


Standards at Stake

***Exploring common ground between
Equator Banks and civil society on
IFC's Proposed Performance Standards***



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Rationale

Civil society organisations and the Equator Banks have overlapping interests in the outcomes of the IFC's Safeguard Policy Review process. BankTrack recognizes that these interests will not always converge, but we are convinced that there are a number of important issues upon which the interests of NGOs and the Equator Banks are broadly consistent, and upon which there is a basis for reaching a common understanding. This *Paper* explores where those opportunities for common ground may lie. BankTrack looks forward to feedback from and further discussions with the banks on these issues.

Introduction

Increasingly, the environmental and social policies of the World Bank's private sector lending arm, the International Finance Corporation (IFC), are becoming the *de facto* standards for much of the global private-sector project finance market. IFC's standards provide the basic framework for the "Equator Principles," and for the "Common Approaches of the OECD countries' export credit agencies."¹ Going forward, we can also expect a number of other multilateral development banks to harmonize their policies to IFC standards.

IFC's existing policies, however, are generally considered – even by the IFC itself-- to be inadequate to the task of ensuring desirable environmental and social outcomes, or for appropriately managing such risks.² Recognizing as much, IFC has begun a process to substantially revise these policies. This process will establish a new IFC *Policy on Social and Environmental Sustainability*, and new *Performance Standards* that will establish the standards that IFC clients will be expected to meet across a wide range of substantive areas.³

Both the Equator Banks and civil society have important interests in the outcomes of this revision process. For the Equator Banks, the new policy and standards will revise the basic framework of substantive policies that they have agreed to apply as part of their commitment to adhere to the Equator Principles (EP), and therefore

¹ OECD, *Recommendations on Common Approaches on Environment and Officially Supported Export Credits* (Dec. 2003); at www.oecd.org/dataoecd/26/33/21684464.pdf.

² A number of these shortcomings were identified by an internal review of the safeguard policies and their implementation. See, Compliance Advisor Ombudsman, *A Review of IFC's Safeguard Policies: Core Business: Achieving Consistent and Excellent Environmental and Social Outcomes* (Jan. 2003); IFC, *CAO Safeguard Review: IFC's Management Response* (Dec. 2003), at www.ifc.org.

³ IFC, *Policy on Social and Environmental Sustainability and Performance Standards* (Consultation Draft, August 12, 2004).

will alter the non-financial lending parameters for much of the marketplace in which the Equator Banks operate.

Civil society organizations emphasize the potential impacts on communities and natural environments. Thus, civil society observers view the IFC Safeguard Policy Review process as a global standards-setting exercise that will determine the environmental and social rules that will govern not only finance, but more importantly, the correlative rights and safeguards provided to host communities.

We recognise that these overlapping interests will not always converge. There are bound to be issues of both substance and implementation upon which civil society and the Equator Banks will take different, even contradictory, positions. *Nevertheless, BankTrack, as part of a much wider coalition of NGOs monitoring the IFC Safeguard policy review, is convinced that there are a number of important issues upon which the interests of civil society organisations and the Equator Banks are broadly consistent, and upon which there is a basis for finding common ground.*

This paper discusses some of these issues in detail. For each issue, it sets out the positions and perspectives of many civil society organizations that have been observing this process, and explains why the issue is of priority concern to them. Then, it explains why we believe that the Equator Banks may share these concerns, or may come to similar policy positions to achieve different objectives. Finally, it proposes a potential area of commonality that may provide a basis for collaborative efforts between civil society organizations and Equator Banks to influence the outcome of the Safeguard Policy Review process.

While there are likely to be others, we have identified the following issues as potential areas of common concern or interest:

1. The need for a longer, more inclusive, and more iterative consultative process.
2. The importance of clear and binding rules, and the pitfalls of a flexible approach.
3. The importance of the improvements in the proposed policy and performance standards over the existing policies.
4. The importance of ensuring that IFC policies are not weakened in other areas.
5. The need to screen potential clients for their past performance on environmental, social and human rights issues as part of project due diligence.
6. The need for a clear approach to human rights issues.
7. The need to ensure the meaningful and respectful engagement of affected communities in project decision-making.
8. The need for transparency on the environmental and social impacts of projects, and how the project sponsor will address those impacts.

The civil society positions described in this paper should not be seen as unanimous or consensus positions. However, each has attracted broad, public support as expressed through public statements, correspondence with senior IFC management, and most importantly, a Platform for 'Rights, Rules and Responsibilities' for IFC's Safeguard Policy Review that was signed by over 220 organisations.

Summary

The following is a summary of civil society positions on the IFC Safeguard Policy Review that BankTrack believes may also garner support from the Equator Bank community.

BankTrack looks forward to receiving feedback from the Equator Banks on a) the concrete proposal to work together to improve IFC's Review process, and b) whether there may be agreement on any other substantive issues.

1. The need for a longer, more inclusive, and more iterative consultative process

All external stakeholders share a mutual interest in a longer, more inclusive, and more iterative discussion of the issues raised in IFC's safeguard policy revisions. Therefore, even at this late stage, both civil society organisations and the Equator Banks would be well served by a restructuring of the consultations to allow for greater inputs from external stakeholders and more opportunity for IFC to assimilate and respond to those inputs. BankTrack understands that many Equator Banks would support a longer and more inclusive process. We therefore suggest that BankTrack and interested institutions explore common approaches to influence IFC's process decisions, including joint correspondence to express our concerns.

2. The need for clear and binding rules, and the pitfalls of a more flexible approach.

BankTrack believes that both civil society and the Equator Banks have an interest in the establishment of clear and binding rules over a more flexible, judgement-based approach. The benefits of the Equator Banks' commitments to common standards could be significantly diluted if individual banks were afforded wide latitude to interpret and apply the Principles' underlying environmental and social standards. Consistency in application would decline, and the increased transaction costs of a more flexible approach may lead to reduced quality of implementation. BankTrack looks forward to the Equator Banks' feedback on this position.

3. The importance of the improvements in the proposed Policy and Performance Standards.

Filling the gaps in the existing Safeguard Policies equally serves civil society's interest in avoiding negative environmental and social impacts, and Equator Banks' interest in devising tools to manage the full panoply of project risks. This confluence of interests could serve as a point of departure for a substantive discussion on the gap-filling

measures proposed in the Consultation Draft. BankTrack is looking forward to discussing whether this position resonates with that of the Equator Banks.

4. The importance of ensuring that IFC policies are not weakened in other areas.

It is in neither the Equator Banks' nor civil society's interests for IFC to weaken its current policy framework. Indeed, given IFC's previously stated commitments not to retrench, we expect that most, if not all, of this backsliding will be repaired in future revisions to the Consultation Draft. BankTrack welcomes reactions from the Equator Banks on this analysis.

