



Catching up to the past five years: Recommendations for the IFC's environmental and social sustainability framework

21 June 2010

The International Finance Corporation (IFC), the private sector lending arm of the World Bank Group, plans to update its environmental and social policies by the end of the year. In May, after several months of initial consultations, IFC publicly released the first draft of its updated *Sustainability Policy* (for IFC use), *Disclosure Policy* (for IFC use), and *Performance Standards* (for client use). The draft improves on the 2006 version, and takes important first steps to bring IFC's policies in line with the changing landscape of corporate responsibility over the past five years—including greater focus on climate change, ecosystem services, and human rights.

An ongoing criticism of the IFC Performance Standards is that many clients reduce them to a checklist of the minimal activities necessary to receive financing. IFC, in turn, lacks effective ways to ensure that these activities lead to actual, improved environmental and social performance on the ground. Consultations with local communities, for example, often become “information sharing” sessions rather than an opportunity for affected people to participate meaningfully in project decision-making. This remains an underlying concern in the first draft, and we look forward to continued improvements in the second draft.

Our key recommendations, which are described in more detail below, include:

- Reduce the net **climate change** impacts of IFC's investments.
- Use an **ecosystem-services** approach to strengthen environmental protection.
- Avoid adverse **human rights** impacts in IFC's investments.
- Require the **free, prior and informed consent** of indigenous peoples affected by IFC activities.
- Strengthen the **broad community support** standard as a way to prevent conflict.
- Improve **coordination** between the World Bank and IFC.

Reduce the net climate change impacts of IFC's investments.

In 2008, WRI published a report called *Correcting the World's Greatest Market Failure: Climate Change and the Multilateral Development Banks*.¹ This report evaluated the extent to which multilateral development banks consider the climate change impacts of their investments. According to the report, in 2007 IFC noted the relevance of climate change in the majority of its energy sector projects, but actually integrated greenhouse gas (GHG) emission reductions into less than 10% of energy projects. Since then, IFC has increased investments in energy efficiency and renewable energy, but many of the necessary steps are not yet in place to measure and manage its climate change footprint.

¹ http://pdf.wri.org/correcting_the_worlds_greatest_market_failure.pdf.

A framework for managing IFC's climate footprint would require actions by both the IFC and its clients, including:

Commit to measure and reduce IFC's overall climate footprint.

In the draft Sustainability Policy, IFC declares that it “works towards the reduction of greenhouse gases (GHG) emissions by supporting the adoption of new and appropriate technologies, processes, practices and products.” (Para. 9.) IFC plans to accomplish this largely by providing advisory services to clients. However, IFC does not indicate *how* it knows whether its efforts will be successful. Will the emissions avoided through IFC's clean investments be overshadowed by IFC's increase in GHG-intensive investments? IFC's Sustainability Policy should commit to measure overall portfolio emissions, and to gradually reduce this level of emissions. Progress on these commitments should be reported publicly as part of IFC's annual report. At minimum, we recommend that IFC commit in the Sustainability Policy to “measure, report, and manage with a view to minimizing its GHG emissions.” IFC should also support progress towards environmental and social sustainability in each country's private sector, by measuring GHG emission reductions in the IFC portfolio of each country.

Create incentives for clients to seek energy efficient and renewable energy solutions.

IFC's draft Sustainability Policy supports the adoption of new technologies, processes, practices, and products, but does not explain how it will do so. To build on this commitment, IFC should explore incentives, such as favorable financing terms, which will strengthen the short-term benefits that clients receive from adopting clean technologies. IFC should also work with the World Bank to ensure that clients are aware of regulatory and policy efforts in host countries that incentivizes low carbon options.²

Require clients to measure and report on their greenhouse gas emissions.

The draft Performance Standards contain improved requirements for when clients should measure GHG emissions. In particular, we commend the IFC for applying GHG requirements to all projects that produce more than 20,000 tonnes of CO₂-equivalent annually. (PS3, Para. 8.) IFC also now requires GHG estimates as part of the social and environmental assessment process. (PS1, Para. 6.) However, key elements of a GHG accounting system are still missing. Most notably, there is no indication that IFC will disclose these GHG measurements as part of its public reporting—we encourage IFC to report annually on the estimated lifetime emissions of each significant project undertaken during the reporting year. IFC should also explicitly define greenhouse gases as “carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF₆), and any other gases that contribute to global warming.” Finally, we encourage IFC to reference the WRI/WBCSD Greenhouse Gas Protocol as a leading, internationally accepted methodology for quantifying emissions (<http://www.ghgprotocol.org>).

