

**COMMENTS ON IFC'S CONSULTATION DRAFTS OF THE IFC
SUSTAINABILITY POLICY AND PERFORMANCE STANDARDS AND
DISCLOSURE POLICY**

AUGUST 27, 2010

Contents

General Observations..... 2

Recommendations to Ensure that IFC Has a Robust Process to Address Social and Environmental Concerns..... 5

Recommendations to Secure Robust Development Outcomes..... 11

Recommendations to Ensure Adequate Disclosure of Information..... 12

Recommendations to Ensure that Financial Intermediary Lending Secures Robust Development Outcomes 14

Recommendations to Protect Indigenous Peoples’ Rights and Other Human Rights 18

Recommendations to Address Climate Change..... 26

Recommendations to Better Protect Biodiversity..... 28

Recommendations to Strengthen Standards Related to Advisory Services Lending 30

COMMENTS ON IFC'S CONSULTATION DRAFTS OF THE IFC SUSTAINABILITY POLICY AND PERFORMANCE STANDARDS AND DISCLOSURE POLICY

AUGUST 27, 2010

General Observations

The undersigned civil society organizations believe the latest drafts of the Sustainability Policy, Performance Standards, and Disclosure Policy respond usefully to some issues raised previously by many civil society organizations, including, for example, several issues related to gender, resettlement, and climate change. Many of our most significant concerns, however, remain unaddressed, including centrally important issues related to due diligence, transparency, and accountability, and other issues related to substantive concerns.

In the following paper, we provide a description of how we believe the drafts must be revised to ensure (1) adequate identification and attention to risks; (2) strong development outcomes; (3) financial intermediary lending that meets poverty alleviation needs and does not avoid standards; (4) respect for indigenous peoples' rights and other human rights; (5) protection of biodiversity; and (6) strong application of standards to IFC activities through advisory services.

Attention to these issues is particularly important given the new approach to standards adopted by IFC when it revised its environmental and social policies in 2006. Through adoption of the Social and Environmental Sustainability Policy (the Policy) and Performance Standards, IFC moved from providing a set of clear requirements for IFC clients to a so-called "outcomes-based" approach. Clients are given greater flexibility for determining how to address environmental and social concerns of projects; standards are more loosely defined and clients assume a greater role in determining what these standards mean in practice and how they can be met. IFC relinquished to these clients many responsibilities and obligations IFC once had.

IFC is no longer as involved in identifying and assessing risks, developing plans (in concert with clients) to respond to these risks, disclosing information, and monitoring implementation of requirements. And, in fact, many clients fail to satisfy these responsibilities adequately. This failure is noted in the recent review by the Compliance Advisor Ombudsman (CAO) of IFC's Policy and Performance Standards.¹ The CAO notes that many clients are not developing robust action plans or disclosing action plans, are not reporting to communities on implementation of action plans (as required), have unsatisfactory annual monitoring reports in many of the reviewed projects, and lack or have inadequate grievance mechanisms. As detailed below, the draft revisions do not ensure that clients and IFC robustly address environmental and social risks.

¹ See: <http://www.cao-ombudsman.org/howwework/advisor/3yrpolicyreview.htm>.

With an approach that provides fewer bright lines and certainty for IFC clients and local communities, a heightened need for checks and balances exists. However, the draft fails to include measures that respond to this need. Monitoring and supervision information that would support an informal community auditing role is essential in this regard.

An added level of discretion is involved in the case of lending to financial intermediaries (FIs), which represents nearly half of IFC lending and which the IFC initially utilized primarily in support of microfinance activities. Through FI lending, IFC provides significant sums of money to other financial institutions that, in turn, invest in many projects (termed “subprojects”).² Although IFC appears to be proposing that Category A and B subprojects be subject to the Performance Standards,³ application of the Performance Standards will not be the same, and, as described below, most likely not as robust. Moreover, once IFC provides funds to an FI, the FI, and not IFC, deals directly with FI clients – making decisions about projects that will receive IFC funding, engaging with clients, conducting project appraisal, managing risks, monitoring, etc.⁴ In addition, a number of IFC-supported FIs appear to be domiciled in secrecy jurisdictions, making the application of transparency, consultation and other environmental, social and governance requirements difficult, if not impossible, to implement.

Although the FI essentially assumes the role of IFC and acts as an extension of the IFC with respect to these subproject clients, not all important IFC Sustainability Policy and Disclosure Policy requirements apply to the FI.⁵ For example, neither IFC nor the FI are required to disclose, publicly, the name, location, and other critical information about the subprojects. Moreover, and most significantly, each project – even those in high-risk sectors and those that require significant IFC funding - does not require

² Int’l Finance Corp. [IFC], *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Environmental and Social Sustainability, Rev.0-1*, at 35 ¶ 25 (April 14, 2010).

³ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Environmental and Social Sustainability, Rev.0-1* at 35 ¶ 28 (April 14, 2010).

⁴ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process*, at 35 ¶ 26 (April 14, 2010). “IFC delegates to FIs responsibility for individual transaction appraisal and monitoring as well as overall portfolio management. Social and environmental risk management is part of the responsibilities delegated to FIs.”

⁵ Paragraphs 21 through 24 of the Social and Environmental Policy do not apply to Financial Intermediaries. These describe critical IFC due diligence requirements for each project or business activity, including, in Paragraph 23, “(i) review of the social and environmental risks and impacts of the business activity as assessed by the client; (ii) review of the commitment and capacity of the client to manage risks and impacts, including the client’s social and environmental management system; and (iii) review of the potential role of third parties to meet the requirements of the Performance Standards,” and, in Paragraph 24, the requirement that IFC assure itself that broad community support exists for significant adverse projects. IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Environmental and Social Sustainability, Rev.0-1* at 34 ¶ 21 -25 (April 14, 2010). The Policy and Performance Standards do not specify how, specifically, FIs perform due diligence for FI subprojects. Similarly, only some Disclosure Policy requirements apply to FIs. IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Disclosure Policy, Annex C* at 102, (April 14, 2010).

approval by the IFC Board or even IFC staff/management.⁶ The IFC Board and IFC are failing, in this regard, to ensure that IFC funds support development outcomes that achieve IFC's poverty alleviation mission and do not, through collateral damage, lead to increasing impoverishment and environmental destruction. .

IFC's approach to Advisory Services programs, and its move to become more decentralized in its operations, also signals a move toward shifting IFC responsibilities for IFC-related activities. As noted by the CAO in its review of the Policy and Performance Standards, "IFC provides a variety of advisory services to private businesses and governments in developing countries. These services cover a broad spectrum including advice on privatization; business related public policy; and industry-specific issues. The distinguishing characteristic of this category, compared with IFC investments, is that IFC capital is not relied upon."⁷ Although IFC capital is not used, these IFC activities can involve significant environmental and social impacts. As noted by the CAO, the environmental and social (E&S) risks and impacts "vary significantly between the different types of advisory products, with some yielding substantial E&S risks."⁸ Despite these risks, "There is a lack of clarity and gaps in institutional infrastructure regarding application of the Performance Standards to advisory services."⁹

The new discretionary approach does not appear to be providing the "better outcomes" promised by IFC in exchange for flexible standards for clients and less responsibilities for IFC. In its three-year review of implementation of the Policy and Performance Standards, IFC failed to describe whether projects funded under the Policy and Performance Standards are meeting any indicators of progress toward results. Additionally, current and proposed requirements to secure, measure, and report results are inadequate.

Finally, IFC's latest draft still responds inadequately to widespread support for the United Nations Declaration on the Rights of Indigenous Peoples¹⁰ and increased progress in understanding the responsibilities of private actors with respect to human rights,¹¹ and the proposed standards fall short of

⁶ IFC performs due diligence only in relation to the entire FI portfolio, which may not describe all projects for which IFC funding will be used. IFC, *Progress Report on IFC's Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Environmental and Social Sustainability, Rev.0-1* at 35 ¶ 27 (April 14, 2010).

⁷ CAO, *Review of IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information*, at 7 (May 2010).

⁸ CAO, *Review of IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information*, at 7 (May 2010).

⁹ CAO, *Review of IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information*, at 7 (May 2010).

¹⁰ The United Nations Declaration on the Rights of Indigenous Peoples, requires the free prior and informed consent of indigenous peoples in a range of decisions affecting their culture and livelihoods. See: <http://www.un.org/esa/socdev/unpfii/en/drip.html>

¹¹ We believe, for example, that the draft fails to incorporate, in a robust way, all recommendations made to date by the UN Special Representative on Human Rights and Transnational Corporations and other Business Enterprises, Professor John Ruggie. This is described below.

those recently adopted at other multilateral development banks, including, for example, the Asian Development Bank (ADB) and European Bank for Reconstruction and Development (EBRD).¹²

Recommendations to Ensure that IFC Has a Robust Process to Address Social and Environmental Concerns

As noted above, by introducing flexible standards and relinquishing responsibilities without adding new requirements for increased verification of information, transparency, and oversight, IFC severely compromised the process needed to provide robust responses to social and environmental concerns. To address this shortcoming, IFC Policy and Performance Standards and the Disclosure Policy need to include the following requirements:

I. Ensure that all risks to human rights and the environment (including climate change-related risks) are identified and considered for all lending instruments and approaches

How risks are identified before a project begins is the single most important factor influencing whether and how adverse impacts are addressed throughout a project – it influences how IFC categorizes a project as potentially harmful or not, the level of consultation and how consultation is documented, the development of plans to respond to environmental and social concerns, disclosure of information, and even IFC’s own due diligence.¹³ For example, under the existing Policy and Performance Standards, IFC’s failure to identify and characterize risks robustly have led to fewer “Category A” projects and fewer full assessments. As noted by the Compliance Advisory Ombudsman, several Category B or C projects should have received a Category A rating. In the following ways, the proposed IFC Policy and Performance Standards appear to guarantee that all real risks will *not* be identified, considered and addressed.

