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EVOLUTION OF GLOBAL STANDARDS IN THE EXTRACTIVE SECTOR: THE GROWING ROLE OF THE WORLD BANK GROUP

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EXECUTIVE SUMMARY

There is no true global law-making body capable of creating laws and regulations at the international level analogous to those that have been enacted by nations. Nor are there in most cases international bodies capable of applying or enforcing those rules that do exist.

In many parts of the economy, including the oil & gas and mining sectors, increased economic globalisation has led to a series of problems that are very hard to solve without some globally applicable 'floor' standards.

The demonstrable harm that is done to the interests of communities, consumers, countries, companies and the environment by a lack of common accepted rules, coupled with the lack of any institution capable of creating such rules, has been referred to as a 'governance gap'.

In the last two years, the World Bank Group has – intentionally or unintentionally – been starting to fill at least some of this governance vacuum. In the absence of any other institution willing and able to take these steps, this is perhaps inevitable.

But at the same time that the World Bank Group is taking a bigger role in encouraging the spread of its policies and requirements throughout the mining and oil & gas sectors, its policies in those industries are subject to considerable ferment. Those policies are subject to powerful challenges, from a variety of stakeholder interests, and are in what may be a rapid process of change.

In the longer run, if the World Bank Group is to exercise greater leadership in promoting global 'floor' standards for environmental, social, and human rights

performance of business, this will require more orderly mechanisms for adjusting the very real tensions among government, industry and civil society stakeholders.

Rules are necessary in this sector. But those who are 'governed' need to have a say in what those rules are, and the Bank largely lacks mechanisms for that to occur. In short, the more power the World Bank Group wields, the more essential it is to have effective systems of check and balance to ensure that power is used appropriately.

The function of this contribution is a very brief look at four basic sets of issues, each of which merits a much more extensive treatment:

- The need for, and lack of, more widely accepted standards of environmental and social performance;
- The role of the World Bank Group in developing such standards and promoting their dissemination throughout the extractive industries;
- Current developments and changes in World Bank Group policies in the extractive sector; and
- The need, if the Bank is to play a greater role in this process, for more open, transparent and democratic systems of accountability in the World Bank Group.

The thesis can be summarised in these points:

- There is a global governance gap;
- There are a very limited number of ways that gap can be filled;
- Evolution of private systems of standards and certification may be the most effective way forward;
- The World Bank Group is playing a major role in promoting the evolution of such systems;
- At the same time, World Bank Group policy in the extractive sectors is subject to tremendous pressure for change, and allegations that past policies have been harmful to the poor and disadvantaged and the environment;
- If the World Bank Group is a source of standards or rules, it will inevitably be the forum in which many of these tensions play out; and

- It is therefore essential that the Bank move toward structures in which those tensions can be resolved and conclusions reached in a transparent and accountable manner.

1. A GLOBAL GOVERNANCE GAP

1.1. A Global Economy

Some of the most basic problems are quite obvious. One of them is that in a globalised economy, all of the players are under economic pressure that it is hard for any one of them to resist:

- Companies are under intense competitive pressure to lower costs. If they internalise costs – even where this clearly would benefit society – they will tend to lose to their competitors unless the competitors internalise the same costs.
- Countries – especially poor countries – are under intense pressure to attract investment. If they require investors to internalise costs that do not have to be internalised in other countries, they are likely to lose opportunities for investment.
- Workers are increasingly conscious that their demands for decent livelihoods are competing with demands of other workers elsewhere. If workers force employers to internalise costs – perhaps by providing paid maternity leave or better health care – they increase the likelihood that production will through outsourcing, competition with foreign producers, or otherwise, move to where those costs are not internalised.
- Communities are aware that if they place too many demands on industry – even where these are simply designed to protect existing livelihoods or ensure internalisation of costs – employment may simply go elsewhere.

1.2. Governance at the National Level

Inside a single country, the solution to these problems is fairly clear. Government imposes uniform 'rules of the game' specifying basic values or practices that all economic competitors need to observe. Companies are then free to compete by developing better products, finding new ways to produce, or servicing customers more effectively. But ideally they do not compete by uncontrolled dumping of toxic wastes, seizing land from the poor without compensation, or by making workers work without ever taking a holiday, or adequate time to raise their children.

