Submission by Civil Society Organizations to the International Finance Corporation

Commenting on The Social and Environmental Sustainability Policy, Performance Standards and Disclosure Policy

11 March 2010

Introduction

The undersigned civil society organizations have prepared this joint submission to provide an overview of many of our concerns related to IFC's Policy on Social and Environmental Sustainability, the Performance Standards, related guidance documents, and the Disclosure Policy. We believe these concerns should be explored and addressed further through IFC's current consultation and review process.

This review provides an important opportunity to respond to critical developments in the last three years, including, for example, the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the United Nations General Assembly (UNDRIP); increased progress in understanding the responsibilities of private actors with respect to human rights; increased understanding of the urgent need to respond to climate change; and a significant increase in the development and use of new approaches to lending.

The review also provides a much-needed opportunity to incorporate lessons learned in response to the financial crisis. The crisis underscored the need to provide clear expectations and standards for private sector actors, as well as adequate transparency, due diligence, and oversight procedures to ensure that risks are assessed and addressed fully. We believe the approach assumed by IFC in 2006, prior to the crisis, to introduce greater flexibility in IFC standards and to shift monitoring and supervision responsibilities to private sector clients, is clearly inconsistent with new hard-learned lessons about how to deal with financial risks and poses problems for securing strong development outcomes.

For example, IFC's growing support in recent years for financial intermediaries – including non-banking private financial institutions engaging in high leverage practices and taking significant financial risks – is not consistent with expectations of the general public. The expectation is that multilateral public support will be awarded to the private financial sector on the basis of much stricter and more sound due diligence, while support to the types of actors who substantially contributed to the financial crisis of the last two years will be avoided.

Unfortunately, the foundational document for this review, "IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information: Report on the First Three Years of Application," requested by the Board, inadequately prepares

IFC to respond to these critical developments and lessons learned. Instead, IFC's approach to measuring effectiveness demonstrates a bias towards responding to the needs of IFC's private sector clients rather than, and perhaps to the detriment of, the concerns of local communities and the environment.

For example, in this report, IFC management focused exclusively on soliciting the views of its private sector clients, which is an insufficient barometer of the "effectiveness" of the IFC Policy and Performance Standards. The failure of IFC management to interview a single community for the report, despite the opportunity to do so provided by the 182 projects that have been under IFC's supervision for over a year, is a strong indication that IFC is not, in practice, committed to ensuring that the Policy and Performance Standards are implemented effectively to protect communities and the environment, as intended.

We believe research and reports prepared by the Compliance Advisor Ombudsman (CAO) and the Independent Evaluation Group will be important inputs for consideration by IFC during the review process.

Some key concerns of our organizations include those related to environmental and social due diligence and oversight; accountability; development outcomes; human rights; biodiversity; climate change; financial intermediaries; and disclosure of information. This overview, however, does not represent a comprehensive review of all issues of importance to civil society and local communities; our organizations and others will be providing more detailed feedback on these and other issues.

Environmental and Social Due Diligence and Oversight

IFC's Due Diligence and Oversight

IFC's policy and practice do not provide the environmental and social due diligence required to support development that alleviates poverty and does not harm local communities. Provisions of IFC's Social and Environmental Sustainability Policy and the Environment and Social Review Procedure (ESRP) that relate to pre-appraisal, appraisal, and supervision of projects are fundamentally deficient in several respects. Moreover, inadequate implementation has undermined existing due diligence requirements.

The Policy and ESRP promote a dangerous overreliance on client-provided information that has not been adequately verified for accuracy or comprehensiveness by IFC or other independent sources. Too often, unverified information provided by the client forms the basis for critical and significant decisions by IFC, including decisions related to: (1) whether the project is characterized as one with significant adverse impacts and, in turn, whether external experts are necessary and broad community support for the project must exist; (2) what is included in action plans; and (3) whether the client is meeting commitments reflected in the action plan and loan agreement. These decisions profoundly impact communities and development results.

Compounding the problems raised by reliance on unverified information is the related lack of a clear requirement in the ESRP that IFC provide any critical evaluation of the robustness of the client's environmental and social impact assessment. The ESRP directs IFC primarily to evaluate the "scope" of the assessment.

Inadequate requirements for categorization of projects are also problematic. IFC's failure to categorize projects accurately based on risks has, we believe, contributed to violations of community rights in IFC investments in Indonesia, Nicaragua and other locations.[1] 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 project 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. Improper categorization leads to a failure to incorporate environmental and social requirements necessary for effective risk management. It also leaves projects that have potentially significant impacts less transparent, since disclosure requirements vary depending on project category.

Implementation of *existing* pre-appraisal, appraisal, and supervision requirements is inadequate as well. One such example is highlighted in the Compliance Advisor Ombudsman's audit report in response to a complaint about IFC's loans to the Wilmar Corporation. The audit report states, "Because commercial pressures dominated IFC's assessment process, the result was that environmental and social due diligence reviews did not occur as required." The reporting structure may be one factor, among others, limiting effective implementation; because Environmental and Social specialists have a different reporting line than loan officers, information provided by these specialists may not be given the same consideration as information that is strictly financial.

