

PART II. SUSTAINABILITY POLICY AND PERFORMANCE STANDARDS: KEY CHANGES

INTRODUCTION

29. This section broadly describes the proposed key policy changes to the April 30, 2006 Sustainability Framework. We first address some cross cutting policy issues and then operational issues which are both described in more detail in Annex A. This is followed by key proposed changes to the Sustainability Policy and individual Performance Standards.

KEY CROSS-CUTTING ISSUES

Climate Change

30. With climate change as a strategic priority for the WBG, the review and update process provides a timely opportunity to explore possible approaches to more effectively integrate climate change considerations into the Sustainability Framework. The current Sustainability Policy language is not explicit on climate change and is therefore out of step with IFC's strategic and operational directive. Given the importance of mainstreaming and strengthening climate change in its operations, IFC recommendations are focused around: (i) improving efficiency of use of resources, including energy and water; (ii) driving reduction in greenhouse gases (GHG) emissions; (iii) expanding reporting requirements for IFC and for its clients; and (iv) in anticipation of increasing climate impacts, incorporating an ecosystem approach which will, among other things, increase analysis on the sustainable use of water used by our clients.

Ecosystem Services

31. The theme of ecosystem services was included in the 2006 version of the Performance Standards, primarily in Performance Standard 6. Ecosystem services are defined as benefits that people obtain from ecosystems, which include provisioning services (such as food, freshwater, shelter, and timber), regulating services (such as surface water purification, carbon storage and sequestration, climate regulation, and protection from natural hazards), and natural cultural services (such as cultural heritage and sacred sites), which are linked to biodiversity. Based on stakeholder comments, IFC has identified several areas where the Performance Standards can be strengthened and made more explicit. Examples of strengthening include where there may be impacts to ecosystem services: conducting an analysis of ecosystem services during the project's life-cycle when conducting an assessment; using natural resources such as water more efficiently and making sure that the project's use of such resources does not have significant adverse impacts upon others; protecting the regulating services that the environment provides to communities and that thus help to reduce landslides, floods, and other natural hazards; and identifying restrictions on land use that might include loss of ownership or access to natural resources (i.e., ecosystem services, such as fire wood, fishing, foraging, hunting, etc.).

Gender

32. Each of the Performance Standards was analyzed through the lens of strengthening the gender requirements. Information from various consultations has fed into the review of and proposed changes to the Sustainability Framework. Several areas were identified where this could be done, including recognizing the importance of a gender-responsive approach during a project's life-cycle (e.g., when analyzing risks, impacts, and opportunities of a project). This is reflected both in the diagnostic aspects of the assessment and management of social and environmental aspects, and in the participatory process building on stakeholder analysis disaggregated by gender as well as other relevant social identities. The consultation process should ensure inclusive participation by both men and women. Clients should provide a working environment that protects workers from non-discrimination in areas such as working conditions, terms of employment, avoidance of harassment, and in cases where retrenchment is unavoidable. Clients will also take measures to prevent and address trafficking. Gender is an important aspect when communities might be or have been exposed to communicable diseases. This can have a higher impact on vulnerable groups which may include women in their roles as caretakers.

Human Rights

33. The Sustainability Framework covers a variety of topics that support various aspects of human rights in the context of private sector operations. In response to the work of the UN Secretary-General's Special Representative for Business and Human Rights, and specific comments from IFC's external stakeholders. IFC has carried out a comprehensive analysis of the Performance Standards against various reference documents. This analysis has identified areas in the Sustainability Policy, Performance Standards, and Guidance Notes which can be strengthened. The details of this analysis will be released simultaneously with the draft Sustainability Framework documents for consultation during the Phase II consultation period.

