

**ADB SAFEGUARD POLICY UPDATE**

**REPORT ON STAKEHOLDER CONSULTATIONS**

**October 2008**

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## STAKEHOLDER CONSULTATION PROCESS

This report summarizes ADB's safeguard policy update (SPU) consultation process and includes a comments-response matrix on the consultation draft of the Safeguard Policy Statement (SPS) which was posted on ADB's website on 12 October 2007. The matrix reflects comments received during fourteen country/subregional consultations and written submissions received during the comment period of 12 October 2007 – 30 April 2008.

**Purpose and Key Principles of Consultation Process.** The three objectives of the consultation process are: (i) enhance ADB's understanding of stakeholders' perspectives; (ii) establish a shared understanding of safeguard objectives, principles and requirements; and (iii) guide the formulation of the safeguard policy statement. The consultation approach ensures:

- i. broad participation by reaching a diverse range of stakeholders, including ADB's member country governments, private sector, civil society organizations (CSO), experts, partner development institutions, and other interested parties;
- ii. accessibility to stakeholders of both the written information and the consultation process through a dedicated ADB SPU webpage (<http://www.adb.org/Safeguards/policy.asp>), e-mail ([safeguards\\_update@adb.org](mailto:safeguards_update@adb.org)), and mailing address;
- iii. wide dissemination of information and feedback channels through ADB's website and e-mail notification, translation of some policy documents, and face-to-face discussion during country/subregional consultation workshops; and
- iv. transparency in documenting and reporting results of consultations by posting participants' comments and staff responses on the SPU website.

**Consultation Period.** The on-going consultations commenced when the SPU was formally announced on the web in July 2005, and the consultations will continue through W-Paper (draft policy paper), and R-Paper (final policy paper) preparation:

- The SPU Discussion Note, including consultation plan, was posted on the ADB website in October 2005 for a 90-day comment period and many comments received from stakeholders were incorporated into the Consultation Draft of the SPS.
- The consultation draft of the SPS was made publicly available on 12 October 2007 for a 6-month comment period and was translated in Mandarin, Russian, Vietnamese and Bahasa Indonesia. The Consultation Draft was the basis for discussion for the fourteen country/subregional consultation workshops and for the written comments from November 2007 to April 2008.
- In order for the new safeguard policy to be responsive to a wide range of views, in April 2008, ADB Management decided to introduce an additional step and prepare a second draft of the SPS and hold another multistakeholder consultation workshop in Manila.
- A Draft Updated Consultation Plan was posted on the ADB website for comment from 20 June 2008 until 4 July 2008. The final Updated Consultation Plan reflects comments received from stakeholders.
- The second draft of the SPS was posted 3 October 2008 on the SPU webpage for a 60-day comment period until 4 December 2008, and a multistakeholder consultation workshop will held during the week beginning 17 November 2008. The second draft of the SPS will also be made available in Bahasa Indonesia and Russian. A draft safeguard review procedures (draft operations manual) will be posted on the SPU website before the Consultation Workshop in November 2008.
- In early 2009, a draft W-Paper (draft policy paper) will be finalized based on the comments from both the external stakeholders and ADB internal deliberations on the second draft of the SPS. The W-Paper will be posted on the SPU website for a 3 week comment period when it is submitted to ADB Board. Relevant comments will be considered in the finalization of the R-paper (final policy paper), which will be submitted to the Board for consideration.

**Country/Subregional Consultation Workshops.** From November 2007 until April 2008, ADB engaged extensively with interested stakeholders, organizing fourteen workshops including ten country/subregional consultation workshops for ADBs developing member countries and four consultation workshops with its developed member countries in North America, Europe and Japan. Professional facilitation and interpretation were provided during the consultation workshops. Participants' comments along with ADB staff responses were documented and posted on the SPU website, and the consultation reports from each workshop have been posted on SPU website <http://www.adb.org/Safeguards/about.asp>. These workshops formed a core part of the consultation process, providing an open forum that helped build a shared understanding of key safeguard policies, principles and requirements among the participants. A total of 415 people participated, 45% representing Government, 34% Civil Society Organizations, 6% academe, 7% development agencies and 8% private sector. Through these workshops and submitted written comments, primarily from CSOs, ADB has received widespread feedback and detailed suggestions on the consultation draft of the SPS.

**Consultation Workshop in November 2008.** In the week beginning 17 November, ADB will hold another consultation workshop for multistakeholders at ADB headquarters in Manila. The objective of this workshop is to review a second draft of the SPS in its entirety with emphasis on ADB's response to stakeholder comments on the consultation draft of the SPS. The consultation workshop will consist of approximately 60 stakeholders including representatives of project-affected communities, government agencies, CSOs, businesses, academia, and other international, multilateral and bilateral organizations. Professional facilitation and interpretation will be provided as required during the consultation workshop.

In addition, a separate 1-day session for Indigenous Peoples for approximately 20 participants will provide them with a dedicated forum to review the second draft of the SPS and related documents. This 1-day workshop recognizes the unique nature of Indigenous Peoples and acknowledges the value of their involvement in SPU.

**Ongoing Consultations.** Ongoing consultations with external stakeholders by ADB staff will continue throughout the SPU. DMCs are consulted on safeguards in a variety of ways at headquarters and in the context of operations missions to the field, as well as through seminars such as Orientation Programs for DMC Officials. Panel discussions with NGOs on ADB safeguards have taken place in the context of the ADB Annual Meetings in 2007 and 2008 and other events, as well as occasional meetings with representatives of the NGO Forum on ADB, Bank Information Center, and United Nations Permanent Forum on Indigenous Issues, and others. About 15 meetings between CSOs and ADB have taken place since November 2005. Dialogues with relevant multilateral and bilateral partners and other international and regional organizations continue to be carried out, such as meetings with Multilateral Financial Institutions Environment Working Group.

**Electronic and Mail Consultations.** This involves broad-based electronic and mail communication through the SPU website and e-mail facility. Comments received during the consultation process are appropriately collected, analyzed and along with responses of ADB, and posted on the SPU website. More than 70 letters concerning the SPU from civil society have been received since July 2005.

<b>Environmental Safeguards</b>		
<b>General Comments</b>		
<b>Comments and Recommendations</b>	<b>Comment No.</b>	<b>ADB Staff Response</b>
1. NGOs should be involved early in the project identification.	1	Noted.
2. There should be a separate funding for EMPs/monitoring.	9	This is part of the EMP. See Principle #4 of environmental safeguards and Annex 1 of SR1
3. Clarify who will do the elaborate strategic environmental assessment. There was expressed concern that it may be appropriate to expect the public sector to be responsible for this.	7	The borrower/client is responsible for carrying out the SEA.
4. Does not require that clients have an EMS in place that is compliant with ISO 14001, EMAS or a similar system?	64	EMP is required, and key elements of EMP include institutional arrangement, performance indicators, procedure for information disclosure and consultation, monitoring and reporting, as well as mitigation measures. FIs and General Corporate Finance require the borrower/client to establish and maintain an ESMS.
5. The Policy Statement Environmental Safeguard Policy Principles and the Environmental Requirements require establishment of a grievance mechanism. However, the language about the mechanism is not consistent. The Principles require a mechanism for “affected communities concerns and grievances about the project’s environmental performance.” The Environmental Requirements state that a mechanism must be established “[i]f ongoing risks to or adverse impacts on affected people are anticipated.” These documents apply different standards for establishing a mechanism. The mechanism must be created for each project. How does this mechanism work in relation to the ADB’s Accountability Mechanism? The section in the Environmental Requirements includes good language about ensuring the grievance mechanism must be available at no cost to the affected people and that it does not impede access to domestic remedies. However, there needs to be more information about how it relates to the ADB’s Accountability Mechanism to determine whether it is going to be redundant and require affected people to jump through another hoop, or to see if it is intended to be a simpler, speedier process. It is impossible to evaluate the grievance mechanism since there are no details about it.	62	<p>The policy principle is more general, while SR1 provides specific requirements.</p> <p>The objective of the grievance redress mechanism is to ensure that the borrower/client will address/resolve concerns or complaints of affected people in a timely and responsive manner at project level. The ADB’s Accountability Mechanism will address grievances and complaints that are not fully resolved through grievance mechanisms. We added a section to the SPS that outlines the role and functions of ADB’s Accountability Mechanism.</p>
6. The SPS does not require clients to systematically assess the potential impacts on the internationally recognized rights of affected people. A human rights-based approach to impact assessment is critical to ensure that projects do not transgress the internationally recognized rights of affected people, and positively contribute to the realization of those rights.	64	Human rights are embedded in the policy principles and SRs.

<p>7. The SPS is silent about enhancing the positive environmental impacts of projects, and the safeguard requirements focus on managing negative impacts. The proposal to deliver “aspirational” elements through a corporate environment strategy requires detailed consideration because it may not serve the desire to ensure positive environmental outcomes of projects.</p>	<p>67</p>	<p>The SPS emphasizes avoidance, minimizing, and mitigating adverse impacts. ADB will develop a separate environmental strategy emphasizing “aspirational” elements.</p>
<p>8. ADB should promote not only minimizing environmental and social risks, but also maximizing its environmental and social additionality. ADB should work with clients to:</p> <ul style="list-style-type: none"> <li>- incorporate innovative components into project design (such as payments for environmental services);</li> <li>- promote continuous improvement in borrower’s environmental and social performance;</li> <li>- identify potential development benefits of applicable safeguards in terms of new market opportunities, avoidance of downstream risks and costs, and more equitable distribution of project benefits; and</li> <li>- monitor, and report the development benefits from applying the ADB’s environmental and social safeguards.</li> </ul>	<p>65, 70</p>	<p>ADB is doing this through alternatives analysis, project design, monitoring and evaluation. Also see above comment.</p>
<p>9. ADB’s Environmental Assessment Guidelines (2003) should properly be referred in the Draft. In addition, the Guidelines could also be updated to reflect current situation and development of methodologies for assessments, e.g., inclusion of the assessment of climate change or GHG emissions.</p>	<p>70</p>	<p>Guidelines will be updated.</p>
<p>10. For projects in IP areas, adopt any of these options: (i) free, prior and informed consent; (ii) free, prior and informed consultation and consent; or (iii) free, prior and informed consent through democratic consultation.</p>	<p>3</p>	<p>This is addressed through policy principles of Indigenous Peoples safeguards and SR3.</p>
<p>11. The overall policy is based on the OED special evaluation study regarding alleged high “transaction costs” of safeguard policies, the so-called “need” to move away from a “project focus”, and the “necessity” for reconsideration of the current 120-day disclosure requirement. The raw data from the OED do not support these interpretations or approaches.</p>	<p>19</p>	<p>The SPS emphasizes project-level requirements.</p>
<p>12. There are no clear, detailed requirements on the assessment of social impacts, nor requirements for full participation in decision-making by affected peoples. It is unclear if the SPS requires a rigorous social impact assessment for any environmental category of projects that does not involve resettlement or indigenous peoples.</p>	<p>19</p>	<p>The SPS and SR1 require that environmental assessments cover socio-economic aspects, including health and safety, physical cultural resources, and impacts on livelihood caused by project activities other than land acquisition (see Principle #2 and para. 4 of SR1).</p>

<p>13. There is no detailed language regarding the rights of project-affected peoples who are not Indigenous Peoples and who do not meet the restrictive definition of “involuntary resettlement.” This leaves non-Indigenous project-affected extremely vulnerable.</p>	<p>19</p>	<p>Many human right issues are embedded in the policy principles and requirements.</p>
<p>14. There is no requirement to obtain free, prior, informed consent from project affected peoples. “Broad community support” and “good faith negotiations” are required for Indigenous Peoples but not for other project-affected local peoples.</p>	<p>19</p>	<p>This draft recognizes the principle of free, prior and informed consent as part of Indigenous Peoples safeguards. For environment and IR safeguards, free, prior and informed consultation and informed participation are required.</p>
<p>15. The SPS represents a dramatic weakening of the majority of existing ADB safeguard policies. It replaces the ADB’s detailed mandatory environmental safeguards with one page of mandatory vaguely worded “policy principles.”</p>	<p>53</p>	<p>Environmental safeguards consist of policy principles, policy delivery process, and requirements for borrowers/clients specified in SR1.</p>
<p>16. Environmental standards and implementation requirements (“delivery mechanisms”) have been weakened in all sectors of ADB operations. The current requirement that environmental assessments be carried out for “all project components whether financed by ADB, co-financiers, or the borrower” has been eliminated, as has been the existing requirement for the assessment of “indirect and cumulative impacts.”</p>	<p>53</p>	<p>Potential impacts and risks in the project’s area of influence include direct, indirect, associated and cumulative impacts. See definition of the project’s area of influence in para. 5 of SR1,  On cofinancing, ADB’s requirements will apply for ADB-administrated direct cofinancing. The SPS opens an opportunity for Collaborative Cofinancing and Third-party Financing to adopt a single social and environmental process and unified safeguard approach, consistent with the policy principles of the SPS.</p>
<p>17. There has also been a direct weakening of (i) ADB’s role and responsibilities and borrower obligations, public consultation and participation requirements, (ii) information disclosure requirements, (iii) monitoring, reporting, due diligence, and review requirements, (iv) definition of “external experts” (to avoid conflict of interest problems), “project area of influence,” and (v) requirements pertaining to changes in project scope, “uncertainties in location”, etc. These direct violations of the ADB’s guarantee that the new SPS process will not lead to any weakening of standards renders the current draft unacceptable and unsuitable as a basis for public comment.</p>	<p>53</p>	<p>Both the Consultation Draft and the Second Draft (i) clearly delineated the respective roles and responsibilities of ADB and its borrowers; (ii) require free, prior and informed consultation and participation; (iii) the SPS emphasizes project implementation including monitoring and supervision, by adding the following mandatory requirements: (a) establishment of local grievance mechanisms; (b) engagement of external experts and qualified NGOs to verify project monitoring reports for projects with significant impacts</p>

		and risks; (c) use independent advisory panel for highly complex and sensitive projects; and (d) disclosure of monitoring reports to stakeholders; (iv) these terms are defined and included in the glossary; and (v) This is covered by the OM section.
18. The SPS does not meet international standards with respect to the assessment and monitoring of environmental impacts. It does not (i) adopt a precautionary approach to environmental decision-making in the face uncertainty, (ii) require borrowers to disclose environmental management plans, (iii) ensure that affected communities have the right to be fully informed, including by requiring release of all impact assessments at least 120 days before the decision to finance is made, (iv) require that clients have an EMS in place that is compliant with ISO 14001, EMAS or a similar system, or (v) require sponsors of projects with significant environmental or social impacts to obtain the consent or support of non-indigenous affected people, or enter into negotiated agreements with them.	64	(i) precautionary approach is included (see Principle # 8), (ii) clarified in updated draft, (iii) clarified in updated draft, (iv) see SR4, (v) see revised IP principles and requirements on FPIC.
19. The principles or requirements should explicitly require that projects comply with domestic and international law (in addition to complying with Bank policies).	62	Compliance with national laws is an integral part of the SPS and requirements. See para. 82 of the SPS.
20. Clarify that the loan agreement should include a covenant on the EMP and a requirement on government clearance of the EIS or IEE.	9, 66	(i) included in draft OM section, (ii) to be included in draft OM section.
21. The title “Policy Principles” is not suitable because some statements are procedural.	4	Noted.
22. The SPS should provide a clear description of guidelines for implementation so that ADB, the borrower, executing agencies, implementing agencies, and the stakeholders will have a common understanding of the policy.	7	Guidelines/handbooks will be updated/developed.
23. With respect to third party risk, the SPS should adopt language similar to that contained in the IFC Safeguard Policy, recognizing that some changes may be needed to account for ADB lending to both private and public sector clients. For example, a public sector client may have more leverage over a public sector third party than a private sector client has over either a public or private sector third party.	70	New language on third-party (consistent with IFC’s PSs) introduced in SR1.



<p>24. Principle 5, Attachment A and Annex 1 need to use consistent language on who will be consulted. The SPS should use affected people and local NGOs (and drop the key stakeholder language).</p> <p>The SPS could be strengthened by stating that in-country people or groups that request information (regardless of whether they are affected or local) will receive the same information that is provided to the affected people.</p>	<p>62</p>	<p>'Affected people' and 'concerned NGOs' are used.</p> <p>Noted.</p>
<p>25. Principle 3 states that alternatives to “the project, project design and components” must be considered. Annex 1(F) states alternatives to the “proposed project site, technology, design, and operation” must be considered. These can be interpreted to mean different things.</p>	<p>62</p>	<p>Agreed and clarified in updated draft.</p>
<p><b>Objective, Scope, and Principles</b></p>		
<p><b>Objective</b></p>		
<p>26. 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.</p>	<p>53</p>	<p>Included in updated SR1 (see para. 24 and 27).</p>
<p>27. Does not establish a policy objective of achieving “no net loss of biodiversity.”</p>	<p>64</p>	<p>As above.</p>
<p>28. 'People's health' should be included in the first objective.</p>	<p>8</p>	<p>Included in policy Principle #2 and SR1.</p>
<p>29. The statement needs to be more explicit in requiring environmental considerations to be integrated into planning, project decision making and implementation process (or overall project cycle).</p>	<p>10</p>	<p>This has been addressed by policy principles and SR1.</p>
<p><b>Scope</b></p>		
<p>30. In particular, we propose that the scope of the SPS be expanded to include social impacts. In doing so, environmental assessment requirements would become environmental and social assessment requirements, environmental management plans become environmental and social management plans, and so on. Social assessment procedures (not limited to resettlement and impacts on indigenous peoples) could be either incorporated into environmental assessment or conducted in parallel, and disclosure requirements for such procedures that are the same as for environmental assessment. Recognizing that the ADB may treat some safeguard-related issues (e.g. minimum labor standards) via other official documents, such issues are more appropriately treated like other safeguard issues (in terms of requirements for consultation, disclosure, implementation, monitoring and supervision) in order for the principle of “do no harm” to be fulfilled.</p>	<p>70</p>	<p>Noted. The SPS covers both social and environmental safeguards.</p>

<p>31. The draft SPS fails to adequately address the social impacts of projects. Maintain, at a minimum, the scope of existing safeguard policies. Clarify the scope of each safeguard policy, and include social impacts in environmental safeguards.</p>	<p>66</p>	<p>Further clarified in revised draft. The SPS and SR1 require that environmental assessments cover socio-economic aspects, including health and safety, physical cultural resources, and impacts on livelihood caused by project activities other than land acquisition (see Principle #2 and para. 4 of SR1).</p>
<p><b>Principle 1 / Screening and Scoping</b></p>		
<p>32. 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 proportional to significance of potential impacts/risks. Screening should include associated, induced, and cumulative impacts.</p>	<p>70</p>	<p>This has been addressed.</p>
<p>33. All projects should be screened for potential environmental impacts at the onset of the project cycle. Specify when screening will be conducted; “as early as possible” needs clarity.</p>	<p>3</p>	<p>Clarified in the draft OM section. Screening will be conducted in project identification stage.</p>
<p>34. Screening should integrate national strategies and policies as well as ADB policies.</p>	<p>9</p>	<p>ADB will carry out project classification and screening in consultation with the borrower.</p>
<p><b>Principle 2 / Environmental Assessment</b></p>		
<p>35. It does not require sponsors of projects with significant environmental or social impacts to obtain the consent or support of non-indigenous affected people, or enter into negotiated agreements with them.</p>	<p>64</p>	<p>Free, prior and informed consultation is required for all projects with potential social and environmental impacts. The principle of consent of Indigenous Peoples communities to project activities is recognized in this draft.</p>
<p>36. Explain why “health and safety” are in brackets; and clarify if this refers to public health, public safety, or personal health.</p>	<p>7</p>	<p>Clarified in SR1 (see para. 39-43).</p>
<p>37. Unlike involuntary resettlement safeguards, environmental safeguards do not require looking into past impacts.</p>	<p>11</p>	<p>See SR1 on existing facilities/environmental audit.</p>

<p>38. The draft does not clearly require that social impacts be assessed as part of project due diligence. ...It is ambiguous with respect to when a systematic assessment of social impacts will be required to avoid adverse impacts on affected peoples, and what those social assessments will entail. The draft explains that a key objective of ADB's safeguard policies is to "avoid adverse impacts of a project on the environment and affected people, where feasible." (para. 37)(emphasis added). And it explicitly requires borrowers to assess the potential social impacts on certain populations--indigenous peoples (Attachment C, paras. 14-16) and those who may be involuntarily resettled (Attachment B, para. 12). It is not at all clear, however, when, or whether, social impacts on other populations must be assessed. For example, the environmental classification system set out in the Draft SPS does not specify whether ADB will factor social impacts into project classification. (para. 42). And the draft Environmental Assessment policy is inconsistent with regard to social assessments. While paragraph 4 defines environmental assessments as "an ongoing process of environmental analysis and planning to address environmental impacts associated with a project," paragraph 5 requires that "socio-economic aspects" be considered in an integrated fashion along with environmental impacts.</p>	<p>64</p>	<p>Further clarified in revised draft. The SPS and SR1 require that environmental assessments cover socio-economic aspects, including health and safety, physical cultural resources, and impacts on livelihood caused by project activities other than land acquisition (see Principle #2 and para. 4 of SR1).</p>
<p>39. The Policy should go further though and require reductions in greenhouse gas emissions from projects that will have such emissions.</p>	<p>62</p>	<p>SPS requires that GHGs emissions are minimized. See para. 38 of SR1 for specific requirements.</p>
<p>40. [Principle 2, Sentence 1] In the category of pre-project environmental assessment, dangerous seismic zones should be included into the vulnerable territories because the construction of a project in a seismic zone can lead to potential catastrophic consequences.</p>	<p>69</p>	<p>See new Section 10(b) on community safety in SR1.</p>
<p>41. It is not clear whether the EA would need to consider the cumulative impact of the proposed project and another project in the area that is planned or existing, but not under the control of the borrower. Environment Requirements, para. 6. If two dams are simultaneously proposed by different developers in the same region, the EAs for the dams should consider the impact of the other dam.</p>	<p>62</p>	<p>This has been addressed. See para. 5 of SR1.</p>
<p><b>Principle 3 / Alternatives</b></p>		
<p>42. Examination of alternatives should be (i) consistent with the total cost accounting economic analysis and (ii) detailed enough to allow a side-by-side comparison with the proposed project in terms of benefits, risks, and impacts.</p>	<p>70</p>	<p>Clarified in SR1 (see para. 3 and 7, and section F of Annex 1).</p>

<p>43. The policy states that alternatives to “the project, project design and components” must be considered. The requirements state alternatives to the “proposed project site, technology, design, and operation” must be considered. These can be interpreted to mean different things. For example, if a country wanted to build a dam to produce electricity, it could be argued under the language found in the requirements section that the assessment only needs to consider alternative sites and technology for dams, while the language found in the policy section argues for considering feasible alternatives for producing electricity such as a wind power project.</p>	<p>62</p>	<p>Agreed. Clarified in SR1.</p>
<p>44. The alternative review is limited to “financially and technically feasible alternatives.” This may mean that project proponents only need to consider the least-cost alternative. A more costly project (and thus perhaps not “financially feasible” in the eyes of the project proponent) may have less impact on the environment and thus be worth the extra costs. The wording of the alternatives section may mean that such an alternative would not be considered under the current draft.</p>	<p>62</p>	<p>ADB will review the alternative analysis done by the project proponent to verify that the alternative selected is justifiable addressing environmental impacts. The alternative selected must be technically feasible, economically available and financially sustainable.</p>
<p><b>Principle 4 / Environmental Management Planning</b></p>		
<p>45. Add “Avoid adverse impacts through ex ante modifications in project design, construction and/or operation unless avoidance will render the project unviable.” in the first statement. Where avoidance is not feasible, minimize, mitigate and/or compensate for adverse project impacts through environmental planning and management, and prepare an environmental management plan (EMP) or equivalent instrument that includes the proposed mitigation measures, environmental monitoring and reporting requirements, emergency response procedures, related institutional or organizational arrangements, capacity development and training measures, implementation schedule, cost estimates and performance indicators.</p>	<p>70</p>	<p>Noted. The hierarchy of required measures with a priority on avoidance and the requirement on alternatives analysis are clear.</p>
<p>46. Remove “compensate,” or use the word “off set” because the latter may bring in speculation in monetary terms.</p>	<p>7</p>	<p>Principle # 4 revised and clarified in SR1.</p>
<p>47. Strengthen mitigation by adding a provision on “alternate resource allocation to affected people.”</p>	<p>4</p>	<p>This is not relevant to principle 4 in environmental safeguards.</p>
<p><b>Principle 5 / Consultation and Participation</b></p>		
<p>48. On ENV, Principle 5 and Attachment A apply different standards for establishing a grievance mechanism.</p>	<p>62</p>	<p>The principle is general, while SR1 provides more specific requirements.</p>

<p>49. [Principle 5, Sentence 2] “Involve key stakeholders, including project-affected individuals and local NGOs...” The word “NGOs” should be further qualified as independent and legitimate NGO representatives. Likewise, for purposes of clarity, we deem it necessary for the SPS to give a definition of who constitutes potentially affected people, at the same time, SPS should stipulate a mechanism for information and consultation of APs by referencing the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters6: “The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.” The term “local NGOs” should be deleted as some countries do not have local NGOs and therefore, would not be able to comply with the requirement. The term “local NGOs” disqualifies non-local NGOs from participating</p>	<p>9, 10, 69</p>	<p>‘Local NGOs’ is replaced by ‘concerned NGOs’; ‘Affected people’ is defined in the Glossary of terms.</p> <p>Strengthened disclosure and consultation requirements have been built in to the SPS and SRs. Among 44 DMCs, only 7 signed the Aarhus Convention. The principles of Aarhus Convention have been embedded in the SPS.</p>
<p>50. Sufficient information needs to be provided to enable clearance of projects. Public consultation is needed before finalization of a document.</p>	<p>10</p>	<p>This has been addressed in the SPS and SRs.</p>
<p>51. Consider making affected people part of the project structure so that their voices could easily be brought in, as the results of the consultations do not guarantee that their concerns are answered or considered. Community preparation phase should be done by an independent party. Borrower may also do the consultation but appropriate participatory approaches need to be done.</p>	<p>70</p>	<p>The borrower/client is required to reflect affected peoples concerns received during consultations into project design. For projects with significant impacts, ADB project team is also required to participate in consultation activities and ensure affected people’s concerns are appropriately addressed on project design and safeguard plans. See para. 63 of the SPS.</p>
<p>52. Carry out free, prior and informed consultation with affected people and facilitate their informed participation in the environmental assessment process, starting at the scoping phase of this process. Involve key stakeholders, including project-affected persons and local 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 throughout project implementation as necessary to address environmental assessment-related issues that affect them. Establish a grievance mechanism to receive and facilitate resolution of the affected communities’ concerns and grievances about the project’s environmental performance.</p>	<p>70</p>	<p>Further clarified in updated draft. See policy principles and SR1.</p>
<p>53. People should be able to object on designs in order to draw a line between ‘consultation’ and ‘grievance’</p>	<p>10</p>	<p>Consultation and grievance mechanism are clarified in the SPS and in SR1.</p>

<p>54. [Principle 5, Sentence 4] “Establish a grievance mechanism to receive and facilitate resolution of the affected communities’ concerns and grievances about the project’s environmental performance.” It is unclear how this kind of grievance mechanism will be linked with the ADB’s Accountability Mechanism. How does the Bank exactly propose to operationalize this mechanism in concrete terms? Who will take the lead on this under the proposed CSS approach?</p>	<p>69</p>	<p>The objective of the grievance redress mechanism is to ensure that the borrower/client will address/resolve concerns or complaints of affected people in a timely and responsive manner at project level. The ADB’s Accountability Mechanism will address grievances and complaints that are not fully resolved through grievance mechanisms. We added a section to the SPS that outlines the role and functions of ADB’s Accountability Mechanism.</p>
<p><b>Principle 6 / Information Disclosure</b></p>		
<p>55. Does it ensure that affected communities have the right to be fully informed, including by requiring release of all impact assessments at least 120 days before the decision to finance is made?</p>	<p>64</p>	<p>Free, prior and informed consultation and informed participation are required. For clarity, the 120-day disclosure rule is about ADB web posting of environmental impact assessment to general public.</p>
<p>56. The existing 120 day public comment period has been eliminated. There is no minimum specified period of public comment and policy principles make no detailed requirements for the timing of consultations with project-affected peoples.</p>	<p>19, 69</p>	<p>Clarified in updated draft.</p>
<p>57. Disclose “summary environmental assessment” rather than “draft environmental assessment.”</p>	<p>9</p>	<p>The draft environmental assessment normally includes an executive summary.</p>
<p>58. Disclose draft environmental assessments before appraisal, in a form, manner and language(s) easily accessible to affected communities and other stakeholders.</p>	<p>70</p>	<p>This has been reflected in Principle #6.</p>
<p>59. The following resettlement and monitoring documents for private sector and FI projects that are newly introduced in the draft SPS are not required to be posted on ADB website: Environmental and Social Management System (ESMS); Annual Report; Corrective Action Plan. These documents are highly important for affected people and equivalent to those required to be posted on the ADB website under the existing policy.</p>	<p>66</p>	<p>ADB does not require public disclosure of ESMS for FI projects, which is consistent with the existing Environment Policy and Public Communication Policy. However, ADB requires that ADB’s due diligence assess the adequacy of ESMS and include a description of the ESMS in the project RRP (see the draft OM section).</p>

<p>60. It is good that the Requirements include providing relevant information in a “form, manner and language(s) accessible to the affected people.” Note that the Policy Statement Environmental Safeguard Objectives state that draft EAs (only) must be available to “affected communities” and “key stakeholders.” Disclosing the draft EAs (only) to affected communities and key stakeholders is weak.</p>	<p>62</p>	<p>Clarified in updated draft. “Affected people and other stakeholders” is used in the revised draft.</p>
<p><b>Principle 7 / Implementation and Monitoring</b></p>		
<p>61. Specify that monitoring is an ongoing process, done by third parties on a regular basis for the duration of the project. Monitoring should involve not only ADB, but also technical institutions, civil society, and environment agencies.</p>	<p>7</p>	<p>This has been addressed, as appropriate.</p>
<p>62. Document monitoring results, including development and implementation of corrective actions.</p>	<p>3</p>	<p>This has been included in the wording of Principle # 7.</p>
<p>63. Principle 7 may need to include reference to conflict resolution in the event that not everyone may agree on the project outcomes.</p>	<p>9</p>	<p>Grievances redress mechanism already included in Principle # 5.</p>
<p>64. Participants discussed a number of implementation challenges for environmental projects including problems in getting final approval following conditional approval being granted but where problems occur later on. The group agreed that all local environmental legislation should be complied with and all the projects should be finalized keeping in view local environmental needs and requirements.</p>	<p>10</p>	<p>Noted/agreed.</p>
<p>65. It was proposed to specify third party monitoring or add one more principle in the series. Monitoring is an on going process, done by third parties on a regular basis. In some projects, there is mandate for post completion evaluation.</p>	<p>10</p>	<p>The SPS requires that (i) for project with significant impacts and risks, retain qualified and experienced external experts or qualified NGOs to verify the borrower/client’s monitoring information, and (ii) use of independent advisory panels during project preparation and implementation is required for highly complex and sensitive projects.</p>
<p>66. The draft SPS does not meet international standards with respect to the assessment and monitoring of environmental impacts.</p>	<p>64</p>	<p>Opinion noted.</p>
<p>67. It does not require borrowers to disclose environmental management plans.</p>	<p>64</p>	<p>Further clarified in updated draft.</p>
<p><b>Principle 8 / Natural Habitats</b></p>		
<p>68. The draft SPS does not adopt a precautionary approach to environmental decision-making in the face uncertainty.</p>	<p>64</p>	<p>Included in Principle # 8.</p>
<p>69. Substantive standards outlined in Principle 8 should be strengthened</p>	<p>62</p>	<p>Clarified in updated draft.</p>

70. Use “to prohibit all projects in critical habitats”. This means adding a definition for the term “no go zones”, thus forbidding any project activity (in zones such as protected areas, UNESCO World Heritage sites, seismic territories, etc) except those involving conservation and rehabilitation. No-go zones should include projects that don’t comply with national legislation.	1, 9	Further clarified in updated SR1.
71. Clearly define what is referred to as non-critical habitats, as well as the area of coverage of this.	69	Critical habitats is defined and also included in the glossary of terms.
72. Prohibit any project activity located within critical habitats.	1	Further clarified in updated SR1.
73. Some suggested to allow projects aimed at restoration of ecosystems. Academic institutions should be involved to conduct long-term research.	1	Noted.
74. [Principle 8, Sentence 3] The draft policy recognizes the need to conserve critical habitats and protected areas. However, the third sentence of this principle states: “If the project has the potential to adversely impact non-critical habitats, proceed 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.” The SPS should clearly define what it refers to as non-critical habitats, as well as the area of coverage of this.	69	Critical habitats, natural habitat are defined and included in the glossary.
75. With respect to provisions related to natural habitats, coastal, marine and freshwater habitats should be incorporated where appropriate.	70	Natural habitats include non terrestrial habitats.
76. Projects located in a legally protected area should be geared towards enhancing and promoting the conservation aims of the protected area. Consider adding conversion of existing land uses aside from conversion of natural habitats	3	This has been addressed in Principle # 8 and in SR1.
77. Unlike IFC’s PS 6 the objective of mitigation measures to “achieve no net loss of biodiversity...” is not evident in the SPS.	53	Included in updated SR1. See para. 24 and 27.
78. Unlike IFC PS6, the SPS does not have requirements for the sustainable management of natural and plantation forests and freshwater and marine ecosystems.	53	This has included in Principle # 8 and section 8 of SR1.
79. Does not meet international standards with respect to biodiversity protection and the sustainable management of natural resources.	64	Opinion noted.
80. Does not reference, or commit ADB to adhere to the Convention on Biological Diversity (CBD);	64	The objectives of CBD are reflected in Principle # 8 and Section 8 in SR1.



81. Allows ADB to support projects that would adversely impact protected areas set aside for conservation (as defined by IUCN categories I-IV); wetlands protected under the Ramsar Convention; and World Heritage Sites;	64	Clarified in updated SR1.
82. Allows ADB to support projects that (1) have adverse impacts at the community or population level on species identified on the IUCN Red List of Threatened Species; or (2) threaten migratory species listed under the Convention on the Conservation of Migratory Species of Wild Animals;	64	Clarified in updated SR1.
83. Does not require ADB to refuse to support the production or trade in any living modified organism, except with the approval of the importing country and as otherwise required under the Cartagena Protocol.	64	Noted.
84. Does not require clients to obtain consent from the country of origin for any activity involving access to genetic resources; or to operate under mutually agreed access and benefit sharing agreements with the country of origin.	64	The SPS requires that all national laws and regulations must be met.
85. Allows substantial adverse impacts on “critical natural habitats.” The Draft SPS adopts IFC’s definition of critical natural habitats. (para 18, fn 3). But while IFC’s Performance Standards prohibit project activity that has a “measurable impact” on the ability of such habitat to support targeted species, the Draft SPS only precludes project activity that causes “significant conversion or degradation” to such habitats. (para. 20).	64	This was addressed in the Consultation draft. Further clarified in SR1.
<b>Principle 9 / Pollution Prevention and Abatement</b>		
86. Substantive standards outlined in Principle 9 should be strengthened	62	Further clarified in updated SR1.
87. The first statement may be revised to read, (i) “... consistent with international and national good practice...” (ii) “... consistent with good practice...” (iii) consistent with national standard.	3	This has been addressed in the SPS and SR1.
88. This principle could be where the requirement to comply with the national laws including international obligations is stated. It was recognized that international laws are the responsibility of the governments and the government should implement their own policies and comply with their own international obligations.	10	Clarified in SR1. See para. 4.
89. Change the last statement to “Avoid the use of chemical pesticide where possible,” or delete it entirely.	7	Revised.
90. Delete “financially and” from the sentence: “Ensure opportunities, where financially and technically feasible.	9, 10	The alternative selected must be technically feasible, economically available and financially sustainable.

91. The principle is too general and pertains to macro level. Specific sector policy should be prepared such as for the water sector.	8	Policy principles apply to all projects under all sectors.
92. The principle does not meet international standards with respect to pollution prevention and abatement and the use of hazardous chemicals. Reject the use of hazardous materials subject to international bans or phase-outs.	64, 69	This has been addressed in Principle # 9 and Section #9 in SR1.
93. The principle does not reference or incorporate the provisions of key international agreements regarding the environmentally sound management of chemicals and waste.	64	Reference made to relevant international conventions and standards. See para.35-37 in SR1.
94. The principle does not require project sponsors to incorporate any resource conservation or energy efficiency measures.	64	This has been addressed in Principle # 9 and in SR1.
95. The principle should explicitly state that ADB will not fund any project producing greenhouse gases emission. The principle does not require project sponsors to reduce greenhouse gas emissions. The greenhouse gas emissions provisions of the Draft SPS apply only to projects that are expected to produce significant quantities of greenhouse gases. (para 27), and they only require sponsors of such projects to quantify emissions and evaluate options to reduce or offset them. It treats emissions reductions and offsets as interchangeable options.	64, 69	Noted.  Further clarified in para. 38 of SR1.
96. The principle does not require clients to “avoid” emitting pollutants, and to minimize or control their emissions only when avoidance is not possible.37 (para 26).	64	This has been addressed in Principle # 9. Also see para. 33-34 of SR1.
97. The principle does not require chemical manufacturers to test for environmental and health impacts of the chemicals they produce, or that any chemical used has been tested for environmental and health impacts.	64	The principle requires application of international recognized standards such as the World Bank Group’s Environment, Health, and Safety Guidelines which covers chemical manufactures.
98. The principle does not require that borrowing companies receive the prior informed consent of countries into which they will be importing listed chemicals.	64	The SPS requires that the borrower/client must comply with host country laws, regulations and standards. Also see ADB Prohibited Investment Activities.
99. The principle does not require borrowers to publicly report on their pollutant releases and transfers.	64	Project EMP and monitoring reports will cover this.
100. The principle does not prohibit financing of the manufacture of chemical weapons or inputs for chemical weapons.	64	See ADB Prohibited Investment Activities.
<b>Principle 10 / Physical Cultural Resources</b>		
101. Substantive standards outlined in Principle 10 should be strengthened	62	Noted. See updated SR1.

