

A. JACSES' Comments and ADB's Responses

JACSES' Suggestions (April 14)	ADB's Responses (June 3)	Rationales and Comments
<p>1. <b>W-Paper and R-Paper:</b> W-Paper and R-Paper should be made available to the public at the same time as they are distributed to the Board of Directors in the PCP review. The requirement should be included in the new PCP for the upcoming reviews of policies.</p>	<p>N/A</p>	<ul style="list-style-type: none"> <li>➤ PCP Review Timeline<sup>1</sup> does not provide a clear plan whether ADB will disclose the W-Paper and R-Paper to the public at the same time as they are distributed to the Board of Directors.</li> <li>➤ ADB should provide opportunities for stakeholders to review how their comments are considered before the Board approval.</li> <li>➤ World Bank's Disclosure Policy requires the Bank to disclose operational policy papers and sector strategy papers at the same time as they are distributed to the Board, and they are prepared following a public consultation process, if a draft version of the paper has already been revised by the Executive Directors. (See para. 13)</li> <li>➤ In order to avoid any confusion in the future revisions of policies and strategies, it is important to include the requirement in the new PCP.</li> </ul>
<p>2. <b>Board Transcripts:</b> Board transcripts should be made available to the public.</p>	<p>Board members need freedom to discuss issues openly, therefore disclosure of Board transcripts is covered by an exception. However, the Policy calls for the disclosure of the minutes of regular Board meetings and chair's summaries of Board discussions for final policies and strategies, country partnership strategies (CPS) and regional cooperation strategies (RCS).</p>	<ul style="list-style-type: none"> <li>➤ The minutes are only 2-3 pages documents describing results of voting. Information on their decision making process is not transparent.</li> <li>➤ Board members' freedom should be limited only in the case that there is any sensitive information in the transcript, since ADB is an international finance institution using public money. The transcript should be made available after the elimination of the sensitive part.</li> </ul>
<p>3. <b>Safeguard Information on Financial Intermediaries (FIs):</b> For Category FI projects, periodic reports on the implementation status of Environmental and Social</p>	<p>Client/project lists have a competitive value and are considered confidential business information. In general, most of the financial intermediary (FI) loans made through the private sector operations are</p>	<ul style="list-style-type: none"> <li>➤ ADB did not respond to the suggestion. The current PCP requires ADB to disclose Social and Environmental Monitoring Reports for both public and private sector projects. However, there is no requirement of information disclosure of periodic reports on the implementation status of ESMS and FI's corrective action plans</li> </ul>

<sup>1</sup> <http://www.adb.org/PCP-Review/timeline.asp>

<p>Management System (ESMS) and FI's corrective action plans should be made available.</p>	<p>to finance small and medium-sized enterprises with no or insignificant social or environmental impacts. However, the safeguard policy statement (SPS) requires that environmental impact assessments, resettlement plans, or indigenous peoples plans of FI-financed subprojects that use ADB funding and have potential significant social or environmental impacts must be submitted to ADB and posted on the ADB website. For such subprojects, monitoring reports should be also disclosed to affected people by subproject sponsors. Also, based on the provisions of the SPS, the FI will prepare and submit periodic reports at least annually on the implementation status of its environmental and social management system (ESMS). If the reports or ADB's reviews conclude that the ESMS is not functioning, the FI will prepare and submit a corrective action plan agreed to with ADB and implement it.</p>	<p>under Category FI.</p>
<p><b>4. Draft Resettlement Plans and Draft Indigenous Peoples Plans:</b> Draft resettlement plans and draft Indigenous Peoples plans have to be also made available to the public by borrower/client as well as ADB. The document "Public Communication Policy's (PCP) Safeguard Disclosure - Requirements Superseded by the Safeguard Policy Statement (SPS)" should be revised.</p>	<p>Provisions reflected in the draft revised PCP regarding safeguard documents follow the disclosure requirements in the safeguard policy statement (as the SPS has superseded the PCP).</p>	<p>➤ Requirements in Policy Principles of SPS are not reflected in paras. 88, 90 and 92 of the Draft PCP. Policy Principles clearly require borrowers/clients to disclose draft/completed/updated EIAs, RPs and IPPs, and monitoring reports. These requirements should be included in the paras. 88, 90 and 92.</p>
<p><b>5. Mission Aide Memoire and MOU:</b> Mission Aide Memoire and MOU should be made available to the</p>	<p>Aide memoires document basic understandings with borrowers following missions, but do not represent final</p>	<p>➤ World Bank's Disclosure Policy states that "full mission aide-memoires may be released if the Bank and borrower so agree." (See Page 6, Box 1)</p>

