

Comments on the World Bank Safeguard Review, Bank Forestry Portfolio and Forestry and Natural Habitat Policies

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April 2014

1. Upward harmonization / “No policy dilution”: World Bank President Kim has committed the Bank to “no dilution” of safeguard policies as a result of the Safeguard Review process. In addition, when “harmonizing” existing Bank safeguard policies and procedures with those from other institutions or systems, the Bank must adhere to the strongest and best practices, avoiding a “race to the bottom” and ensuring upward harmonization of standards.

2. Architecture: Safeguards must be rules-based, mandatory, contractually and legally binding upon both the Bank and borrowers for all activities including policy lending, investments, projects, sub-projects.

3. Scope: Development Policy Lending, other non-investment lending, use of “country systems”

As currently framed, environmental and social standards (Safeguards) will only apply to the World Bank’s shrinking portfolio of project finance, but not to other Bank lending instruments. However, 40% of the Bank’s forest sector lending is supported by Development Policy Loans (DPLs, OP 8.60). Project preparation teams face serious obstacles in applying OP 8.60 to manage forest-related social and environmental risks, including identification of “likely significant effects” and indirect impacts on forests.¹ Compliance with Bank Safeguard requirements must also be required, including in the use of “country systems” approaches. Any weakening of equivalency requirements between “country systems” and Bank safeguards, including through the Systematic Country Diagnostic or the Country Partnership Framework, would represent a policy dilution.

4. EBRD and IFC Performance Standards as an unsatisfactory model for WB Safeguards: Policy dilution

A significant source of “policy dilution” arises from the proposed use of the EBRD or IFC Performance Standards as a model for Bank safeguards. There is a surprising lack of discussion of upward harmonization with the highest standards including those of the Asian Development Bank.

EBRD: There is a new proposal to base much of the Bank’s safeguards on the EBRD safeguard approach. If this step is taken, it will lead to a direct dilution of existing Bank safeguards. EBRD safeguards are far weaker than those of other institutions, such as the Asian Development Bank. EBRD safeguards are not mandatory: the new draft EBRD safeguards even proposes that clients can bypass normal project assessment requirements and use “alternative approaches”. Not only that, the EBRD’s new draft proposes deferring undefined aspects of project assessment until after Board approval. EBRD safeguards have been particularly weak in providing for sufficient disclosure and participation of affected communities and other stakeholders in decision-making. The EBRD’s troubled record in the Ukraine provides a stark example of the dangers of such an approach. In addition, the EBRD delegates important bank obligations to clients, and relies heavily on client self-reporting and self-monitoring, which has led to miscategorization of high-impact projects as “category B” and substantial negative impacts on local communities and the environment. New EBRD draft safeguards even propose a weakening of important biodiversity safeguards, including for critical habitats, and propose widespread use of “offsets”, including in critical habitats. In sum, application of EBRD-type safeguards to the World Bank will result in a direct and substantial dilution of World Bank policy.

IFC: Use of IFC Performance Standards would also lead to a reduction of the Bank’s direct and mandatory role in oversight, including assessment, categorization, monitoring, consultation, information disclosure, and evaluation of Bank funded activities and investments along with a shift towards a greater reliance on client self-assessment and self-reporting and the client’s environmental and social risk management systems. A shift to more of a self-

assessment regime, such as that of the IFC, will lead to less accountability, less compliance and poorer safeguards results. This represents not only a policy dilution but a surprising lack of upward harmonization with international best practices resulting in a “race to the bottom” in terms of environmental and social standards.

We note that the IFC’s Performance Standards (PS) did not prevent the 2012 launch of a new IFC program under the Climate Investment Funds/Forest Investment Program to prepare to support industrial logging on up to 700,000 hectares of intact forest in Indonesia, including in high conflict regions such as West Papua. In 2013, the PS did not prevent IFC participation in a \$5B geothermal “clean energy” Clean Technology Fund project in Indonesia which poses a direct threat to protected forests and intact forests and yet which featured no impact assessment on forests or forest communities.

The PS did not stop the IFC from investing in Corporacion Dinant in Honduras, despite credible evidence that the company was complicit in forced evictions and substantial human rights violations. The CAO found that these failures arose, in part, from staff incentives “to overlook, fail to articulate, or even conceal potential environmental, social and conflict risk”ⁱⁱ, and that staff felt pressured to “get money out the door”ⁱⁱⁱ and were discouraged from “making waves”^{iv}.

Given this as well as CAO findings^v of the failure of IFC to provide any meaningful oversight on environmental and social issues for close to half of its portfolio, we strongly feel that the IFC is not a good example to utilize in the context of the WB Safeguards review.