It turns out that in this process, government also achieves something that greatly facilitates business access to capital: a regulatory framework in which investment can take place with increased certainty and confidence.[1]

A basic presumption of most traditional market economics is that all players are fully informed about their choices. Yet we know that this is never the case. And in many economies it is very far indeed from the case. Indeed, the level of reliable public information about economic activities may be a principal indicator of development.

There is therefore much current focus in economics, including some recent Nobel prizes, on what happens when individuals in the market do not have reliable information, or need to worry endlessly that they will be cheated, or outmanoeuvred by insiders with preferred access to information. It turns out that such basic government functions as inspecting scales and punishing people who do not use fair weights and measures allow competition to be much more effective. The same is true of insisting on a higher degree of disclosure in equity markets, or inspecting aeroplanes, elevators and ferries for safety, or food and drugs for purity, which, if done correctly, far from burdening competition, enables far more efficient competition that produces more robust economic results.

By spending some modest amount of tax money in regulation designed to ensure a greater flow of more reliable information, government therefore enables competition and growth. By ensuring some basic 'floor' of environmental and social performance, it takes certain kinds of activities – child labour, dumping toxic waste in rivers, lying about company earnings – outside the realm of competition. It is increasingly recognised that in our zeal to free business of unnecessary or burdensome regulation we may in some cases have gone too far and hampered clean competition by overly weakening the 'level playing field'.

1.3. The Global Governance Gap

Governments can create a level playing field for business at the national level because they have certain attributes:

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[1] *See* De Soto, 2000.

- *Self-finance.* Governments impose taxes to raise money to pay for regulation and enforcement of 'weights and measures' type rules, information disclosure systems, or health and safety regulation.

- *Legitimacy.* Governments have legitimacy because they are elected, accepted by consensus, or tradition, or otherwise conceded by a sufficient number of people to have some sort of right to make laws and govern.

- *Power.* Governments have police, armies, a judiciary, prisons or other means to force compliance, or deal with those who flout the law.

At the global level, there simply are no institutions that have these qualities. The United Nations, the World Bank Group, and others must ask for money from governments rather than demand it through taxes. The national representatives who sit on their councils and boards are not elected, and not really accountable to their national publics except in extraordinarily indirect ways; there is no legitimacy *qua* government. And there is no raw power – no police, no ability to coerce compliance.

The global reality instead is some 200 national governments, deeply jealous of their sovereignty and usually quite resistant to giving up any power to international bodies. That reality also includes thousands or even millions of business entities. Creating new business entities, even hundreds at a time, is extremely quick and easy in this globalised era. Even finding out who owns or controls these entities – unless they are listed on stock exchanges or subject to regulation as publicly traded companies – may be difficult or impossible, meaning that accountability for many of them is almost non-existent.

With global commerce and global markets, but no global government, there is in fact every reason to fear an economic 'race to the bottom' on a multitude of fronts. Country competition for investment, worker competition for livelihoods, and competition among companies could mean:

- Producers who do not employ child labour, prisoners or slaves are underpriced by those who do.

- Countries that attempt to protect their air and water from pollution lose crucial investment to those that have no meaningful environmental programmes.

- Workers who have struggled for decades to achieve limitation of the hours of work, safe working conditions and decent wages and benefits wind up unemployed as production shifts to areas where social standards are very low or completely absent.

- Companies that attempt to observe reasonable labour, environmental and health and safety standards increasingly lose out to 'shadow enterprises' that proceed simply by corrupting government any time it gets in the way.
- The majority, who depend on ecosystem goods or publicly financed services, find a dramatically increasing gap between the quality of their lives and the quality of life of small elites that principally consume privately financed goods and services which the majority cannot afford. This in turn leads to breakdown of social solidarity and the consensus on which democratic institutions depend.
- Those powerful economic interests that feel they gain advantage by the absence of law form an increasingly powerful lobby against the creation of mechanisms to manage even the grossest of abuses; the global economy faces increased anarchy and breakdown on the conditions of order on which business and investor confidence and prosperity ultimately depend.

This kind of 'law of the jungle' or 'wild West' vision of our common future is profoundly disturbing, in part because we are in many cases not far from that brink. Among the many negative consequences are likely to be less efficient competition and less robust economic growth on the global level. This would much reduce our collective ability to reduce poverty, alleviate human misery and move the economy onto a more sustainable path.

2. FILLING THE GOVERNANCE GAP

There are not all that many obvious solutions to the global governance gap. Some of the most prominent of the few that have been offered are discussed here.

