

'Right to appeal' - International Financial Institutions and accountability – on the way to independent compliance and appeal mechanism for the European Investment Bank - Conference

Thursday, 30 November 2006, Brussels

Making the Grade: a survey of IFI social policies, international development standards and the policies of the European Investment Bank (EIB)

by Tom Griffiths

Background paper

Updated version: 31 December 2006

Conference organised by:



In cooperation with: Friends of the Earth Europe, Friends of the Earth International, Global Transparency Initiative, Bank Information Center, Campagna per la Riforma della Banca Mondiale, WEED, Urgewald, Les Amis de la Terre

The organisers gratefully acknowledge the financial support provided by the European Commission and the Dutch Ministry of Housing, Spatial Planning and the Environment

Making the Grade: a survey of IFI social policies, international development standards and the policies of the European Investment Bank (EIB)

By Tom Griffiths¹

Executive Summary

This paper pinpoints some key IFI standards in the social safeguard policies of the World Bank, Inter-American Development Bank, African Development Bank and Asian Development Bank together with associated best practice guidelines on sustainable development. These standards are then compared with the existing social policies of the European Investment Bank (EIB) in an effort to pinpoint gaps and weaknesses in the EIB social framework that need strengthening.

At the outset the paper argues that mandatory operational policies with clear procedural and objectives standards form an important part of institutional accountability of public IFIs. It is stressed that such policies can help IFIs improve project performance and development effectiveness.

The analysis finds that in recent years the EIB has adopted several social and transparency policies, and that these policies contain important (brief) references to key social issues like human rights, core labour standards, resettlement, gender and indigenous peoples. However, in contrast to the policies of other IFIs that have binding and detailed operational standards, existing EIB social policies – with the partial exception of its new policy on Information Disclosure – constitute general policies based on broad EIB commitments to core principles. These policies contain few explicit details of specific actionable standards applicable to EIB loan operations outside the EU. The survey thus finds that the EIB does not possess adequate mandatory *operational* standards to deal with social issues in its loan operations in developing countries. In short, clear objective standards and benchmarks to which the EIB may be held accountable for its treatment of social and rights issues in its loan operations remain unclear or entirely absent.

To increase its accountability to the public and affected communities in countries outside the EU the EIB should:

- Adopt binding operational standards and specific policies on human rights, core labour standards, free, prior and informed consent, resettlement, indigenous peoples, gender equality and cultural heritage
- Adopt a specific *operational* policy on social assessment to complement its general statement
- Ensure its operational standards are consistent with international standards and best practice, including those of the World Commission on Dams (WCD) and Extractive Industries Review (EIR). As a very minimum, EIB policies should be at least equivalent to the World Bank's IBRD/IDA and IFC standards.
- Establish a transparent and inclusive participation mechanism to involve civil society organisations, rights holders and other interested parties in the formulation of strengthened EIB social standards.

¹ IFI Programme Coordinator, Forest Peoples Programme: tom@forestpeoples.org

Table of contents:

Acronyms	3
I. Introduction	4
II. A brief survey of some international social standards and related IFI policies	5
A. Human Rights and the Rule of Law	6
B. FPIC and social license to operate	10
C. Social Assessment	12
D. Public participation and transparency	15
E. Core Labour Standards	18
F. Gender equality	20
G. Resettlement	21
H. Indigenous Peoples	24
III. Existing EIB Social Standards	27
Figure 1: A matrix comparing key IFI social policies with existing EIB policies	30
IV. Conclusions and recommendations	33
Annex I: Documents consulted:	36
A. European Union, European Commission and European Parliament:	36
B. European Investment Bank	37
C. World Bank Group (IBRD/IDA)	38
International Finance Corporation (IFC)	38
D. Inter-American Development Bank (IADB)	39
E. African Development Bank	39
F. Asian Development Bank	39
G. United Nations Development Programme (UNDP)	40
H. Organisation for Economic Co-operation and Development	40
I. Development Assistance Committee	40
References	41

Updated version: 31 December 2006

Acronyms

ADB	Asian development Bank
AfDB	African Development Bank
CAO	Compliance Advisor and Ombudsman Office (of the IFC)
CBD	Convention on Biological Diversity
CLS	Core Labour Standards
COA	Comprehensive Options Assessment
CSR	Corporate Social Responsibility
DFID	Department for International Development
EBRD	European Bank for Reconstruction and Development
ESMP	Environment and Social Management Plan
EC	European Commission
EPB	Equator Principles Banks
EIB	European Investment Bank
EIF	European Investment Fund
EDF	European Development Fund
EIR	Extractive Industries Review (of the World Bank Group)
EU	European Union
HRIA	Human Rights Impact Assessment
IA	Internal Audit Department (of the EIB)
IACHR	Inter-American Commission on Human Rights
IDA	International Development Association
IBRD	International Bank for Reconstruction and Development
ICERD	International Convention on the Elimination of all forms of Racial Discrimination
IFC	International Finance Corporation
IG	Inspectorate General (of the EIB)
ILO	International Labour Organisation
IPDP	Indigenous Peoples Development Plan
IPP	Indigenous Peoples Plan
IUCN	International Union for the Conservation of Nature
MDB	Multilateral Development Bank
NGO	Non-governmental organization
OCCO	Office of the Group Chief Compliance Officer
OECD	Organisation for Economic Co-operation and Development
OP	Operational Policy
PRSP	Poverty Reduction Strategy Paper
PSIA	Poverty and Social Impact Assessment
RAP	Resettlement Action Plan
RP	Resettlement Plan
SEA	Social and Environmental Impact Assessment/Strategic Environmental Assessment
SEMS	Social and Environment Management System
SIA	Social Impact Assessment
UNDP	United Nations Development Programme
UNPFII	UN Permanent Forum on Indigenous Issues
WBG	World Bank Group
WCD	World Commission on Dams

Updated version: 31 December 2006

I. Introduction

Since the 1970s civil society organisations, community-based organisations and social movements in the South and North have campaigned for greater accountability of public IFIs to citizens and communities affected by their development projects, programmes and macroeconomic development policies.² In response to severe international criticism of its finance for damaging and top-down infrastructure, road, dam and energy projects that devastated forests and indigenous peoples in Amazonia and elsewhere in the tropics, the World Bank adopted its first environment policy and a policy on “Tribal Peoples” in the early 1980s.³ Today, all the main public IFIs have their own *mandatory* public operational policies on social and environmental issues, including social and environmental assessment, public participation, information disclosure, gender equality, resettlement, indigenous peoples, and cultural heritage, among others. This trend of adopting clear standards to address social and environmental issues in development finance is now being taken up by private financial institutions, with the major differences that these private sector actor standards are *voluntary*.

Social organisations and NGOs stress that public accountability is derived from *binding* standards and therefore they have campaigned for public IFIs to ensure that their operational policies retain clear mandatory requirements on their staff and their borrowers, and that such standards are regularly updated to ensure they are consistent with international standards and best practice.

Why are mandatory IFI standards important?

Specific mandatory social policies can yield multiple benefits to both affected people and development agencies because (if properly applied) such policies can:

- Provide mechanisms to address the rights and concerns of affected communities, who are easily sidelined by the development process;
- Foster measures to correct or account for historical injustices and inequalities;
- Open political space for local communities and their representatives to reject unacceptable development plans and identify their own needs and priorities;
- Facilitate culturally appropriate participatory planning, implementation and follow-up;
- Empower rights holders by providing external accountability of the development agency to local communities who may refer to key principles and standards in the policy in order to raise concerns with project managers and, if problems are not resolved, to make complaints and seek redress through the relevant agency or authority;
- Establish clear rules and guidelines for staff to follow – staff who are very often not trained in dealing with the issues of concern;
- Offer donors a strong position from which to enter into policy dialogues with governments on the structural causes of inequality and discrimination;
- Constitute an agreed basis for negotiating loans or contracts with borrowers, recipient countries, sponsors, clients or project/programme beneficiaries;
- Help justify requirements for special funds for project processing;
- Create a yardstick for assessing “development effectiveness”;
- Improve overall development quality.

² See, Treacle, K (1998) “Ecuador: structural adjustment and indigenous environmentalist resistance” pp.219-264 in Fox J A and Brown L D (Eds)(1998a) *The Struggle for Accountability: the World Bank, NGOs, and grassroots movements* The MIT Press, Cambridge (MA) and London

³ See, Gray, A (1998) “Development Policy, Development Protest: The World Bank, Indigenous Peoples and NGOs” pp.267-301 in Fox J A and Brown L D (Eds)(1998) *op. cit.*

Updated version: 31 December 2006

The contribution that high quality implementation of social safeguard standards make to effective social development is confirmed by official evaluations conducted by the IFIs.⁴ The importance of specific agency social policies is also recognised by the OECD's Development Assistance Committee (DAC), which urges donors to develop 'clear and credible policies' on aid and human rights, and highlights the potential value of specific policies for specific groups.⁵ Civil society and social justice organisations thus reject arguments that IFI social policies hinder development or that they impose an unfair burden of "transaction costs" for compliance and effective implementation on IFI staff and borrowers (time and money). Instead, they point out that these policies constitute a small fraction of project overheads and that the effective application of these standards increases IFI accountability, helps deliver positive poverty reduction impacts, and improves overall development effectiveness.⁶

Crucially, it is emphasised that IFIs and other public bodies are the subjects of international law and they have a *duty* and *obligation* to ensure that their operations do not undermine a borrower country's capacity to comply with international standards on human rights, environmental protection and sustainable development in treaties it has ratified. In particular, the EIB as a European institution has a duty to promote human rights and social principles outside the EU as enshrined in European "external policies" and in European development cooperation treaties like the Cotonou Agreement.

What policies are useful for public accountability?

To be useful instruments that can help deliver effective poverty reduction and increase IFI accountability to the public and affected communities, IFI operational policies must:

- Have clear preconditions that should be complied with before the agency will support a particular development project or programme;
- Apply provisions which are consistent with relevant international human rights and sustainable development standards
- Contain unambiguous procedural and substantive operational rules or benchmarks for project preparation, implementation, monitoring and evaluation, which are binding on agency staff, managers and consultants;
- Count on adequate resources and appropriate institutions to implement the actions and activities required under the policy (monitoring and compliance);
- Have associated appeals and accountability mechanisms which are accessible to affected and/or participating communities.
- Be known to (and understood) by IFI staff, its clients and executing agencies and by intended beneficiaries through proactive dissemination and communication aimed at involving all stakeholders.

II. A brief survey of some international social standards and related IFI policies

This section of the report examines briefly some core standards and international best practice under different development topics of direct relevance to EIB lending in developing countries. Note is taken of European standards and intergovernmental commitments alongside standards established under regional and global human rights instruments. Key standards developed by the World Commission on Dams and the World Bank's Extractive Industry Review are also highlighted, where appropriate. As part of the assessment of

⁴ See, for example, OED (2003) *Implementation of Operational Directive 4.20 on Indigenous Peoples: an evaluation of results* April 10, 2003, Country Evaluation and Regional Relations (OEDCR), OED, Washington, DC at page 38.

⁵ DAC (1995) *Participatory Development and Good Governance* Development Co-operation Guidelines Series OECD, Paris at paras. 66-82. See especially para. 71.

⁶ See, for example, Bosshard, P (2004) "Response to Sebastian Mallaby" *Foreign Policy* <http://www.irm.org/programs/finance/index.php?id=sebastianmallaby/040927mallaby.html>

Updated version: 31 December 2006

existing IFI policies, the survey has involved careful scrutiny of relevant operational policies of the World Bank Group, Inter-American Development Bank, African Development Bank and the Asian Development Bank (Annex I). The purpose of this summary is to pinpoint best practice standards and key minimum standards in order to make recommendations to the EIB at the end of this paper.

Scope and limits of the study

The study aims to give a general overview of core standards and best practice on social issues in international development and IFI policies. It does not claim to be exhaustive and does not include all IFI policies (EBRD policies are not covered, for example). Nor does coverage in this survey extend to social development policies applied by European bilateral development agencies. The study does not examine IFI accountability and complaints policies as this topic is covered in other papers that have been compiled for this conference.

A. Human Rights and the Rule of Law

Under universal UN HR instruments, the European Convention on Human Rights, and the national legislation of European countries, States are obliged to respect, protect and fulfil human rights. European Commission communications on human rights and European aid affirm that:

The protection of human rights, together with the promotion of pluralistic democracy and effective guarantees for the rule of law and the fight against poverty, are among the European Union's essential objectives.⁷

European governments have pledged to uphold their human rights commitments under the Millennium Declaration and the *Charter of Fundamental Rights of the European Union*.⁸ Commitments to promote human rights in European development cooperation are also in European policies like the policy on *Inclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries* and the *EU European Consensus on Development (2005)*.⁹ Commitments to respect and promote human rights are also embedded in European aid agreements with developing countries. Under the Cotonou Agreement, for example, European states affirm that:

Respect for all human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable development.¹⁰

Obligations and responsibilities of IFIs

It is increasingly accepted that public international financial institutions and other public international development agencies are required under international law to ensure that their decisions, actions and operations do not undermine the ability of other subjects of international law, including their member states, to fulfil their obligations under applicable

⁷ European Commission (2001) *Communication from the Commission to the Council and the European Parliament on the European Union's role in promoting human rights and democratisation in Third Countries* Brussels, 8 May 2001 COM(2001) 252 final http://ec.europa.eu/comm/external_relations/human_rights/doc/com01_252_en.pdf

⁸ http://www.europarl.europa.eu/charter/default_en.htm

⁹ http://ec.europa.eu/comm/external_relations/human_rights/doc/com95_216_en.pdf

¹⁰ Cotonou Agreement, Article 9(1)

http://ec.europa.eu/comm/development/body/cotonou/pdf/agr01_en.pdf#zoom=100

Updated version: 31 December 2006

international human rights instruments, environmental treaties and under international customary law.¹¹

IFIs that are specialized agencies of the United Nations also have obligations derived from the human rights provisions of the Charter of the United Nations, the UN Universal Declaration of Human Rights, the International Covenants and other UN human rights instruments.

