



Review of IFC Sustainability Policy, Performance Standards and Disclosure Policy

BIC Concerns and Policy Recommendations

May 11, 2010

I. Extractive Industries Revenue and Contract Transparency

The public disclosure of revenue flows and contracts is a critical first step towards the responsible management of extractive industries and towards realizing the potential contribution of revenues to poverty reduction. In order to promote more effective revenue and contract transparency in IFC-supported extractive industry (EI) projects, **the updated Sustainability Framework must include minimum revenue reporting requirements and contract disclosure that is applied equally to all extractive industry operations.**

1) Define minimum revenue reporting requirements for all extractive industry projects.– We applaud the progress IFC has made on improving transparency of EI revenues through its Policy requirement and the key step the IFC has taken by providing links on the IFC website to revenue information disclosed by its EI projects. However, unfortunately the types of revenue data reported by IFC EI projects vary greatly among companies and often are not clear or easy to find. This practice has led to confusion for groups and individuals attempting to track the information and an asymmetric availability of information between IFC clients.

IFC staff recently provided a revenue disclosure template, which they hope clients will use to make data more uniform across projects. We fully support this effort, however the template falls short of including all relevant payments and does not address project-level disclosure or timing of reporting. To make this an effective effort, we strongly urge the IFC to include a list of minimum revenue disclosure reporting requirements in a revised Sustainability Framework, which includes the following:

- All types of material project payments from extractive industry operations to the government must be disclosed, including, *inter alia*: royalty payments, taxes, profits/dividends, commodity-based payments, signing bonuses, pipeline/transit tariffs, dividends, acreage fees, rental fees, investments in social development funds, and payments to local communities.
- Revenue disclosure must be reported according to payments made to each level of government, e.g., federal government, regional/state government, and local municipalities.
- Revenue disclosure must be done on a project-level and on an annual basis. In addition, revenue reporting must be done in a timely manner, no more than 4 months after the end of the calendar or fiscal year, depending on which timeframe the company typically provides annual data.

2) Require contract disclosure of all IFC extractive industry projects. - Currently, the IFC Sustainability Policy requires contract disclosure only for “significant” extractive industry projects, defined as accounting for 10 percent or more of projected government revenues. Such a threshold is arbitrary and has been ineffective in bringing about any contract transparency in IFC projects as was intended by Bank Management’s commitment to the Extractive Industry Review. Since the inception of the Policy in 2006, more than **55** IFC extractive industry projects have been approved and not a single project funded by IFC has triggered this requirement. Project developmental and fiscal impacts, especially at the local and regional levels, occur irrespective of the size of a country’s total revenues.

Moreover, arguments for the need to protect confidential business information over concerns of commercial disadvantages are largely unjustified. A recent study published by Revenue Watch Institute and Columbia University (2009)¹ found no strong defenders and few well-articulated defenses of contract secrecy, despite its pervasiveness. Trade secrets are not typically in contracts and commercially sensitive information is a very vague term. The research found little evidence that companies actually remove anything from such agreements even when they have the option and that within the industry, supposedly confidential contracts are bought and sold, analyzed, and even ranked.

The updated Sustainability Framework should incorporate the following:

- All IFC-supported extractive industry projects must disclose all contracts, principal and derivative, related to the EI operation to which the government is a party, including, *inter alia*: between host governments and companies (e.g. Host Government Agreements, Production Sharing Agreements, Power Purchasing Agreements, Concession Agreements) and between governments (e.g. Inter-Governmental Agreements).
- In addition, all IFC-supported extractive industry projects must disclose all contracts and agreements affecting the ultimate payments made to the government, such as those involved in pricing methods of the companies and formulas that change government payments based on changes in commodity prices, project costs, or other factors.

II. Reporting on Development Outcomes

To strengthen accountability and truly demonstrate IFC’s progress toward achieving its poverty reduction mandate, the updated Sustainability Framework must introduce a robust framework for public reporting on development outcomes for each project.

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

Currently, the IFC reports on development outcomes annually, aggregating results by sector or area, rather than at a project-level. For example, the IFC does not require any tracking or reporting on the number of people displaced by each project, or on the impoverishment or enrichment of displaced people. Project-level disclosure would serve as an important gauge to assess which types of projects have actual positive impact on communities and contribute to poverty reduction. Such measures are necessary to determine if displaced people’s standards of living improve and whether their livelihoods are restored.

