Review of IFC Performance Standards and Sustainability Policy

Recommendations from Oxfam International

As the International Finance Corporation reviews its 2006 Performance Standards and Sustainability Policy, Oxfam International recommends a particular focus on improvements in the areas of 1) community engagement and "broad community support", 2) transparency, 3) project definition and categorization, 4) demonstrating project-level development impacts, 5) application of the Performance Standards to financial intermediaries and 6) human rights. These recommendations are a result of Oxfam International and local partner engagement with IFC-financed oil, gas, mining, dams, hydro-power, and other large-scale projects over the past decade.

I. Community Engagement and Broad Community Support

For projects with "significant adverse impacts on affected communities," the IFC Policy on Social and Environmental Sustainability calls for *free, prior and informed consultation* leading to "broad community support for the project within the affected communities." However, the definition of the concept within the document is quite imprecise.[1] The IFC relies primarily on clients to provide evidence of "broad community support," which represents a conflict of interest. At the same time, local communities, civil society organizations and the public at large are not afforded the opportunity to review information substantiating the client's determination of "broad community support," nor to offer their support or critiques of these findings. **The IFC should publish all documentation pertaining to their determination of "broad community support" in advance of IFC consideration of projects.** This recommendation is in line with the consensus view of the World Bank Group Extractive Industries Advisory Group that the "IFC should give more detail in its disclosure of projects on how BCS was established."[2]

In addition, in order to ensure that local communities have a voice in decision-making pertaining to their land and natural resources, **the IFC should require that companies secure the free, prior and informed *consent* of project-affected populations.** This key requirement

[1] "Broad community support is a collection of expressions by the affected communities, through individuals or their recognized representatives, in support of the project."

[2] Summary of the World Bank Extractive Industries Advisory Group Meeting, November 24-25, 2008, Washington. http://siteresources.worldbank.org/INTOGMC/Resources/minutes2008.pdf

would be consistent with the 2004 recommendation of the Extractive Industries Review that the World Bank Group, "require companies to engage in consent processes with communities and groups directly affected by projects in order to obtain their free prior and informed consent,"[3] and with the United Nations Declaration on the Rights of Indigenous Peoples, which calls for the free, prior and informed consent of indigenous peoples for decisions which affect them.[4] Replacing the term "consultation" with "consent" would stress a key element of the FPIC principle – that communities have the option either to reject a proposal, or accept it under certain conditions. *As a member of the UN system, the World Bank Group should support rights enshrined in UN declarations.*

Finally, the IFC should require clients to make project-affected communities aware of IFC funding and that the Compliance Advisor Ombudsman exists for their benefit. In order for communities to take full advantage of the recourses available to them, they must be made aware that these tools exist. The IFC should require clients to provide communities with clear and straightforward information explaining their project involvement and the role of the CAO.

II. Transparency

In its last revision of its policies and standards, the IFC took a leadership role by including in it is Policy on Social and Environmental Sustainability in 2006 a requirement that all extractive industry clients publish all material payments to host governments. At the same time, little progress has been made on the disclosure of extractive industry project agreements between companies and host governments. The Policy on Social and Environmental Sustainability requires that clients disclose the relevant terms of key agreements only for "significant" new extractive industry projects – defined as those that are expected to account for 10% or more of government revenues. However, this policy has yet to provide new information to interested stakeholders. Since the IFC launched the policy in 2006, more than 55 IFC extractive industry projects have been approved, but not a single project funded by the IFC has triggered this requirement. Additionally, the IFC policy should be broadened to require the publication of all material payments to host governments for *all* project types - not just EI projects.

Contract transparency offers a key opportunity to improve resource management and increase stability for the benefit of clients, host governments, and citizens of developing countries. Some countries, like Peru, already disclose their contracts as a matter of course. In 2009, the President of Ghana declared an intention to disclose extractive industry contracts, and the International Monetary Fund has in some cases made contract disclosure a condition of debt relief. **The IFC Policy should require that all investments (including but not limited to EI and hydro-power projects) publicly disclose contracts, principal and derivative, related to the operation to which the government is a party, including, inter alia: between host**

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[3] "Striking a Better Balance – The World Bank Group and Extractive Industries: The Final Report of the Extractive Industries Review," September 2004, http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/FinalManagementResponse/$FILE/finaleirmanagementresponse.pdf

[4] UN Declaration on the Rights of Indigenous Peoples 2007.

governments and companies (e.g. Host Government Agreements, Production Sharing Agreements, Power Purchasing Agreements, Concession Agreements) and between governments (e.g. Inter-Governmental Agreements), without regard to any threshold size or scope (for more details, please see the Publish What You Pay-US IFC Policy Review submission).

We also urge the IFC to include the payment and contract disclosure requirements in Performance Standard 1. While IFC's *Sustainability Policy* applies uniquely to itself, the IFC's *Performance Standards* may *de facto* set the standards for the dozens of private banks and export credit agencies that have endorsed the Equator Principles. Therefore the requirement for the disclosure of revenue payments and contracts should be moved to PS 1 for all project types.

