

Comments on the Consultation Draft of the Safeguard Policy Statement

April 22, 2008

Submitted by Mekong Watch

General Comments

The consultation draft of the Safeguard Policy Statement (hereinafter “the draft SPS”) of the Asian Development Bank (ADB) completely fails to achieve the objectives of the Safeguard Policy Update (SPU). It is also critically weakened as compared to the existing safeguard policies and other similar documents. Below are our comments and recommendations, organized by topics¹:

1 Failure to Address Objectives of Updating

1.1 Improving Clarity, Consistency and Coherence

SPU completely fails to achieve its objective to “improve clarity, consistency and coherence among safeguard policies” (para.21.) The draft SPS consists of three main documents, namely Objectives, Scope and Policy Principles (para.40), Policy Delivery Process (paras. 41-59), and Safeguard Requirements for Borrowers/Clients (Attachment A-C). Inconsistency and unclarity among the three documents creates ambiguity about what is mandatory and when. Below are some examples:

- Some of the Policy Principles are not translated into explicit procedural requirements or completely omitted in the Attachment A-C. This creates ambiguities about whether achievement of Policy Principles is mandatory to the borrowers and subject to the compliance review under the Accountability Mechanism.
- While we support the clear delineation of roles and responsibilities of ADB and borrowers/clients, the requirements that borrowers/clients must comply are mixed up in the Policy Delivery Process. For example, Policy Delivery Process contains borrowers/clients’ requirements on the consultation and participation (paras.46-47.) There also exists a discrepancy between Attachment B and the Policy Delivery Process. Attachment B requires the borrower to submit to ADB for approval the final resettlement plan, which is prepared after the loan approval (para.18). However, there are no requirements in the Policy Delivery Process regarding review and approval of project documents after the loan approval.
- Throughout the draft SPS, terms are used in an inconsistent manner, and often without clear operational definition. For example, Policy Delivery Process stipulates that “ADB will not finance projects that do not comply with its safeguard requirements” (para.48). However, There is no definition in the draft SPS that what constitutes ‘ADB safeguard requirements’ in the new policy. In some cases, clear definitions provided in the existing policies are deleted, including “replacement cost” (OM F2/BP, footnote 6), and involuntary resettlement categories (OM F2/OP, para.19-21).

ADB should:

1. Fully reflect the Policy Principles in the Attachment A-C. Attachment A-C should be read as stand-alone documents with comprehensive list of borrowers/clients obligations that are

¹ The scope of our analysis is limited to the environmental and involuntary resettlement safeguards.

subject to the Accountability Mechanism. Same is true for the forthcoming Operations Manual, which will provide procedural requirements for ADB.

2. Clearly delineate the roles and responsibilities between ADB and borrower/client in Policy Delivery Process and Attachment A-C, respectively. Eliminate inconsistency between the two documents.
3. Define and clarify the terms, e.g. ADB safeguard requirements, replacement costs, affected people, significant/limited/minimal impacts, negotiated settlement, involuntary, corporate investments, etc.

1.2 Safeguard Elements in Other Policies and Strategies

One of the objectives of SPU is to “consolidate environmental safeguard elements currently covered in other ADB sector policies/strategies” (para.23). As illustrated by this objective, social safeguard elements that are covered in the ADB policies and OMs, other than the “safeguard policies”, are excluded from the consolidation process. In particular, OM sections on gender² and social dimension³ play important roles in integrating gender/social issues in ADB operations. They are completely ignored in the draft SPS. As a result, social aspects in the draft SPS is far from sufficient.

In addition, SPU fails to incorporate important environmental requirements. For example, ADB's Policy on Forestry states that ADB will not finance any project “that contributes significantly, directly or indirectly, to deforestation or to the degradation and depletion of forests.”⁴

ADB should:

1. Incorporate social safeguard elements of other policies into the SPS, in particular OM sections on gender and social dimension.
2. Incorporate all environmental safeguard elements of other policies into the SPS.

1.3 Improving Clarity of Policy Scope and Triggers

While “improving clarity of policy scope and triggers” is stated as an objective of SPU (para.24), proposed scope and policy triggers are far from clear, leaving space for interpretation. Furthermore, they are more limited as compared to the current policy scope. For example, the scope of the involuntary resettlement safeguards are limited to ‘involuntary’ acquisition and “involuntary” restriction, and the draft SPS does not define the meaning of “involuntary”. Depending on the interpretation, a wide range of resettlement cases may fall outside of the policy scope. Also, loopholes are found in the draft SPS, which allow impacts under certain situations to go unaddressed even if such impacts are within the policy scope. An example is displacement that is caused by a project in which land acquisition is not required and no environmental impacts are identified. Such displacement is deferred to the environmental assessment process to address. However, the environmental safeguards is triggered only when potential environmental impacts are identified.

ADB should:

² OM Section C2, Gender and Development in ADB Operations. This OM section is based on *Policy on Gender and Development*, June 1998., and *Interim Progress Report on ADB's Policy on Gender and Development*, December 2002.

³ OM Section C3, Incorporation of Social Dimension into ADB Operations. This OM section is based on *ADB Policy on Involuntary Resettlement*, 1995; *The Bank's Policy on Indigenous Peoples*, 1998; *ADB Policy on Gender and Development*, 1998; *Cooperation Between Asian Development Bank and Nongovernment Organizations*, 1998; and *Fighting Poverty in Asia and the Pacific: The Poverty Reduction Strategy of the Asian Development Bank*, October 1999.

⁴ *The Bank's Policy on Forestry*, March 1995, p.13.

1. Clarify the scope of each safeguards.
2. Maintain, at minimum, the scope of existing safeguard policies. This will require, among others, deleting the requirement of involuntariness from the scope of involuntary resettlement safeguards.
3. Ensure that no impacts will be left unaddressed, especially social impacts. Inclusion of social impacts in the scope of environmental safeguards is strongly recommended.

2 Introduction of Country Safeguard System (CSS)

We believe that use of country safeguard system is premature for ADB. The World Bank's pilot country system program is still in the process of determining the benefits and concerns of CSS. Furthermore, the draft SPS is already full of major shortcomings and they alone require considerable efforts in the consultation process and future drafts.

ADB should:

- Discuss the possible adoption of the CSS separately from the SPU process. Such discussion should take place after the SPU is completed and careful review of the outcomes of the World Bank's pilot country system program.

3 Elimination of ADB's Due Diligence on Safeguard Requirements

In the draft SPS, ADB introduces new mechanisms, namely Framework Approach, Environmental and Social Management System (ESMS), under which borrowers/clients will be responsible for reviewing compliance with safeguard requirements and ADB will not conduct environmental and social due diligence for subprojects. Though we understand importance of borrowers capacity to manage environmental and social impacts of subprojects, current draft SPS fails to ensure that environmental and social impacts of subprojects are properly assessed and managed.

- ADB does not provide any justification to apply framework approach for a project loan or grant (e.g. Attachment A, para.41.)
- There is no requirement for ADB to review subprojects' EIA and draft RP/IPP before ADB approves category-A subproject.
- For Financial Intermediaries (FIs), subprojects with limited impacts are not required to meet ADB's requirements and will be applied standards of national laws instead (e.g. Attachment A, para.43 (i).)
- For corporate investment projects, ADB will not review environmental and social impacts of projects, and it is not clear whether ADB's safeguard standards will be applied to them (e.g. Attachment A, para.48.) Under current policies, the substance of environmental and social requirements for private sector projects is the same as those of public sector projects.
- There is no accountability in the process of formulating frameworks/ESMS (e.g. Attachment A, paras.36, 44.)
- ADB is not required to disclose relevant information on environmental and social safeguard issues in subprojects.

Furthermore, in case of co-financing, ADB's safeguards will be replaced by those of financing partner in certain circumstances (Policy Delivery Process, para.59). Where ADB requirements are applicable, scope of the application is limited to the specific components financed by ADB only. Under the existing policy, all components of projects, whether financed by ADB or cofinanciers, are covered by safeguard policies (OM F1/OP, para.24, F2/OP, para.2.)

ADB should:

1. Not extend the use of framework approach to project loans or grant.
2. Not apply framework approach to any subproject classified as Category-A or with any resettlement impact. ADB should screen all subprojects identified after loan approval, and conduct environmental and social review for subproject classified as Category-A or with any resettlement impact before approving them.
3. Screen and review all category-A subprojects financed by FIs before approving them.
4. Require all subprojects financed by FIs to comply with ADB's safeguard requirements.
5. Conduct environmental and social due diligence for all corporate investment projects in a manner same as public sector projects.
6. Require that draft frameworks/ESMS are disclosed for public comments before ADB's due diligence.
7. Require borrowers/clients to submit EIA, draft RP/IPP, and disclose them on the ADB's website.

4 Weak Provisions on Social Considerations

The draft SPS fails to adequately address social impacts caused by ADB-financed projects, even compared with the existing safeguards standards.

- Scope of Environmental Safeguard is limited to environmental impacts (Scope, Environmental Safeguards,) while para.9 of Attachment B states that adverse economic and social impacts of projects without land acquisition will be assessed and mitigated through the environmental assessment process.
- Scope of the Involuntary Resettlement Safeguards is limited to 'involuntary' acquisition of land, while providing no definition for involuntariness (Scope, Involuntary Resettlement Safeguards.) Furthermore, change of land use, which is within the scope of current OM F2 on Involuntary Resettlement, is excluded from the scope of current draft safeguards on involuntary resettlement. Restriction of access to land other than legally designated parks and protect area is also excluded.
- Failure to incorporate OM C2 on gender and C3 on social dimension in ADB operation resulted in serious flaws in the manner draft SPS addresses social impacts. It is especially concerning that Initial Poverty and Social Analysis, which is a key ADB document to analyze potential social impacts of projects, is not required in the draft SPS.

ADB should:

1. Include social impacts in the Scope of Environmental Safeguards;
2. Delete 'involuntary' from the Scope of Involuntary Resettlement Safeguards and expand their scope to change of land use and restriction on access to land other than legally designated parks and protect area;
3. Incorporate OM C2 on gender and C3 on social dimension to the SPS.

5 Weakened Standards compared to Existing Policies

Despite the commitment repeatedly expressed by ADB's senior management not to dilute or weaken safeguard standards, the draft SPS constitutes significant weakening of existing policies and procedures. We compiled the detailed comparison on how and where the provisions in the draft SPS are weakened or omitted from the current policies (see Appendix). Below are some examples of the important requirements of the current policies that must not be undermined:

- Elimination of 120-day rule: Current policy requires that SEIA or SIEE will be posted on the ADB's website at least 120 days before ADB board considers the loan (OM F1/OP para.10.) This requirement is dropped in the draft SPS. We understand that SPU team claims that

average time of ADB's appraisal is more than 6 months, providing enough time for the public to review these documents. However, "average time" does not guarantee the minimal disclosure period (para.45 (i).) Moreover, ADB has not provided justification for eliminating this requirement.

- **Disclosure and Consultation:** Current policy requires borrowers to conduct public consultation at least twice: (1) once during the early stages of EIA field work, and (2) once when the draft EIA report is available (OM F1/OP para.9.) The draft SPS eliminates requirements on the numbers of consultations and its timing (Attachment A, para.13) . Furthermore, under the draft SPS, ADB will not disclose final EIA, Resettlement Plan or Indigenous Peoples plan on website (para.45) which are all available under the current policy (OM F1/OP para.10, OM F2/OP para.47 (ii), OM F3/OP para.26 (ii).)
- **Change in Scope and Unanticipated Impacts:** Current policy provides various due diligence requirements for ADB regarding a major change in scope. Such requirements include screening and classification of the change, preparation of environmental and IR documents in accordance to the category of the change (OM F2/OP, para.52). For environment, in addition, approval of the change by ADB board is required (OM F1/OP, para.29). These requirements for ADB are completely dropped in the draft SPS. Change in scope is dealt as "unanticipated impacts" for involuntary resettlement (Attachment B, para.27). For environment, the borrower's EMP seems to replace ADB's due diligence for change in scope and unanticipated impacts (Attachment A, para.11).

ADB should:

1. Maintain the standard of existing policies, at minimum.

6 Consultation Process

6.1 Release of the 2nd Draft

Many NGOs have expressed their disappointment and dissatisfaction with the draft SPS. They have decided to boycott ADB-led consultation process, on the ground that the draft has significantly weakened ADB's current safeguard standards and therefore the draft cannot be the basis of the consultation between ADB and NGOs.⁵ Mekong Watch shares their strong criticism on the current draft.

We urge ADB to produce 2nd consultation draft of the SPS before the preparing the Working Paper.

6.2 Operations Manual

Operations Manual is an important document which describes how the new SPS will be implemented. We regret that the draft SPS does not accompany the draft OM.

We urge ADB to prepare draft OM and release it to public comments, together with the next draft SPS.

