

CENTRO DE DERECHOS HUMANOS Y AMBIENTE (CEDHA)



Comments to

Proposed IFC Performance Standards Review 2010/2011

General Comments, Climate Change, & Human Rights

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About the Center for Human Rights and Environment (CEDHA):

*CEDHA, based in Córdoba Argentina, is a non-profit organization founded in 1999 working to defend victims of environmental degradation. We work with local communities to address local environmental degradation, and with the international community to address policy evolution and the development of human rights and environmental protection mechanisms. In 2006 CEDHA's founder won the acclaimed Sophie Prize for our work in linking human rights and environment. In 2006-2008 she served as Argentina's Environment Secretary, winning EPA's Climate Protection Award during that period for her very active efforts to build global consensus on HCFC phase-outs under the Montreal Protocol. CEDHA as an institution, won Sierra Club's most prestigious international advocacy award, the Earth Care Award for our contributions to promoting greater corporate environmental and social accountability. Over the years CEDHA has engaged closely with the World Bank Group, and with the IFC and CAO specifically, to address the evolution of its Social and Environmental Safeguard Policies, and Performance Standards and we have participated in many previous rounds of policy edits. In 2006 CEDHA filed a complaint to the CAO in the case of the Botnia Pulp Mill investment in Uruguay and for the duration of that case, closely engaged IFC and CAO upper management, including IFC's Vice President, as well as the Board of Directors, as a **user** of the Performance Standards and procedures, gaining an invaluable perspective on their effectiveness and limitations. The author of this report and one of CEDHA's founders worked for several years with the World Bank Group at its headquarters office and on local investment programs in Latin America.*

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Introduction

The Center for Human Rights and Environment (CEDHA) welcomes IFC's commitment to periodically review its' Performance Standards and the effort that IFC makes to incorporate the views of specialized agencies, institutions, civil society, direct stakeholders, and representatives of stakeholders.

The following is a commentary of the currently proposed changes to the IFC's Performance Standards, as submitted by IFC in various documents and annexes with track changes to the Committee on Development Effectiveness (CODE). Three IFC publicly released documents have been reviewed and compared for this commentary, including:

- 1) Proposed edits by IFC version April 2010 (Annex B) which correspond to the first round of initial proposed changes to the existing Performances Standards (dating to 2006);
- 2) Proposed edits by IFC version December 2010 (Annex A) which shows how the text looks today relative to the April 2006 version of the Performance Standards;
- 3) The existing Performance Standards as they were approved in 2006.

It is important to consider *all* of these IFC documents as some important modifications (positive and negative) occurred between the various versions that have circulated since April of 2010.

*Given the critical importance of global discussions on climate change, as well as very significant recent evolution on the issue of human rights and business, in which IFC has played a critical role, we've chosen during this revisions round, to add to our *General Comments* on the current proposed edits, *two additional stand alone sections on **Climate Change** and on **Human Rights**.**

Our document is hence divided into an Executive Summary plus 3 sections as follows:

- **Executive Summary** (Page 3)
- **Section I:** (Page 7)
General Comments to IFC's proposed Reviews to its Performance Standards
(a paragraph by paragraph analysis and recommendations);
- **Section II:** (Page 33)
IFC's Treatment of Climate Change in the Proposed Performance Standards Text Streamlining with G20 and UNFCCC Commitments
- **Section III:** (Page 45)
IFC's Treatment of Human Rights in the Proposed Performance Standards Text
The Role of IFC in the Evolution of the Corporate Responsibility to Respect Human Rights

We are *not* commenting at this stage on the Guidance Notes.

Any comments, questions, clarification or other information from CEDHA about these critiques and recommendations, can be sent to jdtailant@gmail.com

Executive Summary

The Global Context of the Performance Standards Review

1. Given the very critical global evolution of discussions and negotiations around key issues such as *climate change* and *energy efficiency*, and the exponentially growing *concerns of investment impacts from local communities* and particularly discussion around lacking “*social license*” for investments, it is an opportune moment to consider reviewing the World Bank Group’s, and particularly the IFC’s, role in this process.
2. States are also reaching consensus on how to implement global development policy, including to push more aggressively to meet our *Millennium Development Goals (MDGs)*.
3. Three priorities should be on the minds of IFC’s upper-management and the World Bank Group’s Board of Directors as they consider the proposed edits to IFC’s Performance Standards (PSs):
 - Where are the opportunities for IFC to tangibly contribute to the implementation of agreements reached by States, including for example under the G20, and in negotiations under the UNFCCC, and particularly on issues such as climate mitigation, adaptation and structural moves towards *energy efficiency* and a switch to renewables?
 - How can IFC guide, advise and influence the private sector, on issues such as *due diligence* on community impact, climate change, and other key investment decisions taking place?
 - How should the IFC address their systematic failure to achieve “community support”, and address growing pressure from stakeholders to incorporate human rights impact policy and tools, and particularly what should IFC do in regards to conclusions coming from the work of the UN Special Representative on the Issue of Business and Human Rights, John Ruggie?
4. The answers to these questions will necessarily have to do with:
 - How IFC’s mandate and policy is shaped as directed by it’s Board of Directors and upper management;
 - If IFC continues to take on a leading role in setting global corporate sustainability policy;
 - How demands coming from IFC’s clients influence decisions;
 - The effectiveness of mounting pressure from stakeholders for IFC to address issues like human rights impacts, climate change, etc.

General Overview of the Proposed Edits to the Performance Standards

5. *On these objectives and issues, the present proposed text is falling short, on nearly all counts.*
6. *The proposed Performance Standards (PSs) fail to place IFC in a leadership role on issues such as climate finance; the proposed PSs backtrack on existing sustainability language lowering the bar for corporate compliance; they fail to make IFC more competitive relative to the evolution of issues such as climate mitigation and adaptation or on human rights impacts assessment. And in the end, they fail to work to lower the likely reputational, legal and financial risks that growing social and environmental impact concerns in areas such as human rights and climate change are generating.*

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7. Proposed changes in the April 2010 PS version show that IFC's upper management *did have intentions* to take a more opportune direction, in areas such as climate change, human rights, stakeholder consultation, and indigenous peoples. These were important steps in the previous text versions, which helped IFC address social and environmental risks and bring IFC's PSs in line with evolving global consensus on corporate sustainability policy. Yet many of those advances have been deleted in the later PSs text, in some cases the PSs have regressed from the existing PSs.
8. IFC has systematically failed to gain community support for its more sensitive investments. This has presented legal and reputational problems for IFC and its clients, particularly regarding Category A Projects placing undue costs and risks on projects and on economic returns, as well as casting doubt on the sustainability of projects relative to community priorities. *More information to the Board* on sensitive projects is needed; IFC should, when necessary, be guiding clients to carry out *more effective impact assessment* such as on community stakeholder opinion, human rights impacts etc., which are becoming more in demand from stakeholders.
9. *Recommendations by the Compliance Advisory Ombudsman (CAO) should be taken more seriously* as many times, the intervention by the CAO has warned of high project risks, but the suggestions of the CAO have been taken lightly or ignored.
10. We welcome, new text on the issue of *Free Prior and Informed Consent (FPIC)* for indigenous communities, as well as on the decision to reintroduce *the "community"* as a key target group for measuring impact, but would encourage that *"other stakeholders"* also be systematically included alongside "community" when referring to impact assessments, to ensure that affected stakeholders that are not part of a specific community also be duly protected.
11. We also welcome the new language on *"disclosure"* which has now become *"access to information"* which we see as aligning IFC policy with the commonly and universally accepted terminology in this regard.
12. Also an important improvement since the April 2010 version, which we had highlighted in earlier commentary is the systematic change of language in the Performance Standards from **"reducing risk"** to **"minimizing"**, which we see as critical.
13. However, we find in some edits *a watering down* from *conditioning* lending or from already weak language of *encouraging* to even weaker and absolutely irrelevant language suggesting that IFC *supports clients that take sustainability actions*. IFC has very influential leverage not only over clients but over the corporate sector's sustainability policy generally around the world, whether or not they take IFC financing. Weakening PSs language is not only unnecessary, but results in lowering the bar for corporations on social and environmental policy and practice.
14. We are concerned that requirements on sustainability compliance of *Financial Intermediaries* is only targeted to *high risk business activity*. Financial Intermediaries should be held accountable to all social and environmental performance standards as they apply to any business.
15. *On climate change we are not pleased with language* in the proposed Performance Standards, and feel IFC is missing an opportunity to set the stage for the decade to come on climate finance. In our discussions with IFC's upper management it seems that IFC is indeed working on the promotion of more climate-friendly investments and initiatives, however we do not see that reflected in the current policy and Performance Standards, which means the IFC is not sending the right signals to the investment community so that

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they too are driven to make the right investment choices relative to climate protection. It should be. Current language on climate change in the proposed text is weak and could be more assertive establishing clearer commitments by IFC and key indicators that the institution is pushing for more climate-friendly investments. For example, there is no reference in the PSs to promoting investments that focus on climate mitigation; there is no PS policy referring to transparency on GHG emissions, for IFC or for clients; there is no clarity or solid commitment to moving IFC's portfolio to climate-friendly technology; there is no IFC's priority to promote investments that address climate adaptation. **In fact the word "renewable", "efficient" or the term "energy conservation", for instance, do not even appear a single time anywhere in the Performance Standards, older or newer proposed versions.** More should be done to align IFC with evolving international agreements and policy that has the collective approval of global leaders. We offer in Section II on Climate Change, specific analysis of IFC's opportunities to harmonize policy positions with intergovernmental advancements and agreements that have been made at the international level, particularly relative to the G20 and UNFCCC forums.

16. *We welcomed efforts to incorporate **human rights** references in the earlier April 2010 text, but are concerned about the watered-down and confusing direction this has taken in the actual text, particularly because we see that it is not inline with growing global consensus on where the human rights and business debate is currently, including global consensus achieved and increasing demands from the corporate sector to address human rights in corporate activity. The corporate sector is demanding universally accepted policy and management tools to address human rights. While stakeholder groups and communities are increasingly concerned over human rights impacts from industrial activity, companies are having to respond to these concerns without having the necessary policy and management tools to do so. Failed or technically poor efforts to address human rights leads to increased investor risk, increased reputational risk, and increased legal and economic risks of investments. IFC which should be providing more guidance linked to policy to its clients on human rights impacts issues, *simply is not.* Further, and even more concerning, is that current PSs text contradicts important consensus made by the work and recommendations of John Ruggie, the UN Special Representative on Human Rights and Business, and fails to set the stage for the next step of evolution on this debate. Many actors are already looking to IFC for technical guidance on implementing the Ruggie Framework. IFC is best poised now to carry the technical discussion on human rights forward in collaboration with partners, *but again, it is not.**

Conclusions

17. IFC has a critical opportunity at a crucial juncture existing in the evolution of development policy. States, corporations, communities, civil society, are all demanding more guidance and attention to key global issues such as climate change, energy efficiency, energy switching from fossil fuels to renewable energy solutions, community impacts, human rights, etc..
18. This demand is generating tangible interest from many actors, including States and IFC's clients, for guidance on policy, management tools, monitoring systems, etc.
19. These issues are critical to lowering investment risks including reputational risk, legal and economic risk as well as economic risk, thus minimizing the negative social and environmental impacts to local communities and other stakeholders.
20. IFC can choose to take a protagonist role in this evolution, or let someone else do it.

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21. The present text, in the proposed Performance Standards, is not meeting this expectation. It is clear that IFC has engaged constructively over the past several years on each of these social and environmental issues, and that the earlier version of the PS text showed some clear advances, which have unfortunately been deleted in the present version.
22. IFC has even participated in the development of experimental tools, which have been well received by the corporate sector, and others, such as its Guidance Tool on The Voluntary Principles on Security and Human Rights or more recent work on Responsible Contracting and Stabilization Clauses.
23. IFC's clients (corporations) will, whether IFC chooses to develop human rights tools or not, need periodically, when projects warrant it, climate, human rights and other impact assessments related to their projects. If policy, process and management tools are not clear, such tasks will be costly, confusing not systematic. For this reason, IFC has much value added to contribute in technically systematizing processes such as human rights due diligence, climate impact assessments, etc.
24. IFC needs to maintain its leadership as a one-stop-shop for corporate sustainability investment policy and provide the guidance and quality of service that clients have come to expect. This will help avoid reputational risk, lower economic and legal risk, and ensure that projects are more efficient, and social and environmentally sustainable. Presently it is failing to do so. The opportunity to take on this challenge has never been better.

SECTION I:

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General Comments to the IFC's Proposed Reviews to its Performance Standards (2010-2011)

Our general opinion over the proposed changes to the April 2006 version of the IFC's Performance Standards (PSs) is that *some important advances were made in the April 2010 version* of text by IFC relative to various issues, including climate change, human rights, stakeholder consultation, and indigenous rights; but that some of these (particularly climate change and human rights improvements made in this text) have regressed from the April 2010 version. In some cases this is especially worrisome as the new proposed text even regresses from the existing Performance Standards (version 2006).

We welcome advances made for example, on the issue of *Free Prior and Informed Consent (FPIC)* for indigenous communities, as well as the reconsideration made in the latest version on reintroducing the "community" as a key target group for measuring impact, but would encourage that "*and other stakeholders*" be systematically included alongside "community" to ensure that all stakeholders are duly considered for potential negative externalities investments might impose.

We would like to see more advancement on IFC's PSs relative to its *obligations to present information to the Board of Directors before projects are approved*, particularly on issues such as *Broad Community Support* related matters, or on *disclosure of information by the client to the community* which we see has regressed in the present version, and in particular more and specific commitments to *take into account recommendations of the Compliance Advisory Ombudsman (CAO)* when appropriate, which we still see as critically lacking in IFC's overall policy, Performance Standards framework, and institutional arrangements.

In consonance with what we hear from our sources inside IFC, we would also like to see more emphasis on *implementation of policy*, which is understandably difficult to express in terms of policy statements in the PSs, but which is critical to long term sustainability of IFC investments.

We welcome the new *language on disclosure* as "*access to information*" which we see as aligning IFC policy with the commonly and universally accepted terminology in this regard.

Also an important improvement since the April 2010 version, highlighted in our earlier commentary is the systematic language change from "*reducing risk*" to "*minimizing*", which we see as critical.

We sense in some edits a *watering down* of language that is intended to leverage client action. We see that previous language referring to *encouragements* (which is already weak) or *conditioning* lending to clients on compliance, is now weakened by language such as "*suggests*", or "*supports*", which we see as troublesome, since IFC has very influential leverage not only over clients it finances but over the corporate sector's sustainability policy generally. Weakening conditionality or encouragement language, will lower the bar for corporations. IFC should be

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doing the opposite, *progressively raising the bar on corporate social and environmental accountability*.

