

# TIME TO INVEST IN HUMAN RIGHTS

## A SUMMARY OF CONCERNS FOR THE INTERNATIONAL FINANCE CORPORATION

### INTRODUCTION

The International Finance Corporation (IFC) is the member of the World Bank Group that finances and provides advice to private sector investment in developing countries. IFC frequently invests in business activities with potentially significant environmental, social and human rights impacts, such as mining, oil and gas extraction projects, and major infrastructure development. IFC-supported projects are frequently carried out in areas that are home to people living in poverty or marginalized communities, including Indigenous peoples. Many of the countries in which IFC promotes investment face significant challenges in ensuring effective protection of human rights from corporate abuse because the state is either unable or unwilling to adequately regulate corporate activities and hold companies to account. Consequently, the commercial projects that IFC supports can pose substantial risks to the human rights of individuals and communities.

Since 2006, IFC has used a policy framework, known as the Sustainability Framework, to address social and environmental issues. The Sustainability Framework includes the Policy on Social and Environmental Sustainability (SES Policy), eight Performance Standards and related Guidance Notes, and the Policy on Disclosure of Information. The SES Policy describes IFC's responsibility for supporting projects, while the Performance Standards outline clients' roles and responsibilities in relation to projects and the requirements for receiving and retaining IFC support. The associated Guidance Notes provide additional advice to clients on implementation of the Performance Standards, but clients are not required to comply with the advice in the Guidance Notes.

In 2009, IFC launched a review of the Sustainability Framework. As part of this review, in May 2010 Amnesty International submitted an analysis of the Sustainability

Framework from a human rights perspective and made recommendations on how to incorporate human rights due diligence into IFC's policies and operating standards.<sup>1</sup> Amnesty International's analysis concluded that the Sustainability Framework failed to adequately reflect human rights standards, leaving affected individuals and communities exposed to potentially serious human rights abuses.

On 2 June 2010, IFC released a draft revised Sustainability Framework.<sup>2</sup> IFC also released a comparative analysis of the IFC Sustainability Framework and certain human rights standards where IFC considered stated that the draft framework would give "further concrete meaning to and strengthen human rights" in the Performance Standards.<sup>3</sup>

Amnesty International has undertaken an analysis of these documents to determine the extent to which the draft revised SES



Policy and Performance Standards are adequate to ensure that IFC-supported projects and business activities are conducted in a manner that respects human rights. Amnesty International's analysis concluded that the draft revised Sustainability Framework does not adequately incorporate human rights standards and fails to outline a robust process for IFC or its clients to identify, assess, and manage the risk of human rights abuses occurring in IFC-supported projects.

The following document summarizes Amnesty International's main concerns and recommendations regarding the draft revised Sustainability Framework. Full details of Amnesty International's analysis and recommendations can be found in its publication, *Time to invest in human rights: A human rights due diligence framework for the International Finance Corporation* (Index: IOR 80/004/2010).

## WHAT IS HUMAN RIGHTS DUE DILIGENCE?

The Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises (Special Representative on Business and Human Rights) has clarified that companies have a responsibility to respect human rights. In his most recent report, the Special Representative on Business and Human Rights stated that the corporate responsibility to respect human rights "constitutes a universally applicable human rights responsibility for all companies in all situations". The corporate responsibility to respect all human rights has a corresponding requirement for concrete action by companies to discharge this responsibility, including through the exercise of human rights due diligence. The concept of corporate human rights due diligence describes the steps a company must take to become aware of, prevent and address adverse impacts on human rights. According to the Special Representative on Business and Human Rights, corporate human rights due diligence comprises four aspects:<sup>4</sup>

- a statement of policy articulating the company's commitment to respect human rights;
- periodic assessment of actual and potential human rights impacts of company activities and relationships;
- integrating these commitments and assessments into internal control and oversight systems; and
- tracking and reporting performance.