5. The need to screen potential clients for their past performance on environmental, social and human rights issues as part of project due diligence.

IFC's Compliance Advisor/Ombudsman (CAO) and some investment banks have recognized the importance of scrutinizing the quality of clients' environmental management systems and performance as part of project due diligence. BankTrack believes that these practices are sufficiently valuable that they should be standardized and explicitly included in IFC's Policy and in the Equator Principles. BankTrack looks forward to feedback on this issue, and particularly invites those banks that have already instituted such client-focused due diligence to consider joining NGOs in advocating for similar procedures at the IFC.

6. The need for a clear approach to human rights issues.

BankTrack believes that both NGOs and the Equator Banks would benefit if IFC addressed this issue in a timely manner. However, IFC has evinced a reluctance to do so. We would therefore welcome a discussion of human rights outside of the Safeguard Policy Review process, as part of our ongoing dialogue with the Equator Banks.

7. The need to ensure the meaningful and respectful engagement of affected communities in project decision-making.

BankTrack believes that meaningful engagement of communities in project decision-making would generate substantial benefits that could reduce project risks for Equator Banks. We would welcome the opportunity to dialogue with Equator Banks on this topic, and suggest that the Bank-NGO Working Party (established in London in July 2004) frame this issue as a topic for future group meetings.

8. The need for transparency on environmental and social impacts of projects

BankTrack believes that if project financiers were to encourage greater transparency from project sponsors, projects would improve from an operational, financial and developmental perspective. BankTrack welcomes the opportunity provided by the joint NGO-Bank working group to dialogue with Equator Banks on this topic.

Discussion

1. The need for a longer, more inclusive, and more iterative consultative process.

Civil society organisations from around the world have strongly and repeatedly objected that the current consultation framework does not provide adequate time or space for an inclusive and comprehensive discussion of the full range of issues raised by the review.⁴

In particular, many have noted that fully involving locally-affected people in the policy dialogue would require “more time, more outreach, more translation, more information and more engagement than IFC’s current process will allow.”⁵ Many civil society organisations have also noted that since IFC has already achieved broad internal consensus within the World Bank Group, the expedited consultation schedule essentially presents external stakeholders with a *fait accompli*, and little reason to believe that their inputs can yield more than incremental changes to the proposed framework.⁶ Finally, as virtually all external parties have noted, the ability to have a meaningful discussion about the application and implications of the proposed policy and performance standards has been severely constrained by IFC’s failure to promulgate the Interpretation Notes in a timely fashion.⁷ As a result of these flaws, a large number of civil society groups have chosen, as a matter of principle, not to participate in the review. This has forced IFC to cancel at least one of its proposed consultations, and several others have suffered from insufficient attendance.

We understand that the Equator Banks’ would like to see IFC produce a set of policy revisions that provide effective, implementable, broadly legitimate and politically durable solutions to these complex, often contentious, policy challenges. We doubt that the current review process can satisfy this objective. First, it is too compressed to accommodate a policy dialogue that includes (a) a full analysis and discussion of the substantive weaknesses of the current policy; (b) a deep synthesis of comments or proposed alternatives, and (c) a meaningful attempt to reconcile competing perspectives. As a result, it is unlikely that this process could yield policy solutions that differ substantially from those that IFC has proposed, regardless of how innovative or elegant those solutions may be. And because the process has become so contentious, it is less likely still that it will identify areas of common agreement, or

⁴ *Civil Society Letter to James Wolfensohn and Peter Woicke Re: Seriously Flawed Consultation Process for IFC Safeguard Policy Update*, (16 Sept. 2004); *Statement of Civil Society Representatives* (4 Oct. 2004) (Appendix A).

⁵ *Statement of Civil Society Representatives* (4 Oct. 2004)(Appendix A)

⁶ *Id.*

⁷ They are still unavailable at the time of this writing, despite IFC’s repeated promises to release them.

broker accommodations between competing interests, in a way that will be perceived as broadly legitimate. Because it is therefore unlikely to adequately resolve the critical policy or political challenges, it will not provide the Equator Banks with the opportunity to successfully address the complex or contentious substantive issues and to fully devote their own resources and attention to the difficult questions of implementation.

Potential Areas of Commonality on Process Issues:

BankTrack believe that all external stakeholders share a mutual interest in a longer, more inclusive, and more iterative discussion of the issues raised in IFC's safeguard policy revisions. Therefore, even at this late stage, both civil society organisations and the Equator Banks would be well served by a restructuring of the current consultations to allow for greater inputs from external stakeholders and more opportunity for IFC to assimilate and respond to those inputs. BankTrack understands that many Equator Banks would support a longer and more inclusive process. We therefore suggest that BankTrack and interested institutions explore common approaches to influence IFC's process decisions, including joint correspondence to express our concerns.

2. The need for clear and binding rules, and the pitfalls of a more flexible approach.

Civil society organisations have called on IFC to ensure that the *Performance Standards* embody clear, binding, and enforceable mandatory minimum standards, and to reject an approach in which they merely provide guidance for the exercise of professional judgement.⁸

Civil society's interest in clear mandatory minimum standards is twofold. First, mandatory minimum standards provide a basis for holding institutions accountable to adhering to their publicly stated commitments. Second, clear standards are an important counterweight to the institutional incentives to lend. These incentives tend to induce staff to exercise flexibility and professional judgement in ways that understate existing risks and overstate the ability to mitigate or manage them. Therefore, civil society organisations have pressed IFC to make clear policy commitments that are not encumbered by discretionary qualifications. For example, civil society organisations have been strong proponents of clear exclusion lists, and bright line rules for determining 'no go areas' or 'no go technologies.'⁹

⁸ See, Platform for 'Rights, Rules and Responsibilities' for IFC's Safeguard Policy Review (Nov. 2004) (Appendix A).

⁹ For example, the Platform calls on IFC to expand the current exclusion list to include:

- IUCN I-IV protected areas and World Heritage sites for all industrial activities and other areas that are deemed to be of high conservation value, as defined through a multi-stakeholder process for all Category A projects;

The case for bright line rules is, if anything, more compelling for the Equator Banks than it is for IFC. IFC operates under an explicit development mandate that should encourage it to seek out projects that represent the most attractive development opportunities. IFC argues that in certain circumstances, this development mandate can be better served by reducing the rules-based constraints on project teams and allowing them to exercise their professional judgement to resolve challenges as they see fit.

