

DISSERTATION

LIBERAL INTERNATIONAL ENVIRONMENTAL JUSTICE AND
FOREIGN DIRECT INVESTMENT AT THE
INTERNATIONAL FINANCE CORPORATION

Submitted by

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ABSTRACT

LIBERAL INTERNATIONAL ENVIRONMENTAL JUSTICE AND FOREIGN DIRECT INVESTMENT AT THE INTERNATIONAL FINANCE CORPORATION

In recent years there have been broad and important debates about whether international environmental justice is attainable within the liberal model. This issue warrants examination, particularly in a context which reflects the strongest possible potential for liberal claims. An especially potent commendation of the liberal model is found in North-to-South foreign direct investment, where liberal advocates identify investment as a key strategy to improve the life chances of the poor. However, foreign direct investment today reflects in many cases dimensions of injustice as between investor and affected populations. Such injustices arise in particular where an investment project taps into local resources such as land, air, water, precious metals, and so on without sufficient participation by affected persons in the benefits of such resource access. These sorts of inequities are especially troubling where the investor originates in one of the wealthier countries of the global North and the recipient country and affected population resides in the global South.

This study attempts to then answer the question: may such injustices be remediated within the scope of a liberal model of economic activity and development? That is, can liberal prescriptions for justice be satisfied by liberal economic precepts and patterns? The study first posits a social liberal amendment to dominant contemporary neoliberal understandings. The analysis then turns to the World Bank Group's International Finance Corporation as a potential best-case example of efforts to render North-South foreign direct investment more

environmentally sound. In particular, the study asks whether the policies and programs of the International Finance Corporation may be fairly seen to accommodate liberal justice precepts.

Culling the existing literature, and employing evidence gleaned from documentary analysis and in-person interviews, the study asks whether the International Finance Corporation is durably engaged in advancing international environmental justice in financed projects.

Through a deconstruction of International Finance Corporation documents and case studies of a purposive sample of recently-financed projects the study asks whether there is more going on at the International Finance Corporation than mere environmental window-dressing. The analysis shows that a social liberal international environmental justice is being advanced, but not evenly.

The study concludes that a stronger implementation of international environmental justice is possible within the social liberal model, but that improvements are needed.

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LIST OF ACRONYMS

AfDB	African Development Bank Group
BEL	Bujagali Energy Limited
CAO	Compliance Advisor/Ombudsman
CES	IFC Environment, Social and Governance Department
CRS	Congressional Reporting Service
ECOSOC	UN Economic and Social Council
EKC	Environmental Kuznets Curve
EPA	Environmental Protection Agency
ESIA	Environmental and Social Impact Assessment
FDI	Foreign Direct Investment
FY	Fiscal Year
GAO	Government Accountability Office
GHG	Greenhouse Gases
GN	Guidance Note
HRIA	Human Rights Impact Assessment
IBHR	International Bill of Human Rights
ICF	Investment Climate Facility
IDA	International Development Association
IEG	Independent Evaluation Group
IEJ	International Environmental Justice
IFC	International Finance Corporation
IFI	International Financial Institution
ISO	International Organization for Standardization
MDB	Multilateral Development Bank
MNC	Multinational Corporation
NAPE	National Association of Professional Environmentalists
NEPAD	New Partnership for African Development
NGO	Non-Governmental Organization
OHCHR	Office of the UN High Commissioner for Human Rights
OPIC	Overseas Private Investment Corporation
PRTR	Pollution Release and Transfer Register
PS	Performance Standard
SEA	Social and Environmental Assessment
SOX	Sarbanes-Oxley Act
SP	Safeguard Policies
TRI	Toxic Release Inventory
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNIDO	UN Industrial Development Organization
US	United States
USAID	US Agency for International Development
WCED	World Commission on Environment and Development
WIR	World Investment Report
WRI	World Resources Institute

INTRODUCTION:

THE PROBLEM, AND THE PATH AHEAD

In recent years there has been an important debate on whether there can be a workable and defensible liberal approach to international environmental justice (IEJ). A review of the literature reveals that many who work on issues of IEJ are not hopeful of any real progress for justice within the context of a liberal—especially neoliberal—organization of the global economy. Liberalism is often criticized for minimizing the extent to which public policy can take account of environmental concerns, based on a prescribed view of neutrality on individual visions of the 'good life.' That is, if individuals are to fully enjoy their own liberal-ensured ability to make life choices for themselves, how can liberalism reign in individual decisions to manage the natural environment in an unsustainable manner? The puzzle that catches my interest in this context is whether there can be a liberal—though not necessarily neoliberal—approach to IEJ that can meaningfully address these concerns and facilitate contextually positive and increasingly just environmental practices. To enable an informed answer to this puzzle, I have chosen to examine the arena of foreign direct investment (FDI) in developing countries, as this is a realm of economic activity and environmental impact that many liberals hold out as an example of the positive potential of economic growth for IEJ.

To focus the inquiry even further, I have selected the International Finance Corporation (IFC) as my case study. I have done so because of the self-acclaimed and externally-ascribed mantle of leadership in social and environmental sensitivity which the IFC is seen to wear in the area of FDI. Thus the IFC is arguably among the most thorough and advanced financial institutions with respect to seeking to ensure effective environmental practices for its investment projects.

For these reasons, if the IFC's approach to FDI does not satisfy a minimum of IEJ then a liberal conception of IEJ writ large is in real trouble. Thus my principal research question is: **Is there a defensible liberal approach to IEJ, and can it be identified in the context of the IFC's FDI standards and practices?**

Chapter One begins by focusing on social liberalism, as distinguished from neoliberalism. Following a tracing of the history and contours of this distinction, the Chapter identifies three primary strands of international environmental justice within the social liberal environmental literature: distributive justice, capabilities justice, and human rights justice. The Chapter concludes with a placement of each of these three strands of IEJ within the literature on international environmental justice generally. Chapter One concludes that there is a clear space within the existing literature on environmental justice for each of the three strands of liberal IEJ, and that thus these three concepts are a legitimate conceptual cohort to be assessed by this study.

Chapter Two builds on the findings of Chapter One, and takes up the issue of international environmental justice in North-South foreign direct investment, seeking to show that FDI is of growing importance for and in the South. The Chapter discusses references to justice which may be inferred from relevant text, as well as explicit though brief mentions of justice and equity concerns in the FDI literature. Finding North-South FDI to implicate justice concerns, the Chapter then analyzes what each of the three strands of liberal IEJ would mean for a more just form of cross-border investment. The Chapter concludes with a brief case study which is employed to demonstrate the application of liberal IEJ to FDI.

Chapter Three introduces the primary case for this study as noted above: the World Bank Group's International Finance Corporation. This selection is premised on the hypothesis that the IFC's practices satisfy some type of social liberal IEJ—with the result that social liberal IEJ writ

large may be seen as a viable concept. The Chapter begins by tracing the history of social and environmental sensitivity at the IFC, in order to provide context for the development of the IFC's tripartite system for the management of project related social and environmental impacts: the Social and Environmental Sustainability Policy, the Performance Standards, and the Access to Information Policy (collectively the Sustainability Framework). These IFC policy documents do not make any explicit references to environmental justice or equity. Thus the Chapter takes up a detailed deconstruction of the first two of these policy documents in an effort to ascertain whether issues of environmental justice and equity are important if implicit elements. For heuristic purposes the third policy document—the Access to Information Policy—is considered separately in Chapter Six. Chapter Three concludes that indeed IEJ concerns are central to the first two of these policy document sets, and that each strand of social liberal IEJ is present, albeit unevenly.

In Chapter Four I then ask whether organizational changes at the IFC add support to the argument that these stronger social and environmental policies can be considered real and enduring. The Chapter argues that change has been substantive, but then considers whether there may be additional explanations to organizational moves as well as the very development of the Sustainability Framework itself as discussed in Chapter Three. The Chapter concludes that the range of additional explanations is insufficient to disqualify a conclusion that the IFC has attained genuine change with respect to the implementation of the Sustainability Framework, in general, and environmental justice, in particular.

Chapter Five complements Chapters Three and Four by looking at the external record of the IFC. That is, the Chapter considers a stratified purposive sample of twenty IFC projects approved since the 2006 adoption of the Sustainability Framework, and reviews in detail the IFC

and client documents which contain evidence of the actual application of the Performance Standards. Based on this review, the Chapter then asks whether any or all of the three strands of social liberal IEJ are operational in these cases. The Chapter concludes that the IFC is indeed consistently applying and enforcing its social and environmental policies, at least at the early stages of project proposal and approval, and that elements of each strand of social liberal IEJ are present, though not equally.

Chapter Six then asks whether disclosure practices at the IFC in and of themselves—in the Sustainability Framework (including the Access to Information Policy) and otherwise—contribute to promoting components of a social liberal IEJ. The Chapter reviews the literature on transparency and environmental equity in the private sector, and then takes up another deconstruction of Sustainability Framework documents—including this time not only the Performance Standards but also the provisions of the Access to Information Policy. Tracing the changes in disclosure and transparency policies at the IFC through the recently-concluded Sustainability Framework revision process, the Chapter concludes that there are real gains for IEJ in transparency at the IFC, but that there remain shortcomings if a greater IEJ is to be fully realized in all three strands.

Chapter Seven then seeks to bring together the findings of Chapters One through Six, and offers a synthesis of the entire study as to whether a social liberal IEJ is indeed possible and durably present at the IFC. The Chapter provides a summary table tracing the overall incidence of IEJ at the IFC. The Chapter then asks what the results of this study mean within the literatures which speak to IEJ, FDI, and the IFC itself.

Chapter Eight briefly surveys the international organizations literature to place this study within recent scholarship on the theoretical basis for understanding movements towards social

and environmental sensitivity at the IFC. The Chapter concludes with recommendations for future research.

CHAPTER ONE

LIBERALISM AND INTERNATIONAL ENVIRONMENTAL JUSTICE

Given the pervasiveness of the liberal—particularly neoliberal or laissez faire economic model, it is fair to ask whether and how justice, and international environmental justice (IEJ) in particular, is conceptualized and pursued in such political and economic systems. Liberal values of individual worth, freedom, liberty, and equality reflect a particular ethos of equal rights (e.g. human rights), equal dignity (e.g. capabilities), and equal opportunity (e.g. distributive justice). If there are observable effects either domestically or internationally which would seem to counter these aspirations and thus undermine our confidence in a sanguine destiny for a liberal society, then liberalism and its vision for IEJ in foreign direct investment must be fairly asked to articulate a defense.

In this Chapter I first identify the contours of a specifically social liberal approach, as distinct from neoliberalism. I then trace the development and implications of three strands of social liberal IEJ evident in the social liberal literature. I conclude by asking whether the literature on IEJ includes and can accommodate each of these three strands of social liberal IEJ, in an effort to discern the viability of seeking to test out a social liberal formulation of IEJ.

SOCIAL LIBERALISM

What precisely do I mean by 'liberalism' in this dissertation? Here I want to go more deeply into the differences between liberal thought generally and the neoliberal consensus that has dominated global economics over the last three decades. This distinction within global liberalism is exemplified in the literature by references to 'embedded liberalism,' seen in the work of Karl Polanyi (1944) and relatedly that of John Ruggie (1982). As Ruggie argues, we may helpfully see liberalism in either its 'orthodox,' or 'embedded' iterations. The orthodox

liberal view gives top priority to market rationality and marshals state resources to protect market latitude. The more embedded form of liberalism, extant in the post-War years, held economics to be the servant of society and took a stronger interventionist and regulatory stance towards economic activity (e.g. Mishra 1999). The collective importance of this work is a judgment that economic activity pursued for its own ends, with the social and political dimensions taking the place of servant rather than master, unleashes global economic forces that can have sweeping negative political and social effects (e.g. Ruggie 1982). This divide, and the work of Polanyi, are also highlighted in Meyer's work on the globalization of environmental impacts and issues. Meyer notes the breach between liberal theory, and the [neoliberal] practice of the globalizing economy (Meyer 2005; see also McMichael 1992 regarding the neoliberal discarding of embedded liberalism).

Indeed, neoliberalism has come under renewed attack since the onset of the global economic crisis beginning in 2008, arguably precipitated by neoliberalism in the financial sector, untethered from appropriate cautions and disclosures and disembedded from the society and values which would serve to guide and restrain the more volatile forms of financial speculation. However, negative public sentiment towards 'cowboy capitalism' has not produced a wholesale rejection of liberalism itself. For example, the World Bank's *Doing Business Report 2012* presents data which indicate that despite the recent global economic crisis, countries are not only retaining capitalist paradigms, but have also continued unabated in pursuing an improved business climate for investment (World Bank 2011).

In this light, it is important to trace the development of neoliberal or laissez-faire liberalism, and the course of events which reflect the development of a more social model. The laissez-faire approach arose out of the increasingly industrialized economy in England in the

19th century. In line with the works of Adam Smith and David Ricardo, liberalism began to be one sided in its focus on political economy. In this understanding the state was to remain strictly non-interventionist as to markets and market forces (Richardson 2001). This was a new development, as earlier forms of liberal political economy had assumed values of moral equality among individuals, and Kant's Categorical Imperative that each individual be treated as an end and not merely a means (Ibid, p. 35).

While some conservatives began later in the 19th century to agitate for regulation of factory work practices and regimens, socialism also arose at this time as an attempt to counter the harshness of laissez-faire liberalism. In line with these developments, a social version of liberalism arose in Britain which suggested that the lack of attention to the social, and the blocking of worker activism, were actually subverting the liberal vision and promise (Arblaster 1984, pp. 284ff).

The American model had not embraced laissez-faire liberalism to the extent that England had, and thus also resisted the move to a more social model of liberalism (e.g. Richardson 2001, p. 39). However, two significant forces converged out of the Great Depression to moderate liberalism's force and content. First was the inception of the New Deal in the United States. Second was the work of John Maynard Keynes in England. Keynes advocated significant state intervention in the national economy, contending for a particular version of macroeconomics that saw the state investing in key sectors of the economy (Arblaster 1984, pp. 292ff). These forces and the substance of New Deal programs resulted in a more socially-sensitive version of political economy in the US.

Following World War II, the significant economic growth and prosperity in the US seemed a vindication of a liberal political economy, but of a more Keynesian bent (e.g. Giddens

1998). This era was characterized by Ruggie and Polanyi's "embedded" liberalism, discussed above and is thus fairly characterized as a more social version of liberalism where the state is a partner in ensuring that the rights and benefits of a liberal political system and economy are available to all (e.g. Mishra 1999). Some have expressly argued that we need to stretch the American version of liberalism to allow a more social expression, since the alternative means of enforcing environmental policy, for example, would be totalitarianism (e.g. de Shalit 1995; and Bell 2002). In this view the move in the 1970's and thereafter to embrace economic freedoms and opportunities as *the* fundamental element (the neoliberal element) of liberalism is itself a distortion of classical liberal thought.

The neoliberal agenda itself had sought to take laissez-faire economics to a new level, that of subordinating the state to the economy, eradicating all vestiges of the 'welfare state,' and hollowing out the public sector. The intellectual progenitors of this move were Friedrich Hayek in Britain (1976), and Milton Friedman in the US (1962), who advanced the strength of anti-statist ideals. And this neoliberalism has been promoted and applied at a global scale. However, for purposes of the present analysis we should note that the more social forms of liberalism have just as great a historical precedent and resonance as the neoliberal agenda evident today.

Thus, this dissertation will not seek to defend neoliberalism, but will employ a view of liberalism which is more classical in form. This means that when reference to liberalism is made, I do mean to include the basic tenets of political liberalism--individual worth and equality, liberty, freedom, and opportunity, and the liberal economic precept that economic activities and relationships should operate as freely as possible among individuals. And the operation of markets will be seen as often the best tool for allocating resources and determining economic benefits such as prices and wages, so long as these arrangements do not themselves violate these

liberal political values. By focusing on IEJ, however, which implicitly takes on concerns for the environmental and social welfare of workers and communities, it is the more social version of liberalism which I adopt and seek to study in the context of FDI at the IFC. And the turn to social liberalism will actually set a higher standard with respect to the global poor than would the adoption of a lower, market-focused neoliberal standard.

Alternatives to Liberalism. In light of the previous discussion, it is important to ask what the alternatives may be to a social liberal form of political and economic organization, under conditions of a fundamentally capitalist economy. Here I employ a scalar depiction ranging from a focus on liberty on the one end, and a primary emphasis on equality at the other end (O’Neil 2007). I then plot four primary categories of political and economic thought along this continuum with the intention of identifying and considering the primary alternatives to the more hybrid form of liberalism I am proposing to engage. The diagram is constructed as follows:

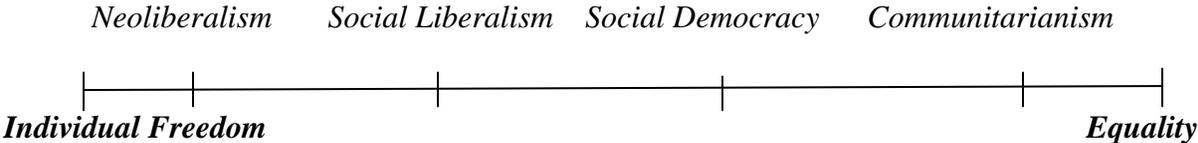


Figure 1-1 Potential Political Systems

It is important to note here that in seeking to understand and distinguish among the various forms of political and social organization, the placement of particular models on this continuum reflects the aspirational intentions of individual systems, not necessarily the actual comparative level of liberty and/or equality. Each state has its own history, founding documents, electoral system, legislative structure, political economy, and balance among the powers held by the heads of state and government. These unique qualities may result in a more blended form of government.

Social democracy takes socialist ideals and principles to the ballot box, seeking the majoritarian embracing of a more welfarist vision (e.g. Przeworski 1986). Social democracy goes an important step further than social liberal democracy in advocating not only extended social benefits for the polity, but in also contemplating the collective ownership of property and economically productive assets. The basic goal of modern social democratic societies, however, has been to regulate “the market economy so as to combine equity with efficiency, security with enterprise and individual freedom with a measure of social solidarity and community” (Mishra 1999, p. 112). The view from this approach is that acceptable levels of equality cannot be obtained when the disparities of positional and inherited power and wealth which inhere in the social liberal model are permitted to endure. Acceptable levels of equality will only be obtained when the state (democratic or social democratic) can oversee the overall distribution of economic resources, control and benefits.

The social liberal response is that, in fact, wellbeing in the aggregate will not be served by extensive state or other public or collective ownership of enterprise and regulation of wealth (with the possible exception of common pool resources). Rather, it is only when private entities may expect to benefit fully from their own initiative and risk-taking that the maximally profitable range of economic activities will be undertaken. Indeed, the inequalities which are admittedly an unavoidable externality of a more social liberal approach are necessary to incentivize individuals to perform and achieve to their potential and to motivate enterprises to undertake the sorts of ventures which will best create jobs and livelihoods. It is just in this view to facilitate individual reward for individual effort. When an entire society is organized along these lines, social liberals contend that the overall level of wealth and productivity will be higher than in a social democracy, and thus the overall well-being of all will be the greatest. And social liberals would

point out that public forms of ownership are also capable of inequity. According responsibility for attaining equality to the state, for example, cannot be left to itself, a point acknowledged by Giddens in his second work on social democracy (Giddens 2000, p. 33).

The social liberal response would, I contend, also acknowledge the need for the instruments of a liberal society to be sensitive not only to the owners of capital but, also, to the voices and interests of other societal stakeholders—affected individuals and communities in particular.

I turn then to communitarianism, which to a greater extent than even social democracy highlights and ennobles the values and rights of the individual, but primarily as these arise within the local community. In the communitarian view, in direct contradiction of classic liberalism, it makes no sense to speak of the individual as an autonomous and atomistic entity, since what each individual perceives as his or her alternative courses of action is predetermined by the social and cultural milieu within which the individual lives (e.g. Richardson 2001). Indeed, members of a community owe their greatest debt to the interests of the collective, not their own personal interest (e.g. de Shalit 2000, pp. 113ff). What communitarianism seeks to add is a sensitivity to community needs and identity, and the need to re-identify and re-invigorate local communities (e.g. Okereke 2008, p. 47). Finally, the communitarian approach characteristically disclaims any assertion of the universality of social liberal or any other values. Rather the focus on the individual community means that notions of the moral and the good are relevant and apt only within the confines of the community which produced such norms and ideas (see e.g. discussion in Dobson 2001, pp. 92, 102). While many communitarians thus argue that there is no workable definition and operation of a global justice (e.g. Walzer 1983; Kukathas 2006), some do extend internationally local justice norms, based on the notion that human communities

within and across individual states are overlapping, and thus individual obligation effectively runs to all humankind, though in admittedly differing degrees.

From a social liberal point of view the problem with communitarianism is its fundamental commitment that distributive justice is valid only within a specific community. Communitarianism can thus lead to moral relativism. Liberals counter that this view doesn't comport with our experience. We oppose slavery not because it is incidental to our idiosyncratic views, but because we believe it is morally wrong. This wrongness "is a reason for, not the product of, our shared understanding" (Kymlicka 1996, p. 43). We also need some larger sense and concept of justice if we are to arbitrate between different views of local justice within our own communities (Ibid). As a practical matter, some liberals also argue that there is no state that functions like the homogenous moral community conceived of by communitarians (e.g. discussion in Okereke 2008, pp. 46ff). Indeed, communitarianism may be fairly accused of taking up an untenable view of human nature—namely that whatever views may be characterized as 'local' are the values to be ennobled. This approach does not take account of the fact that individual views may well be based on self-concern and prejudice, and thus may not truly speak to or of the needs of the community (e.g. Caney 1992, p. 288).

SOCIAL LIBERAL VISIONS FOR JUSTICE

I now turn to consider the ways in which a broader liberalism can speak to issues of justice. In this pursuit this dissertation seeks to identify the outer limits of a social liberal approach to justice. Following the articulation of liberal approaches to justice generally, I will turn to the placement of each of these three approaches in the IEJ literature.

I begin by identifying what I contend are the three principal manifestations of the liberal justice paradigm in contemporary international politics and relations, and turn second to place

each of these paradigms in the literature on IEJ. The three paradigms are: the egalitarian distribution of burdens and benefits; the capabilities approach; and the human rights approach. I find it useful to think of each of these approaches in terms of the strength of the claims which it provides for the poor to realize environmental justice benefits and be protected from environmental damage and injury. The placing of these three approaches on such a continuum, then, would proceed as follows:

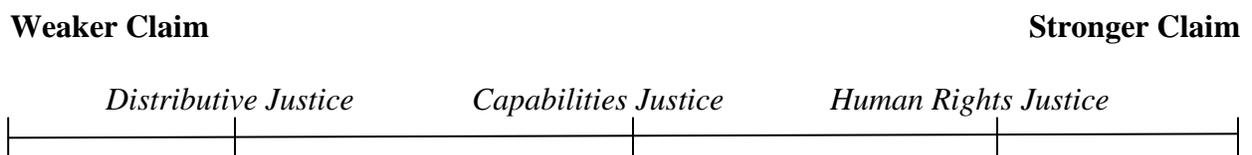


Figure 1-2 Liberal Views of Justice Organized by Strength of Claim for the Poor

A defense of this characterization is addressed in the sections which follow.

Distributive Justice. The literature on a liberal IEJ is often concerned that the benefits of environmental services, and the burdens of effluence and other environmental externalities of human activity, should be fairly distributed among individuals and peoples. In this view fair and just deliberative and decisional procedures are not enough—there must also be justice in substance, in outcomes (e.g. Anand 2004; Adger et. al. 2006). The call for distributive justice is broad and multifaceted, enjoying substantial attention in both the environmental justice literature, and in the international justice literature generally (see e.g. Diefenbacher 2006; Dow et.al. 2006; Harris 2001; Lal 2002; Low and Gleeson 2001; Paavola 2003; Shrader-Frechette 2002; Shue 1996). Indeed, the literature on distributive justice presently dominates the debate on global and environmental justice (Wissenburg 2006), though it has not always been this way (Stavis 2006).

The environmental ethics literature provides a helpful lens here regarding the particular form of distributive justice being referred to in the social liberal approach. Okereke and Dooley (2010) helpfully catalogue six distributive approaches to climate justice in their work on the current state of effort on equity in the global climate regime. For example, some justice scholars advocate a justice as meeting needs approach, whereby justice means that all are assured some basic set of environmental benefits such as adequate food, water and shelter. In this view the exercise of political and civil rights, for example, is unattainable absent the satisfaction of these basic needs. Alternatively, some contend for justice as mutual advantage, where justice is seen to call for the establishment of societal institutions and linkages which would permit members of society to best reach agreement on structures and practices which serve their interests. While there are shades of social liberalism in these approaches, one approach squarely takes up the social liberal vision: the liberal egalitarian approach (pp. 84-85). In this approach a fair distribution of burdens and benefits amongst stakeholders refers to all parties receiving what is 'fair' given their recognized claims in the specific case, and assumes some significant degree of equality among the parties to the distribution. Rawls represents the focal point of contemporary liberal distributive justice theory: "fair distributions away from any substantive agreement on what we each believe as 'good'—pictures of the good life" (Schlosberg 2007, p. 13). Rawls' view was that primary social goods, such as wealth and income, power and status, liberties and rights should be justly distributed, and that natural primary goods, such as intelligence, health, and imagination should not serve as a basis for an unjust distribution of primary social goods (Garcia 2003, pp. 60-62). Key was his Difference Principle, namely that unequally distributed natural goods, such as intelligence and natural talent, should work to the betterment of the least advantaged. Inequalities in the distribution of primary social goods are then permissible only to

the extent that the inequality serves the interests of the poor. That is, “the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate” (Rawls 1971, p. 75).

While Rawls was resolute in *A Theory of Justice* and his later work *The Law of Peoples* (1999) that his construct could not be extended beyond borders, Garcia argues that the connection between us and the foreign ‘other’ who is impacted by our economic decisions (i.e. the visible level of economic interdependence around our globe), requires an extension to the international realm of the Difference Principle (Garcia 2003, p. 126). And while this principle applies primarily among states as the juridical persons in international economic relations, “[t]he principle must nevertheless be understood as deriving its moral force from the conditions of justice between the individuals residing in the affected states” (Garcia 2003, p. 135; see also Baxter 2000, p. 44; Wapner 1997, p. 216).

Distributive international environmental justice would call for the stronger and wealthier partner in a foreign direct investment project—the multinational corporation (MNC)—to take up the burden of conducting a project environmental impact assessment, and bearing the human, technical and financial burdens of implementing the best environmental mitigation methods and strategies. Distributive IEJ would thus require full disclosure by the investors regarding the environmental impacts and effects of their project. Distributive justice also entails consultation between and among affected stakeholders, and participation by such stakeholders in discussions of project structure and impacts. The expectation is that those affected will be able to use that information to better advance their interests. Distributive IEJ does not, however, require substantive power transfers, for example, according local stakeholders control over whether a

foreign direct investment project will go forward. It is enough that the burdens and benefits of environmental activity are more equitably distributed.

This approach to justice is, in my view, the weakest form of a claim for social liberal justice. This is because it is heavily conceptual, and is complex to apply in practice. Practically speaking, notwithstanding the implementation of project environmental impact statements, and full disclosure to affected stakeholders, those impacted by a proposed foreign direct investment project may still be unable to materially impact the contours and externalities of the project. At the more theoretical level, in the context of a specific foreign direct investment project it is not clear with respect to environmental impacts and decision-making just what the practical steps should be to honor the Difference Principle, and who should be accorded the privilege and responsibility to generate for the larger community binding dictates from an Original Position (Rawls 1971, pp. 17ff). For example, we need ask who is accountable to provide such justice (MNCs? The state?), and to whom should the poor turn for redress when distributive justice has not been served? These difficulties are taken up by, among others, Amartya Sen in the following section.

Capabilities Justice. This scholarship has emerged as a powerful adjunct to a social liberal distributional construction of political and economic thought. Advanced primarily in the work of Amartya Sen (1999; 2009) and Martha Nussbaum (2000; 2006), the capabilities approach contends that an apparently fair distribution of wealth and income, for example, may mask significant underlying disparities in the sorts of lives individual people are actually enabled to live, or constrained from living. The capabilities approach is a social liberal political theory because of its focus on the individual. However, the process of ensuring justice by securing human capabilities includes, in both Sen and Nussbaum's work, an express recognition that a

fulfilling human life necessarily entails a meaningful engagement with others within one's community and arena of relationships. Thus advocating only individual identity and latitude does not, in the capabilities view, fairly capture the core of what justice requires (see also Morvaridi 2008, pp. 91ff).

The influence of the capabilities approach is seen for example in the adoption by the UNDP of the approach in constructing its Human Development Index of overall human welfare in specific countries (e.g. UNDP 2009, pp. 171ff). Moreover, the *Journal of Human Development and Capabilities* was founded in the year 2000 and has since then been publishing articles expressly dealing with the developmental role and significance of capability approaches and understandings.

The call for a conception of justice that goes beyond neoliberal views is evident in Sen's *Development as Freedom*, published in 1999, and expanded upon in his 2009 *The Idea of Justice*, and I engage these works here at some length in that they constitute the basis for much contemporary work on a capabilities-based liberal justice. I will also attend to the important and complementary work of Martha Nussbaum, who articulated her own application of capabilities to issues of justice in her foundational work on the capabilities approach—*Women in Human Development—The Capabilities Approach* (2000). This volume took the additional step of seeking to articulate a list of required capabilities. Of more insight and applicability to the international domain, and also included in the following discussion, is her more recent and detailed exposition *Frontiers of Justice* (2006).

I contend that both Sen and Nussbaum are operating in the social liberal tradition, and focus discussion of this claim on Sen as representative of the approach. First, Sen explicitly appeals repeatedly to the appropriateness of the value of individual freedom. While he does not

define freedom in Western terms per se, it is the case that individual liberty to engage in whatever activities and life choices one has “reason to value” (Sen 1999, pp. 6, 85) is of real importance. Second, Sen focuses not on the importance of substantive equality, but rather on the importance of capabilities (p. 13). This is in line with social liberal tenets of empowering and ennobling individual autonomy, initiative and enterprise, with an attendant disinclination to insist upon substantive equalities as a matter of right—with respect to individual incomes for example.

Consistent with social liberalism, Sen's characterizations of liberty are not limited in applicability to individual societies. Sen repeatedly appeals to elements of freedom which are for him implicitly (and explicitly, e.g. 1999, p. 244) universal, for example the capabilities to enjoy basic healthcare, basic education, improved longevity, gainful employment, and economic and social security (Ibid, e.g. pp. 15, 40, 108, 129). While indeed not affirmed equally by all liberals in substance, for Sen these are benchmarks of justice and equality across cultures.

Lastly, Sen centrally advocates basic “political and liberal rights” (1999, p. 148). These are directly instrumental in providing individuals and communities the freedom of what is for Sen an essential arena of public discourse and deliberation—a vehicle for the conception and articulation of substantive economic and social goals and needs (Ibid).

However, Sen is no neoliberal. First, as noted above, the capabilities approach places significant value on community. Second, Sen refrains from defining freedom in primarily economic terms. Wealth is not an end but a means to other more important things (1999, p. 14). Third, he explicitly affirms the need for the formation of institutions to guide and inform individual freedoms (p. 142). Significantly, he cites Adam Smith in support of the need to carefully scrutinize economic liberties: even Smith “did not hesitate to investigate economic circumstances in which particular restrictions may be sensibly proposed, or economic fields in

which *nonmarket institutions* would be badly needed to supplement what the markets can do” (Ibid, p. 124 emphasis added). Fourth, he argues against relegating what are fairly considered “public goods” to the private market mechanism (Ibid, p. 128).

Both Sen (2009) and Nussbaum (2006) contend that the capabilities form of justice is valid as a theory and approach with respect to global justice, thus becoming relevant for purposes of this dissertation’s focus on IEJ. Indeed, the capabilities approach speaks directly to a more social form of liberalism. “Since the late twentieth century it has been obvious that an adequate treatment of international and cosmopolitan justice must address not only the traditional topics of war and peace, but also the topics of economic justice and material redistribution”—topics argued to be well addressed by the capabilities approach (Nussbaum 2006, p. 406). Sen offers two grounds for a broader focus: first the empirical fact of the interdependence of interests among the citizens of different nations, and second, the relevance of the perspectives of other peoples (2009, p. 402). Thus the public reasoning we so easily call for within national borders must also extend beyond them.

In this vein, Nussbaum argues that the capabilities approach “says that a world in which people have all the capabilities on the list is a minimally just and decent world” (2006, p. 274). This issues from a shared conception of what it means to respect human dignity, and what the basic precepts of human dignity require (though assigning specific duties in their pursuit is indeed difficult—p. 277). Nussbaum argues that the capabilities approach is a kind of human rights approach, as many of the qualities of life included in her capabilities list are included in most lists of human rights (2006, p. 284). But she argues that there are issues with a rights approach that aren’t present for a capabilities approach. People disagree on the basis for having a right (Sentience? Life of any form? Rationality?). We need ask, for example, whether rights

are part of the nature of things, or are rather human constructs? Nussbaum argues that the capabilities approach has the answer: the right to capabilities arises from simply being human. Thus the capabilities are pre-political and pre-institutional.

The capabilities concept, as distinct from a negative freedoms approach, is all affirmative, and focuses on outcomes—what capabilities people are actually able to exercise. The capabilities approach thus takes on a focus that is more amenable to social agility and prerogative than a more categorically determined panoply of human rights. This effect is seen in this dissertation's placement of the capabilities approach as embodying a stronger call for reform in the IEJ literature than the human rights approach (see IEJ Typology below).

Both Sen and Nussbaum, by virtue of their more recent work, hold that the capabilities approach to global justice attends well to environmental issues. In the capabilities approach, environmental justice speaks to the need for all to have capabilities which are founded in access to the opportunities offered by the natural environment, as well as the tools and understanding to improve one's natural environment (e.g. Sen 2009, p. 249). Sen argues that environmental sustainability necessarily entails an assessment of the need to protect the capacity of the environment to offer life chances and opportunities for the betterment of the welfare of humans (2009, pp. 248-9).

In this strand of social liberal IEJ the shifting and sharing of environmental burdens and benefits respectively would need to be accompanied by the meaningful sharing of decisional authority and substantive negotiations, and not merely input, over the activity which is the subject of disclosure. This strand thus affords a greater justice for the poor because it specifies aspects of individual and community life which must be accommodated and facilitated if individuals are to be enabled to live out justice in their own lives.

Thus the capabilities approach reaches deep into understandings of how society should be constructed, and of the nature of individual freedom. However, while the capabilities approach is then more socially progressive than the human rights approach discussed next, I accord the capabilities approach the median place in my continuum of strength of claim in that while Nussbaum notes that there should be a moral and ethical obligation on the part of nation states to supply the essential capabilities and the means to exercise them to all of its peoples, claims that the state has failed in this regard have no international recognition or jurisdiction. “The idea of capability all on its own does not yet express the idea of an urgent entitlement based on justice” (2006, p. 290).

Human Rights Justice. Finally, I include human rights as a social liberal expression of justice because the discourse has its modern origins in the context of liberal democracy, and because the emphasis on the individual and his or her freedoms and liberties is quintessentially a liberal concept and principle (see e.g. Bosselmann 2001; Woods 2006, p. 577).

The literature seeking to establish a basis for environmental human rights picks up in the early 1990’s. For example, in June of 1992 the Human Rights Watch and the Natural Resources Defense Council co-published a report in contemplation of the UNCED in Rio, identifying specific examples of how the encumbrance of human rights has had disastrous effects on the natural environment and its inhabitants. In the winter of 1993, the *Yale Journal of International Law* published the results of a symposium there on the issue of environmental human rights. The early 1990’s also witnessed the appointment of a Special Rapporteur to the UN Sub-Commission on Human Rights and the Environment, whose Final Report recommended the formal adoption of a range of environmental human rights (Anderson 1996, p. 1 n.1).

While Amnesty International does not include an environmental human right per se within the range of issues it engages, it does reach the issue indirectly by means of advocating economic, social and cultural human rights, importantly for our purposes the right to a healthy living environment (Amnesty International 2012). Additionally, the Office of the UN High Commissioner for Human Rights not only considers economic, social and cultural human rights, but also expressly considers climate change burdens on human rights and the violations of human rights present in the international trade in toxics (OHCHR 2012a).

On this foundation the current literature reflects the credibility and relevance of the early treatments of this issue, but is not as broad and prolific as one might expect given the purchase for the environmental agenda of what appears to be a legally defensible right to environmental protection and access. Nonetheless, the literature includes important debates regarding the desirability on the one hand, or the liability on the other, of declaring there to be environmental human rights (e.g. Anderson 1996).

As a threshold matter, I note that those calling for the inclusion of environmental rights in the human rights discourse do so precisely to strengthen the imperative to protect and steward the environment, because the language of rights and justice carry more force than merely contending for notions of right or wrong, and because there are existing and emerging domestic and international procedural and judicial mechanisms in place to expose human rights violations and to fast track their protection and defense (e.g. Ageyman et.al. 2003, p. 11; Anderson 1996, pp. 19-20; Douglas-Scott 1996, pp. 120ff).

The language of environmental human rights in the view of some also exposes important echelons of power and dominance present in the environmental dimension of the global political economy (e.g. Stammers 1999), suggesting a social dimension to the rights discourse. Sachs for

example argues that one key to attaining environmental justice is to ensure that those in power are not the only ones who can define what ‘environmental justice’ means (Sachs 1995, p. 8).

Not all would contend for a new range of social, particularly environmental human rights. Indeed for many the way to advance the more social dimension of environmental human rights is to advance and protect existing basic human freedoms of expression, assembly and organization, freedom of the press and speech, and so on (e.g. Boyle 1996, p. 63). That is, the attainability of environmental human rights may be founded in human rights that are already agreed upon among most nations (e.g. Anderson 1996, p. 4; Churchill 1996).

For others the best route is to formulate a new core of environmental human rights, and to enshrine such rights in legal documents—national constitutions in particular (e.g. Hayward 2005). The constitutions of over 100 states already in fact contain explicit environmental provisions (Hayward 2005, p. 22 n. 2). Some contend that in fact establishing environmental human rights in domestic law is the most promising approach, as relying excessively on international human rights law would stumble on differences in culture, judicial structure and function, and socio-economic perspectives and conditions (e.g. Anderson 1996, p. 2).

The environmental human right is also often couched in more positive terms, such as the right to environmental goods and to the benefits of being able to control access to local natural resources. This is because to speak only in terms of a right to be free of *disproportionate* exposure to negative environmental externalities adds little, if the end result is a more equitable distribution of an unsustainable level of environmental degradation.

Nonetheless there are a number of issues which come up in this context, as human rights are not an unproblematic matter even without an environmental component. First, many speak of human rights as necessitating the ability to realize the benefit of promised rights. Some thus

call for the notion of what are termed ‘enabling’ human rights, where what is guaranteed is not only the substance of the right, but the affirmative facilitation of the wherewithal necessary to enjoy the right (e.g. Woods 2006, p. 585-86).

Eckersley points further to the manifest enforcement difficulties of reducing the general language of a right to ‘clean air and water’ to the specificity required to initiate legal action, identifying all those responsible for the violation of such an environmental human right, and proving causality (1996, p. 229). And as noted earlier, debates over the basis for rights also inhere in the human rights discourse.

But perhaps the most strident opposition to the notion of an environmental human right focuses on the fact that an environmental human right is fundamentally anthropocentric (e.g. Boyle 1996, pp. 51ff; Redgwell 1996). In the view of many, however, it is the case that humans are uniquely capable of moral reflection and action, and that there is thus no avoiding some significant and appropriate measure of anthropocentrism (Redgwell 1996, p. 86; Bosselmann 2001; Hayward 2005, p. 32). And the moral scheme which develops on that basis need not preclude ethics that demand consideration for non-human nature. In any event improvements in the natural environment for the benefit of humans will spill over into benefits for non-human nature as well (Redgwell 1996; p. 87). Moreover the strengthening of legal and political systems in the interest of the environment for humans will provide better tools by which to accentuate the concern of non-human nature (Hayward 2005, p. 35).

The sorts of initiative and participation of affected communities is, in human rights international environmental justice, attached to specific rights which must be recognized and accommodated, for example by disclosure regarding the status of existing rights and the means of obtaining legal access to needed rights. This would again require a focus on not only the

nature and quality of community engagement but also on enhancing the ability of stakeholders in recognition of incipient power disparities to meaningfully apply and enforce disclosed information.

In any event, I have argued that the human rights approach provides the strongest basis for claims by the poor, in view of the established juridical character of international human rights laws and agreements and the more credible and compelling nature of recourse sought under such provisions and international regimes.

THE PLACE OF SOCIAL LIBERAL JUSTICE IN THE INTERNATIONAL ENVIRONMENTAL JUSTICE LITERATURE

Having established the boundaries of the social liberal approaches to justice with which this dissertation is engaged, I move to the task of placing each approach within the literature on IEJ.

As early as the late 1980s scholars began to debate whether and how a political system so taken up with concern for and protection of the interests of the individual could impose on society an environmentally sensitive and thus substantive view of the good and still be liberal (e.g. discussion in Barry 2001). This theme has been taken up more recently by scholars such as Avner de Shalit (1995) and Marcel Wissenburg (2001).

Since the natural world is not a party to the liberal social contract, it may be seen to go begging in a narrowly liberal system of thought and practice (Wapner 1997). For some liberals the constraints of environmental protection may even be seen as barriers to individual liberty (Ibid, p. 216). However, these scholars also argue that liberalism's focus on the individual and on equal worth and dignity for all provides a strong basis for liberalism to take on an international environmental concern and to establish an international standard for what is fair and

just with respect to the global environment. (de Shalit 1995, pp. 289-90; Wapner 1997, pp. 226-27).

The liberal approach is seen then to speak to environmental (and ecological) justice by enlisting the sensitivities of citizens of liberal societies who may freely choose to constrain their own prerogative in some manner to serve fundamental commitments to the preservation of nature (e.g. Dobson 2001, p. vii; Achterberg 2001). Indeed, even the more strident environmentalists are moving to engage the debate within, rather than outside liberal governance (e.g. Barry 2001, p. 60).

While the state in a liberal society is not expected to be interventionist and paternalistic, there is then a place for moral suasion, in this case with respect to the environment (e.g. Beckman 2001, p. 184). Nonetheless the liberal environmental scholarship does in the view of many implicitly and explicitly require a shift from neoliberal worldviews to a more social form of liberalism, as taken up in this dissertation, where some articulation of notions of the ‘good’ and some degree of state intervention are permitted (e.g. de Shalit 1995, p. 295; Mills 2001, p. 168; Bell 2002, p. 704; Barry 2001, pp. 67ff).

