

Comparison between ADB SPU and IFC Policy and Performance Standards

By Steve Herz for Bank Information Center

*In its Safeguard Policy Update process, ADB has stated its intent to **harmonize** its safeguard policies with those other MDBs. In particular, it has suggested that IFC's Policy and Performance Standards would be a key benchmark for that harmonization. For this reason, we believe that it would be useful to consider how ADB's draft Safeguard Policies compare with those of the IFC. Accordingly, this note compares ADB's proposed policies with IFC's Policy and Performance Standards. At this point, it is intended only for informational purposes—not necessarily to be submitted to ADB. Further strategic thinking will be necessary to determine how, or whether, this comparison will be useful in shaping arguments to be made to ADB.*

1. Statement on Safeguard Commitment: IFC's Policy provides: "Central to IFC's development mission are its efforts to carry out its investment operations and advisory services in a manner that "do no harm" to people or the environment. Negative impacts should be avoided where possible, and if these impacts are unavoidable, they should be reduced, mitigated or compensated for appropriately. In particular, IFC is committed to ensuring that the costs of economic development do not fall disproportionately on those who are poor or vulnerable, that the environment is not degraded in the process, and that natural resources are managed efficiently and sustainably." (para 8).

ADB's statement similarly prioritizes avoidance of impacts over minimization, mitigation and compensation. However, it does not express a commitment to (a) "do no harm"; (b) preventing disproportionate impacts on the poor and vulnerable; or (c) ensuring efficient and sustainable natural resource management. (para 36).

2. Social assessments: IFC Performance Standard 1 (Social and Environmental Assessment and Management Systems) establishes the importance of an integrated assessment to identify the social and environmental impacts, risks, and opportunities of projects. It is clear and unambiguous that the full range social impacts must be assessed, particularly those that are addressed in other performance standards. (labor and working conditions, indigenous peoples, community health, involuntary resettlement) (para. 4).

ADB's draft Safeguard Policy Statement and Environmental Assessment provisions, on the other hand, are less clear. They refer only to *environmental* impacts and assessments. For example, the categorization requirements in the draft Policy statement refer only to environmental impacts. (para 42). Similarly, the draft EA policy defines environmental assessments as "an ongoing process of environmental analysis and planning to address environmental impacts associated with a project." (para 4). The narrowness of this

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definition is tempered somewhat in para. 5, which requires that “socio-economic aspects” be considered in an integrated fashion along with environmental impacts.

Comprehensive social assessments are now, or are fast becoming, standard practice in IFI due diligence. ADB should be clear that it expects its borrowers/clients to conduct a rigorous due diligence into social impacts. Following IFC, it should call these planning tools “Social and Environmental Assessments” and should be more specific about what kinds of social assessments it requires.

3. International Law: Para 5 of the ADB’s draft Environment Policy requires that “the project’s potential environmental impacts and risks will be reviewed against applicable laws and regulations ...that pertain to environmental matters, including those laws implementing host country obligations under international law.” This provision is deficient in two ways. First, as noted above, legal due diligence must also include social issues, such as laws regarding the expropriation of property and labor rights and other worker protections. Second, with regard to international law, it is insufficient to look only at “laws implementing host country obligations under international law.” ADB should also require its borrowers/clients to discuss applicable general principle of international law, customary norms, and host country obligations that have not been implemented in domestic law. Otherwise, ADB runs the risks of aiding and abetting host countries in violating their international law obligations.

4. Area of Influence: Para 6. describes the area of influence in which impacts and risks must be assessed. It mirrors the language of para 5. of Performance Standard 1, with several important caveats. First, the last line of para 6 provides that “the borrower/client will address impacts and risks commensurate to its control and influence over third party actions.” This language is borrowed from IFC’s PS 1, but the PS also makes clear that borrowers must also consider the role and capacity of third parties, and the risks associated with their participation in the project. This includes local and national governments, contractors, and suppliers. By omitting that language, ADB implies that borrowers need not fully consider the impacts of third party actions on the project.

Second, ADB should address the relevance of this provision for public sector borrowers. IFC has included this provision to address the fact that projects sponsored by its private sector clients may rely on public entities that are outside of its control to provide services for the project. This concern is greatly diminished where the borrower is a governmental agency. The language should be clarified to limit its relevance to circumstances in which the borrower is a private-sector actor.