Require clients to weigh options for reducing emissions and improving efficiency in their activities.

We also commend IFC for requiring clients to assess the options for best available low-carbon technologies during the design of projects. In particular, clients must now evaluate options to improve energy efficiency and reduce GHG emissions associated with the project. (PS3, Paras. 6-7.) However, IFC requires clients to “evaluate” these measures (PS3, Para. 6.) We believe that IFC should require clients to “evaluate *and describe the rationale for choosing or not choosing*” these measures.

² WRI (2010), *Investing in Sustainable Energy Futures: Multilateral Development Banks' Investments in Energy Policy*, <http://www.wri.org/publication/investing-in-sustainable-energy-futures>.

Prioritize actual emission reductions over offsets.

IFC requires clients to “evaluate technically and financially feasible and cost effective measures for improving efficiency...” (PS3, Para. 6; see also, Para. 7.) We are concerned that the emphasis on “cost effective” measures is unnecessary, because measures must already be financially feasible, and we believe that this statement biases the Performance Standards towards least cost options. As currently worded, the Performance Standards make cost *the* primary consideration for clients when evaluating options. When cost is the primary consideration, there will always be a tendency to automatically defer to the offset option. We believe that actual emission reductions, rather than offsets, should be the default option when viable low-emission options exist. This is consistent with IFC’s proposed hierarchy to avoid, then reduce, and then restore environmental and social impacts (see e.g., PS1, Para. 14.). As a result, we recommend replacing “cost effective” with “the most resource effective” to emphasize the desired environmental goal of resource efficiency. IFC should also require clients to prioritize actual on-site emission reductions, but if no on-site reduction options are feasible, the client may then consider the use of certified emission offsets.

Avoid investing in low carbon activities that impose environmental and social costs on local communities.

Low carbon investments, if not carefully designed, can have adverse impacts on the communities that host them. Biofuel projects, for example, can reduce land access for the poor. Projects designed to avoid deforestation can criminalize communities’ access to local food and water sources. The IFC’s draft Performance Standards acknowledge that “changes resulting from a project’s use of natural resources or from alteration of natural resources, which may be potentially compounded by climate change, can result in adverse impacts to communities.” (PS4, Para. 8.) The draft Performance Standards require that “the client will avoid these impacts that result from project activities.” (PS4, Para. 8.) However, IFC does not clarify what this requirement means in practice. What steps must clients take to identify and avoid these impacts? How will IFC monitor this requirement? An ecosystem services approach, discussed below, is one important way to assess these broader, systematic changes on communities. As such, IFC should integrate ecosystem services requirements not only into Performance Standard 6 on biodiversity conservation, but also into Performance Standard 4 on community health, safety, and security.

Use an ecosystem services approach to strengthen environmental protection.

In 2009, WRI published *Banking on Nature’s Assets: How Multilateral Development Banks Can Strengthen Development by Using Ecosystem Services*.³ This report argues that using an “ecosystem services approach” will improve development and environmental outcomes, and identifies ways to incorporate this approach into bank operations. “Ecosystem services” are the benefits that people derive from ecosystems, such as freshwater, timber, erosion control, flood protection, climate regulation, recreation, and aesthetic and cultural values. The ecosystem services approach provides a way to systematically account for some of the complex relationships between people and their environment. By using this more holistic approach, the IFC and its clients can better assess an investment’s impact and dependence on ecosystem services and examine the trade-offs between different ecosystem services. Understanding these impacts, dependencies, and trade-offs should help the IFC improve the long-term performance of its investments, reduce negative ecological and social impacts, and facilitate engagement with affected stakeholders.

