

Comments on the EBRD Environmental Policy Discussion Paper
Submitted by the Bank Information Center
June 29, 2007

The Bank Information Center (BIC) welcomes the EBRD's revision of the 2003 Environmental Policy in order to respond to environmental and social challenges, provide greater clarity on Bank project requirements, and reflect current international best practices. As a first step in the consultation process, BIC is pleased to provide comments on the EBRD's "Environmental Policy Discussion Paper" which outlines proposed changes to the 2003 Policy. We hope that civil society input will be recognized by the EBRD as imperative in building a transparent and robust new Environmental and Social Policy to protect and ensure benefits to both the environment and affected communities.

BIC partners with civil society in developing and transition countries to influence the international financial institutions such as EBRD to promote social and economic justice and ecological sustainability. This rests on the core premise that socially and environmentally sustainable development is not possible without the informed and active participation of local communities. Drawing from an analysis of the Discussion Paper, discussions conducted during the 2007 EBRD AGM with social and natural resources teams, previous IFI global consultation processes, and a comparison with existing international public and private sector standards, this paper details BIC's comments/recommendations to the Environmental Policy Discussion Paper.

Initial Comments and Recommendations

1. Policy Revision Process - Stakeholder Consultation and Disclosure Plan: The Discussion Paper states that the EBRD will solicit comments on (1) the Environmental Policy Discussion Paper and (2) the draft, revised policy (p.2). The EBRD should clearly commit to full public disclosure, stakeholder consultation, and appropriate consideration of comments on (1) the draft new **Environmental and Social Policy**, which provides the EBRD's requirements and expectations, (2) the draft **Policy Requirements**, which provide project/client requirements, and (3) the draft **Environmental and Social Review Procedures**, which provide the internal EBRD process for project appraisal and monitoring.

2. Strategic Directions – Climate Change: The Discussion Paper states that the EBRD intends for the new Policy to maintain the four strategic directions set out in the 2003 Policy (p.4). However, the EBRD states that two of the reasons for the revision of the 2003 Policy include the need to respond to emerging best practice amongst the international institutions, and the growing value attached to carbon neutrality (p.2). In addition, the Discussion Paper points out that EBRD's Article 2.1 vii directs the Bank to "promote in the full range of its activities environmentally sound and sustainable development."

Given the real and increasing negative impacts to the environment and global economy caused by climate change, the EBRD needs to follow other international financial institutions by adding

a fifth strategic direction to the Policy that specifically directs/commits the EBRD to focus its overall investment portfolio on the transition to a low carbon/low GHG economy, i.e. primarily phasing out the use of fossil fuels. This strategic direction needs to be accompanied by concrete project requirements that ensure such a transition will take place. Such project requirements need to go well beyond what the Discussion Paper is currently considering - GHG quantification and project design to minimize GHGs, including attempting to make projects carbon neutral, which will always be plagued by issues of leakage, additionality, sustainability, and accountability.

The recent report released by the Inter-governmental Panel on Climate Change (IPCC - April 6, 2007) contained strong evidence that negative impacts from climate change are already occurring and faster than originally thought. Moreover, the IPCC estimates that “global mean losses could be 1-5% GDP for 4 degrees Celsius” and the “developing countries are expected to experience larger percentage losses.” In addition to all the governments who have ratified the Kyoto Protocol, many international financial institutions have made commitments to focus institutional investment on the transition to a low carbon economy, including the World Bank (Clean Energy for Development Investment Framework), Asian Development Bank (Medium-Term Strategy & new draft Energy Strategy), and Overseas Private Investment Corporation (OPIC). The EBRD needs to join international best practice and ensure its strategic direction for overall investment is to support the transition to a low carbon/GHG economy.

3. Project Boundaries – Unlike the 2003 Policy, the new Policy should have a comprehensive definition of project boundaries. Having an appropriate definition of project boundaries is critical to conducting adequate social and environmental due diligence and implementing proper mitigation measures. In order to develop a definition that is inclusive and fully represents international best practice, the EBRD will need to combine the definitions of several international institutions and consult with civil society and outside experts. To begin, the definition needs to include, *inter alia*:

- **Inclusive area of influence** – At a minimum, the area of influence includes: affected watershed(s), down-stream impacts, off-site areas required for resettlements, etc., the airshed, migratory routes, areas used for livelihood, religious, or cultural activities, transboundary and global impacts, e.g., greenhouse gases, and areas potentially affected by predictable developments caused by the project that may occur later in time or in a different location.¹ In addition, and related to developments in different locations, **project-associated facilities** are included in the project boundary regardless of the source of funding when they are part of the overall project implementation, including new or additional infrastructure (roads, pipelines, ports warehouses, etc.) or project components.²

¹ This represents a combination of World Bank OP 4.01 Environmental Assessment Annex A and IFC Performance Standard 1, Social and Environmental Assessment and Management Systems.