A. All risks need to be identified and accurately characterized

For all lending instruments and approaches (direct investments, financial intermediary investments, advisory services investments, etc.) – it appears that only risks ‘reasonably expected to be significant’ are “relevant” and need be identified, and this determination of relevance is made by the client.¹⁴ The

¹² The EBRD requires “free, prior, informed consent” for projects that may impact indigenous peoples. See: <http://www.ebrd.org/pages/about/principles/sustainability/policy.shtml>. The ADB requires a 120 day disclosure requirement for projects and subprojects likely to have significant impacts, and stronger standards for Financial intermediaries and gender, See S. Fried, T. Soentoro, "Upward Harmonization of IFC Standards with Best Practices: The Example of the Asian Development Bank", July 8 2010 for more information.

¹³ IFC conducts social and environmental due diligence of the business activity to be financed as part of its overall investment review process. This due diligence is appropriate to the nature, and scale, and stage of the business activity, and *commensurate with the level of social and environmental risks and impacts*. IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process*, at 34 ¶ 21 (April 14, 2010).

¹⁴ “The client will identify the social and environmental risks and impacts of the project.” Footnote 7 to this sentence reads, “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, ecosystem functions, and access to water resources.” IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process*,

‘reasonably expected to be significant’ standard leaves a client with considerable discretion to avoid consideration of key risks, including, for example, those that might cause cumulative harm. The Policy fails to ensure that IFC is meeting its obligation to assess risks accurately and to understand fully the environmental, human rights and social context of projects it funds. Under the proposed language, IFC will continue to over rely on self-reported information provided by clients seeking funding from IFC. Although proposed language indicates that IFC will “review” the client’s determination of risk, it is not clear if IFC critically evaluates the client’s determination or simply looks at the description of risks.¹⁵ A proposed requirement for use of external experts to assist in risk identification for “projects posing potentially significant adverse impacts,”¹⁶ falls short in two respects. First, it is not the “potentially significant adverse projects” for which verification of risk identification is most needed – an external expert’s analysis would only either confirm that it is a significant adverse project or suggest a reduced rating. Verification is needed most for projects for which risks are underestimated – projects that should have been categorized as having significant adverse projects, but were, instead, given a Category B or lower rating. Additionally, without criteria informing the selection of an ‘external expert,’ the requirement does not ensure impartial credible verification of information. Finally, the requirement currently is limited in effectiveness since the standard for ‘relevant’ risk is so high.

Asks:

(1) Require that all risks (not just risks reasonably expected to be significant) are verified by the IFC, either through its own investigation or that of an independent, credible entity, and that a full description of risks is made public.

(2) Require that projects in high risk sectors for which complex social and environmental impacts are likely receive a Category A rating, including, for example, projects involving resource-based commodities (e.g. palm oil), mining, coal, oil and gas energy projects, and large scale infrastructure development.

Performance Standard 1 Assessment and Management of Social and Environmental Risks and Impacts, at 45 ¶ 6 (April 14, 2010).

¹⁵ Additionally, the Sustainability Policy states, “As part of its review of a project’s expected social and environmental impacts, IFC uses a system of social and environmental categorization to: (i) reflect the magnitude of impacts **understood as a result of the client’s Social and Environmental Assessment....**” IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process*, at 33 ¶ 18 (April 14, 2010).

¹⁶ “For projects posing potentially significant adverse impacts or where technically complex issues are involved, clients will involve external experts to assist in the risks and impacts identification process and to verify its monitoring information.” IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 1 Assessment and Management of Social and Environmental Risks and Impacts*, at 47 ¶ 12 (April 14, 2010). Note, also, that Guidance Note 79 appears to incorrectly state, “For projects with issues that may pose significant adverse impacts and risks, clients **should** consider retaining external experts....” It later states, “in some high-risk cases, IFC may require a panel external experts...” and “external experts are required in certain defined circumstances...” IFC, *Guidance Note 1, Rev – 0 – Assessment and Management of Social and Environmental Risks and Impacts*, May 19, 2010.

(3) Strengthen requirements to ensure that all projects that may impact indigenous peoples, and all projects that may involve large-scale involuntary resettlement, receive a Category A rating.

(4) Ensure that full assessments are made available in local languages, in addition to English.

B. Project's Area of Influence

Performance Standard 1 requires that risks and impacts within the “project’s area of influence” be “analyzed.”¹⁷ A project’s area of influence includes risks associated with ‘associated facilities’ and ‘cumulative impacts.’¹⁸ The proposed definition of “associated facilities” as “those facilities that would not be constructed if the client’s project did not exist and where the client’s project would not be viable without the other facilities” is needlessly narrow. Existing facilities on which the project depends may pose significant risks in relation to the project. These should, at least, be considered to determine their relevance to project risk management. Additionally, the definition of cumulative impacts as those “realistically defined at the time” is too restrictive.¹⁹

Asks:

(1) An ‘associated facility’ should be defined as “a facility that is critical to the functioning of the IFC project, but is not necessarily financed by IFC.”

(2) Cumulative impacts should include “reasonably foreseeable activities.”

C. Better Assess Risks Associated with Supply Chains

The client is only encouraged, not required, to give preference to suppliers with verified sustainable management practices.²⁰ Additionally, adverse impacts associated only with “ecologically sensitive supply chains” are considered – and then only when primary suppliers are overexploiting areas of critical habitat or high conservation value.²¹

¹⁷ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 1 Assessment and Management of Social and Environmental Risks and Impacts*, at 45 ¶ 7 (April 14, 2010).

¹⁸ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 1 Assessment and Management of Social and Environmental Risks and Impacts*, at 45 ¶ 7 (April 14, 2010).

¹⁹ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 1 Assessment and Management of Social and Environmental Risks and Impacts*, at 45 ¶ 7 (April 14, 2010).

²⁰ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 6 Biodiversity Conservation and Sustainable Natural Resource Management*, at 86 ¶ 25 (April 14, 2010). Moreover, the texts limit this preference to such suppliers only when the resource is “ecologically sensitive.” It states, “Where the resource utilized is ecologically sensitive, clients should give preference to purchasing products, including renewable natural resources, from primary suppliers that have verified sustainable management practices.”

²¹ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 6 Biodiversity*

Asks:

(1) *Require clients to give preference to suppliers with verified sustainable management practices.*

(2) *Require supply chain impacts to be considered when suppliers' activities are likely to have significant social, human rights, and environmental impacts, including impacts to air, land, and water, and climate change – not just when the supply chain is “ecologically sensitive” and suppliers are overexploiting areas of critical habitat or high conservation value (or when the supply chain involves child and forced labor issues).*

(3) *Require contracts throughout the supply chain to specify and require compliance with IFC environmental and social standards.*

D. Ensure human rights-related risks are considered adequately

Although the current draft of IFC's Policy and Performance Standards advances recognition of the need to assess impacts to human rights, it does not indicate adequately how the current environmental and social assessment process would be modified to ensure robust consideration of human rights.²² For reasons outlined in Amnesty International's submission, a more robust and explicit human rights impact assessment should be required and performed.²³

Ask:

Ensure a more explicit and robust assessment of human rights risks, and include explicit consideration of international human rights standards for projects with human rights risks.

II. Ensure that risks related to all lending are robustly addressed

As noted by the CAO, once risks have been identified, plans to address these risks are not always robust, and plans and other measures to address risks are not always implemented adequately. As noted in greater detail in the Financial Intermediary section, below, these problems are compounded significantly with IFC loans to financial intermediaries - which could be as large and as risky as direct IFC investments.

Conservation and Sustainable Natural Resource Management, at 86 ¶ 25 (April 14, 2010). “Where the resource utilized is ecologically sensitive, clients **should** give preference to purchasing products, including renewable natural resources, from primary suppliers that have verified sustainable management practices. The adverse impacts associated with ecologically sensitive supply chains will be considered where there is a potential risk that primary suppliers are overexploiting areas of critical habitat or HCV.”

²² IFC, *Progress Report on IFC's Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Environmental and Social Sustainability, Rev.0-1* at 31 ¶ 10 (April 14, 2010).

²³ Amnesty International, *Amnesty International Submission to the Review of the International Finance Corporation (IFC) Sustainability Framework*, May 2010. Available at <http://www.business-humanrights.org/Categories/UNIntlorgs/Intlfinancetradeorgs/IFC>.

A. Ensure strong action plans

IFC's latest draft Policy still fails to incorporate measures to ensure that action plans are robust.

Ask:

*(1) As suggested by the Guidance Notes, require IFC to develop the Action Plan, with appropriate opportunity for access to information and public participation in the Plan's design.*²⁴

(2) Make IFC's evaluation of Action Plans publicly available, including its assessment of whether timelines are adequately clear and measures to address environmental, social, and human rights concerns robust, and ensure public participation in the evaluation process.

B. Better evaluate implementation of requirements, and make evaluations public

As indicated in the Compliance Advisor Ombudsman's report describing implementation of IFC's Policy and Performance Standards, IFC's clients have not been meeting important requirements, including, for example, disclosing impact assessments, implementing all action plan requirements, reporting to communities on implementation of action plans, submitting robust monitoring reports, etc.²⁵ IFC is proposing some language to respond to these concerns, including a new requirement for development and implementation of an annual IFC program of project supervision visits.²⁶ Although this language recognizes the problem and introduces potential for improving implementation, it lacks the necessary specificity to ensure that measures proposed are meaningful and useful. It fails, as well, to require public disclosure of information necessary for securing accountability.²⁷

²⁴ IFC, *Guidance Note 1, Rev – 0 – Assessment and Management of Social and Environmental Risks and Impacts*, May 19, 2010. G 75 indicates an approach that would be most appropriate for IFC lending – that IFC develop the Action Plan in agreement with its client. “IFC will develop an Environmental and Social Action Plan...” This language, however, appears to conflict with language in the Performance Standard, which continues to indicate that the client will develop the Action Plan.

²⁵ CAO, *Review of IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information*, at 15, 23 (May 2010).

