



Japan Center for a Sustainable Environment and Society

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Comments on the Discussion Note of the ADB Safeguard Policies Update

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Submitted by

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1. Relations between policies, OMs, and guidelines/handbooks

We are deeply concerned about the changes proposed in the Discussion Note (D/N) concerning the relationship between policies, Operation Manuals (OMs), and guidelines/handbooks, without advancing any substantial reasons. D/N proposes to exclude detailed procedural requirements in the new policy (Para 31). At the same time, D/N fails to define the relationship between policies, OMs, and guidelines/handbooks. In ADB's current legal framework, the contents of OMs are not subject to the Board's decision, and guidelines/handbooks are outside the scope of compliance review by the Compliance Review Panel (CRP) under the New Accountability Mechanism. **Therefore, ADB should not fiddle with this legal framework without thoughtful consideration.**

2. Shifted focus on safeguard requirements during project implementation

D/N proposes to shift ADB's attention from procedural requirements during project processing to satisfying safeguard requirements during project implementation (Para 30). D/N addresses the reason for this change in focus, saying that "the timing and sequence of those procedural requirements are not always optimal, and the requirements in themselves do not ensure satisfactory safeguard outcomes (Para 19)." However, ADB usually has less leverage during project implementation than that in the project preparation stage. Even if significant adverse impacts on the natural and social environment become apparent during the project formation stage, the project can still be approved by ADB with a prospect that these impacts can be mitigated in the future project implementation.

If the current safeguard policies do not include corresponding emphasis on achieving satisfactory safeguard outcomes during project implementation, requirements at implementation stage should be added in a new policy. There is no concrete reason to weaken procedural requirements during project processing. **Therefore, at least, a new policy should ensure that all requirements during project implementation, which are required in the current safeguard policies, be included.**

3. Using country safeguard systems

D/N proposes to use country safeguard systems instead of ADB's safeguard policies. However, we note the following concerns with regard to country safeguard systems:

- Degradation of standards: D/N fails to clarify compatibility between ADB's safeguard policies and country safeguard systems. If ADB use standards as represented in the Appendix 1 as criteria to assess

equivalences between its safeguard policies and country systems, a number of specific safeguard requirements would be dropped from the current safeguard policies.

- Improvement in place prior to approval: D/N is not clear whether ADB can finance a project when the country system does not meet ADB's equivalence criteria. ADB's equivalence assessment should be judged on a country's existing capacity and track record, not on future commitments.
- Application of the New Accountability Mechanism: D/N fails to make it clear whether people, affected or likely to be affected by an ADB-funded project, can file a complaint to the CRP under the ADB New Accountability Mechanism, and whether CRP can investigate possible violations of ADB policy in the project.

Therefore, ADB should not use country safeguard systems, if these concerns cannot be addressed.

4. Update Process

We welcome ADB's commitment to hosting more than 13 public consultations at different regions. However, we also note the following concerns on the policy revision process proposed in the Discussion Note:

- "Documents" publicly disclosed prior to public consultations: D/N states that "participants will receive discussion documents at least three weeks prior to any consultative workshops (Para 42)." However, D/N is not clear about whether "discussion documents" include a comprehensive draft policy paper. **ADB should unequivocally state in public that they disclose at least one draft policy paper for public consultations before a Working Paper (W-Paper) is presented to the Board of Directors for consideration.**
- Translation: In order to ensure effective participation of stakeholders in the update processes, it is necessary to understand how the current detailed requirements in the policies will be revised, and why ADB is trying to revise these requirements. **Therefore, draft policy documents, which are disclosed for public comment, either at public consultations or through ADB website, should be translated into languages that can be easily understood by participants.**

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