

Specific Comments on IFC's Revised Disclosure Policy, Sustainability Policy and Performance Standards

November 3, 2005

General Comments

- IFC has proposed a system based on more discretion and flexibility, but without related requirements for increased transparency and accountability, making the entire system flawed and unlikely to accomplish the policy objectives. Below are a number of recommendations that will help ensure greater accountability through increased transparency and clear, bottom-line requirements.
- The objectives in each Performance Standard should be converted to actual standards rather than aspirational statements. Clients should be measured and evaluated based on these standards.
- The Performance Standards do not give adequate attention and commitment to maximizing positive development outcomes and safeguarding communities and the environment.
- IFC must address its client and project selection process, and address the criticism raised by the CAO that its current client selection process is insufficient.
- In general, there is an over-reliance on client-generated information and client-based monitoring, and a lack of requirements for effective and independent project supervision.
- The standard for establishing, maintaining, and re-evaluating Broad Community Support should be clearly reflected in the Performance Standards themselves, in addition to IFC's Policy.

IFC's Disclosure Policy

- IFC should report on the development outcomes at a project level, rather than in the aggregate.
- The Disclosure Policy should detail the types of client monitoring reports that are, at a minimum, required to be disclosed for Category A and B projects.
- IFC should release the Summary of Project Information (SPI), Environmental and Social Review Summaries and full Environmental and Social Impact Assessments no less than 120 days before Board consideration for Category A projects.
- Via its website, IFC should publicly disclose the full assessment and not rely on client releasing the assessment as proposed.
- **EIR commitment:** Draft Disclosure Policy says that SPI will summarize the governance risks to the anticipated project benefits. Management also committed to disclose its rationale for supporting new EI investments in the SPI, which should also be reflected.

IFC's Sustainability Policy

- One way to promote IFC's development mission and improve accountability is to establish social, environmental and poverty indicators for projects, and require IFC to report on the development outcomes at a project level, rather than in the aggregate. This should be reflected as one of their responsibilities in the policy.
- IFC's role in supervision and overall monitoring for compliance of projects must be strengthened and clearly articulated in the Sustainability Policy. As currently proposed, IFC's supervisory role is weak and does not compensate for existing problems under the current system.

- IFC should involve itself in projects early in the project cycle in order to bring its own additionality to the project. The Policy should also clarify that IFC will not support a project that is well advanced in its project development and when IFC does not have a role in influencing the project development.
- The definition and measurement for Broad Community Support is vague, and should be clarified. IFC should not be the final arbiter, but broad community support should be independently verified (independent of IFC and the client). Additionally, the nature of that support should be detailed in written agreements between the client and community, as is required for indigenous peoples in WB OP 4.10. These agreements shall be incorporated into covenants in the IFC loan agreement.
- The Policy should make explicit reference to international human rights law and obligations, and commit to consistent application and adherence to international law. The proposed human rights language [“IFC also recognizes that the roles and responsibilities of the private sector in respecting human rights are emerging as an important aspect of corporate social responsibility. The Performance Standards, developed by IFC to help private sector clients address environmental and social risks and opportunities, are consistent with these emerging roles and responsibilities.”] is circuitous and vague. It also runs the risk of implying that human rights obligations are evolving and ambiguous, and private actors can choose to respect them or not.

PS 1: Assessment and Management System

Assessments and Monitoring

- IFC should retain its requirement for independent, third party assessments. As proposed, PS 1 does not detail how IFC will ensure that the information contained in the Assessment is balanced and unbiased, thus exposing IFC to increased reputational risks.
- The project categorization system is missing from PS 1, and should be included. Furthermore, the PS should detail associated disclosure and consultation requirements for each category of project. As drafted, how disclosure, consultation and transparency issues will be addressed for each category of project is undefined.
- PS 1 should clearly require clients to allow sufficient time to fully incorporate baseline socio-economic, health, and environmental data into the assessments. PS 1 currently fails to explicitly require that assessments include baseline data, a critical component of any assessment.
- **EIR commitment:** PS 1 does not require *independent monitoring for all large projects*, as agreed in response to the EIR. Instead, PS1 relies on client based monitoring information. Furthermore, there is no mention of the role of communities in monitoring processes, including public disclosure monitoring reports, which the ADB now requires. PS 1 should be revised to reflect this commitment agreed to by the Board, and require public disclosure of monitoring reports, as well as facilitating the role of communities in monitoring projects as well.

