

U.S. Comments on the Safeguard Policy Statement, Second Draft, October 2008
Submitted to the ADB

General Comments

We appreciate the effort the ADB has taken in developing the SPU and in conducting extensive consultations, and appreciate this opportunity to comment on the second draft of the SPU paper.

We continue to believe that the ADB safeguard policy will serve not only to ensure the development benefits of ADB operations, but also as a potential model for how other regional investments can support development. Thus, it continues to be critical that the ADB set a strong model for safeguards. It is equally critical that the ADB continue to seek opportunities to leverage its lending such that the application of its safeguards spills over to non-ADB projects in the region, and that the ADB moves toward the use of country safeguard systems in a manner that maximizes its effectiveness in helping countries strengthen their safeguard systems.

We would like to highlight three principles that are important for the USG in the SPU.

- First, we view the SPU as an opportunity to strengthen the ADB's safeguard policies; a new policy should not weaken the ADB's safeguards.
- Second, efforts to harmonize with other MDBs should not result in inadvertent weakening of the ADB's policy. We encourage the MDBs to harmonize upwards, and to harmonize procedures as well as policies to the extent feasible.
- Third, the Operations Manual should be sufficiently detailed to ensure that the proposed new policy structure is implemented effectively and consistently.

We mention some specific areas of concern *vis-à-vis* these principles below. In addition, we urge full consideration of the many other comments provided on this consultation draft.

We urge the ADB to ensure that it provides sufficient resources for the implementation of the final policy, and look forward to reviewing the Policy Implementation Plan, where resources and other elements of implementation will be discussed.

We recommend that the ADB include in the SPS W-paper a commitment to undertake a review of the proposed policy in three or so years. The review should assess ADB implementation, borrower compliance and overall policy effectiveness.

In addition, we urge the ADB to modify the proposal on country safeguards systems so that it will include only a limited number of countries at this time and will be subject to independent review after 2 or 3 years.

We have also included at the end of these comments (under “Other”) a suggestion for an email notification system of the availability of safeguard documents. This is not a comment on the draft SPS, but nevertheless a related issue.

Priorities

In considering the ADB’s SPS, the USG will pay particular attention to the following issues, which are (except for resources) discussed in more depth in the “Specific comments” below.

Resources for policy implementation

Country systems

The principles

Categorization or a satisfactory alternative for projects with significant IP and IR impacts

Disclosure and consultation, including public disclosure for Category A project EIAs

Other financing modalities, including FIs

Key definitions, such as “project” and “associated facility”

A narrow scope of the derogation

Operations manual completeness

Cross-cutting comments

Purpose of Free Prior and Informed Consultation. We recommend that the ADB articulate a clear purpose for free, prior and informed consultation in the environment, IR and IP principles, paragraph 63, and the SRs. (The concepts and language are slightly different among environment, IR and IP principles and paragraph 63.)

- We recommend consideration of concepts like, “to achieve broad community support,” or “to facilitate their informed participation in the project process and to ensure that their concerns are taken into account in the design, development and implementation of the project.”
- Consultation and participation by affected people should be throughout the project cycles. If free, prior and informed consultation is only applicable before project approval, please refer in some other way in these texts to the broader principle.

We recommend an appropriate principle in each area (environment, IR, IP) on documenting the results of such consultation.

“Approve” and “review.” Even where ADB “approval” in a current safeguard policy has been replaced with “review,” we expect that the function of ADB review will continue to be to ensure compliance with ADB policies and requirements. Accordingly, if “review” is retained, we urge that the text read, “review in order to ensure compliance with ADB safeguard objectives, principles and requirements” (or whatever specific requirement is relevant in the particular text).

“Feasible” and “possible.” On balance, we recommend the use of “possible” except where “feasible” is part of a term of art, as in “financially and technically feasible.”

Specific Comments in Order of Text

IV. Key Policy Considerations (paragraphs 23-50)

Paragraphs 26-27. Relationship to Environmental Strategy. We recommend that the ADB clearly explain the relationship of the SPS to the upcoming Environmental Strategy. We look forward to the upcoming Environmental Strategy, since operationalizing positive environmental considerations across MDB operations is essential for maximizing the ADB’s environmental and social additionality.

New paragraph 30. We recommend that a new paragraph be added on the “Social Safeguard Elements in Other Policies and Strategies.” In particular, we recommend that the ADB explain the relationship of the SPS to the existing *Social Protection Policy*, in which are embodied the ADB’s requirements with respect to core labor standards.

New paragraph 31. We recommend a reference to ADB policies on illegal activities that might occur in connection with projects that have environmental and social impacts.

V. The Draft Safeguard Policy Statement (paragraphs 51-56)

Para 53. We recommend that the second sentence read, “... Throughout the ADB’s project cycle against the ADB objectives, principles and requirements...” This includes the full range of requirements, including implementation. The reference to the ADB’s business cycle is to avoid confusion with others’ cycles.

Para 55. We recommend replacing “are expected to meet” with “are required to meet,” to clarify that borrower requirements are required, not only expected.

Paragraph 56. This paragraph defines the scope of application of the SPS and is, accordingly, very important. We recommend that this paragraph state, “The Safeguard Policy Statement applies to all ADB projects. ADB projects are those activities financed and/or administered by the ADB, and include standard investment operations, technical assistance, project components not financed by the ADB but administered by the ADB through a co-financing arrangement, and the full range of other modalities (such as program loans, sector investments, multi-tranche financing facilities, emergency programs, financial intermediary operations, corporation finance), whether the borrower/client is a sovereign or non-sovereign entity and whether the form of finance is loan, grant, equity, guarantee and/or other means.”

- We recommend that the same definition be included in the glossary, and that there not be any other definition of “project” or “ADB projects” in the SPS (which would be confusing). Alternatively, Paragraph 56 could be just the first sentence, with the definition only in the glossary.

Principles – General Comments

We assume that the definitions in the glossary of the words and phrases used in the principles are an integral part of the principles. **If this is not the case, please let us know so that we can elaborate on the principles.**

Stylistic suggestion. We recommend that the principles be in regular font, not limited to one page per topic, so that they are as readable as the rest of the text.

To provide our recommendations on edits to the principles, we show the proposed edits to the principles immediately below. We have provided a description of these edits with some discussion in the attachment on principles at the end of these comments.

Environment – Objectives, Scope and Policy Principles on Environmental Safeguards

1. Objectives, Scope and Policy Principles on Environmental Safeguards

Objectives	To ensure the environmental soundness and sustainability of projects, and <u>integrate</u> environmental considerations into the project decision making process.	Deleted: support integration of
Scope	The Policy applies to all projects.	
Policy Principles	<p>1. Use a screening process for each proposed project, as early as possible, to determine the appropriate extent and type of environmental assessment, so that appropriate studies are undertaken commensurate to the significance of potential impacts and risks.</p> <p>2. Conduct a <u>social and</u> environmental assessment for each proposed project to identify potential impacts and risks on physical, biological, socio-economic (including health and safety, <u>and resources and ecosystems on which people depend</u>), and physical cultural resources in the project's area of influence. Assess <u>direct, indirect and cumulative impacts, and potential trans-boundary and global impacts, including climate change</u>. Use strategic environmental assessments <u>and environmental audits</u> where appropriate. <u>Comprehensive baseline data, allowing assessment of the full range of social and environmental impacts and mitigation measures, shall be required as part of assessments.</u></p> <p>3. Examine financially, technically, <u>environmentally and socially</u> feasible alternatives to the project location, design, technology and components, their potential environmental and social impacts, and document the rationale for selecting the particular alternative(s) proposed. The no project alternative will be also considered. <u>The analysis of alternatives will be of sufficient scope and depth to allow a direct comparison of the respective benefits, risks and impacts of the alternatives and the proposed project. Where relevant, the alternatives analysis should include a development alternatives analysis (e.g., alternative development-promoting uses of government revenue).</u></p> <p>4. <u>Prevent</u> and, where <u>prevention</u> is not feasible, minimize, mitigate and/or offset for adverse impacts and enhance positive impacts through environmental planning and management. Prepare an environmental management plan (EMP) that includes the proposed mitigation measures, <u>site remediation measures</u>, environmental monitoring and reporting requirements, related institutional or organizational arrangements, capacity development and training measures, implementation schedule, cost estimates and performance indicators. <u>For projects with a limited time-span, the EMP will include a decommissioning plan. EMPs should be finalized and ready to be implemented prior to project approval. EMPs will adopt an adaptive management approach while maintaining a commitment to the mitigation performance measures.</u></p> <p>5. Carry out free, prior and informed consultation with affected people and facilitate their informed participation, <u>starting at an early stage no later than as scoping and continuing throughout the project cycle</u>. Ensure women's participation in consultation. Involve</p>	<p>Deleted: n</p> <p>Deleted: the context of</p> <p>Formatted: Bullets and Numbering</p> <p>Deleted: and</p> <p>Deleted: , where relevant</p> <p>Deleted: ¶</p> <p>Deleted: Avoid</p> <p>Deleted: avoidance</p> <p>Deleted: or equivalent planning document(s)</p>