Human rights due diligence is essential to fulfilling the corporate responsibility to respect human rights.

Both IFC and its client companies should undertake human rights due diligence in order to ensure that IFC-supported activities do not cause or contribute to human rights abuses.

## IFC'S HUMAN RIGHTS DUE DILIGENCE

As an inter-governmental institution whose Member States have duties to respect, protect and fulfil human rights – including to protect human rights against abuse by third parties, such as corporations – the Sustainability Framework of IFC ought to explicitly require IFC to respect human rights and promote respect for human rights by its clients. At a minimum, as part of its responsibility to respect human rights, IFC should conduct its own human rights due diligence.

The draft revised SES Policy, which sets out IFC's responsibilities, does not establish for IFC any of the core components of human rights due diligence (see left: "What is human rights due diligence?"). It states that IFC recognizes the responsibility of the private sector to respect human rights;<sup>5</sup> however, there is no specific reference to IFC itself respecting human rights. In terms of its own responsibility, the strongest human rights commitment made by IFC in the SES Policy is that "the risk of being complicit in gross human rights violations may require IFC to refrain from financing the business activity".<sup>6</sup> It is entirely inappropriate that this commitment is worded as a permissive statement. As a minimum, IFC must ensure that the revised Sustainability Framework contains an

explicit policy which commits IFC to ensuring that projects and other IFC-supported activities do not cause or contribute to human rights abuses. This policy should be integrated throughout IFC's operations.

Beyond a policy commitment to respecting human rights, effective human rights due diligence would require IFC to assess and manage potential human rights risks, including by ensuring appropriate oversight systems for assessing impacts that IFC clients' activities may have on human rights.

In fulfilling its own responsibility to respect human rights, IFC should ensure that information on which it bases its decisions and assessments is accurate and complete. At present IFC is overly reliant on information provided by clients about project impacts and potential impacts. However, clients and prospective clients have a vested interest in obtaining or retaining IFC support, and allowing the client to have substantial control over the compilation of the information on which IFC relies raises concerns about the independence and reliability of the information. IFC must take a proactive role in assessing the human rights impact of proposed commercial activities, verify information received by clients, systemically engage with local communities directly, and

ultimately ensure that its clients follow the same approach. At present, the draft revised SES Policy does not require IFC to take these steps.

Amnesty International has called for IFC to incorporate the following into the revised SES Policy:

- IFC should develop and incorporate a **human rights policy** in which IFC commits to respecting human rights and taking all possible steps to ensure that IFC clients respect human rights in IFC-supported business activities.
- IFC should undertake a **preliminary assessment of human rights risks** and potential impacts of any proposed business activity. This assessment should inform decisions taken in respect of the business activity, including on whether IFC will support the project or investment and how the activity is classified for further review. The preliminary assessment should also inform subsequent monitoring of the business activity.
- IFC should undertake **independent monitoring** of client compliance with human rights due diligence requirements. These should be elaborated in the revised Performance Standards for the clients.

■ **IFC should engage with communities**

when IFC supports activities with potential community impact, so as to ensure that communities have information regarding: (a) involvement of IFC in the business activity; (b) requirements placed by IFC on clients; and (c) the existence of the Compliance Advisor/Ombudsman (CAO) and other means of raising concerns about the impacts of the business activity.

**IFC CLIENTS' HUMAN RIGHTS DUE DILIGENCE**

A key element of IFC's own human rights due diligence should be ensuring that the companies to which it provides support are committed to respecting human rights and that they, in turn, carry out adequate due diligence in respect of the activity for which support is provided.

The Performance Standards outline the responsibilities required of clients, but do not include human rights due diligence. While IFC states that it recognizes that its clients should identify and avoid or address adverse human rights risks, the Performance Standards do not clarify the means by which clients would discharge this responsibility. Amnesty International recommends that in order to do this:

■ IFC should require its clients to take specific steps to become aware of, prevent and address potential adverse human rights impacts. This would involve outlining a human rights due diligence framework in Performance Standard 1, which outlines the risk assessment and management systems that clients are required to have in place.

