

Brief Comments on IFC's Revised Policy and Performance Standards and Disclosure Policy (July 26, 2010)

This document is the product of a 2-day strategy meeting in Manila last July 7 and 8, 2010. Attended by 38 participants, representing 28 organizations from Southeast Asian countries including Indonesia, Lao PDR, Thailand, Cambodia, Vietnam and Philippines as well as advocacy partners from the north, the meeting enabled informed discussions and sharing of critical views and grounded propositions from among the groups and community representatives on IFC's Sustainability Policy. (See Annex 1 for list of signatories). The actual IFC consultation last July 9, 2010 allowed the participants to articulate our collective concerns to IFC representatives and put forward recommendations for stronger and accountable policies and standards. Our substantive comments are reiterated here.

The same document was, in part, informed by the submission that civil society organizations submitted during the Washington DC Open House consultation last June 15, 2010. (See Annex 2 for CSO Submission, June 13 version). The substantive comments also take stock of the realities of private sector investments in the region; the practices of the IFC and its clients from the lens and experiences of communities impacted by its investments; as well as comparative analysis of best practices and standards including the new Safeguard Policies of Asian Development Bank, other international financial institutions, relevant national laws, and international declarations including the UN Declaration on the Rights of Indigenous People.

The comments are organized into three (3) clusters, following the thematic groupings used in the July 9, 2010 IFC consultation in Manila. These are a) Environment-related concerns, b) Social-related concerns and c) Concerns related to transparency and accountability issues. Cross-cutting issues were raised; they are reflected in each section.

A. Environment-related Concerns

A.1 Water-Related Rights

The draft more explicitly addresses efficient use of water, but fails to address other important water access concerns, and, in particular, fails to explicitly identify 'affordable and equitable' access to safe drinking water and sanitation as a key issue. It also fails to address the US Government's concerns relating to evaluating the impacts of large hydropower projects.

IFC projects on extractives provides for the free use water in extractive activities

Grey and polluted water affect the water quality, where people depend on for their livelihood purposes

Role of IFC in privatization of water system in countries which affect not only livelihood, food security, social, cultural, spiritual

Recommendations:

1. Require consideration of "affordable and equitable access to water;
2. Fully evaluate impacts of large hydropower projects

3. Require IFC's clients in extractive industry to meter or quantify their use of water, natural resources such as timber and gravel aggregates values
4. IFC should not use the concept of "water offset" since this is tainted by the market concept of carbon offsets
5. IFC should look into fully evaluating the impacts of large hydro projects, taking into consideration WCD study

A.2 Reducing total GHG emissions

IFC does not make commitments to reduce total GHG emissions in its overall portfolio, although it does require the client to evaluate and implement "feasible" and "cost-effective" measures to reduce GHG emission, and it does specify that emissions of greenhouse gas emissions will be considered during the social and environmental assessment process (as part of transboundary effects), and finally, as noted above, requires accounting for GHG emissions over 20,000 tons of CO₂-equivalent annually

Recommendations:

1. Make clear commitments to reduce IFC's total anthropogenic emissions according a set timetable; if not IFC and world bank group should stop funding climate finance related project.
2. IFC should look into the more progressive policies of other IFIs, Upward harmonization with ADB
3. IFC should require its clients to make public its GHG reporting, and should use UNFCCC methodologies
4. IFC should commit to a carbon cap, not just a commitment on lowering energy intensity
5. IFC should Use UNFCCC standards for clients to follow (rather than 'good international practice')

A.3 Fossil fuels

The IFC did not make any institution-wide commitment to phase-out fossil fuels. This is not aligned to the WBG's role as a climate bank.

Recommendation:

1. Make a clear (with a timeline) to totally phase out fossil fuel projects.

A.4 Offsets

IFC continues to support the use of offsets.

Recommendation:

1. IFC should not allow clients to offset their GHG emissions, because the point is to get them to reduce actual emissions of their projects,

A.5 Exclusion list for all natural resources and environmental activities

1. IFC should expand and implement the exclusion to include all projects will cause harm to the environment and natural resources

Examples of projects in the exclusion list:

- Open pit mining
- Projects in critical habitats
- Any project where first option on mitigation hierarchy (To Avoid) cannot be demonstrated
- Monoculture plantations of industrial scale → which converted natural forests
- Extractive industries

A.6 Protect Biodiversity

PS 6 now makes biodiversity offsets an option to compensate negative impacts on species in critical habitats and the loss of endangered or highly-threatened species. Groups call for IFC not to fund any projects that pose significant risks to biodiversity.