On climate change we are not pleased with language in the proposed PSs, and feel IFC is missing an opportunity to set the stage for the decade to come on climate finance. In our discussions with IFC's upper management it seems that IFC is indeed working on the promotion of more climate-friendly investments and initiatives, however we do not see that reflected in the current policy and Performance Standards. It should be. We detail many issues in Section II of this commentary on *climate change* short falls of the present text.

We welcome efforts to incorporate human rights references in earlier text, but are concerned about the watered down and confusing direction this has taken in the later text, particularly because we see that it is not inline with growing global consensus on where the human rights and business debate is currently, including marked consensus coming from the corporate sector. More is included about this point in Section III below on *human rights*.

Paragraph by Paragraph Analysis and Recommendations

(NC = No Comment)

SUSTAINABILITY POLICY

Section 1: Purpose of this Policy

(PARAGRAPH NUMBERING CORRESPONDS TO IFC NUMBERING IN LATEST VERSION)

1. The initial paragraph of the Performance Standards (PSs) should contain strong up front wording (there presently is NOT) that the IFC is committed to sustainable development in the VERY first sentence. Presently the reference is to "positive development" which is entirely ambiguous, and not linked in any way to the concept of sustainable development. This has the effect of creating poor hierarchy of objectives, placing "positive development outcomes" which could perfectly be limited to profit growth, as a priority, while supporting *sustainable development* only as an additional objective. This FIRST idea and objective of the PS should be unequivocally associated to sustainable development. Currently, it is not.

We welcome the insertion of expansion of applicability of policy to other institutions or circumstances (IFC subsidiaries, investments funded by donors).

2. If sustainable development were more prominently referenced in paragraph one, as noted above, this paragraph should be used to provide more substance. The IFC should use this paragraph to make a firm commitment inline with the commitment established, for example, in the G20, or by the international community under the UNFCCC process, to combat climate change and/or work towards the achievements of the millennium development goals.

3. In the last phrase, IFC would apply the PSs to "proposed investments that have moderate to high risk", would hence the PSs for "proposed investments" that have low risk not apply? We would strongly support that the PSs apply to all proposed investments.

4. NC

5. NC

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6. (line 8) **We welcome** the return of language to “minimize” impacts, as opposed to “reduce”

7. To say that “responsibility is of the client” minimizes the role and responsibility (and leverage) that IFC has over client performance and activity. This is a very crucial point of having the PSs in the first place. The PSs should refer to a shared responsibility and recognize the role and influence IFC can have over client project design and systems management, even if that leverage is not formally conditional.

8. The removal of the concept of “sustainable private sector development in developing countries” as an essence of IFC’s work is troublesome. The wording should make reference to *developing countries* and in some way suggest that IFC’s work should promote sustainability. The present wording does neither of these.

9.

- Should bring back the deleted phrase, “Negative impacts should be avoided where possible”
- Should add the following to the previous phrase: *negative impacts should be properly identified, assessed and strategies developed to mitigate, ex-ante*
- Should add the following underlined words, “IFC is committed to ensuring that the costs and negative externalities of economic development do not fall disproportionately on those who are poor or vulnerable ...” (underlined text suggested as addition)
- Should bring back the deleted phrase, “[IFC should strive to minimize] restore, or compensate/offset, as appropriate”
- Should add the underlined words “IFC believes that the client’s regular, early and ex-ante (before a project begins) engagement with stakeholders ...” (underlined text suggested as addition)

10.

This paragraph is critical to IFC’s stated policy commitments to helping reduce climate change and address climate change impacts. The April 2010 version of edits to the PSs, while limited in their own rite, made a stronger commitment of the institution to addressing climate change. The first sentence of that edition read, unequivocally:

“IFC is committed to supporting low-carbon economic development.”

The first sentence in the December 2010 version reads rather weakly:

“IFC recognizes that climate change impacts may impede economic and social well-being and development efforts”.

This new sentence in the present draft is not only much weaker in terms of commitments to actually support low-carbon investments, but it also sheds doubt on the actual impacts of climate change relative to development. Just as climate change “may impact” well-being, it also may not, leaving the company reading these policies with unneeded ambiguity. While the new paragraph makes reference later to supporting low carbon investments, it does so as “*one dimension of a balanced approach to supporting access to modern, clean and reliable energy services*”. Again, this last sentence isolates climate-friendly investments, indicating that they are merely *one dimension* (there could be others, which also could be priority over climate-friendly investments). It is not necessary that IFC make this distinction in its PSs.

Needless to say, we expect the leader in global corporate sustainability policy to make a much firmer commitment and much firmer upfront statement recognizing that climate change impacts cause harm to the most vulnerable. IFC should certainly NOT lead the paragraph by suggesting any doubt as to the impacts of climate change! This may not have been the intention of the drafters of this present version, but it is nonetheless the consequence of the present text.

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Specific comments and recommendations to this paragraph:

- Include a strong opinion that IFC should commit to progressively lowering the carbon content of its' portfolio;
- (Line 10 of Annex A7) presently reads: "*IFC also believes that the private sector needs to implement appropriate climate adaptation measures that ensure financial, social, and environmental sustainability, of its investments, in the face of potential climate impacts*". It is irrelevant to state what IFC *believes* private sector clients should do; this phrase needs to be edited so that *IFC commits to supporting clients to implement appropriate climate adaptation measures that ensure financial, social, and environmental sustainability, of its investments, in the face of potential climate impacts*.
- (Line 16) which reads "*allow its clients to consider climate related risks*" is extremely weak, IFC should commit to encouraging, leveraging, promoting, etc. climate-friendly projects and options within projects.
- (Lines 17-23); these deleted lines should be brought back, with stronger wording and commitment that IFC works to reduce GHG in its portfolio, promote climate adaptation, offering clients options (or promoting) mitigation measures
- This paragraph should also guide the client to conduct *climate vulnerability assessments* or *climate impact assessments* where it is known that communities are climate-vulnerable.

Section II of this commentary is specifically focused on Climate Change with much further detail.

11.

- (Line 6) wording should be stronger, not that IFC "supports", but rather "that IFC is committed to promote and guide" the private sector's responsibility to respect human rights. This is the now accepted global terminology used to refer to the human rights relevance of corporate activity. IFC's PSs wording should at the very least reflect this consensus.

- This paragraph should state firmly that IFC supports the work and guidance provided by the key internationally accepted frameworks for inclusion of human rights in corporate governance and management, including, and particularly, the recommendations of the UN Special Representative on Human Rights and Business (Professor John Ruggie), as well as other guidelines such as the OECD Guidelines for Multinational Corporations, and other accepted international commitments such as the UN Global Compact. We are concerned that present wording is not in line with consensus that has been reached at the global level through the UN Special Representative's work and that the present language of paragraph 11 will thus generate conflict and unnecessary contradiction.

We welcome the inclusion of "impacts" in addition to "risks";

Section III of this commentary is specifically focused on Human Rights with much further detail.

12. NC

13. NC

14. (Line 9) Suggest to reintroduce the concept of IFC creating "sustainability value and public goods" which has been deleted.

15. Suggest to insert up front (in Line 1) that it is IFC's objective to promote sustainability in client projects, which the paragraph fails to do at present.

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16.

- It is unclear whether this paragraph is about IFC's internal footprint (that is, footprint of operations in the building at 21st an Penn ave in Washington DC) or if it is about it's portfolio lending and engagement with clients; clearly, IFC's commitment should be heavily directed towards reducing the carbon footprint of its portfolio, in addition to whatever it's own operational footprint might be;

- IFC should introduce stronger wording committing the institution to "reduce the carbon footprint of the clients it works with through the projects that IFC finances"; present wording states that "IFC has made a commitment to manage". This is extremely weak wording and also a very weak commitment;

- **We welcome** the commitment of "objective of achieving carbon neutrality of its global internal business operations" (Line 5)

17. IFC should establish stronger wording and commitment to addressing transboundary impacts of client projects. Providing "notifications" to clients is extremely weak. IFC should commit in this paragraph to refraining from providing any lending or advisory services to clients that have projects that prove to engender or that will likely engender undesirable, irreversible, transboundary impacts.

18. (Line 2), should read "the level of IFC's engagement is determined by the nature, ~~and~~ scope, and impact of the proposed investment or advisory activity" [we suggest adding "and impact"]

3. WE STRONGLY OPPOSE DELETION OF WHAT WAS PREVIOUSLY PARAGRAPH 3. as appears in the edits following paragraph 18.

4. WE STRONGLY OPPOSE DELETION OF WHAT WAS PREVIOUSLY PARAGRAPH 4. as appears in the edits following paragraph 18.

19. NC

20. Suggest the re-introduction of the deleted phrase, "~~IFC also considers whether and how its investment can be expected to contribute to the development of the host country and to broadly benefit its relevant stakeholders in economic, social and/or environmental terms~~"

21. Suggest the re-introduction of the deleted phrase, "There are several types of activities that IFC does not support ...". The idea that there are exclusion lists is *very* important to state, since it sets out a sense of boundaries and definitive no-go zones. The present phrase that remains is not sufficient as it only speaks of what IFC *does* finance, and misses the opportunity to show that there are some areas that are *not* good to finance. This was an important point made in the previous version that we would like to see return.

22.

-**Strongly oppose** deletion of reference in LINE 5, regarding client complicity with third party violations, and the expectation that IFC has that such an evaluation is carried out by the client.

-**Strongly oppose** deletion of last phrase reference to, "such as the risk of being complicit in gross human rights violations". This phrase should be brought back.

23. Suggested addition to END of paragraph, "including cancellation of loans not yet disbursed, or suspension of any pending payments"

24. Add "impacts" to the first phrase (LINE 3), to read, "is appropriate to the nature, scale, stage, and impact of the business activity"

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25.

We suggest the addition of the underlined text as follows “IFC will review the environmental and social management system and risk management practices already in place, as well as the social and environmental assessment (or human rights impact assessments where appropriate) and community engagement undertaken by the client and/or third party ...”

We welcome the inclusion of “community engagement” in Line 6.

26. **Strongly disagree** with the removal of Lines 13-22. It is very important that IFC review the client’s commitment and capacity to manage risks and impacts, which has now been removed through the deletion in this paragraph. There is also an “additionality” feature in this paragraph (Line 20, referring to “additional studies”) that has been deleted which is also highly necessary to maintain.

27. NC

28.

- While **we are pleased to see the inclusion of Informed Consultation Process (ICP) language** in Paragraph 34 of PS1, we strongly urge that the same language be used in paragraph 28, including the references to “free” and “prior” with regards to consultation;.

- Disagree with the deletion of “stakeholders” from the text (lines 8, 9, and 10);
- Should make reference in each case to “communities and other stakeholders”
- Disagree with the deletion in LINE 12 of, “IFC discloses the rationale for its determination of BCS in the Board Paper”. IT SHOULD BE BROUGHT BACK.

Other specific word edit comments:

- Delete the word “potential” in Line 1
- Change the word “expects” in Line 3 to “requires”, or something conjuring up MORE obligatory conditionality; IFC has also eliminated this requirement in Para 46! IT SHOULD BE BROUGHT BACK!
- This paragraph should mention that affected communities may be across borders or in other jurisdictions;

29.

-We strongly welcome introduced wording in this paragraph on FPIC (Free, Prior and Informed Consent) with regards to communities of indigenous peoples;

- This requirement of a review of the process conducted should ALSO apply to IFC due diligence, not only to the clients;

30. NC

31.

- Line 1: change “supports” to “promotes”
- Line 2: add underlined “to manage social and environmental risks and impacts.”
- Same comment as Line 2, to Lines 5, 6, 8
- reintroduce last line deleted related to IFC’s monitoring of FI’s addressing of social and environmental risks

32.

- Line 1: should add the following underlined text: “manage social and environmental risks and impacts related to FI investments”. Same comment for lines 3 and 4
- Line 2: should reintroduce deleted reference to “due diligence”

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- Disagree with deletion of Line 8, reference to requiring FIs to apply PS 2 to its workers

33.

-**Disagree strongly** with the applicability of the PSs to FIs only in projects with moderate to high social and environmental risks (lines 11-12). PSs should apply to all projects;

-Disagree with deletion of Lines 14-16, regarding FIs application of Exclusion List, following national laws, etc.

34. NC

35. NC

5. NC

6. NC

36. We welcome the introduction of this paragraph

37. NC

38. NC

39.

STRONGLY DISAGREE with this edit and specifically the elimination presently considered which reads: “IFC’s institutional requirements for disclosure ~~to the public project specific information prior to presenting projects to the Board of Directors for approval in accordance with Section 12 of the Disclosure Policy~~”. The wording “to the public project specific information prior to presenting projects to the Board of Directors for approval” should be brought back as this condition is critical to assuring IFC’s due diligence relative to community consultations and risk management.

40. NC

41. NC

42. We are not pleased with the approach taken by IFC on this point, where information is not sufficient. It seems that IFC should take on greater responsibility to clarify impacts before proceeding. As a first step, greater sensitivity and communication to affected communities and stakeholders should be taken, perhaps also more time given for public commentary.

43. NC

44.

Previously deleted paragraph 34 which read: “Encourage the client to report publicly on its social, environmental and non-financial aspects of performance ...” **SHOULD BE BROUGHT BACK** and graduated from *encouragements* to requirements

7. NC

8. Disagree with elimination of this paragraph on case of extractive industries

9. NC

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Advisory Services: Disagree with elimination of this section

45.

Add a point at end bullets encouraging partnerships on best available climate-friendly technology and climate change policy/adaptation, etc.

46. NC

47. NC

48. **Disagree strongly** with the elimination of previous paragraph 10, LINE 12 in the current text, relative to the “key agreements that are of public concern, such as (HGAs)” in extractive industries investments; the subsequent wording in the next paragraph does not suffice for this point; the mention of HGAs as well as “key agreements that are of public concern”, is key.

49. **We welcome** this text and IFC commitment, although we would like to see this made effective IMMEDIATELY for all new projects, not in two years as currently indicated by the paragraph.

50. **WE DISAGREE STRONGLY** with the allowance for disclosure in summary form of “the key terms and conditions under which the resource is being developed”; IF THIS CONDITION AND WORDING IS MAINTAINED, the IFC should at the very least require to see the terms to assure that the summary includes the KEY points and wording that would allow for stakeholder comments;

51. We disagree with the inclusion of this paragraph. There is no need to limit the condition of disclosure of key agreements to the “principle investment”

52. NC

53. NC

54. The terms “stakeholder” should be added to “community” in Line 2

55.