Additionally, failures by IFC to ensure that clients are meeting obligations to make assessments public, report to communities on implementation of action plans, and establish strong grievance mechanisms, are evidenced in IFC's loan to Nicaragua Sugar Estates Limited (NSEL) in Nicaragua and other projects. Communities in Nicaragua, for example, which fear that an IFC project is gravely affecting community health, have not been able to access impact assessments, have not received reports from NSEL describing measures taken to implement action plans, and do not believe mechanisms exist to address their concerns effectively.[2]

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[1] See, for example: The Compliance Advisor Ombudsman. *Audit of IFC's investments in: Wilmar Trading, Delta Wilmar CIS, Wilmar WCap and Delta Wilmar CIS Expansion,* June 19, 2009.

[2] See, for example: Compliance Advisor Ombudsman. *Stakeholder Assessment Report Regarding Community and Civil Society concers in relation to activities of the Nicaragua Sugar Estates Limited (NSEL), Nicaragua*, December 2008.

More fundamentally, too often communities are not made aware that IFC has invested in a given project, that environmental and social requirements apply, and that they have rights to information and accountability.

Client Assessments, Monitoring and Reporting

Civil society organizations and communities have observed that client assessments of social and environmental impacts are notably flawed in many projects. These flaws can be explained in part by inadequate assessment requirements.

For example, IFC's definition of "associated facilities" often excludes assessment of the upstream and downstream impacts of the project. IFC requires that clients conduct a social and environmental assessment 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." In practice, IFC's interpretation of the definition of "associated facilities" has proven unreasonably narrow. According to the United States' statement in February 2008 on the Peru LNG project, "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." To address this shortcoming, IFC should remove the phrase "and whose viability and existence depend exclusively on the project" from its "associated facilities" definition in order to ensure consideration of all dependent components of the project.

To strengthen impact assessments as a risk management tool, IFC should, additionally, require clients to:

- Include a "no project" alternative within the impact assessment;
- Account for and publicly report direct and indirect GHG emissions associated with project activities;
- Identify impacts to all ecosystem services;
- More effectively consider cumulative impacts of projects on regional development; and
- Assess the potential human rights impacts of projects (described below).

Inadequate *implementation* by IFC clients of assessment, monitoring and reporting requirements is also a significant problem. As noted above, IFC clients have failed to implement critical requirements that IFC has failed to adequately monitor.

Accountability

Despite requirements in Performance Standard 1 that clients respond to communities' concerns, including through the establishment of "grievance mechanisms," we have not seen progress in this regard. Over 500 projects have been approved by IFC since the Performance Standards came into force in 2006. Yet it is not clear how many of them have robust project level grievance mechanisms; IFC did not include this information in its three year report or 2009 Good Practice Note. Communities with whom we have engaged in the context of IFC projects have either not known the mechanisms exist, or believe them to be useless. At a minimum, grievance mechanisms should be independent and have the trust of communities. They should be easy to access and able to address communities' complaints effectively and in a timely manner.

More specifically, Performance Standard 1 should mention that company-sponsored mechanisms should exist within an "accountability framework" that includes: (1) community access to remedies through courts, the Compliance Advisor Ombudsman (CAO), and other independent dispute-resolution bodies; (2) third party monitoring and verification; and (3) public reporting. Furthermore, IFC should require clients to disclose the existence of the CAO and how to access it.

To secure the trust and buy-in of communities, essential elements of local grievance mechanisms, Performance Standard 1 should clearly state that the client shall work in consultation with the community to establish a grievance mechanism. The paragraph should also mention that monitoring, reporting and evaluation are essential elements of a community-based grievance mechanism, as discussed in the CAO's 2008 Advisory Note on this subject.

Reporting Development Outcomes on a Project-Level

When IFC adopted the existing Policy and Performance Standards, it announced that it was moving from a rules-based lending approach to an outcomes-based approach.3 However, as IFC reduced prescriptive control over lending – offering clients greater flexibility in meeting environmental and social goals and relying more on clients for monitoring and supervision – it weakened accountability and neglected evidence-based development reporting. To strengthen accountability and truly demonstrate IFC's progress toward achieving its poverty reduction mandate, the updated Sustainability Framework must introduce a robust framework for public reporting on development outcomes for each project.

(1) Reporting on development outcomes should be at the project level.

Currently, the IFC reports on development outcomes annually, aggregating results by sector or area, rather than at a project-level. For example, the IFC does not require any tracking

[3] http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pr_PolicyReviewFactSheet/$FILE/FactSheet.pdf

or reporting on the number of people displaced by each project, or on the impoverishment or enrichment of displaced people. Project-level disclosure would serve as an important gauge to assess which types of projects have actual positive impact on communities and contribute to poverty reduction. Such measures are necessary to determine if displaced people's standards of living improve and whether their livelihoods are restored.