²⁶ IFC, *Progress Report on IFC's Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process*, at 37 ¶ 34 (April 14, 2010). Proposed language includes requirements for IFC to “Develop and implement an annual program of supervision for projects with social and environmental risks or impacts”; “Review implementation performance, as reported in the client's Monitoring Report and updates on the ESAP to IFC, against the social and environmental conditions for investment and the client's commitments” and “Where relevant, identify and review opportunities for further improving client performance” and “Review the client's disclosure and public reporting on its social, environmental and other non-financial aspects of performance.” Additionally, the Bank is proposing that clients “where appropriate” consider involving representatives from Affected Stakeholders to complement or verify monitoring activities.

²⁷ More specificity would include information related to the following: What are the criteria for an annual program of supervision? What information will be used to review the client's implementation performance against social and environmental conditions, i.e., information provided only/primarily by the client? What happens once IFC reviews the client's disclosure and public reporting? Will this review be public? Will the client be penalized for failing to disclose and required to disclose immediately?

The proposed requirement for an “external expert” to verify client-provided monitoring information for projects with potentially significant adverse impacts is a welcome step in the right direction. However, it leaves much information unverified, including information provided by clients for all Category B projects.²⁸ And, absent criteria for selecting “external” experts, the verification process will almost certainly be biased and unlikely to be credible. Again, and importantly, IFC continues to deny the public and communities access to information needed to evaluate critically whether IFC clients and FI subproject clients are complying with plans and requirements.

This lack of disclosure of supervision and monitoring reports stands in marked contrast to monitoring and supervision information the World Bank has committed to making available. Information that will be made public apparently will include a more critical evaluation of measures the client is, and is not, taking to meet standards.

Although IFC is proposing to make public an annual update of Action Plans and actions the client has taken to implement the action plans, this requirement is only for “significant adverse projects,” only for direct investments (not Financial Intermediaries), and not an objective critical evaluation of client implementation.²⁹ Additionally, under proposed language, clients are “encouraged to publish periodic reports accessible to all stakeholders on their environmental and social performance.”³⁰ Without a clear

²⁸ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 1 Assessment and Management of Social and Environmental Risks and Impacts*, at 47 ¶ 12 (April 14, 2010). “The process of identification of risks and impacts will consist of an adequate, accurate, and objective evaluation and presentation, prepared by qualified and experienced individuals. For projects posing potentially significant adverse impacts or where technically complex issues are involved, clients will involve external experts to assist in the risks and impacts identification process and to verify its monitoring information.” Note: Guidance note language appears to be inconsistent with performance standard language, suggesting that external experts are not always required for these projects.

²⁹ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Disclosure of Information, Annex C*, (April 14, 2010). Section C.13.(e) “For direct investments with potential significant adverse social or environmental risks and/or impacts, IFC discloses an annual update of the Action Plan, including a summary of key actions that have been taken to implement the Action Plan.”

³⁰ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 1 Assessment and Management of Social and Environmental Risks and Impacts*, at 52 ¶ 30 (April 14, 2010). Reporting to Affected Stakeholders: “The client will provide periodic reports to the Affected Stakeholders that describe progress with implementation of the project Action Plan on issues that involve ongoing risk to or impacts on Affected Stakeholders and on issues that the consultation process or grievance mechanisms has identified as of concern to those stakeholders. If the management system 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 Stakeholders, the updated relevant mitigation measures or actions will be communicated to Affected Stakeholders. These reports will be in a format accessible to the Affected Stakeholders. The frequency of these reports will be proportionate to the concerns of Affected Stakeholders but not less than annually. In addition, clients are encouraged to publish periodic reports accessible to all stakeholders on their environmental and social performance.”

requirement, clients are not likely to do this, and these reports, again, will not provide an objective, critical evaluation of implementation progress. Client monitoring reports and IFC's supervision reports must be made public to ensure that IFC and its clients are meeting obligations and increase the likelihood that information provided is accurate.

Ask:

(1) Detail what is required of IFC for its annual supervision measures and reports.

*(2) Require that client and IFC monitoring and supervision reports, **as well as the primary documentation on which those reports are based**, be made public as soon as they are prepared."*

(3) Ensure that client-provided information used to assess implementation of Action Plans be verified by an independent, credible external expert.

D. Create incentives to assess and address social and environmental concerns

IFC Staff are not encouraged to identify and address environmental and social risks accurately, nor are they otherwise rewarded for doing this.

Ask:

Increase staff incentives to assess and address environmental and social concerns.

Recommendations to Secure Robust Development Outcomes

In 2006, IFC promised better development outcomes, but failed to ensure that its Policy and Performance Standards included requirements that emphasized, robustly measured, and reported development outcomes at the project level. A few improvements are proposed, including inclusion of "development outcome indicators" in the "Summary of Investment Information" document for potential significant adverse impacts. However, the proposed changes fall short in several ways, including the following.

A. Useful Development Outcomes Indicators

Indicators that are part of IFC's "Development Outcomes Tracking" System (DOTS) are inadequate for measuring outcomes at the project level.

Asks:

*(1) Include new indicators that provide not only quantitative, but also qualitative information about results – this is critically important. **Add more precise indicators that focus on quality, equity, and linkages between service access and opportunity, climate, productivity, institutions, environmental sustainability.***

(2) Include indicators that capture negative outcomes, not just positive, including, for example, net job effects - not just jobs created but also jobs lost due to a project, e.g., fishing and agriculture based-employment is often negatively affected by extractive industry activities.

(3) Broad Community Support (BCS) should be a development outcome as well as initial condition for IFC projects. Development outcomes should include periodic measures of BCS to observe change or improvement.

(4) IFC should demonstrate the strategic value of projects, which involves demonstrating how a project advanced the relevant institutional, national and sector-wide development objectives.

B. Availability of Information about Development Outcomes and Implementation

IFC is proposing to publicly report Development Outcomes information only for projects with significant adverse outcomes (Category A) – and to provide yearly updates on DOTS development indicators for these projects.³¹ This is only a very small step in the right direction – Category A projects are only a small fraction of IFC’s portfolio. Even more significantly, these are not the only projects – or even the most important projects - for measuring development outcomes.

Ask:

Ensure development outcomes measurement and reporting for projects – beginning with at least all Category A and B projects and projects in other key sectors, such as extractives, agribusiness, energy, and forestry, etc.

C. Verification of Development Outcomes

It is unclear what information IFC will be using to assess whether development indicators are being met and whether development outcomes are achieved. Needless to say, information derived solely from self-reported claims by the client will not be enough.

Ask:

Information used to measure development indicators and development outcomes must be verified by an independent credible expert.

Recommendations to Ensure Adequate Disclosure of Information

In addition to the disclosure-related “asks,” above, there are a few bigger picture asks related to the Disclosure Policy.

A. Require True Presumption of Disclosure

³¹ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Disclosure of Information*, (April 14, 2010). Page 104, Ongoing Disclosure, “(i) Throughout the life of each IFC direct investment with potential significant adverse social or environmental risks and/or impacts, IFC annually updates the SII with the investment’s development outcome, including development outcome indicators, as agreed with the client, that were identified in the SII.”

IFC claims that it already takes a “presumption of disclosure” approach – that IFC presumes documents will be made public unless there is a compelling reason not to release them.³² The big problem here is that the scope of information to which the presumption applies is quite small. Information that does not fall under the presumption is much greater than information presumed disclosed. IFC’s Disclosure Policy (including this presumption), falls short of World Bank standards. The World Bank, for example, is willing to disclose key monitoring and supervision report information that IFC is not disclosing.³³

Ask:

(1) Ensure that a true “presumption of disclosure” be adopted – ensure the presumption applies to all documents with a few, well-defined exceptions.

(2) At least 120 day disclosure before Board approval for all Category A projects – (as currently required by the ADB), and at least 60 days for Category B projects.

*(3) Require in the Summary of Investment Information (SII) and the Environmental and Social Review Summary (ESRS) (disclosed prior to Board consideration) the following: any requirement for free, prior informed consent for indigenous peoples (currently Broad Community Support (BCS) and Good Faith Negotiation (GFN) – but we are requesting recognition of free prior informed **consent**).*

(4) Ensure that at least key aspects of monitoring and supervision reports are made public, including both objective and subjective information describing how standards are and are not being met. All disbursement waivers should be disclosed.

(5) Ensure that criteria for measuring development outcomes and results of these measurements are made public for Category A and B projects and other projects in critical sectors, such as extractives, agribusiness, energy, etc.

B. Extractive Industry Contract Disclosure

IFC did not address this in the recent draft – it will do so in Phase II.³⁴ Our previous asks remain outstanding. 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 is clearly set too high given that the threshold has been ineffective in bringing about any contract transparency in IFC projects, despite a supposed commitment to transparency by Bank Management during 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

³² IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Disclosure of Information*, at 99 ¶ 9 (April 14, 2010).

³³ <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTANDOPERATIONS/EXTINFODISCLURE/0,,menuPK:64864911~pagePK:4749265~piPK:4749256~theSitePK:5033734,00.html>.

³⁴ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process*, at 11 ¶ 37 (April 14, 2010).

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).³⁵ Project developmental and fiscal impacts, especially at the local and regional levels, occur irrespective of the size of a country's total revenues.

Asks:

(1) Revise the Policy to require that all IFC-supported extractive industry projects disclose all contracts and partnership agreements, principal and derivative, related to the EI operation to which the government is a party

(2) Require that all IFC-supported extractive industry projects 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.

(3) For any information that is removed from an EI contract, the client or government must provide a clear reason for confidentiality, and the merits for confidentiality must outweigh the importance to the public. Key contract terms and clauses that may not be kept confidential because of their public importance, include, inter alia: royalty rates, tax rates, tax exemptions, commodity based payment/purchase requirements, signing bonuses, pipeline/transit tariff structures, guidelines for the operation of special funds, social development requirements, revenue distribution requirements, power purchase requirements, stabilization clauses³⁶ (e.g. on taxation, environmental, social, labor rights regulations, etc.), economic equilibrium clauses, and dispute resolution mechanisms (e.g. international arbitration).

(4) For FI subprojects and investments that involve extractive industries, the client must follow IFC requirements for revenue and contract disclosure of direct project investments in the extractive industries.