5. Human Rights: Free Prior and Informed Consent, Human Rights Impact Assessment, Land acquisition policy, Gender-sensitive risk and impact assessments:

In addition, we would like to underscore the introduction of an assessment of human rights risks and impacts, the documentation of consent, as well as a policy on land acquisition.

Respect Human Rights: Introduce a commitment to respect and protect international human rights law and not support any activities that are likely to contribute to or exacerbate human rights violations. This commitment should be articulated in the World Bank’s new integrated safeguards framework and should extend to all Bank projects, programs, and activities, irrespective of the funding mechanism utilized.

Prohibit Discrimination, Advance Equality: An essential element of the World Bank’s human rights commitment would be ensuring that all activities it supports do not involve discrimination against affected people on any grounds prohibited by international law. The World Bank should actively work to address inequality in the activities it supports. This would include, for example, respecting the rights of persons with disabilities and working to ensure that all activities supported by the Bank are disability-inclusive.

Undertake human rights due diligence to achieve these commitments, including by undertaking human rights impact assessments to identify the human rights impacts of its activities and avoid, address or mitigate adverse impacts. The Bank can also use such impact assessments to maximize positive human rights impacts of its activities, consistent with its poverty alleviation mandate.

We would like to underscore the importance of gender-sensitive risk assessment and impact assessment. Assessment of impacts and risks to affected communities must be disaggregated by gender, including assessments of direct and indirect project impacts due to changes in living environment. In addition, specific measures must be taken to ensure the involvement of women in decision making during all stages of Bank-supported activities with potential impacts on lives and livelihoods. The Bank must ensure the provision of full and complete project information to women in languages, forms and ways understood by them, as well as gender-sensitive and gender-responsive grievance mechanisms at project and program level.

Any land acquisition or resettlement policy must address non-acquisition impacts on land tenure and tenure systems (including conflict, inequality, and cultural rights violations). It is of vital importance that the involuntary resettlement policy to be brought into line with international human rights standards, including by expressing a

prohibition on direct or indirect support for forced evictions in any Bank projects and ensuring access to adequate housing (as defined in international law) upon resettlement.

6. The Rights of Indigenous Peoples must be respected with a stand-alone policy, and Free and Prior Informed Consent (FPIC) must be integral to this policy.

The World Bank's Policy on Indigenous Peoples (OP 4.10) requires "Free Prior and Informed Consultation leading to Broad Community Support," but this falls far short of "Free Prior and Informed Consent (FPIC)."

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) sets the minimum standard for the respect and recognition of the rights of indigenous peoples. Thereby, the explicit recognition of rights of indigenous peoples to their lands, territories and resources, to self-determination including on development concerns and the right to their cultural heritage shall underpin the IP Policy of the World Bank.

7. Forest and Natural Habitat Policy Recommendations:

In addition to the above recommendations regarding consultation, FPIC, and upward harmonization it is of vital importance that forest-dependent communities must be involved throughout the process of project planning, implementation and monitoring, and forest management as well as in the identification of critical natural habitat of importance to local communities. The policy must recognize the relationship between forests and people, including Indigenous Peoples, and must recognize the customary land tenure of indigenous peoples that is collective and incorporate the management of forests by local communities. The forest safeguard must prevent adverse livelihood impacts. It is critical that the revised policy not restrict access to or use of natural resources that indigenous peoples or local communities depend on for their physical, economic, social, cultural, or spiritual well-being. Given the substantial negative environmental and social impacts of industrial-scale logging articulated by the IEG Evaluation^{vi}, the External Advisory Group on Implementation of the World Bank's Forest Strategy^{vii}, and others^{viii}, the Bank must not fund industrial logging. In addition, the term 'forest' must be redefined to distinguish between natural forests and plantations, In certain countries, the designation of "degraded forest" has been utilized to allow powerful plantation companies to engage in land-grabbing from forest dependent communities. This must be prohibited. The conversion or degradation of critical natural habitats, including through the use of offsets, must also be prohibited.

World Bank Group Support for Industrial-Scale Logging in Tropical Forests (often as timber concession reforms) While the WBG's 1991 Forest Policy Paper included a ban on support for industrial logging in primary moist tropical forests, the Bank's 2002 Forest Strategy overturned this ban, claiming that it had been too conservation-oriented and not geared towards poverty reduction. However, both the Mid-Term Review (2007) and the Independent Evaluation Group's (IEG) Evaluation of the 2002 Forest Strategy (2012)[5] note that the Bank has not paid attention to rural poverty. The IEG also found no evidence that Bank-supported industrial timber concession reform has led to sustainable and inclusive economic development and recommended a comprehensive public review of Bank support for industrial timber concession reforms in tropical forest countries. (IEG, 2012,xxi). Instead of being a parallel track undertaking, the comprehensive review recommended by the IEG could provide valuable input into what a Forest Safeguard should look like.