Finally, ADB’s draft policy adopts a poorly written provision of IFC’s policy that may be interpreted as a gap in the stated objective of assessing all of the impacts within the area of influence. Para 6 defines the area of influence to include, among other things, “(ii) associated facilities that are not funded as part of the project (funding may be provided separately by the borrower/client or by third parties including government), and whose viability and existence depend exclusively on the project and whose goods or services are essential for the successful operation of the project...” This description of the relevant

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“associated facilities,” should be read in context of the other examples of a project’s area of influence, and in light of the overall objective to comprehensively assess the impacts of the project. But as written, it invites a narrow, lawyerly reading that can be misused to exempt some integral parts of a project from the environmental assessment requirements. It should therefore be rewritten to define associated facilities in a way that is more consistent with the plain meaning of “area of influence.”

5. Projects with Significant Adverse Impacts: PS 1 requires that “projects with potential significant adverse impacts that are diverse, irreversible, or unprecedented will have comprehensive social and environmental impact assessments. This assessment will include an examination of technically and financially feasible alternatives to the source of such impacts, and documentation of the rationale for selecting the particular course of action proposed.” This language is not evident in the draft ADB policy. Indeed, it is not clear that borrowers/clients have any heightened assessment responsibilities for higher impact projects. This should be clarified and redressed.

6. Assessment of Differential Impacts: PS 1 requires clients to “identify individuals and groups that may be differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status. Where groups are identified as disadvantaged or vulnerable, the client will propose and implement differentiated measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in sharing development benefits and opportunities.” (para 12). The ADB draft has no such requirements. This provision is critical to ensuring that ADB projects actually help alleviate poverty and deliver benefits to the poorest and most politically marginalized.

7. Informed Participation: Like PS 1, the ADB draft policy requires the informed participation of affected people. IFC, however defines the term, (para 22), and ADB does not. The ADB policy would be strengthened by adding IFC’s definition: “Informed participation involves organized and iterative consultation, leading to the client’s incorporating into their decision-making process the views of the affected communities on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues.”

8. Reporting on Environmental Management Plans: PS 1 requires borrowers to disclose EMPs to the affected communities. (para 26). ADB’s draft policy implies, but does not specify, that EMPs and draft EMPs will be disclosed as part of the consultation process, (para 13), but these documents are not included in the list of documents that must be disclosed in the draft EA policy (para 14), or in the information disclosure section of the Safeguard Policy Statement (para 45). This should be clarified.

9. Biodiversity and Sustainable Natural Resource Management:

a. Critical Natural Habitats: ADB draft policy adopts IFC’s definition of “critical natural habitats”, the areas that are afforded the highest level of protection in the policy. (ADB para 18, fnt 3; IFC PS 6, para 9). However, ADB’s policy tolerates far greater adverse impacts on these habitats than IFC’s PS does. ADB’s draft policy provides that

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“no project activity that involves or is likely to result directly or indirectly in the significant conversion or degradation of critical habitat will be implemented.” In so doing, it treats “critical natural habitats” essentially the same as non-critical natural habitats.

But in its Performance Standards, IFC explicitly abandoned the “significant conversion or degradation” standard in favor of a more protective “measurable impact” standard. Thus, PS 6 now provides:

In areas of critical habitat, the client will not implement any project activities unless the following requirements are met:

- There are no measurable adverse impacts on the ability of the critical habitat to support the established population of species ... or the functions of the critical habitat described in [the definition of critical natural habitats]
- There is no reduction in the population of any recognized critically endangered or endangered species
- Any lesser impacts are mitigated...(para 10)

b. Mitigation: IFC’s PS 6 establishes that an explicit objective of mitigation measures is to “achieve no net loss of biodiversity...” (para 8). This objective is not evident in the ADB draft.

c. Management of Forests and Aquatic Ecosystems: IFC’s PS 6 includes requirements for the sustainable management of natural and plantation forests (para 16) and freshwater and marine ecosystems (para 17) that are omitted in ADB’s draft policy. These paragraphs provide:

