



Review of IFC Performance Standards and Sustainability Policy Overview of Key Issues

From September to November 2009, IFC is conducting an initial scoping of issues to improve in its updated sustainability policies. The following analysis recommends ways to improve IFC's coverage of four key issues:

- Climate change
- Environmental and social impact assessment
- Community engagement
- Human rights

Strengthen IFC's commitments to address climate change.

Science and policymaking on climate change have advanced exponentially since adoption of the 2006 Performance Standards. IFC currently has only a limited number of climate change requirements for clients within Performance Standard 3 on Pollution Prevention and Abatement, and makes no mention of any commitments for IFC itself in the Sustainability Policy.

IFC's policies only require projects with "significant emissions" to quantify greenhouse gas emissions (GHGs). "Significant emissions" refer to projects that emit at least "100,000 tons CO₂ equivalent per year for the aggregate emissions of direct sources and indirect sources associated with purchased electricity for own consumption." To address existing policy gaps, we recommend that IFC:

Commit to institution-wide measurement and reduction of greenhouse gas emissions

Under the current policies, IFC makes no institution-wide commitments to mitigate climate change. The updated Sustainability Policy should reflect commitments to measure and publicly report GHG emissions across IFC's portfolio.

Expand requirements for clients to measure and report on their projects' greenhouse gas emissions

The following modifications to Performance Standard 3 are necessary to reflect developments in GHG accounting since 2006:

- Reduce the threshold for GHG accounting from 100,000 tonnes CO₂ equivalent per year to 25,000 tonnes. This is the level being proposed as the threshold for U.S. greenhouse gas regulations.¹
- Expand the scope of direct emissions beyond purchased electricity, to also include steam, heating, and cooling. Under the current Performance Standards, only direct sources associated with power production for the project require quantification.
- Remove the option for clients to offset GHG emissions. Instead, require clients to conduct an overall assessment of options for best available low-carbon technologies. By doing so, IFC will gain comparative advantage in promoting energy efficiency, renewable energy sources, alterations of project design, and other mitigation technologies.

¹ U.S. Environmental Protection Agency, Final Mandatory Reporting on Green House Gases Rule, <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

IFC's clients should also quantify GHG emissions for direct and indirect land use change resulting from projects. This is particularly important for land intensive projects such as forestry, agriculture, mining, oil and gas, and hydropower.

A large percentage of IFC's portfolio consists of lending to financial intermediaries. These financial institutions, too, should account for GHG emissions as a condition of IFC financing. WRI's recent publication on GHG accounting for financial institutions provides guidance on applying accounting principles to the financial sector: <http://www.wri.org/publication/accounting-for-risk>.

Increase support for clean energy alternatives

The IFC continues to support fossil fuel-intensive projects, even as the World Bank Group prepares to play a leading role in financing the UNFCCC response to climate change. Fossil fuel energy has long-term costs that impact human health as well as the environment, and the IFC should help its clients consider the full costs associated with such projects—through GHG accounting and options assessment.

Furthermore, the IFC could demonstrate its commitment to combat climate change by offering to subsidize the additional costs of pursuing clean energy options in order to “level the playing field” between fossil fuel and renewable energy technologies.

Assess the human rights impacts of climate change-related projects

Human rights will affect the broader range of IFC climate change activities. As the IFC supports greenhouse gas mitigation by investing in cleaner projects, financing is likely to be channeled towards biofuel projects (which often displace poor communities from agricultural land), forest management (which can affect communities' access to water, food, and cultural resources), and large hydropower. As the IFC helps countries adapt to unpreventable impacts of climate change, certain activities may have human rights implications—such as forced resettlement from flood-prone areas, and potential for discrimination in which communities receive disaster relief assistance. IFC climate change standards should assess the potential for these risks.

Improve environmental and social impact assessments.

In many ways, the environmental and social impact assessment (ESIA) is the cornerstone of the IFC Performance Standards. If used correctly, the ESIA helps clients to identify a project's environmental and social risks, and to develop a plan to manage or avoid those risks. However, IFC has not indicated that it plans to review the effectiveness of ESIA implementation. To improve ESIA effectiveness, IFC should incorporate the following into Performance Standard 1:

Assess impacts on ecosystem services

The IFC currently requires clients to identify impacts to ecosystem services (the benefits that people obtain from ecosystems) within the ESIA process, but only if significant impacts on biodiversity are identified. Ecosystem services cover a much broader range of issues—such as cultural services which could include burial or ceremonial grounds, ecotourism, provisioning services such as timber or fresh water, and regulating services such as water purification and erosion control. Applying an ecosystem services approach across all ESIA's will help clients to assess the true costs and benefits of the project, and to design compensation packages that cover the full cost of impacts.

