

PUBLISH WHAT YOU PAY

February 11, 2005

Rachel Kyte
Director
Environment and Social Development Department
International Finance Corporation
2121 Pennsylvania Avenue, NW
Washington, DC 20433 U.S.A.

Dear Ms. Kyte,

The Publish What You Pay Coalition (PWYP) has reviewed the International Finance Corporation's (IFC's) August 12, 2004, Concept Paper on Review of IFC's Policy on Disclosure of Information (hereafter the Concept Paper), and the November 24, 2004, Working Draft: IFC Framework for Discussion Regarding Disclosure of Information (hereafter the Draft IFC Disclosure Framework). We are encouraged by the commitment made in the IFC's Concept Paper, in response to the Extractive Industries Review (EIR), to promote revenue and contract transparency in private infrastructure projects through its lending and assistance. We are troubled, however, that the Working Draft indicates that IFC's commitment to implementation is increasingly ambiguous and insufficiently comprehensive. We are writing to express a number of concerns and suggestions to be incorporated in the **IFC's upcoming draft Information Disclosure and Safeguard Policies**.

Although this letter focuses on particular transparency concerns, we would like to make it clear that revenue transparency represents only one of many issues that concern member groups of PWYP related to the revision of the Information Disclosure and Safeguard policies. Furthermore, we note that the consultation process itself has thus far been flawed; numerous groups have registered complaints about the lack of important information concerning the revisions, the rushed timeframe, and other obstacles to meaningful participation. A separate letter discussing the consultation process issues was sent on 16 September 2004 from a wide range of civil society groups, including many PWYP members.

With regards to revenue and contract transparency, in particular, we note that the draft IFC Disclosure Framework provides little detail on the IFC's transparency commitments and requirements of its clients. Furthermore, relevant Performance Standards, whose impacts will be especially far reaching (due largely to the Equator Principles), make no reference to revenue and contract transparency. Both the Disclosure Policy and relevant Performance Standards, such as Social and Environmental Management System, Land Acquisition and Involuntary Resettlement, and Indigenous Peoples and Natural Resource Dependent Communities, should clearly articulate the IFC's own transparency obligations and those of its private sector clients.

We urge the IFC to implement the EIR recommendations on transparency by ensuring that its Disclosure Policy and relevant Performance Standards:

1) Immediately require revenue and contract transparency for all IFC-supported extractive industry investments, including financial intermediaries. We wholeheartedly support the Concept Paper's call for transparency of contracts for private infrastructure projects, and we believe this should be expanded to include all extractive projects, and that transparency of these contracts should simply be a requirement rather than the ambiguously stated effort by IFC to "work to facilitate such disclosure." Yet even the Concept Paper's limited commitments are not reflected in the Draft Framework. The Draft Framework seems to move in the other direction, by stating that "IFC recognizes that transparency regarding *revenue payments* from extractive industry projects (oil, gas and mining production) to host governments is important for governance reasons," while excluding the fact that transparency of contracts is equally important for this very same reason. The Concept Paper goes on to state that only in "projects providing for the final delivery of essential services to consumers...[IFC] encourages its clients to make publicly available tariffs and other similar key contractual terms that directly affect consumers." Hence, IFC appears to be weakening rather than strengthening its resolve to achieve contract transparency.

We are also concerned by the World Bank's different treatment of "significant", "non-significant", and financial intermediary extractive projects, as outlined in the Bank's response to the EIR. For "significant" projects, companies are required to publish their payments to governments and relevant contract terms immediately, while revenue disclosure will not be required from "non-significant" projects for two years. Moreover, contract disclosure for "non-significant" projects and transparency of any kind for financial intermediary extractive projects is not addressed at all.

The IFC is apparently defining "significant" projects as those that are expected to provide ten percent or more of a government's revenues. Since such projects are quite rare, the requirement for revenue and contract transparency may be applied to only a small number of the total extractive investments supported by the IFC in the next two years.

IFC intentions to eventually extend revenue transparency to all IFC-supported extractive projects indicate the World Bank Group's clear recognition of the need for payment disclosure. However, the current proposed approach will create inconsistencies over the next two years between a limited number of large IFC-backed projects which will disclose revenues and contracts, and the many smaller projects which do not. The Bank Group provides no justification for this differential treatment. Transparency requirements should not vary with the magnitude of an investment or its returns; they should be applied to all activities in the extractives sector.