Specific Comments

Please refer to Appendix A and B for the detailed comparison of the draft SPS and the current

⁵ Letter from NGO Forum on ADB to Haruhiko Kuroda, President of ADB, dated February 8, 2008.

policies.

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Appendix A

Comparison between the draft SPS and the Existing Policy of the Asian Development Bank (ADB) regarding Environment⁶

1. Scope of Application

- (1) Requirement to apply the policy to project and project components are that not funded by ADB is omitted.

Draft SPS	(N/A) (c.f. SRBC, para.3)
Existing Policy	ADB's environmental assessment process ... covers <i>all projects components whether financed by ADB, cofinanciers, or the borrower.</i> (OM F1/OP, B. Application of the Policy, 2. General Requirements for Environmental Assessment, para.4)

- (2) ADB's safeguard policies will be replaced by CSS under certain circumstances. Please refer to 14.(1).

2. Information Disclosure

- (1) Requirement to disclose information on environmental issues “during the early stages of EIA field work” is omitted.

Draft SPS	The borrower/client will submit to ADB the following documents and disclose them to key stakeholders: (i) draft environmental assessment reports, before appraisal...(SRBC, C. General Requirements, 3. Information Disclosure and Consultation, para.14)
Existing Policy	To facilitate the required consultations with project affected groups and local NGOs, ADB ensures that the borrower or project sponsor provides relevant information on the project's environmental issues in a form and language(s) accessible to those being consulted. <i>For category-A projects, this should happen (i) during the early stages of EIA field work;</i> and (ii) when the draft EIA report is available, and before appraisal. (OM F1/OP, B. Application of the Policy, 2. General Requirements for Environmental Assessment, c. Public Consultation and Information Disclosure, para.11)

- (2) Requirement to disclose “Summary” Environmental Impact Assessment (EIA) on ADB's website is changed to “draft” environmental assessment.

⁶ For the purpose of this paper, “Existing Policy” refers to Bank Policy (BP) and Operational Procedures (OP), Operations Manual (OM) Section F1 “Environmental Considerations in ADB Operations”. The draft Safeguard Policy Statement (SPS) refers to Objective Scope and Policy Principles on Environmental Safeguards (OSPP), Policy Delivery Process, and Attachment B. Safeguard Requirements for Borrowers/Clients: “Environment” (SRBC). Emphasis in the text is added. This paper does not include new OM, which is to accompany the SPS and provide detailed procedures and requirements for ADB. The draft OM was not included in the draft SPS or subject to public consultation.

(3) Requirement for disclosure on ADB’s website “at least 120 days before ADB Board considers the loan” is dropped.

Draft SPS	<p>Information Disclosure. ... ADB will post on its website the following safeguard documents:</p> <p>(i) For each proposed project (other than those expected to have minimal or no adverse impacts or private sector FI projects), ADB will disclose <u>draft environmental assessment</u>, IR plan, and Indigenous Peoples plan <u>before appraisal</u>.</p> <p>(ii) Environmental, IR and Indigenous Peoples monitoring reports submitted by borrower/clients during project implementation will be disclosed. (C. Policy Delivery Process, 1. General Requirements, para.45)</p>
Existing Policy	<p>The <u>SEIA</u>, or in the case of category-B projects that deemed environmentally sensitive, the SIEE, shall be posted on ADB’s website <u>at least 120 days before ADB Board considers the loan</u>, or in relevant cases, before approval of category A or category B subprojects deemed environmentally sensitive or major changes in project scope. The 120-days rule applies to all public and private sector category-A projects and to those category-B projects deemed to be environmentally sensitive. (OM F1/OP, B. Application of the Policy, 2. General Requirements for Environmental Assessment, c. Public Consultation and Information Disclosure, para.10)</p>

(4) Following resettlement and monitoring documents for private sector and FI project that are newly introduced in the draft SPS are not required to be posted on ADB website:

- **Environmental and Social Management System (ESMS)**
- **Annual Report**
- **Corrective Action Plan**

These documents are highly important for affected people and equivalent to those required to be posted on the ADB website under the existing policy.

3. Consultation and Participation

(1) Requirement on the timing and number of public consultation is deleted.

Draft SPS	(N/A) (see, SRBC, C. General Requirements, 3. Information Disclosure and Consultation, para.12)
Existing Policy	For category-A projects, ADB ensures that the borrower or private sector sponsor carries out public consultation <u>at least twice: (i) once during the early stages of EIA field work; and (ii) once when the draft EIA report is available</u> , and before loan appraisal by ADB. (OM F1/OP, para.9)

4. Environmental Assessment

(1) Responsibility of borrower to follow ADB requirements is weakened from “must be met” to “in a manner consistent with”.

Draft SPS	The borrower/client is responsible for assessing projects and their impacts, preparing safeguard plans, and engaging with affected communities through information disclosure, consultation and informed participation, <i>in a manner consistent with</i> ADB policy objectives, principles, and requirements as specified in Attachments A-D. (C. Policy Delivery Process, D. Roles and Responsibilities, 2. Roles and Responsibilities of Borrower/Clients, para.62)
Existing Policy	The following are essential in the preparation and review of IEEs, SIEEs, EIAs, and SEIAs. (i) All government and ADB environmental requirements <i>must be met</i> . (OM F1/OP, F. Borrower's Responsibilities in Preparing and Reviewing RIAs, SEIAs, IEEs, and SIEEs, para.35)

- (2) **The timing to start environmental assessment is made ambiguous, from “as soon as potential projects for ADB financing are identified” to “as early as possible in the project cycle”.**

Draft SPS	... If adverse environmental impacts are identified, the borrower/client will undertake an environmental assessment <i>as early as possible</i> in the project cycle to improve project selection, location, planning, design, and implementation. (SRBC, C. General Requirements, 1. Environmental Assessment, para.4)
Existing Policy	ADB's environmental assessment process starts <i>as soon as potential projects for ADB financing are identified</i> ... (OM F1/OP, para.4)

- (3) **Requirement to assess “indirect” impacts is omitted.**

Draft SPS	(N/A) (see, SRBC, para.5)
Existing Policy	Important considerations in undertaking environmental assessment include examining alternatives; identifying <u>potential environmental impacts, <i>including indirect and cumulative impacts</i></u> , and assessing their significance; ... (OM F1/OP, B. Application of the Policy, 2. General Requirements for Environmental Assessment, para 4)

- (4) **Requirement to address major site selection issues by the time of Board approval for category A project is omitted.**

The existing policy also stipulates the requirements in case where location or alignments of major infrastructure are uncertain at the time of board approval. These requirements are also omitted in the draft SPS.

Draft SPS	(N/A)
Existing Policy	Uncertainties in Locations and Alignments of Infrastructure. For most environmentally sensitive projects, especially under category A, <i>major site selection issues should have been addressed by the time of Board approval</i> . <u>Where specific locations or alignments of major infrastructure or project facilities are uncertain at the time of Board approval, the EIA or IEE must include an EMP that presents full details on the agreed process to be followed for environmental assessment, including any special studies of environmental issues and specification of environmental mitigation measures during project implementation. The pertinent details must be presented in the SEIA or SIEE and summarized in the RRP. The details must also be reflected in the loan agreement.</u> (OM F1/OP, B. Application of the Policy, 7. Implementation, and Monitoring and Evaluation, para.29)

5. Loan Agreement

(1) The legal document on which client’s obligations are to be included is made ambiguous from “Loan Agreement” to “Legal Agreement”. Whereas disclosure of “Loan Agreement” is mandatory (Public Communication Policy, paras.102-103), there is no provision concerning “Legal Agreement”.

(2) Requirement to include specific environmental covenants in loan agreement is omitted.
 According to the draft SPS, compliance to the policy depends greatly on the legal agreement. Policy Delivery Process requires clients to implement safeguard measures and relevant safeguard plans “as provided in the legal agreements” (para.49). Furthermore, ADB reviews project performance against the client’s commitments “as agreed in the legal documents” (para.50), and will seek corrective measures if a client fails to comply with “legal agreements” on safeguard requirements (para.60). However, there is no provision requiring inclusion of environmental requirements into loan agreements.

(3) Requirement for ADB to reflect in loan agreements the client’s obligation to submit periodic progress report is omitted.

Periodic progress reports are still required for client for projects with large-scale resettlement. However, reflecting this requirement in the loan agreement is omitted.

Draft SPS	Borrowers/clients are required to implement safeguard measures and relevant safeguard plans, as provided in the <u>legal agreements</u> , and to submit periodic monitoring reports on their implementation performance. (C. Policy Delivery Process, 1. General Requirements, para.49)
Existing Policy	As part of the environmental assessment process, category-A and environmentally sensitive category-B projects require the development of EMPs that outline specific mitigation measures, environmental monitoring requirements, and related institutional arrangements, including budget requirements. <u>Loan agreements include specific environmental covenants that describe environmental requirements, including the EMPs...</u> To ensure proper and timely implementation of the EMPs and adherence to the agreed environmental covenants, ADB requires, for all category-A projects and all environmentally sensitive category-B projects (footnote 9), that (i) <u>borrowers or executing agencies submit semiannual reports on implementation of EMPs, and that this requirement be reflected in the loan agreements...</u> The purpose is to ensure that the <u>borrower and executing agency are implementing the EMPs and fulfilling the environmental covenants.</u> (OM F1/OP, B. Application of the Policy, Implementation, and Monitoring and Evaluation, para.27)

(4) Requirement to include in the loan agreement the details on the agreed process to be followed for environmental assessment, where location or alignments of major infrastructure are uncertain at the time of board approval, is omitted.

It should be noted that requirement to address major site selection issues by the time of Board approval for category A project is also omitted (please refer to 4.(4)).

Draft SPS	(N/A)
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Existing Policy	Uncertainties in Locations and Alignments of Infrastructure. For most environmentally sensitive projects, especially under category A, major site selection issues should have been addressed by the time of Board approval. <u>Where specific locations or alignments of major infrastructure or project facilities are uncertain at the time of Board approval, the EIA or IEE must include an EMP that presents full details on the agreed process to be followed for environmental assessment, including any special studies of environmental issues and specification of environmental mitigation measures during project implementation.</u> The pertinent details must be presented in the SEIA or SIEE and summarized in the RRP. <i>The details must also be reflected in the loan agreement.</i> (OM F1/OP, B. Application of the Policy, 7. Implementation, and Monitoring and Evaluation, para.29)
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- (5) Requirement to include in the loan agreement a covenant requiring government clearance of the EIS or IEE is omitted.

Draft SPS	(N/A)
Existing Policy	Wherever possible, the borrower gives its final clearance of the EIA or IEE before the SEIA or SIEE is submitted to the Board. <u>Where this is not possible, and final government clearance has still not been received before the conclusion of loan negotiations, a loan covenant requiring government clearance of the EIA or IEE is to be included in the loan agreement.</u> (OM F1/OP, F. Borrower's Responsibilities in Preparing and Reviewing EIAs, SEIAs, IEEs, and SIEEs, para.35, (iv))

6. Monitoring

- (1) After construction, progress report is required for projects that are likely to have significant impact during operation on an “annual basis” at minimum only.

Draft SPS	The borrower/client will prepare periodic progress reports that describe progress with implementation of the EMP or equivalent planning document(s), and, if any, compliance issues and corrective actions. For projects likely to have significant adverse environmental impacts, the borrower/client will submit, at the minimum, semiannual progress reports during construction. For projects likely to have significant adverse environmental impacts during operation, reporting will continue at the minimum on <i>an annual basis.</i> (SRBC, C. General Requirements, 5. Monitoring and Reporting, para.17)
Existing Policy	ADB requires, <u>for all category-A projects and all environmentally sensitive category-B projects, that (i) borrowers or executing agencies submit <i>semiannual reports</i> on implementation of EMPs...</u> (OM F1/OP, para.27)

- (2) Frequency of “periodic site visits” by ADB is not specified.

Under the existing policy, annual review by ADB review mission is required for projects with significant adverse impacts.

Draft SPS	... ADB will carry out the following monitoring actions to supervise project implementation: (i) conduct <i>periodic</i> site visits of projects with significant adverse environmental or social impacts...(C. Policy Delivery Process, 1. General Requirements, para.50)
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Existing Policy	ADB requires, for all category-A projects and all environmentally sensitive category-B projects (footnote 9), that...(ii) review missions from ADB regional departments conduct an annual review of environmental aspects of the project. (OM F1/OP, para.27)
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7. Change in Scope and Unanticipated Impacts

(1) All requirements for change in scope are dropped, including:

- screening and classification of the change by ADB
- preparation of EIA or IEE according to the category of the change
- disclosure of the SEIA or SIEE on ADB’s website
- approval by ADB Board

(2) All requirements for unanticipated environmental impacts are dropped, including:

- Assessment of the significance of impacts, evaluation of the options, estimation of the mitigation costs, identification of the resources needed to mitigate the damage, with help of ADB
- Review of project-induced environmental concerns and recommending ways to address them, by ADB review mission
- If unanticipated impacts are identified after a loan is closed, plan and implement remedial measures, with assistance of ADB as required.