	<p>stakeholders, including project-affected people and concerned NGOs early in the project preparation and ensure that their views and concerns are made known and understood by decision makers and taken into account. Continue consultations with stakeholders throughout project implementation as necessary <u>regarding the project's social and environmental performance</u>. Establish a grievance mechanism to receive and facilitate resolution of the affected people's concerns and grievances regarding the project's environmental performance. <i>[See also the crosscutting comments on free, prior and informed consultation.]</i></p> <p>6. Disclose draft environmental assessments (including EMP) before project appraisal, in a form, manner and language(s) accessible to affected people and other stakeholders. <u>Undertake prompt public disclosure throughout the project cycle, in a form, manner and language(s) accessible to affected people and other stakeholders, of other relevant documents.</u></p> <p>7. Implement the EMP and monitor its effectiveness. <u>Update the EMP and corrective action plans as necessary.</u> Document monitoring results, including development and implementation of corrective actions, and disclose <u>promptly periodic monitoring, progress and compliance reports throughout the project lifecycle in a form, manner and language(s) accessible to affected people and other stakeholders. Where possible, include affected people in project monitoring, with development of community and local capacity to assist in monitoring as needed.</u></p> <p>8. Do not implement project activities <u>with the potential to adversely impact critical habitats. OR ADD Do not implement project activities with the potential to adversely impact critical habitats unless they are mitigated to prevent any adverse impacts on critical habitats.</u> If a project is located within a legally protected area, implement additional programs to promote and enhance the conservation aims of the protected area <u>so that the net project impact is positive or neutral.</u> If the project has the potential to adversely impact non-critical habitats, proceed only if there are no technically and financially feasible alternatives, overall benefits from the project substantially outweigh the environmental costs, and any conversion or degradation is appropriately mitigated. Use a precautionary approach to the use, development and management of renewable natural resources. <i>[We also recommend adding a standard to which clients or ADB will be held accountable (e.g ensuring ecosystem integrity; maintenance of genetically viable populations)]</i></p> <p>...</p> <p><u>12. Independent expertise will be used in the preparation of EA, where appropriate. For highly risky and/or contentious projects, or those with serious multidimensional environmental concerns, an independent expert advisory panel will be engaged throughout the preparation and implementation of the project.</u></p>
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Involuntary Resettlement – Objectives, Scope and Policy Principles on IR Safeguards

Objectives	To avoid involuntary resettlement wherever feasible, and minimize involuntary resettlement through exploring project and design alternatives, and enhance, or at least restore the livelihoods of all affected persons in real terms relative to pre-project levels and improve the standards of living of the affected poor and other vulnerable groups.
Scope	The Policy covers physical displacements (relocation or loss of shelter) and economic displacements (loss of assets, access to assets, or income sources or means of livelihoods) <u>in the project's area of influence</u> as a result of (i) involuntary acquisition of land, (ii) involuntary restriction on land use or access to legally designated parks and protected areas. It covers them whether such losses and involuntary restrictions are full or partial, <u>permanent or temporary, and immediate or cumulative.</u> <u>The determination that a displacement is involuntary does not depend on the client's determination, but rather on a transparent process including if necessary an arbitration mechanism.</u>

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Policy Principles	
	<p>1. Screen the project early to identify its past, present and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through survey/census of the affected persons, including a gender analysis, specifically related to resettlement impacts and risks.</p> <p>2. Carry out free, prior, informed consultations with all affected persons, host communities and concerned NGOs, <u>starting at an early stage such as scoping and continuing throughout the project cycle</u>. Inform all affected persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially of those below the poverty line, the landless, the elderly, women and children, Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support social and cultural institutions of affected persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a 'social preparation' phase. <u>[See also the crosscutting comments on free, prior and informed consultation.]</u></p> <p>3. Improve livelihoods of all affected households through (a) land-based resettlement strategies when affected livelihoods are land-based where feasible; (b) cash compensation at replacement value for land when the loss of land does not undermine livelihoods; (c) prompt replacement of assets and access to assets of equal or higher value; (d) prompt compensation at full replacement cost for assets that can not be restored, and (e) where feasible, additional revenues and services through project benefit sharing schemes. OR <u>ADD If monitoring of resettlement outcomes reveals that livelihoods have not been restored, remedial actions will be undertaken promptly to achieve restoration. Include in compensation packages the loss of free goods and services such as non-timber forest products and water.</u></p> <p>...</p> <p>8. Prepare a resettlement plan, or equivalent planning document(s), elaborating affected persons entitlements, the income and livelihood restoration strategy, institutional arrangement, monitoring and reporting framework, budget, and time-bound implementation schedule. <u>Resettlement plans will ensure gender equity in livelihood enhancement and other remedial activities.</u></p> <p>9. Disclose draft resettlement plan, including documentation of the consultation process before the project appraisal and in a form, manner and language(s) accessible to affected persons and other stakeholders. The final resettlement plans and their updates will also be disclosed to the affected persons and other stakeholders.</p> <p>10. Involuntary resettlement should be conceived and executed as part of a development project or program. The full costs of <u>all resettlement activities, including indirect costs such as costs associated with the transition to and re-establishment of livelihoods,</u> will be included in the presentation of the costs and benefits of the project. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand alone operation.</p> <p>11. Pay compensation and provide other entitlements before physical or economic displacement. Implement the resettlement plan <u>in a timely manner, so that resettlement benefits are not diminished,</u> under close supervision throughout the project implementation.</p> <p>12. Monitor and assess resettlement outcomes, their impacts on the standards of living of the affected persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. <u>Where possible, include affected people in project monitoring, with development of community and local capacity to assist in monitoring as needed. Disclose monitoring and assessment documents promptly, in a form, manner and language(s)</u></p>

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Indigenous People – Objectives, Scope and Policy Principles on IP Safeguards

Concerning principle 4 on Free Prior and Informed Consent (FPIC): The USG has not signed the UN Declaration on the Rights of Indigenous Peoples. We will review carefully any ADB proposal concerning free, prior and informed consent. Any proposal should be operationalizable.

Objectives	To design and implement projects in a way that fosters full respect for Indigenous Peoples' identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by the Indigenous Peoples themselves, so that they (i) receive culturally appropriate social and economic benefits; (ii) do not suffer adverse impacts of projects; and (iii) are able to participate actively in projects that affect them.
Scope	The Policy is triggered if a project, <u>in its area of influence</u> , impacts directly, indirectly <u>or cumulatively</u> on the dignity, human rights, livelihood systems, or culture of Indigenous Peoples, or affects the territories, natural or cultural resources that Indigenous Peoples own, use, occupy or claim as an ancestral domain or asset. "Indigenous Peoples" is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: (i) self identification and recognition of this identity by others, (ii) collective attachment to geographically distinct habitats or ancestral territories and to the natural resources in these habitats and territories, (iii) presence of distinct customary cultural, economic, social or political institutions, and (iv) a distinct language, often different from the official language of the country or region. A group that has lost "collective attachment to geographically distinct habitats or ancestral territories in the project area" (item [ii]) because of forced severance, <u>including for?] as a result of natural disasters, development programs, or immigration/settlement by non-indigenous persons</u> remains eligible for coverage under this Policy.
Policy Principles	<p>1. Screen early to determine (a) whether Indigenous Peoples are present in, or have collective attachment to, the project area, and (b) <u>the scope of any potential or likely project impacts on Indigenous Peoples and of assessment and planning to address the issues.</u></p> <p>...</p> <p>3. Undertake free, prior and informed consultations with affected communities and concerned Indigenous Peoples' organizations to solicit their participation (a) in designing, implementing, and monitoring measures to avoid adverse impacts, or, when avoidance is not feasible, to minimize, mitigate, or compensate for such effects; and (b) in tailoring project benefits for them in a culturally appropriate manner. To enhance Indigenous Peoples' active participation, the projects affecting them will provide for culturally-appropriate capacity development. Establish a culturally appropriate grievance mechanism to receive and facilitate resolution of the Indigenous Peoples' concerns. <u>[See also the crosscutting comments on free, prior and informed consultation.]</u></p> <p>4. Apply the principle of free, prior, informed consent of affected Indigenous Peoples to the following project activities: (i) commercial development of the cultural resources and</p>