We do not feel that the IFC's present stance is consistent with its leadership role or the pressing need -- felt by industry and civil society stakeholders and prominently featured in Extractive Industries Transparency Initiative (EITI) debates -- for consistent standards of revenue transparency that can be compared across all projects and countries. The current patchwork quilt of disclosure requirements needs to be avoided going forward. There is no reason why revenue and contract transparency cannot be required immediately for all new IFC extractive industry investments and relevant financial intermediaries.

2. Clearly state that revenue transparency is a “requirement” of IFC and not simply an “expectation.” IFC’s new Disclosure Policy and relevant Performance Standards should contain concrete transparency commitments and binding language requiring action, rather than “expecting” or “encouraging” it. The new policy should confirm that revenue transparency is in fact a “requirement” of the IFC and not simply an “expectation.” We emphasize this point because the Bank management’s response to the EIR uses “requirement” in its Executive Summary¹ and “expectation” in the main text². This discrepancy needs to be corrected in favor of mandatory transparency standards.

3. Provide a clear explanation of what constitutes “revenue and contract transparency”, including a comprehensive list of payments that are required to be disclosed and an acceptable disclosure mechanism. In addition, the transparency-related requirements contained in IFC loan agreements and investment contracts with sponsors must be publicly disclosed. In the new IFC Disclosure Policy, there needs to be a clear and comprehensive definition of what “revenue transparency” actually means. For example, at a minimum, full revenue data and contract terms for each project must be placed in the public domain, in a format that is widely accessible to citizens of the project host country. This information cannot be simply relayed by project partners to the IFC or a third party for eventual publication in an altered or redacted form.

Furthermore, the IFC should clarify what it considers to be a “material EI-related payment,” as stated in paragraph 14 of the management response to the EIR. The definition of “materiality” needs to be carefully considered, to avoid the risk that corrupt persons in particular countries may attempt to have EI-related payments reclassified as “non-material” in order to avoid disclosure. Management’s response to the EIR also states that they will expect that “the relevant terms of key agreements are publicly available where they are of public concern.” Like the reference to “material” payments, the definition of “relevant terms” of agreements should be clarified and arrived at in consultation with civil society.

More generally, while we welcome effective and comprehensive measures by the IFC to secure revenue and contract transparency at the project level, the fundamental problems of resource-related corruption and lack of transparency need to be tackled at the country level in World Bank borrower countries. The impact of IFC revenue transparency commitments will be compromised if the Bank does not require borrower governments that receive its lending and assistance to promote revenue transparency nationally. We note that in their responses to EIR, the United States, Britain and France all urged the Bank to require revenue transparency from governments, not just from individual projects, and we urge you to use your influence within the Bank to this end.

Thank you for your consideration of these issues. We look forward to IFC’s progress on revenue and contract transparency as part of its Safeguard and Disclosure Policy reviews.

Yours Sincerely,

¹ p. iv, third bullet-point under “Strengthening Governance and Transparency”

² p. 4, paragraph 14

Publish What You Pay Members (from nine countries)

Emmanuel Kuyole
ISODEC
Ghana

Christian Mounzeo
Publish What You Pay Coalition
Republic of Congo

Anton Artemyev
Kazakhstan Revenue Watch
Kazakhstan

Sergey Solyanik
Ecological Society Green Salvation
Kazakhstan

Ingilab Ahmadov and Farid Gardashbayov
Public Finance Monitoring Center
Azerbaijan

Kirsten Hund
Netherlands Institute for Southern Africa
Netherlands

Micha Hollestelle
Pax Christi Netherlands
Netherlands

Daniel Dommel
Transparency International
France

Michel Roy
Publish What You Pay Coalition
France

Simon Taylor
Global Witness
United Kingdom

Henry Parham
Publish What You Pay Coalition
United Kingdom

Dr. Wesley Cragg
Transparency International
Canada

Julie McCarthy
Open Society Institute
United States

Ian Gary
Catholic Relief Services
United States

Heike Mainhardt-Gibbs
Bank Information Center
United States

Shannon Lawrence
Environmental Defense
United States

Doug Norlen
Pacific Environment
United States