After this paragraph, IFC should add a paragraph COMMITTING ITSELF to review CAO observation, conclusions, recommendations and provide actions/answers or justified dismissals to such recommendations.

56. NC

PERFORMANCE STANDARD 1: ASSESSMENT AND MANAGEMENT OF SOCIAL AND ENVIRONMENTAL RISKS AND IMPACTS

1. the deleted term “stakeholders” in Line 6, 7, should be brought back systematically and always included alongside the term “communities”

We welcome the expansion to include affected communities from previous PSs and from the April 2010 version.

CENTRO DE DERECHOS HUMANOS Y AMBIENTE (CEDHA)

2.

-Disagree with deletion of the term “land clearing” in Line 7. This has been an important topic in which IFC financing of land clearing projects has raised considerable and very significant opposition from local communities;

In Objectives,

- **we welcome** the replacement of “reduce” with “minimize”

- **we disagree with deletion of term “stakeholder”** – see above comment from paragraph 1

- **we disagree with the deletion of the 4th bullet point** under objectives, referring to building constructive relationships and appropriate stakeholder engagement; it should be brought back

- **we disagree with elimination** of paragraph on accessibility of relevant social and environmental information; the subsequent paragraph does not cover the issue of “access to information” per se

We welcome the expansion of applicability to affected communities.

3. We strongly disagree with the idea that this point applies to “In some cases” (Line 4); the previous wording was stronger and more appropriate.

4.

Suggest to add a reference in this paragraph to: “where appropriate, Human Rights Impact Assessments”

5.

IFC could include in this paragraph or in paragraph 6 an encouragement for clients to include a statement on human rights policy, or require it where human rights impacts have been deemed to be relevant;

6.

This paragraph could also include mention, “where appropriate assessments may include a “Human Rights Impact Assessment”.

The last sentence referring to trans-boundary impacts, should include the phrase “including identification of stakeholders and affected communities across international borders”

7.

Transboundary facilities should be included, they presently are not.

8. NC

9. (Previous Paragraph 9) **Strongly disagree** with elimination of this paragraph on risk assessment in various stages, as well as assessment of third party responsibility; it should be brought back. Wording in new paragraph 9 relative to supply chain **does not suffice** for third party assessment;

9. (New Paragraph 9) The condition of where the client “can reasonably exercise control” is not sufficient, as the client should have a contingency plan precisely where it cannot exercise control. The mere reason of not being able to exercise control does not warrant not assessing risk!

- Footnote 9:

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The reference note number 9 that appeared in the April 2010 version by IFC in paragraph 6 (Identification of Risks and Impacts) stated very positively:

“Relevant risks and impacts to consider and identify if reasonably expected to be significant include, among others those relating to **climate change**, human health, **human rights**, gender differences, ecosystems functions, and access to water resources”. [bold added].

We **strongly disagree** with the deletion of the references to **climate change** and to **human rights** in this sentence in the December 2010. They should be brought back.

10. Reintroduce the deleted term “stakeholder” in last line.

11.

We welcome the reinsertion of “individuals” from the earlier version of the revisions where it had been deleted.

13. NC

12. NC

13. (New Paragraph 13). Insert the term “and impact” in addition to “nature and scale” in Line 1

14. Reintroduce deleted term “stakeholder” in last line.

15. NC

17. (Previous paragraph 17). Disagree on the removal of this text and its content on Action Plans from the main body of the PS.

16. NC

17. NC

18. NC

19. Reintroduce deleted term “stakeholder” in Line 9

20. Reintroduce deleted term “stakeholder” in Line 2 and 8

21. Reintroduce deleted term “stakeholder” in Line 7

22. Reintroduce deleted term “stakeholder” in Line 7

23. NC

24. **Strongly disagree** with the deletion of the term “participation” from Line 7 (Annex B); this is a critical dilution of IFC’s policy!

Line 4: change “may” to “must”

25. NC

26.

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VERY CONCERNED with the elimination of what was previously paragraph 29 on External Reporting on Action Plans; that paragraph read:

29. The client will disclose the Action Plan to the affected communities. In addition, the client will provide periodic reports that describe progress with implementation of the Action Plan on issues that involve ongoing risk to or impacts on affected communities, and on issues that the consultation process or grievance mechanism has identified as of concern to those communities. If the management results in material changes in, or additions to, the mitigation measures or actions described in the Action Plan on issues of concern to the affected communities, the updated mitigation measures or actions will also be disclosed. These reports will be in a format accessible to the affected communities. The frequency of these reports will be proportionate to the concerns of affected communities but not less than annually.

It seems that this content was edited and folded into this new paragraph 26, but the new wording fails to capture the obligatory essence of reporting on action plans and actions. **We strongly suggest** the wording and commitments stated in previous wording reappear in this paragraph or elsewhere.

27. NC

28. Reintroduce deleted term “stakeholder” in Line 1, 5,

29. Reintroduce deleted term “stakeholder” in Line 4, 6

30. Reintroduce deleted term “stakeholder” in Line 2

31. Reintroduce deleted term “stakeholder” in Line 2, 5, 8, 15

32.

- Add “and other stakeholders” to communities in Line 1
- Reintroduce deleted term “stakeholder” in Line 6, 11, 13

33. (New paragraph 33) Add “and other stakeholders” to communities in Line 1

33. (Previous paragraph 33) disagree strongly with elimination of wording and content of this paragraph. Subsequent new paragraphs and wording fail to capture the concept of “opportunity to express views”, and “client response” ; this is a key element of exchange and addressing of views;

34.

- **We welcome** the introduction of the Informed Consultation Process (ICP) for affected communities under this section
- We are not pleased with the limitation of ICP only for projects with “significant adverse impacts” and suggest that ICP should be more broadly applied;
- Reintroduce deleted term “stakeholder” in Line 1, 6, 9
- Add “and other stakeholders” alongside “communities” in Line 3

35. We strongly welcome the inclusion of Free Prior and Informed Consent, as relates to communities of indigenous peoples (FPIC);

36. Add “and other stakeholders” alongside “communities” in Line 2, 5, 9

37. Reintroduce deleted term “stakeholder” in Line 1, 3, 4, 7, 9, 10,

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38. NC

PERFORMANCE STANDARD 2: LABOR AND WORKING CONDITIONS

1. NC

2.

In Objectives:

- **Strongly Disagree** with deletion of term “worker rights” from text; it should be brought back; this is a term for the promotion of Human Rights and is a key example of how the IFC is avoiding its policy commitments to Human Rights;

- There should be some mention of deference/respect to Human Rights in this paragraph.

- The policy should oblige the client to respect both international labor laws as well as national laws and where there are different degrees of legal standards, the client should adopt whichever is higher;

- Objectives (second objective): Disagree with the elimination of the phrase “the fair treatment, non-discrimination and equal opportunity of workers, and ...” ; it should be brought back

3. NC

4. NC

5. NC

6. NC

7. NC

8. NC

9. NC

10. NC

11. NC

12. NC

13. NC

14. NC

15. NC

16. NC

17. NC

18. NC

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19. NC

20.

- The policy should add somewhere in this paragraph, “and where it is considered appropriate/applicable particularly where there is fear of threats, bodily harm, or other reprisal, the client shall provide an anonymous mechanism for complaint presentation” ;

- A third and independent party verification/participation recommendation would also be appropriate as a policy measure for complaints;

21. NC

22.

- The policy might add the idea that “ where trafficking of women, children, minorities or vulnerable groups are common, the client will take extra precaution and establish policy and measures to assure that no trafficking of workers is taking place’ ;

23. NC

24. NC

25. NC

26. TEXT IS MISSING???

27. NC

28. NC

PERFORMANCE STANDARD 3: RESOURCE EFFICIENCY AND POLLUTION PREVENTION

General Comments:

The name of the PS should be “Pollution Prevention and Resource Efficiency”, not the other way around! The order establishes priority, and pollution prevention should **definitely** be the priority. This change should also be made throughout the text where the phrase appears.

PS 3 should start off with a strong statement affirming IFC’s commitment to financing projects that both reduce and prevent pollution as well as seek energy efficiency where possible. It presently does not, making reference to an existing problem, which could form the launch of the second paragraph or subsequent phrases. This is an important PS in which IFC needs to establish a firm and proactive policy geared towards pollution prevention and towards energy efficiency. It is missing an important opportunity to do so.

In this context, we also **strongly disagree** with the removal of para. 4, which stated that,

“The client will promote the reduction of project related greenhouse gas (GHG) emissions in a manner appropriate to the nature and scale of the project operations and impacts”.

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The new text in para 6, **does not** suggest “reduction of GHGs”, but rather only refers to improving efficiency, which is substantially weaker.

Para 7, which also makes reference to GHG, **does not** satisfy this issue either, as it does not specifically recommend reduction of GHGs, but **only** refers to the requirement that the client have “evaluated” options during design and operations phases. This paragraph should make more bold recommendations that the client chose the most pollution and climate-friendly options if they are within the reasonable scope and finance of the project.

Paragraph by paragraph comments:

1. see *General Comments* above

2.

- **We welcome** the replacement of “reduce” by “minimize” in the Objective section, and subsequently throughout this section; we will not make reference to other such cases in subsequent comments.

3. NC

4. NC

5. NC

6. NC

7.

-**Strongly disagree** with elimination of “Energy use and” in the heading and content of this section; Energy use is a key example of the issues we are talking about and its elimination greatly reduces the scope of the real discussion and issues at stake;

- **Strongly disagree** with the deletion of Line 1

- IFC should make a much stronger statement in this paragraph committing to promoting client adoption of Energy friendly options in their investments, as well as long term GHG reductions;

- The policy should specifically state that the client should opt for reduction of GHGs when the options to do so are reasonable;

- The IFC should require in this paragraph that the client, if it chooses more contaminating options, explain why it has done so;

- IFC should make a much stronger statement and commitment to offering and expecting that the client choose energy-friendly and GHG-friendly options;

8. **Strongly disagree** with the deletion of 5-11, regarding evaluation of options for reducing GHG, using alternative energies, emissions offsets, mitigation measures, etc.; These should be brought back;

9.

- The policy should add, “recycling water” in the sentence that begins. “These measures include...

- The policy should call special attention to “clients operating in arid regions, where water for human and agricultural consumption is scarce”.

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10.

- **Strongly disagree** with deletion of phrases in Lines 2-3 regarding adverse impacts to human health and environment; these should be brought back;

- **Strongly disagree** with deletion of Lines 5-7, regarding opportunities to include resource conservation and energy efficiency measures;

- this paragraph should add the requirement to assure a “baseline assessment” of environmental conditions.

11. NC

12.

We welcome the replacement of “reduce” by “avoid or minimize”.

13. **Strongly disagree** with deletion of Lines 9-10, regarding consideration of use of less hazardous substitutes for contaminating chemicals and materials; these should be brought back;

The IFC should require that the client chose “the least contaminating technology option” where that choice is viable and project design and costs are not significantly altered.

14. NC

15. NC

16. NC

17. NC

PERFORMANCE STANDARD 4: COMMUNITY HEALTH, SAFETY AND SECURITY

1.

We welcomed the previous insertion (see version April 14 2010) of the idea that “communities are affected by impacts resulting from lack of access to public buildings, impacts to their natural resources that they use, exposure to disease, and from misuse of security personnel”. (underline added).

We hence are concerned with the regression made on this version, which now eliminates in particular, the wording “impacts to their natural resources that they use”.

This sort of impact is key from large infrastructure projects, particularly on resources such as water. **It should be kept in this first paragraph** as it is key.

We welcome the replacement of “Reduce” with “minimize”

2.

In Objectives

Reintroduce deleted term “stakeholder” in Line 2, 6

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We welcome the replacement of “reduce” with “avoid or minimize”

3. NC

4. Reintroduce deleted term “stakeholder” in Line 1

5. Reintroduce deleted term “stakeholder” in Line 1, 2

We strongly disagree with the elimination of the following paragraph (previously 6) plus insertions found in the April 2010 version with markups, beginning with:

6. Where the project poses risks to or adverse impacts on the health and safety of affected communities the client will disclose the Action Plan and any other relevant project-related information to enable the affected communities and relevant government agencies to understand these risks and impacts, and will engage the affected communities and agencies on an ongoing basis consistent with the requirements of Performance Standard 1. In a high risk project, where the affected communities are expected to bear the burden of adverse impacts from the project, Community Development Plans may be required to document how project benefits may be shared with the communities to achieve their development goals over the life of the project.

6. NC

7.

We welcome the replacement of “reduce” with “avoid or minimize”

8.

- Add “and other stakeholders” alongside “communities” in line 2
- Disagree with elimination of Lines 14-18, regarding climate vulnerability of certain communities; It should be brought back

9. NC

10.

- We welcome the replacement of “reduce” with “avoid or minimize”

11.

- Para 11. **Strongly disagree with the elimination of the phrase** “The client will assess the potential risks and impacts from the project activities and inform affected communities of significant potential hazards in a culturally appropriate manner”

- Reintroduce deleted term “stakeholder” in Line 2, 9

12.

- **STRONGLY DISAGREE** with deletion of human rights reference in Line 5, 7;

THIS IS AN EXAMPLE OF WATERING DOWN OF IFC’S COMMITMENTS TO INCLUDE HUMAN RIGHTS IN POLICY

- Reintroduce deleted term “stakeholder” in Line 9, 12

13. NC

14. NC

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PERFORMANCE STANDARD 5: LAND ACQUISITION AND INVOLUNTARY RESETTLEMENT

1. NC

2. NC

3. NC

4. NC

5. (Previous Paragraph 5). **Strongly disagree** with the elimination of this paragraph concerning previously gained livelihoods of previously utilized lands with no ownership; it should be brought back.

6. **Strongly disagree** with the elimination of Lines 5-9, referring to loss of access to assets or resources... we strongly suggest to bring back this phrase as it is commonplace that this occurs.

7. NC

8.

- We welcome the replacement of “reduce” with “avoid or minimize”

9. NC

10. **Strongly disagree** with elimination of Lines 8-12 as it provides assurances of engagement with affected communities on compensation packages; it should be brought back.

11. NC

12. **Strongly disagree** with the elimination of the term “compensation” from the heading of this paragraph. It strongly dilutes the essence of this safeguard which is a retribution for losses; It should be brought back.

Disagree with the elimination of the three paragraphs previously listed as Para 13 beginning “In the case of Type transactions (acquisition ...” suggest to bring this back.

13. NC

14. **Strongly disagree** with the elimination of the term “compensation” from Line 2. It strongly dilutes the essence of this safeguard which is a retribution for losses; It should be brought back.

15. **Strongly disagree** with the elimination of the term “compensation” from Line 3, 5. It strongly dilutes the essence of this safeguard which is a retribution for losses; It should be brought back.

