

Comments on the IFC's Draft Policy and Performance Standards on Social & Environmental Sustainability and the Draft Policy on Disclosure of Information (September 22, 2005 Version)

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A. Comments on the Policy on Social and Environmental Sustainability (PSES)

1. **It should be clearly stated in the PSES that the IFC will not finance projects which do not meet the requirements of all Performance Standards (PSs).** PSES states that "IFC seeks to ensure that the projects it finances are consistent with the requirements of the Performance Standards (Section 1)." This means almost all projects can be financed by IFC, if IFC expects that the proposed project will meet the requirements of PSs.
2. **The Exclusion List should be included in the PSES.** It is currently included in the Environmental and Social Review Procedures (ESRPs), which are not subject to the Board's approval. As a public institution, the IFC should specify its social commitments to solving environmental and social issues. .

B. Comments on the Performance Standards

PS1: Social and Environmental Assessment and Management System

Social and Environmental Impact Assessment (SEIA)

3. **SEIAs by external experts should be required, at least for projects with significant impacts.** The existing Environment Policy requires adoption of external experts for the environmental impact assessments of Category A projects.¹ However, this requirement is omitted in the current draft of PS1. According to the IFC, the reason for this omission is to promote the client's in-house capacity to manage social and

¹ See IFC, *OP 4.01*, paragraph 4.

environmental considerations.² However, the IFC's first priority should be to ensure that the projects comply with the PSs.

4. **The scope of the SEIA should be disclosed at its planning stage to the people who will be affected, in their respective local languages. A draft and complete version of the SEIA report should be also disclosed.** For projects with limited impacts, equivalent requirements should be established. PS1 does not require documentation of the SEIA, and does not require public disclosure of the SEIA report. PS1 only requires disclosure of the Assessment's result. However, the affected people cannot judge whether the assessment's results are appropriate without knowing how the project sponsor arrived at those results. Almost all international financial institutions require clients to disclose environmental assessments (including draft versions) and equivalents for Category A and B projects.³

Social environmental management program (SEMP)

5. PS1 requires that the avoidance and prevention of adverse impacts be given priority over reduction, minimization, and compensation wherever technically and financially feasible. However, as economic development projects are usually designed to be financially feasible, **it is meaningless to include the term "wherever financially feasible." Therefore, the term should be deleted. This term is also found in PS6 and PS8, and should be deleted there as well.**
6. Composition of the Action Plan, and how affected people can be involved in the creation of the said Action Plan is not clear. **The Action Plan should include all detailed mitigation measures, and a draft of the Action Plan should be disclosed at the same time as the draft SEIA report, in local languages understood by the affected peoples.**

Consultation

7. PS1 only states that consultation should begin early in the SEIA process, and that additional consultation should take place only if additional material risks and impacts arise. It is not clear when the clients should start the consultations. **For the projects with significant adverse impacts, consultations should be conducted at least twice: first at the SEIA scoping stage, and secondly when the draft SEIA report is**

² See, IFC, *IFC Response to Stakeholder Comments & Rationale for Key Policy Changes*, Page 11, September 22, 2005

³ See, e.g., Asian Development Bank (ADB), *Environment Policy*, paragraphs 63 and 64, European Bank for Reconstruction and Development (EBRD), *Environment Policy*, Annex 2, paragraphs 3 and 4, World Bank, *OP4.01*, paragraph 16 and 17.

completed. These requirements are also included in the existing IFC policy⁴ and that of other international financial institution⁵. Consultations should be conducted continuously throughout the project life.

8. Regarding languages in the consultation process, PS1 states that, "special attention will be paid." Yet it is not clear whether important documents are disclosed in a language and manner understood by those affected. Therefore, **PS1 should clearly require that important documents like the scoping plan of SEIA, SEIA Report and Action Plan (both including draft versions), and monitoring reports be disclosed in local languages and in a manner understood by the affected people.**
9. In the current draft, there will be no ways that the affected people know how their comments are incorporated into the implementation of the project, or why other comments are not incorporated. **PS1 should require clients to attach the contents and results of the consultation process with the final Action Plan.**

Grievance Mechanism

10. The scope of the grievance mechanism is limited to expected project impacts. It should not be limited to expected project impacts, since unexpected impacts could occur during project implementation. **The grievance mechanism should cover these unexpected impacts as well as expected impacts.**

Monitoring

11. It is not clear whether or not the clients must disclose social and environmental monitoring reports to the public. If the monitoring reports are not disclosed, the affected people have no way of knowing whether the project impacts have been avoided, minimized or mitigated along the lines of the Plan, and thus cannot give appropriate input regarding the project's implementation. Therefore, **the social and environmental monitoring reports should be disclosed to the public in languages understood by the affected people.** ADB requires private sector sponsors to disclose monitoring reports.⁶

PS5: Land Acquisition and Involuntary Resettlement

Scope of the PS

12. PS5 only covers physical displacement and economic displacement as a result of

⁴ See IFC, *OP 4.01*, paragraph 12.