Such provisions are completely omitted in the draft SPS.

Draft SPS	(N/A)
Existing Policy	<p>Changes in Scope. A major change is one that materially alters or fundamentally affects the project’s purpose (immediate objectives), components, costs, benefits, procurement, or other implementation arrangements as approved by the Board. <u>All major changes in scope must be screened for environmental significance, and classified in accordance with paragraphs 6 and 7. All proposed changes that are under category A require an EIA, and those classified as B require an IEE. In the case of environmentally sensitive changes, the SEIA or SIEE must be posted on ADB’s website and submitted to the Board, at least 120 days before the change in scope is approved. (OM F1/OP, B. Application of the Policy, 7. Implementation, and Monitoring and Evaluation, para.29)</u></p> <p>Unanticipated Environmental Impacts. Where unanticipated environmental impacts become apparent during project implementation or after project completion, <u>ADB helps executing agencies and other relevant government authorities assess the significance of the impacts, evaluate the options, and estimate the costs of mitigation. ADB also helps DMCs find the resources needed to mitigate the damage. Project completion review missions should review project-induced environmental concerns, and recommend ways to address them. ADB resident missions take on an increasing role in working with DMCs to resolve issues. If unanticipated impacts are identified after a loan is closed, ADB encourages and assists as required, the borrower to plan and implement remedial measures.</u></p>

8. Project Completion and Performance Audit Report

(1) Requirements to prepare Project Completion and Performance Audit Reports are completely dropped.

There is no provision in the draft SPS requiring ADB or client to evaluate the implementation of the EMP and environmental loan covenants, or assessment of the performance of the executing agency. Under the existing policy, ADB is required to prepare project/program completion report and project/program performance audit report.

Draft SPS	(N/A)
Existing Policy	<p>Project Completion and Performance Audit Reports. To ensure proper documentation of the actual environmental impacts of the project and the success of the EMP, the project or program completion report (PCR) prepared by ADB’s regional departments must include (i) a concise history of the environmental aspects of the project to completion, including an account of the performance of environmental indicators during project implementation; (ii) an evaluation of the implementation of the EMP and environmental loan covenants; and (iii) an assessment of the performance of the executing agency. The PCR’s environment section is based on the facts documented in executing agencies’ semiannual reports and review missions’ back-to-office reports. ADB’s Operations Evaluation Department prepares project and program performance audit reports, which are independent evaluations and include an analysis of the effectiveness of the EMP in achieving the objectives. The reports also assess the PCR’s environmental reporting for its adequacy, and focus on specific environmental issues as documented in the PCR. (OM F1/OP, B. Application of the Policy, 7. Implementation, and Monitoring and Evaluation, para.28)</p>

9. Program Loans

(1) Requirement to incorporate mitigation measures for impacts of policy actions as loan covenants is omitted.

(2) Requirement to prepare a matrix of potential environmental impacts and mitigation measures is omitted. Under the existing policy, the principles followed in preparing the matrix include:

- **Screening of potential environmental impact, including indirect impacts**
- **Mitigation of impacts to the levels of “no significant harm to third parties”**
- **Polluter paying for mitigation measures**
- **Ensurance that the institutional basis for implementing mitigation measures is in place**

(3) “Strategic environmental assessment” is not defined.

Draft SPS	If the policy actions associated with a program loan are likely to have significant adverse environmental impacts on human populations, biodiversity or natural resources, the borrower/client with prepare a strategic environmental assessment (SEA) of such policy actions. (SRBC, Specific Requirements on Different ADB Financing Modalities, 1. Program
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	Loans, para.34)
Existing Policy	ADB requires that the environmental impacts of policy actions associated with program loans be evaluated, and that mitigation measures be identified and incorporated as loan covenants... [A] matrix of potential environmental impacts of each policy action, together with mitigation measures, must be prepared for each program loan, with a qualitative indication of the likely order of magnitude of each impact and brief reasons for the judgment. The principles followed in preparing the matrix include screening of potential environmental impacts (including indirect impacts); mitigation of potential adverse impacts to the levels of “no significant harm to third parties”; polluter paying for mitigation measures; least-cost mitigation; and ensurance that the institutional basis for implementing mitigation measures, including environmental monitoring, is in place. Strategic environmental assessment, which facilitates systematic evaluation of the environmental impacts of a policy, plan, or program, and its alternatives, may be applied to prepare program loans. (OM F1/OP, B. Application of the Policy, 3. Specific Requirements by Lending Modality, para.14)

10. Sector Loans

- (1) Disclosure requirement for environmental assessment for subprojects prepared prior to loan approval is omitted.

Draft SPS	To establish the broad criteria (including the environmental parameters) for selecting subprojects to be financed under a project, a few subprojects are identified and appraised prior to loan approval. For these subprojects, the borrower/client will prepare relevant documentation, including environmental assessment and planning document(s). (SRBC, Specific Requirements on Different ADB Financing Modalities, 2. Sector Finance, para.37)
Existing Policy	For environmentally sensitive sample subprojects, the SEIA or SIEE is submitted to the Board <u>at least 120 days before it considers the sector loan</u> , to demonstrate the manner of treating environmental issues that may arise during and after subproject selection. <u>The SEIA or SIEE describes the institutional arrangements (including budget and capacity requirements) and process that will be followed for environmental assessment of subprojects after the sector loan is approved.</u> (OM F1/OP, B. Application of the Policy, 3. Specific Requirements by Lending Modality, paras.16-17)

- (2) ADB’s review and approval of subprojects prepared after loan approval is omitted.

- (3) Requirement for disclosure of environmental assessment in accordance with the 120 days rule for subprojects prepared after loan approval is omitted.

Draft SPS	The general requirements specified in Section C apply to subprojects and components identified during project implementation. (SRBC, Specific Requirements on Different ADB Financing Modalities, 2. Sector Finance, para.38)
Existing Policy	After the sector loan is approved, for subprojects confirmed by ADB as environmentally sensitive, <u>the proposal and the IEE or EIA of the subproject must be forwarded to ADB for review. The SEIA or SIEE must be made available to the public at least 120 days before the subproject is approved.</u> (OM F1/OP, B. Application of the Policy, 3. Specific Requirements by Lending Modality, paras.17)

11. Wider Application of Framework Approach (MFF, Project Loan or Grant, Emergency Assistance Loans)

(1) Under the Environmental Assessment and Review Framework (EARF), ADB’s review and approval of subprojects is omitted.

Under this approach, components, projects, and subprojects are identified after the approval of ADB. However, there are no provisions in the Policy Delivery Process that requires ADB to conduct review and approval of projects, or disclose relevant documents, after loan approval.

Draft SPS	<p>Framework approaches applies to projects delivered through sector lending modality, MFFs, or other lending modalities where subprojects or project components are prepared after Board approval. Where appropriate, the framework approach may apply where the project or project component is subject to detailed design after Board approval. (C. Policy Delivery Process, 2. Specific Requirements, (b) Application of Framework Approach, para.52)</p> <p>The general requirements specified in Section C will apply to components, projects and subprojects identified during preparation and implementation of an MFF...The borrower/client will agree with ADB on an EARF as specified in paragraph 36. (SRBC, Specific Requirements on Different ADB Financing Modalities, 3. Multitranches Financing Facilities (MFF), para.41)</p> <p><u>An EARF will be prepared for a project loan or grant</u> where subprojects or project components are identified after Board approval. The borrower/client will agree with ADB on an EARF as specified in paragraph 36. The general requirements specified in Section C will apply to subprojects and project components identified during project implementation. (SRBC, Specific Requirements on Different ADB Financing Modalities, 4. Wider Application of EARF, para.41)</p> <p>For emergency assistance loans, the completion of a standard environmental assessment may not be possible before Board approval. In such cases, EARF as per paragraph 36 will be prepared. Components and subprojects identified during the project implementation will follow the general requirements specified in Section C. (SRBC, Specific Requirements on Different ADB Financing Modalities, 3. Multitranches Financing Facilities (MFF), para.41)</p>
Existing Policy	(N.A.)

12. Financial Intermediaries

(1) ADB’s review and approval of subprojects is omitted.

(2) Requirement of disclose environmental assessment in accordance with 120 days rule is omitted for subprojects.

There are no provisions in the Policy Delivery Process that requires ADB to conduct review and approval of projects, or disclose relevant documents, after loan approval.

Draft SPS	<p>...FIs providing long-term corporate finance or project finance will require the recipient of such finance to:</p> <p>(i) <i>follow national laws</i> where the activity financed presents <i>limited environmental</i></p>
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	<p><i>impacts;</i> (ii) follow national laws and <i>apply ADB’s general requirements specified in Section C where the activity financed presents significant environmental impacts.</i> (SRBC, Specific Requirements on Different ADB Financing Modalities, 6. Financial Intermediaries (FIs), para.43)</p>
Existing Policy	<p>For category-A and environmentally sensitive category-B subprojects above the “free limit”, the EIA or IEE must be cleared by ADB before subproject approval. <u>The SEIA or SIEE must be disclosed to the public at least 120 days before the subproject is approved (para. 10). For these subprojects, ADB reviews compliance with its environmental assessment requirements, including those related to consultation and information disclosure. For subprojects below the free limit, ADB reserves the right to review the subproject proposal and its EIA or IEE. (OM F1/OP, para.17)</u></p>

13. Corporate Investments

- (1) Whether or not ESMS will be prepared based on the ADB’s environmental safeguards is not provided.**
- (2) What “ADB’s environmental safeguard requirements” refers to is unclear.**
 Definition of such a term is not provided in the draft SPS.
- (3) The term “unmitigated noncompliance” is incomprehensible.**

Draft SPS	<p>The borrower/client will establish and maintain an ESMS. The ESMS will include a screening mechanism that would identify if the work that it would be supporting is <u>likely to be in noncompliance</u> with ADB’s environmental safeguard requirements. The borrower/client will not provide contracting services for projects that are <u>likely to have unmitigated non-compliance</u> with ADB’s environmental safeguard requirements. The ESMS will also include the following elements: (i) organizational structure and staffing including skills and competencies in environmental and social management; (ii) training requirements; and (iii) monitoring and reporting. (SRBC, Specific Requirements on Different ADB Financing Modalities, 7. Corporate Investments, para.46)</p>
Existing Policy	<p>[T]he substance of ADB’s environmental assessment requirements for private sector investments is the same as that of the requirements for the public sector. For loans and equity investments with specific identified projects or subprojects, the <u>general environmental assessment requirements are applied</u> (paras. 4–12). For indirect assistance in the form of credit lines to, or equity investments in, a financial intermediary or an investment vehicle where subprojects to be financed with ADB funds will be known only during project implementation, <u>ADB’s environmental requirements for category-FI loans and equity investments apply.</u> (OM F1/OP, para.23)</p>

14. Strengthening and Use of CSS

- (1) ADB’s safeguard policies will be replaced by CSS under certain circumstances.**

Draft SPS	<p>ADB’s overall approach for <u>the strengthening and use of CSS</u> has the following attributes...(C. Policy Delivery Process, 2. Specific Requirements, (d) Strengthening and Use of CSS)</p>
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Existing Policy	(N.A.)
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15. Project with Cofinancing

- (1) ADB’s safeguard policies will be replaced by those of financing partner in certain circumstances.
- (2) In other cases, application of ADB’s safeguard policy requirements is limited to ADB-financed components only.

Draft SPS	<p>... In the case of a guarantee or cofinancing transaction with active coordination under formal arrangements with a financing partner to facilitate the processing and implementation of the project, where ADB has satisfied itself that the safeguard policies of a MFI, bilateral institution, or other public/private financing partner are at least equivalent to ADB’s safeguard objectives and policy principles, and that such financing partner has the capacity to implement its policies, <u>the safeguard policies of such financing partner may apply</u>. This approach will not remove ADB’s responsibilities for due diligence and safeguard review during project preparation. Unless otherwise approved by the ADB Board, ADB’s oversight responsibilities for monitoring and supervision during project implementation will also not be removed. In the context of a cofinancing transaction in which the financial partner’s funds are provided in parallel to ADB’s, without formal arrangements between the parties, ADB’s safeguard policy requirements will apply to <u>all ADB financed components</u>. In any context, ADB will make efforts to collaborate with the borrower/client and cofinanciers to adopt a single environmental and social process and unified safeguard documentation, consultation and disclosure requirements, consistent with the principles of this Safeguard Policy Statement. (C. Policy Delivery Process, 2. Specific Requirements, (e) For Projects with Cofinancing, para.59)</p>
Existing Policy	<p>ADB’s environment assessment process covers <u>all components of projects, whether financed by ADB or cofinanciers</u>. Cofinancing comprises financing from official sources (e.g., official loans and grant cofinancing) as well as commercial sources (e.g., commercial banks, insurance companies, institutional investors, and export credit agencies). Commercial cofinancing may be provided with or without an ADB credit enhancement instrument (i.e., a partial credit guarantee, a political risk guarantee, or the complementary financing scheme). <u>Project components that use cofinancing in any form must have environmental assessments carried out in accordance with the requirements set forth in this Operations Manual</u>. Wherever possible, a single environmental assessment should be conducted to satisfy the requirements of ADB and the cofinanciers. (OM F1/OP, para.24)</p>

Appendix B

Comparison between the draft SPS and the Existing Policy of the Asian Development Bank (ADB) regarding Involuntary Resettlement⁷

1. Objectives

(1) Emphasis on avoiding population displacement is weakened.