16. **Strongly disagree** with the elimination of the term “compensation” from Line 3, 7. It strongly dilutes the essence of this safeguard which is a retribution for losses; It should be brought back.

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17.

We disagree with elimination of paragraph originally listed as 17, which read:

17. Land acquisition for the project may result in the physical displacement of people as well as their economic displacement. As a result, requirements for both physical displacement and economic displacement may apply.

We suggest to bring this text back.

18. NC

19. NC

20. NC

21. NC

22. NC

23. NC

24. NC

25. **Strongly disagree** with the elimination of the term “compensation” from Line 2, 4, 8. It strongly dilutes the essence of this safeguard which is a retribution for losses; It should be brought back.

26.

We welcome the reinsertion after deletion (in the April 2010 version of edits) of the phrase in parenthesis “(such as crops, irrigation infrastructure and other improvements made to the land)”; as this point is typical of the losses suffered by such vulnerable communities, with no defense or retribution thereafter;

27. NC

28. NC

29. NC

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PERFORMANCE STANDARD 6: BIODIVERSITY CONSERVATION AND SUSTAINABLE MANAGEMENT OF LIVING NATURAL RESOURCES

Comment to TITLE:

Disagree with inclusion of term “Living” in the heading. There are many natural resources that are NOT considered Living (rocks, mountains, ice, etc);

1. NC

2.

Footnote 1, relative to environmental services, should include a mention of glaciers and glacier melt runoff;

3.

In Objectives

- Disagree with addition of term “living” natural resources; we suggest deleting this term;

The last line of this paragraph should include a reference to time implications of impacts, “short, medium and long term”, since in many cases, impacts are cumulative and can only be evidenced in long periods of time.

4. NC

5. Disagree with addition of term “living” natural resources in Line 7; we suggest deleting this term;

6. Disagree with deletion of “climate change” in Line 9; it should be brought back;

- suggested addition: This paragraph should stress the importance of measuring impact to glaciers, glacier perimeters, glacier ecosystems (glaciosystems), and glacier melt runoff;

7. NC

8. NC

9. NC

10. NC

11. NC

12. NC

13. NC

14. NC

15. NC

16. NC

17. NC

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18. NC

19. NC

20. NC

21. NC

22. NC

23. NC

24. NC

25. NC

26. Disagree with addition of term “living” natural resources in Line 1, 6; we suggest deleting this term;

27. Disagree with addition of term “living” natural resources in Line 2; we suggest deleting this term;

28. NC

29. Disagree with addition of “living” natural resources in Line 2, 9; we suggest deleting this term;

30. NC

31. NC

PERFORMANCE STANDARD 7: INDIGENOUS PEOPLES

1. There should be a mention of vulnerability to climate change in this paragraph.

2.

- We welcome the replacement of “reduce” with “avoid or minimize”

Objectives

- **We strongly welcome the inclusion of Free Prior en Informed Consent (FPIC) for communities of indigenous peoples;**

3. NC

4. NC

5. NC

6. NC

7. NC

8. NC

9. NC

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10. Edits to this paragraph have left out a key element to IFC's indigenous policy, particularly relevant to the right of participation, which is not reflected in the word choice or meaning in subsequent paragraph edits, specifically:

- in Line 5, the following phrase has been deleted and should have the underlined essence brought back in subsequent language, "facilitate their informed participation on matters that affect them directly, such as the projects direct and indirect adverse impacts, proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues";

11.

- **Strongly disagree with the elimination of content** in LINES 1-4. They should be brought back.

12. NC

13. NC

14. NC

15. - **We strongly welcome the inclusion of this paragraph on Free Prior en Informed Consent (FPIC) for communities of indigenous peoples;**

16. - **We strongly welcome the inclusion of this paragraph on Free Prior en Informed Consent (FPIC) for communities of indigenous peoples;**

17. NC

18. NC

19. NC

20. NC

21. NC

22. NC

23. NC

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PERFORMANCE STANDARD 8: CULTURAL HERITAGE

1. NC

2. NC

3. NC

4. NC

5. NC

6. NC

7. Include “and other stakeholders” alongside communities.

8. NC

9. NC

10. Include “and other stakeholders” alongside communities, Line 6, 7, 8, 13, 15.

11. NC

12. Include “and other stakeholders” alongside communities, Line 6, 7, 8, 11

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ACCESS TO INFORMATION POLICY

We welcome the change of name from “disclosure” to “access to information” as it reflects commonly accepted language.

As an overall observation and pertinent to IFC's addressing Human Rights issues, IFC should consider adding a paragraph or phrase, preferably upfront, perhaps in Paragraph 1, stating its commitment to disclose any and all information that is discovered which may imply violations to human rights.

IFC should consider adding a paragraph (e.g. in relation to existing paragraphs 9 or 10) relative to the requirement of clients to disclose significant results of human rights impacts assessments and other related information that would be important to communities and stakeholders.

Another aspect that has not been sufficiently addressed in this revisions round is IFC's needs to improve disclosure around Broad Community Support, which is presently limited and insufficient.

Finally, and as another general observation, IFC needs to encourage third party Financial Intermediary Institutions to improve their disclosure particularly where the corporate veil does not warrant the retention of critical human rights impact information.

Paragraph by paragraph commentary follows:

1. We strongly suggest that the deleted Line “IFC believes that transparency and accountability are fundamental to fulfilling its development mandate and to strengthen public trust in IFC and its clients” is fundamental to appear up front and in this very first paragraph. IFC has moved this line to paragraph 3, which lowers its prominence. We suggest to bring it back or at the very least maintain the principles commitment in some other form in this very first paragraph. We accept the wording chosen, in this regards, provided in current paragraph 3 which captures our concerns and is much improved from previous text.

2. NC

3. See comments to paragraph 1.

4. NC

5. NC

6. NC

7. NC

8. NC

9. NC

10. NC

11. This section has a long list of sensitive and critical issues that are worth debating between IFC, EDs and other stakeholders. While the sensitivity of internal documentation concerning deliberation might merit withholding from public scrutiny, IFC is a public institution comprised of national governments, which are also public entities. It is for this reason that further debate is needed on such a comprehensive list of non-disclosed items, many of which seem to be of very

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public character. One option, although the option would not preclude further discussion on this topic, is to offer a right of contestation by interested parties to have the non-disclosure waved in specific circumstances with some neutral body (such as the CAO) deciding on that right following consultation with the EDs, for example. Given the importance and sensitivity of these issues, we suggest holding a special consultation on the many proposed items in section 11 of the policy.

12. NC

13. NC

14. This condition should include a value statement and limitation in regards to such withholding if it might cause undue impacts on communities, environment, etc. There needs to be some criteria of impact associated to this discretion given to Directors where there are impacts involved.

15. NC

16. NC

17. NC

18. NC

19. NC

20. NC

21. We strongly encourage IFC to publish ownership investments (stock purchases, or co-investments) made by company and by sector, each year, and give particular emphasis to any sectors, such as extractive industries, dams, coal energy, etc where the World Bank Group has already established policies because of these sectors' sensitivity or high adverse social/environmental impacts;

22. NC

23. NOT CLEAR WHAT TEXT IS FOR SECTION 23???

24. NC

25. NC

26. NC

27. NC

28. NC

29. NC

30. NC

31. NC

32. NC

33. NC

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34. NC

35. NC

36. NC

37. NC

38. NC

39. NC

40. NC

41. NC

42. NC

43. NC

44. NC

45. NC

46. As in the case of IFC, AMC should abide by the suggestions made in Para 21 (above), relevant to reporting on sensitive sectors by sector and company.

47. NC

48. NC

49. NC

50. NC

51. NC

52. NC

53. NC

54. NC

55. NC

56. NC

57. NC

58. NC

59. NC

60. NC

61. NC

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62. NC

63. NC

64. NC

65. NC

66. NC

67. NC

68. NC

69. NC

SECTION II:

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IFC's Treatment of Climate Change in the Proposed Performance Standards Text (2010-2011): Streamlining with G20 and UNFCCC Commitments

1. Global debate and negotiations on climate change are advancing rapidly and are at a critical stage with some noted advancements recently as occurred at the last COP meeting in Cancun in November of 2010.
2. States and corporations are actively moving and seeking guidance on how to adopt their policies, orient their financial investments and design projects that are not only utilizing more climate-friendly technologies, processes and management systems but that also focus on, for example, switching from fossil fuels to renewable energy sources. The goal of achieving climate and energy efficient orientation of nearly all corporate policy and investment is now firmly entrenched in nearly all sectors.
3. The role of the World Bank Group in this evolution has been controversial and has generated significant conflict with many developing country governments, concerned over the fairness, equity and political intentions with which the World Bank manages discretion over the use of climate finance. It is critical for the World Bank to ensure that it plays a clear and constructive leadership role in the guidance and definition of trends deriving from international climate finance negotiations so that development finance generally is more climate-friendly and that the World Bank Group's agencies, particularly IFC, sends the right signals to the various actors (governmental and private sector) that must decisively and actively engage to make a global transformation to a more climate-friendly low-carbon economy.
4. In this context, we cannot sufficiently emphasize the critical role played by IFC to engage, advise and guide private sector actors in this direction, sending not only the proper signals to the private sector so that they make the right climate relevant choices, but also leading the way with concrete policy recommendations and advisory assistance on the development of policy and management tools. In this regards, more than ever, *the Performance Standards and IFC policy that will be approved in 2011 needs to make clear, unwavering commitments to helping move our global economy towards more efficient energy options and to lower our carbon fossil fuel dependency, while orienting IFC's advisory assistance and lending operations to offer more climate-friendly services and products.*
5. Further, it is clear from the evolving field, that IFC can play a major role in helping clients assess the climate relevance of their investment strategies and projects, not only in regards to ensuring that they have properly considered climate-friendly technology,

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- management systems and policy, but that they have also taken stock of the climate impact relevance of their activities and investments. In this regard, the importance of *climate impact assessments*, which today are largely unclear in terms of methodology and process, are a critical component of any investment. IFC can play a fundamental role in elaborating standards, developing guidelines, and showcasing best practice with a view to help clients carry out this critical step in their project cycles and planning. IFC has not committed yet to this key role it has great comparative advantage in undertaking. Much of this can be done through the content and text of the PSs.
6. *We welcomed some preliminary but important policy advances and wording on IFC commitments to revert climate change that were introduced in the April 2010 version (Annex B as presented by IFC to the Board of Directors) of edits, which more firmly committed IFC to promoting climate-friendly investments, to encouraging the reduction of GHG emissions in client operations, and which offered guidance to its clients on climate matters, but find that the December 2010 version (Annex A) of the PSs has effectively regressed from the April 2010 text version on such directions, and has actually regressed even from the existing Performance Standards (version 2006).*
 7. These regressions are extremely troublesome, especially given that inter governmental negotiations on climate change are moving at a much quicker pace than is IFC on establishing clearer policy and commitments to address climate change, leaving IFC behind in terms of what States are expecting and in terms of what IFC can offer to clients in this regards. If this trend is maintained, IFC will inevitably lose relevance in climate finance circles and its own evolution relative to the climate agenda will be defined and imposed by other actors instead of forged by IFC.
 8. The first and most relevant mention by the December 2010 Performance Standards to IFC's climate policy is found in the Sustainability Policy section in paragraph 10, under IFC's Commitments, which is the key paragraph in the PSs where IFC's Climate Change Policy is grounded.
 9. In reviewing the text of paragraph 10, we prefer language used in the April 2010 version which for example, unequivocally committed IFC to **support low carbon development**. This commitment has disappeared in the December 2010 version and surprisingly in the new text, IFC leads this most important paragraph relative to climate change *by casting doubt* on the effects of climate change, by saying that "IFC recognizes that climate change **may impede** economic and social well-being and development efforts".
 10. Word choice, especially in a lead phrase such as this one, in the most climate relevant paragraph of the Performance Standards, is extremely important to set the tone and send the right signals to clients of IFC's policy with regards to climate change. "*May impede*" to a client that may have doubts about taking steps to address climate change in their investments, means very simply, "that climate change may also **not** impede development". If IFC's goal is to encourage clients to move towards climate-friendly investments, leading climate policy with such a doubtful phrase, is the wrong signal. *Clients need to know that the World Bank is clear that climate change is a problem, and that the World Bank is moving to renewables, and eventually out of carbon-financing.* That signal needs to set the tone for long term investments, otherwise clients will sense that carbon-finance will always be a part of the portfolio and hence always have a high carbon option for their own investments. In sum, IFC needs a much bolder and clearer statement which sets the long term target and offers the right signal, affirming unequivocally that it will work to reduce carbon emissions, and provide leadership on moving the world towards a more climate-friendly low carbon development model.
 11. Further down, in the same section, in the new text IFC has deleted the phrase, "**IFC works towards the reduction of greenhouse gases**", which appeared in the April 2010

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- version, and instead includes this aspect as a *responsibility of clients*. While clients definitely have the ultimate responsibility, IFC should show by example, and should take more initiative in driving the debate, and as such, assume complimentary responsibility in climate policy and practice.
12. In this same new text of paragraph 10 of the Sustainability Policy, IFC also indicates that climate change is merely **one dimension** of the problem. While this may be the case, specifically isolating climate change as a *single dimension*, rhetorically suggests that there are more dimensions, and as such, *climate change is minimized* to one of several dimensions in the client's mind. With such language, a corporate climate change skeptic will place climate change priorities at a lower level, discouraging more climate-friendly solutions to investments.
 13. Another extremely poor choice of wording in paragraph 10 suggests that IFC will develop practices "**that allow its clients to consider climate-related risks and opportunities in their investments decisions**". (underline is added). This phrase shows a very poor choice of wording and concept. It is *irrelevant* that IFC *allows* a client to consider climate-friendly options. Clients can consider whatever they want, it is a client's ultimate *choice* (not their consideration of choices) over which IFC can have significant influence. IFC needs to be more direct and more definitive in its policy about what it expects clients to do relative to climate change, and it needs to be clear in the policy wording that IFC *expects* clients to consider climate-friendly technology opportunities in its investments **and to chose climate-friendly options** that are available if they are reasonably similar in costs, for example. IFC's policy on climate change should be guiding clients and facilitating the development of practices and enabling investment decisions to invest in climate-friendly technology, not merely *encouraging* it.
 14. Other examples of IFC's watering down of earlier attempts to introduce bold and reasonable climate policy are for example, the reference note number 9 that appeared in the April 2010 version by IFC in paragraph 6 (Identification of Risks and Impacts) which stated very positively:

"Relevant risks and impacts to consider and identify if reasonably expected to be significant include, among others those relating to **climate change**, human health, human rights, gender differences, ecosystems functions, and access to water resources". [bold added].
 15. The reference to **climate change** in this sentence has been deleted in the December 2010 version of the Performance Standards and should be brought back.
 16. In PS 4, Para 8, the new text has eliminated references to the *compounded affects of climate change on vulnerable communities*.
 17. In the latest text coming from the UNFCCC's Cancun statement, States universally agree that "the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status and disability".¹ As a development agency whose aim is to reduce poverty, IFC should firmly embrace this concept and this universally agreed wording. Yet it is unfortunate that on this point, IFC's policy is moving in directions different from what governments are already saying and committing to on climate policy and implementation.
 18. Further, in PS 6, Para 6, the new text has eliminated a key reference to climate change relevance to biodiversity loss.

