



## **Review of IFC Performance Standards and Sustainability Policy**

### **Recommendations from Oxfam International**

As the International Finance Corporation (IFC) reviews its 2006 Performance Standards and Sustainability Policy, Oxfam International recommends a particular focus on improvements in the areas of 1) community engagement and “broad community support”, 2) transparency, 3) project definition and categorization, 4) demonstrating project-level development impacts, 5) application of the Performance Standards to financial intermediaries and 6) human rights. These recommendations are a result of Oxfam International and local partner engagement with IFC-financed oil, gas, mining, dams, hydro-power, and other large-scale projects over the past decade. Specifically, Oxfam International recommends that the IFC implement the following policy changes:

#### **Community Engagement and Broad Community Support**

- Require that companies secure the free, prior and informed *consent* of project-affected populations.
- Publish *all* documentation supporting the IFC’s determination of “broad community support” (BCS) for projects 60 days prior to the Board of Directors vote on the project, both online and directly with communities.
- Ensure that the BCS process is ongoing and provide communities with the opportunity for consultation at least prior to the initiation of each phase of a project life-cycle.
- Extend application of BCS standard to all extractive industry projects, regardless of the category they are assigned, and to all Category A and B projects in other industries.
- Require clients to make project-affected communities aware of the performance standards (and the BCS requirement in particular) and that the Compliance Advisor Ombudsman exists for their benefit.

#### **Transparency**

- Require that all extractive industry investments publicly disclose contracts, principal and derivative, related to the operation to which the government is a party, including, inter alia: between host governments and companies (e.g. Host Government Agreements, Production Sharing Agreements, Power Purchasing Agreements, Concession Agreements) and between governments (e.g. Inter-Governmental Agreements), without regard to any threshold size or scope.

- Disclose all extractive industry contracts and agreements affecting the ultimate payments made to the government, such as those involved in pricing methods of the companies and formulas that change government payments based on changes in commodity prices, project costs, or other factors.
- Include the payment and contract disclosure requirements in Performance Standard 1.
- Disclose client monitoring reports and IFC supervision reports for all projects, regardless of project category.

### **Improving Project Definition and Categorization**

- Revise the current definition of “associated facilities” to the following: “An ‘associated facility’ is a facility that is critical to the functioning of the IFC project, but is not necessarily financed by IFC.”
- Ensure that categorization is based on potential pre-mitigation impacts, not post-mitigation impacts, and that it takes into account indirect impacts.
- Ensure that all risks and impacts are identified, not just those that are “reasonably expected to be significant” as determined by the client.

### **Demonstrating Project-level Development Impacts**

- Introduce a robust framework for public reporting on both positive and negative development outcomes for *all* projects, regardless of project category.

### **Improved Application to Financial Intermediaries (FIs)**

- Require disclosure of sub-projects and equity-based investments receiving IFC funding, including at a minimum the name and location/domicile of the subproject, type of operation/activities, funding sources, financial performance, potential environmental and social impacts, binding language to ensure compliance with environmental and social requirements, implementation information, and development rationale.
- Require disclosure of completed Financial Intermediary Portfolio questionnaire, completed Environmental and Social Management System (EMS) questionnaire, all environmental and social performance reports, and all project supervision reports.
- Require categorization of individual subprojects of IFC supported FIs according to the same system used by IFC direct-project investments, with all applicable requirements, including information disclosure for social and environmental due diligence documents.
- Extend these requirements to corporate loans and equity investments.

### **Human Rights**

- Explicitly incorporate universally accepted human rights standards in the Performance Standards, and provide greater guidance to clients to help ensure that clients respect human rights.
- Require clients to undertake human rights impact assessments as part of human rights due diligence processes.

These recommendations are described in more detail below.