In carrying out their oversight and executive functions in the governing bodies of IFIs, States have obligations to ensure that their decisions do not infringe national and international human rights laws.¹² The UN Human Rights Committee, the Inter-American Human Rights Commission and the African Commission on Human and Peoples' Rights have ruled that State policy and practice relating to economic development and natural resource exploitation must uphold the State's obligations under international human rights law.¹³

A significant number of bilateral international development agencies in European donor countries have formally adopted a rights-based approach to development; these include DFID (UK), DANIDA (Denmark), SIDA (Sweden), DGIS (Netherlands) and SDC (Switzerland), while most aid agencies of other European countries have specific policies on human rights and international development.¹⁴

In recent years, some public and private IFIs, in consortiums with private companies, have underwritten particular legal regimes for their investments using Host Government Agreements (HGAs). In some cases, these HGAs have sought to annul, freeze or weaken the host government's legal jurisdiction and human rights' responsibilities within the project area of influence, as has occurred in the case of the Chad Cameroon Pipeline Project and in other IFI-financed extractive industry investments.¹⁵ The use of HGAs to try to limit or 'freeze' a State's human rights obligations has been condemned by social justice organisations and such abusive use has been challenged in the European Court of Justice in relation to the Baku Tbilisi Ceyhan (BTC) oil pipeline.¹⁶

Existing IFI standards:

¹¹ Sands, P and Klein, P (Eds)(2001) *Bowett's Law of International Institutions* Sweet and Maxwell, London. See especially, MacKay F (2002), Universal Rights or a Universe Unto Itself? Indigenous Peoples' Human Rights and the World Bank's Draft operational Policy 4.10 on Indigenous Peoples, 17 *American University International Law Review* 527, 568-70. See also - Skogly, S (2001) *The Human Rights Obligations of the World Bank and the IMF* Cavendish Publishing, London, and - McBeth, A (2006) "Breaching the vacuum: a consideration of the role of international human rights law in the operations of IFIs" *The International Journal of Human Rights* Vol. 10(4):385-404, December 2006

¹² Skogly, S (2006) *Beyond National Borders: States' Human Rights Obligations in their International Cooperation*. Intersentia, Antwerp

¹³ UN Human Rights Committee (1992) *I. Lansman et al. vs. Finland (Communication No. 511/1992)*, CCPR/C/52/D/511/1992 at page 10; Inter-American Commission on Human Rights (1997) *Report on the Situation of Human Rights in Ecuador* OEA/Ser.L/V/II.96, Doc. 10 rev. 1 1997 at page 89; African Commission on Human Rights (2001) *Decision Regarding Communication No. 155/96.. Nigeria: The Social and Economic Rights Action Center and the Center for Economic and Social Rights* at paragraphs 58 and 69.

¹⁴ See, for example, DFID (2000) *Realising Human Rights for Poor People* International Development Target Strategy Paper, DFID, London http://62.189.42.51/DFIDstage/Pubs/files/tsd_human.pdf

¹⁵ See, for example, Amnesty International (2005) *Contracting out of Human Rights: the Chad-Cameroon Pipeline Project* Amnesty International UK, London

¹⁶ Hildyard, N (2005) *Holding Funders and Companies to Account: litigation and standards* Paper Presented to American Anthropological Association Annual Meeting, Washington DC, 3rd December 2005. The First Court of instance of the ECJ did not dispute the standing of civil society organisations, but ruled that on a technicality that it could not proceed with the case against the European Commission .

Updated version: 31 December 2006

The need for IFIs to adopt specific policies and objective standards on human rights has long been advocated by civil society organisations and indigenous peoples. Such policies have also been recommended by different IFI-led sector reviews, including the Extractive Industries Review (EIR), which recommends:

...that the World Bank Group adopt a system-wide policy that integrates and mainstreams human rights into all areas of Bank policy and practice and that Bank policies and operations must be, at a minimum, consistent with its obligations, as a subject of international law, in relation to international human rights law.¹⁷

While the World Bank has been slow to act on this key recommendation of the EIR, its Inspection Panel already accepts that investigation of human rights abuses as they relate to World Bank safeguard policies falls within its mandate to investigate and document complaints by project-affected people.¹⁸

More recently, the World Bank's legal department has affirmed that "...taking into account, where appropriate, human rights issues and members' international human rights obligations does not contravene the Articles' prohibition on political interference...", and that: "There are some activities that the Bank cannot properly undertake without considering human rights"¹⁹. In a recent article, the new General Counsel of the World Bank, Ana Palacio, has affirmed:

"...there should be a clear understanding that in certain cases and under certain circumstances, human rights generate *actionable legal obligations*. Such obligations may arise from international treaties, or from rights enshrined in national laws. Here the Bank's role is to support its Members to fulfill those obligations where they relate to Bank projects and policies."²⁰

It is also significant that the Inter-American Development Bank (IADB) has publicly committed the institution to adherence to safeguard standards that will ensure that its loan operations uphold "applicable legal norms", including "...international jurisprudence of the Inter-American Court of Human Rights or similar bodies".²¹

Notwithstanding these important advances, to date no public IFI has adopted a specific policy on human rights. Civil society organisations therefore continue to press the World Bank Group and other IFIs to adopt clear public policies on human rights that recognise that the institution and its staff have duties to uphold human rights in their decisions and operations.

Human rights standards in the private sector:

While public IFIs have been slow to formulate specific standards on HR for their operations, several private sector IFIs have adopted voluntary HR policies. A recent survey of the social

¹⁷ Salim, E (2003) *Striking a better balance: the World Bank Group and Extractive Industries* EIR final report, December 2003

[http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/\\$File/volume1english.pdf](http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF6006843AB/$File/volume1english.pdf)

¹⁸ Ayensu, E S (2002) *Remarks of the Chairman of the Inspection Panel to the Board of the Executive Directors on the Chad-Cameroon Pipeline Projects – Inspection Panel Investigation Report*, September 12, 2002

¹⁹ Danino, R (2006) *Legal Opinion on Human Rights and the work of the World Bank* Senior Vice President and Legal Counsel, 27 January 2006.

²⁰ Palacio, A (2006) "The Way Forward: Human Rights and the World Bank" *Development Outreach*, October 2006 <http://www1.worldbank.org/devoutreach/article.asp?id=388>

²¹ *Operational Policy on Indigenous Peoples – OP-765*, 2006 <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=776078>

Updated version: 31 December 2006

policies of the Equator Principles Banks (EPB), found that seven already have specific institutional policies on human rights which go beyond EP commitments.²²

Companies today increasingly accept that they have duties to protect and promote human rights in their investments.²³ As noted by the IFC in its guidance to its recently adopted Performance Standards:

While...(human rights) instruments establish responsibilities of States, it is increasingly expected that private sector companies conduct their affairs in a way that would uphold these rights and not interfere with states' obligations under these instruments..."²⁴

Human rights impact assessment:

The European Commission Communication on *The European Union's Role in promoting human rights and democratisation in third countries (May 2001)* has highlighted the need to develop tools to assess the effect of European development and trade policies on human rights in developing countries. To this end, European human rights organisations, experts and government agencies have developed Human Rights Impact Assessment (HRIA) instruments for use by public and private sector agencies.²⁵

The Human Rights Committee of the Netherlands defines HRIA as:

A systematic process to ensure the integration of human rights aspects in decision-making throughout policy formulation (and) implementation...HRIA should include a fixed set of criteria derived from international law and standards, according to which human rights performance can be held accountable²⁶

The International Finance Corporation (IFC) is developing HRIA guidelines for its private sector clients to complement its mandatory Performance Standard on Social and Environmental Assessment. The draft guidelines structure the HRIA evaluation on core labour standards, labour rights, other "key rights", including rights of the child, women's rights, property rights, right to life, right to livelihood, the rights of Indigenous peoples, rights of minorities, right to be free from discrimination, among others.²⁷ The draft IFC guidelines recommend that HRIA should, *inter alia*:

- identify clear-cut potential negative impacts on human rights and how such adverse impacts can be avoided
- pinpoint less clear potential risks on human rights that require careful consideration

²² Though several private banks have adopted human rights policies, scrutiny of their investments and operations shows that they must develop compliance and oversight mechanisms to ensure their commitments on human rights are fulfilled. See Bank Track (2006) *Shaping the future of Sustainable Finance: moving from paper promises to performance* Bank Track, WWF

http://www.banktrack.org/doc/File/banktrack%20publications/BankTrack%20publications/0_060126%20Sustainable%20finance%20full%20report.pdf

²³ Misol, L (2005) *Private Companies and the Public Interest: why corporations should welcome global human rights rules* Human Rights Watch <http://www.hrw.org/wr2k6/corporations/corporations.pdf>

²⁴ Guidance Note 1: G22 and Guidance Note 7: GN1.

²⁵ See, for example, NORAD (2001) *Handbook in Human Rights Assessment: State obligations, awareness and empowerment* NORAD, Oslo <http://www.norad.no/files/Handbook.pdf>. See also, Danish Institute for Human Rights (nd) *Human Rights Compliance Assessment: a tool for better practice* <https://hrca.humanrightsbusiness.org/>

²⁶ Radstaake, M and Bronkhorst, D (2002) *Matching Practice with Principles: human rights impact assessment: EU opportunities* Humanist Committee on Human Rights at page viii http://www.hom.nl/publicaties/Matching_practice_with_principles.pdf

²⁷ IFC (2006) *Guide to Human Rights Impact Assessment*, Draft June, 2006

Updated version: 31 December 2006

- describe the alternative options open to the Company to avoid or remove potential adverse impacts
- identify positive impacts on human rights resulting from the project and that will be realised during implementation
- include plans for monitoring and reporting on human rights impacts during project implementation

The draft IFC guidelines stress that the findings and recommendations of HRIA should be used by decision-makers and project planners to decide how potential human rights impacts will be addressed and managed in a project and integrate these decisions in the project management plan.

Minimum standards:

It is a general standard among public international agencies, and increasingly among the private sector IFIs and companies,²⁸ that IFI investments and operations must:

- Comply with all applicable national laws and regulations and applicable international standards, including ILO and UN Conventions, and other relevant statutory requirements
- Not undermine a Borrower State's obligations under international human rights and environmental treaties it has ratified.

B. FPIC and social license to operate

The right to free, prior and informed consent (FPIC) is established under international law for indigenous peoples (see below) and is accepted as the best practice standard to be applied in protecting indigenous peoples' rights in the development.²⁹ Indigenous peoples' right to FPIC is grounded in their collective rights to property, their right to participate in decisions that affect them through their collective representative bodies and their right to self-determination.³⁰ The European Council of Ministers has accepted standards equivalent to FPIC under its 1998 Resolution on Indigenous Peoples which states that: "Indigenous peoples have the right to choose their own development paths, which includes the right to object to projects, in particular in their traditional areas".³¹ The same principle has been adopted by the European Council and Commission in the *Second Northern Dimension Action Plan*, which recognises the need to protect indigenous peoples' right to self-determination (which includes the right to FPIC).³²

The FPIC safeguard for indigenous rights is increasingly recognised by global and regional human rights bodies, public development agencies and private sector organisations alike, including the UN Committee on the Elimination of Racial Discrimination, UN Committee on Economic, Social and Cultural Rights, the CBD, the UNDP, the UN Permanent Forum on Indigenous Issues, the Inter-American Commission on Human Rights, the Inter-American

²⁸ Business Social Compliance Initiative (BSCI) Code of Conduct <http://www.bsci-eu.org/dl.php?id=10030>

²⁹ UN Permanent Forum on Indigenous Issues (2004) *Inter-agency Support Group on Indigenous Issues Report on Free Prior and Informed Consent* 3rd Session, 2004

³⁰ Colchester, M and MacKay, F (2004) *In Search of Middle Ground: indigenous peoples, collective representation and the right to free, prior and informed consent* FPP, Moreton-in-Marsh at pages 8-12

³¹ European Council (1998) *Council of the European Union Resolution of 30 November 1998 - Indigenous Peoples within the framework of the development co-operation of the Community and the Member States* 2141st Council Meeting, Ref: 13461/98 (Presse 421-G), Brussels

http://europa.eu.int/comm/external_relations/human_rights/ip/res98.pdf

³² European Union *Second Northern Dimension Action Plan: 2004-2006*, 18 October 2003

http://ec.europa.eu/comm/external_relations/north_dim/ndap/ap2.pdf

Updated version: 31 December 2006

Development Bank, UN Centre for Transnational Corporations, the IUCN, Forest Stewardship Council, Roundtable on Sustainable Palm Oil and the International Association of Oil and Gas Producers, among others.³³

Alongside recognition of the need for respect for indigenous peoples' rights, including FPIC, there is a growing acceptance among development agencies that sustainable development must be based on a social licence to operate. Social license is derived from the informed participation of civil society and affected communities in development planning and their prior acceptance of a specific project or development intervention. The first strategic priority for sustainable development established by the World Commission on Dams (WCD), for example, is "Gaining Public Acceptance", based on the principle that:

Demonstrable public acceptance of all key decisions is achieved through agreements negotiated in an open and transparent process conducted in good faith and with the informed participation of all stakeholders.³⁴

In the case of indigenous peoples, the WCD guidelines state that:

Decisions on projects affecting indigenous and tribal peoples are guided by their free, prior and informed consent achieved through formal and informal representative bodies.³⁵

Both the WCD and EIR reviews underline that FPIC does not apply to just one point in the project cycle, but rather applies at different stages throughout project preparation.³⁶ The WCD criteria, for example, establish that public acceptance and FPIC for indigenous peoples should be obtained at each of the five critical decision points during the project cycle.³⁷

Existing IFI standards:

The IADB) has adopted the FPIC standard for indigenous peoples affected by resettlement (see below). The IFC and IADB have also in recent policies accepted the related standard of good faith negotiation and prior agreement in projects with potential adverse impacts on indigenous peoples (see below). For its part, the World Bank (IBRD/IDA) has adopted the standard of free prior and informed *consultation* (FPICon) leading to broad community support (BCS), which has been incorporated into its policy on Indigenous Peoples (see below). While the FPICon language is controversial,³⁸ the "Broad Community Support" standard does now require that Bank loan operations affecting indigenous peoples must be based on a certain degree of prior collective agreement on the part of affected indigenous communities.

