



Comments by the NGO Forum on the ADB on the Operations Manual of the new Safeguards Policy Statement of the Asian Development Bank.

February 2010

To: the Board of Directors of the ADB

The ADB's Safeguard Policy Statement and its newly released Operations Manual which instructs staff how to implement the new policy, became effective on January 20, 2010. Civil society groups which were deeply concerned about the introduction of greater vagueness and ambiguity in the new policy are alarmed at the fact that the implementation measures found in the Operations Manual, while improved from an earlier draft, fail to ensure that the new policy does not represent a roll-back of earlier protections and fail to provide clear instructions for implementation. This is likely to undermine the effectiveness of the Safeguards Policy Statement and cause unnecessary time delays due to disputes over interpretation of implementation requirements. In at least one instance, the OM is inconsistent with the Policy and weakens requirements of the new Policy, which is unacceptable. (see 'Regarding sector loans')

In some areas, improvements in the language of the content of the OM have been made over earlier drafts.

We welcome some important improvements in the language and content of the Operations Manual in response to NGO Forum comments, for example:

- A clearer chain of command for ensuring safeguards compliance than in earlier draft. The new OM is clearer than previous drafts. Several of the passive phrases of earlier drafts such as, "periodic reports will be submitted" have been replaced with clearer statements about who must do what, when, submitted to whom. This includes improved clarity (and some changes) as to the precise roles/responsibilities/hierarchy of the project team, operations department, RSES, and CCO.
- Paragraph 35 OM SPS now includes an additional phrase that reads: *"(iii) if there were significant impacts on livelihood caused by project activities other than land acquisition, a comparison of the livelihoods of the affected persons to the baseline situation..."* (p. 9, para. 35).

However, the shortcomings in the OM outweigh the improvements and we have substantial concerns that the new SPS and the implementation measures laid out in the OM will not adequately protect vulnerable populations and the environment. Most of the major substantive changes we recommended were not made.

No improvements were made for consultation requirements for non-IP groups. There is no mention of requiring that project monitoring and evaluation involve the participation of APs. There is still no mention of common property resources in the OM at all, and in the SPS, the concept is only mentioned once as a one-liner in the outline of a resettlement plan, p. 52. This is as a major dilution, since it is now mentioned only in the handbook. There is no language in the OM regarding requirements for APs in the monitoring process, despite the fact that the SPS calls for "Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs" p. 17, Policy Principle 2.

A lot of responsibility is left to the operational department only. More supervision by RSES is needed to make sure that the operations are in compliances with the safeguards principles and requirements.

The new policy requires stronger gender considerations in the policy principles as well as more detailed requirements for the consideration of gender in the assessment of environmental, social and economic impacts, involvement of women in consultations and gender sensitive and responsive grievance mechanisms. However, the instructions to staff about how to implement the new policy don't mention gender at all, except in a footnote.

It will take a significant analytical effort to provide an in-depth assessment of the new OM and detailed recommendations. For now, however, below are some key highlights:

Regarding vague languages:

As a manual for procedures, the OM should avoid vague languages. Samples of vague languages:

- 'to the extent possible, the project team...' (OM F1/OP para 13). OM should state clear instruction such as (in this context) full disclosure of screening check lists, IPSAs, etc.
- 'appropriate expertise' (OM F1/OP para 14). OM should state clear instruction about the composition of the project team and make sure that certified safeguards and gender experts are included.

Regarding the objectives of the ADB safeguards

Under para 2 (ii), it is important to mention that the objective of ADB safeguard is also to improve affected peoples income and livelihood levels.

Regarding environmental procedures:

- Concerns that as more projects appear to be labeled "Category B" for environment, there is a lack of information and transparency required regarding these projects. It is important to give further detailed elaboration on the definition of 'Category B' so it won't be handled as a container for rest category for projects. Detailed instructions to process the categorization are needed.
- Draft IEE reports are only made available "to interested stakeholders before project approval by the Board on request". According to the 2002 Environment Policy, summary EIAs, and in relevant cases summary IEEs, must be made available to the general public at least 120 days before Board consideration of the loan. (Environment Policy 2002, para 64). The wording in the OM regresses the 120 day rule where it applies to IEE and thus represents a weakening of the old policy.
- No requirement for RSES review of IEE (or resettlement plan, IPP, etc) – only if operations department requests RSES review; or if RSES requests it.
- Different standards for IP consultation vs. resettlement and environmental consultation.
- Concerns about how consultations will be operationalized and the extent to which they will occur.
- Concerns about projects with "uncertainties in location and alignment of infrastructure" – no clear language re consultation requirements in these cases.
- Lack of transparency requirements pertaining to safeguard covenant language placed in legal agreements; no requirement to make it publicly known
- For sectoral lending projects, draft resettlement plans and draft IPs for category A projects are only to be "posted on ADB's website before approval of subproject". This appears insufficient for proper consultation.

Regarding Involuntary Resettlement

- Only projects with physical displacement from housing or loss of income will be deemed category A. This is a problem, because this assumes that those people who are not physically displaced from housing or lose income-generating assets are not facing equally grave risks, but in reality for people

with land/natural-resource-based livelihoods who experience displacement that undermines what they are able to get from the land or other resources, they may experience devastating risks that are not captured here.