² Inter-American Development Bank, 2006 Environment and Safeguards Compliance Policy

- **Cumulative impacts** – Often the cumulative effects of the project are larger and different in nature than the individual immediate impacts, and need to be thought through adequately and treated appropriately. One source of guidance is Espinoza and Richards (2002).³
- **All project stages and project-associated activities** – the project boundary needs to include all stages of the project cycle, including the decommissioning of infrastructure or extractive industries sites. In addition, the EBRD should extend social and environmental due diligence to the role and capacities of third parties such as contractors, government bodies, and suppliers (i.e. the supply chain).

Project Requirements

Indigenous Peoples - In international human rights law, indigenous peoples have the right to give or withhold their free, prior and informed consent (FPIC) in relation to activities that may affect the lands, territories and resources traditionally owned or otherwise occupied and used. Furthermore, the European Union passed a Council Resolution on Indigenous Peoples (1998) calling for “the full participation of indigenous peoples in the democratic processes of their country... asserts they should participate fully and freely in the development process... [recognizing] ...their own diverse concepts of development...the right to choose their own development paths, [including]...the right to object to projects, in particular in their traditional areas”⁴.

- EBRD should require free, prior and informed consent (FPIC) for all projects from indigenous peoples and other affected communities in relation to activities that may affect the lands, territories and resources traditionally owned or otherwise occupied and used.
- FPIC should be initiated as early as possible, and must be a continuous process throughout the entire project cycle.
- EBRD should ensure that the project sponsors have the capacity to successfully engage communities in the FPIC process, and account for other enabling conditions such as national legislation and political environment. Where such enabling conditions are not in place, EBRD must make special provisions to monitor FPIC processes, outcomes and participation of indigenous communities. Third party audits would be an effective way to ensure that project sponsors have achieved community consent⁵.

³ Espinoza, Guillermo and Barbara Richards (2002). Fundamentals of Environmental Impact Assessment, Inter-American Development Bank. From: <http://www.iadb.org/sds/doc/ENV-FundofEnvironImpactAssessE.pdf>

⁴ European Union (1998). Council Resolution on Indigenous Peoples. From: http://ec.europa.eu/external_relations/human_rights/ip/res98.pdf

⁵ For more recommendations for project financiers concerning the issue of consent, please read: Herz, Steve, Vida, Antonida and Jonathan Sohn (2007). Development without Borders: the business case for community consent. World Resources Institute.

Human Rights

- Require projects and EBRD lending practices to explicitly respect and adhere to applicable provisions of international human rights and humanitarian law and ensure that projects do not lead to or exacerbate violations of human rights or humanitarian law – either directly or indirectly. Setting up a specific human rights unit within EBRD may be necessary to carry out this directive adequately.

Client Disclosure and Consultation Requirements

- Specifically require clients to disclose and to consult on draft Environmental/Social Action Plans and draft Action Plan documents with affected communities.
- The new Policy should describe terms for community engagement and consultation processes, including timelines and number of consultations. Require that consultations begin early in the social and environmental process for new projects and that, at a minimum, clients will consult with affected communities at least twice during the assessment process (a) shortly after screening and before the terms of reference of the assessment are finalized, and (b) once a draft assessment report is prepared.
- Require all projects to explicitly identify project stakeholders and ensure that it is an inclusive list of all individuals or groups that could be potentially or likely to be affected by or have an interest in the project.
- Require disclosure of “full” (not only summaries) Action Plans and assessments to affected communities “as early as possible” and no later than 120 days before the Board date for projects. Require that disclosure occur prior to project development.
- Require the Action Plan to be disclosed locally in an understandable and accessible form and language.
- Require local notification of and consultation on client’s intent to amend the Action Plan and disclosure of any changes to the Action Plan as well as, if necessary, disclosure of any changes to the EBRD’s supplemental actions.
- Require that clients publicly disclose pollution release information and pollution prevention plans. Public transparency and disclosure around pollution emissions have proven to be an important aspect of pollution reduction strategies and an indicator of best practice.
- Require clients to disclose on an ongoing basis (periodic and annually) monitoring reports on the overall project and on Action Plan implementation for all projects.

EBRD Disclosure Requirements - The Bank should use the opportunity of revising the existing Environmental Policy to elaborate and clarify the disclosure requirements for environmental and social information.

- The Public Information Policy contains an imposing list of exceptions to the presumption of disclosure of information to the public. Among the kinds of information considered confidential are documents intended for internal purposes only; board documents; information provided to the Bank by third parties who have requested that it be kept confidential; and financial, business or proprietary information given to the Bank by private entities. The Bank’s environmental policy should include a narrow and clearly defined list of exceptions to its presumption of disclosure to ensure that all vital environmental information is disclosed to the public.
- The EBRD’s new environment policy should develop a comprehensive “positive list” of documents containing environmental information that should be routinely disclosed through the Bank’s website and other mechanisms for dissemination.
- Require disclosure of PSD and ESRS 120 days before Board consideration of projects. The PSD and ESRS must contain or reflect all assessment and Action Plan material for the duration of the 120-day period.
- Require that the ESRS provides the basis of EBRD’s decisions on categorization, applicability of environmental and social requirements, and existence of community consent.
- The ESRS should be updated on a regular basis and at a minimum every 6 months during the life of the project. Updated information should include information that is added or changed in the ESRS. The updated ESRS should be publicly disclosed.