■ The standards that clients should follow when addressing potential adverse impacts should be brought fully in line with international human rights standards by revising Performance Standards 2-8.<sup>7</sup>

**PERFORMANCE STANDARD 1 – REQUIRING CLIENT HUMAN RIGHTS DUE DILIGENCE**

A core element of client due diligence should include carrying out an assessment of potential adverse human rights impacts of a project. No such requirement is included in Performance Standard 1. Instead, the draft revised Performance Standard 1 focuses almost exclusively on assessing social and environmental risks, with little substantive reference to human rights. This is despite IFC stating in April 2010 that it would explicitly spell out human rights considerations “where relevant”.<sup>8</sup> The only substantive reference to human rights in the draft revised Performance Standard 1 occurs in a footnote, which states that consideration of human rights may form part of social and environmental risk assessments where there is a “reasonable” expectation that human rights risks and impacts would be “significant”. Unless clients are required to identify and assess potential human rights impacts, it is unclear how an assessment could be made as to whether “significant” human rights risks might “reasonably” be expected to exist.<sup>9</sup>

The failure to explicitly require human rights due diligence of clients, as a matter of course, is a fundamental concern. In its submissions to IFC, Amnesty International has outlined why social and environmental impact assessment processes are not

sufficient to identify, assess or address the full range of human rights impacts a project is likely to have. As the Special Representative on Business and Human Rights has stated, “While these [human rights impact] assessments can be linked with other processes like risk assessments or environmental and social impact assessments, they should include explicit references to internationally recognized human rights.”<sup>10</sup> Unless the requirement to consider human rights impacts is explicitly stated, the risks posed by business activities to human rights may be overlooked.

In order to establish a human rights due diligence framework for IFC clients, Performance Standard 1 should require:

■ **A human rights policy.** Clients seeking IFC support should be required to have a human rights policy in which the company commits to respect all human rights consistent with international human rights standards. Clients should be able to demonstrate that policies are integrated into management systems and are implemented and monitored with adequate resources throughout the company.

■ **A human rights impact assessment.** IFC should require clients to carry out a human rights impact assessment before final support is granted. A human rights impact assessment can occur along with

environmental and social impact assessments, but the assessment must specifically consider human rights impacts and be undertaken in a manner that conforms to the following principles:

- clients should ensure provision of information on all relevant aspects of the project – in a manner and within a time frame that ensures that the information is accessible and useful to people likely to be affected;

- clients should ensure that affected communities or individuals are able to participate in decision-making processes;

- there should be disclosure, in accessible form, of the outcomes of impact assessments, and a process to allow people to query and challenge the assessments.

■ **Action Plans should specifically address measures to be taken to prevent human rights abuses, and avoid, minimize and address other negative human rights impacts.** For projects that pose a risk of adverse human rights impacts, IFC should require clients to submit an Action Plan that specifically sets out how identified risks of adverse human rights impacts will be addressed and managed. Such an Action Plan should be submitted before final

support is agreed. Involvement of affected communities in the development of the Action Plan will be critical in identifying effective avoidance and mitigation measures.

■ **Engagement with affected communities and individuals.** All clients receiving IFC support should present a clear explanation of how affected communities will have access to information, including Action Plans and information about grievance mechanisms, and be consulted on decisions and activities that are likely to affect their human rights throughout the project’s life cycle.

## PERFORMANCE STANDARDS 2 TO 8: ALIGNING THE PERFORMANCE STANDARDS WITH HUMAN RIGHTS STANDARDS

It is critical that clients address and manage potential adverse impacts as a result of their operations in line with international human rights standards. Many of the issues covered by Performance Standards 2 to 8 – such as resettlement and environmental pollution – have a clear human rights dimension, and would be likely to affect the human rights of individuals and communities. However, IFC has failed to ensure that guidance on these issues that is provided in the Performance Standards is fully consistent with human rights

standards.<sup>11</sup> To illustrate the shortcomings of Performance Standards 2 to 8, Amnesty International has provided detailed comments on how three of the Performance Standards fail to reflect international human rights standards.