2.1. World Institutions with Some Attributes of Government

One way to fill the global governance gap would be to create world institutions that would have at least some attributes of government. This is an idea that has been discussed for centuries. There are those who argue passionately that it is an indispensable element of a decent human future. But there are also those who are horrified by the idea, or who think that not enough of human societies have evolved far enough to make it work.

Bluntly, it took the disaster of World War I to create the League of Nations with all of the limitations of power to which it was subject. Even then some prominent and powerful countries declined to join. It took the catastrophe of World War II to get the victors to agree to the Bretton Woods institutions. And if these institutions are evolving toward assuming some government-like attributes, that evolution is occurring at a pace that is hard to detect. And most of us share the profound hope that there will not be another crisis on the scale of the two World Wars, even if that is the most likely route to achieving a stronger world system of governance.

Filling the world's demand for the products of extractive industries in ways that promote poverty reduction and development at an acceptable social and environmental price cannot wait for national governments of the world to cede some of their sovereignty to a world body with some regulatory functions.

2.2. Treaty Architecture

Even most of those most disturbed by the concept of world government accept the idea that there are times when it is in the collective interest of nations and their citizens to create international agreements that regulate some of the harsher edges of totally unconstrained global economic competition. In the case of some of the more extreme possibilities – let us say unconstrained private international trade in nuclear warheads or dangerous biological agents – there is very broad agreement indeed that we are better off if there are effective international agreements with real teeth.

There are some rather successful examples of treaties creating not only clear standards but some effective machinery for implementation of those standards. Perhaps the Convention on International Trade in Endangered Species (CITES), or the Montreal Protocol on ozone-depleting chemicals, and some of the International Labour Organisation (ILO) conventions are positive examples.

But the effort and cost of reaching treaties on every subject of interest is hardly negligible. Foreign ministries may be able to focus on a handful at a time; they typically take a decade of work to come into effect. And it seems likely that the rate at which treaty regimes can be created is inadequate to deal with the growing backlog of problems. Further, there seem to be some problems, including some critical ones, where it is very difficult to come to any kind of effective agreement.

Treaties have important uses, and have achieved considerable success in some areas. But they are not likely to be adequate as a comprehensive response to the whole range of issues.

2.3. Evolution of Standards and Codes

If governments as a group are for whatever reason not moving rapidly to fill the global governance gap in the extractive sector, this does not mean that there is no opportunity for progress. There are other models.

One of them is the multiplicity of international non-governmental codes and standards that govern everything from computer cable connections and the angle of screw threads to certification of forest and marine resource products through such organisations as the Forest Stewardship Council, International Organisation for Standardisation (ISO), or the Marine Stewardship Council. Much of this rich experience is captured in a recent book.[2]

These systems taken as a whole are numerous and extremely important to the smooth functioning of the world economy. They have the potential to be a fundamental cornerstone that can change the course of the extractive industries in the direction of sustainable development.

3. A VISION OF THE WHERE WE MIGHT BE GOING

Perhaps a vision – albeit no more than a flight of imagination – of where the extractive industries might be 20 years hence could illustrate how such a system could begin to fill the governance gap. This system would create and enforce a system of rules almost entirely on private initiative, and voluntary adoption. It could create a workable international level playing field without the spectre of some unaccountable world government enforcing growing stacks of regulations.

The system toward which we could move – and indeed toward which we are now moving – has these three key elements.

- A set of *sustainable development standards* for extractive industries;
- A system for independent *verification of compliance* with those standards; and
- A series of *incentives for compliance* with the standards.

The purposes of this system are several but clearly include these:

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[2] Walker and Howard, 2003.

- Promoting the *internalisation of environmental, social and other costs* essential to poverty reduction and sustainability by consistent and sustained movement toward a *level playing field* for companies and countries;
- Helping all of the principal players in the sector to *achieve their legitimate goals* more effectively; and
- Creating a *higher degree of assurance* to all important interests that do business with the extractive sector that they are dealing with companies that are socially responsible and managed in ways that protect their reputations *and the reputations of those who do business with them.*

3.1. Sustainable Development Standards

To be effective, standards must deal with all stages of the *project cycle* of individual company projects such as mines, oil fields, refineries, or oil terminals. They must also deal with the entire life cycle or *product chain* of what these industries produce.

Well before 2023 – indeed within five years – there could be a comprehensive set of global standards for the entire project cycle of at least the most common and familiar kinds of facilities in the extractive industries. There could also be a set of sustainable development standards for the most common products of these industries, based on concepts of product stewardship from exploration and production through refining, fabrication, use, reuse and recycling, and final disposal of any wastes.