Development outcome tracking should be continuous and include interim and completion reports. A project-by-project approach allows for monitoring of progress toward anticipated development outcomes and enables project managers/civil society to spot problems early. Such aims are not foreign concepts for several of the international financial institutions. The Inter-American Development Bank (IDB)'s Loan Review Documents and the World Bank IBRD/IDA's Implementation Completion and Result reports can serve as examples of ongoing and ex-post reporting. The European Bank for Reconstruction and Development (EBRD) has also started disclosing brief evaluations of its projects on its website.

(2) Outcome tracking should emphasize progress on sustainable development and result in quantitative and qualitative reports for each project.

IFC's vision is that "people should have the opportunity to escape poverty and improve their lives." As such, project impact reports must emphasize achievements in poverty reduction, empowerment, expansion of opportunities in communities, and sustainable development, aside from the business and financial performance of the project. IFC should also report on qualitative outcomes, such as equity in terms of the prevailing power relations in the project, and progress on protection of the rights and interests of women and vulnerable groups, particularly when it comes to participation, consultation, land titles, property rights, compensation and decision making. Reporting on qualitative improvements cannot be achieved with the few quantitative indicators currently captured by IFC's Development Outcome Tracking System (DOTS). IFC should supplement quantitative data with narrative reports elaborating whether and how anticipated development outcomes have been achieved.

(3) IFC should disclose relevant client documentation.

IFC can strengthen development outcomes reporting by making client's documents publicly available on its website in addition to the disclosure of its own assessment. IFC can disclose how its clients are implementing Community or Indigenous Peoples Development Plans (IPDP), any benefit sharing agreements that project sponsors and affected communities agree on, or client reports on social assistance provided to communities. This measure will reinforce the client's responsibility to report on development outcomes to communities directly. Disclosing client's reports on impacts is consistent with the 2008 recommendation of IFC's Compliance Advisor/Ombudsman (CAO) on improving local development impacts at the project level.

(4) Reporting should capture both positive as well as negative outcomes.

IFC's DOTS and client-submitted information capture mostly positive outputs such as the number of jobs created or amounts spent in the local economy. Certain projects, however, result in differentiated impacts, creating opportunities for some groups, but harming others. Any reporting on project outcomes should include information on both winners and losers, considering the wider impact in the community, supply chain or the sector. Such an approach helps reveal when the vulnerable bear the negative impacts disproportionately or whether project benefits target those most in need.

(5) Sensitive projects should be subject to independent impact assessments.

For high-risk projects, the IFC Sustainability Policy should require an independent in-depth evaluation of project impacts and contribution to sustainable development. This requirement is in-line with the current requirement of the Multilateral Investment Guarantee Agency (MIGA) for impact assessments as outlined in its disclosure policy. The IFC-commissioned report on the Yanacocha gold mine project is an example of such third-party assessments.

(6) The project should be evaluated on its replicability and strategic value.

The IFC's Summary of Proposed Investments and subsequent outcome reporting should reflect the strategic value of the project and how IFC's value addition can be replicated. The strategic value of a project involves demonstrating how a project has advanced the relevant institutional, national and sector-wide development objectives of a country. Replicability should point to poverty reduction and sustainability solutions that can be adopted and scaled up by others across the sector or within the supply chain.

Human Rights

IFC activities can significantly impact human rights. The Chad-Cameroon Oil & Pipeline project, for example, is an IFC investment that is associated with deepening poverty, deterioration in governance, and violent conflict. The IFC remains engaged in the project even though IDA/IBRD withdrew from it in 2008 citing systematic violations of loan agreements by the Chadian government. The Policy and Performance Standards do not ensure that human rights are respected fully and are not adequate to prevent a repetition of the Chad-Cameroon outcome elsewhere.

We are concerned that IFC's current sustainability and risk management framework seeks primarily to minimize and manage risks that social and environmental concerns pose to the project and to IFC's clients, and does not fully take into account risks that projects may pose to individuals and communities likely to be affected.

This approach to risk and harm is neither effective nor adequate from a human rights perspective. The starting point for assessing human rights-related risks should at least consider the following:

(1) Will any action in this project produce a foreseeable risk to rights of individuals and communities likely to be affected? If so have reasonable steps been taken to avoid those risks?

(2) What foreseeable impact will this project have on rights not directly affected by the project (for example, wider issues related to access to food)? This assessment may in turn lead to reasonable adjustments to the project to reduce or avert the foreseeable impacts.

IFC's current Performance Standards do not address these concerns, presenting, instead, alternative lower standards that undermine a common, clear and consistent understanding of rights. Moreover, they do not cover the whole range of human rights that IFC's activities may impact. While the Guidance Notes that accompany the Performance Standards reference some human rights standards and treaties, these references do not fully embrace recognition and implementation of key human rights standards, and, as non-binding guidance, fail to require any such recognition or implementation. Failure to carry out adequate human rights due diligence can result in serious human rights abuses that often disproportionately affect the most marginalized people and communities.