Under the existing policy, priority is placed on avoiding resettlement, and the premise of minimizing resettlement is “where population displacement is unavoidable”. Such premise is dropped in the draft SPS.

(2) “Choosing” alternative to minimize resettlement is changed to “assessing” alternative.

This weakening is reflected in the relevant requirements provided in the Policy Delivery Process (para.43) and SRBC (para.10), where review of project alternative to avoid or minimize resettlement effects is omitted. Please refer to 4.(1) for more detail.

Draft SPS	Avoid involuntary resettlement wherever feasible, and minimize involuntary resettlement through assessing project alternative and alternative project designs. (OSPP, Objectives)
Existing Policy	The involuntary resettlement policy objectives are (i) to avoid involuntary resettlement wherever feasible; (ii) to minimize resettlement where population displacement is unavoidable by choosing alternative viable project options...(OM F2/BP, C. Policy, para.3)

(3) Focus is on the restoration of affected people’s “livelihoods” only, rather than their general social and economic circumstances.

Under the existing policy, “social and economic circumstances” of affected people are to be at least restored to the preproject level (OM F2/BP, para.4, (iii)). Throughout the draft SPS, however, the emphasis is on livelihoods of affected people and their social circumstances are effectively neglected. For example, social losses and impacts are dropped from the policy scope (please refer to 2.(1)). When determining which resettlement strategies to employ, land-based or compensation, only livelihoods situation of affected people is considered. Social circumstances (e.g. social support system) or opinion of affected people is not considered (please refer to 3.(6)).

Draft SPS	Enhance or at least restore the livelihoods of all affected people in real terms relative to pre-project levels... (OSPP, Objectives)
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⁷ For the purpose of this paper, “Existing Policy” refers to Bank Policy (BP) and Operational Procedures (OP), Operations Manual (OM) Section F2 “Involuntary Resettlement”. The draft Safeguard Policy Statement (SPS) refers to Objective Scope and Policy Principles on the Involuntary Resettlement Safeguards (OSPP), Policy Delivery Process, and Attachment B. Safeguard Requirements for Borrowers/Clients: “Involuntary Resettlement” (SRBC). Emphasis in the text is added. This paper does not include new OM, which is to accompany the SPS and provide detailed procedures and requirements for ADB. The draft OM was not included in the draft SPS or subject to public consultation.

Existing Policy	The involuntary resettlement policy objectives are...(iii) where involuntary resettlement is unavoidable, to ensure that affected people receive assistance...so that they will be at least as well off as they would have been in the absence of the project. (OM F2/BP, C. Policy, para.3)
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2. Policy Trigger and Scope of Application

(1) Social losses and impacts are dropped from the policy scope.

The policy coverage is limited to physical and economic displacements. Throughout the draft SPS, with only few exceptions, social losses and impacts are neglected and there are no provisions requiring avoidance or mitigation of such losses and impacts. The exclusive focus of the draft SPS on physical and economic aspects is illustrated by the objective of a resettlement plan (RP)—the main planning document to protect affected communities from harms—to at least restore the livelihoods and living standards of affected people as relative to “pre-displacement (physical/economic) levels” (SRBC, para.13).

The existing policy states that “‘Involuntary resettlement’ addresses social and economic impacts”. A wide range of social losses and impacts are to be addressed and avoided/mitigated. Such losses include “social support systems” (OM F2/BP, para.1) and “cultural sites” (OM F2/BP, footnote 3).

Draft SPS	The Policy on Involuntary Resettlement covers <i>physical displacements</i> (loss of residential land, shelter or relocation) and <i>economic displacements</i> (loss of lands, assets, access to assets, income sources and means of livelihoods)... (OSPP, Scope)
Existing Policy	“Involuntary resettlement” <i>addresses social and economic impacts</i> that are permanent or temporary... (OM F2/BP, Definition, para.2)

(2) The qualifier “Involuntary” is added to policy triggers, potentially resulting in the exclusion of a wide range of resettlement.

The qualifier “involuntary” is imposed before each action that triggers policy application. Depending on the interpretation of what is “involuntary”, a wide range of resettlement may be excluded from the policy coverage. For example, if “involuntary acquisition of land” is interpreted as “expropriation of land”, cases where local communities give consent to relocation to the Executing Agencies (EAs) would be excluded from policy scope. Such cases are common in ADB projects. It should be noted that, given the political environmental of many DMCs, for local communities to refuse consent until their land is expropriated or “involuntarily” taken away is generally extremely difficult, if not impossible.

Draft SPS	The Policy on Involuntary Resettlement covers physical...and economic displacements...as a result of (i) <i>involuntary</i> acquisition of land, (ii) <i>involuntary</i> restriction on land use, and (iii) <i>involuntary</i> restriction of access to legally designated parks and protected areas. It covers losses and <i>involuntary</i> restrictions that are full or partial, and permanent or temporary. (OSPP, Scope)
Existing Policy	“Involuntary resettlement” addresses social and economic impacts that are permanent or temporary and are (i) <i>caused by acquisition of land and other fixed assets</i> , (ii) <i>by change in the use of land</i> , or (iii) <i>restrictions imposed on land as a result of an ADB operation</i> . (OM F2/BP, Definition, para.2)

(3) Whether “negotiated settlement” falls within the policy scope is unclear.

There is no clear definition of “negotiated settlement”, a concept newly introduced in the draft SPS. From SRBC, it can be read that land is acquired through either “expropriation or negotiated settlements” (Annex 1, Outline of Resettlement Plan, (vii)). If negotiated settlement is interpreted as “voluntary” resettlement, it would be excluded from the policy scope. It should be noted that, even if the policy covers negotiated settlement, different procedures is to be developed and applied for negotiated settlements. For detailed analysis of negotiated settlement, please refer to 10. Negotiated Settlement.

Draft SPS	... <u><i>In case of negotiated settlements involving economic or physical displacements, procedures will be developed in a transparent, consistent and equitable manner to offer the affected people compensations and livelihood restorations, which meet the objectives of this policy principle.</i></u> (OSPP, Policy Principles, 3)
Existing Policy	(N/A)

(4) Acquisition of non-land fixed assets omitted from policy trigger.

(5) Policy trigger concerning land use is narrowed to “involuntary restriction” from “change”.

Events triggering policy application is limited to “involuntary restriction” on land use. As a result, a wide range of impacts would be excluded from the scope of policy application. The existing policy covers impacts by change in the use of land (OM F2/BP, para.2). Below are some examples of cases that would be excluded:

- Adverse impacts on agricultural land, where such land is rendered useless because a physical structure was built under a project and changed watercourse.
- Loss of livelihoods, where Non-Timber Forest Product (NTFP) that communities depend upon disappears because the project cleared nearby forest resources.
- Loss of livelihoods of communities who have shops along a road, where number of customers decreases because the alignment of a road was shifted away from the shops under a road rehabilitation project

(6) Policy trigger is limited to “involuntary restriction of access to legally designated parks and protected areas” from “restrictions imposed on land”.

Access to land, natural and cultural resources, etc. are often integral to the social, cultural, and economic lives of local communities. However, restriction imposed on access to such outside of legally designated parks and protected areas are excluded from the policy scope. The existing policy requires mitigation of loss of access to cultural property and common property resources, including cultural sites, water resources, grazing, or forest resources, etc., regardless of whether or not such area is legally designated as parks or protected areas. Furthermore, the policy states that “[mitigation] measures must be determined in consultation with affected communities, whose rights might not be formally recognized in national legislation” (OM F2/BP, footnote 4).

Draft SPS	The Policy on Involuntary Resettlement covers physical displacements (loss of residential land, shelter or relocation) and economic displacements (loss of lands, assets, access to assets, income sources and means of livelihoods) <u>as a result of (i) involuntary acquisition of land, (ii) involuntary restriction on land use, and (iii) involuntary restriction of access to legally designated parks and protected areas</u> . It covers losses and involuntary restrictions that are full or partial, and permanent or temporary. (OSPP, Scope)
Existing Policy	“Involuntary resettlement” addresses social and economic impacts that are permanent or temporary and are (i) caused by acquisition of land and other fixed assets , (ii) by change in the use of land, or (iii) restrictions imposed on land as a result of an ADB operation. (OM F2/BP, Definition, para.2)

(7) Definition of affected people is omitted.

Draft SPS	(N/A)
Existing Policy	The term affected person includes any people, households, firms, or private institutions who, on account of changes that result from the project will have their (i) standard of living adversely affected; (ii) right, title, or interest in any house, land (including residential, commercial, agricultural, forest, and/or grazing land), water resources, or any other moveable or fixed assets acquired, possessed, restricted, or otherwise adversely affected, in full or in part, permanently or temporarily; and/or (iii) business, occupation, place of work or residence, or habitat adversely affected, with or without displacement. (OM F2/BP, Definition, footnote 3)

(8) Displacement by project activities beyond direct land acquisition is excluded from the policy scope.

The draft SPS states that such displacement is to be addressed through the environmental assessment process. However, the scope of environmental policy is limited to “projects with potential environmental impacts and risks” (Objectives, Scope and Policy Principles on Environmental Safeguards, Scope). This means that, if a project does not require land acquisition and no potential environmental impacts are identified, displacements will not be addressed at all. This creates a significant loophole in the ADB safeguards. Even when environmental policy is applied, social consideration in the environmental assessment process is far from sufficient.

Draft SPS	<u>In the event of potential adverse economic, social or environmental impacts from project activities other than land acquisition (e.g., loss of access to assets or resources or restrictions on land use), these impacts will be avoided, minimized, mitigated or compensated for through the environmental assessment process. If these impacts are found significantly adverse at any stage of the project, the borrower/client will consider applying the policy principles and safeguard requirements on involuntary resettlement, even where no initial land acquisition was involved. (SRBC, B. Scope of Application, para.9)</u>
Existing Policy	(N/A)

(9) ADB’s resettlement requirements are exempted for FI with investments that have “minimal” or “limited” resettlement impacts.

(10) Even for FI’s subprojects with potential significant impacts, only Section C of SRBC is applied. It is not clear whether OSPP or Policy Delivery Process will be applied.

Please refer to 17. Financial Intermediaries.

(11) ADB’s safeguard requirements will be replaced by Country Safeguard System (CSS) under certain circumstances.

Please refer to 20. Country Safeguard System.

(12) ADB’s safeguard requirements will be replaced by those of financing partner under certain circumstances. ADB’s safeguard policies will be replaced by those of financing partner in certain circumstances.

(13) In other cases, application of ADB’s safeguard policy requirements is limited to ADB-financed components only.

Please refer to 21.

3. Compensation and Assistance

(1) Absence of formal legal title to land by an affected person is not a bar to “compensation”, narrowed from “ADB policy entitlements”.

Under the existing policy, ADB policy entitlements include compensation, other forms of assistance, and rehabilitation.

(2) Description of groups that are unlikely to possess legal land title is omitted.

Draft SPS	The absence of formal legal title to land by an affected person is not a bar to <u>compensation</u> . (OSPP, Policy Principle, 4)
Existing Policy	No formal title. <u>Indigenous groups, ethnic minorities, pastoralists, people who claim for such land without formal legal rights, and others, who may have usufruct or customary rights to affected land or other resources, often have no formal legal title to their lands.</u> The absence of a formal legal title to land is not a bar to <u>ADB policy entitlements</u> . (OM F2/BP, Scope of the policy, para.4 (vii))

(3) Affected people must occupy the land for entitlement under type (i) and (ii).

New condition is added in the draft SPS that displaced people must “occupy” the land to be considered type (i) or (ii) (SRBC, para.5). Depending on the interpretation of “occupancy”, those without physical presence on the land in the project area may not be entitled. Please refer to (9) below for its implication.

(4) Definition of formal legal rights to include “customary or traditional rights recognized under the laws of the country” (OM F2/OP, para.9) dropped.

(5) Example of circumstances where claims to land may be recognizable under the national law (OM F2/OP, Footnote 8) is omitted.