The IFC has accepted that a social license to operate is required for high-risk projects affecting local communities. Under the IFC's *Policy on Social and Environmental Sustainability* (2006), the agency states:

³³ See MacKay, F (2004) *Indigenous Peoples Right to Free, Prior Informed Consent and the World Bank's Extractive Industries Review* Forest Peoples Programme, Moreton-in-Marsh at pages 24-25

³⁴ WCD (2000) *op. cit.* at page 215

³⁵ Ibid.

³⁶ Salim, E (2003) *op. cit.* at page 50.

³⁷ WCD (2000) *op. cit.* at page 281

³⁸ Indigenous organisations strongly criticised the FPICon language in a letter sent to the President of the World Bank in July 2004 in which they stated: "...The (Bank's) misappropriation and misinterpretation of FPIC as free, prior and informed consultation is unacceptable...as this undermines indigenous peoples' internationally guaranteed right to consent to activities that affect us and equates indigenous peoples and our rights to those of any local community."

Updated version: 31 December 2006

In the case of projects with significant adverse impacts on affected communities, IFC also assures itself that there is broad community support for the project within the affected communities.³⁹

One major weakness in the IFC's standard on broad community support is that the existence of community support is based only on IFC's judgment and there is no independent verification mechanism or requirement that community acceptance be documented and attested to in written agreements between the client and the affected communities.⁴⁰ In the case of IFC's required standard of good faith negotiation for indigenous peoples (see III.H below), however, the possibility of independent verification is to some extent allowed for – in so far as staff guidelines advise that the process of negotiation must be documented and that any “successful” outcome must be duly recorded in a “memorandum of understanding, a letter of intent, a joint statement of principles, and written agreements.” (Guidance Note 7: G25).

C. Social Assessment

Development agencies and IFIs increasingly recognise that effective social assessment, also known as social analysis or social and cultural impact analysis, are a fundamental part of designing, planning and implementing development projects that are socially and environmentally sustainable.⁴¹ It is especially recognised that good prior social assessment and accurate baseline studies are essential for the preparation of effective mitigation measures in infrastructure, extractive or other projects that may generate negative social impacts. World Bank studies show that projects based on effective participatory social assessment deliver higher levels of development effectiveness and have enhanced poverty reduction impacts.⁴²

The World Commission on Dams (WCD) guidelines consolidate international standards on upstream *Strategic impact assessment* and project-level social assessment based on participatory rights and risks analyses, and the use of *Comprehensive Options Assessment* methods to systematically evaluate and select the most effective and publicly acceptable project designs. As explained in the WCD guidelines:

Strategic impact assessments provide an initial level of screening to remove alternatives that have unacceptable social and environmental consequences. They need to reflect the importance of avoiding adverse impacts and the precautionary approach. The assignment of relative weights to designate the importance of various parameters should be a participatory process and form the basis of a multi-criteria analysis to screen and rank alternatives.⁴³

A first step in the social assessment process is stakeholder analysis.

“A stakeholder analysis based on recognising rights and assessing risks should be used to identify key stakeholders for planned activities...The analysis will [i]dentify those at risk through vulnerability or risk analysis and consider them as core stakeholders, including those who face risk to their livelihoods, human rights, and

³⁹ IFC *Policy on Social and Environmental Sustainability* at para. 15.

⁴⁰ FPP (2006) *A brief and preliminary assessment of the IFC's new Safeguard Policy framework* FPP briefing

⁴¹ Goldman L R (Ed)(2000) *Social Impact Analysis: an applied anthropology manual* Berg, Oxford and New York

⁴² See, for example, Cruz, M and Davis, S (1997) *Social Assessment in World Bank-GEF Funded Biodiversity Conservation: case studies from India, Ecuador and Ghana* Social Assessment Series Paper No.043, Environment Department Papers, World Bank, Washington, DC

⁴³ WCD (2000) *op. cit.* at page 266.

Updated version: 31 December 2006

property and resource rights. Special attention should be given to indigenous and tribal peoples, women and other vulnerable groups...”⁴⁴

The WCD guidelines stress that:

Clarifying the rights context...is an essential step in identifying those legitimate claims and entitlements that might be affected by the proposed project – or indeed its alternatives. It is also the basis for effective identification of stakeholder groups that are entitled to a formal role in the consultative process, and eventually in negotiating project-specific agreements relating, for example, to benefit sharing, resettlement or compensation.⁴⁵

Under the WCD best practice standards, upstream Strategic Impact Assessment is followed by a detailed project-level assessment of social, health and cultural heritage issues. The WCD guidelines advise that this social assessment should involve:

...a two-stage impact assessment: the first is a scoping phase, including full public participation, that identifies key issues of concern and defines the terms of reference for the second, assessment, phase...Impact assessments should be carried out independently of the interests of the project developer and financing mechanisms should reflect this independence.⁴⁶

At the intergovernmental level, the importance of Strategic Environmental Assessment has been recognised by many European governments as well as non-European governments under the *Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context*.⁴⁷ Although this protocol contains important requirements for public participation (Article 8), linkages with social, cultural and rights impacts are not addressed.

More progress in recognising the vital connections between environmental and social impacts has been made under the Convention on Biological Diversity (CBD), which has recently developed social impact assessment methods for evaluating development impacts on indigenous and local communities. The CBD guidelines, known as the *Akwé: Kon Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities*, have been developed through consensus among indigenous peoples and government Parties to the Convention.

Among many detailed recommendations for effective social and cultural impact assessment, the *Akwé: Kon* guidelines advise that:

Cultural, environmental and social impact assessment procedures should refer to... relevant domestic legislation, regulations, guidelines and international and multilateral environmental agreements and protocols that have been ratified by the [government] Party and have come into force...⁴⁸

⁴⁴ WCD (2000) *op. cit.* at page 279.

⁴⁵ *Ibid.* at pages xxxiii and 207.

⁴⁶ *Ibid.* at page 283

⁴⁷ <http://www.unece.org/env/eia/>

⁴⁸ Akwe:kon Guidelines at para 5, page 6.

Updated version: 31 December 2006

The EU is now committed to applying the *Akwé: kon Guidelines* in its development cooperation to countries outside the EU in its 2006 *Action Plan to 2010 and Beyond*.⁴⁹

Existing IFI policies:

Although the World Bank has developed best-practice guidelines on social analysis,⁵⁰ its public sector lending arms (IBRD/IDA) still confine mandatory requirements for social assessment to sub-provisions in specific operational policies on Resettlement and Indigenous Peoples.

Civil society and sector reviews are calling on the World Bank to adopt an institution-wide mandatory policy on combined social and environmental assessment. The EIR has made the same recommendation:

That the World Bank Group require Integrated Environmental and Social Impact Assessments. The WBG should take a holistic, multidimensional approach to assessments, identifying cumulative impacts of projects and socioeconomic linkages to environmental issues. Social impacts should be fully identified, including health impacts and project effects on vulnerable groups.⁵¹

Other IFIs like the African Development Bank (2001) and the private sector arm of the World Bank (IFC) have already adopted standards for integrated project-level Social and Environmental Assessment (SEA) as part of their safeguard procedures.

In addition, some IFIs, like the IFC, advise that the social assessments for their projects should draw on international best practice like the *Akwé: kon Guidelines* (mentioned above).⁵²

The World Bank, with support from bilateral agencies like the UK Department for International Development (DFID) has developed guidelines for upstream *Poverty and Social Impact Assessment (PSIA)* to help IFIs assess the macro-level impacts of development policies at the country and regional levels.⁵³

Core standards:

Examination of existing IFI policies on project-level social assessment (see Annex I) indicates that core standards include requirements for, *inter alia*:

- Screening and *categorisation of projects* proportionate to the scale of potential risks and impacts
- Detailed and full social assessments and high standards for public participation and information disclosure in projects categorised as high or medium-risk⁵⁴
- “Extreme caution” and the application of additional assessment safeguards in high-risk projects that may adversely affect the health and safety of persons in the project

⁴⁹ Annex I to European Commission (2006) *Communication from the Commission - Halting the Loss of Biodiversity by 2010 – and beyond: sustaining ecosystem services for human well-being* Brussels, 22 May 2006 COM (2006)216 final at Section B.3.1.8.

⁵⁰ World Bank (2003) *Social Analysis Sourcebook: incorporating social dimensions into Bank-supported projects* Social Development Department, World Bank, Washington DC

⁵¹ Salim, E (2003) at pages ix and 64.

⁵² IFC Guidance Note 7 to Performance Standard 7 at G.11

⁵³ World Bank (2003) *A User's Guide to Poverty and Social Impact Assessment* Poverty Reduction Group (PRMPR) and Social Development Department (SDV), World bank, Washington, DC

⁵⁴ In most IFI categorisation systems, high risk projects (Category A) have irreversible, large-scale, durable and extensive impacts, while medium risk projects (Category B) have “site specific”, small-scale and normally reversible impacts.

Updated version: 31 December 2006

- area or threaten the cultural survival or welfare of vulnerable groups, including the use of culturally appropriate consultation
- Use of independent experts to assist in social assessment for high-risk projects
- Objective criteria and secondary expert reviews to ensure project categorisation is accurate and appropriate
- *Step-wise* social assessments involving: screening, scoping (including stakeholder analysis), detailed assessment of impacts, report review, report completion, input to decision-making process and impact monitoring and management
- Assessments based on accurate baseline social, economic and cultural data
- Analysis of direct and indirect risks and impacts for each stage of the project cycle, including cumulative and post-project impacts
- Legal analysis of domestic and international laws relevant to the assessment
- Mechanisms to ensure meaningful prior consultation with affected communities
- Measures to guarantee effective public and community participation in the analysis of potential impacts
- Early disclosure of relevant project information and documents to enable the *informed* participation of affected communities in the assessment
- A process to document the views and concerns of affected communities
- Incorporation of public and community consultations in the analysis and findings of the assessment
- Incorporation of community views and priorities in related decision-making processes on project design and implementation
- Serious consideration of the “no-project” alternative where social impacts are high and cannot be adequately mitigated nor properly compensated
- Public disclosure of summaries of Social and Environmental Impacts for projects prior to project approval
- Social and Environment Management Plans or Systems based on the findings of the assessment
- Incorporation of social safeguards in loan agreements and covenants

D. Public participation and transparency

The importance of participation of civil society and vulnerable and disadvantaged groups in the development process is recognised under the intergovernmental action plan to achieve sustainable development at the Earth Summit in 1992. Agenda 21 affirms:

One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making...This includes the need of individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions, particularly those which potentially affect the communities in which they live and work.⁵⁵

In a recent joint statement made in February 2006 by the European Parliament, European Council and EC development cooperation agencies affirm that:

The EU supports the broad participation of all stakeholders in countries' development and encourages all parts of society to take part. Civil society, including economic and social partners such as trade unions, employers' organisations and the private sector, NGOs and other non-state actors of

⁵⁵ *Agenda 21*, Chapter 23: “Strengthening the role of major groups”, paragraph 23.2

Updated version: 31 December 2006

partner countries in particular play a vital role as promoters of democracy, social justice and human rights.⁵⁶

The Aarhus Convention (ratified by 46 European countries) requires States-parties to:

...guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters.⁵⁷

Subsequent EC related Directives have extended the right of access to environmental information to any interested person, regardless of residence.⁵⁸

Under the Cotonou Agreement, European community members have enshrined civil society participation as a fundamental principle of their development cooperation with ACP countries:

Apart from central government as the main partner, the partnership shall be open to different kinds of other actors in order to encourage the integration of all sections of society, including the private sector and civil society organisations, into the mainstream of political, economic and social life⁵⁹

Civil society and NGOs stress that *meaningful* and *full and effective* participation means that citizens and other rights holders are able to take part in, and influence, development decisions that may affect them directly or indirectly.⁶⁰ It also means having timely access to information about IFI development projects and portfolios in the right languages and in a form that is accessible. The Global Transparency Initiative, for example, lists 9 core principles for effective transparency of IFIs, including:

- **Right of Access** as a fundamental human right to access to IFI information in both the public and private sector
- **Automatic disclosure** about structures, policies, procedures and decision-making
- **Access to decision-making**, including a presumption of public participation in key meetings
- **Right to Request Information**, *subject only to a limited regime of exceptions*
- **Limited Exceptions to disclosure**, where the IFI can prove that potential harm of disclosure outweighs the public interest
- **Right to appeal** against a refusal of access to information, including right to have a review of grievances by an independent and authoritative body
- **Whistleblower protection**
- **Freedom of information**
- **Regular review**, to ensure disclosure meets best practice standards⁶¹

Existing IFI standards on participation

⁵⁶ Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' *Official Journal of the European Union C 46/1*, 24 February 2006

⁵⁷ Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Article 1.