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	<p>knowledge of Indigenous Peoples, (ii) physical relocation from traditional or customary lands, and (iii) commercial development of natural resources on lands used with impacts on the livelihood, or cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples. For the purposes of policy application, consent refers to a collective expression by the affected Indigenous Peoples communities through individuals and/or their recognized representatives, of broad community support for such project activities. Such broad community support may exist even if some individuals or groups were to object to the project activities.</p> <p>5. Prepare an Indigenous Peoples Plan (IPP) or equivalent planning document(s) that is based on the social assessment, with the assistance of qualified and experienced expert(s), and draws on indigenous knowledge and the participation of the affected Indigenous Peoples communities. The IPP includes a framework for continued consultation with the affected Indigenous Peoples communities during project implementation; specifies measures to ensure that Indigenous Peoples receive culturally appropriate <u>social and economic</u> benefits; identify measures to avoid, minimize, mitigate or compensate for any adverse project impacts; and include culturally-appropriate grievance procedures, monitoring and evaluation arrangements, and a time-bound actions and budget for implementing the planned measures.</p> <p>6. Disclose a draft IPP including documentation of the consultation process and the results of the social assessment, before project appraisal, in a form, manner and language(s) accessible to affected communities and the public. The final IPP and its updates will also be disclosed to the affected communities and other stakeholders.</p> <p>7. Put in place <u>and implement</u> an action plan for the legal recognition of customary rights to lands and territories, or ancestral domain, when the project involves (a) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples traditionally owned, or customarily used or occupied; or (b) the involuntary acquisition of such lands.</p> <p>8. Avoid, to the maximum extent possible, any restricted access to and relocation from protected areas and natural resources. Where such avoidance proves not to be feasible, ensure that the affected Indigenous Peoples' communities participate in the design, implementation, monitoring and evaluation of management arrangements for such areas and natural resources and that their benefits are equitably shared.</p> <p>9. <u>Implement the IPP.</u> Monitor the implementation of the IPP, using qualified and experienced expert(s), and adopting a participatory monitoring approach, wherever possible. <u>Document monitoring results, and disclose promptly monitoring and assessment reports in a form, manner and language(s) accessible to affected people and other stakeholders.</u> Prepare a project completion report that assesses if the objective and desired outcome of the IPP have been achieved, taking into account the baseline conditions and the results of IPP monitoring.</p>
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B. Policy Delivery Process – 1 - General Requirements (paragraphs 57-69)

Paragraph 58. We *urge* reference to the project's area of influence, for clarity, so the text would read, "... by the category of its most environmentally sensitive component, including direct, indirect, and cumulative impacts in the project's area of influence."

Paragraph 58. Category A. We *urge* a definition that clearly tracks the World Bank's, even if it eliminates the footnote structure, so that it does not risk being interpreted as weaker.

- For example, don't narrow the World Bank definition that includes "sensitive...or" by making the issues the footnote covers mandatory in the ADB definition. Also, given their inclusion in the World Bank definition, include "natural habitats" and "physical cultural resources." (To truly match the World Bank definition, "unprecedented" would be followed by, "or that impact..." but that ignores the multiple overlaps.)
- We also recommend that the definition cover significant social impacts, as the IR and IP policies only cover those, and other social issues are expected to be covered by the E(S)IA.
- The ADB may wish to confer with the World Bank to ascertain if there is a meaning to "sensitive" that is not captured in the text below that should be added. Accordingly, rephrase as:

Proposed text: "Category A. A proposed project is classified as Category A if it is likely to have significant adverse environmental and/or social impacts that are irreversible, diverse or unprecedented, including but not limited to impacts on human populations, biodiversity, natural habitats, natural resources and/or physical cultural resources. These impacts may affect an area broader than the sites or facilities subject to physical works. A full scale environmental impact assessment (EIA) is required."

Paragraph 59. IR Categorization. We *urge* the ADB to commit to either categorization of projects with IR impacts or to develop an alternative means to disclose *prior to appraisal* whether the ADB considers that significant IR impacts are likely. In addition, we recommend that the ADB develop and disclose a standard for "significant" IR impact.

- This is important information for ADB staff, Board members and external stakeholders and will determine some aspects of due diligence and oversight, such as when safeguards missions for detailed implementation review for projects with significant IR impacts. We *don't support* the proposal to remove OM categorization for involuntary resettlement impacts unless ADB, at a minimum, develops an alternative means for disclosing an assessment of significance prior to appraisal. An alternative is to rate any project with IR as "Category A."
- Determinations of significance should include the loss of subsistence or ecosystem services that are not economically valued and usually not taken into account (e.g., free goods and services such as non-timber forest products, water) as well as the scope of physical and economical displacement.

Paragraph 59. IP Categorization. We *urge* the ADB to commit to either categorization of projects with IP impacts or to develop an alternative means to disclose prior to appraisal whether the ADB considers that significant IR impacts are likely. In addition, we recommend that the ADB develop and disclose a standard for "significant" IP impact.

- This is important information for ADB staff, Board members and external stakeholders and will determine some aspects of due diligence and oversight, such as when safeguards missions for detailed implementation review for projects with significant IP impacts. *We don't support* the proposal to remove OM categorization for indigenous people impacts unless ADB, at a minimum, develops an alternative means for disclosing an assessment of significance prior to appraisal. An alternative is to rate any project with IP as "Category A."
- In this same paragraph, we recommend reinserting reference to the type, location, scale, nature and magnitude of project IP impacts.

Paragraph 61. We recommend a bolded title ("Independent Advisory Panels" or "Independent Experts") so that it doesn't look like part of the IP text. The ADB may wish to use this paragraph to flag all requirement for independent experts, such as the SR1, paragraph 21, requirement for borrower/clients to appoint independent environmental and/or social experts to verify the borrower's monitoring reports for projects with significant adverse environmental impacts.

Paragraph 62(i). *We urge* the ADB to replace this sub-paragraph, which potentially allows disclosure of environmental due diligence documents to lag significantly behind IR and IP disclosure, with the following text (after the sub-bullets).

- This text provides for disclosure of environmental due diligence documents at the same time as others, since there is no basis for a lag for environmental due diligence documents and it would facilitate early review.
- The text also proposes the same disclosure period for public and private sector projects, as the timeframe needed by stakeholders isn't affected by whether the project is being undertaken by a private or public sector entity, but by the nature and complexity of the project and associated analysis, and by the challenges that relatively remote communities may face in getting them. For extractive industry projects, often undertaken by the private sector, are often challenging and should not have a 60-day minimum. Moreover, different requirements for public and private sector borrower/clients will complicate joint public/private activities.
- Lastly, the text specifies a minimum disclosure period equally for projects with significant environmental, IP and IR impacts.
- We are not sure if corrective action plans will be available on the same timeframe; if "before appraisal" is too early, please make a new sub-paragraph with the appropriate timing.

Proposed 62(i): "ADB will disclose on its website all draft due diligence documents – environmental impact assessments, strategic environmental assessments, environmental assessment and review frameworks, existing facility environmental and social compliance audits, audits of corporate ESMS systems, environmental management plans,

corrective action plans, resettlement plans, resettlement frameworks, indigenous people’s plans, indigenous people’s planning frameworks – before project appraisal.”

Proposed new 62(ii) “In addition, for all Category A projects and projects expected to have significant IR and IP impacts, the ADB will disclose on its website the draft due diligence documents at least 120 days before Board consideration. ADB will post on its website the final or updated due diligence documents upon receipt.”