A Typology of IEJ. I now turn to a placement in the IEJ literature of the three approaches to social liberal justice which I have identified. In so doing I will employ a typology of the IEJ literature which I have found useful as a heuristic tool, and which divides the scholarship into three broad categories: Narrow IEJ, Broad IEJ, and Ecological IEJ. While there is indeed IEJ literature which crosses over each of these categorical boundaries, the overall model nonetheless serves as an aid to conceptualize not only the literature but how to understand and locate the three liberal approaches to justice. The placement of the three approaches to a liberal IEJ proceeds as follows, discussed in detail in the subsequent sections:

Table 1-1

Liberal Approaches to Justice in the IEJ Literature

Category of IEJ:	Narrow International Environmental Justice	Broad International Environmental Justice	Ecological IEJ
Approach to Justice:	Distributive Justice	Human Rights Justice	Capabilities Justice
What Constitutes IE Injustice:	<i>The maldistribution of environmental burdens and benefits, and decision-making authority.</i>	<i>The failure to ensure the provision of rights to safe and healthy living and working conditions for all, including safety from harmful environmental externalities, and the failure to ensure rights to local access to and control over situate natural resources and environmental services.</i>	<i>The failure to ensure that individuals and the communities in which they live are free to live the lives and make the choices they have reason to value, unencumbered by limitations, restraints, and incapacities in the natural environment. Also the failure to consider the capabilities of non-human nature.</i>

As will become clear, the effect of this placement is to push out the boundaries of social liberal environmentalism well beyond the more limited scope of the social liberal distributive approach itself. It is my contention that the human rights and capabilities approaches in particular effectively broaden a social liberal conception of IEJ in the direction of more positive freedoms, and a stronger call for the sorts of reform ascribed to Broad IEJ in the discussion *infra*. As noted earlier however, while the human rights approach affords a more legally defensible claim for the poor than the capabilities approach, in the context of the IEJ literature the latter occupies a deeper reform position and is thus among the three approaches the most potent vanguard for social change.

Narrow Environmental Justice. Distributive justice among humans and within the existing political and economic systems is the chief focus of a liberal IEJ in this category. At a system level, this form of liberalism seeks environmental solutions which are largely consistent with support for democratic political structures, free markets and largely autonomous global economic relations (e.g. Beckerman 1999; Achterberg 2001; Lal 2002; Wissenburg 2006; and Morvaridi 2008). Indeed, the neoliberal approach to justice fits entirely within this category (e.g. Bhagwati 2004; see also discussion in Chasek et.al. 2006).

As to the place for the distributive approach to liberal justice, the Narrow view of IEJ raises the focus on individual and distributive rights to a global level, and retains a commitment to seek to address both the burdens and benefits of environmental resources and externalities, particularly across national boundaries. Justice enters the picture directly when these burdens and benefits are allocated disproportionately among domestic populations or nation-states.

As to human rights, because of its focus on legal rights and states of being within present political and judicial institutions—domestic and international, and its propensity to support the status quo, this approach fits well within the Narrow IEJ category. Nonetheless I contend that we cannot fit the entirety of the human rights literature in the Narrow IEJ category, principally because the current state of human rights scholarship also speaks to social, environmental and cultural rights noted above—seen by more traditional liberal scholars as ‘secondary’ rights, following the ‘primary’ political and civil human rights of the Narrow IEJ category. In addition, the human rights approach establishes a concrete set of norms and values which are part and parcel of the human condition, and must therefore be also accorded to future generations of humans. This goes beyond the more malleable inter-generational obligations of the distributive approach, and is thus another reason for the inclusion of human rights also within a Broad IEJ.

Broad Environmental Justice. In this approach, effectively addressing environmental justice must go beyond distributive concerns, must implicate issues of social welfare and capacity, and may also be directed to address enduring and institutional impediments to these social goods. In the broad category, liberalism takes on a reform agenda, and contends that systemic changes and accommodations are necessary to serve liberal international environmental justice.

As a threshold matter, not all liberals are fully enamored with the extent to and means by which economic neoliberalism and the Washington Consensus has operated over the past twenty years, and thus with the Narrow IEJ literature that affirms the neoliberal ethos (e.g. Kymlicka 1996; Agarwal et.al. 2002; and Morvaridi 2008). It is indeed the case that classical liberalism reflected a strong moral commitment to the weaker members of society, and those who were victims of modernity and progress (Low and Gleeson 2002). And in its initial formulation liberalism did not hold private property to be inviolate, but to be defended and upheld only where enough was left in common for others (Locke 1988/1714, pp. 288, 291). Thus the positing of the Broad IEJ category's heightened liberal sensitivity to social and economic inequities is not unprecedented.

The capabilities approach finds a home in the broad IEJ literature because this literature adds substantive content to the liberal notion of affording individuals equal opportunities and life chances. Nussbaum, for example, points out that the capabilities approach calls for positive aids and obligations of the state to ensure that capabilities are realized. Negative freedoms alone leave us exposed to injustice. If unaided the ostensibly open and equally distributed market and individual freedoms fall short of ensuring the required realization of the full range of capabilities. Thus the capabilities approach fits well within the reform ethos of a Broad IEJ. Importantly, the capabilities approach has also been extended to non-human nature, and thus will be addressed within the Ecological IEJ category as well (e.g. Schlosberg 2007).

Ecological IEJ. Finally, in the ecological justice view, nature must be valued in its own right. The importance of human needs must be counter-balanced by the equally-important needs of non-human nature. Guarding non-human nature may acceptably result in some cases in deleterious impacts on justice among humans.

Nature is not only instrumentally, but inherently and objectively valuable. Some liberal scholars, such as Derek Bell (2006), argue that liberal thought can also advocate for an ecological justice understanding. The difference here for both liberals and critical theorists is that what is sought is not primarily justice for humans, but justice for nature.

In this regard, Nussbaum (2006) and Sen (2009) extend the human capabilities approach to non-human nature, contending that animals, for example, retain a range of entitlements to life and the enjoyment of sentience. Nussbaum argues: “Because it is capable of recognizing a wide range of types of animal dignity, and of corresponding needs for flourishing, and because it is attentive to the variety of activities and goals that creatures of many types pursue, the [capabilities] approach is capable of yielding norms of interspecies justice that are subtle and yet demanding, involving fundamental entitlements for creatures of different types” (2006, p. 327).

On a somewhat different tack Sen argues that we must look beyond human needs in conceptualizing sustainability, because there are aspects of being human that go so far beyond mere need: values, and in particular the “ability to reason, appraise, choose, participate and act” (2009, p. 250). This latter expression of individual freedom must be made part of what we mean by ‘sustainable development.’ But it is this same freedom which then permits us to posit a value to protecting an endangered species even though it would limit an anthropocentric view of development.

One may well question whether the capabilities approach retains the strong obligation to the non-human environment required by Ecological IEJ. While Nussbaum’s approach is founded on the language of the “entitlements” of non-human nature, suggesting something of a stronger claim, Sen may be fairly characterized as advancing a prior anthropocentric stewardship-type obligation. This would seem to accord humans too much discretion in determining how non-

human nature will be accorded particular interests. However, if the ultimate impact upon nature is identical as among these two views, Ecological IEJ is still served even if mediated differently.

CONCLUSION

In conclusion, then, the IEJ literature plainly makes room for each of the three approaches to liberal justice presented in this Chapter. That is, the puzzle which animates this project—the issue of being able to examine the concrete impacts of a liberal approach to IEJ—holds some significant degree of promise in that the concept is legitimate and that thus a reasonably defensible answer may be found.

CHAPTER TWO

FOREIGN DIRECT INVESTMENT AND A SOCIAL LIBERAL INTERNATIONAL ENVIRONMENTAL JUSTICE

This Chapter builds on the social liberal approaches to international environmental justice in Chapter One, and aims to identify whether the growing discourse on international environmental justice can speak to the broadening environmental impacts of foreign direct investment in developing countries. The literature on international environmental justice (IEJ) is progressing to the point where it is now possible to consider whether and what notions of IEJ may be relevant in the theory and practice of cross-border private investment. This Chapter is based on an extensive literature review of work on the issue of foreign direct investment and its social and environmental impact upon communities, peoples, and ecospheres in general, and a case study of a foreign direct investment hydroelectric project in Uganda funded in part by the International Finance Corporation.

In this Chapter I first argue the significance of foreign direct investment for the South, noting that there are nonetheless debates about its impacts. I then seek to demonstrate that the model of social liberal IEJ offered in Chapter One is relevant and applicable to an analysis of North-South foreign direct investment and the environment. Finally, I consider a case study which aims to illustrate this applicability.

Foreign direct investment (FDI) continues to be a major source of capital for developing countries. As noted below, FDI inflows into the developing world have increased substantially in recent years, though with some pullback since the onset of the 2008 global economic crisis. And it is this geographical space within which this Chapter will assess the prospects for FDI that takes account of environmental justice concerns. The poorest forty percent of the world's population earn only 5% of global income (Global Issues 2012), and outside of Asia progress

towards the Millennium Development Goals has been incremental at best. The global poor are inordinately impacted by environmental externalities as their reliance on the natural environment is much more proximate and immediate. And FDI entities wield significant influence within their environs, suggesting the need for special care in considering their overall environmental impacts on the vulnerable. This Chapter focuses then on the impacts of FDI on the global poor, contending that this is the most urgent and compelling dimension of seeking to understand the environmental footprint of FDI (Zarsky 2004).

While the literature on globalization, trade and investment is large, this Chapter will seek to evaluate FDI through the lens of liberal formulations of IEJ. There is no shortage of published work criticizing global capitalism writ large, and contending that the poor will never be justly served short of a post-liberal world order (e.g. Sklair 2002; Falk 1997; Steger 2004, 2009; Hoogvelt 1997; Soederberg 2007; Van Den Anker 2005). A project such as this would be an important contribution to the debate. However, this Chapter is based on the notion that the prior question is whether the liberal literature on FDI can itself accommodate notions of IEJ.

FDI is a realm of economic activity and environmental impact that social liberals hold out as an example of the positive potential of liberal economic growth (e.g. Kehl 2009; Bhagwati 2004; Moran 2002; Wolf 2004; Graham 2000; Neumayer 2001; Esty and Bradford 1997; Talukdar and Meisner 2001; Tikku 1998). Many observers point in particular to the necessity of increased FDI in the South if poorer countries are to achieve their sustainable development goals (e.g. von Moltke 2004, p. 174, 2002; Araya 2004, p. 46).

LIBERALISM, DEVELOPMENT AND FOREIGN DIRECT INVESTMENT

To begin, the consideration of the justice impact of FDI for developing countries must go further and deeper than debates over globalization and its impacts on countries both North and

South. This is because FDI—in particular on-the-ground i.e. “greenfield” investment—is not only about a particular country’s place in the international political economy and related domestic economic and social effects. In the case of FDI something more significant is at stake, in that the foreign corporate entity takes up relatively long-term residence within the borders of a country and thereby becomes part of the fabric and story of that nation (e.g. Chudnovsky and Lopez 2007, p. 74).¹ For example, the FDI entity becomes an economic peer with domestic enterprises, employs domestic labor, and is physically and geographically proximate with potential domestic sources of inputs, markets, services and know-how. As noted by von Moltke, “[i]nvestment is at the centre of economic development and touches virtually every aspect of economy, society and environment” (2004, p. 173). This proximity renders FDI particularly potent for creating both positive and negative environmental outcomes (Araya 2004, p. 47; Bora 2002, p. 213).

This Chapter will then focus on FDI as a proxy for social liberal development for several reasons. First, FDI continues to be an important source of capital in the developing world. As reflected in Table 1 below, greenfield FDI in the developing world increased from an annual average of approximately \$118 billion in inward FDI over the years 1992-1997, to around \$620 billion in 2008 (UNCTAD 2004, UNCTAD 2009a), (though the 2009 total declined to some \$511 billion, in large part due to the global economic crisis (UNCTAD 2011)). For example, the region of the world receiving the smallest share of inward FDI—sub-Saharan Africa—has nonetheless witnessed FDI growth rates of nearly 1,000% since the mid-1990s. Thus FDI

¹ I note here that significant proportions of FDI occur in the form of cross-border merger and acquisition activity, which registers a lower degree of foreign presence in country. However, for purposes of this paper I will be focusing on the forms of investment which themselves take up residence within the host country. As such, I also will not deal with portfolio investment.

represents an important locus of economic activity which, as this Chapter argues, implicates significant questions of the capacity of FDI activity to accommodate concerns of a liberal IEJ.

Table 2-1 Inward Foreign Direct Investment Flows (\$million US)²

Region :	The Developed World	The Developing World	Sub-Saharan Africa
Year(s): 1992-1997 (annual average)	180,750	118,596	4,010
1998	472,545	194,055	6,209
1999	828,352	231,880	8,558
2000	1,107,987	252,459	5,810
2001	571,483	219,721	14,126
2002	489,907	157,612	8,149
2003	358,539	175,138	9,250
2004	396,145	275,032	11,294
2005	611,283	316,444	17,224
2006	972,762	433,764	33,903
2007	1,358,268	529,344	38,307
2008	962,259	620,733	48,081
2009	602,835	510,578	40,279
2010	601,906	573,568	38,114

Second, the work of liberal scholars and practitioners is representative of those who would seek to promote the expansion of FDI-oriented conceptions of economic, social and political development. Indeed, the Northern consensus on the value and potential of FDI is seen in the very existence and reach of such institutions as the World Bank Group’s International Finance Corporation, and the US’ Overseas Private Investment Corporation, that together expend over \$12 billion annually on investments in developing countries, and whose express vision and mission is to facilitate FDI in developing countries for purposes of alleviating poverty (IFC 2011a; OPIC 2010). Indeed, the IFC is now the world's most prolific financier of project finance in developing countries (IFC 2011a, Introduction).

² Data obtained from the UNCTAD 2004, 2006, 2007, 2008 2009, 2010 and 2011 World Investment Reports (UNCTAD 2004, 2006, 2007, 2008, 2009a, 2010, 2011).

Third, such thinkers and perspectives are also influential in policy positions within institutions which retain a unique position to impact the views of the South on FDI. For example, in its Millennium Declaration the UN adopted the following:

We [the United Nations General Assembly] resolve to halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day. . . . We also resolve to take special measures to address the challenges of poverty eradication and sustainable development in Africa, including debt cancellation, improved market access, enhanced Official Development Assistance and increased flows of **Foreign Direct Investment**, as well as transfers of technology (United Nations, September 8, 2000, emphasis added).

Support for FDI is also present in the statements and publications of the United Nations Conference on Trade and Development (UNCTAD). The flagship product of UNCTAD each year is its World Investment Report (WIR), which is the authoritative summary of FDI data for many authors addressing FDI in the South, for example. The tone of the WIRs is not blindly positive with respect to the potential of FDI to improve economic conditions in host countries (e.g. WIR 2011, UNCTAD 2011), but UNCTAD is nonetheless committed to the view that FDI is still an important factor in the positive development potential of countries in the South, evident in the third meeting of its Investment, Enterprise and Development Commission in May 2011 (e.g. UNCTAD 2012).

Taking the same practical example as above, sub-Saharan Africa presently receives only 3% of the global total of inward FDI, and only 7% of the total inward FDI for developing countries (derived from UNCTAD 2011). In view of this historical reality, the WIR has urged: "[i]f African countries are to become internationally competitive, it is essential that they strengthen the necessary linkages between their export sectors and the rest of the economy by building and fostering domestic capabilities in areas such as physical infrastructure, production capacity and institutions supportive of private investment." (UNCTAD 2006, p. xix; see also Boocock 2002; p.19).

The United Nations Industrial Development Organization (UNIDO) takes up a similar theme. FDI is an official strategy of UNIDO: "Foreign direct investment (FDI) in particular is an important driver of industrial performance, as it is expected to improve directly industrial productivity growth by infusing new capital, technologies and managerial know-how, and by improving the average skills and efficiency levels of industry." (UNIDO website 2010).

Again using sub-Saharan Africa as an example, there are also increasing regional calls for increased FDI. First, the New Partnership for Africa's Development (NEPAD) is perhaps one of the most important regional and multilateral Africa-originated efforts in recent years. NEPAD was formed in October 2001 with the vision of establishing a forum and impetus for the "redevelopment" of Africa. (New Partnership for Africa's Development, circa 2002, *What is NEPAD?*). In Section V.C.iv of its Framework Document, addressing the mobilization of resources, NEPAD states that increased private capital flows are "an essential component of a sustainable long-term approach to filling the resource gap" (that is, the gap between needed capital for poverty reduction, and the anticipated levels of foreign aid direct assistance). (NEPAD, October 2001, *Framework Document*, p. 46). This affirmation is followed by a recognition of needed growth in the areas of political stability, good governance, macroeconomic stability, and good infrastructure as necessary preconditions for improving levels of private capital flows to the Continent (Ibid).

Second, the African Development Bank Group (AfDB) has committed itself to aiding the development of the private sector in member nations, with a particular focus on increasing FDI inflows both within and from without Africa (AfDB 2009, *Main Program*). And the AfDB identifies the Investment Climate Facility ("ICF") as one of its recent projects, begun in 2008 to assist African countries in improving their political and economic climate for private investment.

The ICF is a “public-private initiative through which donors, international and domestic corporations as well as NGOs, collaborate with African governments and regional organizations, to improve the investment climate at the national, regional, and continental levels” (AfDB 2009). The inclusion of international corporations in the initiative expressly draws on efforts to increase FDI as a formal commitment of the AfDB.

The collective importance of the above analyses is that FDI is likely to continue to be a significant player in the financial development plans of both Northern MNCs and Southern states for the foreseeable future, and is thus a worthy and important proxy for the larger question of the efficacy of global liberalism for international environmental justice.

FOREIGN DIRECT INVESTMENT AND INTERNATIONAL ENVIRONMENTAL JUSTICE

While this dissertation focuses fundamentally on examining and probing the implications and potential of liberal scholarship with respect to FDI and IEJ, it is important to note that many scholars argue for a recognition of the deleterious impacts of cross-border economic activity in the liberal, but especially neoliberal paradigm—impacts that reach beyond the effects of FDI upon host country economies and environments to injurious effects also upon social and cultural rights and capabilities (e.g. Levy and Newell 2005; Low and Gleeson 2002; Martinez-Alier 2002; McCarthy 2004; Rees and Westra 2003; Crotty, Epstein and Kelly 1998; Bryne and Glover 2002; Agyeman et.al. 2003; Bryner 2004; Amanor 2007; Clapp 2006; Humphreys 2001; Faber and McCarthy 2003; Benton 1999; Sachs 2002; Byrne, Martinez and Glover 2002).

This debate includes in particular claims and counter-claims over whether FDI drives an environmental and even political ‘race to the bottom’ in host countries (e.g. Kamieniecki and Sansarian 1990; Clapp 2001; Weidner 2002; Agyeman et.al. 2003; Faber and McCarthy 2003; Grossman 2002; Kütting 2004; and Meyer 2005; **but for arguments that a race to the bottom**

does not pertain, see Bailey 1993; Wallace 1996, pp. 68-69; Esty and Gentry 1997; Bora 2002, p. 215; Chudnovsky and Lopez 2002; Bardhan 2006; Hochstetler 2005; Christmann 2004; de Soysa 2005; Kirkpatrick and Shimamoto 2005; Jensen 2006; Gallagher and Zarsky 2007, pp. 28ff, 165, 179; Shah and Rivera 2007; Costantini and Crespi 2008; De Santis and Stahler 2009; Sachs et.al. 1998, p. 160; Pearson 1985, pp. 36ff; Mann and Araya 2002, p. 164). For many, it is not only intuitively but also demonstrably the case that MNCs seek to locate in locales where social and environmental regulation are the lowest. Much of this literature finds fuel for the fire in the track record of the more ‘dirty’ and pollutive industries—in the primary sector specifically (see e.g. discussion in Pearson 1985, p. 52; Bebbington et.al. 2008; Harper and Rajan 2007; Keenan et.al. 2007; Agbola and Alabi 2003; and Lundan 2004, p. 2).

On their part, FDI advocates contend that the evidence is scant for a race to the bottom (see e.g. Pearson 1985, pp. 51-52; see also related cites in above paragraph). This is due in part to the fact that the environmental costs of production and abatement are relatively small (Ibid, p. 53). As a result the possibility of more lax environmental regulations and enforcement is not a driving factor, in particular when compared to much stronger incentives such as lower labor costs, and untapped domestic markets and resource stocks (e.g. Kennelly and Lewis 2004, p. 26; Hansen 2004, pp. 68-69; and Chudnovsky and Lopez 2007, p. 87). Some liberal scholars would go even further, however, to contend that FDI entities often actually improve environmental practices in host locales. This is so for several reasons: First, the relatively higher environmental standards in the FDI-sending developed countries have over the years driven changes in corporate culture and environmental technology in ways that improve the environmental practices of MNC foreign affiliates (e.g. Hansen 2004, pp. 88-89; Pearson 1985, pp. 38ff; but see Chudnovsky and Lopez 2007, p. 89). Second, many MNCs are producing for export to markets

in developed countries, where consumers are coming to demand products (and producers) with a smaller environmental footprint (see e.g. Biller 2001, p. 206; Sachs 2002; Bora 2002, pp. 223-24; Lundan 2004, p. 14; Hansen 2004, pp. 86-87; and Faucheux et al. 1998, p. 14). Third, it is noted to be more cost-effective for MNCs to adopt consistent environmental technologies and practices across all of their operations (e.g. Kennelly and Lewis 2004, p. 26). This results in FDI entities using more advanced environmental mitigative and management technologies and practices than their domestic counterparts (e.g. Bardhan 2006, p. 1401; Bora 2002, pp. 215, 221; Araya 2004, pp. 54ff; Bao 2008; Lundan 2004, p. 14).

Fourth, some FDI advocates also contend for the validity of the environmental Kuznets curve (EKC) hypothesis, arguing that as FDI activity increases host country incomes, society will come to demand improved environmental practices and outcomes by all industry—FDI and domestic (e.g. Bao 2008, pp. 260-61). Positive evidence of the EKC may be found, particularly in the industrialized North. Nonetheless among these scholars are those who would argue that in any event the income level turning point towards the upward side of the EKC curve is so far off for the less-developed regions that the interim high levels of environmental degradation are untenable (Bao 2008; Van Alstine and Neumayer 2008, p. 57). Some also contend that gains in political and civil rights, and capacities such as literacy in the host country retain as much explanatory power with regard to higher environmental standards as do increases in income and economic growth (Van Alstine and Neumayer 2008, p. 54; Boyce 2008, p. 105). In the end, however, the weight and scope of research done for this Chapter suggests that the race to the bottom hypothesis is anything but certain. Indeed, FDI advocates would commend FDI overall because “[i]t is a means of increasing the capital available for investment and stimulating the economic growth needed to reduce poverty and raise living standards In addition, it can

contribute to sustainable economic development by promoting the transfer of new technologies, skills and production methods, provide access to international markets, enhance efficiency of resource use, reduce waste and pollution, increase product diversity and generate employment” (Boocock 2002, p. 19; see also e.g. Agosin 2007, p. 61 and accompanying discussion).

How, then, may these literatures speak to the issue of IEJ in FDI? As a matter of first impression, this literature may be overlaid with IEJ concerns. For example, the argument that an environmental race to the bottom exists could be strengthened since (if) these impacts are distributed unfairly between the FDI home and host populations. This draws on the cross-border comparative dimension of distributive IEJ. The literature on the deleterious environmental effects of FDI regardless of any race to the bottom can also be said to have a justice dimension in that the local populations, and even the project host state, are at a disadvantage in dealing with MNCs which wield significant power in pursuing their own interests. This suggests that FDI entities retain an implicit debt to host country populations on the basis of a characteristic power differential (e.g. Kehl 2009, pp. 14, 32; Morvaridi 2008; Boyce 2008; Anand 2004; Wade 2004b; Tollefson 2008; Martinez-Alier 2002; Gallagher and Zarsky 2004, pp. 30-31; Pearson 1985, p. 35; Von Moltke 2002, p. 348).

The link between FDI and IEJ need not, however, be merely inferred. Authors discussing FDI generally have often in a sentence or brief paragraph specifically appealed to considerations of environmental equity. These references, however brief, fall along several distinct lines. First, some refer to the potential of FDI activity to shortchange the interests of not only present, but also future generations (e.g. Bora 2002, p. 212; O’Riordan and Voisey 1997, p. 9; Carter and Huby 2005, pp. 264-65; Agosin 2007, p. 41). Second, some who recognize the power differential between FDI entities and host country actors point to this discrepancy as explicitly

implicating issues of justice (e.g. Van Alstine and Neumayer 2008; p. 54; Calvano 2008, p. 799). Third is the contention that FDI reveals and may exacerbate social inequities—gaps in well-being which must be addressed (e.g. Zarsky 2004, pp. 9ff; Moser 2001, p. 292; Byrne and Glover 2002, p. 10; Agosin 2007). Fourth is the argument that FDI entities need to bear a greater share of the costs of pollution and its abatement (e.g. Islam 1981, p. 243). Fifth, some contend for a greater justice for nature (e.g. O’Riordan and Voisey 1997; von Moltke 2004, pp. 176ff). Sixth, some argue for greater gender equity in FDI (e.g. Braunstein 2009; Agosin 2007). Seventh, some contend for greater economic equity between the MNC and the host state, on the basis of the advantages accruing to the MNC because of access to cheap natural resources (e.g. Pearson 1985, p. 30). Eighth, some see a direct link between the actions of FDI entities and their impact on labor and human rights (e.g. Tay and Tan 2004, pp. 109-10). Ninth, some see a form of inequity in the imposition of Northern environmental standards as requirements of production processes in the South, first as to FDI firms but naturally extending to domestic production as well. In this understanding, an upward ratcheting of environmental standards can create market barriers in the North to goods produced in the South (Sachs et.al. 1998, p. 164). And finally, some see in FDI more broadly the mark of a general global injustice (e.g. von Moltke 2004, p. 176; Sachs 2002, pp. 24ff).

While justice and equity are thus important issues for scholars of FDI, most of these authors do not take the next steps of identifying the basis for the justice for which they call, and of laying the groundwork for how such justice may be realized. Thus this Chapter suggests several reasons why the relationship between FDI and IEJ needs to be theorized and studied in its own right. First, a critique of neoliberalism is not necessarily a critique of FDI. A more social form of liberalism may well contemplate a more interventionist host state, with respect to the

FDI entity as well as the local community, without thereby fundamentally altering the incentives and potential positive outcomes of a particular FDI project. Indeed, a broad spectrum of FDI scholars temper any optimism with references to the necessity of coupling increased levels of FDI with increased governmental capacity to regulate FDI. For example, some liberals argue for a strengthened host country institutional capacity to implement and enforce environmental regulations against FDI entities (e.g. Bao 2008, pp. 261-62; Boocock 2002, p. 19; Gallagher and Zarsky 2004; Zarsky 2008; Kehl 2009; Lundan 2004, p. 12). A broad spectrum of observers argue for this result in terms of improved host country governance if the putative benefits of FDI are to be realized in practice (e.g. Newell and Frynas 2007, p. 679; Goldenman 1999, p. 88; Gentry 1999, p. 29; Moser 2001, p. 305; Araya 2004, p. 47; Agosin 2007, p. 40; Faucheux et.al. 1998, p. 34; see also NEPAD discussion above).

Second, as noted in the introduction to this section, FDI is in-country and thus becomes part of the domestic economic, political and social context. As noted by observers early on, this renders FDI activity much more immediate and direct in its impact on local persons and communities than international trade activities, for example (see e.g. Pearson 1985, p. 10). Concomitantly FDI entities retain a very particular capacity—with attendant demands for accountability—to perceive and respond to local environmental impacts and needs.

In this context we need ask whether an analysis of FDI projects speaks to IEJ, or only to a foreign version of domestic environmental justice. That is, where is the cross-border injustice accommodated? In the context of distributive justice, for example, as discussed further below, the first argument that IEJ is addressed is that companies engaged in investments in the South are themselves first world actors which benefit from cheap resources and labor in the South. By requiring them to engage in extensive social and environmental assessment, prevention and

remediation, resources and energies are being effectively expended in the North on the behalf of persons and groups in the South. Thus corporate beneficiaries in the North are themselves shifting the balance of where the burdens of FDI fall.

Another argument that IEJ issues are being addressed in the FDI context is that Northern corporations will and do pass on to consumers the added expenses of complying with increasing requirements for environmental management and sensitivity, thus in some measure rectifying the typical injustice created by enormous environmental footprints of consumers in the North. If consumers are effectively paying an environmental tax in their purchases of finished goods, based on increased production costs of resource extraction or product manufacture, then those who benefit in the North from the environmental burdens of the South are indeed, I contend, satisfying some measure of IEJ.

That firms will likely pass on increased costs to consumers is in part popular lore and assumption. Interestingly, the business literature is not consonant on the extent to which CSR costs, for example, are necessarily passed on to consumers. In a seminal and extensively cited article, McWilliams and Siegel (2001, p. 121) contend that as a matter of the theory of the firm, publicly-traded corporations may be willing to undertake increased CSR compliance burdens where they are able to pass on the attendant increased costs to customers eager and able to fund such environmental conservation and prevention premiums. Research reveals that indeed passing on price increases is a discretionary response to increased sustainability costs, to be pursued where market and demographic conditions permit. In a number of analyses the evidence showed that eco-based price increases reduced demand and sales (e.g. Schumacher 2010; see also end of paragraph cites). The broad literature seeking to assess whether CSR benefits financial performance is often presented in terms of shareholder value or general financial

returns, rather than ultimate price impact and pass through (for general assessment: Callan and Thomas 2009; airline industry: Lee and Park 2009; Korean firms: Choi et.al. 2010; forest products: Bouslah et.al. 2010). This literature is then less relevant for purposes of assessing the cost pass-through argument for IEJ. What is clear nonetheless is that products produced with increased environmental costs may command higher prices to consumers who are ethically committed to environmental sensitivity, and who demonstrate some measure of price-inelasticity of demand as a function thereof (e.g. organic foods generally: Zander and Hamm 2010; beef: Umberger et.al. 2009; food products generally: Woolverton and Dimitri 2010; fair trade coffee: Arnot et.al. 2006; and Cranfield et.al. 2010; and certified wood products: Aguilar and Cai 2010; and Anderson and Hansen 2004).

The most recent significant context in which this dynamic may be assessed is corporate responses to the implementation of the Sarbanes-Oxley Act of 2002 (Publ.L. 107-204, 116 Stat. 745 (SOX)). In response to the Enron and WorldCom debacles, and other perceived irregularities and deficiencies in the practices of public companies, the US Congress passed drastic securities legislation, precipitating the most sweeping changes in US securities laws since the adoption of the 1933 and 1934 Securities Act and Securities Exchange Act, respectively. Executives of publicly-traded companies now bear significantly increased exposure and liability for misleading and false investor and market disclosures. Publicly-traded companies must now change head auditors at least every five years, and face significantly increased legal and accounting expenses in satisfying the additional disclosure requirements under SOX.

The question for our purposes is whether companies under SOX jurisdiction pass on these increased costs to their customers. If so, then the argument that corporations in the South likely pass on IFC compliance costs to their customers would be bolstered. In what is thought to

be the first analysis of the cash impact of SOX on subject companies (as opposed to earlier studies of SOX impact on stock performance or the incidence of going private), published in January 2010, what is clear is that not all companies have the luxury of being able to pass-through increased compliance costs. Ahmed et.al. demonstrate that companies which operate in high growth-high profit environments may indeed be able to pass on compliance costs because their market and profit margin circumstances allow (Ahmed et.al. 2010, pp. 356, 364). However, companies which operate in established, high competition markets with smaller profit margins cannot automatically pass on increased SOX costs to customers, and may actually have to accept reduced cash flow as a result.

The result of this assessment is that FDI-engaged companies in the South may not be seen to automatically pass on increased costs as a result of IFC requirements for example, suggesting that there is no necessary link on this discrete basis between local level environmental justice and IEJ. Nonetheless, the pass-through is evident in some industries and for some consumers. Indeed it is the wealthier consumers in the US for example, who as a class have arguably benefitted the most from the overall economic benefits of a large US environmental footprint, who are more likely to pay premium prices. Thus requiring higher standards and better practices by corporations may indeed conceptually and empirically address some amount of concern over IE injustice.

I then turn to apply each of the three models of social liberal IEJ to FDI, in ascending order of their strength of claim for the poor noted in Chapter One: distributive IEJ, capabilities IEJ, and human rights IEJ.

Distributive International Environmental Justice. Here the notion of maldistributed environmental benefits, burdens and decisional access is viewed as a cross-border issue. In this

regard some see the need to regulate MNCs as ethically driven, for both social and environmental reasons. This is because FDI is seen as a key means by which the North imposes its environmental footprint on the South, and extracts profits in the process—a fundamentally unjust distribution. Ageyman et.al. observe that it is unjust when the global poor bear most of the environmental burdens caused by the consumption of the wealthy (2003, p. 2; see also Rees and Westra 2003). Others would accentuate this unfairness by noting that in any event, MNCs account for most of the world's pollution and environmental degradation (Humphreys 2001, p. 88). Thus FDI may be seen to directly impact the ecology of poorer countries by a distributive violence which provides resources for the FDI home country, for example, and effluence and the infliction of other environmental harms for the host country (e.g. Harper and Rajan 2007; Pellow 2008, p. 226).

Two insightful pieces integrating distributive IEJ and FDI come from work on the global electronics industry. Smith et.al. (2006) offer a clear picture of uneven cross-border distributions of burdens and benefits. In particular, we enjoy declining prices on our cell phones, televisions, iPods, computers, and electronic games, while we go unaware or worse—unconcerned that the manufacture of these products harms the workers who make them, and poisons the air and groundwater where the MNC-owned factories are located (Smith et.al. 2006, p. 1). Cheaper products for us also mean declining wages and job insecurity for foreign workers (Ibid).

A second and even clearer engagement with the implications of a distributive IEJ in FDI is by Alastair Iles (2004), dealing again with global electronics production and waste—explicitly the purview of Northern FDI. IEJ is not just about inequality—unequal treatment in government and corporate decision-making, or just identifying disadvantaged communities, but about differential cross-border impacts of the underlying production process. “The absence of

ostensibly local environmental problems such as e-waste from global political agendas may reflect the failure of nations and international agencies to attend to the justice dimensions which would reveal the *transnational* character of the problems.” (Iles 2004, p. 68, emphasis added).

The importance of the above for distributional IEJ is that accommodations of social and environmental concerns by FDI entities must be evaluated not merely with respect to impacts on persons and communities, but with respect to the equity of the project in the context of the global relationship between the home and host country. And the index of what ought to be the outcome of an FDI project must be constructed with reference to the relative benefits of the project to home and host beneficiaries and stakeholders.

Such a transnational analysis also implicates the distribution of decisional access and participation (e.g. Schlosberg 2007; Shrader-Frechette 2002) as relevant from an IEJ point of view. The transnational balance of decision-making content and authority between the MNC and affected populations has IEJ implications, as FDI project managers make determinations regarding production or process technologies, extractive methods and waste disposal, ambient plant conditions, labor rights, pay and benefits, and the existence and effectiveness of community liaison channels. Given that the local environment and populace will likely be impacted by the FDI activity more than those who will ultimately benefit from the project, distributive IEJ calls for a deliberate and sustained engagement by FDI line personnel of local leaders and legitimate representatives of the weak and under-represented. This engagement includes prompt disclosures of potential and actual environmental impacts over the life of the project. However, as the following discussion makes clear, seeking equitable distributions may not secure the full expression of justice called for by human dignity.

Capabilities International Environmental Justice. The use of the capabilities approach to engage issues of justice in FDI is a nascent enterprise, and the discussion in this Chapter is intended to illustrate the general direction of this scholarship and to establish the direction such an approach could take towards justice in FDI. As noted in Chapter One, injustices identified in the capabilities approach exist on their own, independent of any particular distribution of environmental goods and access.

As noted above, the capabilities approach is not neoliberal, and it may even be argued that the capabilities approach has successfully tarnished the perceived gloss on neoliberal, economics-led growth models (e.g. Morvaridi 2008). The UNDP Human Development Report conceptualizes development "as the achievement of equality of opportunity or capabilities for individuals to pursue a life of their choosing by removing some of the structural constraints they face" (Morvaridi 2008, p. 92). Thus the capabilities approach extends beyond procedure or distribution only, and addresses substantive states of being. As Agosin argues, Sen's capabilities approach includes a call for equity across a broad range of activities that make up the nature of a society's interaction with a globalized economy, including liberalized FDI (2007, pp. 41-42).

Here the overarching principle is that what is needed is not an insular determination by FDI project personnel of how the interests of local and migrant populations might be accommodated. The very process of distribution can itself entrench the power wielded by FDI project officers and managers, even if what is being distributed is a putative recognition of and participation by local peoples. The capabilities approach to IEJ would contend that the FDI staff still potentially hold all the cards, as participation may be explicitly or indirectly suspended when what is being called for works against the interests of the FDI project. Ensuring capabilities instead means ensuring the conditions which will permit the full exercise of individual latitude

and responsibility by those who may otherwise be subjected to prejudices and distortions by FDI staff. This would, I contend, include the capability to grant or withhold consent for a proposed project. The bottom line ethos of the capabilities approach is in a word *agency* (e.g. Boyce 2008, p. 110). That is, what must be permitted and ensured is the sort of agency that would facilitate full expression of human dignity and discretion by those impacted by an FDI project, in a meaning and manner they are free to value and choose (see e.g. Stevis 2002).

Taking two of Nussbaum's specific argued capabilities is instructive here, in particular the capabilities of bodily health, and control over one's environment (the material environment in particular) (Nussbaum 2006, pp. 76-77). As to bodily health, a capabilities IEJ would insist that the affected stakeholders should have the right and discretion to determine, upon full disclosure as discussed in Chapter Six, whether the environmental impacts of a particular proposed FDI project are acceptable or must be modified. Advocacy by the FDI project staff would be permitted, and may assist in educating local leaders and representatives in understanding proposed mitigative measures. But according dignity to the local population in a capabilities IEJ would allow that local peoples must be in the final analysis allowed to attain and live out their own views of a healthy life, meaning that they must be accorded real power-sharing over the inception and direction of an investment project.

The capability of controlling one's own material environment is another example of how the capabilities approach to IEJ would be applied in the context of FDI. Nussbaum includes in this capability the right to own and protect property—both land and material goods. Here the capabilities approach would, for example, speak directly to the accommodation of indigenous rights to land and resources. Clearly the capabilities approach would not dictate how such rights should be exercised—local populations may indeed welcome an extractive project for the jobs it

would provide, and should be free to sell rights to land and other situate resources. Indeed, as Nussbaum conceives of this particular capability, the right to pursue employment on equal footing with others, and the ability to function in meaningful employment are explicit elements of one's dignity in managing one's material environment. But again, in the capabilities approach the fundamental quality of the interactions between FDI staff and local peoples must be of a sort that grants local people full agency in considering, permitting, facilitating, and being employed by an FDI project.

While the capabilities approach clearly speaks to the empowering of local communities, the concept may also be seen as applicable to the capabilities of host governmental entities to effectively govern and regulate FDI in their locale. In this regard, I contend that the sorts of capabilities called for by Sen and Nussbaum are not only important in and of themselves, but are also essential as a foundation for strengthened capacity in arenas which are founded on the capabilities of individuals and communities which we have discussed. That is, individual capabilities must translate into collective capabilities, even in the more systematized dimension of formal government, be it local or national. It is this appeal for a stronger and more agile state which is implicated even more explicitly in the human rights approach to IEJ in FDI.

Justice, Business and Human Rights. The claim that FDI activity implicates issues of human rights is one of the most powerful venues in which to seek to examine the notion that FDI can produce positive outcomes. Morvaridi notes "how egalitarian liberals promote the idea of human rights for development, based on the principle of social justice, and how this challenges neoliberal economists who prefer to talk of individual freedom, under the guarantors of minimal state activity and a free market" (2008, p. 107).

Fair distributions in cross-border comparisons do not compel any particular array of human rights and the capacity to enjoy them. Thus the obligation of an FDI entity to guard human rights IEJ also arises because of its place and potential in the host country setting. However, this scholarship adds to the capabilities approach a greater discursive and juridical purchase, with attendant increased possibilities of the provision of such rights for the poor. This would mean a legally-enforceable right of affected stakeholders to exercise a "go—no-go" vote over the decision to proceed with a project.

The business and human rights issue has been on the table for a number of years. As early as 1995 the connection was being made between the injustice of environmental burdens on human rights and the activities of MNCs (e.g. Sachs 1995). International environmental injustices mediated by and through MNCs were identified in logging operations in Siberia, and Shell petroleum extraction in Ogoniland, Nigeria (Ibid, pp. 25ff). The debacle in Nigeria, for example, makes plain a direct connection between FDI-precipitated environmental and human injury not shared with countries that consume the export—i.e. international environmental injustice—and the human rights of affected persons (e.g. Agbola and Alabi 2003, p. 270). Indeed, over the past fifteen years or so, there has been steady progress in the direction of assigning private sector actors some significant degree of responsibility for human rights violations and degradations that may be fairly traced to their presence and impact in a particular environment or locale (e.g. Leader 2006).

As a corroborative matter, it is important to note that both Amnesty International (2012) and the UN High Commissioner for Human Rights (2012a) explicitly make a place for business and human rights in the range of issues to which they are committed.

Significantly, since 2005 this issue has been receiving an even more cogent focus through the work of John Ruggie in his capacity as ‘Special Representative to the UN Secretary General on the issue of human rights and transnational corporations and other business enterprises’ (Ruggie 2011, 2010, 2009a and 2009b). The explicit argument here is that work on FDI has insufficiently considered the extent to which greenfield cross-border investment activity can burden and block what should be seen as a full conception of the rights-based welfare and prospects of situate populations.

The UN has constructed a website which focuses entirely on this issue of business and human rights (<http://www.business-humanrights.org/Home>), with a link to an associated site which serves as a resource specifically for Ruggie’s work in this special capacity (<http://www.business-humanrights.org/SpecialRepPortal/Home>). The primary website is intended to catalog both theoretical and applied work concerning MNCs and their impact upon human rights. This work includes studies of corporate impact in specific geographical regions or countries, as well as legal and other developments with respect to specific corporations. Concerns with environmental impacts, including many case studies of disputes over matters which arguably fall within the purview of IEJ, are expressly included in website content.

The UN website serves as a source for documentation produced by Ruggie, including his Final Report of March 2011 to the United Nations Human Rights Council, reiterating his own conception of how to render the human rights discourse discernible and attainable in the context of FDI (Ruggie 2011). In this Report Ruggie outlines a tripartite roadmap for the pursuit of human rights in FDI, namely that states need to actively *protect* against human rights abuses by FDI actors, that MNCs need to *respect* human rights in the implementation of their business activities, and that there needs to be improved access by human rights victims to both judicial

and non-judicial recourse and *remedies* (Ibid). While this Report does not directly address IEJ, it does create an implicit link with the IEJ debates and literature which take up the issue of whether there is a human right to the environment.

By way of clarification, however, in this Report Ruggie makes clear that host country governments—who solicit and maintain connections with FDI entities—have a significant obligation to create the sort of environment and governmental capacities necessary to engender and secure human rights within their borders, and in the areas affected by foreign and domestic private sector activity (Ruggie 2011, pp. 6ff). Others also point to local community pressure and activism as enabling a stronger and more even application of relevant human rights (e.g. Araya 2004, p. 66). Thus for some observers significant leverage for human rights in FDI must come from non-corporate actors.

