

Comments on the Draft Policy and Performance Standards on Social and Environmental Sustainability, and the Draft Policy on Disclosure of Information
Version 1

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Japan Center for a Sustainable Environment and Society (JACSES)
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A. Comments on the Policy on Social and Environmental Sustainability (PSES)

Comment 1:

If the client fails to comply with its social and environmental commitments as expressed in legal agreements, the PSES should clearly stipulate the possibility of suspension and cancellation of IFC's support. (para. 20)

Rationale

- The PSES (para. 20) only states "IFC works with the client to bring it back into compliance to the extent possible, and if the client fails to re-establish compliance, exercise its rights and remedies as appropriate," when the clients fails to comply.

Comment 2:

For Category FI, subprojects classified as "High" risks/impacts should be cleared by IFC before subproject approval by the FI. IFC's due-diligence and disclosure requirements for general direct investment should be adopted for "High" subprojects in Category FI.

Rationale

- The draft states that "IFC may review the results of the social and environmental due diligence review conducted by the FI for subproject investments." IFC's clearance on subprojects is not a requirement under the current draft (PSES, para. 30).
- Broad Community Support (BCS) is reviewed by IFC only in direct investments (PSES, para. 24).
- In Asian Development Bank (ADB)-supported FI's subprojects which have potential for significant environmental or social impacts, the FI client must submit safeguard documents to ADB for clearance before subproject approval (ADB, Safeguard Policy Statement, Safeguard Requirements 4 para. 15).

Comment 3:

In all extractive industry projects, the amount of revenue payments from those projects to their host governments and the relevant terms of key agreements should be made available to the public by clients.

Rationale

- The existing requirement is applied when IFC invests in extractive industry projects which the revenues are expected to account for 10% or more of government revenues. However, there has been no such case since 2006. This requirement should be more effective and realistic.

Comment 4:

The requirement on extractive industries' transparency as above should be in PS 1, not in PSES.

Rationale

- Requirement for client should be included in PSs, not in PSES.

Comment 5:

In projects involving the final delivery of essential services to the general public under monopoly conditions, information relating to household tariffs and tariff adjustment mechanisms, service standards, investment obligations and the form and extent of any ongoing government support should be made available to the public by clients. In privatization of such distribution services, information on concession fee or privatization proceeds should be made available to the public by clients. These requirements should also be in PS 1, not in PSES.

Rationale

- The existing PSES requires IFC to encourage public disclosure, but it does not set these requirements to clients. However, tariff hikes in essential services have caused significant impacts on poor people in many projects.

- Requirement for client should be included in PSs, not in PSES.

Comment 6:

In collaborating with other partner, IFC should identify and disseminate “best practice” as stated in para. 40, not just “good” international practice.

Rationale

- IFC should identify and disseminate “best” practice.

Comment 7:

Regarding procedures of the Compliance Advisor/Ombudsman (CAO), the following statement in para. 42 should be deleted: “the role of administrative and/or legal procedures available in the host country should also be considered.”

Rationale

- CAO has a different role and responsibility from administrative and legal procedures in host countries. It is not always appropriate to consider administrative and legal procedures in host countries in the CAO process.

B. Comments on the Performance Standards (PSs)

Comment 8:

In objectives of PSs, “minimize” should be sustained in all PSs, and it should not be replaced with the word “reduce.”

Rationale

- In principle, adverse impacts by the project supported by IFC should be first avoided, and then only if prevention is impossible, should minimization be practiced.
- The objective has to be effective and measureable. Therefore, “reduce” is not an appropriate word in objectives.

Comment 9:

To avoid, minimize, reduce or compensate should be encouraged as much as possible, and should not be limited to financially and technically feasible cases (for all PSs).

Rationale

- Regardless of what is written in PSs, there is no question that clients can not do anything financially and technically unfeasible. IFC should rather encourage the best practice.

Comment 10:

Assessment or management of environmental and social impacts should not only be “ongoing basis” but from the early stage. (PS 1, para. 1)

Rationale

- The draft deletes the phrase “from the early stage” regarding the assessment or management system.
- In paras. 3 and 8, the draft states the application of the PS 1 is from “early stages of project development” and includes the design stage.

Comment 11:

The issues and measures of loss of livelihood should be emphasized more strongly.

Rationale

- In the past, loss of livelihood has often caused huge adverse impacts, but the draft only refers to the issue in footnote 3, as a definition of Affected Stakeholders.
- In order for clients to understand easily and pay more attention to the importance of issues and measures regarding loss of livelihood, it should be articulated more clearly by referring to that in para. 3 of PS 1 “Scope of Application.”

