

Comments to the International Finance Corporation Regarding the Review and Update of Its Sustainability Framework

Submitted by International Accountability Project
April 30th, 2010

Introduction

The International Accountability Project welcomes this opportunity to provide commentary to the International Finance Corporation (IFC) as it reviews and updates its *Policy and Performance Standards on Social and Environmental Sustainability* and *Policy on Disclosure of Information* (policy and performance standards). Of particular concern to the International Accountability Project are the impacts of development-induced displacement on human rights, land rights, and property rights.

The rights to adequate housing and security of the person and property are basic tenets of human rights law and serve to protect individuals and communities from being arbitrarily displaced from their homes and land. These human rights apply to everyone—including owners, renters and possessors—and state that no matter what their status, wealth, religion, gender, age or ethnic background, all have the right to live in adequate housing and should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.¹

Despite these guarantees in international law, every year, approximately 15 million people are forcibly evicted from their homes, communities and lands to make way for development projects such as mines, oil and gas pipelines, urban renewal schemes, mega-dams, ports and transportation infrastructure. Impacts from these projects, including land and real estate speculation, changes in land use and environmental pollution, further escalate the number of displaced. Together, these projects and their impacts have fueled an international crisis making development one of the leading causes of displacement worldwide.²

We acknowledge that the IFC has sought to address issues of development-induced displacement in its social and environmental policy and performance standards, and we appreciate the willingness of the IFC to review and revise its current policy and performance standards based on the experience of implementation since 2006. Since the application of the IFC's policy and performance standards, the International Accountability Project has investigated a number of projects financed by the IFC. These projects raise several concerns around the implementation and the effectiveness of IFC's policy and performance standards with regard to development-induced displacement. We believe these concerns should be addressed through a revision of the policy and performance standards, primarily through the revision of Performance Standard 5: Land Acquisition and Involuntary Resettlement (Performance Standard 5), and by certain changes to IFC's practices.

¹ See, for example: U.N. CESCR, General Comment No. 7: The Right to Adequate Housing: Forced Evictions, 16th Sess., U.N. Doc. E/1998/22 (1997) Arts. 7, 17 & 18; Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, Vol. I (A/CONF.151/26/Rev.1 vol.I), annex II, Agenda 21, chap. 7.9 (b); Report of the United Nations Conference on Settlements (Habitat II) (A/CONF.165/14), annex II, The Habitat Agenda, para. 40 (n); Commission on Human Rights resolution 1993/77, para. 1.

² Statement by Mr. Miloon Kothari, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, to the World Urban Forum III (19-23 June 2006) in Vancouver. Available at: <http://www.unhchr.ch/huricane/huricane.nsf/view01/8D7EB03469E474FAC12571930049A410?opendocument>.

Informed by our findings among affected communities, and based on the principles and requirements outlined by international guidelines on development-induced displacement³, the IFC policy and performance standards should require more effective mitigation of the risks of those displaced by its projects and ensure that displaced persons have benefited from projects in their own terms. In particular, the policy and performance standards should be amended and properly enforced so that the IFC:

- Protects those people displaced by non-land acquisition activities. In particular, Performance Standard 5 should be broadened in scope to ensure coverage for all displaced persons, not merely those displaced by land acquisition;
- Guarantees land-based compensation. In particular, Performance Standard 5 should prohibit rehabilitation schemes based solely on cash compensation, and an explicit preference for land-for-land compensation should be established;
- Improves livelihoods of displaced people and ensures resettled peoples are project beneficiaries. In particular, Performance Standard 5 objectives should incorporate the best practice of requiring *improvement* of the livelihoods of vulnerable groups that are displaced; resettled peoples should be treated as project beneficiaries, and rehabilitation should be a development project in its own right, defined by the communities;
- Minimizes displacement through consideration of input from affected communities and comprehensive exploration of project alternatives, resulting in optimal project designs that avoid unnecessary displacement;
- Guarantees that affected people are free from coercion in negotiated settlements;
- Enforces consultation processes and agreement on outcomes at each stage, and addresses gaps in policy and implementation relating to Broad Community Support; and
- Guarantees adequate grievance mechanisms and accountability measures are in place and understood broadly by all project-affected people;
- Incorporates respect for the principles of free, prior and informed consent (FPIC) in the context of development decision-making and involuntary resettlement, particularly if such displacement would affect indigenous peoples; and
- Incorporates the “exceptional circumstances” limitations on displacement, such that forced displacement may take place only in exceptional circumstances when the project is proven to serve the genuine public interest, only when displacement is proven to be necessary after exploring all other options, and only when the rights and interests of affected communities are fully respected.

Case Studies Upon Which Recommendations are Based

The International Accountability Project’s recommendations are based on a long history of working with

³ Over the past two decades, different international legal entities and institutions have responded to the human rights impacts and risks of development-induced displacement by formulating a variety of guidelines, laws and best practices, including:

- The UN *Basic Principles and Guidelines on Development-based Evictions and Displacement*, A/HRC/4/18 (2007), available at http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf
- U.N. Comm. On Economic, Social and Cultural Rights, 6th Sess., art. 11(1), General Comment 4 (1991), available at <http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument>
- U.N. CESCR, *General Comment No. 7: The Right to Adequate Housing: Forced Evictions*, 16th Sess., U.N. Doc. E/1998/22 (1997) Arts. 7, 17 & 18;
- The OECD’s *Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects*, 1992; and
- The Report of the World Commission on Dams: *Dams and Development*, an influential framework for development decision-making, 2000.

communities affected by displacement, as well as a long history of engaging in policy debates at international financial institutions regarding involuntary resettlement. These recommendations are also informed by comprehensive field-based research in 2009 that looked specifically at the impacts of IFC-financed projects on local communities. The recommendations draw largely from and are illustrated by three case studies: the Peru LNG project, the Maple Energy project, and the Cambodia Airports II project. Examples from each of the case studies are used in this document to illustrate needed areas of improvement in IFC policies and practices.

Case study: Peru LNG Project. The Peru LNG project is one component of a multifaceted undertaking to explore, extract, transport and market natural gas from a four-lot portion of the Peruvian Amazon. In the first phase of the megaproject, a consortium of international oil and gas companies explored and later contracted with the Peruvian government for rights to the natural gas fields known collectively as the Camisea fields. The Peru LNG project, essentially phase two of the Camisea project, includes the construction of a 408 km pipeline that will connect to the existing Transportadora de Gas del Peru (TgP) liquefied natural gas pipeline downstream from Malvinas and carry the gas to the coast, where the new processing plant, Pampa Melchorita, will prepare the gas for export. All gas transported and processed by Peru LNG is destined for export by contractual stipulations.

In January 2008, the Board of the International Finance Corporation approved a US\$ 300 million loan to Peru LNG, a Peruvian company formed in 2003 by a consortium of international oil and gas companies. Its majority owner and operator is Hunt Oil, a Texas-based oil company with a 50% share. Other members of the consortium include SK Energy (South Korea – 20%), Repsol YPF (Spain – 20%), and Marubeni (Japan – 10%). Total project costs are estimated at US\$ 3.9 billion. Other financiers include the Inter-American Development Bank (US\$ 400 million) and the U.S. Export-Import Bank (US\$250 million).

Case study: Maple Energy Project. The Maple Energy project in Peru is designed to extend production of existing oil and gas fields, conduct exploration activities on oil and gas concessions, and develop an ethanol project. The project includes Maple's upstream operations around the city of Pucallpa in the central east of the country, hydrocarbon exploration and production blocks in the departments of Loreto, Ucayali, and Huanuco, an ethanol project site in northwestern Peru and construction of ethanol storage and shipping facilities in the port of Paita.

In July 2007, the IFC approved an "equity investment of up to US\$ 10 million and/or debt investment of up to US\$ 30 million" of the US\$ 68 million project. The research by International Accountability Project on the Maple project and all the data included in these comments refer only to hydrocarbon exploration and production blocks.

Case study: Cambodia Airports II Project. The Cambodia Airports II Project consists of a loan granted by IFC in 2007 to a special purpose company, Société Concessionnaire de l'Aéroport (SCA), for upgrading and expansion of two Cambodian airports. The bulk of the financing is dedicated to expanding Sihanoukville International Airport, and a smaller amount for additional investments on Siem Reap International Airport. The financing for the project involves two parts: The loan is divided into a first section that provides up to US\$ 7.5 million, and a second disbursement of up to \$10 million as a *stand-by loan*. The stand-by loan is earmarked to finance the construction of the new runway at Sihanoukville International Airport, should tourism and airport traffic volumes increase as SCA has projected.