KEY OPERATIONAL TOPICS

Free, Prior, and Informed Consultation Plus Broad Community Support vs. Consent

34. For projects affecting Indigenous Peoples, IFC's current Performance Standard 7 requires the client to engage in a process of Free, Prior, and Informed Consultation (FPIConsultation) which leads to the informed participation of the affected community. This is similar to the World Bank's practice, through Operational Policy 4.10. IFC also requires an elevated form of client consultation called Good Faith Negotiation (GFN) in addition to FPIConsultation where projects are to be located on traditional or customary lands under use by Indigenous Peoples. The principles of consultation has been challenged in recent years, with Indigenous Peoples and their advocates arguing that they should have a right to Free, Prior, and Informed Consent (FPIConsent) in development-related decision making. This principle has been endorsed by the UN and by some other multilateral development banks. IFC's position is therefore perceived by some to be out of step with the international community.

35. A review of standards and practices related to FPIConsent globally shows that it is functionally equivalent to FPIConsultation as implemented by IFC in terms of legitimacy of process with desired results. There is broad agreement that FPIConsent does not mean local veto power or consensus among all concerned stakeholders. There are both political and conceptual arguments for adopting the term “FPIConsent,” however, IFC is of the view that it needs to better understand how its practice should change if it were to implement the concept of FPIConsultation. The recommendation is therefore to retain the language of FPIConsultation and GFN, and continue to consult with internal and external stakeholders on this issue. A final decision on “consent” will be made by October 2010, before the next version of the Sustainability Framework is presented to CODE and subsequently to the Board of Directors for approval.

Categorization

36. IFC uses a system of environmental and social categorization to communicate the magnitude of risks and/or impacts understood as a result of IFC’s appraisal, and to specify IFC’s institutional requirements to disclose project information to the public prior to presenting projects to its Board of Directors. The current framework for project categorization is not well understood by some external stakeholders, and this sometimes results in uncertainty. IEG has also identified categorization differences within the WBG. IFC recommends revisions that would (i) make the system more relevant for all types of investment structures; (ii) make the categorization process more predictable; and (iii) increase transparency in the signaling of risk. IFC proposes dividing the current FI category into FI-Low, FI-Medium, and FI-High categories in order to strengthen social and environmental signaling to the Board of Directors and stakeholders on this important portion of IFC business.

Contract Transparency

37. The Sustainability Policy currently contains three paragraphs on sector-specific initiatives on governance and disclosure related to extractive industry and infrastructure projects. During the consultations, we have heard from stakeholders that project-level disclosure and revenue transparency in extractive and infrastructure projects is of particular importance to them. IFC is currently reviewing these issues internally and through engagement with relevant business partners, including other multilateral development institutions. During Phase II consultation, IFC welcomes feedback from all stakeholders, including CSOs, and industry and government agencies, on how to make relevant terms of Host Government and Inter-Government Agreements and revenue transparency provisions clearer and easier to be implemented by clients.

PROPOSED KEY CHANGES

38. IFC would like to highlight that one of the key conclusions of *IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of*

Information: Report on the First Three Years of Application report and from Phase I of consultation was that some of the language in the Performance Standards needs to be clarified. Thus, many of the proposed changes in the documents are striving to bring greater clarity without changing the intent or content of the Performance Standards. The summary of key issues below is intended to signal the most significant proposed content changes to the Sustainability Framework.

Policy on Social and Environmental Sustainability

39. Proposed changes to the Sustainability Policy include the strengthening of the policy statements with regards to climate change, as noted earlier, and to gender, human rights and corporate governance, as it relates to social and environmental management. Additional clarity is provided through a more detailed description of IFC roles, responsibilities, and the due diligence process for direct and FI investments, including situations where the use of proceeds of IFC financing is not specified at the time of IFC's due diligence, as well as for Advisory Services. The approach to categorization has been adjusted to consider risk more systematically and to recognize different risk levels within the FI categorization. The policy also recognizes the greater importance of monitoring and supervision, and introduces the requirement for the development and the implementation of an annual IFC program of project supervision visits.