In some respects, the Performance Standards are silent on critical human rights issues. Performance Standard 3, for example, which deals with pollution and the prevention of pollution, contains no explicit requirement for clients to identify and address the risks or potential impacts that pollution may have in relation to human rights. This is despite the fact that environmental pollution can result in violations of the rights to: an adequate standard of living, including the rights to food, water, and housing; the right to health; and the right to life itself.

Similarly, Performance Standard 5, which deals with involuntary resettlement does not stipulate that clients should ensure they do not carry out forced evictions, which have been described by the UN Commission on Human Rights as a “gross violation of human rights, in particular the right to adequate housing”.<sup>12</sup> These omissions expose IFC, its member states and clients to risks that, unless adequate safeguards are put in place, evictions in IFC-funded

projects may be undertaken in a manner that breaches international safeguards against forced evictions as well as other human rights abuses in the context of evictions.

In other respects, the Performance Standards establish requirements that are lower than those established in international human rights instruments. This is particularly notable in Performance Standard 7, which deals with Indigenous peoples. The Performance Standard establishes a process for engagement with Indigenous peoples that falls short of contemporary human rights standards on the rights of Indigenous peoples, particularly the UN Declaration on the Rights of Indigenous Peoples, and the right to free, prior and informed consent (FPIC). Instead of recognizing the need to obtain Indigenous peoples’ FPIC in certain circumstances, Performance Standard 7 imposes a lower standard: free, prior and informed consultation (FPI Consultation). While IFC has sought to argue that its processes are functionally equivalent to FPIC, Amnesty International’s view is that the FPI Consultation process as outlined in the draft revised Performance Standard 7 is not functionally equivalent to FPIC because it fails to direct clients to investigate and determine how affected

Indigenous communities will give their consent to a proposed project. What is required is an objective investigation into how Indigenous peoples make decisions, and how in relation to the proposed project, based on full disclosure of all issues to the communities, the communities will determine whether to grant consent to the project.

In order to ensure that Performance Standards 2 to 8 are in line with international human rights standards, they should be revised to explicitly incorporate human rights considerations, and should refer to relevant international human rights instruments.

In particular:

- Performance Standard 3 should specifically require IFC clients to identify and address **risks to human rights as a result of pollution**. In particular, clients engaged in activities likely to result in pollution must ensure that the **differentiated** effects of pollution on segments of the surrounding communities (such as pregnant women, children and the elderly) are identified and that appropriate measures are taken to address risks to their human rights.

■ IFC should clearly state in Performance Standard 5 that it **prohibits clients from engaging in forced evictions**. It should clarify that projects that involve evictions and resettlements will not be supported **if required safeguards** in line with international standards are not in place before such evictions are undertaken. This includes the requirement that all feasible alternatives to evictions are explored in genuine consultation with affected communities and evictions are only undertaken as a last resort. It should also clarify that it will not proceed to support the project if IFC discovers, in the course of its due diligence and preliminary impact assessment, that **forced evictions** have occurred or unless suitable corrective action is taken in situations where there is a risk of forced evictions.

■ IFC should bring its policies regarding Indigenous peoples in line with the protections contained in the UN Declaration on the Rights of Indigenous Peoples, in particular by requiring **clients to respect Indigenous peoples' rights as contained in the UN Declaration, including the right to free, prior and informed consent**.

## ENDNOTES

1 *Amnesty International Submission to the Review of the International Finance Corporation (IFC) Sustainability Framework*, May 2010, (Index: IOR 80/003/2010).