Comment 12:

The scope of the risks and impacts identification process should not only be consistent with “good international industry practice”, but “internationally recognized best standards” such as WCD recommendations. (PS 1, para. 6)

Rationale

- The practice should not be limited to “industry practices.” Regardless of its origin, the best practice should be applied to projects.

Comment 13:

Consideration of a zero option alternative in the social and environmental assessment process should be required. (PS 1, para. 10)

Rationale

- ADB requires considering alternatives including a zero option (ADB, Safeguard Policy Statement, Policy Principles 1-3).

Comment 14:

Identifying risks and impacts should not be limited to “directly” affected groups and communities, but should also include those affected “indirectly.” The word “directly” should be deleted. (PS 1, paras. 11 and 22)

Rationale

- In practice, it is not clear what IFC means, or is trying to do, by adding the word “directly.”
- Whether directly or not, the identification of risks and impacts should be based on the extent and degree of damage that people suffered, not whether it was a direct or indirect effect.

Comment 15:

Translation of Social and Environmental Assessment Documentations, Action Plans and Monitoring Reports into languages understandable by affected peoples should be required. (PS 1, para. 26)

Rationale

- Language is key for affected peoples to participate in the development process. The draft fails to set a minimum range of documents that clients must translate.
- According to CAO’s review, there were only 53% projects that Action Plans were disclosed to communities, and many local stakeholders voiced concerns that engagement with companies operating in their community does not sufficiently address the impact remains even after taking mitigation measures. The lesson learned should be reflected to the new standard.

Comment 16:

IFC should require clients to disclose information before consultation including draft documents and plans. (PS 1, para. 27)

Rationale

- The current PS requires it and this requirement is very important for affected people.

Comment 17:

Disclosure of Monitoring Reports and periodic reports by clients should be required. (PS 1, para. 30)

Rationale

- The Draft (PS 1, para. 30) states “clients are encouraged to publish periodic reports accessible to all stakeholders on their environmental and social performance,” and it is not a requirement.
- The CAO’s review states that “None of these projects demonstrated that affected communities were updated at least annually on the Action Plan’s implementation, as required by Performance Standard 1.” The lesson learned should be reflected to the new standard.
- In ADB, the client is required to disclose social and environmental monitoring reports in ADB private sector projects (ADB, Safeguard Policy Statement, Policy Principles 1-7, 2-12, 3-9).

Comment 18:

The grievance mechanism should be accessible to all segments of the affected communities and thus “All segments of the affected communities” should not be deleted. (PS 1, para. 32)

Rationale

- There should not be any differentiation between affected people in terms of who can have access to grievance mechanisms.

Comment 19:

One of the objectives of PS 5 should remain “To improve, or at least restore, the livelihoods and standards of living of displaced persons.” (PS 5, Objectives)

Rationale

- Both terms of “improve” and “restore” should not be just juxtaposition as an objective in the issue of physical and/or economic displacement, but “to improve” should be set above “to restore.”

Comment 20:

Even in the case of projects involving economic displacement only, Compensation Plan or Supplemental Compensation Plan should also covers the applicable requirements of the PS 5, such as Resettlement Plan or Supplemental Resettlement Plan.

Rationale

- The draft requires a compensation plan in projects involving economic displacement only (PS 5, para. 22). While para. 18 of PS 5 states that "In the case of physical displacement, the client will develop a Resettlement Plan that covers, at a minimum, the applicable requirements of this Performance Standard," Para. 22 states that "In the case of projects involving economic displacement only, the client will develop a Compensation Plan to compensate affected persons and/or communities and offer other assistance that meet the objectives of this Performance Standard," It is unclear why the requirement on Compensation Plan is so limited.
- Likewise, while para. 25 of PS 5 states that “the client will prepare a Supplemental Resettlement Plan that (.....) will address the relevant requirements of this Performance Standard,” para. 26 states that “the client will develop a Supplemental Compensation Plan to complement government action.”

Comment 21:

The scope of assessment on biodiversity should not be limited to “major threats to biodiversity and priority ecosystem services” but it should be more broad and comprehensive to include all the potential threats to biodiversity. (PS 6, para. 5)

Rationale

- Holistic assessment on biodiversity should be required, not just one that cover major threats to biodiversity and priority ecosystem services.