102. Prohibit removal of physical cultural resources.	1	Further clarified in SR1. See para. 48 of SR1.
103. Recast first sentence into: "Conduct field-based surveys with qualified specialists during environmental assessment and preserve physical cultural resources and avoid their destruction or damage."	3	Revised, as appropriate.
<b>Others</b>		
104. Add a principle stating that ADB will recognize the country systems and adopt a policy of continual alignment.	4	This has been addressed in the SPS. See para. 77 and 78
105. Add a principle that identifies what comes after consultation and before implementation, possibly an articulation of the EIA approval process and publication.	10	Requirements regarding EIA disclosure have been addressed. ADB's review on EIA reports is covered in the draft safeguard review procedure (the draft OM Section).
<b>Requirements for Borrowers/Clients (Environment)</b>		
<b>General</b>		
106. Regarding the Cartagena Protocol on Bio-safety in the presentation, it is better to refer also to the Convention on Biodiversity. Genetically Modified Organisms (GMOs) should be mentioned as well.	1	Many principles of the Convention on Biological Biodiversity have been embedded in SPS policy principle and SR1.
107. The EMP should (i) include rehabilitation and exit measures, such as decommissioning activities; (ii) evolve to remain relevant for the duration of the project up to post-closure; and (iii) be linked to monetary penalties, performance bonds, or financial incentives to ensure its implementation.	3, 7, 9	Decommissioning and post-closure activities such as rehabilitation or restoration have been addressed in SR1 (see para. 41).
108. The SPS can adopt the following definition of "associated facilities" for environmental assessment purposes: "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 a Bank-financed project to function, such as but not limited to access roads, railways, power lines, pipelines, construction camps or permanent housing for project workers, power plants, effluent treatment facilities, warehouses and marine terminals built to handle project goods, mines, oil fields, or other dedicated sources of raw materials necessary for the Bank-financed project to function." When the impacts from such facilities are significant, the provisions of the SPS would be applied to the extent feasible within contractual or legal constraints.	70	Definition of area of influence has been clarified in SR1.
109. Require strategic environmental assessment for (i) policy and program level decision, (ii) for sector finance, or (iii) when the operation involves plans, policies, programs, or regional initiatives.	4, 6, 70	Clarified in SR1&SR4.

<p>110. Substantive standards outlined in paragraphs 18-33 of Attachment A should be strengthened</p>	<p>62</p>	<p>Noted.</p>
<p>111. Include mechanisms for post-project territory rehabilitation. There is insufficient attention given to problems of global warming, desertification and climate change; pay more attention to issues of Water, Fishery, Energy, and Forestry safeguards.</p>	<p>1</p>	<p>These issues have been addressed in the SPS and SR1.</p>
<p>112. It is good that the Policy Statement Environmental Safeguard Policy Principles include specific substantive standards to apply in paragraphs 8-10. The Environmental Requirements add more substantive standards in paragraphs 18-33. All of these standards should be strengthened.</p>	<p>62</p>	<p>Noted.</p>
<p>113. All the requirements for change in scope, for unanticipated environmental impacts, and preparation of Project Completion and Performance Audit Reports are completely dropped, including (i) screening and classification of the change by ADB, (ii) preparation of EIA or IEE according to the category of the change, (iii) disclosure of the SEIA or SIEE on ADB's website, (iv) approval by ADB Board, (v) assessment of the significance of impacts, (vi) evaluation of the options, (vii) estimation of the mitigation costs, (viii) identification of the resources needed to mitigate the damage, (ix) review of project-induced environmental concerns and recommend ways to address them, (x) if unanticipated impacts are identified after a loan is closed, plan and implement remedial measures, with assistance of ADB as required. There is no provision requiring ADB or the client to evaluate the implementation of the EMP and environmental loan covenants, or assessment of the performance of the executing agency.</p>	<p>66</p>	<p>Requirements on <i>change in scope</i> are addressed in draft OM section.</p>
<p><b>Introduction and Rationale (paras. 1-2)</b></p>		
<p>114. Inconsistencies in the projects covered: Section A, para. 2, of the Environment Safeguard Requirements (Environment Requirements) only states that the requirements apply to “ADB-financed projects.” In the following section, the Environmental Requirements state that the requirements apply “to all projects including ADB-funded and/or ADB-administered sovereign and non-sovereign investment projects funded by a loan, and/or a grant, and/or other means (such as equity and/or guarantee).” This inconsistency should be cleared up. This could be done by deleting “to ADB-financed projects” from the end of the first line of section A(2).</p>	<p>62</p>	<p>Thanks and revised.</p>
<p><b>Gen. Requirements: Environmental Assessment (paras. 4-9)</b></p>		
<p>115. Consider developing guidance for low-carbon projects</p>	<p>71</p>	<p>Noted. We will consider including some guidance on this matter in the guidelines.</p>
<p>116. Paras. 7-9 require more details on what the requirements for ‘existing activities’ will be under the ADB policies.</p>	<p>1, 6, 8, 70, 71</p>	<p>Clarified in SR1 and SR4.</p>

<p>117. Revise para 5 to read: “The assessment will also consider ... global impacts, such as on climate change by assessing the GHG emissions.”</p>	<p>71</p>	<p>Clarified, as appropriate.</p>
<p>118. Require the following: (i) reductions in greenhouse gas emissions from projects that will have such emissions, (ii) reference to international conventions and laws (e.g. Espoo Convention) in the assessment of transboundary effects, (iii) inclusion of independent experts and the community in environmental assessments, (iv) assessment to be done by a third party (e.g. a licensed consulting firm) directly hired by ADB to ensure objectivity of the report, (v) assessment of impacts arising from all reasonably foreseeable activities (including non-project activities) that create significant cumulative impacts when project-related impacts are considered, and (vi) collection of sufficient baseline data allowing assessment of the range of social and environmental impacts.</p>	<p>1, 8, 62, 70</p>	<p>Clarified in the updated SPS and SR1 (i) see para. 38 of SR1, (ii) transboundary issue has been addressed in Principle # 2 and in SR1, (iii) see para. 61 of SPS, (iv) noted, (v) see para. 5 of SR1, and (vi) see para. 4 of SR1.</p>
<p>119. It is not clear whether the EA would need to consider the cumulative impact of the proposed project and another project in the area that is planned or existing, but not under the control of the borrower. For example, if two dams are simultaneously proposed by different developers in the same region, the EAs for the dams should consider the impact of the other dam.</p>	<p>1, 6, 8, 70, 71</p>	<p>This has been addressed in SR1 (see para. 5)</p>
<p>120. Requirements to prepare Project Completion and Performance Audit Reports are completely dropped. There is no provision in the draft SPS requiring ADB or client to evaluate the implementation of the EMP and environmental loan covenants, or assessment of the performance of the executing agency. Under the existing policy, ADB is required to prepare project/program completion report and project/program performance audit report.</p>	<p>66</p>	<p>Addressed in draft OM Section.</p>
<p>121. Consideration of climate in environmental assessment is commendable, but the policy should go further than assessing climate change and require reductions in greenhouse gas emissions.</p>	<p>62</p>	<p>Revised. See para. 38 of SR1.</p>
<p>122. The Requirements allow for full-scale environmental impact assessments or briefer reviews, but does not include guidelines for determining which is appropriate. Environment Requirements, para. 7. While not perfect, the World Bank includes some guidelines to determine the breadth of assessment that is required for each proposed project. World Bank, OP 4.01 paras. 7-8 (including footnotes).</p>	<p>62</p>	<p>Further clarified in para. 3 of SR1.</p>
<p>123. The draft Requirements require comparing the environmental impacts and risks with applicable laws and regulations of the jurisdiction in which the project operates that pertain to environmental matters, including those laws implementing host country obligations under international law. While this is a good addition to the Bank’s policies, it does not go far enough. The Policy or Requirements should explicitly require that projects comply with domestic and international law (in addition to complying with Bank policies).</p>	<p>62</p>	<p>This has been addressed (see para. 82 of the SPS, para. 33 of SR1)</p>

124. Requirement to assess “indirect” impacts is omitted.	66	Noted. See definition of area of influence in SR1 (para. 5).
125. The timing to start environmental assessment is made ambiguous, from “as soon as potential projects for ADB financing are identified” to “as early as possible in the project cycle”.	66	Noted. See draft OM section.
126. The assessment of GHG emissions at the project level is important, but the introduction of the concept of “low carbon” into the planning of the project is more important. MOEJ is planning to develop guidance for “low-carbon projects” and I suggest that ADB also consider developing it.	71	Noted. We will consider including some guidance in the guidelines.
127. Para 5 of Attachment A says “The assessment will also consider ... global impacts, such as on climate.” This sentence could be revised as “... such as on climate change by assessing the GHG emissions.” because the original text might be read as if the assessment of direct impacts on climate by the project would be required.	71	Further clarified in SR1. See para. 38.
<b>Gen. Requirements: Info Disclosure &amp; Consultation (paras. 12-14)</b>		
128. Remove the statement, “The consultation process will be undertaken in a culturally appropriate manner.”	1	This has been reflected in the policy principles and SRs.
129. Weakened standards compared to existing policies: Current policy requires borrowers to conduct public consultation at least twice: (i) once during the early stages of EIA field work, and (ii) once when the draft EIA report is available (OM F1/OP para.9.) The draft SPS eliminates requirements on the timing and number of consultations. The procedure and the timing for consultation could be clarified.	66, 71	The SPS emphasizes that the consultation is an on-going process and will be carried out as early as possible in the project cycle. It is less specific but more meaningful. Further guidance will be provided in the guidelines/handbooks.
130. 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.	53	Further clarified in revised SPS.
131. It is good that the Requirements specifically state that the EA reports (draft, final, and updated) and environmental monitoring reports must be made available. Environmental Requirements, para. 14. However, this paragraph states that they must be disclosed to “key stakeholders.” Again, this is too limited.	62	“Key stakeholders” is replaced by “other stakeholders”.

<p>132. It is good that the Requirements include providing relevant information in a “form, manner and language(s) accessible to the affected people.” Environmental Requirements, para. 12. Note that the Policy Statement Environmental Safeguard Objectives state that draft EAs (only) must be available to “affected communities” and “key stakeholders.” Policy Statement Environmental Safeguard Objectives, para. 6. This is weak.</p>	<p>62</p>	<p>As above.</p>
<p>133. Requirement to disclose information on environmental issues “during the early stages of EIA field work” is omitted.</p>	<p>66</p>	<p>Clarified in the draft OM section. Screening will be conducted in project identification stage.</p>
<p>134. On para. 12, clarify if views of local NGOs will also be taken into consideration, who will determine who is affected, and how to interpret "local" NGOs.</p>	<p>62</p>	<p>Views of affected people and other stakeholders including NGOs will be taken into consideration. Social and environmental assessment will identify who will be affected. See para. 16 of SR1 for further clarification.</p>
<p>135. For private sector and FI projects Environmental and Social Management System (ESMS), annual report, and corrective action plans are not required to be posted on ADB website. ADB should maintain the standard of existing policies, at minimum.</p>	<p>66</p>	<p>ADB does not require public disclosure of ESMS for FI projects, which is consistent with the existing Environment Policy and Public Communication Policy. However, ADB requires that ADB’s due diligence assess the adequacy of ESMS and include a description of the ESMS in the project RRP (see draft OM Section).</p>
<p><b>Gen. Requirements: Monitoring &amp; Reporting (paras. 16-17)</b></p>		
<p>136. Monitoring reports (i) should include results of monitoring public and NGO opinion and (ii) should be translated into local languages. Locations accessible to the public” should be specified in accordance with the Aarhus Convention.</p>	<p>1</p>	<p>Noted. Further guidance will be provided in the guidelines/handbooks.</p>
<p>137. Requirement for monitoring should be the same for all projects. Delete “extent of monitoring will be commensurate to the project’s risks and impacts.”</p>	<p>1</p>	<p>The suggested approach would not be efficient and effective, no revisions made.</p>
<p>138. Monitoring reports of projects likely to have significant adverse environmental impacts should be prepared by independent monitoring agencies.</p>	<p>8</p>	<p>SR1 requires that, for project likely to have significant adverse environmental impacts, the borrower will retain qualified and experienced external experts to verify its monitoring information.</p>
<p>139. EIA reports should be entrusted to ADB, not to the borrowers. Some commercial banks have adopted this method.</p>	<p>8</p>	<p>Noted.</p>

<p>140. After construction, progress report is required for projects that are likely to have significant impact during operation on an “annual basis” at minimum only.</p>	<p>66</p>	<p>Project specific requirements will be addressed through EMP.</p>
<p><b>Gen. Requirements: Biodiversity (paras. 18-23)</b></p>		
<p>141. EcoNet areas should be taken into account. Where appropriate, include coastal, marine and freshwater habitats in the principle.</p>	<p>1,70</p>	<p>Clarified in updated SR1.</p>
<p>142. The SPS adopts IFC’s definition of “critical natural habitats” but it tolerates greater adverse impacts on these habitats than IFC’s PS does. The SPS precludes project activity that causes “significant conversion or degradation of critical habitat” while IFC’s PS explicitly abandoned the “significant conversion or degradation” standard in favor of a more protective “measurable impact” standard.</p>	<p>53</p>	<p>Clarified in updated SR1. See Section 8 of SR1.</p>
<p><b>Gen. Requirements: Pollution Prevention &amp; Abatement (paras. 24-29)</b></p>		
<p>143. We propose that Attachment A, para. 28 be strengthened with respect to how the ADB evaluates less carbon intensive alternatives to proposed projects with significant GHG emissions. The text should call for clients to conduct a detailed analysis of alternatives that achieve the same development objective but with different carbon footprints (and presumably costs), using an ADB-approved baseline. If, for example, the client is proposing a coal-fired power plant, the alternatives analysis should include identification of commercially feasible non-coal alternatives (individually or as a package) for some or all of the proposed capacity that have lower aggregate carbon emissions, with an estimate of the incremental costs in levelized cents/kwh. If this analysis indicates that coal is the only feasible or preferred fuel, analysis of generation technology alternatives that lower carbon emissions relative to whatever technology would be used had ADB financing not been available.</p>	<p>70</p>	<p>Clarified in updated draft/SR1. See para. 38 on GHGs emissions.</p>
<p>144. The strictest standards (whether of ADB or of the borrower) should be used in any case.</p>	<p>1</p>	<p>See para. 33 of SR1.</p>
<p>145. Unlike IFC’s PS3, the SPS (i) appears to drop the preference for avoidance of pollutants, although it retains a similar preference for avoidance with respect to the generation of wastes; (ii) has no requirement on resource conservation and energy efficiency, (iii) does not require borrowers 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; (iv) is less clear on the requirement that chemical management should only be used as a last resort, and when pesticides are to be used, which may be used under what circumstances; and (v) does not require clients to reduce GhG emissions.</p>	<p>53</p>	<p>See revised Section 9 in SR1.</p>
<p><b>Gen. Requirements: Physical Cultural Resources (paras. 30-33)</b></p>		



146. Prohibit removal of physical cultural resources.	1	Clarified in SR1. See Section 11 of SR1.
<b>D. Specific Requirements (paras. 34-48)</b>		
147. Clarity is needed on the requirements on corporate investments and what is meant with 'unmitigated non-compliance.'	14	Clarified in SR4. See new section on General Corporate Finance.
148. Program Loans, requirement to incorporate mitigation measures for impacts of policy actions as loan covenants is omitted, requirement to prepare a matrix of potential environmental impacts and mitigation measures is omitted, and "strategic environmental assessment" is not defined. Under the existing policy, the principles followed in preparing the matrix include, screening of potential environmental impact, including indirect impacts, mitigation of impacts to the levels of "no significant harm to third parties," polluter paying for mitigation measures, insurance that the institutional basis for implementing mitigation measures is in place.	66	Clarified in SR4.
149. On sector loans, the following are omitted: (i) disclosure of environmental assessment of subprojects prepared prior to loan approval, (ii) ADB's review and approval of subprojects prepared after loan approval, and (iii) disclosure of environmental assessment in accordance with the 120 days rule for subprojects prepared after loan approval is omitted.	66	See draft safeguard review procedures (draft OM Section).
150. On the wider application of framework approach, ADB's review and approval of subprojects is omitted. There are no provisions in the Policy Delivery Process that requires ADB to conduct review and approval of projects, or disclose relevant documents, after loan approval.	66	Noted. Wider application of framework approach to standard projects is no longer proposed in the second draft.
151. On financial intermediaries, (i) ADB's review and approval of subprojects is omitted, (ii) requirement to disclose environmental assessment in accordance with 120 days rule is omitted for subprojects, and (iii) there are no provisions in the Policy Delivery Process that requires ADB to conduct review and approval of projects, or disclose relevant documents, after loan approval.	66	Clarified in the second draft of the SPS and in SR4.
152. On corporate investments, it is not clear if ESMS will be prepared based on the ADB's safeguards.	66	Clarified in updated SR4. See Section H of SR4.
153. On cofinancing projects, (i) ADB's policies will be replaced by those of financing partner in certain circumstances, and (ii) in some cases, application of ADB's safeguard policy requirements is limited to ADB-financed components only.	66	Noted. Under the circumstance of collaborative cofinancing, ADB may consider to apply safeguard policies of a cofinancier only if ADB has satisfied itself that the policies are at least equivalent to ADB's policy objectives and principles, and that the cofinancier has the capacity to implement its policies.

<b>Annex 1: Outline of EA Report</b>		
<p>154. The EA report should disclose the references, lists of persons responsible for the study and their work contribution, and comments made by the public, NGOs, and other agencies. It is also important to indicate specific dates for environmental and social assessment procedures.</p>	1	See SR1, Annex 1 section G 'Consultation and Information Disclosure'.
<p>155. Integrate sections Annex 1 (E) and (F) to ensure that the assessment enables citizens to easily compare the impacts of the chosen project and the alternatives considered. Clarify if the alternative analysis is intended to cover the chosen project as well as the rejected alternatives. May need to combine sections G and H (iii) on consultation and information disclosure. Section (G) limits participation to "key" stakeholders. Who will decide which stakeholders are key?</p>	62	This has been clarified in SR1 and Annex 1.

<b>Involuntary Resettlement Safeguards</b>		
<b>General Comments</b>		
<b>Comments and Recommendations</b>	<b>Comment No.</b>	<b>ADB Staff Response</b>
1. Preparation for resettlement is critical and should be guided by the “Recommendations of UN Special Rapporteur on Right to Shelter.”	1	Resettlement policy and borrower/client’s requirements and draft OM section have taken into consideration, not only UN recommendations but also World Bank, IFC and EBRD policy frameworks
2. Involuntary resettlement must be avoided or minimized whenever feasible by exploring all viable alternative project designs, including the “no-project” alternative.	64	The SPS is a combination of environment, resettlement and indigenous peoples policies. As an integrated policy, the SPS addresses this issue
3. Compensation must be assessed by independent consultants in cooperation with the local authorities and affected people.	9	This is the approach applied in the SPS
4. ADB’s policy on resettlement is critically important to millions of people across Asia. It is well established that involuntary resettlement leads to impoverishment of affected people unless comprehensive measures are taken to ensure otherwise. The proposed involuntary resettlement provisions of the draft SPS endanger displaced people with much greater risks of life-threatening impoverishment. The ADB, as a public institution with a mandate to promote poverty alleviation, must ensure that its lending activities do not result in ‘involuntary impoverishment’ of the vulnerable populations that its projects displace. It is thus essential that the ADB establish robust safeguard policies that effectively prevent impoverishment.	53	ADB’s proposed SPS is robust enough to address most of the issues listed. It proposes that project benefit sharing as an option to improve income and livelihood losses arising from a development intervention.
5. How will the safeguards address the psychological impact of road building, and what are the processes involved in explaining how the anticipated economic boom will impact on the community? There may be a need to provide social counseling and psychological counseling.	5	Project benefit sharing by APs is one way of addressing this issue. The SPS includes and recommends this approach
6. The existing ADB policy is relatively weak in terms of adequate provisions for ensuring gender-sensitive resettlement plans and practices and safeguarding women’s rights. It is thus shocking that the draft SPS is far worse in this arena than the already-flawed existing policy. The draft SPS makes essentially no mention of “gender” or “women” anywhere in the involuntary resettlement components of the draft, other than to call for gender-disaggregated data, and listing women as a vulnerable group. In reviewing projects ADB Management must ensure that gender concerns are incorporated in the IR safeguard plans.	60, 66	This issue is addressed in the revised SPS

<p>7. Although Principle 3 refers to gender disaggregated social impact assessments, Attachment B merely suggests that the borrower’s social impact assessment include a gender-disaggregated description of the conditions of affected people.</p>	<p>19, 60, 65, 66</p>	<p>Please above (6)</p>
<p>8. The term “assets that cannot be restored” is not defined. It is not clear whether compensation will be provided for the entire asset, including the residual parts, or only for the affected portion. For example, if a part of a wooden house is destroyed as a result of land acquisition, the remaining structure may not be livable or economically viable. But the pieces of wood could be used to build a new house. Such case is common in road rehabilitation projects where houses and shops are built very close to the road. In the draft SPS, it is not clear how such case would be treated for compensation. Under the existing policy, affected people are entitled to compensation and other assistances for the entire house. In addition they can retain their assets.</p>	<p>66</p>	<p>Replacement cost calculations will include this item.</p>
<p>9. The term ‘resettlement’ is misleading and causes confusion among implementers. Where there is no physical resettlement; substitute the word resettlement with an applicable term (land acquisition, compensation, or rehabilitation as necessary). Define all the concepts referred to in resettlement – land acquisition, compensation, rehabilitation and resettlement</p>	<p>7</p>	<p>Involuntary resettlement is defined in SR 2</p>
<p>10. The potential impact of global warming and natural disasters on involuntary resettlement need to be considered in IR plans.</p>	<p>6</p>	<p>This is not an involuntary resettlement issue. See environmental principles and SR1.</p>
<p>11. Explain why the following are in ADB’s current IR policy but are omitted in the SPS.</p> <ul style="list-style-type: none"> <li>▪ Requirement to compensate for community and public resources losses (OM F2/OP, para.15)</li> <li>▪ Definition of cut-off date is omitted, leaving to the interpretation of clients (OM F2/OP, Footnote 5)</li> <li>▪ Requirement to ensure that contract packages are consistent with the resettlement plan (OM/F2)</li> <li>▪ Example of circumstances where claims to land may be recognizable under the national law (OM F2/OP, Footnote 8)</li> <li>▪ Requirement to prepare project-specific definition of the poorest and vulnerable groups (OM/F2).</li> </ul>	<p>66</p>	<p>All these issues are now addressed in the SPS, especially in SR 2.</p>
<p>12. The Draft should clearly explain how to implement the Involuntary Resettlement policy and how to define standard of living.</p>	<p>4</p>	<p>In the preparation of resettlement plans, this is taken into consideration – please see SR 2.</p>
<p>13. State the Principles first then follow up with statements supporting the principles. Identify through what mechanisms the principles will be implemented.</p>	<p>1</p>	<p>As described in the SPS, principles will be delivered through the implementation of SRs and the OM.</p>

<p>14. The following language inconsistencies were noted:</p> <ul style="list-style-type: none"> <li>Objective and para.10 of Attachment NB on alternatives</li> <li>Principle 1 and paras. 10-11 of Attachment B on when to conduct screening</li> <li>Principle 2 and para. 24 of Attachment B on grievance mechanism (local and independent not repeated)</li> <li>Principle 6 and para. 21 of Attachment B on information disclosure</li> <li>Principle 9 and para. 28 of Attachment B on the preparation of completion report (mandatory or discretionary)</li> <li>Paras. 2 and 3 of Attachment B on projects covered by the policy</li> </ul>	<p>62</p>	<p>These issues are addressed in appropriate language in SR 2.</p>
<p><b>Objectives, Scope, and Principles</b></p>		
<p><b>Objectives (General)</b></p>		
<p>15. IFC’s policy prefers avoidance of involuntary resettlement, and treats mitigation as an option only where avoidance is not possible. The SPS must express a similar preference.</p>	<p>53</p>	<p>This issue is adequately addressed in the SPS – objectives, Scope and Policy Principles of IR</p>
<p>16. Aspirational elements must be included to remove the impression that the policy is diluted.</p>	<p>4</p>	<p>Policy is not diluted and it is evident in the text.</p>
<p>17. The impact of involuntarily resettlement on culture and traditions must be minimized.</p>	<p>9</p>	<p>This is addressed in IR Principle # 2.</p>
<p>18. The Objectives should include non-economic factors such as socio-cultural factors. Include “and similar socio cultural factors”, though noted that addressing both socio cultural and economic factors is difficult</p>	<p>10</p>	<p>“Similar socio cultural factors” is too vague. However this is sufficiently addressed in IR Principle # 2.</p>
<p><b>First Objective</b></p>		
<p>19. Involuntary resettlement involves enormous risks of impoverishment and human rights violations, and must be avoided. If it proves to be unfeasible, it must be minimized by assessing projects and design alternatives. The alternative of refraining to carry out the project (the "non-action" alternative) should be seriously considered, particularly if negative impacts on affected people will be severe.</p>	<p>19</p>	<p>See objectives of IR safeguards, see also environmental safeguards Principle # 3. The SPS is an integral document. Therefore, all three sets of principles apply equally to any project.</p>
<p>20. Under the existing policy, priority is placed on avoiding resettlement, and the premise is minimizing resettlement “where population displacement is unavoidable”. Such premise is dropped in the draft SPS. Emphasis on avoiding population displacement is weakened.</p>	<p>19, 66</p>	<p>SPS IR Objectives to emphasize the importance of avoiding involuntary resettlement. No difference between current and SPS in this regard.</p>
<p>21. The current policy to “choose” the alternative that minimizes resettlement is changed in the SPS to an obligation to “assess” alternatives. This weakening is reflected in the relevant requirements provided in the Policy Delivery Process (para.43) and borrower requirements (para.10).</p>	<p>19, 66</p>	<p>Revised. This issue is now addressed in the SPS by changing ‘assessing’ to ‘exploring’. Exploring in the context of the objective means checking all alternatives to choose the best one which would minimize IR impacts.</p>

<b>Second objective</b>		
22. The draft SPS does not require that specific measures be planned and implemented to mitigate risks to the poorest, most vulnerable groups.	64	Specific measures are listed in IR principles # 2, 5 and 7
23. This Objective should require improvement of livelihood of the affected people rather than just enhancement or restoration.	9	'Enhancement' is wider than 'improvement'. It covers both the improvement of current livelihoods and providing better livelihoods.
24. Unforeseen challenges often dilute the effectiveness of resettlement plans in achieving livelihood objectives. If the objective is merely to restore, there is a greater risk of impoverishment than if the objective is enhancement. The livelihoods of affected people should be improved relative to pre-project levels, rather than either enhanced or restored.	70	Please see the above response at # 23.
25. Restoring livelihoods to "pre-project" levels is problematic for long term projects. For example, a project may commence in 2007 but resettlement occurs in 2010. If the rate of compensation is at 2007 levels, resettled communities may not adequately benefit from it. "Pre-project" and "real terms" should be defined.	9	These phrases have clear and distinct meanings. Therefore, definitions not required.
26. Where people are resettled to places without access to infrastructure (e.g., schools), "restore livelihood" should be changed to "restore rights to infrastructure;" and restoration should be based on the real value the of property lost	1	Objective cannot explain the strategy as well. This is addressed in Principle # 4.
27. The SPS should clarify whether "restoration" is the responsibility of the developer and "improvement of people's living standard" is with the government of borrower country, and who will determine the baseline from which improvement is measured.	8	IR Principles and SR 2 clarify this issue.
28. The SPS should indicate whether the vulnerable groups (e.g., minorities, handicapped, landless) are included protected by the policy.	70	The Consultation Draft included vulnerable groups in both the IR principles and SR 2. With regards to IP aspects, this is addressed in the IP Policy principles.
29. Involuntary resettlement must be avoided unless doing so will render the project unviable.	70	Meaning of the comment is not clear enough to provide a response.
30. When complete avoidance is not feasible, the impacts of involuntary resettlement must be minimize through assessing project alternatives and alternative project designs.	70	Please see response # 21

31. Projects must be designed so that affected people can share in project benefits.	70	This is addressed in IR Principle # 3 and SR 2 para 16.
32. The standard of living of all affected people must be enhanced. If that is not possible, it must be restored in real terms, relative to pre-project levels, taking account of livelihood transition and re-establishment costs. The standard of living of the affected poor and other vulnerable groups must be improved.	70	This is the objective of the SPS.
33. The draft SPS requires improvement for poor and vulnerable populations, but renders this requirement meaningless by failing to delineate how such populations will be identified and how improvement will be measured and verified.	60	IR Principle # 2 and SR 2 paras 9 and 10 address this issue
34. Restoration as an acceptable outcome will result in the continued impoverishment of those who are forcibly resettled. The SPS should require across-the-board livelihood improvement. This standard will allow resettlement to be conceived as a development project and will have the added benefit of making the resettlement process more acceptable to local communities.	60	This is the ideal target of SPS; however, the experience shows that this is not always possible. Therefore, SPS specifically suggests in SR 2 the importance of project benefit sharing by APs.
35. Reword the statement to use “restore as well as enhance” because displaced people should be treated as project beneficiaries themselves and should never be placed in a “worse off” situation.	69	Emphasis of the SPS is on ‘enhancement’. All IR principles and SR 2 geared towards achieving this.
36. The SPS emphasizes only on the livelihoods of affected people and neglects their social circumstances. When determining which strategy to use, only the livelihoods of affected people are considered. For example, social losses and impacts are dropped from the policy scope.	66	The IR component of the SPS emphasizes livelihood losses mainly because it deals with land acquisition which is directly linked with livelihood. But the IR principles and SR 2 provides for restoration and improvement of income and better social environment.
37. The locally affected people should be consulted early in project design to determine their preferences on how to achieve improvement in the quality of their lives; they should also be included in the assessment of whether such improvement has occurred as a result of the project. Participatory and transparent baseline studies must be conducted early in the process.	60	Noted. This has been incorporated.
38. A third objective must be added as to ensure that affected people are able to actively participate in and shape the projects that affect them, the associated resettlement activities, and benefit-sharing schemes.	19	Participation and consultation are included as policy Principles # 2 and 10.
39. All projects involving involuntary resettlement must provide sufficient investment resources and opportunities for resettlers to share in project benefits. Ensuring equitable benefit-sharing systems should thus be included as a policy objective, rather than simply as a possibility among the policy principles, as it is currently framed in the draft SPS.	19	This is addressed in policy Principles # 3, 4, 5 and 7.
<b>Scope</b>		
40. The draft IR policy requires monetary compensation based on titles and assets. The update must also safeguard other rights such as tenants’ rights to cultivation and the rights of artisan	5	Tenant and other non-titled APs’ entitlements are addressed in IR Principle #

group that have no assets. Their bases of livelihood are their social networks and settings, which never regenerate after relocation.		7 and in SR 2.
41. The draft SPS does not reference or adequately protect the economic and social rights of affected peoples and involuntarily resettled persons. While it does require that the “income-earning capacity, production levels and standard of living” be improved or at least restored (para 8), and that involuntarily displaced persons are entitled to adequate replacement housing (para 6), the policy should be clear that the full range of recognized economic and social rights will not be adversely affected, and that rehabilitation measures will contribute to their realization.	64	The purpose of IR principles listed soon after ‘Scope’s is to address these key issues.
42. The draft SPS does not require that compensation and rehabilitation measures account for common property resources, cultural property, public facilities or infrastructure.	64	This is now addressed in the SPS and SR2 (see para. 6).
43. 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. Affected people who do not have title to land must be compensated for loss of access to land, or provided with access to replacement land.	64	This is now fully addressed at SR 2 of SPS. The non-titled business owners are not entitled to receive land for the loss land. This is in line with general entitlements of non-titled APs.
44. Not all people affected by IR are covered under SPS because of the narrow the definition of who is considered “displaced.”	64	Displaced covers both physical and economic displacement. This broad definition of displacement covers all APs of a project.
45. Define “displacement” to include physical displacement (e.g., loss of or relocation from land, shelter, and other fixed assets) and economic displacement (e.g., loss of assets or access to assets that leads to loss of income and other sources or means of livelihood).	64	Current elaboration of ‘displacement’ is broader than what is suggested.
46. Socio-cultural displacement is different from physical and economic displacement and should be mentioned. If a community is displaced from its socio-cultural setting to a new one, serious consequences must be acted upon	5	Socio-cultural displacement arises from physical displacement. This is dealt with in IR Policy # 2.
47. We agree with the provisions, consistent with the World Bank approach, requiring that any loss of access to assets or restrictions on land use should be avoided or compensated, and that significant losses should trigger requirements of involuntary resettlement policy even when land acquisition is not involved.	70	Yes. This is the way the IR principles are formulated.
48. Revise the statement to read: The Policy on Involuntary Resettlement covers ... and economic displacements (loss of lands, assets, access to private or common property assets, income sources and means of livelihoods) as a result of ... (iv) other project activities. ...	70	Noted.
49. Moral loss, such as IP links to their territories, should be compensated.	1	Compensation for ‘moral loss’ is too vague to be addressed in SPS.
50. Social displacement needs to be mentioned, measured, and addressed. This happens when the displaced are relocated to areas where their own cultural values are not accepted. It is a consequence of physical or ecological displacement.	4, 8	See above # 46.



51. The policy should cover socio-cultural displacement or emotional connection to land associated with displacement.	69, 10	See above # 46.
52. Clarify if the policy applies to voluntary resettlement and displacements caused by changes in water resources or overcrowding.	4	The IR Policy applies to the outcome of the two processes listed under the 'scope'.
53. Clarify the criteria for applying the IR policy, and whether it also applies to temporary involuntary resettlement, usufruct rights and customary rights (including e.g. rights of fishermen to coastal areas), and community or cultural assets.	1, 3, 4, 5, 6, 8, 10, 70	Yes, it applies to all issues listed.
54. The proposed scope and policy triggers are far from clear. "Involuntary" is not defined. It is not clear if "negotiated settlement" falls within the policy scope. Depending on the interpretation, a wide range of resettlement cases may fall outside the policy scope. The draft SPS allows impacts under certain situations to go unaddressed even if such impacts are within the policy scope. An example is displacement that is caused by a project in which land acquisition is not required and no environmental impacts are identified.	66	'Involuntary resettlement' is now defined in SR 2.
55. 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).	53, 60, 66	Noted. This clarification is now included in SR 2
56. The draft SPS reduces the scope of the resettlement policy by narrowing the definition of who is considered "displaced (social losses and impacts are dropped)."	60	Please see # 46 above.
57. The draft SPS does not cover displacement caused by a change in land use or by a restriction of access only to land that is legally designated parks and protected areas.	66	It does cover these two important aspects of IR.
58. Using the qualifier "involuntary" results in the exclusion of a wide range of resettlement and limits the policy scope only to involuntary acquisition and restriction.	66	Involuntary Resettlement does cover involuntary acquisition, restrictions on access and relocation.
59. Maintain, at minimum, the scope of the existing safeguard policy.	66	What is proposed is wider than the current scope of IR Policy.
60. The scope should include the following during identification of compensation cost: (i) market value of land or land use right; (ii) market value of landed properties, including fruit trees and perennial plants; (iii) cost of inputs, related to land reclamation, its exploitation, including its inflation; (iv) all losses of property owner and land user caused by impoundment of land; and (v) lost profit.	69	These details are elaborated in SR2.
61. The scope should put equal importance to physical displacements and economic displacements as they are not mutually exclusive. Social and cultural displacement should also be factored in.	69	SPS places equal importance on both physical and economic displacement. See # 46 above for cultural displacement.

62. The scope should be clearly inclusive of affected peoples without legal titles.	69	The SPS is inclusive of peoples without legal titles
<b>Triggers</b>		
63. The policy trigger must not depend on the client’s determination that resettlement is involuntary, but rather on a transparent process including, if necessary, an arbitration mechanism.	70	Noted. This decision is based on the determination of both borrower/client and ADB
64. We agree that it is ADB’s responsibility to determine whether adverse impacts on affected people are significant enough to invoke the Resettlement Policy.	70	Noted. Thanks.
65. Revise item (iii) to read involuntary restriction of legal access to legally designated parks and protected areas.”	9	‘Legal’ restrict the scope of access. Broader scope is beneficial to affected persons.
66. Add (iv) loss of assets due to investment/change in land use	1	Noted. This is included in the SR2.
67. Clarity on items (i), (ii), and (iii) is needed. For example, it is not clear if people who will be affected or resettled because of new developments (e.g., new zone) will be included.	1	Noted.
68. To ensure that all the impacts and losses are accounted for, add (iv) change in land use	19, 53, 66	Noted.
69. The SPS is not clear if negotiated settlements in coercive circumstances as defined by IFC trigger the policy.	53	If coercive, APs could resort to normal legal procedure of land acquisition
70. Acquisition of non-land fixed assets is omitted from the policy trigger.	66	IR Principle # 3 covers this category.
<b>Principle 1 / Screening and Scoping</b>		
71. clear definition of ‘assets’ is needed. What one country or community considers assets, others do not. These can include things that are culturally sensitive and are considered community or cultural assets and may not just be financial assets.	6	Precisely for this reason, ‘asset’ is not defined. Project-level decision is more useful.
72. The statement reflects full and meaningful protection of all displaced people. It provides for comprehensive approach to past, present, and future fair compensation.	1	Noted. Thanks
73. Inclusion of past impacts raises concerns. This should be removed as there is a danger of raising expectations, or inviting compensation claims for what happened several years ago. This idea should be considered more as aspirational and not mandatory. The SPS should be prospective or future-oriented rather than retrospective.	4, 6, 7, 10	The objective is not to probe past; but to ascertain whether involuntary resettlement impacts are adequately addressed so that there are no outstanding IR issues.