Draft SPS	There could be three types of displaced people in a project area: (i) people with formal legal rights to the land <u>they occupy</u> , (ii) persons without formal legal rights to land <u>they occupy</u> but their claims to such land are recognized or recognizable under the national laws... (SRBC, B. Scope of Application, para.5)
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Existing Policy	<p>In order to assist affected people who may not be entitled to compensation for loss of land under the applicable legal framework of the developing member country (DMC) concerned, eligible affected people are classified into three groups with respect to land title, each of which will have different entitlements as set out in Section C.</p> <p>(i) Titled: Those who have formal legal rights to land, <u>including any customary or traditional rights recognized under the laws of the country.</u></p> <p>(ii) Legalizable: Those who do not have formal legal rights to land when the affected population is recorded, but could claim rights to such land, under the DMC’s laws. <u>(footnote 8)</u></p> <p>(iii) Nontitled: Those who have no recognizable rights or claims to the land that they are occupying. (OM F2/OP, B. Eligibility under the Policy, para.9)</p> <p><u>Such claims may result from recognition of prescriptive rights, from adverse possession, from continued possession of public lands without eviction, through eligibility for a government land titling process, or from customary or traditional usage.</u> (OM F2/OP, Footnote 8)</p>
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(6) The only factor determining resettlement strategies (land-based or compensation) is the mode of livelihoods. Social circumstance (e.g. social support system) or opinion of affected people is not considered.

The existing policy also states that “Nonland based options may be used where land is not the preferred option of the affected people; or where land of similar quality and quantity is not available” (OM F2/BP, footnote 5). The quality of land is based on not only livelihoods opportunity or economic circumstances but also social circumstance.

Draft SPS	<p>Improve or at least restore livelihoods of all affected households through (a) <u>land-based resettlement strategies when livelihoods are land-based, and cash compensation at replacement value for land when the loss of land does not undermine livelihoods</u> ... (OSPP, Policy Principle, 3)</p>
Existing Policy	<p><u>Nonland based options may be used where land is not the preferred option of the affected people; or where land of similar quality and quantity is not available.</u> (OM F2/BP, footnote 5)</p>

(7) Definition of replacement cost is omitted.

The definition of replacement cost is omitted, leaving it to the interpretation by the borrower/client. The existing policy provides such a definition, and adds that “where national law does not meet this [ADB] standard the replacement cost will be supplemented as necessary.”

Draft SPS	(N/A)
Existing Policy	<p><u>Replacement cost means the method of valuing assets to replace the loss at market value, or its nearest equivalent, plus any transaction costs such as administrative charges, taxes, registration, and titling costs. Where national law does not meet this standard the replacement cost will be supplemented as necessary.</u> Replacement cost is based on market value before the project or dispossession, whichever is higher. In the absence of functioning markets, a compensation structure is required that enables affected people to restore their livelihoods to levels at least equivalent to those maintained at the time of dispossession, displacement, or restricted access. (OM F2/BP, footnote 6)</p>

(8) Assets that cannot be restored is not defined. Furthermore, it is not clear whether

compensation will be provided for the entire asset, including the residual parts, or only for the affected portion.

For example, if a part of a wooden house is destroyed as a result of land acquisition, the remaining structure may not be livable or economically viable. But the pieces of wood could be used to build a new house. Such case is common in road rehabilitation projects where houses and shops are built very close to the road. In the draft SPS, it is not clear how such case would be treated for compensation. Under the existing policy, affected people are entitled to compensation and other assistances for the entire house. In addition they can retain their assets.

Draft SPS	Improve or at least restore livelihoods of all affected households through... (c) <u>prompt compensation at full replacement cost for assets that can not be restored</u> ...(OSPP, Policy Principle, 3)
Existing Policy	<u>If the residual of an asset taken is not economically viable, compensation and other assistance are provided as for the entire asset. In this case, affected people have the option to retain their assets.</u> (OM F2/BP, footnote 5)

(9) No compensation/replacement would be provided for land that is neither occupied nor used for commercial purposes.

Replacement/compensation is provided for land for type (i) and (ii) persons who “occupy” the land and are displaced (SRBC, para.6). “Business owners with legal rights or recognized or recognizable claims” to “the land where commercial activities are carried out” are also entitled to replacement/compensation for land (SRBC, para.7). However, there is no requirement to provided compensation or replacement for land that is neither occupied nor used for commercial purposes. Under the existing policy, all titled and legalizable affected people are entitled to compensation/replacement for land (OM F2/OP, para.11).

Draft SPS	<u>For those persons under paragraph 5 (i) or (ii), the borrower/client will also provide either replacement property of equal or higher value or cash compensation at full replacement cost.</u> (SRBC, B. Scope of Application, para.6) <u>If resettlement impacts extend to loss of income or livelihood sources, regardless of whether or not the affected people are physically displaced, the borrower/client will promptly compensate loss of assets or access to assets at full replacement costs... Business owners with legal rights or recognized or recognizable claims to land where commercial activities are carried out are entitled to replacement property of equal or greater value or cash compensation at full replacement cost.</u> (SRBC, B. Scope of Application, para.7)
Existing Policy	Where land and assets are lost, <u>titled (para. 9[i]) and legalizable (para. 9[ii]) affected people</u> are entitled to compensation, in the form of <u>cash at replacement cost or replacement land</u> , and to other assistance to at least restore their economic and social base. (OM F2/OP, C. Involuntary Resettlement Entitlements, para.11)

(10) Nonland assets that are not connected to income or livelihood will not be compensated.

Example of nonland assets that may not be compensated include fence and walls around a property, and religious and cultural assets (e.g. graves and stupas). If affected person does not occupy the land, houses and other structures would also not be compensated. The existing policy requires that all eligible affected people are entitled to compensation/replacement for nonland assets.

Draft SPS	<u>If resettlement impacts extend to loss of income or livelihood sources</u> , regardless of whether or not the affected people are physically displaced, the borrower/client will promptly compensate loss of assets or access to assets at full replacement cost. (SRBC, B. Scope of Application, para.7)
Existing Policy	<u>For nonland assets, all eligible affected people</u> , whether titled, legalizable, or <u>nontitled, need to be compensated at replacement cost through cash or replacement assets.</u> (OM F2/OP, C. Involuntary Resettlement Entitlements, para.12)

(11) Not all affected people who lose jobs, incomes, or livelihoods are entitled to financial assistance to cover the losses of the move.

According to the draft SPS, provision of financial assistance to cover the losses of the move is limited to “affected business owners” only in cases where “land acquisition affects commercial structures”. Under the existing policy, “all eligible affected people, including tenants and employees of affected businesses” who lose their jobs, incomes, or livelihoods are “entitled to receive one-time financial assistance to cover losses of the move”. This may include relocation and transfer expenses, transitional income and livelihood support, etc.

Draft SPS	<u>In cases where land acquisition affects commercial structures, affected business owners are entitled to the cost of reestablishing commercial activities elsewhere, for lost net income during transition period, and for the costs of the transfer and reinstallation of the plant, machinery or other equipment</u> (SRBC, B. Scope of Application, para.7)
Existing Policy	<u>All eligible affected people</u> , including tenants and employees of affected businesses <u>who stand to lose their jobs, incomes, or livelihoods because of project impacts, are entitled to receive one-time financial assistance to cover losses of the move, as well as economic and social rehabilitation.</u> Such entitlements may include: <u>(i) relocation and transfer expenses; (ii) assistance for transitional income and livelihood support; (iii) compensation for crop or business losses; (iv) reestablishment of agricultural or business production; (v) assistance for income restoration.</u> (OM F2/OP, C. Involuntary Resettlement Entitlements, para.13)

(12) Requirement to compensate for community and public resources losses is omitted.

Draft SPS	(N/A)
Existing Policy	Community and public resource losses to be considered as eligible for compensation include: (i) common property resources, including water bodies, forest, woodland, pasture, and community recreation, and cultural sites; (ii) public structures such as markets, health and educational facilities, water and washing points, and meeting houses; and (iii) infrastructure such roads, bridges, and other transport lines; power facilities; telecommunication lines; and water sanitation and drainage facilities. (OM F2/OP, para.15)

(13) Definition of cut-off date is omitted, leaving to the interpretation of clients.

Draft SPS	(N/A)
Existing Policy	The eligibility cutoff date could be the date of the delineation of the project area prior to population record or census, the date of commencement of the population record or the census within the project area boundaries, or public notification of the project by appropriate authorities. (OM F2/OP, Footnote 5)

(14)SRBC contains no specific provisions concerning following requirements in OSPP (which are also provided under the existing policy):

- “Support social and cultural institutions of affected people and their host population” (Policy Principles, 2)
- “Those affected by physical displacements should receive in addition...d) civic infrastructure and community services...f) development assistance, such as land development...”
- “Integrate resettlers economically and socially into their host communities, and extend project benefits to host communities”
- “Improve the standards of living of vulnerable groups affected by the project to comply at least with national minimum standards and provide them in rural areas with legal and affordable access to land and resources, and in urban areas with legal and affordable access to adequate housing” (Policy Principles, 3)
- “Address potential economic and social impacts of the project that are caused by involuntary restriction of access to legally designated parks and protected areas” (Policy Principles, 5)

4. Review of Alternative

(1) The requirement to review of project alternative to avoid or minimize resettlement effects is omitted.

Draft SPS	<u>If through the screening process, involuntary resettlement impacts are identified, resettlement plans will be prepared</u> commensurate with the extent and scale of the impacts. (C. Policy Delivery Process, 1. General Requirements, para.43) Each project proposed for ADB financing is screened...to ... <u>identify feasible alternative project alternatives</u> ... (SRBC, C. General Requirements, 1. Screening, para.10)
Existing Policy	<u>Wherever screening procedures identify likely involuntary resettlement, the policy requires efforts to avoid or minimize such effects through review of feasible alternative project design and location options.</u> The reviews allow evaluation of risks, alternatives, and tradeoffs, and open the way for development opportunities with early stakeholder involvement, including affected people and their representatives, local government, civil society groups, and others. (OM F2/OP, A. Scope and Application, para.3)

5. Screening and Categorization

- (1) Requirement to determine the category of a multi-component project/program “by the category of its most resettlement sensitive component” is omitted.
- (2) Requirement to prepare resettlement planning document as a precautionary measure in case of doubt is omitted.

Draft SPS	(N/A)
Existing Policy	<u>A project’s involuntary resettlement category is determined by the category of its most resettlement-sensitive component...Classification is an ongoing process, and the involuntary resettlement category can be changed at any time with the approval of the CCO as more detailed information becomes available and project processing proceeds. However, in case of doubt in the early stages of project preparation, a resettlement-planning document must be prepared.</u> (OM F2/OP, D. Involuntary Resettlement Identification and Categorization, 1. Involuntary Resettlement Screening, para.22)

- (3) **Clear and measurable resettlement category is deleted.**
While the terms “significant” “large-scale” “minimal” and “limited” is used throughout the draft SPS to describe the significance of resettlement impacts, there are no measurable definition of such terms. Requirement to categorize projects based on clear and quantitative assessment of resettlement impacts is deleted.

- (4) **Required actions according to the significance of resettlement impact is unclear.**

Requirements dependent on the significance of resettlement impacts include:

- Disclosure of draft resettlement plan on ADB website (Policy Delivery Process, para.45)
- Application of ADB requirements other than Prohibited Investment Activities List (PIL) for FI (Policy Delivery Process, para.56)
- Establishment and maintenance of Environmental and Social Management System (ESMS) for FI (Policy Delivery Process, para. 56)
- Preparation of resettlement framework for FI (SRBC, para.40)
- Retention of external expert to conduct monitoring and/or verify monitoring information of the client (SRBC, para.25)
- Submission of semiannual resettlement progress reports (SRBC, para.26)

Draft SPS	<u>...the borrower/client will determine if a project has significant resettlement impacts based on the following criteria: (i) scale of IR/displacement, (ii) severity of IR impacts/displacement; and (iii) borrower/client’s capacity to adequately address these impacts.</u> (SRBC, C. General Requirements, 1. Screening, para.11)
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Existing Policy	<p>Projects are assigned an involuntary resettlement category depending on the significance of the probable involuntary resettlement impacts. (OM F2/OP, D. Involuntary Resettlement Identification and Categorization, 1. Involuntary Resettlement Screening, para.18)</p> <p>a. Involuntary Resettlement Category A: Significant “Significant” means 200 or more people will experience major impacts, which are defined as (i) being physically displaced from housing, or (ii) losing 10% or more of their productive assets (income generating). Category A projects require a full resettlement plan. Some of these projects may require a resettlement framework prior to the full resettlement plan. (OM F2/OP, D. Involuntary Resettlement Identification and Categorization, 1. Involuntary Resettlement Screening, para.19)</p> <p>b. Involuntary Resettlement Category B: Not Significant Category B projects include involuntary resettlement impacts that are not deemed significant and require a short resettlement plan. Some of these projects may require a resettlement framework prior to the short resettlement plan. (OM F2/OP, D. Involuntary Resettlement Identification and Categorization, 1. Involuntary Resettlement Screening, para.20)</p> <p>c. Involuntary Resettlement Category C No involuntary resettlement effects are foreseen in category C projects. They neither require a resettlement plan nor a resettlement framework.(OM F2/OP, D. Involuntary Resettlement Identification and Categorization, 1. Involuntary Resettlement Screening, para. 21)</p>
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6. Social Assessment

(1) Initial Poverty and Social Assessment (IPSA) is omitted.