Action Plans

- The development of the Action Plan is one of the most critical stages for project development and acceptance, and the crux of IFC's proposed system. The client's interpretation of its obligations, as well as the community's needs and benefits should be reflected fully in the Action Plan. In PS 1, the community is not consulted on the Action Plan, nor will they have a right to review a draft Action Plan. The draft Action Plan should be publicly released to the local community, in local language(s), and should be the basis for an informed consultation between the client and the community. Furthermore, the language requiring public release of a final Action Plan should also be

- re-inserted into the Disclosure Policy. Similar points have been made by the CAO regarding the Action Plan
- The components of the Action Plan should also include (1) measurable performance indicators and requirements that the client report on these indicators; (2) establish independent monitoring procedures; (3) involve affected people in monitoring of the project and performance of the Action Plan; and (4) establish a fully resourced financial mechanism for implementation, including decommissioning for certain projects and resettlement costs and contingencies.

Public Consultation and Disclosure

- Contrary to existing requirements, draft PS 1 does not set any minimum requirements or benchmarks for consultation with local communities but calls instead for 'ongoing consultation'. PS 1 should restore the requirements of the existing policy (OP 4.01 para. 12) which requires that for Category A projects, the project sponsor consults "project-affected and local nongovernmental organizations at least twice during the EA process: (a) shortly after environmental screening and before the terms of reference for the EA are finalized [i.e. during scoping], and (b) once a draft EA report is prepared."
- PS 1 states that free, prior informed consultation will be required for "all large projects with significant impacts" but does not define what is large or significant. PS 1 should clearly state that FPI consultation will be required for all Category A and B projects.
- PS 1 should clearly state what clients are expected to publicly disclose, including the full ESIA, not just 'the results of the ... assessment,' the full draft and final Action Plan and Annual Monitoring Reports.
- PS1 should require the client to publicly disclose documentation related to the results and outcomes of their community consultation process.
- **EIR commitment:** Revenue and contract transparency requirements related to projects in the extractive industries should be included in PS1 since they are the responsibility of IFC clients. Furthermore, IFC should ensure that disclosure of revenues and contracts is immediately required for all EI projects, regardless of scale.

Grievance Mechanisms

- PS 1 should provide more clarity on what constitutes an effective company or project level grievance mechanism. PS 1 should be revised to require any grievance mechanism be transparent, independent of project operations, fair and objective, and accessible and responsive to communities.
- Furthermore, access to a client-based grievance mechanism shall not in any way preclude or serve as a hurdle for communities to seek other avenues of redress, including the CAO.

Reference to International Law

- PS 1 should incorporate the existing language of OP 4.01 which states that the EA "also takes into account the variations in project and country conditions; the findings of country environmental studies; national environmental action plans; the country's overall policy framework, national legislation, and institutional capabilities related to the environment and social aspects; and obligations of the country, pertaining to project activities, under relevant international environmental treaties and agreements. The Bank does not finance project activities that would contravene such country obligations, as identified during the EA."
- PS 1 should reference and call for respect for international law more broadly, not only international environmental law.

PS 2: Labor

- Reference to “harmful” child labor should be removed since the ILO’s standard is for child labor.
- PS 2 allows significant discretion for clients to decide whether unions “fairly represent the workers in the workforce.” This language should be replaced by the following: “Clients should engage with such worker representatives. Worker organizations are expected to fairly represent workers in the workforce.”

