

Comments on the 2nd Draft Policy and Performance Standards on Social and Environmental Sustainability, and the Draft Policy on Disclosure of Information

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

Comment A-1:

All requirements of Performance Standards should be applied for Category A and B projects. (PSES, para. 3)

Rationale:

- Para. 3 in the PSES states “Proposed investments that are determined to have moderate to high levels of social and environmental risk or the potential for adverse social and environmental impacts will be carried out in accordance with the requirements of the Performance Standards.”
- It is unclear whether all requirements of PSs are applied for all Category A and B projects.

Comment A-2:

The word “may” before “Certain risks” should be deleted. (PSES, para. 22)

Rationale:

- Para. 22 in the PSES states “Certain risks may require IFC to refrain from supporting the business activity.”
- Such ambiguity of IFC will reduce motivation of companies that involve projects with undue process.

Comment A-3:

If the client fails to comply with its social and environmental commitments as expressed in legal agreements and/or conditions for investment, the PSES should clearly stipulate the possibility of suspension and cancellation of IFC’s support. (PSES, paras. 23 and 44)

Rationale:

- The PSES (para. 23) 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.
- The PSES (para. 44) states “If the client fails to comply with its social and environmental commitments, as expressed in the social and environmental conditions for investment, IFC will work with the client to bring it back into compliance to the extent feasible, and if the client fails to reestablish compliance, IFC will exercise remedies as appropriate.”
- JBIC Guidelines for Confirmation of Environmental and Social Considerations clearly state that “If it becomes evident that the borrower and the project proponents have not met the conditions required by JBIC under the Guidelines, or if it becomes apparent that the project will have an adverse impact on the environment after funding is extended, due to the borrower’s or related parties’ failure to supply correct information during the environmental review process, JBIC may, in accordance with the loan agreement, suspend the disbursement or declare all the principal outstanding at the time, with interest and any other charges thereon, to be payable immediately.”

Comment A-4:

Environmental and social impacts should include not only direct impacts but also indirect impacts resulting from the business activity to be supported by IFC. (PSES, para. 3, footnote 2)

Rationale:

- Whether directly or not, the identification of impacts should be based on the extent and degree of potential damage to the environment and community, not whether it was a direct or indirect effect.
- JBIC Guidelines for Confirmation of Environmental and Social Considerations stipulates “In addition to the direct and immediate impact of projects, derivative, secondary and cumulative impact are also to be examined and investigated to a reasonable extent.” (Part 2, Scope of Impact to be Examined)

Comment A-5:

The wording of “matters that directly affect them...” should be “matters that directly and indirectly affect them...”. (PSES, para. 9)

Rationale:

- Whether directly or not, the identification of impacts should be based on the extent and degree of potential damage to the environment and community, not whether it was a direct or indirect effect.

Comment A-6:

The wording “to minimize, restore, or compensate/offset for the impacts...” should be replaced by “to minimize, restore, or where minimization and restoration is not possible, compensate/offset for the impacts...”. (PSES, para. 6)

Rationale:

- The draft states that “Central to these requirements is the application of a mitigation hierarchy to avoid adverse impacts on workers, communities, and the environment, or where avoidance is not possible, to minimize, restore, or compensate/offset for the impacts, as appropriate.” (para. 6)
- Minimization and restoration should be prioritized before compensation/offset for the impacts in the application of “mitigation hierarchy”.

Comment A-7:

Broad Community Support (BCS) should not depend substantially on community representatives, but Affected Communities. (PSES, para. 28)

Rationale:

- Although there exist communities whose representative(s) is a sort of decision-maker(s) of the community, how to make ensure that the representative(s) represents the view of Affected Communities truly is extremely difficult. Hence, such stakeholder engagement process should not be allowed ideally or should be applied only to a limited case.

Comment A-8:

For Category FI, subprojects classified as FI-1 should be cleared by IFC before subproject approval by the FI. IFC’s due-diligence and disclosure requirements for general direct investment should also be adopted for FI-1 subprojects.

