



The World Bank Safeguards Review and Human Rights

A Brief for Government Agencies and National Human Rights Institutions

The World Bank is currently re-drafting its entire suite of social and environmental safeguard policies. Over the next several months, the Bank will be consulting with member governments, civil society, and other stakeholders. The outcome of this review process will not only determine the standards and conditions under which Bank-financed development activities are implemented, but because the Bank's safeguards serve as a global benchmark for development policy, the new safeguards framework will set the bar for many governments and public and private finance institutions around the world on issues ranging from resettlement and indigenous rights, to social impact assessment and labor standards. This brief explains the human rights implications of the safeguards review and identifies opportunities for government agencies and national human rights institutions to engage.

Human Rights and the World Bank Safeguards Review

Development and Human Rights

Development activities can have a profound impact on the realization of human rights within borrowing countries. This impact can be positive, such as improved access and quality of health care, increased protection of indigenous peoples' land rights, and education that reaches the most marginalized populations. Impacts can also be negative, as in the case of forced evictions, imposed solutions that undermine the livelihoods of never-consulted communities, or policy reforms that further entrench discrimination. Without effective policies and processes based on internationally recognized human rights standards, opportunities to contribute to the realization of human rights are missed, and too often human rights abuses result.

The World Bank Safeguards

The World Bank is an international organization that provides lending and technical assistance to middle and low-income countries for a broad range of development projects, programs, and policy reform efforts. The World Bank safeguards establish standards and procedures with which the Bank and governments who borrow from it must comply.¹ For instance, the current safeguards require that Bank-financed projects avoid resettling people against their will, and that if people are displaced, their livelihoods and standard of living must be restored or improved.

Additionally, the safeguards provide critical entry points for communities and civil society organizations to gain information and to give input into project design and implementation. The Environmental Assessment Policy, for instance, requires that an impact assessment be prepared in consultation with local communities and disclosed publicly, prior to the approval of a given project. If a borrowing government does not comply with the safeguards, the Bank is supposed to withhold financing. If the World Bank does not comply with its safeguards, communities and civil society can raise a complaint

¹ The World Bank's private lending arm, the International Finance Corporation, and companies it lends to are bound by a separate set of policies called Performance Standards.

with the Bank's independent accountability mechanism, the Inspection Panel, which will investigate the situation and recommend actions the Bank should take to prevent and address any harm.

Over the past decades, the World Bank and other development finance institutions have gradually strengthened their social and environmental protections and increasingly elevated the bar of best practice for development. At the same time, significant shortcomings remain. In many areas, the World Bank safeguards are not consistent with human rights norms and do not provide adequate protection for affected communities. The World Bank has not yet committed to ensuring respect for human rights within Bank-financed activities. There are additionally significant problems regarding safeguard implementation. While it is the borrowing country which carries out project implementation, the Bank bears the responsibility for project supervision - ensuring that project design and implementation are in compliance with the safeguards and that the borrowing country has the capacity and resources necessary to deliver successful development and ensure that people and the environment are not harmed.

The World Bank's Safeguards Review

In the past, the World Bank has developed and revised safeguard policies one-by-one as needed. Now however, the Bank is engaged in an unprecedented revision of its entire safeguards framework, bringing all of the safeguard policies into one set of standards. The policies under review include Environmental Assessment, Natural Habitats, Pest Management, Indigenous Peoples, Physical Cultural Resources, Involuntary Resettlement, Forests, Safety of Dams, and the Policy on Piloting the Use of Borrower Systems for Environmental and Social Safeguards ("Use of Country Systems"). The Bank is also considering if and how it will address a number of so-called "emerging areas", including human rights; labor and occupational health and safety; gender; disability; free, prior, and informed consent of indigenous peoples; land tenure and natural resources; and climate change.

The safeguards review began in 2012 and is divided into three consultation phases. The third and final phase began in August 2015 and will last into the spring of 2016 before final negotiations within the World Bank Board of Directors. Member States may submit input throughout the review and several have taken public positions on critical issues. In addition, face-to-face consultations with governments and civil society are underway in approximately 30 countries.