The total project cost is projected at US\$ 40.1 million, with US\$ 33.7 million going toward expansion of the Sihanoukville Airport (US\$ 9.7 million for capital expenditure at the airport, and US\$ 24.0 million going to runway investment). The remaining US\$ 6.4 million of the project budget corresponds to terminal expansion at Siem Reap International Airport.

Recommendations for the Review of the IFC's Policy and Performance Standards

To adequately address concerns around development-induced displacement, the review and update of the IFC's policy and performance standards should evaluate whether existing IFC standards have effectively mitigated the risks faced by those displaced by its projects, whether displaced persons' rights have been respected, and whether the displaced individuals and communities have benefited from projects, in their own terms. The following sections outline concerns around specific aspects of the policy and performance standards, in particular Performance Standard 5: Land Acquisition and Involuntary Resettlement, and offer recommendations as to how to address these concerns within the performance standards.

The comments are organized into eight sections, each of which covers a major issue identified in the research as an area of needed improvement in IFC policy and practice. Those sections are:

1. *Protect people displaced by project impacts other than land acquisition;*
2. *Ensure appropriate project categorization;*
3. *Guarantee adequate compensation & rehabilitation, including land-based compensation;*
4. *Improve livelihoods of displaced peoples, and ensure resettled peoples are project beneficiaries;*
5. *Minimize displacement through community input and consideration of project alternatives;*
6. *Guarantee freedom from coercion in negotiated settlements;*
7. *Enforce fair consultation processes, address gaps in implementing Broad Community Support and uphold community rights to Free Prior Informed Consent; and*
8. *Guarantee adequate grievance mechanisms and accountability measures.*

Each section includes: an overview of existing IFC requirements pertaining to that issue; key findings on the issue from the three case studies conducted by International Accountability Project; and recommendations for IFC policy and practice based on those findings.

1. Protect people displaced by project impacts other than land acquisition

The IFC policy and performance standards recognize that displacement can be both physical and economic,

but Performance Standard 5: Land Acquisition and Involuntary Resettlement applies only to those displaced physically or economically *by land acquisition*. Displacement by any other project activities is theoretically covered under Performance Standard 1: Social and Environmental Assessment and Management Systems.

However, while land acquisition is an important cause of physical and economic displacement, decades of research by the World Bank itself shows that it is by no means the only cause. Individuals and communities who lose their livelihoods because of environmental impacts such as polluted fisheries, diminished water supplies and air pollution will face the full gamut of potential human rights violations and risks associated with unmitigated displacement, but are excluded from the specific compensation, redress and rehabilitation requirements that are unique to Performance Standard 5.

Further, research into IFC projects finds that the implementation of the existing provisions of Performance Standard 5 is lacking. Although it does cover land-associated economic displacement as written, companies are not adequately addressing this issue in affected communities. Additionally, projects are sometimes mis-categorized and Performance Standard 5 is not adequately triggered.

Problem: The IFC Policy and Performance Standards do not require client companies to include short- or long-term environmental impacts in their definitions of displacement, nor does it require companies to adequately compensate for these damages from the beginning of the project cycle. By ignoring particularly economic displacement caused by activities other than land acquisition, communities are being adversely affected by IFC projects.

Case example: Peru LNG Project. The construction phase of the Peru LNG project has caused various problems for those living near the right-of-way area of the pipeline, and has adversely impacted communities experiencing environmental degradation from the pipeline construction without providing adequate compensation. Dust, noise and vibrations have caused livestock to weaken and fail to produce milk in Andean and coastal communities. In some cases, the land where these livestock graze is not physically crossed by the right-of-way area, and therefore the owners of these livestock have not received any sort of compensation from Peru LNG or any of the company's contractors. These individuals are not protected under Performance Standard 5 because impacts are not directly related to land loss. Rather, they are related to changes in the productive potential of surrounding lands or other economic activities physically located near the project.

A point of great contention for residents of communities between the Huancavelica and Pisco sections of the duct are the permanent changes to the ecosystems native to local rivers and streams. The Transportadora de Gas del Peru (TGP) pipelines (part of an earlier project that follow the same course as the Peru LNG pipeline) that cross the rivers of this region not only disturbed the ecosystem during construction; safety regulations also require annual upkeep and maintenance of the riverbeds, which includes placing large boulders, transportable only by heavy machinery, in the river on top of the muddy banks where fresh water shrimp live and reproduce. This has extinguished shrimp populations, yet fishermen who harvest shrimp as a means of livelihood have not received any direct compensation package from TGP or the Camisea consortium. While this example does not pertain specifically to Peru LNG's practices, it does provide perspective on the longevity of a pipeline project's effects and the variety of economic activities in which local people are engaged, independent of land ownership.

Furthermore, it is obvious from the negotiation documents that landowners are receiving a long-term lease price for their land rather than a sale price, despite the fact that the environmental effects on the pipeline area and its surroundings will continue over the entire 40 years of the project and into the future.

This is a clear example where it would make sense for the IFC to require client companies to model foreseeable non-land-based economic rehabilitation and community development initiatives at the outset of a project, and particularly at the outset of a second or third phase of a project with prior demonstrable impacts, as part of Performance Standard 5.

Case example: Maple Energy Project. In the Maple Energy project, communities are experiencing economic displacement due to environmental contamination that has polluted their food and water supply, causing food insecurity and disease. Because these communities are primarily non-cash economies, these impacts cannot be remedied through traditional cash compensation schemes. As several community leaders commented during International Accountability Project's investigation, the Shipibo "supermarket" is their natural environment. The people have lived by fishing and farming their natural environment for generations. The constant inflow of contaminants and oil run-off into the local water supply affects the food, drinking water and bathing water on which the Shipibo people depend.

These issues were not calculated into compensation packages prior to project construction because Maple Energy did not admit that permanent environmental contamination could result from its activities. In their 2006 Environmental and Social Impact Assessment (ESIA), Maple Energy determined that water quality in the rivers and soil quality surrounding their existing installations met or exceeded all quality criteria related to hydrocarbons. However, a site visit to several portions of the Quebrada Cachiyacu demonstrated that Maple Gas has been using superficial orange sponges to contain oil run-offs into the river. In the dry season, oil is visible on the surface of the water near the sponge, and community leaders indicate that in the rainy season these greasy waters escape the sponge and run down into the sites where community members collect their water and fish for family consumption.

The effects of environmental contamination on traditional livelihoods is not taken into consideration in Maple Energy's ESIA as required by Performance Standard 1 and reiterated in the Guidance Note for Performance Standard 5 (No. G10). The IFC does not consider this issue to be a direct component of Performance Standard 5. But this is a clear example of why Performance Standard 5 should be triggered in instances of physical and/or economic displacement by environmental contamination.

Case example: Cambodia Airports II Project. In the Cambodia Airports II project, research conducted by International Accountability Project also found communities at risk for environmental impacts to their land. A large portion of the population in close proximity to the airport depends on access to tidal wetlands for their livelihood through traditional crab and seashell farming. Additionally, there are potentially affected populations that depend on timber collected from the Ream National Park and farmers who depend on its mangrove ecosystem for fertile harvests. It is likely that residents of these areas would experience negative environmental impacts from the airport expansion that could lead to livelihood disruption. However, to date, these impacts have not been addressed in safeguard planning documents.

Problem: In several instances, measures taken by IFC clients clearly fall short of existing requirements around economic displacement and environmental impacts in the Performance Standards. Specifically, there are various instances of economic displacement that, in spite of Performance Standard 5 application, have not been compensated for in any way.

Case example: Cambodia Airports II Project. In the Cambodia Airports II project, community members became aware their land was to be affected by the project concession, but at the same time were left with little to no information regarding a timeline or any assurance of compensation. As a result, the affected populations stopped implementing long-term plans related to their livelihood, and investment in maintaining community homes and structures stopped at both the household and municipal level. Some people stopped farming or abandoned their crops, thinking it would be worthless to farm in land that would soon be taken away. This situation has been compounded by local creditors refusing to issue credit to those living in the area that will be affected by the airport expansion. Impoverishment and negative impacts on livelihoods are already taking place, but no compensation or rehabilitation has been implemented. Although Performance Standard 5 should protect from instances of economic displacement due to land acquisition, the economic impacts of the project thus far have not been addressed.

Case example: Peru LNG Project. The Peru LNG project has failed to consider the full consequences of economic displacement caused by its imposition of restrictions on right-of-way land use following construction. Although Peru LNG has recognized economic displacement as a consequence of its construction activities, it fails to compensate farmers for longer-term changes to their economic activities. For example, each contract establishing the company's right-of-way stipulates that farmers may not plant any crops with deep roots in the right-of-way area for the duration of the pipeline's operation. As a consequence, avocado farmers in the Pisco and Chincha regions along the right-of-way are now excluded from the exportation markets.