Assess the development impacts of proposed projects

IFC requires that clients develop alternative project designs based on these risks, and then justify which option was chosen. However, IFC should require clients to analyze a “no project” alternative within the impact assessment as well, as required for Category A projects in the World Bank’s Operational Policy 4.01. This would serve to provide affected communities with information they need in order to be informed. This would also allow IFC to more accurately assess the development outcomes of its investment, by providing a clearer picture of the tradeoffs inherent in project development.

Clarify requirements for community engagement.

The Performance Standards require clients to engage communities throughout the life of projects, in order to ensure that affected communities have a voice in project design and implementation. However, the current requirements do not provide clear guidance, and leave clients with a great deal of discretion. In many recent Compliance Advisor Ombudsman (CAO) complaints, an underlying tension appears to be ineffective community engagement.

Clarify the requirements for community engagement

The table below lists IFC’s community engagement standards and when each of these is applied. The use of such a wide variety of standards reduces accountability to affected communities. How do communities know they have participated in “free, prior and informed consultation” rather than mere “consultation”? How do communities know when “broad community support” exists? Clients and communities would benefit from a clearer set of community requirements.

Basic Community Engagement Standards	When the Standard Applies
Categorization of Projects	IFC categorizes all projects to determine the level of due diligence required.
Social and environmental Assessment	Depends on type of project, magnitude of risks and impacts.
Disclosure of information / external reporting	For all affected communities.
Consultations	When local communities may be affected by risks or adverse impacts from a project.
Free, prior and informed consultation & informed participation	Projects with significant adverse impacts on affected communities.
Broad community support exists at the time of Board vote	Projects with significant adverse impacts on affected communities; Projects that affect indigenous peoples directly.
Good faith negotiations	For projects that affect indigenous peoples.
Grievance mechanisms	Scaled to the risks and adverse impacts of the project.

IFC should present these requirements in three, more accessible categories:

First, the Performance Standards should present the minimum community engagement requirements necessary for all affected communities. These include principles such as timely disclosure of information, consultations in a culturally appropriate manner, responsiveness to community concerns, access to grievance mechanisms, and regular reporting back to communities.

Second, the standards should present minimum community engagement requirements for indigenous peoples. These include the principles mentioned above, as well as respect for customary rights to land and natural resources, consent obtained prior to key project decisions, necessary time set aside for traditional deliberations, and disclosure of information in a culturally appropriate manner.

Third, the standards should provide specific requirements for when clients must use enhanced community engagement. For example, negotiations—rather than consultations—may be necessary when a project impedes on communities’ rights to land or natural resources, or when the potential for conflict is high.

Strengthen “broad community support” to protect communities’ rights

The IFC’s Sustainability Policy requires that projects with potentially significant, adverse impacts and projects that affect indigenous peoples must have “broad community support” in order to receive IFC financing. The IFC currently determines at the time of Board vote whether broad community support exists for projects with significant impacts or that affect indigenous peoples.

Several concerns prevent this standard from effectively protecting the rights of affected communities. For example, broad community support can exist even if the community is unaware that they have expressed support. Furthermore, IFC does not disclose its justifications for its assessment of the existence of broad community support. IFC also draws evidence of broad community support almost exclusively from the client’s documentation, which presents a conflict of interest.

For this standard to be credible, the IFC must disclose the evidence for its determination that a project has broad community support. IFC should also take steps to ensure that communities are aware of this standard, and that stakeholder groups have the opportunity to knowingly provide or withhold their support.

Strengthen “good faith negotiations” to protect indigenous communities’ rights

In 2007, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples, which enumerates current expectations for respecting indigenous rights. In particular, the Declaration requires free, prior and informed consent of indigenous peoples for activities affecting them. The IFC, however, has not yet updated the Performance Standards to ensure consistency with the Declaration.

For projects that affect indigenous peoples, IFC requires its clients to enter into “good faith negotiations” with affected peoples, and also to obtain broad community support. Together, these requirements could be equivalent to the principle of free, prior and informed consent with further adjustments:

- Where governments have made indigenous rights commitments under international law, such as through ratification of ILO Convention No. 169, there must be evidence that indigenous communities have provided their free, prior and informed consent before the IFC provides financing.
- For projects already underway when IFC becomes involved, there must be evidence that governments or previous project developers undertook a process of good faith negotiations when granting concessions.
- Negotiations must be free from coercion, prior to the commencement of project activities or IFC disbursement, and informed through access to information and technical assistance.
- The investment cannot go forward if good faith negotiations do not lead to a successful agreement with the communities.
- The outcome of negotiations must be a binding agreement that has been approved by the indigenous community.