Under the existing policy, required for every development project, IPSA is the basis for assuring the budget and resources for preparing the resettlement plan. IPSA is carried out early in the project cycle, so that appropriate measures and sufficient resources for resettlement planning can be included in the TOR for the feasibility study (OM F2/OP, para.23 and 24). IPSA may:

- Together with detailed resettlement planning, determine the need for and the magnitude of entitlements and the delivery schedule of rehabilitation provisions (OM F2/OP, para.14)
- Identify resources and steps required to determine project sites and alignments
- Identify people, households, and communities likely to be affected by involuntary resettlement
- Indicate institutions that will be involved in resettlement planning and management, and assessment of their capacities (OM F2/OP, para.23)
- Identify the resources and steps required to determine project sites and alignments
- Quantify any land acquisition, land changes, or restrictions that will necessitate involuntary resettlement planning
- Flag the necessary and sufficient conditions for resettlement planning (OM F2/OP, para.24)
- Identify public consultation process (OM F2/OP, para.44)

(2) “Poverty assessment” is omitted in the socioeconomic survey.

Draft SPS	... (v) social impact assessment based on a sample of at least 10% of the affected people and 20% of affected vulnerable populations... (SRBC, Annex 1, Outline of Resettlement Plan)
Existing Policy	<u>The [resettlement] documents include...data on the existing economic and social condition of the affected people, including a poverty assessment and a survey of least 10% of affected people and 20% of seriously affected people, together with local-level impact data. (OM F2/OP, F. Compliance Requirements, 1. Resettlement Plan, para.34)</u>

(3) Requirement for sufficient site investigation to prepare population record and asset inventory is omitted.

(4) Requirement to prepare population records, land assessment, asset inventory, and sample socioeconomic surveys in consultation with those affected is omitted.

Draft SPS	The borrower/client will conduct a social impact assessment for projects with potential IR impacts. The social assessment report will outline identified social impacts, conduct an inventory of affected people and their assets, assess their income and livelihoods, and provide information regarding economic, social, and cultural conditions of affected people and their communities including a gender-disaggregated description of the findings, based on a sample of 10% of affected people and 20% of affected vulnerable populations. (C. General Requirements, 2. Social Assessment, para.12)
Existing Policy	<u>The population record and asset inventory are prepared based on site investigation sufficient to identify titled, legalizable and nontitled affected people.</u> These are essential elements in resettlement planning for establishing scope and quantities and determining the full compensation and resettlement cost. <u>The population records, land assessment, asset inventory, and sample socioeconomic surveys are prepared in consultation with those affected.</u> (OM F2/OP, F. Compliance Requirements, 1. Resettlement Plan, para.35)

7. Information Disclosure

(1) Requirement to post the following on ADB website is omitted:

- draft resettlement framework
- final resettlement plan
- revised resettlement plan

(2) Requirement for ADB to post resettlement plan for private sector and FI project on ADB website is omitted.

(3) Following resettlement and monitoring documents for private sector and FI project that are newly introduced in the draft SPS are not required to be posted on ADB website:

- Environmental and Social Management System (ESMS)
- Annual Report
- Corrective Action Plan

These documents are highly important for affected people and equivalent to those required to be

posted on the ADB website under the existing policy. Please refer to sections 17. and 19. for details of these documents.

(4) Requirement on timing of disclosure (14 calendar days after receipt of document) is deleted.

Draft SPS	<p>ADB will post on its website the following safeguard documents:</p> <p>(i) For each proposed project (<i>other than</i> those expected to have minimal or no adverse impacts or <i>private sector FI projects</i>), ADB will disclose draft environmental assessment, IR plan, and Indigenous Peoples plan before appraisal.</p> <p>(ii) Environmental, IR and Indigenous Peoples monitoring reports submitted by borrower/clients during project implementation will be disclosed.(C. Policy Delivery Process, 1. General Requirements, para.45)</p>
Existing Policy	<p>ADB shall post on its website</p> <p>(i) before appraisal—a draft resettlement plan or <i>framework (or both)</i>;</p> <p>(ii) <i>no later than 14 calendar days after receipt of the final resettlement plan—the final resettlement plan</i>; and</p> <p>(iii) <i>no later than 14 calendar days after receipt of a revised resettlement plan—the revised resettlement plan.</i> (OM F2, OP, G. Participation of Affected People and Resettlement Disclosure, para.47)</p> <p>A loan agreement may require that certain social monitoring reports be prepared during the course of a project or program. <i>Such social monitoring reports shall be posted on ADB’s website upon submission to ADB. ADB shall require private sector sponsors to make social monitoring reports available to affected people and to submit these to ADB for web posting.</i> (OM F2, OP, G. Participation of Affected People and Resettlement Disclosure, para.48)</p>

(5) Requirement for executing agency or project sponsor to “disseminate” information to affected people is weakened to “provide” information.

Draft SPS	<p>The borrower client will <i>provide</i> relevant resettlement information as brochures, leaflets, or booklets in a form, manner and language(s) accessible to affected people and key stakeholders. (SRBC, C. General Requirements, para.22)</p>
Existing Policy	<p>The policy requires that the executing agency or project sponsor <i>disseminates</i> information <u>to</u> and closely consults <u>affected people</u> during resettlement planning and implementation. (OM F2, OP, G. Participation of Affected People and Resettlement Disclosure, para.44)</p>

(6) Requirement to carry out gender-specific consultation and information disclosure is omitted.

Draft SPS	(N/A)
Existing Policy	<p>...<i>management will ensure</i> that gender concerns are incorporated, including <i>gender-specific consultation and information disclosure.</i> (OM F2/OP, para.4)</p>

8. Consultation and Participation

(1) Requirement to ensure participation in “choosing” resettlement options is weakened to “consultation on choices”.

Draft SPS	A RP includes measures to ensure that the displaced people are (i) informed about their options and rights pertaining to resettlement; and (ii) <u>consulted on choices</u> , and provided with technically and economically feasible resettlement alternatives (SRBC, C. General Requirements, 3. Formulation of Resettlement Planning Documents, para.13)
Existing Policy	Pertinent resettlement information is to be disclosed to the affected people at key points, and specific opportunities provided for them <u>to participate in choosing, planning, and implementation options</u> . (OM F2/BP, Scope of the policy, para.4 (v))

(2) Requirement to conduct consultation in transparent manner is omitted.

Draft SPS	(N/A)
Existing Policy	Interventions are to be designed with participation by, and consultation with affected people, including the poor and vulnerable to ensure that their needs, priorities and preferences are addressed. <u>Such participation and consultation need to be carried out in a transparent manner</u> . (OM F2/OP, C. Involuntary Resettlement Entitlements, para.17)

(3) Requirement to incorporate the views of civil society groups into resettlement planning documents weakened.

The draft SPS writes that borrower/client is required to “engage” civil society. The existing policy requires that views of civil society, including NGOs, are “taken into account” in preparation and review of resettlement planning documents.

Draft SPS	<u>ADB will require the borrower/client to engage with the communities, groups, or persons affected by the proposed projects and civil society through information disclosure, consultation and informed participation,</u> in a manner commensurate to the risks and impacts on the affected communities... (C. Policy Delivery Process, 1. General Requirements, para. 46)
Existing Policy	The following are essential in the preparation and review of resettlement planning documents... (iii) <u>In preparing the resettlement planning documents, ADB requires the borrower to take into account the views of affected groups and civil society groups where relevant, including nongovernment organizations.</u> (OM F2, OP, I. Borrower’s Responsibilities, para.58)

9. Consideration to Gender and Poor and Vulnerable Groups

(1) Disabled is omitted from the definition of vulnerable groups.

Draft SPS	Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, Indigenous Peoples, or persons without legal entitlements. (OSPP, Policy Principle, 2)
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Existing Policy	Particular attention must be paid to the needs of the poorest affected people, and vulnerable groups that may be at high risk of impoverishment. This may include those without legal title to land or other assets, households headed by females, the elderly or <i>disabled</i> and other vulnerable groups, particularly indigenous peoples. (OM F2/BP, Scope of the policy, para.4 (ix))
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- (2) Requirement to prepare project-specific definition of the poorest and vulnerable groups is omitted.

Draft SPS	(N/A)
Existing Policy	<i>The resettlement planning documents will, in each case, define the poorest and vulnerable groups</i> , using, as appropriate, the poverty line as defined in the poverty partnership agreement with the DMC concerned, or other accepted ADB documents. (OM F2/BP, Footnote 9)

- (3) Poverty Assessment is omitted in the socioeconomic survey.

Please refer to 6.(2)

- (4) Requirement for ADB management to ensure that gender concerns are incorporated is omitted.

Draft SPS	(N/A)
Existing Policy	<i>...management will ensure that gender concerns are incorporated, including gender-specific consultation and information disclosure. This includes special attention to guarantee women’s assets, property, and land-use rights; and to ensure the restoration of their income and living standards.</i> (OM F2/OP, para.4)

- (5) Objective of social preparation phase and focus on vulnerable groups is deleted.

Draft SPS	Where <i>social impacts and risks are complex and sensitive, resettlement and compensation decisions should be</i> preceded by a ‘social preparation phase’. (OSPP, Policy Principle, 2)
Existing Policy	Where <i>adversely affected people are particularly vulnerable groups</i> , resettlement planning decisions <i>will be</i> preceded by a social preparation phase <i>to enhance their participation in negotiation, planning, and implementation.</i> (OM F2/BP, Scope of the policy, para.4 (v))

- (6) Specific requirements to prepare measures to improve the status of poor and vulnerable people are omitted.

There is no provisions in SRBC to implement the Policy Principle 3 of OSPP, which states: “Improve the standards of living of vulnerable groups affected by the project to comply at least with national minimum standards and provide them in rural areas with legal and affordable access to land and resources, and in urban areas with legal and affordable access to adequate housing.”

Draft SPS	(N/A)
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Existing Policy	<p>Measures to improve the status of the poor and vulnerable people should focus on strategies to avoid further impoverishment and create new income opportunities. Among them are:</p> <ul style="list-style-type: none"> (i) reducing barriers, for example, to employment opportunities, such as project work; (ii) improving access to and delivery of essential services, including those that can be provided by the project; (iii) empowering people through good governance, sound participatory processes, and effective organization; and (iv) reducing vulnerability to poverty through asset-building strategies such as development grants, land-for-land, replacement housing of minimum standard, and increased security of tenure. (OM F2/OP, para.16)
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10. Negotiated Settlements

The concept of “Negotiated settlement” is newly introduced in the draft SPS to be treated differently from the rest of the resettlement process. Ensuring that negotiated settlement does not become a loophole in ADB’s safeguards is critical especially since substantial resettlement cases may be considered “negotiated settlement”. There is no clear definition of “negotiated settlement” provided in the draft SPS, leaving it to the interpretation. Moreover, acquisition of land and other assets through negotiated settlements is encouraged (SRBC, para.20). Concerns regarding negotiated settlement are described below:

(1) Whether “negotiated settlement” falls under the policy scope is unclear.

If negotiated settlement is considered “voluntary resettlement”, it would be excluded from the application of policy. Please refer to 2.(2) and 2.(3).

Even if negotiated settlement is within the policy scope, it is highly problematic for the following reasons:

(2) Requirements provided in the Policy Principle 3 of OSPP will not be applied.

Policy Principle 3 in OSPP sets out the general requirements on compensation and other assistances. For negotiated settlement, however, these requirements will not be applicable. Policy Principle 3 states that the “objectives” of this principle would be applied; however, there is no “objectives” provided in the principle. Whereas compensation at “replacement cost” is required by Policy Principle 3, SRBC requires “fair and appropriate” compensation (para.20). What is “fair and appropriate” compensation is not defined in the draft SPS.

(3) What other policy principles and provisions, if at all, is applicable is unclear.

(4) Resettlement framework would be prepared, rather than resettlement plan.

Policy Principle 3 and para.20 of SRBC writes that different procedures will be developed for negotiated settlement, but fails to clarify what other policy principles and provisions, if at all, is applicable. Moreover, resettlement framework would be prepared for negotiated settlement, rather than resettlement plan (SRBC, para.20).