Whether or not one finds this argument compelling with respect to IFC practice—and most civil society groups do not¹⁰-- it has little relevance to the operations of the Equator Banks. Since the Equator Banks obviously do not have an explicit development mandate, the argument that they need greater flexibility to pursue development opportunities that may be foreclosed by generally applicable rules is conceptually rather weak.

Moreover, for the Equator Banks, an approach based upon bright-line rules will be much simpler, more efficient and cost effective to administer. The substantive 'lines' that have been proposed by civil society organisations (such as screening out projects in the most critical natural habitats) generally demarcate areas in which environmental and social risks, and the level of political controversy, tend to rise precipitously. Increasing flexibility in crossing them does not reduce the underlying risk, but does substantially raise the costs of mitigating them.

IFC may have greater latitude to experiment with judgement-based approaches because they have a competitive advantage in doing so; they have much larger in-house capacity to address environmental and social issues than the specialists to draw upon than the Equator Banks, which have relatively less in-house capacity. The Equator Banks should therefore consider whether they are willing to assume the additional administrative costs inherent in adopting a more flexible approach.

In addition to their ease of administration, clear rules offer other benefits. They send clear signals to staff, clients, and communities about the bank's values and commitments, and its willingness to take responsibility for environmental and social issues. More importantly, they allow a bank to make strategic decisions about those issues outside the pressurised context of any specific project proposal, thus insulating them from the distorting effects of the desire to close any specific deal.

In this way, the promulgation of clear rules functions as an effective "pre-commitment" strategy, of the kind illustrated by Odysseus's famous strategy to evade the Sirens in Homer's epic, *The Odyssey*.

- Certain practices that are particularly destructive, such as riverine and submarine tailings disposal of mine waste;

- Other social, cultural and environmental 'no-go circumstances.' (App. A)

¹⁰ Many organisations, including BankTrack, seriously question the validity and results of this approach, and note that mandatory minimum conditions and professional judgement are generally complimentary rather than contradictory approaches to problem solving.

To ensure that his ship would not succumb to the fatal song of the Sirens, Odysseus has his sailors plug their ears with beeswax and lash him to the mast until they are out of earshot of the Sirens. By deafening his men to the Sirens' song and disabling himself from acting upon it, Odysseus pre-commits himself to an effective strategy that he cannot abandon when it will be most tempting to do so.

Clear standards offer a similar strategy to steel investment staff against the requests of valued clients for special dispensations, or the ready assurances of purveyors of problem projects.

Potential areas of Commonality on the Need for Clear and Binding Rules:

BankTrack believes that both civil society and the Equator Banks have an interest in the establishment of clear and binding rules over a more flexible, judgement-based approach. The benefits of the Equator Banks' commitments to common standards could be significantly diluted if individual banks were afforded wide latitude to interpret and apply the Principles' underlying environmental and social standards. Consistency in application would decline, and the increased transaction costs of a more flexible approach may lead to reduced quality of implementation. BankTrack looks forward to the Equator Banks' feedback on this position.

3. The importance of the improvements in the proposed Policy and Performance Standards.

Civil society and the Equator Banks have a mutual interest in ensuring that IFC adopts a set of policies that provide a comprehensive framework for addressing environmental and social issues. The current suite of Safeguard Policies does not adequately serve this function. The Safeguard Policies were never intended to address the full range of potential impacts, or to be used as a comprehensive risk management tool. Rather, they evolved in an *ad hoc* manner as specific responses to discrete policy and political challenges. As such, there are substantial gaps within and between the existing policies.

IFC has recognised that its existing Safeguard Policies do not address many of the most important potential impacts and risks.¹¹ The *Consultation Draft* therefore attempts to close some of the more conspicuous gaps by, for example:

- Requiring project teams to pay more attention to the capacity of companies to meet their environmental and social commitments,

¹¹ See, Compliance Advisor Ombudsman, *A Review of IFC's Safeguard Policies: Core Business: Achieving Consistent and Excellent Environmental and Social Outcomes* (Jan. 2003); IFC, *CAO Safeguard Review: IFC's Management Response* (Dec. 2003), at www.ifc.org.

- and to more closely scrutinise risks associated with third party performance (such as regulators or contractors);¹²
- Requiring a more systematic approach to assessing social impacts through an integrated environmental and social impact assessment, and requiring that the full range of social issues be addressed;¹³
 - Expanding protections for employees and organised labour;¹⁴
 - Requiring that sponsors address a broad range of community health and safety issues;¹⁵
 - Requiring protection of biodiversity and endangered species in all habitats;¹⁶
 - Requiring sponsors to have ongoing interactions with local communities for some projects;¹⁷

In all likelihood, most Equator Banks would also see these innovations as important, even indispensable, components of a holistic risk management strategy. It is difficult to imagine an environmental and social risk management approach that did not consider, for example (a) the priority health issues in the project area, such as HIV/AIDS and other infectious diseases; (b) the need to ensure harmonious labor relations; (c) the potential impacts of public corruption or ineffectual delivery of public services; (d) the needs and preferences of the community during project operations; or (e) the risk of causing the extinction of endangered species. Yet *none* of these issues must be addressed under the current safeguards or Equator Principles frameworks. And if a project team did choose to address them, they would have had to determine how to do so without the benefit of any explicit policy guidance.

Potential Areas of Commonality on Policy Improvements:

We believe that filling the gaps in the existing Safeguard Policies equally serves civil society's interest in avoiding negative environmental and social impacts, and Equator Banks' interest in devising tools to manage the full panoply of project risks. This confluence of interests could serve as a point of departure for a substantive discussion on the gap-filling measures proposed in the Consultation Draft. BankTrack is looking forward to discussing whether this position resonates with that of the Equator Banks.

¹² *Policy on Social and Environmental Sustainability.*

¹³ *Performance Standard 1: Social and Environmental Assessment.*

¹⁴ *Performance Standard 2: Labor and Working Conditions.*

¹⁵ *Performance Standard 3: Community Health and Safety.*

¹⁶ *Performance Standard 6: Conservation of Biodiversity and Sustainable Natural Resource Management.*

¹⁷ *Performance Standard 9: Social and Environmental Management System.*

4. The importance of ensuring that IFC policies are not weakened in other areas.

From the outset of the Safeguard Policy review process, many civil society organisations have been concerned that IFC would adopt a more *ad hoc* and subjective approach to environmental and social issues that would reduce the mandatory minimum standards of the current policy framework. In fact, the *Consultation Draft* does contain a number of provisions that are substantively weaker than existing policies. For example, it:

- Reduces some of the requirements for the assessment of Category A projects, including no longer requiring the use of independent experts, and no longer addressing “sensitive” impacts;
- No longer includes an “exclusion list” of certain types of projects;
- No longer prohibits the financing of project that contravene the obligations of the country under relevant international environmental treaties and agreements;
- No longer requires that all adversely affected resettlers have their livelihoods improved or at least restored, and that they share in the project benefits. No longer provides for independent monitoring of resettlement;
- No longer prohibits the financing of commercial logging operations or the purchase of logging equipment for use in primary tropical moist forest;
- Does not follow the land titling requirements of the World Bank’s draft operational policy on Indigenous Peoples, which requires that legally recognised land rights are established prior to, or concurrent with, project development.
- Allows the sponsor, rather than the host government, to make critical determinations of cultural heritage.