¹ See Ad Hoc Working Group on Long-term Cooperative Actions under the Convention. United Nations Framework Convention on Climate Change. GE.10-7091. 10 December 2010. p. 2

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19. IFC's weak policy commitments to addressing climate issues, in contrast to *commitments* that are being made and that are of common agreement amongst world leaders, reveal to clients that IFC is an institution that is not aligning with those global political commitments. As such, clients will be confused and will tend to doubt their own policy intentions, or commitments they might have otherwise intended to make, as well as signals coming from their respective States encouraging climate friendly investments.
20. The language used by IFC in the latest version could even be read to suggest that IFC is doubtful as to whether climate change actually has any relevance at all on development, "climate change *may* affect development", it is "one dimension". The world and IFC's clients in particular are looking for, and are in need of, precisely the opposite, *bold, strong leadership* from IFC and they are not getting it from present language of the PSs.
21. We feel strongly that IFC is missing an opportunity to steer the World Bank towards promoting and setting a baseline for effective, bold, yet reasonable climate policy. Ironically, we do see this sort of bold commitments coming from some of the key intergovernmental forums discussing, advancing and setting global policy on climate change. Some of the more critical forums where this is taking place include: the UN Framework Convention on Climate Change (UNFCCC), the G20, The Montreal Protocol, etc..
22. It is not unknown that many States negotiating climate change policy under the UNFCCC process have resisted entrusting discretionary lending decisions to the World Bank on climate change policy and finance. This adverse environment relative to World Bank participation in climate finance is grounded in the mistrust many countries have of the World Bank to deliver fair and equitable development solutions that are neutral relative to the politics and policies of industrialized nations.
23. The sort of text offered by IFC in this review process will not help revert this fear or mend this problem. On the contrary, weak and uncommitting text will aggravate it. IFC must step up to the challenge of committing itself to recognizing the reality and urgency of climate change, and to combating and steering its lending portfolio in the right direction, particularly given the World Bank's new role as interim trustee of the Green Climate Fund established at the last UNFCCC meeting in Cancun this past November.
24. We offer here some suggestions to strengthen the Performance Standards with respect to incorporating effective, bold and yet reasonable Climate Change Policy for IFC's Performance Standards.
25. To begin with we suggest eliminating paragraph 10 and redrafting the text of the paragraph to include all or a significant portion of the following commitments and ideas:
26. That IFC is committed to:
 - long term lowering GHG emissions in project lending and operations;
 - creating a GHG inventory of IFCs lending portfolio;
 - promoting climate-friendly investments;
 - reducing and eventually phasing out fossil fuel/carbon energy financing;
 - financially assisting developing countries in this renewable energy switch (which would imply subsidies for renewable solutions);
 - requiring carbon capture, where appropriate, in project and corporate finance;
 - progressively moving away from fossil fuels investments and into renewables;
 - providing proper incentives for a structural shift favoring renewable energies;

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- orienting policy in harmony and in compliment to UNFCCC agreements;
 - addressing climate vulnerability, such as in PS Sustainability para.9, para 40.
27. The present Performance Standards text, and particularly the suggested wording for paragraph 10, does not adequately address these points.
28. Several questions may come to mind for the Bank's Executive Directors, as well as for IFC's upper management, such as:

Why should IFC assume a leadership role on Climate Change Finance – isn't that the responsibility of other UN agencies?

29. The World Bank group has been assigned very significant roles in making climate finance readily accessible to needy countries, particularly to climate-vulnerable countries. In this regards, member States have decided that the World Bank shall play this role in managing the Green Climate Fund (US\$30billion). As such, and in response to this mandate, the World Bank Group, and its agencies such as IFC will have to make notable efforts to move its client portfolio into climate-friendly, low-carbon finance.
30. But independent of the mandate that the World Bank Group now has to steward climate finance, IFC in particular, is already extremely well poised to do so. IFC already brings together an unmatched group of leading corporate actors from nearly all sectors that are constantly in search of guidance on sustainability policy. These actors look to IFC for leadership and to set sustainability bearings on their operations. We recall for example, in the leadup to Copenhagen (in Bali) the call from many of the world's largest corporations which ran a two page spread in the Financial Times, requesting that States establish clear guidance and unequivocal commitments for the future on climate policy, laws and regulations. *These corporations weren't asking for less regulations, but they were asking for firmer rules and more clarity.* The challenge is not to set a challenging bar but to be clear about where the bar is today and where the bar will be tomorrow! Corporations turn to the IFC for such guidance because they trust IFC and appreciate the long term rationality of sustainability policy and management guidance that the institution generally adopts and projects onto its clients.
31. And yet on the issue of climate change, IFC policy is simply not providing this guidance. IFC should serve as a natural liaison between governments, intergovernmental forums discussing climate finance, and the private sector with a view to help leverage and guide private sector investments towards more climate-friendly solutions to development needs. As the UNFCCC process moves forward, and States reach long awaited decisions on which direction to steer climate policy, corporations will look to IFC to rationalize these commitments and convert them into understandable and applicable corporate policy and management tools and they will be looking for the right investment signals to orient their projects. IFC is presently not providing these signals.
32. By not making firm commitments to promoting climate protection, by not capturing policy decisions from the UNFCCC process, IFC is failing States, and is also failing the expectation of its clients. Instead it is creating doubt, skepticism, and confusion over how development finance should tackle the issue of climate change.
33. If the World Bank, and particularly IFC in regards to the private sector, does not step up to the challenge of encouraging and facilitating corporations to incorporate more climate-friendly policy and management systems, and to chose more climate-friendly investment

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alternatives, and if the Banks's agencies such as IFC do not meet the expectations now assigned to them as trustees of the Green Climate Fund, other institutions, other sectors, and probably other governmental forums will take the lead, displacing IFC in that prerogative, which is what the trend has largely been in global climate negotiations to the present.

34. We will now turn our comments briefly to focus on policy statements and commitments from States reached recently at the G20 Seoul Summit of world leaders held in November of 2010 and the long term implications these commitments and policy trends stemming from the G20 will have on IFC lending and policy and how these commitments should be folded into IFC policy and Performance Standards.

(A) Intergovernmental Climate Policy Commitments under the G20 relevant to IFC Portfolio Lending and Policy

35. World leaders met in Seoul in late 2010 to discuss global development needs, identifying several immediate priorities; among these a few are particularly noteworthy for IFC, but they are not reflected in current drafts of IFC's proposed wording for Performance Standards:
- Investing in infrastructure in developing countries;
 - Combating climate change;
 - Eliminating fossil fuel subsidies;
 - Promoting sustainable growth;
 - Promoting clean and efficient energy;
 - Protecting forests;
 - Transferring technologies to developing countries;
 - Promoting local policies that guarantee energy access to the poor;
 - Achieving climate mitigation targets;
 - Facilitating rapid access and availability of climate finance;
36. The G20 members also refer in their declarations to the necessity of governments to engage to reform multilateral financial institutions, specifically citing the World Bank as a key target.²
37. The G20 states reaffirmed that they are committed to the UN's climate negotiations process.³ We've already mentioned that negotiations under the UNFCCC process have created tensions regarding the role played by the World Bank Group as regards climate finance relative to the agreements that stem from the UNFCCC negotiations process.
38. The decision by global leaders to reform multilateral finance organizations and growing consensus under the G20 and in the UNFCCC process on climate change, provides a unique opportunity for the World Bank Group to consider aligning future policy in this direction.
39. Clearly it would benefit the World Bank Group to iron out the tensions relative to climate finance that have surfaced with many States under the UNFCCC process. Relative to climate change, the above cited goals and commitments of the G20, are all quite reasonable, and yet in terms of climate commitments, they go quite a bit further than does the present proposed text of the IFC Performance Standards relative to how IFC can help steward climate finance investments.

² See: See: The G20 Seoul Summit Document. Paragraph 18.

³ See: See: The G20 Seoul Summit Document. Paragraph 66.

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40. Global leaders under the G20 agreed to work towards “strong, sustainable and balanced growth”,⁴ including committing to phase out fossil fuel subsidies.⁵ The IFC, which should be doing the same, by progressively moving its lending portfolio to renewable energies, and taking a stock of its GHG footprint from lending, fails to make any such overall or long term commitment to eliminate fossil fuel subsidies.
41. The G20 has firmly stated its commitment to combat climate change⁶ and make climate finance easily and readily accessible. In the Seoul Summit Document, G20 leaders stress the need to guarantee concessional lending to help ensure that developing countries have “access to sufficient concessional resources”.⁷ IFC should be the most acquiescent intergovernmental finance institution behind these commitments, and yet, IFC does not presently promote readily available climate finance. In fact, the text of the current proposed policy is ambivalent on climate change, suggesting that climate change “*may impede*” development and that climate change is only “one dimension” of the development problem, minimizing one of the most important priorities before our government leaders and nations.
42. The six core principles (paragraph 50) that stem from the Seoul Summit Document, include “the critical role of the private sector to create jobs and wealth, and the need for a policy environment that supports sustainable private sector-led investment and growth”.⁸ IFC is the natural leader to provide the proper incentive and guidance for sustainable private sector-led growth, and yet, IFC has systematically resisted making commitments to promote more climate-friendly solutions to development, and is failing to take the lead on climate change development finance, where much of our present priority as a global society lies.
43. The G20 leaders summarize climate commitments in core issues⁹, including:
- Mitigation
 - Transparency
 - Finance
 - Technology
 - Adaptation
 - And Forest Preservation
44. At the very least, IFC’s Performance Standards, in relation to climate change, should incorporate these G20 priorities into its own policy, and shape its policy commitments departing from these core issues, stating its’ commitments firmly in its policy. And yet on these 6 very basic issues relative to climate change,
- There is no PS reference to promoting investments that focus on climate mitigation;
 - There is no PS policy referring to transparency on GHG emissions, for IFC or for clients;
 - There is no clarity or solid commitment to moving IFC’s portfolio to climate-friendly technology;
 - There is no IFC’s priority to promote investments that address climate adaptation;
 - Several IFC financed projects have been criticized for their incentives to promote deforestation

⁴ See: The G20 Seoul Summit Leaders’ Declaration – November 11-12, 2010, Paragraph 4.

⁵ See: The G20 Seoul Summit Leaders’ Declaration – November 11-12, 2010, Paragraph 13.

⁶ See: The G20 Seoul Summit Leaders’ Declaration – November 11-12, 2010, Paragraph 13.

⁷ See: See: The G20 Seoul Summit Document. Paragraph 21.

⁸ See: See: The G20 Seoul Summit Document. Paragraph.50.

⁹ See: See: The G20 Seoul Summit Document. Paragraph 66.

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45. The G20 leaders further commit to:

“green growth policies”, and “enabling countries to leapfrog old technologies in many sectors, including through the use of energy efficiency and clean technology”. To that end, we will take steps to create, as appropriate, the enabling environments, that are conducive to the development and deployment of energy efficiency and clean energy technologies, ... We also commit to stimulate investment in clean energy technology, energy and resources efficiency, green transportation, and green cities by mobilizing finance, establishing clear and consistent standards, developing long term energy policies, supporting education, enterprise and R&D”;¹⁰

46. What international development agency is better poised to harness their capacity to place such commitments to long term, private sector led, climate sustainable growth than IFC?

47. And yet, IFC does not echo these commitments in any remotely similar way, anywhere in its present or past versions of its Performance Standards or other policy. What will happen if IFC does not fulfill this demand for finance and leadership is that it will be supplanted by some other public or private development finance institution.

48. World leaders set a multi-year medium action plan in Seoul to address the gaps and bottlenecks that they have identified for accelerating and sustaining growth in a sustainable manner into the future. The plan includes a focus primarily on infrastructure gaps in developing countries, focusing primarily on energy, transport, communications, water and regional infrastructure, and stresses State’s commitment to “facilitating increased finance for infrastructure investments in developing countries”.¹¹ The plan states, for example, in the section on improving the domestic infrastructure investment climate, that the G20 will work with low income countries (LICs) to “increase energy access, including by supporting more sustainable paths that make maximum use of cost effective renewable energy and resources, support energy conservation, and increase efficiency.”¹²

49. IFC should review this Multi Year Action Plan of the G20, and consider how it can place its know-how and lending capacity as a vehicle to move this plan forward as quickly and as effectively as possible in favor of climate-friendly solutions to development finance. The political commitments to make this possible are in place, we now need the institutional infrastructure. IFC is best poised to work with this challenge. These G20 commitments, which are already very much in line with the sorts of sectors IFC engages with, should find reflections in IFC’s Performance Standards as IFC’s own policy commitments.

50. *However, presently, as regards G20 commitments to address climate change, IFC Performance Standards and policy, fails on nearly all issues.* IFC’s proposal as such falls extremely short of the demands being voiced by the world’s leaders. **The word “renewable”, “efficient” or the term “energy conservation”, for instance, do not even appear a single time anywhere in the Performance Standards, older or newer proposed versions.** This failure to even consider the basic language associated to the world’s direction on climate policy, (or even much less to consider issues that are relevant to this discussion), on the agenda and priority list of the world’s leaders, places the World Bank Group once again, in a contentious position of not sending the right signals or offering answers to the call of world’s leaders to facilitate critically needed climate finance and orienting the private sector to make good climate relevant choices.

¹⁰ See: See: The G20 Seoul Summit Document. Paragraph 68

¹¹ See: Annex II: Multi-Year Action Plan on Development. G20 Summit – Seoul November 2010. P.1.

¹² See: Annex II: Multi-Year Action Plan on Development. G20 Summit – Seoul November 2010. P.1, Action I.

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51. Even the minimal advances made by the suggested wording of climate policy commitments made by IFC in the April 2010 version were watered down by IFC's upper management. IFC should take the commitments cited by the G20 leaders, and set the minimum boundaries for those commitments, providing a workable, useful, and practical financing mechanism for the climate finance demands of global leaders and for the private sector. Present policy fails to do so.