Rationale:

- The draft states that “IFC reviews the existing portfolio and prospective business activities of its FI clients to identify activities where the FIs and IFC could be exposed to risks as a result of their investments, and defines requirements for managing these risks. IFC reviews the implementation capacity of FIs as well as their social and environmental management systems, as required by Performance Standard 1.” (para. 32) IFC’s clearance on subprojects is not a requirement under the current draft.
- Broad Community Support (BCS) is reviewed by IFC only in direct investments. (para. 28)
- 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 A-9:

All requirements of Performance Standards should be applied for Category FI-1 and FI-2 subprojects. (PSES, para. 33)

Rationale:

- The draft states that “FIs with portfolio and/or prospective business activities that present moderate to high social or environmental risks will require high business activities they support to apply relevant requirements of the Performance Standards.” However, it is unclear whether all requirements of PSs are applied for all FI-1 and FI-2 subprojects.
- The 1st draft states that “All other FIs (except minimal or no risks) will apply the Exclusion List, follow respective national laws, and where the activity financed presents some social or environmental risks, they will apply the Performance Standards.” The requirement of para. 33 in the 2nd draft is weaker than that of the 1st draft.

Comment A-10:

IFC should identify and disseminate “best practice” as stated in paras. 38 and 45, not just “good”

international practice.

Rationale:

- IFC should identify and disseminate “best” practice.

Comment A-11:

IFC should clearly stipulate that if there are material changes in the environmental and social aspects of the IFC’s supported business activity after IFC made categorization, IFC will revise the categorization and conduct environmental and social due diligence according to the changes.

Rationale:

- There is no provision regarding revision of categorization when there is material change in environmental and social aspects of the project that IFC considers to support/supports. Thus it should be articulated in the section of “Social and Environmental Categorization”(para. 39-43) in PSES.
- JBIC Guidelines for Confirmation of Environmental and Social Considerations stipulates “JBIC may revise the categorization when necessary, e.g., in cases where environmental impact worth considering comes to light even after the screening based on the information provided by the borrowers and related parties is performed.”

Comment A-12:

The requirement on extractive industries’ transparency in paras. 48-51, PSES should be in PS 1.

Rationale:

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

Comment A-13:

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 PS1, not in PSES.

Rationale:

- Tariff hikes in essential services have caused significant impacts on poor people in many projects.
- The draft PSES requires IFC to encourage public disclosure, but it does not set these requirements to clients.
- Requirement for client should be included in PSs, not in PSES.

Comment A-14:

Regarding procedures of the Compliance Advisor/Ombudsman (CAO), the following statement in para. 53 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 Standard 1

Comment B-1:

There are some sentences that downgrade indirect impacts and these should be rectified as below:-

- **Definition of Affected Communities should include indirectly affected people. (PS1, para. 1)**
- **Identifying risks and impacts should not be limited to “directly” affected groups and communities, but should also include those affected “indirectly.” (PS 1, paras. 11 and 27)**
- **Although it is important to “prioritize those directly affected” for effective consultation, it should delete the word “directly.” (PS 1, para. 32)**

Rationale:

- The current definition of Affected Communities excludes indirectly affected people, which are to be regarded as affected people usually.
- 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.
- Even though people are indirectly affected, the impacts may be significant. Thus indirectly affected people should not be differentiated in such a way.
- What often happens is that not directly affected people but indirectly affected people are overlooked. Hence, the PS should not emphasize only directly affected people.
- JBIC Guidelines for Confirmation of Environmental and Social Considerations stipulates “In addition to the direct and immediate impact of projects, derivative, secondary and cumulative impact are also to be examined and investigated to a reasonable extent.” (Part 2, Scope of Impact to be Examined)

Comment B-2:

Principle that environmental and social consideration should be ideally from the early stage should be clearly mentioned somewhere in paras 1 to 4 of PS 1 where it can overarch all the management system.

Rationale:

- The current wording allows projects not to consider social and environmental impacts that can be avoided, minimized and restored from the early stage.

Comment B-3:

The draft should not allow IFC to support clients who are involved in projects that are not consistent with the PS. This is especially the case where IFC find incompliance with PS before its decision-making. (PS1, para. 2)

Rationale:

- The draft allows IFC to support the clients of projects that do not comply with PS, even if the clients who cannot control or influence risks and impacts of the projects make efforts to achieve consistency with PS.