Paragraph 62(ii). We recommend replacing this sub-paragraph, which is unclear about who will do the disclosing and when, with the following text:

Proposed 62(## iii): “ADB will disclose on its website all environmental, involuntary and Indigenous Peoples monitoring reports submitted to the ADB by borrower/client during project implementation upon receipt” [or “promptly”].

Paragraph 63. We recommend that the paragraph include the concept of consultation throughout the project cycle. See also the cross-cutting comment about the purpose of free, prior and informed consultation.

Paragraph 65 (ii). Replace “adequate” with “effective.”

Paragraph 68. Derogation. We *urge* the ADB to a second sentence: “Alternative approaches will be recommended to the Board only in exceptional circumstances.” We also recommend, in the last sentence, replacing “will balance” with “may balance” so as not to appear to be instructing the Board on its consideration.

Paragraph 69. Add that “while people are encouraged to use the project-specific grievance mechanism, they may go directly to the ADB’s accountability mechanism.” It should be clear that using the grievance mechanism is not required.

B. Policy Delivery Process – 2 – Specific Requirements (paragraphs 70-76)

Terminology

In this section and SR-4 (and maybe elsewhere), there are several different and confusing phrases referring to the ADB’s objectives, principles and requirements. We hope that these all refer to the paragraph 52 objectives, the principles, the general requirements in paragraphs 57-69, and the SRs. We recommend that the phrase “ADB safeguard objectives, principles and requirements” be used consistently. (NB: the problem with “requirements” alone is that it suggests non-inclusion of the principles).

Where the phrase applies only to borrowers/clients, the appropriate phrase might be “ADB safeguard objectives, principles and SR1-3 borrower/client requirements.”
Safeguard framework

Para 71, first sentence. We recommend that the ADB add “emergency assistance loans” to the list of modalities for which a framework approach is to be used.

Para 71. We *urge* the ADB to include as a new second sentence the following: “The purpose of a safeguard framework is to ensure that the projects implemented under the framework comply with the ADB’s safeguard objectives, principles and requirements.” We understand that this is the intent of the framework approach; it is not explicitly stated, but should be.

Para 71, last sentence. We recommend replacing “is not appropriate for” so it reads, “The application of safeguard frameworks will not be used for” This is clear.

Para 73, last sentence. While the text requires identification of gaps, there is no requirement to fill gaps. We *urge* the ADB to include additional text stating, “and establishing a plan, including timeframes, for implementing the gap-filling requirements prior to any project development.”

Financial Intermediaries

Para 75. *minor*: There is no explanation of what an “appropriate” ESMS is. We recommend that the ADB reference the next paragraph (“as discussed in the next paragraph”), since that is what is being referred to.

New paragraph 76. Add discussion of ADB’s assessment of FI capacity. This is mentioned in paragraph 72, but not discussed in depth comparable to framework paragraph 73. We recommend, “ADB will assess the adequacy of the FI’s capacity to manage environmental and social impacts and risks, to implement national laws and, for FI’s with targeted subprojects, to implement ADB’s requirements. Where there are gaps in borrowers’ capacity, and where there are gaps between ADB’s requirements (if applicable) and country’s procedural requirements, the ADB and FI will establish a time-bound plan that identifies the specific gap-filling requirements necessary.”

Para 76. There is no discussion of the quality of the ESMS that must be established by FIs with non-targeted sub-projects. We *urge* the ADB to include the following underlined text: “... the FI will adopt an ESMS that covers the entire FI’s portfolio of subprojects originated from the time when AB provides finance, that will achieve compliance with the ADB safeguard environment, IR and IP principles, and is commensurate with the nature and risk of the anticipated portfolio, and will ensure...”

Disclosure

Location TBD. For framework projects, FIs with targeted subprojects, and activities undertaken by clients receiving corporate finance, implementing the disclosure requirement for environmental assessment documents a certain number of days before Board approval will be meaningless. We *urge* the ADB to clarify, in an appropriate section of the SPS, that this means the required number of days before a future decision by the framework implementing entity, FI or corporation to approve/go forward with the subproject.

Other “Different Finance Modalities”

We *urge* the ADB to include a discussion in this section on the different finance modalities that are covered by SR4 but are not covered here, namely: program loans, existing facilities and corporate finance. (Also include emergency loans if they are not added to paragraph 71.) Currently there is nothing.

B. Policy Delivery Process – 2.c. – Strengthening and Use of CSS -- Country Safeguard Systems (paragraphs 70-78 and Appendix 2)

The use of country safeguard systems has the potential to deliver important benefits, both in terms of supporting development and in terms of streamlining safeguard due diligence activities and reducing costs. However, experience suggests that these benefits will not be automatically achieved. Rather, the transition to the use of country safeguard systems must be done thoughtfully, addressing a range of challenges.

The SPS proposal suggests that the ADB should proceed with a full-fledged country safeguards system approach without a track record of effective system assessment and implementation. Moreover, while the ADB benefits from the World Bank's experience, that public sector focus may provide little guidance on issues unique to the private sector confronting the ADB.

Accordingly, we *urge* the ADB to modify the proposal on country safeguards systems so that it will include only a limited number of countries at this time and will be subject to independent review after 2 or 3 years. On the basis of the review, the Board may then decide to expand the application of the ADB's country safeguard system proposal.

In addition, we believe that any proposal to the ADB Board on the use of country safeguard systems should discuss more fully a number of important issues. These fall into nine main categories – experience and lessons learned, equivalence and acceptability assessments, gap-filling, harmonization, different finance modalities, monitoring and remedies, incentives, ADB implementation (resources and operations manual) and accountability to the ADB Board. In more detail:

Experience and lessons learned

- (1) A much fuller discussion of the World Bank (and potentially the IDB's) pilot safeguard experience, including challenges and lessons learned, including with respect to implementation needs (staff, time, financial resources).
- (2) Discussion of the applicability (or not) of the World Bank's (and potentially the IDB's) experiences to the ADB; clarification of whether the ADB's proposed approach is harmonized with the World Bank's and, if not, how they differ.
- (3) Discussion of the ADB's own country safeguard systems technical assistance, including challenges and lessons learned.

Equivalence and acceptability assessments

- (4) Methodology to be used for the equivalence diagnostics, including whether the World Bank's Safeguard Diagnostic Review (SDR) will be used or, if not, how the ADB's methodology will be different; tools (desk reviews, on-site evaluations, etc.); a clear statement that the scope will include: relevant laws, policies, regulations, operating procedures, public notice, legal recourse and enforcement. How will the methodology take into account differences in application of a country's system to private and public sector entities, if any?
- (5) Plans and requirements for public disclosure and consultation on equivalence assessments in more detail than the current proposal. (For example, what minimum public disclosure period, language, location and accessibility requirements will apply? Will in-country consultation be the standard procedure and, if not, under what circumstances? What language, location and accessibility requirements will apply?)
- (6) Methodology to be used for acceptability diagnostics.
- (7) Plans and requirements for public disclosure and consultation on acceptability assessments, in more detail than the current proposal. (For example, will the acceptability analysis be in a stand-alone document or integrated in the environment, IR and IP documents and, if standalone, what disclosure/language/location/accessibility requirements will apply?)
- (8) Will there be a sequencing issue for safeguard due diligence and acceptability analysis and, if so, how will it be addressed? How will the ADB ensure sound implementation of due diligence requirements while an acceptability analysis is taking place? (In other words, once a system has been determined "equivalent," a project will be prepared. If the project's safeguard due diligence and the acceptability assessment are done concurrently, there will be no opportunity to address the acceptability issues *before* the system is used for front-end project due diligence activities (e.g., EIA, RP, IP). This suggests that some acceptability assessment and addressing of identified weaknesses has to take place before other parts of project preparation can begin, potentially complicating integration into the standard consultation process.)

Gap-filling requirements

- (9) Will the gap-filling measures and the associated Action Plans included in the equivalence assessment? If not, please clarify the plans and requirements for public disclosure and consultation on gap-filling measures and Action Plans, including to affected communities.
- (10) How will the ADB ensure that use of the country systems approach leads to systemic change that will have positive impacts on non-ADB funded projects in the target DMC? We are concerned that this may not be achieved under a project-by-project approach, given the possibility of limited cumulative or iterative benefits.
- (11) With respect to equivalence gap-filling, in order to support strengthening of country systems, the policy should specify a preference for systemic or permanent gap-filling measures (such as laws) over more temporary measures to achieve the same objective.