IFC’s first draft identifies the importance of an ecosystem services approach and takes several steps to mainstream such an approach. WRI is supportive of IFC’s effort to incorporate ecosystem services into its

³ http://pdf.wri.org/banking_on_natures_assets.pdf.

policies, as this reflects a major change in managing environmental risk and opportunities. We recommend that the following additional measures be taken:

Require clients to consistently look at all categories of ecosystem services.

Despite defining ecosystem services according to the Millennium Ecosystem Assessment (GN1, Para. G54), the IFC does not consistently refer to all four categories of services in Performance Standard 6, which defeats the purpose of the Millennium Assessment definition to account for all aspects of the environment in decision-making.

For example, the IFC defines critical ecosystem services as those “provisioning services necessary for sustaining the project or the survival, sustenance, livelihood, or primary income of Affected Stakeholders.” (PS6, Para. 3, footnote 3). This definition circumscribes considerations to provisioning services. However, people, communities, projects, and companies depend upon and impact a variety of regulating, cultural, and supporting services. In fact, many provisioning services depend upon non-provisioning services. For example, many agricultural crops depend upon watershed protection services that nearby forests provide, the pollination services of bees, and the soil quality benefits provided by native organisms.

We recommend the IFC to adhere to its definition of ecosystem services and require its clients to consistently look at the four categories of ecosystem services, including supporting services such as primary production and habitats.

Clarify the difference between priority ecosystem services and critical ecosystem services.

In Performance Standard 6 (Para. 3, Footnote 3), the IFC defines critical ecosystem services as “those provisioning services necessary for sustaining the project or the survival, sustenance, livelihood, or primary income source of Affected Stakeholders.” In Guidance Note 1 (Para. G56) priority services are defined as “the provisioning, regulating and cultural services that are most likely to be a source of opportunity for the project (i.e., dependence) and/or risk to the project (impact on directly affected stakeholders).” The difference between these two terms is not clear. Neither is clear how they relate to each other.

We recommend the IFC to provide a clear definition of both priority ecosystem services and critical ecosystem services in the Performance Standards (see previous recommendation for not defining either priority ecosystem services or critical ecosystem services in terms of category of ecosystem services) and spell out their relationship.

Tentatively, we propose to define priority services as the services the most likely to be sources of risk and opportunities for the client. These services are identified in a structured manner from a list of relevant ecosystem services. This assessment should entail determining the degree to which the project depends upon and/or impacts an ecosystem service. The services with relatively high levels of dependence and/or impact should be the “priority” services. On the other hand, we propose to define critical services as the services that contribute significantly to human well-being and/ or whose trends and conditions jeopardize their supply and/ or that are necessary to the supply of other services and/ or that have no cost-effective replacement.

The client’s environment assessment and management system will therefore focus on a subset of priority services and assess the significance of its impacts on these priority services according to whether they are critical. If a priority service is also a critical service, more stringent measures to protect it must be taken. The previous version of PS6 included “areas providing key ecosystem services” in “critical habitats,” which ensured high protection standards. Since the revised version does not explicitly include those areas in critical habitats, we recommend that the IFC spell out similar level of requirements to protect ecosystems supplying critical ecosystem services.

Require a participatory process for identifying priority and critical ecosystem services.

Performance Standard 6 creates no opportunities for the people who depend on ecosystem services—the affected stakeholders—to participate in the process of defining priority and critical ecosystem services. Since the client’s environment assessment and management system will focus on a subset of ecosystem services, the participation of stakeholders is particularly important for “building strong, constructive, and responsive relationships that are essential for the successful management of a project’s social and environmental impacts” (PS1, Para. 22.). As a result, we recommend that the IFC require—within Performance Standard 6—a heightened level of stakeholder engagement for the identification of priority and critical ecosystem services. This would include the free, prior and informed consent of indigenous peoples and informed participation of other stakeholders.

Avoid adverse human rights impacts in IFC’s investments.

In 2010, WRI published *A Roadmap for Integrating Human Rights into the World Bank Group*,⁴ which provides recommendations on how to manage human rights risks at the IFC and World Bank. We welcome IFC’s willingness to engage in frank dialogue with civil society on this issue.