2 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*, 2010, available at [http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Phase2\\_CODEReport/\\$FILE/Compounded+CODE\\_Progress+Report+on+IFC%27s+Sustainability+Framework\\_Review+and+Update.pdf](http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Phase2_CODEReport/$FILE/Compounded+CODE_Progress+Report+on+IFC%27s+Sustainability+Framework_Review+and+Update.pdf) last accessed 19 July 2010.

3 IFC, *The International Bill of Human Rights and IFC Policies and Performance Standards* (2010), 1, available at <http://www.ifc.org/ifcext/policyreview.nsf/Content/IBHRandIFCPoliciesPS>

4 Report of the Special Representative on business and human rights, John Ruggie, *Business and human rights: further steps towards the operationalization of the "protect, respect and remedy" framework*, A/HRC/14/27, 9 April 2010, paras 83-84.

5 IFC, *Policy on Social and Environmental Sustainability*, Rev-0.1, 14 April 2010, p 31, para 10.

6 IFC, *Policy on Social and Environmental Sustainability*, Rev-0.1, 14 April 2010, p 33, para 19.

7 These Performance Standards outline the specific steps required of IFC clients in seven

areas: Performance Standard 2 – Labour and working conditions; Performance Standard 3 – Resource efficiency and pollution prevention; Performance Standard 4 – Community health, safety and security; Performance Standard 5 – Land acquisition and involuntary resettlement; Performance Standard 6 – Biodiversity conservation; Performance Standard 7 – Indigenous peoples; Performance Standard 8 – Cultural heritage.

8 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*, p 24, June 2010, last accessed 19 July 2010.

9 For a full analysis of revised Performance Standard 1, see Amnesty International, *Time to invest in human rights: A human rights due diligence framework for the International Finance Corporation* (Index: IOR 80/004/2010), pages 23-26.

10 Report of the Special Representative on business and human rights, John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, A/HRC/8/5, 7 April 2008, para 61.

11 For a full analysis of revised Performance Standards 2-8, see Amnesty International, *Time to invest in human rights: A human rights due diligence framework for the International Finance Corporation* (Index: IOR 80/004/2010), pages 27-36.

12 UN Commission on Human Rights, Resolution 1993/77, para 1.

## SUMMARY OF RECOMMENDATIONS

**Amnesty International recommends that IFC requires human rights due diligence, by revising the Social and Environmental Sustainability Policy as follows:**

- IFC should develop and incorporate a human rights policy in which IFC commits to respecting human rights and taking all possible steps to ensure that IFC clients respect human rights in IFC-supported business activities.
- IFC should undertake a preliminary assessment of human rights risks and potential impacts of any proposed business activity.
- IFC should undertake independent monitoring of client compliance with human rights due diligence requirements.
- IFC should engage with communities when IFC supports activities with potential community impact, so as to ensure that communities have information regarding: (a) involvement of IFC in the business activity; (b) requirements placed by IFC on

clients; and (c) the existence of the Compliance Advisor/Ombudsman and other means of raising concerns about the impacts of the business activity.

**IFC should require client due diligence, by revising Performance Standard 1. This will require clients to:**

- Have a human rights policy in which the company commits to respect all human rights consistent with international human rights standards.
- Undertake human rights impact assessments.
- Establish Action Plans that specifically address measures to be taken to prevent human rights abuses, and avoid, minimize and address other negative human rights impacts;
- Engage with affected communities and individuals in a human rights compliant manner.

**IFC should bring Performance Standards 2 to 8 in line with international human rights standards. For example, revise:**

- Performance Standard 3 to require IFC clients to identify and address risks to human rights as a result of pollution.
- Performance Standard 5 to prohibit clients from engaging in forced evictions.
- Performance Standard 7 by requiring clients to respect Indigenous Peoples rights as contained in the UN Declaration on the Rights of Indigenous People, including the right to free, prior and informed consent.

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**Amnesty International** is a global movement of 2.8 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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