

Upward Harmonization of IFC Standards with Best Practices¹

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The need for upward harmonization with best practices

It will be of the utmost importance for the IFC to ensure that this review of Policy and Performance Standards leads towards an upwards harmonization with the best and most robust practices of other financial institutions. Here we focus specifically on policies and practices recently developed by the Asian Development Bank (ADB) that we urge the IFC to implement, including:

- the 120 day disclosure requirement for projects and subprojects likely to have significant impacts;
- the requirement for environmental assessments of all components of all projects, regardless of funding sources;
- new rules for Financial Intermediaries;
- new language pertaining to gender and;
- a commitment to “no policy dilution” through the vehicle of the Performance Standards review.

After more than 4 years of intensive advocacy on the design of the the Asian Development Bank’s new Safeguards Policy Statement, members of the NGO Forum on ADB succeeded in ensuring strong languages regarding Financial Intermediaries (FI) in the new Safeguard Policy Statement (SPS) that became effective in January 2010. FIs are institutions that facilitate the channeling of funds between lenders and borrowers and may include banks, broker-dealers, investment advisers, off-shore private equity funds and financial partners. NGO Forum on ADB also successfully pushed for strong gender considerations, detailed provisions for consultation, involuntary resettlement and indigenous policy principles in the new SPS. Some dilutions, weaknesses and significant problems, including with the language of the Operations Manual for the SPS still persist, however. Nonetheless, it is important for the IFC to – at a minimum – harmonize with the best practices of the ADB and other financial institutions..

The strength of ADB SPS based on the interventions of the NGO Forum on ADB²:

1. **Gender:** Stronger gender considerations have been mainstreamed throughout the SPS and the three policy areas. The SPS sets an example for other IFIs in regard to explicitly requiring gender sensitive and responsive application of the safeguards policies.
2. **Consultation:** Definition of consultation is explicit. This represents an advance over the ADB’s former policies, and sets the basis for ensuring a meaningful participatory process for ADB operations. The new SPS documents the ADB’s laudatory commitment to “understand the concerns of affected people and ensure that such concerns are addressed in project design and safeguard plans” for environmental, Involuntary Resettlement and Indigenous

¹ A part of this brief is taken from the “IFC’s draft revised Sustainability Policy and Performance Standard: Comments on Financial Intermediaries, Bank Information Center – CIEL – Ulu Foundation, June 17, 2010

² Comments of the NGO Forum on ADB on The Review Paper of Safeguard Policy Statement of The Asian Development Bank, July 14, 2009 at: http://www.forum-adb.org/docs/Comments-SafeguardsRPaper_July14.pdf

- People impacts. The implementation measures for these requirements are inconsistent across the three policies but this can be remedied through changes in OM language.
3. **Involuntary Resettlement:** Improvement of the livelihoods of poor and vulnerable affected people is now required. There is new language emphasizing the importance of creating benefit-sharing arrangements and development opportunities for affected people. These improvements will contribute significantly to preventing impoverishment among people displaced by ADB-supported projects.
 4. **Indigenous Peoples:** Recognition of the need to protect Indigenous Peoples and the commitment not to finance projects in the absence of broad community support. This commitment is an advance over the ADB's former Indigenous Peoples' policy.
 5. **Subprojects/financing modalities:** Rules pertaining to many of the different finance modalities have been significantly improved over earlier versions of the draft SPS and much of the protective language from the existing policy has been re-instated. In some cases, language has been improved over the ADB's former policy. Requirements pertaining to the category of Financial Intermediaries has been significantly strengthened and now requires subprojects with the potential for significant environmental or social impacts financed by *Fls whether through credit-line, loan, equity, guarantee, or other financing instrument* to submit category A projects for ADB clearance, subject to a 120 day disclosure requirement.
 6. **Prohibited Investment List:** a clearly-stated application of a Prohibited Investments List to all ADB activities is written.
 7. **Country Safeguards System:** Improved clarity in how ADB intends to implement its CSS policy, especially with regard to disclosure and consultation, as well as ensuring that gap-filling measures are in place prior to project implementation.

The following language from the ADB's SPS describes a far more robust level of due diligence, oversight and monitoring of private sector and FI projects by Bank staff than that proposed by the IFC. IFC should, at a minimum, use this language, which also requires the assessment of all components of projects/subprojects, regardless of the source of finance.

1. Gender considerations

Gender considerations in the new ADB SPS are a set of measures to provide protection to women from project impacts and risks. These are a good addition to the gender policy of ADB and other MDBs in that the framework of gender mainstreaming mainly is about a strategy for improving women's lives throughout the project. What this means is that gender considerations in the new SPS are not about strategies only, but are also requirements for the borrowers for protection for women.

The progress in the new ADB SPS on gender issues exists in three main areas (1) requirements for gender considerations in terms of project impact and risk assessment; (2) requirements for the involvement of women and consideration of gender issues in consultations; and (3) requirements for a gender sensitive, responsive and inclusive grievance mechanism³.

2. Due diligence to ensure compliance with environment and social requirements:

The ADB is responsible for conducting due diligence, review and supervision in order to ensure that clients comply with environmental and social requirements. The IFC should also explicitly require compliance.