The current review of the IFC's sustainability framework offers an opportunity to ensure that IFC's Policy, Performance Standards, and Guidance Notes are made consistent with international human rights standards and provide more effective human rights protection for affected people and communities.

More specifically, the review provides an opportunity for the IFC to increase protection of human rights by explicitly and fully recognizing human rights standards and ensuring comprehensive and robust human rights due diligence in all IFC project activities and throughout the project cycle.

At a minimum, as a pre-requisite for loan approval, a human rights impact assessment that explicitly applies the human rights legal framework must be performed. The findings of this assessment should be made available to the public as part of IFC's due diligence process.

Any human rights impact assessment should: be adaptable to different circumstances and phases of IFC-supported projects; uphold rights to participation and access to information for all affected communities; ensure non-discrimination and equality; and include appropriate mechanisms for people whose rights are negatively affected to hold those responsible to account.

Failure by an IFC client to ensure that IFC projects are respecting human rights should carry severe consequences. Such consequences could include measures such as breach of contract, revocation of outstanding funds, disbarment of the company from future IFC support, and a requirement for IFC to conduct an internal investigation as to whether adequate due diligence was carried out.

IFC must, additionally, ensure that a host government's ability to strengthen laws and policies relating to human rights, as well as other social and environmental concerns, is not limited by stabilization clauses in host government agreements. Joint research promoted by the IFC and Professor John Ruggie, the United Nations Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, indicates that stabilization clauses can, and do, impact human rights and should be addressed.

Some examples of gaps in the current coverage of human rights protection in the Performance Standards are outlined below.

Indigenous Peoples' Rights

Although IFC and the World Bank have contributed to the development of safeguards to protect the rights of indigenous peoples, the Policy and Performance Standards must be upgraded to ensure consistency with international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). IFC must ensure, as part of this process, that revisions to its sustainability framework achieve this consistency.

Article 42 of the UNDRIP indicates specifically, "The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration."

The UNDRIP, which affirms rights that are recognized and protected by binding international conventions, contains specific requirements related to free, prior informed consent. For example, the UNDRIP requires that consent be sought in good faith for any activity that might affect the lands, territories or resources of indigenous peoples; before any relocations (which are prohibited in the absence of consent of indigenous peoples); before adopting or implementing legislative or administrative measures that might affect indigenous peoples; and when indigenous peoples' cultural, intellectual, religious and spiritual property are to be used. Lack of consent should prevent any activities or decisions that might directly affect indigenous peoples' property rights.

Paragraph 20 of IFC's Policy on Social and Environmental Sustainability states that

> "…IFC assures itself that the client's community engagement is one that involves free, prior, and informed consultation and enables the informed participation of the affected communities, leading to broad community support for the project within the affected communities, before presenting the project for approval by IFC's Board of Directors. Broad community support is a collection of expressions by the affected community, through individuals or their recognized representatives, in support of the project."

Neither on paper nor in practice do the IFC's Sustainability Policy and Performance Standard 7 on Indigenous Peoples fully honor the principle that indigenous peoples have the right to free, prior and informed consent before significant decisions are made or actions taken that would affect their lands, territories or resources. As currently implemented, the broad community support (BCS) standard does not ensure that communities with a special attachment to their land and resources and with distinct cultures and languages have provided their "free, prior and informed consent." To date, IFC's apparent approach to BCS in practice is to determine if significant objections exist to a project. In the absence of major objections, IFC staff assumes the project has "support." This approach clearly does not ensure that "consent" of indigenous communities has been secured, or even that a project has support. It also does not ensure that indigenous peoples' right to determine how they engage in decision-making processes is respected. IFC and its clients must be required to inform indigenous peoples that they have the right to provide or withhold their consent, and that indigenous peoples have the right to withdraw from "good faith negotiations" with companies if the proposed terms of agreement are unacceptable. If indigenous peoples withdraw from negotiations the project should not proceed.

Broad Community Support

Currently complicating a review of an IFC determination of broad community support is the lack of transparency related to evidence used by IFC to make this determination. The IFC must provide local communities and civil society organizations with an opportunity to review all information substantiating IFC's determination of broad community support and an opportunity to critique or support these findings. IFC should publish, in advance of IFC consideration of projects, all documentation pertaining to the determination of support.

Considering the importance of the good faith negotiation and broad community support standards, and the relative lack of information on systematic implementation of these standards by the IFC, IFC must undertake a focused review of these standards, in close consultation with communities. This should include an examination of (1) how the standards have been applied in practice in order to assess quality of compliance; (2) weaknesses that need to be addressed; and

(3) lessons learned from affected communities and their representatives about how the provisions can be improved.

Women's Rights

The 1979 Convention on the Elimination of All Forms of Discrimination against Women creates a framework for ensuring equal protection and non-discrimination based on gender. IFC Performance Standards, however, do not consistently acknowledge the differing impacts of development on gender. For example, women sometimes lack a voice in local governance, are often the primary labor force and yet have limited rights to own property, tend to have primary responsibility for growing food and collecting water, and have distinct health care concerns. All areas covered by the performance standards potentially have gender impacts.