(B) Intergovernmental Climate Policy Commitments under the UNFCCC (Cancun 2010) relevant to IFC Portfolio Lending and Policy

52. The world's climate change policy negotiators met in Cancun end November 2010, to set future strategies on climate change policy. Climate finance was at the center of the agenda. Yet, IFC's latest proposed wording for its Performance Standards fails to incorporate the commitments that are finally beginning to come out of the UNFCCC process.
53. The wording in the Cancun outcome is very similar in content and reference to what we see in the Seoul Summit Declaration of the G20 and supporting documents. Many of the commitments cited in the meeting conclusion document, provide key guidance to the IFC as to where its' climate policy should be heading (but presently is not).
54. IFC would do well to identify the relevant aspects of the Cancun text to its own lending portfolio and policy and much of it could very easily be included in policy and used to set IFC's agenda and action plan relative to climate change. Below are numerous examples of where this is possible.
55. Section one of the Cancun statement reads (relative to the Parties' shared vision):

the vision addresses mitigation, adaptation, finance, technology development and transfer, and capacity-building in a balanced, integrated and comprehensive manner to enhance and achieve the full, effective and sustained implementation of the Convention".¹³
56. *For IFC, this shared vision should be reflected in its' own policy language.*
57. Paragraph 2 of Section I, point (d) states:

Mobilization and provision of scaled up, new, additional, adequate and predictable financial resources is necessary to address the adaptation and mitigation needs of developing countries.
58. *This paragraph offers the context and what should be the mandate for IFC on climate finance.*
59. Paragraph 4 recognizes that "deep cuts in global green house gas emissions are required ... and that Parties should take urgent action to meet this long-term goal".
60. *This paragraph offers clear language which IFC should assume as its own as it more effectively did in the April 2010 version, but is failing to do in the present language.*

¹³ Draft decision -/CP.16. Outcome of the Ad Hoc Working Group on long-term Cooperative Action under the Convention. Section I, paragraph 1. see: http://unfccc.int/files/meetings/cop_16/application/pdf/cop16_lca.pdf

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61. Paragraph 10 states the recognition by Parties that “addressing climate change requires a paradigm shift towards building a low-carbon society that offers substantial opportunities and ensures continued high growth and sustainable development”. This sort of language is missing from IFC’s policy and should be firmly and unequivocally incorporated.
62. Paragraph 14 calls for Parties to “enhance actions on adaptation ... by undertaking ...:
(b) Impact, vulnerability and adaptation assessments, including assessments of financial needs as well as economic, social and environmental evaluation of adaptation options;”
63. *IFC should include this sort of language and reference to tools to address climate change vulnerability, which is precisely the sort of services that it can offer its clients.*
64. Paragraph 20 is especially relevant to the role IFC should play in the evolution of climate policy, calling for:
 - (d) Providing information and recommendations, drawing on adaptation good practices, for consideration by the Conference of the Parties when providing guidance on means to incentivize the implementation of adaptation actions, including finance, technology and capacity building and other ways to enable climate-resilient development and reduce vulnerability, including to the operating entities of the financial mechanisms of the Convention;
65. *There is no doubt over IFC’s comparative advantage to meet these challenges on guidance and recommendations and yet references such as these are missing from the current wording of the PSs.*
66. Paragraph 34 furthers this call, inviting “relevant multilateral, international, regional and national organizations, the public and private sectors, civil society and other relevant stakeholders to undertake and support enhanced action on adaptation at all levels ... and to make available information on the progress made”. This is an unresponded call to IFC.
67. Parties have understood that reporting and strategy development is a critical dimension of understanding and tackling our climate problem. Paragraph 40 clearly orients States to build “on existing reporting and review guidelines, process and experiences”.
68. *IFC should read paragraph 40 utilizing obligations for States to influence its own institutional policy and mandate and relationship with clients, which should include (each point is taken from text of paragraph 40):*
 - *Build on reporting;*
 - *Reviewing guidelines and experiences/best practice;*
 - *Work on accessibility of finance;*
 - *Ensure transfer of technology;*
 - *Measure economy-wide advances according to targets;*
 - *Focus on removal of GHGs not controlled under the Montreal Protocol;*
 - *Focus on developing low-carbon development strategies and/or plans;*
 - *Setting short and medium term targets for emissions reductions;*
 - *Reviewing the role of land use, and land use change, forestry and carbon credits implications (para. 46)*
69. The first step for IFC is clearly taking stock of GHG emissions, not only of its own operations, but *more critically*, that of the projects financed in its lending portfolio, the development of short, medium and long term institutional strategies to progressively

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- lower client's GHG emissions over time, and most importantly, work with clients to guide and encourage the choice of more climate-friendly investments are critical to achieving the global targets States have recognized are necessary to revert our climate problem.
70. IFC should engage promptly with States to implement their commitments under paragraph 53, which calls for the creation of "a registry to record nationally appropriate mitigation actions seeking international support and to facilitate matching of finance, technology and capacity-building support to these actions".
 71. Section III, Sub-Section C of the Cancun text (Paragraphs 68-79) focus on forestry resource protection, combating deforestation with a view to "slow, halt and reverse forest cover and carbon loss". IFC should harmonize its own lending policy and portfolio with this objective, ensuring that its lending is not causing deforestation (as some IFC projects have done) and that indeed it is a priority of IFC to help reverse forestation rates.
 72. Section III, Sub-Section D of the Cancun text focuses on opportunities of using market-based mechanisms to promote mitigation actions. Again, IFC can use its institutional leverage to harness market dynamics with a view to actively promoting more climate-friendly energy solutions, transport solutions, infrastructure, etc.
 73. Section IV, Sub-Section A on Finance in another critical arena for IFC to review and consider how it can accompany, compliment and harmonizing its own policy on climate change with the direction world leaders are taking. Paragraph 97 for instance, prioritizes the "urgent and immediate needs of developing countries that are particularly vulnerable to the adverse effects of climate change". IFC can play a critical role in promoting climate-friendly investments in key target countries, orienting clients on the types of investments possible and also help mobilize the US\$100billion per year by 2020 called for in paragraph 98.
 74. Clearly, the establishment of the **Green Climate Fund** (paragraphs 100 and 102), which is the operating entity of the financial mechanism of the Convention, and the designation of the World Bank as the interim trustee of the fund (paragraph 107) sends a signal to IFC that it should take proactive steps within the World Bank Group to engage the private sector and serve as the natural liaison with corporations facilitating private sector participation in the implementation of global commitments on climate change policy and investments. The opportunity for IFC to engage on the development of global climate change policy has never been riper.
 75. Paragraph 111 draws attention to the need to coordinate efforts with other relevant UN agencies, international financial institutions, multilateral development banks, and the Global Environmental Facility. This is a natural fit for the World Bank Group, and particularly for IFC as concerns the linkage to the private sector, and engaging from its policy and outreach in this regard would help smoothen the rocky past the World Bank Group has had with negotiators of developing countries under the UNFCCC process.
 76. The transfer of technology and the development of endogenous capacities and environmentally sound technologies of, and in. developing countries is another key priority of States in climate negotiations. (Cancun text, paragraph 120). Point (d) of this paragraph refers specifically to the importance of "[promoting and facilitating] collaboration on the development and transfer of technology for mitigation and adaptation between governments, the private sector, non-profit organizations and academic and research communities".
 77. This target is echoed in Paragraph 120 point (g):

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“Catalyse the development and use of technology road maps or action plans at international, regional and national levels through cooperation between relevant stakeholders, particularly government and relevant organization or bodies, including the development of best practice guidelines as facilitative tools for action on mitigation and adaptation”.

78. Paragraph 123 (a-i) points to the importance of providing

“advice and support related to the identification of technology needs and the implementation of environmentally sound technologies, practices and processes”.

79. In point (b), (c-ii) and (c-v) of paragraph 123, States call for stimulating and encouraging

“through collaboration with the private sector, public institutions, academia and research institutions, the development and transfer of existing and emerging environmentally sound technologies ... facilitating international partnerships among public and private stakeholders to accelerate the innovation and diffusion of environmentally sound technologies ... and [disseminating and assisting] with developing analytical tools, policies and best practice for country-driven planning to support the dissemination of environmentally sound technologies”;

Conclusions on the present Climate Change content of proposed Performance Standards.

80. IFC is one of most strategically poised intergovernmental finance organizations to assume a collaborative and proactive role in achieving global targets for promoting climate finance, and should be prioritizing its own institutional approaches to development finance that achieve technology transfers, that promote local technology and locally developed solutions to climate policy challenges. Such commitments should be made explicitly in the PSs.
81. Further, IFC can and should be providing key advisory services to clients to assess their climate impacts and orient their policy, investment strategies and projects relative to climate technology and energy efficiency. IFC can and should help clients make these critical climate-friendly investment decisions.
82. Currently no such orientation exists. Policy wording fails to establish such commitments or send the right signals to clients.
83. Instead IFC leads its most important policy statement (paragraph 10) with bland and un-committing statements about climate change that even casts doubt on the validity of climate change trends. IFC fails to assume its own responsibility in setting trends and showing by doing, passing off responsibilities solely to clients. IFC’s Performance Standards word choice is downplaying the relevance of climate change as a factor impeding development. IFC has deleted wording from policy committing to carbon emissions reductions.
84. IFC is missing the opportunity to improve its relationship with the UNFCCC negotiations process which has been rocky and conflictive, particularly with developing countries. More firm language to parallel commitments with the UNFCCC process is needed.
85. These shortfalls are simply unacceptable from the intergovernmental finance institution that should be leading corporate policy and finance on addressing climate change.
86. More is necessary and possible.

SECTION III:

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IFC's Treatment of Human Rights in the Proposed Performance Standards Text (2010-2011):

The Role of the IFC in the Evolution of the Corporate Responsibility to Respect Human Rights

1. *Business enterprises have the responsibility to respect human rights, this is already a widely accepted principle to define the corporate responsibility relative to human rights issues. This means avoiding infringing the human rights of others and addressing the adverse human rights impacts corporations may cause or contribute to.*¹⁴
2. *Nearly all actors, government, business, non-governmental organizations, academics and intergovernmental human rights agencies agree on this idea. What no one seems absolutely clear on, however, are the technical underpinnings of what respecting human rights for business really means in practice.*
3. *It is in defining this technical dimension of human rights due diligence for corporations where IFC must provide policy and guidance for its clients, which have growing demands (but little centralized guidance) from stakeholders groups and from governments, to ensure that project investments do not violate human rights.*
4. *The current version of proposed text in IFC's Performance Standards relative to human rights policy, particularly paragraph 11 of the present text, posits confusing language, lacks clarity, fails to properly distinguish the differentiated responsibilities of States, companies and IFC, and more troubling still, contradicts evolving global consensus on where the human rights and business discussion lies, largely defined today by the recent recommendations by John Ruggie, the UN Special Representative on the issue of Human Rights and Transnational Corporations, which have received broad stakeholder support, largely grounded in the State and corporate sector. .*
5. *This failure by IFC to lay out clearer boundaries and define key technical aspects for a human rights discussion and human rights due diligence steps with clients, leaves corporations at a loss in terms of the sort of advisory assistance they naturally seek from an institution like IFC and which they will be needing more and more as the field consolidates.*
6. *These shortfalls of IFC's new text proposal are especially worrisome as they entirely miss an excellent opportunity to place IFC in a leadership role on defining the technical aspects of the human rights and business debate. It should be even more worrisome to IFC's upper management and to the Board of Directors that if IFC does not set out to define the technical components of a human rights and business debate, other*

¹⁴ See Principle 12. Report of the Special Representative of the UN Secretary General on the issue of Human Rights and Transnational Corporations and Other Business Enterprises: Guiding Principles for the Implementation of the United Nations Protect, Respect and Remedy Framework. p.12

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institutions will, thereby further complicating the playing field and placing IFC and IFC clients in an uncontrolled environment with respect for human rights due diligence and with respects to the policy and management tools they will nonetheless have to develop (as determined by others). This should be of special concern to IFC since demands from stakeholder groups (for example on the expected content of a human rights impact assessments for business) will end up being defined by players that will not take into consideration the IFC's PSs or the needs and interests of IFC's clients. In such a scenario, IFC and its clients will have to adapt to externally imposed guidelines rather than develop them themselves according to the institutions expertise, its existing norms, and client needs.

7. Three essential barriers stand in the way of placing IFC at the forefront of the human rights and business discussion:
 - 1) First is *an entrenched misunderstanding* by some of IFC's Board Members and certain upper management in the World Bank Group of the role the World Bank (and IFC in particular) should play in the human rights and business debate; it is a mistake to assume, as many EDs at the Bank have and still do, that incorporating human rights into IFC policy or broader World Bank policy implies that the World Bank or any of its agencies become human rights policing agencies or that lending to States or corporations will be conditioned to State compliance of human rights obligations. This is simply not the case; the discussion is around improving project efficiency and lowering risk and impacts, not about evaluating State compliance with human rights.
 - 2) Second is the failure of some parts of the institution and some Executive Directors to visualize the extreme relevance and *positive* financial and project sustainability implications that addressing human rights can have for IFC's lending portfolio if the human rights debate is in fact promoted and incorporated into policy. Incorporating human rights issues into policy or working to ensure that client projects comply with human rights by incorporating policy, tools and management systems in client operations (where appropriate) will likely make projects more efficient and more sustainable, lowering social and environmental impacts and risks (including legal and reputational risks) of IFC-financed projects;
 - 3) Third is the false presumption that IFC already covers human rights related issues in its Performance Standards, and that as such, specific language is not needed on human rights, or that including human rights language will only further complicate IFC's already stringent due diligence process, thereby discouraging clients from seeking IFC financing. Human Rights debates relative to corporate dimensions are now extremely common most everywhere around the world, yet there is very significant misunderstanding about what Human Rights really are, and this leads to common confusion about sustainability issues generally and human rights issues specifically, which is why *effective human rights impact assessment tools are key to identify human rights issues in project lending as distinct from other sustainability issues*. Applying specific human rights tools also helps better understand what are **not** human rights issues which can sometimes be even more important to the client than understanding what are. Focusing IFC policy, where appropriate, on the due diligence issues which derive from the International Bill of Rights, will help clarify specific due diligence processes and obligations and avoid throwing every social and environmental issue into a rights framework, which is why technical content and clarity is so important, for example, relative to Human Rights Impact Assessments;

Regarding IFC as a Human Rights Police Agency

8. Historically, and even at present, the fear that bringing human rights language into the World Bank Group's policy would transform the institution into a human rights police force, suggests that there is significant misunderstanding of the real issues at stake. Or

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the idea that introducing human rights will limit IFC's business, killing business deals, or complicating business transactions is also unfounded.