Similarly, the construction process has altered the natural ecosystem in the Andean region of Huancavelica where communities have pooled their resources to raise vicuñas for their wool, making vicuña farming non-viable in many of these areas. Peru LNG has provided recognition of lost income only during the 3-year construction period, but the long-term effects of environmental changes to the vicuña territory have not been calculated into the communities' compensation packages, demonstrating an incomplete application of Performance Standard 5.

Recommended Changes in Performance Standards:

- **Expand scope of coverage:** The definition of economic displacement in Performance Standard 5 should be expanded to include permanent, and semi-permanent, changes to the environment for communities with land-based economies, and compensation and mitigation measures should comply with Performance Standard 5 requirements for compensation. The determination of who is affected and to what degree should be the result of a participatory, pre-appraisal eviction impact risk assessment⁴ of the entire population, not only a sample, and should include those indirectly affected by the project as well, such as host communities, or communities living downstream on a river that is dammed.
- **Ensure timely compensation:** Performance Standard 5 contains a specific requirement that compensation for physically displaced people be provided "prior to relocation" however, no such

⁴ See paragraphs 32 and 33 of the U.N. Basic Principles and Guidelines on Development-based Evictions and Displacement (2007).

specific requirement regarding the timing of compensation is outlined in Performance Standard 1.⁵ Rather, Guidance Note 1 (No. G9) states that “it may be appropriate” to model mitigation measures after those used under Performance Standard 5.⁶ This is a clear example of why removing the coverage of displacement impacts other than land acquisition from PS 5 and inserting it into PS 1 does not work. The IFC should require client companies to work closely with community members to develop a rehabilitation plan for foreseeable non-land-based economic displacement at the outset of a project, and particularly at the outset of a second or third phase of a project with prior demonstrable impacts.

Recommended Changes to IFC Practice:

- ***Enforce existing requirements:*** The IFC must strengthen its enforcement of the current Performance Standards to ensure that unexpected and long-term health and safety impacts of its client’s projects are taken into account.

2. Ensure appropriate project categorization

The categorization of projects according to the severity of their anticipated social and environmental impacts is an important component of approach to ensuring sustainability. As stated in the IFC Sustainability Policy, “[a]s part of its review of a project’s expected social and environmental impacts, IFC uses a system of social and environmental categorization to: (i) reflect the magnitude of impacts understood as a result of the client’s Social and Environmental Assessment; and (ii) specify IFC’s institutional requirements to disclose to the public project specific information prior to presenting projects to its Board of Directors for approval in accordance with Section 12 of the Disclosure Policy.”⁷ However, findings by the International Accountability Project – and by the Compliance Advisor Ombudsman, and by other civil society organizations – have shown that categorization often happens in ways that fail to adequately reflect the real impacts of the project. This can have a huge impact on the application of relevant performance standards and must be meaningfully addressed by IFC in the context of the revisions to the sustainability policy and performance standards.

Problem: Some projects are mis-categorized, leading to inadequate impact mitigation.

⁵ International Finance Corporation, Performance Standard 5 Land Acquisition and Resettlement, (2006).

⁶ International Finance Corporation, Performance Standard 1 Social and Environmental Assessment and Management Systems, (2006).

⁷ International Finance Corporation, Policy on Social & Environmental Sustainability, p. 3, para. 18, (2006).

Case example: Cambodia Airports II Project. The Cambodia Airports II project appears to be mis-categorized. As a whole, the project is categorized as a B project, due to “potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures.” However, the Categorization section of the Environmental and Social Review Summary (ESRS) document fails to acknowledge the fact that in contrast to the initial IFC investment in the company, this second loan involves large-scale physical displacement as well as permanent effects on tidal wetlands near the airport facilities. There are several irreversible impacts, including the resettlement of whole communities, the taking of mangrove forests, the impact on tidal wetlands, etc. Rather than appropriately categorize the project according to these impacts, IFC allowed the Cambodia Airports II Project to essentially “inherit” a Category B from the earlier loan to SCA, overlooking severe impacts that could result from the project.

Case example: Maple Energy Project. Maple Energy project activities in the Ucayali region are designated as Category B, but this project clearly deserves an A categorization. The periodic oil spills and regular leaking of oil residues onto the land and rivers have caused irreversible impacts on the environment and health of the Shipibo people. If the IFC had properly taken into account Maple's track record in the region (including the cumulative impacts of many spills), as well as the substantial cumulative impacts of fifty years of oil extraction in the region, prior to its 2007 loan and equity investment, the project would have mandated category A designation.

Recommended Changes to IFC Practice:

- ***Make accurate project categorizations:*** Categorizations must take in the full scope of impacts of a project. If a project is following on a previous project, the follow-on project should not automatically be granted the same categorization as the initial project, particularly as cumulative impacts may have occurred. Additionally, initial project categorizations should take into account cumulative impacts in a region from related activities, particularly where repeated projects have been carried out over many years, resulting in exacerbated impacts experienced by local people.

3. Guarantee adequate compensation & rehabilitation, including land-based compensation

Currently, the IFC does not require land-for-land compensation. Instead it states that where the “livelihoods of displaced persons are land-based,” the client will offer land-based compensation “where feasible” and cash-based compensation otherwise.⁸ However, cash-based compensation has been found to rarely improve the livelihoods of displaced persons. The IFC’s language fails to meet the requirements of United Nations’ *Basic Principles and Guidelines on Development-based Evictions and Displacement*, which states:

“Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case. Cash compensation should under no circumstances replace real compensation in the form of land and common

⁸ International Finance Corporation, Performance Standard 5 Land Acquisition and Resettlement, (2006).

property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value or better.”⁹

According to current research on development-induced displacement “compensation by itself [cash- or land-based] cannot adequately restore and improve the income levels and livelihood standards of people subjected to expropriation and forced displacement.”¹⁰ Indeed, compensation as the only benefit provided to displaced persons is one of the primary causes leading to affected persons being left with a lower standard of living than before project.

Furthermore, a key underlying issue limiting the development effectiveness of displacement and resettlement programs is the lack of economic evaluation. While the IFC is proud of the quality of its mandated economic and financial feasibility project analyses, it does not require the application of the same economic and financial feasibility tests to resettlement plans (RAPs); this allows IFC clients to mis-plan, under-finance, and under-budget resettlement operations, causing their failure and peoples’ impoverishment.

Problem: The IFC’s projects show that cash compensation packages inadequately address displacement, including land-based and economic displacement. This is particularly true when the economy is land-based, or when natural resources such as drinking water are jeopardized. Similarly, cash compensation is not an adequate form of compensation for long-term economic changes caused by land acquisition, environmental contamination, or changes in land use.

⁹ U.N. Basic Principles and Guidelines on Development-based Evictions and Displacement (2007).

¹⁰ U.N. Basic Principles and Guidelines on Development-based Evictions and Displacement (2007).

Case example: Maple Energy Project. The Maple Energy Project compensates affected communities for the right-of-way to land based on market values that do not take into account the full value of the ecosystem to the affected communities' culture and livelihoods. The traditional economy in the Shipibo communities does not place a cash value on land that leaders could use as a point of reference for negotiating with company officials, and local communities do not have access in most cases to outside consultants who can help them to understand the amount of money offered to them. The breakdown of values derived from the land has not been explained to the community. For example, community members do not know whether flora and fauna are included in the valuation, and they are not genuine participants in the valuation process. In one case the community of Canaán did have a meeting with Maple about land valuation and came with their own valuation of their land and what payment for its use should be. Maple proposed a much lower amount, and the meeting came to an impasse. This violates Guidance Note 5, paragraph G11 that references the "cultural appropriateness" of goods and resources used to compensate losses "not easily valued or compensated for in monetary terms."

Additionally, the potential impacts of project activities on non-cash economies do not figure into the company's rehabilitation measures. The constant inflow of contaminants and oil runoff into the local water supply affects both the fish and drinking water on which the Shipibo people base their diet. Cash payouts cannot compensate for damages to the rivers surrounding these communities, or for the severe health impacts they are experiencing. Additionally, cash compensation for their natural environment represents a much larger change to their culture and lifestyle than company representatives take into consideration. A more appropriate compensation scheme would need to involve the construction of water purification tanks or stock fish ponds capable of providing a direct substitute to the community, designed with the community's active participation and guidance.