Recommendations:

1. IFC should not invest in biodiversity offset projects
2. IFC should not include in project that break ecology chain
3. IFC should not fund any project that will harm or potentially harm critical ecosystem, habitat and species
4. The Critical Habitat Interpretation Note for Performance Standard 6 needs to be made public as it influences the meaning of PS6.

A.7 Forestry

IFC forestry definition is very flawed, which includes plantations in the definition of forests

Recommendation:

1. IFC should exclude plantations (monoculture) from the definition of forest
2. FC should only fund projects which will protect natural forests rather than plantations

A.8 Extractive industry

IFC is heavily involved in extractive industry – oil and gas mining

Recommendations:

1. IFC must pull out in all large-scale extractive project.

For existing projects:

2. Apply Strategic Environmental Assessment (SEA), a process where communities themselves are genuinely involved – from data gathering, to assessment, and identification of problems and solutions.
3. Make policy on information disclosure more transparent
4. Stricter standards on contract and revenue transparency. In particular:
 - Require disclosure of agreements between IFC clients and host governments in all IFC supported extractive industry projects, including investments and advisory services, without regard to the size or significance of the project to the national economy;
 - IFC should ensure that extractive industry projects financed by the IFC through financial intermediaries also agree to publish all material payments to governments and key terms of agreements with governments;
 - Finally, consider including above resource revenue transparency requirements in the Performance Standards in addition to the Sustainability Policy;
5. Require cost-benefit natural resource valuation
6. Adopt the international language of FPIC (consent)
7. There should be gender segregated baseline health study

A.9 Biofuels

Biofuels related activities funded by the IFC impact negatively on people's food security and food sovereignty, health and environment. Biofuel projects encourage land grabbing, with the conversion of agricultural lands to commercial lands.

Recommendation:

1. Pull-out of IFC on biofuel projects

Cross cutting issues

A.10 On Upward harmonization

We urge the IFC to exceed (upward harmonization) the protections developed by the robust consultation process of the ADB, including 120 day disclosure requirement, gender considerations language, consultation requirements, assessments for all components of all projects regardless of source of finance, ADB requirements for FIs, including those designed to ensure that FI investments are not to be utilized as a way to avoid the implementation of environmental and social safeguards. As per the above language, the IFC

must ensure that all subprojects financed using its funds meet the basic environmental and social standards, including those pertaining to disclosure and consultation. (See attached submission, Annex 3: Upward Harmonization)

A.11 Financial intermediaries

Half of IFC lending is through Financial Intermediaries, and yet risks associated with projects funded by Financial Intermediaries (subprojects) are not at all well addressed. These risks are not well addressed in several ways. First, it appears that only some of the subprojects funded by FIs are, and are proposed to be, subjected to the social and environmental standards that apply to all other IFC projects.

Recommendations:

1. IFC should be transparent in its dealings with FIs
 - Disclose Monitoring and Supervision Information for Financial Intermediaries
 - IFC should require that names of all FI projects and their associated subprojects be made public
 - The following information should also be made public: Location, By-laws, Contract safeguard language, Environmental and social risk, Development rationale, Consultation, supervision, BCS determination, UNDRIP/Core Labor Standards, IFC due diligence/oversight of subprojects, Funding, and Financial performance.
 - Make IFC and Financial Intermediary supervision and monitoring reports publicly available
2. Require independent verification of annual monitoring reports for FIs and their subprojects to ensure compliance with Performance Standards and achievement of performance indicators
3. Implement an annual IFC program of project supervision visits, including visits by environmental and social specialists to FIs to determine the effectiveness of the FI's social and environmental management system and individual sub-project Policy and PS compliance
4. Require that when a FI client's activities are found to be out of compliance with IFC Policy and PS requirements (largely determined through independent monitoring and IFC supervision visits), the FI will be given 6 months to remedy the situation or IFC will dis-invest from the FI. IFC should make it a requirement for their FIs to require a stringent set of performance standards in the FI's projects, so as not to result to "investment laundering"
5. Ensure that risks of Financial Intermediary subprojects are addressed
6. Require IFC to follow a two-tiered social and environmental risk categorization system for financial intermediaries. Tier-one represents the risk assigned to the FI's overall portfolio. This categorization of FI-low, -medium, and -high risk will be based on the riskiest activities included in the FI's current and anticipated portfolio. Tier-two represents the risks assigned to the individual IFC-supported sub-project investments of an FI. Each sub-project will be categorized according to the "A, B, and C" system used for IFC direct-project investments with all applicable requirements of such categorization met by each sub-project, including 120 day information disclosure requirement for all Category A subprojects and consultation. IFC will review each sub-project to ensure the correct risk categorization has been applied and to ensure compliance with Policy and Performance Standards requirements
7. Require that FI lending be limited to small and medium enterprises and only after IFC has made a publicly-available assessment of FI capacity to deal with environmental and social risks.