The global-level standards would be short and to the point and would deal only with the issues essential to creating a level playing field for competitors at the global level. They would in some cases be supplemented by regional standards in areas with roughly similar sets of ecosystems, social systems and levels of development, such as sub-Saharan Africa, the European Union, or the Central Asian republics.

They could also be supplemented by national standards, though since these would over time look more and more like countries' national legal requirements, the standards system might tend to fade over time at the national level. Finally, there would be local standards, agreed with ample community participation, at each major project site. The system would observe the principal of subsidiarity: that rules would exist at the lowest level at which they could be effective in achieving the goals of the system.

Standards at the global level will – within ten years – be formulated by an Extractive Industries Council that will have representation from industry, government and civil society on an agreed formula. It would also have a balanced representation from the Organisation for Economic Cooperation and Development (OECD) countries and transition and developing countries. Members would be selected by, and represent, constituency organisations such as international labour unions, industry associations and associations of civil society organisations.

Standards at the lower levels would be set based on the same principles. The global-level standards would include due process requirements which all standard-setting processes at all levels would have to meet to insure participation, openness, and transparency.

Standards would cover the basic subject matter of economic development, social development, environmental protection and governance.

3.2. Verification of Compliance

A condition of claiming compliance with the global-level standards would be compliance with all effective lower-level standards plus applicable legal requirements. The same would be true of any regional or national standards.

Companies wishing to be certified as complying would contract with any one of a number of Registered Auditors. Registered Auditors could be private companies, universities, government institutes or other kinds of organisation. They would perform audits according to approved Audit Protocols developed by the Extractive Industries Council. The Extractive Industries Council would also have the responsibility for determining standards of performance for approval of Registered Auditors. The Council would each year conduct a limited number of test audits of auditors to ensure their maintenance of standards of performance.

Disputes over certification or denial of certification, or registration or denial of registration, would be heard by arbitration panels convened by the Extractive Industries Council, operating under rules similar to those of the International Chamber of Commerce, American Arbitration Association, or similar organisation.

At the local level, multi-stakeholder Monitoring Groups would be a standard feature of most project-level monitoring.

3.3. Incentives for Compliance

Certification might be required:

- By the World Bank Group, regional development banks, and other IFIs as a condition of support for projects;
- By all reputable commercial banks as a condition of commercial loans;
- By all major insurance companies as a prerequisite to almost any form of insurance;
- By an increasing number of customers as a precondition for buying the company's products;
- By a large and increasing number of investors as a condition of buying or holding the company's stock; or
- By global, regional and national industry associations as a condition of membership.

In addition, the standards would perform other useful functions:

- They would serve to identify the kind of reporting that was required in voluntary company reports under such systems as the Global Reporting Initiative;
- They would increasingly serve to identify the kind of reporting that was required in mandatory company reports under national securities laws and stock exchange rules;
- They would serve as the basis for a more uniform and informative set of accounting standards;
- Positive certification would be a prerequisite for purchase of company stocks and bonds by a growing number of 'ethical investment' or 'socially responsible investment' funds;
- They would become the basis for procurement standards by governments; and
- They would converge toward and increasingly resemble national legal and regulatory requirements.

Together, these could in ten years – by 2013 – create an extremely powerful pressure to come into compliance with the standards and continue to stay certified.

They could start having a real effect very much sooner than that. In fact, to some extent, they are here today.

3.4. A Level Playing Field

Since it will become harder and harder to do business in the extractive industries without certification, this could be a powerful way of ensuring a much greater level of internalisation of social and environmental costs. This will reduce the pressures on countries to compete by allowing such costs to be externalised, and will reduce the pressures on companies to go slow in seeking better performance.

4. DEVELOPMENTS IN THE WORLD BANK GROUP

The World Bank Group has played a crucial role in the growth of the oil, gas and mining sectors – the 'extractive industries' in the developing countries. The influence of Bank policy and programmes goes far beyond the relatively small number of projects in which the Bank has played a direct role as lender or guarantor.

It has, through technical assistance programs and support for institutional strengthening, had a profound impact on the legal and regulatory structures governing foreign investment in the oil & gas, mining and energy sectors and the government organs that administer them. Loans and syndications from the International Finance Corporation, and guarantees from MIGA have often led the way for foreign direct investment into countries and regions that private capital has been hesitant to enter.