Comment B-4:

The definition of “minimize” should not include the word “rectify, repair, and/or restore.” (PS 1, footnote 5)

Rationale:

- Such definition will undermine the efforts of proponents to reduce the impacts as much as possible, as the 2nd draft allows them to only to even repair and restore.
- Especially, the word “repair” and “restore” is more like an expression of “compensate” than minimize.

Comment B-5:

There are inconsistencies between each elements of management system in terms of their relationships with PS 1. Hence, in para 3 of PS 1, there should be a sentence “all the elements of management system are required to meet PSs.”

Rationale:

- In para. 5 “Policy”, the draft states that policy should be consistent with the applicable PSs.
- In para. 6 “Identification of Risks and Impacts”, the draft states that the process will be consistent with good international industry process, while PSs are only subject to be considered regarding the risks and impacts.
- In para. 14 “Management Programs”, the draft states that the client will identify mitigation etc to “meet the requirements of PS1 through 8”.
- In para. 15 “Action Plans”, the draft mentions nothing about the PS’s requirements.
- In para. 21 “Monitoring and Review”, the draft states its compliance with any related legal and/or contractual obligations and regulatory requirements, but do not mention PSs.
- In this way, it is confusing why the level of PS application to each element is so different.

Comment B-6:

The scope of the risks and impacts identification process should not 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 B-7:

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

Rationale:

- World Bank requires considering alternatives including “without project” situation for Category A projects (World Bank, OP 4.01 - Environmental Assessment, para. 8)
- ADB requires considering alternatives including a zero option (ADB, Safeguard Policy Statement, Policy Principles 1-3).
- JBIC requires considering alternatives including a zero option (JBIC Guidelines for Confirmation of Environmental and Social Considerations, Appendix)

Comment B-8:

The mitigation hierarchy should favor “the avoidance of impacts over minimization AND compensation/offset, and compensation” not avoidance of impacts over minimization OR compensation/offset. (PS 1, para. 13)

Rationale:

- It is not appropriate to choose either minimization or compensation/offset. Both of them should be ensured.

Comment B-9:

Information including draft social and environmental documentations and draft action plans should be disclosed by the client before consultation. (PS 1, para. 27)

Rationale:

- Although the draft states that “(consultation will) be based on the prior disclosure of relevant and adequate information (para. 32),” the draft fails to set an explicit requirement for disclosing draft social and environmental documentations and draft action plans.
- The current PS requires it and this requirement is very important for affected people.

Comment B-10:

The PS should not easily allow clients to depend substantially on community representatives, but Affected Communities. (PS 1, para. 29)

Rationale:

- Although there exist communities whose representative(s) is a sort of decision-maker(s) of the community, how to make ensure that the representative(s) represents the view of Affected Communities truly is extremely difficult. Hence, such stakeholder engagement process should not be allowed ideally or should be applied only to a limited case.

Comment B-11:

Information disclosure should occur “at the latest” before the project construction commences (PS 1, para. 31)

Rationale:

- As the project or project site/design has been already decided when the project construction commences, ideally, information disclosure should occur much before that.

Comment B-12:

It should be clearly mentioned that the translation of Social and Environmental Assessment Documentations, Action Plans and Monitoring Reports into languages understandable by affected peoples is a requirement under the Performance Standard. (PS 1, para. 31)

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 B-13:

Disclosure of Client's Annual Monitoring Reports and periodic reports should be required. (PS 1, para. 37)

Rationale:

- The Draft (PS 1, para. 37) states "clients are encouraged to publish periodic reports accessible to all stakeholders on their environmental and social performance," and it is not a requirement.
- Client's Annual Monitoring Reports are required to submit to IFC for supervision in para. 44, PSES. However, it is not required to make available to the public by clients.
- 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).

C. Comments on the Performance Standard 5

Comment C-1:

In the 3rd point of Objectives in the PS 5, the target of compensation at replacement cost should not be limited only to "loss of assets" but also to "access to assets."

