IFC’s Review of Safeguard Policies & Policy on Disclosure of Information:
CAO comments on the January 25, 2006 drafts of IFC’s Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information

1. Introduction

1.1 The purpose of this note is to provide the CAO’s comments on IFC’s January 25, 2006 drafts of its Policy and Performance Standards on Social and Environmental Sustainability (PPS), due to be submitted by the IFC to the Board for approval on February 21, 2006. These comments will be distributed to the Presidents Office, members of the Board and to IFC prior to the Board discussion.

1.2 In early September 2005, the CAO discussed with CODE – and made public – its comprehensive comments on IFC’s August 2005 draft PPS and Disclosure Policy. This document considered the extent to which the findings of the CAO’s January 2003 Safeguard Policy Review (SPR) had been integrated into IFC’s revised approach. CAO also submitted a more detailed set of comments on the September 22, 2006 Disclosure Policy to IFC, which it publicly disclosed. IFC subsequently responded to the CAO’s comments and made a number of revisions to the draft PPS and Disclosure Policy.

1.3 CAO appreciates that many of the comments made in our earlier statements have been addressed. We also remain convinced that the transition towards an outcomes-focused approach, with much clearer definition of responsibilities between IFC and its clients, is appropriate because it allows for greater flexibility and responsiveness. However, there are some important issues about which we have remaining concerns based on our shared belief with IFC that ‘transparency and accountability are fundamental to fulfilling IFC’s development mandate and strengthening public trust in the IFC and its clients’, as well as our experience of handling complaints received by our office and audits we have undertaken over the last two years. In particular, we consider that the IFC exposes affected communities, its clients, and itself to avoidable risks by not fully:

   i) Supporting the transition to development outcomes with a firm commitment (by IFC or its clients) to reporting on development impact/effectiveness at the project level (see Section 2);

   ii) Addressing risks to the institution in the application of the current safeguard policies identified by the CAO in recent years (see Section 3);

   iii) Implementing some of the key commitments in the Extractive Industries Review (EIR) Management Response that were to be incorporated in the process of developing the PPS (see Section 4); or

   iv) Ensuring that the PPS do not represent a weakening of the current institutional commitments to E&S sustainability and transparency and accountability (see Section 5).

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2. Developing firmer commitments to reporting on development effectiveness

2.1 CAO has already publicly noted our concerns that the commitments to development impact reporting are very weak (see footnotes 1 and 2 above) and fall short of the CAO’s recommendations – both within the PPS and the revised Disclosure Policy. CAO believes that the transition to a more flexible, outcomes-based approach must be underpinned by a commitment to systematic monitoring and reporting on achievement of outcomes.

2.2 The current draft PPS and disclosure policy: (i) requires disclosure of anticipated development impacts (and IFC’s expected development contribution) in the pre-project-approval Summary of Proposed Investment (SPI); and (ii) does not require clients to subsequently report on whether or not these anticipated development impacts or IFC’s expected development contribution have been met throughout the life of the project. We believe that the lack of a requirement to report on development impacts and development contribution at the project level exposes both the IFC and its clients to increased risks, where interested and affected parties have concerns that anticipated development impacts are not being realized. It could also lead to complaints from project affected people.

2.3 CAO understands that IFC, through its Development Effectiveness Unit, is committed to monitoring and evaluating project-specific information. We also understand IFC’s pragmatic reticence not to disclose proprietary information. However, CAO does not accept IFC’s justification for not publicly reporting on project-level development outcomes compared to anticipated development impacts reported in the SPI, nor for IFC not reporting on its development contribution at the project level.

3. Addressing institutional risks identified from the CAO’s recent experience

3.1 The CAO’s experience with handling complaints and audits over the past five years, and increasingly in the latter two years, have highlighted the following lessons concerning the risks inherent in the current policy and procedural framework for handling social and environmental issues:

i) Transparency and accountability for key decisions that are integral to IFC’s current Environmental and Social (E&S) Review Procedures are weak – for example, decisions on the applicability of a particular policy requirement or adequacy of client’s EA’s or consultation processes are made without any justification or rationale being recorded;

ii) Co-ordination with the IBRD is critical in improving the assessment of governance and other socio-political country risks, particularly with larger/sensitive projects; and

iii) Capacity to cope with some core social and environmental policy requirements – such as the concepts of meaningful consultation (to be replaced by FPIC) or critical natural habitat – is often insufficient given the socio-political challenges surrounding these issues, which are increasingly prevalent in the investment environment.

3.2 Transparency and accountability: The Environmental and Social Review Document (ESRD), as required under IFC’s draft revised E&S Review Procedure (ESRP), should enable CAO to process complaints or conduct audits with greater clarity concerning the rationale for decision-making. CAO urges IFC to ensure that the Environmental and Social Review Summary (ESRS) that IFC releases publicly to the Infoshop, and which is derived from the ESRD, contains sufficient information to support transparency and accountability for decision-making to interested and affected parties. Either within the PPS or E&S Review Procedure, CAO would
like to see a much clearer description of the basis upon which IFC will judge that E&S Assessment documentation.