Case example: Peru LNG Project. Peru LNG relies solely on cash compensation for land loss, which is an appropriate compensation method only under two assumptions: short-term environmental impacts caused by the pipeline and no change to the traditional economy post-construction. However, a limited-term cash compensation cannot adequately compensate farmers who must learn to cultivate new or less lucrative crops due to restrictions on planting around the pipeline. And in the case of longer-term, permanent environmental changes, the compensation payments will need to be re-evaluated and reinforced with secondary payments according to the new circumstances. It is still too early to know what these changes might be, but the environmental impacts and challenges farmers have experienced during early attempts to replant their lands suggest that there will be ongoing environmental impacts beyond the construction period.

Peru LNG has implemented employment-training programs primarily along the coast in Cañete where marine fishermen have lost access to their source of livelihood due to the construction of the plant at Pampa Melchorita. However, inland communities report no training opportunities other than trainings to become community monitors of the Peru LNG project. In short, the majority of families affected by this project must continue their economic activities as before with little to no instruction on how to overcome environmental impacts on their land or natural resources.

There are also clear concerns with regard to Peru LNG's procedures to compensate and rehabilitate individuals whose livelihoods are affected by non-land acquisition. For example, freshwater fishermen and vicuña caretakers in Huancavelica have experienced permanent changes to water resources due to project activities. In the case of the vicuña herders, natural freshwater deposits in the upper highlands, which are essential watering holes for these grazing animals, have disappeared, having been filled in with earth during project construction. For the freshwater fishermen, the economic problems stem from periodic disturbances of river ecosystems due to pipeline maintenance activities. In both of these cases, it is necessary that Peru LNG take another look at compensation and rehabilitation strategies in order to determine whether longer-term cash compensation and employment training programs are adequate solutions to the long-term economic displacement caused by the project.

To summarize, Peru LNG has thus far acted under the assumptions of short-term environmental impacts and no permanent changes to local economies. However, their operations have already caused permanent environmental impacts on all regions of the project area. With the coming completion of construction, the company must redirect its attention toward remedying these problems over the long-term.

Case example: Peru LNG Project. Since the beginning of the construction process, Peru LNG has received numerous complaints regarding the need for compensation for economic impacts not considered in the original compensation package. For example, as land negotiations began in the coastal regions of Chincha and Pisco, many farmers accepted compensation packages that calculated payment based on one lost harvest during the construction year. However, several farmers in the Cabeza del Toro community reported they actually lost more than one harvest. This happened because construction activities in their community began earlier than originally expected (due to construction running ahead of schedule). Two weeks before the farmers were planning to harvest the year's crops, the construction company began to plow through their land and farmers lost the entire harvest. No compensation was awarded in spite of formal complaints about this occurrence.

Subsequently, Peru LNG told the same farmers that they must not replant on their lands until they sign a "Conformity Decree" indicating their satisfaction with soil composition and the general condition of their land. This left farmers in the difficult situation of having to choose whether to sign in agreement and resume farming (despite many having serious concerns with their land as a result of construction activities); resume farming without signing the agreement (even though the company considers this tacit support); or to postpone their farming activities until the soil quality issues are resolved (and potentially lose another harvest while waiting). This situation is clearly not conducive to affected farmers receiving meaningful rehabilitation support for project impacts. Their difficulty is further compounded by the fact that those who have tried to turn in the Conformity Decree forms or to contact representatives from Peru LNG have not been able to reach anyone, and in fact have had no contact with company representatives since completion of construction. As a result of this delay, farmers compensated for only one harvest have now lost two to three, suggesting that any additional lost harvests will not be compensated either.

Farmers in this region also spoke emphatically about the problems caused by dust and machine traffic during construction. As the pipeline canal was excavated, the sandy soil in the region became airborne dust and blew throughout the region. Farmers remark that the coating of dust on the crops surrounding the right-of-way prohibited the flowering process of many of their crops, and diminished crop yields by 60 percent. As several farmers stated, alongside the right-of-way no one touched their corn and cotton plants; however, the dust rendered the plants "useful only as cow fodder." Farmers in various regions of the project have submitted formal complaints, but to date Peru LNG has neither responded to them nor provided additional compensation.

Meanwhile, in communities around Chincha, the most common post-construction complaint is that replaced soils are extremely rocky and have a different salt and mineral content than the original soils. Aside from being difficult to plow and plant, rocky soils also filter a high percentage of irrigation waters deep into the earth, which crops planted in top soil cannot absorb. Many farmers have lost investments in one or more harvests due to problems with soil re-composition. Peru LNG has received these complaints through its established grievance mechanism, whereby individual farmers may submit complaints for processing and response by the company. However, no interviewed farmer has received compensation for harvests lost to soil composition problems to date.

Recommended Changes in Performance Standards:

- **Guarantee land-for-land compensation.** Cash compensation packages inadequately address land-based and contamination-based economic displacement. The IFC's performance standards should be in line with the UN guidelines that state, "cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value or better."¹¹ Takings should be compensated with alternate land that is cultivable, irrigated, and located close to the original habitation to ensure that livelihoods and community structures are not disrupted.
- **Take into account environmental contamination.** Performance Standard 5 should take into account the effects of environmental contamination on traditional livelihoods. Companies should be required to plan for environmental contamination contingencies prior to commencing activities. Further, the IFC must require that client companies provide alternative resources to communities that experience economic displacement due to environmental contamination caused by projects and currently inadequately addressed by Performance Standard 1.
- **Provide stronger direction on compensation packages.** Language regarding the "feasibility" of in-kind compensations in Performance Standard 5, paragraph 8 provides too much flexibility to client companies in determining compensation packages. IFC should discontinue the allowances for the feasibility of cash versus other forms of compensation provided in the current performance standards. IFC should require that companies look for other ways to compensate communities for losses, not according to the "feasibility" for the company, but according to the appropriateness of in-kind compensation. Companies should evaluate cash compensations relative to the economy they are meant to replace and the duration of probable environmental impacts caused by the project. The IFC's Performance Standards should require "economic feasibility analyses" of resettlement plans to ensure that compensation measures are adequate.
- **Ensure that livelihood improvement measures have met their objectives.** While the IFC recognizes that "other assistance" such as "credit facilities, training and job opportunities" are necessary opportunities to improve or at least restore the livelihoods of displaced persons,¹² the IFC must ensure that assistance has benefited displaced persons and that livelihood improvement measures have met their objectives. This requires direct consultations with affected communities, and cannot be limited to assurances from the client. It also requires ongoing monitoring over time and a system for corrective interventions to address any problems that arise in implementation.
- **The IFC should more stringently monitor projects and project impacts to ensure adequate compensation for displacement impacts.** The IFC has a role to play in its monitoring function for a client company.
 - The IFC should ensure that client companies involve affected communities in the assessment of options regarding resettlement, as it is an explicit provision of Performance Standard 5 (paragraphs 16 and 18).
 - The IFC should enforce Performance Standard 5 to ensure prior rehabilitation.
 - The IFC should analyze the completeness of ESIA and Resettlement Plans prior to project approval to help to guarantee that more of the necessary compensations are allocated prior to project construction.

¹¹ U.N. Basic Principles and Guidelines on Development-based Evictions and Displacement (2007).

¹² International Finance Corporation, Performance Standard 5 on Land Acquisition and Involuntary Resettlement, (2006)

- The IFC should force companies to address permanent impacts that may be downplayed as micro-level circumstantial impacts.
- The IFC should review land compensation schemes to ensure its own policy is followed, providing appropriate in-kind or resource-based compensation where cash is a clearly inadequate way to compensate communities for their resources.
- The IFC should review models for compensation calculations to ensure that communities are not left permanently poorer by irreversible changes in their economic activities that will continue over the long-term. Where this seems to be the case, IFC should demand employment training programs, improved benefit sharing, and/or other forms of economic rehabilitation, determined in consultation with communities.

4. Improve livelihoods of displaced peoples, and ensure resettled peoples are project beneficiaries

For a resettlement and rehabilitation program to be successful, project-affected people must agree that they would be better off after displacement and approve plans for their resettlement and relocation; they must actually benefit from the project in practice and not only in theory; they must not suffer adverse impacts beyond what was planned for; and they must have their livelihoods and standards of living improved. Successful projects must also incorporate benefit-sharing – the distribution of project-related revenues or profits and jobs and other economic opportunities to project-affected people as part of their overall design and implementation.

From the start, projects must be designed as local development projects in their own right, and in close cooperation with affected people. Physically or economically displaced individuals and communities should help frame and identify development-outcome indicators, and a project's success should be evaluated against these indicators.

Problem: Despite IFC requirements, companies have failed to make affected people project beneficiaries. Benefits-sharing plans and implementation of have been too narrowly focused and have not benefited all those affected by a project.