Performance Standard 1: Social and Environmental Assessment and Management Systems

40. It is proposed to rename Performance Standard 1 to "Assessment and Management of Social and Environmental Risks and Impacts" to better reflect IFC's changing business products which continue to move away from greenfield project finance. Client requirements on community engagement have been expanded further to address all stakeholders in varying degrees rather than the affected communities. Clients are also being encouraged to involve Affected Stakeholders in monitoring where applicable. A key change in the revised Performance Standard 1 is related to assessing environmental and social risks related to supply chains. The 2006 version of Performance Standard 1 requires that the impacts associated with supply chains are considered where the resource utilized by the project is ecologically sensitive, or in cases where low labor cost is a factor in the competitiveness of the item supplied. In the case of low labor cost (primarily related to textile and agribusiness industries) the requirement has been broadened to apply to any industry that may have a risk of child or forced labor and now also includes reference to significant occupational, health, and safety risks. Performance Standard 2 and Performance Standard 6 provide additional clarification on each of these supply chain risks.

Performance Standard 2: Labor and Working Conditions

41. The key changes in Performance Standard 2 intend to broaden the scope of application of this Performance Standard to workers hired through third party; working conditions for migrant workers that are comparable to those of non-migrant workers; and extend access to grievance mechanism to contracted workers and to include supply chain provisions related to significant occupational, health, and safety issues. In addition, the revised Performance Standard 2

introduces requirements related to workers' accommodation, not previously covered, and requires an analysis of alternatives to collective dismissals, as well as compliance with legal requirements for such actions.

Performance Standard 3: Pollution Prevention and Abatement

42. To better reflect the intent of Performance Standard 3, a name change is proposed to "Resource Efficiency and Pollution Prevention." A revised Performance Standard 3 broadens focus to include efficient use of resources, in particular energy and water, which should result in additional GHG emissions reduction as well as more efficient use of resources in general. The revised Performance Standard 3 tightens the GHG emissions reporting requirement by lowering the threshold requirement from 100,000 tons to 20,000 tons CO₂-equivalent. It requires all projects with significant GHG emissions to demonstrate good international industry practice and to consider additional measures to further reduce emissions. In addition, it introduces a new requirement to consider operational standards and duty-of-care in the context of hazardous waste disposal.

Performance Standard 4: Community Health, Safety and Security

43. Performance Standard 4 does not include significant changes.

Performance Standard 5: Land Acquisition and Involuntary Resettlement

44. Performance Standard 5 recognizes that land acquisition can lead to the loss of access to assets to those without property rights. The revised version also introduces a new requirement for a post-resettlement completion audit under certain circumstances, and introduces a compensation plan requirement which is analogous to a resettlement action plan.

Performance Standard 6: Biodiversity Conservation and Sustainable Natural Resource Management

45. A revised Performance Standard 6 introduces new requirements in case of possible significant conversion and degradation of natural habitats. The new approach encourages development in modified habitats and provisions for conservation measures and set-asides in the project area. It also highlights existing requirements related to ecosystem services. In regards to ecologically-sensitive supply chains, requirements have been included for clients to examine the risks associated with primary suppliers that may adversely impact: (i) high biodiversity value areas; and (ii) forest products, typically from plantations.

Performance Standard 7: Indigenous Peoples

46. A revised Performance Standard 7 introduces a concept of vulnerability as a factor in determining requisite compensation. It also adds a new criterion to the GFN requirement, namely an agreement on a proposed compensation framework, mitigation measures, and development interventions. The new criterion is more explicit about the requirement of an agreement with

regard to proposed development and Indigenous Peoples Development Plan. It includes a section on private sector responsibilities under government Indigenous Peoples Management systems.

Performance Standard 8: Cultural Heritage

47. Performance Standard 8 has minimal changes. It now references the mitigation hierarchy and requires clients to consider providing access across their lands to cultural sites of significance.

Guidance Notes

48. The Guidance Notes that correspond to each of the Performance Standards provide guidance and reference materials on good sustainability practices. They have proved to be a helpful tool to clients, IFC staff, and other users of the Performance Standards over the past four years. These Guidance Notes are not intended to establish policy. The Guidance Notes will be updated after the May 5, 2010 CODE meeting to reflect the proposed changes to the Performance Standards, and included as part of the public disclosure package anticipated to be available during Phase II consultation. IFC will provide copies of the updated Guidance Notes for CODE's background information at least two weeks prior to the public release of the Guidance Notes.