<p>74. If past impacts will be retained, expectations for due diligence must be clear at the outset. Past impacts must be taken into account to address issues where due compensation was not given because of administration difficulties.</p>	<p>7</p>	<p>This is correct.</p>
<p>75. Gender-disaggregated social impact assessments are applicable to all projects. It should be applied only to gender-sensitive projects.</p>	<p>1, 8</p>	<p>It is difficult to identify gender-sensitive projects without gender disaggregated assessment. This would provide specific information for resettlement planning, compensation and rehabilitation packages.</p>
<p>76. Change the last statement to “gender and age-disaggregated social impact assessments.”</p>	<p>1, 8</p>	<p>Age factor is addressed under vulnerable persons.</p>
<p>77. The political, environment, and social impacts should be evaluated and poverty analysis conducted from the national to the local levels to see how these relate to involuntary resettlement.</p>	<p>8</p>	<p>Surveys and social assessment would cover these issues. Environment and IP policy requirements also cover some of them.</p>
<p>78. We agree that it is ADB’s responsibility to determine whether adverse impacts on affected people are significant enough to invoke the Resettlement Policy.</p>	<p>70</p>	<p>Noted.</p>
<p>79. Clarification is needed on the following whether broad community support recognizes that minority populations among the displaced population require different approaches to meaningful engagement, and who will do the screening.</p>	<p>1, 4, 6, 7, 8, 9, 10, 70</p>	<p>The borrower/client will do the screening. Principle # 2 addresses this issue.</p>
<p>80. This principle contradicts the objectives and the current policy which require that involuntary resettlement be avoided where feasible. This principle does not mention the “no-project alternative.”</p>	<p>69</p>	<p>This principle deals only with screening. The first objective focuses on this issue.</p>
<p><b>Principle 2 / Consultation and Participation</b></p>		
<p>81. Resettlement should be conditioned upon 100% agreement of affected people.</p>	<p>1</p>	<p>This is difficult to achieve. Free, prior, informed consultation provides to arrive at broad community support.</p>
<p>82. The term “Local NGOs” needs to be reviewed because it limits provision of information to only local NGOs.</p>	<p>1</p>	<p>“Local” has been revised to “concerned.”</p>
<p>83. Add the text: “Evaluate alternatives in project design, location and operation that would enable resettlement or economic displacement to be avoided. If avoidance is not feasible, carry out free, prior, informed consultations with all affected people.”</p>	<p>70</p>	<p>See response to comment #80. Principle # 2 has addressed part two.</p>
<p>84. The borrower must be required to fully inform and consult with affected people during planning, implementation and monitoring of resettlement activities.</p>	<p>64</p>	<p>This is addressed in Principle # 2</p>

<p>85. Both local and national government agencies need to be recognized and involved in the process, particularly with respect to private sector loans.</p>	<p>10</p>	<p>Noted. This is the SPS approach</p>
<p>86. Do not implement a project that causes massive resettlement (i.e., of more than 200 people).</p>	<p>1, 3, 4, 6, 9, 10, 70</p>	<p>Development interventions sometimes require significant resettlement although the IR policy objectives emphasize the need to avoid involuntary resettlement, whereas feasible.</p>
<p>87. The word “all” should be defined. For example, sometimes just the head of a household attends the consultation process but his views/decision may not reflect those of other family members.</p>	<p>1, 3, 4, 6, 9, 10, 70</p>	<p>Gender-disaggregated consultation should take care of this issue. Please see SR 2</p>
<p>88. Explain (i) “To pay particular attention to the needs of the vulnerable groups,”(ii) “especially those below the poverty line...,” and (iii) “social preparation phase”</p>	<p>1, 3, 4, 6, 9, 10, 70</p>	<p>Vulnerable groups are defined in the glossary; so is the social preparation phase. Poverty line changes from country to country; hence, the definition is country-specific.</p>
<p>89. The substitution of consultation for consent renders the concept of FPIC meaningless. “Free prior informed consultation” is in no way equal to the concept of free prior informed consent. The SPS falls short of standards upheld by the ADB’s peer institutions. It fails to encourage reaching agreements through negotiated settlements. It does not determine in which cases ADB or the implementing agency is required to set up a negotiated process.</p>	<p>51</p>	<p>Neither the Consultation Draft nor the Second Draft equates free prior and informed consent with free prior and informed consultation. Instead, the terminology is free prior and informed consultation leading to broad community support. Negotiated settlement is encouraged. Please see SR 2.</p>
<p>90. The OED Study on Involuntary Resettlement found “relatively weak performance on public consultations and disclosure” (p. 24) and also concluded that “[n]o clear guidance is given about the level of public consultation required” (p.11). ... To overcome these weaknesses and to uphold relevant international law, the SPS must require that the free prior informed consent of affected communities is obtained for any projects causing displacement. Their consent for fair and just compensation is also needed.</p>	<p>60</p>	<p>Please see above # 89. Broad community support is a practical approach. In case of IP there are a few instances where FPIC will be used.</p>
<p>91. Democratize decision-making. Resettlement will not be effective if both the resettled people and host community are not properly involved in the analysis of alternatives, project design, implementation, and monitoring. Host communities and local NGOs (not just affected people) should also be informed of their rights and options, participate in planning and implementation of resettlement plans, and monitor and evaluate such plans.</p>	<p>60</p>	<p>This issue is sufficiently addressed in IR Principle # 2.</p>
<p>92. Explicitly state that it is an obligation of both ADB and the borrower to conduct dialogue with affected people and local NGOs during the entire project implementation.</p>	<p>69</p>	<p>It is the responsibility of the borrower/client to consult APs and NGOs.</p>

93. Physically-challenged individuals and people-with-disabilities are omitted from the definition of vulnerable groups. There should be tacit mention of special assistance to this people.	69	Included in meaning of vulnerable groups, as the examples given in the SPS are not exhaustive.
94. Why was the objective of social preparation phase and the focus on vulnerable groups deleted (OM/F2)?	66	Both are in IR Principle # 2
<b>Principle 3 / Entitlements</b>		
95. Compensation schemes must have the consent of affected people.	1	Replacement cost and land-based resettlement strategy have a consultation component.
96. The draft SPS does not give adequate preference to land-based resettlement strategies for displaced persons whose livelihoods are land-based.	64	IR Principle # 3 covers this aspect sufficiently.
97. The SPS must recognize the economic and social rights of involuntarily resettled persons—including their rights to adequate housing, water, and food; ensure these are not adversely affected; and ensure the project contributes to the realization of those rights.	64	IR Principle # 3 & 4 cover this aspect.
98. Ensure that affected people are compensated for all lost assets with cash or replacement assets.	64	IR Principle # 3 & 4 cover this aspect.
99. Most measures to ensure that the housing rights of displaced persons are protected have been severely weakened and some have been altogether eliminated	58	Refer to IR Principle # 4
100. IFC 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.” The SPS has no analogous provision. The policy must require that specific measures be planned and implemented to mitigate risks to the poorest and most vulnerable groups. Further, compensation and other relocation assistance be provided prior to displacement	53, 64	IR Principle # 2, 5 and 7 address these issues
101. The draft SPS does not require that specific measures be planned and implemented to mitigate risks to the poorest, most vulnerable groups.	64	Refer to IR Principle # 2 and 7
102. Cultural loss and moral loss should be compensated when indigenous peoples are resettled.	1	This issue is addressed in IP section of the SPS
103. Monetary compensation is not appropriate for the cultural value of land.	6	It is one option among many
104. The term “appropriate compensation” could replace “replacement value of land.” Recognizing that different areas of land will have very different values. For example, if airport land was the land to be replaced, then airport land could be considered quite valuable however, without the airport the value of that land is greatly diminished.	1, 4, 6, 70	The Principle # 3 covers this adequately

105. Specify that restoration or compensation for loss should be based on the real or replacement value of lost property, whether private or public land.	1	This issue is further elaborated in SR 2
106. Land-based resettlement is very difficult to implement. There are opposing views if a caveat (where possible or preferably) should be added or not.	10	This is incorporated.
107. Land-based resettlement is a significant challenge for large-scale projects, such as those in Pakistan. Compensation requirements often cost more than the project.	5	The option of land-based resettlement or cash compensation at replacement cost is available.
108. Skills development and capacity building programs should be made part of livelihood restoration and rehabilitation. Involvement of affected people in the project can teach them construction skills, for example. Without this, or with only equal standard of housing given to affected people, poverty is just moved to another place.	5	This vital issue is sufficiently addressed in Principle # 5.
109. ADB should consider the provision of new sustainable livelihood where restoration of the same livelihood is not feasible. For this, “other approaches or options as appropriate” should be added as a fifth item on the restoration of livelihood.	8, 9	This is addressed in Principle # 5
110. Provision of “credit facilities” without livelihood support has created problems on repayment	9, 70	The whole Principle # 3 provides this assurance.
111. Include “access to adequate housing” for affected people in rural areas.	4	With the replacement as compensation, APs could construct housing; but in urban areas, it is difficult.
112. Include a requirement that resettlement plans must ensure gender equity in livelihood enhancement and other remedial activities.	70	This is sufficiently addressed in SR 2.
113. Compensation for environmental damage should be used to restore the area.	7	This is addressed under environmental safeguards.
114. Requiring national minimum standards of living may be an issue in the PRC because national and local standards of living vary.	8	In such situations, local standards apply.
115. Implementation guidelines are needed for the provision of affordable housing.	8	In IR Guidelines, these will be provided
116. The term “compensation” pertains only to monetary compensation based on titles and assets. But tenants’ rights to cultivation are not recognized. Similar to this is the case of artisan groups that do not have assets. Social networks and socio-cultural settings are their basis of livelihood. In new locations these never regenerate. The SPS must consider this aspect.	1, 4, 5, 6, 7, 8, 9, 10, 70	This vital issue is covered by Principle # 7.

<p>117. As a fundamental component of international best practice for resettlement programs, benefit sharing must be a central pillar of any resettlement policy. Resettlement specialist Michael Cernea, among other experts, argues that resettlement policy and practice must move away from a focus on compensation and toward an emphasis on benefit-sharing, in order to prevent impoverishment and contribute to meaningful development impact.</p>	<p>60</p>	<p>This is included in Principle # 3 and in SR 2.</p>
<p>118. Improve or at least restore livelihoods of all affected households through –</p> <ul style="list-style-type: none"> <li>• land-based resettlement strategies when livelihoods are land-based, and cash compensation at replacement value for land when the loss of land does not undermine livelihoods;</li> <li>• prompt replacement of assets and access to assets of equal or higher value;</li> <li>• prompt compensation at full replacement cost for assets that can not be restored, and</li> <li>• (d) additional revenues and services through benefit sharing schemes.</li> </ul>	<p>70</p>	<p>These issues have been addressed in the SPS and SR2.</p>
<p>119. Those affected by physical displacements should also receive:</p> <ul style="list-style-type: none"> <li>• assistance to relocate,</li> <li>• secure tenure,</li> <li>• better housing at resettlement sites with comparable access to employment and production opportunities,</li> <li>• civic infrastructure and community services,</li> <li>• transitional support, and</li> <li>• (f) development assistance, such as land development, credit facilities, training or employment opportunities.</li> </ul>	<p>1, 4, 5, 6, 7, 8, 9, 10, 70</p>	<p>As above.</p>
<p>120. Integrate resettlers economically and socially into their host communities; extend project benefits to host communities.</p>	<p>70</p>	<p>IR Principle # 4 and SR 2 address this issue</p>
<p>121. Improve the standards of living of vulnerable groups affected by the project to comply at least with national minimum standards.</p>	<p>69, 70</p>	<p>Refer to IR Principle # 5</p>
<p>122. Provide those in rural areas with legal and affordable access to land and resources, and those in urban areas with legal and affordable access to adequate housing.</p>	<p>1, 4, 5, 6, 7, 8, 9, 10, 70</p>	<p>These issues have been addressed in the SPS and SR2.</p>
<p>123. Give preference for adopting negotiated settlements involving economic or physical displacements. In such cases, procedures will be developed in a transparent, consistent and equitable manner to offer the affected people compensations and livelihood restorations, which meet the objectives of this policy principle.</p>	<p>1, 4, 5, 6, 7, 8, 9, 10, 70</p>	<p>IR Principle # 6 and SR 2 address this issue.</p>
<p>124. Will ADB policies apply where people are displaced for water resource reasons or because areas are overcrowded?</p>	<p>1, 4, 5, 6, 7, 8, 9, 10, 70</p>	<p>Noted.</p>

<p>125. It is important to create satisfying conditions for people to be resettled. Loss should be compensated on the basis of current price. It was suggested to consider “replacement value” instead of “market price” which is vulnerable to prevailing market change. A Project Contractor must be guided clearly that compensation must be replacement value. Replacement might mean “depreciated”.</p>	<p>1</p>	<p>These issues are sufficiently addressed in IR Principle # 3 and in SR 2</p>
<p>126. Access to legal assistance should be free of charge and should be provided to people being resettled, for them to exert their right to compensation</p>	<p>1</p>	<p>Right to compensation is clearly stated in entitlement matrix of each RP. Legal assistance is not required to get compensation.</p>
<p>127. There was a request by some to explain how ADB proposes to reconcile the current practice of compensation based on prevailing market rates and the requirement on using replacement value. The guidelines should define how the “replacement value of land” will be determined</p>	<p>4</p>	<p>This is addressed in SR 2.</p>
<p>128. Clarify if the term “legal and affordable access to land” includes “titling.”</p>	<p>1, 4, 5, 6, 7, 8, 9, 10, 70</p>	<p>Yes, it does.</p>
<p>129. Revise the statement to read: “Give preference for adopting negotiated settlements involving economic or physical displacements. In such cases, procedures will be developed in a transparent, consistent and equitable manner to offer the affected people compensations and livelihood restorations, which meet the objectives of this policy principle.</p>	<p>1, 4, 5, 6, 7, 8, 9, 10, 70</p>	<p>This is now Principle # 6. Further elaboration is in SR 2.</p>
<p>130. The SPS weakens the requirements and specific provisions relating to compensation, rehabilitation, replacement of land and lost assets, and other entitlements owed to affected people because</p> <ul style="list-style-type: none"> <li>• it eliminates the detailed and explicit requirements for restoring access to common property resources such as forests and grazing lands, public facilities and cultural sites...</li> <li>• it fails to state or adequately emphasize that compensation alone is not enough to improve, or even restore, livelihoods after displacement...</li> <li>• it removes key requirements for benefit-sharing mechanisms that were included in the July 2007 version of the SPS.</li> </ul>	<p>60</p>	<p>Each of these important issues are addressed in SR 2</p>
<p>131. Sentence 1 of Principle 3 should include a clear discussion on agriculture lands that will be used and eventually degraded for infrastructure projects. These lands should be compensated according to the prevailing market value.</p>	<p>69</p>	<p>This is addressed in Principle # 3.</p>
<p>132. On Item D “where feasible” should be dropped as this weakens the protection that should be accorded to displaced communities, and gives opportunity for the project implementers to circumvent the provision.</p>	<p>69</p>	<p>This issue is clearly stated in SR 2. As a principle it may not be feasible to apply to all projects</p>



<p>133. It is necessary to include provisions showing that damages inflicted on affected people should be estimated in accordance with the market prices existing at the time of compensation.</p>	<p>69</p>	<p>This is the basis of compensation stated at IR Principle # 3. It is further elaborated in SR 2</p>
<p>134. This should be added to Principle 3, “As for physical displacement, owners should be resettled in areas with better social infrastructure; the same should receive compensation for land properties based on their ability to purchase properties that are equal in value. Affected people should be given their rightful choice to avail of either resettlement or pecuniary compensation.”</p>	<p>69</p>	<p>IR Principle # 3 &amp; 4 provide for this option.</p>
<p>135. Sentence 3 of Principle 3 should be qualified to read “Improve the standards of living of vulnerable groups . . . in terms of housing, livelihoods, and social inclusion.”</p>	<p>69</p>	<p>This is already addressed in IR Principle # 2</p>
<p>136. The SPS should require the borrower to use independent adjuster’s (valuer) services by conducting tenders. The final decision on compensation-related issues should be done with the full participation of independent NGOs, ADB representatives, municipal representatives, and affected people.</p>	<p>69</p>	<p>All except ADB will be party to the calculation of replacement cost. ADB will review the manner in which the final calculation has been arrived.</p>
<p>137. Principle 3 does not consider social circumstances (e.g., social support system) or opinions of affected people. It provides that the mode of livelihood is the only factor determining resettlement strategies (land-based or compensation). On the other hand, the existing policy states that “Nonland-based options may be used where land is not the preferred option of the affected people; or where land of similar quality and quantity is not available” (OM F2/BP, footnote 5).</p>	<p>69</p>	<p>This important issue is now addressed in IR Principle # 3</p>
<p>138. The quality of land is based not only on livelihoods opportunity or economic circumstances but also on social circumstance.</p>	<p>66</p>	<p>Agreed.</p>
<p>139. There is no clear definition of “negotiated settlement”, a concept newly introduced in the draft SPS. It can be read that land is acquired through either “expropriation or negotiated settlements” (Annex 1, Outline of Resettlement Plan, (vii)). If negotiated settlement is interpreted as “voluntary” resettlement, it would be excluded from the policy scope. It should be noted that, even if the policy covers negotiated settlement, different procedures need to be developed and applied for negotiated settlements.</p>	<p>66</p>	<p>APs have the option to go back to normal procedure of land acquisition if negotiated settlement fails. In the SR2 negotiated settlement and the process is explained</p>
<p>140. Principle 3 states that the “objectives” of this principle would be applied but there is no “objectives” provided in the principle.</p>	<p>60, 66</p>	<p>IR Principle # 3 is now revised.</p>
<p><b>Principle 4 / Absence of Formal Legal Title to Land</b></p>		
<p>141. The policy does not talk about land title.</p>	<p>6</p>	<p>This is now included IR Principle # 7, reference is made to land title</p>
<p>142. Compensation and rehabilitation must be required even in the absence of a formal title.</p>	<p>64</p>	<p>Yes, this is provided in Principle # 7</p>

<p>143. The key conflict mentioned was in regard to compensation to non-titled land holders (“encroachers”)</p>	<p>10</p>	<p>Encroachers are also included within ‘non-titled’. There is no conflict in this regard</p>
<p>144. Make the statement positive by specifying the provisions for affected people without titles. There should be different levels and mechanisms of compensation for legal title holders and non-title holders.</p>	<p>1, 3, 4, 6, 7, 8, 9, 10</p>	<p>The revised IR Principle # 7 addresses this issue.</p>
<p>145. Remove the requirement of compensation to those without legal title, or rephrase it to prevent squatters from deliberately moving into project areas to take advantage of compensation. These people should not be consulted or compensated. At a minimum, timeframes on habitation of the area should be specified.</p>	<p>1, 3, 4, 6, 7, 8, 9, 10</p>	<p>Those squatters deliberately moving into project area will be excluded from resettlement/compensation package by applying the cut-of-date. This is discussed in SR 2.</p>
<p>146. This principle encourages illegal access or encroachment to land.</p>	<p>10</p>	<p>Please see the above (145)</p>
<p>147. There is an issue with this principle when a country’s law does not allow compensation to those without legal title to land.</p>	<p>1, 3, 4, 6, 7, 8, 9, 10</p>	<p>This is true. This is a key principle to avoid further impoverishment of APs.</p>
<p>148. Specify (i) which situations are not barred from compensation, (ii) the eligibility criteria for compensation, (iii) the terms and timeline for compensation, and (iv) if compensation covers not only replacement of land but also replacement of other properties.</p>	<p>1, 3, 4, 6, 7, 8, 9, 10</p>	<p>The revised Principle # 7 addresses these issues.</p>
<p>149. The principle should read “The absence of formal legal title to land by an affected person is not a bar to compensation by the borrower or to ADB providing support”.</p>	<p>9</p>	<p>Good suggestion. But the revised Principle # 7 covers these issues.</p>
<p>150. Under the existing policy, ADB policy entitlements include compensation, other forms of assistance, and rehabilitation. Absence of formal legal title to land by an affected person is not a bar to “compensation”, narrowed from “ADB policy entitlements”.</p>	<p>66</p>	<p>This issue is addressed in the revised Principle # 7.</p>
<p>151. The draft SPS currently discriminates against affected people without legally recognizable title to land. While it affords such groups a number of important entitlements, it fails to require that such people are compensated for loss of land, or provided with replacement land. This principle narrows down the entitlements (compensation, other forms of assistance, and rehabilitation) required by the existing policy to compensation only.</p>	<p>19, 60, 66</p>	<p>The SPS recognizes non-titled peoples rights and entitlements. Those without title but with recognizable rights will get compensation for land lost; but those APs without legal title or recognizable rights to land are eligible for resettlement assistance, and compensation for loss of non-land assets.</p>
<p>152. All entitlements and benefits should be applied equally to all affected people, regardless of whether or not they have legal/ legalizable title to land. A policy that discriminates against non-titled APs will compromise the true sustainability of the project and lead to unnecessary and increased impoverishment and strife among affected people.</p>	<p>19, 60, 66</p>	<p>As above (151)</p>

<p>153. In accordance with international best practice on the protection of vulnerable groups and the human rights principles of equality and non-discrimination, the ADB should reaffirm its commitment to ensuring that affected people without legal or legalizable title to land living in the project-affected area are guaranteed equal entitlements in compensation and rehabilitation measures.</p>	<p>19, 60, 66</p>	<p>See above (151). They do get equal rehabilitation assistance and compensation for structures and crops on such lands.</p>
<p><b>Principle 5 / Legally Designated Parks and Designated Areas</b></p>		
<p>154. Clarify why this type of resettlement should be addressed differently. The principle implies that the potential economic and social impacts of other types of resettlement do not need to be addressed.</p>	<p>62</p>	<p>This was not the intent of the Consultation Draft. Language has been changed.</p>
<p><b>Principle 6 / Information Disclosure</b></p>		
<p>155. While the principle is appropriate, its implementation is time consuming and costly.</p>	<p>9</p>	<p>Noted , Principle # 10. has been revised to address APs' right to know and be informed</p>
<p>156. Draft plans are long detailed documents and the disclosure requirements specified in this principle are onerous. They suggested that the requirement should be the disclosure of summary documents only.</p>	<p>9</p>	<p>Yes, resettlement information will be disclosed to APs by booklets, pamphlets etc.</p>
<p>157. It is important to disclose all draft and final documents.</p>	<p>9</p>	<p>Yes, these requirements are included in the principle</p>
<p>158. Resettlement plans should be disclosed to the affected community after the appraisal phase as there could be technical and design changes that may have different impact subsequently.</p>	<p>4</p>	<p>After the detailed designs, RP will be revised and again disclosed to all APs and other stakeholders</p>
<p>159. There is no clarity in the document regarding the timing of disclosure for draft and final resettlement plans.</p>	<p>10</p>	<p>This is explained in the SPS text.</p>
<p>160. Providing all information in local languages is a challenge. The provision is acceptable if appropriate 'form and manner' implies that alternatives to full translation of all documents into local languages is possible.</p>	<p>10</p>	<p>Although challenging, it is a requirement of the SPS that resettlement information will be disclosed in local languages.</p>
<p>161. Disclose draft resettlement plans, and documentation of the consultation process, before appraisal at the local level. Disclose in a form, manner, and language(s) accessible to affected people and other key stakeholders. The final resettlement plans and their updates will also be disclosed to the affected people and the public prior to any displacement or resettlement activities occurring.</p>	<p>70</p>	<p>Yes, This is the process of disclosure.</p>
<p>162. The SPS should require all resettlement plans to carry the tacit consent and full agreement of affected people.</p>	<p>69</p>	<p>RPs are based on free, prior, informed consultation with APs and on inputs from APs. Thus there is a tacit consent of APs to RPs.</p>

<b>Principle 7 / Resettlement Planning</b>		
163. The draft SPS does not require that displaced persons share in project benefits. It must require that all involuntarily resettled people share in the benefits of the project, that their social and economic well-being be improved; and that a benefit-sharing mechanism be established. Where a project is intended to have public benefits, displaced persons should have priority in enjoying those benefits. Principle 7 does mandate that “involuntary resettlement should be conceived as part of a development project or program.” While this may arguably be read to imply that involuntary resettled people should share in project benefits, the policy never explains what this actually requires.	64	Now IR Principle # 8. This important issue is outlined in Principle # 3 and elaborated in SR 2.
164. ADB financing should include allocations for resettlement cost. The SPS needs to clarify that borrowers must include in project costs the full cost of all resettlement activities, including indirect costs such as those associated with the transition to and re-establishment of livelihoods.	70	Yes, they are. Please see SR 2.
165. The timeframe for implementation of resettlement plans should be agreed with the borrower, the affected people, and ADB.	8	Yes, they are. Please see SR 2
166. Improvement of living standards should not depend primarily on monetary compensation (although such compensation may be needed until alternative livelihoods programs are fully established).	70	Entitlement matrix of any RP will have different types of compensation packages
167. A lack of consent from ‘squatters’ should not prevent the project.	6	Consent of squatters is not a key requirement.
168. Consider organizing legal assistance for resettled people to complement establishing local independent grievance mechanisms.	1	Grievance mechanisms would not supersede appeal to courts.
169. Remove the word “benefits” as this is difficult to value and just retain the word “costs.”	8	The revised IR # does not refer to benefits
170. Revise the statement to read: “Involuntary resettlement should be conceived and executed as part of a development project or program in consultation with affected people to reflect their aspirations towards development.”	1	This idea is imbedded in the SPS.
171. Ensure that the policy is general enough to be applied to various contexts. For example, the term “livelihood restoration” may be conceptually different for ADB and for the government.	7	Yes, but there should be match between what is proposed by a government and what is expected by ADB
172. Clarify what is meant with “full costs of resettlement.”		Resettlement includes compensation and relocation and rehabilitation. Please see SR 2
<b>Principle 8 / Implementation of Resettlement Plans</b>		
173. Specify or clarify the entitlements that are included.	1	Revised, now Principle # 12.

174. The principle says, "Implement all resettlement plans under close supervision." It should clarify who will supervise implementation i.e., whether ADB or Government, and it should clarify the NGOs' monitoring role.	1	This is explained in SR 2.
175. Some proposed to restate the first statement to: "Pay compensation and initiate provision of entitlements as well while doing so."	4	Meaning obscure, unable to provide a response.
176. The policy should only address legitimate land claims. If settlers are illegally on the land they should not be compensated for the land.	6	Cut-off-date will decide the entitlements of APs.
177. The ADB should consider if this principle, in combination with principle 4, encourages squatting i.e. if people can gain access to compensation this way	6	Please see above (176)
178. There will be difficulties implementation the principle of paying compensation and entitlements before physical and economic displacement.	8	Yes, but that ensures APs could at least maintain their pre-project level living standards.
179. Which projects will be subject monitoring and evaluation by external resettlement experts?	8	All resettlement plans and their implementation.
180. Some suggested having a preliminary resettlement plan that is flexible and will allow different agreements according to the local conditions. In addition, planning and the final evaluation should be synchronized.	8	Out of scope of SPS
181. Payment under long term large projects may be problematic. Specifying a phased approach for these cases to improve application of the principle.	10	This is addressed in SR 2.
182. The group noted that payment before displacement rarely happens in practice.	10	This is a policy implementation issue.
<b>Principle 9 / Project Completion &amp; Monitoring</b>		
183. The borrower must be required to fully inform and consult with affected people during planning, implementation and monitoring of resettlement activities.	64	This has been addressed by policy principles and SR2.
184. Require that monitoring and completion of the project be done by an independent and credible organization with the effective involvement of civil society.	10	The SPS requires (i) engagement of external experts or qualified NGOs to verify project monitoring reports for projects with significant impacts and risks; and (iii) use independent advisory panel for highly complex and sensitive projects.
185. Independent evaluation of compensation should be made.	1	As above.

186. Some shared their apprehension about how to address impacts after the project has already closed. Others discussed that problems may arise in the middle of project implementation especially in IR cases. This implies that it is not sufficient to just provide compensation, other support or assistance may be required.	7	Monitoring extends beyond project completion. For a specific period ADB supports the EA to complete resettlement program.
187. All grievances need to be addressed prior to project closure.	1	Yes, that is correct. If failed, still ADB provides support to EA to fulfill this.
188. Add “host community after” affected people.	4	Revised. ‘Affected persons’ is defined in the glossary.
189. This is more of a project implementation procedure than a principle.	1	But important one – therefore elevated to the level of a principle
190. Regarding completion reports that assess outcomes of resettlement: in order to come up with a non-biased result, preparation of the report should be participative. Representatives from the local communities should be allowed to participate in the preparation and finalization of the report to ensure robust outcomes and authentic results. Submission and disclosure of said reports should be made mandatory to attest that the results of the report are conclusive and reliable.	69	Project completion Report is mandatory. It will analyze against baseline data the output of resettlement program.
191. This should be reworded as: No project completion report should be released until all outstanding livelihood and economic restoration cases have been completed and resolved. Project closure should be predicated by satisfactory restoration and the enhancement of the socio-economic aspects of the affected peoples’ lives.	69	PCR is not the end of a project. If any outstanding resettlement issues are identified in the PCR, they will be addressed by the EA. ADB will assist in this regard within a timeframe.
<b>Requirements for Borrowers/Client (Involuntary Resettlement)</b>		
<b>General</b>		
192. Compensation and other relocation assistance must be provided prior to displacement.	10, 53, 64	This is incorporated.
193. The draft SPS does not require that displaced persons share in project benefits. It must require that all involuntarily resettled people share in the benefits of the project, that their social and economic well-being be improved; and that a benefit-sharing mechanism be established. Where a project is intended to have public benefits, displaced persons should have priority in enjoying those benefits. Principle 7 does mandate that “involuntary resettlement should be conceived as part of a development project or program.” While this may arguably be read to imply that involuntary resettled people should share in project benefits, the policy never explains what this actually requires.	64	This is incorporated in SR 2.

<p>194. IR Principle 3 expresses a preference for land-based resettlement strategies when livelihoods are land-based. This preference must be reflected in Attachment B, which currently gives borrowers the option to provide either land-based or cash compensation.</p>	<p>64</p>	<p>This is addressed in SR 2</p>
<p>195. 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. Affected people who do not have title to land must be compensated for loss of access to land, or provided with access to replacement land.</p>	<p>64</p>	<p>This is addressed in SR 2</p>
<p>196. The risk of speculation on land values and relocation compensation needs to be addressed.</p>	<p>8</p>	<p>The cut-off-date and census will take of the risk of speculation on land. Moreover detailed evaluation of land and other property values to calculate replacement cost provides this safeguard.</p>
<p>197. The draft SPS does not require that specific measures be planned and implemented to mitigate risks to the poorest, most vulnerable groups.</p>	<p>64</p>	<p>Specific measures are now incorporated in SR 2.</p>
<p>198. Explain why the following are in ADB’s current IR policy but are omitted in the SPS.</p> <ul style="list-style-type: none"> <li>• Definition of replacement cost (OM F2/BP, footnote 6)</li> <li>• Description of groups that are unlikely to possess legal land title (OM F2/BP, para.4 (vii))</li> <li>• Definition of formal legal rights to include “customary or traditional rights recognized under the laws of the country” (OM F2/OP, para.9)</li> </ul>	<p>66</p>	<p>All these issues are now addressed in SR 2.</p>
<p>199. Add a section or paragraph on “Mechanisms for Compensation”</p>	<p>1</p>	<p>This is now included in SR 2.</p>
<p>200. None of the SPS Safeguards require borrowers/clients meaningfully consult with men and women, take gender issues into consideration during project assessment, address gender concerns identified in project design and implementation, or monitor projects for gendered results.</p>	<p>19, 65</p>	<p>This is now included in SR 2.</p>
<p>201. The policy principles on IR include gender disaggregated social impact assessments. Yet the Borrower Requirements section simply suggests that the borrower’s social impact assessment include a gender-disaggregated description of the conditions of affected peoples.</p>	<p>65</p>	<p>This is now corrected in SR 2.</p>
<p>202. To safeguard women and gender equality, ADB must: establish and improve mechanisms for project affected women and men to influence project design and ADB’s decision to fund projects. The SPS must require clients to establish special culturally sensitive measures to ensure women’s meaningful participation in project consultations.</p>	<p>65</p>	<p>These important issues are not addressed in SR 2.</p>

<p>203. The legal document on which the borrower’s obligations are to be included is made ambiguous from “Loan Agreement” to “Legal Agreement”. Whereas disclosure of “Loan Agreement” is mandatory (Public Communications Policy), there is no provision concerning “legal agreement.”</p>	<p>66</p>	<p>Legal agreement is defined in the glossary</p>
<p>204. The requirement to include specific involuntary resettlement covenants in the loan agreement has been omitted. According to the draft SPS, compliance depends greatly on the legal agreement. Policy Delivery Process requires clients to implement safeguard measures and relevant safeguard plans “as provided in the legal agreements” (para.49). Furthermore, ADB reviews project performance against the client’s commitments “as agreed in the legal documents” (para.50), will seek corrective measures if a client fails to comply with “legal agreements” on safeguard requirements (para.60). However, there is no provision requiring inclusion of resettlement requirements into loan agreements.</p>	<p>66</p>	<p>This is addressed in the SPS, and will be further clarified in the ADB Safeguard Review Procedures (draft OM Section).</p>
<p>205. The requirement to include in the loan agreement a covenant on the EA’s or project sponsor’s clearance or endorsement of the resettlement-planning document is omitted. It should be noted that, according to the draft SPS, RP will not be finalized until the completion of detailed engineering designs, which may take place after the loan approval (SRBC, para. 17). (OM/F2)</p>	<p>66</p>	<p>As above.</p>
<p>206. The requirement to reflect in loan agreements the client’s obligation to submit periodic progress report is omitted. Semiannual or quarterly progress reports are still required for client for projects with large-scale resettlement. (Please refer to 13.(1)) However, reflecting this requirement in the loan agreement is omitted.</p>	<p>66</p>	<p>These requirements are in SR 2</p>
<p>207. Include support for social and cultural institutions of affected people and their host population.</p>	<p>66</p>	<p>This is included in SR 2</p>
<p>208. Specify that those affected by physical displacements should also benefit from access to civic infrastructure, community services, and development assistance (such as land development).</p>	<p>66</p>	<p>Benefit sharing is now part of SR 2</p>
<p>209. Specify that resettlers will be economically and socially integrated into their host communities, and that project benefits will be extended to both communities.</p>	<p>66</p>	<p>See Principle #4.</p>
<p>210. The policy must require that the standards of living of vulnerable groups be raised at least to comply with minimum national standards. Those in rural areas must be provided with legal and affordable access to land and resources, and those in urban areas with legal and affordable access to adequate housing.</p>	<p>66</p>	<p>See Principle #5.</p>



<p>211. The policy must address potential economic and social impacts of the project that are caused by involuntary restriction of access to legally designated parks and protected areas.(Principle, 5)</p>	<p>66</p>	<p>This is part of the policy scope.</p>
<p><b>Introduction and Rationale (paras. 1-2)</b></p>		
<p>212. Para. 2 is not consistent with para. 3 in terms of projects covered.</p>	<p>62</p>	<p>Revised SR 2</p>
<p><b>Scope of Application (para. 3-9)</b></p>		
<p>213. Define the criteria for both physical and economic displacement and the timeframe should be defined.</p>	<p>1</p>	<p>These are outlined in SR 2</p>
<p>214. Indonesia differentiates compensation based on the different rights they have (especially if they are from the same community as specified in Attachment B). We cannot give equal treatment to 3 types. For example, a titled owner may receive higher compensation than one who has no title. A local process to determine fair compensation must be provided.</p>	<p>7</p>	<p>'Different compensation and resettlement assistance packages for different ownership statuses' is the basis for the IR policy principles.</p>
<p>215. Para 9 can be interpreted to mean that the borrower has a choice, and therefore not obliged to apply involuntary resettlement safeguards.</p>	<p>14</p>	<p>This triggers more fully under environment policy principles</p>
<p>216. Para 5 – Depending on the interpretation of “occupancy,” those without physical presence on the land in the project area may not be afforded entitlements because there is no requirement to provided compensation or replacement for land that is neither occupied nor used for commercial purposes (see para. 7).</p>	<p>66</p>	<p>This issue is sufficiently addressed in SR 2</p>
<p>217. IFC 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). IFC also provides for in-kind compensation to these people (para 18), whereas ADB’s draft does not.</p>	<p>53</p>	<p>Cash compensation is an option in the SPS</p>

<p>218. IFC provides that “where livelihoods of displaced persons are land-based, or where land is collectively owned, the client will offer land-based compensation, where feasible.” (para 8). Displaced people 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).</p>	<p>53</p>	<p>This issue is resolved in SR 2.</p>
<p>219. Para 7 – Nonland assets (e.g., fence and walls around a property, and religious and cultural assets) that are not connected to income or livelihood will not be compensated. If the affected person does not occupy the land, houses and other structures would also not be compensated. The existing policy requires that all eligible affected people are entitled to compensation/replacement for nonland assets.</p>	<p>66</p>	<p>Compensation for non-land assets is recognized in IR principles as well as in SR 2.</p>
<p>220. Not all affected people who lose jobs, incomes, or livelihoods are entitled to financial assistance to cover the losses of the move. According to the draft SPS, provision of financial assistance to cover the losses of the move is limited to “affected business owners” only in cases where “land acquisition affects commercial structures”. Under the existing policy, “all eligible affected people, including tenants and employees of affected businesses” who lose their jobs, incomes, or livelihoods are “entitled to receive one-time financial assistance to cover losses of the move”. This may include relocation and transfer expenses, transitional income and livelihood support, etc.</p>	<p>66</p>	<p>All APs regardless of their land/property ownership status will receive compensation packages.</p>
<p>221. The SPS reduces the scope of involuntary resettlement to a focus on land acquisition. International best practice, including policies of ADB’s peer institutions, recognizes that involuntary resettlement covers a much broader range of activities beyond land acquisition. There is a lack of due process for affected people who fall outside this new limited scope of IR. Most importantly, for non-indigenous project-affected people who lose access to natural resources, lands and waterways caused by project activities other than direct land acquisition, they are now left without strong provisions to ensure due process, participation, compensation or full entitlements. The new scope limited to land acquisition will unfairly exclude a vast proportion of economically and physically displaced people from entitlements under the IR policy. The paragraph says they will be covered by the environment section of the draft SPS, but that will not be of much worth to these affected peoples, because the Environment policy principles have been drastically weakened, and lack robust provisions for management, mitigation and compensation of social impacts. The Indigenous Peoples section has some strong provisions on participation and rights protection, but these will not be triggered for non-indigenous affected groups. This irresponsible and unjust reduction in scope must be corrected.</p>	<p>19</p>	<p>The SPS covers involuntary land acquisition, involuntary restrictions on land use, access to parks and protected areas. These entitlements take much higher significance in case of IPs. Please see IP principles and SR 3</p>

<p>222. Paragraph 9 creates a problematic overlap between Involuntary Resettlement vs. Environmental Assessment. It will create confusion among ADB staff, implementing agencies and affected people as to which policy should be triggered.</p>	<p>19</p>	<p>Not an overlap; but supplement each other in order to highlight the importance of impacts from other than land acquisition such as downstream impacts</p>
<p><b>Gen. Requirements: Screening (paras. 10-11)</b></p>		
<p>223. The requirement to review project alternatives to avoid or minimize resettlement effects is omitted.</p>	<p>66</p>	<p>Screening for alternatives is done as part of project's requirement; not only as a resettlement safeguard.</p>
<p><b>Gen. Requirements: Social Assessment (para. 12)</b></p>		
<p>224. Delete "10% affected people and 20% affected vulnerable population" and replace with "statistically representative sample"</p>	<p>3</p>	<p>Noted. This is already been incorporated in SR 2.</p>
<p>225. Why are the following requirements are omitted:</p> <ul style="list-style-type: none"> <li>• initial poverty and social assessment (IPSA)</li> <li>• poverty assessment in the socioeconomic survey</li> <li>• sufficient site investigation to prepare population record and asset inventory</li> <li>• preparation of population records, land assessment, asset inventory, and sample socioeconomic surveys in consultation with those affected</li> </ul>	<p>66</p>	<p>They are included in SR 2</p>
<p><b>Gen. Requirements: Formulation of Resettlement Planning Documents (paras. 13-19)</b></p>		
<p>226. Clarify that borrowers must include in project costs the full cost of all resettlement activities, including indirect costs such as costs associated with the transition to and re-establishment of livelihoods. Improvement of living standards should not depend primarily on monetary compensation (although such compensation may be needed until alternative livelihoods programs are fully established).</p>	<p>70</p>	<p>Yes, these costs are part of project costs.</p>
<p>227. Include a requirement that resettlement plans ensure gender equity in livelihood enhancement and other remedial activities.</p>	<p>70</p>	<p>Yes, this is incorporated.</p>
<p>228. One objective of IFC's policy 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.</p>	<p>53</p>	<p>This is part of the IR policy objectives</p>
<p>229. The requirement to ensure participation in "choosing" resettlement options is weakened to "consultation on choices."</p>	<p>66</p>	<p>Choice derives from consultation; consultation strengthen the choice</p>

