

## SUMMARY OF QUESTIONS AND COMMENTS DURING THE COUNTRY CONSULTATIONS

Note: ADB responses are preliminary and subject to subsequent consultations and approval

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<b>COMMENTS FROM NGO FORUM</b>			
General		<p>We appreciate the stated intent of having flexibility in deciding over which documents are for disclosure by shifting from prescriptive policy to principles-based disclosure. We have no reason, however, to believe that it will work.</p> <p>Annual reports of the PCP implementation reveal that the 2011 PCP has have been improved through time to bring implementation to best practices yet gaps and inefficiencies remain. Our own experiences:</p> <p>a) project documents are not uploaded on time and in a regular basis with documented cases when uploading was done during Board approval; b) Email queries are seldom responded to either due to complacency, lack of regulation, or gaps in the delivery mechanism and systems (response forms, information request system), c) existing policy exceptions continue to inhibit vital information to protect project-affected communities; d) translation of key policies were not sufficiently undertaken and safeguards documents are not shared in the manner understandable to project-affected communities. Utmost, publicly disclosed means available in ADB.org.</p> <p>With low-levels of adherence to information disclosure matched with the same policy exceptions, it is difficult to expect that Bank management and staff have the capacity to evaluate the particular facts and circumstances of each</p>	<p>The new policy goes much further than the current PCP in that it makes all documents subject to disclosure not just those that were previously on a prescriptive list. There is no ambiguity or subjectivity to this – all documents are disclosed unless they meet one of the exemption criteria. This move to a principles-based policy meets with the highest standards for international organizations. The PCP Annual Report will review the performance of the AIP and make recommendations if changes are needed in the policy. Major amendments will be subject to consultation.</p> <p>On the issue of implementation, ADB recognizes that more work needs to be done on compliance. This can be done through training and making the policy's Operational Procedures (currently called "Staff Instructions") clearer. One of the major issues with the PCP is that it contains a large list of</p>

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		<p>project-affected community and refer to the principles to adequately provide the appropriate disclosure needs. Despite the challenges we have encountered in the last five years using the 2011 PCP, we still strongly subscribe for a <i>prescriptive</i> information disclosure policy.</p> <p>The same argument applies on the removal of the public communications approach which should also be in the policy text as it binds the entire Bank and the borrower(s) to be committed to transparency and information disclosure that cannot be achieved if it is subsumed in an external relations strategy subject to changing resources and priorities.</p> <p>Therefore, ADB should sustain the current policy structure which include a non-exclusive list of documents as minimum set for disclosure with additional proposed recommendations in the latter</p>	<p>documents to be disclosed. The new policy is much simpler and easier for staff to implement as everything is disclosable (except information falling under exceptions).</p> <p>ADB needs some measure of what defines “disclosed” which is why the policy states that posting on the website meets this criterion. The policy and its Operational Procedures (currently called “Staff Instructions”) are very clear on the many other methods to convey information to project-affected people and the need to provide information in a manner, language, and place accessible to project affected people.</p> <p>Note is taken of the view for the policy to remain prescriptive. The ADB views this as a digression from the model of presumption in favor of disclosure - for all documents to be potentially disclosable. The shift to a policy with a presumption in favor of disclosure not only meets the best international practice but was widely supported in the consultation process. ADB does not believe that a prescriptive policy document that may be as much as 50 pages long is useful to stakeholders or project-affected people.</p> <p>The new policy details the communications related to disclosure and projects. The Public Communications Approach is related exclusively to ADB’s institutional, external communications and has almost nothing to do with either disclosure or project communications. This section was removed from the PCP because it created great confusion on the difference between project-related and corporate communications.</p>