Some key gaps in the Performance Standards include: (1) lack of a requirement to guarantee fair labor standards and equal labor opportunities for women in affected communities; (2) inadequate requirements to address security and health concerns prioritized by women; (3) inadequate protections for the rights of women who do not have recognized title to land, but are the primary agricultural labor force; and (4) impact assessments that often fail to disaggregate data or consider the differential impacts on women.

Housing and Land Rights

The right to live in adequate housing is implicated in numerous IFC-financed projects. In particular, housing and land rights require security of land tenure and legal protection against eviction, harassment, and threats. Major problems occur when a project displaces communities; displacement often leads to impoverishment, including homelessness, loss of livelihoods, food insecurity, and disruption of community cultures and support networks. Performance Standard 5, which focuses on land acquisition, inadequately addresses these concerns.

First, Performance Standard 5 extends protections only to those physically or economically displaced by land-acquisition, leaving those who have been constructively evicted because their lands have become unliveable as a result of polluted fisheries, water, and air, without any protections. Second, IFC does not require clients to replace lost land with land. This fails to meet the United Nations' *Basic Principles and Guidelines on Development-based Evictions and Displacement*, which states that land takings "should be compensated with **land** commensurate in quality, size and value or better" (emphasis added). Finally, the IFC requirement that clients "improve, or at least restore" the livelihoods of displaced people in practice does not secure improvements to livelihoods. Peer institutions, such as the Asian Development Bank, clearly require the improvement of livelihoods. In this regard, IFC should identify displaced people as project beneficiaries and emphasize that mechanisms for project benefit-sharing in addition to compensation (whether cash- or land-based) are necessary for sustainable resettlement.

Finally, an underlying issue limiting the development effectiveness of displacement and resettlement programs is the lack of sound economic evaluation. While IFC is proud of the quality of its mandated economic and financial feasibility project analyses, it does not require the application of the same economic and financial feasibility tests to resettlement action plans (RAPs). Numerous studies have shown that project costs, including resettlement costs, are routinely under-estimated, while project benefits are overstated. This ongoing failure to adequately measure the full costs of resettlement implementation allows IFC clients to under-finance and under-budget resettlement operations, ultimately resulting in impoverishment of displaced persons.

Water-related rights

Affordable and equitable access to water and sanitation is not explicitly mentioned in the current iteration of IFC Performance Standards. Currently, the standards address impacts to water resources and overall water quality, but do not identify potential project impacts related to access, cost of service, distribution, or other issues related to access to water. These are critical issues that must be addressed, particularly when the project itself is a water supply and/or sanitation project. These issues could be covered in Performance Standard 1, as well as Performance Standards 2, 3, and 4.

Access to water is an issue of particular concern in emerging markets. As the United Nations acknowledged in 2002, the right to water "is a pre-requisite to the realisation of all other human rights." In that context, it is incumbent on IFC to ensure that water quality and access implications are an integral part of the performance standards used for assessing the impacts of all development projects.

Labor Rights

IFC's Performance Standard 2 marked an important step towards integrating the International Labour Organization's Core Labour Standards (CLS) in its projects. Taking place during a global unemployment crisis, this policy review offers an important opportunity for the IFC to improve its approach to labor issues. Chief among our recommendations in this area is the need to strengthen language on the clients' obligation to avoid job reductions, closing the existing gap by requiring clients to examine and adopt alternatives to the greatest possible extent.

We also recommend that IFC develop improved categorization and explanation of project risk, taking account of the fact that some activities may have low environmental risks but high risks for labor standards violations (or vice versa). This distinction would help to address one issue with investments in financial intermediaries, where labor risks continue to be significant even where there are minimal environmental risks.

In addition, we recommend that IFC take greater responsibility for project impact by extending the application of PS 2 to cover "indirect" employees in its supply chain. IFC's Performance Standards should explicitly state that a client's employees are considered part of "affected communities," and that the client is required to engage with its employees and their representative associations. Evidence of this constructive engagement should be reported through the obligatory Social and Environmental Assessment, and in any Action Plan that may be required to assure client compliance. We further recommend that both these documents be publicly disclosed through the IFC project website for all projects, in order to address access to information problems that we have experienced.

Climate Change

IFC continues to support fossil fuel-intensive projects, despite the long-term costs that impact human health as well as the environment. IFC should help its clients consider the full costs associated with such projects by accounting for and publicly reporting greenhouse gas (GHG) emissions and analyzing the options available to incorporate low carbon technologies into each investment.

IFC currently has only a limited number of climate change-related requirements within the Performance Standards and no requirements for IFC in the Sustainability Policy.