⁵⁸ FERN (2004) *The EU's impact on forests: a practical guide to campaigning* FERN and TRN, Brussels and Jokkmokk at page 87.

⁵⁹ Cotonou Agreement, Article 2.

⁶⁰ See, for example, Hildyard N, Hegde P, Wolverkamp P and Reddy S (1998) *Same Platform, Different train: the politics of participation* <http://www.thecornerhouse.org.uk/item.shtml?x=51958>

⁶¹ Global Transparency Initiative (2006) *Transparency Charter for International Financial Institutions: claiming our right to know* Global Transparency Initiative http://www.ifitransparency.org/doc/charter_en.pdf

Updated version: 31 December 2006

All the IFIs surveyed as part of this study have mandatory standards or best-practice guidelines on public participation in development. Recently adopted or updated IFI standards increasingly require meaningful participation of affected communities in project and development policy *decision-making processes*, though earlier policies usually only require *consultation* standards.⁶² The Global Environment Facility (GEF) has one stand-alone policy on public participation standards required for all its projects.⁶³ However, most IFIs have chosen to embed participation and transparency standards in specific operational policies. The World Bank, for example, has mandatory participation and information disclosure requirements embedded in at least 14 of its operational policies.

The World Bank has also developed several best practices guidelines on participation, including guidelines on methods to achieve participation with specific groups, like indigenous peoples.⁶⁴

Key participation standards in mandatory IFI policies include, *inter alia*, requirements for:

- Mechanisms to ensure participation and transparency in IFI projects and programmes at multiple levels: global, national, sub-national and local
- Full documentation of public participation and involvement in project design and implementation
- Project budgets and technical assistance to enable *meaningful* public consultation and *informed* participation, including local participation, in project design, preparation and implementation
- Ongoing participation of affected “stakeholders” throughout the project cycle, starting at the earliest stage possible, including participation in monitoring and evaluation
- Measures to include affected communities in social and environmental assessment
- Special action to ensure *culturally appropriate* participation by indigenous peoples, including measures to provide sufficient time for their customary and collective decision-making processes
- Particular measures to ensure the participation of marginalised and disadvantaged persons and groups, such as ethnic communities, the elderly, women, children, the disabled and low-income groups
- Incorporation of the views of affected communities in project plans and design and their effective participation in project *decision-making* processes
- Measures to ensure access to specific project documents and mitigation plans of direct relevance to affected “stakeholders” in a form, manner and language that are comprehensible to them e.g., Resettlement plans, Indigenous Peoples Plans, Gender action plans etc
- Participation processes that include measures to respect the right to free, prior and informed consent and/or involve good faith negotiation with indigenous peoples in the case of resettlement or high risks projects (see II.B and II.F)

⁶² Earlier IFI social and environmental policies, only required what Pimbert has called low grade “participation by consultation” based mainly on a requirement to share some project information with affected communities and civil society organisations, but not on obligations to provide any share in decision-making - see Pimbert, M (2003) “The promise of participation: democratising the management of biodiversity” *Seedling* (July 2003) <http://www.grain.org/seedling/?id=243>.

⁶³ GEF (1996) *Guidelines on Public Involvement in Projects Financed by the GEF* http://www.gefweb.org/Operational_Policies/public_involvement/public_involvement.html

⁶⁴ World Bank (1996) *The World Bank Participation Sourcebook* ESD, World Bank, Washington DC www.worldbank.org/wbi/sourcebook/sba212.htm; Davis, SH and Soeftestad, L T (1995) *Participation and Indigenous Peoples* Social Development Paper No. 9, June 1995, ESSD, World Bank Washington D.C.

Updated version: 31 December 2006

Existing IFI standards on transparency

Until quite recently IFIs have been highly secretive in their business activities and have only provided limited information to the public and communities affected by their projects. The World Bank, for example, only adopted its first full policy on Information Disclosure in 1993. Today, however, in response to calls for greater transparency, IFIs increasingly accept that they have duties to enable public access to information, though they still insist that there are many constraints on disclosure, which civil society organisations do not accept and argue are unnecessary and unjust.

All the IFIs surveyed for this study have specific public policies on information disclosure (Figure 1). Understandably, the most recently updated policies tend to be the most progressive, particularly where civil society enjoyed some degree of participation in their formulation.⁶⁵

Some existing core disclosure standards:

Key standards included in IFI disclosure policies include, *inter alia*:

- A presumption in favour of disclosure of information, absent a compelling reason not to disclose such information
- Disclosure of relevant institutional and project or investment-related information
- Public disclosure of relevant project information *including DRAFT documents and plans*, before projects are sent for Board consideration
- Publication of summary project information once it is likely that a project will be processed and may proceed to the IFI's Board for consideration (i.e., project information documents, summary of proposed investment etc etc).
- Requirements for inclusion of specific useful information in project summaries on different issues and topics e.g., contact details of project managers, expected total project costs, sources of finance, project objectives, location, planned duration, links to other relevant documents etc etc
- Release of social and environmental impact assessment summaries no less than 60 days prior to Board consideration for Category A projects (high risk) and 30 days for medium-risk projects (Category B)
- Regular updating of public information where decisions or project situations have changed
- Project-level information dissemination to affected communities tailored to local language preferences
- Project-level information tailored to the needs of disadvantaged groups
- Periodic reports that describe progress with project implementation
- Disclosure of normally confidential information where such disclosure would save human life or help prevent serious negative social and environmental impacts

E. Core Labour Standards

Since the World Summit on Social Development held in 1995, it has been globally accepted that core labour standards (CLS) refer to four basic rights and principles established under various ILO and UN Conventions. These are the right to be free from forced or compulsory

⁶⁵ Bank Information Center (2005) *A Comparative Analysis and Introduction to the IFI transparency Resource* February 2005

Updated version: 31 December 2006

labour, the right to be free from discrimination in employment and occupation, the right to freedom of association and collective bargaining, and the effective abolition of child labour.⁶⁶

The European Union is committed to the promotion of core labour standards and these standards have been included in its bilateral agreements with South Africa, Bangladesh and Pakistan and in the Cotonou Agreement with ACP countries (Article 50). The need to protect and promote core labour standards is affirmed in the 2002 European Parliament Resolution on '*Promoting core Labour Standards and Improving Social governance in the context of globalisation*', and in 2003 European Council conclusions on the same issue. The need to uphold core labour standards is incorporated in the *OECD Guidelines on Multinational Enterprises* and is also accepted by the Business Social Compliance Initiative (BSCI). The so-called Equator Principles Banks have also committed to abiding to core labour standards in all their project investments over \$10 million through their adoption of the IFC's new Performance Standards in July 2006 (see below).

During successive replenishments of the IDA, donor governments have urged the World Bank to mainstream core labour standards into its policies, operations and dialogue with Borrower governments. Sector reviews have likewise called on the Bank to adopt core labour standards. The EIR has recommended that the World Bank Group:

In conformity with WBG statements endorsing the ILO Core Labour Standards as being consistent with and supportive of the institution's poverty alleviation mandate, IBRD and IDA should adopt the CLS as contractual requirements for project financing by including them as mandatory elements of the WBG's Standard Bidding Document... The WBG should also work with governments, trade unions, industry groups, and other organizations, as well as the ILO, to promote the implementation and enforcement of the standards.⁶⁷

Existing IFI Standards:

In 2001, the Asian Development Bank affirmed in its Social Protection Strategy that "Core labour standards are an integral part of the ADB's development mission".⁶⁸ In 2006, the ADB has published jointly with the ILO a "Core Labour Standards Handbook".⁶⁹ In 2006, the World Bank has developed a *Core Labour Standards Toolkit for Staff Preparing Country Assistance Strategies*⁷⁰ in accordance with recommendations from donor governments in IDA replenishments. However, this study has not found evidence that the IBRD/IDA have acted on the EIR's full recommendations to adopt project-level standards. Leadership in the World Bank Group in this regard has been shown by the IFC, the World Bank's private sector arm, through adoption of its Performance Standard 2 on *Labour and*

⁶⁶ Key international instruments protecting core labour standards include: ILO Convention 29 on Forced Labor; ILO Convention 105 on the Abolition of Forced Labor; ILO Convention 138 on Minimum Age (of Employment); ILO Convention 111 on Discrimination (Employment and Occupation); ILO Convention 87 on Freedom of Association and Protection of the Right to Organize; ILO Convention 98 on the Right to Organize and Collective Bargaining and United Nations Convention on the Rights of the Child, among others.

⁶⁷ Salim, E (2003) *op. cit.* at page 59.

⁶⁸ *Core Labour Standards and the ADB* <http://www.adb.org/Documents/Brochures/InBriefs/Core-Labor-Standards.pdf>

⁶⁹ It is important to note that while these guidelines demonstrate an institutional commitment on the part of the ADB to address core labour standards in its business, they do not constitute binding standards on staff. It is therefore questionable to what extent the handbook will make the ADB more accountable to workers affected by its loan operations. Civil society groups campaigning for greater ADB accountability maintain that the Bank must adopt binding standards and incorporate these in its due diligence for project screening and approval. (Email briefing to NGO Forum on the ADB, 15th December, 2006)

⁷⁰ <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALPROTECTION/EXTLM/0..contentMDK:20224298~menuPK:584854~pagePK:148956~piPK:216618~theSitePK:390615.00.html>

Updated version: 31 December 2006

Working Conditions. This standard requires its clients to uphold all four core labour standards.⁷¹

One weakness of the IFC standards is that the private sector client is required to address core labour standards, but the requirements do not safeguard against the abuse of child or forced labour in indirect supply-chains relations used by the company.⁷² In any EIB policy on labour standards, safeguards must be included to prevent such problems in EIB's Global Loans to big private financial institutions (which then split these loans to minor entities and companies).

F. Gender equality

The international development community has long recognised that development planning and development projects must take specific and proactive measures to attend to women's rights and interests, given their experience of marginalisation and discrimination in the development process. Women's rights are protected under human rights instruments, including the *Convention on the Elimination of Discrimination Against Women* (CEDAW), which also establishes standards for the protection of the rights of indigenous women and women belonging to ethnic and minority groups.⁷³

Alongside the ratification of international treaties, governments have pledged to promote gender equality under Millennium Development Goal 3, which has a series of concrete targets on gender and development.

Most multilateral and bilateral agencies have developed policies on gender equality and methodologies for gender analysis.⁷⁴ Specific policies have been developed to fulfil legal requirements and commitments to ensure non-discrimination against women. The adoption of such policies is also based on the recognition that gender inequality can impede effective development and hinder poverty reduction efforts. The OECD DAC Guidelines recommend that:

Increases in the capacity of poor women and men to shape the processes and decisions that affect their lives will require attention to the specific constraints faced by women in exercising their rights and claiming resources.⁷⁵

The 1998 European Council Regulation on *Integrating Gender Issues in Development Cooperation* aims to "support the mainstreaming of gender analysis in all area of development cooperation policies and to support and facilitate the inclusions of actions addressing major gender disparities". It also aims to ensure that European aid "satisfy the

⁷¹ The public sector lending arms of the Bank are lagging behind the IFC as no mandatory policy on core labour standards has so far been adopted by the IBRD and IDA. World Bank policy makers have recently been strongly criticised by civil society for playing down the importance of core labour standards in economic development. See Bretton Woods Project (2006) "Bank, Fund sidestep labour standards: Promote violation of workers' rights" *Bretton Woods Update No.53* (November 2006).

⁷² See Halifax Initiative (2006) *One Step Forward and One Step Back: an analysis of the IFC's Sustainability Policy, Performance Standards and Disclosure Policy* Halifax Initiative Coalition, Ottawa at page 11.

⁷³ Kambel, E-R (2004) *A Guide to Indigenous Women's Rights under the International Convention on the Elimination of All Forms of Discrimination Against Women* FPP, Moreton-in-Marsh

⁷⁴ See, for example, UNDP (2005) *Resource Guide for Gender Theme Groups* UNIFEM, New York. See also, DFID (2000) *Poverty Elimination and the Empowerment of Women* DFID, London; SIDA (2005) *Promoting Gender Equality in Development Cooperation* http://www.sida.se/shared/jsp/download.jsp?f=SIDA4888en_Gender_Policy.pdf&a=3584

⁷⁵ DAC (1998) *Guidelines on Gender equality and Women's Empowerment in Development Cooperation* at page 31

Updated version: 31 December 2006

OECD/DAC criteria for gender integration and positive action in development".⁷⁶ The 2004 Regulation on the same matter aims to:

Support gender mainstreaming in all areas of development cooperation, combined with specific measures in favour of women of all ages, with the goal of promoting gender equality as an important contribution to poverty reduction⁷⁷

Existing IFI policies:

Several IFIs, including the World Bank and the Inter-American Development Bank (IADB) have specific gender policies or policies on women in development. These policies include requirements or recommendations for, *inter alia*:

- Gender analysis or at least special consideration of gender issues in the preparation of countries and sectoral studies carried out by the IFI
- Use of gender assessment to inform a dialogue with borrower countries and integration of its findings into Country Assistance Strategies and sector plans
- Early identification of gender-related roles, interests and constraints and measures to ensure project design and preparation facilitate women's access to project activities, benefits and facilities
- Gathering of disaggregated baseline data, including short-term missions to assess opportunities for women's participation
- Consideration of women's needs as identified through local consultations, surveys and studies
- Measures to ensure the active participation of women in project design and implementation
- Assessment of potential project impacts on women and strategies to avoid negative impacts and enhance positive ones
- Incorporation of gender issues and safeguards in project documents
- Oversight throughout the project cycle to ensure compliance with the policy
- Periodic reports on the involvement of women, where they are identified as key beneficiaries.
- Ex-post evaluation on project closure to assess the level of women's participation and identify which factors promoted or inhibited such participation
- Regular monitoring of gender policy implementation

In 2002, the World Bank adopted an action plan and strategy for *Integrating Gender into the World Bank's Work* and in 2006 the Bank's board approved a *Gender Action Plan* to promote implementation.⁷⁸

G. Resettlement

It is well documented that the physical relocation of families and communities can result in massive social upheaval, the destruction of social support networks, irreparable damage to livelihood and land security, and cultural loss causing severe impoverishment and vulnerability among displaced persons. Economic displacement that does not involve actual physical relocation of dwellings, but involves the appropriation and loss of people's livelihood and cultural assets can likewise have devastating social and cultural impacts on affected

⁷⁶ EC Regulation No. 2836/98 at para. 2(1)(c).