Rationale:

- It states that "(i) providing compensation for loss of assets at replacement cost" in this version, but that "(i) providing compensation for loss of assets or access to assets at replacement cost" in the previous version. The phrase of "or access to assets" should not be deleted.
- It states that "Prompt compensation of economically displaced persons for loss of assets or access to assets at full replacement cost" in the 1st point of para. 26.

Comment C-2:

To mitigate adverse social and economic impacts from non-land related restrictions on assets/ access to assets should be added as one of the Objectives of the PS 5.

Rationale:

- Whether the adverse impacts are from land related restrictions or not, the effects of the project such as loss of livelihoods can be significant for the affected communities.
- Para. 7 of the PS 5 states that "Where direct project impacts affect land, assets or access to assets ...adversely..., the client will apply the requirements of Performance Standard 5, even where no land acquisition or land use restriction is involved". However, mitigating impacts from non-land related restrictions on assets/ access to assets is not articulated as the Objectives.

Comment C-3:

"Indirect and" in para. 6 should be deleted.

Rationale:

- It states "It also does not apply in situations where impacts are indirect and not attributable to a project's change of the land used by the affected groups..." The definition of "indirect" is vague, but only the words of "not attributable to a project's..." are enough to show the condition in this sentence.

Comment C-4:

The wording of "direct project impacts..." should be "direct and indirect project impacts."

Rationale:

- Indirect project impacts should be also covered by the requirements of the PS 5.

Comment C-5:

The illustration of "Disruption of access to mineral deposits by artisanal miners" stated in the 10th footnote of PS 5 is inappropriate, and should be deleted.

Rationale:

- “Disruption of access to mineral deposits by artisanal miners” should be covered by the PS 5. For when such disruption of access to mineral deposits attributable to a project leads to loss of income sources, the livelihood and standards of living should be improved, or at least restored, in accordance with the requirements of the PS 5.

Comment C-6:

“So” before “adversely” in para. 7 should be deleted.

Rationale:

- Regardless of the extent of adverse impacts, the matter of physical and/or economic displacement should be covered by the PS 5, in order to improve or at least restore the livelihood and standards of living.

Comment C-7:

“Staggered compensation payments” stated in the 15th footnote in the PS 5 should be arranged with the agreement of affected communities and persons.

Rationale:

- Such payment should not be made without the agreement of affected communities and persons.

Comment C-8:

It is better to describe “Livelihood Improvement and Restoration Plan” or in the other way, than “Livelihood Restoration Plan” as a document to be developed for economic displacement.

Rationale

- In this version of the PS 5, “Livelihood Restoration Plan” is required to develop for economic displacement. As the Objective requires “to improve, or restore the livelihoods and standards of living,” it is confusing to use only the term of “Restoration.” It might send the message that the Client is required only to restore, but not to improve.

Comment C-9:

Affected communities and persons, but not only “their representatives” should be also consulted during the monitoring process, in para. 14 of the PS 5.

Rationale:

- Through the PS 5, the wording of “Affected Communities and persons” is commonly found.
- The target of the consultation even during the monitoring process should not be limited only to “their representatives.”

Comment C-10:

The words of “Alternative housing and/or cash compensation will be made available prior to relocation” in the original PS 5 should not be deleted in para. 20 in this version.

Rationale:

- Alternative housing and/or cash compensation should be made available prior to relocation.
- If ever there is any exceptional case to this, it is better to mention as a footnote, such like the 15th footnote of the PS 5.

Comment C-11:

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

Rationale:

- While para. 19 of PS 5 states that “In the case of physical displacement, the client will develop a Resettlement Action Plan that covers, at a minimum, the applicable requirements of this Performance Standard,” Para. 25 states that “In the case of projects involving economic displacement only, the client will develop a Livelihood Restoration 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 Livelihood Restoration Plan is so limited.
- Likewise, while para. 28 of PS 5 states that “the client will prepare a Supplemental Resettlement Plan that (.....) will address the relevant requirements of this Performance Standard,” para. 29 states that

“the client will develop a Supplemental Action Plan to complement government action.”