Interestingly the International Organization for Standardization (“ISO”) has a new social responsibility certification program, ISO 26000, which expressly requires certified organizations to monitor their own activities and take related action to protect the human rights specified in the International Bill of Human Rights (“IBHR”), which consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights 1966, and the International Covenant on Civil and Political Rights 1966 (OHCHR 2012b; cf. also ISO 2009, p. 14). The IBHR includes the social, economic and cultural rights discussed above, which include a healthy and supportive living and working environment (OHCHR 2012b). ISO 26000 has now been formally adopted (International Organization for Standardization 2012).

Some see the growing human rights discourse in the development context as a needed impetus to an otherwise uninspired discussion. That is, intoning the language of rights triggers a heightened moral visibility and imperative for action (e.g. Cornwall and Nyambu-Musembi

2004, p. 1416). Indeed, the human rights focus on business can politicize the otherwise principally economic content of FDI prospecting, planning, and implementation (Ibid). The rights focus also conceivably increases the need and possibility of improved accountability on the part of FDI entities and host states (Evans 2001, p. 626).

Importantly, however, the human rights approach to IEJ in FDI may be seen to turn less on agency than does the capabilities approach, as reflected in the placement of the capabilities approach within the IEJ literature above as retaining a more progressive social vision than the human rights approach. This is because at bottom the principal responsibility and latitude for providing human rights rests with the facilitating host state government. The situate population retains only the residual agency that is determined by contextual factors in seeking to enforce human rights from the bottom up. These factors specifically include language barriers, limits on financial resources for legal process, and cultural norms which may color the content, trajectory, and thus the ultimate success of domestic appeals for regulatory enforcement and/or formal legal action regarding argued human rights.

FOREIGN DIRECT INVESTMENT AND JUSTICE ON-THE-GROUND

Perhaps the best way to flesh out the implications of the three approaches to a liberal IEJ in FDI discussed in this Chapter is to examine how they would operate in a real world setting. In this regard one particularly useful example of the interplay among the approaches is the presently-ongoing Bujagali Hydroelectric Dam project sub-Saharan Africa being constructed by Bujagali Energy Limited (BEL), and financed in part by the World Bank Group's International Finance Corporation (IFC).

As the IFC is the case study for this dissertation, I note that Chapters Three and following undertake a detailed analysis of IFC programs and policies. The purpose of the BEL example in

this Chapter is thus not to focus on the efficacy of IFC requirements, but rather to provide a concrete setting in which to apply the preceding treatment of IEJ in FDI.

Overview. The BEL project is a 250 MW generating plant currently under construction on the Nile River in Uganda, Africa. While small by Northern standards, the Bujagali project will double the amount of electricity currently being produced within Uganda. The project was begun back in 1998--with the assistance of the IFC and with compliance with the IFC's social and environmental assessment requirements in place at that time. Early on the project received some focused criticism by environmental NGOs (see e.g. Mucunguzi October 7, 2000), including the Ugandan NGO National Association of Professional Environmentalists (NAPE) (Kamagara June 13, 2002, see also the NAPE website <http://www.nape.or.ug/index.php>). In fact the IFC Compliance Advisor Ombudsman still has available on its website two particular investigations it undertook to examine detailed claims by affected persons and communities, including NAPE (CAO 2000; CAO 2001). Opposition continues (e.g. International Rivers 2007, 2009), but the protests have not delayed the project. In 2003 the original private investor backed out, leaving the project prospects uncertain. In 2005 BEL entered the project, and in 2006 undertook its own extensive and updated social and environmental assessment ("SEA"). The IFC approved its own participation in the project April 26, 2007, and disbursed funds on January 22, 2008 (IFC 2006j).

Distributive International Environmental Justice. As to distributive equity in decision-making, community engagement began with contacting local governmental authorities and establishing with their assistance special committees to represent the interests of local villages and communities (BEL 2006a, pp. 266ff). These committees expressly included women and elderly representatives, as well as those who could speak for orphans and the disabled. Public meetings were held at which BEL presented the proposed project and took

comments and concerns from attendees. BEL documents in its SEA that its engagement of affected persons was extensive and ongoing, and that the call by the IFC for ‘free, prior and informed consultation’ had in its view been satisfied (Ibid, p. 274). Specific measures included conducting public meetings in the local languages, and contact with local kingdom leaders to ensure all who should be consulted have been included. Focus groups held in 2006 in the project locale revealed that from the perspective of local people, the number of meetings held regarding the project were many and that local concerns were well-received (e.g. BEL 2006b, p. 62).

Community meetings as reported by BEL identified widespread support for the project, as articulated by local government and community representatives (see e.g. Table 6.5 at BEL 2006a, pp. 295ff). Concerns raised in community meetings included obtaining access to electricity produced by the project, vocational training and hiring priority so that local people could compete for new jobs created by or as a result of the project, being able to realize new economic opportunities and benefits associated with the project, and improved water supply in view of the project’s curtailment of some existing sources.

In response to these concerns, BEL committed to a greater distributive equity in project benefits by establishing job centers locally, and ensuring that the project subcontractors hire local persons where qualified (see BEL 2006a, Table 6.7, pp. 302ff). BEL committed to lobbying the Ugandan private company which controls electricity distribution to supply some amount of project power to local communities, noting that BEL could not provide such services on its own. BEL agreed to construct new wells in affected villages, but for cost and maintenance reasons declined to provide each village with piped water. And BEL agreed to serve local development by helping establish markets closer to the resettled villages, and assisting in establishing a microcredit system so local people could obtain capital for business purposes (2006a, Table 6.8,

p. 309ff.). BEL has even developed a freestanding Community Development Action Plan addressing specific measures to assist social and economic development in project environs (BEL 2006c).

Finally, in accordance with IFC requirements, BEL established an ongoing grievance mechanism whereby local communities and individuals could register grievances regarding the planning, construction and operation of the project (BEL 2006a, p. 316).

It is clear from the preceding evidence that BEL's community engagement and consultation, and provisions for benefit sharing have had and are having a significant impact on the conduct of this project. BEL has undertaken specific measures to assist local populations in enjoying increased incomes from jobs related to or resulting from the project, and to pursue the health and economic benefits which would accrue to local populations by the provision of electrical power. These benefits may be seen in an IEJ analysis to fairly offset some portion of the new environmental burdens of the project. BEL has become aware of and has committed to particular plans to ensure that it is not the only entity which profits from this project. The breadth and duration of public consultations—both past and into the future—and the groundwork necessary to ensure that these meetings and associated committees were representative and culturally appropriate, have required and will require the expenditure of significant monetary and human resources by BEL to effectively understand and respond to these inputs.

Capabilities International Environmental Justice. However, even an examination as detailed as permitted by this project's documentation does not fully satisfy concerns for capabilities IEJ. For example, the BEL SEA makes clear that its purpose in meeting with local officials and representatives was to satisfy the IFC's requirement for free, prior and informed *consultation*, rather than *consent*--which would have provided local populations veto power over

the project. As it happened, all of the local communities were in support of the project, but there remains significant potential for coercion and disenfranchisement when projects seek only consultation and may nearly always go forward in the end.

Nonetheless capabilities IEJ is served to some extent in BEL's resettlement and displacement measures and activities. The BEL's investor predecessor had conducted surveys in local communities to identify 'Project Affected Persons' (BEL 2006a, pp. 266ff). Based on those surveys, the prior participant developed and implemented a comprehensive relocation and resettlement plan in the early 2000's. Nonetheless BEL established its own resettlement follow-up plan, to seek feedback from resettled peoples regarding the then-present state of their new locale, residences and livelihoods (BEL 2006b, *Assessment of Past Resettlement Activities and Action Plan* ("Action Plan")).

While the project has had or will have physical and/or economic displacement effects on over 5,000 people, the Action Plan notes that only 85 households were required to be physically or economically resettled. These were all relocated by the earlier participant in this project. Thirty-four households were resettled in a village newly constructed by the project client, and fifty-one were given cash compensation to relocate themselves how and where they so determined (BEL 2006b, p. 4). Cash compensation was also provided for project impacts on existing land use, perennial crops and trees, and existing structures.

The resettled community was provided with new housing including land titles, ventilated pit latrines, rainwater catchments, water bore holes, the promise of a new school (which BEL has taken on itself), and a new health center. The intent of the original project participant was to provide physically and economically displaced persons with comparable livelihood opportunities, small plot farming in particular. To that end displaced persons who chose

resettlement were provided with plots of land at a newly developed site, as well as regionally appropriate seeds and farm implements.

In its 2006 public consultation process and focus groups with resettled persons, BEL identified positive outcomes for those who had better homes and better incomes following physical resettlement. Some noted difficulties with land titles, housing repair needs, and poor roads in the new community (BEL 2006a, pp. 295ff; BEL 2006b, pp. 13ff). Negative reports also arose among fishermen who were experiencing greater difficulty in access to the Nile river due to increased distances and fencing, with attendant negative income effects (BEL 2006b, p. 17). BEL also learned that the resettlement had indeed caused some significant economic difficulties in that pre-existing and dependable business relationships were interrupted, resulting in lost market and income opportunities (e.g. BEL 2006b, p. 83). Long-standing low-cost reliance on neighbors for assistance and security was also interrupted or terminated, resulting in higher living costs in the new location.

BEL learned from project affected persons who took cash compensation that many were better off because the cash had facilitated new livelihood options previously unavailable. Economic uses to which cash compensation was put included constructing rental housing, purchasing a motorcycle to use as a taxi and transport vehicle, and engaging in poultry or other animal farming (BEL 2006b, p. 21). Relatedly, as noted above, BEL has undertaken to sponsor a micro-credit entity to serve such economic pursuits among displaced populations.

BEL noted that vulnerable people such as orphans, elderly and disabled persons were not well identified in the earlier relocation program, and are now nearly impossible to identify as original qualified claimants under the resettlement program (BEL 2006b, p. 24).

Regard for capabilities is seen in the provision of resources needed to maintain existing livelihoods, again a fairer and more generous outcome than would have resulted in a project not subject to the IFC's requirements. This case goes even further, though, in the case of cash compensation. Here affected persons in many cases were given the capability—indeed the agency—to advance beyond their own historical livelihood options and make economic choices which reflected their own unique values and creativity. These arrangements reflect the provision of a meaningful opportunity for affected persons to direct the course of their own life and community.

What remains unclear, however, is the extent to which the actions of BEL under the requirements of the IFC have enabled, or interfered with, the second-order capability of affected communities to organize and represent themselves in their ongoing relationship with BEL as the project enters its operational phase and the long term effects of the project become more clear.

Human Rights International Environmental Justice. As to human rights, the documents reviewed for this case do not refer to land or livelihood rights per se. And as noted earlier, the indeed extensive community consultation nonetheless did not grant affected persons a legally-enforceable veto right over the project. However, the ways in which BEL approached this project and the outcomes of community engagement retained the stature of positive rights. In particular, these were indeed the more secondary—social and cultural rights. But the follow-on resettlement program and associated grievance mechanism provide displaced persons a basis for formal claims against BEL for the provision of specific benefits. The existence and strength of these rights supersedes a private contract relationship between the two parties, in that BEL has made its obligations and commitments public and has thereby elevated specific project benefits

to a status I contend is similar to that normally accorded human rights. Thus while FDI entities may not speak directly of human rights, the equivalent may be found implicit in their actions.

In sum, this case—while significantly impacted by the imposition of specific environmental and social standards by one of the project financiers—provides a useful example of just how the three social liberal approaches to IEJ might be applied, and strengthened, in practice.

CONCLUSION

Based on the discussion and arguments in this Chapter, it should be apparent that social liberal formulations of IEJ are indeed relevant to how FDI is conceived, planned, implemented and operated. That is, distributive IEJ, capabilities IEJ, and human rights IEJ all speak to potential avenues of improving the environmental and therein the social impacts of FDI projects upon the poor. It follows from this recognition that the range of literature discussing the environmental impacts of FDI—the pollution havens/haloes literature in particular, would be usefully augmented by a greater focus on what social liberal approaches to IEJ bring to the table. A first world focus on the environmental dimension of FDI is often based on preexisting sentiment and norms in the North regarding the desired and appropriate impacts of FDI. The IEJ discourse adds to this intellectual disposition and prejudice new dimensions by which FDI may and must be evaluated. In particular, justice calls for attention to the importance, substance and disposition of local involvement, thereby opening up new conversations and new considerations for identifying and implementing acceptable and equitable forms of FDI in the developing world.

It is hoped that this Chapter has at least cracked open the door for a wider discourse and discussion, and that the positive potential of FDI for the poor may be assessed on a more complete set of criteria.

CHAPTER THREE

POLICY OUTPUTS AND INTERNATIONAL ENVIRONMENTAL JUSTICE AT THE INTERNATIONAL FINANCE CORPORATION

Having set in place the liberal approach to international environmental justice (IEJ), and having established that each of the three liberal approaches is effectively relevant to foreign direct investment (FDI), I now turn to ask whether, then, the preeminent international organization engaged in FDI in the South: the International Finance Corporation (IFC), may be said to be accommodating any or all of the three liberal approaches to IEJ?

The goal of this Chapter is to demonstrate that the IFC's claims and policies do address issues of IEJ. I begin by providing some historical background on the IFC. I then deconstruct the IFC's operational documents to show that questions of IEJ—whether distributive, capabilities or human rights IEJ—are central to these documents. In short, this Chapter aims to show that the IFC can be properly evaluated in IEJ terms. This Chapter is based on an extensive literature review and analysis of available secondary sources on the IFC and the environment. These sources are followed by a thorough deconstruction and content analysis of publicly-available IFC policy documents.

INTERNATIONAL FINANCE CORPORATION HISTORY

It is important to be aware of the progression of the IFC's environmental programs from internal program to external impact on private enterprise and other international financial institutions (IFIs) generally.³ This is because the dynamics and actors on the path of the IFC towards greater social and environmental sensitivity generally are probative of the possible future path of the IFC towards a greater IEJ.

³ I note here that the IFC is a hybrid institution: a multilateral development bank to the extent that its members are representatives of states (e.g. Wright 2007), and an international financial institution to the extent that its clients are largely private entities (e.g. Park 2005a). Nonetheless I refer to the IFC herein as an international financial institution.

The IFC originated out of the Bretton Woods agreements, concluded following the end of World War II. The IFC was established in an era during which foreign direct investment in the developing world was seen as roundly beneficial to host countries (e.g. Haralz 1997, p. 807). Initially the World Bank was tapped as the institution to promote and assist FDI in the South. But this arrangement soon proved to not be favorable for private investors, particularly the requirement of government guarantees of individual investments. That put the idea of an IFC fully under consideration. However the concept was aggressively opposed by various US government agencies, such as the Treasury Department, the Federal Reserve System, and the US Export/Import Bank. In their view, sharing the ownership of private enterprise with a public institution would undermine the operation of the free enterprise system. Others argued that if public support was required for foreign direct investment in the South, "these investments were probably not economically justified in any case" (Ibid, p. 809). But the IFC was ultimately approved, and opened its doors in 1956.

The IFC is similar to the World Bank (the Bank) as to membership and voting rights, with each member's vote indexed to its percentage share of contributed capital. Of the Bank's 187 members in 2012, 183 are IFC members (IFC 2012j; World Bank 2012). Although the IFC shares its board of governors, board of directors and president with the Bank, it has its own Articles of Agreement and funding sources (IFC 2012b).

Today the IFC is the world's leading financier of project finance FDI in the South, providing over one third of all private equity and debt project finance for FDI in the developing world (IFC 2011a). This is the case even though the IFC generally does not take a majority stake, whether debt or equity, in the projects it finances. A significant portion of the IFC's investments have been in the wealthier developing countries, such as Brazil and India. The IFC,

in response, has renewed of late its focus on the poorer countries, as evident in its reporting on investments in Bank Group International Development Association countries (i.e. the poorest) in FY 2010 (IFC 2010a, p. 1).

As of FY2011, the IFC was invested in 518 projects in 102 countries, with the total value of its loans, equity investments, and debt securities exceeding \$42 billion, including \$12 billion in new investments for its own account in 2011 (which excludes financing mobilized by the IFC from other sources) (IFC 2011a). This is up significantly from some \$13 billion total invested in 284 projects in 66 countries in the year ended June 30, 2006. A growing component of the IFC's portfolio consists of financial and business advisory services. At the end of FY2011, advisory services were being provided in 642 active projects with a total annual value to the IFC of some \$820 million (IFC 2011a).

The IFC's investments are spread across a number of different economic and industrial sectors, the resulting distribution reflecting the areas in which IFC projects are likely to have the highest levels of social and/or environmental externalities. As of FY-end 2011, the percentage distribution of IFC projects by dollars invested was agribusiness 4%, global financial markets 25%, trade finance 38%, global information and communication technologies 3%, global manufacturing 7%, infrastructure 13%, and oil, gas, mining and chemicals 2% (IFC 2011a, p. 12).

The IFC currently follows the project environmental and social categorization scheme established initially by the Bank: Category A projects are those likely to have significant irreparable environmental and social impacts, which are "diverse, irreversible, or unprecedented." Category B projects are those with "limited" negative social and environmental impacts, which are considered to be remediable with existing technologies and management

practices. Category C projects are those unlikely to have significant adverse social or environmental impacts, and Financial Intermediary projects are those which consist primarily of the funding of loan vehicles and finance institutions, though the IFC recognizes that some projects funded by involved institutions and funds may have potential impacts. (IFC 2012a, p. 8). Of the 518 projects currently active, only 10 are Category A, 133 are Category B, and 246 are Category C. One hundred twenty-nine are Financial Intermediary projects. (IFC 2011a, p. 12).

The IFC's early objectives were centered on industrial development. But in 1969 Bank and IFC President Robert McNamara delivered a prescient policy statement to the IFC Board that accorded equal importance and relevance to corporate profitability and host country development. Environmental awareness and sensitivity in particular may be traced to a 1970 speech to the UN ECOSOC by McNamara again in which he stated that "The problem facing development finance institutions, including the World Bank, is whether and how we can help the developing countries to avoid or mitigate some of the damage economic development can do to the environment, without at the same time slowing down the pace of economic progress" (quoted in LePrestre 1989, p. 17; see also Haralz 1997, p. 877). Relevant and influential here were the passing of legislation in the US—in particular the National Environmental Policy Act in 1969, and the pending 1972 UN Conference on the Human Environment. In a pamphlet designed to preface and speak to the 1972 UN Conference, the Bank argued that economic development and environmental sensitivities were not incompatible (World Bank 1972, p. 5). The full scope and impact of this vision has, however, become clear only of late. The sustainability imperative has now come to form an integral part of the IFC's ethos and mission, taking its cues in particular from the sustainable development paradigm and debate as they have played out since WCED.

The environmental history of and programs at the IFC must also be seen in the context of analogous and in many instances prior developments at the Bank. External pressure on the Bank began in the 1980s, principally due to highly visible deleterious environmental and social impacts of large infrastructure projects. In 1982, the Bank funded the Polonoroeste project in the Brazilian Amazon (see e.g. discussion in Wade 1997, Seymour and Dubash 2004, and Park 2005b). The project involved the building of a highway through the rainforest, and the establishment of business-oriented enclaves, with the goal of opening up proximate regions to industry and economic growth (including farming, cattle ranching, and settlements in particular). The immediate effects of the project included malaria, mass displacement of local populations, unprecedented rates of deforestation, and water contamination from gold mining (Park 2005b, p. 122). The Bank soon came under intense pressure from NGOs and watchdog groups to cancel the project. Critics were able to bring this project to the attention of parliamentary members in Europe, and Congress in the US, with the result that the Bank was induced to develop specific criteria by which to screen out proposed projects with unacceptable and unmitigated environmental risks. The lobbying network included the Natural Resources Defense Council, the Environment Defense Fund, the Environment Policy Institute, the National Wildlife Federation, the Sierra Club, and the Bank Information Centre. “Between 1983 and 1987, there were more than twenty hearings on the environmental and social performance of MDBs before six sub-committees of the US Congress” (Park 2005b, pp. 123-124). By thus increasing the visibility of Bank activities, NGO actors were able to induce threats to cut off the Bank’s funding if it did not address the identified environmental and social issues.

Shortly following Polonoroeste, the Narmada dam project in India became another public relations nightmare for the Bank. The dam was to be the world’s largest hydroelectric dam

project, involving some 30 separate major hydro dams with an extensive network of downriver dams. Local populations in India protested with hunger strikes, sit ins, and other protests. The Bank itself was lobbied by letters, phone calls, faxes, emails and related meetings. For the first time, the Bank in 1992 commissioned an outside consultant to study the project. The resulting report found that the project had not considered downstream impacts on local populations, or significant salinity and water-borne disease issues. Because of these social and environmental concerns, the Indian government ultimately asked the Bank to cancel the project—the first project to be pulled solely because of social and environmental concerns (Park 2005b, p. 126). This trend in public scrutiny of Bank project impact demonstrated the growing potential of transnational advocacy networks to have durable impacts upon Bank Group programs and policy, as distinct from according primacy to direct pressure from member states.

The Pelosi Amendment and the Tuesday Group. This sort of influence upon the Bank Group by involved NGOs had resulted earlier in the passing by the US Congress of what is termed the “Pelosi Amendment” in 1989. This amendment to US legislation governing the involvement of the US Executive Director to the Bank required that the Director cast a negative vote on any Bank project for which an environmental assessment had not been completed and made available to the Board at least 120 days prior to the Board vote on the project. The Amendment tasked the Treasury Department with the responsibility of monitoring proposed projects to enable the Director to comply with the legislation. What ultimately resulted was the inception of the “Tuesday Group”—consisting of representatives from Treasury, USAID, the US EPA, and NGOs such as the Bank Information Centre. The Group constitutes something of an “early warning system” to alert the US Executive Director to potentially problem projects (Park 2005b, p. 128). The Group still meets regularly to review the environmental and social impacts

of Bank Group projects—for our purposes including IFC projects—in order to prefigure the US vote relating thereto.

These developments formed the basis for the Bank Group to begin to take up sustainability concerns in project design and implementation. “While most scholars recognize that the Bank introduced environmental criteria into the mainstream of Bank operations from 1987, they all agree that transnational advocacy network pressure on the US made the cost of not reforming too high [with cites]” (Park 2005b, p. 130; see also Gutner 2002, p. 19, and Wade 2004, p. 92). In 1993, the Bank established its own Inspection Panel to investigate the social and environmental impacts and policy compliance of specific identified Bank projects. The panel was empowered to accept input directly from impacted private citizens and groups. This functionality led to the adoption by the Bank of what were termed “safeguard policies” by which projects were to be tempered regarding negative social and environmental impacts. While policy and behavior are indeed two different things (e.g. discussion in Gutner 2005, pp. 773-74), the Bank was nonetheless engaged in institutional changes that would have lasting effect.

The IFC underwent similar processes of public scrutiny and protest in 1992 with respect to the Pangué Dam project in Chile, with similar results for increasing institutional sensitivity to and accommodation of social and environmental concerns. Having approved some \$170 million in loans to the Pangué project, the IFC came under intense pressure from a variety of NGOs, and Chilean citizens groups, articulating concern the potential impacts of the dam network on surrounding peoples and environs. The Tuesday Group, and in particular the efforts of the Treasury Department, effectively brought these concerns to the attention of the US Executive Director, who had also met personally with a number of the NGOs involved, and who then in 1992 abstained from voting on the project. In 1995 involved NGOs and groups sought to enter a

claim against the project with the Bank's Inspection Panel, which declined to hear the claim because it was, in its own view, not empowered to review IFC projects. Negative elements of two privately prepared reports on Pangue increased public pressure on the IFC to alter or abandon the project.

Prior to Pangue, the IFC had in 1989 formed an Environment Division and hired an environmental advisor. "Yet the volume of projects to review was beyond the capacity of one permanent staff member: in 1990, only 7 of 160 projects reviewed were deemed to have potentially significant environmental impacts" (Park 2005a, p. 108). But in 1993, at the apex of public activity on the Pangue project, the IFC adopted the Bank's environmental safeguards for funded projects (Lawrence 2005, p. 3). In 1995 the IFC created the Operations Evaluation Group, which was tasked to conduct post-project review of IFC compliance with Bank safeguards. In 1999 the IFC also created the office of the independent Compliance Advisor/Ombudsman (CAO), specifically tasked to facilitate, consider and report on claims by private persons and groups of injury—including environmental injury—occurring as a result of an IFC project (see e.g. discussion in Seymour and Dubash 2004). In 2001, IFC senior management asked the CAO to undertake a review of its 1998 safeguard policies (SPs).

Also in 2001, the Director of the then-newly-formed and expanded Environmental and Social Department (CES) launched the 'Sustainability Initiative,' redefining "the IFC's environmental and social mission around the internally engendered concept of sustainability" rather than the compliance approach urged upon the IFC by external forces and groups (Wright 2007, p. 74). As a result of the above-mentioned CAO report, in 2004 the IFC began a review of its SPs, ultimately resulting in the publication in 2006 of the IFC's own landmark Performance Standards (together with the Policy on Social and Environmental Sustainability, and the Policy

on Disclosure of Information, the "Sustainability Framework"). And in 2007 the IFC published a road test document on Human Rights Impact Assessment (IFC 2007a), further expanding its scope of stated concern for social and environmental project impacts. Key in these developments has been the institutional embrace of sustainability as good business practice, rather than of a more adversarial strict compliance approach. By 2004 the number of professional environmental and social staff had reached 99, a significant increase from one staff member in 1989 (Park 2005a, p. 111; see also Lawrence 2005, p. 6).

Even critics of the Bank Group acknowledge its role as a knowledge producer with respect to liberal economic practices and policies in the South (e.g. Goldman 2005). As part of its own perceived external mandate, in 2003 the IFC joined 10 private IFIs to adopt the IFC sustainability approach (and now the Performance Standards and IFC Environment, Health and Safety Guidelines (IFC 2007b)) as standards (the “Equator Principles”), to be applied to FDI project finance in the South (see e.g. Lawrence 2005, pp. 6-7). As of February 2012, over 70 “Equator Banks” representing more than 80 percent of global project finance have acceded to the Equator Principles (Equator Principles 2012).

1989	1995	1999	2001	2003	2004	2006	2007	2010-2011
One CES Staff member	OEG created	CAO created	CAO undertakes Review of SPs	Equator Principles	99 CES Staff	Sustainability Framework	Human Rights Document	Sustainability Framework Revised

Figure 3-1 IFC Timeline

In its 2010 Annual Report, the IFC expressly embraces what it sees as its external mandate. Speaking in the context of the impact of the Equator Principles and Performance Standards on the private sector: “At a time of scarce public resources, IFC is able to invest in some of the world’s most challenging spots, improving lives and generating profits. This ‘demonstration effect’ is powerful—it encourages private companies to follow our lead”

(IFC 2010a, Preface). Finally, in 2010 the IFC reaffirmed this external mandate as it undertook a thorough and unprecedentedly transparent process of revising the Sustainability Framework. In so doing, the IFC invited clients, NGOs, academics and other stakeholders to have sustained and meaningful input in to the revision process. The 2010-2011 revision process is now complete, and revised Sustainability Framework documents took effect January 1, 2012.

INTERNATIONAL FINANCE CORPORATION POLICIES

The foregoing discussion reveals that the IFC has come to its present position as the result of both external influence and pressure, as well as and in concert with internal synergy and innovation. Deriving from precipitating events and key individual initiative and leadership, the IFC now occupies a central position in global environmental and social practices with respect to FDI in the South. What is in order now is an assessment of the extent to which the IFC's current policies and programs may reflect intersections with the sorts of concerns inherent in a concern for a social liberal IEJ.

IFC doctrine regarding social and environmental impacts is found in the three documents that make up the Sustainability Framework: The Policy on Social and Environmental Sustainability (Policy) (2012), the Performance Standards (PSs) (2012), and the now-entitled Access to Information Policy (2012). The Policy sets out the IFC's basic principles and vision for social and environmental sensitivity. The PSs deal with operational requirements for client projects. Each Performance Standard is augmented by an associated Guidance Note (GN), which were also revised in the 2010-2011 process. These three sets of documents are the focus of this Chapter. Finally, the Access to Information Policy raises important questions regarding the import of disclosure and transparency for equity, and for heuristic purposes is the subject of analysis in Chapter Six.

The following table summarizes these IFC's policy documents, which make up the Sustainability Framework as defined herein:

Table 3-1 IFC Sustainability Framework

Title	Summary of Content	To Whom Applicable
Social and Environmental Sustainability Policy	Sets forth the IFC's overall philosophy and approach regarding client and IFC roles and responsibilities. Provides foundational guidance regarding the specific content of individual Performance Standards	IFC, Client
Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts	Sets forth general and specific guidelines for the conceptualization, conduct and disclosure of Environmental and Social Impact Assessments. Provides detailed guidance regarding the stakeholder engagement and consultation, as well as project monitoring.	Client
Performance Standard 2: Labor and Working Conditions	Establishes guidelines and requirements regarding working conditions and terms of employment, non-discrimination and equal opportunity, workers' organizations, grievance mechanisms, and child labor.	Client
Performance Standard 3: Resource Efficiency and Pollution Prevention	Provides guidance and imposes requirements aimed at avoiding or minimizing adverse impacts on human health from funded projects. Seeks to enhance sustainable resource use. Specifically addresses water consumption, greenhouse gases, and pollution prevention.	Client
Performance Standard 4: Community Health, Safety and Security	Deals with infrastructure and equipment design and safety, hazardous materials management, emergency preparedness and response, and guidelines for project security personnel	Client
Performance Standard 5: Land Acquisition and Involuntary Resettlement	Imposes specific requirements for how clients must approach communities subject to involuntary economic or physical displacement. Addresses livelihood restoration and compensation.	Client
Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources	Seeks to aid clients in identifying and conserving ecosystem services, including the protection of biodiversity, and critical natural habitat.	Client
Performance Standard 7: Indigenous Peoples	Establishes specific and unique provisions and requirements for client engagement with indigenous communities. Provides guidance on minimizing impacts on indigenous populations, and sets minimum standards for community engagement and consent.	Client
Performance Standard 8: Cultural Heritage	Establishes procedures for clients to follow to help preserve important cultural areas and artifacts which are impacted or proposed to be impacted by client projects.	Client
Access to Information Policy	Defines the range of information to be disclosed by both the IFC and the client. Established timelines for such disclosures and clarifies the basis for limitations on disclosure.	IFC, Client

It is the case that the IFC has not formally embraced the notion of IEJ, environmental equity, fairness, or burden-sharing with respect to the environmental impacts of its projects. Nonetheless, the following analysis demonstrates that the IFC is already accommodating the IEJ issues identified in the preceding Chapters One and Two. What follows, then, is an explicit identification and discussion of the ways in which the IFC may be argued to be already inclined towards IEJ. To pursue these issues, I will assess each of the Policy and PSs for each of distributive IEJ, capabilities IEJ, and human rights IEJ. Each section contains a Table which

reflects a summary analysis of the Policy and applicable PSs, identifying the elements of each PS which may be argued to speak to that dimension of a liberal IEJ. More comprehensive Tables follow the text of this Chapter. In each of the three following discussions, the section will not consider every entry in the respective data-reporting Tables, but will instead cull out recurrent and important themes from the Policy and the Performance Standards as set forth in the respective Table.

DISTRIBUTIVE INTERNATIONAL ENVIRONMENTAL JUSTICE

In distributive IEJ, the balancing of burdens and benefits (including decisional authority) is between and among the project company or companies, and potentially affected persons and communities. Here project companies serve as a proxy for the cross-border fairness issues among the first world persons who benefit from the production of goods or commodities, and the third world persons in the locale of the project. Whether such a proxy arrangement adequately speaks to the full range of IEJ issues is debatable. However, it is here we must start.

Distributive justice is attained in the FDI context by three related dynamics: burden sharing, burden shifting, and benefit sharing with respect to a specific FDI project with environmental externalities. I will argue that there are elements of the IFC's PSs that speak to each of these three dimensions of distributive IEJ

I move on, then, to examine the extent to which IFC standards speak directly to IEJ issues. The following discussion is summarized in Table 3-2 below, supplemented in detail by Table 3-6 which is placed at the end of the Chapter. The data in these and other tables in this Chapter represent correlations between particular elements of IFC policy and themes identified in Chapter One as being emblematic of one or more of the three social liberal strands of IEJ. The strength of noted correlations is indicated by the number of x's in the respective table column.

Table 3-2**Distributive Justice**

	Sustainability Policy	PS1 Assessment	PS2 Labor	PS3 Pollution	PS4 Safety	PS5 Resettlement	PS6 Biodiversity	PS7 Indigenous	PS8 Culture
Burden Shifting	xxx	xxx	xxx	xxx	xxx	xxx	xx	xxx	xxx
Burden Sharing	xxx	xx	xx	x				x	
Benefit Sharing/Decisional Access	xxx	xxx			x	x		xx	

Burden Shifting. The threshold point is that the requirement that clients conduct an environmental and social impact assessment (ESIA—referred to in the 2006 PSs as a ‘social and environmental assessment’ (SEA)) prior to project approval and implementation shifts some amount of the overall environmental burden to first-world actors. That is, the expenses and analytical energies and resources required in such an assessment mean that the local population is served at least to that extent. And PS6 requires that the ESIA reach to the local environment’s assimilative capacity, which implicates on a deeper level questions of whether the project should or should not go forward (IFC 2012g). The client must bear additional expenses and effort where the project will involve the encroachment of natural habitat. In these cases PS6 requires that outside expertise be retained to assess and advise regarding possible project impacts and the extent to which these satisfy regional standards (IFC 2012g). PS1 and PS3 as revised have also significantly strengthened the requirement that clients recognize and mitigate the risks of GHG emissions, shifting greater IEJ burdens onto the client.

The requirement in the Policy that the plight of the poor and vulnerable be considered in particular deepens the level of ESIA analysis and further shifts the burden of evaluation and consideration by requiring clients to not only identify but also to expressly take account of the poorest elements in the project locale (IFC 2012a). These requirements are reiterated in PS1 (IFC 2012b). PS1 as revised further shifts the burden onto the client by requiring that standards

of evaluation and assessment be those applied globally, and not ratcheted down to a diluted version for project purposes (IFC 2012b). This same standard applies in PS2 to workplace health and safety standards (IFC 2012c), in PS3 to pesticide use (IFC 2012d), and in PS4 to community safety generally and the design, construction, maintenance and decommissioning of physical structures (IFC 2012e). Significantly, PS3 allows that where national limits and requirements are less stringent than IFC guidelines, the more stringent benchmarks apply unless the client can show that lower standards are ‘appropriate’ (IFC 2012d). And revised GN3 at Para. 16 allows that there may be ‘legitimate’ deviations from international best practice in some specific project contexts (IFC 2011c). These would appear to be accommodations of industry interests in a manner which could to some extent shift the environmental burden back towards the local community.

Based on the ESIA and related community consultations, PS1 requires the client to engage in mitigative measures, shifting the environmental burden off the local population onto the project. Significantly, PS1 and PS3 also allow that the client may determine that certain possible mitigative measures are not financially or technically ‘feasible’—a judgment as to project ‘viability’ expressly left to the client. This discretion may be seen as a dilution of the PSs requirement for effective environmental countermeasures.

PS2 as revised adds the requirement that the client consider whether elements of their primary supply chain employ child or forced labor, broadening the burden placed on clients to investigate and maintain diligence and awareness with regard to their operational environment (IFC 2012c). This effectively reduces the burden on the local community to undertake this sort of oversight and advocacy. PS3 as revised requires similar cognizance in the area of hazardous

waste disposal, where the client must monitor and maintain due diligence over third parties retained for such tasks.

Burden Sharing. PS1 also requires the client to engage in community disclosure and consultations where a project may have significant adverse social and/or environmental impacts. PS1 as revised makes clear that the Management Plan resulting from the ESIA and such consultations must reflect the content and outcome of the community engagement. Such engagement is based on full disclosure of risks and hazards by the client, and the PSs require such disclosure. The aim is to obtain “broad community support” for the project, and these provisions accomplish, I contend, significant burden sharing between clients and communities. Importantly, as noted in the section on human rights IEJ, the consultation requirement has been strengthened to "consent" with respect to indigenous peoples under certain circumstances, furthering burden sharing.

Benefit Sharing. The Policy states that the IFC will evaluate projects on potential benefits to local communities in economic, environmental and social terms—an assessment that is intensified when the proposed project is in the extractive or infrastructure sector. And PS1 requires that project benefits be assessed with the local poor and vulnerable particularly in mind. PS1 as revised requires additionally that the client ensure their community engagement reaches all who must be included to fully represent the local community, in particular the poor and underrepresented. PS 5 regarding resettlement explicitly requires that in any resettlement the client consider in particular the poor and vulnerable. Considering the potential benefits to indigenous communities is particularly emphasized in PS7, which notes that indigenous peoples may be fruitfully seen as ‘partners’ in the project. And commercial use of indigenous resources,

knowledge, culture, and insights must be fairly compensated in keeping with their traditions and customs.

PS2 allows that hiring measures designed to remedy past discrimination are not impermissible under IFC standards, though PS2 as revised clarifies that such measures must not run afoul of applicable national law (IFC 2012c). The latter amendment could be seen as an accommodation to those who would not support such ‘reverse’ discrimination, reducing potential benefits to the local community.

In conclusion, there is ample basis upon which to contend that IFC clients must at least on paper make measurable shifts in distributing fairly the environmental benefits and burdens of vetting and operating proposed projects.

CAPABILITIES INTERNATIONAL ENVIRONMENTAL JUSTICE

In this section of the Chapter, the question is whether the IFC enables aspects of IEJ that fulfill capabilities identified in relevant literature. As in the section on distributive IEJ, the international justice component is at least as a threshold matter satisfied in that the actors ostensibly facilitating particular capabilities are first world entities, who are committing first world resources to satisfy respective IFC requirements. The following discussion then considers the extent to which IFC requirements actually fit within a capabilities analysis. Table 3-3 below provides a summary, augmented by Table 3-7 at the end of the Chapter.

By way of review, Sen includes such capacities as the opportunity to “enjoy [or] to utilize economic resources for the purpose of consumption, or production, or exchange,” “effective participation in economic and political activities,” and “taking part in the life of the community” as among the essential capabilities for the realization of a just and full life (Sen 1999, pp. 39, 89). His more recent work includes within the ambit of capabilities the ability to improve and

enhance the environment (2009, p. 249). Nussbaum includes bodily health, practical reason, freedom of expression, and control over one’s political and material environments in her list of essential capabilities (Nussbaum 2006, pp. 76-78). Bodily health would logically include freedom from environmental injury. Practical reason includes “being able to form a conception of the good and to engage in critical reflection about the planning of one’s life” (Ibid, p. 77). Freedom of expression includes freedom of political speech (p. 76). Control over one’s political environment includes “being able to participate effectively in political choices that govern one’s life” (Ibid, p. 77). Control over one’s material environment includes “having property rights on an equal basis with others; having the right to seek employment on an equal basis with others” (Ibid).

The capabilities IEJ approach may be segmented into two primary categories: capabilities for participation, and the capability to exercise material control over the environment. I argue that the IFC PSs speak to each of these capabilities in some respect.

Table 3-3 **Capabilities Justice**

	Sustainability Policy	PS1 Assessment	PS2 Labor	PS3 Pollution	PS4 Safety	PS5 Resettlement	PS6 Biodiversity	PS7 Indigenous	PS8 Culture
Capabilities for Participation	xxx	xxx						xx	
Capabilities for Control	xx	xx	xx			xx	x	x	x

Capabilities for Participation. PS1 as revised requires regular engagement with local communities to reduce social and environmental harms. Such engagement includes “free prior informed consultation” with impacted communities, for the purpose of ensuring “broad community support” for the project. The Policy emphasizes the role of the CAO in providing monitoring and remedies for persons and groups marginalized in any manner by project activities. The Policy as revised adds the requirement that in any stakeholder consultation

participants must be able to freely assemble and to communicate their views freely and openly (IFC 2012a). PS1 as revised further states that the consultation process must be free of external "manipulation, interference, coercion, or intimidation" (IFC 2012b, p. 8). This speaks to freedom of expression and the capability of individuals and groups to meaningfully participate in the life of the community, as further enabled by the required consideration of the poor, vulnerable and underrepresented, as discussed in the preceding section.

PS1 requires that the client disclose to the local community the results of its ESIA and its Management Plan to address concerns identified therein, and that sustained engagement with the community over the life of the project is in order. Revised GN1 requires that the client in fact provide annual reports to local communities regarding its performance in satisfying the environmental and social standards and measures identified and adopted through the ESIA (IFC 2011b, Para. G118). PS1 as revised adds the requirement that project monitoring for environmental and social performance should include representatives of the local community where appropriate. Revised GN1 makes clear at Para. 99 that the level of community consultation is to be in keeping with the scope of the project, but the weight of emphasis is on effective engagement. This speaks to being able to participate meaningfully in the life of the community, and to exercising freedom in the formulation of one's own conception of the good life. This also speaks to the articulation of one's own views on relevant political issues, such as whether a particular project should proceed, who should be consulted in the development of the ESIA, and who should be included in the project monitoring team.

PS7, which speaks to the particular concerns of indigenous peoples, refers explicitly to the dignity, human rights, aspirations and cultures of indigenous peoples, setting an overall capabilities context for the provisions of the PSs which follow. Again, the client is required to

engage the local community with free prior informed consultation (significantly amended to free prior informed “consent” in some circumstances, as discussed in the following section), and like PS1 dictates, to seek broad community support for the project. PS7 adds the requirement that the expression of views and concerns by local persons and groups must be free of coercion and intimidation by project staff and representatives.

Capabilities for Control. PS1 and PS2 also require the client to establish an effective grievance mechanism to permit local persons and groups to bring complaints and injury claims to the attention and adjudication of project staff. This right is of course bolstered by the rights of such persons to bring the same issues to the attention of the IFC’s own CAO. These provisions and programs then enable a heightened capability to participate meaningfully in the life of the community, but also to exercise greater control over one’s material and physical environments, and to be free from bodily harm.

The preceding section of this Chapter identified a focus on ensuring project benefits accrue to proximate persons, and in particular indigenous populations. This aspect of the PSs also speaks to the capability to enjoy employment and to realize the benefits of the utilization of natural and other resources.

PS5 speaks to the requirements when local populations must be physically or economically displaced. While the lion’s share of the related analysis falls in the next section on human rights IEJ, it is the case that these requirements, including for example the requirement that the client provide opportunities for equivalent land and livelihoods, also speak to the right to control one’s own material environment, and realize the benefits of one’s own use of resources for economic purposes. PS5 as revised adds requirements for extensive consultation with local communities in the formulation of any resettlement plans, including the poor and the vulnerable,

and including considering the different interests of men and women in the same household (IFC 2012f). Where resettlement is undertaken, the needs of women must be considered, even when national or local law does not provide them such consideration. Here one may fairly contend that the PSs are driving an increased focus on capabilities for both individuals and communities at large.