A more complete outline of the apparent downward departures from existing policy is included as Appendix B.

Civil society organizations see these retrenchments as a significant weakening of the protections provided by the existing policies. Moreover, because IFC has explicitly and repeatedly committed not to weaken the policies during this review process, many organizations view these changes as indicative of bad faith on the part of IFC. Indeed, for some organizations, IFC’s apparent willingness to forsake this bedrock commitment has fatally compromised the legitimacy of this review.

Similarly, Equator Banks likely have little interest in seeing the existing policies weakened. First, having adopted these policies as the operative standards of the Equator Principles, the Equator Banks have presumably concluded that the standards are useful and workable. Second, each loosening of the due diligence procedures or

lowering of the substantive requirements comes with a concomitant increase in risk exposure. Finally, if the Equator Banks follow the IFC's lead and step back from their current commitments, they will incur the same sorts of political costs that IFC has incurred by proposing to relax some of its standards.

Potential Areas of Commonality on Apparent Retrenchment:

BankTrack thinks it is in neither community's interest for IFC to weaken its current policy framework. Indeed, given IFC's previously stated commitments not to retrench, we expect that most, if not all, of this backsliding will be repaired in future revisions to the Consultation Draft. BankTrack invites feedback from the Equator Banks on this analysis.

5. The need to screen potential clients for their past performance on environmental, social and human rights issues

A recent IFC study found that the single most important variable in determining environmental and social outcomes is the sponsor's commitment to sustainability objectives. The study recommended that in order to ensure that IFC only partner with companies that have the requisite commitment, IFC should "fully take into account the commitment to and capacity for addressing environmental and social issues" as a fundamental aspect of its due diligence when it selects project sponsors or financial intermediaries.¹⁸ Accordingly, civil society organizations have called upon IFC to substantially improve its due diligence regarding a potential sponsor's environment, social, health and safety practices and past performance, and to decline to conduct business with those sponsors whose commitment to achieving excellent development outcomes is found to be wanting.¹⁹ In particular, many groups believe that the selection of project sponsors should be guided by a publicly available, policy-based methodology, and should not be left entirely to the *ad hoc* discretion of investment staff.

The Equator Banks have a similar interest in being careful about the project sponsors that they choose to associate themselves with. Indeed, some investment banks, independent of the Equator process, have already adopted due diligence procedures that investigate clients' past environmental and/or social performance of clients in environmentally sensitive sectors. If IFC, with its considerable resources on environmental and social issues, can not generate good project outcomes with sponsors that have a poor or unproven record of environmental/social management, it is highly unlikely that the Equator Banks will be able to do so. Sorting out the

¹⁸ Compliance Advisor Ombudsman, *A Review of IFC's Safeguard Policies: Core Business: Achieving Consistent and Excellent Environmental and Social Outcomes*, at 7 (Jan. 2003).

¹⁹ *Platform*, (Appendix A).

project sponsors that you can have confidence in from those that you can not should therefore be a primary objective of project due diligence.

Potential Area of Commonality on Sponsor Due Diligence:

IFC and some investment banks have recognised the importance of scrutinising the quality of clients' environmental management systems and performance as part of project due diligence.

BankTrack believes that these practices are sufficiently valuable that they should be standardised and explicitly included in IFC's Policy and in the Equator Principles. BankTrack looks forward to feedback on this position, and particularly invites those banks that have already instituted such client-focused due diligence to consider joining NGOs in advocating for the same procedures at the IFC.

6. The need for a clear approach to human rights issues.

Civil society organizations not only consider respect for human rights to be a moral imperative, they recognize that it can be an essential precondition for sustainable and equitable development. Thus, upholding human rights is often essential to ensuring that critical voices are heard in project decision-making, project benefits are broadly shared, and costs and risks are minimized and allocated equitably. Civil society organizations have therefore called upon IFC to ensure that the projects it finances are designed and implemented in accordance with the client's and host countries' applicable international human rights commitments. In particular, many NGOs have urged IFC to require clients to include a human rights impact assessment as part of a comprehensive environmental and social assessment, and to take appropriate action to mitigate the risks that are identified.

Unfortunately, human rights issues are conspicuous in the Consultation Draft only by their absence. Reportedly, IFC had intended to propose an approach to addressing human rights issues (and, indeed, had publicly committed to doing so), because they recognize that it is a critical issue for their clients. However, IFC apparently was stymied by the World Bank, which (a) is concerned about the political sensitivity of human rights issues at the Board level, and (b) for political or reputational reasons, was unwilling to allow IFC to seize the initiative of proposing a response to this issue.

However, the political infighting at the World Bank Group should not detain the Equator Banks from acting proactively on this issue. The risks associated with poor human rights practices are real, and will not disappear simply because IFC cannot muster the political will to address them. In fact, human rights may be the single greatest gap in the proposed Policy and Performance Standards with respect to social risk management. As public scrutiny of the private sector has intensified, and as victims of human rights abuses increasingly seek redress against companies (and those who assist them) through

litigation, the potential economic and reputational risks of poor human rights practices has multiplied. Both IFC and a number of Equator Banks have recognised that the case for integrating human rights into an overall risk management strategy is compelling.²⁰ Indeed, many at IFC would probably admit privately that they are disserving their clients by not addressing human rights in a more forthright way.

Human rights is therefore a policy area where it probably would not be prudent for the Equator Banks to use the IFC Safeguard Policy Review process to articulate the standards to be incorporated into the Equator Principles. Another more suitable venue for such a dialogue needs to be identified. In fact, an open and inclusive dialogue around the recommendations contained in the recent *Banking on Human Rights* report would probably be more likely to yield an effective, workable, and politically acceptable response to the challenge of human rights than the IFC's review process.²¹ Importantly, by proactively addressing human rights issues in the absence of IFC leadership, the Equator Banks would be going beyond the specific commitments of the Equator Principles. BankTrack would certainly welcome such an initiative as a valuable innovation in the development of the Principles, and as a strong indicator of commitment to achieving positive development outcomes for all stakeholders.