Preventing a race to the bottom on human rights

Stronger and more effective safeguards can help prevent human rights violations within Bank-financed development projects. The impact of the safeguards, however, goes much further than the boundaries of Bank financing. When the Bank co-finances projects with other lenders, the safeguards often provide a minimum protection floor for the larger project. Additionally, because the World Bank is a standard-setter for development finance, the safeguards have a global impact. World Bank safeguards have served as the foundation for safeguard policies at a variety of multinational institutions, including regional and national development institutions and climate financing bodies.

In recent years, new sources of development finance from emerging economies have increased the availability of quick financing with little social or environmental requirements. The World Bank is now arguing that it needs to make the safeguards more flexible in order to remain financially relevant. If the Bank weakens its safeguard policies, this will have a major impact on global finance, putting downward pressure on other institutions and governments to weaken their standards, and making it even more difficult to establish or strengthen standards within other national and multilateral development banks.

Key Human Rights Concerns with the Draft Safeguards

The proposed draft safeguards make some improvements which we hope will be maintained in the final draft, such as a new labor standard, the incorporation of free, prior, and informed consent, provisions on non-discrimination, and the expansion of assessment of social risks and impacts. Unfortunately, these improvements are undermined by the fact that the new draft transforms the overall framework of the safeguards from one based on compliance – with specific time-bound standards and processes – to a loose framework, wherein the protections of the safeguards may not apply in many cases. The new framework fails to require respect for human rights or robust due diligence to ensure protection of human rights within Bank-financed activities. If adopted as is, it could significantly increase the chance of development-related human rights violations.

Human Rights Requirement

The World Bank’s draft safeguards do not contain a commitment to respect human rights or to ensure that Bank-financed projects do not contravene borrowers’ international legal obligations. The draft provision on human rights is located within the vision statement rather than the operational section of the safeguards and characterizes human rights as merely aspirational.

Recommendation: Include a binding requirement that Bank-financed activities respect human rights and that the Bank and Borrower take all measures necessary to ensure that Bank-financed activities do not cause, contribute to, or exacerbate human rights violations or contravene Borrowers’ obligations under international law.

Ensuring an Adequate Level of Protection

The proposed draft erodes the effectiveness of the safeguards as a safety net by establishing several major loopholes. Where a project is financed through financial intermediaries or co-financing, or where the Bank decides to rely on a Borrower’s national laws and regulations (Use of Country Systems), or where an activity is characterized as a sub-project, safeguard protections may not apply. Unfortunately, the draft does not provide clear benchmarks for measuring the adequacy of these alternative systems nor capacity building and monitoring to ensure an adequate level of protection throughout implementation.

Recommendation: Ensure that safeguards establish a firm baseline of social and environmental protection, which all projects and activities must meet. Where a borrowing country’s laws and standards (or a co-financier’s standards) differ from the safeguards, the standard that ensures greater protection for people and the environment should apply. Identify a clear measurement for adequacy of Country Systems and other alternate systems that ensures consistency with the requirements of the safeguards, not merely consistency with safeguard objectives. Allocate sufficient human and financial resources to ensure Bank and Borrower capacity for effective project implementation and supervision.

Due Diligence

The new draft framework expands the assessment and management of social risks. It however abrogates Bank responsibility to supervise projects and ensure that Bank-financed activities do not lead to harm. It does so by weakening the Bank’s due diligence requirements around assessment of risks and impacts and shifting these responsibilities to self-reporting and monitoring by the borrower. Under this proposal, assessment and due diligence may be deferred until after project approval, delaying disclosure of many types of environmental assessments and some resettlement plans that are critical for informed decisionmaking. Projects not categorized as “high risk” are left with insufficient supervision and

monitoring. Sub-projects not categorized as “high risk” may only have to comply with national law, not the safeguards requirements.

Recommendation: Maintain clear Bank responsibility for due diligence, supervision, monitoring, and evaluation. High risk and substantial risk activities should be excluded from any deferral of risk appraisal or management. Due diligence for substantial risk activities (including sub-projects) should be comparable to that for high risk. Ensure that risk and impact identification involves participation of affected communities and that the Bank takes necessary steps to verify that information provided by the Borrower is adequate to assess project risks and impacts. Require third-party or community-based monitoring for high and substantial risk projects.

Non-discrimination

The new safeguards include encouraging provisions on inclusion and non-discrimination. They do not however, define prohibited grounds of discrimination, meaning that certain grounds, including discrimination on the basis of political or other opinion or on sexual identity, may not be addressed.