Human rights due diligence is good business—it not only reduces reputational and operational risks for IFC’s company clients, but also for IFC’s member governments. Governments often have an economic interest in IFC projects, for example, through the growth of the private sector in their economies, generation of employment, and development of a stable and predictable business environment. As a result, both companies and governments can benefit from a greater understanding of the human rights risks that may affect these development outcomes. The Performance Standard review provides an opportunity to integrate human rights concerns into the IFC’s risk management system.

Are the Performance Standards different from the international human rights framework?

When a person has a “right,” this means that they have a guarantee to be treated with a minimum level of dignity. The protection of human rights depends on several conditions being in place—including equality and freedom from discrimination, participation and inclusion in activities that affect people, accountability, and the rule of law.⁵ Accountability, in turn, requires that people are aware of their rights, and are able to seek remedies when these rights are violated. Are each of these conditions in place and available whenever a “rights-holder” is affected by an IFC investment? Have IFC and its clients taken steps to identify all of the rights-holders who might be affected?

In its June 2010 analysis on the extent to which the IFC Performance Standards are consistent with the International Bill of Human Rights, the IFC concluded that “the Standards are consistent with and broadly address the rights in the International Bill of Human Rights.”⁶ In its memo to the Board, the IFC also reported that there are no substantial differences between the IFC’s current “environmental and social” risk management and the management of human rights risks. (p. 24.) Yet the June 2010 analysis only identifies areas of convergence between the Performance Standards and International Bill of Human Rights, and does not seek to identify gaps. Furthermore, the analysis only considers the International Bill of Human Rights (which consists of the Universal Declaration of Human Rights; International Covenant on Economic, Social

⁴ http://pdf.wri.org/roadmap_for_integrating_human_rights.pdf.

⁵ See UN, Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding among the United Nations Agencies (2003).

⁶ IFC Policy Review, “The International Bill of Human Rights and IFC Policies and Performance Standards” (draft), 1 June 2010, <http://www.ifc.org/ifcext/policyreview.nsf/Content/IBHRandIFCPoliciesPS>.

and Cultural Rights; and International Covenant on Civil and Political Rights), rather than all core human rights conventions.⁷ IFC would benefit from further analysis.

We believe that there are significant differences between the international human rights framework and the draft Performance Standards, many of which are not traditionally assessed under the IFC's social and environmental assessments. Some missing elements include:

- Due diligence to ensure that a project does not contravene a government's obligations under international and national human rights law.
- Understanding of the local context for human rights protections, and identification of legacy issues that might contribute to conflict.
- Assessment of affected communities' ability to seek remedies for any harm suffered through an independent conflict resolution mechanism.
- Recognition of the right to self-determination of indigenous peoples, including through the UN principle of free, prior and informed consent for activities that affect them.
- Clear exclusion from investment of inherently risky activities, such as large-scale evictions.
- Specific recommendations on how to ensure that project decision-making processes remain fair to local communities—i.e. equitable, participatory, inclusive, non-discriminatory, and accountable.
- Recommendations to manage risks to local communities in a manner that considers the rights and interests of communities independently of other project design factors such as cost, technical feasibility, and client capacity.

Is the IFC sustainability framework consistent with the Ruggie framework?

In June 2008, the UN Human Rights Council unanimously affirmed the UN Business and Human Rights Framework prepared by John Ruggie, the UN Secretary General's Special Representative for Business and Human Rights. The framework consists of three pillars: (1) the *State duty to protect* against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; (2) the *Corporate responsibility to respect* human rights, that is, to act with due diligence to avoid infringing on the rights of others; and (3) *Greater access by victims to effective remedy*, both judicial and non-judicial.⁸

IFC has actively engaged in discussions with Professor Ruggie, and "is committed to supporting this responsibility of the private sector." (May 2010 memo to Board, p. 24.) However, the draft Performance Standards do not appear to systematically consider how to integrate the framework. We recommend that IFC's revised gap analysis explicitly consider whether the Performance Standards and Sustainability Policy are consistent with the three components of the UN framework.

State duty to protect. The first component of the UN framework is the State duty to protect against human rights abuses by third parties, including companies. Although IFC does not directly finance governments, this component of the framework is relevant in at least two ways.