Case example: Cambodia Airports II Project. In the Cambodia Airports II project, SCA has only implemented a few scattered community development activities, in spite of the fact that its plans for construction have already had a major impact on the community. None of the activities it has undertaken to date could qualify as benefit sharing, and none has been designed with the communities. In its annual environmental and social monitoring report to IFC, SCA lists social or community development activities it has undertaken, including: donation of used IT equipment to an orphanage; donation for a public traffic light for National Road 4 project (on the intersection with the airport road); and the establishment of a “community center” in a wooden structure outside the airport entrance; displaying information about the project. This community center is not functional and remains locked, and it was never communicated to the community that this structure was built for their use. Although these events are purely on donation basis, they hardly represent a meaningful benefit-sharing scheme for local communities.

Case example: Peru LNG Project. To date, Peru LNG’s sharing of benefits with communities has been remarkably limited. Peruvian law requires that communities located in areas of natural resource extraction and exportation receive a portion of the royalties earned by the national government from that business. In the case of Peru LNG, the company’s royalty commitment to the Peruvian government has been contractually designated as 37% of all sales. Perhaps the company feels that it has already contributed a high percentage of its profits to Peruvian development. However, only the communities affected by the exportation plant in Canete along the Peruvian coast are receiving a portion of these royalties. The communities affected directly by the gas pipeline are not entitled to any of this money due to this gap in national legislation.

Recommended Changes to Performance Standards:

- **Require consultation and participation to shape meaningful benefit-sharing and livelihood improvement.** Above all, where forced displacement is inevitable, the affected people must be made net beneficiaries of the project and have their livelihoods improved as a result of the project. Adequate consultations should first be held with communities to explore alternative project options or designs that will minimize or eliminate the need for displacement. If there are unavoidable displacement impacts, the projects design, procedures, disclosures, timing, and financing should be included in a stand-alone, involuntary resettlement component, which respects and protects human rights and assures that those affected by the project—both directly and indirectly—are beneficiaries of the project over and above compensation for their losses.
- **Enact stricter guidelines and broader scope for benefit sharing.** IFC guidelines for benefit sharing under Performance Standard 5, paragraph 8, allow client companies a large degree of flexibility in determining how to decide which affected communities receive benefits and what benefits are available to them. In oil and gas projects, these programs generally focus on communities where extraction or sale of oil/gas occurs, excluding those people affected by the pipeline. Benefit sharing should not be limited to areas affected by the extraction, but rather must include all areas affected by the project (i.e. by transport or pump stations, etc.).

Recommended Changes to IFC Practice:

- **Ensure that affected peoples are project beneficiaries.** The provisioning of community assistance should not be confused or substituted for specific actions designed to assure that project affected peoples, particularly the most vulnerable, are specific beneficiaries of the project. This means that their sustainable livelihoods, apart from the temporary economic boom benefits of project construction, have been improved and they are not facing new, project associated impoverishment risks.
- **Ensure projects are designed as development projects in their own right, designed in close cooperation with affected people.** The IFC should ensure that development outcomes for displaced persons are identified with input and consultation with the community. Projects, resettlements, compensation, and rehabilitation should be evaluated against those development outcomes. Active participation and guidance from the affected people is essential at each step of this process, in order for the benefits and improvements to be meaningful.

5. Minimize displacement through community input and consideration of project alternatives

A key principle integrated across international law and guidelines, and recognized in IFC standards, is *to avoid and minimize forced displacement*, and in the event that displacement is unavoidable, assure that it is carried out with due procedure under international law and in a manner that protects the human rights of those affected. This objective reflects the established understanding that events such as forced evictions involve extreme risks of human rights violations and the creation of new poverty.

Therefore, displacement should be seen as a last resort, for use only in *exceptional circumstances* including, for example, when the government takes actions that it determines to be in the public interest like the building of a new public hospital, school or road.¹³ While there is no standard means of determining the public interest, there are emerging legal frameworks for doing so.¹⁴ It is important to note, though, that even if a public interest determination has been made, due process in full accordance with relevant provisions of international human rights and humanitarian law must be followed. This includes giving priority to exploring strategies that minimize displacement, conducting eviction impact assessments, dissemination of adequate information, opportunities for dialogue and consultation, and adequate prior notification.¹⁵

Problem: The IFC is not taking appropriate steps to minimize displacement, even though this is the standard articulated in Performance Standard 5. In several cases, community members have not been presented with an options assessment.

Case example: Peru LNG Project. No community member discussing the Peru LNG project ever described a moment where he or she was presented with an options assessment by Peru LNG. In fact, community members affirm that when they were first approached by the company about their lands they felt they had no right to deny the company the ability to proceed with its plans. This points to the strong need for a safeguard mechanism for communities facing State-supported expropriation of land for a development project.

Case example: Maple Energy Project. The options assessments conducted by Maple Energy prior to the solidification of project plans were not shared upon request, and neither IFC project leadership nor the appropriate departments within Maple Energy agreed to participate in an interview regarding the project. At the same time, it can be stated here that resettlement does not figure into the current Maple Gas project in the Ucayali region. Therefore, one might assume that the options assessment was conducted internally and was primarily dependent on considerations of cost, geological studies, and projected impacts. However, given the gravity of health impacts and economic displacement that Maple's operations have caused, it is highly problematic that no options assessment is available.

¹³ U.N. Basic Principles and Guidelines on Development-based Evictions and Displacement (2007).

¹⁴ See, for example, the UN Guidelines which state that the "promotion of the general welfare refers to steps taken by States consistent with their international human rights obligations, in particular the need to ensure the human rights of the most vulnerable." U.N. Basic Principles and Guidelines on Development-based Evictions and Displacement (2007), para. 21, footnoted. Also, see, the U.N. Declaration on the Rights of Indigenous Peoples, A/RES/61/295 (2007).

¹⁵ See paragraphs 6, 32 - 42 of the U.N. Basic Principles and Guidelines on Development-based Evictions and Displacement (2007).

Case example: Cambodia Airports II Project. No local community members were consulted or involved in options assessment activities for the Cambodia Airports II project. The decision to rehabilitate and expand the airport came from the provincial and national authorities after the client company, SCA, funded a major study to create a Master Plan for the Development of Sihanoukville. According to international human rights law on forced evictions, evictions can occur legally only under certain “exceptional circumstances,” which include that the project causing the eviction is one that truly serves the public interest. This case raises a number of questions as to whether the proposed expansion plan for Sihanoukville Airport reflects a plan that best serves the public interest. At minimum, the client company and the Cambodian government should have to prove public interest via documents and studies that go beyond those prepared by the entity with an economic interest in the project going forward.

Problem: On at least one occasion, the principle of minimizing displacement has been used perversely, compromising the health and safety of affected communities.

Case example: Peru LNG Project. IFC guidelines indicate that, where possible, physical displacement of people's homes should be minimized through adjustments to the project and, in the case of the Peru LNG project, in adjustments to the gas pipeline's route. Indeed, as stated in Peru LNG's Environmental and Social Review Summary (ESRS), the pipeline route has been adjusted with as many as 61 micro-turns in order to avoid physical displacement and, with the possible individual exception to the rule, initial research has shown that people have not been physically displaced from their homes. Rather, the pipeline has been re-routed to avoid their houses and to pass instead through their land.

In and of itself, the willingness to avoid people's homes is an important achievement for this project. However, the requirements in Performance Standard 5 that client companies avoid the physical displacement of families do not go far enough to protect communities from economic hardship and physical danger. Of the families surveyed during research in June and July 2009, in both the coastal and Andean regions of the project, the average approximate distance from the pipeline right-of-way could be calculated between 50 and 100 meters. Several families in each region live within 10 to 20 meters of the right-of-way.

This short distance between house and right-of-way has proven exceedingly problematic during the construction process, which employed heavy machinery for the excavation of the pipeline canal and the placement of the pipes. Dust has been reported to cause respiratory problems for children and senior citizens living near the pipeline, and at least one family interviewed was forced to move temporarily in order to avoid more serious respiratory illness in an infant child without receiving relocation compensation. Apart from the potential for respiratory illness, the dust also interfered with household economies due to sanitation concerns. Furthermore, bothersome vibrations and high volumes of noise during construction have disturbed those individuals living in close proximity to the pipeline and were consistently reported by individuals interviewed for this study.

Shifting from a short-term outlook to a longer-term point of view, many families and community leaders expressed concern for the health and safety of families living within 100 meters of the right-of-way. In the upstream project area there have been 8 gas leaks since 2000; however, officials from Peru LNG maintain that there will never be a similar problem along their pipeline. However, it is both logical and highly probable that at some point during the thirty-seven year operational period of the pipeline a leak will occur and will affect the individuals living within a 100 meter distance of the pipeline.