9. To some degree, the fears may stem from fears that human rights policy will be politically manipulated by some countries, to curtail lending to others, on the grounds that some States consider that others do not comply with internationally accepted human rights.
10. At this stage of development, most everyone in the human rights field would probably agree that the World Bank and its agencies *cannot* and *should not* play a policing role on human rights. Nor does the World Bank have any jurisdiction to play such a role. At the same time, most would also agree that the World Bank agencies, and especially IFC, have enormous influence on the design of client projects relative to social and environmental dimensions, which include evidently, relevance to human rights. Incorporating Human Rights in IFC's PSs is not about policing States, it is about advising and guiding clients so that their investments are not violating human rights and so that projects take better account of local community needs and concerns, which in turn will lower IFC and client legal and reputational risk and make projects more sustainable by lowering social and environmental impacts.

Considering the Cost-Benefit and Efficiency Relevance of Human Rights in IFC Policy

11. Fortunately, at a global level, and largely thanks to strong engagement from many States of all sizes and political color, through the UN's Human Rights bodies, and through the newly created Human Rights Council, global society has advanced considerably in recent years, deepening our understanding of the implications of human rights to development in many aspects. Attaining universal human rights, realizing rights, implies social and economic development. Hindering (or violating) human rights, often implies the reverse.
12. In parallel, we've developed a strong sense and understanding, as well as general consensus, over the past several years, as to the relevance of the human rights debate to corporate activity, both in regards to the role of the State as well as to the responsibility of corporations in the respect for universally accepted human rights.
13. It should be noted that IFC has been a key player in advancing the human rights and business debate, despite the large controversy that the discussion generated in the early 2000s. The Bank's leadership under James Wolfensohn and collaborations of upper management with the Office of the High Commission on Human Rights led by Mary Robinson, as well as efforts from IFC, then led by Peter Woike, were fundamental in advancing and achieving a rational approach to thinking on the World Bank's role in the field of human rights. Documents dating back to 1998 show advanced thinking on this relationship, including documents from the Bank's Legal Counsel.¹⁵
14. These drew attention to the need of the World Bank to take human rights into account in investment decisions, indicating that the Bank's investment decisions "cannot be influenced by the political character of the member country, ... but that these limitations would not prevent the Bank from considering ... issues that have economic consequences or implications ... [and more specifically], that lack of respect for human rights norms can seriously affect the economic rate of return or even the viability of investment projects".¹⁶ Further, the important point was made several years ago by the Bank's own upper management that the role of the Bank "is not that of enforcer [and that] enforcement belongs to the mandate of other, non-financial entities." (p.15).

¹⁵ See: Statement by: Senior Vice President and General Counsel. World Bank Vice Presidency. To the American Foreign Law Association, New York. June 9, 2004.

¹⁶ SVP&GC. Op.cit. p.15

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15. Inserting Human Rights into World Bank (or IFC) policy is not about conditioning or suspending lending to States that violate human rights. The discussion today needs to break from this misconception and center on the key issues which are actually much less controversial, and should, if approached properly, generate consensus amongst EDs and upper management:
16. Unfortunately, at the time this discussion was progressing, many key actors in the World Bank Group's upper management, and several member States were not ready to have this debate. Times have changed and today, ignoring the discussion will have serious negative costs, policy and investment wise, on the Bank's agencies, particularly IFC.

On Why general Sustainability Policy is not the same as Human Rights

17. Businesses, and especially large international business, are finding themselves swarmed by human rights issues, with pressure to conduct what have become labeled as *human rights impact assessments*, and are confronted daily with communities claiming a wide variety of rights, sometimes legitimately because they are human rights that they have and that may be at risk, but sometimes claims are simply based on *the perceived sense of rights* entitlements but may have little or nothing to do with human rights *per se*.
18. This leaves corporations (and IFC) in the terrible predicament of having to argue that what a community *thinks* is a right, in fact *may not be* codified anywhere. It is in such cases that a clear due diligence relative to an internationally accepted human rights framework becomes extremely important and valuable for the corporate actor, and for an agency like the IFC which is lending money to one. In this respect, IFC should be considering *what precisely* the International Bill of Rights means for corporate due diligence, and laying this framework out in a clear and applicable manner for corporations; because that precisely is where the technical discussion on business and human rights is heading. And if IFC doesn't technically define the playing field in this regard, the human rights agencies and non-governmental groups will.
19. The work of UN Special Representative on the Issue of Human Rights and Business, John Ruggie has successfully laid out a *framework of principles* on human rights and business, and made initial steps at focusing on a technical map, calling for the regular use of tools like "human rights impact assessments" for corporations, the inclusion of human rights in corporate policy as well as creating grievance mechanisms for victims. Ruggie's working documents, his framework and more recently the Guiding Principles document has wide acceptance of all actors, including IFC and its clients (we will discuss Ruggie's framework in detail below).
20. The next step is underpinning that framework with a robust technical basis, and that basis is not a general discussion on sustainability issues which the IFC already has, it is instead, a framework that clearly delineates where the IFC and its clients are potentially treading on human rights issues, as distinct (although sometimes consonant with) the sustainability issues already covered in the IFC Performance Standards. The risk in not defining this human rights territory, is that the field will naturally push IFC and clients to consider all sustainability issues as human rights issues, which will place undue and extreme pressures on sustainability due diligence, as well as costs to carry out due diligence. Therefore, **not including human rights**, may actually be more costly for clients in terms of project design and implementation, than including human rights!

So where then should the Human Rights debate at IFC move?

21. Incorporating human rights into IFC policy implies:

- Delineating what specific issues are pertinent to the human rights debate, to the International Bill of Rights for example, and how a corporation can go about the boundaries of this discussion, identifying which human rights issues are material to its operations, and identifying key policy and management tools (such as a Human Rights Impact Assessments);
 - Ensuring that IFC-financed projects are not themselves violating human rights or causing unwanted negative human right impacts;
 - Guiding IFC clients on how to ensure due diligence in their responsibility to respect human rights and for clients to ensure that their projects are not resulting in human rights violations, or causing unwanted negative human rights impacts;
 - Advising IFC clients on the design, formulation and implementation of management systems and tools they can apply to conduct proper human rights due diligence, human rights impact assessments, and other actions to ensure against unwanted human rights impacts;
 - Utilizing existing IFC research and tool development experiments, such as the Guide to Human Rights Impact Assessment and Management, relating these to the Performance Standards and Policy;
22. There is no policing function by IFC of States implied in any of these recommendations. None of these eventual actions by IFC to promote human rights considerations, conduct impact assessments or provide advisory assistance to clients will lead to policing State, nor will they lead to suspend lending to clients in States with questionable human rights records. These activities by IFC will help the agency better position itself to meet client demand for project design and assessments. They also help IFC address the mounting pressures coming from local communities and other actors, which will surely increase exponentially in the coming years.
23. If implemented, these recommendations will make IFC projects more efficient, more sustainable and more geared to helping projects achieve greater sustainability, including moving them towards the full realization of human rights which are intricately and directly associated to economic and social development. This will help lower reputational and legal risk for IFC and for its clients, as well as reduce negative social and environmental externalities faced by stakeholder communities.

The Fundamental Role of John Ruggie's Protect, Respect and Remedy Framework to IFC's incorporation of Human Rights into Policy

24. As a first step in a move towards incorporating human rights into IFC policy, EDs and upper management should carefully review the recommendations made by the UN Special Representative of the Secretary General (Professor John Ruggie) on the issue of human rights and transnational corporations both in the 2008 version of the Protect, Respect and Remedy framework as well as the recent publication of the Guiding Principles for that framework, as these recommendations reflect the latest evolution of the human rights and business debate following an extensive and highly constructive work by hundreds of actors, including business, State representatives, NGOs, as well as very active engagement by IFC, to come to terms over what exactly incorporating human rights into corporate policy and management really entails.¹⁷

¹⁷ See: <http://www.business-humanrights.org/Documents/RuggieHRC2008>

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25. It is worthwhile to remember, that the very contentious debates at the World Bank regarding the incorporation of Human Rights which took place in the early 2000s, and in which fears pointed to the idea of the Bank becoming a human rights police agent drove the discussion, were paralleled by a very conflictive multi-stakeholder debate to establish a global charter on human rights and business which resulted in the stillborn introduction in 2003 by the Sub Commission on Human Rights, of the UN Human Rights Norms for Transnational Corporations.
26. After the failed intent of setting a consensus norm on human rights and business at the global level, the UN appointed John Ruggie as the UN Special Representative for Human Rights and Business, who coincidentally fathered the original Global Compact focusing on 9 human rights dimensions (later 10) of corporate behavior. Ruggie initiated a multi-stakeholder consultative process initially drawing suspicion from all of the actors involved, including States, Corporations and Civil Society, which had just come out of a failed debate on the viability of the UN Human Rights Norms for Transnational Corporations.
27. And yet, through trust-building, frank discussion, and the incorporation of all views in the process, the arduous task of consensus building on human rights and business began. The Protect, Respect, and Remedy Framework, drafted by the UN Special Representative, which is the product of nearly 50 consultations worldwide over a 6 year period, has been *extremely successful* in ensuring a multi-sector and multi-actor debate, in which States, corporations and non-governmental human rights organizations on the whole, can agree on a common framework for discussion. In fact, developing nations, industrialized countries and emerging economies are mostly in agreement with the conclusions and recommendations of the mandate, which is why Ruggie's framework is rapidly becoming the state of the art on the human rights and business debate. A recent article in the Financial Times sends precisely this message, "Mr. Ruggie's framework has been broadly welcomed by business. ... there has been an outburst of activity among leading companies to determine if their policies are "Ruggie-proof".¹⁸
28. We may each have fundamental differences regarding how we approach the issue of human rights obligations for business, but for the most part, all of the key actors are at the table and engaging in constructive debate that moves forward and that has achieved measurable progress. And we should stress, the World Bank Group, largely through the very positive and constructive engagement of IFC's upper management, has been a key voice in this process.
29. In 2008, via resolution 8/7, the Human Rights Council of the United Nations, unanimously adopted the Protect, Respect, Remedy Framework devised by the UN Special Representative, establishing a common starting point to discuss, develop and evolve human rights and business policy.
30. We should stress, the Protect, Respect and Remedy Framework (PRR Framework) is far from a set of obligations conditioning human rights activities. It is about clarifying and sorting out differentiated responsibilities, obligations under international law (some for States and some for business enterprises), and about establishing the principle that victims must have proper remedies when things go wrong with corporate activity.
31. The framework, since its launch in 2008 is already effectively influencing human rights and business policy of many governments and other agencies, and has drawn much positive attention and feedback from the corporate sector, which is far from the stalemate that the human rights and business debate reached back in 2003 with the now defunct UN Norms, which never had collective support from the various stakeholder groups

¹⁸ <http://www.ft.com/cms/s/0/d4530e7a-1e45-11e0-bab6-00144feab49a.html#axzz1Apvkgs00>

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engaged in their evolution (civil society, government and business). Most importantly, the PRR framework is solidifying as the primary and most significant global orientation for discussion of the principles that define the business and human rights linkage.

32. While some human rights groups would like to see the framework move further towards more binding obligations, the fact that it has had so much buy-in from all sectors, suggests that the PRR Framework is today *the only global framework that has achieved broad consensus* from key actors regarding the human rights and business dimension.
33. The limitations however of the framework to establish concrete technical guidance are obvious, and this is mostly to due to the fact that the mandate of the UN Special Representative did not include the establishment of technical specificity on the human rights and business debate. Clearly that specificity should now derive as a next step up from the principles-based consensus that the mandate has successfully produced. This next phase needs to bring the discussion to a practical and implementable stage, and that involves a *nuts a bolts discussion with the corporate sector*, and needs to be grounded in a rational debate around actual policy and management tools and systems that corporations can realistically implement in their practices, and that can be included in globally accepted corporate human rights policy.
34. This leads us to the question of what role IFC can (and if it should) play in providing guidance to corporations on how to implement the principles which the international community has developed and is developing to address the human rights dimensions of corporate activity.

Should IFC Lead the Ruggie Mandate to the Next Step, and if so, why?

35. *Ruggie's Protect, Respect, Remedy Framework is the first step in the human rights and business debate. It is clear to us that IFC can, should and is best poised, to make the next step.*
36. *IFC is the most influential inter-governmental agency leveraging forming sustainability policy.* Clients as well as corporations that receive no IFC funding look to IFC for guidance on policy and management systems development. The IFC has shown its ability to steer corporations and entire economic sectors on a variety of sustainability topics. The human rights debate and the evolution of our collective consensus on the human rights dimensions of corporate activity now place the IFC in a unique position to step up to the challenge of laying out a framework for establishing and implementing policy and management tools for the corporate sector on human rights due diligence.
37. We stress that we are not talking about placing the IFC in a position of evaluating State compliance with human rights obligations, or conditioning lending to companies operating in States where there may be outstanding questions on human rights issues.
38. What we are talking about is that *IFC can and should play a critical role in helping steer companies and sectors, worldwide, on how to consider human rights issues, how to design and evaluate human rights impact assessments, and how to establish proper human rights management systems*, all components of human rights due diligence..
39. IFC and its clients today already have to informally consider human rights issues in their lending processes, because communities are demanding it, including rights established in the International Bill of Rights. When human rights issues come up, IFC and clients must scramble to try to define their playing field and its boundaries, unsure specifically just what distinguishes their normal sustainability policies, from human rights. This leads to lack of clarity for stakeholder communities, for host governments, for business and for

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IFC's project staff and management. Obtaining greater clarity on the limits and materiality of the human rights to project design and implementation, understanding the technical implications of human rights, and developing the technical guidance to implement considerations are really what this discussion is all about.

40. So how do we go from Principles to implementable policy and management tools?
41. If we turn to the Principles laid out by the UN Special Representative (the Ruggie Framework),
42. Principles 13 and 15 of the Special Representatives recently published Guidelines of Implementation to the UN's PRR Framework lay out the basic elements companies should be considering, including due diligence that a company must meet to ensure it is not violating human rights:

13. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances that enable them to identify, prevent, mitigate and remediate any adverse human rights impacts they cause or contribute to through their activities and relationships, and to account for their human rights performance.

15. In order to identify prevent and mitigate adverse human rights impacts, and to account for their performance, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, and tracking as well as communicating their performance.

Principles 18 and 19 add the two further critical due diligence elements which are tracking and communication of performance.