D. Comments on the Performance Standard 6

Comment D-1:

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. 16)

Rationale:

- The current draft text excluded the significance of habitat to local communities as one of the criteria for the Critical Habitat although it was clearly stated in the current PS. This should be included again with addition of “survival importance”.
- Criteria on ecosystem services are replaced to paras. 24 and 25. However, minimizing of adverse impacts can be allowed in the draft, although the current PS 6 requires “no adverse impacts” in Critical Habitat.

Comment D-2:

“Measurable adverse impact” should be replaced by “adverse impact.” (PS 6, para. 17)

Rationale:

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

Comment D-3:

"A net reduction in the global and/or national/regional population of any Critically Endangered or Endangered species over a reasonable period of time" should be replaced by "a reduction in the population of any Critically Endangered or Endangered species." (PS 6, para. 17)

Rationale:

- Flexibilities on duration and geography should not be accepted.

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

Comment E-1:

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. 32)

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 E-2:

For Category FI-1 and FI-2, subprojects’ Social and Environmental Assessment Documents and Action Plans should be made available to the public by IFC before approval by IFC’s Board of Directors. (PDI, para. 30)

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 E-3:

Client’s Annual Monitoring Reports referred in PSES para. 44 and Progress Reports referred in PS1 para. 37 should be made available to the public by IFC. (PDI, para. 39)

Rationale:

- The draft states that third-party monitoring reports, where required by the performance standards are available. However, client’s Annual Monitoring Reports and Progress Reports are not required for

disclosure in PS1 para. 37..

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

Comment E-4:

Abbreviated version of investment proposal documents for Board approval should be made available to the public. (PDI, para. 17)

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 E-5:

1) Revenue payments from extractive industry projects to host governments, 2) extractive industry contracts, 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 Section A, stakeholders can access to the information easier, if IFC also disclose the information.

Comment E-6:

Access to Information Policy Advisor should be abolished. Access to Information Appeals Panel should review requests on disclosure. (PDI, paras 55 to 68)

Rationale:

- Access to Information Policy Advisor is an internal body. Fair judgment cannot be expected. Moreover, Access to Information Policy Advisor and Access to Information Appeals Panel have duplicated roles and functions, and it is inefficient for both IFC and requesters.

F. Questions

1. In para. 7 in the PSES, the words "decision to finance the project or not" has been replaced by "approval process". (The new sentence is as follows; IFC's social and environmental due diligence of a proposed business activity is an important factor in its approval process.) Does that change any IFC's operation? (PSES, para. 7)
2. Why is the two years transition period for disclosure of extractive industry contracts needed? (PSES, para. 49)
3. Why are environmental risks and impacts to be not "assessed" but "evaluate"? Does that change any IFC's operation? (PS1, objectives)
4. Why will financial intermediaries adopt only "the principles" of PS, not the PS themselves? And, what does "the principles" mean here? (PS1, para. 3)
5. What does "physical" mean? Some example of physical/not physical would be useful to understand. (PS1, para 4)
6. It is sensible that the PS states "the client should address these risks and impacts in a manner commensurate with the client's control and influence over third party action" (PS1, para 8), but what kind of the case where clients can have control/influence over the "associated facilities" of the third party, which are not funded as a part of the project? Give me some examples.
7. Throughout the PS 5, please explain the difference in practice between the case where you put the word of "at least" before "minimize" or "restore" and the case where you don't put it. For example, while it states that "To avoid or at least minimize..." in the 1st point of Objectives, it states that "The client will consider feasible alternative project designs to avoid or minimize physical and/or economic displacement..." in para 8. Also, while it states that "To improve, or restore the livelihoods..." in the 4th point of Objectives, it states that "...opportunities to improve, or at least restore, their means of..." in the 7th point of para. 26.

8. In para. 10 of the PS 5, why did IFC need to delete one sentence “Affected persons and communities will be consulted on all key aspects of the process including compensation packages, (...) and the proposed timing of resettlement”, which had been stated in the previous version?
9. In the 2nd point of para. 26 of the PS 5, why did IFC need to put “direct” before “compensation of affected business owners”?