## I. Community Engagement and Broad Community Support

For projects with “significant adverse impacts on affected communities,” the IFC Policy on Social and Environmental Sustainability calls for *free, prior and informed consultation* leading to “broad community support for the project within the affected communities.” However, the definition of the concept within the document is quite imprecise.<sup>1</sup> In order to ensure that local communities have a voice in decision-making pertaining to their land and natural resources, **the IFC should require that companies secure the free, prior and informed consent of project-affected populations.** This key requirement would be consistent with the 2004 recommendation of the Extractive Industries Review that the World Bank Group, “require companies to engage in consent processes with communities and groups directly affected by projects in order to obtain their free prior and informed consent,”<sup>2</sup> and with the United Nations Declaration on the Rights of Indigenous Peoples, which calls for the free, prior and informed consent of indigenous peoples for decisions which affect them.<sup>3</sup> Replacing the term “consultation” with “consent” would stress a key element of the FPIC principle – that communities have the option either to reject a proposal, or accept it under certain conditions. *As a member of the UN system, the World Bank Group should support rights enshrined in UN declarations.*

The IFC relies primarily on clients to provide evidence of “broad community support” (BCS), which represents a conflict of interest. At the same time, local communities, civil society organizations and the public at large are not afforded the opportunity to review information substantiating the client’s determination of “broad community support,” nor to offer their support or critiques of these findings. **The IFC should publish all documentation supporting their determination of “broad community support” in advance of IFC consideration of projects.** This recommendation is in line with the consensus view of the World Bank Group Extractive Industries Advisory Group that the “IFC should give more detail in its disclosure of projects on how BCS was established.”<sup>4</sup>

The IFC’s first draft of the revised Policy on Disclosure of Information presents a promising development, requiring that “when IFC makes a determination of Broad Community Support, IFC will disclose a summary of the process outlining how this determination was made.” While summaries of process would be a useful start, project-affected communities should have full access to **all** available project-specific information regarding the IFC’s determination of BCS, including the completed matrix entitled “Review Stream 1 – Has the Client conducted Free,

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<sup>1</sup> “Broad community support is a collection of expressions by the affected communities, through individuals or their recognized representatives, in support of the project.”

<sup>2</sup> “Striking a Better Balance – The World Bank Group and Extractive Industries: The Final Report of the Extractive Industries Review,” September 2004, [http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/FinalManagementResponse/\\$FILE/finaleirmanagementresponse.pdf](http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/FinalManagementResponse/$FILE/finaleirmanagementresponse.pdf)

<sup>3</sup> UN Declaration on the Rights of Indigenous Peoples 2007.

<sup>4</sup> Summary of the World Bank Extractive Industries Advisory Group Meeting, November 24-25, 2008, Washington. <http://siteresources.worldbank.org/INTOGMC/Resources/minutes2008.pdf>

Prior and Informed Consultation and enabled the Informed Participation of Affected Communities?” found in IFC’s Environmental and Social Review Procedures (Version 4.0, August 14, 2009).

Further, the current draft of the policy does not make clear the timing of the disclosure of this information. In order to ensure that project-affected communities have time to contest the IFC’s findings if necessary, IFC should disclose its BCS findings at least 60 days prior to the Board vote, both online and directly with communities. Also, the IFC’s determination of BCS should not be a mere snapshot of the community’s perspective prior to the decision to launch a project, but should be verified in a regular manner throughout the life of the project. **In order for the BCS process to effectively manage risk, it must be ongoing and provide communities with the opportunity for consultation at least prior to the initiation of each phase of a project life-cycle.**

In addition, at present IFC applies its BCS standard only to projects expected to have significant impacts or triggering Performance Standard 7 on indigenous peoples. However, initially the IFC adopted the BCS standard as part of the World Bank Management Response to the Extractive Industries Review and required that BCS be applied to **all** new oil, gas, and mining projects. **Given the potential for grave environmental and social impacts associated with extractive industry development projects, the BCS standard should be applied to all extractive industry projects regardless of the category they are assigned by the IFC. IFC should also apply the BCS standard to Category B projects, those with “limited adverse social and/or environmental impacts.”** This is particularly important given past incidents of project miscategorization (see specific examples in section three below).