Development outcome tracking should be continuous and include interim and completion reports. A project-by-project approach allows for monitoring of progress toward anticipated development outcomes

¹ Rosenblum, Peter and Susan Maples, 2009. *Contracts Confidential: Ending Secret Deals in the Extractive Industries*. Revenue Watch Institute, New York.

and enables project managers/civil society to spot problems early. Such aims are not foreign concepts for several of the international financial institutions. The Inter-American Development Bank (IDB)'s Loan Review Documents and the World Bank IBRD/IDA's Implementation Completion and Result reports can serve as examples of ongoing and ex-post reporting. The European Bank for Reconstruction and Development (EBRD) has also started disclosing brief evaluations of its projects on its website.

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

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

3) IFC should disclose relevant client documentation.

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

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

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

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

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

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

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

III. The FPIC principle and Broad Community Support for risky projects.

1) Adopt the EBRD language pertaining to the principle of free, prior and informed consent for projects with potential negative impacts on Indigenous Peoples, their livelihoods and cultural heritage. With the respect to the principle of Free Prior and Informed Consent, the IFC Policy and Performance Standards should be upgraded to ensure consistency with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Environmental and Social Policy of the European Bank for Reconstruction and Development (EBRD).

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

The EBRD's 2008 Environmental and Social Policy represents a valuable example of recognition that the free, prior, and informed consent of communities must exist for projects that might impact Indigenous Peoples or their lands and resources. The Performance Requirement 7 of EBRD states:

"4. Need for free, prior and informed consent.

This PR recognises the principle, outlined in the UN Declaration on the Rights of Indigenous Peoples, that the prior informed consent of affected Indigenous Peoples is required for the project-related activities identified in paragraphs 31–37, given the specific vulnerability of Indigenous Peoples to the adverse impacts of such projects."²

Currently, neither on paper nor in practice do the IFC's Sustainability Policy and Performance Standard 7 on Indigenous Peoples fully honor the principle that Indigenous Peoples have the right to free, prior and informed consent before significant decisions are made or actions taken that would affect their lands, territories or resources. As currently implemented, the broad community support (BCS) standard does not ensure that communities with a special attachment to their land and resources and with distinct cultures and languages have provided their "free, prior and informed consent." To date, IFC's apparent

² EBRD Environment and Social Policy, 2008. Performance Requirement 7: Indigenous Peoples, page 50.
<http://www.ebrd.com/about/policies/enviro/policy/2008policy.pdf>

approach to BCS in practice is to determine if significant objections exist to a project. In the absence of major objections, IFC staff assumes the project has “support.” This approach clearly does not ensure that “consent” of indigenous communities has been secured, or even that a project has support.

It also does not ensure that indigenous peoples’ right to determine how they engage in decision-making processes is respected. IFC and its clients must be required to inform indigenous peoples that they *have the right* to provide or withhold their consent, and that indigenous peoples have the right to withdraw from “good faith negotiations” with companies if the proposed terms of agreement are unacceptable. If indigenous peoples withdraw from negotiations the project should not proceed.

2) For non-IP projects, publicly demonstrate evidence of adequate consultation with affected communities and existence of Broad Community Support for a proposed project.

For all other risky projects not affecting Indigenous Peoples (IP), IFC should show how the client and IFC validated that broad community support (BCS) for a proposed project exists. Performance Standards should require clients to explicitly inform communities about the opportunity to provide or withhold their support for the project or specific activities before financing from IFC can be secured. In determining whether there is a broad community support for a proposed project, IFC should document clear expression of support rather than observing any objection.

IFC should then publicly disclose how the client identified stakeholders, conducted free prior and informed consultations with affected communities, results of the consultation and how IFC checked that broad community support for a project exists.

To that end,

- The Performance Standard 1 should require that clients inform communities of client’s intention to seek financing from IFC, about the IFC Performance Standards and existence of CAO as part, and during early stages, of the consultation process;
- The Performance Standard 1 and 7 should require the client to unequivocally inform communities that Board consideration of the project is *contingent* on good faith negotiations and broad community support from communities. The Environmental and Social Review Procedure (ESRP) should instruct IFC to verify possession of this knowledge by communities at the time of consultations into its assessment of client’s due diligence with respect to free, prior and informed consultations.
- The Disclosure Policy should also require disclosure of how IFC checks client’s documentation of Broad Community Support. This includes the IFC’s Environment and Social Development Department (CES) Director’s verification of BCS and Project Director site visit opinions; also,
 - ESRP and PS should further clarify approaches to projects for which consultations have already been conducted;
 - The PS, Sustainability and the Disclosure Policy should provide for disclosure of information related to *continuity* of community support throughout life project life cycle;

Information related to IFC's determination of broad community support should be disclosed well before Board's consideration of the project so that affected communities has an opportunity to verify that potentially affected people agree to the environmentally and socially risky projects and proposed mitigation measures put in place by the client.