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		<p>parts of this submission. To clarify the timing and modality of dissemination for each document, a staff directions can be attached to the policy.</p>	<p>The policy's Operational Procedures (currently called "Staff Instructions") are mandatory. The policy's appeals mechanism can be used if stakeholders feel information has been withheld. The policy and the Operational Procedures are both subject to compliance review.</p>
Removal of project communications		<p>Thus, a strategic, affirmative and context-specific action for project-affected communities cannot be subsumed or reduced in significance. Thus, the removal of the orientation to serve project affected communities in the draft PCP is a serious retreat in its stated commitments. To this end, paras 47 and 48 of 2011 PCP should be reinstated:</p> <p>Remove discriminatory provisions to RTI which can be used at stifling media, transparency and human rights groups, individuals and project-affected communities in seeking information that is timely, complete and understandable to communities. The only reason for denying a request for information must only be based on the already comprehensive list of restricted documents under limited exceptions of the PCP in pursuit of the principle of presumption in favor of disclosure. Paragraphs 26 and 27 of draft PCP are unacceptable. And should be removed.</p> <p>Again, no information should be withheld from public access other than those that are already in the wide range of limited exceptions.</p> <p>Removal of the Focal Point does not support a two-way communication with affected people whose needs for information require responses that are reliable, project-specific, policy-informed and above all, time-bound. It should be placed back into the policy</p>	<p>Paragraphs 47 and 48 are contained in the policy's Operational Procedures (currently called "Staff Instructions").</p> <p>We will include in the policy a principle on the right of affected people to information.</p> <p>"Unreasonable" is described as a request for the same subject from the same person, organization, or group if the request has already been responded to by ADB. ADB also cannot provide information that does not exist nor can it create information. The word "unreasonable" will be removed from the policy but not the underlying principle. If an applicant believes that they did not get the information requested, they can access the appeal provisions in the policy.</p> <p>Agreed. There have been varying opinions on the use of a focal point. In the PCP, the functions of the focal point were very vague. In addition, many project implementation groups felt that a more decentralized process with multiple information points closer to project-affected people was a better</p>

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		<p>A definitive period for PCP review participated by stakeholders, particularly CSOs and project-affected communities creates an environment of trust between the Bank and its stakeholders. Any change in the PCP have a direct impact to RTI and as a legal obligation of a public institution, should be subject to meaningful consultations.</p> <p>The following line should be taken down in the draft PCP:  <i>"...Amendments to the policy will be made from time to time as needed."</i>, last line, par 42, draft PCP.</p>	<p>solution rather than having just one person in the capital city.</p> <p>We will return the need for the borrower/client to appoint information contact points to the policy and detail this in the policy's Operational Procedures (currently called "Staff Instructions") and will advise a flexible project-based approach to information contact point/s.</p> <p>The new policy will allow for full reviews as and when needed. The PCP Annual Report will monitor the performance of the policy.</p> <p>The provisions in the AIP for the disclosure of information and two- way communications are meant to assist in ensuring that the background for meaningful consultations in terms of having an informed and knowledgeable public can take place. The AIP is not the vehicle to mandate consultations.</p>
Amendments to list of documents for disclosure		<p>It also follows that the list of documents for disclosure and limited exceptions should not be amended without public consultations. The list of documents for disclosure are simply not matters for Management alone to decide and thus should be in the policy text and not only in the operations manual or staff instructions. Therefore this line should be deleted:  <i>"This list will be updated from time to time, as necessary"</i>, 3rd par. staff instructions</p> <p>The draft PCP must uphold the duty to consult with ADB's stakeholders, particularly project-affected communities in conducting a comprehensive review after a period of time, not exceeding five (5) years from the effective date of the policy through a public consultation. The proposed revision of amending</p>	<p>The policy makes all documents available for disclosure subject to exceptions. It may be that the policy's Operational Procedures (currently called "Staff Instructions") need to be updated with minor information. We will announce this on the ADB website. Any major changes to the policy or Operational Procedures will be subject to appropriate consultation. We will define in the Operational Procedures what we mean by a major change.</p> <p>The policy will be reviewed every year in the PCP Annual Report which provides more flexibility for changes to the policy. The change is in line with other international financial institutions and international best practice (eg at the World Bank for</p>