⁷⁷ EC Regulation No.806/2004 at Article 3(a)

⁷⁸ World Bank (2006) *Gender Action Plan (2007-2010): gender equality as smart economics*
<http://siteresources.worldbank.org/INTGENDER/Resources/GAPOct5.pdf>

Updated version: 31 December 2006

communities. In the case of indigenous peoples, physical or economic displacement can threaten their very cultural survival as distinct peoples.⁷⁹

Studies of the human rights impacts of resettlement conducted by the United Nations have found that forced resettlement can cause multiple violations of fundamental civil, political, economic, social and cultural rights among individuals and groups affected by displacement.⁸⁰

UN studies affirm that in development or other activities involving resettlement, the principle of consent has obtained the status of a binding general principle of international law.⁸¹ This principle is especially important in the case of indigenous peoples. In this regard, the UN Special Rapporteur on resettlement concluded that “an express prohibition of arbitrary displacement is contained in humanitarian law and in the law relating to indigenous peoples”⁸² and, “[e]fforts should be made to obtain the free and informed consent of those to be displaced. Where these guarantees are absent, such measures would be arbitrary and therefore unlawful. Special protection should be afforded to indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.”⁸³

Both the World Commission on Dams (WCD) and the Extractive Industries Review (EIR) have presented recommended best practice standards on resettlement. With regard to prior consent, the EIR recommends that:

The World Bank Group should engage in consent processes leading to free, prior and informed consent before resettlement takes place, thereby complying with indigenous peoples’ rights and receiving a social license to operate.⁸⁴

Alongside the requirement for to obtain prior consent from indigenous peoples and a social license from local communities prior to relocation, the WCD guidelines stress that development agencies and funders have a duty to ensure that displaced persons and displaced groups are *better off* after relocation:

Joint negotiations with adversely affected people result in mutually agreed and legally enforceable mitigation and development provisions. These provisions recognise entitlements that *improve* livelihoods and quality of life, and affected people are beneficiaries of the project. Successful mitigation, resettlement and development are fundamental commitments and responsibilities of the State and the developer. They bear the onus to satisfy all affected people that

⁷⁹ On the impacts of forced displacement on indigenous peoples caused by large dam development projects, for example, see Colchester, M (1999) “Introduction” pp.4-55 *in* *Dams, Indigenous Peoples and Ethnic Minorities*, International Work Group on Indigenous Affairs and Forest Peoples Programme, Copenhagen and Moreton-in-Marsh

⁸⁰ van Boven, T (1993) *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*. Final report submitted by Mr. Theo van Boven Special Rapporteur. UN Doc. E/CN.4/Sub.2/1993/8, at 10. See, also, *Forced evictions: Analytical report compiled by the Secretary-General*. UN Doc. E/CN.4/1994/20.

⁸¹ *Progress report prepared by the Special Rapporteur on the human rights population transfer, including the implantation of settlers*. UN Doc. E/CN.4/Sub.2/1994/18, at para. 25.

⁸² *Internally displaced persons, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39* UN Doc. E/CN.4/1998/53

⁸³ *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39. Compilation and Analysis of Legal Norms, Part II: Legal Aspects Relating to the Protection against Arbitrary Displacement*. UN Doc. E/CN.4/1998/53/Add.1, at Sec. IV, para. 4.

⁸⁴ Salim, E (2003) *op. cit.* at 55.

Updated version: 31 December 2006

moving from their current context and resources will improve their livelihoods (emphasis added).⁸⁵

Existing IFI and development agency standards

All the five IFIs surveyed for this report have specific policies on Involuntary Resettlement.⁸⁶ All these operational policies are based on the recognition by the IFI concerned that forced resettlement may result in severe negative social and economic impacts on affected communities. A World Bank study, for example, found that “[t]he potential for violating individual and group rights under domestic and international law makes compulsory resettlement unlike any other project activity. Carrying out resettlement in a manner that respects the rights of affected persons is not just an issue of compliance with the law, but also constitutes sound development practice.”⁸⁷

Core standards under these IFI policies include requirements for, *inter alia*:

- Measures to identify alternative project options to try to *avoid* physical displacement wherever possible
- Social assessment and/or baseline studies to evaluate the potential social costs of displacement, with special emphasis on social and cultural impacts and attention to “disadvantaged” or “vulnerable” groups, including, indigenous peoples, ethnic minorities, landless people, people below the poverty-line, women-headed households, children, the elderly etc
- Use of *Impoverishment Risk Analysis* where vulnerable groups may be affected
- Selection of the “NO project alternative” where total social and cultural costs are high and cannot be adequately ameliorated or compensated
- Action to minimise the scale and mitigate the negative impacts of resettlement in those cases where relocation cannot be avoided
- Frameworks to treat resettlement as a sustainable development activity
- Census, social survey and baseline studies to identify the number of people potentially affected and their eligibility for compensation and rehabilitation
- Mechanisms to ensure the informed and meaningful participation of affected communities in the planning, decision-making and implementation of resettlement plans, including choice of relocation sites
- Negotiation with affected communities regarding adequate compensation, rehabilitation and provision of development opportunities
- Incorporation of the views of affected communities in the design and implementation of resettlement plans
- A specific project instrument such as a time-tabled resettlement plan with adequate budgets to cover the *total* direct and indirect costs of resettlement, and to ensure that relocated people receive fair and equitable compensation and rehabilitation, including access to land and secure tenure (land titles), basic services, and access to development opportunities
- Land-for-land compensation for those with land-based livelihoods

⁸⁵ World Commission on Dams - WCD (2000) *Dams and Development: a new framework for decision making* Earthscan, London and Sterling at page 240.

⁸⁶ The Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD) has likewise adopted guidelines on “Involuntary Displacement and Resettlement”. These guidelines, however, are now out of date as they do not incorporate prior consent and good faith negotiation.
<http://www.oecd.org/dataoecd/37/27/1887708.pdf>

⁸⁷ World Bank (1994) *Resettlement and Development: The Bankwide Review of Projects Involving Involuntary Resettlement 1986-1993* Environment Department, World Bank, Washington, D.C.

Updated version: 31 December 2006

- Safeguards to ensure adequate protections, compensation and rehabilitation for those without formal legal title to the lands they occupy
- Safeguards and controls to ensure peoples livelihoods are *improved*, or at a minimum restored to pre-displacement levels
- Monitoring of resettlement plan implementation and corrective actions where there are problems in execution
- Provision of locally accessible and culturally appropriate grievance mechanisms for use by displaced persons and groups to raise concerns and seek redress
- Inclusion of borrower obligations to implement agreed resettlement plans in legal agreements between the IFI and the borrower

While most IFIs have yet to formally update policies to adopt the WCD and EIR recommended standards on resettlement, they are increasingly recognising the need to obtain a social license for such high-risk activities. The African Development Bank, for example, requires that project planners "...should work to ensure that "affected communities give their demonstrable public acceptance to the resettlement plan" (3.3.a).⁸⁸

Special protections for indigenous peoples

Most IFIs have adopted higher standards of protection from forced relocation for indigenous peoples, including standards on prior consent or prior good faith negotiated agreement. The World Bank policy on Indigenous Peoples stipulates that: "...the borrower will not carry out relocation without obtaining broad support for it from the affected Indigenous Peoples' communities as part of the free, prior, and informed consultation process" (emphasis added).⁸⁹ Under the IFC's new Performance Standard 5 on *Land Acquisition and Involuntary Resettlement* and its Performance Standards 7 on *Indigenous Peoples*, the IFC will only proceed with resettlement projects (and projects involving economic displacement) affecting indigenous peoples where the client's good faith negotiation with affected communities has resulted in their prior negotiated agreement to relocation.⁹⁰ The Inter-American Development Bank Policy on *Involuntary Resettlement* stipulates:

The Bank will...only support operations that involve the displacement of indigenous communities...if the Bank can ascertain that: customary rights will be fully recognized...; and the people affected have given their informed consent to the resettlement and compensation measures"⁹¹

H. Indigenous Peoples

International law recognises that indigenous peoples have inherent rights that derive from their distinct identities, their unique juridical status, and their collective, close and special attachment to their ancestral lands, territories and resources.

As noted by Osvaldo Kreimer of the Inter-American Commission on Human Rights: "Indigenous peoples, because of their preexistence to contemporary States, and because of

⁸⁸ *Involuntary Resettlement Policy*, African development Bank, November 2004 at paragraph 3.3

⁸⁹ OP 4.10, paragraph 20.

⁹⁰ PS5: 19 and PS7:13 – See

[http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/\\$FILE/IFC+Performance+Standards.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf)

⁹¹ *Involuntary Resettlement Policy – OP-710* http://www.iadb.org/exr/pic/VII/OP_710.cfm

Updated version: 31 December 2006

their cultural and historical continuity, have a special situation, an inherent condition that is juridically a source of rights.”⁹²

These rights are established in several different human rights instruments including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), the American Convention on Human Rights and the Convention on Biological Diversity, among others.⁹³ Indigenous peoples’ rights are consolidated in the UN Declaration on the Rights of Indigenous Peoples that was adopted by the UN Human Rights Council in June 2006 and is now pending adoption by the UN General Assembly. The UN Declaration affirms that indigenous peoples’ have the right to, *inter alia*:

- self-determination and self-development
- free and prior informed consent (FPIC)
- ownership and control over their traditional territories, lands and resources
- cultural integrity
- collective as well as individual rights
- equal protection of the law and non-discrimination
- be free from forcible relocation
- exercise their customary law
- represent themselves through their own institutions
- participate in decisions and activities which may affect them
- a healthy environment
- control and share in the benefits of the use of their traditional knowledge
- restitution of lands and property taken unjustly or without prior consent
- fair compensation for the irrevocable loss of property and other rights⁹⁴

International jurisprudence establishes that “...the property rights of indigenous peoples are not defined exclusively by entitlements within a state’s formal legal regime, but also include that indigenous communal property that arises from and is grounded in indigenous custom and tradition.”⁹⁵

Existing IFI and development agency policies:

All the main public IFIs have specific policies on Indigenous Peoples (IBRDA/IDA, IFC, IADB, ADB), with the exception of the African Development Bank. Specific policies are also applied by the UNDP and the EU adopted a *Council of the European Union Resolution “Indigenous Peoples within the framework of the development co-operation of the Community and the Member States* in November 1998.

⁹² O. Kreimer, The Future Inter-American Declaration on the Rights of Indigenous Peoples: A Challenge for the Americas, at 69-70. In: C. Price Cohen (ed.), *Human Rights of Indigenous Peoples*. Transnational Publishers: Ardeley, New York. (1998).

⁹³ See, for example, Thornberry, P (2002) *Indigenous Peoples and Human Rights*. Manchester University Press, Manchester. See also FPP (2005) *Indigenous Peoples and United Nations Human Rights Treaty Bodies: A Compilation of Treaty Body Jurisprudence, 1993 - 2004*

http://www.forestpeoples.org/documents/law_hr/un_jurisprudence_comp_sept05_eng.pdf

⁹⁴ <http://www.iwgia.org/graphics/Synkron-Library/Documents/InternationalProcesses/HR%20Council/HRCouncil1streport2006.pdf>

⁹⁵ *Inter-Am. Court on Human Rights, Series C, No. 79* (2001), at para. 149, 151; Inter-American Commission on Human Rights, *Report N° 75/02*, Case N° 11.140, Mary and Carrie Dann (United States), Dec. 27, 2002. OEA/Ser.L/V/II.116, Doc. 46, at para. 131; and *Report No. 40/04*, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), 12 October 2004, at para. 117

Updated version: 31 December 2006

Since March 2006, the European Commission requires that all its Country Strategy Programmes address, where appropriate, “the rights of indigenous peoples” in line with the European Consensus on Development.⁹⁶ All these policies aim to safeguard the human rights of indigenous peoples and several policies take their source of standards from international human rights instruments (e.g., UNDP). The mandatory Inter-American Bank Operational Policy on Indigenous Peoples recognises that indigenous peoples’ rights are defined by national and international laws, including international conventions ratified by the borrower country in question and the relevant jurisprudence of the Inter-American Court of Human Rights.⁹⁷

Some core standards in existing mandatory IFI policies on indigenous peoples include, *inter alia*, requirements for:

- Pre-project screening, social assessment and baseline studies to determine if indigenous peoples may be affected in the project area of influence and if their traditional or customary lands, territories, resources may be affected by the project
- Recognition and protection of indigenous peoples’ customary rights to lands and resources
- Action Plans to safeguard indigenous peoples’ land rights
- A strict prohibition on forced relocation of indigenous peoples
- Informed participation of affected communities of indigenous peoples in project preparation, design, implementation and monitoring
- Measures to *avoid* or at least minimise negative impacts
- Specific project instruments such as Indigenous Peoples’ Plans (IPPs) or Indigenous Peoples’ Components with adequate time-scales and budgets and IFI and borrower expertise to implement effective mitigation measures, ensure equitable and culturally appropriate benefit sharing, and provide development opportunities to affected communities

IFIs are increasingly indirectly adopting the principle of prior consent or “social license” in their policies on indigenous peoples, though unlike UN agencies such as the UNDP and the IADB (in its Resettlement Policy), they have not incorporated the accepted international standard of FPIC.