Additionally, **the IFC should increase the transparency of project monitoring information** in order to facilitate timely access to project-related information by project-affected communities and civil society organizations. Specifically, all Monitoring Reports submitted by clients to the IFC and IFC trip reports developed as a result of site visits should be posted on the IFC website. The Asian Development Bank already requires disclosure of all social and environmental monitoring reports by clients[5], and IFC should meet at least the same standard. Clients should be required to translate this material to local languages when necessary, and ensure that project-affected communities are made aware of the availability of this information. While the IFC endeavors to make some project assessment and project information available *before* project approval, it is much more difficult to access IFC and client project monitoring reports during project implementation, making it difficult to independently assess IFC and client performance.

III. Improving Project Definition and Categorization

The IFC requires that a social and environmental assessment be conducted covering the project's "area of influence", which encompasses the primary project site as well as "associated facilities that are not funded as part of the project…and whose viability and existence depend exclusively on the project and whose goods or services are essential for the successful operation of the project."[6] In practice, the IFC's interpretation of the definition of "associated facilities" has proven unreasonably narrow. According to the United States position at the IFC on the Peru LNG project in February 2008, "IFC's definition of associated facilities for environmental assessment is actually narrower than that adopted by IDB, as well as inconsistent with what we believe are the standards under U.S. domestic environmental law and international good practice."[7] **To address this shortcoming, the IFC should remove the phrase "and whose viability and existence depend exclusively on the project" from its**

[5] "The Public Communications Policy of the Asian Development Bank: Disclosure and Exchange of Information," June 2005, Paragraph 92, available at http://www.adb.org/Documents/Policies/PCP/pcp0502.asp?p=disclose
[6] IFC Performance Standard 1, p. 2
[7] U.S. Department of Treasury, "Peru LNG Position of the United States at the IFC February 5, 2008," http://www.treas.gov/offices/international-affairs/multilateral_banks/02-06-2008.pdf

"associated facilities" definition in order to ensure consideration of all dependent components of the project.

The case of Peru LNG provides an important example of the ramifications of applying an overly narrow and legalistic definition of "associated facilities." The IFC did not consider any component of the first phase of the Camisea project (Blocks 56 and 88 and associated pipelines in the Peruvian Amazon) as an "associated facility" to the Peru LNG project, even though the Peru LNG project transports gas exclusively from the Camisea gas fields. In light of this determination, the IFC Performance Standards for Social and Environmental Sustainability have no influence over the upstream portion of the project, which is located in an extremely biodiverse area inhabited by indigenous communities. Since operations began in 2004, six pipeline spills have occurred. Nevertheless, the IFC did not consider Camisea in its social and environmental assessment.

The IFC should adopt a more encompassing and common sense interpretation of the term "associated facilities" to ensure that its application contributes to the IFC aim of "ensuring that the costs of economic development do not disproportionately fall on those who are poor or vulnerable, that the environment is not degraded in the process, and that natural resources are managed efficiently and sustainable."[8]

Related to the question of project definition and the definition of "associated facilities" is the question of accurate categorization of projects by the IFC. As noted in the World Bank Group's Extractive Industries review, "the WBG should take a holistic, multidimensional approach to assessments, identifying cumulative impacts of projects and socioeconomic linkages to environmental issues…Extractive industry projects should be categorized as Category A projects – likely to have significant adverse environmental impacts – unless there are compelling reasons to the contrary."[9] However, in some cases the IFC has neglected to take into account the full range of potential project impacts (including indirect and pre-mitigation impacts), leading to miscategorization of projects.

For example, USAID's technical review of two projects – Bankers Petroleum in Albania and Peter Hambro Mining PLC in Russia (an exploratory project) – found that both of these projects had the potential to pose significant environmental and/or social impacts (in the latter project due to potential expansion), and thus should have been designated as Category "A" rather than Category "B" projects. Oxfam America's research on the IFC-funded Jubilee Field oil project in Ghana suggests that this Category B projects should also have been considered Category A. **In order to avoid categorization problems in future, the IFC should ensure that categorization is based on potential pre-mitigation impacts, not post-mitigation impacts, and that it takes into account both indirect and associated facility impacts.**

[8] IFC Policy on Social and Environmental Sustainability, p. 2

[9] World Bank Group, *Extractive Industries Review: Striking a Better Balance*, Executive Summary, http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTOGMC/0,,contentMDK:20306686~menuPK:592071~pagePK:148956~piPK:216618~theSitePK:336930,00.html

IV. Demonstrating Project-level Development Impacts

IFC does not publicly report its development results on a project-by-project basis for all of its projects. Although the IFC has committed to implementing a system to track development impacts throughout a project's lifecycle, it has not committed to disclosing the data on a project-specific basis. Instead, it reports on its "overall contribution to development," leaving questions about what information may be omitted and how accurately the reporting captures local impacts.