Recommendations to Ensure that Financial Intermediary Lending Secures Robust Development Outcomes

Nearly half of IFC lending is through Financial Intermediaries, and yet requirements fail, largely, to ensure that risks associated with projects funded by Financial Intermediaries are well addressed. IFC provides significant funding to these financial institutions (e.g. banks, private equity funds, etc.) which, in turn, decide which projects to fund and assume other significant responsibilities relinquished to them

³⁵ Josh Klemm, Bank Information Center, "Contract Transparency Missing as IFC Expands Oil Investments in Africa," *Bretton Woods Update* (67), September/October 2009: 5. Available at: <http://www.brettonwoodsproject.org/update/67/bwupdt67.pdf>.

³⁶ We note the important findings of the March 2008, "Stabilization Clauses and Human Rights" project paper authored by Andrea Shemberg and conducted for IFC and the United Nations Special Representative to the Secretary General on Business and Human Rights, which identifies significant concerns about the diverse impacts that stabilization clauses have in many countries. The report recommends that governments and investors publish contracts.

by IFC.³⁷ Financial intermediaries are responsible for ensuring that their clients apply the Performance Standards to Category A and B projects (so-called ‘subprojects’).³⁸ As noted in the draft Policy, “IFC delegates to FIs the responsibility for individual transaction appraisal and monitoring as well as overall portfolio management. Social and environmental risk management is part of the responsibilities delegated to FIs.”³⁹ IFC, however, provides few binding standards to ensure that FIs meet these responsibilities. In addition, the practice of IFC support for FIs domiciled in secrecy jurisdictions further lessens the possibility of transparency regarding risk management.

Although the FI in many ways assumes the role of IFC, and represents an extension of its due diligence and governance operations, the FI is not subject to the same Disclosure Policy and Social and Environmental Sustainability Policy requirements to which IFC is subject. These requirements shape IFC’s engagement with IFC clients, communities, and the public. Significantly, for example, neither IFC nor the FI must disclose to the public key information related to subprojects for which the FI is using IFC funding. The public does not know what these projects are, where they are, the capacity of each FI client,⁴⁰ or whether or how standards are being met. This means that project- or subproject-affected peoples would have, therefore, no way of utilizing IFC accountability and grievance mechanisms in the case of violations of environmental, social or governance standards. Moreover, the requirement to ensure that broad community support exists - an IFC responsibility mentioned in the Sustainability Policy - does not apply to FI subprojects.

IFC’s and the IFC Board’s oversight of FIs, and how IFC funds are used, raises serious concerns. First, IFC reviews only the general portfolio of an FI, (which may or may not include all projects that will be

³⁷ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Environmental and Social Sustainability, Rev.0-1* at 35 ¶ 25 (April 14, 2010).

³⁸ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Environmental and Social Sustainability, Rev.0-1* at 35 ¶ 28 (April 14, 2010). Although proposed language appears to suggest that Performance Standards will be applied to Category A and B subprojects funded by an FI, it is not entirely clear that this is the case. Application of the Performance Standards to an individual project depends, first, on whether the project is part of a portfolio of investments that pose more than “minimal risk.” In other words, an FI may have hundreds of projects in which it plans to invest IFC funds, but whether the Performance Standards will be applied to any one of these projects will depend first on whether the projects are part of a “minimal risk” portfolio or not. If IFC and the FI determine that the portfolio of projects/activities – considered as a whole - is likely to pose only minimal risks, the Performance Standards apparently will not apply to any of the individual projects in the portfolio. Because the determination of portfolio risk does not focus on the riskiest projects in the portfolio, activities that are “high risk” can, it seems, be averaged out with activities that are “low risk” – and the portfolio could be seen to have only minimal risks and not require application of the Performance Standards.

³⁹ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process*, at 35 ¶ 26 (April 14, 2010).

⁴⁰ The inability for the public to evaluate the capacity of FIs stands in contrast to the ability of the public to evaluate the capacity of governments when the World Bank is using a “country systems” approach to lending – using standards and institutions of a given country for Bank lending. See World Bank Operational Policy 4.00. Arguably, private sector entities have less incentive to carry out environmental and social impact assessment, consultation and mitigation activities. As a result, the proposed devolution of responsibility and authority to the private sector is risky for project-affected communities.

funded by the FI), and does not review individual subprojects.⁴¹ Once this approval is provided, the Board appears to lose all leverage to ensure that IFC funding for a given project is likely to provide the necessary development outcomes and operate in compliance with IFC standards. The FI appears to have the authority to determine what is funded and what is not, as long as it can attest to satisfaction of environmental, social, and fiduciary standards. IFC's Articles of Agreement require the Board to ensure that IFC funds are used in a manner that is consistent with the Agreement. And the Board needs to ensure that funding helps secure the World Bank Group's mission to alleviate poverty. These requirements cannot be achieved if IFC and the IFC Board are not reviewing individual projects and if IFC and the Board are not provided with appropriate tools with which to exercise proper due diligence.

Second, requirements for IFC's due diligence of the general portfolio are ill-defined.⁴² The Guidance Notes indicate that IFC due diligence includes review of information provided by the investee, site reconnaissance, meetings, and interviews - all to prepare findings, conclusions and recommendations.

⁴¹ IFC, *Progress Report on IFC's Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Environmental and Social Sustainability, Rev.0-1* at 35 ¶ 27 (April 14, 2010). Proposed language indicates that IFC reviews only the portfolio of the FIs, not the individual projects. It states, "In order to appropriately manage the social and environmental risks related to FI investments, IFC conducts due diligence of the business portfolio of its FI clients to identify activities where the FIs and IFC could be exposed to risks as a result of their investments, and defines requirements for managing these risks. IFC reviews implementation capacity of FIs as well as their social and environmental management systems, as required by Performance Standard 1. These systems should be commensurate with the level of social and environmental risks associated with their business activities and type of investment made with IFC financing." See, also IFC, *Guidance Note 1, Rev – 0 – Assessment and Management of Social and Environmental Risks and Impacts, May 19, 2010*, G18. "In case of investment through Financial Intermediaries, IFC will delegate to FIs the responsibility for transaction appraisal and monitoring as well as overall portfolio management. Environmental and social risk management is part of the responsibilities delegated to FIs. In order to appropriately manage its environmental and social risks related to FI investments, IFC conducts due diligence of the business portfolio of its FI client to identify activities where the FIs and IFC could be exposed to reputational risks as a result of their investments and defines requirements for managing these. IFC reviews implementation capacity of FIs against its requirements as well as environmental and social management systems as required by Performance Standard 1. These Systems should be commensurate with the level of environmental and social risks associated with their projects and type of investment made by with IFC. FI clients request their clients (sub-projects) to identify impacts and risks as described below. They will also have a procedure(s) to verify risk and impact identification conducted by their clients (see section on Social and Environmental Assessment and Management Systems)."

⁴² IFC, *Guidance Note 1, Rev – 0 – Assessment and Management of Social and Environmental Risks and Impacts, May 19, 2010*, G33. "The level of environmental and social due diligence (ESDD) should be based on the project's environmental and social risk profile and potential impacts, for example, whether they are significant...or moderate. The ESDD shall typically consist of (i) review of all relevant documents and information provided by the investee and other sources; and (ii) site reconnaissance comprising visual observations of relevant areas and meetings and interviews with relevant stakeholders, etc. Upon completion of the due diligence, the findings, conclusions, and recommendations shall be presented in the ESDD." Note, also, IFC, *Guidance Note 1, Rev – 0 – Assessment and Management of Social and Environmental Risks and Impacts, May 19, 2010*, G74, "The recommendations of the ESDD conducted for financial institutions (FI) and investment funds should include the necessary actions which must be implemented for the proposed investment to proceed to financial closure. At a minimum, these shall consist of a set of mitigation, management, monitoring, and institutional measures to be taken during project implementation and operation to address any gaps with the FI's or fund's Social and Environmental Policy. Any mitigating actions addressed in the ESDD report should clearly indicate the (achievable) level of environmental compliance with the Policy, the existing performance gaps, and the corrective actions that need to be taken to close those gaps along with reasonable timelines (collectively, the action plan)..."

But it is entirely unclear what the standards are for this review and the recommendations, i.e. when IFC reviews information, what is it seeking, exactly, to determine? It also is not entirely clear how the Environmental and Social Due Diligence Report (ESDD) is used once it is prepared.

Finally, requirements for IFC monitoring of FIs and FI subprojects are not sufficiently specific, requiring only that IFC monitor on an “ongoing basis” whether social and environmental risks are adequately addressed, and that “IFC may review the results of the social and environmental due diligence review conducted by the FI for sub-project investments under credit lines or other targeted finance facility.”⁴³

Asks:

- (1) More explicitly state that any portfolio that contains a Category A or B project will be subject to the Performance Standards.*
- (2) Require that all FI lending, from now on, be limited to microenterprises and only after IFC has made a publicly-available assessment of FI capacity to deal with environmental and social risks.*
- (3) Require IFC to follow a two-tiered social and environmental risk categorization system for financial intermediaries. Tier-one represents the risk assigned to the FI’s overall portfolio. This categorization of FI-low, -medium, and -high risk must be based on the riskiest activities included in the FI’s current and anticipated portfolio. That is, an FI with a Category A subproject would automatically be classified as high risk. Tier-two represents the risks assigned to the individual IFC-supported sub-project investments of an FI. Each sub-project should be categorized according to the “A, B, and C” system used for IFC direct-project investments. Require IFC to critically evaluate the risk identification and categorization process.*
- (3) Eliminate IFC support for FIs domiciled in secrecy jurisdictions.*
- (4) Require IFC Board approval for each Category A and B project of an FI.*
- (5) Require greater IFC monitoring and supervision of FI risk management and monitoring activities, and make these monitoring and supervision reports public.*
- (6) Require independent verification of annual monitoring reports for FIs and their subprojects to ensure compliance with Performance Standards and achievement of performance indicators/development outcomes.*
- (7) Implement an annual IFC program of project supervision visits, including visits by environmental and social specialists to FIs to determine the effectiveness of the FI’s social and environmental*

⁴³ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Environmental and Social Sustainability, Rev.0-1* at 36 ¶ 30, and 35 ¶ 26 (April 14, 2010). “IFC monitors client performance on an ongoing basis. Additionally, to determine the effectiveness of an FI’s social and environmental management system, IFC may review the results of the social and environmental due diligence review conducted by the FI for sub-project investments under credit lines or other targeted finance facility.” And “IFC monitors on an ongoing basis whether the social and environmental risks associated with the FI’s business activities are being adequately addressed.”

management system and individual sub-project Policy and PS compliance. Ensure visits will occur for all Categories A sub-projects, and at least 40% of Category B subprojects.