The World Bank policy on Indigenous Peoples establishes that “The Bank provides project financing *only* where free, prior, and informed consultation results in broad community support to the project by the affected Indigenous Peoples” [para. 1. OP 4.10] and also stipulates that “The Bank does not proceed further with project processing if it is unable to ascertain that such support exists” [OP, para 11].

In the case of IFC projects with potential adverse impacts on indigenous peoples, the private sector client is required to: “enter into good faith negotiation with the affected communities of IPs, and document their informed participation and the successful outcome of the negotiation” (PS7:13). This process of good faith negotiation includes “mutually acceptable procedures for the negotiation” (PS7 – GN7: G25).

Indigenous peoples’ have strongly criticised the World Bank for failing to adopt the FPIC standard in accordance with indigenous peoples’ rights in international law (see B. above).

⁹⁶ European Commission (2006) *Communication from the Commission to the Council and the European Parliament – Increasing the Impact of EU Aid: a common framework for drafting country strategy papers and joint multiannual programming*, Brussels, 2 March 2006 COM (2006) 88 final at page 7.

⁹⁷ OP-765: Section IV.B.4.3.c.

Updated version: 31 December 2006

More generally, the United Nations Permanent Forum on Indigenous Issues (UNPFII) has called on all agencies to adopt a rights-based approach to development and respect indigenous peoples' human rights in their policies, projects and programmes:

The Permanent Forum reaffirms and reiterates that self-determination, free, prior and informed consent and accountability form the basis of, and prerequisite for, any relationship that can be called a true partnership for development, and urges all States, indigenous peoples, United Nations bodies, international development agencies, corporations and the private sector, as well as civil society, to uphold these vital principles (Report of Fifth Session, May 2006)

III. Existing EIB Social Standards

The European Investment Bank (EIB) at present has several public policies to deal with social and transparency issues in its investments and loan operations.⁹⁸ These include:

- *The Social Assessment of Projects outside the European Union: the approach of the EIB*, 02 October, 2006⁹⁹
- *Development Impact Assessment Framework for Investment Facility Projects*, April 2005
- *Public Disclosure Policy: principles, rules, and procedures*, 28 March 2006
- *Guidelines on Fighting Corruption and Fraud*
- *Statement on Corporate Social Responsibility*

This survey finds that the EIB lacks specific operational policies on key social development and safeguard issues such as human rights, public participation, gender equality, indigenous peoples, core labour standards and resettlement (Figure 1).

The EIB publicly affirms that all its projects (in the EU):

Promote EU environmental policy; Comply with EU environmental law in the EU, Acceding and Candidate Countries. Comply with EU environmental law, subject to local conditions, in all other countries of operations. Fulfill the requirements of the EU Directive on Environmental Impact Assessment, where applicable. Apply 'best available techniques', as appropriate. Apply good environmental management practices, including disclosure of environmental information.

It also states that: "as a financial institution functioning in a modern economy, the Bank is further aware of the possible major impacts of its investment decisions."¹⁰⁰

In relation to social assessment for EIB projects outside the EU, the Bank states that:

The social assessment of projects considered for EIB financing routinely includes an analysis of any significant impacts on income distribution and the likely effect on poverty alleviation. It comprises the summary evaluation of

⁹⁸ The EIB does have several Codes of Conduct, including codes for its Board members, members of its Management and Audit Committees, EIB staff and for administration and relations with the public.

⁹⁹ This 2006 policy supercedes the previous policy titled: *The Social Assessment of Projects in Developing Countries: the approach of the EIB*, 28 July, 2004

¹⁰⁰ <http://www.eib.org/publications/publication.asp?publ=260>

Updated version: 31 December 2006

labour standards, occupational health and safety, resettlement issues, impacts on indigenous people and cultural heritage. In the specific case of large complex projects cofinanced with other IFIs as co-investors, responsibilities for appropriate social assessment are often shared with these institutions to the extent that they are committed to the application of international good practice on social issues.¹⁰¹

The EIB Statement on Corporate Responsibility states:

The EIB Group aims to integrate environmental and social concerns into its business activities. This includes giving recognition to the rights, interests and responsibilities of shareholders and other stakeholders in order to achieve sustainable outcomes.¹⁰²

Under the heading “social assessment in developing countries”, the EIB explains in its CSR report for 2005 that:

As far as the Bank is concerned, the coverage of social issues is grounded in its external mandates and the social policies of inclusion and non-discrimination adopted by the EU as well as its evolving development policy. The EIB has taken social issues into account for many years, as part of its overall environmental assessment of projects. As a policy-driven bank, the EIB strives to ensure that agreed EU standards with respect to human rights, employment, occupational health and safety (including major communicable diseases) and integration and non-discrimination are adhered to, and uses EU law as a benchmark against which to judge the acceptability of national legislation. The case for any significant variations from EU principles and standards is explored in terms of incremental costs and benefits¹⁰³

The EIB’s 2006 policy on Information Disclosure favourably departs from its other policies in making more specific commitments to the public. For example, the policy asserts:

The EIB will also respect the tenor, aims, and provisions of the “European Parliament and Council Regulation on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in decision-making and Access to Justice in Environmental Matters to EC institutions and bodies” (the “Aarhus Regulation”). (paragraph 20)

The policy rightly adopts the critical standard of a presumption in favour of information disclosure:

The EIB’s disclosure policy is founded on a presumption of disclosure of information, in line with EU legislation, those of the EU Member States, and internationally accepted principles. All information held by the Bank is subject to disclosure upon request, unless there is a compelling reason for non-disclosure (paragraph 22).¹⁰⁴

¹⁰¹ EIB (2005) *at* page 72.

¹⁰² EIB (2005) *EIB Group Statement on Corporate Social Responsibility at* para. 1, page 3.

¹⁰³ EIB (2005) *at* page 72

¹⁰⁴ On the downside, the EIB policy contains multiple derogations which mitigate against disclosure. To date, civil society efforts to obtain project-related information on EIB investments and programmes have not been very successful as EIB staff have been quick to invoke “confidentiality” clauses in denials of access to information. See, for example

Updated version: 31 December 2006

Crucially, this policy specifies at least some EIB standards tied to its project cycle.¹⁰⁵ For example, the policy specifies that:

The Bank posts on its website advance information on projects it considers for financing on a Project List with associated Project Summaries. Projects are introduced onto the list before consideration by the EIB's Board of Directors, unless compelling reasons would justify a later release (see also the section on "Constraints", § 25-37) ... The "trigger point" for posting a Project Summary is when the Bank requests the opinions of the Member State(s) concerned and the European Commission, as required under Article 21 of the EIB Statute. (paragraphs 70 and 71)

Existing EIB compliance mechanisms:

In 2005, the EIB established a Compliance Office to:

...identify, assess, advise on, monitor and report on the compliance risk of the EIB Group, that is, the risk of legal or regulatory sanctions, financial loss, or loss to reputation that a member of the EIB Group may suffer as a result of its failure to comply with all applicable laws, regulations, codes of conduct and standards of good practice¹⁰⁶

This statement suggests that the existing Office of the Group Chief Compliance Officer (OCCO) is an internal body primarily geared towards minimising reputational and financial risk to the Bank and its clients.

Marekov, N (2006) "Bulgaria" pp.13-18 in Musuva, C (Ed)(2006) *Behind Closed Doors: secrecy in international financial institutions* Global Transparency Initiative, Pretoria. See also Musuva, C (2006) "South Africa" pp.28-33 in Musuva C (ed)(2006) *op.cit*

¹⁰⁵ See, EIB (2005) *Corporate Responsibility Report 2005* at page 43.

¹⁰⁶ EIB (2005) *CSR Report 2005* at page 24.

Updated version: 31 December 2006

Figure 1: A matrix comparing key IFI social policies with existing EIB policies

Social policy	WBG: IBRD/ID A	WBG: IFC	IADB	AfDB	ADB*	EIB	Total s
Binding operational standards	✓	✓	✓	✓	✓	? except Info Disc	5
Social Assessment	* No OP	✓	* No OP	✓	✓	✓	3
Participation	✓ cross-cutting	✓ cross-cutting	✓ cross-cutting	✓ cross-cutting	✓ cross-cutting	? Not clear	5
Information Disclosure	✓	✓	✓	✓	✓	✓	6
Resettlement	✓	✓	✓	✓	✓	* x	5
Gender/women in development	✓	* x	✓	* x	* x	* x	2
Indigenous Peoples	✓	✓	✓	* x	✓	* x	4
Core Labour Standards	* x	✓	* x	* x	✓	* x	2
Human Rights	* x	* x	* x	* x	* x	* x	0
Independent Appeals mechanism(s)	✓	✓	✓	✓	✓	* x	5
Totals	7	8	6	6	8*	2	

* Some ADB safeguard policies such as its Resettlement and Indigenous Peoples policies have been strongly criticised by civil society for being out of step with international standards. ADB safeguard policies are currently undergoing a process of revision.

The EIB has also established its own Inspectorate General (IG) comprised of its Evaluation Department (EV) and Internal Audit Department (IA) which is intended to function as the EIB quality control mechanism for reviewing project preparation, design and implementation. Project screening and preparation is conducted by the EIB's "Projects Directorate".

This survey has not been able to pinpoint the range and scope of objective criteria used by the "Projects Directorate" and IA to assess the quality of EIB projects, and to what extent audit procedures addresses social development issues in EIB loan operations.

Updated version: 31 December 2006

The EIB's Inspectorate General is reportedly also intended to act as "an independent recourse mechanism for investigating complaints that the European Ombudsman considers to be outside his remit".¹⁰⁷ Nonetheless, this Office does not constitute a stand alone appeal mechanism open to affected communities. The need for such a mechanism is currently the subject of EIB consultations with civil society organisations and forms a major demand in NGO calls for EIB reform under discussion at this conference.¹⁰⁸

Few operational safeguards:

While the EIB makes welcome public commitments to recognise rights (in its CSR Statement, for example) and to comply with international standards and international best practice in its development lending, including benchmarks derived from relevant European law and EU regulations, scrutiny of its existing policies shows that they are largely descriptive. As noted above, the EIB lacks specific policies on key social issues like human rights, gender, resettlement and indigenous peoples (Figure 1). With the partial exception of the EIB's new policy on Information Disclosure, which does contain some measurable and objective standards, this study finds that existing EIB policies contain very few objective procedural or substantive benchmarks for the screening, approval and execution of EIB projects. The policy statement on Social Assessment for example, cannot be considered an operational safeguard policy: it is primarily a public statement of principles and general EIB commitments on social assessment. For example, on the issue of core labour standards, the social assessment policy makes the general statements that:

The EIB assesses core labour issues (related to abolition of forced labour, elimination of harmful child labour, freedom of association and the right to organise and bargain collectively and equality of opportunity and treatment) with reference to the Conventions of the International Labour Office (ILO) and the safeguard policies of the other major IFIs.

These public principles and commitments are important and commendable. However, the EIB policy in question does not clarify at what stage in the project cycle social assessment must be carried out; nor does it specify in what manner potential impacts on, and compliance with, core labour standards must be evaluated; nor to what extent each stage of the assessment must identify rights holders and evaluate impacts, nor what minimum requirements EIB staff and clients must be fulfilled before a social assessment is considered adequate by the Bank.

The EIB's Development Impact Policy (2005) provides a general set of thematic indicators to help EIB staff during project appraisal to assess the potential development impact of EIB loan operations financed through its Investment Facility under the Cotonou Agreement.¹⁰⁹ The social and governance performance indicators under this policy include, *inter alia*: numbers of affected persons anticipated, impacts of resettlement, poverty levels, impact on the poorest, labour standard quality, impact on women and disadvantaged/vulnerable groups, impact on social facilities and legal frameworks, financial transparency and degree of consultation with affected communities.¹¹⁰

The policy does not specify requirements to avoid or minimise negative impacts and only requires staff to categorise social and environmental performance under four broad categories: high, medium, moderate and low. The policy does note, however, that where

¹⁰⁷ EIB (2006) *Corporate Operational Plan 2006-2008*, EIB January 2006 at pages 32 and 33

¹⁰⁸ Magda Stoczkiewicz, pers. comm. November 2006

¹⁰⁹ <http://www.eib.org/publications/publication.asp?publ=210>

¹¹⁰ EIB (2005) *CSR Report 2005* at page 73.

Updated version: 31 December 2006

social performance is expected to be “low”, this “may lead to rejection of a project or its reconsideration under a concrete number of mitigation measures.”¹¹¹

Notwithstanding this important principle, the objective standards by which a project may or may not be approved, or how each general impact is classified (as “high” or “low”, for example) are not specified in the policy. Nor does the policy require specific actions by EIB staff and borrowers to avoid or mitigate adverse or deficient social impacts. In this regard, the policy is not a social safeguard policy, but rather an aid to project preparation. Like the other EIB policies it suffers from vagueness and an overly discursive and descriptive style that lacks objective substantive and procedural standards for project processing and approval.