- (12) Since capacity strengthening is to be done only on a project-by-project basis and does not appear to be part of the overall equivalency assessment, how will systemic improvements in capacity be achieved, including in monitoring and enforcement?
- (13) The policy should specify that identified gap-filling measures will be accompanied by a clear timeframe for implementation and identification of entity accountable for implementation.
- (14) The policy should also specify that gap-filling measures will be
 - a. differentiated according to whether the national, subnational, sector, or agency level is targeted for application of CSS (this is currently implied);
 - b. differentiated depending on whether the ADB project is public or private, in those cases where the DMCs' application of environmental laws varies accordingly.

Some specific issues related to gap-filling in the existing text

- (15) With respect to the text in paragraphs 77(iii) and Appendix 2 paragraph 11 saying that the ADB and the borrower will agree on , how will the ADB deal with the fact that in some instances, the borrower may not have the authority to implement the required gap-filling measure? The terminology "borrower" suggests that gap-filling may remain at the project level and not ever really reach the systemic level. Is this the intent of this choice of word?
- (16) The relevant paragraphs of the SPS (including paragraphs 77(iii) and Appendix 2 paragraph 11) should state clearly that, "The agreed specific gap-filling measures for equivalence will be implemented before the system is considered equivalent and the borrower/country can proceed to Phase II."
- (17) The relevant paragraphs of the SPS (including paragraphs 77(iv) and Appendix 2 paragraph 11) should state clearly that, "The acceptability assessment will result in the identification of specific gap-filling measures for acceptability, and that these will be implemented before project implementation." If it is anticipated that any implementation of acceptability gap-filling measures will occur during project implementation, the circumstances in which this appropriate should be clearly identified – e.g., in the very limited instances where learning by doing is important and there is no systemic issue that needs to be addressed – and the policy should also require that in such instances, the project proposal will identify by when (e.g., before which specific stages of project implementation) the measure must be complete.

Harmonization and Collaboration with Other MDBs

- (18) Discussion of ADB harmonization and collaboration with other MDBs to date. (This is related to the experience and lessons learned topics above.)
- (19) Discussion of potential areas of harmonization and collaboration with other MDBs (e.g., joint pilots, joint assessments, joint monitoring), including challenges and short-term and long-term priorities;
- (20) Identification of specific areas of planned harmonization and collaboration with other MDBs under the proposed policy, including collaboration with the

World Bank where it has pilots in the ADB's DMCs to gain experience (as the AfDB has done in Africa, if this is still feasible at this date);

- (21) Coordination among donors with respect to mobilizing resources necessary to support countries in attaining and sustaining improvements to their systems, including with respect to human resources/capacity

Different Finance Modalities

- (22) What additional issues would arise in the application of country systems to different finance modalities, such as program loans, sector investments, multi-tranche financing facilities (MFFs), emergency loans, FIs, corporate finance?

Monitoring and Remedies

- (23) Plans for monitoring implementation of project-specific gap-filling measures during project implementation and clarification that failure to implement or maintain required measures will result in reversion to the ADB safeguard requirements;
- (24) For whatever level of safeguard system has been determined to be equivalent to the ADB's (e.g., national, subnational, sectoral), plans for monitoring that system to ensure continued equivalence, and a clear statement that failure to maintain equivalence will result in termination of the equivalence determination and loss of use of country safeguard systems at that level. (This would be potentially be separate from any individual project cycle.)
- (25) Plans and requirements for public disclosure of monitoring reports/assessments and decisions based on them.
- (26) Accountability mechanisms. The ADB's safeguards are supported by the ADB's accountability mechanism. Please clarify that the ADB accountability mechanism is still available to the same eligible stakeholders in the event of project problems, including non-compliance with the ADB-equivalent country system requirements or with, more generically, the ADB principles.
- (27) Explanation of how information on the substance of a country system that has been deemed to be equivalent be made available to affected people and ADB staff in a manner equivalent in clarity and ease of access to the current ADB policy, so that they can know the standards to which the project is being held, in order for stakeholders to exercise their rights and ADB due diligence and accountability staff to perform their duties. For a country safeguard system to be "equivalent" to the ADB system in its application to affected people, and for affected people to understand the specific standards that apply to a project, the affected people will need access to information on the applicable system that is equivalent in clarity and ease of access to the ADB policy, in order to be able to assess if it is being appropriately implemented. Similarly, ADB staff will need to know what they are assessing.

Incentives

- (28) Address both internal and country incentives regarding the proposal to use CSS, gap analysis, and identification of gap-filling measures.

ADB Implementation: Resources and Operations Manual

- (29) We expect that the full range of resources needs for implementing a country safeguard approach will be assessed and discussed in the policy implementation plan accompanying a proposed country safeguard policy.
- (30) We look forward to the preparation of operations manual text for the country safeguards system section of the proposed policy.

Accountability to ADB Board

- (31) Please clarify the Board's role in implementation of the proposed policy. For example, the Board should have the opportunity to review and make a decision on equivalence assessments and gap-filling measures/Action Plans to achieve equivalence. Board approval of acceptability assessments and action plans is implicit in the project approval process. The Board should be notified in the event that an equivalence determination (at whatever level is has been established) is canceled.

B. Policy Delivery Process – 2.d. – Projects with Cofinancing (paragraph 79)

Roles and Responsibilities

We find the placement of paragraphs 80-82 confusing. They would be much more helpful right before the general requirements (paragraph 57), as they would then “set the stage” for the more detailed discussion of ADB and borrower/client responsibilities in the Policy Delivery Process and SRs. We recommend that it be moved.

Roles and Responsibilities –ADB (paragraph 80)

We recommend the following new paragraphs/text, which may also require additional text to be developed elsewhere in the SPS (general and specific requirements and SRs):

- “ADB project teams will work with clients to identify and demonstrate benefits of safeguards in terms of risk reduction, market opportunities, avoidance of downstream costs, more equitable distribution of project benefits, etc.
- The ADB will require monitoring and reporting on appropriate outcome indicators on the environmental and social performance of individual projects that can be used in assessing the Managing for Development Results agenda.
- If client capacity is lacking to implement needed mitigation measures, the ADB will consider providing resources to build such capacity through TA grants or increased loan resources.
- The ADB will pay particular attention to projects in countries where there is not a strong public consultation practice and where people may be afraid to speak out,

to ensure compliance with consultation, grievance and accountability principles and requirements."

With respect to certain risks, we *urge* the ADB to add the following language. Third-party risk is addressed in SR1 but not in the ADB requirements. The first proposed bullet is broader than third-party risk in that it includes the borrower/client. A main objective of the second proposed bullet is to be clear that insufficient action by an associated facility, e.g., to address issues identified in an EIA, is a basis for the ADB choosing not to proceed with the project, although of course the issue is much broader. This could be made more explicit. See also proposed reference to associated facilities in the glossary definition of third parties. This language may also require additional text to be developed elsewhere in the SPS (general and specific requirements and SRs).

- In deciding whether to support a project with potential adverse environmental and social impacts, the ADB will take into account the borrower/client's and third party authority and capacity to implement necessary conservation, mitigation and enforcement (for example, to monitor and control access to natural habitat). As needed, ADB will assess whether gaps exist and, where gaps exist, ADB staff will work with relevant parties to ensure that the necessary authority and capacity (e.g., of relevant government and local community) are in place and effective prior to project activities.
- In deciding whether to support a project with potential adverse environmental and social impacts, the ADB will consider third-party risk. The ADB will work with the borrower/client to address third-party risk. If third-party risk is not addressed to the ADB's satisfaction, the ADB will not finance the project.

We recommend a new summary paragraph.

- "The ADB's responsibilities are described in more detail in the General Requirements and Specific Requirements, described below*. In addition, portions of the ADB's Business Processes (?) and the forthcoming Operational Manual will specify applicable procedural requirements." [*This will make sense only if the section is moved as recommended above.]

Roles and Responsibilities –Borrowers/Clients (paragraph 82)

Compliance with international treaties. In addition to the existing sentence on compliance with host country laws, regulations and standards, we recommend inclusion of language on compliance with a country's international legal obligations. Perhaps, "The project shall comply with applicable international legal obligations" or "The project shall comply with international treaties to which the host country is a party."