⁵ See ADB, *Environment Policy*, paragraphs 63.

⁶ See ADB, *Public Communication Policy of the Asian Development Bank*, paragraph 92.

project-related land acquisition. It fails to address other social and environmental impacts, such as the loss of livelihoods including impacts on fishery and non-timber forest products, that need to be prevented, mitigated or compensated for. IFC stated these impacts are treated in PS1, however **it does not require the clients to improve or at least restore livelihood and standards of living of affected people while PS5 does. This requirement should be also stipulated in PS1.**

Requirements

13. **PS5 should require clients to make documents describing compensation measures and contents of all transactions, and to provide copies of these documents for affected people, in order to prevent misunderstanding and breaches of contracts.**
14. **Clients should provide an opportunity for affected people, whose livelihood depends on land, to choose between land or cash compensation.**
15. It is not indicated whether the resettlement plan is completely included in the Action Plan set out in PS1. **Clients should disclose resettlement plans including the draft versions in local languages understood by those affected.**

Resettlement as the Primary Responsibility of Government

16. The scope of requirements in the case of resettlement as the primary responsibility of government is not clear. **Clients should meet all requirements of PSs even if resettlement is the primary responsibility of government, including the ones of PS5.**

PS6: Conservation of Biodiversity and Sustainable Natural Resource Management

17. **Biodiversity Action Plan (BAP) should be required to be documented and disclosed in PS6, and not just be stipulated in GNs.**
18. According to the PS6, if the overall benefits of a project outweigh the costs (e.g. environmental costs), clients can convert or degrade natural habitats in the project area. However, if clients estimate the costs to be low (e.g. appropriate environmental costs are excluded from the mitigation budget), then the requirement for converting a natural habitat can be met. Therefore, **measures of environmental costs should be defined. If the definition is impossible, this term should be deleted from the PS6.**
19. **According to the existing Forestry Policy, the IFC does not finance commercial logging operations or the purchase of logging equipment for use in primary**

tropical moist forests.⁷ The IFC Response stressed that IFC adopts an overall approach towards forests, which IFC defines as Natural Habitat and Critical Habitat.⁸ However, adopting this overall approach cannot be a proper reason to delete the requirement on primary tropical moist forests. **This requirement should be included in the PS and Exclusion List.**

20. **IFC should not finance a project that includes conducting illegal logging or purchase of these products. This requirement should be included in the PS and Exclusion List.**

PS 7. Indigenous Peoples

21. When the land of indigenous peoples is affected, there is no requirement for clients to obtain broad community support. This requirement is only made of the IFC under the PSES. The IFC is required to obtain broad community support not only from those in the project area, but also from international stakeholders. In addition to the IFC, **clients also have a responsibility to obtain broad community support, at least in the project area. Therefore, this requirement for IFC should be included in the PS7 as a clients' obligation.**
22. **An "independent" expert should be adopted when an investigation of the land of indigenous peoples is carried out. It is necessary to assure the objectivity of the social survey in order to follow the Objectives of the PS7.**

C. Comments on the Policy on Disclosure of Information

General Comments

23. The Policy should include the following provisions on translation.
 - (a) **The SPI should be translated into local languages.** Under the PS, clients are not required to disclose the IFC's involvement in proposed investments. Affected people and public in project countries have rights to access information concerning the IFC's involvement in the investments, and translation of the SPI is necessary to ensure such access by local people.
 - (b) **IFC should make an effort to translate key policy documents into local languages.** Such key documents include PSES, PSs, the Policy on Disclosure of Information and the Operational Procedures of Compliance Advisor and

⁷ See IFC, *OP4.36*, paragraph 1 a).

⁸ See, IFC, *IFC Response to Stakeholder Comments & Rationale for Key Policy Changes*, Page 27, September 22, 2005

Ombudsman. The important purpose of these policies is to ensure that affected people's interests are incorporated into preparation and implementation of investment projects, and translation of policy documents will facilitate informed involvement of affected people and communities.

24. **It should be clearly stated that the purpose of the Policy is to promote transparency and accountability of IFC and to ensure informed participation of stakeholders in the decision-making process.** (paragraph 1)
25. **Documents obtained or produced by IFC before the effective date should be subject to request-based disclosure under the new policy** (note 3). While routinely-disclosed documents can be subject to such cutoff dates, all documents held by IFC should be subject to request-based disclosure. Any prejudice caused by such disclosure can be prevented by the exception clauses in paragraph 9.