Develop clear guidance on brownfield projects

In cases where IFC finances a project that is already underway, there is no policy or guidance on how it will assess the quality of the pre-existing community engagement, and how it will, therefore, ensure that its clients deliver quality community engagement. Clear guidance on brownfield projects is particularly important in places where there has been a history of community opposition to development projects or where conflicts are ongoing. Further IFC guidance is needed, such as:

- Internal procedures for assessing pre-existing community engagement.
- Guidance on how to operate in areas of pre-existing community conflict.
- Separate standards for greenfield and brownfield projects, where relevant.
- Modification of the existing broad community support standard to also be applicable to brownfield projects.

Integrate human rights considerations into IFC operations.

The IFC cannot fulfill its poverty alleviation mandate without considering the structural causes of poverty that human rights help to protect against—such as discrimination, exclusion, lack of accountability, and abuses of state power. Throughout the review, IFC has explicitly acknowledged the need for a more systematic approach to human rights. The human rights landscape has changed in the past three years, particularly due to the work of John Ruggie, the UN Special Representative on business and human rights. Professor Ruggie’s work has helped establish an international norm that companies are responsible for respecting human rights in their activities.

Ensure that the standards are consistent with Ruggie’s framework

While the IFC has no direct obligations under international human rights law, it is important that IFC does not support any activities that would contravene human rights norms for companies.

In his 2008 report to the UN Human Rights Council, Professor Ruggie introduced a widely-accepted framework to help companies conduct appropriate due diligence in order to meet their responsibility to respect human rights. Key elements of any human rights risk management system include: (1) a company-wide human rights policy; (2) human rights impact assessment; (3) tracking and reporting on implementation; and (4) access to remedies. Further steps are needed to ensure that the Performance Standards are consistent with Ruggie’s framework, including:

- Require clients to incorporate key elements of human rights impact assessments listed below into environmental and social impact assessments.
- Require a comprehensive human rights impact assessment for certain projects, such as Category A projects and those with potentially significant human rights impacts.
- For lending to financial intermediaries and other forms of indirect finance, require clients to develop an internal human rights policy.
- Monitor IFC-financed projects to ensure that those voicing opposition to the project or raising claims with the accountability mechanisms do not face retaliation.

Ensure that local communities are aware of IFC involvement in projects that affect them

Many communities are not aware that the IFC has financed a project affecting them. This is increasingly problematic as the IFC supports projects through indirect finance. Furthermore, those communities that know about IFC involvement are often not aware that the CAO exists. The IFC does not require its clients to inform affected communities about this mechanism. Further steps to help address this problem include:

- Require clients to disclose that projects have received financing from the IFC, regardless of whether the IFC finances a project directly or indirectly.
- Require clients to disclose the existence of the CAO to affected communities.

Assess human rights impacts

ESIAs often fail to anticipate human rights violations of IFC investments. The IFC has developed a draft guide to “human rights impact assessment,” which has been road-tested with several companies. Many environmental and social impact assessments already address a wide range of human rights challenges, but adding human rights components to these assessments would enhance risk management. Examples of human rights issues that clients should, but often do not, assess:

- Identification of duty bearers and rights holders.
- Discrimination against or disproportionate impacts on minorities and marginalized groups.
- Areas of tension and potential conflict by favoring certain stakeholders’ interests over others.
- Availability of conflict resolution mechanisms for local communities to seek redress.
- Whether conditions are in place for meaningful consultations, such as access to information, appropriate timing for consultations, inclusiveness of minority groups, and freedom of communities to express opinions without retaliation.
- Gaps in enforcement of local laws that may require additional protection.
- Legacies of past development projects and unsettled human rights claims.

Apply John Ruggie’s framework to IFC’s indirect finance

Increasingly, the WBG invests indirectly in project developers and financiers, rather than investing directly in a specific project. For example, almost 40% of the IFC’s portfolio consists of lending to financial intermediaries. The IFC also increasingly participates in trade finance and asset management. In these investments, the IFC has less operational control over the project, and is less able to monitor use of funds that might be disbursed across several different projects.

Currently, the IFC applies the performance standards when lending to financial intermediaries that have higher-risk portfolios. For all financial intermediaries, the IFC requires companies to create company environmental and social risk management systems, although the requirements for these systems are vague. Many private financial institutions have already adopted human rights policies, in line with Professor Ruggie’s recommendations for all companies. Similar requirements for IFC clients would help to strengthen human rights protections in its indirect finance portfolio.

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