Borrower/Client Requirements (SRs 1-4) generally

We *urge* the ADB to ensure that all requirements for borrowers/clients implied in the principles and mentioned in the SPS General Requirements and Special Requirements, *and* paragraph 82 on borrower/client requirements are captured in the SRs with the necessary clarity to ensure that the achievement of each relevant principle by a borrower is explicit, transparent, and measurable/assessable.

- For example, the SRs do not include timeframes for complying with the ADB's web-posting requirements. (SR1 paragraph 19 and equivalent paragraphs in other SRs should state clearly the timeframe required, either by reference to SPS paragraph 62 or with new text.)
- Another key example: paragraph 82 includes several requirements that we do not readily find in the SRs, on compliance with host country laws, regulations and standards, and inclusion of safeguard requirements in bidding documents and civil work contracts. It is critical to safeguard implementation that borrowers/clients be accountable for these measures and that, in turn, they include the necessary requirements in contracts so that contractors are also accountable.

Similarly, we *urge* the ADB to ensure that all changes to the SPS Principles, General Requirements, Special Requirements and text on Roles and Responsibilities have corresponding changes to the SRs. (We have included some points below.)

Paragraph 1 of each SR (except SR4): Drop "expected" so that text reads, "... requirements that borrowers/clients are to meet..." ("Expected" weakens the concept of requirement.)

We *urge* the ADB to add a new Paragraph 2 to each SR, "The fundamental mandatory client requirement is fulfillment of the [environmental/IR/IP] Principles" (or similar wording) to make clear that fulfillment of the principles is a mandatory client requirement. Include in the new paragraph 2 following: "In addition, the borrower/client requirements in this SR are in the context of the General Requirements and Special Requirements" (or similar wording) to underscore the relationship.

SRI – Environment - Safeguards Requirements for Borrowers/Clients

Para 2, Scope of Application. We recommend that the sentence read, "These environmental requirements apply to all ADB projects." (See earlier discussion on definition of project.)

Para 2, Scope of Application (cont.) We *urge* the ADB to add to this paragraph a second sentence, which already exists in the corresponding IP and IR scope paragraphs, "They also cover actions conducted in anticipation of ADB projects."

Para 3 – Add "... identify potential direct, indirect and cumulative impacts and risks... " (Principle 2)

Para 3 – Add "technically, financially, environmentally and socially feasible alternatives" (Principle 3)

Para 3 - Add concept of identification/scope of potentially adverse environmental /social impacts in consultation/participation of stakeholders (potentially affected communities, local NGOs and government)

Para 4 – Add "... identify potential direct, indirect and cumulative impacts and risks..." (Principle 2) (This is duplicative of the comment on para 3, because the drafted text is duplicative.)

Para 5(ii) Replace existing text with either simply "(ii) associated facilities" or "(ii) associated facilities -- new or additional facilities required by the project (e.g., access roads, power plants, water supply, quarries and borrow pits, and spoil disposal)" or (ii) associated facilities -- new or additional works and/or infrastructure, irrespective of the source of financing, essential for an ADB-financed project to function; or " *See the Glossary for a fuller discussion of the definition of an associated facility.*

Para 5(iii) on cumulative Impacts. Add, "...any existing project and condition, any reasonably foreseeable activities (including non-project activities), and other... "

Para 5 – Combine and rephrase last two sentences more clearly, "Environmental impacts and risks will be analyzed for all stages of the project cycle, including preconstruction, construction, operations and, where relevant, decommissioning and post-closure activities such as rehabilitation or restoration."

Para 6 – Add concept of analyzing projects in the context of climate change impacts on the project itself.

Paras 8-9-10. The discussion of appropriate environmental assessment documents makes no reference to the ADB's categories discussed in the general requirements, paragraph 58. *We urge* the ADB to add the following to the existing paragraph 8 the following, stating a clear relationship: "A full-scale EIA is required by the ADB for Category A projects. An IEE is required by the ADB for Category B projects. In addition, national requirements may require an EIA for some Category B projects." (We defer to the ADB on inclusion of the sentence on national requirements.)

Para 8. Delete "typical." Text should read, "An EIA report includes..."

Para 8. *We urge* the ADB to add a new (iv): "(iv) comprehensive baseline data, allowing assessment of the full range of social and environmental impacts and mitigation measures."

Para 8. *We urge* the ADB to replace the last sentence (on when IEEs are appropriate, which is already covered in the definition of Category B) with text on the scope and/or

required elements of an IEE. The SR1 should provide some guidance on this; currently all that is provided is a document title.

New paragraph 9. To state clearly the requirements for alternatives analysis, at a minimum corresponding to the existing and proposed language for principle 3.
If there is a clear statement that the substance of Annex 1 "Outline of an EIA report" is required, and the description there is binding, and the reference in Annex 1 to "typical" is deleted, it can go in Annex 1.

Para 11 – Add the concept of compliance with international standards and best practices. (Currently the text refers only to compliance with applicable laws and regulations.)

Para 11. Add the concepts, for relevant projects, of site remediation plans, the establishment of adequately funded provisions for site remediation, and project decommissioning.

Para 13. Add, "EMPs will adopt an adaptive management approach while maintaining a commitment to the mitigation performance measures."

Para 14, Third Parties. Recommend reference to “a” third party, not “the” third party. Add “*inter alia*” to read, “A third party may be, *inter alia*, a government agency...” (“*Inter alia*” is already in the definition in the glossary.” Add “moderate or,” to read, “When third party risk is moderate or high ...”

New Para 15, Third Parties. Add, "When the third-party risk is high and the ADB and the borrower/client do not have direct leverage over mitigation of cumulative impacts and/or the impacts of associated facilities, the project sponsor will undertake best efforts to engage with the relevant third party or parties to develop appropriate plans for mitigating cumulative impacts and/or the impacts of associated facilities. Mechanisms for facilitating cooperation between the borrower/client and the relevant third party or parties include establishment of joint action plans, cross-conditionality, and financial contributions to the third-party." (This language is based on our experience at other MDBs.)

Para 16 – Consultation should be conducted at the initial scoping phase. Add "The consultation should be carried out as early as possible in the project cycle, and no later than the initial scoping phase, so that..."

Para 20 – Delete “relevant.” The available information should be provided and not filtered through the project sponsor, given the inherent conflict of interest. If the intent is to capture that some of the documents simply aren't relevant to the affected people, clarify "relevant" along the following lines: "...will provide all information from the above documents relevant to the affected people in a form.."

Para 21 – Add, "experienced, independent, external experts.." (to ensure that they are independent). Add at the end of this sentence, "who shall reporting to the client and the public on verification findings."

In para 22, add, "borrower/client will submit quarterly or, at a minimum..." and add requirements for during project closure, if relevant.

Paras 21 and 22. Add in an appropriate place (perhaps a new paragraph), "Where possible, include affected people in project monitoring, with development of community and local capacity to assist in monitoring as needed."

Para 24 – Add standard to which clients or ADB will be held accountable (e.g ensuring ecosystem integrity; maintenance of genetically viable populations)

Para 26, footnote 5 - Add, "caused by a major short- or long-term..." short term degradation can be just as detrimental as long term depending on the species at risk.

Para 26, footnote 5 - Add, "(ii) modification of a habitat or of access to a habitat that substantially reduces...." Even if habitat is not degraded, access to it by humans change in such a way that the habitat can no longer sustain populations, e.g., if poaching/illegal extraction of wildlife increases and threatens the viability of a population.

Para 27 - Add, "Proposals for offsets through the creation of ecologically comparable area(s) managed for biodiversity will be supported by evidence of the likely success of such proposals, such as previous success of creating similar biological offsets." (This is proposed because of the risks involved.)

New Para 28. Add, "For projects where the proposed project activity offers increased access to natural habitats and IP territories, the EIA and EMP will assess issues related to access control measures to protect against adverse impacts."

New Para 29. Add, "Where there may be significant conversion of natural habitats, an independent expert review will be undertaken to determine the impact of proposed project in the natural habitat towards maintaining the integrity of ecosystem functions, services and community structure. This would include a full cost accounting of ecosystem services and products that would be lost by direct, indirect, cumulative, associated impacts of the proposed project to determining costs and benefits of the project."

Para 29 – Add, "experienced, independent, external experts.." (to ensure that they are independent).

Para 31 – (Unless this is stated elsewhere in the policy) Add that borrowers/clients will not introduce genetically modified organisms (GMOs) into the environment within the project area unless in accordance with an existing regulatory framework and risk assessment for such introductions.