**Finally, the IFC should require clients to make project-affected communities aware of the performance standards (and the BCS requirement in particular) and that the Compliance Advisor Ombudsman exists for their benefit.** In its May 2010 advisory note, the CAO noted that, “interviews with representatives of local communities in two projects that triggered IFC’s BCS commitment indicated that impacted communities were not aware of IFC’s BCS commitment, or its efforts to gauge support for the project”.<sup>5</sup> IFC’s new draft of the Disclosure Policy importantly requires IFC staff to confirm that clients have locally disclosed IFC’s potential participation in projects, an important first step. However, in order for communities to take full advantage of the resources available to them, they must be made aware of relevant tools. The IFC should require clients to provide communities with clear and straightforward information explaining the performance standards and the role of the CAO.

## **II. Transparency**

The IFC took an important leadership role by including in its Policy on Social and Environmental Sustainability in 2006 a requirement that all extractive industry clients publish all material

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<sup>5</sup> Review of IFC’s Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information, Compliance Advisor Ombudsman, May 2010

payments to host governments. This requirement has now been matched by the US, with Congress now requiring the SEC to mandate the disclosure of payments by all oil, gas and mining companies registered with the SEC. At the same time, little progress has been made on the disclosure of extractive industry project agreements between companies and host governments. The Policy on Social and Environmental Sustainability requires that clients disclose the relevant terms of key agreements only for “significant” new extractive industry projects – defined as those that are expected to account for 10% or more of government revenues. However, this policy has never been triggered and has yet to provide new information to interested stakeholders. Since the IFC launched the policy in 2006, more than 55 IFC extractive industry projects have been approved, but not a single project funded by the IFC has triggered this requirement. The IFC has not yet made a decision on how to address the contract transparency issue in the new draft, noting that the discussion will be ongoing throughout the revision process.

Contract transparency offers a key opportunity to improve resource management and increase stability for the benefit of clients, host governments, and citizens of developing countries. Several countries, such as Peru, already disclose their contracts as a matter of course. The International Monetary Fund has in some cases made contract disclosure a condition of debt relief. In addition, the IMF’s Guide on Resource Revenue Transparency notes that contract disclosure is best practice and that no competitive or commercially confidential information will be lost through post-signing contract disclosure. **The IFC Policy should require that all extractive industry investments publicly disclose contracts, principal and derivative, related to the operation to which the government is a party, including, inter alia: between host governments and companies (e.g. Host Government Agreements, Production Sharing Agreements, Power Purchasing Agreements, Concession Agreements) and between governments (e.g. Inter-Governmental Agreements), without regard to any threshold size or scope. In addition, all IFC-supported extractive industry projects must disclose all contracts and agreements affecting the ultimate payments made to the government, such as those involved in pricing methods of the companies and formulas that change government payments based on changes in commodity prices, project costs, or other factors** (for more details, please see the Publish What You Pay-US IFC Policy Review submission).

**We also urge the IFC to include the payment and contract disclosure requirements in Performance Standard 1.** While IFC’s *Sustainability Policy* applies uniquely to itself, the IFC’s *Performance Standards* may *de facto* set the standards for the dozens of private banks and export credit agencies that have endorsed the Equator Principles. Therefore the requirement for the disclosure of revenue payments and contracts should be moved to Performance Standard 1 for all project types.

Additionally, the IFC should increase the transparency of project monitoring information in order to facilitate timely access to project-related information by project-affected communities and civil society organizations. Specifically, all monitoring reports submitted by clients to the IFC and IFC trip reports developed as a result of site visits should be posted on the IFC website. The Asian Development Bank already requires disclosure of all social and environmental

monitoring reports by clients<sup>6</sup>, and IFC should meet at least the same standard. Clients should be required to translate this material to local languages when necessary, and ensure that project-affected communities are made aware of the availability of this information. While the IFC endeavors to make some project assessment and project information available *before* project approval, it is much more difficult to access IFC and client project monitoring reports during project implementation, making it difficult to independently assess IFC and client performance.