³ Further reading: Tea Soentoro, Making ADB accountable and responsible to Women, women and gender issues in the Safeguard Policy Update, in Bank Watch vol. VIII, no. 4, fourth quarter, 2009 at <http://www.forum.adb.org/docs/BNKWTCH-032810.pdf>

46. To achieve the policy objectives and deliver the policy principles, ADB carries out the actions described in the following subsection (“B. Policy Delivery Process”). To help borrowers/clients and their projects achieve the desired outcomes, ADB adopts a set of specific safeguard requirements that borrowers/clients are required to meet in addressing environmental and social impacts and risks. ADB staff, through their due diligence, review, and supervision, will ensure that borrowers/clients comply with these requirements during project preparation and implementation⁴.

Paragraph 48, below, defines the scope of ADB’s environmental and social policy, which the IFC should also implement. The policy applies to *all components* of private sector (and public sector) projects *regardless of the source of finance*.

47. ADB will not finance projects that do not comply with its safeguard policy statement, nor will it finance projects that do not comply with the host country’s social and environmental laws and regulations, including those laws implementing host country obligations under international law. In addition, ADB will not finance activities on the prohibited investment activities list (Appendix 5).

48. This safeguard policy statement applies to all ADB-financed and/or ADB-administered sovereign and non-sovereign projects, and their components regardless of the source of financing, including investment projects funded by a loan; and/or a grant; and/or other means, such as equity and/or guarantees (hereafter broadly referred to as projects⁵).

The ADB will assist FIs with appraisal of any subprojects with potential for significant environmental or social impacts; must review due diligence information, determine additional information needed. Borrowers must submit EIA, resettlement plans and IPPs to ADB for *clearance prior to subproject approval, etc.* The IFC should, at a minimum, take these steps, in addition to requiring minimum disclosure practices as outlined in the paper by Ulu Foundation and NGO Forum on the ADB.⁶

15. Where the subprojects financed by the FI using ADB funds, through either credit-line, other loans, equity, guarantee, or other financing instruments, have potential for significant environmental or social impacts, the FI will be required to ensure that such subprojects meet ADB’s requirements specified in Safeguard Requirements 1–3, including information disclosure and consultation. In such cases, the FI will refer these subprojects to ADB early in its due diligence process. ADB will assist the FI with the appraisal of these subprojects. ADB will review the due diligence information collected by the FI, determine any additional information needed, assist with determining appropriate mitigation measures, and specify conditions under which the subprojects may proceed. For such subprojects, the borrower/clients will submit EIA, resettlement plan and/or IPP to ADB for clearance before subproject approval. ADB may also set additional requirements for the FI’s activities more generally depending on the its portfolio and the host country’s safeguard systems. ADB will monitor the FI’s performance on the basis of its environment and social management system⁷.

⁴ ADB. Safeguard Policy Update, June 2009, para 46, p.14 at: at <http://www.adb.org/Documents/Policies/Safeguards/Safeguard-Policy-Statement-June2009.pdf#page=6>

⁵ *ibid*, para 47-48, p. 15

⁶ Top Four Minimum Disclosure Requirements for Financial Intermediaries and Associated Subprojects, Ulu Foundation and NGO Forum, July 2010.

⁷ *ibid*, Appendix 4, para 15, p.68

3. IFC should meet or exceed the **ADB Requirements for Category A, 120 day requirement as follows**⁸:

*“Where the subprojects financed by the financial intermediary using ADB funds, through either credit-line, other loans, equity, guarantee, or other financing instrument, will likely be classified as category A for any of their environment, involuntary resettlement, or Indigenous Peoples impacts, the ESMS incorporates relevant provisions that such subprojects meet ADB’s requirements specified in Safeguard Requirements 1–3 in addition to national laws and standards. In such subprojects, the project team requires the financial intermediary to refer those subprojects to ADB early in its due diligence process. The operations department assists the financial intermediary in appraising these subprojects. ADB (i) reviews the environmental and social information collected by the financial intermediary, (ii) determines any additional information needed, (iii) assists with determining appropriate mitigation measures, and (iv) specifies conditions under which the subprojects may proceed. For such subprojects, **ADB clears the EIA, resettlement plan, and/or IPP before subproject approval, and the project team ensures that the following documents are made publicly available: (i) the draft EIA report at least 120 days before the approval of the subproject, and (ii) the draft resettlement plan and draft IPP before the approval of the subproject.**”*

4. Consultation:

The definition of meaningful consultation in ADB new SPS is explicit as described below which should, at a minimum, be met by the IFC:

54. Consultation and Participation

ADB is committed to working with borrowers/clients to put meaningful consultation processes into practice. For policy application, *meaningful consultation is a process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues*⁹.

Recommendations:

We urge the IFC at a minimum, meet or exceed (upward harmonization) the protections developed by the robust consultation process of the ADB, including 120 day disclosure requirement, gender language, consultation requirements, assessments for all components of all projects regardless of source of finance, ADB requirements for FIs, including those designed to ensure that FI investments are not to be utilized as a way to avoid the implementation of environmental and social safeguards. As per the above language, the IFC must *ensure* that all subprojects financed using its funds meet the basic environmental and social standards, including those pertaining to disclosure and consultation

⁸ For ADB Category A FI sub-projects, environment and resettlement planning documents and frameworks are available: <http://www.adb.org/Projects/summaries.asp?query=&browse=1&ctry=ALL&type=5&year=ALL>

⁹ ADB. Safeguard Policy Statement, June 2009, para 54, p. 20 at <http://www.adb.org/Documents/Policies/Safeguards/Safeguard-Policy-Statement-June2009.pdf#page=6>