For IFC, the updated Sustainability Policy should include an institution-wide commitment to phase out investments in fossil fuels. This is consistent with the September 2009 Pittsburgh G-20 Summit commitment,[4] as well as recommendations from the 2004 Final Report of the World Bank Extractive Industries Review (EIR), to phase out fossil fuel subsidies. The EIR recommended that IFC funding for new investments in the coal sector should cease, lending for the oil sector should be phased out, and any new investments in fossil fuels should focus selectively on natural gas as a transition fuel.

IFC also has continued to support large-scale livestock projects, including in the Amazon Forest Region, despite: (a) a 2001 World Bank livestock strategy statement recommending avoidance of further investments in such projects; (b) a citation in the 2010 World Development Report to an estimate by the Food and Agriculture Organization (FAO) in 2006 that18% of GHG emissions are attributable to the livestock; and (c) a finding, published in a 2009 report authored by current and former World Bank Group staff members and published by the

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[4] *Leaders' Statement: The Pittsburgh Summit*, September 24-25, 2009, para. 24. http://www.pittsburghsummit.gov/mediacenter/129639.htm

Worldwatch Institute, that at least 51% of GHG emissions can be attributed to the entire life cycle and supply chain of livestock projects.

The IFC should devote development funds to investments in renewable energy resource development, emissions-reducing projects, clean energy technology, energy efficiency and conservation, and other efforts that delink energy use from greenhouse gas emissions.

In order to trigger a portfolio shift towards low carbon technologies, clear commitments should be made to reduce total emissions according to a set timetable. New targets adopted by the Overseas Private Investment Corporation (OPIC) and Export-Import Bank (EXIM Bank) in the US offer a concrete model to implement such commitments. A new reduction commitment might represent the most important short-term contribution of the World Bank Group to tackling the climate emergency.

It would be strategic for the IFC to adopt an "exclusion list" of technologies to guarantee that most of its resources are channeled toward interventions that contribute to emission reduction targets and do not have significant adverse social and environmental impacts.

Additionally, due diligence requires that IFC assess the risk that climate change poses to its proposed investments, understanding, for example, how climate change-induced hydrological variations might affect the viability of a proposed hydropower project.

IFC requires that greenhouse gas emissions be quantified by clients only for projects with "significant emissions." This requirement covers projects that emit at least "100,000 tons CO2 equivalent per year for the aggregate emissions of direct sources and indirect sources associated with purchased electricity for own consumption," but fails to account for a large number of projects that cumulatively have a significant impact across IFC's portfolio.

The following modifications to Performance Standard 3 are necessary to reflect developments in GHG accounting since 2006 when the standards were adopted:

- Reduce the threshold for GHG accounting from 100,000 tonnes CO2 equivalent per year to 25,000 tonnes to be consistent with best standards globally;[5]

- Quantify and publicly disclose GHG emissions for all direct and indirect sources, such as downstream combustion of fossil fuel energy extracted, refined and transported by IFC-backed ventures, as well as land use change resulting from projects including foregone carbon absorption in land set aside for livestock and feed production. This is particularly important for land intensive projects such as forestry, agriculture, livestock mining, oil and gas, and hydropower;

[5] The 100,000 ton threshold is outdated. For example, new standards in the US government set a GHG accounting threshold at 25,000 tonnes. See: http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.

- Remove the option for clients to offset GHG emissions, instead requiring clients to conduct an overall assessment of options for best available low-carbon technologies; and
- Extend GHG accounting and climate relevant policies to the activities of financial intermediaries.

Finally, it is important for IFC to consider and address the relationship of human rights to the broader range of IFC climate-change activities. Many fossil fuel projects adversely impact human rights by inducing local and regional conflict, worsen poverty by increasing inflation related to local housing, food and other essential costs, and adversely impact health through the spread of sexually transmitted diseases from migrant largely male work forces. Moreover, IFC financing is likely to be channeled increasingly towards biofuel projects (which often displace poor communities from agricultural land), forest management (which can affect communities' access to water, food, and cultural resources), and large hydropower. As countries adapt to address unpreventable impacts of climate change, certain IFC-supported activities may have human rights implications—such as forced resettlement from flood-prone areas. IFC climate change standards should assess the potential for these risks.

Biodiversity

We would like to see considerably improved discussion and guidance regarding the use of ecosystem standards and knowledge for these types of planning and assessment applications. The scientific and conservation community has developed a comprehensive suite of standards and knowledge elements regarding the distribution and status of terrestrial, freshwater and marine ecosystems. This ecosystem level information is systematically applied to address conservation planning and resource management issues, environmental review, and the planning of development projects. These knowledge elements should be free and open to the public to help advance science, ensure productive dialogues and improved the well-being of people who depend on healthy natural systems. It is important to underscore the enormous benefits gained through the practical application of standardized ecosystem-level standards and information for Performance Standard 6, Criterion 4, 5 and 6.

Financial Intermediaries

IFC activities funded through financial intermediaries (FI) represent a longstanding and enormous shortfall and loophole of the Policy and Performance Standards, resulting in unacceptably poor social and environmental performance of a substantial portion of IFC investments. The Performance Standards and the Sustainability Policy largely fail to provide specific application guidelines to FIs.