(8) Make public the ESDD report.

(9) Require binding language in contracts and partnership agreements stipulating that when a FI client's activities are found to be out of compliance with IFC Policy and PS requirements (largely determined through independent monitoring and IFC supervision visits), the IFC has the right to divest immediately from the project, with no penalty or fee accruing to the IFC, and stipulating that the IFC may choose to give the FI will be six months to fully remedy the situation. If not fully remedied within six months, the IFC will automatically divest from the FI, with no penalty or fee for the IFC.

(10) Track development outcomes / performance indicators on both a portfolio-wide and individual sub-project bases. Indicate in the Summary of Investment Information the specific performance indicators that will be monitored and publicly disclosed for each FI.

(11) Track the following FI Portfolio-wide Indicators: FI allocation, e.g. breakdown of projects/investments by sector and risk categorization; percent of projects with sustainable objectives, e.g. specific poverty reduction measures and "green" businesses. FI reach: who benefits from FI - urban vs. rural, microenterprise, small, medium and large entities; benefits to women and vulnerable populations; and amount of tax revenue paid disaggregated by country.

(13) Require a yearly update on pre-agreed development indicators (see BIC suggestions regarding indicators for direct investments), for each category A sub-project and for at least 40 percent of category B sub-projects and 10% of category C sub-projects in an FI's portfolio receiving IFC or MIGA assistance.

(14) Apply all disclosure requirements to all FI subprojects (for specifics, see Appendix I for paper by BIC, CIEL and Ulu Foundation detailing FI-related information requirements), and disclose IFC's detailed assessment of FI capacity to invest IFC funds and manage risks. For example, this requires the public disclosure of financial intermediary (FI) sub-projects and equity-based investments receiving IFC funding, including, inter alia the name and location /domicile of the subproject, type of operation/activities, and potential environmental and social impacts. Furthermore, IFC needs to ensure that project-affected local communities and the public are able to participate in the development of analyses and solutions to these impacts.

Recommendations to Protect Indigenous Peoples' Rights and Other Human Rights

IFC's draft fails to reference specifically the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) or to otherwise suggest that standards should be consistent with the UNDRIP. Consistency with the UNDRIP would require explicit adoption of the "free, prior, informed consent"⁴⁴ (FPIC) standard for projects involving indigenous peoples (See the submission by the Forest Peoples Programme (FPP) for a fuller elaboration of concerns related to the IFC Policy, Performance Standards,

⁴⁴ IFC, *Progress Report on IFC's Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process*, at 25 (April 14, 2010).

Disclosure Policy and Indigenous Peoples).⁴⁵ Additionally, IFC’s draft also fails to address other key human rights concerns, described below.

Neither the Sustainability Policy nor the Performance Standards reference specifically the UN Declaration on the Rights of Indigenous Peoples or otherwise suggest that standards should be consistent with the UNDRIP.⁴⁶ This is of particular concern given Article 42 of the UNDRIP, which states that UN specialized agencies (such as the World Bank Group) “shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.”⁴⁷

IFC also continues to assert that existing safeguards are functionally equivalent to free, prior, informed consent despite numerous rejections by indigenous peoples of this assertion. IFC relies on this assertion to claim that no change is needed in the Performance Standards in this regard. (See the submission by the Forest Peoples Programme (FPP) for a fuller elaboration of concerns related to the IFC Policy and Performance Standards and the Disclosure Policy and Indigenous Peoples).

A. UNDRIP and Free Prior Informed Consent

Given widespread State support for the UNDRIP, the IFC Policy and Performance Standards should explicitly reference the UNDRIP and adopt free, prior, informed consent as the standard for projects and other business activities that may impact indigenous peoples.⁴⁸ The European Bank for Reconstruction and Development (EBRD) has already adopted this standard for indigenous peoples. As noted in the submission by FPP, the current standards – broad community support (BCS) and good faith negotiation (GFN) - are deficient both in content and in implementation, and lessons learned from these deficiencies should be used to ensure a robust free, prior, informed consent standard for indigenous peoples. The first major deficiency is that the existence of BCS is based only on IFC’s judgment. IFC’s assessment of the level of support does not equate to an expression of support or consent by the affected people(s). In the absence of an independent verification mechanism, a requirement that BCS be documented and attested to in written agreements between the client and the affected communities, or any understanding with communities of the form such support might take (in the absence of any independent expression by

⁴⁵ Forest Peoples Programme, *Submission to the International Finance Cooperation: Review of the Sustainability Policy, Disclosure Policy and Performance Standards*, July 2010. Available at http://www.forestpeoples.org/documents/ifi_igo/ifc_safegd_rev_fpp_submission_jul10_eng.pdf.

⁴⁶ This is in contrast to two other multilateral finance institutions that have reviewed their safeguard frameworks since the adoption of UNDRIP, the European Bank for Reconstruction and Development and the Asian Development Bank.

⁴⁷ Article 42 states, “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.”

⁴⁸ Many other provisions of the United Nations Declaration on the Rights of Indigenous Peoples relate directly to activities of the World Bank Group. Article 32 indicates, “States shall consult and cooperate in good faith with the indigenous people concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.” Other articles provide more specific guidance.

the peoples concerned), IFC's judgment is inadequate. Currently, BCS can take place entirely in the absence of any knowledge within affected communities that their 'support' for a project is being judged.

Additionally, IFC's assessment is made at only one point in time – the time at which the decision to finance is made. Conditions that lead to initial consent, however, may change over time. These conditions, and community consent, must be examined throughout the project cycle to ensure robust responses to community needs, interests, and rights.

Implementation is even more problematic. IFC has failed to determine BCS in a number of projects that require such a determination, and findings by the CAO confirm this failing.⁴⁹ The standard of GFN suffers even more from implementation difficulties, with projects requiring this standard impossible to verify or independently assess. The GFN standard has the potential to provide improved protections over BCS, but in the absence of any real evidence of its widespread use, it is difficult to assess whether it has been effective in practice.

Asks:

- (1) Explicitly reference the need to comply with the UNDRIP.*
- (2) Require free prior informed consent for projects that impact indigenous peoples (similar to the EBRD).*
- (3) Include free prior informed consent as a requirement not only in the Policy, but also in the Performance Standards, and ensure that it applies to FI subprojects and other business activities.*
- (4) Require disclosure to indigenous peoples of the requirement for free, prior informed consent for a given business activity.*
- (5) Establish a requirement for independent verification of free, prior, informed consent in all category A and B projects.*
- (6) Ensure that mechanisms exist for gauging consent throughout the lifetime of the project.*
- (7) Establish more effective systems of accountability to ensure that conditions leading to free, prior, informed consent (currently BCS) are publicly documented and met by clients*
- (8) Ensure that results of impact and risk assessments undertaken by clients are verified with the appropriate indigenous peoples' leadership, authorities and organizations.*
- (9) Place the prohibition on funding projects where a 'government managed process is not likely to meet the requirements of Performance Standard 7' in the ESR, Sustainability Policy and Performance Standard 7.*

⁴⁹ CAO, Review of IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information, May 2010 at page 16. The CAO found, "IFC's application of its BCS commitment has been rare and not transparent. IFC neither discloses which projects have triggered the commitment, nor how it has determined Broad Community Support."

(10) Incorporate the definition of good faith negotiation (GFN) into the body of Performance Standard 7 (PS7) (in addition to free, prior, informed consent requirement) and highlight that agreement is required on all areas of the project that impact on indigenous peoples.

(11) Ensure that the Summary of Investment Information (SII) and the Environmental and Social Review Summary (ESRS) mentions any requirement for free, prior, informed consent for indigenous peoples (currently good faith negotiation and BCS) and/or broad community support (for communities to which PS 7 does not apply).

B. Broad Community Support

As noted above (and by the CAO), IFC is unjustifiably limiting application of the Broad Community Support requirement, and failing to make information about this determination public. The current Disclosure Policy draft proposes to make public a “summary of the process outlining how this determination was made.”⁵⁰ This summary, however, likely will not describe critical evidence used to make the determination. As significantly, this requirement is under the “Ongoing Disclosure” section of the Policy, indicating that critical community and public information about IFC’s determination of broad community support will not be available to the Board when deciding on the investment.

Asks:

(1) Ensure that the broad community support requirement is applied for all projects and other business activities that may significantly adversely impact communities to which Performance Standard 7 does not apply. This will require that risks are more accurately identified and characterized.

(2) Ensure that clients inform local communities that BCS is required (when it is required) for a given project or business activity.

(3) Publicly provide, prior to the Board decision on the project, all of the evidence and information used by IFC to determine that BCS exists.

(4) Include the BCS requirement not only in the Policy, but also in the Performance Standards, and continue to require IFC to verify that BCS exists.

C. Project-level grievance mechanisms

Project-level grievance mechanisms required in the 2006 Policy and Performance Standards have not been robust – often communities are not even aware they exist.⁵¹ Although the proposed draft includes some measures to strengthen these mechanisms, several key measures are still lacking.⁵² For example,

⁵⁰ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Draft Policy on Disclosure of Information*, at 102 ¶ 13(d) (April 14, 2010).

⁵¹ CAO, *Review of IFC’s Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information*, at 24 (May 2010).