Calls on EIB to develop and adopt specific mandatory standards:

Civil society organisations and NGOs are calling on the EIB to adopt, as a minimum, policies similar to those of other IFIs with explicit minimum standards that codify international requirements and best practice for EIB investments and the EIB project cycle. They point to the negative impacts of EIB-financed projects in developing countries and maintain that more objective social safeguard standards would improve EIB performance and strengthen its public accountability.¹¹²

Governments are likewise calling on the EIB to reform. The European Union has recommends in the *EU Sustainable Development Strategy* that:

Investments through the EIB...should support sustainable development objectives. The EIB should assess its lending against the contribution to achieving the Millennium Development Goals and sustainable development.¹¹³

The European Parliament has called on the EIB to take further measures to increase local participation in and local *acceptance* of its projects in the pre-appraisal stage of credit authorisation.¹¹⁴ The European Special Rapporteur on development cooperation has also recommended that the EIB:

- Further develop its guidelines on lending to the private sector, which should be founded for respect for human rights, maintenance of environmental and social standards in line with existing international standards, compliance with ILO standards and, where appropriate compliance with OECD guidelines for multinational enterprises
- Formulate safeguards for EIB lending consistent with standards developed by the World Commission on Dams (WCD) and the World Bank’s Extractive Industry Review (EIR)¹¹⁵
- Establish an independent complaints mechanism to which complaints may be addressed regarding any project approval criteria, without going via the European

¹¹¹ EIB (2005) *Development Impact Assessment Framework for Investment Facility Projects* at page 8

¹¹² Colajacomo, J (2005) *The development impact of European Investment Bank (EIB) lending operations in the Cotonou and ALA framework* External study, European Parliament, Directorate General External Policies, Policy Department (Project EP/ExPol/B/2004/09/06) at pages 26-27; Colajacomo, J (2006) *European Investment Bank in the South: in whose interest?* CEE Bankwatch, FoE International, Campagna per la riforma della Banca Mondiale (CRBM)

¹¹³ EU (2006) *Review of the EU Sustainable Development Strategy – renewed strategy* Brussels, 9 June 2006, Council of the European Union, 10117/06 at page 21

¹¹⁴ Zimmer, G (2005) *Report on the impact of the lending activities of the European Community in developing countries* European Parliament Committee on Development (2004/2213(INI)), A6-0183/2005. Session Document RR\353350EN.doc at paragraph 8, page 5

¹¹⁵ Ibid. at paras. 22 and 24

Updated version: 31 December 2006

- Ombudsman, thereby making it open to citizens affected by EIB projects in developing countries¹¹⁶
- Meet transparency standards established by the International Finance Corporation¹¹⁷

IV. Conclusions and recommendations

This survey of social standards among several key global and regional IFIs finds that these institutions are increasingly adopting specific and mandatory operational policies on social development and safeguard issues, including social assessment, public participation, gender equality, core labour standards, resettlement, indigenous peoples and cultural heritage, among others. In most cases, IFI social development policies are based on objective and obligatory requirements on IFI staff and on their borrowers and clients. Existing IFI social policies also set clear benchmarks that determine whether or not a project may be submitted to the Board for consideration and possible approval. More recently updated IFI policies, like those of the IFC, also require the establishment of local grievance mechanisms at the project level to complement centralised IFI complaints and appeals offices.

Civil society organisations and rights holders maintain that in order to maximise the effectiveness of IFI operational policies, it is essential that these public policies are updated on a regular basis to ensure they are consistent with international law and best practice on sustainable development.

It has been shown that the IFIs surveyed still lack specific policies on vital issues such as human rights and that existing policies like the World Bank's Involuntary Resettlement Policy do not meet best practice standards like those set by the World Commission on Dams (WCD) and Extractive Industries Review (EIR).¹¹⁸

Numerous independent and official studies also show that while IFIs may adopt social safeguards, all too often these are still not implemented on the ground or are applied with a superficial checklist approach, where paper trails lay a path of documented "due diligence" by IFI staff in order to neutralise any complaints of non-compliance, but practical implementation is seriously flawed and communities and executing agencies remain largely unaware of their rights, entitlements and responsibilities under the policies.¹¹⁹

There is a pressing need for all IFIs to adopt more stringent oversight mechanisms to ensure their policies are applied, including provisions for independent project tracking by affected communities and their representative organisations or their chosen technical advisors.

Increasing the accountability of the EIB:

The EIB is set to increase its lending to non-EU countries and to become one of the largest IFI lenders to projects in developing and middle income countries,¹²⁰ yet this review has

¹¹⁶ Ibid. at para. 28

¹¹⁷ Ibid. at para. 30

¹¹⁸ See, for example, Skudder, T (2005) What's Wrong with the World Bank's Approach to Resettlement? Lots, Says

Longtime Resettlement Expert and Former WCD Commissioner

<http://www.irm.org/programs/finance/pdf/050621scudder1.pdf>

¹¹⁹ Forest Peoples Programme and Samata (2005) *Andhra Pradesh Community Forest Management Project – a preliminary independent evaluation* FPP report, Moreton-in-Marsh. See also, Griffiths, T (2005) *Indigenous peoples and the World Bank: experiences with participation* FPP, Moreton-in-Marsh

¹²⁰ The EU has recently authorised the EIB to lend €25.8bn over the next seven years to countries outside the EU. An additional €2bn may be authorised after 2010. See Parker, G (2006) "Wider lending role for EIB supported" *Financial Times*, 21 November, 2006

Updated version: 31 December 2006

found that the EIB still lacks adequate operational standards to ensure its projects are sustainable and genuinely accountable to affected communities. The survey conducted for this study finds that the EIB has made welcome progress in recent years in adopting public statements on social assessment and Corporate Social Responsibility and Information Disclosure. However, with the exception of its transparency policy, scrutiny of these instruments reveals that they are largely vague and principle-based policies that contain few substantive standards that could be used by affected citizens and communities to hold the EIB to account. The EIB Operational Plan for 2006-08 commits the institution to greater accountability and transparency and its 2005 CSR statement affirms that the EIB Group will consistently adapt its policies, standards and procedures to meet best practice.¹²¹ In upholding these public commitments the EIB has an opportunity to position itself at the forefront of IFI best practice on social standards and public accountability.

It is recommended that the EIB strengthen its social policy framework by formulating binding operational social standards through a participatory revision process with civil society that ensures its upgraded policies build upon and address the gaps and weaknesses found in existing IFI policies. In addition to bolstering existing policies, additional specific binding social safeguard policies should be adopted on human rights, core labour standards, Indigenous peoples, resettlement, gender and cultural heritage. This new policy framework must then be implemented through new oversight mechanisms and new procedures for appeals and complaints by affected communities.

Specifically, the EIB should:

1. Establish a specific mandatory Bank policy on human rights that includes minimum standards for Bank investments and provisions for project screening, oversight and reports on human rights impacts in EIB projects and its portfolio by region and sector.
2. Ensure that in updating existing and formulating new operational policies, the principle of a social license to operate is incorporated in its mandatory standards, and the FPIC standard is applied to indigenous peoples in accordance with the recommendations of the WCD, EIR and the UN Permanent Forum on Indigenous Issues (UNPFII). EIB standards should provide for independent mechanisms to verify FPIC for indigenous peoples and to assess the extent of public acceptance among communities affected by its projects.
3. Update its public Social Assessment statement to establish a binding operational policy, using safeguard standards and methodologies based on Human Rights Impact Assessment, poverty risk analyses and Comprehensive Options Assessment.
4. Adopt more explicit and detailed safeguards and mandatory standards to ensure its public and private sector loans uphold core labour standards in line with EIR recommendations
5. Elaborate and adopt a specific mandatory policy on *Resettlement* covering both physical and economic displacement and consistent with standards under international law and best-practices principles established by the WCD and EIR
6. Develop and adopt a mandatory policy on Indigenous Peoples in full conformity with international law, including standards established in the UN Declaration on the Rights of Indigenous Peoples. This policy should be formulated in consultation with indigenous peoples and their representative organisations in the regions where the EIB operates and indigenous peoples may be affected by its operations and investments.

¹²¹ EIB (2005) *Statement on Corporate Social Responsibility* at page 3.

Updated version: 31 December 2006

7. Formulate and adopt a mandatory operational policy on gender and development
8. Formulate and adopt a binding operational policy on Cultural Heritage that is fully consistent with international standards, including those established under the Convention on Biological Diversity
9. Develop project-level performance-based development impact indicators against which projects can be evaluated
10. Ensure its operational standards are consistent with international standards and best practice, including those of the World Commission on Dams (WCD) and Extractive Industries Review (EIR). As a very minimum, EIB should be at least equivalent to the World Bank's IFC standards.
11. Establish a transparent and inclusive participation mechanism to involve civil society organisations, rights holders and other interested parties in the formulation of the new EIB social standards.

Updated version: 31 December 2006

Annex I: Documents consulted:

A. European Union, European Commission and European Parliament:

European Commission (2006) *Communication from the Commission to the Council and the European Parliament – Increasing the Impact of EU Aid: a common framework for drafting country strategy papers and joint multiannual programming*, COM (2006) 88 final

European Commission (2006) *Communication from the Commission - Halting the Loss of Biodiversity by 2010 – and beyond: sustaining ecosystem services for human well-being* Brussels, 22 May 2006 COM (2006)216 final

European Commission (2001) *Communication from the Commission to the Council and the European Parliament on the European Union's role in promoting human rights and democratisation in Third Countries* Brussels, 8 May 2001 COM(2001) 252 final
http://ec.europa.eu/comm/external_relations/human_rights/doc/com01_252_en.pdf

European Commission (2001) *Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee promoting Core Labour Standards and Improving Social Governance in the Context of Globalisation* COM (2001) 416(01) http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_143/l_14320040430en00400045.pdf

European Commission (2001) *Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment* http://ec.europa.eu/environment/eia/full-legal-text/0142_en.pdf

EC Development Cooperation Policy on Core Labour Standards
http://ec.europa.eu/comm/development/body/theme/human_social/pol_gender3_en.htm

EC Development Cooperation Policy on Gender Equality
http://ec.europa.eu/comm/development/body/theme/human_social/pol_gender2_en.htm

EC Gender Equality Toolkit
http://ec.europa.eu/comm/europeaid/projects/gender/index_en.htm

European Council (1998) *COUNCIL REGULATION (EC) No 2836/98 of 22 December 1998 on integrating of gender issues in development cooperation*
http://europa.eu.int/eur-lex/pri/en/oj/dat/1998/l_354/l_35419981230en00050009.pdf#zoom=100

European Council (1998) *Council of the European Union Resolution of 30 November 1998 - Indigenous Peoples within the framework of the development co-operation of the Community and the Member States* 2141st Council Meeting, Ref: 13461/98 (Presse 421-G), Brussels
http://europa.eu.int/comm/external_relations/human_rights/ip/res98.pdf

European Parliament resolution 'Promoting core Labour Standards and Improving Social governance in the context of globalisation' (COM(2001) 416 - C5-0162/2002 - 2002/2070(COS))

European Union (2000) *Cotonou partnership agreement between the members of the African, Caribbean and Pacific group of states of the one part, and the European Community and its member states*
http://ec.europa.eu/comm/development/body/cotonou/pdf/agr01_en.pdf#zoom=100

Updated version: 31 December 2006

European Union (2003) *Second Northern Dimension Action Plan: 2004-2006*, 18 October 2003

http://ec.europa.eu/comm/external_relations/north_dim/ndap/ap2.pdf

European Union (2005) *'The European Consensus on Development'* Joint Statement by the Council and the representatives of the governments of the member states meeting within the Council, the European Parliament and the Commission

http://ec.europa.eu/comm/development/body/development_policy_statement/index_en.htm

European Union (2005) *Global Partnership for Sustainable Development*

<http://europa.eu/scadplus/leg/en/lvb/l28015.htm>

European Union (2006) *Review of the EU Sustainable Development Strategy – renewed strategy* Brussels, 9 June 2006, Council of the European Union, 10117/06

Promotion of Human Rights and Democratisation in the European Union's External Relations

http://ec.europa.eu/comm/external_relations/human_rights/intro/index.htm

Regulation (EC) N° 806/2004 of the European Parliament and of the Council of 21 April 2004 on "Promoting gender equality in development co-operation"

Zimmer, G (2005) *Report on the impact of the lending activities of the European Community in developing countries* European Parliament Committee on Development (2004/2213(INI)), A6-0183/2005. Session Document RR\353350EN.doc

B. European Investment Bank

The Social Assessment of Projects Outside the EU: the approach of the EIB, 02 October, 2006

http://www.eib.europa.eu/Attachments/strategies/social_assessment_2006_en.pdf

Development Impact Assessment Framework for Investment Facility Projects, April 2005

http://www.eib.org/Attachments/thematic/eib_diaf_en.pdf

Public Disclosure Policy: principles, rules, and procedures, 28 March 2006

http://www.eib.eu.int/Attachments/strategies/public_disclosure_policy_en.pdf

Statement on Corporate Social Responsibility

http://www.eib.org/Attachments/strategies/statement_csr_en.pdf

Corporate Responsibility Report 2005 EIB, Luxembourg

http://www.eib.org/Attachments/general/crr2005_en.pdf

Corporate Operational Plan 2006-2008, EIB January 2006

The Project Cycle at the European Investment Bank (2001)

http://www.eib.eu.int/Attachments/strategies/cycle_en.pdf

EIB project eligibility and appraisal criteria

<http://www.eib.europa.eu/projects/index.asp?designation=appraisal>

Charter for Internal Audit, 24 October 2001

http://www.eib.org/Attachments/general/internal_audit_charter_en.pdf

Updated version: 31 December 2006

C. World Bank Group (IBRD/IDA)

OP 4.01 Environmental Assessment

<http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/toc2/9367A2A9D9DAEED38525672C007D0972?OpenDocument>