public.	agreements. In some instances, staff may decide to disclose an aide memoire on request, in consultation with the borrower. The Policy requires that the Project Information Document be updated to reflect agreed changes in a project.	➤ The new PCP should states that “ADB shall seek the consent of borrower/client before making mission aide memoires available on request.” Such provision is also included in para. 113. (legal agreements for sovereign project)
<b>6. Legal Agreements for Private Sector Projects:</b> Para. 104 <sup>2</sup> “ADB shall not make private sector legal agreements enter into by ADB, or amendments to such agreements, publicly available” should be deleted.	Legal agreements for nonsovereign (private sector) projects are protected by an express legal commitment to the client to keep such information confidential (confidentiality agreement) because of their business nature.	➤ Para. 69 states that “the following documents shall be posted on the ADB website according to the time period specified,” and para. 114 (legal agreements for nonsovereign projects) is under the same section. So para. 114 includes inappropriate language under this section.
<b>7. Independent Recourse Mechanism on Information Disclosure:</b> ADB should establish an independent recourse mechanism on information disclosure composed of external experts.	ADB staff making disclosure decisions are not handling complaints on denied requests. Complaints should be reviewed by members of the PDAC, as outlined in paragraph 167. The PDAC received to date three requests to review requests denied by ADB staff. At this stage, ADB finds it might not be appropriate to change the existing recourse mechanism.	<ul style="list-style-type: none"> <li>➤ Compliance of PCP should be reviewed by a third party, not only by the Bank itself.</li> <li>➤ World Bank established an independent recourse mechanism, and complaints will be considered by three external experts in the second independent stage. (See para. 28 of the World Bank’s Disclosure Policy)</li> </ul>
<b>8. Rationale of Non-Disclosure of Delivered Information:</b> When ADB provides a denial response to a requester, and the reason of the non-disclosure stands on 126.2 (delivered information by outside entities) <sup>3</sup> , ADB should confirm with the related entity whether the delivered information can be disclosed. If the entity does not accept the disclosure of information, ADB should inform the requester	N/A	➤ The 1 <sup>st</sup> draft PCP does not provide a clear requirement that ADB needs to confirm with a related entity whether the delivered information can be disclosed, when ADB provides a denial response that stands on para. 136.2.

<sup>2</sup> Para.114 in the 1<sup>st</sup> draft PCP

<sup>3</sup> Para 136.2 in the 1<sup>st</sup> draft PCP

about the denial. This requirement should be included in the new PCP.		
<b>9. Notification of Option to File a Complaint:</b> When ADB provides a denial response to a requester, ADB should inform him/her about an option to file a complaint to the Public Disclosure Advisory Committee (PDAC). The requirement should be included in the new PCP.	N/A	<ul style="list-style-type: none"> <li>➤ The 1<sup>st</sup> draft PCP does not require ADB staff to inform a requester about an option to file a complaint to the PDAC.</li> <li>➤ Since September 2005, only three complaints have been received and reviewed by the PDAC, while many requests have been denied. There is a question whether all requesters know that they can file a complaint to the PDAC.</li> </ul>

**B. New JACSES' Comments:**

<b>Suggestions</b>	<b>Rationales</b>
<b>10. Disclosure of Terminated Project Information Document (PID):</b> Disclosure of terminated project's PIDs should be continued after 6 months.	<ul style="list-style-type: none"> <li>➤ The 1<sup>st</sup> draft PCP requires ADB to keep the terminated project's PID for 6 months (See paras. 81 and 83). Stakeholders cannot get the terminated project's information after the date.</li> </ul>
<b>11. Inclusion of the Reason in Terminated Nonsovereign Project's PID:</b> The reason for termination should be included in nonsovereign project's PID, as well as sovereign project's PID.	<ul style="list-style-type: none"> <li>➤ The 1<sup>st</sup> draft PCP does not require ADB to disclose the reason for the termination in nonsovereign project's PID, while it requires ADB to disclose that in sovereign project's PID (See paras. 81 and 83). There is no clear reason for the difference.</li> </ul>