Draft SPS	<p>...In case of negotiated settlements involving economic or physical displacements, <u>procedures will be developed in a transparent, consistent and equitable manner to offer the affected people compensations and livelihood restorations, which meet the objectives of this policy principle.</u> (OSPP, Policy Principles, 3)</p> <p>Borrower/clients are encouraged to acquire land and other assets through negotiated settlements based on a free, prior and informed consultation with affected people....Negotiated land acquisition includes offers of fair and appropriate compensation and other incentives or benefits. The borrower/client will ensure that any negotiations with affected people openly address the risks of asymmetry of information and bargaining power of the parties. The borrower/client will engage an independent external party to document the processes and agreements of such negotiations. <u>The borrower/client will agree with ADB on a resettlement framework (RF)</u> that outlines the participatory process, policies and laws that are applicable to such transactions, third party validation, mechanisms of calculating replacement cost of land and other assets affected, and record-keeping requirements. (SRBC, C. General Requirements, 4. Negotiated Land Acquisition, para.20)</p>
Existing Policy	(N/A)

11. Formulation of Resettlement Planning Documents

(1) Responsibility of borrower to follow ADB requirements is weakened from “must be met” to “in a manner consistent with”.

Draft SPS	The borrower/client is responsible for assessing projects and their impacts, preparing safeguard plans, and engaging with affected communities through information disclosure, consultation and informed participation, <u>in a manner consistent with</u> ADB policy objectives, principles, and requirements as specified in Attachments A-D. (C. Policy Delivery Process, D. Roles and Responsibilities, 2. Roles and Responsibilities of Borrower/Clients, para.62)
Existing Policy	The following are essential in the preparation and review of resettlement planning documents. (i) All ADB requirements <u>must be met.</u> (OM F1/OP, F. Borrower’s Responsibilities, para.58)

(2) Following elements are omitted in the outline of RP proposed in draft SPS:

- a statement of involuntary resettlement objectives and strategy
- access to training, employment, and credit
- shelter, infrastructure, and social services
- environmental protection and management
- gender analysis

Draft SPS	(N/A)
Existing Policy	a statement of involuntary resettlement objectives and strategy (OM F2/OP, E. Resettlement Planning Documents, para.25)

	...(iii) findings of the socioeconomic survey and social and gender analysis;... (ix) access to training, employment, and credit; (x) shelter, infrastructure, and social services; (xi) environmental protection and management...(OM F2/OP, E. Resettlement Planning Documents, 1. Full Resettlement Plan, para.25)
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(3) “Poverty assessment” is omitted from the socioeconomic survey to be included in resettlement document.

Please refer to 5.(6)

(4) Cost of social preparation and incremental benefits over the without project option are excluded from project costs.

Draft SPS	All costs of compensation, relocation, and livelihood restoration will be project costs. (SRBC, C. General Requirements, 2. Formulation of Resettlement Planning Documents, para.15)
Existing Policy	All costs of resettlement and compensation, including <i>the costs of social preparation</i> and livelihood programs, together with the <i>incremental benefits over the without project situation</i> , must be included in the project costs and benefits. (OM F2/OP, F. Compliance Requirements, 1. Resettlement Plan, para.32)

12. Loan Agreement

(1) The legal document on which client’s obligations are to be included is made ambiguous from “Loan Agreement” to “Legal Agreement”. Whereas disclosure of “Loan Agreement” is mandatory (Public Communication Policy, paras.102-103), there is no provision concerning “Legal Agreement”.

(2) Requirement to include specific involuntary resettlement covenants in loan agreement is omitted.

According to the draft SPS, compliance to the policy depends greatly on the legal agreement. Policy Delivery Process requires clients to implement safeguard measures and relevant safeguard plans “as provided in the legal agreements” (para.49). Furthermore, ADB reviews project performance against the client’s commitments “as agreed in the legal documents” (para.50), and will seek corrective measures if a client fails to comply with “legal agreements” on safeguard requirements (para.60). However, there is no provision requiring inclusion of resettlement requirements into loan agreements.

(3) Requirement to ensure that contract packages are consistent with the resettlement plan is omitted.

Draft SPS	Borrowers/clients are required to implement safeguard measures and relevant safeguard plans, <u>as provided in the <i>legal agreements</i></u> , and to submit periodic monitoring reports on their implementation performance. (C. Policy Delivery Process, 1. General Requirements, para.49)
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Existing Policy	... <u>Loan agreements</u> must include specific involuntary resettlement covenants that describe the measures agreed for involuntary resettlement management, making direct reference, wherever necessary, to the requirement for implementing resettlement plans/frameworks in accordance with ADB's involuntary resettlement policy. This ensures compliance with ADB's involuntary resettlement policy by executing agencies, contractors, and supervision consultants...Moreover, the formulation of contract packages must be consistent with the resettlement plan (OM F2/OP, F. Compliance Requirements, para.31)
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(4) Requirement to include in the loan agreement a covenant requiring EA's or project sponsor's clearance/endorsement of the resettlement-planning document is omitted.

It should be noted that, according to the draft SPS, RP will not be finalized until the completion of detailed engineering designs, which may take place after the loan approval (SRBC, para. 17).

Draft SPS	(N/A)
Existing Policy	Wherever possible, the borrower will give its final clearance of the resettlement plan or framework before it is submitted to the Board. <u>Where this is not possible, and the EA's or project sponsor's clearance has still not been received before the conclusion of loan negotiations, a loan covenant requiring EA's or project sponsor's clearance/endorsement of the resettlement-planning document must be included in the loan agreement.</u> (OM F2/OP, I. Borrower's responsibilities, para.58 (iv))

(5) Requirement for ADB to reflect in loan agreements the client's obligation to submit periodic progress report is omitted.

Semiannual or quarterly progress reports are still required for client for projects with large-scale resettlement. (Please refer to 13.(1)) However, reflecting this requirement in the loan agreement is omitted.

Draft SPS	(N/A)
Existing Policy	To ensure proper and timely implementation of the resettlement plan/framework and adherence to agreed land acquisition and involuntary resettlement covenants, <u>ADB requires, for all involuntary resettlement category A and B projects, that (i) EAs or project sponsors submit quarterly or semiannual progress reports, as deemed necessary by ADB, on implementation of resettlement plans; and (ii) this requirement must be reflected in the loan agreements.</u> (OM F2/OP, H. Initiation, Implementation, Monitoring and Evaluation, para.49)

13. Monitoring

(1) Requirement to submit either quarterly or semiannual resettlement progress report is limited to projects with large-scale resettlement impacts.

Under the existing policy, such requirement applies to all projects with resettlement impacts (category A and B).

Draft SPS	The borrower/client will prepare periodic progress reports that describe progress with implementation of the RP or equivalent planning document(s), and, if any, compliance issues and corrective actions. <i>For projects with large-scale involuntary resettlement impacts</i> , the borrower/client will submit, at the minimum, <u>semiannual resettlement progress reports</u> . Quarterly progress reports are required for projects that entail relatively short implementation periods. (SRBC, General Requirements, 8. Monitoring and Reporting, para. 26)
Existing Policy	To ensure proper and timely implementation of the resettlement plan/framework and adherence to agreed land acquisition and involuntary resettlement covenants, <u>ADB requires, for all involuntary resettlement category A and B projects</u> , that (i) EAs or project sponsors submit quarterly or semiannual progress reports, as deemed necessary by ADB, on implementation of resettlement plans; and (ii) this requirement must be reflected in the loan agreements. (OM F2/OP, H. Initiation, Implementation, Monitoring and Evaluation, para.49)

(2) Requirement for ADB to reassess resettlement preparation prior to implementation for project with significant impacts is omitted.

Draft SPS	ADB will carry out the following monitoring actions to supervise project implementation: (i) conduct periodic site visits of projects with significant adverse environmental or social impacts...(C. Policy Delivery Process, 1. General Requirements, para.50)
Existing Policy	<i>For category A projects, an ADB supervision mission is fielded to reassess involuntary resettlement preparations prior to their implementation.</i> (OM F2/OP, H. Initiation, Implementation, Monitoring and Evaluation, para.49)

(3) Frequency of site visits or review by ADB is not specified.

Under the existing policy, review of implementation of the resettlement plan is required, including at midterm and project completion. Semiannual review is required for large-scale resettlement.

Draft SPS	ADB will carry out the following monitoring actions to supervise project implementation: (i) conduct periodic site visits of projects with significant adverse environmental or social impacts; (ii) review periodic monitoring reports submitted by borrowers/clients to ensure that adverse impacts and risks are mitigated as planned and as agreed with ADB...(C. Policy Delivery Process, 1. General Requirements, para.50)
Existing Policy	Implementation of the resettlement plan should be reviewed regularly, including at midterm and project completion. Large-scale resettlement should be reviewed semiannually. (OM F2/OP, H. Initiation, Implementation, Monitoring and Evaluation, para.50)

14. Change in Scope and Unanticipated Impacts

(1) Requirement for ADB to conduct screening and categorization of change in scope is omitted.

Under the existing policy, “change in scope” (OM F2/OP, para.52) and “unanticipated resettlement impacts” are distinguished (OM F2/OP, para.53), with different procedural requirements. Former requires screening and categorization by ADB, whereas assessment by the client is sufficient for the latter. The draft SPS omits this distinction. It considers “change in scope” (“change in alignment and footprint”) as “unanticipated resettlement impacts”. Screening is to be conducted by clients.

Draft SPS	If unanticipated IR impacts become apparent during project implementation, <u>such as change in alignment and footprint, the borrower/client will screen the potential impacts</u> ...(SRBC, General Requirements, 9. Unanticipated Impacts, para. 27)
Existing Policy	Changes in Scope. <u>A major change materially alters or fundamentally affects the project's purpose (immediate objectives), components, costs, benefits, procurement, or other implementation arrangements as approved by the Board. All major changes in scope need to be screened by operations departments for resettlement significance, using the involuntary resettlement checklist, and classified in accordance with the appropriate procedures.</u> (OM F2/OP, H. Initiation, Implementation, Monitoring and Evaluation, para.52)

15. Project Completion and Performance Audit Report

- (1) **Requirement for ADB to prepare Project/Program Completion Report is omitted. Report will be prepared by client on its own account.**

Thus, nature of the completion report is changed from ADB's evaluation of implementation of resettlement plan/framework and compliance to resettlement related loan covenants, as well as assessment of the executing agencies performance, to client's evaluation of itself.

- (2) **Implementation of resettlement framework will not be evaluated.**

Project/program completion report by ADB included evaluation of implementation of resettlement framework. Evaluation in the completion report by client is limited to resettlement plan only.

- (3) **Requirement to attach a financial audit statement, approved by independent agency, to the client's completion report is omitted.**

Under the existing policy, a resettlement completion report may be prepared by the executing agency. A financial audit statement, approved by an independent agency, is required. Such statement is not required in the draft SPS. It should be noted that, regarding implementation of resettlement plan, assessment will be limited to the achievement of the "objectives" of the plan.

Draft SPS	On completion of resettlement activities, as necessary, <u>the borrower/client will prepare and submit a completion report</u> which includes <u>an evaluation of the implementation of RPs and the degree of compliance with IR-related loan covenants</u> . The report will include an assessment of (i) the degree of affected people' participation throughout the project cycle; (ii) a comparison of the level of income and livelihoods of affected people with that of the baseline status; (iii) <u>whether the project has achieved the objectives of RPs</u> ; and (iv) lessons learned, if any, for future projects. (SRBC, General Requirements, 10. Project Completion, para. 28)
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Existing Policy	<p>Completion Reports and Performance Audit Reports. To ensure proper documentation of the actual involuntary resettlement impacts and the successful implementation of the resettlement plan, <i>the project or program completion report prepared by ADB's operational departments includes</i> (i) a concise history of the involuntary resettlement aspects of the project and/or program to completion, <i>(ii) an evaluation of the implementation of the resettlement plan and or resettlement framework and involuntary resettlement loan covenants, (iii) an assessment of the executing agencies performance;</i> and (vi) a summary of the external monitoring and evaluation reports. As necessary, a resettlement completion report may be prepared by the executing agency, based on the agreed resettlement planning documents, <i>together with financial audit statements that have been approved by an independent agency.</i> (OM F2/OP, H. Initiation, Implementation, Monitoring and Evaluation, para.54)</p>
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(4) Requirement for ADB to prepare Project/Program Performance Audit Report is omitted.

Draft SPS	(N/A)
Existing Policy	<p>To foster organizational learning and project improvement, ADB's Operations Evaluation Department prepares <i>project or program performance audit reports</i>, which are independent evaluations and include an analysis of the effectiveness of the involuntary resettlement in achieving the intended objectives. The reports also assess the adequacy of the project completion report's on involuntary resettlement reporting, and focuses on specific involuntary resettlement issues as documented in the project completion report. (OM F2/OP, Footnote 28)</p>

**16. Loans with Subprojects or Components for Later Approval
(Sector Loan, Program Loan, MFF, and Wider Application of Framework Approach)**

Requirements under the existing policy for sector loan (OM F2/OP, para.37-39) are as follows:

- A. Preparation and approval of resettlement framework
- B. Preparation and approval of resettlement plans for core subprojects with resettlement impacts. "Core subprojects" are subprojects that are prepared before Board approval and appraised during the ADB appraisal.
- C. Inclusion of subprojects having significant resettlement among core projects
- D. Use of resettlement plans for core projects as a model for subsequent resettlement planning for other subprojects
- E. During implantation, preparation and approval of resettlement plan for each subprojects, in accordance with the resettlement planning principles set in the policy, before the award of civil works contracts or similar milestone event occur. Ensure that contract schedules and packages consistently match each subproject requiring a resettlement plan. Ensure that sufficient resettlement planning and management capacity are provided during project implementation.