First, the member states that govern IFC have obligations under international human rights law—most of these states have committed to uphold several human rights conventions. In his April 2010 report to the UN

⁷ The nine core international human rights conventions are (1) International Convention on the Elimination of All Forms of Racial Discrimination (1965, 173 parties); (2) International Covenant on Civil and Political Rights (1966, 160 parties); (3) International Covenant on Economic, Social and Cultural Rights (1966, 160 parties); (4) Convention on the Elimination of All Forms of Discrimination against Women (1979, 186 parties); (5) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984, 146 parties); (6) Convention on the Rights of the Child (1989, 193 parties); (7) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990, 42 parties); (8) International Convention for the Protection of All Persons from Enforced Disappearance (2006, 13 parties); and (9) Convention on the Rights of Persons with Disabilities (2006, 65 parties).

⁸ Report of the UN SRSG on business and human rights to the UN Human Rights Council, 9 April 2010, Doc. A/HRC/14/27.

Human Rights Council, Professor Ruggie noted as part of the State duty to protect: “Greater policy coherence is also needed at the international level. States do not leave their human rights obligations behind when they enter multilateral institutions that deal with business-related issues.”⁹ Arguably, IFC should act in manner consistent with the human rights obligations of the member states that govern it, ensuring that its investments do not infringe on human rights.

As IFC has acknowledged, this requires not only that IFC’s clients conduct human rights due diligence, but that IFC also conduct its own due diligence. When clients self-report on their own human rights performance, they may face a conflict of interest, particularly because of the risk of civil or criminal liability. By conducting its own due diligence, IFC can assure that it is fully aware of human rights risks, which can inform investment decision-making.

This inevitably requires a greater understanding of the State’s role in human rights risk management—although IFC should not seek to censure or judge a country’s overall performance. To balance the need for robust human rights risk assessment with the politically sensitive process of assessing a country’s relevant human rights protections, we recommend that IFC take narrow, specific steps that remain within the scope of the proposed investment. Such steps might include the specific activities that Professor Ruggie has found to be a part of the State Duty to Protect, such as assessing projects for responsible contracting, effective enforcement of local human rights laws, and reasonable approaches for conflict-affected areas.¹⁰ IFC can also take advantage of the “watchdog” role of civil society and local communities to support monitoring, by increasing disclosure to stakeholders on human rights issues (such as disclosure of human rights impact assessments).

Second, weak human rights conditions in one part of a country should not prevent IFC from investing in other parts of that country. However, IFC should not invest in any particular project where it would risk being complicit in human rights violations. This is consistent with IFC’s member states’ obligations to avoid contributing to human rights violations. The draft Sustainability Policy provides that “certain risks, such as the risk of being complicit in gross human rights violations, may require IFC to refrain from financing the business activity.” (Para. 19.). According to this language, the IFC could still invest in a project if there is a risk of being complicit in human rights violations that are legally less than “gross.” Nevertheless, we support IFC’s inclusion of this language.

Corporate responsibility to respect. IFC’s draft policies focus primarily on this component of the UN framework. The draft Sustainability Policy states that “IFC’s Performance Standards support this responsibility of the private sector.” (Para. 10.) The framework recognizes that companies have a “responsibility to respect” human rights, which includes undertaking due diligence to avoid infringing on human rights. According to the UN Framework, this due diligence requires: (1) a statement of policy articulating the company’s commitment to respect human rights; (2) periodic assessment of actual and potential human rights impacts of company activities and relationships; (3) integrating these commitments and assessments into internal control and oversight systems; (4) tracking and reporting performance; and (5) company-level grievance mechanisms.¹¹

Yet the draft Performance Standards fall short of these expectations. For example, IFC does not require clients to assess human rights risks that fall outside the traditional “environmental and social assessment,” including the examples listed above. We recommend that IFC integrate human rights risk management more explicitly into PS1, and include in the Guidance Note a description of how human rights impact assessment differs from an environmental and social assessment.

⁹ Report of the UN SRSG, 9 April 2010, para. 52.

¹⁰ 9 April 2010 report to UN Human Rights Council.

¹¹ 9 April 2010 report to UN Human Rights Council, para. 83.