3.3 The PPS should also strengthen the requirement for the draft Action Plan – where it contains social and environmental provisions that may affect local people – to be disclosed and consulted upon by project affected people prior to project approval. CAO would also welcome greater clarity on the criteria IFC will use to determine “materiality”, where they refer to material changes or material influence in the PPS and ESRPs.

3.4 Coordination with IBRD on governance and socio-political risks: To some extent this aspect is addressed in the PPS, particularly in relation to significant new extractive industry projects. However, a more general commitment to coordination on governance and socio-political risks is not currently provided for. Such coordination might help to flag, and in turn reconcile, intra-institutional divergences of opinion on high-profile projects.

3.5 Capacity within IFC: This aspect is not addressed in the PPS or E&S Review procedures. CAO would welcome a considered response from IFC to our expressed concerns regarding adequacy of capacity, both for S&E appraisal of projects, support to clients and IFC investment staff, and during project supervision.

4. Fully implementing key commitments in the EIR Management Response

4.1 The commitments articulated in the Management Response to the EIR have largely been incorporated into the latest drafts of the PPS, but with some notable exceptions. These relate to a partial adoption or implementation of the Management Response commitments as opposed to the commitments being ignored, yet CAO believes that the aspects highlighted below should be reinforced. In addition, IFC has indicated that a number of the Management Response commitments will be implemented through the revised EHS Guidelines, which are not yet available.

4.2 Free, prior and informed consultation (FPIC) leading to broad community support: A definition of Broad Community Support has never been publicly articulated and the question of what constitutes FPIC has been the subject of considerable debate. CAO welcomes the better definition of FPIC and expectations of clients in the final PPS. Once publicly released, IFC’s recently produced draft document outlining IFC’s approach to Determining Broad Community Support which will be included IFC’s Environmental and Social Review Procedures (ESRPs), should bring further clarity to external parties. However, IFC has not explained how it will deal with situations where clients demonstrate best practice in striving to ensure FPIC, but where Broad Community Support remains elusive. This uncertainty is perhaps of greatest and common concern to potentially affected communities and to prospective clients.

4.3 Community participation in monitoring: The only reference to community participation in monitoring is in Guidance Note 1, which limits participatory monitoring to high-risk projects, whereas CAO considers that community participation in monitoring can be mutually beneficial to communities and companies in a wider set of circumstances. The PPS should specifically encourage participatory monitoring of Action Plan implementation in a broader set of circumstances, in keeping with the commitment in the Management Response to the EIR to “encourage the development of capacity in communities to monitor projects that affect them”.

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4.4 **Security and Human Rights:** The EIR Management Response committed to requiring clients to follow provisions consistent with the US/UK Voluntary Principles on Security and Human Rights. There is no explicit reference to the link between security and human rights, which was the central thrust of the Voluntary Principles, within Performance Standard 4. The requirements are generic to all sectors, which while positive in principle, fails to flag the specific issues and concerns of relevance to extractive sectors. Overall the current wording is too limited to effectively require clients to implement provisions that are consistent with the Voluntary Principles – as committed to in the EIR Management Response.

4.5 **Revenue management risks for smaller projects:** The EIR Management Response commitment to carefully review the revenue management risks of smaller projects is not addressed in the final PPS. IFC have advised that the review of the revenue management risks will be the responsibility of the investment departments. However, CAO considers that the links between such governance risks and potential social impacts on affected communities should be explicitly addressed in the S&E appraisal of projects, and should be incorporated in the drafting of the E&S Guidelines.

5. **Weakening of current institutional commitments to E&S sustainability**

5.1 CAO welcomes that the latest drafts of the PPS address some of the areas of policy weakening that CAO flagged to IFC in August 2005, but considers that a few areas of policy weakening still remain.

5.2 **Client’s ‘objective’ involvement in self-assessment:** Performance Standard 1 requires that the Social and Environmental Assessment (S&EA) be “an adequate and objective evaluation and presentation of the issues”, and provides for clients to undertake the S&EA in all situations where they have the requisite capacity in-house. CAO notes that for projects with significant impacts, clients are required to retain qualified and experienced external experts to independently verify monitoring information. CAO believes that this same principle should be extended to the conduct of S&EA by IFC clients, and that in such circumstances, IFC should ensure that independent external verification has occurred.

5.3 **Weakening of biodiversity provisions:** The current Natural Habitats Policy (OP4.04) includes the principle that projects should be sited on land that was already converted or degraded wherever feasible – CAO considers that this provision should be retained, and that feasibility be determined based on a consideration of technical, political and other environmental and social factors.

5.4 **Timing of disclosure and links between consultation and disclosure:** Neither the PPS nor the Disclosure Policy are clear about the timing of disclosure of key documents to affected communities, such as the S&EA and Action Plan, to ensure that they have adequate opportunity to consider their implications. In addition, they do not require – unlike the 1998 Disclosure Policy and E&S Review procedure – that sufficient project-level consultations be undertaken on all material or environmental social issues in advance of the pre-Board 30 – 60 day consultations. CAO considers that both these aspects should be addressed.

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3 IFC’s 1998 Disclosure policy requires that “IFC staff must be satisfied that the EA report is complete in all material respects before releasing it to the InfoShop”. The 1998 E&S Review Procedures require that the Infoshop disclosures include “all supplements and addenda to the EA report and the responses to the public consultation process.”