The new draft of the Policy on Disclosure of Information improves disclosure of monitoring information by requiring that the IFC “provide periodic updates on the investment, once made by IFC”. Specifically, the policy requires updating of the Summary of Investment Information “as necessary to ensure the continued accuracy of information disclosed”, and, for projects with potential significant adverse social or environmental risks and/or impacts, annual updates on implementation of Action Plans and progress towards achieving development outcomes. However, if information used to provide these updates is unverified, client-provided information, the usefulness of these updates will be questionable. **The IFC should disclose all client monitoring reports and its own supervision reports, regardless of project category, in order to help ensure that information provided is accurate.**

### III. Improving Project Definition and Categorization

The IFC requires that a social and environmental assessment be conducted covering the project’s “area of influence”, which encompasses the primary project site as well as “associated facilities that are not funded as part of the project...and whose viability and existence depend exclusively on the project and whose goods or services are essential for the successful operation of the project.”<sup>7</sup> In practice, the IFC’s interpretation of the definition of “associated facilities” has proven unreasonably narrow. According to the United States position at the IFC on the Peru LNG project in February 2008, “IFC’s definition of associated facilities for environmental assessment is actually narrower than that adopted by IDB, as well as inconsistent with what we believe are the standards under U.S. domestic environmental law and international good practice.”<sup>8</sup>

The new IFC language on associated facilities differs little from the previous definition, remaining unreasonably narrow: “Associated facilities are defined as those facilities that would not be constructed if the client’s project did not exist and where the client’s project would not be viable without the other facility.” By stipulating that in order to be considered ‘associated’ the facilities must have been constructed *as a result of* the project, this definition unreasonably excludes facilities constructed prior to the initiation of the project, but on which the project may depend.

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<sup>6</sup> “The Public Communications Policy of the Asian Development Bank: Disclosure and Exchange of Information,” June 2005, Paragraph 92, available at <http://www.adb.org/Documents/Policies/PCP/pcp0502.asp?p=disclose>

<sup>7</sup> IFC Performance Standard 1, p. 2

<sup>8</sup> U.S. Department of Treasury, “Peru LNG Position of the United States at the IFC February 5, 2008,” [http://www.treas.gov/offices/international-affairs/multilateral\\_banks/02-06-2008.pdf](http://www.treas.gov/offices/international-affairs/multilateral_banks/02-06-2008.pdf)

The only criteria for determining ‘associated facilities’ should be dependency of the client’s project on the facility, not timing of construction. Risks associated with any facility on which the project depends should be taken into account in the IFC’s risk assessment of a given project. If these risks are assessed and determined not to be relevant because they do not exist as a result of the associated facilities support for the project, they need not be addressed in an action plan. **Oxfam International suggests that the current draft language be replaced with the following: “An ‘associated facility’ is a facility that is critical to the functioning of the IFC project, but is not necessarily financed by IFC.”**

The case of Peru LNG provides an important example of the ramifications of applying an overly narrow and legalistic definition of “associated facilities” which excludes existing facilities. The IFC did not consider any component of the first phase of the Camisea project (Blocks 56 and 88 and associated pipelines in the Peruvian Amazon) as an “associated facility” to the Peru LNG project, even though the Peru LNG project transports gas exclusively from the Camisea gas fields. In light of this determination, the IFC Performance Standards for Social and Environmental Sustainability have no influence over the upstream portion of the project, which is located in an extremely biodiverse area inhabited by indigenous communities. Since operations began in 2004, six pipeline spills have occurred. Nevertheless, the IFC did not consider Camisea in its social and environmental assessment.

The IFC should adopt a more encompassing and common sense interpretation of the term “associated facilities” to ensure that its application contributes to the IFC aim of “ensuring that the costs of economic development do not disproportionately fall on those who are poor or vulnerable, that the environment is not degraded in the process, and that natural resources are managed efficiently and sustainable.”<sup>9</sup>

Related to the question of project definition and the definition of “associated facilities” is the question of accurate categorization of projects by the IFC. As noted in the World Bank Group’s Extractive Industries review, “the WBG should take a holistic, multidimensional approach to assessments, identifying cumulative impacts of projects and socioeconomic linkages to environmental issues...Extractive industry projects should be categorized as Category A projects – likely to have significant adverse environmental impacts – unless there are compelling reasons to the contrary.”<sup>10</sup> However, in some cases the IFC has neglected to take into account the full range of potential project impacts (including indirect and pre-mitigation impacts), leading to miscategorization of projects.