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		without inquiry and debate, treads below international practice in policy consistency, transparency and confidence-building with stakeholders.	example). No substantive changes to the policy are envisioned in the future. If there are substantive changes, they will be subject to appropriate consultation.
PDS		Project Data Sheets (PDS). The minimum frequency for updating the PDS twice a year should maintain and avoid reducing the standard.	The PDS is updated whenever substantive changes to a project are made and are mandated to be updated at least once a year in any case. In practice in many cases the information in the PDS does not substantially change within a year often making mandatory updates redundant. ADB is exploring ways to make the PDS more user friendly or to find other ways to provide better project information.
Recommendations on restructured documents and limited exceptions		<p>Clearly, the time has come for ADB to narrow down its list of exemptions, remove questionable overrides and unnecessary vetoes and refrain from introducing additional barriers to Right To Information.</p> <p>International practice sets out a three-part test for exceptions as follows: it must relate to a legitimate aim listed in the policy; disclosure must threaten to cause substantial harm to that aim; and the harm to the aim must be greater than the public interest in having the information. Instead of bestowing a blanket exception for a class of documents, ADB must formulate with sufficient precision the harm it seeks to avoid by stating the commercial interests, financial interests and /or competitive position of such party that is put at risk if a specific document is disclosed rather than identifying a class of documents.</p> <p>Requested information of project-affected communities have not been pro-actively responded to in as much as the stated objective of the 2011 PCP due to existing policy exceptions that we are again seeing in the proposed PCP. Paragraph 19 of</p>	<p>Noted.</p> <p>There are no anticipated changes to the exception list which remains the same as in the current PCP.</p> <p>There are a series of implementation issues which have been noted and we will seek ways to encourage better implementation of the policy such as increased training and monitoring.</p>

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		<p>the draft policy carries the same policy barriers that have been lanced against project-affected communities. This provision must be narrowed down by including a preference for disclosure in requests specific to safeguards and compliance-related cases:</p> <p>Following the principle of open meetings, disclosure should be practiced most especially when it pertains to policy dialogues and therefore the paragraph below should be removed:  <i>“Information exchanged, prepared for, or derived from the deliberative and decision making process between ADB and its members and other entities with which ADB cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision making process between and among ADB and its members and other entities with which ADB cooperates by inhibiting the candid exchange of ideas and communications, particularly with respect to policy dialogue with DMCs.” par 19.2, draft PCP</i></p> <p>Additionally, par. 19.3 of the draft PCP should be revised. Minutes of the Board Compliance Review Committee should be disclosed</p> <p>25. Delete par. 22.  <i>“ADB also reserves the right not to disclose, under exceptional circumstances, information that it would normally disclose if it determines that such disclosure would or would be likely to cause harm that outweighs the benefit of disclosure. This prerogative may be exercised only by the Board, par 22, draft PCP</i></p>	<p>Communications is also another issue that the policy seeks to address through more systematic communications plans.</p> <p>Deliberative processes for project design will continue to be exempt from the disclosure policy as staff need to be able to have free and open discussion to ensure smooth and innovative work.</p> <p>Thank you. We feel the provision needs to remain.</p> <p>Noted. This is to be used in exceptional circumstances and, in fact, has never been invoked.</p>