To strengthen accountability and demonstrate IFC's progress toward achieving its poverty reduction mandate, IFC must introduce a robust framework for public reporting on both positive and negative development outcomes for each of its projects. IFC should clearly articulate the anticipated development outcomes for its projects, track project performance against those expectations, and report on results publicly. Reporting should be designed primarily to inform the public and affected communities, and, therefore, reports must evaluate contributions to poverty reduction. Relevant indicators of development outcomes and IFC additionality described by the Development Outcomes Tracking System (DOTS) should be disclosed, and standardized across projects where possible. In addition, DOTS-fed data must be supplemented with data on sustainable development impacts such as duration of employment, comparative earnings level, skills development, etc. Development outcome reporting is particularly important in sectors such as mining or hydrocarbons that have significant negative impacts on communities and the environment.

V. Improved Application to Financial Intermediaries[10]

The Performance Standards and the Sustainability Policy fail to provide specific application guidelines to Financial Intermediaries (FIs). As a result, subprojects financed by IFC-supported FIs are not required to comply with the Performance Standards, which is an unacceptable loophole. Other shortcomings of the current application of PS and the Sustainability Policy to FIs include:

- the environmental and social risk-rating system is based on the average make-up of a FI's current portfolio of investments, not individual projects
- only portfolios deemed by IFC staff as high-risk are subject to the Performance Standards
- no requirement for disclosure of Summary of Proposed Investments for IFC funded FI portfolio

[10] See also: Submission by Civil Society Organisation to the International Finance Corporation Commenting on the Social and Environmental Sustainability Policy, Performance Standards and Disclosure Policy, 11 March 2010 http://www.bicusa.org/en/Article.11802.aspx

- no disclosure of IFC assessment on FI social and environmental management system compliance with PS

In light of the anticipated rise in FI funding by the IFC, it is essential that the Performance Standards and Sustainability Policy unambiguously apply to FI operations, including subprojects. The Performance Standards and Sustainability Policy must be revised to include FI-specific requirements as follows:

- **required disclosure of completed Financial Intermediary Portfolio questionnaire, completed Environmental and Social Management System (EMS) questionnaire, all environmental and social performance reports, and all project supervision reports**
- **required disclosure of FI's Summary of Proposed Investments**
- **required categorization of individual subprojects of IFC-supported FIs according to the same system used by IFC direct-project investments, with all applicable requirements, including information disclosure for social and environmental due diligence documents**
- **extension of these requirements to corporate loans and equity investments**

In order to ensure consistent application of the Performance Standards and Sustainability Policy, the IFC should consider developing a separate Performance Standard on special financing modalities, following the EBRD's and ADB's example.

VI. Human Rights

Large scale projects including oil, gas, mining, dams and hydro-power can have negative impacts on human rights. These can include negative impacts on project-affected peoples' rights to food, property, life, health, housing and an adequate standard of living. Despite the potential human rights implications of large scale projects, the Performance Standards do not provide project sponsors with a robust framework for meeting their responsibility to respect human rights or for providing affected people with access to a rights-compatible grievance resolution process.

In particular, the Performance Standards fall short in three critical areas:[11]

- Substantive Standards: The Performance Standards do not address many critical human rights issues, and address others only partially or in ways that do not meet international norms and standards.
- Due Diligence Procedures: The Performance Standards do not provide an adequate procedural framework for conducting human rights due diligence. Although the Performance Standards require a comprehensive environmental and social assessment for

[11] *The International Finance Corporation's Performance Standards and the Equator Principles: Respecting Human Rights and Remedying Violations? A Submission to the U.N. Special Representative to the Secretary General on Human Rights and Transnational Corporations and other Business Enterprises*, Center for International Environmental Law, Bank Information Center, BankTrack, Oxfam Australia and World Resources Institute, August 2008, Steven Herz, Kristen Genovese, Kirk Herbertson, and Anne Perrault.

high-impact projects, they do not require explicit assessment of potential impacts on human rights.

- Grievance Mechanisms: While the Performance Standards require project sponsors to implement project-level grievance mechanisms, these mechanisms are not required to meet any minimum due process standards.

The Performance Standards should explicitly incorporate universally accepted human rights standards, and provide greater guidance to clients to help ensure that clients respect human rights. This approach is consistent with and can draw on the work of the UN Secretary General's Special Representative on Business and Human Rights.

The IFC should require clients to undertake human rights impact assessments as part of human rights due diligence processes. Additionally, the IFC should require clients to develop a human rights management program. The requirements should be in addition to existing requirements to undertake and develop social and environmental impact assessments and management programs.

The Performance Standards should outline minimum due process standards for the design and implementation of project-level grievance mechanisms. These due process standards should require that project-level grievance mechanisms are legitimate, accessible, predictable, equitable, transparent, and importantly, rights-compatible to ensure that its outcomes and remedies accord with internationally recognized human rights standards.

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