Where FI-specific guidance is provided, requirements are riddled with problems and ambiguity. For example, the Environmental and Social risk-rating system (low, medium, high) is based on the average make-up of a FI's current portfolio of investments, not individual projects. Furthermore, it involves review of the FI's existing portfolio of investments only, and does not address future investments that will actually be receiving IFC-provided funding.

In addition, only portfolios deemed by IFC staff as posing a high-risk are subject to the Performance Standards. This appears to trigger only the requirement of a social and environmental management system, with no further elaboration of an evaluation of relevant individual Performance Standards. Finally, each FI has a portfolio of projects that are considered IFC-supported sub-projects and yet there is no public information available on individual investments. Even for high-risk FI portfolios, there is no public information in the Summary of Proposed Investment on project types, on applicable Performance Standards (with the exception of Performance Standard 2, Labor and Working Conditions), or whether the FI has a social and environmental management system in place that meets IFC requirements.[6]

Growing Importance – Declining Performance

Since the inception of the Performance Standards, FI operations represent 40% of IFC projects (or 223 projects). Moreover, IFC staff has indicated that this percentage is slated to increase even further in coming years. The actual number of investments is even higher considering that each FI represents a portfolio of investments. Although IFC has recently increased the number of FI environmental specialists from one to four, and has increased overall supervision of FI operations, this has not translated into improved performance. The most recent IEG evaluation of IFC's performance (2009) found that environmental and social performance has declined sharply for FI operations (2006 to 2008).

In addition to general concerns regarding inadequate coverage by the Performance Standards of FIs, many specific concerns relating to Private Equity Funds and the use of offshore banking as tax havens exist. As part of the review process, IFC needs to provide more information and consultation on these specific concerns.

Policies must be revised to include adequate FI-specific requirements

The current Sustainability Framework leaves wide loopholes for high-risk projects to receive IFC support without meeting fundamental social and environmental safeguards. This is unacceptable and must be resolved fully with significant FI-specific requirements added to the current policies, including:

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[6] IFC's treatment of financial intermediaries is not consistent with an international trend toward greater FI accountability. For example, recent US legislation relating to the Overseas Private Investment Corporation requires that environmental, transparency and internationally-recognized worker rights and human rights standards of the Corporation and its investors shall be consistently applied to all projects, funds and sub-projects supported by the Corporation.

For each FI, IFC must disclose the completed Financial Intermediary Portfolio questionnaire, the completed Environmental and Social Management System (ESMS) questionnaire, all environmental and social performance reports, and all Project Supervision Reports.

IFC should categorize the individual IFC-supported sub-project investments of an FI according to the "A, B, and C" system used by IFC direct-project investments with all applicable requirements of such categorization met by the individual projects.

Given the high proportion of FI projects (40%) in IFC's portfolio and the declining performance of FIs, IFC should ensure that, before it continues to make significant FI investments, it has these necessary policies and capacity to ensure that projects adhere to the Performance Standards and Sustainability Policy.

In regards to Private Equity Funds and offshore banking, IFC should ensure that its supported projects are not based in secrecy jurisdictions. In order to ensure appropriate implementation, all beneficiaries should sign a legally binding agreement that prevents them from using secrecy jurisdictions while benefiting from IFC support. In cases where support is granted to financial intermediaries, IFC should also ensure that all supported banks and other financial intermediaries have stringent safeguards in place against the use of secrecy jurisdictions. This should include the disclosure of beneficial ownership of financial assets. Additionally, the IFC should adopt the Financial Secrecy Index promoted by the Tax Justice Network.[7]

IFC supported companies and financial intermediaries should present their annual accounts on a country by country basis, in order to identify where they make profits and therefore where taxes should be paid.

Disclosure of Information

General Observations

IFC should adopt a presumption of disclosure, subject only to clear and justified exceptions. IFC's reliance on its clients to make certain disclosures has inherent weaknesses. IFC should set clearer standards for their disclosure performance and institute disclosure oversight mechanisms. IFC should release so-called "draft" documents simultaneous with their transmittal to the Executive Directors, including drafts of the Project Assessment Documents, Program Documents, and policy documents. In addition, IFC should assure full disclosure of the Environmental and Social Review Document, as well as post-approval documents, such as supervision reports, annual monitoring reports and project implementation and completion reports, and the clients' environmental and social monitoring reports. IFC should take steps to

[7] http://www.financialsecrecyindex.com

clarify where and how to submit requests, and provide for appeals to be reviewed by an independent and authoritative body. Finally, as detailed below, requiring full transparency for extractive industry-related contracts and payments to governments should be a high priority.