Paragraph 39-41. Health and Safety. For both "Occupational Health and Safety" and "Community Health and Safety," the text appears to be drawn from the IFC's PS4. However, it seems to be more limited than the treatment of the same issues in PS4, which

may give rise to weaker application than by the IFC. We urge the ADB to review paragraphs 39-41 and IFC PS4 with a view to including more text from PS4, to ensure that the ADB treatment is equivalent to the IFC's. For example, we recommend including language on security personnel and government security forces.

Annex 1. To be consistent with the concept of this document in the principles, this should be called an Environment and Social Impact Assessment (ESIA), and include some acknowledgement of social issues as well.

Annex 1. Replace "a typical EA report includes...." with language that this statement of EA contents is binding. For example, "An EIA report will include...."

Annex 1, Paragraph E. Add, "...likely positive and negative direct and indirect impacts...."

SR2 – Involuntary Resettlement - Safeguards Requirements for Borrowers/Clients

SR3 – Indigenous People - Safeguards Requirements for Borrowers/Clients

SR-4. Special Requirements for Different Finance Modalities

We recommend that the ADB conform SR4 as needed to the changes recommended above to paragraphs 70-76 (Specific Requirements) above.

We *urge* the ADB clarify the disclosure requirements for all the different finance modalities EA documents, especially since documents are normally to be disclosed "before Board approval," which may not be feasible for many subprojects.

Consistent with the comments above about clarifying the purpose of various mechanisms and using consistent terminology, we recommend that the following sentence be included in each section, tailored to the particular modality, along the lines of the following.

"ADB safeguard objectives, principles and requirements apply to all projects, components and subprojects identified and/or financed by the sector investment/Multi-tranche finance facility/emergency loan/FI operation with targeted sub-projects] or

"... to achieve compliance with the ADB safeguard objectives, principles and requirements by the [existing facility][corporate activities]"

(This would replace paragraph 9 (on sector investments), 11 (on MFFs – we don't understand why there are two separate sentences), and the similar text in the other modalities except non-targeted FIs.)

Para 8 should read, "to establish sub-project criteria, one or more representative subprojects will be identified..."

Para 12. We recommend that the ADB clarify that the MFF is subject to the framework approach, and then specify the documents.

Para 23, what we are trying to clarify is that end goal is that the corporate *activities* need to be in compliance with ADB's safeguard objectives, principles and requirements, not that the ESMS has to be in compliance....

Glossary of Terms – We recommend adding definitions for the following: associated facilities (described in SR1), broad community support (if used in the policy), environment, indirect impacts, losses, project, significance or significant (described in General Requirements, paragraph 58). Comments on some existing definitions are below.

- Area of influence – currently listed as “Project Area of Influence,” and therefore difficult to find if one is thinking simply of “area of influence.” We recommend that it either be listed simply under “Area of Influence,” or that it also be listed under “Area of Influence” and cross-referenced to “Project Area of Influence.” Also, we recommend that the definition of “(ii) associated facility” be revised as discussed below and that the definition of Area of Influence in both the glossary and SR-1 (paragraph 5) be conformed to the new Associated Facility definition. See recommendations elsewhere for the definition of associated facility.

Discussion of the definition of Associated Facility.

We see at least two options for the definition of an associated facility. Whatever definition is chosen, examples are helpful. We *urge* the ADB to adopt one of these definitions because they capture the key element of an associated facility - that it is required by the ADB-financed project. The definition currently being proposed by the ADB is too narrow. Although it is the definition used by the IFC and recently adopted by the EBRD, it has, proven problematic. Rather, we *urge* the ADB to harmonize with the definition used by the IDB, which has seemed to work better.

- "Associated facility. An associated facility is a new or additional facility required by the project (e.g., access roads, power plants, water supply, quarries and borrow pits, and spoil disposal). Additional works are those added to an existing work." (This is taken from SR1, Annex 1, Paragraph C. We don't see that the "or for" adds anything. The bit about additional works needs to be explained at least in the Glossary.)
- Associated facility –Associated facilities in the context of environmental assessment, refer to new or additional works and/or infrastructure, irrespective of the source of financing, essential for an ADB-financed project to function, such as: new/additional access roads, railways, power lines, pipelines required to be built for the project; new/additional construction camps or permanent housing for project workers; new/additional power plants required for the project;

new/additional project effluent treatment facilities, new/additional warehouses and marine terminals built to handle project goods. Additional works are those added to an existing work. (This is the definition used by the IDB.)

- Cumulative Impacts. Add, "...any existing project and condition, any reasonably foreseeable activities (including non-project activities), and other... "
- Project – see discussion of SPS paragraph 56. "ADB projects are those activities financed and/or administered by the ADB, and include standard investment operations, technical assistance, project components not financed by the ADB but administered by the ADB through a co-financing arrangement, and the full range of other modalities (such as program loans, sector investments, multi-tranche financing facilities, emergency programs, financial intermediary operations, corporation finance), whether the borrower/client is a sovereign or non-sovereign entity and whether the form of finance is loan, grant, equity, guarantee and/or other means."
- Significant conversion or degradation. Add, "caused by a major short- or long-term..." short term degradation can be just as detrimental as long term depending on the species at risk. Add, "(ii) modification of a habitat or of access to a habitat that substantially reduces...." Even if habitat is not degraded, access to it by humans change in such a way that the habitat can no longer sustain populations, e.g., if poaching/illegal extraction of wildlife increases and threatens the viability of a population.
- Third party. Add, "..., or a party connected to an associated facility."

Prohibited Investment List

We recommend an appropriate cross-reference to the Social Protection Policy prohibitions on certain forms of child labor. The current footnote 2 may not be sufficiently clear.

We recommend adding to the PIL the prohibited activity in environmental principle 8. This will be either "Activities with the potential to adversely impact critical habitats" or "Activities that involve or are likely to result directly or indirectly in the significant conversion or degradation of critical habitats. ...

We recommend adding to the PIL items from the EBRD prohibited activities list that are not currently on the ADB PIL, notably, "Activities prohibited by host country legislation or international conventions relating to the protection of biodiversity resources or cultural heritage" plus the relevant international conventions listed in the EBRD policy footnote; and "Shipment of oil or other hazardous substances in tankers which do not comply with International Maritime Organization (IMO) requirements," again with the relevant footnote.

Operations Manual

We urge the ADB to include sufficient detail in the Operations Manual to ensure that the proposed new policy structure is implemented effectively and consistently. We welcome the planned availability of the Operations Manual for public review, and note that a period longer than 3 weeks would be helpful for some interested parties. We recommend that the Operations Manual include the following components:

- Explicitly identify internal lines of authority and accountability, such as what management position is responsible for signing off on the borrower's compliance with relevant safeguards.
- Elaboration of requirements for monitoring and reporting on the environmental and social performance of individual projects as specified in relevant safeguard management plans, including minimum time intervals for reporting.
- Discussion of the application of specialized tools such as Strategic Environmental Assessment that may be appropriate for growing lending modalities.
- Discussion, including examples, to provide guidance in the use of key terms in the policy, such as environment, associated facilities, significance, losses, indirect impacts, cumulative impacts, critical habitat, broad community support, etc.

Policy Implementation Plan

We recommend that the policy implementation plan include the following components:

- Analysis of the resource needs for full implementation of the proposed policy, in different time horizons as appropriate.
- Time-bound milestones for implementation based on the date of Board approval of the R-Paper.
- Changes in institutional and human resource procedures and policies that strengthen internal incentives for professionalism, quality and commitment in safeguards oversight, especially project supervision during implementation. Such incentives are needed as a counterweight to the prevailing incentives to maximize lending volumes.
- Budget for implementation of the policy.
- Training plan for non-environmental staff.

Handbooks

Environmental Handbook: We recommend including as a best practice the use of environmental performance bonds to encourage satisfactory performance.

Resettlement Handbook: We recommend that the forthcoming handbook on resettlement pay particular attention to livelihood restoration when foregone access to private land or common property resources cannot be fully restored.

Other

We recommend that the ADB establish an email notification system, whereby the ADB could notify people on the distribution list of the availability of new safeguard documents when they are posted. The EBRD has a good system which the ADB could take as a model.

ATTACHMENT ON PRINCIPLES

Environment

Scope

- Replace “support integration” with “integrate.”