Over the last decade, the World Bank Group has been under increasing pressure from a variety of sources to ensure more effective management of environmental and social impacts of projects it funds. It has in response developed a number of strategies to ensure better environmental and social performance. Prominent among these has been development of the International Finance Corporation's *Safeguard Policies* and *Pollution Prevention and Abatement Guidelines*.[3] The World Bank Group will not lend to or insure the loans of projects that do not comply with these policies.

While World Bank Group lending is a small fraction of foreign direct investment worldwide, it is influential in creating confidence in emerging and transition economies where large private finance institutions may be hesitant to enter.

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[3] A list of the current Safeguard Policies is included as Appendix A.

The Safeguard Policies and the Pollution Prevention and Abatement Guidelines or their equivalent have now been adopted by the great majority of public sector IFIs – the regional development banks, and national export credit and credit guarantee agencies.

4.1. The Equator Principles

Many of the principal commercial banks have for some time used the Safeguard Policies and the Pollution Prevention and Abatement Handbook (PPAH)[4] as internal guidelines for lending. But this last August a crucial development occurred. A decisive bloc of the major global lending banks all agreed publicly to apply the Safeguard Policies and the Pollution Prevention and Abatement Guidelines in their lending decisions worldwide.[5] This means that from here on, there will be very considerable difficulty in competing in the global market for project finance without complying with these standards. That difficulty will increase with time.

> London-based Dealogic Project Ware, which produces statistics and analysis of the project finance market, has calculated that the 18 banks which have now adopted the Equator Principles arranged US$ 43 billion of project loans in 2002, and that the 18 banks arranged 74% of project loan market volume in 2002. This year to date through 28 October, the 18 banks have accounted for 78% of the project loan market, according to Dealogic.[6]

This leaves precious little space for those who want to seek project finance without reference to the Equator Principles and the underlying Safeguard Policies and PPAH.

4.2. Ferment in the World Bank Group

World Bank Group activities in mining and oil & gas have been subject to a variety of criticism from a variety of stakeholders ranging from local communities

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4 Pollution Prevention and Abatement Handbook, which embodies the *Pollution Prevention and Abatement Guidelines*.

5 The banks are now 18 in number, *see* <www.equator-principles.com/principles.shtml>. The list of banks that have adhered to the Equator Principles is growing. A current list is attached as Appendix B.

6 *See* <www.equator-principles.com/index.html>; *see also* <www.dealogic.com>.

impacted by projects to labour unions, NGOs and host country governments. Among the criticisms are:

- A view that these activities are 'not sustainable' and thus simply inconsistent with the mission of the World Bank Group and should therefore be discontinued;
- A lack of critical questioning within the Bank of the assumption that attracting foreign direct investment in mining and oil & gas will always lead to poverty reduction;
- A focus on gross indicators that obscures what are in some cases dramatic increases in wealth of tiny elites accompanied by immiseration and deterioration of living standards for others, particularly in local communities;
- A lack of *any* rigorous evaluation of the effects of World Bank programmes in the extractive industries on poverty using *any* standards or using any indicators;
- A concern that the enormous revenue streams flowing from minerals or oil & gas development are stunting the development of democratic government, fuelling conflict and civil war, or sinking countries in seas of corruption from which they are unable to recover;
- Fear that the legislative regimes promoted by the World Bank Group in developing countries have concentrated so heavily on being 'investor friendly' that they have unbalanced domestic government in ways that weaken environmental management, undermine the rights of indigenous communities, or otherwise create asymmetric development of law and institutions.

4.3. The World Bank Group Response

The World Bank Group is currently in the process of the most far-reaching review it has ever undertaken of its objectives and policies in the oil & gas and mining sectors. This Extractive Industries Review is being conducted under the overall management and control of an eminent person, Dr. Emil Salim, former Environment Minister of Indonesia. It has featured a series of regional consultations

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[7] *See* <www.eireview.org>.

and workshops, the proceedings of which are available on the EIR website.[7] The Extractive Industries Review was developed to evaluate a list of concerns about the impacts of World Bank Group activities in the extractive industries and whether these were consistent with the Bank's mission of poverty reduction through sustainable development.