Natural and Plantation Forests

Clients involved in natural forest harvesting or plantation development will not cause any conversion or degradation of critical habitat. Where feasible, the client will locate plantation projects on unforested land or land already converted (excluding land that is converted in anticipation of the project). In addition, the client will ensure that all natural forests and plantations over which they have management control are independently certified as meeting performance standards compatible with internationally accepted principles and criteria for sustainable forest management. Where a pre-assessment determines that the operation does not yet meet the requirements of such an independent forest certification system, the client will develop and adhere to a time-bound, phased action plan for achieving such certification. (para 16)

Freshwater and Marine Systems

Clients involved in the production and harvesting of fish populations or other aquatic species must demonstrate that their activities are being

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undertaken in a sustainable manner, through application of an internationally accepted system of independent certification, if available, or through appropriate studies carried out in conjunction with the Social and Environmental Assessment process. (para 17)

Arguably, each of these requirements is at least implied in the ADB draft policy, but the policy would be strengthened by making them explicit.

10. Pollution Prevention and Abatement:

a. Avoidance of Pollutants: IFC's PS3 makes clear that the emission of pollutants should be avoided, and when avoidance is not feasible, minimized or controlled (para 4). The ADB draft policy appears to drop this preference for avoidance (para 26), though it retains a similar preference for avoidance with respect to the generation of wastes. (para 25). This distinction is illogical and should be rectified.

b. Resource Conservation and Energy Efficiency: IFC's PS 3 provides that the "client should examine and incorporate in its operations resource conservation and energy efficiency measures, consistent with the principles of cleaner production." (para 4). No such requirement is evident in the ADB draft.

c. Hazardous Materials: PS 3 requires the borrower to "avoid the manufacture, trade, and use of chemicals and hazardous materials subject to international bans or phase-outs due to their high toxicity to living organisms, environmental persistence, potential for bioaccumulation, or potential for depletion of the ozone layer, and consider the use of less hazardous substitutes for such chemicals and materials." (para 6). No such requirement is included in the ADB draft.

d. Pesticide Use and Management: Like PS 3, the draft ADB policy expresses a preference for integrated approaches to pest management. However, PS 3 is much clearer that chemical management should only be used as a last resort. And when pesticides are to be used, PS 3 has far more stringent requirements regarding which pesticides may be used and under what circumstances. Thus, PS 3 provides that when pest management activities include the use of pesticides, the client will select pesticides:

- that are low in human toxicity, known to be effective against the target species, and have minimal effects on non-target species and the environment;
- based on whether the pesticides are packaged in safe containers, are clearly labeled for safe and proper use, and have been manufactured by an entity currently licensed by relevant regulatory agencies. (para 13).

PS 3 further requires borrowers to "design its pesticide application regime to minimize damage to natural enemies and prevent the development of resistance in pests." (para 14).

None of these requirements are included in the ADB's draft policy.

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In addition, the ADB draft allows the use of pesticides rated by the World Health Organization as extremely hazardous, highly hazardous, and moderately hazardous where there is “no alternative” (para 27), and exception that is not included in IFC’s PS 3. (para 15).

11. Greenhouse Gas Emissions: The ADB draft waters down the already meager requirements of PS 3 with respect to greenhouse gas emissions. Whereas PS 3 requires all clients to reduce “project-related greenhouse gas (GHG) emissions in a manner appropriate to the nature and scale of project operations and impacts (para 10),” the ADB draft policy may only apply to projects that are expected to produce significant quantities of greenhouse gases. (para 27). Moreover, whereas IFC requires reductions in emissions, the draft ADB policy requires borrowers only to evaluate options, and treats emissions reductions and offsets as interchangeable options.

12. Physical Cultural Resources: The ADB draft policy falls short of IFC’s PS 8 on Cultural Heritage in a number of important ways. The draft policy (a) does not reference domestic or international legal requirements with respect to cultural heritage (PS 8, para 4); (b) fails to require that the client support and protect cultural heritage by “undertaking internationally recognized practices for the protection, field-based study, and documentation of cultural heritage (PS 8, para 4);” (c) does not include any consultation requirements (PS 8, para 6); (d) fails to articulate a preference for preserving cultural resources in place (PS 8, para 7); (e) does not require that overall project benefits be demonstrated to outweigh the anticipated cultural heritage loss from removal before removal is allowed (PS 8, para 7); (f) fails to recognize or afford heightened protections to “critical cultural history”-- internationally recognized or legally protected areas of cultural history. (PS 8, paras 8-10); (g) fails to recognize the cultural resources, knowledge, innovations, or practices of local communities embodying traditional lifestyles, or afford them any protections from unauthorized commercial exploitation (PS 8, para 11).