OP/BP 4.12 on Involuntary Resettlement

<http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/tocall/CA2D01A4D1BDF58085256B19008197F6?OpenDocument>

OP/BP 4.10 on Indigenous Peoples (July 2005)

<http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/B52929624EB2A3538525672E00775F66/0F7D6F3F04DD70398525672C007D08ED?OpenDocument>

Gender and Development OP 4.20, January 2003

<http://wbln0018.worldbank.org/institutional/manuals/opmanual.nsf/72b094329ae65e838525705c00162b8a/e8f5eda29748a0038525672c007d0735?OpenDocument>

Appendix II - Working Paper Summaries: "Participation and Indigenous Peoples" in World Bank (1996) *The World Bank Participation Sourcebook*

www.worldbank.org/wbi/sourcebook/sba212.htm

World Bank (1996) *The World Bank Participation Sourcebook* ESD, World Bank, Washington DC www.worldbank.org/wbi/sourcebook/sba212.htm

World Bank (2003a) *Social Analysis Sourcebook: incorporating social dimensions into Bank-supported projects* Social Development Department, World Bank, Washington DC

<http://siteresources.worldbank.org/SOCIALANALYSIS/2145781111998982522/20486246/Social+Analysis+Sourcebook+FINAL+2003+Dec.pdf>

World Bank (2003b) *A User's Guide to Poverty and Social Impact Assessment*

Poverty Reduction Group (PRMPR) and Social Development Department (SDV), World Bank, Washington, DC

World Bank (2006) *Gender Action Plan (2007-2010): gender equality as smart economics*

<http://siteresources.worldbank.org/INTGENDER/Resources/GAPOct5.pdf>

World Bank (2004) *Involuntary Resettlement Sourcebook: planning and implementation in development projects* IBRD, World Bank, Washington, DC

International Finance Corporation (IFC)

IFC Policy on Social and Environmental Sustainability (2006)

[http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/\\$FILE/SustainabilityPolicy.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/$FILE/SustainabilityPolicy.pdf)

IFC Performance Standards (2006)

[http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/\\$FILE/IFC+Performance+Standards.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf)

IFC Guidance Notes (2006)

Updated version: 31 December 2006

[http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_GuidanceNote_full/\\$FILE/GuidanceNote_full.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_GuidanceNote_full/$FILE/GuidanceNote_full.pdf)

IFC Environmental and Social Review Procedure (2006)

[http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_ESRP2006/\\$FILE/ESRP2006.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_ESRP2006/$FILE/ESRP2006.pdf)

IFC Exclusion list

<http://www.ifc.org/ifcext/enviro.nsf/Content/IFCExclusionList>

IFC Guide to Human Rights Impact Assessment, Draft June, 2006

Good Practice Note: Addressing the Social Dimensions of Private Sector Projects, December 2003

<http://www.ifc.org/ifcext/enviro.nsf/650f3eec0dfb990fca25692100069854/4fe78adedec59194852570c00072db55>

D. Inter-American Development Bank (IADB)

Environment and Safeguard Compliance Policy – OP-703, 2006

<http://idbdocs.iadb.org/wsdocs/getDocument.aspx?DOCNUM=665902>

Operational Policy on Indigenous Peoples – OP-765, 2006

<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=776078>

Involuntary Resettlement Policy – OP-710, 1997 http://www.iadb.org/exr/pic/VII/OP_710.cfm

Women in Development – OP-761 http://www.iadb.org/exr/pic/VII/OP_761.cfm

Disclosure of Information Policy – OP-102, August 2006

<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=784916>

E. African Development Bank

Involuntary Resettlement Policy, November 2004

http://www.afdb.org/pls/portal/docs/PAGE/ADB_ADMIN_PG/DOCUMENTS/ENVIRONMENTALANDSOCIALASSESSMENTS/INVOLUNTARY%20RESETTLEMENT%20POLICY_0.PDF

African Development Bank Group's Policy on the Environment, February 2004

http://www.afdb.org/pls/portal/docs/PAGE/ADB_ADMIN_PG/DOCUMENTS/ENVIRONMENTALANDSOCIALASSESSMENTS/ENVIRONMENT%20POLICY_0.PDF

Environmental and Social Assessment Procedures for the African Development Bank's Public Sector Operations, June 2001

http://www.afdb.org/pls/portal/docs/PAGE/ADB_ADMIN_PG/DOCUMENTS/ENVIRONMENTALANDSOCIALASSESSMENTS/ESA%20PROCEDURE%2C%20PUBLIC%20SECTOR%20OPERATIONS.PDF

Environmental Review Procedures for Private Sector Operations of the AfDB

http://www.afdb.org/pls/portal/docs/PAGE/ADB_ADMIN_PG/DOCUMENTS/ENVIRONMENTALANDSOCIALASSESSMENTS/02%20EA%20FOR%20PRIVATE%20SECTOR%20OPERATIONS.PDF

F. Asian Development Bank

Updated version: 31 December 2006

Environment Policy of the Asian Development Bank (2002)

http://www.adb.org/Documents/Policies/Environment/environment_policy.pdf

Indigenous Peoples, ADB Policy (1998)

http://www.adb.org/Documents/Policies/Indigenous_Peoples/ADB-1998-Policy-on-IP.pdf

Indigenous Peoples, Operations Manual, Bank Policies (BP), OM Section F3/BP, September 2006 http://www.adb.org/Documents/Manuals/Operations/OMF03_25sep06.pdf

Involuntary Resettlement, ADB Policy (1995)

http://www.adb.org/Documents/Policies/Involuntary_Resettlement/involuntary_resettlement.pdf

Involuntary Resettlement, Operations Manual, Bank Policies (BP) OM Section F2/BP 25

September 2006 http://www.adb.org/Documents/Manuals/Operations/OMF02_25sep06.pdf

ADB Social Protection: our framework - policies and strategies

http://www.adb.org/Documents/Policies/Social_Protection/social-protection.pdf

G. United Nations Development Programme (UNDP)

Indigenous Peoples: a policy of engagement (2001)

<http://regionalcentrebangkok.undp.or.th/practices/governance/ripp/docs/PolicyOfEngagement.pdf>

Resource Guide for Gender Theme Groups, UNDP, UNIFEM, New York

http://www.undp.org/women/docs/ResourceGuideGenderThemeGroups_eng.pdf

H. Organisation for Economic Co-operation and Development

Common Approaches for ECAs

<http://www.oecd.org/dataoecd/26/33/21684464.pdf>

The OECD Guidelines for Multinational Enterprises - Revision 2000 Organisation for

Economic Co-operation and Development <http://www.oecd.org/dataoecd/56/36/1922428.pdf>

I. Development Assistance Committee

DAC (2001) *The DAC Guidelines – Poverty Reduction: international development* OECD, Paris

DAC (1995) *Participatory Development and Good Governance* Development Co-operation Guidelines Series OECD, Paris

DAC (1998) *Guidelines on Gender Equality and Women's Empowerment in Development Co-operation* <http://www.oecd.org/dataoecd/56/46/28313843.pdf>

DAC (2002) *The DAC Guidelines – Integrating the Rio Conventions into Development Co-operation* OECD, Paris <http://www.oecd.org/dataoecd/49/2/1960098.pdf>

Updated version: 31 December 2006

References:

- Bosshard, P (2004) "Response to Sebastian Mallaby" *Foreign Policy*
<http://www.irn.org/programs/finance/index.php?id=sebastianmallaby/040927mallaby.html>
- Bretton Woods Project (2006) "Bank, Fund sidestep labour standards: Promote violation of workers' rights" *Bretton Woods Update No.53*(November 2006)
- Bridgeman, N L (2006) *Accountability Resource Guide: tools for redressing human rights and environmental violations by IFIs, ECAs and Private Corporate Actors* International Human Rights Counsel
- CEE Bankwatch Network (2006) *European Bank out of European Control: public funds for public benefit*
http://www.bankwatch.org/documents/letacek_vystava_public_funds_leaflet.pdf
- Clark, D, Fox, J and Treakle, K (Eds)(2003) *Demanding Accountability: civil society claims and the World Bank Inspection Panel* Rowman and Littlefield Publishers, Lanham
- Colajacomo, J (2005) *The development impact of European Investment Bank (EIB) lending operations in the Cotonou and ALA framework*" External study, European Parliament, Directorate General External Policies, Policy Department (Project EP/ExPol/B/2004/09/06)
- Colajacomo, J (Ed)(2006) *European Investment Bank in the South: in whose interest?* CEE Bankwatch, FoE International, Campagna per la riforma della Banca Mondiale (CRBM)
- Colchester, M and MacKay, F (2004) *In Search of Middle Ground: Indigenous peoples, collective representation and the right to free, prior and informed consent* FPP, Moreton-in-Marsh
- Danish Institute for Human Rights (nd) *Human Rights Compliance Assessment: a tool for better practice* <https://hrca.humanrightsbusiness.org/>
- Fox J A and Brown L D (Eds)(1998) *The Struggle for Accountability: the World Bank, NGOs, and grassroots movements* The MIT Press, Cambridge (MA) and London
- Global Transparency Initiative (2006) *Transparency Charter for International Financial Institutions: claiming our right to know* Global Transparency Initiative
http://www.ifitransparency.org/doc/charter_en.pdf
- Griffiths, T (2005) *Indigenous peoples and the World Bank: experiences with participation* FPP, Moreton-in-Marsh
- Halifax Initiative (2006) *One Step Forward and One Step Back: an analysis of the IFC's Sustainability Policy, Performance Standards and Disclosure Policy* Halifax Initiative Coalition, Ottawa
- Hildyard, N (2005) *Holding Funders and Companies to Account: litigation and standards* Paper Presented to American Anthropological Association Annual Meeting, Washington DC, 3rd December 2005 <http://www.thecornerhouse.org.uk/pdf/document/IFlacnt.pdf>

Updated version: 31 December 2006

Hildyard N, Hegde P, Wolverkamp P and Reddy S (1998) *Same Platform, Different train: the politics of participation* <http://www.thecornerhouse.org.uk/item.shtml?x=51958>

Imhof, A, Wong, S and Bosshard, P (2002) *Citizen's Guide to the World Commission on Dams* International Rivers Network (IRN), Berkeley

Kambel, E-R (2004) *A Guide to Indigenous Women's Rights under the International Convention on the Elimination of All Forms of Discrimination Against Women* FPP, Moreton-in-Marsh

Kreimer, O (1998) "The Future Inter-American Declaration on the Rights of Indigenous Peoples: A Challenge for the Americas" at 69-70. In: C. Price Cohen (ed.) (1998), *Human Rights of Indigenous Peoples*. Transnational Publishers: Ardeley, New York..

MacKay, F (2002) "Universal Rights or a Universe unto Itself? Indigenous peoples' human rights and the World Bank's draft OP4.10 on Indigenous Peoples" *American University International Law Review* 17(3):527-624.

MacKay, F (2004) *Indigenous Peoples Right to Free, Prior Informed Consent and the World Bank's Extractive Industries Review* Forest Peoples Programme, Moreton-in-Marsh

MacKay, F (2005) "The Draft World Bank Operational Policy on Indigenous Peoples: progress or more of the same?" *Arizona Journal of International and Comparative Law* 22

McBeth, A (2006) "Breaching the vacuum: a consideration of the role of international human rights law in the operations of IFIs" *The International Journal of Human Rights* Vol. 10(4):385-404, December 2006

Musuva, C (Ed) (2006) *Behind Closed Doors: secrecy in international financial institutions* Global Transparency Initiative, Pretoria

NGO Forum on the ADB (2006) "Dec 13 Launch of ADB's Core Labor Standards Handbook" Email circular, 15th December, 2006

NGO Working Group on EDC (2004) *Risk, responsibility and human rights: assessing the human rights impacts of trade and project finance* Background paper for expert meeting on human rights, trade and finance, Ottawa, Canada, 3-4 May, 2004

NORAD (2001) *Handbook in Human Rights Assessment: State obligations, awareness and empowerment* NORAD, Oslo <http://www.norad.no/files/Handbook.pdf>

Palacio, A (2006) "The Way Forward: Human Rights and the World Bank" *Development Outreach*, October 2006 <http://www1.worldbank.org/devoutreach/article.asp?id=388>

Parker, G (2006) "Wider lending role for EIB supported" *Financial Times*, 21 November, 2006

Pimbert, M (2003) "The promise of participation: democratising the management of biodiversity" *Seedling* (July 2003) <http://www.grain.org/seedling/?id=243>

Radstaake, M and Bronkhorst, D (2002) *Matching Practice with Principles: human rights impact assessment: EU opportunities* Humanist Committee on Human Rights

Salim, E (2003) *Striking a better balance: the World Bank Group and Extractive Industries* EIR final report, December 2003

Updated version: 31 December 2006

Sands, P and Klein, P (Eds)(2001) *Bowett's Law of International Institutions* Sweet and Maxwell,London

Skudder, T (2005) What's Wrong with the World Bank's Approach to Resettlement? Lots, Says Longtime Resettlement Expert and Former WCD Commissioner
<http://www.irn.org/programs/finance/pdf/050621scudder1.pdf>

Thornberry, P (2002) *Indigenous Peoples and Human Rights* Juris publishing and Manchester University Press, Manchester

World Commission on Dams (2000) *Dams and Development: a new framework for decision making* Earthscan, London and Sterling