230. The requirement to conduct consultation in transparent manner is omitted.	66	Free prior and informed consultation includes transparency
231. The cost of social preparation and incremental benefits over the without project option are excluded from project costs.	66	Social preparation is borrower/client's cost.
232. This passive language of paragraph 16 avoids saying that ADB should not allow implementation of the investment component of the project to proceed until such time as the resettlement components have been adequately implemented. ADB should take financial responsibility for resettlement as part of the main investment project, and require that disbursements and/or awarding of civil works may only go forward after agreed-upon rehabilitation milestones have been achieved and independently verified.	60	Language has been changed and strengthened in the requirement.
<b>Gen. Requirements: Negotiated Land Acquisition (para. 20)</b>		
233. It is not clear if "negotiated settlement" falls under the policy scope.	66	Yes, as the affected persons could resort to general acquisition process if negotiations fail
234. This paragraph (and Principle 3) indicates that different procedures will be developed for negotiated settlement, but fails to clarify what other policy principles and provisions apply to negotiated settlement. Moreover, resettlement framework would be prepared for negotiated settlement, rather than resettlement plan.	66	Process of a negotiated settlement is given in SR 2.
235. Compensation at "replacement cost" is required by Principle 3, but this paragraph states "fair and appropriate" compensation without defining what "fair and appropriate" is.	66	Negotiations will decide the price. If not acceptable, APs could request replacement cost.
<b>Gen. Requirements: Information Disclosure (paras. 21-22)</b>		
236. Specify a minimum time (e.g., 30 days before submission) within which a draft resettlement plan is presented and discussed with affected people for comments or to obtain their consent.	1	Free, prior, informed consultation process covers all these details
237. All documents should be in the language of affected people.	1	This is clearly stated in IR Principles # 9 and SR 2
238. Disclosure of resettlement plans is required to enable involvement of NGOs, CSOs at every stage of the project. Thus, all information on resettlement should be available.	1	This is the objective of Principle # 9 and SR 2
239. Requirement for executing agency or project sponsor to "disseminate" information to affected people is weakened to "provide" information.	66	'Disseminate' has a wider meaning than 'provide'.
240. Requirement to carry out gender-specific consultation and information disclosure is omitted.	66	Now included in SR 4

<b>Gen. Requirements: Consultation (para. 23)</b>		
241. Requirement to carry out gender-specific consultation and information disclosure is omitted.	66	See above.
<b>Gen. Requirements: Grievance Redress Mechanism (para. 24)</b>		
242. On IR, para. 24 of Attachment B do not state that the mechanism should be local and independent.	62	'Impartial' and 'transparent' convey this meaning
<b>Gen. Requirements: Monitoring and Reporting (paras. 25-26)</b>		
243. Reporting requirements have been dramatically weakened. For example, requirement to submit either quarterly or semiannual resettlement progress report is limited to projects with large-scale resettlement impacts. Under the existing policy, such requirement applies to category A and B projects. Requirement for ADB to reassess resettlement preparation prior to implementation for project with significant impacts is omitted. Frequency of site visits or review by ADB is not specified.	66	Noted. Revised
<b>Gen. Requirements: Project Completion (para. 28)</b>		
244. Requirement for ADB to prepare project/program completion report is omitted. Report will be prepared by client on its own account.	66	ADB too will prepare a PCR.
245. Implementation of resettlement framework will not be evaluated because the evaluation in the completion report by client is limited to resettlement plan only.	66	Resettlement framework is a collection of guidelines; therefore not implementable.
246. Requirement to attach a financial audit statement, approved by independent agency, to the client's completion report is omitted, which is required under the existing policy.	66	It is still a component of PCR prepared by ADB
<b>Specific Requirements (paras. 29-43)</b>		
247. For sector loans, the following requirements from OM F2/OP, paras.37-39 are omitted: <ul style="list-style-type: none"> <li>• To include subprojects having a significant resettlement among "core" subprojects for which short resettlement plans must be submitted for ADB's approval. In the draft SPS, no criteria is set for subprojects that are required of resettlement planning documents ad ADB appraisal prior to loan approval.</li> <li>• To use the resettlement plan(s) of core subproject as "model resettlement plan" for subsequent resettlement planning for other subproject</li> <li>• For ADB to review and approve subprojects</li> <li>• To allocate sufficient contingency allowance for resettlement prior to loan approval is omitted.</li> </ul>	66	These are ADB requirements which will be addressed in OM

<p>248. There are specific requirements for loans with subprojects or components for later approval (Sector Loan, Program Loan, MFF, and Wider Application of Framework Approach) under the existing policy for sector loans. The same requirements are applicable to other loans for subprojects or components prepared after loan approval, except that in the absence of core subprojects, only subprojects or components due for financing during the first year of implementation require the preparation of a resettlement plan acceptable to ADB (OM F2/OP, para.41). Some of these requirements are omitted in the draft SPS. For example the requirement to include subprojects having a significant resettlement among “core” subprojects, for which short resettlement plans must be submitted for ADB’s approval, is omitted for sector loans. No criteria are set for subprojects that require resettlement documents and ADB appraisal prior to loan approval.</p> <p>The requirement to use the resettlement plan(s) of core subproject as “model resettlement plan” for subsequent resettlement planning for other subproject is also omitted. The draft SPS writes that resettlement framework would be “tailored to the specificities of individual projects (Policy Delivery Process, para.54). Without model resettlement plan(s), how this “tailoring” will be done is ambiguous. The requirement for ADB to review and approve subprojects is omitted. There are no provisions in the Policy Delivery Process that requires ADB to conduct review and approval of projects, or disclose relevant documents, after loan approval.</p> <p>The requirement to allocate sufficient contingency allowance for resettlement prior to loan approval is omitted. There is no such requirement provided in the draft SPS.</p>	<p>66</p>	<p>Please see SR 2 and SR 4 for details. Some of the suggestions will be included in the draft OM as they pertain to ADB’s internal process.</p>
<p>249. For multitranche financial facilities (MFF), there is an omission of the requirements to include as a core projects those subprojects having significant resettlement, and to use plans for core projects as a models for subprojects.</p>	<p>66</p>	<p>Please see SR 4.</p>
<p>250. Existing requirements for Emergency Assistance Loans have also been omitted, such as the requirement to justify in Report and Recommendation for the President (RRP) the departure from standard procedures, and the requirement to allocate sufficient contingency allowance prior to the loan approval.</p>		<p>Emergency assistance Loan modality is discussed in SR 4.</p>
<p>251. It is unclear whether ESMS based on the ADB’s environmental safeguards need to be prepared for corporate investments.</p>	<p>66</p>	<p>This is discussed in more detailed SR 4</p>
<p>252. For emergency assistance loans, these are omitted:</p> <ul style="list-style-type: none"> <li>• requirement to justify in Report and Recommendation for the President (RRP) the departure from standard procedures, with reference to the specific circumstances and the emergency processing schedule, is omitted; and</li> <li>• requirement to allocate sufficient contingency allowance prior to the loan approval (OM F2/BP, Scope of the policy, para.4 (x))</li> </ul>	<p>66</p>	<p>To be included in subsequent draft OM section</p>

<b>Annex 1: Outline of Resettlement Plan</b>		
<p>253. The following elements are omitted in the outline of resettlement plans:</p> <ul style="list-style-type: none"> <li>• a statement of involuntary resettlement objectives</li> <li>• access to training, employment, and credit</li> <li>• shelter, infrastructure, and social services</li> <li>• environmental protection</li> <li>• gender analysis</li> </ul>	<p>66</p>	<p>Noted. Revised</p>

Indigenous Peoples Safeguards		
General Comments		
Comments and Recommendations	Comment No.	ADB Staff Response
1. An old issue resurfaces in the Consultation Draft over the use of the words consultation or consent.	67	Neither the Consultation Draft, nor the Second Draft, equates consultation with consent.
2. For some projects, a national level committee may additionally be appropriate, and flexibility should be retained to enable the most suitable grievance mechanism for any particular project to be designed and included in the IPP. In addition to project, and possible national level mechanisms, there should be an ADB-wide panel for addressing indigenous people's grievances, when not addressed at a project or national level. This body could have regular sessions throughout the year, and review specific complaints and reporting directly to the Board. This panel could address, among other things, redress for past unresolved complaints, and focus on mediation of agreed and viable solutions to ongoing impacts. All levels of grievance mechanisms (project / national / ADB) must have the required authority and mandate to enable them to effectively address the complaints raised (the independence and 'teeth' or authority).	53	In addition to project level grievance mechanism, ADB has already set-up a corporate-level mechanism to file any complaints, regarding that concerning IP issues, through the OSPF and OCRP.
3. It is completely wrong to say that the concept of indigenous people is ambiguous and unclear. There is a global consensus on these now, fixed also in global jurisdiction. The concept also includes a flexibility, which the application in various country contexts requires. It needs to be pointed that the concerns of indigenous people are now - with the climate change - even more important. And their time-tested adaptive and mitigative approaches are more "modern" than those of the rest of population. Aspirations are always part of safeguarding too. You need to know what you are doing and why. Values are at the heart of development, and so are people. All in all, the problem with aspirations and safeguarding has been self-created when the ADB dismantled the Social Development Division and established a separate Safeguard Unit. As a manager I was not in favor of this move.	63	Noted. The Second Draft SPS has been revised to reflect the fact that the application of the existing 1998 IP Policy poses particular challenges in the region due to the huge variation in national history, cultures, ideologies, economic resources, demography, and politico-institutional frameworks. Also, the SPS states that "Indigenous Peoples" is used in generic sense to refer to a distinct, vulnerable, social and cultural group possessing the varying degrees of characteristics mentioned in the scope of the Policy.
4. All measures proposed by ADB to protect IP are consistent and logical. The measures give due recognition to IP.	1	Noted with thanks.
5. A strategy paper for the IP is needed to complement the Safeguard Policy Statement.	2	Noted.
6. The policy should consider landowners where land is owned together with ethnic groups.	6	We understand the comments refer to communal or collective land ownership, which is by nature subject to the Policy



<p>7. Applying the Policy in countries such as Solomon Islands or Fiji Islands can cause discrimination.</p>	<p>6</p>	<p>Noted. The Second Draft SPS, SR3, footnote 1, has acknowledged the unique situation of the Pacific Island nations, where the overwhelming majority of the national population may be indigenous</p>
<p>8. Although the current draft uses careful language and provides some improved protections in specific areas, it fails to uphold existing human rights requirements for international finance institutions generally, and specifically in the case of indigenous peoples. In particular, the protections afforded to the right to give or withhold consent, to obtain and retain recognized rights to customary and traditional lands and resources, and the overall lack of clear guidance on requirements for 'consultation' and 'good faith negotiation' mean that the policy statement and operational requirements fail to provide the minimum protections required under international law.</p>	<p>19</p>	<p>The Second Draft SPS operationalizes "consent" for conducting the following three activities: (i) commercial development of cultural resources and knowledge of IPs; (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 IPs.</p>
<p>9. The passage of the UN Declaration must be taken as a resounding and powerful statement of the aspirations and intentions of Asian governments and peoples for the future of the indigenous peoples of the region. The SPS does not promote international law endorsed by its borrowers; nor does it assist borrowers to operationalize this law. The SPS currently fails to meet existing standards on safeguard measures for indigenous peoples on a number of key significant points highlighted below:</p>	<p>19</p>	<p>As explained above, the Second Draft SPS recognizes the principle of FPIC.</p>
<p>10. fails to apply or reference relevant international agreements, legal norms and laws as relevant to the requirements of the policy, in particular the Declaration on the Rights of Indigenous Peoples (2007)</p>	<p>19, 64</p>	<p>The Second Draft SPS explicitly mentions the latest development in international standard setting and the strong recommendations by IP groups and civil society stakeholders to bring ADB Policy in line with the UN Declaration on the Rights of Indigenous Peoples.</p>
<p>11. fails to apply a human rights based approach to development</p>	<p>19, 64</p>	<p>Reference to human rights is explicitly stated in the scope of the Policy as follows; "The Policy is triggered if a project impacts directly or indirectly on the dignity, human rights, livelihood systems, or cultures of IPs, or affects the territories, natural or cultural resources that IPs own, use, occupy or claim as an ancestral domain or asset."</p>

<p>12. fails to ensure that the policy provisions are universally applied across all Bank-supported activities (in particular 'Section E' or 'special requirements')</p>	<p>19</p>	<p>The restructuring of the Second Draft SPS, with SR1-2-3 and the separate SR 4, has clarified the universality of policy principle application across all Bank-supported activities.</p>
<p>13. fails to protect or recognize the right to free, prior and informed consent in ANY activity impacting on indigenous peoples</p>	<p>19</p>	<p>The Second Draft SPS has been revised to include the recognition of FPIC and its operationalization for selected project activities.</p>
<p>14. fails to provide protection for customary and traditional tenure in projects involving physical relocation or direct impacts on indigenous peoples' lands, if such tenure is not formally recognized by the state</p>	<p>19</p>	<p>The Second Draft SPS provides such protection. See the SPS (i) Scope section; (ii) IP Policy Principle # 7.</p>
<p>15. fails to ensure that the imposition of Protected Areas can only proceed with the free, prior and informed consent of the affected peoples, in direct contravention of agreements made under the World Parks Congress (Durban 2004)</p>	<p>19</p>	<p>The Second Draft SPS operationalizes FPIC for activities involving physical relocation of IPs from traditional or customary lands which, by definition, include IP inhabited Protected Areas.</p>
<p>16. fails to prohibit the relocation of indigenous peoples from their traditional lands, territories and resources without their free, prior and informed consent, nor does it prohibit the restriction of access or commercial development of natural resources found on the lands of indigenous peoples</p>	<p>19</p>	<p>The Second Draft SPS has included such requirements.</p>
<p>17. fails to provide disclosure requirements sufficient to ensure informed decisions can be made, in particular SIA and EIA documents</p>	<p>19</p>	<p>In the original Draft SPS and also in the Second Draft SPS, SR 3, paragraph 9 (iii), it is stated that the borrower/client will “provide the affected IPs, prior to actual consultation, all relevant information from draft documents and plans, including an assessment of potential impacts that may arise during and after project implementation, in local language accessible to the affected people.” Furthermore, IP Policy Principle # 6 requires the disclosure of the results of the social assessment, before appraisal, in a form, manner and language(s) accessible to affected communities and the public.</p>
<p>18. lacks established grievance mechanisms for project level redress:</p>	<p>19</p>	<p>The project level grievance redress mechanism has been clarified and strengthened in the Second Draft SPS SR 3, para 20.</p>

<p>19. 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.</p>	<p>53</p>	<p>The IP Policy Principle # 7 ("put in place an action plan for the legal recognition of customary rights to lands and territories or ancestral domain") as well as the FPIC for activities involving physical relocation from traditional or customary lands are a recognition of Indigenous Peoples title to land.</p>
<p>20. The new language lowers the already sub-standard level of consent from indigenous populations required before undertaking an ADB-financed project on their land.</p>	<p>58</p>	<p>As explained before, the Second Draft SPS applies to three selected project activities.</p>
<p>21. Does not protect or recognize the right to free, prior and informed consent. Unlike IFC's Performance Standard 7, the SPS does not actually require good faith negotiations to reach a successful outcome. The Draft SPS also fails to reference the right to FPIC where physical relocation and restriction of access are involved.</p>	<p>64</p>	<p>As above.</p>
<p>22. Does not require borrowers to recognize and respect customary or traditional land tenure. While the SPS asks borrowers to "pay particular attention" to these issues, however, it does not actually require them recognize or respect customary land rights.</p>	<p>64</p>	<p>We do not agree. See response to Comment 19 above.</p>
<p>23. Does not apply key policy provisions to all Bank-supported activities. The policy requirements in the current draft depend on the nature of ADB's support. Although Section E "Special Requirements" addresses the most sensitive impacts, its heightened requirements do not apply to activities funded under Program Loans, Multitranches Financing Facility, Emergency Assistance, Sector Finance or Financial Intermediaries.</p>	<p>64</p>	<p>See response to Comment 12.</p>
<p><b>Principles</b></p>		
<p><b>Objectives</b></p>		
<p>24. <b>Guidance provided does not include reference to relevant international law.</b> The SPS does recognize that the policy requirements are triggered when a project may impact on the human rights of indigenous peoples. It can provide more guidance as to what this entails in a manner similar to IADB's approach by referencing international legislation and international instruments in a footnote.</p>	<p>55</p>	<p>The same as in the original Draft SPS, the Second Draft SPS under the "Scope" states that the Policy is triggered if a project impacts directly or indirectly on the dignity, human rights....."</p>
<p>25. The current draft has removed this sentence under Objective in the July 2007 draft: "This set of policy requirements aims to safeguard indigenous peoples' rights ...", and thus removed the rights-based understanding of the overall purpose of safeguard policies. This removal is symptomatic of a wider fault within the SPS – the lack of reference to or application of a human rights based approach to development. The results of such a lack of framework can be seen in the lack of reference to any form of 'consent', or to any applicable international legal norms, or to the specific provisions for indigenous peoples' rights enshrined in the UN Declaration on the Rights of Indigenous Peoples.</p>	<p>55,69</p>	<p>We don't know which Draft you are referring to. We did not circulate a Draft in July 2007. However, the Second Draft SPS includes a reference to human rights and applies "consent" as enshrined in the UN Declaration on the Rights of Indigenous Peoples.</p>

<p>26. The objectives should provide for (i) preservation at all costs of the cognate ties of voluntary resettled IPs; and (ii) respect for the right of IPs to self-determination in terms of setting their own development priorities; the right to participate in the preparation, implementation and evaluation stages of projects and programs; the right to preserve own traditions and institutes; right over natural resources that are their primary means of subsistence; and rights to land and property.</p>	<p>55,69</p>	<p>The objectives under both the previous Draft and Second draft SPS are clear and succinct.</p>
<p><b>Scope</b></p>		
<p>27. A participant noted that unlike involuntary resettlement safeguards, indigenous peoples safeguards do not require looking into past impacts.</p>	<p>4, 11</p>	<p>Noted. However, the coverage of the IP Policy includes Indigenous Peoples that have lost collective attachment to geographically distinct habitats or ancestral territories in the project area because of forced severance.</p>
<p>28. The ADB rightly acknowledges that the ADB can not define who indigenous peoples are, due to the right to self- determination. Instead the ADB uses an approach common among multi-lateral development banks, the provision of a list of identifying elements which need to be present to varying degrees. This approach to identifying indigenous peoples is consistent with international best practice, and rests on the first element provided – that of self-identification. This approach to identifying indigenous peoples can be effective if a few basic conditions are met, all of which can be addressed in either the policy principles or the operational requirements.</p>	<p>55</p>	<p>Thank you.  Noted that the proposed identification of IPs are laid out in the SPS, and SR3 is considered acceptable.</p>
<p>29. The application of safeguards for indigenous people should be based on their self-identification rather than legal status.</p>	<p>70</p>	<p>Noted. There is no reference to legal status.</p>
<p>Suggestions on how to define IP: 30. Provide reference to national governments who also have a say on how IP groups are identified and who have a role in implementing IP policies. Safeguards become more important where there is an absence of government policy in this area.</p>	<p>6</p>	<p>The phrase “self identification and identification by others” does not necessarily exclude the national governments from identifying IPs.</p>
<p>31. Add “customary laws and cultural beliefs.”</p>	<p>2</p>	<p>Noted.</p>
<p>32. Make reference to specific examples, e.g., refer to individual countries in the guidance documentation to support the definition &amp; makes allowances for cultural diversity.</p>	<p>6</p>	<p>Noted.</p>
<p>33. Provide guidance when there is a difference between the ADB definition and that of the government (e.g., Indonesian Ministry of Social Welfare).</p>	<p>7</p>	<p>Noted.</p>
<p>34. Replace the term “indigenous peoples” with the term “minority ethnic group”.</p>	<p>8</p>	<p>“Indigenous Peoples” is an internationally accepted term and is used in the SPS.</p>
<p>35. The following characterize IP: (i) They occupy an ancestral domain, they live in non-settled areas, have certain features, and share a collective property of land. (ii) They are referred to as being ‘distinct’, a fundamental distinction is that they are not regulated by law. (iii) They have vulnerabilities in land, culture and language; marginalized from the dominant politico-economic system. (iv) They possess indigenous language.</p>	<p>10</p>	<p>Noted.</p>

<p>36. This is the only time in the draft that 'human rights' is mentioned in relation to indigenous peoples. With regard to application, the formulation appears strong and means that the safeguard provisions apply to any project that has any impact, positive or negative, on any aspect, direct or indirect, on indigenous peoples' land, territories or lives. As a trigger for application this is consistent with international standards. However on closer inspection there are areas of concern with this application. Firstly, the extent to which provisions are followed depends upon the assessed 'significance' of the potential impacts – an assessment in which indigenous peoples are not required to be involved. The level of detail and comprehensiveness of the social assessment will be proportional to the complexity of the proposed project and commensurate with the nature and scale of the proposed project's potential effects on the Indigenous Peoples, whether adverse or positive." The allowance for the social assessment to be 'commensurate' with the nature and scale of potential impacts is an added section of text inserted into the original draft, and its inclusion weakens the text without providing any additional clarity or guidance.</p>	<p>55</p>	<p>Thanks for recognizing that the SPS is consistent with international standards. The Second Draft SPS has removed the reference to “significance” of potential impact. However, it makes sense to prepare the social assessment with the level of detail and comprehensiveness proportional to the complexity of the proposed project and commensurate with the nature and scale of its potential effects.</p>
<p>37. The ADB rightly acknowledges that it cannot define indigenous peoples based on the right to self-determination, and uses an approach common among multi-lateral development banks by providing a list of identifying elements which need to be present to varying degrees. This approach is consistent with international best practice and rests on the first element provided – that of self-identification. This approach can be effective if these basic conditions are met: (i) self-identification should be clearly recognized as the fundamental or foundational criteria for recognizing an indigenous identity, on which the other criteria depend; (ii) screening must be carried out by independent experts; (iii) identification of indigenous peoples must clearly be separated from national legislation or national legal recognition. We draw attention to the formulation of the Inter- American Development Bank where the target populations are identified "irrespective of their legal status"</p>	<p>55</p>	<p>Noted.</p>
<p><b>Principle 1 / Screening and Scoping</b></p>		
<p>38. Unlike involuntary resettlement safeguards, indigenous peoples safeguards do not require looking into past impacts.</p>	<p>11</p>	<p>See response on Comment 27.</p>
<p><b>Principle 2 / Consultation and Participation</b></p>		
<p>39. Inconsistencies exist between existing ADB safeguards implying the need for free prior informed consent with affected people and communities in safeguard planning and implementation- this needs to be more explicit. This general rule is contradicted in the 1998 Policy on Indigenous Peoples which allows for the “consent” of affected communities rather than “consultation”. It is now generally agreed that consent would allow small groups to jeopardize development that would have far reaching benefits - so consultation (free prior and informed) should be the common language.</p>	<p>67</p>	<p>The Second Draft proposes to recognize the principle of free, prior and informed consent.</p>

<p>40. Use free, prior and informed consent instead of broad community support because (i) it is the emerging international standard, (ii) all Asian countries voted for the UN Declaration on Human Rights (Bhutan and Bangladesh abstained), (iii) it is the institutionalized and applied term in the Philippines under the IP Rights Act (IPRA), (iv) it is currently in the ADB policy, and (v) "Consent" implies there is agreement whereas consultation does not. In addition, consent implies and encourages ownership of the project and therefore is more likely to encourage cooperation during implementation.</p>	<p>3</p>	<p>Noted. The SPS seeks to recognize the principle of FPIC.</p>
<p>41. Emphasize that during project development, it is essential to ensure the participation of IP and to bring in experts in IP study, including local anthropologists and sociologists.</p>	<p>8</p>	<p>Noted and incorporated.</p>
<p>42. Clear processes need to be outlined to ensure inclusive consultation in the consent process to make sure the whole community is involved. One way a government can ensure this is to erect public notices.</p>	<p>6</p>	<p>Noted. The process of ensuring inclusive consultation and ascertaining consent will be further specified in the Handbook.</p>
<p>43. Full and sufficient time needs to be allocated for the consultation and informing process (although there wasn't consensus in this area), but the timeline should not be specified because schedule varies based on project conditions.</p>	<p>6</p>	<p>Noted.</p>
<p>44. Skills of indigenous peoples need to be developed as part of the project to enable them to participate and to provide informed consent. The requirement for local capacity building should be more explicit. The provision in Principle 2 is inadequate as capacity building requirement can also be strengthened in the monitoring approach.</p>	<p>6</p>	<p>The Second Draft SPS adequately provides for capacity building for IPs as stated in IP Principle # 3, "To enhance Indigenous Peoples' active participation, the projects affecting them will provide for culturally-appropriate capacity development."</p>
<p>45. If avoidance is not feasible, undertake free, prior and informed consultations with affected communities 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 starting at the scoping phase, the projects affecting them will provide for culturally-appropriate capacity development.</p>	<p>70</p>	<p>No need to include the suggested phrase "If avoidance is not feasible" as consultation itself will also include a discussion on the possibility to avoid the adverse impacts.</p>
<p>46. Drop the term "free prior informed consultation" in favor of "free prior and informed consent." While the ADB's existing IP policy recognizes the right of the IPs to free, prior informed consent in terms of development initiatives, the draft policy completely fails to recognize this right. Likewise, the draft policy should explicitly refer to international agreements and covenants such as the UN Declaration on the Rights of IPs. They have the right to self-determination. They should be consulted at all times and their free prior informed consent should always be obtained in terms of development or utilization of their ancestral lands. Moreover, their attendance to ADB-initiated consultations or meetings concerning projects or programs should not be misconstrued for their consent and agreement. Moreover, it would be presumptuous if not illogical for ADB or the borrower to interpret their presence in consultations as expression/indication of their full support of ADB development intervention. Project proponents should make sure that IPs are requested to attend ADB or borrower-initiated consultations.</p>	<p>69</p>	<p>Noted. The "free prior informed consent" is now recognized in the Second Draft SPS, and operationalized for specific project circumstances. The consultation draft did not equate "free, prior and informed consultation" with "free, prior and informed consent." It used "free, prior and informed consultation leading to broad community support".</p>

<b>Principle 3 / Broad Community Support</b>		
<p>47. Adopt 'consent' because it is clearer, more robust, and more preferable than broad community support. It implies a clear point where a community will say 'Yes.' Use an independent third-party evaluation, or use existing country guidelines for free, prior and informed consent (e.g., those of the Philippines). FPI Consent vs FPI Consultation leading to broad community support – It was suggested that 'consent' is more robust than 'consultation' and also preferable to 'broad community support' (BCS). It was suggested by some participants that 'consent' implies a clear point where a community will say 'yes' and was therefore a clearer term. Discussion in the plenary about how you would define consent beyond what was contained in BCS did not yield any additional suggestions.</p>	<p>6</p>	<p>Noted. "FPIC" is now recognized in the Second Draft SPS and operationalized for specific project circumstances.</p>
<p>48. Local indigenous decision-making and consent procedures should be recognized, and the process of engaging consent could vary significantly across the region. However, in some instances, broad community support may not form part of the local decision-making process (e.g. the 'chief' makes the decision without consulting with other members of the community).</p>	<p>6</p>	<p>Noted.</p>
<p>49. Where "broad community support" guidelines and criteria for determining BCS is adopted, (i) provide a clear definition to indicate at least a majority, and in a manner that is measurable and transparent in order to minimize disagreements about whether BCS has been achieved; without such, application of the requirement would open the door to problems or various interpretations of what constitutes broad community support, (ii) it should be obtained through a legitimate and public people's forum.</p>	<p>10, 70</p>	<p>The Second Draft SPS recognizes the principle of FPIC which for the purpose of policy application, refers to "a collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives, of broad community support for the project activities. Such broad community support may exist even if some individuals or groups were to object to the project activities." The Handbook will further provide guidelines and criteria for determining such community support.</p>
<p>50. "Broad community support" (BCS) should be applied in situations that do not necessarily involve resettlement. The standard for BCS should be particularly strict when a project requires that indigenous peoples are to be separated from their ancestral lands. We propose that language be added similar to the following: Clients will not proceed with the project unless they have made a good faith effort to enter into negotiations with the affected communities of Indigenous Peoples, and to document their informed participation and the outcomes of the negotiation.</p>	<p>70</p>	<p>Noted. The Second Draft SPS requires FPIC in three selected activities mentioned earlier.</p>
<p>51. The SPS fails to protect or recognize the right to free, prior and informed consent in ANY activity impacting on indigenous peoples. It removes the requirement of 'informed consent' for projects that cause physical relocation of indigenous peoples from their lands, and for those involving limitations on access and use to traditional resources. There is no mention of the "consent" in the document. The earlier drafts of SPS provided for indigenous peoples' rights to give or withhold their 'informed consent,' but these have been removed.</p>	<p>19, 55</p>	<p>The Second Draft SPS recognized FPIC as applied to the three selected activities mentioned earlier.</p>

<p>52. Unlike in IFC's PS7, the requirement that Indigenous Peoples' representative bodies must be involved in the process of obtaining broad community support, and that ample time must be given for these collective decision-making processes to work is not evident in the SPS.</p>	<p>53</p>	<p>Noted. The Second Draft SPS states that the process of consultation and ascertaining the broad community support of Indigenous Peoples will be done in accordance with their customs and cultural practices.</p>
<p>53. Strongly interpreted, the SPS provisions for 'broad community support' and 'good faith negotiation' may provide some limited protections for indigenous peoples, but remain far below the standard of international law. Lack of clarity and specificity in the requirements mean that interpretation is more open than it should be.</p>	<p>55</p>	<p>The Second Draft SPS has clarified this part.</p>
<p>54. ADB should not be contented with merely ascertaining IPs' broad support for a certain project. "Broad" is a dangerous term that is open to different interpretations. It should instead ascertain IPs' free, prior informed consent for a certain project. Broad support could also pose a problem for the marginalized groups in certain IP communities that continuously oppose ADB-assisted operations. Likewise, an independent body, composed of all stakeholders should be established to ensure that IPs have given their free prior informed consent to an ADB project or program.</p>	<p>69</p>	<p>Noted.</p>
<p><b>Principle 4 / Protected Areas and Natural Resources</b></p>		
<p>55. There was a concern about the consistency between indigenous peoples and environmental safeguards. Principle 8 of environmental safeguards protects only the environment and not the IP.</p>	<p>3</p>	<p>The concern noted. The IP Policy will apply if a project has impact on Indigenous Peoples regardless of whether or not the Environment Policy mentions Indigenous Peoples.</p>
<p><b>Principle 5 / Customary Rights to Lands and Territories</b></p>		
<p>56. Add: "Any project impacting on IP traditional lands, territories and resources, or lands and resources under customary use may only proceed with the informed consent of IPs.</p>	<p>2</p>	<p>Noted and this is reflected in the Second Draft SPS.</p>
<p>57. Clarify participation of IPs in the process of establishment of parks, protected areas, and commercial plantations. Clarify that such project would need to obtain free, prior and informed consent of the affected IP.</p>	<p>3</p>	<p>Noted and appropriately reflected in the Second Draft SPS.</p>
<p>58. There are difficulties in implementing the principle. Freehold ownership of land built on customary systems must be recognized. Language could be adjusted because the current text might allow for ad hoc processes. There is a need to recognize the complexity of the situation and the sensitivity of the government-initiated titling programs.</p>	<p>6</p>	<p>Noted.</p>
<p>59. Distinction between individual land and communal land should be recognized.</p>	<p>7</p>	<p>Noted.</p>
<p><b>Principle 6 / Social Assessment</b></p>		
<p>60. Women, youth, and vulnerable groups need to be included and have a voice.</p>	<p>6</p>	<p>The issue of inclusiveness is well noted. The IP Principle # 2 in the Second Draft aptly states that a social assessment will identify social and economic benefits for affected Indigenous</p>



		Peoples that are culturally appropriate, and gender and inter-generationally inclusive.
<b>Principle 7 / IP Planning and Information Disclosure</b>		
61. Development of IP Plan must consider existing local plans, for example in the Philippines, consider the Ancestral Domain Sustainable Development Policy Principle/other existing laws and regulations.	3	Noted. The Handbook will further clarify how projects could consider the relevant existing policies or infrastructures of each country.
62. Remove “or equivalent document” and add requirement for all relevant documents to be disclosed in a form and language, and in sufficient time appropriate to affected communities.	2	The phrase “or equivalent document” here refers to Ethnic Minority Plan, or Tribal People Plan, etc.
63. Change to “The IPP includes a framework for continued consultation” to “includes a framework for continued consultation and participation.” Consultation and participation can be interpreted differently but both words need to be included because it reflects the ongoing and active involvement of stakeholders for the duration of the project	6	This comment points to the IP Policy Principle # 5, which includes “participation of the affected communities.”
64. There is a need for a community consultation process which leads to consent from the people.	6	Noted. Such consultation process is described in the SPS.
<b>Principle 8 / Cultural Resources and Knowledge</b>		
65. Often indigenous people don’t recognize that they’re the owners of valuable cultural resources therefore this principle should require the borrower to identify and conserve the cultural resources of the affected people.	6	IP Principle # 8 in the First Draft has been moved to Principle # 4 in the Second Draft SPS. Commercial development of the cultural resources and knowledge of IPs requires their consent. Implicitly, the borrower has to identify the affected IPs’ cultural resources first before it proceeds to seek for their consent. Principle # 4 of the Second Draft SPS also implies that even to conserve the cultural resources would require consent from the affected Indigenous Peoples.
66. Add a statement explicitly prohibiting the use of local cultural resources and traditional knowledge by means of falsification, separation, and manipulation. The objective is to prevent local culture, cultural relics, and customs from destruction. “Strengthen the protection of intellectual property rights of minority ethnic groups during each stage of project development and assure the benefits are obtained after the development.”	8	Suggested addition to the Policy Principle is not necessary.
67. The SPS uses the formulation of 'conditional upon prior agreement' without providing any guidance as to what these terms mean. 'Consent' was present in the early drafts, and therefore its removal appears to represent a conscious effort to weaken protective provisions. Current international legal norms and emerging agreements provide strong protections for the intellectual property rights of indigenous peoples over their cultural and customary knowledge, norms that should be reflected also in the ADB’s emerging standards.	55, 62	Noted. The principle of FPIC is recognized in the Second Draft SPS.