Indonesia's troubled 2012 Forest Investment Plan, supported by the World Bank, the IFC and the Asian Development Bank includes the launch of new IFC program under the CIF/FIP to prepare to support industrial logging on up to 700,000 hectares of intact forest in Indonesia, including in high conflict regions such as West Papua.

The Use of Biodiversity Off-sets to Compensate for the Destruction/Degradation of Critical Natural Habitat

The Safeguard Review includes revising the World Bank's Policy on Natural Habitats (OP 4.04). The current policy does not allow the Bank to support projects that, *in the Bank's opinion, involve significant conversion or degradation of critical natural habitats.*

The revision of OP 4.04, the use of EBRD biodiversity language and/or the development of a draft national offsets plan could allow the Bank to finance activities with significant impacts on critical natural habitats as long as there is an *off-set plan* to ensure **there will be net positive gains of those biodiversity values for which the critical habitat was designated**. Our concern stems from the fact that the IFC's Performance Standard 6 (*Biodiversity Conservation and Sustainable Management of Living Natural Resources*) has undergone precisely this kind of weakening and IFC standards are frequently being cited as a model for the Safeguard Review. EBRD's new draft standards specifically propose sharply weakened language and an overreliance on offsets. Scientific evidence indicates that claims of "no net biodiversity loss" are problematic and that biodiversity loss (and associated harm to resource-dependent communities) is a likely outcome.

The Intersection of Illegal Logging, Forest Destruction & Money Laundering

In 2012 the World Bank published an important report that establishes the need to integrate support for criminal justice systems with forest protection strategies. This recommendation must be part of a revised Forest Safeguard.

8. Inspection Panel and the Right to Redress

The inspection panel plays an important role in holding the Bank accountable for the impacts of the projects it supports. It is crucial that the independence of the inspection panel is ensured and that its core function of giving affected communities the opportunity to have their claims investigated is protected. We are concerned that the changes that have been proposed to the Panel's Operating Procedures regarding the eligibility criteria for investigation and the pilot program for "Early Solutions" can contribute towards diluting the independence of the panel process and limit the opportunity for affected communities to have their cases heard. **It is important to ensure that the core function of the inspection panel is not diluted, and that an independent, fair and effective process is ensured for requesters.**

The revised safeguards framework should guarantee the right to an effective remedy, including the right to reparations, for people who have suffered human rights violations and other harms resulting from Bank projects. The policy should require that independent, accessible and transparent grievance mechanisms are established at the local level for every project that carries risk of social or environmental harms. The policy and Bank procedures should provide recourse for affected people to seek remedies, including where appropriate compensatory damages, if they are found by the Inspection Panel to have suffered harm as a result of a Bank operation. These provisions should be stipulated in the legal agreement with the borrower.

9. Safeguard Implementation:

The safeguards must be accompanied by detailed BPs / Guidance Notes (implementation manuals for staff) prior to Board submission. The effectiveness of the policy will depend on diligent implementation. Mandatory requirements to hold staff and implementing agencies accountable with sanctions for violations are needed. Policies must be accompanied with language about financial obligations and budgetary allocation.

ⁱ Midterm Review of Implementation of the World Bank Forest Strategy (2007)

ⁱⁱ CAO investigation p. 59.

ⁱⁱⁱ CAO investigation p. 26.

^{iv} CAO investigation p. 57.

^v http://www.cao-ombudsman.org/documents/Audit_Report_C-I-R9-Y10-135.pdf

^{vi} IEG. Managing Forest Resources for Sustainable Development: An Evaluation of World Bank Group Experience' (2013), *supra* note 1.

^{vii} Kaimowitz, David, EAG. (March 2008). http://siteresources.worldbank.org/INTFORESTS/Resources/EAGletter_March2008.pdf.

^{viii} For example, Greenpeace. (2007). *Forest reform in the DRC: how the World Bank is failing to learn the lessons from Cameroon.*; Zimmerman, B. et al. (2012). *Prospects for Sustainable Logging in Tropical Forests*. Bioscience: 62 (5).; Elson, D. (2013). *Guide to investing in locally controlled forestry*.

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