A.12 Advisory Services

1. We urge that the new Performance Standards require the IFC to conduct its own assessment of environmental and social risk levels and potential impacts of proposed AS project(s), including impacts on climate, forests, Indigenous Peoples and other forest and rural communities, and women, and to make these assessments public 120 days prior to Board consideration for all projects with potentially significant environmental impacts.
2. We urge the IFC to ensure that Performance Standards require public release of all draft and final assessments, including the release of draft environmental assessments for projects/subprojects with potentially significant environmental risks 120 days prior to Board consideration and 60 days prior to Board consideration for all other projects/subprojects.
3. We urge the IFC to make public release of this information a requirement of the Performance Standards.

A.13 Exclusion list

Recommendation:

1. IFC stop funding projects that harm or potentially impact livelihood, food security, social, cultural, spiritual values.

B. Social-related concerns

The genuine and meaningful participation of affected communities and CSOs must be encouraged in terms of providing information, documentation and alternative sources of information. This space and platform for participation must be made available throughout the remaining phase of the review process, and more importantly to all existing and new investments or client-relationships that IFC will enter into.

These recommendations must be treated as pre-conditions to any relationship with a client. The outlined proposals were generated after an exhaustive review and discussion of various CSOs with different working expertise. Issues and gaps on these thematic concerns have been studied and identified through documentation and research of different NGOs. The recommendations should then be taken as concrete efforts to address these gaps within the IFC Sustainability Framework. For example, one concrete recommendation is that If countries do not have mechanisms for Human Rights Impact Assessments (HRIAs), IFC should not invest there.

A more robust Exclusion List must be established by the IFC, one that should specifically identify extractive industry (mines, oil and gas). This Exclusion List must also reflect the more stringent definitions of forced labour, harmful labour, contemporary forms of slavery and human trafficking

Regarding human rights, the IFC Sustainability Framework must recognize and incorporate universally accepted human rights definitions and standards. This can be operationalized through the creation of and conduct of human rights impact assessments (HRIAs) for all IFC investments during the

design phase and utilizing the results of these HRIAs as decision points of whether to enter into a relationship or not. At the minimum, IFC must ensure that its investments and activities it supports do not contribute to human rights abuses. Relatedly, the Performance Standards should outline minimum due process standards for the design and implementation of project-level grievance mechanisms.

On Indigenous peoples (IPs), the IFC Sustainability Framework must recognize and integrate the UN Declaration on the Rights of the Indigenous Peoples (UNDRIP). Concretely, the Performance Standards must transcend its definition of FPIC, transforming the C from “consultation” to “CONSENT”. Premium must be extended to ensure that the consent process is guided by customary or indigenous or traditional systems of consensus-building and decision-making. The concept of Broad Community Support (BCS) must be re-visited, as experience has shown that this approach undermines community solidarity and sometimes even results to community division and conflicts.

About housing, land acquisition and re-settlements, the over-arching principle should be physical displacement must be avoided and minimized, and not simply reduced, as currently phrased in the IFC documents. Involuntary re-settlement should never be an option for an IFC investment. If displacement or re-location is unavoidable, meaningful participation of the affected communities and their support groups must be ensured. This meaningful and genuine participation must include assessment of alternative designs (of housing) and physical plans and monitoring implementation of resettlement plans.

Regarding labor conditions, IFC policies must ensure compliance with ILO definitions and standards of employment, regardless of type. More importantly, IFC must ensure that its policies and practices in its investments are sensitive enough to prevent forced labor in the supply chain of its clients.