43. Large corporations, as they read through the Ruggie Framework, probably agree with the general essence and principles of the issues covered, but as they turn to their managers, they are immediately concerned by their lack of clarity (because there is currently **no** internationally accepted standard) on:
 - What should human rights policy include according to the corporation's sector?
 - What is appropriate to size?
 - What is Human Rights due diligence?
 - What's the difference between "social or environmental impact" and "human rights impacts"?
 - How does one define and measure "human rights performance"?
44. This is where IFC can step in to initiate a process to provide clarity on human rights due diligence to clients that need this service.
45. While clearly it is not IFC's obligation to assume the role of the State, IFC's clients will have such questions which need technical guidance, and in most cases, States are not providing such guidance to their own public institutions, much less to corporations. And yet stakeholder communities are insisting more and more that human rights are considered.

Duty of the State vs. Responsibility of the Corporation: Where does IFC come in?

46. The Ruggie Protect, Respect and Remedy Framework lays out clear differences between corporate obligations and State obligations. IFC's incorporation of human rights into its PSs should respect this difference.
47. Nonetheless, IFC can utilize the entire framework to develop its own thinking, policy and tools on human rights due diligence.
48. Many of the issues and guiding principles under the duty to protect, cover very relevant issues which IFC could use to help define it's own policy and advisory tools.
49. Guiding Principle 2, for example, states:
50. "States should encourage business enterprises ... to respect human rights throughout their global operations, including those conducted by their subsidiaries and other related entities".¹⁹
51. *This recommendation can easily be reworded and transformed into IFC's Human Rights Policy, in which case it would read:*
52. *"IFC guides business enterprise ... to respect human rights throughout their global operations, including those conducted by the subsidiaries and other related entities".*
53. Guiding Principle 3 entrusts States with the duty to "ensure that governmental departments, agencies and other State based institutions that shape business practice, ... are aware of and observe ... human rights obligations ... including providing them with relevant information, training and support".²⁰
54. If we replace the words *governmental* and *state*, with *client*, we have created a very reasonable human rights policy for IFC, in which IFC will work with clients and their relative departments, to shape business practice relative to human rights.
55. In a similar fashion, if we take Guiding Principle 5 and replace "State" with "IFC" and adapt wording to describe an IFC-client relationship, we end up with another very reasonable human rights policy commitment.

IFC should set out clearly its expectation for all clients receiving IFC financing or services, to respect human rights, and take the necessary steps to support, encourage and where appropriate require them to do so.
56. Guiding Principle 7 deals with outsourcing. Again, we can shape this principle to develop a very reasonable IFC human rights policy commitment:

IFC should require clients to ensure that by outsourcing the delivery of services, they should ensure that their supply chain is also respectful of human rights
57. Guiding Principle 10 offers insight for IFC on how it should deal with sensitive conflict zones, where the chances of human rights are markedly higher. In this sense, more specific attention, or a higher standard should be adopted;

¹⁹ See: Report of the UN Secretary General on Business and Human Rights. Op.Cit. p.6

²⁰ See: Report of the UN Secretary General on Business and Human Rights. Op.Cit. p.6

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58. *IFC can take much of the Ruggie Framework language to set its own policy commitments relative to human rights, but will have to consider the needs of its clients to define the technical nature of the principles that Ruggie has set out. This is a task corporations will have to do more and more as the field of corporate sustainability continuously develops in this direction. Providing such advisory services, particular to human rights, differentiated from social and environmentally sustainability more generally, is rapidly becoming the standard for the industry. IFC needs to get there quickly if it is to have expertise and tools to offer its clients in this respect;*

Why IFC and not some other policy institution or UN Agency?

59. A few natural questions might arise for EDs and IFC's upper management in considering why IFC should take a predominant role in establishing human rights policy and providing human rights assessment services:

1. If IFC is not an international human rights agency, and if IFC will not be policing human rights compliance, why should IFC get involved in providing technical assistance on human rights, shouldn't some other institutions do this?
2. Will IFC lose clients by including human rights in its Performance Standards?
3. Will IFC have to black list countries for their human rights records and thus get into unwanted political debates which will upset its members?

60. These are all valid questions and we know that they are in the minds of many EDs as well as upper management at the Bank, and particularly at IFC.

(1) In regards to the first question, as to why should IFC get involved and not some other intergovernmental Human Rights agency:

61. *First*, no other agency has the legitimacy to set and guide international corporate sustainability policy for the private sector as does IFC. It is important to stress that irrespective of whether global corporate actors seek IFC financing, companies look to IFC as a benchmark for sustainability policy. No other agency, intergovernmental body, or other institution has this influence over the private sector on such a wide base of sustainability issues. Companies are generally comfortable working with IFC policy finding them realistic in a corporate context, and very practical in terms of going through due diligence on sustainability. IFC also provides a single source of coherent *nuts and bolts* sustainability management guidance operating in a workable overall framework familiar to and accepted by the corporate sector. And yet, human rights, while in many cases similar to general sustainability issues, have very specific technical differences and approaches, for which there is yet *no* international guidance providing corporations with critical answers to very specific human rights questions.

62. *Second*, because the human rights and business debate has been firmly constituted in the corporate social and environmental responsibility realm. All actors in this debate now recognize that human rights have a place in corporate policy and management and are extremely relevant to any company's impacts on society and these issues are very distinct from more general sustainability issue. This was not the case only a few years ago. The issue of human rights and business overlap is no longer a novel or exploratory debate. Human rights will now permanently stay in the corporate sector as an issue to consider, and policy and management tools shall without a doubt be built around the discussion because they don't yet exist in a systematic or centralized manner. It will occur haphazardly confusing all actors and business, or it will occur in a more centralized and consensus manner. A unique and universal global standard is necessary.

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63. If IFC, which is the leading policy setter on sustainability issues does not take up the challenge of guiding the practical and technical implications of the human rights and business debate, *someone else will* and it may not be a financial institution, which for IFC and IFC clients, risks that the eventual guidance will not work in harmony to existing PSs, or consider the overall sustainability framework for corporate investment, generating non aligned frameworks and tools that are difficult or cumbersome to streamline into existing IFC/Corporate approaches to sustainability policy, making them difficult or impossible to implement.
64. The problem with the alternative scenario (that is, that some other agency or institution provide the technical guidance on human rights and business) is that no other institution has the buy-in, the legitimacy and the corporate know-how to lead the corporate sector to define the technicalities of such an issue, which will inevitably drive the discussion in multiple directions, generating confusion, juxtaposition of concepts and guidance documents, contradicting policy, uncoordinated guidance references, etc. which in turn leads to confusion and complications amongst corporate actors.
65. *Third*, because if IFC does not fully engage in defining human rights due diligence processes for its clients, both IFC and its clients will face constant and increasing pressure, complaints (such as CAO or OECD Guidelines complaints), and other procedural confrontation or in project finance, each calling for compliance with a multiplicity of possible norms, regulations, principles, policy references, etc. Already a number of IFC projects have received OECD Guidelines complaints, because of human rights concerns, largely because these concerns are not sufficiently addressed in IFC due diligence processes. Unifying such normative technical guidance on human rights by the leader in sustainability policy for corporations, will guarantee for clients, a level and rational playing field, and IFC is clearly the most natural leader to set the threshold for this discussion.

(2) As to whether IFC will lose clients by including human rights in its Performance Standards?

66. *Absolutely not*. On the contrary, *IFC will gain interest from clients* and clients are likely to request advisory services from IFC to meet their growing human rights due diligence obligations. The human rights and business debate, and pressure from many groups for corporations to meet human rights is already upon corporations. They are already pressed to offer *human rights impact assessments* which they generally do not know how to carry out and which vary immensely depending on what institutions has devised the tool. *There is currently no singly accepted human rights impact assessment tool for corporations*. If the IFC were to produce a standardized human rights impact assessment guideline, it would instantly become the accepted format for the wider corporate sector, thereby ending much of the discussions and confusion about what such a tool must comprise.
67. Presently each corporation must tackle the issue from very uneven platforms and perspective, with no unified set of principles or technical baseline to do so. The UN's Protect, Respect Remedy framework is becoming that platform to some extent, but it is a Principles framework now supplemented by the Guiding Principles and does not have the technical content to provide the critical answers companies need or the direction they seek on policy and management system details.
68. The fact that IFC gets involved in providing such a policy baseline and technical guidance on human rights will not generate an exodus of clients, but rather quite the contrary. It will likely attract great interest, unify clients around a single approach and generate demand

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for much needed guidance on the technical implications of human rights due diligence for the formulation of corporate policy and management systems, which in turn will generate an increase in demand for IFC's advisory services.

(3) As to whether IFC will have to black-list countries for their human rights records and thus get into unwanted political debates which will upset its members?

69. Absolutely not. The idea that IFC will be out criticizing States for human rights non-compliance, and as such condition lending or suspend lending to certain States for alleged human rights violations is absolutely alien to the current discussion.
70. First of all, IFC is not a human rights agency, nor does IFC have jurisdiction to judge States for their human rights records. The discussion is not about policing, it is about whether IFC-financed projects have in place the necessary policy and management systems to evaluate and address unwanted social impacts, particularly human rights impacts. This is not a legal exercise between IFC and the host State, this is a management discussion between IFC and its clients and an issue that companies (and sometimes IFC) are more and more having to engage on with local communities.

Conclusions

71. The World Bank's attention to human rights over the past decade has been irregular and scattered, with some notorious advancement, and also some critical regressions. Several attempts, including by past progressive leaders in IFC's highest management, to insert human rights language into policy and through the institutional collaboration of the World Bank Group and key global agencies such as the UN Office of the High Commissioner on Human Rights, have been thwarted by other upper management actors, by the World Bank's Legal Counsel in some cases, and also through the political intervention by some Executive Directors, worried that human rights policy in Bank policy will block lending and other financial assistance to developing countries. The validity of such concerns is no longer realistic.
72. As the human rights and business debate has evolved, we have all come to understand that human rights realization is fundamental to development, and that human rights shortfalls can hinder social and economic progress. We have also come to agree that we can set out principles that clarify what human rights mean for corporations. There is global consensus that *business has the responsibility to respect human rights*. What we need now is clarity on the process and due diligence, and IFC is the best global actor to help lead this debate and define this territory for its clients and for the corporate world more generally.
73. By incorporating human rights policy, IFC will:
 - help clients understand where human rights issues come up in their operations;
 - generate a better understanding of potential and actual project impacts;
 - help clients understand project risk and design more appropriate management tools;
 - enhance transparency and accountability;
 - help clients achieve social value creation in project implementation;
 - help clients understand where the specific human rights issues lie in their projects that can be quite different from their more general social and environmental sustainability issues;
 - fulfill its mandate and leadership role;
 - take advantage of social and environmental opportunities to improve project efficiency;

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74. The protection of Human Rights and the collective global effort to move our societies towards the full realization of human rights are a key development tendency of recent decades, and never have we come so far in understanding the very critical implications of human rights in nearly all aspects of human development.
75. The discussion around the role of the State and the role of business in the protection and respect of human rights has also seen very significant evolution over the past 5 years, particularly as the UN and member States have assumed their responsibility in helping guide human rights policy, both in terms of the *State Duty to Protect Human Rights*, but also in the *Corporate Responsibility to Respect Human Rights*.
76. Even forums such as the UNFCCC have understood that human rights are critical to all aspects of social development. Progressively guaranteeing that all people are fully realizing human rights,²¹ and ensuring that no one is a victim of human rights violations are a fundamental pillar of sustainable development.
77. *The World Bank Group, and particularly the IFC which engages with the private sector, has enormous leverage power over the countries and private clients it engages with through its lending and technical assistance, to orient our global society in a positive direction relative to helping achieve universal human rights. It is known that many corporations seek guidance from IFC on a number of sensitive sustainability issues; human rights is one of those.*
78. We welcome the *intent* by some IFC management staff in the April 2010 version of the new Performance Standards to incorporate basic human rights language, but are extremely concerned not only with the deletion of much of this language, but also in the regression we see now in the December 2010 version relative to human rights content.
79. "Relevant risks and impacts to consider and identify if reasonably expected to be significant include, among others those relating to climate change, human health, **human rights**, gender differences, ecosystems functions, and access to water resources". [bold added]. The reference to human rights in this sentence has been deleted in the December 2010 version of the Performance Standards.
80. *If we look at paragraph 11 of the current Performance Standards version, we find serious inconsistencies with wording, principles, and other aspects regarding where global consensus on the human rights and business debate is today.*
81. Wordsmithing this paragraph will not provide a better policy statement.
82. Several serious problems exist with paragraph 11, among these:
 - IFC does not assume itself the responsibility to assure that IFC financed projects are not violating or complicit in violating human rights;
 - It is unclear about precisely what is a company's due diligence with respect to human rights and what difference exists between social and environmental policy on the one hand and human rights on the other;
 - It confuses and/or fails to clarify the distinct and differentiated roles of the State, the role of the company and of third parties in terms of obligations, responsibilities;
 - It mentions the existence of human rights relevance in the Performance Standards without actually clarifying where these are;

²¹ See: Draft decision -/CP.16. Outcome of the Ad Hoc Working Group on long-term Cooperative Action under the Convention. Section I, paragraph 1. see: http://unfccc.int/files/meetings/cop_16/application/pdf/cop16_1ca.pdf, Introduction

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- It sets out a *new standard* in great contrast to the evolving standards emerging from the UN Special Representative's work on Human Rights and Business.
83. We consider that IFC is missing a critical opportunity to bring its policy inline with the tendencies that the international intergovernmental community has taken on the role of corporations in human rights compliance and due diligence.
 84. *Again, this is not about policing human rights compliance*, a task neither the IFC nor other World Bank agencies have the capacity or the jurisdiction to do.
 85. In this respect, IFC and particularly the Bank's Executive Directors (EDs) which are concerned of the implications of streamlining IFC policy with human rights, need to step back from the engrained and outdated debate of the early 2000s at the Bank about Human Rights streamlining of policy, and consider the broad strides the global community has made on the human rights and business discussion and recognize the important role the IFC can and should play in leading the technical underpinnings of this debate.
 86. IFC and EDs need to approach the business and human rights debate from advisory assistance and evaluation of policy and management systems, with a view to controlling and measuring impact, and consider the significance such actions and products will surely have on project efficiency and sustainability, ultimately reducing negative externalities to community and thus lowering legal, economic and reputational risk.
 87. IFC and Board Member should review John Ruggie's UN Protect, Respect, Remedy framework in this context and focus IFC's discussion on human rights and business on how the institution can introduce useful policy to minimize human rights impacts, while helping clients become more efficient, more competitive and ultimately, more sustainable. Such an approach will help clients and IFC-financed projects ensure that corporations are not committing human rights violations
 88. *EDs and IFC upper management should have no fear of generating political conflicts with member States if they include human rights policies. On the contrary, EDs should be reassured that incorporating human rights due diligence in the IFC's Performance Standards will improve projects, make the more efficient, lower their social risk, and ultimately provide better assistance to the communities they intend to assist.*