Potential Area of Commonality on Human Rights:

BankTrack believes that both NGOs and the Equator Banks would benefit from encouraging the IFC/World Bank Group to address this issue in a timely manner, and would welcome a discussion of human rights as part of its ongoing dialogue with the Equator Banks.

7. The need to ensure the meaningful and respectful engagement of affected communities in project decision-making.

The civil society organisations following the IFC process believe, as a general proposition, that people should have a meaningful voice in decisions that may directly affect their well-being. Ultimately, civil society organisations believe that community consent should be a prerequisite for project approval.

Next to maintaining this right of communities to decide on their own future as an end in itself, inclusive decision-making also serves a more instrumentalist function—it can improve the quality, effectiveness, and sustainability of projects by allowing the experience and local wisdom of project-affected people and

²⁰ Peter Woicke, Remarks at the Center for Human Rights and Global Justice, New York University Law School (March 1, 2004), at www.ifc.org; KPMG, *Banking on Human Rights*, (Sept., 2004).

interested civil society organizations to be integrated into project planning and design.

This helps ensure that projects are well suited to their local contexts, that they respond to the needs and preferences of their host communities, and that the communities feel that they have a stake in the project's success. In fact, as a result of these benefits, the World Bank has consistently found a high correlation between the extent and quality of public participation and overall project quality.²²

For these reasons, BankTrack believes that the proposed policy and performance standards should seek to ensure that high quality consultations and engagements are the norm during all phases of project development and implementation.

Requiring deeper and more meaningful community engagement would also offer a number of benefits to the Equator Banks and their clients. Increased community participation can reduce project risks by helping project sponsors to anticipate and address problems early on, and by providing insights on how to improve project design and implementation. Meaningful community involvement is also essential for establishing good community relations and a record of dealing in good faith. An open line of communication and accumulated good will serve as a kind of political risk insurance against future conflict. Project sponsors that have not established such relationships are far more exposed to such risks than those who have assiduously cultivated them.

Moreover, the informed participation of the host community can provide significant benefits to the Equator Banks *vis-à-vis* their clients. Project sponsors can retain a near monopoly on project information, and absent expansive, independent due diligence, lenders may be overly reliant on sponsor representations to remain informed about circumstances on the ground. However, informed and engaged communities and project users can be extremely motivated watchdogs, and can provide project lenders with an independent conduit of information that can serve as a valuable hedge against the risk of relying exclusively upon the sponsor for project information. In short, it is in the Equator banks interests to ensure that that the public is effectively mobilized to serve as independent project monitors.

We recognise that while many banks appreciate the importance of community engagement, there is considerable reluctance to extend that principle to require community acceptance before a project can go forward. This concern is usually framed as an unwillingness to cede a 'veto' power to project opponents. However, it may better

²¹ F&C, *Banking on Human Rights*, at http://www.isisam.com/uploadFiles/banking_human_rights_sept04.pdf (Sept 2004)

²² World Bank OED, 2002 Annual Review of Development Effectiveness; World Bank, World Bank Civil Society Progress Report 2000/2001 (2001); World Bank, *Assessing Aid: What Works, What Doesn't and Why* (1999); World Bank Quality Assessment Group (QAG), *Quality at Entry in CY99—A QAG Assessment* (2000).

serve the interests of the Equator Banks to consider this issue from a risk management perspective. Local project risks increase dramatically when a project is imposed on a community against its will—the potential for political conflict, or even civil strife, greatly increases, while the benefits of community involvement are rendered inaccessible. Moreover, since concerted community opposition to a project is a relatively atypical phenomenon, it should be regarded as an urgent warning sign that there are profound, unaddressed problems and risks associated with the project.

Even if the Equator Banks cannot endorse a bright-line rule precluding the financing of such projects, they should consider how their interests in managing project risks would be advanced by requiring sponsors to (a) rigorously assess the risks associated with community opposition; and (b) articulate in the Action Plan exactly how it will endeavour to overcome those risks. It may also be in the Equator Banks interests to encourage IFC to develop and promulgate a methodology for conducting such an assessment.

Potential Areas of Commonality on the Need for Meaningful Participation:

BankTrack believes that meaningful engagement of communities in project decision-making would generate substantial benefits that could reduce project risks for Equator Banks. We would welcome the opportunity to dialogue with Equator Banks on this topic, and suggest that the Bank-NGO Working Party (established in London in July 2004) frame this issue as a topic for future group meetings.

8. The need for transparency on environmental and social impacts of projects

Civil society organisations have called on IFC to expand the public's access to critical information about the environmental and social impacts of projects.²³ Public access to such information is essential for affected people to have a meaningful voice in how projects will be designed and implemented, how project costs and risks will be distributed among affected people, and how negative impacts will be mitigated and managed. Ultimately, access to project information is also a necessary prerequisite to ensure accountability--to hold companies to account for how they conduct themselves, and to hold governments to account for how they respond to that conduct.

For these reasons, civil society organisations believe that lenders should ensure that their clients publicise comprehensive and timely information about the project and its impacts throughout the design, planning and implementation stages of the project. This includes the public release of the client's Action Plan for implementing the requirements of the Performance Standards.

²³ See, *Platform* (Appendix A). BankTrack is engaged in a similar discussion regarding information disclosure for Equator Banks

Ensuring public access to critical information on the environmental and social dimensions of a project may be in the Equator Banks interests for three main reasons. First, allowing the public to have access to such information is critical to their ability to meaningfully engage in project decision-making, and therefore for essential for reaping the benefits of such engagement discussed above. Second and relatedly, denying such information is often seen as an affront, or an effort to cover up publicly indefensible practices, and will therefore tend to subvert the effort to cultivate harmonious community relations. Finally, placing such information in the public domain may substantially improve its quality and rigor. Allowing affected individuals the opportunity to independently scrutinize the assumptions and methodologies of the project sponsor, and to test its conclusions against their own (much more intimate and nuanced) understanding of the local conditions, would help the Equator Banks ensure that they receive the best project information possible.

Potential Area of Commonality on the Issue of Greater Transparency:

BankTrack believes that if project financiers were to encourage greater transparency from project sponsors, projects would improve from an operational, financial and developmental perspective. We would welcome the opportunity to dialogue with Equator Banks on this topic, and look forward to our February 2005 meeting, which we hope will address this issue.

