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Urgewald Commentary:

First Draft (July 10, 2014) of World Bank "Environmental and Social Framework"

Massive Dilution of World Bank Safeguards:

Lack of clear policy commitments for the World Bank & open-ended compliance for Borrowers

1. The World Bank's Due Diligence

A. Over-Reliance on Client Information

The top mandatory requirement retained by the Bank is to carry out its own due diligence of a proposed project. All other Bank requirements flow from there.

Beyond a broad listing of possible environmental and social impacts, there is no definition of what this due diligence entails.

However, the due diligence will depend largely on information provided by the borrower:

"The Borrower is responsible for ensuring that all relevant information is provided to the Bank so that the Bank can fulfill its responsibility to undertake environmental and social due diligence in accordance with this Policy" (Environmental and Social Policy, p. 14, # 29).

Since Borrower activities may be the source of significant environmental and social risks, conflict of interest situations loom large in such a scenario.

The IEG has identified the IFC's reliance on the information provided by those who themselves may be causing the negative externalities as its crucial weakness (IEG, Safeguards and Sustainability Policies in a Changing World, An Independent Evaluation of World Bank Group Experience, 2010, p. xix).

But the Bank grants the Borrower even larger latitude. In cases where *"projects may have different levels of information regarding the environmental and social risks"* (Environmental and Social Policy, p. 14, # 30), the Bank's due diligence will be based on whatever general information may exist and on the Borrower's capacity and commitment.

B. Ex-Ante Disclosure of Environmental Assessment?

The current Policy on Environmental Assessment (OP 4.01) requires that the Environmental Impact Assessment for High Risk projects be reviewed by the World Bank <u>before</u> processing the project for financing (OP 4.01, # 5).

This requirement seems to have been eliminated.

C. Input by Affected Communities?

The current policy (OP 4.01 # 15) requires the Borrower to consult with project affected groups and local NGOs during the Environmental Assessment (EA) Process and to take their views into account. Since the EA is taking place <u>before</u> appraisal, this created the space for communities to make their voices heard <u>before</u> a World Bank funding decision.

This requirement seems to have been abandoned.

The Draft opens the door to a situation where Executive Directors on the Bank's Board will be asked to approve financing for projects without independent verification of

Borrower information, without input from communities and NGOs and therefore without knowing the full range of risks and possible mitigation costs.

2. Open-Ended Compliance for Borrower

Bottomless flexibility in complying with Environmental and Social Standards (ESSs) or with national environmental and social management systems or with national laws (both of which may replace ESSs).

The Borrower is expected to structure projects in a way to meet Environmental and Social Standards (ESSs*) "in a manner and timeframe acceptable to the World Bank"* (Vision Statement, p. 10, #27).

The manner and timeframe are not specified. In addition, the requirement to meet ESSs is accompanied by omnipresent qualifiers such as ***"whenever technically and financially feasible"*** (ESS1, p.25, #25) and ***"to the extent appropriate"*** (ESS1, p. 27, #29), ***"where feasible"*** (ESS6, #25).

A common commitment to environmental and social sustainability of all of the Bank's Borrowers is simply assumed (Introduction, p.8, f).

"The Borrower will assess, manage and monitor environmental and social risks and impacts …" *(*ESS1, p.23, # 15). In other words, the Borrower is judge, jury and executioner - a questionable proposition anywhere and especially in countries where democratic rights, the rule of law and institutional capacity are weak, if not largely absent.

<u>Examples of severely diluted standards</u>

A) ESS 6 Biodiversity Conservation and Sustainable Management of Living Natural Resources

World Bank support may be used for infra-structure development, mining or other high impact projects in even the ecologically most sensitive areas (provided there is no alternative site!).

Industrial-scale logging may occur in any type of forest, including the primary tropical rainforest (provided that there is a certification standard in place now or will be in the future!).

ESS6 replaces both the World Bank's existing Forest Policy (OP 4.36) and its Policy on Natural Habitats (OP 4.04).

Several World Bank Vice-Presidents and Environmental Specialists have warned that ESS6:

- Would severely weaken the protections that currently exist for biodiversity and natural habitats under both IFC Performance Standard 6 and the Bank's Operational Policy 4.04;
- Does not contain important provisions contained in the current Forest Policy;
- Is less clear-cut, leaves too much room for interpretation which will make effective implementation more difficult and more costly.

These concerns have not been addressed. We fully share them. Below is more detail:

The current **Forest Policy** (OP 4.36) refers to protecting the vital local and global environmental services and values of forests. It also applies to projects that affect the rights and welfare of forest-dependent people. **Both the protection of ecosystem services and the need to protect the rights of forest-dependent communities are not part of ESS6.**

The existing Forest Policy does not allow the World Bank to finance commercial logging in critical forests or related critical natural habitat. ESS6 is far more open-ended on this:

"Where feasible, the Borrower will locate land-based commercial forestry and agricultural projects ... on land that is already converted or highly degraded" (ESS6, #25).

This leaves ample room to use World Bank support to industrial logging even in the most sensitive rainforest areas. At least as long there is some kind of "certification" standard in place now or to be established at some future date (ESS6, #29).

The current Policy on **Natural Habitat** (OP 4.04) establishes that the Bank does not support projects, which, in the Bank's opinion, involve significant conversion or degradation of critical natural habitat.