PS8 on cultural heritage includes such intangibles as traditional knowledge, lifestyles and practices as important elements of cultural heritage to be identified and protected in the course of the design and implementation of the project (IFC 2012i). This again establishes an overall context in which the capabilities already identified in this section as being addressed by particular PSs are viewed through the lens of local perspective, rather than only by the client. This then facilitates capabilities at a deeper, and more genuine and legitimate level.

Finally, as noted in Chapter Two, the capabilities approach does allow of some provision for the capabilities of non-human nature. PS6, while couched in terms of the interests of and impacts upon local human populations, reaches nonetheless thereby to an increased protection for nature itself, in its own right.

One may fairly conclude, then, that while the IFC does not explicitly speak in terms of capabilities, the substance of many IEJ-relevant capabilities is indeed being addressed.

HUMAN RIGHTS INTERNATIONAL ENVIRONMENTAL JUSTICE

While not addressing an environmental human right per se, the recent movement of the IFC to recognize the obligation of private enterprise to partner in respecting human rights is noteworthy. As noted earlier, in 2007 the IFC published a 'road test' document on Human Rights Impact Assessment, noting that the role of corporate actors and activity in respecting and promoting human rights within the reach of their impact and authority is being increasingly

emphasized (IFC 2007a). In response to this Assessment, the IFC has convened a number of consultations seeking feedback and input on the feasibility and advisability of implementing a more extensive requirement to recognize and enable human rights in the SEA process. The result is an extensive online guidance document, the “Guide to Human Rights Impact Assessment and Management” (the “Guide”) published online in June 2010 (and only available online), for conducting human rights impact assessment (see <http://www.guidetohriam.org/welcome>). The Guide is published by the IFC in concert with the International Business Leaders’ Forum and the Global Compact, and with the involvement and endorsement of John Ruggie in view of his work as Special Rapporteur to the UN Secretary General on these issues, as noted in Chapter Two. It is the case that the 2007 HRIA was focused almost entirely on primary human rights, and did not reach explicitly to an environmental human right. However, the new Guide notably deals extensively with secondary rights, access to ecosystem services in particular. Moreover, the Guide notes that its provisions and guidance would be of importance and usefulness to those within corporations who work on environmental and social impact issues.

However it is also significant that in the revisions to the Policy and PSs, and in particular revised GN1 Paras. 46ff, there is extensive discussion of human rights concerns, and an acknowledgement of the content and importance of Ruggie’s work in particular with respect to business and human rights (IFC 2011b). The question at hand is whether the IFC’s interest in human rights, and the import of the PSs generally implicate to any extent an environmental human right, as discussed in Chapter One, and the following analysis seeks to address this issue.

In this section, the argument that the international dimension of IEJ is being addressed goes beyond the mere recognition that involved actors are Northern corporations. Rather, it is

additionally and especially relevant in this context that the IFC occupies a central leadership role in the project finance industry, through the Equator Principles, and by virtue of the demonstration effect of its own PSs. Thus what the IFC elects to do in the area of human rights has an impact on the practices and policies of other banks, and the requirements to which they subject FDI clients in their own portfolios.

A finding of human rights IEJ at the IFC may be helpfully understood in two components: social rights, and environmental rights (please refer to Table 3-8 at the end of the Chapter for more detailed information).

Table 3-4 **Human Rights Justice**

	Sustainability Policy	PS1 Assessment	PS2 Labor	PS3 Pollution	PS4 Safety	PS5 Resettlement	PS6 Biodiversity	PS7 Indigenous	PS8 Culture
Social Rights	xx	x						x	
Environmental Rights	xx	xx	xx		x	x			

Importantly, and I argue, correctly, Revised GN1 at Para. 47 notes that the revised PSs, while not explicitly engaging human rights, are nonetheless “generally supportive” of the human rights—particularly the secondary rights such as a right to health and to work, identified in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (cf. <http://www2.ohchr.org/english/law/index.htm> for the text of these treaties and declarations)—by virtue of the policies and requirements they establish. Indeed, the IFC published its own correlation of the Sustainability Framework with specific provisions of the International Bill of Human Rights (IFC 2010e).

It is the case that the language of the PSs is often not in terms of the rights of affected populations, but rather of the obligations of the client, tempering any claim to be in full recognition of e.g. secondary human rights. However, revised GN1 makes clear that clients must

exercise vigilance to avoid profiting from others' violations of human rights (Para. G2). Revised GN1 further addresses the importance of client cognizance of human rights issues, and asserts that clients must respect human rights in their operations. But revised GN1 does not significantly derogate from the original PSs and GNs guidance that the protection of human rights is primarily the purview of states (Para. G46).

Social Rights. The original guidance in the PSs and GNs was that resettlement of indigenous peoples was permitted where the client determined that there was “no feasible alternative” (e.g. GN7 Para. 28; (IFC 2007d)). Notably, PS1 as revised makes what I would argue is the most significant change to all of the PSs in the revision process, namely that indigenous peoples have the right to “free prior informed *consent*” to proposed projects in certain cases (emphasis added). The consent requirement is triggered where relocation would be required, or where indigenous lands or resources would be used commercially (PS7, IFC 2012h). The consent requirement generally is a contentious issue and standard—one which some argue should apply to all IFC projects with significant social and/or environmental impacts. It is notable, however, that the IFC would accede to the concept in any respect, having made such a clear demarcation in the 2006 standards that “consultation” is all that is required and that no veto right was intended. I note that in any event, it is difficult enough to identify and engender a consensus in the indigenous context where a people group may be readily identified; determining the threshold of consent in a more culturally and ethnically diverse context would easily become unworkable in practice. Indeed, PS7 as revised makes clear that the consent requirement may be met even where there is opposition to the project, and I contend this possibility would be exacerbated where there is the possibility of factions not only within a population, but in two or more stakeholding populations at issue.

Environmental Rights. The Policy states that the goal of the IFC is to "do no harm" to people or the environment (IFC 2012a, p. 2), which is consistent with a right to be free of environmental injury for proximate populations. I note again however the language regarding technical and financial feasibility in the PSs, which renders the right to be free of environmental injury violable where proposed social and environmental protections would render the project not viable in the client's judgment.

The Policy also reiterates the importance of client engagement with local communities, supporting the primary right to self-governance, as to the environment in this case.

As noted in the section on distributive IEJ, PS1 includes human rights as one of the risks to be assessed. Revised GN1 makes this even clearer, clarifying that while the protection of such rights is commonly the purview of host states, private enterprise increasingly has a complementary and corroborative role to play in advancing human rights (IFC 2011b).

Significantly, the revised Policy and PS1 contain express provisions calling for business to respect human rights, directly tying the Sustainability Framework to Ruggie's framework.

PS2 acknowledges that workers have "fundamental" rights (IFC 2012c). These rights explicitly reach to working conditions—a central element of an environmental human right. PS3 as revised adds a new requirement that a client's water use not create adverse effects on water use by others, another fundamental element of an environmental human right (see also revised GN1 Para. G18 (IFC 2011b); and revised GN3 Para. G2 (IFC 2011c)). PS4 relatedly requires clients to avoid or minimize project negative impacts on others' use of proximate natural resources, and upon natural hazards such as infectious diseases. PS4 as revised refers specifically to protecting local 'ecosystem services' (IFC 2012e). And PS6 as revised adds 'provisioning services' to protected biodiversity—services which issue from the natural

environment and are necessary for human survival and flourishing (IFC 2012g). These again are all explicitly part of an environmental human right.

PS5 regarding physical or economic resettlement requires the client to improve or at least restore the livelihoods and living standards of displaced peoples. This is consistent with a right to one's physical, natural environment.

Finally, the above discussion makes clear that those who argue that an environmental human right is best based upon existing rights, rather than a new explicitly environmental provision, will find a broad basis for these arguments in the IFC's approach. That is, it has not been the choice of the IFC to embrace a free-standing environmental right, as also evident in the Guide they have co-published, but rather it is the explicit plan of the IFC to implicitly encourage the recognition of secondary human rights—argued here to reach to dimensions of an environmental right—by clients through the implementation of the PSs generally.

CONCLUSION

The preceding analysis of the Policy, PSs and GNs makes clear, in my view, that the IFC may be said to be positioned to actively accommodate many of the concerns of IEJ in the context of FDI in the South. That is, the PSs contain many provisions which directly or tangentially address issues which form part of the elements of distributive IEJ, capabilities IEJ, and/or human rights IEJ as discussed in Chapters One and Two. Indeed, in nearly every case, revisions to the Sustainability Framework as outlined above have furthered the representation of IEJ concerns in IFC documents. Thus the IFC projects may be fairly seen to be satisfying at least a liberal formulation of IEJ.

I summarize these findings in Table 3-5 which follows, noting the strands of liberal IEJ accommodated in each of the Policy and respective Performance Standards. The entries in this

table are based on a compilation of the individual entries in the tables presented previously in this Chapter.

Table 3-5 Liberal IEJ in International Finance Corporation Documents

Strand	Sustainability Policy	PS1 Assessment	PS2 Labor	PS3 Pollution	PS4 Safety	PS5 Resettlement	PS6 Biodiversity	PS7 Indigenous	PS8 Culture
Distributive IEJ	xxx	xxx	xxx	xx	xx	xx	xx	xxx	xx
Capabilities IEJ	xxx	xxx	xx			xx	x	xx	x
Human Rights IEJ	xx	xx	xx		x	x		x	

The above Table offers the insight that notwithstanding the absence of explicit commitments to IEJ, the IFC clearly does accommodate IEJ in the course of its existing documents and policies. Chapter Seven takes up this theme in even greater detail, seeking to assess the strands of liberal IEJ which are addressed in not only the Policy and Performance Standards, but also in the Access to Information Policy and by IFC project monitoring (Chapter Seven, Table 1). However, at this stage what is now required is to ask whether the indeed notable policy shifts at the IFC analyzed in this Chapter have been accompanied by real organizational change? Alternatively such measures may be merely 'window-dressing'—useful primarily to defuse the sorts of outside criticism identified earlier in this Chapter. To that end I turn first in Chapter Four to consider the fundamental nature and quality of change at the IFC. Chapter Five then inquires whether the content of the PSs is enforced and faithfully followed, or whether operating exigencies may compromise what is clearly the aspirational import of these standards. In this regard, the Bujagali Dam case study presented in Chapter Two is useful as to IEJ at the IFC generally, but in that the vast majority of IFC projects are not Category A projects, the lion’s share of environmental impacts are imposed by Category B projects. A broad analysis of these projects is thus in order, and will be presented in Chapter Five.

Table 3-6

Distributive Justice

Performance Standard/Policy	Original Documents 2006	2012 Comparable Provisions	2012 Revisions
Policy on Social and Environmental Sustainability	<p>Para. 8: Committed to ensuring that the costs of economic development don't fall disproportionately on the poor and vulnerable. And negative impacts should be compensated for or mitigated</p> <p>Para. 13: IFC works with client to find remediating measures re. environmental and social risks and impacts (shifts some burden to client as compared with local community)</p> <p>Para. 16: IFC considers whether a project will benefit relevant constituencies in economic, environmental and social terms (sharing of project benefits; offsetting project costs on locals)</p> <p>Para. 19: sharing of decision making regarding project: disclosure of information, consultation, and informed participation with and by affected communities (benefit and burden sharing)</p> <p>Paras. 21-23: acknowledges the additional burdens imposed by the extractive and infrastructure sectors, and requires commensurate additional benefits (burden recognition)</p> <p>Para. 26: IFC monitoring, includes exercising remedies against clients not in compliance (burden shifting onto client)</p> <p>Paras. 36, 39: IFC may help fund client social and environmental programs and efforts (assumption of burden)</p> <p>Glossary: benefits are to be understood as improving livelihoods and standards of living in a "culturally appropriate manner" (permits greater burdens on local communities)</p> <p>Glossary: disadvantaged or vulnerable groups are those who could experience adverse impacts more severely than others—the ill, old, infirm, poor, women, etc.</p>	<p>Para. 9</p> <p>Para. 6</p> <p>Paras. 7 and 8</p> <p>Para. 14</p> <p>Paras. 48-53</p> <p>Paras. 24 and 25</p> <p>None</p>	
Performance Standard #1 Assessment and Management of Social and Environmental Risks and Impacts	<p>Paras. 1, 4, 7: Social and Environmental Assessment is client's responsibility, covering risks and those affected by them. Where risks are significant, outside experts may need to be retained (burden shifting)</p> <p>Para. 6: SEA must consider transboundary effects, such as air or water or CO2 (burden sharing)</p> <p>Para. 12: SEA must consider whether the poor and disadvantaged would be disproportionately impacted by project and thus kept from</p>	<p>Paras. 5 and 7</p> <p>Para. 7</p> <p>Para. 12</p>	<p>Para. 7: now expressly requires clients to consider GHG emissions risks</p> <p>Para. 7, n.10: sets standard of review at prudent and professional standards globally (burden sharing—first world standards are generally higher than third world standards)</p> <p>Para. 15: Management Plan must reflect the outcome of any consultation with Affected Stakeholders (burden sharing)</p> <p>Para. 18: includes 'primary' supply chain in ESIA purview</p>

	<p>sharing in its benefits and opportunities (burden shifting and sharing)</p> <p>Para. 13: based on the SEA and community consultations, client must engage in mitigative measures (burden shifting)</p> <p>Para. 14: avoidance is preferable to mitigation where technically and financially feasible, which are judgments of the client (burden shifting back onto affected persons)</p> <p>Para. 22: projects with significant adverse impacts on affected communities must involve community engagement which includes discussing sharing the benefits of the project (burden and benefit sharing)</p>	<p>Para. 13</p> <p>Para. 14</p> <p>Para. 26</p>	<p>(burden shifting, expanding burden on client)</p> <p>Para. 24: clients must ensure that they are engaging those who can speak to the full range of community interests (burden sharing with the poor and underrepresented)</p> <p>Para. 27: Stakeholder Engagement Plan must expressly consider how to ensure the participation of the vulnerable and disenfranchised</p> <p>Para. 31: Projects with potentially significant adverse impacts require a deeper level of consultation than projects with potentially adverse impacts, including the discussion of sharing project benefits (benefit sharing)</p>
<p>Performance Standard #2 Labor and Working Conditions</p>	<p>Para. 11: special hiring measures to remedy past discrimination are not deemed discriminatory as prohibited by this PS para. (burden sharing with the poor and disadvantaged)</p> <p>Para. 16, and n.3: occupational health and safety standards are those which would be applied globally (burden shifting—applying first world standards)</p>	<p>Paras. 16-17: remedying past discrimination is not prohibited unless it violates national law, though clients are encouraged in this latter case to apply a higher standard (burden shifting back onto poor)</p> <p>Para. 23, and n. 14</p>	<p>Para. 12: where client provides accommodations, certain basic minimum requirements of sanitation and subsistence must be provided (burden shifting onto client)</p> <p>Para. 27: client must consider the possibility of child or forced labor in the project’s primary supply chain (burden shifting to client)</p> <p>Para. 28: requires clients to assist supply chain partners with worker safety (burden shifting)</p>
<p>Performance Standard #3 Resource Efficiency and Pollution Prevention</p>	<p>Para. 3: this PS applies international pollution identification and abatement standards (subject to technical and financial feasibility as defined above, which includes the client’s assessment of project ‘viability’) (burden shifting in both directions)</p> <p>Para. 4: client must consider the transboundary effects of project pollution</p> <p>Para. 5: hazardous waste must be disposed of in environmentally sound manner, and in compliance with Basel (burden shifting)</p> <p>Para. 8: where national measures and limits are less stringent than IFC measures in EHS Guidelines, IFC requirements apply (burden shifting)</p> <p>Para. 9: requires client to undertake an extensive and informed assessment of environ assimilative capacity (burden shifting of the cost of such analysis)</p> <p>Paras. 14 and 15: pesticide use must comply with FAO and WHO guidelines (burden shifting—first world standards)</p>	<p>Paras. 4-5</p> <p>Paras. 7-8</p> <p>Para. 12 and ns. 15-16</p> <p>Para. 5 (but see entry in next column)</p> <p>None</p> <p>Paras. 14-17</p>	<p>Para. 5: permits standards below IFC EHS standards where client can show it is appropriate (burden shifting back onto local populations)</p> <p>Paras. 7-8: add GHG to range of risks to be mitigated</p> <p>Para. 12: where client uses third parties to dispose of hazardous waste, client retains due diligence and monitoring obligations (burden shifting onto client)</p>
<p>Performance Standard #4 Community Health, Safety, and Security</p>	<p>Para. 6: client must construct, operate, maintain and decommission structures in accordance with ‘good</p>	<p>Paras. 5-6</p>	

	international industry practice’, and where risks are high client must engage outside experts (burden sharing and shifting)		
Performance Standard #5 Land Acquisition and Involuntary Resettlement	<p>This entire PS dictates in detail how displaced persons and their recipient communities must be compensated, shifting burdens onto client.</p> <p>Para. 3: explicitly acknowledges that there is an asymmetry of information and bargaining power between displaced peoples and the client. This requires fair compensation and full disclosure in cases of resettlement (burden shifting onto client)</p> <p>Para. 7: precipitating involuntary resettlement can be on the basis of client financial considerations (burden shifting back onto local populations)</p> <p>Para. 8: client must afford displaced persons the opportunity to benefit from the project (burden sharing)</p> <p>Paras. 12 and 16: in resettlement client must consider the special concerns of the poor and vulnerable (burden sharing and shifting)</p>	<p>None</p> <p>None</p> <p>None</p> <p>Paras. 8 and 19</p>	<p>Paras. 1 and 5: add restrictions on land use as a basis for resettlement compensation by client (burden shifting onto client)</p> <p>Para. 15: contemplates that client will have to engage an outside auditor to ensure that the requirements of this PS have been fairly met (burden shifting onto client)</p>
Performance Standard #6 Biodiversity Conservation and Sustainable Management of Living Natural Resources	<p>Para. 1: speaks to balancing conservation needs and development priorities (burden shifting both ways, depending on the balance)</p> <p>Para. 14: client should obtain independent certification where possible regarding managing renewable resources in a sustainable manner. N.8 does not require international standards be applied, however.</p> <p>Paras. 16 and 17: forest and aquatic resource use must be certified by outside experts to international standards</p>	<p>None</p> <p>Para. 8 re. natural habitat</p> <p>Paras. 26-29</p>	<p>Paras. 2 and 3; 24 and 25: expand coverage of PS6 to ecosystem services (burden shifting onto client)</p> <p>Para. 30: extends coverage to participants in client’s supply chain (burden shifting onto client)</p>
Performance Standard #7 Indigenous Peoples	<p>Para. 2: notes that indigenous peoples may be partners in and benefit from projects</p> <p>Para. 8: where avoiding adverse environmental, social and cultural impacts is not ‘feasible’ client must minimize, mitigate or compensate in a ‘culturally appropriate manner’</p> <p>Para. 10: client must deliberately seek out and consider ways in which indigenous peoples may benefit from project, to improve their standard of living in a culturally appropriate manner</p> <p>Para. 13: use of land particularly important to indigenous peoples must be documented by outside experts, and good faith negotiation and compensation must follow</p> <p>Para. 15: any commercial use of indigenous people’s labor,</p>	<p>Para. 2</p> <p>Para. 9</p> <p>Paras. 18-20</p> <p>None</p> <p>Para. 14</p>	<p>Paras. 10-17: where indigenous peoples must be relocated, or in case of the commercial development of land occupied by indigenous people, client must obtain Free Prior Informed Consent (burden sharing, and shifting onto client)</p>

	resources, knowledge, insights, must be fairly compensated and in keeping with their traditions and customs (benefit sharing)		
Performance Standard #8 Cultural Heritage	<p>Para. 7: permits injury to cultural heritage sites where there are no technically or financially feasible alternatives and the benefits of the project are seen [by client] to outweigh the loss (burden shifting onto local population since client can make this subjective judgment—but consultation with outside experts is required (Para. 5))</p> <p>Para. 11: any commercial use of cultural heritage such as resources, knowledge, insights, must be fairly compensated and in keeping with relevant traditions and customs (benefit sharing)</p>	<p>None</p> <p>Para. 16</p>	<p>Para. 7: requires client to retain outside experts when there is a possibility of impacts to cultural heritage (burden shifting onto client)</p>

Table 3-7

Capabilities Justice

Performance Standard/Policy	Original Documents 2006	2012 Comparable Provisions	2012 Revisions
Policy on Social and Environmental Sustainability	<p>Para. 8: regular engagement with local communities is important in reducing harm to people and environment (community involvement and expression capability)</p> <p>Para. 20: FPI consultation, broad community support required and monitored by IFC</p> <p>Para. 31-35: CAO provides avenue for affected persons to formally file grievances against the client and project (governance, community expression)</p> <p>Glossary: definition of BCS: may exist despite some disapproval</p>	<p>Para. 9</p> <p>Para. 30</p> <p>Paras. 54-57</p>	
Performance Standard #1 Assessment and Management of Social and Environmental Risks and Impacts	<p>Para. 16, 20: the client's SEA, and Action Plan to implement the SEA findings must be disclosed to affected communities (governance, community involvement)</p> <p>Para. 19: required sustained engagement with affected communities (governance, community expression and involvement)</p> <p>Para. 23: requires clients to establish an effective grievance mechanism to receive and facilitate the resolution of community concerns and complaints</p>	<p>Para. 29</p> <p>Paras. 30 and 31: also require consultation with affected communities commensurate with the project's risks</p> <p>Para. 35</p>	<p>Para. 22: monitoring activities should include participants from local communities where appropriate</p> <p>Para. 30: adds the requirement that in any stakeholder consultation the process must be free of external manipulation, interference, coercion, or intimidation (community involvement and expression capability)</p>
Performance Standard #4 Community Health, Safety, and Security	<p>Para. 1: acknowledges that local communities may receive benefits but also hazards from projects</p>	<p>Para. 1: referring only to hazards</p>	
Performance Standard #5 Land Acquisition and Involuntary Resettlement	<p>Para. 1: involuntary resettlement can occur physically or economically with the loss of livelihoods as a result of project land acquisition</p>	<p>Para. 1</p>	<p>Para. 10, and n. 16: affected persons must be consulted throughout the process of designing and implementing displacement compensation, including the poor and vulnerable, and including considering the different interests of men and women in the same household</p> <p>Para. 12 n. 17: where resettlement is undertaken, the needs of women must be considered, even when national or local law does not provide them such consideration</p>
Performance Standard #6 Biodiversity Conservation and Sustainable Management of Living Natural Resources	<p>Para. 1: acknowledges the social and cultural importance and significance of biological resources</p> <p>Para. 4: the SEA must take into account the differing values placed on particular biodiversity by different peoples, and must identify project impacts on ecosystem services</p> <p>Para. 9: where habitat is</p>	<p>Para. 1</p> <p>Paras. 2 and 3: as to ecosystem services</p> <p>Para. 17</p>	

	'critical'—of significant social, economic or cultural importance to local communities, projects may not proceed unless the critical nature of the habitat is not compromised, and lesser impacts are mitigated		
Performance Standard #7 Indigenous Peoples	Paras. 2 and 8: objectives include fostering respect for the dignity, human rights, aspirations and cultures of indigenous peoples, and fostering good faith and ongoing relationships with them to enable informed participation Para. 9: the expression of views and concerns must be enabled to avoid coercion or intimidation	Paras. 1 and 2 Para. 10	Paras. 11 and 12: add the requirement for Free Prior Informed Consent under specified circumstances
Performance Standard #8 Cultural Heritage	Para. 3: cultural heritage includes intangible culture such as traditional knowledge, lifestyles, and practices	Para. 3	

Table 3-8

Human Rights Justice

Performance Standard/Policy	Original Documents 2006	2012 Comparable Provisions	2012 Revisions
Policy on Social and Environmental Sustainability	<p>Para. 8: Policy is to do no harm to people or environment (right to be free of env injury). Private sector has roles and responsibilities in respecting human rights.</p> <p>Para. 10: importance of client engagement with local communities (right to self-governance)</p> <p>Para 15: projects with significant adverse impact on local communities must have “broad community support” i.e. free prior informed consultation (right to self-governance)</p>	<p>Para. 9</p> <p>Para. 9</p> <p>Para. 30</p>	<p>Para. 12: adds explicit reference to the obligation of business to respect human rights</p> <p>Para. 31: adds a reference to Free Prior Informed Consent for indigenous peoples</p>
Performance Standard #1 Assessment and Management of Social and Environmental Risks and Impacts	<p>Para. 14: right to be free of environmental injury is violable where not technically or financially avoidable, in client’s judgment</p> <p>Para. 23: client must establish a grievance mechanism regarding client’s environmental and social performance (right to formal redress and remedies)</p>	<p>Para. 14</p> <p>Para. 35</p>	<p>Para. 3: adds an explicit reference that business should respect human rights</p> <p>Para. 32: establishes a free prior informed CONSENT requirement for certain projects affecting indigenous peoples. See PS 7.</p>
Performance Standard #2 Labor and Working Conditions	<p>Para. 1: acknowledges that workers have ‘basic rights’</p> <p>Para. 6: client must protect and respect worker rights in national labor and employment laws</p> <p>Para. 9: acknowledges that workers have ‘rights’ regarding working conditions and terms of employment, even if not established by national laws</p> <p>Paras. 9 and 10: client must not discourage collective worker organization even if not protected by national law</p>	<p>Para. 1: referring to basic rights as “fundamental”</p> <p>Para. 9</p> <p>None</p> <p>Paras. 13 and 14</p>	<p>Para. 22: establishes a blanket ‘strict liability’ prohibition against employing trafficked persons, removing the proposed knowingly qualifier</p>
Performance Standard #3 Resource Efficiency and Pollution Prevention			<p>Para. 9: new requirement that client’s water use not create adverse affects on water use by others (right to basic subsistence)</p>
Performance Standard #4 Community Health, Safety, and Security	<p>Paras. 8, 9 and 10: clients must avoid or minimize impacts of project on natural resources in use by affected communities and on the propensity of natural hazards including disease</p> <p>Para. 13: expressly permits the use of force against workers and others “when used for preventive and defensive purposes” (right to life and person)</p>	<p>Paras. 5 and 9: as to general safety and disease</p> <p>Para. 12</p>	<p>Para. 8: the client must consider project impact on ecosystem services</p>
Performance Standard #5 Land Acquisition and Involuntary Resettlement	<p>Para. 3: one objective in resettlement is to improve or at least restore the livelihoods and living standards of displaced persons</p> <p>Para. 5: this PS applies to involuntary land relinquishment</p> <p>Para. 14: the rights of displaced persons to land (which must then be compensated) may be informal, based on adverse</p>	<p>Para. 9</p> <p>Para. 12</p> <p>Para. 17</p>	

	possession or customary or traditional law (cultural rights)		
Performance Standard #6 Biodiversity Conservation and Sustainable Management of Living Natural Resources			Para. 2: adds 'provisioning services' to biodiversity, which refers to the necessity of the use of natural resources for survival
Performance Standard #7 Indigenous Peoples	Para. 9: calls for free prior informed CONSULTATION, including representatives of both mens' and womens' groups	None: see entry in next column	Paras. 11-17: add the requirement for FPIC consent where relocation would be required, or indigenous lands or resources would be used commercially. Consent does not require unanimity.
Performance Standard #8 Cultural Heritage	Para. 1: objectives include protecting cultural heritage from adverse project impacts	Para. 1	Para. 14: client will not damage critical cultural heritage lands and resources without free informed prior consultation Para. 16: free prior informed consultation required prior to the commercial use of local communities' knowledge, practices, cultural resources

CHAPTER FOUR

THE INTERNATIONAL FINANCE CORPORATION: ORGANIZATIONAL CHANGE FOR INTERNATIONAL ENVIRONMENTAL JUSTICE

This Chapter asks whether the IFC has changed organizationally to effectively implement the Performance Standards, Social and Environmental Sustainability Policy, and the Access to Information Policy (collectively the Sustainability Framework), especially as to environmental equity? The Chapter also notes that additional explanations do not fully account for this change as well as for the implementation of the Sustainability Framework.

As noted at the end of the previous Chapter, what is now necessary is a more in-depth look to determine if the International Finance Corporation (IFC) can capitalize on potentials and realize some substantive measure of environmental equity in private enterprise projects. To enable this look, and to set the stage for the case studies which follow in Chapter Five, this Chapter will consider semi-structured in-person interviews (Berg 2007, p.93) and observations conducted at and about the IFC in 2010 and 2011, and the materials which these interviewees have provided or to which they have pointed. Individual interviews are cited in-text; Appendix Two contains a summary table of all interviews conducted for this dissertation.

On the basis of these materials this Chapter will conclude that there is good evidence to suggest that the IFC and thus FDI in the South are at present positioned for some significant measure of self-generated social liberal environmental equity with respect to both local stakeholders and the international considerations of environmental justice discussed in the previous Chapter. The Chapter will then make some preliminary observations regarding the particular strand of social liberal IEJ—distributive, capabilities or human rights IEJ—which enjoys the greatest support and application within IFC operations, and why this observation is important.

The reasons for these conclusions will be founded first on an analysis of whether the IFC has really undertaken the sorts of fundamental organizational change which would be required to meaningfully implement their stated objectives and policies with respect to the social and environmental impacts of sponsored projects. This assessment will be followed by a consideration of two additional explanations which provide insight in understanding the conclusion that the IFC's organizational change is genuine and durable in its commitments to policies which evince fairness concerns. These are: 1) the role and importance of risk management in IFC environmental programs and policy; and 2) the role of outside pressure in bringing about and maintaining change at the IFC in the area of the environment—for our purposes factors that facilitate international environmental justice (IEJ). The Chapter concludes that each of these additional explanations are valid and significant, but that the change that has resulted at the IFC for social and environmental equity is at this juncture nonetheless genuine and enduring.

CHANGE AS AN ORGANIZATIONAL DYNAMIC

As one scholar of organizational change recently observed, deliberate and sustained change, as opposed to unplanned and gradual change, “especially on a large scale, affecting the entire system, is unusual: not exactly an everyday occurrence” (Burke 2008, p. 1, see also pp. 284ff). “Most organizational change is not significant or successful” (Ibid, p. 4). Indeed, the largest body of literature on organizational theory deals not with change, but with “continuity and stabilization” (Ibid, p. 2, see also discussion pp. 131ff).

In her important work on the IFC and the environment, Susan Park argues that the very culture and identity of the IFC have changed to become genuinely green (Park 2005a, 2005b). The present study seeks to take the next step of considering whether change at the IFC has

continued, and thereby addresses at a basic level the IEJ factors identified in Chapter Three. The business literature suggests that such change is very difficult, and that organizational culture can be the very core of resistance to change (see e.g. Cameron 2008, p. 436; Danisman 2010, p. 201 [with cites]; and Burke 2008, p. 11). Thus if deep change at the IFC has persisted and even progressed with respect to IEJ, then we may conclude that the Sustainability Framework has at least some measure of credibility for IEJ. And if the IFC can be seen to have successfully retooled itself to effectively implement and enforce the Sustainability Framework, then it is reasonable to project that their hoped-for demonstration effect on FDI in the South will include some dimension of IEJ.

One might inquire whether hiring a staff of environmental specialists and publishing information regarding the environmental impacts of projects is only a surface adaptation by, or fundamental change within, the organization. The evidence for the latter is growing. By virtue of its external leadership and stature through the Equator Principles, and its increasing ownership of a mandate to provide training, guidance, and expertise with respect to the environmental and social impacts of private enterprise in the South (e.g. IFC 2010a), it would at least appear that the overall mission of the IFC has been expanded to include managing social and environmental impacts, both within and without the institution, as a principal organizational function and activity.

I next consider specific developments in and capacities of the Environment, Social and Governance Department (so renamed in February 2011, herein the CES Department) in an effort to assess the IFC's commitment to its stated social and environmental policies and their IEJ dimension. This Chapter finds on the basis of the following that recent developments in the

office and operation of the CES Department confirm that change has been enduring, progressive and pervasive.

The following discussion addresses two primary dimensions of the operations of the CES Department: external dynamics which impact the CES Department, and second the Department's own internal operations, and is organized along these lines.

INSTITUTIONAL STRUCTURE

Organization. The CES Department falls under the Vice President for Business Advisory Services, rendering it a peer Department with the Investment Departments. The current Vice-President for Business Advisory Services originally worked in the office of the IFC independent Compliance Advisor/Ombudsman (CAO), suggesting that the CES Department is overseen by someone with strong qualifications to understand the potential negative impacts of IFC projects (David Hunter Interview, March 2011).

Budget and Finance. The IFC considers specific budget data internal and/or confidential information. Nonetheless, as to organizational capacity, the hiring and support of CES staff evince real commitment to making IFC stated policies credible. This commitment is further evidenced by the ways in which the IFC actually implements the Performance Standards and related policies and guidelines. The energy and resources to monitor approved projects, the time and resources required to provide training for IFC staff, and the compliance with the Performance Standards as evident in the project profiles available on the IFC website, are relevant here. One may then fairly conclude that financial support within the IFC has and will continue to be sufficient to impel some measure of project environmental sensitivity (see also IFC 2009a).

Growth in Services. The business environment for the IFC has been dynamic, in particular shifting significantly from greenfield project finance to a growing portfolio of investments in financial intermediary institutions which administer IFC-supplied funds to support their own project portfolios. In step with this growth, the CES Department has been adding project specialists devoted to the financial intermediary business (IFC 2009a, p. 6). And as business and investment advisory services are also an increasing share of the IFC portfolio, the IFC group tasked to review the environmental and social impacts of advisory services clients has recently been graduated to constitute its own department, reporting directly to the Vice-President of Business Advisory Services rather than the Director of the CES Department (IFC Interview, Piotr Mazurkiewicz, May 2010). Both of these developments reflect institutionalized growth in recognizing the potential environmental impacts of the full range of IFC activities.

AUTHORITY AND ACCOUNTABILITY

Organizational Dimension. CES Department staff are now organized internally into three divisions: two divisions in support of project screening and review, organized along sectoral and regional lines, and one recently elevated division (the Policy and Quality Assurance Division) responsible for social and environmental policy—in particular the development and administration of the IFC Sustainability Framework (IFC Interview, Piotr Mazurkiewicz, May 2010). The promotion of the latter division is seen by the IFC as evidence of its growing commitment to policy concerns—both internal and external—and to improved stakeholder engagement (IFC 2009a, p. 5).

The total number of staff in the CES Department is now approaching 120—60 of whom are project specialists, with the remainder assigned to policy development and implementation, and overall management (IFC Interview, Piotr Mazurkiewicz, May 2010). This is up from

around 90 staff in 2004, as discussed in Chapter Three. At this time over 50 percent of project specialists are assigned to field offices, improving the extent to which CES Department staff are integrally involved in project screening, approval and monitoring (IFC 2009a).

Staff hired to work in the CES Department must have relevant technical qualifications, for example engineering qualifications, or relevant education and experience as social specialists for work on resettlement, indigenous peoples, labor and working conditions, and cultural heritage issues (IFC Interview, Piotr Mazurkiewicz, May 2010). Importantly, the CES staff are evaluated by CES managers, not by investment group managers who may be more focused on the financial dimension of projects (Ibid). This permits CES staff to spend their energies entirely in the fulfillment of their social and environmental objectives. CES core staff are assigned to spend 75% of their time screening and monitoring projects, and 25% of their time contributing their knowledge to good practice notes and case studies for the improvement of the CES Department. Specific performance criteria for the evaluation of CES staff are considered by the IFC to be confidential, but the content is centered on the CES mission, not on project approval rates (Ibid).

Authority. With respect to understanding the relevance and role of the work of the CES Department, research revealed that CES project specialists are involved from the earliest stages of the project application and due diligence process (IFC Interview, Piotr Mazurkiewicz, May 2010; IFC 2009a, p. 7; see also IFC internal project screening procedure document, IFC 2009b). In addition, in most cases CES staff assigned to a project at the application/approval stage remain with the project for monitoring and enforcement purposes until the IFC has been repaid and the project is closed (IFC Interview).

CES staff retain significant influence in the project application/due diligence/approval stages. It is reported by the IFC that the rejection of projects primarily for social and environmental reasons occurs “a lot” and “quite often” (IFC Consultation, Washington D.C., March 2011). Since the adoption of the Performance Standards in 2006, the IFC has screened over 1,300 projects, only 560 of which were ultimately approved by the IFC Board of Directors (IFC 2009a, p. 9). The precise number of these rejected for social and environmental reasons is not disclosed by the IFC, and the identification of the specific projects subject to such disapprovals is considered confidential. Nonetheless, it is clear that the work of the CES Department is more than merely advisory.

Thus CES staff have direct input and access to the IFC Board in the project approval process. Perhaps more importantly, CES staff also retain authority over projects even following Board approval. In particular, by way of its monitoring activities the CES Department has the power to make recommendations to the Board that an IFC exit be orchestrated by requiring particular projects to repay early their obligations to the IFC because of the projects’ social and environmental performance (IFC Interview, Piotr Mazurkiewicz, May 2010). It is then a Board decision whether or not to actually call the loan early. While accelerating a loan solely for social and environmental reasons is rare, it has occurred more than once since the adoption of the Sustainability Framework in 2006, though the number of times is not disclosed and the identification of the specific projects involved is considered confidential information by the IFC (Ibid).

It is important here to recognize the role of the IFC in project approval. Because the IFC generally takes only a minority position—whether debt or equity—in a given project, the project is usually well into the design stages before coming to the IFC for additional funding. Thus the

IFC's determination whether or not to support the project is not definitive as to what the project will look like and whether the project will go forward. The overall go-no go decision is largely up to the project sponsors, who have provided and will provide the lion's share of project funding (IFC Interview, Piotr Mazurkiewicz, May 2010). This is sometimes a source of confusion in that the World Bank project cycle is somewhat different. There the focus on larger, e.g. infrastructure projects, permits the Bank to be integrally involved in project design, and to thus have a greater say in whether the project will go forward in view of potential social and environmental impacts (Ibid).

In addition, it is also important to understand that the Performance Standards are not merely up front compliance requirements. Rather the idea behind their adoption was that clients would be assisted in complying with the Performance Standards over a "reasonable period of time" (Ibid). This time period is specified in the investment legal documents executed between the IFC and the client, and is commonly around two years in duration (Ibid, and IFC Consultation, March 2011).

These factors are helpful in clarifying the actual scope of CES staff influence and impact. That is, common expectations that the CES Department can use veto power to ensure the best possible environmental and social practices in applicant projects, or assumptions that approved projects will fully employ the Performance Standards at the earliest stages of project operation, do not comport with reality.

With respect to project monitoring, the original intent of the 2006 Sustainability Framework was to construct a comprehensive risk management framework for the IFC, with the overall objective of managing IFC's risks, or risks that the IFC could be exposed to. As discussed in greater detail below, risks include environmental and social risks in their own right,

financial risk, credit risk, liability risk, and reputation risk (IFC Interview, Piotr Mazurkiewicz, May 2010). At the project screening stage, CES staff assign each project an Environmental and Social Risk Rating score, which is based on the compliance potential of the project with each Performance Standard. Projects with higher risk rating scores are flagged for special attention, including heightened scrutiny at the project monitoring stage (IFC 2009a, p. 7). The CES Department conducted over 720 project supervisory visits in the fiscal years 2007-2009 to monitor higher risk projects (IFC 2009a, p. 8), and changes to the Sustainability Framework in the current review process make clear that this emphasis and activity of the CES Department will increase significantly in the near future (IFC Consultation, March 2011). As discussed in greater detail below, the focus on social and environmental risk, and the institutional capacity to effectively take account of it, render the IFC's implementation of its Sustainability Framework more credible.

Accountability. In addition to the CES Department's accountability to the IFC CAO and the World Bank's (the Bank) Independent Evaluation Group, in 2009 the IFC Management Group formed the Corporate Risk Committee, to which the CES Department must submit quarterly reports "on environmental and social performance and risks associated with IFC operations" (IFC 2009a, p. 5). This is seen as a strengthening of CES social and environmental performance accountability. This also elevates the visibility of the CES Department within IFC management, and adds a new layer of importance and analysis to the work of the Department in screening and classifying proposed projects.

Standardization and Oversight. To maximize the standardization of the application of the Performance Standards across projects, sectors and regions, the CES Department employs a peer review process whereby CES teams meet regularly to discuss individual projects and the

specific application of the Performance Standards in different contexts (IFC Interview, Piotr Mazurkiewicz, May 2010; IFC 2009a, p. 8). CES also organizes Departmental group meetings to discuss issues (IFC Interview). While individual staff may have differing views on precisely what sustainability means, these differences are discussed openly. For example, the 2006 Social and Environmental Sustainability Policy (the Policy) established a ‘do no harm’ principle with respect to the environmental impacts of IFC projects. Based on movement within the CES Department, the revised Policy now includes a requirement that projects also retain positive developmental outcomes (IFC Interview, Piotr Mazurkiewicz, May 2010; IFC 2012a). In the end, it is a collective judgment of the CES Department whether a particular project is sustainable from an environmental and social point of view (IFC Interview).

ASSESSMENT OF ORGANIZATIONAL CAPACITY

In my view, the above constitute in the aggregate clear evidence that the IFC has engaged in and continues to engage in real organizational change in support of its stated social and environmental objectives, including those aspects that promote a liberal IEJ. And as noted above, real organizational change, by virtue of its difficulty, denotes changes in culture and identity which are fundamental and enduring. In its 2010 Annual Report, the IFC more than once expressly acknowledges its external role as standard setter for the private sector, and notes the “normative” impact of its work on social and environmental standards (IFC 2010a, e.g. Introduction). That it lays itself out to external scrutiny and evaluation, as in the 2010-2011 Sustainability Framework review process, suggests that the IFC is inclined towards transparency, and has undergone deep organizational change. Indeed, as is clear from the foregoing discussion, certain aspects of the IFC's internal operations remain confidential, such as the identification of specific companies which were disapproved for environmental reasons or the

IFC's own budget data. However, these sorts of measures are fairly within the range of customary latitude and discretion for finance institutions with confidentiality obligations to their clients. Thus the overall weight of the foregoing in my view legitimates the conclusion that the Sustainability Framework may be fairly relied on as a source of data for the study of the applicability of IEJ to FDI in the South.

ADDITIONAL EXPLANATIONS FOR POLICY OUTPUTS AND CHANGE

Notwithstanding the sanguine conclusions of both the above discussion and of the analysis presented in Chapter Three, one may well and understandably challenge these diagnoses by suggesting that in fact something more may be going on at the IFC. In particular, perhaps the implementation of the Sustainability Framework and apparent changes at the IFC are primarily the result of a concerted effort to manage institutional risk related to the IFC's bottom line financial performance. It is possible that their apparent commitments to social and environmental policies are in essence disingenuous because they will only be invoked and advocated when and to the extent that they serve the IFC's profit interests and organizational viability as part of the World Bank Group. The recent business and academic literature on risk management contains multiple references to the increasing pressure on management and boards of directors of late to address risk management more broadly and thoroughly in the wake of the first decade of the 21st century, and the corporate credibility and global economic crises witnessed therein (see e.g. National Association of Corporate Directors 2010/2011; Coleman et.al. 2010; Ryan et.al. 2010; and Thompson 2010).