Appendix A Civil society statements

Platform for 'Rights, Rules and Responsibilities' for IFC's Safeguard Policy Review

December 2004

The International Finance Corporation (IFC) has provided more than \$40 billion directly to private companies, many of them multinational corporations operating in developing countries, in the name of sustainable development and poverty reduction. The IFC is also involved in the lending of billions of additional dollars through its financial catalyst role. This money often goes to projects that lead to environmental pollution and degradation, poverty creation and more social inequities.

The IFC argues that it brings environmental and social expertise and improves high-risk projects and that without its involvement, projects would be much worse. However, internal studies and independent evaluations carried out by affected communities and civil society organizations demonstrate serious and systemic problems with implementation of the institution's environmental and social safeguard policies. It is also doubtful whether the best use of public funds for development and poverty alleviation is to mitigate the negative consequences of these high-risk projects rather than invest in projects that have clearer development benefits.

This past experience demonstrates the need for clear and enforceable rules for IFC lending and significant institutional reforms to guarantee due diligence, ensure effective implementation and improve accountability to affected communities and citizens. The proposed policies do not address these concerns, but instead opt for more flexibility and subjectivity. We oppose this approach and call upon the IFC to upgrade and strengthen its social and environmental policies and ensure that multinational corporations respect fundamental international human rights, labour rights and environmental law as conditions for access to IFC loans.

Global public institutions must operate for the public good. We call for the IFC to abide by clear, mandatory Rules, Rights and Responsibilities (RRR) to promote the public good through its lending.

The IFC's Safeguard Review Process must address current problems of implementation of the safeguard policies, guarantee that there is no backsliding or weakening of existing policies as well as lead to the strengthening and improvement of environmental and social policies. The undersigned civil society and Socially Responsible Investors call on the IFC and its Board of Directors to adopt the following points.

1. Adopt Policy and Performance Standards that establish **clear, binding rules and meet the highest social and environmental standards** for IFC and its borrowers,

which would allow the IFC to claim leadership in international standard-setting and demonstrate its commitment to respect international human rights and environmental laws.

2. Commit and hold itself accountable to **deliver on poverty reduction and sustainable development**. One of IFC's core responsibilities must include evaluating each and every project it considers for financing to determine how and whether poverty reduction is likely to occur, stating specifically how poverty will be reduced -- including at the local level -- and tracking and reporting regularly and publicly on each project's outcomes, development impacts, and any necessary mitigation efforts in order to ensure a basic level of accountability.

3. Establish clear mechanisms for making the policies **more enforceable and accountable** and reject self-monitoring by corporations as proposed throughout the proposed Performance Standards. IFC must take responsibility for meaningful supervision and project monitoring in a publicly transparent and accountable manner, which would include, at a minimum, the public release of all Action Plans.

4. Ensure that **information is disclosed** in appropriate languages in a timely and predictable way throughout the project cycle. This includes defining clear rules for the early release of all action plans, social and environmental assessments, monitoring and evaluation reports, as well as procedural guarantee that reflect a genuine commitment to the presumption of disclosure. The IFC must also require the public disclosure of all host government agreements and similar contracts, as well as increase the transparency of revenues from IFC-supported investments.

5. **Screen all companies** for their past performance on environmental, social and human rights issues. The IFC should only lend to clients who are fully committed to sustainable development and safeguarding the environment and internationally agreed human rights of local communities, workers and vulnerable groups. We emphasise one of the main conclusions of the CAO's internal review of the IFC's safeguard policies, which stated that the private sector client's commitment to environment and social protections is the main determinant of whether or not the company will comply with IFC's policies.

6. Uphold and ensure **compliance with international human rights, labour and environmental laws, conventions, and norms**. The Performance Standards should make reference to relevant international laws and standards and ensure that projects are designed and implemented in accordance with the client's and host countries' applicable international commitments. IFC has an obligation to ensure that its clients abide by relevant international laws and norms and therefore, as recommended by the CAO, must "systematically consider risks to human rights at the project level, take appropriate [and effective] steps to mitigate them and provide clearer guidance to clients on both these aspects. [T]hese aspects should be reported on at the project level." Such assessments and reports must be undertaken by reputable and independent third parties and not by the client itself and be a pre-condition of IFC support for the project. Project affected persons, communities and indigenous peoples

have the right to participate in project assessments, reporting and human rights audits.

7. Ensure **respect for indigenous peoples' internationally guaranteed rights**, including their rights of ownership over lands and resources traditionally owned or otherwise occupied and used, and only support projects that have the free, prior and informed consent of indigenous peoples arrived at through their customary decision-making processes and institutions subsequent to meaningful and good faith consultation and their informed and effective participation commencing at the earliest stages of project design, and agreement on benefits. These customary decision-making processes constitute culturally appropriate and collective decision-making, which enhances indigenous peoples' self-development. All agreements between relevant parties will be reflected in the loan covenants and be made publicly available. We strongly reject the cynical manipulation of free, prior and informed consent as 'free, prior and informed consultation leading to broad community support' and insist that the IFC and others not use this language.

8. Ensure that conditions are in place for **meaningful and respectful engagement with affected communities** (free, prior informed consent). In addition, the IFC should ensure a process whereby, after having access to all relevant information in an appropriate language and form, local communities identify their development priorities and the benefits and results that they want to achieve, rather than allowing the company or others to determine the benefits they will provide. One of the IFC's core responsibilities must be to evaluate community acceptance, negotiated settlements, and meaningful participation and not leave this to the private sector clients. This requires ongoing supervision and monitoring to ensure that any agreements entered into between communities and the client are respected over time. All projects that involve the displacement of local people must be subject to their consent, and must result in an improvement of their standards of living and quality of life and include full restoration of their livelihoods and resource base.

9. Include a self-selected **community-based monitoring** approach for projects with significant social and environmental impacts to improve oversight and accountability of these projects. One key component will be strengthening the community's capacity to monitor projects by ensuring that project funds are made available for this purpose and are independent of company or government influence. Furthermore, the community should have influence regarding the terms of reference of the monitoring methodology used. All community monitors should be informed of the requirements of the IFC policies and Performance Standards, and should be informed about the processes of accountability at the IFC in a language and manner that is appropriate for them, so that they have a full understanding of their rights and potential remedies. Outcomes and recommendations of monitoring should be made public and affect the future direction of the project.

10. Commit to measuring, disclosing and reducing the harmful **impacts of climate change** in the developing world by requiring a reduction in overall emissions from IFC investments at the project level. Work with companies to reduce emissions and operate more efficiently and report fully on the direct and indirect emissions that

result from IFC portfolio investments, including financial intermediaries. Furthermore, the IFC should more aggressively shift its portfolio towards renewable energy lending.