Comment 22:

Areas having biodiversity of significant social, economic, cultural and survival importance to local communities should be regarded as one of the criteria for the “Critical Habitat”. (PS 6, para. 14)

Rationale

- The current draft text excluded the significance of habitat to local communities as one of the criteria for the Critical Habitat. This should be included again with addition of “survival importance”.

Comment 23:

“Measurable adverse impact” should be replaced by “adverse impact.” (PS 6, para. 15)

Rationale

- Adverse impacts should be assessed through measures including Precautional Approach.

Comment 24:

“A net reduction in the global or national/regional population of any Critically Endangered or Endangered species over time” should be replaced by “a reduction in the population of any Critically Endangered or Endangered species.” (PS 6, para. 15)

Rationale

- Flexibilities on duration and geography should not be accepted.

C. Comments on the Policy on Disclosure of Information (PDI)

Comment 25:

For category A projects, Social and Environmental Assessment Documents and Action Plans should be made available to the public at least 120 days prior to the IFC’s Board approval. (PDI, para. 13)

Rationale

- The draft includes requirement on minimum disclosure period of ESRS, it does not include that for Social and Environmental Assessment Documents and Action Plans.
- In ADB, draft environmental assessment reports must be made available to the public at least 120 days before Board consideration (ADB, Safeguard Policy Statement, para. 53).

Comment 26:

For Category FI, subprojects' Social and Environmental Assessment Documents and Action Plans should be made available to the public by IFC. (PDI, para. 13)

Rationale

- In ADB-supported FI's sub-projects which have potential for significant environmental or social impacts, safeguard documents must be made available by ADB before subproject approval (ADB, Operations Manual Section F1/OP, para. 56).

Comment 27:

Client's Monitoring Reports and Progress Reports should be also made available to the public by IFC. (PDI, para. 13)

Rationale

- In ADB, disclosure of social and environmental monitoring reports on the website is required under ADB, Public Communication Policy, para. 92.

Comment 28:

Social and environmental status information should be also updated and made available to the public at the IFC's project completion. (PDI, para. 14)

Rationale

- The draft states that "For direct investments with potential significant adverse social or environmental risks and /or impacts. IFC discloses an annual update of the Action Plan, including a summary of key actions that have been taken to implement the Action Plan (PDI, para. 13-e)." However, it does not require to update at the project completion.
- In ADB, Project, Technical Assistance and Program Completion Reports have to be made available to the public by ADB (ADB, Public Communication Policy, para. 95).

Comment 29:

Abbreviated version of investment proposal documents for Board approval should be made available to the public. (PDI, para. 20)

Rationale

- In ADB, abbreviated version of Report and Recommendation of the President (RRP) for private sector projects has to be made available to the public no later than upon Board approval (ADB, Public Communication Policy, para. 90).

Comment 30:

1) Revenue payments from extractive industry projects to host governments, 2) the relevant terms of key agreements in extractive industry projects, 3) information relating to household tariffs and tariff adjustment mechanisms, service standards, investment obligations and the form and extent of any ongoing government support in project involving the final delivery of essential services to the general public under monopoly conditions, and 4) information on concession fee or privatization proceeds in privatization of distribution services, should be also made available to the public by IFC.

Rationale

- In addition to client's disclosure as described in comments 3 and 5, stakeholders can access to the information easier, if IFC also post the information on its website.

D. Questions

1. Why the word "review" was replaced by "assess" or other words in PSES? Also, in practice, what will be different from the current practice by changing this word?

2. Why anything related to environmental and social "review" was deleted in the draft PSES and instead, the draft use the word "due diligence"? The deletion is especially evident in para. 9, 10 and 11 of the current PSES.
3. In all PSs, there are many places where the term "assessment" is replaced with "risks and impacts identification process" Why is that? What in practice does this change mean?
4. In PS 1, there are many places where the term "Social and Environmental" assessment is replaced with "social and environmental" risk and impacts. Why the capital letter was changed into small letters? What in practice does this change mean?
5. Throughout the PS 5, the word "at least" is deleted. For example, as an objective of PS 5, the previous text states, "To improve or at least restore the livelihoods and standards of living of displaced persons". However, the word "at least" is deleted in the current draft text. Why is that? What in practice does this change mean?
6. Para. 17 of PS 6 states "In circumstances where a proposed project is located within a legally protected area or an internationally designated area, the client, in addition to the applicable requirements of para. 12, 13 and 15 above, will consult protected area sponsors and managers, local communities, Indigenous Peoples and other key stakeholders on the proposed project, as appropriate". Does this sentence mean that the client will choose who to consult with? Or does it mean that the client will choose whether to consult or not with these parties?