

World Bank Safeguards Review: Civil society reaction to the second Environmental and Social Framework

Civil society organizations welcome several positive changes made to the revised Environmental and Social Framework compared to the first Draft, including the removal of the opt-out clause in ESS 7 on Indigenous Peoples although even in this case a waiver process may still allow borrowers to disregard the requirements of ESS7. Other improvements, such as the inclusion of land titling projects in the scope of ESS5 on Involuntary Resettlement are also noted. However, many of the most pressing overarching issues pointed out not only by civil society, but also by the World Bank's Inspection Panel and the Independent Evaluation Group remain unaddressed. Most prominent is the limited scope of ESF application. The Inspection Panel in its comments on the second draft ESF highlights that the application of the ESF should be harmonized for all World Bank supported activities, including Development Policy Lending and Program for Results (June 17, 2015). Similarly the IEG had argued that it was vital for the Bank to seek consistency among the different lending instruments to ensure coherence in environmental and social sustainability outcomes (2011). In addition, the new draft still proposes widespread material dilutions of existing environmental and social protections provided by the Bank's current safeguards.

Other civil society concerns about the new draft ESF include the following major dilutions and problems given that the new draft proposes to:

- **Weaken existing mechanisms for transparency, oversight, and accountability** by eliminating mandatory time-bound requirements, introducing vague “flexibility” on what safeguards will be applied to each project and when, and by introducing vague requirements for projects classified at a level of “substantial risk” and “moderate risk”:
- **Initiate a heavy reliance on the borrowers' national systems**, as well as on the internal systems of financial intermediaries, in place of World Bank safeguards, while eliminating the due diligence currently required under the Bank's Country Systems Safeguard which supports the strengthening and use of national systems and ensures that their environmental and social protections are least as strong as those of the Bank.
 - o See World Bank CSS Operations Manual, Table A1 which outlines over 64 specific components of equivalence testing that are currently mandatory;
 - o Compare that to, for example, the four weakened Objectives of ESS1 which are all that a national system must be “consistent with” in terms of ESS1 as evaluated (in an undefined manner) by the Bank;
 - o This simple comparison is concrete evidence of the massive safeguard dilution.
- **Exclude thousands of displaced people from coverage** by reducing or eliminating existing protections for communities which have been forcibly or involuntarily displaced from their lands and livelihoods. Protections for those subject to involuntarily resettlement are also jeopardized by diluted and more flexible requirements on resettlement planning. Elimination of requirement that draft resettlement plan be disclosed prior to appraisal.
- **Result in increased barriers for affected communities accessing the Inspection Panel** and make it difficult for the Panel to assess the Bank's compliance as a result of the lack of specificity and time-bound standards, limited scope of coverage, and reliance on “national systems”, opaque “gap-filling measures” or safeguards of co-financers under the proposed “common approach”.
- **Eliminate the requirement to allow affected communities to provide input on the environmental impact assessment** of any project with significant impacts, prior to appraisal (normally approximately 120 days prior to Board vote.) This is likely to ultimately lead to Board approval of an increasing number of projects with damaging impacts on communities and the environment, which in turn will result in significant delays in implementation, and markedly increased costs.

- **Introduce a narrow application of labor standard.** While a welcome inclusion, the proposed labor standard is narrowly drawn and does not mention ILO core labor standards and only guarantees the rights of collective bargaining and freedom of association if found in national law. Unlike the IFC, EBRD and the African Development Bank, the second draft ESF does not require compliance with the ILO core labor standards.
- **Weaken existing protections and scope of coverage for biodiversity and forest-dependent peoples,** reversing the ban on financing projects that lead to the destruction of critical habitat, protected areas and nature reserves.
- **Allow for the evasion of safeguards altogether** by relying more heavily on borrower sub-projects for implementation and reducing due diligence requirements for financial intermediaries compared to existing Bank safeguards and even compared to the first draft ESF. Only sub-projects that the borrower classifies as "high risk" are required to apply Bank safeguards. Projects classified as having "substantial" environmental and social risks only need to comply with national regulations, which may provide weak safeguards for environmental protection and involuntary resettlement. Naturally the borrower has every incentive to classify projects as having "substantial" as opposed to "high" risks.
- **The absence of an updated safeguards budget and implementation plan and meaningful human rights language** in the mandatory portions of the ESSs are also significant concerns.

The revised ESF maintains the Bank's reliance on borrower self-assessment, self-monitoring and self-reporting. While encouraging local capabilities and systems is critically important, transfer of responsibility for safeguards implementation to borrowing countries is highly problematic.

As Vinod Thomas, the former head of the IEG and now head of Evaluation at the ADB noted in a recent Financial Times article:

"As very few country systems are adequate, their ready application for risky projects (labeled in the proposal as high and substantial as opposed to moderate and low) would endanger communities and the environment, as seen in the grievances from applying country systems in China, India and elsewhere" (Sept, 23, 2015).

These concerns are exacerbated by the lack of 1) An updated safeguards budget and implementation plan 2) A methodology for determining whether borrower frameworks offer protections equivalent to those provided by the ESSs. This is critical especially in light of weakening social and environmental standards and increasing restrictions on civil society space in many Bank member states.

Civil society continues to find problematic the absence of binding timing/procedural benchmarks for borrower compliance with the ESSs. The achievement of "objectives materially consistent with the ESSs" "in a manner and timeframe deemed acceptable by the Bank" is extremely subjective. A very serious concern is deferring upstream due diligence by allowing for the preparation of indigenous peoples plans, resettlement plans and other critical documents to be prepared some time during implementation. This renders Board assessment of potential risks highly problematic. Once a project is approved corrective actions become unlikely and requirements are likely to be watered down. These unclear benchmarks for compliance also jeopardize the Inspection Panel's ability to identify whether ESSs are violated and when, thus undermining its power to achieve redress and compensation for project-affected communities.

Finally, civil society is deeply concerned about the continued weakness of the human rights language in the second draft ESF. The Bank is sending a clear message to the world, and to its own staff, that respect for human rights is aspirational and discretionary. In his most recent report, the United Nation Special Rapporteur on extreme poverty and human rights refers to the World Bank as a human rights free zone and calls on the World Bank and its member states to adopt a new and consistent approach to human rights (Sept. 29, 2015) We agree.

Although we note some improvements, contrary to President Kim's commitment, the draft Environmental and Social Standards represent a serious dilution of the World Bank's existing Safeguards.