11. **Define IFC's 'no-go circumstances'** in the overall policy by including the current Exclusion List and expanding it to include, at a minimum,

- IUCN I-IV protected areas and World Heritage sites for all industrial activities and other areas that are deemed to be of high conservation value, as defined through a multi-stakeholder process for all Category A projects;
- Certain practices that are particularly destructive, such as riverine and submarine tailings disposal of mine waste;
- Clarifying social, cultural and environmental 'no-go circumstances' and the criteria used.

Endorsed by 220 organisations –see www.grrr-now.org

Mr. James Wolfensohn
President
World Bank Group
1818H Street, NW
Washington DC 20433

Mr. Peter Woicke
Executive Vice President
International Finance Corporation
2121 Pennsylvania Avenue NW
Washington DC 20433

16 September, 2004

Dear Mr. Wolfensohn and Mr. Woicke,

Re: Seriously flawed consultation process for IFC Safeguard Policy Update

We, the undersigned members of development, human rights, environmental and indigenous peoples' organisations, and concerned individuals, would like to inform you of our deep concerns about the IFC Safeguard and Disclosure Update Process which is already underway.

As the IFC itself acknowledges, its proposals could become a global benchmark for international investment for both public and private financiers. While we support the intention of the IFC to update its policies, we are alarmed that the first consultation drafts (dated 12 August 2004) imply a major shift from a mandatory and compliance-based approach to a mainly discretionary approach. Such a shift would dilute the responsibilities of a public institution and undermine its accountability to affected communities.

The substantial proposed revisions to the policies largely ignore the priorities and concerns expressed by rights-holders and civil society organisations in numerous previous Bank consultations on its safeguard policies. The proposals likewise disregard many key recommendations and lessons emerging from the safeguard policy review undertaken by the Compliance Advisor and Ombudsman (CAO) and the recently completed Extractive Industries Review (EIR).

We believe that the IFC revision process should result in a mandatory and rights-based approach to "safeguard" and disclosure issues and better protection of people and the environment in accordance with the World Bank Group's mandate to alleviate poverty through sustainable development. However, the draft documents that have been released reveal a disturbing re-orientation of the policies towards accommodating the needs of private sector clients, with scant mention of the rights of the affected communities whose interests would be most impacted by these proposals.

Given the potentially significant implications of such proposed changes, the IFC

must, as a minimum, ensure that its process for engagement with civil society is undertaken in accordance with World Bank best practice and the IFC's own guidelines for good faith public consultation.

At present, the process is fundamentally flawed. The timeframe will exclude and marginalise the participation of civil society groups, especially those most affected by the proposed substantial changes. The rushed schedule also seems to be driven by an internal and arbitrary desire to conclude this process by February next year. This allows only a little over four months for a proposed worldwide debate on the IFC's plans to replace the entire set of its existing Safeguards. We feel this is a grossly inadequate period to re-assess policies and standards which took years to formulate.

Furthermore, documents essential for assessing the full ramifications of these policy revisions, such as the implementation guides and the IFC's revised corporate procedures, are simply not available yet. In addition, less than 30 days before the first regional consultation planned to take place in Brazil, the proposed draft documentation has still not been translated into all appropriate languages, including Portuguese.

These serious flaws and shortcomings in the proposed consultation process are not acceptable and do not reflect a good faith engagement with civil society by the IFC. If our organisations are to consider participating in the IFC consultation, we believe that it is essential that the IFC takes at least the following measures:

1. Suspend immediately the start of the consultation process on the Safeguard Policy Update until all relevant information has been made publicly available in all appropriate languages at least 30 days prior to the first regional consultation. This includes the implementation guides and revised IFC corporate procedures.
2. Postpone the consultations on the disclosure policy until at least 30 days after the full draft revised policy is made available to the public in the appropriate languages.
3. Extend substantially the period for consultation on the first draft consultation documents.

In order to ensure transparency and informed and equitable participation we also recommend that the consultation process is revised to:

- Include a self-selection process for civil society groups and indigenous peoples in the regional consultations (if indigenous organisations or leaders in each region so choose)
- Make information on the participants invited to each consultation publicly available prior the meetings.
- Provide comprehensive summaries of the meetings to the public within 30 days of each consultation.

- Include an additional open hearing for any interested party to give input and allow anyone access with observer status for the regional consultations.
- Make the subsequent version of the IFC draft proposals available for public comment for a period of at least 90 days - following the first consultation phase.
- Indicate in the second public draft of the proposed policies where comments were incorporated and provide rationale for accepting or rejecting certain recommendations.

Given the fact that the first regional consultation is scheduled for the end of this month, we trust that you will take immediate steps to rectify this current process which is at present fundamentally flawed. We hope to hear a response from the Bank on its action to implement measures to ensure effective public consultation no later than 24th September 2004.

Unless the above minimum preconditions for meaningful and informed consultation are in are put in place, we do not see how we can participate in this process as we fear it will be lacking any acceptable level of credibility.

Signed jointly by the following organisations and individuals:

**The original letter plus signatories can be found at
<http://www.grrr-now.org/?action=showdoc&typedoc=1&menu=24>.**

Appendix B Examples of Downward Departures from Existing Policies in Draft Performance Standards

IFC Roles and Responsibilities in Investment Operations

1. No longer requires IFC to conduct a site visit for Category A projects;²⁴
2. No longer includes an “exclusion list” that prohibits the financing of certain types of projects, thereby lifting the prohibition on financing projects that involve:
 - a. production or trade in any product or activity deemed illegal under international conventions and agreements;
 - b. production or trade in weapons and munitions;
 - c. production or trade in alcoholic beverages (excluding beer and wine);
 - d. production or trade in tobacco;
 - e. gambling and casinos;
 - f. trade in wildlife or wildlife products regulated under CITES;
 - g. production or trade in radioactive materials;
 - h. production or trade in or use of unbonded asbestos fibers;
 - i. production or trade in products containing PCBs;
 - j. production or trade in pharmaceuticals and subject to international phase-outs or bans;
 - k. production or trade in pesticides/herbicides subject to international bans or phase-outs;
 - l. production or trade in ozone depleting substances subject to international phase-out;
 - m. drift net fishing using nets in excess of 2.5km in length.²⁵

Performance Standard 1: Social and Environmental Assessment

1. No longer requires sponsors of Category A projects to retain independent experts not affiliated with the project to carry out the EA.²⁶
2. No longer provides that sponsors of Category A projects that are “highly risky or contentious, or that involve serious and multidimensional environmental concerns” should “normally” engage an advisory panel of independent, internationally recognised environmental specialists to advise on all aspects of the project relevant to the EA.²⁷
3. No longer includes “sensitive” impacts within the Category A definition of “significant adverse impacts.”²⁸ Under the current policy, a potential impact is considered to be “sensitive” if it “may be irreversible (e.g. lead to loss of a major natural habitat), affect vulnerable groups or ethnic minorities, involve involuntary displacement and resettlement, or affect significant cultural heritage sites.”²⁹ Of these potential impacts, only “irreversible”

²⁴ IFC, *Procedure for Environmental and Social Review of Projects*, at 12 (Dec. 1998).