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		<p>While personal details are not disclosed for safety purposes, a directory of Board, directors, alternate directors, managers, paid as part of the project or policy work must have their names, emails and positions posted in ADB.org. Currently, we are bound to fill-up an online form to reach a specific staff.</p> <p>The online system, however, does not reveal the emails of the staff nor does it provide for a copy of the correspondence. The email system which is supposed to be a platform for two-way communication becomes a one-way flow and that which allows deliberate disregard for the information needs of project-affected communities.</p>	<p>The name and contact information of the relevant project officer is available and posted on the web. This system allows for disclosure staff to check that requests for information have been responded to.</p>
<p>Recommendation for an independent and uncompromised appeals panel</p>		<p>Maintaining the system of appeals and oversight is a desirable direction but the proposed system lacks independence. The veto power given to the ADB Board to the ADB President to decide on appeals as it compromises the autonomy of the appeals panel, renamed as Appeals Information Committee (AIC). The last line in par. 21, draft PCP must be deleted. <i>“the AIC will consider such request but any recommendation to disclose or deny such information will require the approval of the Board, for Board records, and the President, for other documents; and their decisions shall be final.”</i></p> <p>Further, a provision on the temporary suspension of Board approvals requiring loan disbursements related to project with an ongoing appeal must be stated to enable appropriate decision making based on newly disclosed information to allow further investigation and meaningful consultation.</p>	<p>The appeals process is the same as in the PCP. No changes are anticipated.</p> <p>Noted.</p>
<p>Recommendations on the list of</p>		<p>We recommend that no distinction be made between sharing of public and private sector project</p>	<p>Noted. There is essentially only one difference between posting sovereign and non-sovereign</p>

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documents, timing, and modality for disclosure		<p>documents, especially with the recent evaluation of the Independent Evaluation Department on potential weaknesses in screening F1 projects. Thus, we propose that the timing and modalities for disclosure of all project documents for nonsovereign projects follow take the same requirement for sovereign loans.</p> <p>For the same reason, disclosure of cofinancing agreements for project-specific agreements, framework agreements, trust fund agreements including safeguards monitoring reports between ADB and any bilateral or multilateral cofinancier be posted on the ADB.org 120 days before Board approval. Disclosure should not be “subject to approval of cofinancier” as proposed.</p> <p>Based on our project monitoring, it is common that by the time initial project information is disclosed the project is already approved. This materially limits the ability of potentially affected communities and the CSOs that support them to meaningfully engage in a project, negating the ADB’s commitments to meaningful consultation. Further, this practice falls short of international best practice of international financial institutions. Or problem-solving, negotiation, and survival critically depended on which data and information were available or restricted.</p> <p>We propose that safeguards documents for all projects under category B be released 90 days before board approval.</p> <p>All projects under Category A for all safeguards, whether sovereign or nonsovereign, should be</p>	<p>loans. Some non-sovereign projects contain information has been made available to assess the project (usually financial information) that would normally be confidential. As such, these documents need to be redacted. In practice, it has been found that clients are taking longer than 14 days to do this work. It has been proposed that these documents be made available as soon as possible but no later than 30 days. The intent of the revised policy is to try and harmonize with other disclosure policies used by other development banks.</p> <p>Noted.</p> <p>Initial Project Data Sheets are mandated to be posted upon approval of the concept paper for the project or program. This should be updated whenever there is progress in the project. The PCP Annual Report monitors performance of the policy. These reports are public.</p> <p>Noted. Changes to the disclosure requirements of safeguard documents will be considered when ADB’s Safeguard Policy Statement is next reviewed.</p> <p>Noted and we will review this recommendation Since some projects can operate for more than 20 years and interest in a project falls off after several</p>