Presumption in favor of Disclosure and Exceptions

26. **Paragraph 8 should be deleted entirely.** This paragraph unjustifiably limits the scope of documents subject to disclosure into two narrowly defined categories: (1) "institutional information concerning its activities that would enable its partners and stakeholders . . . to understand better, and to engage in informed discussion" about IFC's activities; and (2) "certain limited investment-specific information as described in Section III. C." The draft policy provides no justification for such a blanket exception for disclosure. We believe this limitation severely undermines the purpose of the policy for the following reasons.

- (a) This limitation virtually destroys the 'presumption in favor of disclosure' proclaimed in paragraph 9. The presumption in favor of disclosure is usually defined as the principle that all documents will be disclosed in the absence of a compelling reason not to do so. However, under the draft policy, the bulk of documents which do not fall into these two categories will not be disclosed regardless of the existence of a compelling reason not to disclose. The draft policy falls far short of international standards among international financial institutions.⁹
- (b) From the stakeholders' perspective, any documents held by IFC can be useful to better understand and to participate in informed discussion about IFC's activities. IFC should not have the discretion in deciding which information is important to

⁹ See, e.g., ADB, *Public Communication Policy of the Asian Development Bank*, paragraphs 28, 35; EBRD, *Public Information Policy*, Basic Principles a); World Bank, *The World Bank Policy on Disclosure of Information*, paragraph 4. None of these policies of other international financial institutions limits the scope of the principle as IFC's draft policy does.

the public.

- (c) Under the second category described above, no investment-specific information will be available except for those defined as routinely disclosed in Section III C of the draft policy. However, IFC obtains and produces many investment-specific documents, which are sometimes critical to affected communities' interests. If there is no compelling reason for confidentiality, such documents should be disclosed to affected communities. Any prejudice caused by such disclosure can be prevented by exception clauses in paragraph 9.

27. **The main text of paragraph 9 should be read as “there is a presumption in favor of disclosure of all information held by IFC. IFC will disclose all information, except for that defined below. If only a part of a document falls under these nondisclosure exceptions, that document will be disclosed after eliminating the nondisclosure information.”** The proposed language addresses following problems of the paragraph 9 of the draft policy.

- (a) **The scope of the disclosure should not be limited to information defined in paragraph 8.** (see the discussion above)
- (b) **All exceptions should be clearly stated and exhaustive.** The current draft allows IFC to classify documents based on exceptions that are not defined in paragraph 9, making it difficult for stakeholders to predict the scope of disclosure. Such discretion severely undermines the accountability of IFC that the policy tries to ensure. All exception clauses should be defined in paragraph 9.¹⁰
- (c) **If only part of the requested documents contains confidential information, the documents should be disclosed after removing such confidential information.** While IFC implies partial disclosure in paragraph 34, it should be explicitly stated in paragraph 9 as a requirement of the policy.

28. **The first half of paragraph 9 (a) should be read as “information provided by a client or third party that, if disclosed, would be likely to materially prejudice commercial interests or the competitive position of such a client or party.”¹¹** The

¹⁰ All recent IFIs' disclosure policies set forth exhaustive list of confidential information. See, ADB, *Ibid.*, paragraphs 35, 126-7, 130; EBRD, *Ibid.*, Information Considered Confidential; World Bank, *Ibid.*, paragraph 82. Most national information disclosure legislations have exhaustive list of confidential information. See, e.g., Freedom of Information Act of the United States, 5 U.S.C § 552 (6) (b). It worth to note that the Act applies to the Export-Import Bank of the United States and the Overseas Private Investment Corporation, which are US government's arms financing US business's trades and investments.

¹¹ ADB's PCP defines business confidential information as “[i]nformation provided to ADB by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party.” ADB, *Ibid.*, paragraph 126, section 1.

draft policy classifies all information provided by clients or third parties, regardless of impacts of disclosure. Information provided by clients or third parties should be disclosed if such disclosure would not be likely to materially prejudice commercial interests or the competitive position of such parties. Without such prejudice, no compelling reason for non-disclosure exists. Also, the current draft allows IFC not to disclose all 'non-public' information provided by clients or third parties. If non-public information is not disclosed, the policy does not serve any purpose.

29. **The second half of paragraph 9 (a) should be deleted.** Legal documents or correspondences between IFC and clients include important information for affected communities and interested public, such as clients' environmental and social requirements or IFC's remedies for clients' breach of such requirements. The blanket non-disclosure of such information undermines stakeholder's involvement in the IFC's decision-making in the implementation stage. Any prejudice caused by disclosure of such documents can be prevented by the first half of paragraph 9 (a) and (b). Furthermore, **clients' environmental and social obligations in legal agreements should be publicly available along with other social and environmental review information** (paragraph 13).
30. **Paragraph 9 (b) should be read as "information that, if disclosed, would be likely to materially compromise the integrity of the decision making process or inhibit candid exchange of communications."**¹² Here again, IFC proposes documents to be kept confidential regardless of the impact of their disclosure. The information should be disclosed, if such disclosure would not be likely to harm any decision-making process of IFC. Only information that is materially adverse to the communication and decision-making process should be kept confidential.