²⁵ *Id.*, Annex A at 19.

²⁶ IFC, Operational Policy 4.01, *Environmental Assessment*, at 2 (Oct. 1998).

²⁷ *Id.*

²⁸ *Id.*

²⁹ IFC, *Procedure for Environmental and Social Review of Projects*, at 9, fn 7. (Dec. 1998).

impacts are included in the definition of “significant adverse impacts” (Category A projects) in the draft performance standard. Projects with these other “sensitive” impacts on displaced communities, vulnerable populations and cultural heritage sites would not necessarily receive the closer environmental and social scrutiny required under current policy.

4. No longer prohibits the financing of project that contravene the obligations of the country under relevant international environmental treaties and agreements, as identified during the EA.³⁰ Existing policy precludes IFC from financing “project activities that would contravene such country obligations, as identified during the EA.” However, the draft performance standard requires only that “clients must comply with all applicable laws, including those laws implementing host country obligations under international law.”³¹ Since national implementing legislation often lags behind the commitment expressed through participation in a treaty or international agreement, this narrower formulation does not ensure that borrower obligations under international law are respected.
5. No longer explicitly requires that a project sponsor strengthen internal staff capacity or retain qualified outside expertise where its own capacity is inadequate.³²
6. For expansion, modernisation, retrofit and privatisation projects, the draft performance standard no longer (1) requires that the impacts of an entire plant be evaluated, (2) “usually require[es]” the sponsor to retain an independent consultant to conduct a review; or (3) may require the sponsor to bring the entire plant into compliance with IFC policies and guidelines.³³

Performance Standard 2: Labor and Working Conditions

No longer references ILO standards and international conventions with respect to harmful child and forced labour.³⁴

Performance Standard 3: Pollution Prevention and Abatement

1. No longer categorically excludes certain classes of pesticides.³⁵
2. No longer requires that those pesticides that are used meet specific minimum criteria, including that they (a) have negligible adverse human health effects; (b) are proven to be effective against the target species; (c) have minimal effect on non-target species and the natural environment; and (d) are used in a way that takes into account the need to prevent the development of resistance in pests.³⁶ Instead, the draft performance standard would allow the client to use any pesticides that it can justify under an integrated pest management and integrated vector management approach.

³⁰ *Id.*, at 2.

³¹ IFC, *Draft Policy on Social and Environmental Sustainability and Performance Standards*, at 1 (August 12, 2004).

³² *Id.*, at 4.

³³ IFC, *Procedure for Environmental and Social Review of Projects*, at 12-13 (Dec. 1998).

³⁴ IFC, *Policy Statement on Forced Labour and Child Labour*, (March 1998).

³⁵ IFC, *Operational Policy 4.09, Pest Management*, (Nov. 1998).

³⁶ *Id.*

3. While the current policy applies to “the procurement of any pesticide in an IFC-financed project,”³⁷ the draft performance standard applies only to a potentially narrower category of pesticide use that is “necessary to support project objectives.”
4. No longer references World Health Organisation standards.³⁸

Performance Standard 5: Land Acquisition and Involuntary Resettlement

1. No longer requires that all adversely affected resettlers have their livelihoods improved or at least restored, and that they share in the project benefits. Under the draft performance standard, only those who have legally recognized claim of title to land will be entitled to an improvement in their standard of living or livelihood. In this way, the draft PS completely reverses current and past World Bank policy.
2. The draft policy eliminates current World Bank policy that calls for land-based rehabilitation for people who are displaced from land-based livelihoods. Instead, the draft PS only allows land-based rehabilitation for land-owners, but not for tenants, sharecroppers, family members, and others who derive livelihoods from that land.³⁹
3. No longer provides for independent monitoring of resettlement to ensure complete and objective information about implementation.⁴⁰ Instead, the policy embraces self-monitoring by the client, and depends on the client to resolve grievances with local affected people.
4. Eliminates the requirement that baseline socio-economic studies be conducted, thereby making it impossible to have effective rehabilitation or to evaluate impacts on the quality of life and standard of living of affected people.

Performance Standard 6: Conservation of Biodiversity and Sustainable Natural Resource Management

1. No longer prohibits the financing of commercial logging operations or the purchase of logging equipment for use in primary tropical moist forest;⁴¹
2. No longer prohibits the financing of projects that “contravene any relevant international environmental agreement to which the member country concerned is a party.”⁴²
3. Narrows the definition of “critical natural habitats” so that it no longer includes (a) sites that maintain conditions vital for the viability of protected areas; and (b) areas recognised as protected by traditional local communities (e.g., sacred groves).⁴³

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*, at 2.

⁴⁰ *Id.*, at 7.

⁴¹ IFC, Operational Policy 4.36, *Forestry*, at 1 (Nov. 1998).

⁴² *Id.*, at 2; IFC, Operational Policy 4.01, *Environmental Assessment*, at 1 (Oct. 1998)..

⁴³ IFC, Operational Policy 4.04, *Natural Habitats*, Annex A (Nov. 1998).

Performance Standard 7: Indigenous Peoples and Natural Resource Dependent Communities

1. Does not follow the stricter land titling requirements of the World Bank's draft operational policy, which will require that legally recognized land rights are established prior to, or concurrent with, project development.
2. Does not adopt the draft operational policy's requirement that indigenous peoples have the opportunity to have "informed participation" in project assessment and planning. Instead, the performance standard requires only that the sponsor "foster participation."

Performance Standard 8: Cultural Heritage

1. Allows the sponsor, rather than the host government, to make critical determinations of cultural heritage.⁴⁴
2. Replaces the current requirement that exceptions only be made where expected benefits are "great," with a requirement that benefits need only outweigh costs.⁴⁵
3. No longer requires a field visit by IFC staff.⁴⁶

Performance Standard 9: Social and Environmental Management System

Is significantly more vague than Operational Policy 4.01, Annex C's description of what must be included in an Environmental Action Plan.

⁴⁴ IFC, Operational Policy Note 11.03, Management of Cultural Property in Bank-Financed Projects (1986).

⁴⁵ *Id.*

⁴⁶ *Id.*

BANK *Track*

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