Access to remedies. Access to remedies is an essential part of human rights protection. The UN Framework discusses three ways to access remedies—company-level mechanisms, non-judicial State-based mechanisms, and judicial State-based mechanisms. Professor Ruggie views these three types of mechanisms as a single system of remedy for corporate-related human rights abuses.¹² The IFC, in contrast, focuses exclusively on company-level grievance mechanisms. Without access to state-based mechanisms, however, affected communities may not have full access to remedies (particularly where company-level grievance mechanisms are not independent). We recommend that IFC only operate in situations where affected communities have access to effective remedy. Prior to investing in a project, IFC and its clients should assess local conditions to determine whether such conditions are in place. If not, IFC might be able to collaborate with the World Bank to strengthen access to remedies.

Furthermore, because of the proven effectiveness of IFC’s own grievance mechanism, the Compliance Advisor Ombudsman (CAO), we recommend that IFC require clients to disclose the existence of the CAO to affected stakeholders.

How can IFC incorporate human rights into the Performance Standards?

To incorporate human rights into the Performance Standards, IFC should conduct due diligence across the entire range of human rights risks.

The UN Framework enumerates several requirements for doing so, including a human rights policy statement, assessment of human rights risks, internal control and oversight systems, tracking and reporting, and grievance mechanisms. These elements should be incorporated explicitly into the Sustainability Policy (for IFC due diligence) and Performance Standard 1 (for client due diligence), with specific citation to the UN Framework and with a scope that explicitly addresses human rights risks.¹³

Substantive rights, such as rights to food and health, can be challenging to implement because it is not always clear what a “right” entails. These elements should be incorporated into Performance Standards 2 through 8, with specific citation to relevant human rights conventions (much like IFC already does in PS2 on labor and working conditions). As IFC already proposes, rights relevant to IFC’s clients should be incorporated into the Performance Standards, while other rights are mentioned in the non-binding Guidance Notes. To ensure that each standard rises to the level of a “right,” IFC should ensure that the principles of equality, non-discrimination, participation and inclusion, accountability, and rule of law apply in all circumstances.

¹² Professor Ruggie’s June 2010 report to the UN Human Rights Council provides: “State-based judicial and non-judicial mechanisms should form the foundation of a wider system of remedy for corporate-related human rights abuse. Within such a system, company-level grievance mechanisms can provide early-stage recourse and possible resolution. State and company-level mechanisms can be supplemented or enhanced by a range of collaborative initiatives.” 9 April 2010 report to UN Human Rights Council, UN Doc. A/HRC/14/27, para. 114.

¹³ 9 April 2010 report to UN Human Rights Council, para. 83.

Require the free, prior and informed consent of indigenous peoples affected by IFC activities.

The 2007 UN Declaration on the Rights of Indigenous Peoples marked an important milestone in the global recognition of indigenous peoples' rights. In the three years since the UN General Assembly adopted the Declaration, momentum has grown around the principle that indigenous peoples have the opportunity to collectively grant or withhold their free, prior and informed consent (FPIC) for any proposed development activities that affect their use of traditional or customary lands.¹⁴ FPIC is an important way to uphold the rights of indigenous peoples to self-determine their development paths and preserve their traditional ways of life.

Most companies and governments now acknowledge the importance of FPIC in principle, although there is still limited understanding of how it works in practice. While stakeholders have not reached consensus on the *process* for seeking FPIC, there is emerging agreement on what the *outcome* of that process must be—that indigenous peoples have the opportunity to express or withhold their consent in a culturally appropriate manner.

In its 5 May 2010 memo to the Board of Directors, IFC staff acknowledged that they remain undecided on how to address this issue. IFC wrote, “there are both political and conceptual arguments for adopting the term ‘FPICConsent,’ however, IFC is of the view that it needs to better understand how its practice should change if it were to implement the concept of ‘FPICConsultation.’ [sic] The recommendation is therefore to retain the language of FPICConsultation and [good faith negotiations], and continue to consult with internal and external stakeholders on this issue.” (Para. 35.) This approach raises several issues:

Should IFC adopt an FPIC policy before perfecting the methodologies for gaining FPIC?