Thematic Recommendations:

B.1 On Human Rights

1. The Performance Standards should explicitly incorporate universally accepted human rights standards, and provide greater guidance to clients to help ensure that clients respect human rights.
2. IFC must create a separate and robust human rights impact assessment mechanism, during the design-phase of the project, and
3. The results of this HRIA must be used by IFC as a basis for deciding to engage in any activity
4. IFC should only enter into partnerships with companies that have no track records of human rights abuses[using a decision flowchart]
5. Establish a clear human rights due diligence process that ensures full consideration of potential human rights impacts
6. Clearly identify the responsibilities of IFC to ensure that activities it supports do not contribute to human rights abuses
7. The Performance Standards should outline minimum due process standards for the design and implementation of project-level grievance mechanisms.
8. Establish EMR mechanisms on HR Impact Assessment

B.2 On Indigenous Peoples

1. IFC must recognize, subscribe and comply with the UNDRIP
2. Require conduct of free, prior and informed consent, based on customary or indigenous or traditional systems. Clear provisions on ensuring this FPIC must be defined and operationalized via the Guidance Notes
3. This FPIC must be a requirement, not only in the Policy, but also in the Performance Standards., emphasizing that RISKS are accurately characterized, articulated and understood.
4. The IFC and the client must provide public and detailed information to the community for them to determine if they will support or not
5. Establish, a mechanism for negotiating benefits for the affected community

B.3 Housing/Land Acquisition/Involuntary Resettlement

1. Reference standards that should apply to all evictions, including consultations with communities on all key aspects of the resettlement process
2. Require that displacement be avoided and minimized, and not simply reduced
3. Ensure meaningful participation, including in assessing alternative designs and monitoring implementation of resettlement plans
4. Involuntary re-settlement should not be an option in any IFC engagement
5. Prohibit rehabilitation schemes based on cash-compensation alone, require land-for land ensured through meaningful participation

B.4 On Labor Conditions

1. Ensure that Exclusion List reflect the more stringent definitions of forced labour, harmful labour, contemporary forms of slavery and human trafficking;
2. Ensure the Exclusion List include investments in all production of, use, or trade in asbestos fibres or asbestos-containing products, and other hazardous elements or chemicals with no minimum content threshold;
3. In IFC projects in which collective bargaining agreements do not exist, commit IFC to enforcing the ILO principle of prevailing wages, working conditions and freedom of association (rather than the text currently obliges client firms to comply with national law);
4. Strengthen language that would prevent forced labor in the supply chain
5. Require clients to comply with ILO standards regardless of the type of employment

C. Concerns related to Transparency and Accountability issues

C.1 On accountability

Grievance Mechanism. The IFC does recognize a Grievance Mechanism, through the Compliance/Advisory Ombudsman (CAO). However, there are several principles that must be addressed.

Recommendations:

1. Community access to remedies through courts, the Compliance Advisor Ombudsman (CAO), and other independent dispute-resolution bodies must be ensured
2. third party monitoring and verification;
3. public reporting. Furthermore, IFC should require clients to disclose the existence of the CAO and how to access it.
4. Gender sensitive and responsive Grievance Mechanism
5. establish specific measures to involve the vulnerable groups, i.e. children, differently-abled persons, elderly, and people in armed conflict conditions.
6. On Public Consultation
7. Referring to IFC's documents (Performance Standards and Disclosure Policy), IFC does not recognize the term "public consultation".
8. Recommendation:
9. There should be an explicit provision on how consultations with affected people will be carried out

C.2 On Reporting Development Outcomes on a Project-Level

Recommendations:

1. Reporting Development Outcomes should be on a Project-Level
2. Outcome tracking should emphasize progress on sustainable development and result in quantitative and qualitative reports for each project, as well as pro-active mitigation efforts at the IFC expense.
3. IFC should disclose relevant client documentation.
4. Reporting should capture both positive as well as negative outcomes
5. Sensitive projects should be subject to independent impact assessments.
6. The project should be evaluated on its replicability and strategic value

C.3 On Disclosure of information

For the subject of Presumption of Disclosure and Extractive Industry contract disclosure,

Recommendations:

1. For all ongoing IFC-supported extractive industry projects must disclose all contracts, principal and derivative, related to the EI operation to which the government is a party, including, inter alia: between host governments and companies (e.g. Host Government Agreements, Production Sharing

Agreements, Power Purchasing Agreements, Concession Agreements) and between governments (e.g. Inter-Governmental Agreements)

2. Ensure that a true “presumption of disclosure” be adopted – that exceptions to disclosure are narrowed significantly;
3. Ensure that more than just summaries of monitoring and supervision reports are made public;
4. Ensure that we know development outcomes and measures of development outcomes for more than just projects with significant adverse impacts.
5. For FI sub-projects and investments that involve extractive industries, the client must follow the IFC’s requirements for revenue and contract disclosure of direct project investments in the extractive industries.

In general, there must be a full disclosure of all disclosed documents. The IFC policies sometimes only require the summary of certain documents to be disclosed.