Recommended Changes to Performance Standards:

- ***Ensure options are adequately assessed with regards to displacement.*** IFC clients should undertake, and involve community participation in, options assessments. This would also help to ensure consultation with communities earlier in the project process. Community options assessment should also be part of fulfilling the objective of Performance Standard 5 to avoid and minimize involuntary resettlement by "exploring alternative project designs."

Recommended Changes to IFC Practice:

- ***Ensure the principle to minimize displacement is not misused.*** The principle to minimize displacement is designed to find project alternatives that do not include displacement or to lessen

the impacts on affected communities and protect housing, land, and property rights. The IFC should ensure that this principle is not applied in perverse ways in order to avoid higher project costs related to resettlement, nor should it be applied in ways that put at risk the health and safety of affected communities. For example, if a pipeline is re-routed to avoid physical displacement but is then located within meters of community members' homes, the health and safety of those communities are at risk because displacement has been minimized in ways that run counter to the other policy objectives. Displacement incurs increased projects costs and the principle to *avoid and minimize* displacement should not be conflated with avoiding or minimizing the *costs* of displacement.

6. Guarantee freedom from coercion in negotiated settlements

In Performance Standard 5, IFC encourages clients to “acquire land rights through negotiated settlements wherever possible, even if they have the legal means to gain access to the land without the seller’s consent.” These negotiated settlements are meant to be achieved by “providing fair and appropriate compensation and other incentives or benefits to affected persons or communities, and by mitigating the risks of asymmetry of information and bargaining power.”¹⁶

In spite of IFC’s language around preventing information asymmetries, the lack of clarity around how clients can achieve this unfortunately creates precisely these asymmetrical situations. Performance Standard 5 does not define a measure that would constitute “fair and appropriate compensation.” Furthermore, it is problematic and controversial for the IFC’s client, who has a conflict of interest, to set these amounts. A key concern is the lack of options that the forcibly displaced have when the state legalizes land expropriations for project implementation. In these cases, communities find themselves without bargaining power from the beginning of negotiations; and often have to make the difficult decision between accepting an insufficient compensation package, or facing uncertainty around state sanctioned land takings. Moreover, in many cases, the IFC does not ensure that companies uphold their obligation to provide unbiased information and fair compensation.

Problem: Several IFC projects have exhibited problems of coercion in negotiated settlements. In one case, lack of information and the government’s willingness to expropriate land if needed led to coercion in land negotiations. In another, compensation negotiations were marred by intimidation.

¹⁶

International Finance Corporation, Performance Standard 5 on Land Acquisition and Involuntary Resettlement, (2006).

Case example: Cambodia Airports II Project. As part of the Cambodia Airports II project, in 2009 some individuals in the community experienced coercion from the local authorities around preliminary land acquisition. The individuals involved asked the researcher from International Accountability Project not to include personal information or details of the incident in our report, due to their fear of repercussion from authorities. Without details, key elements of the incident include the following: Authorities attempted to pressure the individuals to accept a price for their land far below market rate. The community gathered in support of the individuals and peacefully protested. In response, the authorities sent in the military and police to the site. Police took the individuals to a separate location and told them that they would get a slightly better price than was originally offered, and that if the individuals tried to negotiate further, they would get nothing.

The timing of this incident suggests that IFC funds from the current loan for airport rehabilitation project are already being used for resettlement issues. There is no indication that the legitimate entity established to manage land acquisition for the project (the Land Acquisition Committee) was involved in the above incident. This case illustrates the real-world power dynamics and coercion that community members often face, particularly when there is not adequate due diligence and supervision over implementing agencies for ensuring compliance and fairness in the land acquisition process.

Case example: Peru LNG Project. The Peru LNG land negotiation process began in late spring and early summer of 2007. In late 2006 and early in 2007, landowners began to receive formal letters from Peru LNG explaining their land would be crossed by the pipeline, and setting a preliminary meeting date to begin the negotiations process.

In the coastal and Andean regions, interviewees reported a variety of irregularities that caused confusion among landowners, and situations of possible coercion for them to sign agreements. For example, in coastal and Andean communities alike, negotiations were conducted in an individual, household-by-household manner. In coastal communities, this is culturally acceptable; however in Andean communities, land is held as common property, with individual land use agreements between community members. Nonetheless, community members were asked not to share with others the settlement they were to receive, and all negotiations occurred behind closed doors. In Andean communities with a large population of Quechua-speakers, a Spanish-speaking relative was not allowed to accompany a Quechua-speaking resident during the negotiation process. Likewise, residents who could not read and write were discouraged from seeking any sort of assistance from other community members. Peru LNG says that this should not be a concern, because JP Planning employed staff members who spoke Quechua and Spanish and could adequately explain settlements to those negotiating. However, all of the formal contracts were written documents in Spanish.

These practices caused concern in many communities, yet when community members did not wish to negotiate, Peru LNG and its contractors resorted to state-authorized expropriation. There are reports that the company told non-negotiators that the offered quantity of money was to be deposited in a bank account in that individual's name. The choice was his whether to take the money or not; however, construction would continue regardless of his decision. This practice was repeated in all regions of the pipeline project. In several cases, interviewees reported being threatened with jail time by armed national police officers who accompanied the construction company to begin work on their land. The only community known to have successfully rejected negotiations to date is Chiquintirca. This Andean community succeeded in raising its expected land compensation from S./25,000 to S./200,000 due to its willingness to physically block the completion of the project through strikes and other manifestations.

IFC has declined to provide information regarding its monitoring of the company's negotiation practices and calculations; therefore, it remains unclear whether the IFC has placed any restrictions on this process with regards to decisions about valuations, time periods and negotiations practices.

Recommended Changes to Performance Standards:

- ***Guarantee protection from coercion.*** Performance Standard 5 should guarantee Guidance Note 5, paragraph G9's language regarding IFC's protection of sellers from coercion. The IFC must also find a way to provide protection to communities facing expropriation if they choose not to negotiate with the client company. This mechanism should be clearly defined in the policy, not merely contemplated.
- ***Require third-party monitoring of negotiations.*** The IFC should require a clear framework for

third-party monitoring of negotiations, including provision for an independent monitor, and legal representation if needed. In addition, IFC should adopt and implement specific requirements to have a third party provide information and training about rights and processes options (including IFC policies and accountability mechanisms) prior to negotiations, to help balance the bargaining power.

Recommended Changes to IFC Practice:

- ***The IFC should monitor land negotiations.*** The IFC needs to play a stronger role in actively monitoring land negotiations, particularly in the case that a government has awarded expropriation rights to a project company. In these cases affected landowners are particularly at risk of damages and injustices in the land negotiation process.

7. Enforce fair consultation processes, address gaps in implementing Broad Community Support, and uphold community rights to Free Prior Informed Consent

IFC standards on consultation requirements fall short of international standards, which include requirements regarding information disclosure, consultation and consent. The UN Guidelines on Development-based Evictions and Displacement, for example, require the following procedures prior to evictions: (a) appropriate notice to all potentially affected and evicted persons; (b) a reasonable time period for public review or commenting on the proposed plan; (c) opportunities for the provision of legal advice to persons about their rights and options and; (d) holding of consultations that provide affected persons and their advocates an opportunity to challenge the evictions or propose alternative plans.¹⁷

The Asian Development Bank has recently approved specific requirements for “meaningful consultations” with potentially displaced persons. These requirements outline a process that begins early in project preparation, provides accessible information disclosure, is free of intimidation or coercion, is gender inclusive and tailored to the needs of disadvantaged and vulnerable groups and enables the incorporation of views of affected people in decision making.¹⁸ Furthermore, special standards for consultation and consent apply to indigenous peoples over and above the UN Guidelines on development-induced displacement and ADB policy.

The UN Declaration on the Rights of Indigenous Peoples requires that:

“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”¹⁹

In this regard, any time land acquisition or economic displacement affects the property rights, in particular, of indigenous peoples, lack of consent should prevent project activities from moving forward.

With the above advances in international law and practice around community rights to consent, as well as new approaches by private sector actors toward upholding Free Prior Informed Consent (FPIC), the IFC is

¹⁷ See paragraphs 37 - 39 of the U.N. Basic Principles and Guidelines on Development-based Evictions and Displacement (2007).

¹⁸ Asian Development Bank. Safeguard Policy Statement, (2009), Glossary.

¹⁹ United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), article 32.

now operating in a different context than that in which the Performance Standards were approved in 2006. As such, the IFC should update its policy and practice to uphold the right to FPIC.