<p>68. The Policy allows for commercial development of cultural resources and knowledge of Indigenous Peoples with “prior agreement.” This is not enough. The policy must be very specific about how the agreement must be reached to ensure the commercial development has community support, and the Policy must ensure that the Indigenous Peoples get just benefits from the commercial development of the resources and knowledge. The Policy must also ensure that this process includes free, prior, and informed consent. The Requirements include this (para. 49), but the ADB is not currently responsible for ensuring the Requirements are complied with, therefore all critical requirements must be in the Policy itself.</p>	<p>55, 62</p>	<p>Noted. The Second Draft SPS has recognized FPIC for activities involving commercial development of IPs’ cultural resources and knowledge.</p>
<p><b>Principle 9 / Monitoring</b></p>		
<p>69. The rationale for the proposed monitoring approach is to ensure capacity building of communities and line ministries and to put emphasis on community empowerment. The capacities of local experts and professionals should be recognized and developed. But while laudable, there are issues in ensuring the independence of local experts in the Pacific due to the small size of the population.</p>	<p>6</p>	<p>Noted.</p>
<p>70. Reference should be made to completion reporting in long-term evaluation e.g., 5 years down the track, in addition to the Project Completion Report. This would allow for unforeseen impacts to be addressed.</p>	<p>6</p>	<p>This can be considered in the OM.</p>
<p>71. The draft policy only requires the preparation of completion reports that assesses the outcome of IPP. However, in order to come up with a non-biased result, preparation of the report should be made participative. Representatives from IP communities should be allowed to participate in the preparation and finalization of the report to ensure genuine results. Submission and disclosure of said reports should be made mandatory to attest that the results of the report are conclusive and reliable</p>	<p>69</p>	<p>Noted. IP Policy Principle # 9 in the Second Draft SPS requires participatory monitoring of the IPP implementation.</p>
<p><b>Attachment C</b></p>		
<p><b>General</b></p>		
<p>72. Unlike in IFC’s PS7, the requirement that Indigenous Peoples’ representative bodies must be involved in the process of obtaining broad community support, and that ample time must be given for these collective decision-making processes to work is not evident in the SPS.</p>	<p>53</p>	<p>The details of how to determine “broad community support” and how much time required in the process will be elaborated in the Handbook.</p>
<p>73. ADB should not be contented with merely ascertaining IPs’ broad support for a certain project. “Broad” is a dangerous term that is open to different interpretations. It should instead ascertain IPs’ free, prior informed consent for a certain project. Broad support could also pose a problem for the marginalized groups in certain IP communities that continuously oppose ADB-assisted operations. Likewise, an independent body, composed of all stakeholders should be established to ensure that IPs have given their free prior informed consent to an ADB project or program.</p>	<p>69</p>	<p>Noted. The Second Draft SPS operationalizes “FPIC” for specific project circumstances.</p>

<p>74. The requirement of broad community support seems to be difficult because based on past experience, the IP usually demand a price higher than the market price. Another concern is how to ensure that the term Broad Community Support is not manipulated.</p>	<p>5</p>	<p>Noted.</p>
<p>75. Consultation to secure agreement should be based on IP decision-making processes (there wasn't consensus in this area.)</p>	<p>6</p>	<p>Noted. The Second Draft SPS, in SR 3 paragraphs 9 and 10, requires a process of consultation in accordance with IP customs and cultural practices and, where there are major differences and disagreements, apply good faith negotiation.</p>
<p>76. The Safeguard Policy Statement also contains a paragraph [44] that implies 'significance' of impact is relevant to determining the extent to which safeguard provisions apply: "projects are screened according to the significance of their impacts ..." This paragraph serves no useful function, as it is not necessary under the terms of the policy trigger, as described in the Safeguard Requirements, for there to be an assessment of significance of impact. The safeguard requirements are applied in full whenever the conditions of the trigger are met, i.e., whenever: a project impacts directly or indirectly 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 their ancestral domain or asset.</p>	<p>55</p>	<p>Noted and accepted. The Second Draft SPS has deleted the previous reference to "significance" of impacts.</p>
<p>77. Start with a reference to the UN Declaration and streamline the text based on the UN Declaration.</p>	<p>2</p>	<p>Noted.</p>
<p>78. None of the SPS Safeguards require borrowers/clients to meaningfully consult with men and women, take gender issues into consideration and address them, or monitor projects for gendered results.</p>	<p>19</p>	<p>Not true. Like in the previous draft, the Second Draft SPS requires the use of consultation methods appropriate to the social and cultural values of the affected IPs' communities, giving special attention to the concerns of indigenous women and youth.</p>
<p>79. The principles mention that social assessments should identify social and economic project benefits that are gender inclusive. Yet Attachment C simply requires that clients "give special attention" to the concerns of indigenous women during project consultations. To safeguard women and gender equality, the ADB must establish and/or improve mechanisms for project affected women and men to influence project design and the ADB's decision to fund projects. The SPS must require clients' establish special culturally sensitive measures to ensure women's meaningful participation in project consultations.</p>	<p>4, 65</p>	<p>The requirement for women's participation in the consultation process is already included in the SPS. Again, the details of how women will be included in such a process will be developed in the Handbook.</p>

<p>80. There is non-application of policy provisions for a wide range of economic activities. The policy does not apply key policy provisions to all Bank-supported activities. International standards with regard to the protections afforded to indigenous peoples should be upheld regardless of the financing modality under which a particular activity is supported. Protections afforded to indigenous peoples should not vary according to the financing modality. However Attachment C currently contains two sets of requirements: General Requirements for all projects and all funding modalities and Special Requirements which are triggered by the possibility of particularly sensitive impacts being felt by affected indigenous peoples.</p>	<p>55, 64</p>	<p>The restructuring of the Second Draft SPS has clarified the application of the same Policy Principles for all projects and lending modalities.</p>
<p>81. Presence of measurable timelines and stages of implementation. Experience in the past with other multi-lateral finance institutions has shown that measurable, concrete indicators of compliance with safeguards are required to ensure that people are able to access and use their rights under safeguard systems. Such timelines and concrete indicators give organizations and communities the ability to track and monitor the responsibilities of the ADB and its borrowers/clients. When the timeline and level of detail for safeguard requirements are left to the judgment of the borrower or client then standards are often 'read down' or interpreted weakly. It was therefore with great concern that we noted the removal of the following from the July draft: [paras. 7 and 8 of Attachment C].</p>	<p>55</p>	<p>Noted. We do not know what July Draft you are referring to here.</p>
<p><b>Scope of Application (para. 3-7)</b></p>		
<p>82. Government representatives from the Caucasus stressed that “the concept of IP can be inappropriate in such a fragile region as Caucasus and may create problems. If there is an IP issue, for example, and the IP are compensated, while other nationalities are not, then there would be conflicts. We should be very careful with this matter. Others added that dividing people into “indigenous people” and “titular nations” can ignite tensions, both locally and internationally therefore ADB should be extra sensitive towards definitions.</p>	<p>1</p>	<p>Noted.</p>
<p>83. The concept of IP should be specially defined in the context of Central Asia. Avoid using the term ethnic minority as it might undermine genuine Indigenous People. It is suggested that the concept of indigenous people be defined in the context of Central Asia.</p>	<p>1</p>	<p>Noted. The Handbook will look at the country issue of how to identify the various groups that are to be considered as IPs under the ADB’s IP Policy.</p>
<p>84. Qualify “.....social and cultural group” in para. 5 by adding “irrespective of national legal status”.....</p>	<p>4</p>	<p>Noted. Neither the Consultation Draft nor the Second Draft SPS makes reference to national law as a determining factor for identifying IPs.</p>
<p><b>Gen. Requirements: FPIC and BCS (paras. 8-11)</b></p>		
<p>85. Attachment C - It was suggested by some to adopt “ Free, Prior and Informed Consultation and Broad Community Support/Consent’</p>	<p>4</p>	<p>The Second Draft SPS recognizes the principle of free prior and informed consent and operationalization in the context of broad community support..</p>

<p>86. Broad community support (BCS) should be applied in situations that do not necessarily involve resettlement. The SPS should elaborate its process in the OM for determining BCS in a manner that is measurable and transparent, in order to minimize disagreements about whether BCS has been achieved. The standard for BCS should be particularly strict when a project requires that indigenous peoples are to be separated from their ancestral lands.</p>	<p>70</p>	<p>Noted. FPIC is operationalized in three selected project circumstances, including that involving separation from ancestral lands.</p>
<p>87. Paragraph 8: Local authorities need to be involved in the consultation process. Change the first sentence to read: “The borrower/client, through local authorities, will undertake ...”</p>	<p>9</p>	<p>Noted. Editorial.</p>
<p>88. Paragraph 9: Add: (iv) Take steps to build the capacity of local indigenous communities affected by the project to better understand the project context and implications.</p>	<p>9</p>	<p>Noted. Editorial.</p>
<p>89. Paragraph 9 (ii): Insert the word “children” in: “... special attention to the concerns of indigenous women, children, and the youth”.</p>	<p>4</p>	<p>Noted.</p>
<p>90. The policy does not protect or recognize the right to free, prior and informed consent. The right of indigenous peoples to give or withhold their free, prior and informed consent (FPIC) is directly referenced and protected in Articles 10, 11, 19, 28, 29 and 32 of the Declaration on the Rights of Indigenous Peoples. The Draft SPS, however, does not reference or protect the right to free, prior and informed consent during initial project planning and screening, and at subsequent stages of project development. Instead, following IFC’s Performance Standards, the Draft SPS requires “free, prior and informed consultation leading to broad community support” for all projects with potential impacts on indigenous peoples. (Attachment C, para. 8). The SPS provides that “when the borrower/client and the affected Indigenous Peoples have serious differences and disagreements on the project, its components, or IPP, the borrower/ client should adopt good faith negotiations for them to resolve such differences and disagreements.” (Attachment C, para. 11). However, unlike IFC’s Performance Standard 7, the SPS does not actually require these negotiations to reach a successful outcome.</p>	<p>64</p>	<p>The Second Draft SPS recognized the principle of FPIC for project circumstances where IPs are particularly vulnerable.</p>
<p><b>Gen. Requirements: Screening and Scoping (para. 12-13)</b></p>		
<p>91. There might be an issue when the borrower is made responsible for screening, which is a critical step to addressing safeguard issues because many countries are reluctant to recognize Indigenous Peoples.</p>	<p>11</p>	<p>Screening is the responsibility of ADB. See Second Draft SPS in SR 3 para.11.</p>
<p><b>Gen. Requirements: IP Planning (paras. 17-19)</b></p>		

<p>92. The draft SPS has changed references to the Indigenous Peoples Plan to 'Indigenous Peoples Plan, or equivalent document.' This could weaken the requirements by not defining or interpreting what an 'equivalent document' is, or who is able to make such a judgment of equivalency, and such information is not provided. It also potentially weakens the ability of affected communities to provide substantive input on what this 'document' is as guidance is only provided as to what an IPP requires in terms of consultation.</p> <p>93. It was suggested to remove “or equivalent document” and add requirement for all relevant documents to be disclosed in a form and language, and in sufficient time appropriate to affected communities.</p> <p>94. Policy Principle 7 - Some suggested that the first sentence of this principle should read: “Prepare an Indigenous Peoples Plan (IPP) or equivalent document such as social development plan ...”</p>	<p>2, 9, 55</p>	<p>“Equivalent document” clarified. See also the response to Comment 62.</p>
<p><b>Gen. Requirements: Information Disclosure (para. 20-21)</b></p>		
<p>95. During a process of free, prior and informed consultation, all relevant documents should be provided to the affected communities in formats and languages that are appropriate to the peoples concerned. This should specifically include documents that impact significantly on the project – at every stage. There is indirect reference to additional disclosure requirements in the guidance on free, prior and informed consultation. However this is insufficient if not specifically and directly reiterated in the disclosure requirements of the safeguard requirements. As the disclosure requirements stand, they fail to provide for appropriate or sufficient access to centrally important project documents, and do not require that affected peoples remain informed about the range of potential impacts that a project may or may not have for them. Although access to such reports does not replace the requirement to iteratively discuss and consult over the form and design of the project, such documents are an essential part of communities and their representative organizations remaining fully informed.</p>	<p>55</p>	<p>Noted. SR 3 para.18 provides the list of documents that are to be posted on the website. In addition, para.19 requires the borrower/client to provide relevant key information on the projects and the IPPs in a form, manner and language(s) accessible to Indigenous Peoples.</p>
<p><b>Gen. Requirements: Grievance Mechanism (para. 22)</b></p>		
<p>96. On IP, there must be a requirement to include a grievance mechanism at the project level as an essential part of the IPP, with representation from IP. There is not enough detail to determine if the grievance procedures mentioned in principle 7 and the grievance mechanism stated in Attachment C are the same and how they relate to each other. The provision is weakened by not being referenced in the policy principle, by the absence of timeline on the establishment of such mechanisms, and by allowing the mechanism to be dispensed with if it is judged that no impacts will be felt, even if the potential for impacts has been identified, and for it to be scaled to the severity of potential impacts. These issues could be addressed by moving the text directly from Attachment C to policy principles and correcting the language to avoid ambiguities in application.</p>	<p>53, 55, 62</p>	<p>Requirement for setting up grievance procedures at the project level can be seen in IP Policy Principle # 5 of the Second Draft SPS. SR 3 para.20 further clarifies the grievance procedures under the sub-heading “Grievance Redress Mechanism.” Details of such mechanism will be elaborated in the Handbook, taking into consideration the comments.</p>

<p><b>Gen. Requirements: Project Completion (para. 26)</b></p>		
<p><b>Special Considerations (paras. 44-52)</b></p>		
<p>97. The policy should be clear on the criteria for involuntary resettlement of IP.</p>	<p>4, 11</p>	<p>Noted. Involuntary resettlement of IPs from their traditional or customary lands will be subject to their consent.</p>
<p>98. Mention both the avoidance of physical relocation of IP to other areas, as well as preventing people from other areas to be relocated to the areas resided by IP.</p>	<p>4, 11</p>	<p>Noted. The principle of free prior and informed consent will apply to physical relocation of IPs from their traditional or customary land to other areas. Any relocation of other people to IP areas will have to go through a consultation process with the host IP communities.</p>
<p>99. Article 26 of the UN Declaration on the Rights of Indigenous Peoples are indirectly referenced in the SPS, but not enforced. No special protections stem from these 'special considerations'. The SPS does not require independent experts to be involved in the assessment of impacts on indigenous peoples' ties with their lands and resources, nor does it require a review of customary tenure regimes. Without such knowledge gained in an independent survey, the borrower can not possibly be expected to ascertain how their project will affect the ties that indigenous peoples have to their lands.</p>	<p>55, 64</p>	<p>Noted. The Draft SPS provides that the borrower/client will hire qualified and experienced experts to carry out a full social impact assessment.</p>
<p>100. Actual enforceable requirements within the document, however, do not uphold the rights of indigenous peoples to their lands. Article 26 of the UN Declaration on the Rights of Indigenous Peoples states, in relation to land, that: Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired; Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired; States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.</p>	<p>55, 64</p>	<p>The Draft SPS upholds the rights of Indigenous Peoples to their lands in the context of project. See the explanation on when the Policy is triggered (that is when a project affects the IP territories or its natural resources). The IP Policy Principle # 7 relates to legal recognition of customary rights to lands and territories.</p>

<p>101. The policy does not require borrowers to recognize and respect customary or traditional land tenure. Article 26 of the UN Declaration on the Rights of Indigenous Peoples affirms the customary land and property rights of indigenous peoples. The Draft SPS recognizes the importance of land and resources to indigenous peoples. It requires that borrowers and clients of the Bank “pay particular attention to” issues such as “the customary rights of indigenous peoples, both individual and collective, pertaining to ancestral domains, lands or territories that they traditionally owned, or customarily occupied, and where access to natural resources is vital to the sustainability of their cultures and livelihood systems.” (Attachment C, para. 44 (i)). Language elsewhere in the draft also underscores the importance of land and resources to the identities, cultures and survival of indigenous peoples. While the SPS asks borrowers to “pay particular attention” to these issues, however, it does not actually require them recognize or respect customary land rights. In contrast, IFC’s Performance Standard 7, for example, requires client to “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 under national laws...”</p>	<p>55, 64</p>	<p>See the response to Comment 100.</p>
<p>102. The weak protection of 'broad community support' is required for ALL ADB projects impacting on indigenous peoples and therefore provides no additional or particular protections for projects involving physical relocation. It does not require 'successful outcomes' or any other such formulation that would imply agreement or consent. Thus the 'special requirements' – seemingly intended to provide additional protections in sensitive cases – appear to fail to provide anything more than the minimum BCS required elsewhere in the draft. Further, the SPS does not provide for the recognition of customary tenure or non-official tenure, only that the client pay 'consideration to' such ties. This means that there is no protection for peoples living with customary and traditional tenure if the state has not recognized such tenure.</p>	<p>55</p>	<p>FPIC is recognized. It is operationalized for three project circumstances including physical relocation of IPs from their traditional or customary lands. Regarding recognition of customary tenure, see also the response to Comments 100.</p>
<p>103. Given international norms and agreements on the creation of Protected Areas, para. 47 is particularly surprising. The inalienable rights over traditional lands and resources claimed by indigenous peoples are not respected or even directly acknowledged in the draft.</p>	<p>55</p>	<p>The Second Draft SPS, IP Policy Principle # 8 states, “Avoid, to the maximum extent possible, any restricted access to and relocation from protected areas and natural resources....”</p>
<p>104. Converting rights to land from communal use or ownership to individual ownership can have major, unintended consequences. The affected communities must be responsible for deciding if, and how, their lands will be titled after they have been well informed about the possible ramifications.</p>	<p>62</p>	<p>Noted.</p>



<p>105. The Policy allows for commercial development of cultural resources and knowledge of Indigenous Peoples with “prior agreement.” This is not enough. The policy must be very specific about how the agreement must be reached to ensure the commercial development has community support, and the Policy must ensure that the Indigenous Peoples get just benefits from the commercial development of the resources and knowledge. The Policy must also ensure that this process includes free, prior, and informed consent. The Requirements include this (para. 49), but the ADB is not currently responsible for ensuring the Requirements are complied with, therefore all critical requirements must be in the Policy itself.</p>	<p>62</p>	<p>Noted. The Second Draft SPS ensures that FPIC, as operationally defined, will be ascertained before implementing any activities involving commercial development of cultural resources and knowledge of Indigenous Peoples.</p>
<p><b>Editorial Comments</b></p>		
<p>106. Attachment C - One stark change between the of July 2007 draft of SPS and the current version is the periodic replacement of the term 'will' to the weaker term 'should'. This is an illustrative example of other changes that have appeared in the draft also, many of which point to a weakening of the language and provisions.</p>	<p>55</p>	<p>We are not aware of the circulation of July 2007 Draft you are referring to. The language of the Second Draft SPS reflects a strengthening of provisions.</p>
<p>107. The initial text provided in the indigenous peoples' consultation in Manila ... should be further developed to include description of the requirements for consultation, how certification of the presence of FPIC can be achieved, and the manner in which consent can be iteratively developed as an on-going dialogue between project proponents and indigenous peoples.</p>	<p>55</p>	<p>Detailed requirements for consultation and consent will be developed later in the Handbook.</p>
<p>108. Good faith negotiation                  - The trigger for requiring good faith negotiation is unclear. How this is judged, who verifies it, and how oversight is ensured is not described.                  - Provide guidance on the acceptable processes of negotiation by referencing the IFC Guidance Notes to PS 7.</p>	<p>55</p>	<p>Noted. The Handbook will further clarify the good faith negotiation.</p>
<p>109. On broad community support, it is not clear whether the intent is to require support or just determine whether there is support. Attachment C implies the latter interpretation. Nothing says concretely that the project shall not be carried out if there is not support from the indigenous peoples affected by the project.</p>	<p>19, 62</p>	<p>Noted. The Second Draft SPS, SR 3 paragraph 30 states that ADB will not finance the project if such consent does not exist.</p>

<p>110. The safeguards must detail the establishment of accessible, effective and responsive grievance mechanisms. There must be a requirement to include a grievance mechanism at the project level as an essential part of the IPP, with representation from indigenous peoples on the grievance committee and/or panel. For some projects a national level committee may additionally be appropriate, and flexibility should be retained to enable the most suitable grievance mechanism for any particular project to be designed and included in the IPP. In addition to project, and possible national level mechanisms, there should be an ADB-wide panel for addressing indigenous peoples' grievances, when not addressed at a project or national level. This body could have regular sessions throughout the year, and review specific complaints and reporting directly to the Board. This panel could address, among other things, redress for past unresolved complaints, and focus on mediation of agreed and viable solutions to on-going impacts. All levels of grievance mechanisms (project / national / ADB) must have the required authority and mandate to enable them to effectively address the complaints raised (the independence and 'teeth' or authority). Reference to grievance mechanisms should be added to the policy principles for indigenous peoples based on the treatment of the concept elsewhere in the paper.</p>	<p>53, 70</p>	<p>Noted. Further elaboration of grievance mechanism will be included in the Handbook.</p> <p>On ADB-wide panel, ADB has established the Accountability Mechanism (AM). Para. 68 is included to describe the functions of AM.</p>
<p><b>Others</b></p>		
<p>111. New principle - "Raise people's consciousness for the protection of biological diversity, indigenous resources, and cultural traditions".</p>	<p>8</p>	<p>No need to add the suggested principle.</p>
<p>112. New principle - "Evaluate alternatives to project design, location or operation that would enable impacts on indigenous people to be avoided."</p>	<p>70</p>	<p>No need to add the suggested principle.</p>

Cross-Cutting Safeguard Issues		
General		
Comments and Recommendations	Comment No.	ADB Staff Response
<p><b>Recommendations</b></p> <p>1. To avoid confusion, it would be best if all the policies, objectives, and requirements could be found in one consistent document for each policy area. ADB could meet its objective of clarifying whether ADB or the borrower/client is responsible for carrying out each task simply by stating which party is responsible in each section.</p>	62	ADB proposes a consolidated safeguard policy with the following structure: (i) a Safeguard Policy Statement that describes overarching objectives of ADB's safeguards, lays out policy principles and outlines ADB's safeguard policy delivery process; (ii) safeguard requirements for borrowers/clients for each of the three safeguard areas; and (iii) ADB internal safeguard review procedures. Many noted that the proposed structure works well to improve consistency and coherence among the three safeguard areas, but remains identity of each policy area. The proposed structure also clearly delineates the responsibilities of ADB and its borrowers/clients. In view of the general support, the overall policy structure remains the same.
<p>2. The weak and vague language of the draft SPS will create more work for ADB staff and will cause unnecessary tension and transaction costs, thereby reducing efficiency. For borrowers with weak capacity in certain safeguard areas, the current draft will also fail to support them in clearly understanding the requirements and how these must be implemented and evaluated.</p>	60	To further improve the clarity, we have added a few paragraphs (para. 3 and 4) describing the proposed policy structure; provided key definitions and a glossary of terms; ensured consistent use of terms; and incorporated additional criteria to the safeguard requirements for borrowers/clients.
<p>3. The World Commission on Dam (WCD) is widely considered to represent best international practice for development decision-making. All updated safeguard policies need to adhere to this framework.</p>	19	Best international practices comparable with those adopted by other MFIs are reflected in the policy principles and safeguard requirements for borrowers/clients. We believe the wording should remain generic.
<p>4. A fundamental principle of international human rights law is that all people are entitled to equal protection of laws, and should not be discriminated against because of race, color, religion, political opinion, or other invidious classification. The draft SPS does nothing to preclude invidious discrimination in government decisions regarding where facilities that require resettlement will be sited, who will be resettled, and how benefits and rehabilitation efforts will be allocated.</p>	64	Many of these issues are indeed addressed in involuntary resettlement (IR) policy principles and requirements for borrowers/clients. IR policy emphasizes improvement of living standards of the affected poor and other vulnerable groups, regardless of their race, color, caste, religion and political opinion. In fact, the SPS goes beyond normal domestic law to protect the rights of non-titled people who are also the marginal and vulnerable people.
<p>5. On the non-coverage of TA projects by the policy, it was suggested that the present procedure be continued and all operations screened for potential IP impacts.</p>	2	The SPS applies to all ADB-financed projects, which is consistent with the current policy approach and procedure.

<p>6. Certain actions are required depending on the significance of resettlement impacts. The policy must indicate when these actions (such as those listed below) are required.</p> <ul style="list-style-type: none"> <li>▪ Disclosure of draft resettlement plan on ADB website (Policy Delivery Process, para.45)</li> <li>▪ Application of ADB requirements other than Prohibited Investment Activities List (PIL) for FI (Policy Delivery Process, para.56)</li> <li>▪ Establishment and maintenance of Environmental and Social Management System (ESMS) for FI (Policy Delivery Process, para. 56)</li> <li>▪ Preparation of resettlement framework for FI (SRBC, para.40)</li> <li>▪ Retention of external expert to conduct monitoring and/or verify monitoring information of the client (SRBC, para.25)</li> <li>▪ Submission of semiannual resettlement progress reports (SRBC, para.26)</li> </ul>	<p>66</p>	<p>Specific timing of these actions will be specified in safeguard plans for each project. The timing of some of these actions has been indicated in the SPS and SRs1-4, or ADB safeguard review procedures (the draft OM section), as appropriate.</p>
<p>7. The policy does not consider involuntary resettlement from the perspective of human rights. To comply with international standards the IR principles must refer to the UNHR Council's Code on Human Rights.</p>	<p>1</p>	<p>Human rights issues are indeed addressed by policy principles and in SR2.</p>
<p>8. There is a need to recognize and simplify the requirement to satisfy both ADB policies and national legislation including where the policy and local law conflict.</p>	<p>10</p>	<p>In most cases, there is no conflict between ADB's policies and national laws. Where ADB's requirements and national laws are different, whichever is more stringent, will apply.</p>
<p>9. The revised policy should contain clear and measurable criteria, which will support ADB staff and borrowers alike to clearly understand and agree upon safeguard planning, implementation, and compliance monitoring.</p>	<p>60</p>	<p>Agreed. ADB's requirements on safeguard planning, implementation, monitoring, and responsibilities of ADB and the borrower/client have been described in the SPS, SRs1-4 and ADB's internal review procedure.</p>
<p>10. The draft SPS fails to improve the clarity, coherence, and consistency of safeguards. It is a confusing document; the language is vague and not consistent. There is an obvious lack of rigor given the use of generalizations and fuzzy terminologies. Examples are (i) There is little consistency between the general requirements; objectives, scope, and policy principles; and safeguard requirements for borrowers/clients; (ii) There are inconsistencies between the description of projects covered by the SPS and the safeguard requirements for each of the three safeguard policy areas. Is it ADB-financed projects, ADB-funded projects, ADB-administered projects funded by a loan or grant, ADB-administered projects without ADB financing, or ADB-supported projects? (iii) Some of the policy principles are not translated into explicit procedural requirements or completely omitted in Attachment A-C; (iv) The requirements that borrowers/clients must comply are mixed up in the Policy Delivery Process section; (v) Terms are used often without clear</p>	<p>60, 62,66, 69</p>	<p>To further improve clarity, we have added a few paragraphs describing the proposed policy structure at the beginning of the Safeguard Policy Statement (para. 3 &amp; 4), provided key definitions and a glossary of terms; ensured consistent use of terms, and incorporated additional criteria to the safeguard requirements for borrowers/clients.</p>

operational definition; and (vi) The SPS lacks clear, objective, and measurable criteria to define the nature of project impacts and the corresponding mitigation measures and reporting requirements.		
11. For ADB to establish legitimacy, strengthen its safeguard standards, and hold the ADB management accountable, ADB should expand safeguard policies to apply to Regional Technical Assistance and non-project related assistance. If safeguard policy compliance is not met under these forms of assistance, ADB should provide the option of filing a complaint under the accountability mechanism.	61	ADB's safeguards apply to all investment projects financed by ADB. The scope of safeguard policy application does not cover TA.
12. The SPS and Attachments A-D must be mandatory and enforceable through the ADB's Accountability Mechanism.	62	Implementation of the SPS and Safeguard Requirements for Borrowers/Clients is mandatory and subject to ADB accountability mechanism.
13. The link between SPU and ADB's Long-term Strategic Framework (LTSF) is viewed as necessary because the focus of LTSF on infrastructure and financial sector development has implications for safeguards. Financial intermediaries (FI), for example, may finance lots of infrastructure loans and the proposed requirements for FIs do not seem adequate. It was suggested that at the minimum, FIs should be required to have systems similar to ADB.	13	A paragraph (para. #10) is added to discuss LTSF 2020 and its implications to safeguard policy update.
14. The draft SPS is very comprehensive. Strong links are made with the Paris Declaration and the principles of country ownership, alignment, harmonization, managing for results and mutual accountability.	67	Noted.
15. Good governance should be included in the safeguard policies.	6	Many governance issues are indeed embedded in the SPS and SRs1-4.
16. The policy document articulate clearly, either in the policy delivery process or as an overarching principle, the central role and importance of affected stakeholders in safeguards issues and the delivery of the safeguards policy.	6	Noted.
17. ADB's safeguard processes should not conflict with existing government policy. There must be a process for validating consistency. It may be better for the SPS to have specific provisions suitable to the country context. Requirements that are not in line with the country realities should be removed.	4, 7, 8	In most cases, there is no conflict between ADB's policies and national laws. Where ADB's policies and national laws are different, whichever is more stringent will apply.
18. If the SPS is principle-based, and not rule-base, how do we deal with local regulations? What are the implications of a result oriented policy?	7	Compliance with national laws and local regulations are an integral part of the SPS and SR1-4. The SPU emphasizes a result oriented approach through balancing up-front procedural requirements with implementation (e.g. strengthened requirements on monitoring and supervision during project implementation); and clearly delineating

		roles and responsibilities of ADB and its borrowers/clients.
19. It is good to have Safeguard policies and Safeguard Systems as Government may not always be pro-poor and pro-citizens. However, the current approach is project based and often does not translate down to strategies. There must be consistency in the principles promoted through the ADB safeguards and the assistance ADB extends to help shape the country strategy.	5	Safeguard policy sets up principles and requirements that must be met by all projects supported by ADB. Country Partnership Strategy (CPS) for a specific country emphasizes assistance priorities that could include assistance in improving country's legal framework and institutional development for safeguards delivery.
20. Specify that borrowers need to comply with national laws as well as with ADB requirements.	9	This has been addressed (see para. 82). Compliance with national laws is an integral part of the SPS and requirements for borrowers/clients.
21. ADB safeguards serve as a potential model for non-ADB investments in the region. ADB is likely to finance a shrinking share of the investments needed for infrastructure in the region especially in middle-income DMCs. In the years ahead, that sector's overall environmental performance will increasingly be a function of other lenders' and the DMCs' application of safeguards on private and other non-ADB investments. Thus, it is critical that ADB sets a strong model for safeguards and that it seeks opportunities to leverage its lending such that the application of its safeguards spills over to non-ADB projects in the region.	70	(i) The SPS and SR1-4 reflects good international practices; (ii) recognizing that ADB can increase the impacts of its development assistance if it establishes partnership with DMCs in strengthening and using their country safeguard systems (CSS), the SPS proposes that ADB may consider to apply a borrower's CSS to manage the social and environmental impacts, provided that (i) the CSS is equivalent to ADB's safeguard policy principles, and (ii) the borrower has capacity and commitment to implementing the applicable laws, regulations, and procedures. The proposed approach emphasizes gaps-fillings to strengthen CSS.
22. The process for reviewing the ADB's safeguards framework should result in a SPS, OM, and SPS Implementation Plan that collectively reflect strengthened protections relative to ADB's existing policy framework, best international practice, and are broadly harmonized with the safeguard policies of the World Bank and IFC. The actual environmental and social performance of an ADB-financed project is a function of these documents. Collectively, these documents should establish an incentive structure for both ADB and its borrowers, and oversight by ADB including throughout the post- Board implementation period.	70	Agreed.
23. The SPS expresses a preference for impact avoidance over impact mitigation. Given this priority, ADB must provide a principle addressing impact avoidance and clear guidance to its clients on upstream procedures for evaluating project alternatives that avoid impacts while maintaining development benefits.	70	Adverse impact avoidance and minimization through assessing alternative projects or design have been incorporated in policy principles and requirements for borrowers/clients. Further guidance will be provided in safeguard guidelines/handbooks.
24. The SPS should specify that project benefits must be shared by the affected communities and the state, particularly where the borrower comes from the private sector.	4	This is indeed reflected in policy principles and requirements for borrowers/clients. See IR Principle #3, para. 17 of SR2, objective of IP safeguards, and para. 35 of SR3. We believe that the principles of project benefit sharing should apply to both public and private sector projects.

<p>25. There was some discussion amongst the group of the need for independent assessment at various points in the project cycle. The preference for local consultants to conduct these assessments was also discussed. It was however highlighted that in countries such as DMCs of the Pacific region that due to the size of the populations, finding local consultants who were also independent was problematic.</p>	<p>6</p>	<p>Use of independent advisory panels during project preparation and implementation is required for highly complex and sensitive projects. The members of the panels could be international or national experts.</p>
<p>26. In moving delivery of safeguards towards being more principles-based rather than rules-based, the key characteristic required for the transformation is greater flexibility which requires (i) a higher level of familiarity with an IA's standard operating procedures, field conditions and challenges; (ii) an appreciation of changes in the socio-political landscape of the borrowing country and how this pertains to field operations; and (iii) working knowledge of member country / borrower's safeguards systems, limitations, and opportunities</p>	<p>56</p>	<p>Noted.</p>
<p>27. Clarify the implications of a result-oriented policy. The results-oriented approach is very encouraging. It promotes requirements to become feasible and implementable actions.</p>	<p>8</p>	<p>The result oriented approach has several implications, including balancing up-front procedural requirements with implementation (e.g. strengthened requirements on monitoring and supervision during project implementation); robust and predictable policy principles and requirements; and clear delineation of roles and responsibilities of ADB and its borrowers/clients.</p>
<p>28. Many expressed agreement with the renewed emphasis on implementation rather than front-loaded procedural requirements, stating that the current policy is focused only on producing paperwork in the early stage of the project. An acknowledged failing has been in the emphasis on the "front end" of the project assessment and approval process. This has resulted in less success in ensuring that the findings and recommendations of the assessment process are actually carried out. This tends to result in a (linear) process focused on the decision on the assessment results and less on an (interactive and iterative) process between client and ADB throughout the life cycle of the project. However, a greater emphasis on the implementation phase should not allow any dilution of the approval process and in fact there is a need to more rigorous assessment right at the front end in the strategic decision making process before project specs are designed.</p>	<p>4, 67</p>	<p>Agreed.</p>
<p>29. The principles are good but implementing these is expected to be challenging. The proposed policies are onerous.</p>	<p>7, 10</p>	<p>Noted.</p>
<p>30. Compliance with both the ADB's and the country's safeguard policies presents considerable challenges. In particular the need to comply with these policies AND the national laws makes it time consuming and requires costly duplication of effort.</p>	<p>9</p>	<p>The SPS proposes that ADB may consider applying a borrower's CSS to manage the social and environmental impacts for projects financed by ADB, provided that (i) the CSS is equivalent to ADB's safeguard policy principles, and (ii) the borrower has capacity and</p>

		commitment to implementing the applicable laws, regulations, and procedures.
31. There are positive provisions in the SPS which we welcome. For instance, (i) inclusion of a Prohibited Investments List; (ii) recognition of the absence of formal legal title to land by affected person as not a hindrance to compensation; (iii) payment of compensation and provision of entitlements before physical or economic displacement; (iv) disclosure of draft resettlement plans and monitoring reports; (v) consideration of direct and indirect project impacts on people’s human rights, dignity, and livelihood of indigenous communities; (vi) removal of the Category B-sensitive classification in environment assessments; and (vii) requiring the conduct of safeguard due diligence for financial intermediaries that is absent in the current environment policy.	69	Noted.
32. The draft SPS presents an inadequate basis for stakeholder consultation because it fundamentally weakens the existing safeguards and it is not pro-poor.	50	The Consultation Draft provided a good basis for eliciting comments on key principles, delivery processes and borrower requirements. Through 14 structured consultations, written submissions, informal meetings and teleconference, we have received extensive comments and detailed suggestions.
33. The draft SPS fails to ensure that projects are designed to promote poverty alleviation, democratic decision-making processes, and respect for human rights.	60	The Consultation Draft and this draft include policy principles and requirements for borrowers/clients that emphasize vulnerable group identification and assistance, project benefit sharing, information disclosure, consultation, community engagement, and many human right issues are indeed embedded in the SPS and SRs.
34. The policy statements fail to even reference rights-based approaches. In general the three policy statements lack the legal teeth necessary for compliance and implementation by the ADB and its borrowing clients.	69	Many human rights issues are indeed embedded in the SPS and SR1-4. All ADB policies must be implemented and are subject to the Accountability Mechanism.
35. The draft replaces the ADB’s detailed and currently mandatory environmental safeguards with one page of mandatory general principles, which are subject to broad interpretation. The detailed pages of policy implementation measures have been replaced with "General Requirements" which are far weaker than the existing safeguard implementation requirements. Due to careful language changes, these requirements appear to be no longer mandatory or are now so vaguely written as to be unenforceable. There are also numerous gaps between the principles and the requirements for borrowers and clients.	51, 66	This was a misinterpretation. In the Consultation Draft, the safeguard policy statement (Chapter V) set out policy objectives, principles and policy delivery process. In addition, the safeguard requirements for borrowers/clients were presented in Attachment A-D. The overall policy structure remains the same in the second draft, and requirements specified in both SPS and safeguard requirements for borrowers/clients are mandatory.



<p>36. The draft SPS contains a number of provisions that are more concerned about ADB keeping its business afloat than safeguarding the poor and marginalized communities. It yields to the demands of big borrowing and lending member countries to lower its safeguard standards. Multiple statements in the Discussion Note and other documents reveal that the SPU process is being driven by the primary objective of making lending easier for these parties.</p>	<p>57</p>	<p>ADB’s safeguard policy update (SPU) is intended to improve the relevance of ADB safeguards and enhance their effectiveness. The main thrusts of SPU are: (i) articulate safeguard requirements to improve clarity, coherence and consistency, (ii) balance the current front-loaded procedural approach with one focused more on implementation, (iii) tailor safeguard procedures to better match different lending modalities, clients and capacities in DMCs, (iv) work towards greater harmonization with safeguard practices across MFIs; and (iv) improve internal capacity and processes.</p> <p>To improve the safeguard policies, both the Consultation Draft and the Second Draft clearly articulate the key safeguard principles and requirements that ADB will apply to all projects; clearly delineated the respective roles and responsibilities of ADB and its borrowers; and improved consistency and coherence across the safeguard areas. The SPS also emphasizes project implementation, for example, by adding these mandatory requirements: (i) establishment of local grievance mechanisms; (ii) engagement of external experts and qualified NGOs to verify project monitoring reports for highly complex and sensitive projects; (iii) use independent advisory panel for highly complex and sensitive projects; and (iv) disclosure of monitoring reports to stakeholders. The proposal has also enhanced the coverage of environmental safeguards to include biodiversity conservation and sustainable natural resources management, pollution prevention and abatement, and physical cultural resources.</p>
<p>37. The SPS should contain clear sections on mandatory requirements that are not exempted through caveats in other sections of the text. It should clearly state which components are mandatory and when, and explain how the different components relate to each other.</p>	<p>51</p>	<p>We have added two paragraphs (para. 3&amp;4) to describe the overall policy structure.</p>
<p>38. Through a series of careful language changes, ADB management has drafted the Safeguard Policy Statement in a manner which appears to eliminate (either directly or through the introduction of vague language rendering implementation measures largely unenforceable ) the current detailed mandatory ADB requirements for the implementation of the safeguard policies. This stunning reversal of ADB policy poses a direct threat to project affected communities and the environment.</p>	<p>53</p>	<p>See previous comments and response.</p>

<p>39. The draft SPS completely centers on meeting the needs of ADB and its clients/borrowers. Multiple statements in the October 2005 Discussion Note and other documents reveal that the SPU process is being driven by the primary objective of making lending easier for these parties. This is not the appropriate focus for an update of safeguard policies, which were created first and foremost as tools for protecting the rights and wellbeing of affected people and the environment. ADB leadership must remind management and borrowers that the <i>raison de etre</i> for safeguard policies is to ensure that no harm befalls project-affected people, and that their rights and wellbeing are protected and advanced. These people must be kept at the forefront of any meaningful safeguard policy. Any changes in the safeguard policy framework must be firmly backed up by a sound justification/rationale explaining how the change benefits local people and their environment.</p>	<p>60</p>	<p>See previous comments and response.</p>
<p>40. There is a need for greater flexibility by ADB officers when monitoring delivery of social safeguards. Emphasis should be placed more on fulfilling principles and objectives of social safeguards and ensuring the end result (that APs do not become worse off) rather than on strict compliance of “rules”. For example, (i) In the case of disclosure. ADB should appreciate and accept an IA’s judgement regarding the level, medium (instrument) and timing of information provided to APs as long as the principle of disclosure is being fulfilled; (ii) In the case of compensation, ADB should be satisfied with the results of negotiations as provided for under Indonesian law provided that they are fair and transparent. (iii) Where APs are found to be satisfied (end result), there is no reason to over-emphasise compliance with rules (eg. assessment of adequacy of compensation) and require additional action (case : Package C1 and C2, Loan 1983-INO). This suggests that rules override the end objective.</p>	<p>56</p>	<p>This is the intent of the SPS.  This is a policy implementation issue.</p>
<p><b>Policy Structure</b></p>		
<p>41. ADB should clearly delineate the roles and responsibilities between ADB and borrower/client in the Policy Delivery Process and Attachment A-C. Eliminate inconsistency between the two documents.</p>	<p>66</p>	<p>Agreed. Consistency has been checked and text has been improved. We welcome further suggestions on consistency improvement.</p>
<p>42. ADB should fully reflect the policy principles in Attachment A-C. The attachments should be read as stand-alone documents with comprehensive list of borrowers/clients obligations that are subject to ADB’s Accountability Mechanism.</p>	<p>66</p>	<p>As above.</p>

<p>43. The October 2007 Consultation Draft of the Safeguard Policy Statement (SPS) contains many fundamental weaknesses, does not upwardly harmonize with policies of other IFIs and its requirements do not meet many relevant international law and best practice standards. The draft replaces the ADB’s detailed and currently mandatory environmental safeguards with one page of mandatory general “policy principles” which in many instances are much weaker than existing requirements and subject to wide interpretation. There are also numerous gaps between the policy principles and corresponding implementation requirements for borrowers and clients. Furthermore, the proposal to aggressively move to a country systems approach to safeguards far surpasses the more cautious approach being pursued by the World Bank.</p>	<p>50</p>	<p>See previous responses.</p> <p>On strengthening and use of country safeguard systems (CSS), this draft emphasizes a phased approach and clarifies that “application of CSS is not automatic or mandatory.”</p>
<p>44. We agree with the consolidation of the three safeguard policies into a single policy document to promote coherence and consistency, as long as sufficient detail in each is maintained.</p>	<p>70</p>	<p>A set of policy principles for each safeguard area is established. Detailed requirements for each safeguard area are specified in SR1, 2 and 3, respectively.</p>
<p>45. The differentiation of key safeguard principles from procedural requirements is acceptable only if the achievement of each relevant principle is explicit, transparent, measurable, subject to ADB’s accountability mechanism, and fully translatable into loan covenants. Each principle listed thus needs to be associated with a specific procedural requirement.</p>	<p>70</p>	<p>SRs1-4 outline the safeguard requirements that borrowers/clients are expected to meet to deliver the policy principles. The ADB operations manual section details ADB internal review procedures that ADB staff must follow to ensure that borrowers/clients comply with the safeguard requirements (SRs1-4).</p>
<p>46. We support the clear delineation of ADB and borrower responsibilities; however, there are sections where the two are still mixed in together, e.g., in Policy Delivery Process section. Each provision in this section should be clearly delineated as mandatory either for ADB or for its clients.</p>	<p>70</p>	<p>Paragraph 55 is added to further clarify the responsibilities of ADB and its borrower/client’s and indicate that these responsibilities are mandatory.</p>
<p>47. We support the separation of procedural detail into the Operations Manual if: (i) the OM will be subject to Board and public review and comment, (ii) it is presented to the Board at the same time as the SPU review, (iii) it will go into effect at the same time that the Policy itself becomes operational, and (iv) it contains at a minimum the items indicated at the end of these comments.</p>	<p>70</p>	<p>In accordance with the relevant ADB Staff Instruction, OM sections are usually prepared during the R-Paper (final draft) stage. To accommodate external stakeholders’ request, we have posted the draft ADB safeguard review procedures (draft OM section) section for comments. In accordance with ADB’s procedure of policy paper processing, the OM will be approved by the President.</p>
<p>48. There should be specific guidelines for each of the three safeguard policies to guide the borrowers on how to apply the policies.</p>	<p>8</p>	<p>We will update ADB’s guidelines on environmental assessment and involuntary resettlement and formulate a guideline on Indigenous Peoples.</p>
<p>49. There should be guidelines on enforcement to avoid manipulation, specifically guidelines describing the characteristics of stakeholders who can be involved in the process.</p>	<p>7</p>	<p>Appropriate elements will be integrated in the guidelines/handbooks.</p>