Recommendation: State a commitment to non-discrimination and to advancing substantive equality within Bank activities, including all forms of discrimination identified in international law, including jurisprudence from regional bodies. Ensure that all marginalized or discriminated against populations are guaranteed opportunities to participate in all phases of development projects, including design, particularly when proposed development projects will directly or indirectly affect them. Measure impacts across marginalized groups through disaggregated data.

Indigenous Peoples

The proposed indigenous peoples’ standard has been strengthened to now include a requirement for Free, Prior, Informed Consent (FPIC) in certain situations. This improvement is very contentious, however, and currently at risk. Several governments are arguing against having a policy on indigenous peoples. As a reflection, the new policy includes a waiver provision which could leave indigenous peoples unprotected in the situations in which they are most vulnerable to project-related harm.

Recommendation: Ensure protection of indigenous peoples’ collective rights to their lands and resources and to maintain their management systems. Ensure respect for the right of self-determination, including the requirement to obtain and maintaining FPIC throughout all project stages, in line with the UN Declaration on the Rights of Indigenous Peoples.

Labor

The draft safeguards include a new labor safeguard, which brings the Bank closer in line with common practice among the other major development banks. Unfortunately, the new safeguard makes no reference to ILO conventions or core labor standards. It additionally contains exclusions for workers defined as “government civil servants” and does not provide adequate protections for freedom of association or collective bargaining. It also establishes inappropriate client discretion over compliance.

Recommendation: Include explicit reference to the ILO’s core labor standards. Include coverage for all project workers. Prohibit acts of discrimination and retaliation against workers who seek to freely associate and bargain collectively in Bank-financed projects. Remove the discretion of borrowers to determine which requirements of the labor standard apply.

Land and Resettlement

The proposed resettlement policy does not ensure that physical or economic displacement only occurs where a project has demonstrated a legitimate public interest purpose and no viable alternatives exist. The draft removes critical requirements around resettlement planning. The policy additionally does not apply to sub-projects or displacement caused by land use regulation, natural resource management, or impacts that are not a direct result of land acquisition, thereby leaving out huge numbers of affected communities, such as those living downstream of dams.

Recommendation: Ensure that displacement is used only as a last resort, and only where it has met a “general welfare” threshold. Require preparation and disclosure of resettlement plans and budgets prior to project approval. Ensure the resettlement safeguard applies to all project and sub-project-related physical and economic displacement. Strengthen measures to support livelihood restoration. Ensure that the policy continues to provide protection for those without formal title or recognized rights.

Gender

The new safeguards framework neither includes a gender safeguard, nor mainstreams gender concerns. The framework fails to require respect for the rights of women and girls, or ensure that impacts on women and girls are adequately assessed and addressed.

Recommendation: Establish a gender safeguard that requires respect for the rights of women and girls, consistent with the UN Convention on the Elimination of All Forms of Discrimination Against Women. Integrate gender issues systematically throughout the safeguards, including measures to ensure the full participation of women and girls, the assessment of impacts on women, men, girls and boys, and the prevention of gender discrimination in Bank-financed activities.

Sexual Orientation, Gender Identity/Expression, and Bodily Diversity

The new safeguard framework includes sexual orientation and gender identity in the definition of “vulnerable groups,” yet it fails to recognize the unique circumstances of these communities and others in terms of ensuring non-discrimination, participation, and access to responsive development and equitable benefits.

Recommendation: Include explicit requirements for assessment of differentiated impacts and non-discrimination, including in access to project benefits, for persons with a non-conforming sexual orientation or gender identity/expression, or who are bodily diverse.

Persons with Disabilities

The safeguards draft includes promising language on universal access and also includes language on accessibility in consultations and stakeholder engagement. It additionally includes persons with disabilities among those who may be vulnerable to adverse impacts. However, the rights of persons with disabilities are not sufficiently protected throughout the safeguards framework, and accessibility and inclusion are not adequately defined to ensure that all, including persons with disabilities, are able to benefit from and not be harmed by World Bank projects.

Recommendation: Mainstream language that advances the rights of persons with disabilities, consistent with the UN Convention on the Rights of Persons with Disabilities. "Inclusion" must be defined to include persons with disabilities to ensure that barriers to

participation and project benefits are addressed at all stages, and principles of universal access must be extended throughout the standards to allow access for all in consultation, design, implementation, and monitoring of World Bank projects.