When projects are conceived and designed in response to local and regional development needs as defined by the affected citizens—including the portion of the project that will create development opportunities for displaced and other affected people—consent will presumably not be difficult to obtain. A failure to gain consent and support for the project implies a failure to design a project that truly responds to the development aspirations of the borrowing country's citizens. IFC itself, as well as peer institutions, recognize that support from local communities is not only good practice in terms of upholding human rights, but also serves as a 'social license' for a project—without which a project will likely encounter significant resistance and project-induced social unrest. "Public acceptance of key decisions is essential for equitable and sustainable... development."²⁰

While the existing standard of Broad Community Support falls short, there are nonetheless important lessons that should be drawn from current gaps in implementation of this standard. These lessons should inform IFC policy and practice in moving toward an FPIC standard, backed by effective procedural requirements and guidance notes.

As currently outlined in the IFC's policy and performance standards, the principle of Broad Community Support is required for projects with anticipated "significant adverse impacts on affected communities."²¹ The demonstration of Broad Community Support requires adequate community participation in client consultations. Additionally, Broad Community Support requires the disclosure of company information regarding determination processes and the IFC's subsequent evaluations of that determination to affected communities and civil society. As such, the determination of Broad Community Support currently relies heavily on client-provided information, which is problematic due to the inherent conflict of interest for the client to affirm that Broad Community Support exists, in order for the project to be approved and go forward.

Problem: In light of the ADB's policy, the IFC Policy and Performance Standards do not meet international best practices on consultation and participation. There are also serious concerns with the implementation of IFC's existing policies around consultations. In two projects investigated, the International Accountability Project found that client "consultations" with affected communities most closely resemble informative workshops in which risks and adverse impacts are often down-played or not mentioned at all. Client companies failed to prepare spaces for participatory conversations or allow for the expression of dissent. Furthermore, the workshops generally occurred at the beginning of land acquisition processes rather than prior to project approval.

²⁰ World Commission on Dams, *Dams and Development: A New Framework for Decision-Making*, p. 214 (2000).

<http://www.dams.org/report/>

²¹ IFC, Policy on Social & Environmental Sustainability, pp. 3-4 (2006).

[http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/\\$FILE/SustainabilityPolicy.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/$FILE/SustainabilityPolicy.pdf)

Case example: Peru LNG Project. Peru LNG conducted informative workshops with affected communities throughout the pipeline's path, as well as in communities affected by the plant. These meetings were conducted in Spanish or Quechua depending on the language of the community. However, community members consistently reported that the workshops did not include a discussion of health risks possible during pipeline operation. In fact, community members have not been informed of the legal restrictions on building within 200 meters of the pipeline, and some municipalities have already planned to sell land over the pipeline to meet their housing needs. This directly violates Peruvian law under the Reglamento de Transporte de Hidrocarburos en Ductos under Article 94. The absence of community participation in client consultations renders them unfit for demonstrating Broad Community Support as stipulated in PS 1, paragraph 20. These characteristics are particularly troubling due to the project's early categorization as a Category A project, capable of producing extreme adverse effects for affected communities.

Case example: Maple Energy Project. Although mis-categorized as explained earlier, the Maple Energy project was designated a Category B project, so the requirement for Broad Community Support is triggered by Performance Standard 7: Indigenous Peoples.

Maple's Social and Environmental Impact Assessment, elaborated in 2006 by OMUS Consultoria Ambiental, identified three communities within Maple's area of influence who received title to their territories as "comunidades nativas" under Peruvian law. These communities include Canaan de Cachiyacu, Bellavista, and Nuevo Sucre. One additional community, Santa Clara 2, is also directly affected by the project activities, and it is unclear why this community was not included in the assessment. All four of these communities are Shipibo communities protected under international law, including ILO Convention 169. In accordance with these agreements and Performance Standard 7, any potential project activities adversely affecting these communities are subject to requirements for free, prior and informed consultation.

Community members in each of the three communities approached during this investigation (Canaan, Nuevo Sucre and Santa Clara 2) remember the presidents of the communities convoking General Assemblies where company representatives conducted workshops informing the community of the project activities. However, some of these meetings occurred after Maple had already begun operations. During these meetings company officials presented information in Spanish, the second language for members of these communities. Community leaders were allowed to ask questions regarding the project; however, no higher level of participation (re: options assessments, project location) was permitted.

Maple Energy worked in Nuevo Sucre's territory for years without once holding a consultation. It wasn't until 2005 that community members in Nuevo Sucre learned that Maple was even operating in their territory. After community members brought the issue to the company, Maple held "consultations" – informative meetings where they essentially explained their operations. This series of meetings led to the establishment of Maple's annual payment to the community for use of its land, but only for 2007 onward – Maple refused to provide payment to the community for the use of their land in prior years, in spite of the community's demands that they do so. While the above happened prior to the start of IFC financing for the project, this track record nonetheless forms part of Maple's history of business practices with the affected communities, and should have been addressed and brought into compliance with the Performance Standards when the partnership began with IFC.

Each of these characteristics violates the requirements for Broad Community Support and community engagement discussed in Performance Standard 1, paragraphs 20 and 21. IFC's definitions of consultation fail to require any non-company source of information for communities, allowing the client companies to monopolize information given to the communities and/or reported to or evaluated by IFC. This creates information asymmetries that are inconsistent with the principles of consultation, as defined in Performance Standard 1, paragraph 22, and elaborated upon in Guidance Note paragraphs G51 and G53.

The IFC and its client companies have failed to disclose to affected communities and civil society information regarding Broad Community Support determinations by the company, the processes the client followed, or the IFC's subsequent evaluations of that determination. Client companies have also failed to inform communities about the need for Broad Community Support for a project.

Case example: Peru LNG Project. Peru LNG is a natural gas transport and marketing project that has been designated a Category A project by IFC. With this project categorization, the company is required to demonstrate Broad Community Support for the project in all communities impacted by project activities under Performance Standard 1, Guidance Note 1 – G54. Neither IFC nor Peru LNG has responded to requests for information regarding the community consultation process undertaken to demonstrate Broad Community Support. At the same time, community members in coastal and Andean communities coincided in their description of the company’s presentation to the community as an informative workshop, rather than an open consultation that welcomed opinions from community members. Therefore, it remains unclear what the nature of the community consultations that proved Broad Community Support was and who might have participated in the process.

IFC’s definitions of consultation fail to require any non-company source of information used in these meetings, allowing the client companies to monopolize all information given to communities. This creates information asymmetries inconsistent with the principles of free, prior and informed consultation, as defined in PS 1, paragraph 22, and elaborated upon in Guidance Note paragraphs G51 and G53.

Case example: Peru LNG Project. Individuals affected by the Peru LNG project commented on the injustice of not understanding how land valuations and adverse impacts to personal and environmental security would affect their communities. For example, no community affected by Peru LNG had been informed about the health and environmental safety risks related to pipeline construction. One community (Cabeza del Toro) had sought suggestions from a third-party engineer who had informed them that everyone living within 100 meters of the pipeline should have been resettled. However, the company did not provide the community with this information, and no other community heard about this standard. Not one community member interviewed was aware of the 200-meter distance required by Peruvian law for new constructions near the pipeline. This has allowed Peru LNG to enter communities that might otherwise have posed strong resistance to the project, but have instead been placated by the company’s false reassurances.

The IFC seems to consider a community’s acceptance of a compensation package or proposal as tacit consent to a project, regardless of prior dissent or expressed disapproval of the project. This is true even for projects where land acquisition is facilitated by government-sanctioned expropriation, in which communities feel that they have no option but to accept the project.

Case example: Peru LNG Project. In several instances, including in Alto Laran and Cabeza del Toro, the company returned to these lands with national police officers if a landowner blocked their entrance onto the property. In other instances, including in Vinchos, Punta la Isla, and Cabeza del Toro, individuals who informed the company that they would not negotiate the right-of-way to their land were told that the company would deposit their offer in a bank account, and it was up to the landowner to use the money or leave it there. Either way, the project would continue.

Peru LNG failed to approach the communities affected by this project with an attitude of adding value to their communities. Rather, the determination that the Peruvian government would assist the company with land acquisition allowed the company to forego participation in local development goals. IFC and Peru LNG's unwillingness to answer questions about how Broad Community Support was demonstrated and analyzed make it difficult to know what this process looked like in meaningful terms. However, the evidence available indicates that IFC needs to strengthen safeguards for communities affected by projects where State-authorized expropriation of lands will occur.

Case example: Maple Energy Project. In the Maple Energy project, the leadership of Nuevo Sucre and Santa Clara report that they did not know they had the right to deny consent. This reveals an information asymmetry that goes against requirements in Performance Standard 1 for Broad Community support and consultation. Furthermore, when several individual community members accepted a cash settlement proposal by the company, Maple Gas acted as if this acceptance provided tacit consent to Maple Gas to proceed with its project plans and satisfied requirements for Broad Community Support. This suggests a need for clearer guidelines as to how community consent should be determined.