Draft of ESS6 opens a huge loophole: The Borrower may implement project activities that covert or degrade critical habitat provided that:

"No other viable alternatives within the region exist for development of the project in habitats of lesser biodiversity value." (ESS6, #17).

Destruction of critical habitat[1] and other areas rich in biodiversity may now be compensated for by establishing **biodiversity offset areas**. There is little scientific evidence for the effectiveness of biodiversity offsets even under the best of circumstances in countries with well-functioning legal frameworks, institutional capacity and independent oversight structures in place.

[1] The World Bank's definition of Critical Habitat is as areas with high biodiversity value, including the presence of highly threatened habitats, endangered or critically endangered species, geographically restricted species, migratory and congregatory species … (Draft, Glossary. p.95)

OP 4.04 also applied to sub-projects of sectoral loans and to loans to financial intermediaries. ESS6 does not.

B) ESS7 Indigenous Peoples

The current Indigenous Peoples Policy OP 4.10 covers all indigenous peoples, based on their self-identification as members of a distinct indigenous culture.

ESS7 provides the Borrower with the option to opt-out and not have this special Safeguard applied to indigenous peoples on its territory. The Borrower may opt for an alternative approach when *"applying ESS7 would create a serious risk of exacerbating ethnic tensions or civil strife, or is inconsistent with the provisions of the national constitution"* (ESS7, #9).

This provision seriously undermines the internationally recognized rights of indigenous peoples and further increases the vulnerability of indigenous communities in borrowing countries that do not recognize them.

For example, ESS7 does not allow for the forced eviction of indigenous peoples. If a borrower opts for the alternative approach, this protection no longer applies.

3. Other Problems

A) Human Rights

The vision statement makes a cursory reference to the World Bank's support for Human Rights, but there is no binding commitment of any kind. Not even a commitment to ensuring that World Bank-supported activities are not complicit in human rights violations.

This is contrary to a long standing IEG/OED Recommendation: ***"The World Bank Group needs to recognize the expanding awareness of the human rights dimension of its policies and projects, and explore possible venues for addressing these issues"*** (World Bank Group Operations Evaluation, Extractive Industries and Sustainable Development, Evaluation Reach, July 29, 2003).

B) Policy-Based Lending

The proposed new Environmental and Social Framework is strictly limited to "Investment Project Financing". It does not cover the growing areas of policy-based lending, such as development policy loans (DPLs) or lending for Program for Results (PforR), which already now represent about 50% of the Bank's portolio. (p.3, # 10).

For example, about 40% of all forest-related loans are made in the form of DPLs and serious impacts on communities and the forests they depend on are likely.

Leaving out policy-based lending contradicts important IEG recommendations:

"***It is vital to seek consistency among the approaches followed in these growing segments of the portfolio to ensure coherence in environmental and social sustainability outcomes."*** (IEG, Evaluative Directions for the World Bank Group's Safeguard and Sustainability Policies, 2011, p.17).

c) Monitoring & Supervision beyond Projects

The World Bank's new commitment to paying attention to implementation is certainly welcome. The Bank to date has a very poor track record in monitoring and supervising the implementation of its projects throughout the project cycle. This has been amply documented by the Bank's own OED/IEG evaluation reports over the past 20 years.

But given that the responsibility for environmental and social management is meant to shift to the Borrower, monitoring and supervision will have to go beyond individual projects. Several Vice-Presidents have posed questions of the implications of this in an age of resource-efficiency, budget cuts and staff reductions:

Country Systems
The World Bank would have to evaluate and constantly up-date its analysis of the country systems for environmental and social management of its Borrowers. As per the draft, this includes the availability of resources and personnel.

National Laws
The same goes for national laws – since both country systems and national laws will be used to apply the ESSs or to replace them altogether.

d) **Capacity-Building/ Institutional Strengthening**

If there are gaps in the Borrower's environmental and social policy framework, the Draft states that the Bank will address these gaps during project preparation or project implementation by developing capacity and strengthening implementing institutions. (p.2, #19).

It is well known that capacity building and strengthening institutions is one of the most challenging tasks and requires long-term commitments.

Has the Draft considered any of the Bank-financed projects that have tried to build capacity and institutions while implementing a project? The Chad-Cameroon Oil & Pipeline Project would be such an example. IEG documents the complete failure of the capacity-building efforts (IEG, The World Bank Group Support for the Chad-Cameroon Petroleum Development and Pipeline Construction, 2009). The price for the Bank's failure continues to be paid by some of the poorest people on earth today.

4) The BIG Question:

What are the Rules for Suspending & Cancelling of Projects?

Given that the responsibility for environmental and social management is to shift to the Borrower, will the Bank suspend or cancel loans when failure to adhere to ESSs becomes obvious?

One of the Vice-Presidents has raised this question very succinctly:

"Pushing the safeguards 'downstream' to supervision would likely entail an increase in the number of problem projects, project suspensions and cancellations. Are we good at the cancellations? Will we actually suspend or cancel if safeguard problems are found? And if we do suspend or cancel if safeguard problems are found, will we be adding to the problems in the portfolio and undermining our lending in the medium-run?"

The proposed evisceration of the World Bank's existing Safeguard Framework places most of the risk on the lives of vulnerable populations and on the environment.

Ultimately, however, the Bank itself will be subject to much greater risk, albeit of the financial and reputational kind.

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