The Extractive Industries Review occurs in the wake of several other processes and studies which also propose significant changes in the way the World Bank Group operates in the extractive industries. It should build on and move forward from this base:

- In 2002, a two-and-a-half year worldwide study of the impact of the mining and minerals industries on sustainable development, the Mining Minerals and Sustainable Development (MMSD) Project, came to an end with the publication of its final report, *Breaking New Ground*.[8] This extensive effort led to a significant body of recommendations directed to the World Bank Group. The MMSD project was managed by the International Institute for Environment and Development in London under contract to the World Business Council on Sustainable Development.

- The internal Operations Evaluation branches that evaluate activities of the three principal members of the World Bank Group, IBRD/IDA, International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) have just completed a coordinated study with numerous conclusions and recommendations, entitled *Extractive Industries and Sustainable Development: An Evaluation of the World Bank Experience.*

- There has been a very recent review by the independent Compliance Advisor/Ombudsman of the International Finance Corporation of the results of recent IFC and MIGA extractive industries projects, *Extracting Sustainable Advantage? A Review of How Sustainability Issues Have Been Dealt With in Recent IFC and MIGA Extractive Industries Projects*. This report builds on another recent study by the same Office, *A Review of IFC's Safeguard Policies.*

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[8] *See* <www.iied.org/mmsd>.

[9] Advanced Draft, published on the Review website, <www.eireview.org>.

The Review's report will be finalised before the end of 2003. Among recommendations of the most recent draft of the report of the Review[9] are:

- A stronger focus on whether projects are consistent with the Bank mission of poverty reduction, backed up by gathering baseline data and subsequent evaluation to demonstrate the impact of projects on poverty;
- Development of a human rights Safeguard Policy;
- Ensuring, 'as a condition of financing, that sufficient funds are designated to be in place for closure from the start' of any new project;
- Withholding World Bank Group support for any projects using Submarine Tailings Disposal (STD) pending further scientific research on the risks;
- Development of a new list of 'criteria for risk management of tailings that must be addressed for all mining projects';
- Phasing out 'IFC equity and quasi equity financing and MIGA financing for coal mining projects within two years and oil projects as soon as feasible and prudent'.

Certain of the proposed changes are deemed so important that no new projects, involving IFC equity and quasi-equity financing, or Multilateral Investment Guarantee Agency (MIGA) political risk insurance, are to be issued until the new and improved safeguards are in place.

4.4. What Does the Future Hold?

The impact of the Equator Principles and the general convergence of international standards on those seeking to do business in international markets is only going to increase. Among the predictable *near-term* directions for this evolution are:

- *Continued spread of the Equator Principles in project finance*. The number of lenders that subscribe to the Equator Principles will continue to grow, making it ever harder to find a source of project finance without complying.
- *Extending the Equator Principles to the insurance market*. It seems likely that principal international insurers will view the Equator Principles as a way of reducing project risk, and will recognise the Principles either by

making them a condition of insurance or by giving favourable treatment to those who comply.

- *Convergence among Export Credit Agencies.* There is also a clear convergence among the environmental standards applied by all OECD Export Credit Agencies.[10] This emerging 'common approach' in the area of the environment appears to be converging with the World Bank norms.[11]
- *Extending and Strengthening the Safeguard Policies and the Pollution Prevention and Abatement Guidelines.* A number of the recent World Bank policy reviews described above have called for adding new safeguard policies to those that now exist, expanding some of the policies that do exist, and supplementing them with specific guidance for the oil & gas industry.
- *Increased incentive for real as opposed to 'paper' compliance.* As companies see increased benefits in saying publicly that they comply with the Equator Principles and other standards reflecting international expectations, the consequences in international public opinion of getting 'caught' claiming to comply while in fact not complying will increase dramatically.
- *Increased consensus on other standards apart from the Safeguard Policies.* A number of other sets of principles apart from the Safeguard Policies and the Pollution Prevention and Abatement Guidelines are gaining consensus status and will increasingly be looked to by lenders, insurers, equity investors and others. Among these are the principles being worked out by the International Council on Mining and Metals (ICMM) and the World Conservation Union (IUCN) on mining that could affect protected areas, and the similar set of protocols being worked out in the process supported by Conservation International for the oil industry, the Global Reporting Initiative, and others.

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[10] *Draft Recommendation on Common Approaches on Environment and Officially Supported Export Credits: Revision 6 [Common Approaches* can be downloaded and printed in pdf format at <www.oecd.org/dataoecd/2/32/2726700.pdf>.