13. Community Health, Safety and Security: The ADB draft policy does not have a section that addresses the issues covered by IFC’s PS 4.

14. Labor and Working Conditions: The ADB draft policy does not have a section that addresses the issues covered by IFC’s PS 2.

15. Broad Community Support: The draft Policy Statement uses IFC’s definition of broad community support. However, whereas IFC’s Policy says that IFC will ensure that broad community support is achieved in all consultative engagement processes, ADB requires it only where communities of Indigenous Peoples are affected. (para 47). ADB therefore does not require that consultations reach any particular outcome.

16. Extractive Industry Projects: For extractive industries projects, IFC conducts additional assessments of governance issues, and requires that payments to governments, and the terms of key agreements such as host government agreements, be publicly

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reported. (para 22). ADB's policy does not require anything additional of extractive industry projects.

17. Delivery of Essential Services: For projects involving the final delivery of essential services, such as the retail distribution of water, electricity, piped gas, and telecommunications, to the general public under monopoly conditions, IFC encourages the public disclosure of information relating to household tariffs and tariff adjustment mechanisms, service standards, investment obligations, and the form and extent of any ongoing government support. If IFC is financing the privatization of such distribution services, IFC also encourages the public disclosure of concession fees or privatization proceeds. Such disclosures may be made by the responsible government entity (such as the relevant regulatory authority) or by the client. (para 23). ADB's Policy includes no such provisions.

18. Involuntary resettlement:

a. Definition of involuntary resettlement: IFC's definition of involuntary resettlement in PS 5 includes "negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail." (para 1). ADB, on the other hand, does not make clear that negotiated settlements in such coercive circumstances trigger the policy. (para 4).

b. Preference for avoidance: IFC's PS 5 expresses a preference for avoidance of involuntary resettlement, and treats mitigation as an option only where avoidance is not possible. (para 2). ADB's draft policy does not express such a preference.

c. Improving livelihoods: One objective of PS5 is "to improve or at least restore the livelihoods and standards of living of displaced persons." The ADB draft includes this objective in its discussion of Resettlement Plans, (para 13). but is should be made explicit up front.

d. Land for Land: PS 5 provides that "where livelihoods of displaced persons are land-based, or where land is collectively owned, the client will offer landbased compensation, where feasible." (para 8). Displacees must be given resettlement options, including adequate replacement property of equal or higher value and cash compensation. (para 16, 17). Under ADB's draft policy, only "business owners with legal rights or recognized or recognizable claims to land where commercial activities are carried out" are entitled to a preference for land-based compensation. (para 7). For others displacees, the policy is indifferent to whether compensation comes in the form of property or cash, and they need not be given any options. (para 6).

e. Differential Impacts: PS5 requires that borrowers "provide relocation assistance suited to the needs of each group of displaced persons, with particular attention paid to the needs of the poor and the vulnerable." ADB' draft has no analogous provisions.

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f. Affected persons without land rights: PS5 requires that displaced persons who have “no recognizable legal right or claim to the land they occupy” be given “a choice of options for adequate housing with security of tenure so that they can resettle legally without having to face the risk of forced eviction.” (para 18). The ADB draft requires that they be given adequate housing with security of tenure, but not that they be afforded a choice of options. (para 6). PS 5 also provides for in-kind compensation to these oustees (para 18), whereas ADB’s draft does not.

19. Indigenous Peoples:

a. Role of Representative Bodies: IFC’s PS7 makes clear that Indigenous Peoples’ representative bodies must be involved in the process of obtaining borad community support, and that ample time must be given for these collective decision-making processes to work. (para 9). These requirements are not evident in ADB’s draft policy.

b. Non-titled lands: IFC’s PS 7 ensures that “the client will offer affected communities of Indigenous Peoples at least compensation and due process available to those with full legal title to land in the case of commercial development of their land...” (para 13). ADB’s draft does not similarly ensure parity with titled landholders.