<p>50. Add an appendix to the document showing the differences between the current and the proposed safeguard policies.</p>	<p>6</p>	<p>Will be prepared and presented at the consultation workshop to be held in Manila. The appendix will be attached to the W-Paper.</p>
<p>51. One of the main reasons the SPS draft fails to provide the required protection for affected people and the environment is the vagueness of its language and structure. The SPS contains different components, some of them as appendices, and it is unclear which (and when) components are mandatory and how they relate to each other. Section V. A of the SPS, for instance, is titled “draft safeguard policy statement”. It contains objectives, scope and policy principles for each of the three policies and states that “the policies apply to all projects funded by a loan, and/or a grant, and/or other means such as equity and/or guarantee (hereafter referred to as projects).” (para 40) It is unclear what “the policies” refers to. Section V lists that ADB’s three safeguards are, : (i) the Policy on Environmental Safeguards, (ii) Policy on Involuntary Resettlement Safeguards and (iii) Policy on Indigenous Peoples Safeguards. However, the SPS contains no sections called “Policy on Environmental Safeguards”; but instead a one page section for each of the three safeguard areas called “Objectives, Scope and Policy Principles” of the respective safeguard area. The SPS further dilutes any binding nature of policy requirements by using language such as “the achievement of safeguard policy objectives” (para 26) and “the achievement of ADB policy principles” (para 57) rather than referring to policy compliance.</p>	<p>51</p>	<p>Paragraphs 3, 4, and 55 are added to further clarify the overall policy structure and responsibilities of ADB and its borrower/client’s as mandatory.</p>
<p>52. We do not inherently disagree with re-organizing the policies to place them under common statements and frameworks and to avoid overlap and contraction. However, we strongly disagree with the way that such integration trims the policies of much of their specific and concrete language pertaining to implementation of principles. Without explicit language (or mandatory Guidance Notes) to contextualize policy principles and specify how they must be implemented, the principles remain meaningless and abstract, subject to a lot of interpretation.</p>	<p>60</p>	<p>SRs1-4 detail the safeguard requirements that borrowers/clients are expected to meet to deliver the policy principles. The ADB operations manual section details ADB internal review procedures that ADB staff must follow to ensure that borrowers/clients comply with the safeguard requirements (SR1-4).</p>

<p>53. The Discussion Note has identified IFC's standards as the main model ADB intends to emulate. We believe that such an approach is misguided for an institution that continues to serve primarily public sector because the IFC Performance Standards are designed for private sector clients. The draft SPS also emulates the principles developed by the World Bank for use in country systems pilot projects. These principles were never meant to serve as a stand-alone policy document, as the World Bank maintained its full set of ten discrete safeguard policies. Distilled principles and vague requirements are not an adequate basis for a functional, responsible safeguard policy framework.</p>	<p>60</p>	<p>We believe that ADB should work with other MDBs towards greater harmonization around safeguard policy principles, while implementation procedures could be tailored to each institution's need. We also believe that the same safeguard policy principles should be applied to public and private sector operations, while certain procedural requirements could be differentiated.</p>
<p><b>Policy Scope</b></p>		
<p>54. Include the following in the scope of SPU, or give more attention to (i) technical assistance dealing with policy reforms (e.g., mining act and forestry laws) as these have major impacts on IP, (ii) occupational health and safety, and (iii) social impacts. On item (iii), social assessment procedures (not limited to resettlement and impacts on indigenous peoples) could be either incorporated into environmental assessment or conducted in parallel, instead of treating other safeguard-related issues through other ADB policies or strategies.</p>	<p>3, 10</p>	<p>(i) The SPS does not cover TA activities. (ii) See para. 39-40 of SR1 for requirements on occupational health and safety. See para. 4 of SR1 and para. 8 of SR2 for social impact assessment through environmental assessment process. Social impact assessment is required in SR2 and SR3.</p>
<p>55. The consultation draft reflects an increase in subject matter coverage over the prevailing policy. The proposed scope, however, is neither as broad in terms of topics treated as current IFC or World Bank safeguards. ADB should expand the scope of its safeguard policy to be more consistent in the range of topics addressed.</p>	<p>70</p>	<p>The scope of the proposed SPS and SR1-4 is consistent with World Bank Group, except for the core labor standards (IFC). Core labor standards are addressed through ADB's Social Protection Strategy, OM C3 and routine inclusion of covenants in loan agreements.</p>
<p>56. The draft SPS fails to adequately address social impacts, even compared with the existing safeguard standards. ADB should (i) incorporate social safeguard elements of other policies into the SPS, in particular OM sections on gender and social dimension and (ii) incorporate all environmental safeguard elements of other policies into the SPS.</p>	<p>66</p>	<p>(i) See above response about core labor standards. On gender issue, the revised policy principles and safeguard requirements SRs1-3 have been further strengthened to emphasize gender-sensitive social assessment, gender-inclusive consultation, gender-responsive grievance mechanism, and address gender-differentiated impacts and gender-specific needs through mitigation and/or compensation measures, (ii) The proposed SPS and SR1 cover environmental safeguard principles reflected in other ADB policies. The SPS and SR1 will not supersede specific environmental requirements embodied in other policies.</p>

<p>57. On extractive industry projects, the draft SPS, unlike IFC, does not require additional assessments of governance issues or that payments to governments and the terms of key agreements such as host government agreements be publicly reported.</p>	<p>53</p>	<p>On 5 February 2008, ADB endorsed the Extractive Industries Transparency Initiative (EITI). ADB's Second Governance and Anticorruption Action Plan (GACAP II) has three themes, public financial management (PFM), procurement and reducing vulnerability to corruption. During country partnership strategy preparation PFM, procurement and corruption risks assessments are being undertaken at the country level and in priority sectors. Once the country/sector level assessments have been completed project level risk assessments are required.</p>
<p>58. The draft SPS is seriously weak because it does not cover non-lending services, such as technical assistance grants and support to the private sector whose operations implicate countries under repressive governments such as Burma. ADB should expand safeguard policies to cover RETA grants and non-project related assistance. If safeguard policy compliance is not met under these forms of assistance, ADB should provide the option of filing a complaint under the accountability mechanism.</p>	<p>61</p>	<p>See response to comment No. 11.</p>
<p>59. There are substantial concerns on the following scope of SPU: (i) "balancing a front-loaded approach ..." which may be an attempt to reduce or eliminate clear safeguard requirements and (ii) tailoring of safeguard approaches to client capacity and increasing adaptability of implementation, which can represent a significant move away from recognized international standards.</p>	<p>19</p>	<p>Opinion noted.</p>
<p><b>Chapter 1-4</b></p>		
<p><b>Chapter I: Background and Introduction</b></p>		
<p>60. It is not clear what exactly this desire for "relevance" relates to in ADB's case. A clearer understanding of the driving need for greater relevance is fundamental to any evaluation of the efficacy of policy revisions. It would be of particular interest to know what regionally specific dynamics motivate the revisions so that consideration can be given to assessing if the revisions are rigorous enough to address these. This regional specificity is not well covered, limited to two paragraphs of generalities.</p>	<p>67</p>	<p>Noted.</p>
<p><b>Chapter II: Changing Context</b></p>		
<p><b>Chapter III: Current Safeguard Policies and Experience</b></p>		
<p>61. Para. 17 - All development finance institutions have had problems in implementing their safeguard policies. Inefficiencies result from lack of will to do a good job. The cost of democratic processes claimed in the paper is a non-issue. Any financial cost should be judged against social, political</p>	<p>63</p>	<p>Opinion noted.</p>

and financial costs of NOT doing them earnestly. Development finance institutions should not shift the responsibility to the developing countries, particularly in this situation when WTO and bilateral development agreements increasingly weaken country capacity to look after the social and human rights interests of their citizens.		
62. Para. 18 - Application of safeguard policies is always a bottom-up exercise, a true nature of which the ADB still fails to understand and how it provides the required flexibility for development planning.	63	Opinion noted.
63. Para. 18 - It is completely wrong to say that the concept of indigenous people is ambiguous and unclear. There is a global consensus on this now, fixed also in global jurisdiction. The concept also includes flexibility, which the application in various country contexts requires.	63	Opinion noted.
<b>Chapter IV: Key Policy Issues and Considerations</b>		
64. Para. 26 - The draft SPS refers to the need to ensure that there is broad support, but it does not detail how such support is measured or intended to be achieved. It refers to the UN Declaration on the Rights of Indigenous People, but merely says that the issue of free prior and informed consent will be "further discussed". Notable in this regard is the removal of the reference to "consent" contained in the 1998 Policy on Indigenous Peoples, despite the adoption of the UN Declaration on the Rights of Indigenous Peoples prior to the release of the draft SPS.	51	This draft proposes to recognize the principle of free, prior and informed consent, and operationalizes 'consent' for the purpose of policy implementation in para. 64 of the SPS.
65. Paras. 24 and 25 – The categorization process is also another of those technocratic institutions that we in the Social Development Division opposed because we knew it would not work. So it is even more important to forget "triggers" other than those that emerge from initial social assessments and in consultation with people and their organizations.	63	Noted.
66. Para. 26 – Spell out what "consensus" by indigenous peoples (and other vulnerable peoples) means. Consent to bad plans is not what we want. We want development programs to incorporate the views of these people so that development benefits them and provides a basis for inclusive planning, and hopefully more inclusive and stable economy.	63	Noted.
67. Para. 27 – Loan documents require clear commitments from the government, with detailed requirements on implementation. After-planning-open agreement is not an alternative. It creates problems, confusion, and ever increasing work for ADB staff.	63	See draft ADB safeguard review procedure (draft OM section) for requirements on legal documentation.
68. Para. 29 – When private sector is supported with public financing - with tax-payers money- , it needs to apply public policies. The chapter on financial intermediation is not clear.	63	ADB safeguard principles and all requirements except for the 120-day disclosure rule apply to both private and public sector projects. Further clarity is made on requirements for FI projects (see para. 74-76 of the SPS).

<b>ADB's Safeguard Commitment</b>		
69. Add a fourth objective requiring that as a minimum standard, improve people's lives and respect their rights.	6	This has been reflected in the objectives of involuntary resettlement and Indigenous Peoples safeguards.
70. Para. 36 - the first statement should clearly reflect and acknowledge respect for and steady rule of human rights as a fundamental and intrinsic component in addressing the poverty in many DMCs.	69	Many human rights issues have been embedded in policy principles and requirements for borrowers/clients.
71. Para. 37 - Item (ii) should be formulated more accurately like this: Where avoidance of negative impact is not feasible, minimize, mitigate, and/or compensate for adverse project impacts on affected people "according to the rate prescribed by national laws of borrowing countries and/or international standards."	69	These concepts and requirements are inherent in the SPS.
<b>Project Screening and Scoping</b>		
72. Project classification should include consideration of the potential impacts from associated facilities, indirect impacts, and cumulative impacts.	70	This was required in the Consultation Draft and remains in the second draft.
73. Maintain the project classification system for IR and IP which it proposes to eliminate, as well as the GAD classification essential to ensure the success of BP/OP C2.10 The classification system is necessary to ensure that ADB staff and borrowers/clients better implement safeguards and enhance the ability for the ADB and outsiders to track ADB performance on gender and other safeguard issues; and	65	The current classification for IR and IP may not reflect the actual scope of impacts or have a material impact on the level due to diligence undertaken on a particular project in practice. Under the proposed approach, RP/IPP will be prepared for all projects with IR/IP impacts, and the level of detail and comprehensiveness of which will be proportional to the scale and nature of potential IR/IP impacts.
74. Clarify whether screening and scoping will be done by ADB or the executing agency. Identify who will conduct research on project impacts and specify how to ensure the independence, competence, and qualifications of researchers. Clarify protocols and methodology to ensure the respondents' perceptions are reflected in the screening and scoping process.	4, 7	It is ADB's responsibility to carry out project classification and screening. This has been further clarified.
75. We agree that screening will be done by ADB, but it should engage with the client to determine when impacts are potentially significant.	70	ADB will determine project category in consultation with the borrower/client.
76. Specify a timeframe for screening. The term "earliest stage" needs to be clarified.	1, 6	See draft ADB safeguard review procedures (draft OM section): screening will be done during project identification stage.
77. Potential impacts should be changed to "positive and negative impacts."	9	Unless it specifies, "potential impacts" include both positive and negative impacts.
78. Add a statement to clearly explain that at the end of the screening and scoping, relevant safeguards are identified and triggered.	3	Text revised. See para. 58, 59, 60 of SPS and draft ADB safeguard review procedures (draft OM section) section.
79. Add this statement: "Screening is an ongoing process and as new information becomes available, the project may be revised and the affected community will be informed."	4	We believe project screening should be carried out in early stage of project preparation. For requirements on <i>change in scope, uncertainties in location and alignment of infrastructure, and</i>



		<i>unanticipated impacts</i> , see the draft ADB safeguard review procedures (draft OM section) section.
80. Define what is “adequate information” in detail. Describe the necessary quality of information (accurate/reliable); and specify that the time for information dissemination should be as early as possible.	7	These have been reflected in SPS and SRs1-4. More detailed guidance will be provided in safeguard guidelines/handbooks.
81. ADB can place standard templates on its website for use in screening and scoping phase.	6	This will be considered.
82. ADB must require independence in any assessments conducted on behalf of the borrower/client and that affected people must be consulted in the assessment process.	6	ADB’s policy emphasizes “qualified and experienced expertise” rather than “independent” in the preparation of social and environmental assessments, because (i) promoting borrowers in-house capacity of assessments contributes to mainstreaming of safeguards, and (ii) the borrower’s payment for services makes the assessment not truly independent. ADB requires that independent advisory panels must be used for highly sensitive and complex projects.
<b>Categorization</b> 83. There are serious concerns about elimination of classification for Involuntary Resettlement and Indigenous People. Civil society organizations are not satisfied with current situation because sometimes measures for Involuntary Resettlement are not appropriate. ADB should keep separate project classification for Environmental impacts, Involuntary Resettlement and Indigenous People and the Bank should improve quality and quantity measures especially for IR. Some individuals strongly commented that environmental policy, IR policy and IP policy should be separated.	1	The existing classification for IR and IP may not reflect the actual scope of impacts or have a material impact on the level due to diligence undertaken on a particular project in practice. Under the proposed approach, RP/IPP will be prepared for all projects with IR/IP impacts, and the level of detail and comprehensiveness of which will be proportional to the scale and nature of potential IR/IP impacts. Also see response to comment #96.
84. We don’t support the proposal to remove categorization for involuntary resettlement impacts unless ADB substitutes the categorization with a measurable definition of significance (such as a threshold number of households that either need to be physically resettled or experience adverse livelihood impacts), and discloses the significance determination prior to appraisal.	70	As above.
85. Use a single or integrated project classification system to reduce processing time and paperwork.	1, 10	The SPS proposes a single classification based on significance of environmental impacts (A, B, C, FI), and elimination of classification for involuntary resettlement and Indigenous Peoples
86. Specify that ADB decides on the project category.	4	This has been specified in SPS (see para.57, 58, 59, 60).
87. Classification of projects should involve the government and NGOs, rather than maintaining it as an internal ADB process.	4	We believe it is ADB’s responsibility to determine project classification.
88. Clarify what will happen when the ADB’s project classification is not consistent with that of the country.	3, 8	ADB will carry out screening using the country’s data as a reference. ADB will determine the project classification. More importantly, ADB will agree with the borrower the potential

		environmental and social impacts and risks to be assessed, and actions to be taken to address the impacts and risks.
89. Explain all the categories. Screening is an ongoing process and as new information becomes available, the project may be revised and the affected community will be informed.” Category may also change if, for example, complexities increase in the course of a project.	4	For requirements on <i>change in scope, uncertainties in location and alignment of infrastructure, and unanticipated impacts</i> , see the draft ADB safeguard review procedures (draft OM section) section.
<b>Categorization of environmental impacts</b>		
90. Clarify the different categories and provide benchmarks to reduce the potential for mis-categorization or manipulation.	10	Classification is conducted on a project-by-project basis. Social and environmental checklists for various sectors are used to guide project classification.
91. The logic of including FI in the environment category is not clear.	10	The nature of FI projects is different from direct investment projects where ADB has direct oversight or strong leverage. To hold FI clients accountable for safeguards, the requirements need to be tailored to FI.
92. Removing Category B – sensitive will create problems. It may result in a tendency to use the lower classification more frequently.	1	This has been done.
93. For Category A, replace ‘significant’ with ‘serious’ and mention IEE. Impacts should include those on cultural resources, and therefore Category A projects should specify “biodiversity, natural resources, or cultural resources”.	4	All relevant factors will be considered for classification for each specific project.
94. For Category C, although no environmental assessment is needed, there should be at least a report explaining the categorization.	4	Environmental checklists for various sectors are used by ADB for this purpose.
95. EIA should be compulsory for all projects.	4	EIA is required for Category A projects, and IEE is required for Category B projects. These requirements are mandatory.
<b>Categorization of IR and IP impacts</b>		
96. The SPS recommends that the categorization on scale of impact be dropped. This categorization system for scale of impact in regard to resettlement is one of the few requirements that is clear in the existing policy which states that Category A with significant impacts means 200 people or more will be affected by physical displacement or loss of more than 10 % of productive assets. (OM Section F2/OP, para 19). These kinds of provisions give staff and borrowing governments clear guidance and provide protection of affected people. What is needed in order to enhance the existing safeguard policies, is to clarify the categories for environmental impact and impact on indigenous people in a similar manner, as currently the policies do not provide definitions for “significant” and “less significant”. The SPS moves in the opposite direction by calling for abandoning the categorization system for the Environment Policy and Indigenous Peoples Policy.	51	(i) The details of RP varies with the significance and the scale of resettlement impacts of a project (ii) Resettlement impacts will be addressed through a detailed procedures described in SR2 regardless of significance of IR impacts

<p>97. For IR, (i) This is not clear: "... resettlement plans will be prepared commensurate with the extent and scale of impacts." (ii) Removal of categorization will not be supported unless ADB (a) substitutes the categorization with a measurable definition of significance (such as a threshold number of households that either need to be physically resettled or experience adverse livelihood impacts), and (b) discloses the significance determination prior to appraisal.</p>	<p>1</p>	<p>As above.</p>
<p>98. For IP, (i) Explain the impacts to communal integrity. (ii) Add a footnote to para. 44 to include reference to other ethnic and/or vulnerable groups and to include affected communities beside affected IP. (iii) Add "direct and indirect" before "impacts on IP."(iv) The language used in para. 44 is not consistent with the policy objectives. (v) Application of IP categorization is complicated in the Pakistani context. (vi) Positive impacts to non-IP should be considered along with negative impacts on IP.</p>	<p>4, 6, 10</p>	<p>The old para.44 points to significance of impact, which is deleted in the Second Draft SPS.</p>
<p>99. The draft SPS lacks clear, objective and measurable criteria that define the nature of project impacts and the corresponding mitigation measures required to protect displaced people. Without such essential criteria, it will be impossible to ensure accountability and that the client/borrower and ADB comply with policy requirements. Specifically, the draft SPS removes clear language on project categorization and reporting requirements for projects causing involuntary resettlement, and replaces these with muddled provisions that will confuse affected people as well as ADB managers and project implementers....</p>	<p>60</p>	<p>Safeguard policy principles and safeguard requirements for borrowers/clients lay out essential criteria on how to address environmental, involuntary resettlement and Indigenous Peoples issues. For comments on project categorization, see previous comments and responses.</p>
<p>100. IFC 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.</p>	<p>53</p>	<p>This has been reflected in IR principle #2. A paragraph (para.10) is included in SR2 to ensure the policy principle will be delivered. A paragraph is also included in SR1 (para.7) to address this issue.</p>
<p>101. 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</p>	<p>53</p>	<p>Principle #3 (environment safeguards), para. 3 of SR1, and Annex 1 of SR1 are revised to reflect this.</p>

<p>higher impact projects.</p>		
<p>102. ADB must specify the time line of project screening. Merely stating at the earliest stage of project preparation robs the affected community of opportunities to prepare well in their interaction with those responsible for screening and scoping work.</p>	<p>69</p>	<p>It is ADB’s responsibility to carry out project classification and screening. The requirement that project classification and screening will be undertaken at project identification stage, which has been specified in the ADB safeguard review procedure (draft OM section).</p>
<p>103. Requirement for ADB to conduct screening and categorization of change in scope is omitted. Under the existing policy, “change in scope” (OM F2/OP, para.52) and “unanticipated resettlement impacts” are distinguished (OM F2/OP, para.53), with different procedural requirements. Former requires screening and categorization by ADB, whereas assessment by the client is sufficient for the latter. The draft SPS omits this distinction. It considers “change in scope” (“change in alignment and footprint”) as “unanticipated resettlement impacts”. Screening is to be conducted by clients.</p>	<p>66</p>	<p>For requirements on <i>change in scope, uncertainties in location and alignment of infrastructure, and unanticipated impacts</i>, see the draft ADB safeguard review procedures (draft OM section) section.</p>
<p>104. Clear guidance on how projects are screened (which should be done through a participatory process) is needed.</p>	<p>63</p>	<p>Social and environmental checklists are used by ADB.</p>
<p><b>Categorization of Project Impacts</b> 105. It is unclear whether a project with likely impacts on cultural resources would be classified as a Category A project. The description of Category A projects should be expanded to ensure that impacts on other resources, such as cultural resources and the climate, will be included.</p>	<p>62</p>	<p>Potential impacts on climate change and physical cultural resources have been covered for environmental classification and assessment. See policy principle #2 on environmental safeguards.</p>
<p>106. Clear and measurable resettlement category is deleted. While the terms “significant” “large-scale” “minimal” and “limited” is used throughout the draft SPS to describe the significance of resettlement impacts, there are no measurable definition of such terms. Requirement to categorize projects based on clear and quantitative assessment of resettlement impacts is deleted.</p>	<p>66</p>	<p>The current classification for IR and IP may not reflect the actual scope of impacts or have a material impact on the level due to diligence undertaken on a particular project in practice. Under the proposed approach, RP/IPP will be prepared for all projects with IR/IP impacts, and the level of detail and comprehensiveness of which will be proportional to the scale and nature of potential IR/IP impacts.</p>

<p>107. To safeguard women and gender equality, ADB must maintain the project classification system for IR and IP, as well as the GAD classification essential to ensure the success of BP/OP C2. The classification system is necessary to enhance the ability to track ADB performance on gender and other safeguard issues.</p>	<p>65</p>	<p>The IR and IP classification system does not address gender equality issues. SPS address gender issues throughout the project cycle, including gender-inclusive consultation, gender-sensitive social assessment, gender-responsive grievance mechanism.</p>
<p><b>Information Disclosure</b></p>		
<p>108. Specific requirements for information disclosure should reference 'all relevant project documents,' including environmental and social impact assessments, indigenous peoples' plans and any other relevant management plans. Information disclosure requirements are essential as a tool to enable indigenous peoples' organizations to monitor borrower/client compliance with the policy requirements. Information dissemination should be done in a manner conducive to access by indigenous peoples, using suitable languages and formats.</p>	<p>53, 55</p>	<p>For disclosure of relevant project documents, please see ADB's Public Communication Policy.</p>
<p>109. ADB should require borrowers/clients to submit EIA, draft RP/IPP, and disclose them on the ADB's website.</p>	<p>66</p>	<p>This has been covered. See para. 62 of the SPS, and paragraphs on information disclosure in SRs1-3.</p>
<p>110. One of the most dramatic changes from the existing policies is the elimination of the 120-day period for public comment. This is a critical weakening of the policies. The draft policies do not include a specific time frame for public comment or consultations. It is critical that the ADB ensures that citizens will have adequate time to review documents and participate meaningfully in decisions that impact them.</p>	<p>62</p>	<p>In response of external comments, and taking into account of other MFIs' approach, this draft proposes: ADB will disclose on its website draft EIA reports at least 120 days before Board consideration for public sector projects, and at least 60 days before Board consideration for private sector projects.</p>
<p>111. The provision for posting of safeguard documents on the ADB website prior to project appraisal is acceptable, as long as paragraph 77 of the ADB's Public Communication Policy on the 120-day rule remains binding.</p>	<p>70</p>	<p>As above.</p>
<p>112. Documents for screening and scoping should be disclosed before appraisal.</p>	<p>10</p>	<p>The results of screening and scoping are reflected in social and environmental assessments and plans. See above for ADB's proposed requirements for environmental assessments disclosure. Disclosure of resettlement plans and Indigenous Peoples plans before appraisal has already been addressed. See para. 62 of the SPS.</p>
<p>113. Disclosing information too early gives rise to speculation (e.g., land value), which makes negotiation difficult. The text should allow for flexibility on the amount and timing of information to be disclosed by the implementing agency. Disclose the resettlement plan only after it has been approved.</p>	<p>7</p>	<p>We believe that draft resettlement plan should be disclosed before project appraisal for meaningful consultation.</p>

<p>114. Clarify how information will be shared to the local community before financial support is approved by ADB. Too much preparatory activities are required but there is no certainty when the project will start or if this is approved. In this case, information regarding the status of the proposed project should be submitted to the community periodically.</p>	<p>5, 7</p>	<p>This has been addressed in SPS and SR1-3. We will consider including more detailed guidance in safeguard handbooks/guidelines.</p>
<p>115. All safeguard documents need to be disclosed. Para. 45 should specify that the final safeguard plans will be posted on ADB website. Relevant information to be disclosed should include (but not necessarily be limited to) environmental and social management plans, monitoring reports, and corrective action plans.</p>	<p>3, 45, 70</p>	<p>This has been addressed. See paragraph 62 of SPS. See paras. on information disclosure of SR1-3.</p>
<p>116. A wider communication strategy should be considered to include detailed description of information flow. Monitoring inclusiveness and exclusiveness need to be specified, and the role of community institutions in information dissemination and feedback need to be defined. In particular, include statements (i) explaining borrowers' obligation to ensure that affected people actually are able to access information on project design, plans etc. (ii) exploring the use of formal public hearing, radio programs, etc. (iii) declaring that information be relayed as soon as available (even if changes are inevitable or even if in draft form), and (iv) providing for a clear process to how the feedback from the affected communities will be taken into account. Ensure that messages reach down to the grassroots. Providing information through the website is not enough. Word-of-mouth works better for village areas and the media to the general public. Other means suggested were: leaflets, brochures, and a briefing process for affected people.</p>	<p>4</p>	<p>Item (i), (iii) and (iv) have been addressed in the SPS and SR 1-4. For item (ii), we believe that the language should remain general, as different disclosure mechanisms exist in different DMCs. However, the suggestion will be considered when the safeguard guidelines/handbooks are updated/formulated.</p>
<p>117. There is apparent double standard in disclosure requirements for private and public sector.</p>	<p>3</p>	<p>We believe that the same safeguard policy principles should be applied to public and private sector operations, while certain procedural requirements could be differentiated.</p>
<p>118. Requirement for ADB to post resettlement plan for private sector and FI project on ADB website is omitted. The following resettlement and monitoring documents newly introduced the draft SPS are not required to be posted on ADB website for private sector and FI projects: Environmental and Social Management System (ESMS), Annual Report, and Corrective Action Plan</p>	<p>66</p>	<p>Disclosure of resettlement plan for non-FI projects has been required.  ADB will not require disclosure of private sector FIs' ESMS and annual reports. This is consistent with ADB's PCP.</p>
<p>119. Translating project information to local languages and providing information to illiterate affected peoples are difficult.</p>	<p>10</p>	<p>This has been covered. The borrower/client is required to disclose safeguard documents in a form, manner and language(s) accessible to affected communities and other stakeholders.</p>

<p>120. Clarify for whom disclosure should be meaningful: government, NGO, or local communities.</p>	<p>5</p>	<p>Relevant information should be disclosed to all stakeholders including affected communities, governments, NGOs and other concerned stakeholders.</p>
<p>121. Include in the text free and prior sharing of project information with the IP and the community.</p>	<p>5</p>	<p>This has been addressed.</p>
<p>122. The SPS should cross-reference ADB’s Public Communication Policy (PCP) for disclosing safeguard-related documents.</p>	<p>70</p>	<p>The SPS contains all disclosure requirements for safeguard documents.</p>
<p>123. The language about who must be informed and consulted must be uniform to ensure there are no ambiguities and allow for broad consultation. The World Bank states that “project-affected groups and local nongovernmental organizations” must be consulted. World Bank, OP 4.01, para. 14. Adopting the World Bank’s language could still leave questions about how to interpret “affected” and “local.” The World Bank’s language also uses affected “groups” rather than “people.” Individuals should be encouraged to participate. The World Bank does not limit participation to “key” stakeholders. The ADB should use affected people and local NGOs (and drop the key stakeholder language). The ADB policy could be strengthened by stating that in-country people or groups that request information (regardless of whether they are affected or local) will receive the same information that is provided to the affected people. This would limit the borrower’s obligation to actively informing and consulting a reasonably defined local population, but would allow other people or groups to “opt-in” to the disclosure and consultation process.</p>	<p>62</p>	<p>The suggestions have been incorporated, as appropriate. “key stakeholders” has been replaced by “stakeholders”; “local NGOs has been replaced by “concerned NGOs. A Glossary of Terms has been prepared and terms such as “affected people” and “affected persons” are defined in the glossary.</p>
<p>124. Regarding the list of information to be disclosed by the ADB and the borrower, it is necessary to disclose information on all the projects irrespective of whether they have big impacts or not.</p>	<p>69</p>	<p>For projects without social and environmental impacts, the project information will still be disclosed in accordance with ADB’s Public Communication Policy.</p>
<p>125. 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.</p>	<p>53</p>	<p>EMP is part of environmental assessment. Further clarification has been made. See Principle #6 on environmental safeguards, the section on information disclosure of SR1, and Annex 1 to SR1.</p>

<p>126. The mandatory provision for “120-day” disclosure of environmental assessments before appraisal is completely missing in this section. There should be explicit mention of a time frame required mandatory disclosure of such documents, including environmental management plans, IP and resettlement plans, in a language and manner that are accessible to affected people. A fixed period of time should be set, in this case at least 120 days, for the disclosure of documents to give local community members ample time to fully understand/ appreciate and provide their inputs/comments on the said documents. We find no merit at all in the attempt to reduce the number of days for disclosure of these important documents. We find that even four months can be insufficient to make an informed assessment of the real and anticipated environmental and social impacts along with the implications of ADB operations. Borrowers should be mandated to provide such reports and documents to the lowest governance structure through publicly accessible places to ensure access to information for affected communities and concerned stakeholders. Apart from the internet, which will be a huge challenge for people without access to or with limited access to the internet, ADB should consider tapping other media entities for information disclosure.</p>	<p>69</p>	<p>For clarity, the 120-day disclosure rule in the existing Environment Policy and the Public Communication Policy is about disclosure of summary SEIA/SIEE to general public through ADB website.</p> <p>In response to the external comments and taking into account of other MFIs’ approach, this draft proposes: ADB will disclose on its website draft EIA reports at least 120 days before Board consideration for public sector projects, and at least 60 days before Board consideration for private sector projects.</p>
<p>127. ADB should be required to publish the periodic monitoring reports on its website and also that it should be required that copies are made available in project offices/sites.</p>	<p>10</p>	<p>These have been addressed in SPS and SRs.</p>
<p><b>Consultation and Participation</b></p>		
<p>128. Provide more guidance on the following: (i) timing and frequency of consultations, (ii) whom to invite and how many, (iii) mechanism for considering public opinion, and (iv) rights and responsibilities of all concerned parties. Stipulate that consultation and participation must be in a form, manner and language acceptable to all affected people.</p>	<p>1</p>	<p>Detailed guidance on suggested items (i) – (iv) will be appropriately provided in guidelines/handbooks. The last point has been stipulated in several places in SPS and SR1-4.</p>
<p>129. CSOs should be represented in the decision to proceed or not to proceed with a project. Their involvement at all levels of decision-making and throughout the project cycle should be guaranteed.</p>	<p>3</p>	<p>CSOs’ involvement in decision-making process through consultation and monitoring has been addressed. ADB cannot give right to CSOs for decision-making involvement at all levels, while ADB will take into consideration of CSOs comments/suggestions in ADB’s decision-making.</p>
<p>130. Free, prior and informed consent (FPIC) should be reflected in the environment, involuntary resettlement, and indigenous peoples safeguards. Apply majority rule in defining consent. “Broad Community Support” needs to be clarified (e.g. does BCS exist where there is majority -51% - support?) and implementation mechanism needs to be explained. “Broad Community Support” needs to be clarified (e.g. does BCS exist where there is majority - 51% - support?) and implementation mechanism needs to be explained.</p>	<p>3, 4, 10</p>	<p>Free, prior, informed consultation is required for all three safeguards policies. In addition, and in recognition of the UN Declaration on the Rights of Indigenous Peoples, this draft proposes to operationalize the principle of free, prior and informed consent under the Indigenous Peoples safeguards. Detailed</p>



		guidance on determining BCS will be provided in IP handbook.
131. Because project conditions vary, clarify (i) what constitutes a satisfactory participation and (ii) what is possible, feasible, and effective consultation.	9	Given the variety of projects and country contexts, it is not possible to provide detailed measures to cover all possible conditions. In accordance with policy principles and requirements laid out in the SPS and SR1-4, satisfactory measures need to be identified on a project-by-project basis.
132. Where the borrower is from private sector, require that the government be informed of and involved in the consultation process.	9	Agreed. "Stakeholders" per the text includes affected people, governments and NGOs.
133. Require that project documents reflect all the perspectives of the affected people.	9	This has been reflected in the required consultation process.
<b>Broad Community Support</b>		
134. Clients should seek "broad community support" across all three safeguard policies, from all affected peoples, and not just for IP.	70	In recognition of the UN Declaration on the Rights of Indigenous Peoples, this draft proposes to operationalize the principle of free, prior and informed consent under the Indigenous Peoples safeguards.
135. Define broad community support (BCS) to include participation of women and youth. Describe how to verify if such support exists, how to measure support, and how to implement the requirement. Lack of experience and methodology to implement BCS raises concern. ADB should consider defining or clarifying further what constitutes "broad community support." It was questioned how to verify community support. How is this measured? The question was raised regarding what would happen if the community supports the project but the person with the land title does not, or vice versa?	6, 70	We agree that BCS must include participation of women and youth. Detailed guidance on the process of free, prior and informed consultation leading to BCS including participation of woman and youth, and methodology for ascertaining BCS will be provided in IP handbook.
136. The text picks up a word game that the ADB has been playing for a while in order to avoid having to really take the views of affected people into account and make according changes to decisions and project designs. The draft SPS states that the borrower/client should "carry out free, prior and informed consultation" (para 12). This phrasing is a variation of the concept of free prior informed consent (FPIC) which was for the first time formalized in the World Commission on Dams Recommendations and also constitutes the cornerstone of the United Nations Declaration on the Rights of Indigenous Peoples which was adopted by the UN General Assembly in September 2007.	51	For clarity, what was proposed in the Consultation Draft was "obtain broad community support through a process of free, prior and informed consultation". It does not equate consultation with consent.
<b>Due Diligence (para.48)</b>		
137. The team who will do due diligence, and who monitor and supervise, should know the country systems and come from the resident mission to improve the due diligence process and shorten the time required	7,10	Agreed.

for approval.		
138. What will happen if the borrower/client does not comply with the safeguard requirements?	4	See paragraph 81 for requirements on noncompliance.
139. Due diligence must be done to determine compensation that must be given before the project. Due diligence must be transparent and clear at the outset. Establish a standard practice to formulate a project document that describes how social safeguards will be operationalised for a project before the loan agreement is signed. (E.g. a PPTA to develop a Compensation Policy Framework & Procedural Guidelines, which will be agreed upon by ADB and government)	7	This has been addressed. See paragraph 65 for requirements on ADB's due diligence and review.  Depending on the project modality, project-specific safeguard plans or frameworks must be prepared. ADB may provide a PPTA to support the preparation of the safeguard plans or frameworks.
140. Due diligence requirements for change in scope and unanticipated impacts are completely dropped by the draft SPS. ADB should maintain the standard of existing policies, at the minimum.	66	For requirements on <i>change in scope, uncertainties in location and alignment of infrastructure, and unanticipated impacts</i> , see the draft ADB safeguard review procedures (draft OM section) section.
141. The draft SPS does not require ADB to conduct due diligence for subprojects implemented under the framework approach and Environmental and Social Management System (ESMS). For example, there is no requirement for ADB to review subprojects' EIA and draft RP/IPP before ADB approves category-A subproject; for financial intermediaries (FIs), subprojects with limited impacts are not required to meet ADB's requirements.	66	For clarity, see draft ADB Safeguard Review Procedures (draft OM section) for ADB's responsibilities of subproject review under sector finance, multitranches financing facility, and subproject review under FI.
<b>Monitoring</b>		
142. Limiting the involvement of NGOs in monitoring to only highly complex and sensitive projects is not desirable. NGOs participation in monitoring of other projects is essential. Clarity is required on how they are engaged and who will bear the cost.	4, 5, 11	The requirement, involvement of experienced external experts or qualified NGOs in monitoring projects with significant impacts and risks, is mandatory. This requirement does not eliminate NGOs' involvement in monitoring other projects.
143. Where feasible, the affected community involved in monitoring should be provided with training and resources.	70	Agreed. Necessary training will be incorporated in project design. The need for training will be examined for each project.
144. External monitoring, (i) should not be required for small projects, (ii) should verify if the roles of both ADB and the borrower are fulfilled--the role of CSOs should also be monitored, (iii) raises concern on the source of funding--this task should be financed by ADB or by other funding sources; (iv) seems inconsistent with the Paris Declaration on Aid Effectiveness which provides that government experts verify monitoring information and not external experts or NGOs, (v) may hinder development of country capacities in monitoring, (vi) may become an issue because it is difficult to find qualified NGOs, (vii) should include in the TOR reporting to the client and the public on verification findings, as well as providing overall advisory services on the sensitive aspects of the project to the client starting as early as possible in the project development process. The external monitor should also analyze mass-media publications and reports of NGOs.	1, 4, 6, 7, 9, 11, 70	For clarity, the SPS requires (i) for projects with significant impacts and risks, retain qualified and experienced external experts or qualified NGOs to verify its monitoring information; and (ii) for highly complex and sensitive projects, use independent advisory panels during project preparation and implementation.  We disagree with the opinion that the requirement of external experts or NGOs' involvement in project monitoring is inconsistent with Paris Declaration. Some DMCs have already developed similar policies or programs.