The purpose of FPIC is to uphold the rights of indigenous peoples to their traditional ways of life. As a safeguard of these rights, IFC should not wait for industry to perfect a methodology for gaining consent. Rather, we recommend that IFC adopt a precautionary approach to FPIC, where investments only go forward if clients and host governments are already in a position to seek FPIC.

Can IFC have an FPIC policy without explicitly mentioning FPIC?

In its May 2010 memo to the Board, IFC discusses the issue of FPIC, but does not explicitly reference FPIC in the first draft of its policies. Will IFC commit to make its policy consistent with FPIC, without explicitly calling it FPIC? There are political benefits of calling FPIC by another name, because several member governments on IFC's Board of Directors continue to oppose the mention of the term “free, prior, and informed consent.”

However, there are benefits of explicitly committing to FPIC, as the Asian Development Bank and European Bank for Reconstruction and Development have done. First, explicit use of FPIC helps to avoid confusion with the World Bank-invented concept of “free, prior, and informed consultation,” which in practice is often implemented in a manner that does not allow communities to have meaningful input into project design.¹⁵

¹⁴ See WRI story (2010), “Momentum Builds for Gaining the Consent of Indigenous Peoples,” <http://www.wri.org/stories/2010/05/momentum-builds-gaining-consent-indigenous-peoples>; Foley Hoag LLP report (2010), *Implementing a Corporate Free, Prior and Informed Consent Policy: Benefits and Challenges* (with third party commentary by WRI), http://www.foleyhoag.com/NewsCenter/Publications/eBooks/Implementing_Informed_Consent_Policy.aspx?ref=1; WRI report (2009), *Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects*, http://pdf.wri.org/breaking_ground_engaging_communities.pdf; WRI report (2007), *Development Without Conflict: The Business Case for Community Consent*, http://pdf.wri.org/development_without_conflict_fpic.pdf.

¹⁵ In the draft (non-binding) guidance note on indigenous peoples, the IFC has contributed to this confusion by referring to “free, prior, informed consultation” as “FPIC.”

Second, FPIC is valuable as a way to correct power imbalances and empower indigenous peoples to participate in development decision-making. As such, using a term that is consistent with indigenous peoples' expectations will help communities to more clearly identify their role in the design of the development project. It is much more difficult for local communities to hold IFC and its clients accountable to a collection of complicated policy phrases such as "free, prior, informed consultation" and "informed participation" leading to "broad community support," along with "good faith negotiations." We recommend that IFC explicitly reference the UN Declaration on the Rights of Indigenous Peoples, adopt the UN principle of free, prior, and informed consent, and clearly define IFC's expectations for what this entails.

Is the IFC's Sustainability Framework already equivalent to FPIC?

In its May 2010 memo to the Board, IFC reported that "a review of standards and practices related to FPIC consent globally shows that it is functionally equivalent to FPIC consultation as implemented by IFC in terms of legitimacy of process with desired results." (Para. 35.) IFC's sustainability framework contains four standards, which together IFC claims are equivalent to requiring the FPIC of indigenous peoples: "free, prior, and informed consultation" and "informed participation," leading to "broad community support," along with "good faith negotiations." We believe that this framework is similar to FPIC, but it is not equivalent. For the framework to be equivalent to FPIC, at minimum, the Performance Standards should emphasize that good faith negotiations *must result* in "the successful outcome of the negotiation" *before* IFC's investment can go forward (see PS7, Para. 16.).

Similarly, good faith negotiations should also address whether indigenous peoples consent to the project as a whole. In the draft (non-binding) guidance note on indigenous peoples, IFC only applies good faith negotiations to three specific instances: the proposed compensation framework, mitigation measures, and development interventions (see GN7, Para. G24.).

Finally, at public consultations in Washington, DC in June, IFC staff members re-emphasized that they define FPIC as "legitimacy of process." We would like to express concern with this approach. In our view, FPIC is legitimate only if an indigenous people consents to a specific process, such as village consensus or a referendum. Using IFC's approach, however, IFC or its clients—rather than the affected people themselves—could potentially determine if a process is legitimate. We urge IFC to adhere to FPIC as it is understood by the United Nations and indigenous peoples movements.

Strengthen the broad community support standard as a way to prevent conflict.

