdf>
- D Staff Required to Meet Safeguard Policy Review Requirements**
<http://www.adb.org/sites/default/files/linked-documents/D-Staff-Required-to-Meet-Safeguard-Policy-Review-Requirements.pdf>
- E Other Multilateral Development Banks and their Use of Country Safeguard Systems**
<http://www.adb.org/sites/default/files/linked-documents/E-Other-MDBs-Use-of-Country-Safeguard-Systems.pdf>
- F Safeguard Requirements of Financial Intermediary Loans Approved Before the SPS**
<http://www.adb.org/sites/default/files/linked-documents/F-Safeguard-Requirements-of-Financial-Intermediary-Loans.pdf>
- G Analysis of Environmental and Social Management Systems for Financial Intermediaries, 2007–2012**
<http://www.adb.org/sites/default/files/linked-documents/G-Analysis-of-Environmental-and-Social-Management-Systems-for-Financial-Intermediaries.pdf>
- H Analysis of the Environmental and Social Safeguard Frameworks for Financial Intermediaries, 2007–2012**
<http://www.adb.org/sites/default/files/linked-documents/H-Analysis-of-the-Environmental-and-Social-Safeguard-Frameworks.pdf>

APPENDIX 2: SAFEGUARD COMPLIANCE FLOW CHART



^a This flow chart reflects major steps of internal safeguard review procedures. It is not a complete treatment of OM F1.

^b A project can be category B or C for safeguards, but may still be considered a "complex project" and would thus need an MRM.

Project team – consists of ADB staff and consultants responsible for the project preparation, and supervision throughout the project cycle.

CCO = chief compliance officer; EARF = environmental assessment and review framework; EIA = environmental impact assessment; EMP = environmental management plan; ESMS = environment and social management system; IEE = initial environmental examination; IP = Indigenous Peoples; IPP = Indigenous Peoples Plan; IPPF = Indigenous Peoples Planning Framework; IR = involuntary resettlement; MRM = management review meeting; OD = operations department; OM = Operations Manual; RF = resettlement framework; RP = resettlement plan; RSES = Environment and Safeguards Division; SPCM = safeguard policy compliance memorandum; SRM = staff review meeting; VP = Vice President.

Source: ADB. 2013. *Progress Report on the Asian Development Bank's Safeguard Policy Statement* (April 2013), prepared for the Asian Development Fund Donors Annual Consultation on 2 May 2013 in Delhi, India (page 16, Appendix 1).

Safeguards Operational Review: ADB Processes, Portfolio, Country Systems and Financial Intermediaries

This evaluation examines the effectiveness of ADB's approach to strengthening and applying country safeguard systems by its developing member countries, as well as the implementation of safeguard requirements for financial intermediary projects.

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ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to two-thirds of the world's poor: 1.6 billion people who live on less than \$2 a day, with 733 million struggling on less than \$1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

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About the Independent Evaluation at Asian Development Bank

The Independent Evaluation Department evaluates the policies, strategies, operations, and special concerns of the Asian Development Bank relating to organizational and operational effectiveness. It contributes to development effectiveness by providing feedback on performance and through evaluation lessons.

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