Alternatively, perhaps a comprehensive view of organizational change at the IFC must accord primary explanatory power to the role of external pressure, so visible in the historical accounts of the World Bank's and the IFC's social and environmental programs traced in

Chapter Three. That is, the IFC's apparent commitment to social and environmental impact mitigation, and the attendant elements of a concern for IEJ, may be visible only when and to the extent of concurrent public scrutiny and pressure. What does the CES Department really do when no one is looking?

I begin then with an assessment of the role of risk management in the adoption and implementation of the Sustainability Framework, followed by a discussion of the role of external pressure. Again, the following are based on author interviews and observations at or about the IFC, as well as available documentation.

The Role and Importance of Risk Management. Research first revealed the importance of risk management to the IFC in an interview conducted with a staff member (Mr. Piotr Mazurkiewicz) in the Policy Division of the CES Department in May 2010. In this interview, information was sought which would identify whether equity concerns factor explicitly in the calculus by CES personnel tasked to implement and monitor the IFC Performance Standards. In the course of this conversation, the IFC staff member noted that the underlying and impelling dynamic in the Performance Standards was “risk management” (IFC Interview, Piotr Mazurkiewicz, May 2010). He further elaborated that “risk” appropriately referred to the full range of risks, including financial risk, liability risk, reputation risk, and actual social and environmental risk. Nonetheless, from this interview IFC institutional interests, including financial interests, were at least at inception the foundation of the Performance Standards.

How are we to understand risk management at the IFC, and what does this mean for the hope for equity and IEJ in IFC projects? First, as noted in this IFC interview, in July 2009, the Social and Environment Department of the IFC submitted a Report to the IFC Board's

Committee on Development Effectiveness to summarize the results of three years of employing the 2006 IFC Performance Standards, and to set the stage for the 2010-2011 public review and revision of these Standards (IFC 2009a, hereinafter the 2009 CODE Report).

In this document, there are several bases for noting the importance of risk management as the core reason for the Performance Standards. Most centrally, the effectiveness of the Performance Standards in assisting with IFC risk management was explicitly noted from the outset (IFC 2009a, p. iv). This was bolstered by a follow-on reference to the role of the IFC Performance Standards in encouraging standardization in global environmental and social practices by international finance institutions—the Equator Principles in particular, practices which were lumped together under the phrase “E&S risk management” (Ibid, p. v). And the 2010-2011 revision process was identified as important in strengthening the risk management aspects of the Performance Standards (Ibid).

Second, in the 2010 Annual Report the President of the World Bank Group identified what has been a recent strategic shift at the World Bank and the IFC—in particular an increased focus on risk management (IFC 2010a, Introduction). Third, the text of the Performance Standards and Guidance Notes themselves, including proposed revisions, are replete with references to risk management.

Given then the importance of risk management in the IFC considerations, I consider what I see as the two most potent sources of risk for the IFC: financial risk, and reputation risk. The following discussion seeks to analyze whether either or both of these sources of risk may provide alternative explanations for IFC environmental and social organizational change and commitment.

Financial Risk. As noted in the 2010 IFC interview, risk management encompasses a variety of concepts and vulnerabilities. First and foremost, I contend, is the risk of the non-repayment of portfolio loans caused by a decline in value of equity investments, when and where clients incur significant increased expenses, loss of goodwill, and other liabilities because of environmental or social practices or lapses. Here the primary concern of the IFC would be its portfolio risk as a function of loss of project profitability, or at worst the capacity of the project to make good on the IFC's investment. Indeed, the IFC's 2009 Environmental and Social Review Procedure (2009b, hereafter the ESRP) governing document, when speaking of the environmental and social risk profile of financial intermediary clients, refers specifically to considering the risk to the IFC generally of such projects (IFC 2009b, p. 63, par 7.2.18). While this reference is general, it does in my view include financial risk.

As noted earlier, in 2009 the IFC formed the Corporate Risk Committee as a subgroup of its formal Management team—a Committee to which the CES Department now submits quarterly reports on not only project social and environmental performance, but on social and environmental risks as well (IFC 2009a, Para. 12, p. 5). Indeed, the entire Department was also reorganized about that time along regional and sectoral lines to allow management a clearer picture of social and environmental risks (Ibid, Para. 13). The foundational importance of risk management for and by borrowers which are themselves financial institutions is also noted in the 2009 CODE Report, which confirms that some significant element of the risk with which the IFC is concerned is financial (IFC 2009a, Paras. 18 and 19, p. 6; see also Para. 46, p. 15; see also IFC 2009b, Para. 7.2.8, p. 61).

The 2009 CODE Report also notes that project screening and post-financing project supervision have both been strengthened since the implementation of the Performance Standards

in 2006, for the primary purpose of enhancing environmental and social risk management (Ibid, Para. 20). As noted briefly in the preceding section, Paragraph 21 of the 2009 CODE Report identifies a discrete risk rating system developed by the CES Department for the purpose of facilitating a focused attention to project risk at the environmental and social screening phase (Ibid, p. 7). This risk rating drives the level of project scrutiny pre-funding, and supervision and monitoring post-funding (Ibid, Paras. 26 and 27, p. 8).

The 2006 Policy on Social and Environmental Sustainability refers to the project classification scheme (e.g. Categories A, B, C and FI) as "categories" (IFC 2012a, Para. 40). The 2009 CODE Report refers to the same scheme as identifying the project "risk category" (IFC 2009a, Para. 31, p. 10). The IFC is engaged in a concerted effort to reduce the "knowledge gap" between IFC project data and actual project conduct, for the express purpose of reducing risk (IFC 2009a, Para. 50, pp. 16-17; see also IFC 2009b, p. 14). Also probative is the IFC's promotion of the Performance Standards, and the conclusion of the CES Department that they are effective for clients, despite the fact that the IFC does not yet have "consistent" data on the impact of the Performance Standards on affected communities and on natural habitats (IFC 2009a, Para. 69, p. 23; see also Para. 75). This suggests that it is indeed risk management for both the IFC and the client, and not net environmental impact, which are of chief importance here. Thus financial risk does explain some of the IFC's focus on environmental policies and objectives in its funded projects and services.

However, one should note that the ESRP refers to the environmental and social review as being motivated by "responsible and pro-active social and environmental risk management" (IFC 2009b, Para. 1.5.1, p. 12). The reference to a "responsible" approach intimates responsibility to affected communities and stakeholders and to the natural environment, and not merely a

responsibility to IFC institutional objectives and interests. The ESRP (2009b, p. 12) also defines high risk projects entirely in terms of their potential social and environmental impact: “(i.e., triggers a significant/exceptional Performance Standard issue, requires a labor audit, or has a Performance Standard issue that either cannot be mitigated or will not be mitigated for a significant amount of time)” (Ibid). Public statements and documents do confirm that the IFC retains some inherent concern for social and environmental impacts generally (e.g. IFC Consultation, March 2011). That is, the IFC is at least to some extent genuinely committed to managing the social and environmental risks of financed projects for their own sake and not only because negative impacts threaten the health of the IFC bottom line. The ESRP (2009b, p.34), for example, notes throughout the discussion of risk that the relevant risk of project impacts is risks to local community “lives and livelihoods” (IFC 2009b), making clear that the IFC is concerned with more than only risk to itself.

While this broader conceptualization of risk cannot itself preclude the conclusion that the IFC is significantly concerned with financial risk, it does reorient the focus more toward a real concern with environmental and social impacts specifically.

Reputational Risk. Second, reputation risk is an increasing concern for capital-raising entities, as potential investors and financiers (see the following section on credit risk) and indeed the public examine the social and environmental credibility of individual corporations (see e.g. Mol 2010; Kim 2010; Godfrey et.al. 2009; and Luo and Bhattacherya 2009). But reputation risk is a broader issue than merely a factor in outside investment decisions for an international organization like the IFC. In something akin to brand loyalty (see e.g. Brunk and Bluemlhuber 2011; Arendt and Brettel 2010; and Luo and Bhattacherya 2006) the IFC should in theory be concerned how it is viewed as a development agency by those concerned with social and

environmental impacts, including government and NGO representatives who are part of the Tuesday Group (see section on external pressure, below), in that its related reputation will impact the disposition of not only formal stakeholders but also world opinion about the World Bank Group as a whole.

Indeed, as is evident in the history section of Chapter Three, the IFC is deeply concerned about reputation risk. The greater and more entrenched the public role assumed and embraced by the IFC, the more the IFC has to lose from bad publicity over financed projects, or the impacts of projects implemented by clients to whom the IFC has provided financial advisory services and support. In the 2009 CODE Report the IFC was explicit that enhanced project impact disclosure and transparency would enhance “public trust in IFC and its clients”—an eventuality important in its own right but also a facilitator of better developmental outcomes of financed projects (IFC 2009a, Para. 10, p. 4).

The ESRP notes that the CES Department shall advise IFC management of all projects which present “reputational risk” to the IFC (IFC 2009b, Para. 2.2.15.a, p. 21). Later in the ESRP, the Department is advised to consider reputational risks that may arise from the perception that the IFC is associated with a particular activity, even if the activity is not directly financed by the IFC (Ibid, Para. 3.2.6.a, p. 25). The ESRP (par 7.2.9) requires the consideration of any reputation risk of financial intermediary clients (Ibid, p. 61). and notes the potential reputational risks of advisory services clients (IFC 2009b, p. 77, par. 11.3).

Thus reputation risk is an explicit factor at the IFC in motivating both the content and application of the Sustainability Framework. Of central importance for present purposes, however, is whether reputation risk is an end in itself at the IFC, suggesting that it is genuinely concerned about its social and environmental impacts, or whether reputation risk is vital to other more important and

fundamental risks that align more closely with traditional business interests. Two of these of potential applicability at the IFC are liability risk, and credit risk.

Liability Risk. Perhaps the efforts of the IFC to formulate, publish, implement and disclose progress on social and environmental standards can be explained at least in part by the claim that the IFC is seeking to establish the sort of reputation and record that would help it avoid direct legal liability for environmental damages caused by IFC projects. Private corporations clearly retain environmental liability for their actions. However, based on existing legislation, case law, and international law, in my judgment the likelihood that the IFC would be sued in an attempt to collect on an environmental injury claim is very remote. This is so for several reasons, as discussed below. The following is based significantly on US law, in that the US is both the IFC's largest shareholder and, for jurisdictional purposes, the host for the IFC's headquarters in Washington D.C.

First, the US International Organizations Immunities Act (22 USCS §§ 288-288i, 1945, hereafter the Act) in Section 288a accords international organizations the same immunity from judicial process as foreign governments, except to the extent that such immunity has been "expressly" waived "for the purpose of any proceedings or by the terms of any contract." Interestingly, the Articles of Agreement of the IFC provide just such an express waiver to process. However, the courts have interpreted this waiver narrowly.

In the seminal case construing the Act as it applies to entities of the World Bank Group, *Mendaro v. World Bank*, the appellate court held that even express waivers would only be interpreted in a manner that serves the interests of the institution (717 F.2d 610, D.C.Ct.App. 1983). This case was a sex discrimination action brought against the Bank by a former employee who alleged that while at the Bank she had been subjected to sexual harassment and discrimination, in that the Bank had permitted male employees to continue unwanted advances

towards her, and promoted male employees ahead of her despite her satisfactory performance. The court noted the Bank's express waiver of immunity from process in its Articles of Agreement (identical to the waiver provision in the IFC's Articles), but then undertook to explain and interpret the provisions of the Act that permit such waivers by international organizations.

The court ruled that in drafting the Articles, in view of its otherwise applicable exemption from process, the Bank could have only intended to permit lawsuits in categories of cases where permitting the Bank to be sued would serve its own "chartered objectives" (1983, p. 615). The court held that as a general matter international organizations will be found not to have implicitly waived immunity unless it can be fairly argued that they would thereby receive some corresponding benefit in return which would further the organization's goals. When any such putative benefits would be substantially outweighed by the burdens of judicial scrutiny of the internal administration of its programs, it is logically less probable that the international organization intended to waive immunity. Thus, "since a waiver of immunity from employees' suits arising out of internal administrative grievances is not necessary for the Bank to perform its functions, and could severely hamper its worldwide operations [because the laws in its areas of operations are all different and the Bank could be held hostage by other member nations to these kinds of claims], this immunity is preserved by the members' failure expressly to waive it" (Ibid). Unless an implied waiver would directly serve the mission of the entity at issue, then, courts will refuse to waive immunity.

The *Mendaro* result is fundamental to the most recent immunity case involving the IFC. In *Osseiran v. IFC*, 552 F3d 836 (D.C.Ct.App. 2009), Osseiran sued to enforce promises by the IFC to sell him its equity interest in a particular client. The court upheld *Mendaro*, and ruled that

it is up to the judiciary to decide if an international organization has deliberately waived immunity. Thus the general rule outlined above has been recently affirmed and will certainly govern all lawsuits brought against the IFC. Importantly, the court in *Osseiran* found that this type of suit by this type of plaintiff would serve the interests of the IFC in being held to its commercial commitments and contracts, and since the IFC did not cite any sufficient countervailing costs to such a suit, immunity was waived. (The merits of *Osseiran*'s claim are still being adjudicated; this case just decided the immunity issue.)

The importance of these cases for the present analysis is that the IFC has complete immunity from lawsuits for environmental damage caused by clients unless a court would find that such liability would actually enhance the ability of the IFC to do its job, and bring some substantive benefit to the IFC that would outweigh its costs of permitting such suits. I contend that, as in the *Mendaro* case, here permitting environmental plaintiffs to recover monetary damages from the IFC would actually make it inadvisable financially for the IFC to engage in the very investment activities for which it was chartered. The IFC would certainly be likely to be seen by potential plaintiffs as the 'deep pocket' of choice, triggering environmental lawsuits, including frivolous claims, on a significantly increased scale. Such exposure to liability would have a pervasive chilling effect on the IFC's initiative and leadership in providing creative and resourceful financing for private capital in the poorest countries.

One might argue that permitting environmental injury lawsuits would force the IFC to do its best in applying the Performance Standards, and in approving projects with the best possible environmental implications. The argument would be that projects which are more environmentally sound have a greater likelihood of being financially successful, thus holding the IFC to the Performance Standards would serve the chartered objectives of the organization. My

response would be that the business case for environmental sensitivity, while important and arguably valid in many respects, is still a contested concept and does not rise to the level of a factually-based legal argument. That is, a court would not be subject to appeal simply because it declined to draw a definitive link between enforcing the Performance Standards to the maximum extent and the financial interests of the IFC.

Second, one might argue that notwithstanding equivocation on the business case argument, managing social and environmental risk is part of the IFC's chartered objectives, and must thus be maximally enforced. The response would be that the chartered objective of the IFC is founded more centrally on effective investment in the developing world. While its environmental programs are vital, the IFC was not chartered as an environmental policy institution.

Thus I conclude that any court applying *Mendaro* and *Osseiran* would find that the IFC does not retain legal liability for clients' environmental damage, with the result that we may understand the IFC's current focus on enhancing the environmental performance of clients to be not driven by a need to demonstrate the sorts of environmental due diligence which would serve its defense in a lender liability lawsuit.

Importantly, international law would support general immunity. As to both the US and other IFC member nations, the Restatement of the Foreign Relations Law of the United States (Revised) at § 464(1) notes that under international law, "an international organization is entitled to such privileges and such immunity from the jurisdiction of a member state as are necessary for the fulfillment of the purposes of the organization, including immunity from legal process" (Tentative Draft No. 4, 1983). Indeed, the *Mendaro* court appealed to established international law to find that international organizations are generally entitled to immunity (1983, p. 615).

Finally, even if environmental lawsuits against the IFC were permitted, it would be difficult to find a hook by which the IFC would be deemed to have stepped into the shoes of the client, who was the legal person who inflicted the damage. For example, because its investment work is focused on project finance, the IFC does not take security interests in physical assets or real property and thus will never become the owner of record of any project assets involved in harming the environment and those resident within it. By avoiding direct ownership of equipment, buildings or land, and by virtue of its position as lender rather than operator, the IFC would typically avoid liability for environmental damage at the project site in any event.

Credit Risk and Cost of Capital. Another potential explanation for the IFC's express interest in reputation risk management is credit risk, or cost of capital. That is, a business entity must consider the effects of its own actions on how it will be perceived and treated by those from whom it hopes to obtain financing. This may be working capital to service current accounts, or investment capital to finance such macro events as corporate expansions or acquisitions. In any case, what is crucial for the corporation, from a risk management point of view is that its stature and credibility must not be injured by factors that may attest how the corporation is perceived by or may become liable to others.

The role of corporate social responsibility is relevant in these discussions, as many observers have argued that CSR is something corporations cannot afford *not* to do, and that public perceptions of a firm's social and environmental responsibility and sensitivity directly impact the firm's value. Assessments of value directly affect then not only the interest rates which the firm must pay for corporate borrowing, whether in bank loans or bond offerings, but also the very availability of not only debt but also equity financing itself. In sum, a firm's social

and environmental profile—negative perceptions in particular—are seen as a risk factor to be managed with respect to finance.

Does the IFC then retain sufficient credit risk that its Sustainability Framework is at least in part an effort to contend for its own credibility for sources of capital and finance? I argue that the answer is ‘no.’

First of all, unlike private banks, a significant share of the capital available to the IFC comes from contributions by member nations. Northern member states are, I suggest, committed to the IFC because of their commitment to its investment mission, and Southern states because of their need for the capital the IFC provides. Thus the social and environmental impact of the IFC is not the threshold question for member nations when making their annual capital contributions. As noted in Chapter Three’s discussion of the Tuesday Group (discussed further below), the US does retain a strong and formal legislative mandate to monitor the environmental impact of proposed projects, and to vote against projects inadequate in environmental design and effect, or inadequately vetted by the IFC Board. It is conceivable that a series of projects disqualified for environmental reasons could bring the US to the point of questioning for a time the functioning of the IFC generally, and withhold its annual contribution on that basis. However, I contend that the possibility of this eventuality is quite remote, and that, based on my conversations with representatives of members of the Tuesday Group, the investment imperative for proposed IFC projects is still quite strong (Author interviews May 2010 with Ms. Susan Rzemien, US Department of the Treasury, Dr. Leslie Johnston, USAID, and Mr. Said Yakhyoev of the Bank Information Centre; also an interview with Mr. Kirk Herbertson of the World Resources Institute May 2010).

Second, a large share of the capital available to the IFC comes from the net earnings on its own investment activities. This source is thus also not subject to credit risk.

It is important to note, however, that some \$6.5 billion in investment commitments in fiscal year 2011 (almost one-third of the total committed) came from funds mobilized by the IFC from other sources (IFC 2011a, p. 9). Could it be that in the view of these finance partners the desirability of contributing capital to investment funds managed by the IFC would be diminished by their perceptions that the IFC was not doing enough to manage the environmental impacts of its projects? A case in point is the recent formation of the IFC wholly-owned subsidiary Asset Management Company (the “Company), a private equity fund manager. The Company was formed in 2009 to deal specifically with the plight of the poorest developing countries in the wake of the 2008 global economic crisis. The intent of the Company was to provide ready capital for the poorest of countries (principally the IDA countries), sourced from entities such as sovereign funds, pension funds, and other institutional investors (IFC 2010a).

For present purposes, it is likely that the participation by other financial partners in the formation and capitalization of the Company was not based entirely on their perception of the creditworthiness of the IFC. Rather, each of these investors retained its own developmental mandate, else they would not have made capital available to the least credit-worthy. Nonetheless, the IFC’s environmental policies and programs, and the extent to which projects with greater social and environmental credibility are then seen as more viable financially, may have been a factor. Here reputation risk then likely plays some role for the IFC. Its stature as a leader in social and environmental policies likely attracts capital partners who seek similar reputational credibility by association. Thus reputation risk may constitute something of an alternative explanation for environmental change at the IFC.

What is important here, however, is that while mobilizing external capital is an interesting dimension of what the IFC does, unlike private banks its internal sources of financing are entirely sufficient for the IFC to perform its chartered mission. Thus credit risk may be something of a factor, but is not conclusively significant for the IFC with respect to continuing its operations.

Assessment of Risk Management as an Additional Explanation. Risk management, then, for the IFC would appear to be predominantly reputation risk and financial risk, both of which have been shown to have the potential to motivate the IFC for reasons other than concern with the environment generally. Nonetheless, the foregoing discussion also suggests that neither of these forms of risk would preclude the notion that the IFC's social and environmental commitments have at least in some part become sincere.

Interestingly, public comments and questions in the 2010-2011 Sustainability Framework review and revision process have not challenged, or questioned motivations on the basis of, the explicit risk management orientation of the Performance Standards. Public input has seemed to focus instead on improving the environmental and social outcomes of the Performance Standards for their own sake, as though social and environmental outcomes may be fairly considered to be ends in themselves at the IFC (e.g. IFC Consultation, March 2011).

EXTERNAL PRESSURE

In an attempt to explain organizational change at the IFC, one may also inquire as to whether the IFC and its work related to IEJ is merely a reaction to public pressure and publicity, or whether social and environmental corporate policy and programs are durable and proactive.

The published works of scholars such as Philippe LePrestre (1989), Michelle Miller-Adams (1999), Susan Park (2005a, 2005b), and Michael Goldman (2005) on the World Bank

Group, and the IFC, as well as information gleaned from semi-structured interviews with civil society organizations and observers, make it clear that external pressure is to be credited significantly with forcing enduring change in the environmental practices of the Bank and the IFC. Absent relentless NGO scrutiny and lobbying for example, and the legislative initiatives that resulted in part therefrom, the Bank and the IFC would likely have continued on with business as usual despite some glaring cases of project environmental and attendant human injury. For example, while the IFC had hired several environmental officers by the mid-1990's, it was civil society and not the IFC internal environmental staff which identified serious impact assessment and forced resettlement issues with the IFC Pangué project discussed in Chapter Three (David Hunter Interview, March 2011).

Further, the move by the IFC towards a greater recognition of project impact on local communities (noted in the Chapter Three analysis, particularly as to capabilities IEJ), and the recent accommodation by the IFC of concerns for human rights and free prior informed consent by indigenous communities to some projects, reflect the content of civil society lobbying and pressure over the past twenty years. This is because these issues have been at the core of the work of the Center for International Environmental Law, for example, in its relationship with the IFC (David Hunter Interview, March 2011). And civil society continues to wield significant influence at the IFC, in no small part due to the constructive relationships of civil society actors with IFC member governments (Ibid).

Indeed, the public consultation process which concluded in July 2011 reveals the IFC not only making itself open to public comment and criticism regarding its proposed changes to the Sustainability Framework, but also taking the initiative in seeking out even those who would oppose what they are doing in general. In particular, the IFC convened over 50 public

consultation meetings to ensure that the Performance Standards, Policy and Access to Information Policy have been thoroughly vetted by NGOs, academics, corporations and other interested non-governmental stakeholders (herein "civil society"), with the stated intent of maximizing the social and environmental effectiveness of the Sustainability Framework (IFC 2010b, 2010c, 2010d). The IFC engaged in two rounds of consultations, holding open sessions in numerous cities around the world specifically to take input on the Sustainability Framework (Ibid). Final documents were presented to the IFC Board in early April 2011, and were approved by the Board to be effective January 1, 2012. The Sustainability Framework as revised will then govern IFC practice for five years until the next review process. These measures are evidence that the IFC has taken note of the costs of allowing deleterious policies and projects to continue unabated, and has come to see that it needs the input of civil society to do its job well.

Given that the largest movement of the IFC towards social and environmental responsibility occurred over the twenty or so years 1989-2011, and because the unprecedentedly transparent posture of the IFC has at least formally come to an end now that the revision process is complete, the greatest source and tool for external pressure will likely be the Tuesday Group.

As noted in Chapter Three, historical influence by involved NGOs resulted in the passing by the US Congress of legislation, including what is termed the "Pelosi Amendment," in 1989 (Public Law 101-240, 22 U.S.C. §§ 262m-7). This legislation establishes the procedures by which the US will vote on various projects at the multilateral development banks (MDBs) of which it is a member. The US Department of Treasury is ultimately responsible to review the social and environmental impacts of MDB projects, and advise the vote of the US Director of each relevant MDB accordingly. Treasury is assisted in this process by staff from USAID, who also conduct project analyses, applying their own internal screening guidelines, but also for

example the Council on Environmental Quality guidelines (see below), and/or the requirements of NEPA to proposed projects (USAID Interview, Dr. Leslie Johnston, May 2010). Both Treasury and USAID staff travel on occasion to conduct on-site due diligence (Ibid; also Treasury Interview, Ms. Susan Rzemien, May 2010).

The Pelosi Amendment required that the US Director cast a negative vote on any Bank project for which an environmental assessment had not been completed and made available to the Board at least 120 days prior to the Board vote on the project. The resulting “Tuesday Group” consists of representatives from Treasury, USAID, the State Department, US EPA, the US Department of Commerce, the US President’s Council on Environmental Quality, and NGOs such as the Bank Information Centre (BIC) and Oxfam (BIC Interview, Mr. Said Yakhyoev, May 2010). When asked whether the IFC takes Treasury input seriously, interviewees affirmed the importance and impact of the Tuesday Group at the IFC, in part because the US is the IFC’s largest shareholder (BIC Interview, Mr. Said Yakhyoev, May 2010; USAID Interview, Dr. Leslie Johnston, May 2010).

The Group still meets the first Tuesday of each month (BIC Interview, Mr. Said Yakhyoev, May 2010) to review the environmental and social impacts of Bank Group projects—for our purposes including IFC projects—in order to prefigure the US vote relating thereto. The Group is co-chaired by the BIC and USAID (BIC and USAID Interviews, May 2010).

For our purposes, we need ask whether the Pelosi Amendment has in the past wielded, and presently continues to wield, the sorts of power and pressure over the IFC that were evident in the early efforts of NGOs, particularly in the 1980s-1990s? It is also important to ask whether these components of civil society continue to play an influential role at the IFC?

In a Library of Congress report to the US Congress near the 10-year anniversary of the adoption of the Pelosi Amendment (the CRS Report), Sanford and Fletcher argue that in fact, it was the Pelosi Amendment which was most influential in inducing the Bank and other MDBs to adopt “environmental assessment and information access procedures” (1998, p. 1). Civil society—principally NGOs—were noted to play an important role, but to lack the ability to systematically review projects, and to be unable to assemble the sorts of coordinated efforts which would be needed to bring about durable change (Ibid, p. 3). Nonetheless the CRS Report notes that “Without [close] collaboration [with NGOs] and the foreign contacts and information it provides, the Treasury Department and other U.S. agencies would most likely be unable to effectively implement the Pelosi Amendment” (Ibid, p. 6). And the Report describes NGOs as retaining a “key role in the process of identifying environmental concerns in MDB projects and evaluating the quality of EAs [environmental assessments]” (Ibid, p. 35). Thus the role of civil society may be seen to have continued its importance even after playing an important part in the very adoption of the Pelosi Amendment itself.

As to the impact of the Pelosi Amendment on MDBs, the CRS Report found that there were at that time still serious deficiencies in the actual implementation of environmental impact assessments being conducted at MDBs, including the IFC, in contrast with legislative intent (Ibid, p. 31). And as to the US, the Report found that the US Executive Director was invoking the provisions of the Pelosi Amendment less often than in the years immediately following its adoption (Ibid, p. 3). Indeed, in the years 1992-93, the US Executive Director relied on the Amendment to register a negative vote or abstention on an MDB project over 100 times. But in the years 1994-96, such votes were entered only 8 times (1998, p. 81).

Ten years later, the US Government Accountability Office delivered a report to the Senate Committee on Foreign Relations on the effectiveness of the Pelosi Amendment (GAO-09-99, 2008, hereafter the GAO Report). This report finds that while US governmental agencies are following required administrative procedures under the Pelosi Amendment, they are actually having limited impact. Specific deficiencies were noted in the Tuesday Group process, including that US agencies all work off their own subjective judgment and ad hoc screening procedures in determining the sufficiency of Bank environmental impact assessments (2008 p. 14). Moreover, the ability of the US to effectively learn of and evaluate the environmental impacts of proposed Bank projects is limited, in significant part because of the time limitations inherent in the process (Ibid, p. 16). Finally, and most importantly, the GAO Report notes that since 2004, “the World Bank Group has always approved proposals that lack U.S. support, even if they have potentially significant adverse environmental and social impacts” (Ibid, p. 19). This suggests that the impact of the Tuesday Group is somewhat latent.

The import of these reports is that the scope of external pressure on the IFC at this time is not as extensive and potent as one might imagine, given the history of NGO impact and the formal structure and procedures of the Pelosi Amendment. The result of this analysis is that the IFC’s growing focus on expanding the Sustainability Framework and its implementation is due not to external pressure alone, leaving the door open for the conclusion that change has at this juncture produced genuine commitment to social and environmental sensitivity.

What are we to make of externally-driven change in any event? The mere fact that change occurs due to external pressures does not per se disqualify the change as disingenuous. That is, if the IFC has changed and continues to change in significant part as a result of the

pressures and visibility brought to bear by academic, NGO, community and other observers, that change may still qualify as a real change in corporate culture, identity and values.

CONCLUSION

To restate the foregoing, there exists concrete evidence that the IFC has undertaken and undergone real, durable change in the formation and implementation of its Performance Standards, and that this change has produced genuine commitment to social and environmental values at the IFC. Additional explanations for the IFC's environmental focus and policies do retain significant explanatory power, and there are both internal and external reasons for the movement of the IFC on environmental issues and programs which are reflective of more than simple environmental beneficence and commitment. Nonetheless, the additional explanations considered here—risk management and the role of external pressure—are similarly not complete and dispositive.

This leaves open the conclusion, which I support, that some amount of what the IFC is doing reflects genuine and fundamental concern for the environmental impact of its policies and projects. This enhances the prospect that the Sustainability Framework and its accommodation of IEJ concerns may be taken seriously as a source of guidance for the implementation of environmental equity in FDI in the South more broadly.

Plainly, the conclusions reached in the preceding analyses reflect a material degree of subjectivity. Indeed, seeking judgments about the true intent and 'heart' of the IFC must, I suggest, employ a significantly qualitative and thoroughly inductive approach. I recognize then that each of my conclusions and interpretations are subject to challenge at some level. Nonetheless there is tangible evidence to be considered, on the basis of which the foregoing discussion can claim some amount of credence. And this credence is sufficient to warrant the

importance of the case studies which follow. That is, the force of the analysis presented in this Chapter undergirds the possibility that case evidence of the validity of the Performance Standards will link practical legitimacy to organizational intent, with the effect that aspects of IFC practice which speak to IEJ are real.

The looming question is whether all three forms of social liberal IEJ are equally addressed, and what the outcome of this question means for understanding the present and possible state of IEJ in North-South FDI?

CHAPTER FIVE

THE INTERNATIONAL FINANCE CORPORATION AND THE SUSTAINABILITY FRAMEWORK IN PRACTICE

This Chapter takes head-on the issue identified at the end of Chapter Four, namely whether the three forms of a social liberal international environmental justice (IEJ) identified in this study—distributive IEJ, capabilities IEJ, and human rights IEJ—are equally represented at the International Finance Corporation (IFC), and the need to understand the implications of the answer to this question. Chapters Three and Four concluded that there is enough evidence that the IFC addresses elements of all three forms of liberal IEJ, though the greatest accommodation in publications, policy and organizational capacity is the distributive strand. In this Chapter I seek to take up this issue in the context of a review of a sample of IFC projects, to determine first whether the organization’s demonstrated commitment to and capacity for IEJ pans out in practice generally and, if so, as to which form(s) of a social liberal IEJ?

This Chapter concludes that despite the threads of both capabilities and human rights IEJ in the Performance Standards and in the organizational structure and strength at the IFC shown in Chapter Four, it is distributive IEJ which is largely served in the way that the IFC screens, approves and manages projects. The conclusion that distributive IEJ predominates will then be juxtaposed with a discussion of capabilities IEJ and human rights IEJ to clarify whether and why these forms of liberal IEJ are not by comparison fully addressed in IFC practice. This Chapter will conclude with some preliminary observations regarding the implications of these findings.

The purpose of this Chapter is not to conduct an audit of the application of the content of the Performance Standards per se. This is principally because the IFC’s own disclosure regarding individual projects specifically identifies the applicable Standards and provides extensive data on the relevant issues which have arisen or may arise under specific Performance

Standards in a given project context. What is of greater salience to understand is the extent to which the visible and consistent application of the Performance Standards to individual projects actually addresses significant dimensions of IEJ.

RESEARCH DESIGN

The analysis presented here is based on an in-depth review of twenty Category A or B projects (explained further below) across the developing world, to cull out the specific application of the IFC Policy on Social and Environmental Sustainability (2006a, 2012a), Performance Standards (2006b-i, 2012b-i), and Access to Information Policy (2006k, 2012i) (collectively the Sustainability Framework).

This Chapter and its conclusions are thus based on a purposive sample (e.g. Berg 2007, p. 44; Marshall and Rossman 2006, p. 71) of twenty IFC projects approved since the inception of the Performance Standards in 2006. Thus it is expected that this study will reveal and reflect at least some of the practicalities of applying the Performance Standards, shown in Chapter Three to include a number of accommodations of IEJ issues and concerns. The projects included in this sample were selected to include projects across economic sectors, across geographical regions, and of varying size. In addition, in that a large percentage of IFC projects are classified as having no significant environmental impact, the present sample was pre-screened to include only Category A (projects with “potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented”) or Category B (projects with “potential limited adverse . . . impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures”) (IFC 2012a, p. 8) projects. This distribution reflects the overall distribution of IFC post-Performance Standard projects, of which some 50% are Category B, while only 3% are Category A (IFC 2012, p. 12). Thus the sample on which this

Chapter is based constitutes a stratified purposive sample (e.g. Miles and Huberman (1994), p. 28). The advantage of a stratified sample is that it can discretely access a richer dataset for the research purposes being employed, by deliberately and selectively identifying subgroups and thereby “facilitating comparisons” (Ibid). The sample was also selected prior to identifying the general direction this Chapter would take, maximizing the range of IFC practices represented. Thus the present sample should provide a reasonably representative snapshot of IFC practices across its present portfolio of some 518 post-Performance Standard (2006) projects (IFC 2011a).

Once this purposive sample was identified, content analysis (e.g. Marshall and Rossman, p. 108) was conducted to identify themes and threads in the IFC’s mode of process in reviewing, approving and managing projects. The source of documentary evidence on which this analysis is based is constituted entirely by the Summary of Proposed Investment, and the Environmental and Social Review Summary (and attached documentation, if any) provided by the IFC on its website for each project (furnished in Appendix One's List of Cases). When consulted directly regarding the possibility of obtaining additional information regarding specific projects, the IFC replied that all public information regarding individual projects is disclosed on its website. Ongoing information and details regarding client compliance with and implementation of project approval requirements for example is considered confidential as between the IFC and the client (IFC Interview, Mr. Piotr Mazurkiewicz, May 2010), though as discussed in Chapter Six the IFC has formally committed to a greater degree of disclosure over the life of individual projects (e.g. also IFC Consultation, Washington D.C., March 2011).

The results of this content analysis are set forth in summary form at Table 5-1 below. This Table is further amplified by Table 5-2 at the end of this Chapter, which codes each project (e.g. Berg 2007, pp. 304ff) first for social and environmental issues, and then for representative

remediation and mitigation measures required of the client by the IFC. These data—the IFC requirements in particular—were then analyzed for recurrent principles and practices. In the end, each of these recurrent categories was analyzed as to whether it better served distributive, capabilities, and/or human rights IEJ.

The interpretation of this data is based on the assumption that relevant elements of the application of the Performance Standards, and therefore IEJ as identifiable therein, will be reflected to some significant extent in the information disclosed by the IFC. In practice, this proved to be the case as each Environmental and Social Review Summary disclosed in detail the Performance Standards applicable to the project, and the aspects of client policy and practice which were or would be deemed by the IFC to be responsive to Performance Standard concerns. In addition, each Environmental and Social Review Summary was explicit regarding the additional measures imposed on the client by the IFC to bring the project into compliance with the Performance Standards, applicable national and local law, and in many cases international best practice. Thus the operation of the Performance Standards is, I contend, sufficiently visible in this analysis to permit conclusions regarding the practical fruition of the IFC's documentary and organizational potential to address components of a liberal IEJ in FDI.

Caveat. What is *not* possible given the state of data currently available is an assessment of how well the client actually complied with the more long-term requirements placed on clients and their projects by the IFC. That is, the sample does contain data regarding the successful completion of specific near-term requirements such as the construction of effluence management facilities, the general implementation of pre-implementation community engagement, and the development of hard-copy human resources or worker safety plans and policies. It does not, however, permit an assessment of how well the client actually implements and manages such

frequent requirements as ongoing community engagement and communication programs, worker and community grievance mechanisms, the right of workers to organize, and community development initiatives. The IFC has not to date disclosed the results of any of its post-Performance Standards Project Supervision Reports. Thus this Chapter must be inconclusive to this extent; actual site visits and interviews with clients and affected stakeholders would be required to confirm client response and compliance with some IFC requirements actually imposed in the review and approval process.

IMPLICATIONS

It is the case that the IFC is seeking to improve its ongoing project monitoring and supervision process. In the recently-concluded Performance Standards review and revision process the IFC has explicitly beefed up its staffing and funding for project supervision visits (e.g. IFC 2009a, p. 9; and IFC Consultation, March 2011). And the IFC Development Outcomes Tracking System, in place since October 2005 (IFC 2009a, p. 25) is specifically designed to gauge the ultimate benefits and burdens of IFC projects on affected stakeholders and environs. Indeed the IFC is significantly increasing the human and financial resources devoted to conducting and disclosing the results of the Development Outcomes Tracking System (IFC Consultation, March 2011). This type of information would bolster the effectiveness of the analysis conducted in this Chapter. Nonetheless, it is indeed in-person and in-depth qualitative research which will be required to provide a more accurate assessment of the extent to which IFC accomplishes a greater capabilities and human rights IEJ in particular on-the-ground, as more fully discussed below.

What is well within reach is to assess the IEJ *focus* of the IFC in its current form and practice, and ask what are and will be the likely impacts and limitations of the IFC's resulting

contribution to IEJ? And in that this dissertation is concerned with the IFC, and the import of its posture and practice for the notion that FDI in the South can accommodate an improved dimension of IEJ, the present sample is in the end sufficient to render a judgment regarding which form of a liberal IEJ is the most potent and present in existing IFC practice. The present analysis is thus also useful in identifying which actors retain the most hope for affecting change. For example, is the IFC truly capable of effecting anything more than an increased level of distributive IEJ? If not, then perhaps one must conclude that the potential of the private sector engaged in North-South FDI to heal itself, as it were, is limited and other actors will be required on an ongoing basis to bring about the full range of needed change. With these qualifications and reflections, the Chapter moves to analyze and interpret the following cases, outlined in summary form below, and elaborated on in detail in Table 5-2 at the end of this Chapter. The entries in each respective table are based on correlations between specific elements of the Sustainability Framework with concrete requirements applied by the IFC to each project in this sample. (Please also refer to Appendix One to this study for a description of the investors to each project and for links to project descriptions). The discussion which follows Table 5-1 does not address each entry of the Table, but rather focuses on key elements of the evidence for the application of the Sustainability Framework to specific projects.

Table 5-1 IFC Category A/B Projects Stratified Purposive Sample Summary

Project Name and Location	Burden Shifting	Burden Sharing	Benefit Sharing	Capabilities for Participation	Capabilities for Control	Social Rights	Environmental Rights
1. Titan Cement Company SA (“Antea-Albania”), Albania (Cat A)	x	x	x	x	x	x	x
2. Secil - Companhia de Cimentos do Lobito, S.A. (“Secil Lobito”), Angola	x	x	x		x	x	x
3. CMC Sisak d.o.o., Croatia	x	x		x	x	x	x
4. Azerbaijan	x				x		x

Electronics CJSC ("SEF Azel"), Azerbaijan							
5. Home Mart LLP ("Eurasia RED"), Kazakhstan	x	x	x	x	x	x	x
6. Uzbek-British Joint Venture Limited Liability Company Katering ("SEF Moi Dom DIY"), Uzbekistan	x	x		x	x	x	x
7. Nosa Sarl ("AEF Nosa IV"), Cameroon	x	x			x		x
8. Kiwara PLC, Zambia	x	x		x		x	
9. Tigullio Holdings ("A1 Belarus"), Belarus	x	x		x	x		x
10. Hidromaule S.A., Chile	x	x			x	x	x
11. Santa Marta International Terminal Company, S.A., Colombia	x	x	x	x	x		x
12. Sichuan Jiuda Salt Manufacturing Co., Ltd. ("Jiuda Salt"), China	x	x		x	x		x
13. Societe Concessionaire de l'Aeroport ("Cambodia Airp II"), Cambodia	x	x	x	x	x	x	
14. Pantaleon Sugar Holdings Company Limited ("Pantaleon II"), Guatemala	x	x		x	x	x	x
15. PT Karunia Alam Segar ("Wings Noodle Integration"), Indonesia	x	x		x	x		x
16. Milagro S.A.-San Miguel Uruguay S.A., Uruguay	x	x			x		x
17. Wataniya Palestine Mobile Telecommunication Company, West Bank and Gaza	x	x			x		x
18. PJSC "Concern Galnaftogaz" ("Galnaftogaz Expansion Phase II"), Ukraine	x	x		x	x	x	x
19. Australian Solomons Gold Limited ("Gold Ridge"), Solomon Islands (Cat A)	x	x	x		x	x	x
20. Chuvash Health, Russian Federation	x	x					

PROJECT SCOPE

As noted at the outset, the foregoing sample includes projects across economic sectors and geographical regions. In addition, many of the projects involve clients with a substantial business presence. Based on IFC disclosure, Jiuda Salt (#12) is the largest private salt producer in China. Pantaleon (#14) is the largest sugar producer in Central America. Gold Ridge (#19) is the largest private sector project in the Solomon Islands. At the same time, Chuvash Health (#20), for example, is a local clinic renovation project of limited scope and size. And as noted above, this sample was selected for Category A and B cases. Thus this sample may, I argue, be fairly seen as a legitimate field within which to dig for representative evidence regarding the IFC and IEJ.

In each case, the IFC identified what it sees as the particular developmental benefits it brings to the project. Consistently, unique forms and terms of financing were pre-eminent. That is, the IFC offers financing—even long-term financing—for projects which would go begging in the commercial lending sector. In each case, however, the IFC also sees itself as bringing to the table seasoned experience in the client's business sector, facilitating increased effectiveness and efficiency in business practices such as product development, marketing, corporate governance, accounting and finance, and so on. Most significantly for our purposes, in each case in the present sample, admittedly by virtue of its being classified as a Category A or B project, the IFC sees itself as providing expertise to help improve the client's and project's social and environmental profile and impact. This assistance takes the form of management training, as well as technology and standards identification and imposition. The IFC in nearly every case referred expressly to its hope and expectation that improved business, social and environmental practices would provide a "demonstration effect" for not only other projects in the geographical

region or project sector, but also for the private sector broadly. This is consistent with the IFC's intensifying vision for itself as a standard-setter for the private sector and for private investment in the South generally (e.g. IFC 2010a).