Sector Specific Requirements for Extractive Industries

As the EBRD’s sector policies do not specifically focus on social and environmental protections, it is necessary for the new Environmental and Social Policy to contain sector-specific requirements to supplement and strengthen sector policies. This is essential for the EBRD to adequately and appropriately address and protect social rights and the environment. Such sectors as extractive industries, energy, and infrastructure, *inter alia*, should have sector specific social and environmental requirements.

With regard to the extractive industries, the EBRD should adopt the recommendations stemming from two extensive multi-stakeholder consultations - the World Bank Group’s Extractive Industries Review (EIR) and the Canadian Government’s National Roundtable Discussions on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries. These consultations included stakeholders from governments, industry, academia, local communities, and local/international civil society organizations. Some of the recommendations from these consultations that should be adopted include, *inter alia*:

- Towards the above recommended new EBRD strategic direction to promote transition to a low carbon economy, it will be critical that the new Policy requires all proposed extractive industry (especially oil-, gas-, and coal-related) projects to conduct and adequately consider

other options provided by analysis of development alternatives, especially analysis of opportunities for renewable energy development. Furthermore, where private finance is available, which is mainly the case for oil and gas, the EBRD should not be involved.

- Explicit core and extractive industries-specific **governance requirements/indicators** that must be met before a project qualifies for EBRD funding (i.e. **sequencing**);
- Under no circumstances should EBRD support extractive industry projects in areas involved in, or at high risk of, **armed conflict**;
- Only support projects that **benefit all affected local groups**, including vulnerable ethnic minorities, women and the poorest;
- **free prior and informed consent** is ensured for indigenous peoples and local communities affected by oil, gas, and mining operations and before any resettlement takes place;
- Require **baseline data on poverty and social indicators**, which should be monitored and publicly disclosed throughout the lifetime of the project;
- Require upstream social and environmental analyses for all **policy advice, technical assistance and analytic/advisory activities** (e.g., privatization, new contract models like production sharing agreements);
- Adopt clear **no go zones** and do not finance any extractive operation that might affect existing World Heritage properties, current official protected areas, or critical natural habitat, or areas planned in the future to be designated;
- Require **emergency response plans** as a precondition of EBRD funding;
- Require **public disclosure of all revenues and investment contracts** (see details below);
- Do not support projects that undermine or are inconsistent with **international human rights law**;
- Create a central **Human Rights Unit** to monitor, verify and conduct annual audits; and
- Adopt all of the **core labor standards** as contractual obligations for project financing.

Revenue and Contract Transparency for Extractive Industries

The EBRD's Energy Operations Policy, approved in 2006, addressed some of the revenue transparency issues, but left significant gaps. The new Environmental and Social Policy should make specific new commitments to revenue and contract transparency.

- The Energy Operations Policy specifies revenue transparency requirements only for oil and gas upstream subsectors. The EBRD has no explicit transparency requirements for the oil and gas midstream or downstream subsectors⁶ or for the metals mining sector. The new environmental policy should require public disclosure of all revenue payments (including royalties, taxes, commodity based payments, signing bonuses etc.) made to governments and their agents by all oil, gas, and mining projects that receive the financial support of the EBRD, including those made via financial intermediaries.
- The Energy Operations Policy does not require transparency for investment contracts. It only refers generally to IMF recommendations as an example of best international practices for revenue management. The IMF's Guide on Resource Revenue Transparency (June 2005) states that good practice requires that all signed contracts are publicly disclosed. In addition, both the EIR and the Canadian Roundtables recommended contract disclosure. The EBRD should clearly require disclosure of key contractual agreements for all oil, gas, and mining projects that it finances.
- The Energy Operations Policy does not specify reporting formats or the timeframes for reporting. The new Environmental and Social Policy should require semi-annual revenue disclosure for the life of the project. Disclosure should be in local languages and in locations that are easily accessible to both the local and national public.

Promotion of Projects with High Social Benefits

The EBRD should adopt the Discussion Paper's suggestion to promote only projects with high social benefits. In addition to the elements considered by the Discussion Paper, the EBRD should also promote projects with long-term livelihood opportunities, positive net employment affects, and net reduction of poverty.

Projects in Advanced Stages

The EBRD should not support projects that are in an advanced stage of development, such as when construction has already begun. Projects must be adhering to EBRD social and environmental as well as other requirements for its entire development and implementation.

Review Period

Due to the need to effectively evaluate implementation, the Discussion Paper suggests changing the current requirement of a policy review every 3 years to a 5-year review cycle. The EBRD should at least allow for a type of interim review every 3 years to update the new Social and Environmental policy according to evolving best international practices. The 3-year review should provide the opportunity for the public to request specific reforms or additions.

⁶ The oil and gas upstream subsector includes extraction processes. The midstream subsector includes transportation infrastructure (pipelines, ports), processing facilities (LNG terminals), and storage facilities. The downstream subsector includes refineries and distribution networks.

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