Extractive Industry Contract Disclosure

Currently, the IFC Sustainability Policy requires contract disclosure only for "significant" extractive industry (EI) projects, defined as accounting for 10 percent or more of projected government revenues. Such a threshold is arbitrary and has been ineffective in bringing about any contract transparency in IFC projects as was intended by Bank Management's commitment to the Extractive Industry Review. Since the inception of the Policy in 2006, more than 55 IFC extractive industry projects have been approved and not a single project funded by IFC has triggered this requirement, even in cases where the arbitrary threshold appears to have been met (e.g., Tullow Oil project to develop the Jubilee offshore oil field in Ghana). Project developmental and fiscal impacts, especially at the local and regional levels, occur irrespective of the size of a country's total revenues.

The IFC Policy needs to require that all EI investments publicly disclose contracts, without regard to any threshold size or scope (for more details, please see the Publish What You Pay-US IFC Policy Review submission). The Sustainability Policy should be revised to incorporate the following:

All IFC-supported extractive industry projects must disclose all contracts, principal and derivative, related to the EI operation to which the government is a party, including, *inter alia*: between host governments and companies (e.g. Host Government Agreements, Production Sharing Agreements, Power Purchasing Agreements, Concession Agreements) and between governments (e.g. Inter-Governmental Agreements).

In addition, all IFC-supported extractive industry projects must disclose all contracts and agreements affecting the ultimate payments made to the government, such as those involved in pricing methods of the companies and formulas that change government payments based on changes in commodity prices, project costs, or other factors.

Conclusion

Civil society organizations will continue to provide more detailed submissions on these and other topics of concern. We urge you to respond to these concerns as IFC revises the Policy, Performance Standards, the Guidance Notes, and the Disclosure Policy. We would welcome the opportunity to discuss these recommendations with you and your staff. Please contact Anne Perrault, Senior Attorney, Center for International Environmental Law, aperrault@ciel.org.

This submission is endorsed by the following organizations:

International and Regional Endorsements

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3. Geoff Nettleton, Indigenous Peoples Links, International
4. Mauricio Alvarez Mora, Oilwatch Mesoamérica, International
5. V. Lakshmi, Public Services International Asia-Pacific Regional Organisation (PSI-APRO), International
6. Violeta Corral, Public Services International Research Unit (PSIRU), International
7. Petr Hlobil, CEE Bankwatch Network, CEE Region (Czech Republic)
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13. Oscar Velasco, Fundación Desarrollo y Equidad, Argentina
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16. Luke Fletcher, Jubilee Australia, Australia
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25. Moses Kambou, ORCADE (Organisation pour le Renforcement des Capacites de Developpement), Burkina Faso
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27. Chhith Sam Ath, The NGO Forum on Cambodia, Cambodia
28. Kay Leak, Conservation and Development on Cambodia (CDCam), Cambodia
29. Nov Piseth, Cambodia
30. Phearum Sia, Housing Rights Task Force (HRTF), Cambodia

31. Sangthorng LA, Partnership in Action (DPA), Based at ICD-RTK, Cambodia
32. Karyn Keenan, Halifax Initiative Coalition, Canada
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35. Oilwatch Costa Rica, Costa Rica
36. Asociación de ecología social (AESO) Costa Rica, Costa Rica
37. Radio Dignidad Costa Rica, Costa Rica
38. Radio Urgente Costa Rica, Costa Rica
39. Sebastien Godinot, Les Amis de la Terre, France
40. Heike Drillisch, GegenStroemung - CounterCurrent, Germany
41. Korinna Horta, Urgewald, Germany
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43. Stephanie Fried, `Ulu Foundation, Hawaii
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45. Gautam Bandyopadhyay, Nadi Ghati Morcha, India
46. Gururaja Budhya, Urban Research Centre, India
47. Prof Sanjai Bhatt, Department of Social Work, University of Delhi, India
48. Raju Mimi, Idu (Mishmi) Indigenous Rights Association Association (IIRA), India
49. Ravindranath, River Basin Friends (NE) India, India
50. Carolina S. Martha, YLBHI, Indonesia
51. Siti Rakhma, Mary Herwati, LBH Semarang, Indonesia
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55. Azija Kurmanbayeva, Committee For Public Control Over Implementation of State Program, Kazakhstan
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58. Cecilio Solís Librado, Red Indígena de Turismo de México, México
59. Fernando Melo, Promotora de Servicios para el Desarrollo, México
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64. Anouk Franck, Both Ends, Netherlands
65. Andrew Preston, Association for International Water Studies, Norway
66. César Leonidas Gamboa Balbin, Derecho, Ambiente y Recursos Naturales (DAR), Perú
67. Annie Enriquez Geron, Public Services Labor Independent Confederation (PSLINK), Philippines
68. Rustam Murzakhanov, NGO Environmental Law Center "Armon", Republic of Uzbekistan
69. Larissa Duarte, Movimiento Campesino en Defensa del Rio Cobre, Republica de Panama

70. Lepoldo Gonzales - Presidente de Junta Directiva, Frente Unido en Defensa del Ecosistema - FUDECO, Republica de Panama
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87. Stephen Kretzmann, Oil Change International, U.S.A.
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