In addition, the following is required for loans that include subprojects, components or investments prepared only after project approval and loans through financial intermediaries that are likely to cause involuntary resettlement:

- F. Allocation of sufficient contingency allowance for resettlement prior to loan approval (OM F2/BP, Scope of the policy, para.4 (x))

The same requirements (A to F) is applicable to other loans for subprojects or components prepared after loan approval, except that in the absence of core subprojects, only subprojects or components due for financing during the first year of implementation require the preparation of a resettlement plan acceptable to ADB (OM F2/OP, para.41).

Some of above requirements omitted in the draft SPS as follows:

(1) Regarding Sector Loans, above requirements C to F are omitted.

Above requirement C to include subprojects having a significant resettlement among “core” subprojects, for which short resettlement plans must be submitted for ADB’s approval, is omitted. In the draft SPS, no criteria is set for subprojects that are required of resettlement planning documents ad ADB appraisal prior to loan approval.

Above requirement D to use the resettlement plan(s) of core subproject as “model resettlement plan” for subsequent resettlement planning for other subproject is omitted. The draft SPS writes that resettlement framework would be “tailored to the specificities of individual projects (Policy Delivery Process, para.54). Without model resettlement plan(s), how this “tailoring” will be done is ambiguous.

Above requirement E for ADB to review and approval subprojects are omitted. There are no provisions in the Policy Delivery Process that requires ADB to conduct review and approval of projects, or disclose relevant documents, after loan approval.

Above requirement F to allocate sufficient contingency allowance for resettlement prior to loan approval is omitted. There is no such requirement provided in the draft SPS.

Draft SPS	To establish the broad criteria for selecting subprojects to be financed under the loan or grant, <i>a few subprojects are identified and appraised prior to loan approval</i> . For these subprojects, the borrower/client will prepare relevant documentation, including resettlement planning document(s). (SRBC, D. Specific Requirements on Different ADB Financing Modalities, 2. Sector Finance, para.32)
Existing Policy	Sector loans that are likely to involve “significant” resettlement need to submit for approval, before the first MRM or PSCCM, a resettlement framework for the loan as a whole and a summary resettlement plan for each core subproject having resettlement issues. <i>A subproject having significant resettlement must be included among the core subprojects prepared prior to MRM or PSCCM. A “core” subproject is one that is prepared before Board approval and appraised during the ADB appraisal, and the resettlement plan or plans serve as a model for subsequent resettlement planning for other subprojects under the sector loan that will be prepared in accordance with this OM section.</i> (OM F2/OP, 2. Resettlement Framework, a. Sector Loans, para.37)

(2) Regarding programs loans, all of the above requirements A to F are omitted for projects, subprojects, and project components prepared after loan approval.

Draft SPS	Policy-based loans and grants—because of their systemic impacts on the DMC—require a deeper analysis of potential social, including IR impacts. <u>In policy-based interventions that are likely to affect relevant national, sub-national policies, guidelines, approaches, and legal frameworks, the borrower/client will discuss and agree with ADB on the proposed actions and remedies. Investment components of a program loan or grant will comply with the general safeguards requirements applicable to projects, subprojects, and project components described above.</u> (SRBC, D. Specific Requirements on Different ADB Financing Modalities, 1. Program Loans, para.29)
Existing Policy	(Please see the requirements outlined in the beginning of this section, or OM F2/OP, 2. Resettlement Framework, b. Other Loans with Subprojects or Components for Later Approval, para. 41)

(3) Regarding Multitranche Financial Facilities (MFF), requirements C to F are omitted.

Draft SPS	ADB's safeguard requirements apply to all components, projects, subprojects financed under an MFF. The general requirements specified in Section C will apply to components, projects and subprojects identified during preparation and implementation of an MFF. (SRBC, D. Specific Requirements on Different ADB Financing Modalities, 3. MEF, para.34) The borrower/client will agree with ADB on an RF as specified in paragraph 31. (SRBC, D. Specific Requirements on Different ADB Financing Modalities, 3. MFF, para.35)
Existing Policy	(Please see the requirements outlined in the beginning of this section, or OM F2/OP, para. 41)

(4) For wider application of framework approach, requirements B to F are omitted.

Draft SPS	Resettlement framework will be prepared for a project loan or grant where subprojects or project components are identified after Board approval. The borrower/client will agree with ADB on an RF as specified in paragraph 31. The general requirements specified in Section C will apply to subprojects and project components identified during project implementation (SRBC, D. Specific Requirements on Different ADB Financing Modalities, 4. Wider Application of Resettlement Framework, para.35)
Existing Policy	(Please see the requirements outlined in the beginning of this section, or OM F2/OP, para. 41)

17. Financial Intermediaries

Under the existing policy, ADB requires FI or project sponsor the following for FI loans involving resettlement. They are to be conducted in accordance with the policy and OM on involuntary resettlement.

- submit a resettlement framework to ADB for approval
- screen the investment/subprojects
- prepare resettlement plans for subprojects for approval by ADB or a third party acceptable to ADB for approval before civil works contracts are awarded or similar milestones occur.

However, the draft SPS significantly weakens or omits such requirements as follows:

(1) ADB’s resettlement requirements are exempted for FI with investments that have “minimal” or “limited” resettlement impacts.

Neither ADB’s resettlement requirements nor ESMS is required for investments that have “minimal” resettlement impacts (Policy Delivery Process, para.56). ESMS is required for FI with “limited” resettlement impacts, but ADB’s resettlement requirements are not applicable.

(2) Even for FI’s subprojects with potential significant impacts, review and approval of resettlement plans by ADB is omitted.

ESMS is prepared and maintained to meet the section C of SRBC only. There are no provisions in the Policy Delivery Process that requires ADB to conduct review and approval of projects, or disclose relevant documents, after loan approval.

<p>Draft SPS</p>	<p><u>Where the FI’s investments have minimal</u> or no adverse social or environmental risks, the FI project will be considered Category C projects and <u>need not apply any other specific requirements</u>. In addition to the PIL,</p> <p>(i) <u>where the FI’s investments have potential significant environmental or social impacts</u>, the FI will be required to establish and maintain an appropriate ESMS <u>to ensure that its sub-projects meet the relevant elements of ADB’s safeguard requirements</u> and the applicable national laws and regulations,</p> <p>(ii) <u>where the FI’s investments are expected to have limited environmental and social impacts</u>, the FI will be required to establish and maintain an appropriate ESMS <u>to ensure that its sub-projects meet the applicable national laws and regulations</u>. (Policy Delivery Process, 3. Specific Requirements, (c) Financial Intermediation, para.56)</p> <p>...FIs providing long-term corporate finance or project finance will require the recipient of such finance to:</p> <p>(iii) <u>follow national laws</u> where the activity financed presents <u>limited IR impacts</u>;</p> <p>(iv) follow national laws and <u>apply ADB’s general requirements specified in Section C</u> where the activity financed presents <u>significant IR impacts</u>. (SRBC, D. Specific Requirements on Different ADB Financing Modalities, 6. Financial Intermediaries, para.38)</p>
<p>Existing Policy</p>	<p>ADB assistance through financial intermediaries may involve credit lines or other means whereby investments or operations targeted for ADB financing are to be selected and prepared during implementation. <u>Where such loans may involve involuntary resettlement, ADB requires that</u>, before the first MRM or PSCCM, <u>the financial intermediary or project sponsor will submit for approval a resettlement framework to ADB</u> and, where resettlement is likely to be significant, will assign responsibility for involuntary resettlement planning and implementation. <u>ADB ensures that the financial intermediary or project sponsor screens the investments or subprojects</u> to be financed by ADB <u>and prepares resettlement plans as needed in accordance with the involuntary resettlement policy and this OM section</u>. <u>These are submitted to ADB, or to a third party acceptable to ADB, for approval before civil works contracts are awarded or similar milestone events occur</u>. The conditions for approval of resettlement plans must include consultation, disclosure, and delivery to affected people of compensation, allowances and house reconstruction, prior to dispossession or displacement of affected people, as necessary for each subproject resettlement plan, to ensure that a subproject does not proceed without replacement of assets prior to the dispossession or displacement of affected people. (OM F2/OP, 2. Resettlement Framework, d. Financial Intermediation Loans, para.43)</p>

(3) Requirement to allocate sufficient contingency allowance prior to the loan approval (OM

F2/BP, Scope of the policy, para.4 (x) is omitted.

18. Emergency Assistance Loans

- (1) Requirement to justify in Report and Recommendation for the President (RRP) the departure from standard procedures, with reference to the specific circumstances and the emergency processing schedule, is omitted.

Draft SPS	For emergency assistance loans, the completion of a standard IR plan may not be possible before Board approval. In such cases, an RF as specified in paragraph 31 will be prepared. Components and subprojects identified during the project implementation will follow the general requirements specified in Section C. (SRBC, D. Specific Requirements on Different ADB Financing Modalities, 3, para.37)
Existing Policy	However, because emergency assistance loans must be processed quickly, procedures must be flexible. If the IPSEA identifies likely involuntary resettlement effects, the completion of standard surveys and consultation requirements based on a feasibility study may not be possible before Board circulation. In such cases, a phased sequencing of preparation to develop a resettlement framework that sets out policy, procedures, and requirements that apply during loan implementation is presented in the RRP for MRM, or, if MRM does not take place, the RRP and legal agreements for Board circulation. <u>In all cases, the RRP must justify the departure from standard procedures as described in this OM section, with reference to the specific circumstances of the individual project and the emergency processing schedule.</u> (OM F2/OP, 2. Resettlement Framework, b. Other Loans with Subprojects or Components for Later Approval, para.41)

- (2) Requirement to allocate sufficient contingency allowance prior to the loan approval (OM F2/BP, Scope of the policy, para.4 (x)) is omitted.

19. Corporate Investment

- (1) Whether or not ESMS will be prepared based on the ADB’s environmental safeguards is not provided.
- (2) What “ADB’s environmental safeguard requirements” refers to is unclear. Definition of such a term is not provided in the draft SPS.
- (3) The term “unmitigated noncompliance” is incomprehensible.

Draft SPS	The borrower/client will establish and maintain an ESMS. The ESMS will include a screening mechanism that would identify if the work that it would be supporting is <u>likely to be in noncompliance</u> with ADB’s environmental safeguard requirements. The borrower/client will not provide contracting services for projects that are <u>likely to have unmitigated non-compliance</u> with ADB’s environmental safeguard requirements. The ESMS will also include the following elements: (i) organizational structure and staffing including skills and competencies in environmental and social management; (ii) training requirements; and (iii) monitoring and reporting. (SRBC, Specific Requirements on Different ADB Financing Modalities, 7. Corporate Investments, para.46)
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Existing Policy	(N/A)
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20. Country Safeguard System (CSS)

(1) ADB's safeguard policies will be replaced by CSS under certain circumstances.

Draft SPS	ADB's overall approach for <u>the strengthening and use of CSS</u> has the following attributes...(C. Policy Delivery Process, 2. Specific Requirements, (d) Strengthening and Use of CSS)
Existing Policy	(N/A)

21. Project with Cofinancing

(1) ADB's safeguard policies will be replaced by those of financing partner in certain circumstances.

(2) In other cases, application of ADB's safeguard policy requirements is limited to ADB-financed components only.

Draft SPS	... In the case of a guarantee or cofinancing transaction with active coordination under formal arrangements with a financing partner to facilitate the processing and implementation of the project, where ADB has satisfied itself that the safeguard policies of a MFI, bilateral institution, or other public/private financing partner are at least equivalent to ADB's safeguard objectives and policy principles, and that such financing partner has the capacity to implement its policies, <u>the safeguard policies of such financing partner may apply.</u> This approach will not remove ADB's responsibilities for due diligence and safeguard review during project preparation. Unless otherwise approved by the ADB Board, ADB's oversight responsibilities for monitoring and supervision during project implementation will also not be removed. In the context of a cofinancing transaction in which the financial partner's funds are provided in parallel to ADB's, without formal arrangements between the parties, ADB's safeguard policy requirements will apply to <u>all ADB financed components.</u> In any context, ADB will make efforts to collaborate with the borrower/client and cofinanciers to adopt a single environmental and social process and unified safeguard documentation, consultation and disclosure requirements, consistent with the principles of this Safeguard Policy Statement. (C. Policy Delivery Process, 2. Specific Requirements, (e) For Projects with Cofinancing, para.59)
Existing Policy	The policy applies to all ADB projects and project components, <u>regardless of whether the source of financing is ADB, its cofinanciers, or the government.</u> (OM F2/OP, A. Scope and Application, para.2)