<p>145. Specify (i) the frequency, time frame, and format for reporting; (ii) that existing country or agency monitoring system can be used; (iii) that accountability and monitoring will be done even after the project is completed; (iv) upfront all baseline data required for monitoring and evaluation; and (v) clarify who has responsibility for what in project monitoring.</p>	<p>4, 7, 9</p>	<p>Project-specific monitoring parameters, frequency and timeframe, and responsibilities of monitoring and reporting will be reflected in safeguard plans for each project.</p>
<p>146. The rationale for requiring submission of monitoring reports is questionable because oftentimes, these reports do not serve their purpose and are merely placed in the library.</p>	<p>7</p>	<p>This is an implementation issue. Submission of quality monitoring reports and timely reviews by ADB staff is crucial for ensuring that adverse impacts are avoided or mitigated as planned, and any noncompliance is timely identified and corrected.</p>
<p>147. Monitoring and evaluation should be able to conclude whether affected people are doing well or have become worse off. This is more important than compliance indicators.</p>	<p>7</p>	<p>Agreed. But appropriate compliance indicators could also find a way to measure the degree of better-off or worse off of affected people.</p>
<p>148. The SPS should incorporate monitoring and reporting on appropriate outcome indicators on the environmental and social performance of individual projects into the Managing for Development Results agenda.</p>	<p>70</p>	<p>All SRs1-3 require time-bound monitoring and evaluation program with performance indicators or measurable targets. Project specific indicators will be reflected in safeguard plans for each project.</p>
<p>149. Include monitoring of the consultation process.</p>	<p>10</p>	<p>This has been covered.</p>
<p>150. <b>On para. 49 (roles of borrowers),</b>                  (i) Specify: participatory monitoring procedure. Add the "and maintain" after "establish"                  (iii) Change to: "document and disclose monitoring results"; mention that the corrective measures should be considered and applied based on the analysis of the monitoring results.                  (iv) Insert "and evaluate the outcomes"                  (v) Insert "private sector" after NGOs and include academe, other third party; replace "qualified NGOs" with "credible CSOs"                  (vi) Insert "disclose reports immediately"                  (vii) Add: "follow up to ensure implementation of recommendations in the monitoring report".</p>	<p>4</p>	<p>Revised, as appropriate.</p>
<p><b>On para. 50 (roles of ADB)</b>                  151. ADB should (i) be responsible for project evaluation, (ii) provide a TA to establish consistent standards and achieve efficiency in monitoring and supervision, (iii) assist the borrower by providing sufficient guidance and improved coordination, (iv) manage the external monitor to ensure independence and to avoid unnecessary effort on the part of the implementing agency when ADB is not satisfied with the report, (v) be required to publish monitoring reports on its website and required that copies are made available in project offices/sites.</p>	<p>3, 4, 6, 7, 8, 9, 10</p>	<p>Most of these suggestions have been addressed in SPS.                   For each project, ADB will evaluate the needs for capacity development and will provide a TA or other type of supports where necessary.</p>

152. On item (iv), add social expert or “indigenous” experts and replace the phrase “highly complex and sensitive projects” with “all projects falling under category A.”	4, 10	“Social experts” include Indigenous Peoples experts. On item (iv) please see revised version (para. 66). Please also note no project classification for involuntary resettlement and Indigenous Peoples.
153. Such experts should be used to verify both the effectiveness of the borrower’s consultation process in terms of affected peoples’ understanding of project impacts and risks, and the borrower’s implementation of the environmental management plan.	14	Agreed. Safeguard plans include consultation process. Monitoring of implementation status of safeguard plans will include verification of consultation process.
154. Include an additional paragraph to further elaborate on corrective measures.	4	We will consider including more detailed guidance in the safeguard handbooks/guidelines.
155. To safeguard women and gender equality, ADB must improve mechanisms to effectively monitor the borrowers’/clients’ implementation of safeguards, including gender considerations. It is a conflict of interest for clients to monitor their own behavior.	65	Both self-monitoring and compliance monitoring are needed.
156. The draft SPS has no mechanisms to evaluate or allow independent monitoring of the cross-border impacts of GMS projects that implicate Burma such as the social costs (human trafficking, rise of HIV-AIDS incidence, wildlife and opium trade from Burma, and other hidden costs).	61	This is an implementation issue.
<b>Framework Approach</b>		
157. ADB should (i) not extend the use of framework approach to project loans or grant. (ii) not apply framework approach to any subproject classified as Category-A or with any resettlement impact. ADB should screen all subprojects identified after loan approval, and conduct environmental and social review for subproject classified as Category-A or with any resettlement impact before approving them.	66	(i) The originally proposed wider use of framework approach to standard project loan has been eliminated from this draft. (ii) In order to determine whether application of safeguard framework is appropriate, ADB will assess the adequacy of the borrower’s capacity in managing environmental and social risks. ADB may decide that the application of safeguard framework is not appropriate. See the section on Application of Safeguard Framework of the SPS.
158. ADB should be involved in the approval of subsequent safeguard plans to ensure compliance with its safeguard policy.	3	ADB will review subproject safeguard plans where applicable. See the draft ADB safeguard review procedures (draft OM section).
159. CSOs should participate in the development of the framework approach.	3	The disclosure and consultation process as required in the SPS and SRs provides CSOs opportunities to comments on safeguard plans/frameworks.
160. The framework approach is appropriate for sector loans and MFF, but not for standard project loans and this should be made explicit in the SPS.	10	Agreed, and the SPS is amended.
161. For lending modalities where subprojects or project components are prepared after the Board approves the project, safeguard frameworks will be prepared, agreed with the borrower, and disclosed prior to Board consideration. The SPS should confirm that these framework documents will be disclosed prior to appraisal.	70	These have been confirmed in relevant sections of the draft ADB safeguard review procedures (draft OM section).

<p>162. A general agreement on safeguards, including criteria for project selection, should be prepared and signed between ADB and the central governments, so that all projects financed by ADB in the future will follow this agreement.</p>	<p>7</p>	<p>This will be done for each project.</p>
<p>163. A “strategic environmental assessment” approach may be more suitable than a framework approach.</p>	<p>10</p>	<p>SEA will be required when the project involves development of or changes to policies, plans, or program that are likely to have regional or sectoral environmental impacts.</p>
<p>164. There is a concern that it seems unlikely for ADB to ensure compliance with its safeguard policies after the framework is approved.</p>	<p>3</p>	<p>See response to comment #157.</p>
<p>165. The fact that only ADB Management will approve subprojects, leaving the Board with less leverage on subprojects, raises concern.</p>	<p>14</p>	<p>Noted, however this is not a safeguard issue.</p>
<p>166. Application of the framework approach to standard Category A project or Category A-equivalent project component where the project or component is subject to detailed design after Board approval, is not supported. If extenuating circumstances surrounding such projects preclude the implementation of relevant requirements prior to Board approval, ADB should request a waiver to the Board and provide it with an explanation of these circumstances.</p>	<p>70</p>	<p>See previous comments and responses.</p>
<p>167. Provide more information on framework approach--where it applies, how it works, and what would be the role of ADB. The approach may weaken the policy when not applied appropriately. Further, clarify (i) if the gap analysis and action plan becomes integral to the safeguard framework; ADB should finance this activity through a PPTA; (ii) whether the environmental assessment, IR plans and IP plans would still be completed when the framework approach is applied; (iii) the respective roles of the ADB Board and the Government in the decision to apply the framework approach; and (iv) gap-filling measures.</p>	<p>4, 7, 14</p>	<p>See previous comments and responses.</p>
<p>168. Specify that all projects financed under MFF will be processed, scrutinized, and appraised in line with the safeguard standards, based on actual assessments and plans and not on the basis of generic framework.</p>	<p>10</p>	<p>This is what we are doing in practice, and what we are proposing in the SPS. See para. 71 of the SPS, SR4, and the draft ADB safeguard review procedures (draft OM section) for detailed requirements.</p>
<p>169. Change the “could” to “must” in the phrase “... frameworks could be agreed upstream ...”</p>	<p>7</p>	<p>The sentence was removed, as this is not mandatory.</p>
<p>170. Revise the last sentence to read: “Impact assessment ... are prepared during subproject preparation, in conformity ...”</p>	<p>9</p>	<p>Language amended.</p>
<p>171. Add text that provides that the effectiveness of relevant safeguards and their implementation will not be impaired in any way in cases in which the project’s construction begins prior to ADB’s decision to finance it.</p>	<p>70</p>	<p>Noted.</p>

<p>172. The framework approach and multi-tranche finance facilities downplay and create giant loopholes for avoiding safeguards. It takes mitigation measures out of project design. It significantly reduces, if not removes, the accountability and oversight of ADB in project management. The only safeguard requirements would be those chosen for implementation over an entire sector or for multiple tranches of a large project which were “agreed upon by ADB and the borrower.” This approach reduces leverage by ADB and affected people over project outcome and impacts. While such an approach may be appropriate for certain projects with no to minimal adverse impacts, this approach may increase the likelihood of approved projects that may not be socially and environmentally sound.</p>	<p>19, 53, 57</p>	<p>This is a misinterpretation. Both the Consultation Draft and this draft have clearly stated in the requirements for borrowers/clients “the general requirements specified (for standard projects) will apply to subprojects and components identified during the implementation of the sector project or during preparation and implementation of an MFF. The proposed approach is consistent with the existing policies for sector investment, and consistent with the practice for MFFs.</p>
<p>173. The introduction of framework approach fails to improve the clarity, coherence, and consistency of the safeguard requirements. The framework approach is not appropriate for highly complex and sensitive projects, but the definition of this type of project is subject to interpretation. It could even be used for “complex and sensitive projects” as long as they are not “highly complex and sensitive.”</p>	<p>51</p>	<p>We have revised the text to improve clarity. See Paragraph 71-73 of the SPS and relevant sections of the draft ADB safeguard review procedures (draft OM section).</p>
<p>174. It eliminates the opportunity for public comment, for improving problem projects or providing sanctions for projects which do not comply with ADB’s safeguard policies. The revise SPS must not utilize the framework approach and the Multi-tranche Finance Facility. Disbursement of funds can continue to be on a tranche/step-wise basis, but ADB must provide an opportunity for full public comment at each stage of disbursement, including a process of evaluation and provision of consent by affected people at every stage of the project.</p>	<p>54</p>	<p>Both the Consultation Draft and this draft have clearly stated in the requirements for borrowers/clients “the general requirements specified (for standard projects) will apply to subprojects and components identified during project sector project implementation or during preparation and implementation of an MFF.</p>
<p>175. We see ADB’s deliberate attempt to push for dangerous mechanisms that would wash its hands off responsibilities under the framework approach. As a development institution, ADB cannot just simply shift its oversight function to borrowing countries.</p>	<p>69</p>	<p>As above.</p>
<p>176. The framework approach is the proposed alternative to the current “frontload approach.” Although this is limited to projects under sector lending modality and MFF, it allows assessments and safeguards plans to be prepared even as late as the project implementation stage. The framework approach is prone to gaps relative to implementation of ADB’s safeguards. Since the approach is tailored to the specificities of individual projects or subprojects, how would ADB and the borrower ensure compliance to safeguards?</p>	<p>69</p>	<p>The proposed approach for sector lending modality is consistent with the existing safeguard policies. The proposed approach for MFF is consistent with the current practice. For more specific requirements, see detailed requirements in the SPS and section 2 and 3 of the draft ADB safeguard review procedures (draft OM section).</p>

<p>177. Further, the effectiveness of the framework approach hinges on the willingness of the borrower to comply with certain requirements prior to project implementation. Given that such requirements would no longer be a stringent prerequisite for project approval, we wonder whether the borrower would actually comply with ADB requirements.</p>	<p>69</p>	<p>See previous comments and responses.</p>
<p>178. Regarding the proposed gap-filling requirements, the SPS does not provide any clear mechanism for implementation, nor does it clearly indicate the existence of an independent body that would ensure that gaps would be addressed. ADB should continue to require subprojects/subcomponents to go through the regular process. Instead of applying a framework approach, ADB should put conditions in the release of the general fund of a general program to ensure that the safeguards requirements are complied with.</p>	<p>69</p>	<p>ADB does continue to require subprojects/components to go through the regular process. Both the Consultation Draft and this draft have clearly stated in the requirements for borrowers/clients “the general requirements specified (for standard projects) will apply to subprojects and components identified during project sector project implementation or during preparation and implementation of an MFF. It should be clear that, for sector loan or MFF where subprojects and components are not necessarily identified before Board approval, the pre-approval safeguard frameworks agreed between the borrower and ADB are critical to ensure that the borrower/client follow ADB’s requirements for subproject preparation and implementation.</p>
<p>179. The draft SPS does not require ADB to conduct due diligence for subprojects implemented under the framework approach. For example, there is no requirement for ADB to review subprojects’ EIA and draft RP/IPP before ADB approves category-A subproject. ADB should (i) not extend the use of framework approach to project loans or grant, (ii) not apply framework approach to any subproject classified as Category-A or with any resettlement impact. ADB should screen all subprojects identified after loan approval, and conduct environmental and social review for subproject classified as Category-A or with any resettlement impact before approving them, and (iii) require borrowers/clients to submit EIA, draft RP/IPP, and disclose them on the ADB’s website.</p>	<p>66</p>	<p>See previous comments and responses.</p>
<p><b>Financial Intermediaries</b></p>		
<p>180. ADB should                  (i) screen and review all category-A subprojects financed by FIs before approving them.                  (ii) require all subprojects financed by FIs to comply with ADB’s safeguard requirements.                  (iii) conduct environmental and social due diligence for all corporate investment projects in a manner same as public sector projects.                  (iv) require that draft frameworks/ESMS are disclosed for public comments before ADB’s due diligence.</p>	<p>66</p>	<p>Some of the suggestions are not practical/implementable. ADB has responsibility for conducting safeguard due diligence to assess the potential impacts and risks associated with the FI’s existing and likely future portfolio and its capacity in environmental and social management. When the FI provides finance under an ADB loan, equity or guarantee for targeted subprojects with potential significant social or environmental impacts and risks, such subprojects will be required to meet ADB’s safeguard requirements. For corporate investment, see revised requirements in Section H of SR4.</p>

<p>181. We support the increased attention to Financial Intermediaries (FI) in the SPS, including the requirement to establish environmental and social management systems (ESMS) for FIs with Category A equivalent subprojects in their portfolios. The SPS should require each ESMS to contain equivalent provisions to those in the SPS for environmental assessment, resettlement, and indigenous people.</p>	<p>70</p>	<p>The SPS requires that all FIs (except for those with minimal or no potential adverse environmental or social impacts) establish and maintain an appropriate ESMS. The ESMS will incorporate the following elements: (i) environmental and social policies; (ii) screening and review procedure; (iii) organizational structure and staffing; (iv) training requirements; and (v) monitoring and reporting. See Section G of SR4.</p>
<p>182. Ensuring safeguards in FI investments is more of implementation issue than a policy issue. Control over safeguards implementation could be better defined in the SPS.</p>	<p>10</p>	<p>The requirements for FI projects are further clarified in the SPS. Also see SR4.</p>
<p>183. The proposed requirements will be difficult to implement and will involve transaction costs because FIs focus on financial responsibilities and not on developing their own safeguard policies. They basically follow national legislations. There is a need to analyze the capacity of FIs for corporate social responsibility and protection of human rights.</p>	<p>1</p>	<p>ADB will conduct due diligence to evaluate FI's capacity and provide assistance where required.</p>
<p>184. The ability of ADB to confirm that the FI establishes and maintains ESMS raises concern because ADB does not have a monitoring mechanism for subprojects.</p>	<p>4</p>	<p>ADB reviews subproject documents and monitoring reports submitted by the FI where applicable.</p>
<p>185. The non-application of ADB's safeguard requirements when the impact is minimal or limited raises concern, especially when such impact relates to involuntary resettlement.</p>	<p>14</p>	<p>Revised, as appropriate. "Minimal or no adverse impacts" will be explained in guidelines/handbooks.</p>
<p>186. Projects financed under FI arrangements may not meet ADB's safeguard standards.</p>	<p>10</p>	<p>This is correct. The SPS does not require all subprojects financed by an FI meet ADB's requirements. This is consistent with the existing safeguard policies and IFC's approach.</p>
<p>187. Clarify the term "financial intermediation."</p>	<p>4</p>	<p>This term has been replaced by "financial intermediary".</p>
<p>188. On Attachment D The first statement in para. 56 should explicitly state that it will not finance the activities listed in Attachment D, even if the country concerned is not a signatory to the convention that prohibits manufacturing or engagement in said activities.</p>	<p>1</p>	<p>This is clear.</p>
<p>189. Add the following to the list: mining, extractive industries, plantation projects in protected areas, facilities for genetically modified organisms, and facilities for prostitution activities.</p>	<p>3,7</p>	<p>Requirements on natural habitat have addressed the issues related to protected areas. ADB has no plan to included GM in the List. National laws cover the last item.</p>



<p>190. The requirements for FI have been significantly weakened: (i) The SPS eliminates ADB review of subprojects and allows “self-reporting” by FIs; (ii) ADB is not required to disclose relevant information, such as Environmental and Social Management System (ESMS), annual reports, and corrective action plans; (iii) Subprojects with limited impacts are not required to meet ADB’s requirements and will apply national standards or laws instead; (iv) There is no accountability in the process of formulating the ESMS.</p>	<p>19, 66</p>	<p>See revised SPS and SR4. On disclosure of ESMS, the proposed approach is consistent with ADB’s existing safeguard policies and the PCP.</p>
<p>191. The SPS does not clearly mention whether there is mandatory public disclosure of the results of due diligence for FI investments. The risks posed by environmentally sensitive projects are much greater as they can be implemented without ADB’s knowledge. The borrower is also provided a strong leeway to circumvent safeguards, which makes it difficult for all relevant stakeholders, particularly CSOs, to make timely and appropriate interventions to prevent negative social and environmental impacts from occurring.</p>	<p>69</p>	<p>Due diligence results will be reflected in the RRP which will be disclosed upon Board approval. See the draft ADB safeguard review procedures (draft OM section).</p>
<p>192. Even for subprojects with potential significant impacts, it is not clear whether the policy principle or policy delivery process will be applied.</p>	<p>66</p>	<p>See revised section on FI in SR4.</p>
<p>193. Unlike the World Bank, the draft SPS does not include other information about the FI’s project compliance with ADB policies.</p>	<p>62</p>	<p>See revised section on FI in SR4.</p>
<p>194. Compliance of FI-projects to safeguards standards is highly questionable since safeguard requirements for FIs will be tailored to suit the FIs’ specific structure. ADB should not sacrifice strict safeguards compliance of borrowers in order to increase its portfolio. ADB should make sure that every dollar it invests benefits the communities, particularly the poor.</p>	<p>69</p>	<p>See above comments and responses.</p>
<p>195. Further, the draft is completely silent about the role of public-private partnerships in this process, which is ADB’s publicly preferred new way of doing business.</p>	<p>69</p>	<p>The SPS clearly states that it will apply to all projects including ADB-financed and/or ADB administered sovereign and non-sovereign projects. Further clarification will be provided in the draft ADB safeguard review procedures (draft OM section).</p>
<p>196. ADB should (i) require all subprojects financed by FIs to comply with ADB’s safeguard requirements, (ii) require that draft frameworks/ESMS are disclosed for public comment before ADB’s due diligence or before appraisal, and (iii) require borrowers/clients to submit EIA, draft RP/IPP, and disclose them on the ADB’s website, or should not be exempt from the disclosure requirements specified in para.45.</p>	<p>66</p>	<p>See above comments and responses.</p>
<p><b>Country Safeguard Systems</b></p>		
<p>197. A project-by-project approach to CSS is difficult.</p>	<p>4</p>	<p>Agreed. A phased approach is now proposed and the SPS has emphasized equivalence assessment and capacity development at</p>

		country/sector level, before moving into acceptability assessment and application of CSS at project level.
198. Support for the proposal to use CSS on ADB projects can come from the Paris Declaration on Aid Effectiveness and the need for safeguards to balance a one-size-fits-all approach vs. a flexible approach that is applicable to each country.	1	Noted.
199. The proposed approach needs more clarity. It needs to specify what to do when there is difference between ADB's and the country's systems.	4	If the country/sector/agency has to improve its systems to meet the objectives and policy principles of the SPS and is committed to doing so, ADB may take account of measures/action plans to improve the CSS when determining equivalence, and provide assistance for gap filling activities. If the identified gaps cannot be filled in a reasonable timetable, ADB's safeguard requirements will apply.
200. The Government of Japan will not support across the board adoption of CSS. Country systems must be equivalent to ADB's and implementation capacity must be adequate before CSS can be used to ADB projects.	14	This has been proposed in the SPS. This draft further clarifies "Application of CSS in ADB-financed projects is not automatic or mandatory." ADB may consider application of CSS, only if (a) the CSS is equivalent to ADB's, i.e. the CSS is designed to achieve the objectives and adhere to the applicable policy principles set out in the SPS; and (b) the borrower/client has relevant capacity and commitment to implementing the applicable laws, regulations, standards, and procedures in the country or specific sector concerned. See paragraph 77 for details.
201. If CSS is used, ADB should ensure that the CSS has met ADB's requirements, CSS will be implemented, and sanctions will be applied for noncompliance. There should be a legal agreement between ADB and the borrower on the use of CSS.	1	This has been proposed in the SPS. "For each project that uses CSS, the specific provisions of CSS and any additional actions that the borrower/client needs to undertake would become part of the borrower/client contractual obligations to ADB and subject to ADB's normal contractual remedies." (paragraph 25 of Appendix 2 of the SPS)
202. Strengthening of CSS should be pursued in light of the positive experience of Mongolia on the use of national procurement standards. ADB should assist countries to develop their CSS.	1	Noted.
203. Use of CSS can exert positive pressure on DMCs to further develop their CSS.	1	Agreed.
204. The use of CSS is a positive step that facilitates utilization of ADB financing.	3	Noted.
205. Through this approach, ADB can influence the government to align the CSS with international conventions to which the country is a signatory	4	Agreed.
206. There was recognition of the value of pursuing CSS, in particular where countries had done considerable work to align with international best practice.	6	Agreed.

207. It may be too early to adopt CSS in Central Asia. Some considerations include absence of political will to implement safeguards, low level of government accountability, lack of capacity, etc.	1	Application of CSS in ADB-financed projects is not automatic or mandatory.
208. CSO representatives expressed hesitation on recommending the use of Philippines CSS.	3	As above.
209. Concerns on the use of CSS include (i) perceived difficulties doing equivalence assessments, (ii) differences between ADB's and country's systems, (iii) lack of capacities of the borrowing country, (iv) how ADB will hold the borrower accountable.	4, 6	See above comments and responses on CSS.
210. Specify how to measure capacity at the implementation level and further explain "highly complex and sensitive projects."	6	Methodology of determining acceptability will be provided in ADB safeguard handbooks/guidelines. See the Glossary of Terms for the definition of 'highly complex and sensitive projects'.
211. Para. 57(ii) (iv) - Replace "sub-regional" with "sub-national" to make it consistent with the other parts of the document.	1	Incorporated.
212. Para. 57(ii) - Revise the statement to make it clear that CSS are not designed to achieve equivalence to ADB policies.	6	This is clear per the text.
213. Para. 57(vi): Revise the statement to read: "CSS will not be applied to highly complex and sensitive projects. ADB safeguard policies will apply to highly complex and sensitive projects".	9	Sentence amended, as appropriate.
<b>Recommendations</b> 214. Launch a pilot project to test the proposed approach.	1	(i) The proposed approach has taken into account the experience and lessons learned from the World Bank's pilot program on CSS; (ii) the proposed strengthening and use of CSS emphasizes a gap-filling and phased approach, and makes it clear that application of CSS is not automatic or mandatory; (iii) ADB may consider the use of CSS only if both equivalence and acceptability tests pass; (iv) for project that use CSS, ADB's due diligence before Board approval and supervision after Board approval will follow the same procedures as for any other ADB financed project; (v) application of CSS to highly sensitive and complex projects are exempted; We believe this is an approach with sufficient cautious.
215. Require that IP participate and agree in the assessment process.	2	A provision on consultation process of CSS assessment is included in the SPS. See para. 77 (vi) of the SPS.
216. Require that CSOs give their consent to the use of CSS.	3	This suggestion is not included in the SPS.
217. Require that CSOs and the affected people participate in the assessment process.	6	A provision on consultation process of CSS assessment is included in the SPS. See para. 77 (vi) of the SPS.
218. Government representatives strongly recommend that ADB recognize the use of CSS in ADB financed projects.	3	This has been addressed in SPS.
219. MFIs should move toward a single approach to CSS in order to do away with a project or sector approach.	4	Agreed. To formulate the overall approach on the strengthening and use of CSS, ADB and the World Bank have communicated

		and collaborated on a regular basis.
220. Where there is apparent equivalency, there is a need for further investigation of social acceptability, noting that in the complexity of the implementation process, implementation becomes more fragile, and coordination and timing of delivery becomes an issue.	4	Noted.
221. Government representatives suggest that where equivalence has been established, CSS should be applied irrespective of the sensitivity of the project. Exemptions (e.g., highly complex projects) are not necessary.	6	We believe the proposed exclusion of highly complex and sensitive projects to CSS application should be retained.
222. ADB's safeguard policies should be the minimum standard, and if the CSS is below this, the country standard will be raised by applying the ADB policies.	6	This is the intent.
223. Involuntary resettlement is an area of particular concern because in the Asia Pacific region, very few countries, if any, have adequate frameworks and capacity to deliver involuntary resettlement safeguards.	19	Noted.
224. Use of CSS is premature for ADB because the World Bank's pilot is still in the process. Furthermore, the draft SPS is already full of major shortcomings and they alone require considerable efforts. 66	66	See above comments and responses.
225. The approach provides an opportunity for governments, which have laws that protect only business interests, or which are corrupt and repressive, to implement projects which adversely affect people and the environment.	54	The proposed strengthening and use of CSS emphasizes a gap-filling and phased approach, and makes it clear that (i) application of CSS is not automatic or mandatory; (ii) ADB may consider the use of CSS only if both equivalence and acceptability tests pass; (iii) for project that use CSS, ADB's due diligence before Board approval and supervision after Board approval will follow the same procedures as for any other ADB financed project; (iv) application of CSS to highly sensitive and complex projects are exempted.
226. ADB states that only a few countries have expressed interest to apply for CSS. This puts into question ADB's motivation to spend considerable time and resources developing this system when clearly this would not be applicable to most DMCs at this point.	69	Opinion noted.
227. The approach can make it more difficult for communities to use accountability mechanisms because it is difficult for them to know when a policy is being violated.	53	Application of CSS will not alter the role and function of accountability mechanisms.
228. The adoption of CSS is a deliberate attempt to significantly reduce, if not remove, the accountability and oversight of ADB in project management. As a development institution, ADB cannot just simply shift its oversight function to borrowing countries.	69	See previous responses.
229. ADB's reliance on a DMC's current capacity and existing systems would, in most likelihood, lead to further violations of the ADB safeguard policies because it takes years to legislate or revise existing laws and regulations. Use of CSS alone will not lead to the outcome of increasing the	69	See previous comments and responses.

<p>borrowing country’s capacity and ownership of safeguards.</p>		
<p>230. The approach requires enhanced supervision by ADB, which in turn necessitates adequate internal capacity. This raises issue on the capacity of ADB to deliver such an ambitious program vis-à-vis its overly optimistic timeline.</p>	<p>69</p>	<p>We agree ADB’s capacity should be taken into account in finalizing the SPS. An implementation plan will be prepared at W-paper stage, including staff training programs, and resources optimization measures.</p>
<p>231. The approach does not demonstrate how ADB will address concerns on assessments at the operational level and who will validate these assessments.</p>	<p>69</p>	<p>It is ADB staff’s responsibility to conduct assessments and determine equivalence and acceptability. Further guidance on assessment methodology will be provided in the guidelines/handbooks.</p>
<p>232. The approach fails to specify the level of detail of action plans. It does not mention when gap-filling measures must be implemented and that these measures must be systemic, permanent, and mandatory. There is also a need to clarify (i) if the standards to be used will be the country/agency track record or best practices; (ii) the implementing entity when CSS is used in the context of private sector investment; and (iii) accountability.</p>	<p>53,69</p>	<p>The detailed schedule for gap-filling actions will be reflected in the time-bound action plan for each country/sector/agency, and for each project that uses CSS. The same approach for strengthening and use of CSS will apply to both private and public sector projects. Other concerns have been addressed in the Consultation Draft and this draft: see Appendix 2 of the SPS for <i>Change in CSS</i>, and responsibility and accountability of ADB and borrowers (para. 18-25).</p>
<p>233. Indigenous peoples are concerned that there is “no practical way” to implement the CSS with full involvement of project affected people.</p>	<p>53</p>	<p>A provision on consultation process of CSS assessment is included in the SPS. See para. 77 (vi) of the SPS.</p>
<p>234. Use of a CSS approach can reduce safeguards standards in the following ways: (i) when the “principle” used to implement the CSS approach requires less than the original safeguard standard; (ii) when the principle provides for flexibility and the CSS or gap-filling measures are weaker than the original standards; (iii) when the principle and the original standard appear to be very similar, but the CSS embraced by ADB are not truly “equivalent” to the standard, or when agreed gap-filling measures are inadequate; (iv) when the timeframe for implementation of gap-filling measures is inadequate.</p>	<p>19,53</p>	<p>This is correct in theory. However, the principles are not weaker than the original policies. ADB would assess equivalence against the policy objectives and principles, because these constitute the substance of the policy requirements as defined in the SPS. Gap-filling action plans will be developed precisely to ensure that there is no weakening of standards where the CSS is not yet deemed equivalent to ADB policy objectives and principles. The timeframe for gap-filling will be determined so as to ensure that the policy principles are not compromised. As part of the assessment to determine whether CSS can be applied to ADB projects, ADB will also assess the borrower/client’s capacity and commitment to implement its CSS. This is explained in para. 77 of the SPS and Appendix 2.</p>
<p>235. There are some substantial flaws and concerns with the approach, including the omission of crucial requirements from the safeguard principles, problems in determining “equivalence” of CSS with ADB requirements, experience with World Bank pilot projects, and increased difficulty for affected communities to use accountability mechanisms. 53</p>	<p>53</p>	<p>See previous comments and responses on CSS.</p>
<p><b>ADB’s and WB’s approach</b> 236. The proposed approach far surpasses the more cautious approach being pursued by the World Bank.</p>	<p>50</p>	<p>See response to comment # 214.</p>

<p>237. ADB relies on the World Bank’s experience but for several reasons, this experience provides inadequate grounding for ADB. First, the World Bank admits that it is too soon to draw any conclusions from its pilot projects. Additionally, the World Bank’s pilot has taken a “project-by-project” approach while ADB is proposing that assessments to identify gaps in the country’s legal framework be performed only once at the national, subnational, or sector level. All subsequent projects in the selected countries, subregions, and sectors would then use the agreed system. The ADB proposal does not explicitly specify that once assessment of gaps has been completed all gaps would be addressed immediately. But it seems to indicate that the “acceptability” assessment, unlike that of equivalency, would occur on a project-by-project basis.</p>	<p>53</p>	<p>ADB requires both equivalence assessment and acceptability assessment. A main lesson learned from the World Bank pilot program (Phase I) is the desirability of equivalence assessments at sector or national levels, with acceptability analysis at project level.</p>
<p>238. A stronger CSS is a laudable goal, but for some reasons, the approach being pursued by ADB and the World Bank will rarely, if ever, achieve this goal. Virtually no permanent, legally-binding improvements in CSS are being achieved in the World Bank’s pilot. Measures to address gaps largely include short-term fixes. Moreover, specific timeframes for implementation of these measures as well as processes for transparent monitoring and evaluation of the effectiveness of these measures do not exist.</p>	<p>53</p>	<p>The SPS is intended to strengthen CSS, and apply CSS only when there is equivalence and capacity.</p> <p>We believe the objective of strengthening CSS is important in its own right and should continue to be pursued more generally through ADB loans, TAs and capacity development activities. The lessons learned from the World Bank first phase pilot program (2005-2007) have been incorporated in the design of the proposed approach for strengthening and use of CSS in ADB projects. The proposed phased approach requires that ADB will not move into the second phase of acceptability assessment if the equivalence assessments conclude that gaps at country/sector/agency level cannot be addressed within a reasonable timetable. In such cases, the focus will remain exclusively on strengthening CSS, while application of CSS will be considered once the gaps have been appropriately filled. Further, the SPS requires that for projects that use CSS, ADB’s monitoring, supervision, and evaluation responsibilities will follow the same procedures as for any other ADB-financed project.</p>
<p>239. ADB should not adopt a CSS approach until (i) the World Bank pilot has been completed, evaluated, and demonstrated not to have weakened safeguard protections, (ii) ADB completes and comprehensively discusses the outputs of RETA 6285, (iii) strong evidence is provided that any CSS approach adopted will secure long-term strengthening of a country’s laws and institutions that will not result in any weakening of safeguard standards.</p>	<p>19, 53</p>	<p>ADB proposes a phased approach with caution. See response to comment # 214.</p>
<p>240. A more detailed methodology and clearly defined criteria for evaluating equivalence and acceptability is needed.</p>	<p>69</p>	<p>The SPS lays out requirements and procedure at policy level. Further guidance will be provided in ADB safeguard handbooks/guidelines.</p>

<p>241. The ADB should adopt CSS with extreme caution, and at the very minimum, set up a testing phase.</p>	<p>51</p>	<p>See responses to comment # 214.</p>
<p>242. What ADB should do first is to develop the safeguard systems of its DMCs to meet ADB's standards. This would require ADB to allocate considerable resources to support its DMCs efforts to improve their CSS.</p>	<p>69</p>	<p>ADB has already been helping its DMCs to improve their safeguard polices through various means and will continue to do so.</p>
<p>243. If ADB would adopt CSS to ADB projects, (i) CSS should be compared to the safeguard requirements specified in Attachments A-C, and not with the principles; (ii) When CSS is sought for implementation, significant consultations with civil society organizations, indigenous peoples, and others, will be conducted. All laws, policies, procedures, etc. that are being used for the equivalency determinations must be made publicly available in the local language and in English sufficiently in advance of public consultations. (iii) Gap-filling measures should be specific, detailed, permanent changes to the country's regulatory regime, be included in the loan agreement, and disclosed to the public. (iv) Clarify the role of ADB's accountability mechanism. Each project communities should be able to challenge the equivalency and acceptability assessments and gap-filling measures when these appear to be inadequate.</p>	<p>19</p>	<p>(i) ADB is judging equivalence against the policy objectives and principles, because it covers the substance of the policy requirements. While the SPS and SRs are much longer, they are policy delivery procedural requirements. Further, pursuing complete adherence to the safeguard requirements in certain cases there the DMCs' CSS can function at an acceptable environmental and social level will not enhance country ownership and can result in a costly duplication of the effort. Gap-filling action plans will be agreed by ADB and deemed by ADB adequate. ADB will also assess the borrower/client's capacity and commitment to implement its CSS.                  (ii) A provision on consultation process of CSS assessment is included in the SPS. See para. 77 (vi) of the SPS.                  (iii) Specific gap-filling measures will be identified based on equivalence and acceptability assessments. Legal obligation and Change in CSS have been covered. See Appendix 2.                  (iv) See para. 19-25 of Appendix 2 for responsibility and accountability of ADB and borrowers</p>
<p>244. Discuss the possible adoption of CSS separately from the SPU process as it tends to muddle the SPU and undermine the "in-good-faith" SPU consultation process with the CSOs. Such discussion should take place after the SPU is completed and careful review of the outcomes of the World Bank's pilot.</p>	<p>66</p>	<p>Alignment with country systems is a key principle of the Paris Declaration on aid effectiveness. Well designed approach for the strengthening and use of CSS will enhance country ownership and development impacts, and reduce unnecessary duplication of efforts.</p>
<p><b>Cofinancing</b></p>		
<p>245. Specify whose safeguard policies will apply if the policies of co-financiers are more stringent than those of ADB</p>	<p>6</p>	<p>Where ADB has satisfied itself that the safeguard policies of co-financiers at least equivalent to ADB's safeguard objectives and principles, and such co-financiers has the capacity to implement its policies, the safeguard policies of such co-financiers may apply.</p>
<p>246. Existing requirements are weakened: (i) ADB's safeguard requirements will be replaced by those of financing partner under certain circumstances, and (ii) in other cases, application of ADB's safeguard policy requirements is limited to ADB-financed components only. Under the existing policy, all components of projects, whether financed by ADB or cofinciers, are covered by ADB's safeguard policies.</p>	<p>66</p>	<p>The proposed approach is consistent with the existing Environment Policy (the existing policies on Involuntary Resettlement and Indigenous Peoples do not have provision on co-financing), because either ADB's safeguards or equivalent requirements will apply.</p>
<p><b>ADB Responsibilities (paras. 60-61)</b></p>		

<p>247. The ADB's role in developing borrower/client capacity should be better articulated and elaborated in the policy document.</p>	<p>10</p>	<p>ADB provide technical and financial support through various means, including mobilization of in-house capacity to provide hands-on project advice and support, provision of staff consultant services, development of guidelines/handbooks, and provision of project preparatory technical assistance, or national/subnational/sector level technical assistance and training.</p>
<p>248. Include a requirement for ADB to not only "help the borrower/client in building capacity ..." but also to "assess and help the borrower client to build capacity ..."</p>	<p>6</p>	<p>This has been included as part of ADB's due diligence responsibilities.</p>
<p>249. When client capacity is lacking to fully implement measures identified in the safeguard plans, ADB must provide resources to build capacity, such as through a supplemental technical assistance project.</p>	<p>70</p>	<p>ADB will provide assistance through various means including TAs.</p>
<p>250. Put more emphasis on implementation by requiring ADB to do more site visits and progress reviews so that constraints can be identified early. One environmental expert should be included in the ADB loan review mission to supervise environmental issues during implementation.</p>	<p>7, 8</p>	<p>This is incorporated. See para. 67 (i) - (ii) of the SPS.</p>
<p>251. The text should reference those portions of the ADB's business processes and the forthcoming Operations Manual that specify applicable procedural requirements.</p>	<p>70</p>	<p>See para. 3 of the SPS that explains the relationship between the SPS and the Operations Manual sections.</p>
<p>252. ADB should promote maximizing its environmental and social additionality. Project teams would work with clients to (i) incorporate innovative components into project design (such as payments for environmental services); (ii) promote continuous improvement in borrower's environmental and social performance; (iii) identify potential development benefits of applicable safeguards in terms of new market opportunities, avoidance of downstream risks and costs, and more equitable distribution of project benefits; and (iv) monitor and report the development benefits from applying the ADB's environmental and social safeguards.</p>	<p>70</p>	<p>Agreed. This will be done when a project is designed and implemented for each project.</p>
<p>253. ADB should engage with the client to determine when impacts are potentially significant, thus triggering various safeguard requirements.</p>	<p>70</p>	<p>It is ADB's responsibility to carry out project screening/classification based on information provided by the borrower/client.</p>
<p>254. ADB must provide clear guidance to its clients on upstream procedures for evaluating project alternatives that avoid impacts while maintaining development benefits.</p>	<p>70</p>	<p>Agreed. This will be done for each project where applicable. Further guidance will be provided in handbooks/guidelines.</p>
<p>255. Para. 61 - review the paragraph to eliminate many redundant terms that cause vagueness</p>	<p>7</p>	<p>Paragraph amended. See para. 81 of the SPS.</p>
<p><b>Compliance to Legal Agreements (para. 61)</b> 256. Drop the statement, "Resorting to legal remedies in the event of noncompliance is not automatic or mandatory."</p>	<p>7</p>	<p>Incorporated.</p>
<p>257. ADB must elaborate a process for the imposition of such penalties that is consistent with its overall loan supervision standards and includes some trigger for penalties.</p>	<p>70</p>	<p>The proposed approach is consistent with ADB's overall loan covenant standards.</p>