⁵² IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 1*, at 52 ¶ 31 (April 14, 2010).

the UN Human Rights Council has adopted the "protect, respect, and remedy" framework elaborated by the Special Representative to the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Under the framework, corporations have a responsibility, as part of their human rights due diligence, to establish a grievance mechanism. Ruggie has identified six principles for non-judicial grievance mechanisms: legitimacy, accessibility, predictability, equitability, rights-compatibility and transparency. Importantly, Ruggie has found that project-level grievance mechanisms must be consistent with an additional principle - that the company itself cannot act as both defendant and judge, but rather operate through dialogue. The current draft does not provide enough guidance to IFC clients on the design and operation of a project-level grievance mechanism that is consistent with Ruggie's seven principles.

Asks:

- (1) *Ensure that local communities are consulted as the grievance mechanisms are created.*
- (2) *Ensure that communities are aware of the mechanism and other elements of an "accountability framework," including the Compliance Advisor Ombudsman, access to courts, etc.*
- (3) *Monitoring, reporting and evaluation should be explicit elements of the grievance mechanism.*
- (4) *Ensure that the Performance Standards reflect all seven of Ruggie's principles for grievance mechanisms.*

D. IFC's Responsibility to Address Human Rights

The latest draft recognizes that companies should respect human rights by undertaking due diligence to identify adverse human rights risks.⁵³ The draft fails significantly, however, in addressing the human rights-related responsibilities of IFC, which - as an entity through which States are acting - has at least the same responsibilities as other private organizations to carry out human rights due diligence and otherwise respect human rights and responsibilities. While the draft recognizes the possible complicity of IFC clients in human rights violations, it fails to state that IFC will ensure that activities it supports do not cause or contribute to human rights abuses.⁵⁴ Moreover, it fails to require IFC to refrain from financing business activities that support gross human rights violations."⁵⁵

⁵³ IFC, *Progress Report on IFC's Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Environmental and Social Sustainability, Rev.0-1* at 31 ¶ 10 (April 14, 2010).

⁵⁴ IFC, *Progress Report on IFC's Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Environmental and Social Sustainability, Rev.0-1* at 33 ¶ 19 (April 14, 2010).

⁵⁵ IFC, *Progress Report on IFC's Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Policy on Environmental and Social Sustainability, Rev.0-1* at 33 ¶ 19 (April 14, 2010).

Asks:

- (1) Establish a clear human rights due diligence process that ensures full consideration of potential human rights impacts (i.e., including impacts to human health from environmental degradation and pollution, and impacts to human rights caused by climate change).*
- (2) Clearly articulate the responsibility of IFC to ensure that activities it supports do not contribute to human rights abuses, including business activities involving risks of complicity in human rights violations.*
- (3) Ensure that the Policy and Performance Standards are consistent with international human rights obligations and instruments.*

E. Water-Related Rights

The draft more explicitly addresses efficient use of water, but fails to address other important water access concerns, and, in particular, fails to explicitly identify ‘affordable and equitable’ access to safe drinking water and sanitation as a key issue.⁵⁶ In addition, on July 28, 2010, the United Nations General Assembly declared the human right to clean water and sanitation. The draft should reference this right and establish safeguards to protect this new human right.⁵⁷

Asks:

- (1) Require consideration of affordable and equitable access to water.*
- (2) Fully evaluate impacts of large hydropower projects⁵⁸, including by: reviewing the options and needs assessment from which the hydropower project emerged; requiring direct, indirect and net GHG emissions accounting, reporting and mitigation (such as reservoir emissions and the flooding of carbon sinks and require biomass clearance); ensuring the free, prior, informed consent of indigenous peoples and broad community support for affected communities through negotiated agreements that include benefit sharing; providing for environmental flows to maintain downstream ecosystems and livelihoods; requiring funded, enforceable compliance plans from developers and compliance with the World Bank’s OP 4.37 on the Safety of Dams. Additionally, ensure that developers evaluate reservoir induced seismicity (RIS) as part of earthquake hazard assessments and consider how climate change-induced hydrological variations might impact dam safety. These assessments and proposed mitigation measures should be reviewed by the independent panel of experts and monitored throughout the life of the dam. Emergency preparedness plans should be communicated to potentially affected communities.*

⁵⁶ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 3, Resource Efficiency and Pollution Prevention*, at 63 ¶ 9 (April 14, 2010).

⁵⁷ See: <http://www.un.org/apps/news/story.asp?NewsID=35456&Cr=SANITATION&Cr1=>

⁵⁸ Many of these asks are supported by recommendations of the World Commission on Dams, “Dams and Development Report” See: <http://www.dams.org/report/>.

F. Housing and Land Rights

IFC proposes to address a few key gaps, including requiring independent verification of resettlement outcomes; making sure compensation is provided before resettlement occurs;⁵⁹ ensuring that women are consulted, compensated and provided rehabilitation support;⁶⁰ increasing consultation requirements more generally; and requiring land compensation (not just cash) for affected people with land-based livelihoods.⁶¹ These are important improvements. However, some key asks remain, including a need to ensure that projects do not result in forced evictions (resettlement without due process and consultation), and a need to ensure that people displaced by project activities other than land acquisition are protected.

Asks:

(1) *Correct the gap in coverage for people displaced by project impacts other than land acquisition. In the new paragraph 8 of the revised draft Performance Standard 5, replace the current proposed language with corresponding language recently incorporated by the Asian Development Bank (ADB): “If these [non-land-acquisition] impacts are found to be significantly adverse at any stage of the project, the borrower/client will be required to develop and implement a management plan to restore the livelihood of the affected persons to at least pre-project level or better.”*

(2) *Make the objectives of Performance Standard 5 consistent with best practice and international human rights law. This requires two key changes: Require that displacement be avoided and **minimized** (i.e., remove the proposed new language of “avoid and reduce”); and insert language that states that involuntary resettlement is permitted only under “exceptional circumstances,” as defined in international law on evictions and housing rights.⁶²*

3) *Require that livelihoods be **improved, not merely restored**. A standard of mere restoration is widely proven to lead to impoverishment. Change the wording to harmonize with the improvement objective adopted at the Asian Development Bank: “...to improve the standards of living of the displaced poor and other vulnerable groups.”*

⁵⁹ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 5, Land Acquisition and Involuntary Resettlement*, at 74 ¶ 10 (April 14, 2010).

⁶⁰ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 5, Land Acquisition and Involuntary Resettlement*, at 75 ¶ 11 fn 15 (April 14, 2010).

⁶¹ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 5, Land Acquisition and Involuntary Resettlement*, at 77 ¶ 20 fn 21 (April 14, 2010).

⁶² Two key elements of “exceptional circumstances” are that the project is in the genuine public interest, and that all other alternatives to forced eviction/resettlement have been explored. See *UN Basic Principles and Guidelines on Development-based Evictions and Displacement* (2007); and U.N. CESCR, General Comment No. 7: The Right to Adequate Housing: Forced Evictions, 16th Sess., U.N. Doc. E/1998/22 (1997) Arts. 7, 17 & 18

4) *Require that external completion audits on resettlement are conducted for all Category A projects. The current wording simply encourages these audits, but provides no objective guidance relating to when they should be triggered.*

G. Labor Rights

IFC proposes to address some concerns. Responding to Global Unions' request, Performance Standard 2 now states that the first objective is "to protect worker's rights." The labor organization's recommendation that IFC ensure that "workers" be considered part of "affected communities" will be addressed by changing "affected communities" to "stakeholders" (stakeholders is defined as including "workers").⁶³

However, the international labor movement has also recommended that the IFC policy include an improved explanation of project categorization criteria, or indicative lists, which should take account of the fact that some types of activities may have low environmental risks but high risks for labor standards violations, or vice versa. IFC's new draft recommends only that the categorization system be more predictable (and suggests that details will be considered in Phase II). Remaining key asks are described below.

Asks:

(1) Ensure that the Exclusion List reflects the more stringent definitions of forced labor/harmful child labor (as defined in PS 2), and prohibit investment in production of, use, or trade in asbestos fibers or asbestos-containing products, with no minimum content threshold.

(2) For IFC projects for which collective bargaining agreements do not exist, commit IFC to enforcing the ILO principle of prevailing wages and working conditions (the text currently obliges client firms to comply with national law). This could be formulated using the language included in the EBRD Performance Requirements, as well as the newly revised MDB Conditions of Contract for Construction, to state "Wages, benefits and conditions of work offered should be comparable to those prevailing at equivalent employers in the relevant region and sector."

(3) Strengthen language that would prevent child or forced labor in the supply chain, adding that "The client should continue to procure goods and services only after it has received satisfactory evidence that the supplier has taken appropriate steps to eliminate child labor and forced labor practices consistent with paragraphs 14 and 15 above."

(4) Require clients to demonstrate that job positions filled by workers not considered to be direct employees "have not been created with the objective of avoiding obligations under national law or the Performance Standards that would otherwise apply if the workers were hired as employees of the client."

⁶³ IFC, *Progress Report on IFC's Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process*, at 11 ¶ 36 (April 14, 2010).

(5) Clarify the extent to which IFC will encourage clients to adopt alternative measures to job reductions. This clarification could be provided in a guidance note, incorporating suggestions from the international labor movement.

H. Women's Rights

The Policy and Performance Standards better address gender concerns, but should include stronger requirements that promote “doing good” in addition to “doing no harm.”

Asks:

(1) In addition to assessing adverse impacts to gender, the Policy and Performance Standards should require that Action Plans promote women's economic status through targeted interventions that increase women's access to and control over credit, land, commercial inputs, business and vocational knowledge, and local, regional and international markets.

(2) Resettlement plans should specify standards to ensure that the quality and quantity of land allocated for women will help achieve income generation and food security.

(3) Land titles and other benefits issued as a result of resettlement should be in the name of both spouses (as is promoted by the African Development Bank).⁶⁴

(4) Targeted consideration should be given to women and girls in project compensation schemes, including compensation for loss of land, shelter, livelihoods, and other assets, and any compensation payments should be made equally to men and women.