- The SPU Team once said that this is not really a problem because both Cat. A and Cat. B projects equally require “a resettlement plan and an assessment of social impacts” (p. 2-3, para. 8). However, the OM instructs that “the level of detail and comprehensiveness of the resettlement plan are commensurate with the significance of the potential impacts and risks” (p. 3, para. 9), which means Cat. A plans will be more in-depth. Furthermore, Cat. A projects require additional screening, reporting, due diligence, etc, including:
 - For Cat. A projects, the operations department also seeks review and comments from RSES on the resettlement plan and other instruments, in addition to reviewing these themselves (p. 4, para.15);
 - For Cat. A, “the project team participates in consultations to understand the main concerns of the project-affected people so that these concerns and recommendations can be adequately addressed in project design and safeguard plans” (p. 5, para. 19);
 - For Cat. A, “the CCO informs Management of the status of compliance of a proposed project with all applicable safeguard requirements before the MRM or the final ICM by issuing a safeguard policy compliance memorandum” (as opposed to just the operations department confirming to Management that all applicable safeguard requirements have been met) (p. 7, para. 23);
 - For Cat. A projects, “the operations department conducts supervision missions, with detailed review by ADB’s safeguard specialists, officers and/or consultants (as opposed to just standard project review missions) (p. 7, para. 26)
- So, there are some major differences in terms of the protections people will receive in Cat. A projects vs. Cat. B.

Regarding Sector Loans

In regard to sector loans, the OM states that “one or more sample subprojects *may* be appraised before project approval” (para 41). The Policy states that “one or more sample subprojects *will* be identified and appraised before the approval of the sector investment project.” (para. 6) While the wording in the Policy is states as a requirement, the wording in the OM is stated as an option, which is a concrete watering down of the Policy document.

Regarding Indigenous Peoples

There is no clear procedure to determine whether or not there is ‘broad community support’ but based on reviews and verification of the operation departments. RSES should provide clearer guidance to determine this and oversight its implementation.

Regarding financial intermediaries

- For financial intermediaries, problem of substitution – current language only applies to subprojects financed with ADB funds (but not with FI funds freed up by the entry of ADB funds).
- If FI environmental and social management system fails to function, FI must design a response but no timing requirement regarding implementation of corrective measures.
- No definition of “external experts” provided in the OM/OP.
- For General Corporate Finance – audits are determined by client and ADB on case-by-case basis (i.e. not independent audit). No requirement that violations of ADB requirements must be addressed and cured prior to receipt of ADB finance.

Regarding gender:

In the entire OM, gender is only mentioned one time -on the footnote 9 to explain that gender action plan is included in the summary poverty reduction and social strategy (SPRSS). There is no other word on woman/women, and female headed household in the entire OM document. This is certainly not sufficient as procedural requirements or instruction to the staff on how to operate policy principles and requirements regarding gender issues. First, because this procedure is lack of any information of about components for protection of women from project impacts and risks and its mitigation measures. Second, the OM neglects other policy principles and requirements regarding gender consideration in environmental, social and economic impacts and risk assessment, involvement of women in the consultations related to the projects and gender sensitive and responsive grievance mechanism.

Furthermore, the OM doesn't provide clear definition for the procedure to differentiate women from affected persons. The OM also doesn't provide procedures that required gender expert for project implementation, and that borrowers have the capacity on gender issues. Those shortcoming on gender issues as analysis by the NGO Forum on ADB are about (a) no differentiation of women and men, and (b) no capacity in gender issues is required to the borrower. Those issues were raised in comments to the R-paper and recommendation to OM. Without correction of OM by including a clear procedure requirements re gender issues, the protection to women from project impacts and risk will be still beyond reach.

Regarding project appraisal

Distinct budgets are needed for these cost categories (as mentioned on OM F1/OP, para 21) A transparent budget table must become obligatory. Cost categories must be broken down; reconstruction expenditures must become distinctively itemized and based on cost-indicators, budget line items must correlate with main stages of development. Resettlement Plans must be tested on their economic feasibility.

Regarding project completion

The formulation regarding the project completion report (as mentioned in OM F1/OP, para 35) is too weak. The OM should formulate a clear statement that ADB and the borrower/client are obliged to guarantee that improvements in living circumstances/livelihoods have been achieved after project completion, since the bank is a development bank. If not, it will have to finance all measures needed to address any shortcoming in this respect.

Also, a detailed financial report must be given, of which the contents correlate with earlier mentioned distinct budget tables for environmental (monitoring) and resettlement plans (d. Project appraisal, OM F1/OP, para 21). It should provide insight in financial resources/means invested and related results with consideration given to environmental sustainability and poverty reduction.

Regarding project evaluation

Responsibility of the project should be clearly stated particularly in case that the project evaluation (as mentioned on OM F1/OP, para 37) finds ~~out~~ that a project has caused a deterioration in living circumstances, or harm the environment. A procedure regarding the obligation to design and implement an action plan (in accordance with the safeguards policy and procedures) to repair all the damages caused, must be formulated.

Regarding interpretation

The direction for inquiries (p. 18) state that "*questions of interpretation of this OM section are decided by the chief compliance officer*". This presents a conflict of interest. The person who is checking for compliance with

the provisions of the OM cannot be the same person who interprets compliance. The Accountability Mechanism policy states that

"it is for CRP to determine which part of the operational policies and procedures was or is not complied with after carrying out a compliance review of the request concerned".(para 143) and that "For the present and for purposes of the policy on the new ADB accountability mechanism, the scope of compliance review is "ADB's operational policies and procedures" as they relate to the formulation, processing, or implementation of an ADB-assisted project..." (ibid.)

This clearly indicates that the interpretation of compliance with the Policy and OM must sit outside of RSES to avoid conflict of interest.

In addition, the OM is inconsistent with other OMs, which direct merely questions (not questions of interpretation) to the relevant department.

Conclusion

The significant problems in the implementation measures may well lead the Bank to violate President Kuroda's promise that the new protections would not be any weaker than the Bank's existing policies.

We call on the members of the Board to urge Management to make the necessary improvements to the OM to ensure that the implementation of the Safeguards Policy Statement will not be undermined.