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		<p>available online for the entire lifetime that the project is operating and shall not be considered historical documents that will be disclosed only when requested to be consistent with the SPS objective of accounting for long-term impacts to people and the environment.</p> <p>Major changes in a project materially alters or fundamentally affects the scope and project outcome and thereby can also bear environmental and social risks that can be substantially different from what was initially disclosed. Project-affected communities need to be informed in a reasonable amount of time to conduct meaningful consultations. The requirement for major change reports on a project to be posted on ADB.org should have a definitive period for disclosure which we propose to be at 120 days before approval by ADB's Board of Directors.</p> <p>The methodology used for equivalency and acceptability assessments must be disclosed to see how Country Safeguards Systems (CSS) are evaluated with SPS and ensure that the Bank and the borrower are using appropriate and adequate parameters for avoiding harm in the implementation of a project. Project monitoring reports must also include information on the progress of the CSS gap-filling measures when CSS have been applied in a particular sector or agency. Disclosure of such documents must be made halfway in the project cycle instead of "upon completion" and the results must be fully disclosed.</p> <p>Consultation plan, proposed papers and approach papers related to policy and strategy reviews must be disclosed all in one webpage in the ADB.org..</p>	<p>years it does place a burden on the website in terms of data retention although information remains available from ADB.</p> <p>The ADB recognizes that sufficient time needs to be made available for affected people to respond to major project changes and to safeguards. But this needs to be balanced against the potential for project delays, cost increases and harmonization with other agencies. We will review this. Other development organizations working in the region have a different period (60 days).</p> <p>This is an operational issue and one that should be taken up during the next safeguards review.</p> <p>Noted. ADB is constantly looking to upgrade the website and will take this comment into account.</p>

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		<p>Details of consultation calendar and venue of planned consultations must be posted at least 30 days prior to the activity as in any notice for public consultations and need not be requested to the ADB.</p> <p>It is important that ADB subscribe to early disclosure of CPS and RCP including its supporting documents to facilitate discussion and consultation with project-affected communities. In addition, these documents reveal public information hence need not seek the concurrence of the member-country before disclosure.</p> <p>For all category A and B projects, RRPs should likewise include in the safeguards section, <i>“the expected minimum frequency of ADB-led safeguards monitoring and supervision missions that will take place during project administration, with specific details documented in their respective project administration manuals”</i> as recommended by the IED. For all FI projects, RRPs should also state a summary of due diligence as to the portfolio risks and the FI’s capacity to address these needs.</p> <p>To elaborate the need for a regular updating of PDS at least twice a year, we recommend for the following information to be consistently reflected:</p> <p>a. Key dates -- date of initial disclosure, projected board date, last updated date. Clear and consistent information on these key dates should be moved to the top of the website/PDS.</p> <p>b. Project Status. The status of the project should be clearly identified. As noted above, where a project is approved, the PDS should state the approval date (board date when it was approved).</p>	<p>Noted.</p> <p>This is an operational issue but ADB will review the Operational Procedures (currently called “Staff Instructions”) to see if this issue can or should be further clarified.</p> <p>The recommendations suggested here will be reviewed. They cover many topics for the PDS that would require substantive staff time to fulfill and some of this information is already available in other project documents. ADB recognizes that the PDS could be a more useful and user friendly document and has discussed this during the consultations. The PDS is always under review to try and make it more useful.</p>

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		<p>c. Geographical location of project. The PDS should consistently indicate the location(s) (e.g. provinces, cities, etc.) of a project. Currently, disclosure of this information is done for some projects and not for others. Where project location cannot be disclosed until implementation is underway (which can be the case with sub-projects), this section should then provide information about the process and timeline for determining this information.</p> <p>d. Financials. The PDS should consistently provide: (1) a list of all financiers of the project and their commitment amounts; (2) total financing for the project; and (3) a record of financial disbursements. Where there are private sector financiers, the PDS and website should also provide brief information about these financiers.</p> <p>e. Environmental and social documents. The key information indicated in the PDS includes brief description, linkage to country and regional strategy; summary of the environmental and social aspects; and status of development objectives, if applicable. This is inadequate information.</p> <p>f. Project description – As is best practice with other IFIs, the project description or summary could provide more details about the project, including information about project components, relevant timelines, etc. For instance, where involuntary resettlement is triggered, the PDS should also provide more information about resettlement impacts (for instance: estimated number of households affected), pertinent mitigation measure and timelines.</p> <p>g. Risk Category and rationale – The risk categories should continue to be provided, as in the current PDS. However, we recommend that the PDS also include a short explanation of that categorization,</p>	