What is crucial for the present analysis, however, is that the IFC is centered largely upon the client. Indeed, this is consistent with express IFC statements that it intends to make the client the primary actor in social and environmental mediation and mitigation (e.g. IFC 2012a, 2011a, and IFC Consultation, March 2011). What this holds for the present analysis is that the IFC does not intend, in most cases, to directly engage the local community, and local and national governmental officials, to determine and dictate the particulars of everyday project implementation and operation. Rather it seeks to put the client in a position to well undertake these tasks itself.

Because of this focus, this Chapter will assert that the present dataset reflects then primarily distributive IEJ, contending that by contrast the domains of capabilities and human rights IEJ—as much more woven into the fabric of local life—are left significantly to the client. The effect of this is to limit the reach of the IFC as to IEJ. That is, the present and recent historical practice of applying the Sustainability Framework, as identified in this Chapter, foreclose a focus on the full range of liberal IEJ and reveal that the multilateral development banks such as the IFC, and the banks which have formally acceded to the Equator Principles, may indeed have arms too short to embrace the elements of FDI which reach deepest into the substance of the daily lives of affected persons, the poor in particular.

The following analysis will first identify the elements of IFC practice which support and engender distributive IEJ. The Chapter will then turn to a discussion of the reasons why capabilities and human rights IEJ are in the end fairly deemed secondary in this process.

DISTRIBUTIVE INTERNATIONAL ENVIRONMENTAL JUSTICE

The distributive justice components of what the IFC does with clients in practice are pronounced in the present sample, as traced in the following discussion of themes of each of burden shifting, burden sharing, and benefit sharing in specific projects.

Burden Shifting and Sharing. The particular areas of burden shifting and sharing which I will highlight here are environmental impact assessment, community engagement plans and policies, the hiring of skilled environmental management personnel and the retention of outside experts, the imposition of international best practices, the extension of client purview to supply chain, and contractor and child labor issues.

Environmental Impact Assessment. Interestingly, an environmental impact assessment, as required by Performance Standard 1 (2012b), was not always required of clients. The circumstances of this eventuality differ. In many cases, relevant environmental impact assessments (“EIAs”) for the proposed project were completed prior to IFC involvement (e.g. Secil Lobito (#2), CMC Sisak (#3), Jiuda Salt (#12) and Gold Ridge (#19)). While in some cases (e.g. CMC Sisak) these were conducted with a view to satisfying IFC Performance Standards in that the client intended to apply for IFC financing and assistance in the future, in most cases the EIAs that were already in place were conducted to comply with local or national law. In this event the IFC usually did not require a new assessment. Rather the IFC conducted a review of existing documentation and made recommendations for rectification of identified deficiencies, usually articulated in what the IFC termed an “Environmental and Social Action Plan.”

Nonetheless, site visits by IFC environmental staff were conducted in all but two circumstances: first, when the project was applying for follow-on financing and site visits had been conducted in connection with the first investment and/or follow-up project supervision

visits (e.g. Pantaleon II (#14) and Wings Noodle (#15)) or second, where the project was merely an expansion of services (Chuvash Health (#20)). In all other cases site visits were conducted to inspect proposed project locales and identify proximate communities, as well as to determine the nature and acceptability of existing client programs for managing environmental, health and safety issues.

The vetting of Category A projects, in particular the Titan Cement Plant construction project (#1), and the Gold Ridge Mine rehabilitation project (#19), was noticeably and understandably more extensive and thorough than for the remaining 18 cases. In both Category A cases the client had already retained outside experts and had consulted with government authorities to construct detailed environmental assessments and, in the case of Gold Ridge, thoroughly negotiated community stakeholder engagement and resettlement plans. In the remainder of the cases, the IFC took on a plainly more hands-off approach, leaving it up to the client to comply with IFC requirements over the near-term progression of the project. While Environmental and Social Action Plans typically imposed calendar or disbursement criteria and deadlines for the completion of specific requirements, in the Category B projects the IFC's assurance of the satisfaction of these requirements is usually from a distance.

To sum the foregoing, here the principal dynamic, even where the IFC has made significant allowance for prior work concerning the project, is burden shifting onto the client. That is, the burden of determining the ultimate and foreseeable social and environmental impacts of projects is placed on the client, in particular as compared with host governments and/or host communities. This process was identified in Chapter Three as constituting a distributive form of IEJ, and is confirmed here as a principal focus and outcome of IFC practice under Performance Standard 1 (2012b). The confirmation that adequate review of environmental and social

concerns has been conducted, and the correlation and comparison of these outcomes with the requirements of the Performance Standards, is the threshold activity of the IFC when it considers a proposed project.

In each project, the IFC ensured that the project met the requirements of local and national law. However, the application of the Performance Standards in each case works a further shifting of burdens onto the client, in that in each case, the Performance Standards require measures of the client which exceed the requirements of applicable law.

Community Engagement Plans and Policies. In the abstract, and in FDI generally as traditionally conceived, local community involvement with the planning and implementation of FDI projects takes the form of seeking redress for grievances or injuries suffered after the fact in the construction and operation of a project. That is, while the business case for corporate social responsibility is being commended in increasingly convincing terms and venues, such as the recent calls for free prior informed consent to an FDI project for indigenous peoples (UN Declaration on the Rights of Indigenous Peoples (2007); and related discussion at the IFC Consultation, March 2011)), there is no legal requirement for engaging local communities at the outset of project planning. Thus the IFC by virtue of the community engagement provisions of Performance Standard 1 is already shifting an increased burden onto clients as compared with the unsponsored setting for private enterprise.

In the present sample the IFC did not require community engagement in every case. Community engagement was not required in the retail construction and expansion projects proposed in the SEF Azel (#4), Eurasia RED (#5), and SEF Moi Dom DIY (#6) cases because the projects were non-encroaching expansions of existing operations, or would be constructed in areas of no immediately affected communities. In other cases, such as the A1 Belarus case (#9),

the IFC did not require community engagement or a community engagement plan because it was not required by national law under the circumstances proposed by the client, in this case the construction of a chain of discount stores. In the Hidromaule case (#10), no community engagement plan was required because all affected stakeholders were landowners in the region of the proposed run-of-the-river hydroelectric project, and were engaged directly through arms-length negotiations for market value rights-of-way over and/or through their property.

For the purposes of this study, what is important is that in all but the two Category A cases—Titan Cement (#1) and Gold Ridge (#19), the IFC relied principally on the client and the client's written and verbal word to confirm that community engagement programs were existing and adequate. This result is the more stark in view of the very small percentage of Category A cases in the IFC portfolio, as noted earlier. Thus while the IFC indeed accomplished a distributive IEJ shifting of the burden from local communities onto clients by requiring clients to invest the time and mental energy necessary to conceptualize and construct a community communication plan, the actual engagement process is largely hidden from the IFC, and it does not have ready tools to assess whether the transparency procedures and promises of the client in this regard have been or will be effectual. Thus, as discussed further below, the deeper analysis required to assess the strength and breadth of true capabilities and human rights IEJ may not be possible in the context of the IFC's operations to date. In the following Chapter I note that this has been substantially remedied in the 2012 Sustainability Framework, in which the IFC commits to disclosing the basis for its determination that the client adequately secured "broad community support" for projects with potentially significant adverse impacts.

The Hiring of Skilled Personnel. Another means by which the IFC shifts environmental burdens onto clients, accentuating a distributive IEJ focus, is by requiring clients to actually

recruit and hire environmental, occupational health and safety, and human resources managers and technicians, whose qualifications and expertise are satisfactory to the IFC. The costs expended and internal reorganization expended and undergone by individual clients in this regard clearly surpass the efforts and resources required of non-sponsored projects. Examples of such requirements include the Titan Cement project (#1) requirement to develop an HR department, the Milagro fruit orchard project (#16) requirement to hire an environmental health and safety manager to consolidate their environmental programs, and the Galnaftogaz fuel distribution project (#18) requirement to hire both an environmental and health program manager and technician. Most significant of all were the requirements placed on the Gold Ridge project (#19). Here the IFC required the hiring of not only an environmental health and safety manager, but also an occupational health and safety manager, and a permanent manager to oversee the resettlement process and program. Significant here is the IFC's determination to make the environmental profile of sponsored projects truly capable and professional. Long-term employment relationships, particularly those approaching or at the executive level, are significant commitments of both finances and organizational capacity and credibility on the part of clients.

Also reflective of the distributional shifting of burdens from local communities onto clients, at a somewhat reduced level, are requirements by the IFC that clients retain outside experts to assist with some aspect of environmental and social planning and impact. As noted in Chapter Three, the expenses of such retention—while less than those involved in hiring permanent staff—are nonetheless considerable, and are not necessarily part of the process for projects outside the IFC portfolio, for example. The Eurasia RED client (#5)—proposing the construction and expansion of a chain of retail malls—was required to retain an international life

and fire safety expert acceptable to the IFC, to develop a safety master plan. The Kiwara mine exploration project in Zambia (#8) was required to retain an outside expert to assist with the assessment of project encroachments on biological diversity, and archaeological sanctity with respect to sites of local cultural heritage. Outside consultants were also required in the Jiuda Salt project (#12) to ensure compliance with IFC labor standards, the Pantaleon sugar project (#14) to ensure compliance with applicable air emissions standards, the Gold Ridge project (#19) for purposes of ensuring the appropriate management of tailings disposal and to provide accountability in the resettlement process. Finally, in the Chuvash Health project (#20) and the A1 Belarus project (#9), the client was asked to retain an international expert on life and fire safety to provide training for workers.

In only the last case (#20) was the IFC the source of the retention and financing of outside consultants. In all other cases the IFC required the client to expend the resources necessary to identify, screen, retain and manage outside consultants. Compared with what would appear to be the relatively few cases in which the Performance Standards require the use of outside expertise (see the related discussion in Chapter Three), the present sample reveals that the IFC is quick to turn to outside expertise in any area in which it feels it cannot for some reason provide the necessary oversight and assistance.

It must be restated at this point, however, that the chief activity of the IFC in this regard is to place increased burdens onto the client, or in some cases where the local community retains some capacity to assess project impact, the sharing of burdens with the local community. Thus the principal dimension of IEJ served by requiring the hiring of internal or external personnel is distributive. The IFC does not, for example, require that the client retain from among the local population a permanent representative or ombudsman to engage the company over community

issues—that responsibility is expressly left to the company itself or to its own consultant(s). Nor does the IFC require the client to engage local experts to gauge the human rights dimension of a particular project. As noted in the revised Performance Standards (2012b-i) and Guidance Notes (e.g. 2011b), the IFC is principally concerned that the client be enabled to be responsible and effective in managing its own social and environmental impacts. The true state of local capabilities and human rights, then, must be left to the discernment and advocacy of someone besides the IFC, if not the client then in many cases state and civil society actors.

International Standards. As is evident in the Performance Standards, the IFC seeks to ensure that clients do not minimize their environmental practices by complying only with the lowest levels required by local or national law in their locale. Rather, the IFC Performance Standards and related IFC Environmental and Health and Safety Guidelines (2007e)—of particular note here references to international best practices—all require of the client a greater effort and higher social and environmental standards. Several of the projects in this sample were required to demonstrate compliance with international best practice with respect to worker life and fire health and safety, for example (e.g. Chuvash Health (#20), A1 Belarus (#9), and the SEF Moi Dom DIY building supplies retail chain project (#6)). Other clients were either required or encouraged to comply with and/or obtain international certifications such as ISO 14001, OHSAS 18001, or ISO 22000 (e.g. Eurasia RED (#5), A1 Belarus (#9), Pantaleon (#14), and Wings Noodle (#15)). And in cases such as the Cambodia Airport II case (#13), the IFC required that labor practices comply with international human rights standards.

As noted in Chapter Three, the requirement that clients exceed local standards shifts the environmental justice burden onto the client as compared with the local community, and also reduces the overall environmental footprint of the FDI project as compared with a non-IFC

setting. Thus these measures by the IFC are again principally distributive in focus and import, in the context of asking on what liberal form of IEJ the IFC is most focused.

Enlargement of Client's Scope of Responsibility. In Chapter Three it was noted that there was both burden shifting and burden sharing where the client was asked to expand the realm of environmental and social impacts for which they were responsible, whether in the form of assessment, management or enforcement. Specific examples given included human trafficking, child labor, and client supply chains. In the present sample, it is evident that the IFC is actually engaged in ensuring clients operate in such expanded spheres of accountability and action.

For example, in a number of cases the IFC expressly required clients to extend their own social and environmental standards to the operations and activities of contractors and subcontractors retained by the client. In the Titan Cement project (#1), the client was required to develop and implement a code of conduct for all third parties with which it did business, including not only environmental practices but also human resources policies, for example. In the Hidromaule hydroelectric project (#10) and the Cambodia Airport project (#13), the clients were required to ensure contractors complied with national labor laws and the labor standards imposed by the IFC Performance Standard 2 (2012c). In the Wataniya cell tower project (#17) the client must ensure that contractors comply with its own environmental health and safety requirements. And in the Santa Marta shipping terminal expansion project (#11), contractors were required to be licensed and to have an environmental management system in place.

In other cases, clients were expressly required to ensure that their IFC-compliant labor policies extended to labor practices by those in its supply chain, and to ensuring that all workers

were of minimum age (e.g. the Milagro fruit production and expansion project (#16), and the Wataniya project (#17)), further shifting justice burdens onto the client.

The weight of the above clearly rests on the side of confirming that the IFC's stated commitment to the broader business climate in project locales and environs is real and credible. It is also the case, however, that this activity is principally distributive IEJ in that it primarily tasks and focuses on the client.

Benefit Sharing. I address benefit sharing below in discussions on decisional access and community development.

Decisional Access. Decisional access is evident particularly in the more industrial projects which contemplate a much more extensive disruption of local life and livelihoods. In the Titan Cement (#1), Secil Lobito cement (#2), CMC Sisak steel mill (#3), Gold Ridge mine (#19) and Cambodia Airport II (#13) cases, community engagement was central to and vital in the IFC's willingness to go ahead with the project. In fact, in the Cambodia Airport project, local residents filed complaints with the IFC Compliance Advisor Ombudsman (CAO) alleging that the project sponsors had inadequately compensated them for loss of land and livelihood (CAO 2009). While the CAO reported out on its assessment in August 2010 (CAO 2010a), encouraging a more transparent and consistent engagement process with locals, the case remains open and negotiations are ongoing. In the Gold Ridge case, some 1,350 persons will be forcibly displaced from the open pit mine site. In this case the IFC's scrutiny of community engagement programs and practices to manage and fairly compensate for the resettlement was understandably extensive. In fact, in the Gold Ridge case the IFC itself attended some of the meetings with local community stakeholders. In other more median cases, community engagement was principally for community education and safety purposes, where the project displayed significant and

proximate industrial hazards or effluence (e.g. Milagro (#16), Pantaleon (#14), and Jiuda Salt (#12)).

Community Development. Finally, as to benefit sharing the IFC makes clear in its Social and Environmental Sustainability Policy (2012a) and in its Performance Standards that it is interested in the overall development benefits of its projects. This was noted above in the brief discussion of the Development Outcomes Tracking System as receiving heightened focus and funding at the IFC. As stated in Chapter Three, this is the benefit sharing component of distributive IEJ, and is also evident among the projects in the present sample.

While the IFC does not often require a community development or support plan, it is quick to note such measures or intentions where they exist. In the Titan project (#1) the IFC noted that the client had a community development plan. In the Eurasia RED project (#5) the IFC observed that the client supported for example a local art museum and local orphanages. As to the Galnaftogaz project (#18), the IFC stated that the client has an active community communication and development program. And in the Wings Noodle project (#15) the IFC reported that the client both meets with and supports local communities, for example in helping fund local schools. However in some cases, engendering community benefits was required by the IFC. For example, in the Cambodia Airport project (#13), the client was required to monitor the economic welfare of local communities and to identify development assistance opportunities.

Again, however, without an in-depth assessment and analysis of the true state of life in local and affected communities, these measures are all on the client side of responsibility and activity, and the IFC at present does not push much past this dimension to determine whether anything more than distributive benefit sharing are at play. In particular, there is no basis upon which to conclude that the fundamental dynamics which enable and empower daily life and

livelihood choices by local residents are being impacted. All we know is that a lot is being asked of clients, and that there are indeed effective measures and instruments in place at the IFC to ensure that its programs, policies and standards are indeed observed by clients.

What then would be required to conclude that there is much going on at the IFC in addition to distributive IEJ? In the following two sections, I consider the counter-arguments, namely the reasons why distributive IEJ predominates over capabilities or human rights IEJ, respectively.

CAPABILITIES INTERNATIONAL ENVIRONMENTAL JUSTICE

In Chapter Three I painted a hopeful picture that capabilities IEJ could be addressed by the IFC. Particular examples included the capability to obtain access to and enjoy the benefits of economic resources, effective participation in community life, freedom of expression, and practical reason. These were organized into Capabilities for Participation and Capabilities for Control. It was suggested that the free prior informed consultation requirement of Performance Standard 1 could ensure the attainment of both of these sets of capabilities.

This study of the actual implementation of the Performance Standards suggests that this positive vision needs some qualification. Here the principal observation is that the IFC has to a significant extent relied on an initial site visit, interviews and documentary review to determine the extent of client compliance with its standards, and to establish the measures that must be put into place to bring the client into compliance. While it is clear that project monitoring has been conducted (IFC 2009a), the IFC has itself acknowledged that these efforts need to be bolstered (IFC Consultation, March 2011).

Capabilities for Participation. As to ensuring community support, while as noted in Table 1 the IFC nearly always conducts a pre-approval site visit, only in the Category A projects

does the record state that the IFC conducted its own audit of the local population and community support for the project. However, the environmental and social impacts of the Category B projects are significant, and much more pervasive given that Category B projects constitute relatively much more of the IFC post-Performance Standard portfolio, as noted earlier.

This means that the IFC has a looser grasp early on of the state of life in affected communities overall. The IFC is thus somewhat passive in ensuring the possibility that life chances for affected and potentially affected persons will really change—eventualities that rely largely on client actions, and project possibilities. If the IFC's primary scrutiny occurs at project inception, it bears asking whether proximate communities have durably changed, in particular with respect to capabilities such as participation in the life of the community.

Capabilities for Control. It is clearly the case that the capability to maintain at least some control over one's material environment, whether workplace health and safety, home health and safety, or the welfare of the local biosphere generally, are all enhanced and facilitated by the distributive IEJ measures imposed on clients as noted above. Thus this perhaps most important and undergirding capability is indeed addressed by IFC practice on-the-ground. And the IFC's interest in community development measures reflects some sensitivity to increasing capability in the FDI context to obtain the benefits of proximate economic resources.

Nonetheless, the reach of the IFC needs to be extended in both time and space with respect to funded projects. Importantly the 2010-2011 Sustainability Revision process has resulted in a substantial strengthening of this reach, in particular by virtue of its now requiring the IFC to disclose its basis for a finding that the client has indeed obtained broad community support for a project (IFC 2012i), and its more detailed and extensive requirement that clients develop a stakeholder engagement plan (IFC 2012a). And it is true that the IFC requires clients

to consider marginalized groups specifically when seeking informed and representative community engagement and consultative assent to a proposed project (Performance Standard 1 (2012b)). We may fairly conclude that clients will take these requirements seriously and that in many cases the social depth of this effort will indeed speak to particular capabilities in an enabling manner.

However, the key point here is that at present these possibilities are not pervasively evident at the IFC level. At a minimum, there will in the short term certainly be measurable variance in how the requirements of Performance Standard 1, for example, are implemented by various clients. Thus it will for some time remain importantly in the purview of advocates such as NGOs, and cross-border networks of individuals, to help monitor FDI project impact at a deeper level. Indeed, to date it has principally been these sorts of external actors which have informed the process of assessing the IFC's conduct and practices

HUMAN RIGHTS INTERNATIONAL ENVIRONMENTAL JUSTICE

As observed in Chapter Three the IFC's revised Performance Standards and Guidance Notes, and as corroborated by Professor John Ruggie in his work on business and human rights (see e.g. Ruggie 2011, 2010, 2009a and 2009b; see also <http://www.business-humanrights.org/SpecialRepPortal/Home>), it is principally the responsibility of national governments to ensure and protect human rights. Nonetheless, in word (Performance Standard 2) and deed (e.g. the projects in this sample) the IFC does accord workers basic rights. And it is also the case that the IFC does address a number of human rights implicitly in the larger and more general content of the Performance Standards and in their application to the projects which make up the present sample. For example, as identified in Chapter Three, the broad range of human rights are to be considered in the conduct of a required social and environmental impact

assessment (Revised Performance Standard 1 (2012b)). Clients' effluence must not encroach on local rights to potable water, speaking to a general human right to the environment (Revised Performance Standard 3 (2012d)). And Performance Standard 4 seeks to channel and limit the use of force against local persons by project security personnel, speaking to a human right to life and person (2012e).

What is visible in the present study is not a complete absence of IFC concern about human rights, but rather the limited extent to which the IFC can account for real change and consistency in client treatment of human rights issues. In a similar manner to the reaction of civil society to the limited explicit mention of human rights in the Performance Standards (IFC Consultation, March 2011), the actual accommodation of human rights concerns by the IFC in the context of specific projects would leave many observers and advocates disappointed.

Social and Environmental Rights. The only express references to human rights in the present sample are to environmental rights in one project where labor practices referenced international human rights standards (Cambodia Airport (#13)), and to social rights in two projects where the IFC required the client to ensure that its armed security personnel received training in security procedures and in human rights (Kiwara Mine expansion project (#8) and the Gold Ridge project (#19)). In the remaining cases, in particular with respect to labor laws, the IFC typically inquired of and referred to only client compliance with national laws and the IFC Performance Standards. As reflected in Table 5-1, there are also implicit references to environmental human rights where PS2 applies, and to social rights where PS4 applies, as noted above.

What is missing here, again in the shadow of an overarching focus on the client and therefore distributive IEJ, is any real reflection by the IFC of the enduring climate in affected

communities with respect to the recognition and exercise of human rights. Again, the client is the dispenser of the benefits ostensibly ensured by relevant (though latent) human rights provisions of the Performance Standards. Nonetheless the question must be asked in this context as well—what sort of changes and impacts will or would endure if the project were to close down or be completed or, perhaps more poignantly—when the IFC’s investment has been repaid or liquidated and the IFC is no longer involved? The answer to questions such as these will at present continue to lie with those entities who have made it their business to monitor private enterprise in the South.

I hasten to add here that it is no small thing that the IFC is a guarantor of a greater distributive IEJ in the South. That is, while the capabilities and human rights dimensions of the Performance Standards prove to be more subcutaneous and indeterminate in practice, it is still significant for host communities that their control over their natural and material environment is measurably enhanced when private enterprise projects are asked to comply with the IFC Performance Standards. While a full engagement with capabilities and human rights IEJ would be most desirable, we needn’t disparage FDI altogether simply because its purview of environmental justice is incomplete. Any amount of voluntary taking up of IFC-like policies and standards—such as would occur if the intended demonstration effect of efficiencies and environmental improvements brought on by IFC standards actually materializes among not only foreign but also local businesses—creates a better world and some amount of developmental improvement for affected communities, if it is allowed that private enterprise may have something other than deleterious effects.

CONCLUSION

From the foregoing it is evident that even if the IFC does a better job of securing effective community engagement, for example, in its Category A cases, these constitute such a small percentage of total projects that the revised approaches to community engagement in Category B projects noted above become increasingly important to ensure the capabilities noted herein.

The capability to exercise control over one's material environment, and its corollary of a human right to a healthy environment—both of which are to a significant and commendable degree accommodated in the distributive shifts brought about between clients and local communities by virtue of IFC policy and practice—are also noteworthy here. Nonetheless it is clear at this juncture that the disproportionate, if understandable, focus on distributive IEJ and client capacity and control at the IFC prefigures and limits the sphere in which any demonstration effect by the IFC as to FDI writ large may meaningfully attain a social liberal IEJ broadly conceived.

Thus the systematic allocation of most social and environmental responsibility to the client by the IFC means that in general, finance institutions and the imposition of social and environmental requirements and standards at the point of financial institution entry into a particular project will result in primarily distributive IEJ gains in North-South FDI. It will for the foreseeable future remain the purview of those who take up ground-level advocacy for local peoples to work for the sorts of enduring social change which can really facilitate enhanced capabilities and rights IEJ which hold greater promise for the poor than distributive measures alone.

However, the state of affairs is not all bad, as the tools available to such persons and entities are measurably expanded and strengthened by the application of the resources available through FDI entities engaged in real distributive change. For example, the training and increased income available through employment with (or through upstream or downstream association with) an FDI entity may be put to good use in other spheres. That is, the space within which to breathe—figuratively and literally—when improved environmental practices and local populations are employed by FDI entities is an important facilitator of the time and resources required to engage in higher levels of reflection and to initiate stronger forms of activism in the interest of deeper changes in life choices, chances, and equity.

Table 5-2

IFC Category A/B Projects Stratified Purposive Sample
In Detail

Project Name and Location	Environmental and Social Risks	Representative Environmental and Social Measures and Documentation Required	IFC Pre-Approval Project Site Visit?
<p>1. Titan Cement Company SA (“Antea-Albania”), Albania, Cement Plant Construction and Operation, Category A, Approved 5/29/08</p>	<p>PS5:-Forced resettlement/land use curtailment PS2:-Labor and working conditions, including subcontractors PS3: -Air pollutant and particulate emissions, including CO2 PS3:-Water effluence PS4:-Large number of vehicles employed PS4: -Plant and human waste treatment PS4:-Risks of plant operation and closure PS4:-Social impacts of migrant worker influx PS4:-Road construction and use safety PS6:-Intrusion into land areas home to plant and animal species of local custom and value PS8:-Proximate areas of pilgrimage, and cultural tradition (cemetery)</p>	<p>-Public Consultation and Development Plan -Maintain community engagement over the life of the project -Social and Environmental Management System -Social Compensation Plan -Client development of an HR department will implement and comply with all provisions of PS2. -Client will recruit and train local personnel to work in the plant, though local sources will not be the only new hires. -Client developed and will implement a Code of Conduct for all third parties it does business with (distributive justice—burden shifting onto client) -Construct water sewage treatment plant, water to be used for local irrigation, for example -Install a waste-heat-to-power generator when financially feasible</p>	<p style="text-align: center;">Yes</p>
<p>2. Secil - Companhia de Cimentos do Lobito, S.A. (“Secil Lobito”), Angola, Cement Plant Construction and Operation, Category B, Approved 12/9/08</p>	<p>-Conceived by the IFC as the cement plant environmental standard-setter for Angola PS1:-Existing EIAs PS2:-Labor and working conditions PS3:-Air pollutant and particulate emissions, including CO2; Quarry reclamation PS4:-the safety of quarry and manufacturing operations, including transportation; -Social impacts of influx of workers</p>	<p>-Prepare quarry Environmental Impact Assessments and reclamation plan -Implement the remedial measures in the existing project Environmental Impact Assessment -Comply with ISO 14001 (though actual certification not required) -Construct a settlement for migrant construction workers; at project completion turn settlement over to local municipality -Establish a worker health and safety unit for training and tracking, comply with ILO guidelines -Improve air emission levels -Consider gas heat recovery (power generation) system when feasible -Has constructed health clinic to serve workers and their families</p>	<p style="text-align: center;">Yes</p>

<p>3. CMC Sisak d.o.o., Croatia, Steel Mill Acquisition and retrofit, Category B, Approved 6/15/2009</p>	<p>PS1:-EIAs completed before IFC involvement, but with an eye to IFC financing PS2:-Labor and working conditions, including subcontractors. PS2:-Radioactive scrap metals safety PS3:-Significant air pollutant emissions PS3:-Solid and hazardous waste disposal PS4:-fire danger to local communities</p>	<p>-Community engagement and disclosure -Environmental and Social Action Plan -EHS Structure and Plan in compliance with national law and IFC requirements must be completed prior to first disbursement. -Retrenchments must be conducted in accordance with Croatian law and PS2 -Upgrade OHS system, and consider applying for OHSAS 18001 certification -Client commits to meet host country and IFC EHS emission targets and limits -Scrap Processing Study must be completed to IFC's satisfaction -Employ 'best industry practice' in managing soil contamination in scrap storage areas -Client will liaison with local government for fire prevention/emergency planning</p>	<p>Yes</p>
<p>4. Azerbaijan Electronics CJSC ("SEF Azel"), Azerbaijan, Expansion of Retail Computer Company, Category B, Approved 6/29/07</p>	<p>PS1:-Sustainable community relations PS2:-Occupational health and safety PS2:-Labor and working conditions PS3:-Solid waste disposal</p>	<p>-Compliance with applicable <i>Performance Standards</i> and EHS Guidelines -No ESAP required</p>	<p>Yes</p>
<p>5. Home Mart LLP ("Eurasia RED"), Kazakhstan, Retail Malls Construction Project, Category B, Approved 3/26/09</p>	<p>PS1:-No EIA required under national law, and thus not required by IFC PS1:-Environmentally sound construction materials and practices PS1:-Community relations PS2:-Labor and working conditions PS3:-Pollution prevention and abatement PS4:-Community Health</p>	<p>-Environmental and Social Action Plan -ISO 14001 Certification must be attained within three years of project opening -Life and Fire Safety Master Plan, applying national and international standards, employing IFC-approved expert -Project being implemented in accordance with "well recognized" international standards -Local and ILO labor standards must be complied with -Project plans posted and translated into local languages -Requirement to hire locally when possible -Commitments to support local community, e.g. Art museum, and orphanage</p>	<p>Yes</p>
<p>6. Uzbek-British Joint Venture Limited Liability Company Katering ("SEF Moi Dom DIY"), Uzbekistan, Home Materials and Furnishing Store</p>	<p>PS1:-No EIA, but client has all required licenses and permits PS2:-Labor and working conditions PS3:-Effluent and solid</p>	<p>-Emergency Response Plan -Occupational Health and Safety audit and plan -Life and Fire Safety Audit -Hazardous Material Management Plan</p>	<p>Yes</p>

<p>Construction, Category B, Approved 5/19/09</p>	<p>waste disposal PS3:-Hazardous materials management PS4:-Community impact—risk of fire; traffic safety</p>	<p>-Employee safety and environmental training will include contractors and third parties. -Contractors will be screened for compliance with PS2 -Environmental Management System HR Policy to IFC's satisfaction</p>	
<p>7. Nosa Sarl (“AEF Nosa IV”), Cameroon, Laundry Soap Manufacturer Plant Expansion, Category B, Approved 4/1/2010</p>	<p>PS2:-Labor and working conditions PS3:-Pollution abatement PS3:-Chemical storage, handling, and disposal PS3:-Waste water treatment</p>	<p>-Environmental and Social Management System developed, as condition of first disbursement -Develop an Occupational and Health Safety monitoring process -Develop an emergency response system -Build a wastewater treatment facility and get it permitted, as condition of first disbursement</p>	<p>No (IFC had conducted previous site visits of this client's operations)</p>
<p>8. Kiwara PLC, Zambia, Minerals Mining Exploration Project, Category B, Approved 6/20/09</p>	<p>PS1:-No EIA, but environmental “project brief” for prospecting activities PS3:-Solid and liquid waste disposal PS4:-Community impact, health and safety PS4:-Impact on local water supply PS6:-Biodiversity encroachment</p>	<p>-Environmental and Social Impact Assessment if any mine prospecting sites are to be developed into mines -Conduct groundwater quality sampling -Develop Environmental Policy Statement -Engage experts on biodiversity and archaeology -Develop a comprehensive community engagement plan, with records of incidence and attendance -Adopt “voluntary principles on security and human rights”</p>	<p>Yes</p>
<p>9. Tigullio Holdings (“A1 Belarus”), Belarus, Construction of a Chain of 128 Discount Stores, Category B, Approved 6/24/08</p>	<p>PS1:-No EIA because plan is to occupy existing facilities PS2:-Labor and working conditions PS2:-Occupational health and safety PS3:-Solid waste disposal PS3:-Waste water disposal</p>	<p>-Retain a Life and Fire Safety consultant, ensure all stores are up to internationally recognized fire safety standards. -Ramp up EMS as appropriate -Create environmental, occupational health and safety and food hygiene management systems, or attain ISO 14001 and 22000 certification -develop a land acquisition policy, as a condition of disbursement -Comply with local labor laws; develop a PS-compliant HR policy as a condition of disbursement -National law and circumstances of project do not require community engagement</p>	<p>Yes</p>
<p>10. Hidromaule S.A., Chile, Run of the River Hydroelectric Project, Category B, Approved</p>	<p>PS2:-Labor and working conditions PS3:-Pollution prevention and abatement, including</p>	<p>-Declaration of Ambient Impact completed (EIA equivalent) -must ensure contractors comply with national law and</p>	<p>Yes</p>

5/9/2007	CO2 PS4:-Community health and safety PS5:-Local land rights	the IFC PS2 -If transmission line will require displacement of persons, client must comply with PS5	
11. Santa Marta International Terminal Company, S.A., Colombia, Shipping Facility Reclamation and Refurbishing, Category B, Approved 3/18/10	PS1:-Community engagement and development PS2:-Occupational health and safety PS2:-Hiring and management practices; working conditions PS3:-Ambient air quality PS3:-Solid waste disposal PS3:-Ship liquid and solid waste management PS3:-Demolition debris management	-Has an Environmental Management Plan, and ISO 14001 certification in place -Plan expressly includes engaging local communities, local authorities, and the local fisherman's association (no express articulation of how reps are appointed) -Prioritizes hiring locally when possible -Has established a labor policy in compliance with PS2, and is applying for national government approval -Has special procedures for managing hazardous waste -Third parties are required to be licensed and have environmental management plans	Yes
12. Sichuan Jiuda Salt Manufacturing Co., Ltd. ("Jiuda Salt"), China, Salt Manufacturing Facilities Expansion, Category B, Approved 8/6/07	PS1:-Existing EIA's for current operations IAW Chinese governmental regulations PS1:-Ad Hoc community engagement program PS2:-Labor and working conditions PS2:-Existing labor programs comply with Chinese law PS3:-Air emissions from generating plants, including CO2 PS3:-Brine water disposal PS3:-Solid waste disposal (coal slag)	-IFC called for an ESAP to ensure all future operations and acquisitions satisfy the <i>Performance Standards</i> -Develop a community engagement plan -Consolidate existing environmental health and safety guidelines and management into one department under one manager -Must retain external expert to conduct labor audit to ensure compliance with PS2 -Must implement more efficient power generating practices and facilities.	Yes
13. Societe Concessionaire de l'Aeroport ("Cambodia Airp IP"), Cambodia, Airport, Terminal, and Services Expansion, Category B, Approved 6/6/07	PS1:-Social and Environmental Impact Assessment was carried out with on-site assistance from IFC, and from external experts PS2:-Labor and working conditions PS3:-Fuel/hazardous materials storage and management PS4:-Buried unexploded ordnance PS4:-Community health and safety PS4:-Noise pollution PS5:-Human resettlement: National government appointed Land Acquisition	-Client agreed to comply with all requirements of SEIA -Labor practices are in compliance with national law and international human rights standards -Contractors must comply with national law and PS2 -Client must undertake specific waste and effluent storage and management procedures and practices -Client must ensure safe transport of fuel through proximate communities -Client must develop its own resettlement plan for the affected approximately 370 persons, in accordance with PS5	Yes

	Committee to handle resettlement planning and compensation	-Client must develop its own community engagement program to manage the resettlement process -Client will monitor local community welfare and identify development assistance opportunities -Is currently subject to an open CAO Ombudsman Case	
14. Pantaleon Sugar Holdings Company Limited (“Pantaleon II”), Guatemala, Sugar Plant and Support Construction and Expansion, Category B, Approved 2/26/09	PS1:-Guatemalan law requires EIAs for plant construction and expansion PS1:-Client has retained outside experts to survey local communities and stakeholders to confirm acceptance of cane activity PS2:-Labor and working conditions; labor relations all IAW national law PS2:-Has functioning HR and OHS departments PS2:-Cooperated with Coca-Cola and conducted a labor audit PS3:-Pollution prevention and abatement, including CO2; recently completed a study to ensure effluence complies with all PS's PS3:-Wastewater treatment and disposal PS3:-Solid waste management and disposal PS4:-Community safety from airborne crop dusting PS4:-Environmentally sound construction practices	-Environmental and Social Impact Assessment IAW PS's will be conducted for Honduran plant and Guatemalan distillery -Implement an integrated Environmental Health and Safety System; consolidate and centralize EHS management -Seek ISO 14001 and OHSAS 18001 certification by June 2011 -Will implement the findings of the labor audit -Update all current management policies to satisfy the <i>Performance Standards</i> -Implement an air emissions monitoring program for cane boilers -Implement groundwater monitoring program -Retain air emissions consultant; ensure compliance with all PS's/EHS Guidelines -Inform local communities of pesticide hazards and how to avoid them -Is developing a formal grievance mechanism protocol for local communities.	None Noted
15. PT Karunia Alam Segar (“Wings Noodle Integration”), Indonesia, Noodle Production Plant Expansion, Category B, Approved 6/19/07	PS1:-Has procedures in place to address EHS risks PS1:-Meets with local communities; supports social programs such as local schools PS2:-Labor and working conditions; has written policies with and for all workers; workers’ union has been established PS2:-Occupational health and safety PS3:-Air pollution emissions PS3:-Solid waste management; most waste collected by recyclers PS3:-Hazardous material storage, handling and disposal	-Environmental and social risk assessment has been conducted for expansion operations, in compliance with government requirements -Client is preparing for ISO 22000 certification in 2008 which will centralized and enhance EHS and OHS capabilities and programs -Ensuring project complies with IFC Environmental Health and Safety Guidelines	Yes
16. Milagro S.A.-San Miguel	PS1:-ESIAs not required by	-Community engagement	Yes

<p>Uruguay S.A., Uruguay, Citrus Fruit Farm Expansion Project, Category B, Approved 1/22/09</p>	<p>local authorities for fruit farm expansion as planned PS1:-Has Nature's Choice certification for its food processing operations, meaning good EHS practices PS2:-Packing plant labor and working conditions; has existing HR manual and policies PS3:-Wastewater treatment and disposal standards are imposed by government authorities</p>	<p>program must be developed, including the establishment of a grievance mechanism -Upgrade their Social and Environmental Management System; retain a qualified professional to manage their EHS affairs -Revise HR system to ensure compliance with PS2, including references to non-discrimination, child labor, and the supply chain -Construct an upgraded wastewater system -Install anaerobic reactor to manage difficult solid waste -Upgrade pesticide management program to reduce pesticide use in accordance with WHO guidelines</p>	
<p>17. Wataniya Palestine Mobile Telecommunication Company, West Bank and Gaza, Cell Phone Network Construction and Operation Project, Category B, Approved 1/15/09</p>	<p>PS1:-EIA not required PS2:-Occupational health and safety PS2:-Labor and working conditions PS3:-Energy Use PS3:-Construction waste disposal (Land acquisition is not an issue)</p>	<p>-Must develop an Environmental and Social Management System to IFC's satisfaction -Contractors must comply with EHS requirements -Will develop and implement a worker recruitment and retention policy to IFC's satisfaction, including ensuring no underage workers; must also address non-discrimination and grievance procedures -Must oversee contractor waste management to ensure compliance with IFC standards -Must implement procedures to ensure community safety from client security forces; will also engage local communities regarding siting of cell towers -Community engagement plan will comply with IFC standards, including community grievance plan -Utilize most efficient electrical components and systems</p>	<p>Yes</p>
<p>18. PJSC "Concern Galnaftogaz" ("Galnaftogaz Expansion Phase II"), Ukraine, Petroleum Storage and Delivery Network Expansion Project, Category B, Approved 12/11/07</p>	<p>PS1:-Environmental and safety managers are stationed at each fuel terminal; client is in process of developing a corporate EHS office PS2:-Has existing HR plan and policies PS2:-Occupational health and safety PS2:-Has active community communication and development program</p>	<p>-Implement an environmental health and safety program; hire EHS manager, and technician -Modify worker safety plan procedure, and monitor workplace air quality -Provide adequate employee training on fire prevention and fire drills -Provide defensive driving training for tanker truck drivers -Submit ongoing storage tank inspection and renovation</p>	<p>Yes</p>

	<p>PS3:-Hazardous materials storage, handling and management</p> <p>PS3:-Wastewater management and disposal</p> <p>PS4:-Soil contamination and reclamation</p> <p>PS5:-Involuntary resettlement forbidden by Ukrainian law</p>	<p>program results to the IFC</p> <p>-Monitor storage tank ambient gasoline levels</p> <p>-Submit land acquisition plan in accordance with PS5</p>	
<p>19. Australian Solomons Gold Limited (“Gold Ridge”), Solomon Islands, Open Pit Gold Mine Rehabilitation and Modernization Project, Category A, Approved 9/3/09</p>	<p>PS1:-ESIA’s and EIS’s were completed for the mine in the 1990’s; outside consultant did bringdown environmental audits in late 2000’s</p> <p>PS2:-Occupational Health and Safety</p> <p>PS3:-Pollution prevention and abatement</p> <p>PS3:-Acid mine drainage management and mitigation</p> <p>PS3:-Erosion and sediment control</p> <p>PS3:-Tailings disposal</p> <p>PS3:-Waste rock dumping</p> <p>PS3:-Hazardous chemical and blasting compound storage, handling and management</p> <p>PS4:-Community health and safety, e.g. cyanide hazards</p> <p>PS5:-Significant human relocation and resettlement—1,350 persons; client retains local residents to staff its community relations department; liaison and negotiations have been extensive with representatives of local tribes</p> <p>PS6:-Biodiversity encroachment</p> <p>PS6:-Reclamation and closure</p> <p>PS8:-Cultural heritage lands encroachment</p>	<p>-Hire an Environmental Manager, a Safety & Health Manager and a Resettlement Project manager</p> <p>-Must develop and implement Operations Manuals for all aspects of EHS activities, such as effluence management, cyanide control, tailings management, and so on</p> <p>-Retain an EHS manager, OHS manager, and Resettlement Project Manager</p> <p>-Develop a chemical and biological limits plan</p> <p>-Conduct and report on regular independent environmental and social monitoring of the project, including reporting to local stakeholders</p> <p>-Ensure security personnel are trained in human rights</p> <p>-Retain a third-party expert to oversee construction ongoing, and an expert to audit tailings management</p> <p>-Submit regular reports on environmental and social program progress</p> <p>-Implement and administer a Resettlement Action Plan, and retain qualified expert to audit and oversee progress</p> <p>-Implement and administer a Community Relations Action Plan</p>	<p>Yes</p>
<p>20. Chuvash Health, Russian Federation, Hospital Care Expansion and Modernization Project, Category B, Approved 5/7/2009</p>	<p>PS1:-Has existing sufficient EHS staff and procedures; no EIA required</p> <p>PS2:-Patient and worker life and fire safety</p> <p>PS3:-Solid and hazardous (e.g. human materials) waste management and disposal</p>	<p>-Develop and implement an infectious waste management plan for new clinics being established within existing hospital structures</p> <p>-IFC will arrange and international expert on Life and Fire Safety to conduct updated training</p>	<p>None Noted</p>

CHAPTER SIX

TRANSPARENCY AND LIBERAL INTERNATIONAL ENVIRONMENTAL JUSTICE: THE INTERNATIONAL FINANCE CORPORATION'S DISCLOSURE PRACTICES

The preceding Chapters have demonstrated the legitimacy of and limitations on finding liberal international environmental justice (IEJ) in the policy outputs and operational activities of the International Finance Corporation (IFC). The foregoing Chapters have also traced the contours of some existing disclosure practices of the IFC, in particular limitations on disclosure by virtue of information that is deemed internal and confidential.