[11] *Common Approaches* states at p. 5 that 'when an EIA is required, it should address the relevant issues referred to in the guidelines of International Financial Institutions', which according to footnote 1 on p. 5 would include examples such as 'the World Bank Group, Regional Development Banks, (in particular EBRD, AfDB, ADB, and IADB) or a Member's Development Agency'.

5. THE NEED FOR BETTER GOVERNANCE

The more that the World Bank Group is a source of standards that become *de facto* rules of conduct throughout the extractive sector, the more necessary it is that those who have a stake in those rules and how they work have some say in their evolution. Yet to date, the Bank has failed to arrive at a satisfactory model for 'opening the box' to allow greater participation of the variety of voices with a strong interest in the outcome.

It has, in the case of some particularly fraught issues, promoted processes that have in one or another structure brought in 'outside' voices for review of Bank Group activities.

Some Recent Examples of Outside Reviews of World Bank Group Activities

Process	*Description*
Pangue Project Review	<www.ciel.org/Publications/prbio2.html <www.dams.org/kbase/submissions/showsub.php?rec=ins078>
Forest Policy Review	<lnweb18.worldbank.org/ESSD/ardext.nsf/14ByDocName/ForestsandForestry>
World Commission On Dams	<www.dams.org/>
Extractive Industries Review	<www.eireview.org/eir/eirhome.nsf/englishmainpage/about?Opendocument

There has been no real agreement on the objectives of these exercises, or how successful they have been in achieving them. In most cases, the outside processes seem to have ended without any kind of clear ongoing process to take them forward. In some cases, the World Bank Group has rejected some or all of the outcomes and recommendations of the process outright.

Among the concerns that have been expressed are:

- *There has been inadequate attention in most cases to imbalance in power.* Some stakeholders have the technical expertise, access to public channels of communication, and access to Bank processes to argue their views and present their concerns forcefully. Others do not. The poor, who it is the mission of the Bank to help, are the least represented in such processes.

- *Lack of access to information.* External reviews are quite dependent on access to information; the stakeholders who attempt to use these processes to voice their concerns are very constrained when there is not information available to substantiate or refute assertions.[12]
- *Lack of ongoing participation and oversight.* These processes may be highly visible while they are underway, but they tend to end. And after they end, the opening they have created may very well end. The problems that require openness, accountability and oversight cannot be solved by this kind of 'one-time' intervention but need some form of ongoing and permanent process.
- *Lack of accountability.* Outside processes can and do make all sorts of recommendations. But the World Bank Group has shown itself largely impervious to recommendations it finds distasteful. Until there are real consequences for poor performance in the Bank, there will be no real accountability.

The higher profile of the World Bank Group in policy-making in the oil & gas and mining sectors may be a positive step toward addressing the ills created by the acknowledged gap in global governance. But it is also true that:

- The more power an organisation wields, the more important it is that that organisation be subjected to effective checks and balances;
- The more there are demonstrably effective checks and balances, the less resistance there is to an organisation achieving a greater role in governance.

The fundamental issue then is to find effective ways to enhance the Bank's mission and positive influence by subjecting it to more transparency, more effective and continuous oversight, and greater levels of accountability for performance.

[12] As Bruce Rich noted over a decade ago in *Mortgaging the Earth*, those who seek to do research about the Bank often wind up researching things on which information is available rather than the questions they really wanted to ask.

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APPENDICES

Appendix A
CURRENT IFC SAFEGUARD POLICIES

Environmental Assessment (OP 4.01)	Pest Management (OP 4.09)
Safety of Dams (OP 4.37)	Involuntary Resettlement (OP 4.30)
Child and Forced Labour (Policy Statement)	Natural Habitats (OP 4.04)
Forestry (OP 4.36)	Indigenous Peoples (OD 4.20)
Cultural Properties (OPN 11.03)	International Waterways (OP 7.50)

Others under development include human rights. The draft report of the Extractive Industries Review calls for new Safeguard Policies on freedom of information, and on access to dispute resolution.

Appendix B
BANKS ADOPTING THE EQUATOR PRINCIPLES

ABN AMRO Bank, N.V.	Barclays plc
Citigroup, Inc.	Crédit Lyonnais
Credit Suisse Group	Dexia Group
Dresdner Bank	HSBC Group
HVB Group	ING Group
MCC	Mizuho Corporate Bank
Rabobank Group	Royal Bank of Canada
Standard Chartered Bank	The Royal Bank of Scotland
WestLB AG	Westpac Banking Corporation

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