In 2008, IFC and civil society groups began discussing ways to improve IFC's implementation of its "broad community support" standard—that IFC will not invest in any activities having potentially significant adverse impacts unless these activities have broad community support.¹⁶ Broad community support could be a powerful tool for identifying potential areas of community conflict and for resolving tensions early and in a transparent way. Unlike the Performance Standards, which clients implement, the IFC itself determines whether broad community support exists. Unfortunately, IFC does not disclose its rationale for determining that support exists in its most controversial, conflict-prone projects, and there is no indication that IFC has ever found that broad community support does *not* exist in a project. As currently construed, the broad community support standard does not identify or manage the risks of conflict.

However, the first draft includes a promising development. The draft Disclosure Policy states that "when IFC makes a determination of Broad Community Support (BCS), IFC will disclose a summary of the process outlining how this determination was made." (Para. 13d.)

¹⁶ WRI story (2008), "How the World Bank Group Gauges Broad Community Support," <http://www.wri.org/stories/2008/11/how-world-bank-group-gauges-broad-community-support>.

This is an important first step, but still does not help the broad community support standard to reduce the risk of community conflict. We recommend that IFC take further steps to:

Inform communities that IFC will gauge whether community support and dissent exists.

By disclosing the existence of the BCS standard to local communities, various interest groups will have an opportunity to voice their support or opposition to the project. In this way, IFC can be assured that all interest groups have had an opportunity to be heard. This could also lead to a stronger assessment of the potential for conflict around the project.

Clarify the timing of when IFC will publish its BCS findings.

While IFC commits to disclose its findings of BCS in the draft Disclosure Policy, no mention is made of the timing of this disclosure. Does the disclosure leave stakeholders with ample opportunity to contest the findings or present additional evidence to IFC? At minimum, IFC should disclose its BCS finding before the Board vote on the project, both on its website and directly to affected stakeholders.

Ensure that BCS continues throughout the life of the project.

According to the draft Sustainability Policy, IFC “continues to monitor the client’s community engagement process as part of its portfolio supervision.” (Para. 24.) However, IFC does not indicate how it will measure the success of the ongoing community engagement process. We recommend that IFC continue to assess the existence of broad community support after disbursement.

Improve coordination between the World Bank and IFC.

The World Bank and IFC often play complementary roles. Successful IFC investments in the private sector depend on a stable and predictable business environment, respect for the rule of law, and good governance. Environmental and social sustainability also hinges on these underlying conditions. World Bank investments can help to create such conditions within a country. Yet there appears to be a lack of coordination and communication between the World Bank and IFC on environmental and social sustainability issues.

This lack of coordination and communication was apparent in April 2010 during public consultations on the World Bank Group’s palm oil sector strategy review. In early 2009, the IFC’s Compliance Advisor Ombudsman issued a report finding that IFC had failed to conduct appropriate environmental and social due diligence in its investments in the Wilmar Group’s palm oil activities.¹⁷ In response, World Bank Group president Robert Zoellick suspended further investments in the palm oil sector until the World Bank and IFC had developed a comprehensive approach to the sector.¹⁸ The IFC subsequently organized public consultations, apparently with little if any input from the World Bank. At the first consultation in Washington, DC in April, participants repeatedly raised the need for the World Bank and IFC to coordinate more closely.

We recommend that the IFC’s Sustainability Policy acknowledge the institutional challenges of coordinating with the World Bank, and take concrete measures to improve communication around environmental, social, and human rights protections in specific investments. In particular, IFC should commit not to invest in any

¹⁷ See CAO reports on the Wilmar cases, <http://www.cao-ombudsman.org>.

¹⁸ Robert Zoellick, World Bank Group president, letter to Forest Peoples Programme (28 Aug. 2009), http://www.forestpeoples.org/documents/ifi_igo/ifc_wb_letter_pressrelease_sep09.pdf; Robert Zoellick letter to International Accountability Project (25 Nov. 2009), http://www.forestpeoples.org/documents/ifi_igo/ifc_wb_palm_oil_let_nov09_eng.pdf.

projects where local governance failures, environmental threats, or human rights concerns will undermine the requirements of the Performance Standards. IFC and the World Bank should work together to assess and understand the complex local conditions in which many investments take place.

Contact information

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