In this Chapter I amplify previous references to disclosure by considering whether transparency in particular can advance a greater environmental equity. Chapter Three considered the first two components of the IFC's Sustainability Framework—the Social and Environmental Sustainability Policy (Policy), and the Performance Standards—to determine whether the IFC may be said to be advancing at least an implicit measure of IEJ. This Chapter adds the third piece of the Framework—the Access to Information Policy—and considers that whatever the outcome of the analysis in Chapter Three and its working out in specific projects surveyed in Chapter Five, there remains the potential that the very disclosure of information by the IFC and its clients may serve IEJ concerns. Thus it is important to study and assess the nature of the IFC's policies on disclosure to determine whether transparency itself can accomplish some significant measure of IEJ for those impacted by IFC projects. The Chapter is based on an extensive literature review on transparency and disclosure by private actors, followed by the deconstruction and content analysis of relevant IFC documentation. The aim of these research activities was to cull out elements of publicly-available documentation which speak to a transparency-driven social liberal IEJ. This Chapter concludes that while the disclosure policies of the Sustainability Framework facilitate a significant degree of distributive IEJ, absent a

consent requirement the mere release of information, however effective, will not ensure a material increase in either capabilities or human rights IEJ.

I begin with a review of the existing literature, focusing particularly on the legal literature which has explicitly considered the issue of transparency and justice. The Chapter then undertakes an empirical study of whether transparency has contributed to the promotion of liberal IEJ by focusing on the disclosure practices associated with the IFC's 2006 Sustainability Framework in its FDI financing and advising activities. More specifically I ask whether these standards have advanced liberal environmental justice and, if so, which strand. I then ask whether the revised 2012 Sustainability Framework addresses some of the shortcomings identified by various interested parties, in this case with respect to advancing environmental justice. I conclude by revisiting the relationship between transparency and environmental justice.

THE RELATIONSHIP BETWEEN TRANSPARENCY AND ENVIRONMENTAL JUSTICE

The issue of the impacts or contribution of transparency to environmental equity—in particular disclosure by private corporate actors—has been considered at some length in the legal literature following the tragic 1984 Bhopal incident in India with Union Carbide. For example, in 1986 the U.S. Congress relatedly enacted the Emergency Planning and Community Right-to-Know Act (EPCRA; 42 U.S.C. §§11001-11050), which in part mandated the disclosure by manufacturing companies of the content and volume of toxic chemicals released at manufacturing sites. Companies falling under the purview of this statute are required to submit information to the US Environmental Protection Agency's annual Toxic Release Inventory (TRI)—identifying the release and/or transfer of "654 specified toxic chemicals, subject to reporting thresholds" (Rechtschaffen et.al. 2009, p. 383; *see also* Johnson 2004, pp. 197ff). This

information is then released to the public in the form of an internet-accessed database (Johnson 2004, p. 199).

Mandated disclosures of this type by private actors have also been instituted increasingly outside the US. TRI-like Pollution Release and Transfer Registers (PRTRs) are now recommended by the OECD for its members (OECD 2012 [PRTR website www.prtr.net]). Touted benefits include enhancing community awareness and environmental information acquisition. Parties to the PRTR Protocol to the Aarhus Convention, of which there are over 25, are also required to adopt PRTRs which meet specified guidelines. The EU has passed similar requirements under EU Regulation No. 166/2006 of the European Parliament and Council, which puts the Aarhus Protocol into law for the EU. These facility-specific reports are produced by emitting corporations for public consumption, to ensure that both public and private actors are aware of the inherent threats of manufacturing activity to health.

Scholars, mainly legal, have debated the impact of TRI disclosure on environmental outcomes (e.g. Pederson 2001; Rechtschaffen 2007; and Durham-Hammer 2004), and some have concluded based on empirical evidence, such as EPA disclosures which show dramatic results, that TRIs have indeed been instrumental in significantly reducing the use and release of toxic chemicals in the United States (e.g. Karkkainen 2001, p. 287). Individual states within the US have also enacted disclosure laws, reaching in the case of California not only toxics but also the overall environmental impact of manufactured goods generally. Rechtschaffen and Williams have concluded that the California "Proposition 65"—through disclosure and labeling requirements—has had a positive impact on the environmental quality of goods produced and sold in California (2005; *see also* Johnson 2004, pp. 203-204).

Legal scholars have both explicitly and implicitly attributed a number of broader benefits to mandated private disclosure schemes. These include providing a basis for self-reflexive regulation by corporations. Reflexive regulation is a legal strategy aimed at reducing the financial and administrative costs of monitoring and enforcing command-and-control legislation. The operative principle is that corporations, by virtue of mandated disclosure, will find in preparing and executing disclosure reports an inherent mandate—indeed a reputational imperative—to examine their own practices and to attempt at their own initiative to improve their environmental behavior (see Karkkainen 2001, pp. 294ff; Orts 1995; Johnson 2004, 212). Market efficiency is another benefit identified in the legal literature, where consumers and affected workers are enabled by better and more complete information to make more informed employment, purchasing and investing decisions in the interest of implementing their own environmental values and wishes (e.g. Johnson 2004, pp. 187, 191ff; Rechtschaffen et.al. 2009, p. 383; Sunstein 1993, 1997), though there are real limits for example to consumer time and ability to concretely and comprehensively digest such information (Menell 1995).

The legal literature identifies additional benefits to information disclosure which speak directly to environmental equity concerns. Scholars note that mandated disclosures provide an empirical basis upon which to determine whether poor and minority communities are indeed burdened with greater levels of toxic effluence—a question confirmed by several empirical studies of precisely this sort (Johnson 2004, p. 225). Scholars also point to the benefits of increased privately-disclosed information for the political mobilization and representation of poor and minority communities, as they negotiate with corporations over the nature and location of proposed 'dirty' activities (Karkkainen 2001, pp. 316ff). Here an increased democratization is seen both as a result of better information and the identification of the actors implicated by that

information (e.g. Rechtschaffen et.al. 2009, p. 383; Johnson 2004, pp. 209ff). Also, mandated disclosure creates in affected communities a legal *right to know* the content of disclosed information (Ibid.).

Legal scholars do, however, note some inherent limitations in the equity benefits of disclosure-based transparency. First of all, it is recognized that those who have the time and resources to decipher and respond to disclosed information will tend to be those with some measure of economic advantage. That is, the poorest have relatively little time and few resources to access, interpret and act upon information which may reveal real risks to their own health and livelihood (Sunstein 1997). Second, even under existing legislation, corporations are not required to disclose every negative aspect of their operations and conduct. Black-letter rules are inherently inflexible and to that degree unresponsive to activities which lie outside the scenarios which are most conceivable and predictable.

Outside the US, studies of these types of correlations, both voluntary and TRI-type, have been less conclusive. Moneva and Cuellar cite a number of European studies which show inconsistent results regarding the impact of environmental reporting on firm and market value (2009, p. 444). Their recent study of publicly-traded Spanish companies concluded that the market's values were aligned with mandated financial environmental disclosures, but not non-financial environmental disclosures, with the result that the latter had negligible effect on market value of disclosing firms and the buying or selling decisions of investors (Moneva and Cuellar 2009, see e.g. pp. 452-453). And a recent study in Japan found negligible market impact of PRTR-based releases of environmental information (Hibiki and Managi 2010). However, a recent study of Public Disclosure Programs for environmental reporting programs asserts that environmental news is correlated directly with market movement as a function of whether the

news was good or bad (Andre, Sokri and Zaccour 2011, pp. 199-200). Their work considered and confirmed the econometric assumption that positive environmental performance, as revealed by regulatory disclosure of corporate reporting, results in increased profitability for companies beginning with a moderate amount of goodwill (Ibid, p. 200).

In the 2010 special issue of *Global Environmental Politics*, a number of references are made to the hope and expectation that increased transparency will contribute to a stronger environmental justice. Arthur Mol asks whether the normative and procedural dimensions of transparency might actually result in greater "environmental justice" (Mol 2010, p. 138). Virginia Haufler observes that proponents of the Extractive Industries Transparency Initiative argue for improved transparency in order to "empower citizens to demand more *equitable* and sustainable development" (2010, p. 53, emphasis added). Michael Mason notes and evaluates the express purpose of the Aarhus Convention to recognize "access to justice" in environmental matters (Mason 2010, p. 11), concluding that the Convention does not sufficiently hold private actors to transparency guidelines. And Auld and Gulbrandsen observe that nonstate certification programs, aimed at improving environmental outcomes, attend not only to environmental degradation but also "social justice" (2010, p. 97).

Other references are more implicit. Aarti Gupta has written on several occasions of the intended role of transparency to empower those receiving data and information. She observes that in the domain of global environmental politics "one key question is whether [transparency] can reconfigure existing power asymmetries and hence be transformative" (2010, p. 33). Elsewhere she analyzes expressly whether the disclosure of information may itself be emancipatory, noting that "[t]ransparency is premised on the notion that information . . . can empower" (2008, p. 4). Florini notes in her comparative study that there is some evidence that

national-level transparency by a state actor "has helped to empower citizens" (2010, p. 121), though transparency will always implicate power struggles (p. 128). And Mason has argued that the global neoliberal order confounds the potential of environmental transparency to empower (2008). The suggestion that transparency can empower the relatively less powerful is fully reflective, I contend, of concerns with equity and fairness.

The importance of the literature for the present analysis is threefold: first, there is indeed empirical evidence and force of argument that increased transparency by corporate entities has resulted in improved environmental outcomes. And net improvements may be instrumental in reducing environmental burdens even among the poor, improving environmental equity. Second, there is some measure of a democratization effect when communities are given access to otherwise inaccessible information regarding their own material environment and prospects. But third, there is the question of how deep and broad improvements to equity run, given structural limitations on the ability of the poor to make full use of the information available to them? To answer this question, I turn then to consider what transparency would mean in each strand of social liberal IEJ, followed by an assessment of transparency at the IFC as a proxy for these issues.

TRANSPARENCY AND LIBERAL INTERNATIONAL ENVIRONMENTAL JUSTICE

Distributive IEJ would call for full disclosure of the actors who are to be granted resource and decisional access, the environmental impacts and effects of that access, and the ends to which it is put. As noted in the literature, the hope for transparency in this regard is that disclosure will translate into real power sharing over contested resources and the benefits of their use. Transparency in this view, enables a fuller understanding of the externalities of human interaction of the material environment with particular activity, facilitating a fair distribution of

the weight of these externalities on affected peoples. Thus distributive IEJ would be that which calls for environmental impact assessments and their disclosure by those seeking to employ resources, and decisional access regarding the proposed project and attendant ameliorative and mitigative measures.

However, the distributive approach is the least efficacious for the poor in my view because: 1) the decisional authority and ultimate control remain firmly in the hands of those who are tasked to undertake disclosure; 2) The release of information may bring about better environmental accountability and thus better equity, but in the end the facility of affected persons to direct their own destiny is only marginally enhanced; and 3) in that resource conflicts go to the core of social organization and mobilization, it is unclear who will hold the more powerful interests to their part of the bargain. This lack of clarity and human agency is remedied to some extent by the capabilities IEJ model.

Transparency practices that are consistent with the capabilities strand would require that the policy arena take full account of the impacts of environmental management and practices on the life chances and prospects of the relatively disenfranchised. Thus transparency would focus not primarily on the disclosing entity as would distributive IEJ, but most importantly on those who need to meaningfully access the disclosed information. The release of information would need to be accompanied by the meaningful sharing of decisional authority, and not merely input, over the activity which is the subject of disclosure. In addition, affected parties must have institutional assistance in the dissemination of information in accessible form. That is, planning and discussion of environmental matters must reach beyond the environmental dimension to the broader dimensions of individual and community life generally, in particular disclosure of the means of attaining capabilities.

Transparency in the human rights strand would be similar to that of the capabilities strand, with the addition of some specific content and legal force to the enabling function which would need to accompany the mere release of information. That is, the capabilities-based initiative and implementational participation by affected communities must, in human rights IEJ, be identified to specific rights, including by disclosure regarding the status of such rights and the means of obtaining of legal access to them. This would again require a focus by the disclosing entity on not only the nature and quality of the information disclosed but also on enhancing the ability of recipients in recognition of incipient power disparities to meaningfully apply and enforce the information.

INTERNATIONAL FINANCE CORPORATION AND TRANSPARENCY

The Chapter now considers whether the disclosure practices of the IFC contribute to the promotion of social liberal IEJ and, if so, which strand. If the IFC's disclosure practices cannot contribute to realizing some modicum of social liberal IEJ in its investment projects, other agencies and unsponsored corporations are unlikely to do better.

It is important to note here the incidence of references to limitations on IFC disclosure and transparency in previous Chapters. For example in Chapter Four, in several instances the IFC was stated to consider certain information internal and/or confidential. This included the refusal of the IFC to identify clients whose projects were not approved for environmental reasons, and clients whose loans were called early for environmental reasons. This raises two principal questions: why such limits, and what are the implications of such limits for IEJ at the IFC?

Client confidentiality is a central precept for financial institutions that make loans to entities engaged in competitive activities. This may be explained in part as deriving from the

interests of both entities in their own survival. The disclosure, by borrower or lender, of business plans and practices which could give a competitor information useful to its adversarial advantage could place the prospects of the disclosing business entity at risk. The presence of this risk would then prejudice the ability of the borrower to remain profitable and thus repay its loan to the financial institution. Some conceptual fence around disclosure is then, I argue, appropriate to the extent that it serves the fundamental business interests of both borrower and lender. One improvement to transparency-based IEJ at the IFC would be to allow a relatively independent third party such as the Compliance Advisor/Ombudsman to add to its responsibilities and authority the ability to consider stakeholder complaints regarding the IFC's own classifications of specific information as confidential.

But it remains the case that the identification of clients struggling with environmental compliance, pre- or post-disbursement, could compromise the IFC and/or its client. One possible outcome is the negative publicity which would result if a client's competitor obtained this information. In that it is the accountability afforded by precisely this sort of negative publicity that animates calls for environmental disclosure by organizations such as the IFC, is the IFC's refusal to disclose such information a limitation on the disclosure-based moves towards IEJ traced in the discussion which follows? Does information access limited in this way compromise any claim to IEJ at the IFC?

I suggest that the answer is negative in the pre-disbursement context, but affirmative in the post-disbursement context. As to pre-disbursement project disapprovals, disclosure of client environmental failings may inhibit the ability of the client to timely and effectively restore its conduct to acceptable environmental standards. This is possible where disclosure would so impair the company's reputation that its very survival would be in question. While this would be

a desirable outcome for companies which would otherwise persist in deleterious conduct, it is reasonable to allow that the IFC should be able to impose policy restrictions on such disclosures as a general policy matter. Where remediation of the proposed environmental impacts but also the potential borrower's financial capacity for remediation are real possibilities, the IFC should not be required to accomplish by transparency the foreclosure or diminution of these possibilities. That is, premature disclosure could give competitors an advantage in the marketplace, producing negative financial and future compliance consequences for the client.

However, I contend that where a business entity is in receipt of IFC funds—always contingent on continued material compliance with the IFC's Sustainability Framework—local stakeholders have a right to know that the borrower is failing to maintain environmental integrity in some substantial way. Thus the present refusal of the IFC to disclose this information does to that extent limit the discussion below. However, the IFC's commitment to increased monitoring, and to expanded environmental disclosure over the life of the project (as discussed below) both serve to offset this limitation somewhat. And the sorts of studies called for in the concluding Chapter of this study would assist in encouraging greater transparency by the IFC in this key area of environmental disclosure.

Disclosure and Transparency. I turn then to trace the progression of the application of the Sustainability Framework, and critical responses to it particularly as to its impacts on corporate disclosure and the capacity of affected communities to meaningfully engage the IFC and its clients. Distinct from Chapter Three, the following table is organized by disclosing entity rather than source document.

Table 6-1

2006 Disclosure Framework

Disclosed by:	What Information is Disclosed	Disclosed to Whom?	Disclosed When?
IFC	<ol style="list-style-type: none"> 1. Summary of Proposed Investment (IFC 2006k, Para. 13) 2. Environmental and Social Review Summary (IFC 2006k, Para. 14) 	<ol style="list-style-type: none"> 1. Disclosed on IFC website 2. Disclosed on IFC website 	<ol style="list-style-type: none"> 1. Prior to Board Approval 2. Category A projects at least 60 days prior to Board Approval (30 days for Category B projects)
IFC CAO	<ol style="list-style-type: none"> 1. Reports of complaints filed and the status thereof (IFC 2006k, Para. 27) 	<ol style="list-style-type: none"> 1. Disclosed on the CAO website 	<ol style="list-style-type: none"> 1. When complaints are received
Clients	<ol style="list-style-type: none"> 1. Relevant project information (IFC 2006a, Paras. 10 and 19) 2. Project contract payments (IFC 2006a, Para. 22) 3. The existence and content of any client ESIA (IFC 2006e, Para. 20) 4. For projects with potential risks and adverse impacts, full project disclosure to enable meaningful community consultation regarding the project (IFC 2006e, Para. 21) 5. For projects with significant risks and adverse impacts, full project disclosure to enable "free, prior informed consultation" (IFC 2006e, Para. 22) 6. Grievance mechanism (IFC 2006b, Para. 23) 7. Grievance mechanism for labor complaints (IFC 2006c, Para. 13) 8. Ongoing community engagement regarding community health and safety issues (IFC 2006e, Para. 5) 9. Additional disclosures related to the physical or economic displacement of persons (IFC 2006f) 10. Distinct disclosure and engagement requirements regarding indigenous peoples (IFC 2006h, Para. 9) 	<ol style="list-style-type: none"> 1. Affected Communities 2. To the IFC and Affected Communities 3. To Affected Communities 4. To Affected Communities 5. To Affected Communities 6. To Affected Communities 7. To Affected Communities 8. To Affected Communities 9. To Affected Communities 10. To Affected Communities 	<p>This column: For greenfield projects, prior to project implementation/ otherwise at inception of IFC involvement</p> <ol style="list-style-type: none"> 6. And ongoing 7. And ongoing 8. And ongoing

International Finance Corporation. The Sustainability Framework requires a variety of information to be disclosed by both the IFC and by IFC clients for both Category A and Category B projects. As to its own disclosure obligations the IFC is committed to the early identification and disclosure of proposed project social and environmental impacts. In the 2006

Policy on Disclosure of Information, the IFC refers specifically to its encouragement of its clients "to be more transparent about their businesses to help broaden understanding of their specific projects and of private sector development in general" (2006k, Para. 6). In the view of the IFC, client commitment to accountability and transparency would increase overall project viability and profitability (Ibid).

The 2006 Policy on Disclosure of Information identifies the types of information disclosed by the IFC, in particular information about the IFC and its activities. The stated purpose of these disclosures was to "enable its clients, partners and stakeholders (*including affected communities*) to understand better, and to engage in informed discussion about . . . its contribution to development" (Para. 8, emphasis added). The IFC adopted a presumption in favor of disclosure, with the limitations customarily afforded financial institutions for client confidential and proprietary information (Para. 9). Specific project documents provided by the IFC on its website for public scrutiny and review included the Summary of Proposed Investment, and Environmental and Social Review Summary, both to be made public prior to IFC Board approval of the project (Paras. 13 and 14, respectively). These documents would contain the IFC's categorization of the project, support for such categorization, and a description of the social and environmental impacts of the project to include development impacts and the particulars of community engagement. Paragraph 27 of the 2006 Policy on the Disclosure of Information noted the written and public identification by the Compliance Advisor/Ombudsman (CAO) of complaints received, and the resolution of such complaints.

Clients. As to client disclosure, the 2006 Sustainability Framework required sponsored corporations to disclose to and engage affected communities in a number of ways, and through a number of different provisions of the Sustainability Framework documents. In particular, the

2006 Social and Environmental Sustainability Policy contemplated that the broad social and environmental aims of the IFC and its sponsored projects would best be met by the client's "regular engagement with local communities about matters that directly affect them" (IFC 2006a, Para. 8). This engagement was to be pursued through "disclosure of relevant project information, consultation, and informed participation." (Ibid, Para. 10; see also Para. 19). The IFC's role in this process was to monitor client performance, but also to engage in its own disclosure of proposed projects and their impacts, as required by the 2006 Policy on Disclosure of Information (IFC 2006k). Where projects had potentially significant negative impacts, the IFC undertook to ensure "broad community support" among affected communities—a level of community solidarity assessed through the client's environmental impact assessment process (IFC 2006a Para. 15; see also Para. 20) (though not rising to the level of consent). Projects in the extractive industries and in the infrastructure sector were noted as requiring disclosure (IFC 2006a, Para. 21).

These aspirations and requirements, as embodied in the more general language of the 2006 Policy, were specifically implemented through the 2006 PSs and the 2006 Policy on Disclosure of Information. In particular, Performance Standard 1 regarding Social and Environmental Assessment and Management required the client to engage affected communities (IFC 2006b, Para. 19) and disclose to them any social and environmental impact assessment prepared by the client (Para. 20). These disclosures were required to be made early in the project review process, before the commencement of project construction in any event, and throughout the project life (Ibid; see also Para. 26). Where projects retained potential risks and adverse impacts to affected communities, clients were required to engage in a consultation process, based on full, prior disclosure of project data (Para. 21).

Projects with significant adverse impacts required "free, prior and informed consultation" by which broad community support for the project was obtained (Para. 22). As part of the ongoing transparency process, clients were also required to establish a grievance mechanism by which to obtain and respond to community complaints regarding the social and environmental impacts of projects (Para. 23). This process was to be managed entirely by the client, and is separate from the CAO program managed by the IFC. Performance Standard 2 required a specific grievance process to handle labor complaints (IFC 2006c, Para. 13). Performance Standard 4 required clients to engage communities on an ongoing basis with reference to particular community health, safety and security concerns (IFC 2006e, Para. 5). Performance Standard 5 applied particular disclosure requirements to projects which required the economic or physical displacement of situate persons and communities (IFC 2006f). Performance Standard 7 established specific disclosure and engagement procedures for projects which would impact indigenous peoples (IFC 2006h; Para. 9).

Compliance Advisor/Ombudsman. The Bujagali Energy Limited hydroelectric project in Uganda provides a useful lens on the enhancement of IFC and client transparency attainable by and through the CAO. Originally invested in 2001 but sidelined shortly thereafter, the IFC re-committed to the Bujagali project in late 2006. Because disclosure had been extensive in the early 2000s, this case is less relevant as to the transparency effectiveness of the 2006 Sustainability Framework. Nonetheless it is important for present purposes because two complaints regarding the project have recently been filed with the CAO, and it is important to understand the extent to which this avenue for community recourse serves capabilities and human rights IEJ. Specifically, on May 16, 2011 a group of local community members filed a complaint with the CAO, noting a number of negative impacts of the project. These included

insufficient compensation for land encroachment, damage to houses and health during project construction, and inadequate compensation for "loss of livelihoods" (CAO 2012). The existence and operation of the CAO is important in several respects. Reaching beyond mere distributive justice, the CAO enables local populations to wield a measure of power over clients and the IFC, holding them to account. This serves both capabilities and human rights IEJ by mediating the sorts of "enablement" called for by human rights scholars, and allows capabilities, such as meaningful participation in the life of the community become a reality. Nonetheless, while email complaints in any language are acceptable, anonymous complaints are not, and going public by filing a CAO complaint still presents political and cultural barriers for many.

It is also the case that the IFC's own initiative in visiting project sites and meeting with community representatives, and requiring the same of clients, does result in some measurable empowerment of stakeholders in relation to the client, and to that extent capabilities and human rights IEJ are served in this respect as well. As noted in Chapter Five, the study of some twenty Category A and Category B projects reveals that in all Category A projects, and in nearly every case as to Category B projects, the IFC social and environmental staff made in-person visits to existing or projected project sites, to meet with client personnel and affected stakeholders. And indeed, the recent formalization of the stakeholder engagement process deepens the reach of corporate transparency under the IFC, as noted in the discussion which follows.

SUSTAINABILITY FRAMEWORK UPDATE

When the IFC Board approved the 2006 Sustainability Framework, it required the Department responsible for the Sustainability Framework (CES) to undertake a review of the policies and practices employed therein within three years following implementation. In the course of conducting this review, the IFC engaged in significant and perhaps unprecedented

levels of transparency. First, the IFC published its own Report on the First Three Years of Application (IFC 2009a), in which it engaged in significant critical analysis of the strengths and weaknesses of the Framework, and outlined a global and comprehensive process of consultations to obtain the views of government and civil society on needed areas of improvement (IFC 2009d). This included the solicitation of written comments on the shortcomings of the Sustainability Framework, web-based dialogues hosted by CES personnel, and in-person consultations with interested persons, hosted by the IFC in many of the major cities around the world. The IFC also identified over 30 specific communities affected by post-2006 projects to consult with regarding the effectiveness of the Sustainability Framework and the Performance Standards in particular (IFC 2009e).

While many submissions to the IFC were not made public by their originators, the overall content of comments and complaints received were periodically summarized by the IFC, and made public in publications posted on its website. In addition, some NGOs and government agencies made their own comments public by posting them on organizational websites. One such submission, endorsed by over 100 international NGOs, was delivered to the IFC in March 2010, relatively early in the consultation process (Civil Society Organizations 2010). In this submission, a number of issues involving the transparency of the Sustainability Framework were identified explicitly. In particular, the NGO Submission details specific failings of the IFC to ensure that clients have engaged affected communities as required, have disclosed ESIA results, and have established meaningful grievance programs. In particular, CAO reports were relied upon to document these types of failings. The NGO Submission also noted that host communities are frequently "not made aware that IFC has invested in a given project, that environmental and social requirements apply, and that they have rights to information and

accountability" (p. 4). The document also called on the IFC to sharpen its project-level reporting on developmental outcomes, in particular "contributions to poverty reduction, empowerment, expanding opportunities and sustainable development" (p. 5). The document asked the IFC to lower its reporting threshold for requiring EITI-type disclosures (p. 17).

In its submission the World Resources Institute (WRI 2010) pointed out that the application of the community engagement requirement was uneven and episodic, while recent CAO complaints made it evident that it is an underlying source of discontent and tension between clients and affected peoples (p. 3). The WRI Submission also joined a number of other entities in calling for free prior informed consent (and not merely consultation) by indigenous peoples for projects which would affect them (p. 4). As in the NGO Submission, the WRI notes that the IFC should require clients to inform communities of the IFC's involvement and of the availability of the CAO process and service (p. 6).

The Department of the Treasury submitted recommendations to the IFC, made public on the Treasury website (US Department of Treasury 2010). In these comments Treasury noted the need for the IFC to timely require clients to disclose to affected communities the IFC's own "free prior informed consultation" and "broad community support" requirements (p. 6). It also called for the IFC to be more transparent about its process and basis for determining that broad community support exists (Ibid) and stated that the IFC needed to be clearer about just what constituted adequate disclosure to affected communities under Performance Standard 1 (p. 8). In particular it was concerned that high-risk Category B projects, which are subject to reduced transparency and disclosure as compared with Category A projects, may undergo insufficient public consultation and disclosure (p. 8). In these circumstances, the submission also noted that the affected community had little recourse if disclosure was inadequate.

Treasury also observed that some peoples may be culturally or politically inhibited from taking advantage of the client's grievance mechanism, or may not understand their rights under such programs. They recommended that the IFC strengthen client efforts to enhance enablement of local peoples (pp. 8-9). As to the IFC's own disclosure, they recommended earlier and more complete disclosure of client environmental and social impact assessments, particularly with respect to Category A projects, as well as a minimum disclosure period for the IFC's Environmental and Social Review Summary (p. 13).

In the IFC's own summaries of inputs received at the various stages of the consultation process, it identified a number of additional transparency and disclosure concerns by interested stakeholders. Some expressed concern that the notion of "broad community support" be balanced with host state sovereignty to approve or disapprove the project (IFC 2010b, Annex I). Comments also centered on asking the IFC to eliminate any minimum threshold for EITI-type reporting. Others asked the IFC to be more specific regarding the means of disseminating ESIA results while others pointed out that existing requirements required too much time and effort on the part of private individuals and communities. Like Treasury, the IFC noted concerns that disclosure and stakeholder engagement on Category B projects was deficient.

The IFC reported that some stakeholders argued that disclosure should include applicable human rights; others noted that the organization needs to improve its disclosure of post-approval project supervision and monitoring reports. Many of the projects are already in the implementation phase by the time the IFC is brought in as a co-financier. These "brownfield" projects were highlighted as needing particular specification and attention regarding how the IFC will handle relevant disclosure requirements. Many of these concerns were reiterated at the June

2010 consultation in Washington D.C., attended by over 60 academics, NGO representatives, and members of the US government (IFC 2010c).

Importantly, at the June 15, 2010 and March 3, 2011 Consultations in Washington, D.C., a number of participants noted that Financial Intermediary projects were not subject to meaningful social and environmental disclosure of the impacts of downstream projects they would fund with IFC support (IFC 2010c; and Author Notes, respectively).

The World Bank's Independent Evaluation Group (IEG)—an internal watchdog agency—also prepared a study for the IFC's review process, in which it recommended improved disclosure to affected communities, such as making additional social and environmental disclosures even after Board approval of the project (IEG 2010). The IEG also recommended a more "robust" approach to applying the Performance Standards to FI projects (Ibid). Finally, the CAO reviewed five IFC projects in order to draft its own report containing a number of transparency-related recommendations for the IFC. These included clarifying and strengthening the local project approval process and recommending, like the IEG, both that updated project disclosure be made available by the IFC and that the Performance Standards be applied more effectively to FI projects (CAO 2010). The CAO also recommended that clients disclose the measures required of them by the IFC as well as ongoing reports on client progress with these measures; improved guidance by the IFC regarding the process of pursuing and identifying broad community support; and better supervision of client-based grievance mechanisms (Ibid).

Table 6-2

2011 Revisions to Disclosure Framework

Disclosed by:	What Information is Disclosed	Disclosed to Whom?	Disclosed When?
IFC	<ol style="list-style-type: none"> 1. Ongoing project disclosure regarding social and environmental impact (IFC 2012i, Paras. 40ff.) 2. New disclosure requirements for FI projects (IFC 2012a, Para. 40) 3. More detail regarding the IFC's process of identifying "broad community support" (IFC 2012i, Para. 32) 4. GHG emissions profile of its investment portfolio (IFC 2012i, Para 11. 	<ol style="list-style-type: none"> 1. Disclosed on IFC website 2. Disclosed on IFC website 3. Disclosed on IFC website 4. The public 	<ol style="list-style-type: none"> 1. Following IFC Board approval 2. Prior to IFC Board approval 3. Prior to IFC Board approval 4. IFC Annual Report
Clients	<ol style="list-style-type: none"> 1. Must obtain "free, prior informed consent" from indigenous peoples under certain circumstances (IFC 2012i, Para. 31; 2012c) 2. Contract disclosure by all extractive projects (IFC 2012i, Paras. 49-51) 3. Must involve affected communities in monitoring where appropriate (IFC 2012b, Para. 22) 4. Must make periodic reports regarding client progress towards compliance with its environmental action plan (IFC 2012b, Para. 36) 	<ol style="list-style-type: none"> 1. Affected communities 2. To the IFC and affected communities 3. Affected communities 4. Affected communities 	<ol style="list-style-type: none"> 1. Prior to IFC Board approval 2. Prior to IFC Board approval 3. Ongoing 4. At least annually

In response to these concerns, the IFC ultimately adopted a number of changes. First of all, the 2006 Disclosure of Information Policy was renamed the Access to Information Policy (IFC 2012i). Rather than the one-time disclosure under the 2006 guidelines, the IFC has now committed to make substantive project disclosures over the life of the project (Paras. 40ff.). This means the IFC will be making environmental, social and development outcome disclosures repeatedly during the tenure of the IFC's financial association with an investment project. These requirements also apply to Financial Intermediary projects, with the result that stakeholders will be able to obtain information regarding the application of IFC bank finance funds downstream from initial disbursement. Furthermore, the IFC amended its categorization scheme to apply an

expanded project category to FI projects, with banks required to make disclosures regarding the most environmentally sensitive projects (IFC 2012a, Para. 40).

The IFC has also undertaken under the Access to Information Policy to accelerate the timing of disclosure of the environmental and social profiles of high risk projects, even in advance of the completion of its own reports. Under the Access Policy, the IFC commits also to disclosing more details regarding its process of confirming broad community support (Para. 32) and, in a new requirement applicable to indigenous peoples under certain circumstances, free prior informed *consent* to proposed projects (Para. 31; see also new Performance Standard 7 (IFC 2012h). The IFC has also committed to disclose the greenhouse gas emissions aggregate of its loan and investment portfolio (IFC 2012i, Para. 11). Finally, they now require contract disclosure by all extractive industry projects, regardless of size and income (Ibid, Paras. 49-51).

In response to IEG, CAO, and NGO comments, the IFC has strengthened its community and stakeholder engagement and consultation requirements. Clients will be required to develop a stakeholder engagement plan to provide greater specificity to the consultation process, subject to IFC review (IFC 2012a, Para 27). The IFC has also expanded its guidance on consultation with affected persons, in particular where projects retain the potential for significant adverse impacts (Ibid, Paras. 30ff.). Further, it now requires clients to involve affected communities in the project monitoring process, "where appropriate" (Ibid, Para. 22).

Based on the two preceding tables, then, the following table summarizes all current disclosure requirements for a proposed Category B project with potentially significant adverse social and environmental impacts, and the proposed resettlement of approximately 15 family units. The simulated project displayed below is not proposed to impact indigenous communities.

Table 6-3

Project Disclosure Simulation

Disclosing Entity	What Is Disclosed	What Is Not Disclosed
IFC	<ol style="list-style-type: none"> 1. Summary of Proposed Investment 2. Environmental and Social Review Summary 3. Updates of both of the above over the life of the project as necessary to ensure original disclosures remain accurate 4. The IFC's basis for concluding that the client indeed obtained "broad community support" for the project 5. The GHG emissions impact of the project (aggregated with other projects) 6. Minutes of Board of Directors' deliberations over the project, following the conclusion of the deliberative process 	<ol style="list-style-type: none"> 1. Any client commercially sensitive or proprietary information given to the IFC, including sensitive or confidential information obtained about the client by the IFC from third parties 2. Board of Directors' documents regarding the proposed project 3. Project legal documentation, or any communications between IFC Legal and the client which are protected by the attorney-client privilege 4. The identity of applicant entities who are disapproved for social and/or environmental reasons 5. The identity of client entities whose loans are called early because of default under applicable social and/or environmental covenants in their loan agreement with the IFC (might now be disclosed under the new 2012 Sustainability Framework) 6. Any information the release of which would compromise the personal health, safety and security of IFC or client personnel, or of the natural environment
Client	<ol style="list-style-type: none"> 1. Project information, including data relevant to understanding social and environmental risk 2. Project contract payments to government entities 3. The existence and results of any client Environmental and Social Impact Assessment 4. Adequate disclosure and engagement to obtain "broad community support" for the project, including disclosure of the client's stakeholder engagement plan 5. The existence of and procedures for a grievance mechanism to accept and consider worker and community complaints 6. Ongoing disclosures as necessary to ensure community health and safety, and to report compliance with IFC social and environmental requirements 7. Disclosure of the client's program and process for managing the proposed resettlement, including restoration of livelihoods and/or compensation as appropriate 	<ol style="list-style-type: none"> 1. Client proprietary information

ANALYSIS AND CONCLUSION

I return now to the question that animates this chapter. Do the disclosure policies of the IFC promote liberal IEJ and, if so, which strand? I summarize these findings in the following table:

Table 6-4

IFC Disclosure Summary

Disclosing Entity	Burden Shifting	Burden Sharing	Benefit Sharing	Capabilities for Participation	Capabilities for Control	Social Rights	Environmental Rights
IFC	XXX	XX	XX	XXX	X	X	X
CAO				XXX	XX	X	X
Clients	XXX	XX	XX	XX	X		X

As a matter of overall impression the IFC's Sustainability Framework, as revised, may be said to take most significant account of distributive IEJ. That is, the IFC's disclosure requirements result in the shifting of considerable knowledge creation and dissemination burdens onto the client, and off of local communities. Environmental information is more equitably distributed in this process, and with strengthened IFC monitoring and project supervision, ongoing engagement should prolong these equity gains. Finally, the disclosure process definitely results in increased decisional access for local populations, the acquisition of which places greater burdens on clients. This means that corporate transparency of this sort can accomplish at least some measure of distributive IEJ within the liberal model.

To the extent that local communities have a right to grant or withhold broad community support for the project, some measure of capabilities for both participation and control are also served as local persons and groups enjoy an enhanced ability to direct their own destinies as compared with a non-IFC scenario. And this provision has been enhanced by the 2012 revisions to the extent that the IFC will be engaged in ongoing social and environmental disclosure, and will be more transparent and thus accountable regarding its process for finding "broad community support" in specific cases. In this context the disclosure of the IFC's involvement, of the nature of the client's required disclosure, and of the availability of the CAO, all provide substantive avenues by which affected persons and groups can make their own views and wishes not only known, but also instrumental in how the project is formed and implemented. This function and role also adds to distributive IEJ by virtue of giving some content to what must be done with disclosed information, and enabling recipient communities to timely understand and act on it. I find in this some measure of empowerment through capabilities for control for affected communities.

However, by virtue of not being able to veto the overall project, there remain barriers to be overcome if the full measure of liberal IEJ is to be served in the context of FDI, in particular capabilities for control and environmental rights. That is, the present operation of the political, economic and social structure within which FDI projects are negotiated and secured by host governments limits the prospect that individuals and groups will be able to exercise complete control over their own lives with respect to project activity and impact. Local politics and cultural traditions also affect the long-term impact of IFC disclosure practices, as the IFC and its clients are not in a position to ensure that distributions within host communities are fair and equitable. And the general tenor of relations between business and government in host locales will also impact the distribution of benefits and burdens identified in a more transparent process.

I have noted in earlier Chapters the IFC's contention that the Sustainability Framework embodies many dimensions of international human rights. However, I observe that IFC transparency and disclosure requirements alone, as noted by civil society observers of the Sustainability Framework revision process, will not ensure that human rights—whether social or environmental rights—are secured against potentially negative project impacts. I agree that it remains significantly the purview of state governments to secure human rights for its peoples, but the link between disclosed information about a project and necessary state oversight is tenuous.

Thus the outcomes for capabilities and human rights IEJ are less clear than for distributive IEJ. As I have observed it is inherent in the IFC-client relationship that the largest share of meaningful disclosure to affected communities is to be undertaken by clients, both initially and ongoing. While the IFC has committed to strengthening its monitoring programs, there is no substitute for the potential of daily and proximate contact of clients with affected

persons and groups to satisfy the spirit and letter of the Sustainability Framework. To that extent the effective enabling of local communities is beyond the institutional capacity or policy of the IFC and similar multilateral development banks at this point.

In sum, I find that the revisions to the Sustainability Framework have enhanced the capacity of the IFC's environmental and social standards to secure an improved distributive liberal IEJ, and some significant degree of capabilities and human rights IEJ at least for a season at the outset of IFC involvement. That is, the forms of accountable transparency which the revised Sustainability Framework enables provide reduce the structural barriers which customarily pertain, through which some measure of empowerment can occur. But if the impacts of the IFC's own guidelines are to be realized outside the portfolio of IFC projects, and indeed within the IFC portfolio, some significant measure of corporate commitment to ongoing and meaningful transparency will be required.

CHAPTER SEVEN

OVERALL ASSESSMENT OF EQUITY AT THE INTERNATIONAL FINANCE CORPORATION

In this Chapter I bring together the results of the preceding Chapters to reach a conclusion regarding the importance of this study. In particular I revisit the research questions which I posited at the outset: Is there a viable and workable liberal approach to international environmental justice (IEJ), and can it be vindicated in the context of North-South foreign direct investment (FDI)? To answer this question, this study asks whether the activities and programs of the IFC permit and/or facilitate a liberal form of international environmental justice. If so, which strand or strands of liberal IEJ predominate at the IFC? If the IFC—a quintessentially liberal institution—accommodates IEJ concerns in its FDI financing activities, then the prospects of a liberal IEJ in FDI are brighter. If international environmental justice can be traced through the policies and programs of the IFC, a greater environmental equity similarly conceived is then notionally possible in North-South foreign direct investment generally.

This Chapter first summarizes the research results underpinning this study regarding whether a liberal IEJ can be accounted for at the IFC, and on what basis. In this process I consider each strand of liberal IEJ separately for purposes of identifying which strands are most represented at the IFC and why. I conclude that indeed the IFC is engaged in promoting international environmental justice in each strand, though clearly the distributive IEJ strand is the most strongly represented. This is followed by an assessment of how this study speaks to the IEJ literature and the associated typology offered in Chapter One, and to the FDI and justice literature canvassed in Chapter Two. I follow each section with an analysis of what this study adds to that literature.

THE INTERNATIONAL FINANCE CORPORATION AND EQUITY

The following table summarizes the kinds of IEJ addressed either explicitly or implicitly by the IFC. While some measure of the respective forms of IEJ may be present within categories which are not marked, the table seeks to identify the primary foci and potential of the respective documents and programs with respect to a liberal IEJ. The development of the following table is based on the detailed identification of liberal IEJ in each of these arenas as set forth in tables and discussion in Chapters Three, Five and Six, discussed in greater detail below. This table attempts to represent the primary trends in and representativeness of each of the three strands of social liberal IEJ in the respective categories. Thus some entries in previous tables are not reflected below in that the broadest assessment would suggest those trends are not dominant.

Table 7-1 **Liberal IEJ at the International Finance Corporation**

Strand	Social and Environmental Sustainability Policy	Performance Standards	Access to Information Policy
Distributive IEJ	✓	✓	✓
Capabilities IEJ	✓	✓	
Human Rights IEJ	✓	✓	

Distributive IEJ. As developed in Chapter Three, the case for distributive IEJ is founded on the presence of one or more of environmental burden sharing, burden shifting, and benefit sharing between the IFC client and the community in the vicinity of the proposed project. If any of these criteria work in favor of host communities then equity concerns are being accommodated to that extent, even if not explicitly credited to environmental equity by the IFC.