Security

The new Community Health and Safety Standard draft includes provisions regarding security personnel, however, they are not consistent with international law or best practice and do not clearly cover both private and public security forces. The draft allows Borrowers to sanction the use of force for ‘preventative and defensive purposes’ and only ‘reasonably inquire’ as to whether contract workers hired for security purposes have been implicated in past abuses. It falls short of requiring Borrowers to disclose security arrangements or take necessary measures to ensure that excessive force is not used by government security personnel. The latest draft removes a requirement for grievance mechanisms and a reference to the United Nations’ Code of Conduct for Law Enforcement Officials, and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. There is no reference to the Voluntary Principles on Security and Human Rights.

Recommendation: Strengthen the provisions on security to prevent excessive use of force in connection with Bank-financed activities. Require Borrowers to disclose security agreements and take all necessary measures to prevent, investigate, report, prosecute, and remedy human rights violations by public or private security forces connected with Bank-financed activities, including provision of project-level grievance mechanisms equipped to address security-related complaints from affected communities.

Participation and Access to Information

The safeguards draft includes promising language requiring borrower governments to undertake stakeholder engagement throughout the project cycle. Unfortunately, procedural requirements critical for meaningful disclosure and consultation have been eliminated or omitted, including requirements for disclosure of impact assessments and resettlement plans prior to project approval.

Recommendation: Ensure full and effective participation by potentially affected communities and marginalized groups in project design, assessment, implementation, and monitoring, consistent with international law. Require that all information on appraisal, mitigation and benefit-sharing (including a detailed Commitment Plan) for any high or substantial risk activity financed by the project, be disclosed 120 days prior to project approval and made available in a form and language accessible to potentially affected communities.

Remedy and Accountability

The safeguards draft includes promising language requiring the borrower to provide a grievance redress mechanism to facilitate resolution of stakeholders’ concerns and grievances. The draft however, lacks sufficient detail to ensure that grievance mechanisms are effective.

Recommendation: Establish requirements for the design of grievance mechanisms to ensure accessibility (including based on culture, socioeconomic, language, geography, ability, and gender), transparency, and independence, security of complainants, and access to remedy. Mechanisms must be designed with input from potential users. Ensure that neither the project level grievance mechanisms nor Grievance Redress Service impede direct access to the Inspection Panel and that they provide notice to affected parties of the availability of the Inspection Panel as an avenue for redress.

Opportunities for Engagement

While the World Bank's Safeguards review should present a critical opportunity to advance human rights-based development positions and policies at both the international and national levels, the new draft instead poses significant challenges to the realization of human rights. World Bank member States are being consulted on the safeguards and weighing in with their positions. Unfortunately, in many countries development decisions are made with little transparency or public debate. Often decisions relating to the World Bank are within the sole purview of ministries of finance, without input from government agencies with more development or human rights expertise, such as labor or justice ministries, or national human rights institutions. Bringing in the expertise of these entities, as well as those of affected communities and civil society organizations, can help to achieve more effective and rights-respecting development policies and practices at the World Bank and beyond.

Additional Information and Resources

- The World Bank Safeguards Review Webpage (www.worldbank.org/safeguardsconsultations) contains information on the review, the draft policy, the date and location of consultations (click on the “meetings” bar), as well as public submissions by civil society and governments (click on the “submissions” bar).
- To engage in an in-person consultation, contact your national finance ministry, the World Bank Country Office (www.worldbank.org) in your country, and email the World Bank safeguards team at safeguardconsult@worldbank.org.
- Regardless of whether the Bank is holding an in-person consultation in your country, your government has a representative within the Bank who will vote on the final policies and can influence the drafting and negotiations process. Country representatives on the World Bank Board of Directors can be found at www.worldbank.org/en/about/leadership/directors. Representatives on the Board of Governors can be found at www.worldbank.org/en/about/leadership/governors.
- Current safeguard policies can be found at: <http://go.worldbank.org/3GLI3EECP0>.
- Additional analysis can be found at www.rightsindevelopment.org/worldbank.

The Coalition for Human Rights in Development is a global coalition of social movements, civil society organizations, and grassroots groups working to ensure that all development finance institutions respect, protect, and fulfill human rights.

www.RightsinDevelopment.org