6. In the disclosure policy, IFC must ensure that disclosure of full report and summary are required in the accessible language of the affected communities [address divide and rule]
7. In the list of documents that can be made available to the public, IFC must disclose the full documents, not just the summaries, as early as possible [elaborate time-lines and document]
8. Point 13. Social and environmental information. We urge to change the language to: In accordance with the Performance Standards, IFC requires its clients to engage with affected stakeholders, including through the disclosure of information, in a manner commensurate with the risks and impacts their projects pose to such stakeholders and provide reports from public and affected communities consultation. For such investments, IFC releases the information prepared by IFC client even before IFC has completed, or in some cases even started, its environmental and social assessment of the investment.

C.4 On Financial Intermediary risks

Recommendations:

1. Ensure that risks of Financial Intermediary subprojects are addressed
2. We urge the IFC to, at a minimum, require the above measures which are designed to ensure that FI investments are not to be utilized as a way to avoid the implementation of environmental and social safeguards. The IFC must ensure that all subprojects financed using its funds meet the basic environmental and social standards, including those pertaining to disclosure and consultation.
3. Require IFC to follow a two-tiered social and environmental risk categorization system for financial intermediaries. Tier-one represents the risk assigned to the FI’s overall portfolio. This categorization of FI-low, -medium, and -high risk will be based on the riskiest activities included in the FI’s current and anticipated portfolio. Tier-two represents the risks assigned to the individual IFC-supported sub-project investments of an FI. Each sub-project will be categorized according to the “A, B, and C” system used for IFC direct-project investments with all applicable requirements of such categorization met by each sub-project, including 120 day information disclosure requirement for all Category A subprojects and consultation. IFC will review each sub-project to ensure the correct risk categorization has been applied and to ensure compliance with Policy and Performance Standards requirements;

4. Require that FI lending be limited to small and medium enterprises and only after IFC has made a publicly-available assessment of FI capacity to deal with environmental and social risks.
5. Disclose Monitoring and Supervision Information for Financial Intermediaries

C.5 On Advisory Services

It was identified, that there has been lack of information regarding funding sources.

Recommendation/s:

1. We urge the IFC to require for all AS projects, through language in the Performance Standards, the amount of IFC funding, the identities of any co-funders, including the use of any "climate funds" and the amounts provided by each co-funder, including national and sub-national government agencies be made public.

We also identify in advisory services, that there has been lack of information regarding environmental and social impacts.

1. We urge that the new Performance Standards require the IFC to conduct its own assessment of environmental and social risk levels and potential impacts of proposed AS project(s), including impacts on climate, forests, Indigenous Peoples and other forest and rural communities, and women, and to make these assessments public 120 days prior to Board consideration for all projects with potentially significant environmental impacts.
2. We urge the IFC to ensure that Performance Standards require public release of all draft and final assessments, including the release of draft environmental assessments for projects/subprojects with potentially significant environmental risks 120 days prior to Board consideration and 60 days prior to Board consideration for all other projects/subprojects.

There is lack of information regarding Track Records of Companies involved in AS projects.

3. Therefore we urge the IFC to make public release of this information a requirement of the Performance Standards.
4. Regarding public comment on choice of companies, in the case of AS projects, we urge the IFC to publish a list of potential partners and seek public input on the environmental, human rights, and climate track records of any such companies prior to committing to a partnership.
5. And lastly, regarding public comment on sub-national agencies, we urge that these be made requirements under the Performance Standards.

Annex 1: List of Signatories

CSO Workshop and Consultation on Review of IFC Sustainability Framework July 7-8, 2010 – Manila, Philippines

Organizations

1. Alyansa Tigil Mina (ATM)
2. Legal Rights and Natural Resources Center -Kasama sa Kalikasan / Friends of the Earth, Philippines (LRC-KsK/FOE)
3. Maporac Aeta Organization (MAO)
4. Philippine Indigenous Peoples Links (PIPLinks)
5. SALIGAN
6. Focus on the Global South
7. EED-TFIP
8. INCITEGov
9. JPICC-AMRSP
10. 11.11.11
11. Earth Rights International – Mekong School
12. Institute of Tropical Biology
13. Pan Nature
14. CAPP
15. Sawit-Watch
16. Bank Information Center (BIC)
17. NGO Forum in Cambodia
18. CNRO
19. Friends of the Earth – Asia Pacific
20. International Accountability Project
21. Vietnam Rivers Network
22. Debtwatch Indonesia
23. NGO Forum on the ADB