<p>258. ADB must confirm that affected people have access to effective and timely legal recourse when grievances cannot be resolved through the client's own established mechanism.</p>	<p>70</p>	<p>ADB has established the Accountability Mechanism (AM). Para. 69 is included to describe the functions of AM.</p>
<p>259. Flexibility should be allowed as long as principles are adhered to, rather than requiring strict compliance to indicators.</p>	<p>7</p>	<p>Noted.</p>
<p>260. Define non-compliance and how it will be addressed.</p>	<p>3</p>	<p>Noncompliance refers to as any failure to comply with legal agreements on safeguard requirements, including those described in the safeguard plans and frameworks. If noncompliance is identified, ADB will seek corrective measures and work with the borrower/client to bring it back into compliance. If the borrower/client fails to reestablish compliance then ADB may exercise legal remedies including suspension, cancellation, or acceleration of maturity, which are available under the legal agreements. See para. 81 of the SPS.</p>
<p>261. ADB must not finance projects that do not meet all the requirements specified in the General Requirements, Objectives, and attachments. The SPS states that the "ADB assumes responsibility to review, monitor, and supervise projects ... (para. 38). This must also incorporate the attachments to ensure that ADB also takes responsibility for ensuring that borrower responsibilities are adequately carried out. ADB must be responsible for ensuring that the borrower complies with all documents related to the safeguard policies.</p>	<p>62</p>	<p>For clarity, ADB carries out the actions described in Section B on policy delivery process of the SPS. SR1-4 set out requirements that borrowers/clients are expected to meet. ADB staff, through their due diligence, review and supervision will ensure that the borrower/client comply with the requirements stipulated in SR1-4.</p>
<p>262. Requirement for ADB to conduct screening and categorization of change in scope is omitted. Under the existing policy, change in scope and unanticipated impacts are distinguished with different procedural requirements.</p>	<p>66</p>	<p>For requirements on <i>change in scope, uncertainties in location and alignment of infrastructure, and unanticipated impacts</i>, see para. 28-31 of the draft ADB safeguard review procedures (draft OM section) section.</p>
<p><b>Compliance to Legal Agreements (para. 61)</b> 263. The strong language in the July 2007 draft has been replaced with a language ("Resorting to legal remedies ...") assuring borrowers that failure to comply with requirements will not necessarily result in penalty.</p>	<p>53</p>	<p>Noted.</p>
<p>264. Borrowers who fail to meet the proposed standards will no longer suffer any sanction, which means that borrowing countries can ignore the safeguards without fear that future financing will be harmed. We view this as kid-glove treatment of borrowers; it gives them excessive leeway for non-compliance with the ADB's operational policies.</p>	<p>58</p>	<p>This is a misinterpretation. This is clarified in para. 81 of the SPS.</p>
<p>265. Affected communities must be guaranteed that both ADB and the borrower/client are required to comply with both the ADB safeguard policies (including all related documents) and domestic laws and regulations.</p>	<p>62</p>	<p>Compliance with national laws and regulations is an integral part of the SPS. See para. 81 of the SPS.</p>
<p>266. ADB must be required to pursue legal remedies if its attempts to bring the borrower/client into compliance fail. Legal remedies must be automatic and mandatory in order to give any meaning to the safeguard policies. The policies must include specific remedies for non-compliance</p>	<p>62</p>	<p>The proposed approach on application of contractual remedies is consistent with ADB's overall loan covenant standards.</p>

such as suspending financing and canceling projects.		
267. Revise para. 61 to read: In case the borrowing government does not comply with the Bank’s Safeguards, the Bank is required resort to the legal remedies.” The SPS should stipulate at what stage legal sanctions can be applied. ADB should never give any opening for borrowers to violate the policies. Neither should it tolerate irresponsible actions from its borrowers. ADB should find out whether it is guilty of aiding, whether knowingly or unknowingly, non-compliance of its own policies.	69	The proposed approach on application of contractual remedies is consistent with ADB’s overall loan covenant standards.
<b>Borrower Responsibilities (para. 62)</b>		
268. Add the statement: “A set of specific measures in a safeguards operational plan should be agreed upon and signed by ADB and the borrower as a prerequisite to signing the loan agreement”.	7	Safeguard requirements, including those described in the safeguard plans and frameworks, is part of loan agreement. See para. 81 of the SPS.
269. It is difficult to comply with the requirement that safeguard plans be done in the early stage of loan processing. Executing agencies often do not commit to preparing detailed plans before they are assured that the loan will be approved.	7	The SPS and SR1-4 require that draft safeguard plans (not final plans) be prepared and consulted as early as possible during the project preparation stage.
270. The mandatory provisions to which clients must adhere lie at the heart of the SPS’s “do no harm” dimension. The text must clarify mandatory client responsibilities, including the statements of Principles; paras. 46-47, 49, 51-56, and 62; and Attachments A-D.	70	Delivery of policy principles and compliance with requirements laid out in SR1-4 are mandatory. See para. 55 of the SPS.
271. For relevant projects, we propose that clients be required to establish adequately funded provisions for site remediation.	70	This will be included in safeguard plans for each relevant project.
272. The SPS describes the borrower/client’s roles and obligations as meeting the ADB policy objectives and complying with host country laws. These obligations become meaningless if ADB is not required to enforce them. If ADB is not required to enforce them, then affected communities will have no recourse if the borrower/client does not comply with the ADB policies.	62	ADB, through its due diligence, review and supervision, will ensure that the borrower/client meet the ADB’s requirements. ADB will decide not to finance a project if the borrower/client does not follow ADB’s requirements during project preparation, or apply contractual remedies if noncompliance is identified during project implementation.
273. The responsibility of borrower to follow ADB requirements is weakened from “must be met” to “in a manner consistent with.”	66	This was not the intent. Revised accordingly.
<b>Resource Implications and Capacity Development</b>		
274. ADB should inform stakeholders how the resources for implementing the safeguard policies will be managed.	6	An implementation plan will be developed at W-Paper stage.
275. ADB safeguards entail additional costs to the government, especially when the government is not familiar with these safeguards.	7	The borrower/client has responsibility to understand ADB’s safeguard requirements and implement them. ADB has responsibility to advise the borrower about ADB’s requirements and procedures, and provide support for capacity development.

<p>276. We propose that ADB append an implementation plan to the W-Paper that includes (but is not limited to) the following components: (i) time-bound milestones for implementation based on the date of Board approval of the R-Paper, (ii) time-bound 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, (iii) budget for implementation of the policy, (iv) training plan for non-environmental staff, (v) adequate staffing and resources for PSOD project preparation and supervision, and (vi) budget for country capacity building in safeguards.</p>	<p>70</p>	<p>We will consider the suggestions.</p>
<p><b>Capacity Development</b> 277. ADB should provide financial and technical support for building the capacities of DMCs (executing agencies, consultants, and contractors) to implement the safeguard policies. The capacities of governments need to be considered since countries have different laws and regulations. ADB's government counterparts should be engaged in capacity building initiatives.</p>	<p>10</p>	<p>ADB provide technical and financial support through various means, including provision of guidelines/handbooks, project-specific advices, staff consultant services, project preparatory technical assistance, and national/subnational/sector level technical assistance and training.</p>
<p>278. The capacity of implementing agency to meet ADB's safeguard requirements before project approval raises concern. For example, an agency which deals primarily on infrastructure development might not have the necessary capacity to address social and environmental issues.</p>	<p>7</p>	<p>As above.</p>
<p>279. A project preparatory technical assistance may not be a sufficient mechanism to clarify and agree on safeguards requirements and discuss operational issues and solutions in the delivery of safeguards.</p>	<p>7</p>	<p>As above.</p>
<p>280. The capacity of ADB's environment experts to handle social assessment or social development aspects of projects raises concern. Similarly, there might be an issue on ADB's capacity to deal with trans-boundary impacts of projects, and on assessment of these impacts.</p>	<p>11</p>	<p>Noted. The issues on ADB internal capacity and resources will be examined and an implementation plan will be developed at W-paper stage.</p>
<p>281. The ability of ADB to implement the updated policy, especially to guarantee compliance and monitor policy implementation raises concern. ADB must consider resources implications of SPU not only for ADB, but also for its clients, and that implementation capacity constraints (e.g., quantity and quality of staff and skills mix, roles of headquarter staff versus those in the resident mission, etc.) be addressed explicitly in the W-paper.</p>	<p>13</p>	<p>See para. 83-85 of the SPS.</p>
<p>282. It is difficult to comment on how ADB will implement the proposed safeguards because of lack of sufficient data, particularly on budget</p>	<p>19</p>	<p>Noted. An implementation plan will be prepared at W-Paper stage.</p>

<p>283. It is widely recognized that ADB needs to enhance its capacity for implementing and monitoring safeguard compliance. ADB will need to make major institutional changes around financing and hiring. The ADB must hire and actively support staff with expertise in safeguards issues, quality monitoring, and diverse arenas of sustainable development. Changes should include deploying more staff and resources to resident missions and project areas, to break away from a headquarters-centric approach, and achieve better safeguard compliance and outcomes on the ground.</p>	<p>60</p>	<p>See previous comments.</p>
<p>284. The SPS downplayed the lack of safeguards specialists in ADB, which could be the main reason behind a number of safeguard violations and non-compliance in a number of ADB-assisted projects and programs. It is long-overdue for ADB to upgrade its capacity and expertise on this front by augmenting its roster of safeguards specialists, and undertaking intensive training of borrowers on safeguards implementation and compliance.</p>	<p>69</p>	<p>Opinion noted.</p>
<p><b>Grievance Mechanism</b></p>		
<p>285. There was support for the establishment of the grievance mechanism.</p>	<p>5, 8 70</p>	<p>Noted.</p>
<p>286. In many countries CSOs have zero or very little confidence with the government, so that they would rather go directly to ADB than use the local grievance mechanism.</p>	<p>12</p>	<p>Noted.</p>
<p>287. ADB should consider determining a course of action if there is insufficient capacity to establish and monitor a local independent grievance redress mechanism.</p>	<p>6</p>	<p>This will be examined through ADB's due diligence.</p>
<p>288. If there are already existing grievance mechanisms at the local level, ADB could just empower them, rather than creating new ones.</p>	<p>7</p>	<p>Agreed.</p>
<p>289. Indigenous Peoples who are identified by and are accountable to the IP community and other local organizations should be made members of the grievance mechanism. However, even NGOs find having to address complaints of affected people and at the same time maintaining a good working relationship with the government, difficult.</p>	<p>2, 12</p>	<p>Grievance mechanism to address IP communities' concerns and grievances will address concerns promptly, using an understandable and transparent process that is culturally appropriate and accessible to the affected IP communities. See Para. 20 of SR3.</p>
<p>290. If the grievance is not redressed, the SPS should specify a next higher level mechanism. Include a mechanism at the national level and a mechanism that addresses trans-boundary concerns.</p>	<p>2</p>	<p>ADB has established the Accountability Mechanism.</p>
<p>291. Grievance mechanism should be established prior to the project implementation to address conflicts during project preparation.</p>	<p>7</p>	<p>Agreed.</p>

<p>292. ADB should organize a body for grievance consideration at the resident missions to respond to safeguard issues.</p>	<p>1</p>	<p>This is an Accountability Mechanism issue. Safeguard issues that are not resolved by the borrower/client's grievance mechanism would be addressed as part of ADB's project administration function, by the office responsible for administering the project, which could be a resident mission or a headquarters division. After that has been done, and if the persons raising the issue are still dissatisfied, they could submit a complaint to OSPF. Complaints can be coursed to OSPF via resident missions or in any other way.</p>
<p>293. Link grievance mechanism with ADB's accountability mechanism</p>	<p>1</p>	<p>Grievance mechanism at project and local level should be the first step. A para. on Accountability Mechanism is included (see para. 69 of the SPS).</p>
<p>294. There should be a mechanism to address non-project based concerns/complaints (e.g., Lafarge cross border TA on Mining Policy and grievances before loan effectiveness).</p>	<p>2</p>	<p>The scope of policy application does not cover TA activities. Non-project concerns are outside the scope of SPS.</p>
<p>295. Include a separate paragraph on grievance mechanism in the Policy Delivery Process section. Further, provide a separate clause on dispute settlement at the field level that is different from the grievance mechanism.</p>	<p>7</p>	<p>We do not see the added value to require a separate dispute settlement at the field that is different from the grievance mechanism.</p>
<p>296. Clarify (i) what local independent grievance redress mechanism is-- does this mean using existing mechanisms because some DMCs have village-level grievance councils which have similar functions, (ii) the required resources for the grievance redress process, (iii) grievance mechanism at the operational level.</p>	<p>1, 7</p>	<p>(i) Use of existing and traditional mechanisms will be encouraged if they function well; (ii) required resources will be commensurate to the nature of the project and the significance of potential social and environmental impacts; (iii) grievance mechanism must be established and maintained at project and local level.</p>
<p>297. More information is needed on grievance redress mechanism (i) to determine how it relates to ADB's Accountability Mechanism; if it is intended to be a simpler, speedier process; (ii) to evaluate the effectiveness of these mechanisms; and (iii) to clarify the requirements for the type of "grievance mechanism" available to affected communities</p>	<p>62</p>	<p>Further guidance will be provided in the safeguard guidelines/handbooks.</p>
<p>298. ADB must require that borrowers/clients ensure project grievance mechanisms are gender sensitive and facilitate women's and men's use of grievance systems.</p>	<p>65</p>	<p>This has reflected in the revised SR2. Specific requirements will be included in the safeguard plan for each project, where relevant.</p>
<p><b>Accountability Mechanism and Loan Agreement</b></p>		
<p>299. Explicitly mention accountability and compliance mechanism in the SPS.</p>	<p>3</p>	<p>Incorporated. See para. 69 of the SPS.</p>
<p>300. As to how accountability mechanism can be addressed in the SPS, the following guidance was provided by the participants. (i) ADB may find help from the Canadian system of results based management framework. (ii) The accountability structure can include independent evaluation or audit of compliance to the policy. (iii) What counts is whether obligations are fulfilled on the ground. The accountability mechanism should clearly specify sanctions for non-compliance both by ADB and the borrowing country. ADB</p>	<p>12</p>	<p>This is an issue for Accountability Mechanism Policy. Comments are forwarded to ADB's Office of Special Projects Facilitator and Office of Compliance Review Panel.</p>

has the compliance review panel; that for the country should also be specified.		
301. Identify who will be responsible for negative consequences of a project that emerge long after implementation.	1	The project owner, it could be the government or private sector sponsor.
<b>Loan Agreement</b>		
302. Loan agreements should specify up front the fund source for compensation because reallocation of funds takes at least 2 years and involves a very complex process.	1	Fund source for compensation is part of resettlement plan. Implementation of resettlement plan must be specified in loan agreement. See the draft OM section.
303. The legal document is made ambiguous from "Loan Agreement" to "Legal Agreement". Whereas disclosure of "Loan Agreement" is mandatory under the Public Communications Policy, there is no provision concerning "legal agreement."	66	Legal agreement is defined in the glossary of the terms. .
304. The following requirements are omitted: (i) inclusion of specific safeguard covenants or requirements in loan agreement, (ii) ensuring that contract packages are consistent with the resettlement plan, (iii) inclusion in the loan agreement of a covenant requiring EA's or project sponsor's clearance/endorsement of the resettlement-planning document, and (iv) requirement for ADB to reflect in loan agreements the client's obligation to submit periodic progress report.	66	This will ultimately be handled in the draft OM section.
<b>Private Sector Operations</b>		
305. A single approach for public and private sector clients raises concern because government borrowers are accountable to the people while enterprises are accountable to their shareholders. Requiring private enterprises to follow the same procedure, e.g., consultation process, might pose some problems.	13	We believe that the same safeguard policy principles should be applied to public and private sector operations, while certain procedural requirements could be differentiated.
306. Identify provisions where public and private sector borrowers should be differentiated. Each category of borrower has different abilities and constraints. For example, states have legal powers not afforded to private entities. States may allocate funds for safeguard implementation based on legal requirements whereas expenditures by private entities for safeguards may also be based on corporate social responsibility or public reputational concerns. Moreover, as a lender to both categories of borrowers, ADB has an opportunity to strengthen the overall implementation of safeguards through complementary activities with public entities that regulate private borrowers.	70	Noted.
<b>International Standards</b>		
307. The 1998 Policy on Indigenous Peoples does provide discussion and details of the national and international legal framework. The new	55	Although there is no lengthy discussion on national and international legal framework, the Second Draft SPS makes it clear

policy statement and requirements must include a commensurate section.		its objectives include designing and implementing projects in a way that fosters full respects of IP’s human rights.
308. The new policy should also underline the requirement to meet applicable international law by referencing it whenever the relevant national law is referenced.	55	The revised SR1 makes clear reference to relevant international conventions and standards.
309. The SPS must reflect human rights principles more precisely in the text. Relevant requirements of international conventions (e.g., Aarhus Convention) must be described in implementation terms.	1	Many human rights issues are indeed embedded in policy objective, principles, and requirements. The principles of Aarhus Convention are embedded in SPS policy objective, principles, and requirements, as well as in ADB Public Communication Policy.
310. Unfortunately the draft SPS does dilute existing ADB safeguard policies in many critical areas and will fall far short in ensuring the sustainability of ADB-financed operations. We find that the SPS does not upwardly harmonize with policies of other IFIs (with the IFC in particular, after which the SPS is modeled), and its requirements do not meet many relevant international law and best practice standards. The draft replaces the ADB’s detailed and currently mandatory environmental safeguards with one page of mandatory general “policy principles” which in many instances are much weaker than existing requirements and subject to wide interpretation. There are also numerous gaps between the policy principles and corresponding implementation requirements for borrowers and clients. An overview of concerns is attached and several NGO analyses are posted at <a href="http://www.bicusa.org/en/Article.2851.aspx">http://www.bicusa.org/en/Article.2851.aspx</a> .	19	Opinion noted.
311. Finally, the protections provided in the current draft are below international standards established by peer lending institutions and other international agencies. <sup>1</sup> ADB should aspire to be a leader among development institutions in formulating and implementing international best practices. Donor harmonization of safeguards should not result in a global race to the bottom in terms of who has the least onerous constraints for ensuring social and environmental sustainability. Rather, the ADB should take this opportunity to lead the way in raising awareness of the importance of strong safeguards, and, in doing so, encourage and inspire other funders to raise their standards as well.	60	Noted.
312. The requirements do not meet and reference many relevant international laws, norms, and best practice standards. The draft SPS makes little effort to align ADB policies with relevant international conventions, treaties, codes, action plans, soft law instruments, and sectoral “best practice” standards.	64	The SPS has made explicit reference to the World Bank Group’s EHS Guidelines. The revised SR1 makes clear reference to relevant international conventions and standards.
313. Many of the protections provided in the draft SPS are far below the standards established by peer lending institutions and other international agencies. They fall substantially short of IFC requirements in a number of substantive areas, including: Environmental and Social Assessment, Biodiversity and Sustainable Natural resource Management, Pollution	53	Opinion noted.

<p>Prevention and Abatement, Greenhouse Gas Emissions, Community Health and Safety, Labor and Working Conditions, Community Consent, Extractive Industries Projects, Delivery of Essential Services, Involuntary Resettlement, and Indigenous Peoples.</p>		
<p>314. Because the draft SPS fails to meet minimum international standards, we feel that is not appropriate to be used as a basis for a public consultation.</p>	<p>58</p>	<p>Opinion noted.</p>
<p>315. In addition to harmonization, there are four other reasons why ADB should incorporate international standards into its revised safeguard policies. First, international standards reflect a consensus of governments or other leading policy-makers on the importance of the issue, the need for international action, and the appropriate policy response. Second, ADB should be at the forefront of disseminating international best practice standards in the region. Third, ADB is a bank with relatively little capacity or expertise to make policy or generate international norms. Fourth, there is now a broad consensus among international jurists, legal scholars and practitioners that international organizations are considered to be bound by general international law, including any human rights norms, that can be viewed as customary law or general principles of law.</p>	<p>64</p>	<p>The SPS has made explicit reference to the World Bank Group’s EHS Guidelines. The revised SR1 makes reference to relevant international conventions and standards, including Basel Convention, Stockholm Convention, Montreal Protocol, IUCN classification for critical habitats, IUCN Red List, Ramsar List.</p>
<p><b>Highly Complex and Sensitive Projects</b></p>		
<p>316. We propose supplementing the provision requiring ADB to appoint independent environmental and/or social experts for highly complex and sensitive projects. Such experts should be used to verify both the effectiveness of the borrower’s consultation process in terms of affected peoples’ understanding of project impacts and risks, and the borrower’s implementation of the environmental management plan.</p>	<p>70</p>	<p>Use of independent advisory panels for highly complex and sensitive projects during project preparation and implementation is required in this draft (see para. 61 of the SPS).</p>
<p><b>Gender</b></p>		
<p>317. There is a need for stronger emphasis on gender analysis. Specify measures and requirements that prevent marginalization of women and other vulnerable groups.</p>	<p>5, 13</p>	<p>The policy principles and safeguard requirements SRs1-3 have been further strengthened to emphasize gender-sensitive social assessment, gender-inclusive consultation, gender-responsive grievance mechanism, and address gender-differentiated impacts and gender-specific needs through mitigation and/or compensation measures,</p>
<p>318. There seems to be a gap in the assessment of project impacts. It is not clear in the SPS how gender concerns are addressed. CIDA would be happy to provide comments and suggestions on how to ensure coherence between the SPS and the Gender and Development Policy of ADB, and how to mainstream gender concerns in ADB operations.</p>	<p>12</p>	<p>Gender and development issues are addressed through ADB’s Gender and Development Policy. This draft further emphasizes gender concerns through social assessment, consultation, grievance mechanism, and vulnerable group identification and assistances.</p>
<p>319. There is a need for a gender policy because women are the most vulnerable group in resettlement activities.</p>	<p>1</p>	<p>As above.</p>



<p>320. The draft SPS fails to fulfill the Convention on Elimination of all Forms of Discrimination Against Women (CEDAW), above all Section 14, Part 2 regarding the participation of women in decision-making regarding development in their region.</p>	<p>54</p>	<p>As above.</p>
<p>321. The draft SPS almost entirely fails to integrate gender concerns including safeguard elements of the ADB’s gender policy. Chapters 3 and 4 do not mention gender or BP/OP C2 at all. The social safeguards are alarmingly weak, particularly for non-indigenous women and men who have not been resettled. Protections for indigenous women and men as well as people who are involuntarily resettled are also extremely weak and must be strengthened. The SPS does not sufficiently facilitate women’s participation in ADB operations, and it neglects to provide adequate protections to ensure that ADB projects and programs do not contribute to gender inequality and marginalization of women.</p>	<p>19,53, 65</p>	<p>The policy principles and safeguard requirements SRs1-3 have been further strengthened to emphasize gender-sensitive social assessment, gender-inclusive consultation, gender-responsive grievance mechanism, and address gender-differentiated impacts and gender-specific needs through mitigation and/or compensation measures,</p>
<p>322. Requirement to carry out gender-specific consultation and information disclosure is omitted.</p>	<p>66</p>	<p>See revised SRs1-3.</p>
<p>323. On environmental safeguards, the SPS does not mention any gender issues despite many women’s key role as custodians of the environment and many poor women’s reliance on natural resources to provide household goods such as water and firewood.</p>	<p>53,65</p>	<p>Addressed in the revised SR1 on consultation and grievance mechanism.</p>
<p>324. On involuntary resettlement safeguards, the existing ADB policy is relatively weak in terms of adequate provisions for ensuring gender-sensitive resettlement plans and practices and safeguarding women’s rights. It is thus shocking that the draft SPS is far worse in this arena and makes essentially no mention of “gender” or “women”, other than to call for gender-disaggregated data and listing women as a vulnerable group. The principles include gender-disaggregated social impact assessments, yet Attachment B simply suggests that the client’s social impact assessment include a gender-disaggregated description of the conditions of affected people.</p>	<p>60,65</p>	<p>Gender issues are now sufficiently addressed in both IR policy principles and SR 2.</p>
<p>325. On indigenous peoples safeguards, the principles mention that social assessments should identify social and economic project benefits that are gender inclusive, yet Attachment C simply requires that clients “give special attention” to the concerns of indigenous women during project consultations.</p>	<p>65</p>	<p>Gender consideration is further strengthened in SR 3. See paragraph 12 requires collection of gender disaggregated data. Furthermore, paragraph 35 (iv) points to initiative to address the gender and intergenerational issues that exist among IPs.</p>
<p>326. The ADB must remedy these problems by radically upgrading the SPS to promote gender equality, human welfare, and environmental sustainability. The updated SPS draft must be open for consultation. To safeguard women and gender equality, the ADB must:</p> <ul style="list-style-type: none"> <li>• Work with civil society and ADB’s RSGS to better integrate BP/OP C2 and other social protections into the SPS;</li> <li>• Require rigorous social impact assessments, including gender impact</li> </ul>	<p>65</p>	<p>ADB’s Gender and Development Policy is not part of safeguards policies to be specified in the SPS. Gender dimensions have been strengthened in the SPS and SRs1-3.</p> <p>See previous comments and responses.</p>

<p>assessments and other provisions in BP/OP C2 for all projects and programs;</p> <ul style="list-style-type: none"> <li>• In compliance with BP/OP C2, require borrowers/clients to ensure considerations of gender issues of women and men in project identification, preparation, appraisal, implementation, operation and maintenance, and monitoring and evaluation;</li> <li>• Improve mechanisms to effectively monitor borrowers'/clients' safeguard policy implementation including gender considerations. It is a conflict of interest for clients to monitor their own behavior.</li> </ul>		
<p>327. Require that borrowers/clients ensure project grievance mechanisms are gender sensitive and facilitate women's and men's use of grievance systems, for example, by requiring culturally sensitive gender awareness training for grievance mechanism staff and requiring the presence of women on project grievance mechanism staff. The ADB should require similar measures for project community liaison teams;</p>	65	Agreed. See the revised section on grievance mechanisms in each of SRs.
<p><b>Harmonization</b></p>		
<p>328. ADB should harmonize or make its safeguard policy consistent with those of other MFIs for the following reasons: (i) to avoid confusion among DMCs, (ii) to lessen unnecessary work and ease the burden of DMCs, particularly those in the Pacific, and (iii) it makes sense to have harmonized safeguards when a project involves several international donors.</p>	1,6	Agreed.
<p>329. Harmonizing with safeguard policy of other MFIs is important, but it may also lead to weaken the current ADB policy. It should be carefully considered so that harmonization does not harm the concept of "no intention to weaken the policy".</p>	71	Noted.
<p>330. In Japan, JICA and JBIC have been updating their environmental guidelines. From the view point of harmonization, it might be useful to reflect the current discussion into the SPU if the schedule would allow it.</p>	71	Agreed.
<p>331. Japan will not support any watering down of safeguard policies, even if it is done to harmonize with other MFIs.</p>	14	Noted.
<p>332. It appears that ADB is being selective in harmonizing with other MFIs. The World Bank, for instance, has 10 safeguard policies while ADB retains its three policies, which it has chosen to integrate. The ADB has also disregarded the strengths of other MFIs' policies, such as that of Inter American Development Bank, aligning itself primarily with the IFC's standards for private finance. The SPS should be consistent in harmonizing with other MFIs and not just select certain aspects to which ADB safeguards will be aligned.</p>	51	ADB believes that harmonization with other MDBs' policies should be undertaken around policy principles, rather than specific procedures.
<p>333. The SPS does not upwardly harmonize with policies of other MFIs (with the IFC in particular, after which the SPS is modeled), and its requirements do not meet many relevant international law and best practice standards.</p>	19,50	Both the Consultation Draft and this draft have taken into consideration safeguard policies of other MDBs, in particular the World Bank, IFC, and EBRD.

<p>334. The full cost of implementing the safeguard policy should be included in project costs and used in the calculation of the project’s economic rate of return. Bearing in mind that affected people bear a number of costs that cannot be easily monetized, a project triggering safeguards, in relation to involuntary resettlement in particular, should be required to have commensurately high returns – reflected in higher ERR requirement than other projects, to be approved. Projects which do not meet this requirement should be re-evaluated, and every effort be made to explore alternatives, for example rail as opposed to road transport infrastructure, to reach the same outcomes.</p>	<p>72</p>	<p>Full cost of implementing IR is included in project costs. In case of project alternatives, the SPS emphasizes the importance of look for alternatives to avoid IR, IP and environmental impacts.</p>
<p>335. Infrastructure projects triggering safeguards should be planned and designed in detail well in advance of starting work on the ground. In this way, projected costs can better reflect actuals and better quality information will be available to provide to affected persons during the consultation process.</p>	<p>72</p>	<p>This is the intent of the SPS. This has been addressed by policy principles and SR1-4. The SPS requires that safeguard plans (environmental management plan, resettlement plan, and Indigenous Peoples plan) must be prepared prior to starting work on the ground, and the safeguard plans must include budget and time-bound implementation schedules (see principle #4 of environmental safeguards, principle#8 of IR, principle #5 of IP, and SRs).</p>
<p>336. Consultation should be based on accurate information. Too often, the implementers are also unaware of what is planned and how it would impact the people living in the area, which makes the consultation process that is carried out <i>before</i> detailed project plans are available, meaningless. Information provided to the affected persons should also not be filtered.</p>	<p>72</p>	<p>The issue on consultation has been addressed by policy principles and SRs that require a consultation process free of intimidation or coercion and provides timely disclosure of information which is relevant, understandable, and accessible to affected people and other concerned stakeholders.</p> <p>As part of borrowers/clients’ responsibilities, a requirement is added in para. 82: “To ensure the safeguard measures are appropriately implemented, the borrower/client will include requirements of safeguard plan implementation into bidding/tendering documents and civil work contracts.”</p>
<p>337. The consultation requirements of the involuntary resettlement safeguard policy should not be any less than those set out under the indigenous peoples safeguard policy. STDP affected a largely rural area in Sri Lanka where a number of households lived in ancestral villages, in houses/locations they had lived in for as far back as they could remember. While these persons do not fall within the definition of indigenous peoples as they belong to the majority ethnic group, they may still have livelihood systems, social and cultural practices and values which are distinct from the mainstream and which are under threat due to urbanization, globalization and other such forces of modernity. At a minimum therefore, the consultation requirements applicable in the case of indigenous peoples should be applied in the case of involuntary resettlement.</p>	<p>72</p>	<p>In ancestral villages referred to are still privately owned by individual and households. Therefore such property could be compensated on an individual basis. In case of IP, they have both claimed and communally owned property. In acquiring such land and property a different policy approach is required.</p>

<p>338. The safeguard policy should require that affected persons are treated in a consistent manner. There should be documented implementation manuals/guidelines regarding compensation rates and conditions under which deviations are allowed. These should be available to affected persons and third parties (such as external monitors) so that there is a verifiable paper-trail for decisions and actions taken under the project. An issue giving rise to much dissatisfaction among affected persons under the STDP is the perception that people were treated differently - and limitations in documentation, such as criteria for eligibility for compensation, reasons why individual households were treated differently etc, adds to this perception. This should be balanced with the need to ensure flexibility to respond to the situation on the ground. For example in the case of STDP, vulnerable households were identified on a case-by-case basis during a face-to-face interview with project implementers which proved to be more appropriate than the originally proposed blanket criteria, such as female headed households. Such balancing of consistency and flexibility can be achieved by separating the Resettlement Plans into two documents – one containing the principles of involuntary resettlement and the other an operational manual which is different for each project according to the context, and which is updated as the project proceeds - documenting the changes in operationalising the principles.</p>	<p>72</p>	<p>Further guidance will be provided in safeguard guidelines/handbooks.</p> <p>Agreed. This will be done for each project on a case by case basis.</p>
<p>339. Often the capacity to fully implement the involuntary policy is not available within a single agency. In such cases, rather than focusing on creating that capacity in a single agency, other agencies which may have the necessary capacity should also be involved.</p>	<p>72</p>	<p>This has been addressed. The SPS requires that the role of third parties is appropriately defined in the safeguard plans (see para. 65).</p>
<p>340. The scope of the livelihoods restoration support should be wider, to encompass not only those whose livelihood related land is acquired but also those who use common resources for livelihood purposes. Loss of traditional systems of production should also be recognised as a legitimate loss, eligible for compensation and replacement assistance.</p>	<p>72</p>	<p>This is further addressed in both IR policy principles and in SR2.</p>
<p>341. Implementation of safeguard policies should be supported by assistance to DMCs to carry out public consultations and update / document their policies and laws relating to land acquisition for development purposes to match or exceed the requirements set out in the safeguard policies. Overall, CEPA supports the existence of rigorous safeguard policies in the IFIs because they provide the space for affected people to realise their rights, especially where national policies are limited or restrictive. In the long run however, we would like to see the development of a national policy environment, both in Sri Lanka and elsewhere, that safeguards affected peoples' rights and which will cover all instances of involuntary resettlement, not just those funded by the IFIs.</p>	<p>72</p>	<p>Agreed. As presented in the SPS, ADB will support DMCs in improving their policies and laws and building capacity, through the strengthening and use of country safeguard systems, and capacity assessment and building at project level.</p>

ADB also received several editorial comments, through the 14 consultation workshops and written submissions.		Editorial comments are incorporated, as appropriate.
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### Source Documents

Document No.	Date of Workshop/ Date Received	Inquiries, Comments, and ADB Response
1	14-15 November 2007	Central and West Asia Consultation (Bishkek)
2	26-27 November 2007	Consultation with Indigenous Peoples (Manila)
3	28-29 November 2007	Philippines Consultation (Manila)
4	16-17 January 2008	South Asia Consultation (New Delhi)
5	18 January 2008	Consultation with Civil Society (New Delhi)
6	30-31 January 2008	Pacific Consultation (Sydney)
7	12-13 February 2008	Indonesia Consultation (Jakarta)
8	27-28 February 2008	East Asia Consultation (Beijing)
9	5-6 March 2008	Mekong Consultation (Hanoi)
10	26-27 March 2008	Pakistan Consultation (Islamabad)
11	1 April 2008	North America Consultation (Washington, DC)
12	3 April 2008	North America Consultation (Quebec, Canada)
13	17 April 2008	Europe Consultation (Frankfurt)
14	22 April 2008	Japan Consultation (Tokyo)
15	4 July 2007	Bank Information Center - letter <ul style="list-style-type: none"> <li>• <a href="#">Analysis by Environmental Defense</a></li> <li>• <a href="#">Analysis by International Accountability Project</a></li> <li>• <a href="#">Analysis by Forest Peoples Programme</a></li> </ul> ADB Response
16	3 July 2007	Forest Peoples Programme - <a href="#">letter</a> and <a href="#">analysis</a> ADB Response
17	2 March 2007	Oxfam Australia - <a href="#">letter</a> and <a href="#">report</a> ADB Response
18	3 November 2006	NGO Forum on ADB - <a href="#">letter</a> and <a href="#">report</a> ADB Response
19	11 January 2008	Bank Information Center - letter and analysis ADB Response
20	28 January 2008	Oxfam Australia - letter and analysis ADB Response
21	8 February 2008	NGO Forum on ADB - letter and analysis ADB Response
22	22 July 2005	NGO Forum on ADB ADB Response
23	4 August 2005	Both ENDS (Amsterdam) ADB Response

<b>Document No.</b>	<b>Date of Workshop/ Date Received</b>	<b>Inquiries, Comments, and ADB Response</b>
24	30 August 2005	Japan Center for a Sustainable Environment and Society ADB Response
25	6 October 2005	Oxfam Australia ADB Response
26	1 October-13 December 2005	Bank Information Center (US) ADB Response
27	10 November 2005	Earthrights International (US and Thailand)
28	21 December 2005	Environmental Defense (US) ADB Response
29	20 January 2006	Oxfam Australia ADB Response
30	17 February 2006	Mekong Watch (Japan and Thailand) ADB Response
31	28 February 2006	Earthrights International (US and Thailand)
32	28 February 2006	Japan Center for a Sustainable Environment and Society ADB Response
33	17 March 2006	NGO Forum on ADB
34	31 August 2006	Japan Center for a Sustainable Environment and Society ADB Response
35	25 January 2007	Environmental Law Center (Uzbekistan) ADB Response
36	9 Feb 2007	NGO Forum on ADB ADB Response
37	10 Feb 2007	Oxfam Australia ADB Response
38	16 Feb 2007	Bank Information Center (US) ADB Response
39	22 Feb 2007	Netherlands Development Finance Company ADB Response
40	2 March 2007	Oxfam Australia ADB Response
41	2 Aug 2007	Bank Information Center (US) ADB Response
42	11 January 2008	Bank Information Center - letter and analysis ADB Response
43	24 October 2007	NGO Forum on ADB ADB Response

<b>Document No.</b>	<b>Date of Workshop/ Date Received</b>	<b>Inquiries, Comments, and ADB Response</b>
44	25 October 2007	NGO Forum on ADB ADB Response
45	9 November 2007	CSOs in Viet Nam ADB Response
46	13 November 2007	CSOs in Indonesia ADB Response
47	13 November 2007	NGO Forum on ADB ADB Response
48	19 December 2007	Bank Information Center (US) ADB Response
49	20 December 2007	Bank Information Center (US) ADB Response
50	21 January 2008	Urgewald (Germany), Bank Information Center (US) and JACSES (Japan) ADB Response
51	28 January 2008	Oxfam Australia - letter and analysis ADB Response
52	29 January 2008	AID/WATCH ADB Response
53	8 February 2008	NGO Forum on ADB ADB Response
54	8 February 2008	Solidaritas Perempuan - Women's Solidarity for Human Rights (Indonesia) ADB Response
55	12 February 2008	Forest Peoples Programme ADB Response
56	22 February 2008	Maunsell (Indonesia) ADB Response
57	28 February 2008	CSOs in Viet Nam ADB Response
58	29 February 2008	NGO Forum on Cambodia and Housing Rights Task Force ADB Response
59	3 March 2008	IAITPTF (Thailand) ADB Response
60	3 March 2008	International Accountability Project (US) ADB Response
61	4 March 2008	CSOs in Burma ADB Response
62	28 March 2008	Environmental Law Alliance Worldwide (US)



<b>Document No.</b>	<b>Date of Workshop/ Date Received</b>	<b>Inquiries, Comments, and ADB Response</b>
		ADB Response
63	31 March 2008	Finland National Board ADB Response
64	1 April 2008	Bank Information Center (US) ADB Response
65	1 April 2008	Gender Action (US) ADB Response
66	22 April 2008	Mekong Watch
67	24 April 2008	Department for International Development (UK)
69	28 April 2008	NGO Forum on ADB
70	28 April 2008	US Government
71	30 April 2008	Ministry of the Environment (Japan)
72		The Centre for Poverty Analysis (CEPA)