PS 3: Pollution Prevention and Abatement

- PS 3 does not provide clarity on the minimum pollution standards required. The language of the Guidance Note for PS 3, which is based on existing requirements, should be incorporated into standard itself: “The client will establish emissions levels...the more stringent of either those levels specified by host country legislation or those specified in the World Bank Group’s PPAH and IFC’s EHS.”
- One issue the Performance Standards do not address is pollution related health impacts. While IFC describes this as an issue that will be addressed in PS 3, in fact there is no provision for addressing health impacts resulting from pollution generated directly from project operations. Whether addressed in PS 3 on Pollution, or PS 4 on Community Health and Safety, clients should be required to assess and anticipate pollution related health impacts on communities, including the establishment of baseline data, and include provisions for ongoing monitoring, assessment and response to health impacts caused directly by projects.

PS 4: Community Health and Safety

- PS 4 should retain the requirement from the last draft for clients to develop a community health and safety plan.
- PS 4 does not address on-going monitoring of community health impacts for projects which pose significant risks to community health and safety, thereby raising questions about how IFC will stay informed about the ongoing impacts on communities.
- PS 4 does not address pollution related community impact issues. This is a significant oversight and gap in the standards (see comment for PS 3).
- The emergency preparedness and response plan developed by the client should include a worst-case scenario, and the locally affected community should be fully informed about all aspects of the plan, including this worst-case possibility.
- PS 4 does not address project closure and decommissioning issues. PS 4 should be revised to address these issues, including requiring a fully resourced plan up-front.
- **EIR commitment:** PS 4 should directly reference the US-UK Voluntary Principles on Security and Human Rights. To be consistent with the Voluntary Principles, PS 4 should expand the scope of the required risk assessment regarding the use of security personnel.

PS 5: Land Acquisition and Involuntary Resettlement

- PS 5 is significantly weaker than existing policy by eliminating any reference to the impoverishment risks of involuntary resettlement and reversing current policy protections. As proposed, PS 5 discriminates against people without title to their land.
- PS 5 narrows the scope of existing policy by applying ONLY to cases of land acquisition that involve the transfer of title or granting of an easement, and not to other project-related impacts that can result in displacement from lands, resources, and livelihoods.
- PS 5 drops fundamental policy objectives from existing policy, including “to ensure that the population displaced by a project receives benefits from it.”

- PS 5 has dropped socio-economic baseline studies and other important risk-protective methodologies, such as the requirement that people displaced from land-based livelihoods be provided with land-based resettlement options.
- **EIR commitment:** PS 5 does not address the need for performance bonds or resettlement insurance.

PS 6: Biodiversity

- PS 6 should clarify that IFC will avoid financing large infrastructure and extractives in areas of high conservation value, including IUCN I-V areas. In addition, PS 6 should reflect and keep in step with policies of other financial institutions (ECAs, commercial banks) as well as private companies by agreeing not to finance projects in World Heritage Sites and Ramsar Protected Areas.
- If a project proposed is to have an adverse impact on a critical natural habitat, then the assessment must be based on independent cost benefit analysis that fully accounts for the ecosystem and biodiversity value and services provided by that area.
- PS 6 should address illegal logging.

PS 7: Indigenous Peoples

- In general, this PS should be revised to incorporate the standards of World Bank's OP 4.10. This would include obtaining broad community support from indigenous peoples for any project affecting indigenous peoples' traditional lands, territories and resources. PS 7 only requires broad community support for large projects with significant impacts, without defining what this means.
- PS 7 must clarify that indigenous peoples will not be involuntarily resettled.
- The PS employs racially discriminatory standards relating to indigenous peoples' rights, for instance, safeguards that only apply to 'customary livelihoods.' Indigenous peoples' livelihoods are not limited to only those that are 'customary' and there is no valid reason that only livelihoods deemed 'customary' should be protected. Non-indigenous peoples' rights are not limited to those that are 'customary' and it is manifestly discriminatory to apply this standard to indigenous peoples.

PS 8: Cultural Heritage

- The language for clients to "seek to provide for fair and equitable sharing" should be changed to "will provide fair and equitable sharing."
- PS 8 should also recognize indigenous peoples' right to benefit equitably when cultural heritage is used.

For more information, please contact Andrea Durbin (andrea@durbinstrategies.org), Coordinator of the Campaign for Global Rights, Rules and Responsibilities. (www.grrr-now.org)