(5) Project monitoring and outcomes criteria should include gender-sensitive indicators to help ensure that gender-specific development outcomes are secured.

Recommendations to Address Climate Change

IFC recognizes that standards related to climate change are a major gap, and, as a result, has added a substantial amount of new language requiring clients to “address” climate-related risks. Most positive improvements include requirements to evaluate options for greater emissions and reduced emissions during project design, and stronger requirements for clients on greenhouse gas emissions (GHG) accounting.⁶⁵ Several concerns remain outstanding. [For a detailed reference on recommendations on energy policy and climate change, see also Comments from Civil Society Organizations on the World Bank Group Energy Policy Review, June 2010.⁶⁶]

⁶⁴ See: <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/10000009-EN-BANK-GROUP-INVOLUNTARY-RESETTLEMENT-POLICY.PDF>, Section 3.4.7.

⁶⁵ See, *inter alia*, IFC, *Progress Report on IFC's Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process*, at 69 ¶ 8, 82 ¶ 5, 30 ¶ 9, 62 ¶ 8 (April 14, 2010).

⁶⁶ Inter-American Association for Environmental Defense (AIDA), “Comentarios de Organizaciones de la Sociedad Civil a la Propuesta de Estrategia Energética del Group del Banco Mundial, Contendia en su Síntesis Sectoral,”

A. Reducing total GHG emissions and moving to a low-carbon economy

IFC is proposing to 1) require the client to evaluate and implement “feasible” and “cost-effective” measures to reduce GHG emissions;⁶⁷ 2) specify that greenhouse gas emissions be considered during the social and environmental assessment process (as part of transboundary effects);⁶⁸ and 3) require accounting for GHG emissions over 20,000 tons of CO₂-equivalent annually.⁶⁹ Although these improve standards, they are inadequate given the significant implications of climate change for poverty alleviation.⁷⁰ IFC is not proposing to make commitments to reduce total GHG emissions in its overall portfolio, or to ask clients and FIs to prioritize projects with reduced climate impact. In addition, because the draft addresses only greenhouse gas emissions, rather than all global warming pollutants that have significant impact on climate change (such as black carbon), IFC is missing a critical opportunity to slow climate change.⁷¹

Asks:

(1) Set ambitious, measurable, reportable and verifiable goals to reduce IFC’s climate change impact in the short, medium and long term, starting from a base line determined by a historical account of the climate impact of IFC financed activities and projects.

October 2009. Available at <http://www.aida-americas.org/sites/default/files/refDocuments/COMENTARIOS%20DE%20OSC%20ESTRATEGIA%20ENERG%20C3%89TICA.pdf>.

⁶⁷ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 3, Resource Efficiency and Pollution Prevention*, at 62 ¶ 6 (April 14, 2010).

⁶⁸ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 1, Assessment and Management of Social and Environmental Risks and Impacts*, at 45 ¶ 6 (April 14, 2010).

⁶⁹ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 3, Resource Efficiency and Pollution Prevention*, at 62 ¶ 8 (April 14, 2010).

⁷⁰ See, for example, IPCC AR4 WGII, p. 359. United Nations Millennium Project 2005, *Halving Hunger: It Can Be Done*, Task Force on Hunger, p. 66. Furthermore, according to the Human Rights Council Special Rapporteur on the right to food, “half of the world’s hungry people ... depend for their survival on lands which are inherently poor and which may be becoming less fertile and less productive as a result of the impacts of repeated droughts, climate change and unsustainable land use” (A/HRC/7/5, para. 51). At *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*. A/HRC/10/61, 15 January 2009. p. 10. “Poor people living in developing countries are particularly vulnerable given their disproportionate dependency on climate-sensitive resources for their food and livelihoods.” Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>.

⁷¹ *The Other Climate Changers: Why Black Carbon and Ozone Also Matter*. Jessica Seddon Wallack and Veerabhadran Ramanathan. Foreign Affairs 88.September/October 2009.and *Reducing abrupt climate change risk using the Montreal Protocol and other regulatory actions to complement cuts in CO₂ emissions*. Mario Molina, Durwood Zaelke, K. Madhava Sarma, Stephen O. Andersen, Veerabhadran Ramanathan. Available at: www.pnas.org/cgi/doi/10.1073/pnas.0902568106, in “El Carbono Negro: Concepto, Efectos Climáticos y Oportunidades en su Control” Interamerican Association for Environmental Defense AIDA, May 2010. Available at: http://www.aida-americas.org/sites/default/files/AIDA_Carbono%20Negro%20FINAL.pdf

(2) Make accounting public, granting public access to information concerning current emissions of global warming pollutants, as well as the set goals and timetables.

(3) Require an evaluation of the climate change impact of all IFC financed projects and prioritize financing of low emission alternatives. First estimate impacts that projects would have on climate change, and, second, determine how climate change could affect the effectiveness of the proposed projects (rainfall patterns, hydrology of the region, proposed safety projects, etc.).

(4) Revise the language in the draft to include all global warming pollutants rather than simply greenhouse gas emissions.

B. Fossil fuels

IFC is not proposing to make any institution-wide commitment to phasing-out fossil fuels.

Ask:

(1) IFC should give priority to energy efficiency and truly sustainable renewable energy projects, aiming to eliminate financial support for fossil fuel projects. Energy efficiency has enormous potential for developing countries, and more than half of the increase in global energy demand could be met through energy efficiency mechanisms in the next fifteen years⁷². A focus on energy efficiency would increase the effectiveness of resources invested by IFC, and by reducing energy demand IFC can focus its resources where truly needed for equitable access to energy.

(2) Make the commitment to phase out funding of fossil fuel-based projects.

(3) Require the highest standards in the design, implementation and performance of all energy projects to be funded. To this end, require use of best available technologies, the analysis of various scenarios and alternatives for meeting energy needs, and an assessment of the costs of social and environmental externalities associated with the project in the medium and long term.

C. Exclusion list

IFC has not proposed to take any measures to update its exclusion list to reflect harmful technologies or projects (such as large-scale livestock ventures, coal-fired power plants, certain types of fossil fuel projects, and cement factories, among others) that contribute disproportionately to GHG emissions.

Asks:

Update the Exclusion list to include antiquated technologies and fossil fuel projects that disproportionately contribute to climate change.

Recommendations to Better Protect Biodiversity

⁷² McKinsey Global Institute (May 2007). Curbing global energy demand growth: the energy productivity opportunity. Available at: http://www.mckinsey.com/mgi/publications/Curbing_Global_Energy/index.asp.

While it is commendable that IFC has tried to align its definition and interpretation of Critical Habitat with more global initiatives such as the AZE (Alliance for Zero Extinction) and KBAs (Key Biodiversity Areas),⁷³ the definition of Critical Habitat still needs much work in order to be relevant and applicable to Endangered (EN) and CR (Critically Endangered) species. One of the most significant changes is that PS 6 now makes Biodiversity Offsets an option to compensate for negative impacts on species in Critical Habitats and the loss of EN or CR species.⁷⁴ While these may be appropriate in certain situations, it is of the utmost importance that language be strengthened to ensure that offsets are real. The old language states, “There is no reduction in the population of any recognized Critically Endangered or Endangered Species.” The proposed language states, “The project is not anticipated to lead to a net reduction in the global or national/regional population of any Critically Endangered or Endangered Species over time.”⁷⁵

Asks:

(1) Replace “is not anticipated to” with “will not” and remove “net” to ensure that populations are not impacted.

(2) Place the burden on clients to demonstrate that the offset is real and fully addresses the damage caused by project activities. [Moreover, ensure that approval of an appropriate offset program or site is provided by an appropriate IUCN/SSC group to ensure an independent advisor to the decision-making process.]

(3) PS6-15 is nonsensical and needs to be reworked, i.e. “There are no measurable adverse impacts on the criteria for which the critical habitat was designated and on the ecological processes supporting that criteria.” This sentence needs to be clarified.

(4) Before lending to multiple projects within the same country or region, it should be mandatory that IFC conduct a national or regional impact assessment that considers cumulative impacts.

(5) Require that experts used to meet standards calling for retention of “qualified and experienced external experts,” be approved by the appropriate IUCN/SSC group.

⁷³ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 6, Biodiversity Conservation and Sustainable Natural Resource Management*, at 84 ¶ 14 (April 14, 2010).

⁷⁴ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 6, Biodiversity Conservation and Sustainable Natural Resource Management*, at 74 ¶ 7 (April 14, 2010).

⁷⁵ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Performance Standard 6, Biodiversity Conservation and Sustainable Natural Resource Management*, at 84 ¶ 15 (April 14, 2010).

(6) *The Critical Habitat Interpretation Note for Performance Standard 6 needs to be made public as it influences the meaning of PS6.*

Recommendations to Strengthen Standards Related to Advisory Services Lending

IFC Advisory Services projects are often characterized by a lack of information regarding (1) environmental and social impacts, (2) track records of companies involved in Advisory Services Projects, and (3) development outcomes, and (4) funding sources. Moreover, the public has no opportunity to provide potentially useful information regarding IFC partners for these projects.

A. Lack of Information Regarding Environmental and Social Impacts

IFC is failing to ensure that impacts associated with Advisory Services projects are evaluated adequately. To use a recent example, IFC is currently proposing an Advisory Services project designed to help establish of 250,000 hectares of pulp plantations in Indonesia, yet so far has failed to provide any assessment of potential environmental or social impacts because, according to staff, the project is only “advisory” in nature.⁷⁶ Given the environmental and social safeguard requirements of IFC, and the extraordinary history of social conflict, environmental devastation and massive corruption usually associated with the establishments of pulp and paper plantations in Indonesia, it is difficult to comprehend how an IFC project or program in Indonesia that has a stated goal of increasing pulp plantation area by 250,000 hectares would not potentially involve significant and irreversible impacts on the environment, including climate impacts, and on the human rights of Indigenous and other forest and rural communities.

IFC does not conduct its own environmental and social assessments for AS projects but, instead, relies solely on the companies involved in the project to carry out their own assessments. There is little information publicly available on the assessments done by such companies.