Recommended Changes to Performance Standards:

- ***Update the Broad Community Support requirement to reflect current standards for Free Prior Informed Consent.*** International Accountability Project supports recommendations made to the IFC on moving toward FPIC, including those submitted by colleagues at World Resources Institute, Forest Peoples Programme, Oxfam America, and Center for International Environmental Law.
- ***Require that disclosure and consultation happen on schedule.*** The IFC should require that plans for disclosure and consultation are conducted on a schedule that begins prior to project approval and takes into consideration local economic schedules. IFC should require documentation of consultations, prior to approving a project.
- ***Include right of indigenous communities to deny consent.*** The IFC's policies should also include the right of indigenous communities to deny consent for the project to the client company, in accordance with the UN Declaration on the Rights on Indigenous Peoples.
- ***Emphasize the need for consent beyond consultation, even in non-indigenous communities.*** The IFC should emphasize the need for consent, beyond mere consultation, including in non-indigenous communities (particularly in non-indigenous communities where there is a strong, long-standing relationship with the land and resources).

- **Enforce clearer requirements to disclose information about consent process.** The IFC should audit the client’s process for verifying community support and consent. This determination and process should be public information. Current ambiguities in paragraphs 10, 19, and 20, of Performance Standard 1 regarding the disclosure of information should be corrected.
- **Require independent, third-party translators.** In consultations with affected communities, requirements must be in place to insure that all negotiations occur in the first language of the community or utilize the facilitation skills of a third-party translator. A full-time company employee will rarely be trusted by the community in this role.
- **Provide for independent consultants, advocates, and attorneys on behalf of the community.** Communities should be provided with the option and requisite time frames to contract an independent consultant prior to signing any agreements with client companies. Where free, prior and informed consultation is required for a client project that already has government support for land expropriation, the IFC should contract a third-party auditor who will accompany the process alongside company personnel, to ensure that communities are allowed adequate spaces for participation and that they receive, in a timely and appropriate manner, all relevant information regarding potential risks and adverse impacts.

Recommended Changes to IFC Practice:

- **Ensure information reaches project-affected people.** The IFC should ensure that project affected people are informed in a timely and culturally appropriate manner of the risks they are likely to face and the full range of options that might be taken to avoid or mitigate these risks. This obligation begins with informing affected people of the IFC standards themselves.
- **Take a more proactive role in evaluating existence of community consent and consultations, particularly in places where the processes could be facing outside pressure to proceed.** The IFC finances development projects in countries that often lack effective regulators and legislation designed to adequately engage communities. If IFC seeks greater sustainability for its projects, it needs to take a more proactive approach to evaluating consent and consultation procedures. Where governments have expressed support for a project and willingness to facilitate its operation through legislation and land acquisition procedures, the IFC should take a particularly proactive role in evaluating consent as a determination of actual community opinion, rather than the tacit consent afforded by signatures on compensation contracts.

8. Guarantee adequate grievance mechanisms and accountability measures

IFC’s Performance Standard 1 requires that a grievance mechanism be established for projects “If the client anticipates ongoing risks to or adverse impacts on affected communities.” The grievance mechanism “should address concerns promptly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, and at no cost and without retribution.” Performance Standard 1 also mandates that “the client will inform the affected communities about the mechanism in the course of its community engagement process.”²² Further, Performance

²² International Finance Corporation, Performance Standard 1 Social and Environmental Assessment and Management Systems, (2006).

Standard 5 requires the client to “establish a grievance mechanism consistent with Performance Standard 1 to receive and address specific concerns about compensation and relocation that are raised by displaced persons or members of host communities...”²³

Problem: While IFC Performance Standards put in place measures for grievance mechanisms, companies are not implementing those standards adequately.

Case example: Maple Energy Project. Maple Energy has failed to set up a grievance mechanism that can be used by members of the affected communities, in violation of Performance Standard 5, paragraph 10. No grievance mechanism is currently employed by Maple Gas in its Ucayali operations. In fact, when community members complain about impacts from oil contamination in their communities, they are often offered work; this, essentially, constitutes Maple’s grievance mechanism.

Case example: Peru LNG Project. Peru LNG’s grievance mechanism is well-publicized and functioning; however, it is not community based in any way, nor is it reported to efficiently address community complaints. This violates the IFC’s requirement under Guidance Note 5, paragraph G18, that the grievance mechanism should provide fair, transparent and timely redress to community concerns.

Peru LNG has established a grievance mechanism for receiving community complaints. In the Andean region this procedure was shared with leaders in each affected community; in the Coastal region Peru LNG has relied more heavily on the community monitors to disseminate information about the procedure and relevant complaints. There are two avenues for complaints in this case: complaints can be submitted via the community monitoring program, or via the grievance mechanism. The primary difference is that land compensation negotiation disputes and requests for additional compensation must be managed through the grievance mechanism. This division has been problematic for the community monitors, because it limits their ability to react to urgent issues and communicate their community’s needs, and reduces their credibility before their peers.

Affected people who wish to use Peru LNG’s complaint mechanism must submit a written form documenting their grievances and deliver it directly to Peru LNG via a community relations specialist or the public information offices in Chincha and Ayacucho. The complaint form must be signed by both parties, and both parties must have a copy for their records. All relevant information is then shared by Peru LNG with TechInt (the construction contractor for Peru LNG), and the two companies follow up on the complaint with an investigation and verification of the facts related on these forms. Following this analysis, the companies propose a solution, which is negotiated with the complainant and eventually signed into agreement. Complaints should allegedly be resolved within fifteen days; however, many community members showed complaint forms and supporting documents with at least six months of submission but no resolution.

Recommended Changes to IFC Practice:

²³ International Finance Corporation, Performance Standard 5 Land Acquisition and Resettlement, (2006).

- ***IFC should better enforce Performance Standard 5 with regard to grievance mechanisms.*** IFC should enforce its own policies, both during pre-approval project phases and during operational phases of the projects.

Conclusion

As demonstrated by the International Accountability Project's field research, there are clear areas where the Performance Standards need to be improved, as well as areas where the IFC needs to better implement existing standards, in order to protect communities from the risks of negative impacts and human rights violations associated with physical and economic displacement.

In summary, the IFC should:

- Protect those displaced by non-land acquisition activities by:
 - Expanding the scope of coverage of Performance Standard 5 to include permanent, or semi-permanent changes to the environment and other displacement impacts beyond land acquisition.
 - Accurately categorizing projects.
 - Enforcing existing requirements to ensure that unexpected and long-term health. and safety impacts are taken into account.
- Guarantee adequate compensation, including land-based compensation, by:
 - Guaranteeing land-for-land compensation.
 - Taking environmental contamination into account in rehabilitation schemes.
 - Providing stronger direction to its clients on compensation packages.
 - More stringently monitoring projects and project impacts to ensure adequate compensation for displacement impacts.
- Ensuring timely compensation for physically or economically displaced people, prior to project initiation.
- Improve livelihoods of displaced peoples, and ensure that affected people are project beneficiaries by:
 - Ensuring that assistance provides benefits to displaced people and that livelihoods are improved.
 - Enacting stricter guidelines and broader scope for benefit sharing.
 - Ensuring projects are designed as development projects in their own right, designed in close cooperation with affected people.
- Minimize displacement through input and consideration of project alternatives by:
 - Ensuring options are adequately assessed with regards to displacement.
 - Ensuring the principle to minimize displacement is not misused.
- Guarantee freedom from coercion in negotiated settlements by:
 - Guaranteeing protection from coercion.
 - Requiring third-party monitoring of negotiations.

- Enhance existing requirements on consultation and Broad Community Support, and enforce implementation of these standards and processes, by:
 - Upholding the right of affected communities, particularly indigenous peoples, to Free Prior Informed Consent.
 - Requiring that disclosure and consultations happen on schedule.
 - Expanding or clarifying requirements for clients and the IFC to disclose information pertaining to determinations of Broad Community Support.
 - Requiring that independent, third-party translators be present during consultations.
 - Providing for independent consultants, advocates, and attorneys on behalf of the community.
 - Ensuring information reaches project-affected populations.
 - Taking a more proactive role in evaluating community consent and consultations, particularly in cases where there is strong outside pressure to proceed swiftly with the project.

- Guarantee adequate Grievance Mechanisms and Accountability Measures by:
 - Better enforcing IFC's own policy on grievance mechanisms.

We hope that the IFC will take these recommendations into account when revising its *Policy and Performance Standards on Social and Environmental Sustainability* and its *Policy on Disclosure of Information*. We believe these changes to the Performance Standards and to IFC practice will improve protections for people affected by development-induced displacement, and will help IFC more effectively achieve its mission, including to promote sustainable development and improve people's lives.