Specific document

31. **Not only clients, but IFC itself should disclose the following documents promptly after receipt: SEIA, Action Plan, monitoring reports and drafts of these documents. SEIA and Action Plans for category A projects and similar documents for category B projects should be disclosed, 60 days (in the case of category A projects) or 30 days (in the case of category B projects) before the date when the Board of Directors of IFC considers the projects for approval.** Under the draft policy, IFC will not disclose SEIA or other environmental and social documents received

¹² ADB's Policy defines decision-making process information as "[i]nternal information that, if disclosed, would or would be likely to compromise the integrity of ADB's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications."

from its clients. This is a major step back from current IFC policy.¹³ Almost all international financial institutions require disclosure of social and environmental impact assessments, not only by their borrowers but also by themselves.¹⁴ IFC has consistently argued that it is the role of clients to disclose environmental and social documents, and disclosure by IFC would confuse the responsibilities of clients and IFC. We disagree. The IFC's disclosure will not hamper clients' efforts to disseminate environmental and social information. Rather, such disclosure will supplement clients' obligations, ensuring access to information by affected communities and the public at large. We believe that sole reliance on clients' disclosure is inadequate to ensure informed participation in decision-making of proposed investments for the following reasons.

- (a) Clients' obligation is limited to inform affected communities they identified. If the clients fail to identify communities likely to be affected by their projects, such communities would not have access to environmental and social information if it were not for IFC's disclosure. This is especially true when transboundary impacts are anticipated but clients fail to identify them in their assessments.
- (b) The public at large, including citizens of project countries and IFC member countries, are also important stakeholders in decision-making. Without disclosure by IFC, IFC would lose important opportunities to solicit input from a variety of stakeholders that might enable more informed decision-making by IFC.

- 32. **Paragraph 19 should be deleted.** If disclosure of project information that IFC decided not to finance would prejudice any interests, such information will not be disclosed under paragraph 9.
- 33. **The documents circulated to the Board of Directors of IFC should be publicly available, after eliminating any information subject to exception clause in paragraph 9** (paragraph 21 (e)). As a public institution, IFC has responsibility to inform the public of the matters its decision-makers consider.
- 34. ESRP and GN should be publicly available as well as the PSES, PS and the Policy on

ADB, *Ibid*, paragraph 126, section 1.

¹³ IFC's current policy provides that "[a]fter obtaining permission for its release, the IFC releases the EA report to the public in-country and through the WB's InfoShop as early as possible and no later than sixty days prior to the proposed Board date (regular procedure), closing date (streamlined procedure) or management approval date (delegated authority). If a project sponsor does not consent to release of the EA report, IFC will suspend further consideration of the project." IFC, *IFC's Policy on Disclosure of Information*, Publicly Available Information: Environment-Related Documents.

¹⁴ See, e.g., ADB, *Ibid*, paragraph 77; EBRD, *Environmental Policy*, Annex 2; World Bank, *Operational Policies 4.01 Environmental Assessment*, paragraph 18.

Disclosure of Information. (paragraph 22 (d)).

Requests for Information

35. **IFC should not charge for information requests** (paragraph 29). Such charges would be a significant barrier for requesters, especially those from developing countries. At least, project-specific documents should be provided free of charge to citizens affected by the projects.¹⁵
36. **IFC should receive requests for information through its Field Offices** (paragraph 29, 32-3).
37. **IFC should accept requests for information in official languages of its member countries** (paragraph 29, 32-3).¹⁶
38. **IFC should respond to requests of information in a timely manner, and no later than 30 days after receiving requests** (paragraph 35).¹⁷ Deadline for the response should be specified in the policy, otherwise undue delay may be caused.
39. **The Disclosure Policy Advisor should not review the compliance with paragraph 8. The Disclosure Policy Advisor should respond to complaints no later than 60 days after receiving complaints** (paragraph 35). As already stated above, paragraph 8 should be deleted entirely, thus the Disclosure Policy Advisor should focus its review in determining IFC's compliance to paragraph 9.

¹⁵ The World Bank provides project-related documents for citizens of project countries free of charge. World Bank, The InfoShop: How to Order, <http://www.worldbank.org/html/pic/charges.htm> (last visited Nov. 20, 2005). ADB does not charge documents requests, and its new policy has no fee-charging clause. ADB, *Ibid*.

¹⁶ ADB accepts requests for information "in any of the official or national languages of ADB's members." ADB, *Ibid*, paragraph 156.

¹⁷ ADB responds within 30 days after receiving requests. ADB, *Ibid*, paragraph 157.