Asks:

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

⁷⁶ IFC press release, “IFC Launches Program to Help Create Forest Plantations on Degraded Indonesian Lands,” November 2009. Available at <http://www.ifc.org/ifcext/media.nsf/content/SelectedPressRelease?OpenDocument&UNID=47DC0D95D1371DA58525767200565A5F>.

B. Track records of companies

There is very little information publicly available regarding the track records of companies proposed for involvement in AS projects, including whether such companies are subsidiaries of larger companies or conglomerates, information on their parent companies. Such information would include:

- a) Any previous or current violations of laws, rules or regulations, including those pertaining to the environment, human rights, finance and corruption by proposed partner companies;
- b) The number and extent of conflicts with local communities in areas where the companies have operated and continue to operate;
- c) The involvement or association of politically exposed persons in the ownership, financing or operation of the companies;
- d) The bylaws of such companies, with special attention to the portions regarding transparency of information and requirements for environmental and social safeguards.
- e) The manner and method and documented records of community consultations and the extent to which and manner by which free, prior informed consent has been determined and obtained from potentially affected communities.

Ask:

We urge IFC to make public release of this information a requirement of the Performance Standard and Disclosure Policy.

C. Lack of information regarding development outcomes.

IFC is proposing to make information related to AS outcomes available only at the conclusion of the project.⁷⁷

Ask:

We urge IFC to report DOTS indicators for Advisory Services at initiation of project, and provide evaluations during the project.

D. Lack of information regarding funding sources.

Identities of co-funders are difficult to ascertain, but are important sources of information for evaluating potential impacts and capacity to deal with impacts.

Ask:

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

⁷⁷ IFC, *Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information Review and Update Process, Draft Policy on Disclosure of Information*, at 105 ¶ 16 (April 14, 2010).

should specify if these funds come directly from national/sub-national budgets or, instead, are provided by IFC or other funders to the national/sub-national agencies as loans or grants.

E. Public comment on choice of companies.

The success of IFC's endeavor will depend in large part on the willingness and ability of IFC partner companies to meet environmental and social standards. The public often has information that may be useful for IFC about the track record of these companies.

Ask:

In the case of AS projects, we urge IFC to publish a list of potential partners and seek public input on the environmental, human rights, and climate track records of any such companies prior to committing to a partnership.

F. Public comment on sub-national agencies.

In the case of the proposed support for the establishment of 250,000 hectares of Indonesian pulp plantations, IFC has proposed partnership with sub-national agencies and entities.⁷⁸ In the past decade, sub-national actors have often been at the lead in facilitating and sponsoring massive deforestation, illegal logging and forced seizures of community forests and lands by plantation and logging companies. It is unclear if IFC currently conducts environmental, social and financial due diligence to assess the appropriateness of choice of sub-national partners. This would include screening or investigation of the former or current involvement of officials of such agencies in illegal forest sector activities, money laundering, land seizures or involvement in corruption prior to developing partnerships with such sub-national agencies and officials as well as a period of public comment on IFC choice of sub-national agency partners where the public would have the opportunity to provide information regarding environmental and social impacts currently associated with the activities of such agencies, entities and officials.

Ask:

We urge that these be made requirements under the Performance Standards.

Accountability Counsel
Natalie Bridgeman Fields, Executive Director
San Francisco, CA USA

American University-Washington College of Law
David Hunter, Director, International Legal Studies Program
Washington, DC USA

Amigos da Terra - Amazonia Brasileira

⁷⁸ IFC, "Forest Plantations on Degraded Lands: Promoting Sustainable Forestry, Improving Lives, 2009.

Roland Widmer, Eco-Finance Program Manager
Sao Paolo, Brazil

Angikar Bangladesh Foundation
Muhammad Hilaluddin
Bangladesh

Association for India's Development (AID)
Aravinda Pillalamarri
India

Association for International Water Studies (FIVAS)
Andrew Preston
Oslo, Norway

Bank Information Center
Chad Dobson, Executive Director
Washington, DC USA

BankTrack
Johan Frijns, Coordinator
Nijmegen, Netherlands

Berne Declaration
Christine Eberlein
Geneva, Switzerland

Both Ends
Anouk Franck
Amsterdam, Netherlands

Bureau on Human Rights and Rule of Law
Natalia Ablova, Director
Bishkek, Kyrgyz Republic

Cameroon Gender and Environment Watch (CAMGEW)
Wirsiy Emmanuel, Binyuy Team Leader/Environmental
Yaounde, Cameroon

Campagna per la Riforma della Banca Mondiale (CRBM)
Antonio Tricarico, Coordinator
Rome, Italy

Center for International Environmental Law
Anne Perrault, Senior Attorney

Washington, DC USA

Centre du commerce International pour le Développement (CECIDE)
Cisse Kabinet, Executive Director
Conakry, Guinea

Centre on Housing Rights and Evictions (COHRE)
Salih Booker, Executive Director
Geneva, Switzerland

Centro de Derechos Humanos y Ambiente (CEDHA)
Laura Ruth Gimenez
Cordoba, Argentina

Childbirth and Postpartum Professional Association (CAPPA)
Rivani Noor
Indonesia

Coastal Development Partnership (CDP)
M. M. Mahbub Hasan
Dhaka, Bangladesh

Committee on Public Control over the Implementation of State Programs
Kurmanbayeva Aziya
Kazakhstan

Community Development Friend (CDF)
Gopalgang, Bangladesh

Consejo Machiguenga del Río Urubamba (COMARU)
Miguel Ruben and Binari Piñarreal, Director
Cusco, Peru

Corporate Accountability International
Mark Hays, Senior Researcher
Washington, DC USA

Derecho Ambiente y Recursos Naturales (DAR)
Cesar Gamboa Balbin, Director
Lima, Peru

Earthworks
Scott Cardiff
Washington, DC USA

Environnement Ressources Naturelles et Developpement (ENRD)

Kashukwa Tshakoma Espoir, Program Officer
Kinshasa, DRC

Environmental Law Center/"Armon"
Rustam Murzakhonov
Tashkent, Uzbekistan

Friends of the Earth Cyprus
Klitos Papastilianou, Campaigner
Limassol, Cyprus

Friends of the Earth - U.S.
Michelle Chan
Washington, DC USA

Fundación Pachamama
Carlos Mazabanda, Program Advisor
Quito, Ecuador

Fundar
Valeria Enriquez, Investigator
Mexico City, Mexico

GegenStrömung – Countercurrent
Heike Drillisch, Coordinator
Germany

Halifax Initiative
Karyn Keenan, Program Officer
Ottawa, Canada

Initiative for Right View
Kazi Zaved Khalid Joy, Coordinator (CEO)
Khulna, Bangladesh

Institut de Recherche et de Promotion des Alternatives en Développement (IRPAD)
Mamadou Goita
Mali

Institute for Democracy in Africa (IDASA)
Richard Calland, Founding Member of the Global Transparency Initiative and Director of Economic Governance Program

Instituto Latinoamericano para una Sociedad y un Derechos Alternativos (ILSA)
Margarita Flórez

Bogota, Colombia

Integrated Social Development Centre (ISODEC)

Zakaria Yakubu

Ghana

Interamerican Association for Environmental Defense (AIDA)

Astrid Puentes Riaño, Co-Director

Atlixco, Mexico

International Accountability Project

Molly Clinehens, Program Coordinator

San Francisco, CA USA

International Alliance on Natural Resources in Africa (IANRA)

Lindlyn Tamufor

Amsterdam, Netherlands

International Rivers

Shannon Lawrence, Senior Policy Analyst

Berkeley, CA USA

ISDE Bangladesh

S M Nazer Hossain, Executive Director

Chittagong, Bangladesh

ITUC/Global Unions

Francesca Ricciardone

Washington, DC USA

Jubilee Australia

Luke Fletcher, Policy Coordinator

Sydney, Australia

Kirat Welfare Society

Chandra SinghKulung, Chairperson

Kathmandu, Nepal

Lokoj Institute

Arup Rahee, Executive Director

Dhaka, Bangladesh

Meghalaya Peoples Human Rights Council, India

Dino Dean

India

Mineral Policy Institute
Charles Roche, Executive Director
Perth, Australia

Nadi Ghati Morcha
Gautam Bandyopadhyay
Chhattisgarh, India

Organisation pour le Renforcement des Capacités de Développement (ORCADE)
Moses Kambou
Ouagadougou, Burkina Faso

Osagyefo Network for Rural Development (OSNERD)
Stephen Yeboah, National Coordinator
Ghana

Oxfam America
Emily Greenspan
Washington, DC USA

Pacific Environment
Doug Norlen, Policy Director
San Francisco, CA USA

Chulalongkorn University
Siriluk Sriprasit, Postgraduate student
Thailand

Mekong School
Tipakson Manpati, Postgraduate student
Thailand

University of Sydney
Nguyen Thi and Kim Cuc, Postgraduate students
Vietnam

Rainforest Action Network
Rebecca Tarbotton, Executive Director
San Francisco, CA USA

River Basin Friends (NE)
Ravindranath
Assam, India

Sierra Club
Richard Cellarius, International Vice President
USA

Sierra Club Canada
Larry Williams, Member, U.S. Canada International Committee
Canada

Sociedad Peruana de Derecho Ambiental (SPDA)
Manuel Pulgar-Vidal, Executive Director
Lima, Peru

Society for Water and Public Health Protection (SWAPHEP)
Hope Ogbeide, Director
Benin, Nigeria

The Bretton Woods Project
Ama Marston, Programme Manager
London, United Kingdom

The Corner House
Nicholas Hildyard
London, United Kingdom

The Oakland Institute
Anuradha Mittal, Executive Director
Oakland, CA USA

Ubonratchathani University - Student
Tanasak Phosrikun, Assistant Reseacher
Thailand

Ulu Foundation
Stephanie Fried, Executive Director

Urgewald
Knud Vöcking
Sassenberg, Germany

Wassa Association of Communities Affected by Mining (WACAM)
Daniel Owusu-Koranteng
Tarkwa, Ghana