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		<p>which would then be elaborated in disclosed environmental and social documents.</p> <p>h. Summary of Environmental and Social Aspects – While projects often contain this section, information provided in this summary is often not specific enough as to provide notice of impacts to affected communities.</p> <p>i. Opportunities for consultation with affected communities – We appreciate that the section on “Stakeholder Communication, Participation, and Consultation” is listed on the PDS. However, as is the case with the summary of environmental and social impacts, to be useful, this section must provide more concrete information about consultation -- when and where they have and will occur and with whom. Often times, this section is left blank. A better practice would be to share this information on the website and disclose it in other environmental and social documents. In addition, the PDS should provide information for local access to project documentation, as is the practice of several IFIs.</p> <p>j. Environmental and social documents – Each project page should contain and centralize all supporting project documentation. Disclosed documents should include, but are not limited to, environmental and social impact assessments, resettlement frameworks and plans, poverty analysis, indigenous peoples plans, implementation/status reports, and loan agreement(s).</p> <p>k. Applicable safeguard standards – In line with best practice, the PDS should clearly provide the safeguards triggered by a project, along with a short description of why, according to the scoping and assessment, they were triggered. A more in-depth explanation of environmental</p>	

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		<p>and social impacts should be disclosed in the environmental and social documents, including the EIA.</p> <p>I. Information about project-level grievance mechanisms – Information about project level grievance mechanisms, including how to access them, should be provided on the website and in disclosed environmental and social documents.</p>	
<p>Recommendation on full disclosure of all loans with association with indigenous peoples</p>		<p>We recommend that all loan agreements that has any association with IPs land must be disclosed or all loan agreement that has a dispute associated with IPs or a conflict with IP land, territories/ancestral domain as central must be disclosed regardless if documents fall under limited exceptions.</p> <p>All project documents related to safeguards under category A for Indigenous Peoples should also be disclosed 120 days before Board approval in the same manner that projects under category A for environment are shared in pursuit of international human rights obligations recognizing the rights of indigenous peoples.</p>	<p>Your recommendation is noted and will need to be reviewed. In general, exceptions apply when the harm outweighs the benefit to disclosing information.</p> <p>Noted. Changes to the disclosure requirements of safeguard documents will be considered when ADB's Safeguard Policy Statement is next reviewed.</p>
<p>Recommendation to recommit to translation of documents</p>		<p>For IFIs especially with development mandates operating in a culturally diverse region with a great number of poor, illiterate, and with low internet and computer access, translated key documents such as policies, strategies, country partnership strategies, PDS, and safeguards documents must be a mandatory requirement to support meaningful consultations, communicate underreported or unidentified risks for project-affected communities. Imposing one language is discriminatory because it can exclude people from important information affecting their lives, decision making processes and access to grievance mechanisms.</p>	<p>Agreed. This is outlined in paragraph 13 of the new policy and in the ADB Translation Framework.</p>

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		<p>We recommend to assign a prescriptive number of days for the release of translated versions particularly for safeguards documents. The following supporting paragraphs from 2011 PCP should reappear in the draft PCP:</p> <p><i>“The borrower and/or client shall provide relevant environmental, resettlement, and indigenous peoples information, including information from the documents referred to in paras. 51–53, to affected people in a timely manner, in an accessible place, and in a form and language(s) understandable to them.”</i></p> <p><i>par 50, 2011 PCP</i></p> <p><i>Again, on par. 112, 2011 PCP: “ADB will undertake translations in accordance with its translation framework adopted in 2007. Such translations as stated in par 47, may include information that (i) addresses ADB’s overall business, policies, and strategic thinking, and is targeted at a wide international audience; (ii) is for public consultation, particularly with affected people.”</i></p>	<p>Noted. The first point is covered under paragraph 13 of the new policy but we will review the policy’s Operational Procedures (currently called “Staff Instructions”) on this point to make them clearer.</p> <p>The second paragraph is already in the policy’s Operational Procedures (currently called “Staff Instructions”).</p>