For example, USAID’s technical review of two projects – Bankers Petroleum in Albania and Peter Hambro Mining PLC in Russia (an exploratory project) – found that both of these projects had the potential to pose significant environmental and/or social impacts (in the latter project

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<sup>9</sup> IFC Policy on Social and Environmental Sustainability, p. 2

<sup>10</sup> World Bank Group, *Extractive Industries Review: Striking a Better Balance*, Executive Summary, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTOGMC/0,,contentMDK:20306686~menuPK:592071~pagePK:148956~piPK:216618~theSitePK:336930,00.html>

due to potential expansion), and thus should have been designated as Category “A” rather than Category “B” projects. Oxfam International’s research on the IFC-funded Jubilee Field oil project in Ghana suggests that this Category B projects should also have been considered Category A.

Further, in its May 2010 advisory note, the CAO notes, “IFC’s current guidance on environmental and social (E&S) risk categorization of corporate investments advises E&S specialists to consider IFC’s own sphere of influence in the categorization decision alongside the investment’s inherent E&S risk profile.” The CAO goes on to point out that this may result in the IFC assigning a project to a lower risk category based on their somewhat limited leverage over the company, rather than strictly on the risks associated with the project. **In order to avoid categorization problems in future, the IFC should ensure that categorization is based on potential pre-mitigation impacts, not post-mitigation impacts, and that it takes into account indirect impacts.**

Finally and importantly, IFC clients maintain primary responsibility for identifying and reporting risks associated with projects to the IFC. It appears that clients must only consider risks that are “reasonably expected to be significant”<sup>11</sup>, and that clients have the responsibility for determining whether risks meet this standard. Though the IFC plans to review the client’s determination of risks and impacts, it is not clear whether the IFC will critically evaluate the determination or simply review the list. **IFC should ensure that all risks and impacts are identified, not just those that are “reasonably expected to be significant” as determined by the client.**

#### **IV. Demonstrating Project-level Development Impacts**

IFC does not publicly report its development results on a project-by-project basis for all of its projects. Although the IFC has committed to implementing a system to track development impacts throughout a project’s lifecycle, it has not committed to disclosing the data on a project-specific basis for all of its projects. Instead, it reports on its “overall contribution to development,” leaving questions about what information may be omitted and how accurately the reporting captures local impacts.

**To strengthen accountability and demonstrate IFC’s progress toward achieving its poverty reduction mandate, IFC must introduce a robust framework for public reporting on both positive and negative development outcomes for each of its projects.** IFC should clearly articulate the anticipated development outcomes for its projects, track project performance against those expectations, and report on results publicly. Reporting should be designed primarily to inform the public and affected communities, and, therefore, reports must evaluate

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<sup>11</sup> PS 1, para. 6 indicates, “the client will identify the social and environmental risks and impacts of the project.” Footnote 7 to this sentence reads, “Relevant risks and impacts to consider and identify if reasonably expected to be significant include, among others, those relating to climate change, human health, human rights, gender differences, ecosystem functions, and access to water resources.”

contributions to poverty reduction. Relevant indicators of development outcomes and IFC additionality described by the Development Outcomes Tracking System (DOTS) should be disclosed, and standardized across projects where possible. In addition, DOTS-fed data must be supplemented with data on sustainable development impacts such as duration of employment, comparative earnings level, skills development, etc. Development outcome reporting is particularly important in sectors such as mining or hydrocarbons that have significant negative impacts on communities and the environment.