Principle 2 –

- In the first sentence, add so the text reads, “Conduct a social and environmental assessment. Refer in following text to the socio-environmental (or “social and environmental” assessment).
- In the first sentence, parentheses on socio-economic impacts, add (... “and resources and ecosystems on which people depend”)
- In the first sentence, delete “in the context of.” It dilutes the phrase, which should read, “in the project’s area of influence.”
- Modify the second sentence to include direct, indirect and cumulative impacts, so it reads, “Assess direct, indirect and cumulative impacts, and trans-boundary and global impacts, including climate change.” Together with the reference to area of influence, this covers that “indirect, cumulative and associated impacts mentioned in World Bank principle #1.
- Third sentence, add the concept of environmental audits where appropriate.
- Add a fourth sentence stating that “Comprehensive baseline data, allowing assessment of the full range of social and environmental impacts and mitigation measures, shall be required as part of assessments.” This is an important principle, often not observed.

Principle 3 –

- In the first sentence, we recommend a different approach to “financially and technically feasible:” expand it to include “environmentally and socially feasible,” so the phrase would read, “Examine financially, technically, environmentally and socially feasible alternatives...” Financial and technical feasibility should not take precedence over social and environmental feasibility.
- First sentence, delete “where relevant.” Where is it not relevant? If the ADB is going to interpret this as “for projects with significant environmental impacts,” please write that out so it is transparent.
- Add a third sentence stating that, “The analysis of alternatives will be of sufficient scope and depth to allow a direct comparison of the respective benefits, risks and impacts of the alternatives and the proposed project.” This is an important principle because often the alternatives analysis is really thin.
- Add a fourth sentence stating that, “Where relevant, the alternatives analysis should include a development alternatives analysis (e.g., alternative development-promoting uses of government revenue).”

Principle 4 –

- We recommend “Prevent” rather than “Avoid...”

- We recommend deletion of the reference to an equivalent planning document. It simply raises questions – “what is an equivalent planning tool?” In other sections of the text, even other principles, EMP is used alone, and the reason there is a reference to equivalent planning tools in this instance and not elsewhere is unclear.
- Add reference to "site remediation measures" to ensure that these are included.
- Add a third sentence that, "For projects with a limited time-span, the EMP will include a decommissioning plan."
- Add additional sentences sentence that, "EMPs should be finalized and ready to be implemented prior to project approval. EMPs will adopt an adaptive management approach while maintaining a commitment to the mitigation performance measures."

Principle 5 –

- First sentence, add "...and facilitate their informed participation, starting at an early stage not later than scoping and continuing throughout the project cycle."
- Fourth and fifth sentences, rephrase as "to address social and environmental issues" and "regarding the project's social and environmental performance." This should not be limited to issues identified in the ESIA, although the ESIA (if it is good) will have identified the likely problematic issues.

Principle 6 –

- Add another sentence: "Undertake prompt public disclosure throughout the project cycle, in a form, manner and language(s) accessible to affected people and other stakeholders, of other relevant documents."

Principle 7 –

- We recommend a more detailed statement of this principle: "Implement the EMP and monitor its effectiveness. Update the EMP and corrective action plans as necessary. Document monitoring results, including development and implementation of corrective actions, and disclose promptly periodic monitoring, progress and compliance reports throughout the project lifecycle in a form, manner and language(s) accessible to affected people and other stakeholders. Where possible, include affected people in project monitoring, with development of community and local capacity to assist in monitoring as needed."

Principle 8 –

- Please clarify the intent for "projects with the potential to adversely impact critical habitats." (The current text addresses projects that involve or are likely to result... which is a higher standard, and projects that have the potential to adversely affect non-critical habitat, which is a lower standard, but does not address projects with the potential, but not the likelihood, to adversely impact critical habitats.) Two options would be acceptable: revise the first sentence to read, "Do not implement projects with the potential to adversely impact critical habitats..." or add a new second sentence that reads, "Do not implement project activities with the potential to adversely impact critical habitats unless they are mitigated to prevent any adverse impacts on critical habitats."
- The prohibited activity should be added to the prohibited activities list.

- Add to the end of the second sentence, “... so that the net project impact is positive or neutral.”
- We recommend adding a standard to which clients or ADB will be held accountable (e.g ensuring ecosystem integrity; maintenance of genetically viable populations).

Principle 12.

- We recommend adding another principle stating, “Independent expertise will be used in the preparation of EA, where appropriate. For highly risky and/or contentious projects, or those with serious multidimensional environmental concerns [nb: in ADB terminology, “highly complex and sensitive projects”], an independent expert advisory panel will be engaged throughout the preparation and implementation of the project.” This would correspond to the World Bank’s principle #8.

Involuntary Resettlement

Scope:

- Add the reference to “area of influence” to ensure that this is known (so there is no doubt or confusion).
- We recommend an additional sentence stating that, “The determination that a displacement is involuntary does not depend on the client’s determination, but rather on a transparent process including if necessary an arbitration mechanism.” (We recognize that for standard projects, the ADB will determine if there is involuntary resettlement, but the principle that this is not the borrower’s call is important for country systems application.)
- We recommend adding to the second sentence, “and immediate or cumulative.” This would address impacts that occur over time, such as a project drawing down a water table and eventually making land unproductive, resulting in economic displacement.

Principle 2

- First sentence, add “Carry out free, prior and informed consultations, starting at an early stage such as scoping and continuing throughout the project cycle, with all affected people...” (Or add this concept in another appropriate place in this principle).

Principle 3

- First sentence, delete “or at least restore” so that the objective is to “improve” livelihoods. We recommend that the objective that the livelihoods of project-affected people should be enhanced relative to pre-project levels, rather than enhanced or restored. Our experience with ADB and other MDB-financed projects is that unforeseen challenges often dilute the effectiveness of resettlement plans in

achieving livelihood objectives. If the objective is merely to restoration, there is a greater risk of impoverishment than if the objective is enhancement.

- *Alternatively*, add a new sentence or principle that if monitoring of resettlement outcomes reveals that livelihoods have not been restored, that remedial actions will be undertaken promptly to achieve restoration.
- First sentence, section 3(a) is confusing because of the two parts. It would be easier to understand (and would probably mean the same thing) if (a) were just land-based resettlement and a new (b) covered the cash compensation. This would require re-lettering the rest of the sentence.
- Add another sentence: “Include in compensation packages the loss of free goods and services such as non-timber forest products and water.”

Principle 8

- Add another sentence that, “Resettlement plans will ensure gender equity in livelihood enhancement and other remedial activities.”

Principle 10

- Revise/add to second sentence, “The full costs of all resettlement activities, including indirect costs such as costs associated with the transition to and re-establishment of livelihoods, will be included in the costs and benefits of the project.”

Principle 11

- Add, “in a timely manner, so that resettlement benefits are not diminished.”

Principle 12

- Add, Where possible, include affected people in project monitoring, with development of community and local capacity to assist in monitoring as needed. Disclose , monitoring and assessment documents promptly, in a form, manner and language(s) accessible to affected people and other stakeholders.

Indigenous People

Scope

- Add the reference to “area of influence” to ensure that this is known (so there is no doubt or confusion).
- Add the reference to “cumulative” so these are covered also.
- Add “including [or] as a result of natural disasters, development programs, or immigration/settlement by non-indigenous persons” to ensure that these are covered.

Principle 1

- Expand (b) beyond the yes/no question of “whether” to include scope of impacts (including potential impacts) and assessment/planning needed, as in: “(b) the scope of any potential or likely project impacts on Indigenous Peoples and of assessment and planning to address the issues.”

Principle 4.

- Free Prior and Informed Consent (FPIC): The USG has not signed the UN Declaration on the Rights of Indigenous Peoples. We will review carefully any ADB proposal concerning free, prior and informed consent. Any proposal should be operationalizable.

Principle 5

- Add “social and economic” for clarify (currently in scope) so it doesn’t get lost.

Principle 7.

- Add “and implement” to the reference to the legal action plan.

Principle 9.

- Add “Implement the IPP,” since it does not seem to be clearly stated in any of the other IP principles. (This would parallel the explicit principles on implementation of EMPs and IR plans.)
- Add, “Document monitoring results, and disclose promptly monitoring and assessment reports in a form, manner and language(s) accessible to affected people and other stakeholders.”