As noted in Chapter Three, the Social and Environmental Sustainability Policy requires the client to adopt corporate practices and policies which incorporate a significant level of social

and environmental sensitivity as to the impacts of the proposed, or existing, project. That is, the client must make a significant commitment to the existence and interests of local stakeholders, at least for the duration of its association with the IFC. Presaging the operational requirements of the Performance Standards and the Access to Information Policy, the Social and Environmental Sustainability Policy is abundantly clear on this point, and sets the stage for significant burden sharing and shifting, as well as improving access to social and environmental decision-making. Indeed the Policy states that the IFC is committed to a threshold analysis of whether a specific project will be overall beneficial to recipient communities in economic, environmental and social terms, indicating an institutional inclination to look for ways in which benefit sharing will be promoted by potential clients (IFC 2012a, p. 1). Thus this Policy document concretely advances the cause of distributive IEJ at the IFC.

As noted in Chapter Three, the Performance Standards pick up on this mandate and establish specific activities and programs which place significant environmental burdens on the client. And these burdens result directly in the sorts of burden sharing and shifting, and indeed benefit sharing, which are called for by distributive IEJ. Chapter Three also notes that these activities and programs include several requirements. These include the requirements for a project Environmental and Social Impact Assessment and the concomitant obligation to consider whether the proposed project will unduly burden the poor and vulnerable, employing environmentally mitigative measures and technical standards acceptable globally, managing third-party disposal of hazardous waste, establishing globally-acceptable occupational health and safety standards, full disclosure and fair compensation in the event of mandatory resettlement, affording displaced persons the opportunity to benefit from the project, and obtaining expert opinions of proposed land use in indigenous areas. These activities result in shifting some or all

of the burden for creating knowledge away from the affected communities and onto the client. By implementing limitations on effluence and by incorporating best technology regarding upstream impact generation, the client is effectively sharing the burden of environmental consumption and degradation as imposed by the project in that local stakeholders would otherwise be required to lobby for such measures. Benefit sharing is also accomplished both by specific requirement, and relatively by reducing the negative impacts and thereby facilitating on balance a net increase in positive impacts. By internalizing some amount of the environmental burden, the client—and thus indirectly the IFC—are advancing a distributive justice by reducing the environmental externalities and environmental footprint of a project.

The IFC does indeed comport with its own standards in significant detail in the context of specific projects. As noted in Chapter Five, at least at the project inception stage clients must, via a developed Environmental Action Plan, identify the specific actions and staffing which they will employ to achieve specific and measurable social and environmental objectives. These requirements are based on the direct application of the Performance Standards to the unique locale, purpose, structure and proposed operation of the project. Thus to the extent that the Performance Standards advance distributive IEJ in policy outputs, this study concludes they do so in practice as well.

The Access to Information Policy, discussed in Chapter Six also works to ensure not only prompt and broad disclosure by the IFC, but by the client as well. The principal contribution of the Access to Information Policy to distributive IEJ is similar to that of the related requirements of the Performance Standards: namely that the development and transfer of meaningful information regarding project impacts creates significant burden shifting from and burden sharing with local communities. The significance of the transfer of this information is captured

more directly in the discussion of capabilities IEJ below, but the key point here is that the client effects a stronger distributive IEJ by employing its considerably greater resources to determine the potential environmental burdens and benefits of the proposed project, and to make that assessment available in accessible form to potentially affected stakeholders.

The IFC's own transparency with respect to its project evaluation and approval process is also a model for multinational corporations engaged in North-South FDI outside the IFC portfolio. That there need be no secrets regarding the social and environmental impacts of a project lends credibility to the IFC's own position that private enterprise improves opportunity for the poor, which in turn improves lives (IFC 2012a, p. 2; and IFC 2011a, Introduction). Thus the disposition of the IFC and its clients to disclose results in greater distributive IEJ not only for potentially affected stakeholders, but also within the field of FDI generally.

Finally, as noted in Chapter Three, project monitoring as amended in the 2012 Sustainability Framework revisions should help secure these equity gains, as the IFC devotes more resources to visiting projects and measuring client compliance with commitments made to the IFC and local community at the time of loan proposal and disbursement. In the course of its interactions with civil society over proposed revisions to the Sustainability Framework, the IFC has de facto acknowledged that increased monitoring is a central element of ensuring the social and environmental benefits promised at project inception are not lost in the din of the daily necessities of project operation. More frequent monitoring by the IFC will also aid in ensuring some greater measure of distributive IEJ. This is because the host community's burden of monitoring and accountability is to that extent shifted onto the IFC in a transfer of responsibility akin to the sorts of distributive IEJ identified in Chapter Three. However, with respect to Table 7-1 above, the substance of this accountability and monitoring is the Sustainability Framework,

and thus no substantive additions to the liberal IEJ already enhanced within the distributive arena are noted.

Capabilities IEJ. I contend the IFC also ensures some significant degree of capabilities IEJ, with respect to both capabilities for participation and capabilities for control. Here the relevant factors are focused on whether the IFC's clients are required to take actions and employ measures which not only impact the resources available to stakeholders, but actually alter their place in the bargaining process. As developed in Chapter One, capabilities IEJ as formulated by Amartya Sen and Martha Nussbaum would include such developments as the opportunity to freely determine the employment of economic resources, meaningful participation in this process, and “taking part in the life of the community” (Sen 1999, pp. 39, 89). Sen's more recent work also includes the ability to improve and enhance the environment (2009, p. 249). Nussbaum includes bodily health, practical reason, freedom of expression, and control over one's political and material environments in her list of essential capabilities (Nussbaum 2006, pp. 76-78).

These qualities of individual and community life go beyond distributive IEJ. For example, as noted in Chapter Six, merely providing the distributive IEJ of relevant social and environmental information and a forum for its dissemination and discussion does not ensure that the information may be effectively employed by the recipients, particularly beyond the project consideration stage. What is required is some amount of concrete intervention into the relations of power and control which channel and apply information.

Chapter Three notes that the Social and Environmental Sustainability Policy again sets the stage by requiring that clients must meaningfully and regularly engage local communities with respect to a proposed and existing project. This general dictate is bolstered by the more

particular requirement that clients engage in free prior informed consultation with affected communities, and where potentially adverse environmental impacts are present also obtain broad community support for the project.

Here the IFC's 2012 Performance Standards-strengthened requirement for community consultation and consent as reflected in Chapter Three, and the IFC's commitment in its Access to Information Policy to disclose the substance of its basis for finding that an affected community has attained broad community support for the project both materially impact the balance of power between investor, IFC and affected stakeholders. In so doing the capabilities of local communities are materially altered by the IFC's adoption of a decisional process which is much more credible and meaningful to affected stakeholders than the mere transfer of information would ensure. These requirements empower individuals to participate more meaningfully in the life of their communities, and to exercise more control over their material environment. Moreover, the capabilities inherent in the exercise of fundamental political and civil liberties reside in the consultation and consent requirements of the IFC. This makes the broad community support and/or consent requirements of the IFC much more credible and transparent, since host communities may be less likely to support a proposed project where the impacts are more fully known.

The 2012 Performance Standards facilitate other capabilities relevant for environmental equity. These include the requirement that the results of any ESIA be disclosed to affected communities, and that community engagement be maintained over the life of the project. Additionally, local stakeholders are to be incorporated into the project monitoring process where appropriate. Enabling a greater individual expression of environmental preferences, the 2012 Performance Standards require clients to consider the different values that affected persons and

entities may place on biodiversity, in order to ensure the client does not serve only its own interests and values. Finally, the Performance Standards now require free prior informed consent by indigenous peoples when their lands are to be utilized, or when indigenous persons are to be resettled.

What is lacking with respect to capabilities IEJ is ultimate control over the launching of the project outside the rather narrow provision for indigenous consent. In particular, local stakeholders are not permitted to exercise a veto right over the project. The IFC could, in cases of greenfield projects, require clients to develop in the course of their environmental and social impact assessment a 'no-project' alternative, accentuating the issue of whether the project should go forward at all. It is this capacity to exercise ultimate control over the project decision which stands in the way of a conclusion that the IFC accords a full measure of not only distributive, but also capabilities IEJ. For example, as contended by the World Resources Institute (Herz et.al. 2007), ensuring pre-project consent, particularly with respect to the more socially and environmentally invasive projects, can serve the interests of both investor and host community.

Nonetheless the consent issue is admittedly a complicated contention. It may well be that the host state has empowered its environmental ministry to develop an overall growth plan which, while seeking to be environmentally responsible, is also considered by its administrators to best serve the needs of the nation as a whole. Such a plan may include projects which impose burdens on local capabilities, but which are open to the defense of state sovereignty and responsibility for the welfare of an entire nation. This suggests a deeper understanding and identification of the various levels at which consent may be obtained, and which level(s) will be deemed operative with respect to the approval of a proposed project.

It is also often difficult to develop and employ a procedure and practice which can accurately represent community solidarity over the desirability of a particular project. In most situations there will be a multiplicity of interests represented in the local community, all valid and important but which may deeply conflict over whether a particular IFC project should go forward. Indeed the IFC itself noted the general unlikelihood of obtaining levels of support approaching unanimity (IFC Consultation March 2011). However, it is this precise issue which mitigates the outcome of an assessment of capabilities IEJ at the IFC, and even more directly the provision and possibility of human rights IEJ.

Human Rights IEJ. The Social and Environmental Sustainability Policy not only serves capabilities, but also implicates a human right to political expression by requiring sustained engagement with local communities and broad community support for projects with potentially significant adverse environmental effects. The Performance Standards also acknowledge that workers retain certain "rights" as laborers even if not established explicitly by national law, and require the ESIA to include among its consideration of risks the possibility of human rights encroachment and violation in the implementation and operation of the project. The Performance Standards also establish a strict liability standard for the employment of trafficked persons.

Further, as noted in Chapter Three, the IFC is clear (and this study agrees) that the Sustainability Framework—the Performance Standards in particular—implicitly accommodate a broad panoply of human rights concerns by virtue of the content of such standards (IFC 2010e). Indeed, in this document the IFC links specific provisions of the Sustainability Framework to many of the elements of the International Bill of Human Rights. The present study in fact takes a similar approach in Chapter Three, which reflects in addition to the above, specific human

rights being implicitly accomplished in several ways. These include the requirements that clients' water use not adversely impact the availability of essential water supplies in the locale (right to basic subsistence), that clients establish an effective grievance mechanism by which concerned local stakeholders may register and obtain resolution of complaints about project impact and disposition (political and civil rights), and that clients minimize the possibility that the project will increase the possibility of the incidence and spread of disease (right to health).

Revised Guidance Note 1 also specifically references the work of John Ruggie as Special Rapporteur to the UN Secretary General on the topic of Business and Human Rights (IFC 2011b, pp. 18-19), explicitly linking the policies of the IFC to Ruggie's dictate that business must respect and remedy human rights issues in the structure and operation of their activities. If Ruggie's framework becomes more widely accepted the IFC's own self-association with his work will sharpen its focus on human rights, and may even drive further programmatic changes in the future. That is, reputational incentives for the IFC will strengthen as Ruggie's work becomes more the standard for business and human rights.

And it is also the case that the IFC has taken the defensible position that corporations cannot and should not be required to fully displace the state as the guarantor of human rights for affected peoples (Ibid; see also IFC 2012a, p. 3). Nonetheless this study concludes that, as with capabilities IEJ, human rights IEJ will not be fully accommodated unless and until there is some tool to provide and establish community consent for a project. The question in the context of human rights IEJ (as distinct from capabilities IEJ) is, whether that right should be established at and by the IFC, or by the state? That is, is it even possible or appropriate for the IFC to fully ensure the depth and range of human rights IEJ?

Indeed a universal consent requirement could be built into the policies of the IFC, particularly since the Sustainability Framework applies even where national-level requirements impose lower standards. However, given that local community decisional rights are part and parcel of political and cultural structures instituted and maintained by the state, a consent provision would more appropriately reside (and endure) in national-level regulation, implemented locally. Consistent with Ruggie's work, the IFC requires that clients respect and thus comply with human rights, but also accepts that states are ultimately the actors which must ensure and enforce human rights (IFC 2011b). A general consent right is not presently established in international human rights law. I suggest that until such time the revised Sustainability Framework's requirement for transparent and broad community support appropriately serves the needed balancing of the right of the state to confirm and protect the human rights of its people with the IFC's own undertakings and responsibilities.

I finally consider the extent to which IFC project monitoring, as revised, may fill some of the gaps in capabilities and human rights IEJ considered as inherent in the operation of the Sustainability Framework. Here my principal argument is that the additional layer of enhanced external scrutiny provided by these IFC post-disbursement initiatives will actually shift the power equation in the direction of the local community, strengthening a human right to the environment. In particular, clients may be more energetic and mobilized early in the project process to demonstrate compliance with the Sustainability Framework. But in the out years project exigencies and shifting prospects for project profits may induce some significant measure of laxity in sustaining early social and environmental commitments. Thus the gains of the actual shifting of power relations present in the project negotiation process may be lost. The certainty that the IFC will come looking two, three or four years down the road means that the power

shifts inherent in the inception stage will be more credible since affected stakeholders will retain influence beyond that initial phase. Thus 'broad community support' evidenced at the project inception stage will not be limited to that point in time, as the IFC's own project monitoring will include evaluating the client's grievance receptivity and response, the success of project effluent and mitigation measures, the welfare and status of laborers, and the degree of community health and safety. Rather affected stakeholders will be empowered to interact with the client at all stages of the project with the knowledge by all parties that their interests must be taken seriously and that the project will not slip into invisibility.

The answer to the basic research question of this study, then, is that the IFC enables a significant degree of distributive IEJ, and some measure of both capabilities and human rights IEJ. Nonetheless there are and will be substantive limitations on capabilities and human rights IEJ so long as recipient communities are not given the opportunity to consider a no-project alternative. And the full impact of even the positive potential will become visible only in the next few years as the IFC implements the 2012 revisions to the Sustainability Framework, and to its monitoring program.

Given these findings, how do these findings add to the existing literature? I look first at the broader IEJ literature, and then ask whether the impacts of the IFC's practices speak to any of the literature on FDI and IEJ.

GENERAL IMPLICATIONS FOR INTERNATIONAL ENVIRONMENTAL JUSTICE

In Chapter One I proposed a rubric for organizing liberal thought on IEJ, specifically the narrow, broad and ecological justice categories. There I argued that narrow IEJ referred principally to neoliberal economic approaches to the construction and operation of the global economy. That is, narrow IEJ seeks environmental solutions which support free markets and a

largely autonomous global economy (e.g. Beckerman 1999; Bhagwati 2004; and Morvaridi 2008). In the broad IEJ approach, effectively addressing environmental justice must implicate issues of social welfare and capacity, and may also address institutional impediments to these social goods. In the broad category, liberalism takes on a reform agenda, and contends that systemic changes and accommodations are necessary to serve liberal international environmental justice (e.g. Kymlicka 1996; Agarwal et.al. 2002). In the ecological IEJ approach, consistent even with the liberal approach, nature is inherently and objectively valuable (e.g. Derek Bell 2006). The key point is that what is sought is not primarily justice for humans, but justice for nature.

Based on the preceding Chapters, where does the IFC fall within this rubric? What approach to liberal IEJ may be said to be most closely aligned with the IFC's own philosophy and practice? I consider each category in turn.

As to narrow IEJ, the IFC plainly operates in this sector. The IFC remains oriented primarily towards its chief objective: the financially successful funding of private enterprise in the South. To attain this objective the IFC employs sophisticated financial and credit structuring techniques and strategies and, as noted earlier in Chapter Four identifies the Sustainability Framework as impelled first and foremost by risk management concerns. Indeed the IFC's move away from the more institution-oriented and regulatory safeguards approach to the more client and business-oriented sustainability approach reflects a commitment to enhancing the capacity of corporations to plan their own social and environmental strategies. While in the case of the IFC this capacity plainly operates within the strictures of the Performance Standards, nonetheless the IFC is committed to the Sustainability Framework principally out of the stated conviction that it is good for business—both their own and that of their clients. Thus the spirit of neoliberalism—

maximizing corporate autonomy and initiative, evincing a belief in the efficacy of markets, and minimizing direct intervention by public authority—plays a significant part in how the IFC sees itself and conducts its operations.

Nonetheless I contend the IFC also resides in the broad IEJ category, for several reasons. First, North-South foreign direct investment projects outside the purview of the Equator Principles and/or IFC jurisdiction typically operate under a much-reduced level of mandated social and environmental sensitivity. The extensive requirements of the Performance Standards—only partially reflected in Chapter Three's focus on provisions related to equity concerns—create significant costs in time, and human and financial resources for IFC clients. Given that project finance is only a small percentage of the totality of North-South investment finance, the extension of the Performance Standards to all North-South foreign direct investment would constitute an unprecedented and sweeping reform of the private sector. Second, as shown in Chapters Three and Five, the Sustainability Framework speaks directly to the social and environmental welfare of affected communities. To comply with the Performance Standards, clients must undertake extensive initiatives with local communities to satisfy IFC requirements for consultation with, and obtaining community support from, affected stakeholders. Performance Standard 3 (IFC 2012d) establishes specific criteria for project externality planning and mitigation, with the specific aim of ensuring community health and safety (see also Performance Standard 4 (IFC 2012e)). Where displacement—physical or economic—will occur because of project implementation, Performance Standard 5 (IFC 2012f) requires clients to undertake compensation/reinstatement plans at a level of detail that reflects credible engagement with the daily social and economic realities of affected persons and families. The collective weight of these provisions places the IFC well into the broad IEJ category in that the IFC plainly

is not content to await 'trickle-down' sorts of market-only effects to ensure the welfare of affected communities.

Third, the IFC may be fairly placed in the broad IEJ category because as a public institution it is a proxy for asserting traditional state authority over private economic activity. That is, there is no conceptual barrier to the possibility that the Sustainability Framework or something much like it, could be implemented by formal legislation at the national level, something that would constitute the sorts of systemic reform characteristic of the broad IEJ category. However, this assessment must be qualified, and the IFC does not reside fully in the broad category. There is no attempt, whether by direct influence over its members or by public diplomacy to encourage the formal adoption of the Performance Standards by host state governments. Rather the focus of the IFC's advisory services is training in improving the investment climate in a given state, region and/or economic sector. Thus the direction of the IFC's work is in the end facilitative of an environment in which business activity is encouraged and enabled. The better comparison with the Sustainability Framework is then with corporate social responsibility initiatives, not with formal governmental regulation, suggesting that the IFC effectively straddles the narrow and broad IEJ categories.

As to ecological IEJ, Performance Standard 6 (IFC 2012g), by virtue of its focus on preserving biodiversity, does provide some measure of ecological IEJ. However, even in so doing the spirit of the Standard is to identify and respect varying views and values regarding biodiversity among local populations, not the protection of nature itself—especially in a manner that would contest these local views and values. In addition, were the IFC to retain a stronger presence in the ecological IEJ category, local communities would have to be given a veto vote over the project to permit them to protect their local environ to the full extent.

Thus the IFC may be fairly said to occupy functional and credible space in both the narrow and broad IEJ categories, which suggests that IEJ at the IFC is more than the neoliberal postulate that in the end the unfettered operation of markets will benefit all.

CONCLUSION: THE INTERNATIONAL FINANCE CORPORATION, FOREIGN DIRECT INVESTMENT, AND EQUITY

It is important to note that the policies and programs of the IFC do speak to some of the explicit references to equity in FDI, outlined at length in Chapter Two. First, Chapter Two notes the argument that FDI entities need to bear a greater share of the costs of pollution and its abatement (e.g. Islam 1981, p. 243). Clearly the IFC's Sustainability Framework addresses this concern by virtue of requiring clients to conduct and publish the results of the environmental and social impact assessment, and to apply global standards to effluent management technologies. Second, as to arguments for greater gender equity in FDI (e.g. Braunstein 2009; Agosin 2007), the IFC expressly identifies sensitivity to gender disparities as a key focus of clients in a number of arenas (see e.g. discussion in Chapter Three). Third, as to the direct link between the actions of FDI entities and their impact on labor and human rights (e.g. Tay and Tan 2004, pp. 109-10), the preceding discussion makes clear that the IFC has made significant advances in strengthening the role of business in ensuring rights in both of these spheres.

Most importantly, however, the literature discussed in Chapter Two focuses both implicitly and explicitly on the justice implications of the characteristic power disparity between an FDI entity from the North and its host community in the South (e.g. Morvaridi 2008; von Moltke 2002; and Gallagher and Zarsky 2004). Here the visible impact of the IFC and the Sustainability Framework is perhaps strongest. In particular, there have been very real increases in distributive IEJ by virtue of the IFC's policies. In particular the obligation of the client to fund and conduct an ESIA, and even more importantly the associated and required community

engagement process following the local dissemination of the results of the ESIA, accord to local communities the power of both information and access. Indeed, the enhanced stakeholder engagement process and the IFC's own disclosure of its basis for confirming broad community support add the additional power to actually exercise substantial influence in the project approval process. The knowledge that this early-stage support may be audited in future years by the IFC further enhances the capability and power of the affected community to exercise control over their material environment and to meaningfully engage in the life of the community. Thus there is a very real sense in which the involvement of the IFC remedies to some significant degree the endemic North-South FDI power differential. Thus the present study may be seen to speak to a number of the concerns for IEJ raised in the FDI literature.

CHAPTER EIGHT

CONCLUSION AND PROSPECTS

I turn, in conclusion, to a brief analysis of what this study adds to the international organizations literature seeking to analyze the theoretical basis for environmental sensitivity at the IFC. This review reaches more broadly to the World Bank Group as a whole, but is I contend nonetheless applicable to the IFC in particular notwithstanding its functional independence from the World Bank itself. I trace two alternative approaches in this literature, arguing that in the end this study contributes to the building of bridges between them. I then suggest that this literature adds weight to Chapter Seven's conclusion that the IFC is indeed serving some significant measure of social liberal international environmental justice. I conclude the Chapter with some recommended avenues for further research.

The international organizations literature seeks to address how we might understand the World Bank Group and its social and environmental sensitivity in terms of theory. This literature may be divided into two sub-categories: first, that which assumes or reaches a rationalist understanding of how and why change has been happening at the World Bank Group and the IFC in particular. In this view the IFC is responding rationally to external pressure, for example, in the furtherance of its own self interest. Second, other authors take a more constructivist approach, contending that change may best be explained by shifts in not only ideas and interests within the IFC, but in its identity as an entity not only in compliance with but actively engaged in the furtherance of environmental norms and values.

THE RATIONALITY APPROACH

Robert Wade was the first to extensively chronicle the progress of the World Bank towards meaningful social and environmental project norms and standards. Wade traces the role of

external influence and pressure on the World Bank through NGOs concerned about the impacts of the Polonoreste and Narmada hydroelectric projects in Brazil and India, respectively (1997).

"[I]n most cases, the Bank has not moved without outside pressure from the major donors/owners of the Bank or from NGOs" (2004, p. 92; see also Gutner 2002, p. 19).

Nielsen and Tierney add clarity to assertions of rational process and calculus by positing a principal-agent model to explain change at the Bank (2003). They contend that the Bank's relatively abrupt institutional embracing of environmental change and sensitivity was the result of pressure from principals (member states and governments) which leveraged their positions as Bank directors to drive the acceptance of their own changed environmental preferences. Gutner (2005), also commends the principal-agent model as the most potent tool for understanding environmental change at the World Bank. In her view, "P-A models, properly applied, can greatly advance rationalist approaches to understanding [international organizations] and their performance" (p. 782).

Lawrence, while also a rationalist, nonetheless observes influence flowing in the opposite direction (2005). She argues that the World Bank Group wields enormous power over governments and states, as well as other international financial institutions, which have taken up the expanding and growing environmental concerns at the Bank, for example, into their own set of preferences (e.g. p. 6). She refers specifically to the Equator Principles in this regard as evidence of the influence of the IFC in particular over international financial institutions. While she views this influence as unfortunate in what she sees as the IFC backing away from the institution-oriented safeguard policies towards the client-oriented Sustainability Framework (c.f. the discussion at Chapter Three of this study), her understanding of power and influence by international organizations presumes a rational calculus.

THE CONSTRUCTIVIST APPROACH

Challenges to these rationalist explanations can be traced to the 1999 work of Michelle Miller-Adams, who rejected the notion that environmental change at the Bank could best be explained by the power and preferences of the states which are members of international organizations, or even the NGOs and other civil society actors who prevail upon institutions such as the Bank to make substantive policy and behavioral changes (e.g. pp. 3-4). Instead, relying on social organization theory, she argues that changes in the "norms, values and beliefs" of management and staff carry much more explanatory power (pp. 4-5). Importantly, she observes that both neorealists and neoliberals rely on a rational calculus in assessing the potential and actions of international organizations. "Essentially, . . . both neorealists and neoliberals are concerned with how states define their interests and how they behave within the international system, leaving little room for any analysis of the internal processes of institutions" (pp. 9-10).

In the spirit of this work Christopher Wright examines "policy development at the IFC in the context of discourses, or 'sets of linguistic practices and rhetorical strategies embedded in a network of social relations' [citing Litfin 1994, p. 3]" (2007, p. 69). Regarding the IFC's move to the Sustainability Framework, in Wright's view the previous compliance approach was incorporated in response to outside pressures, while the sustainability, client-oriented approach was much more a process of "social learning and norm diffusion" within the IFC (p. 80).

The most extensive arguments for a constructivist understanding of what has been happening at the IFC are offered in the work of Susan Park. Park suggests that international organizations are norm consumers—institutions which directly take up and receive environmental norms in a socialization process from and with transnational advocacy networks (2005a, p. 111). "While rationalism may explain why an international organization changed its

behaviour (as a result of material rewards or punishments) it does not examine the degree to which actors are altered, or their identities reconstituted, as a result of normative change" (2007a, p. 169). And "[t]hese changes are significant in demonstrating not only a change in IFC interests and practices, but a shift in its identity: from having no social and environmental conscience, to a position of 'do no harm', to the present 'do good'" (Ibid, p. 179).

She further argues that in fact the NGO-to-IFC flow of socialization has even reversed over time. That is, as international organizations like the IFC have been norm consumers from transnational advocacy networks, over time such networks come to rely on international organizations to promote and disseminate their agenda (2007b, pp. 536-37). In this sense institutions such as the IFC are not only norm entrepreneurs, but also norm "carriers" (Ibid, p. 537). Rationalist explanations of change, such as the neorealist, neoliberal institutional and principal agent models are insufficient because they assume that the linkages between state preferences and dictates, and international organization policy are too direct and strong. This defect actually underpredicts the extent of change both possible and probable at international organizations in an environment of significant pressure, contestation and public visibility over social and environmental project impacts.

In this vein, one particular contribution of this study is that it may serve as a basis upon which to reconcile some measure of the rationalist—constructivist divide (see also Weaver 2007). As identified in Chapters Three and Four, external pressure and rationalist responses to it are recognizable in the historical moves of the IFC towards environmental sensitivity, and were considerably central in the recent round of consultations with civil society regarding the direction of the 2011 revisions to the Sustainability Framework. The amount of feedback generated by engaged NGOs and by government stakeholders such as the Department of Treasury and the US

Agency for International Development was considerable, and the IFC took great pains to respond to it in detail publicly. Thus there can be little doubt, in my view, that some amount of external influence and some significant degree of issue exchange and bargaining between the IFC and its external stakeholders has made a difference at the IFC, in a rationalist understanding of institutional response to a changing external environment in the pursuit of its own self-interest.

However this study also provides further evidence for the constructivist view, namely that an identity shift at the IFC has been underway and continues to progress, rendering its environmental and social commitments now part of its perceived corporate persona and mantle. This is visible in part as a function of the considerable resources invested by the IFC to convene the 2010-2011 consultations over the revision of the Sustainability Framework. In cities in Brazil, India, South Africa, England, Malaysia and many other parts of the world, the IFC expended significant effort to host—both by staffing and finances—these consultations (IFC 2010b). I argue that the IFC would not have extended itself in this manner if it did not begin with the assumption that its identity as a global leader in project finance social and environmental standards would generate global interest in the opportunity to speak to the content of those standards. There is also no visible 'front office'/'back office' dynamic at the IFC with respect to its investments. Data and publicity regarding IFC environmental programs and practices are available in all of its recent annual reports, and IFC promotional material is replete with the social and environmental dimension of the IFC's work. It is not only to interested observers such as watchdog NGOs that the IFC discloses environmental information; it is woven into the very current of what the IFC does.

Both the rationalist and constructivist literatures posit that whatever the explanation, real change has occurred at the World Bank Group—the IFC in particular. That is, changes in

environmental practices, whether the result of calculus or identity, reflect substantive shifts in global values and the global culture within which institutions such as the IFC operate. This permits some measure of optimism regarding the potential of social liberal economic activity to meaningfully accommodate a greater sensitivity to environmental concerns—environmental equity in particular. That is, if there are defensible reasons, based on rationality, identity or both to conclude that environmental change has been real and enduring, then this body of literature provides no obstacle to the conclusions of this study. Thus this study, and the findings of Chapter Four in particular, are validated by this literature to the extent that environmental developments at the IFC are seen as genuine institutional change. Even if rationalist analyses, for example, do not address the durability of change, this analysis itself adds the insight that where the global system is seen as premised on rationality, changes in this culture are concrete. Further, this study adds to the literature the finding that real environmental change at the IFC legitimates the arguments for IEJ in foreign direct investment identified in Chapter Seven.

However, enhancements of social liberal environmental equity in foreign investment transactions are indeed not a foregone conclusion. First of all, this study itself concludes that IEJ will not be attained adequately at the IFC if the promised increases in project monitoring do not materialize, and if a consent right is not attained. Second, the policies and environmental and social measures of the IFC are detailed and extensive, and it is important to ask whether these policies are feasible for corporations outside the IFC's portfolio. Despite the fact that the Performance Standards are now six years old, I suggest that given the lack of substantive studies of the long-term impacts of IFC projects on-the-ground it is still too soon to tell whether the Sustainability Framework is itself sustainable by clients. Even within the social liberal model, inequality may be persistent, and this study suggests that long-term accountability by clients will

be required to preserve early-stage project equity gains. And if IFC clients cannot sustain the ethos and particulars of the Framework absent such scrutiny, non-IFC projects are unlikely to do better.

On the positive side, the momentum of the over seventy international financial institutions that have ascribed to the Equator Principles is substantial. Over 85% of global project finance travels through these institutions, and is thus subject to the Equator Principles' version of the Sustainability Framework (Conley and Williams 2011, p. 545). While some in the South would contend that there are more important priorities for North-South investment than those present in the Equator Principles, resulting in an "over-compliance" of sorts with environmental concerns (e.g. Kulkarni 2010), others note that the Equator Principles have actually produced a second-generational effect. Specifically, it is argued that corporate social responsibility has spread from MNCs to the private institutions which, through finance, effectively govern them (see e.g. Conley and Williams 2011). In this way corporate social responsibility has now become a strengthened source of quasi-regulation for business. And studies of the Equator Principles have shown that participating institutions do indeed employ stronger social and environmental policies and practices than non-participating institutions (e.g. Scholtens and Dam 2007).

Nonetheless these gains are questioned by some, who would argue that indeed there are reasons to doubt whether changes at the lending level will have meaningful impacts on the ground (e.g. Wright 2012). Relevant here, for example, is the enduring mandate of the IFC which at its core remains focused on the IFC's business interests and profit. Indeed, as pointed out in Chapter Four the most significant driver behind the Sustainability Framework is IFC corporate risk management. As to the real impact of the Equator Principles, this business

orientation "may compromise the degree to which the IFC is willing and able to promote those transparency and accountability standards that conflict with the interests of commercial banking interests" (Ibid, p. 72). Also, project finance is only a small portion of the totality of North-South corporate lending and investment, rendering most North-South foreign direct investment outside the ambit of the Equator Principles.

Thus there remains the question of whether the IFC Sustainability Framework holds any promise for the balance of foreign direct investment in poor countries? It must be acknowledged that there are systemic barriers to real changes in capabilities and human rights IEJ, in particular the neoliberal commitment to prioritizing shareholder profits and welfare above all else. One can imagine that this need not be the case, as corporations may be fairly asked, and are being fairly asked, to address more decidedly concern for the impact of their activities on the global poor and disadvantaged. As with much social change throughout history, there will have to be changes in the values and preferences of corporate leadership, much the same as there has been at the IFC. Given that the breadth of corporate activity and the number of active participants render effective NGO lobbying and pressure, for example, relatively diffuse, change in the broader corporate sector is certainly not forthcoming on any timetable comparable to that which marked significant organizational change at the IFC.

CONCLUSIONS AND FUTURE RESEARCH

Having demonstrated that liberal IEJ has its place in the broader literature on IEJ, and in particular having determined that the IFC does materially accommodate some measure of IEJ, this study is evidence that there is indeed a workable approach to a liberal IEJ and that the liberal economic model can speak for itself as to the prospects for a greater justice within that model. And indeed, based on this study such a vision and hope is visibly possible as to FDI in the

developing world. Nonetheless a full verdict is yet to be rendered, and a number of areas call for future research.

First, there is now the need for a systematic on-site survey of a purposive sample of IFC projects as to the long-term impacts of the Sustainability Framework, and the sustainability of the Framework itself in the minds and actions of the businesspersons who manage IFC-financed projects on an ongoing basis and in the out years following initial screening and approval. These studies should be organized by sector, for example generating a sample of projects in the extractive industries, including projects in several different countries. Projects would be selected based on the amount of time elapsed since project approval. Research would essentially involve an audit of the extent to which a client's social and environmental covenants have in fact generated their intended and promised effects.

Second, the issue of risk management warrants further study. To what extent does risk management justifiably and discernably underlie the second-tier move in corporate social responsibility identified by scholars such as Conley and Williams? What are the implications of these findings for prognoses regarding the possibility of a greater IEJ in foreign direct investment? As to the IFC in particular, it would be insightful to identify the extent of IFC project losses directly issuing from the failure of social and environmental covenants in relevant loan documents. What are the prospects of losing legal immunity as a result of social and environmental leadership coming to be seen as a core purpose of the organization, based on the impact in the near term of the enhanced institutional visibility of the Sustainability Framework revision process? And what do the IFC's investment partners and capital sources have to say about the IFC's credit risk based on its social and environmental programs, practices and portfolio? The findings of this sort of study would speak further to an understanding of both the

basis for, and the best avenues for encouraging, a greater IEJ in North-South foreign direct investment.

Third, it would be interesting to survey the civil society actors who engaged the IFC in the Sustainability Review process, to determine just how they now see the IFC and what their prognosis is for the revised Framework. It would be helpful to have a grasp on who is actually now out working in the field to examine the practical efficacy and validity of the revised Framework, and whether any NGOs for example have made long-term commitments to a particular locale to engage in just the sort of study called for above. Also, it would be important to understand how NGOs in particular, and even business interests, see the receptivity of the IFC to input going forward now that the very high level of self-imposed corporate visibility and vulnerability has passed. Finally, it would be useful to study the extent to which the IFC's example of corporate transparency in the Sustainability Framework revision process may set a higher bar and thereby drive change in the management of social and environmental programs at other international governmental organizations.

Fourth, a comprehensive study of the role of the IFC in promoting and securing human rights through its project finance activities would provide illuminating insight into how to navigate the tensions between serving its business mandate in a plethora of rights contexts, and its stated concern that business respect and remedy human rights concerns. One might ask what the impact on the IFC and its clientele would be if it refused to operate in countries that did not attain sufficient compliance, in its estimation, with the IBHR, in particular the International Covenant on Civil and Political Rights. One could also inquire of peoples affected by IFC projects how they perceive that their potential exercise of human rights has been effected?

In the end, a greater environmental equity both inside and beyond the IFC will be most deeply and enduringly ensured when and as individual commitments to the disadvantaged and marginalized result in real change at the organizational and even system level. These needed changes in individual perspective and persuasion may and should be pursued by advocacy at all levels: those of not only the individual, but also the organization and the system itself. Indeed, external change itself has a role to play in opening the door to the very sorts of individual commitment being called for here. What this study has shown, nonetheless, is that movement towards IEJ—at least at the individual and organizational levels—is attainable, but also must be expanded, within the liberal model.

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APPENDIX ONE

List of Cases

1. “Antea-Albania” available at:

<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/cbe37d2e9a5559d2852576c10080cd4d?opendocument> accessed May 2012.

Boka e Kuqe, Albania. Titan Cement Company SA. Subsidiary of leading Greek cement manufacturing company. State-of-the-art cement plant with a production capacity of 3,300 tons per day clinker (or 1,400,000 tons per year cement).

2. “Secil Lobito” available at:

<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/8a8bc72e2d990538852576ba000e2b73?opendocument> accessed May 2012.

Lobito, small seaside town in Angola. Secil-Companhia de Cimentos do Lobito, S.A. Joint venture of Portuguese cement company (51%), and an Angolan state-owned corporation (49%). Multi-phase construction of a cement plant with total capacity of 495,000 tonnes per year of clinker and 650,000 tonnes per year of cement.

3. “CMC Sisak” available at:

<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/066fb699408ff1bc852576ba000e2c2c?opendocument> accessed May 2012.

Sisak, Croatia. CMC Sisak d.o.o. Subsidiary of Dallas, Texas commercial metals company. Privatization and modernization of formerly-state-owned steel mill.

4. “SEF Azel” available at:

<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/6e98dee6935e224e852576ba000e2a0e?opendocument> accessed May 2012.

Baku, Azerbaijan. Azerbaijan Electronics CJSC. Azerbaijan privately-held corporation. Funding to construct and expand a business computer and office supply enterprise.

5. “Eurasia RED” available at:

<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/87c5f229ef949f31852576ba000e2c94?opendocument> accessed May 2012.

Almaty, Kazakhstan. Home Mart LLP. Privately-held Kazak company. Funding for the construction of two retail shopping malls in Kazakhstan.

6. “SEF Moi Dom DIY” available at:

<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/e11cff29877cfe35852576ba000e2ce8?opendocument> accessed May 2012.

Tashkent, Uzbekistan. Katering LLC. Majority owned by a UK import/export company. Funding for a home improvement and appliance store.

7. “AEF Nosa IV” available at:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/5db61a77e1fd2544852576ba000e3278?opendocument> accessed May 2012.

Yaoundé, Cameroon. Nosa Sarl. Privately held Cameroonian company. Funding for an expansion of an existing laundry soap plant.

8. “Kiwara PLC” available at:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/f97c1a695128bd4f852576ba000e2d5b?opendocument> accessed May 2012.

Rural mine site, Zambia. Kiwara PLC. London-based mineral exploration company. Base metals exploration and feasibility study project.

9. “A1 Belarus” available at:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/f6c2c67f701ecfc5852576ba000e2acc?opendocument> accessed May 2012.

Six largest cities, Belarus. Tigullio Holdings. 100% owned by a Russia-based investment company. Funding to open a chain of discount stores.

10. “Hidromaule S.A.” available at:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/6a3c7dceb6b92f62852576ba000e2b6a?opendocument> accessed May 2012.

Lircay, Chile. Hidromaule S.A. Startup hydroelectric power company owned by a consortium of Italian and Chilean investors. 20 megawatt run-of-the-river hydroelectric project.

11. “Santa Marta International Terminal Company, S.A.” available at:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/68f31a9c8184135b852576ba000e3290?opendocument> accessed May 2012.

On the Caribbean coast, Colombia. Santa Marta International Terminal Company, S.A. Majority owned by a Colombian company; privately held U.S. company owns 49%. Colombia’s third largest port. Funding for port facility expansion and modernization program.

12. “Jiuda Salt” available at:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/2e893930317929d9852576ba000e2a5f?opendocument> accessed May 2012.

Zigong City, Sichuan Province, China. Sichuan Jiuda Salt Manufacturing Co. Ltd. Majority owned by company managers and employees. Minority stake held through Mauritius. Funding for the expansion of existing salt production facilities, and the acquisition of new facilities.

13. “Cambodia Airp II” available at:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/2ace00351f4d0d4c852576dc00801c97?opendocument> accessed May 2012.

Phnom Penh, Siem Reap, and Sihanoukville, Cambodia. Societe Concessionaire de l’Aeroport. 70% owned by private interests in France; 30% held locally. Terminal and runway expansion at these three airports, principally to cater to a growing tourist trade.

14. “Pantaleon II” available at:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/acf0c8ef99470796852576ba000e2cee?opendocument> accessed May 2012.

Sugar mills in Guatemala, Honduras, and Nicaragua. Pantaleon Sugar Holdings Company Limited. Privately held Guatemalan company. Funding to expand sugar production facilities and associated power generation facilities, and to expand existing and construct new ethanol production facilities.

15. “Wings Noodle Integration” available at:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/61f633eb600edd a1852576ba000e2a16?opendocument> accessed May 2012.

Surabaya, Indonesia. PT Karunia Alam Segar. Private Indonesian conglomerate. Funding to increase noodle production capacity, due to high demand.

16. “Milagro S.A.-San Miguel S.A.” available at:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/f378c19007ac7617852576ba000e2cda?opendocument> accessed May 2012.

Rural fruit orchards and urban packing plants, Uruguay. Milagro S.A.-San Miguel Uruguay S.A. Appears to be a private Uruguayan company. Funding to acquire additional land for fruit growing, and to enlarge existing and acquire new fruit processing capacity.

17. “Wataniya Palestine Mobile Telecommunication Company” available at:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/8c9e25943e9213de852576ba000e2c8f?opendocument> accessed May 2012.

Ramallah, West Bank/Gaza. Wataniya Palestine Mobile Telecommunications Company. Majority owned by Qatari company; 43% owned by the Palestine Investment Fund. Funding to construct and operate a cell phone network in the West Bank territories.

18. “Galnaftogaz Expansion Phase II” available at:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/273920fa2c95f1ed852576ba000e2a69?opendocument> accessed May 2012.

Throughout Ukraine. PJSC “Concern Galnaftogaz”. Majority held out of Liechtenstein. Largest independent gas station company in the Ukraine. Funding for the expansion of fuel storage, transport and delivery assets and capacity.

19. “Gold Ridge” available at:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/7cb7f53542d4fa09852576ba000e2d8c?opendocument> accessed May 2012.

Solomon Islands. Gold Ridge Mining Limited. Wholly-owned subsidiary of Australian gold company. Funding to reopen and operate a surface open-pit gold mine.

20. “Chuvash Health” available at:
<http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/189e969d33d3e2a2852576ba000e2ce3?opendocument> accessed May 2012.

Cheboksary, Chuvash Republic, Russian Federation. Chuvash Republic. Public sector project to modernize and expand diagnostic and treatment facilities for cardiovascular diseases and trauma.

APPENDIX TWO

List of Interviews

Name	Date	Organization	Position
Mr. Piotr A. Mazurkiewicz	May 2010	International Finance Corporation	Policy Officer, Environment, Social and Governance Department
Ms. Susan B. Rzemien	May 2010	U.S. Department of the Treasury	International Economist
Dr./Ms. Leslie Johnston	May 2010	U.S. Agency for International Development	Senior Environmental Policy Advisor, Office of Environment and Science Policy
Mr. Kirk Herbertson	May 2010	World Resources Institute	Policy Analyst
Mr. Said Yakhyoev	May 2010	Bank Information Centre	Analyst
Mr. David Hunter	March 2011	American University Washington College of Law	Professor