The new draft of the disclosure policy includes a significant improvement to development outcome reporting by requiring annual updates on development outcomes, including development outcome indicators, to the Summary of Investment Information for investments with potential significant adverse social or environmental risks and/or impacts. **However, given that development outcomes are central to the IFC’s mission, reporting should not be limited just to projects with potential significant adverse impacts (or Category A projects), but rather across the board to all project categories.**

#### V. Improved Application to Financial Intermediaries<sup>12</sup>

The new drafts of the Performance Standards and the Sustainability Policy are not explicit and robust on how the individual Performance Standards are applied to Financial Intermediaries (FIs) and to FI sub-projects, and the draft Policy remains unclear on the public disclosure of any information. Other shortcomings of the current application of PS to FIs include:

- the environmental and social risk-rating system is based on the average make-up of a FI’s current portfolio of investments, not individual projects;
- only portfolios deemed by IFC staff as high-risk are subject to the Performance Standards;
- no requirement for disclosure of assessment of portfolio review; and
- no disclosure of IFC assessment on FI social and environmental management system and FI’s subprojects’ social and environmental review compliance with the Performance Standards.

In light of the anticipated rise in FI funding by the IFC, it is essential that the Performance Standards and Sustainability Policy unambiguously apply to FI operations, including subprojects. The Performance Standards and Sustainability Policy must be revised to include FI-specific requirements as follows:

- **required disclosure of sub-projects and equity-based investments receiving IFC funding, including at a minimum the name and location/domicile of the subproject,**

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<sup>12</sup> See also: Submission by Civil Society Organisation to the International Finance Corporation Commenting on the Social and Environmental Sustainability Policy, Performance Standards and Disclosure Policy, 11 March 2010 <http://www.bicusa.org/en/Article.11802.aspx>

**type of operation/activities, funding sources, financial performance, potential environmental and social impacts, binding language to ensure compliance with environmental and social requirements, implementation information and development rationale;**

- **required disclosure of completed Financial Intermediary Portfolio questionnaire, completed Environmental and Social Management System (EMS) questionnaire, all environmental and social performance reports, and all project supervision reports;**
- **required categorization of individual subprojects of IFC supported FIs according to the same system used by IFC direct-project investments, with all applicable requirements, including information disclosure for social and environmental due diligence documents; and**
- **extension of these requirements to corporate loans and equity investments.**

In order to ensure consistent application of the Performance Standards and Sustainability Policy, the IFC should consider developing a separate Performance Standard on special financing modalities, following the example of the European Bank for Reconstruction and Development and the Asian Development Bank.

## **VI. Human Rights**

Large scale projects including oil, gas, mining, dams and hydro-power can have negative impacts on human rights. These can include negative impacts on project-affected peoples' rights to food, property, life, health, housing and an adequate standard of living. Despite the potential human rights implications of large scale projects, the Performance Standards do not provide project sponsors with a robust framework for meeting their responsibility to respect human rights or for providing affected people with access to a rights-compatible grievance resolution process.

In particular, the Performance Standards fall short in three critical areas:<sup>13</sup>

- **Substantive Standards:** The Performance Standards do not address many critical human rights issues, and address others only partially or in ways that do not meet international norms and standards.
- **Due Diligence Procedures:** The Performance Standards do not provide an adequate procedural framework for conducting human rights due diligence. Although the Performance Standards require a comprehensive environmental and social assessment for high-impact projects, they do not require explicit assessment of potential impacts on human rights.

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<sup>13</sup> *The International Finance Corporation's Performance Standards and the Equator Principles: Respecting Human Rights and Remediating Violations? A Submission to the U.N. Special Representative to the Secretary General on Human Rights and Transnational Corporations and other Business Enterprises*, Center for International Environmental Law, Bank Information Center, BankTrack, Oxfam Australia and World Resources Institute, August 2008, Steven Herz, Kristen Genovese, Kirk Herbertson, and Anne Perrault.

**The Performance Standards should explicitly incorporate universally accepted human rights standards, and provide greater guidance to clients to help ensure that clients respect human rights.** This approach is consistent with and can draw on the work of the UN Secretary General’s Special Representative on Business and Human Rights.

**The IFC should require clients to undertake human rights impact assessments as part of human rights due diligence processes.** Additionally, the IFC should require clients to develop a human rights management program. The requirements should be in addition to existing requirements to undertake and develop social and environmental impact assessments and management programs.

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