

Policy briefing note on World Bank safeguards Both ENDS

1 Introduction

1.1 Both ENDS and the World Bank

Since its early years, Both ENDS has had significant interest in developments related to the World Bank and other international financing institutions.

Initially, the interest was sparked by the Bank's continuous involvement with the development of large-scale dams, which met with strong resistance from Southern NGOs. Secondly, as a Dutch NGO we were in a strategic position; not only is the Netherlands a significant donor of the Bank with 2% of its budget coming from Dutch ODA; also, the Dutch ED represents a 4,5% of the votes, since he/ she represents 13 other countries in the Board of the Bank.

Since the late 80s Both ENDS has been engaging with the World Bank on the social and environmental impacts of its financing decisions. In the early 90s the organisation was deeply involved in advocating the Bank using its leverage in financing plans for the Sardar Sarovar dam in the Narmada River in India. This campaign resulted in a major enhancement of the Banks safeguard policies, and the introduction of its independent Inspection Panel. Today, many other International Financing Institutions (IFIs), including the IFC and most recently the Dutch FMO have development and implemented similar complaint mechanisms.

In the context of its long history of engagement with the Bank on these issues, this briefing note is an expression of our deep concerns over the direction the Bank currently seems to consider.

1.2 Purpose of this discussion paper

This paper presents Both ENDS' preliminary analysis of the World Bank's newly proposed Safeguard Policy, in which we assess if the proposed standards will provide for adequate and timely protection to communities and the environment.

The content of this paper is based on our first read of the draft safeguards¹ currently under review as well as the critical comments so far provided by civil society organizations worldwide.²

This note marks Both ENDS' effort to ensure that multilateral and national development banks comply with (human) rights based safeguards for all banking activities.

¹ <http://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies>

² Visit: www.safeguardcomments.org, a website launched by Both ENDS and other Civil Society Organizations

2 The Safeguards policy defined

2.1 Role of Safeguards

The Safeguard policy guides World Bank operations, so that they meet the Bank's social and environmental standards. The Bank requires its clients to comply with these standards; otherwise the bank may withhold the financing for the projects or activities that are not in compliance.

The World Bank safeguards have far-reaching impacts. They determine the social and environmental obligations of the Bank for its lending volume of over 50 billion dollars per year. Moreover, as a leading standard, they influence the policies of other development lenders.

World Bank Safeguards are important to prevent harmful social and environmental impacts of bank-financed projects. The Inspection Panel, which is the accountability mechanism of the bank, enables affected people to file a complaint, if they think that the Bank does not meet its own safeguard requirements. The Safeguards are of crucial importance, since -due to its multi-lateral status- the bank is not required to abide by national laws. The World Bank safeguards and its Inspection Panel are therefore the only mechanisms that affected people can use to hold the Bank to account.

Moreover, for those civil society groups in developing countries that lack well-established legal and democratic decision-making frameworks, the Bank's safeguards are one of the few incentives to hold their own government to account.

Obang Mehto of the Solidarity movement for a new Ethiopia in a meeting at the World Bank Annual Meetings in Washington DC on 7 October 2014 with advisors of the Executive Directors from Australia, Germany, the Nordic Countries, Belgium, Switzerland and France, said the following about the Bank's role to hold its borrowers accountable:

“How to impose safeguards in countries like Ethiopia, where no civil society is allowed to exist? There is about no opposition in parliament. Indigenous People are fully ignored by the government. Many African governments do not want to talk about human rights. Critical journalists are punished for the articles they write. Countries with dictatorship must be held accountable through international bodies and the World Bank has to play a role in this with mandatory and binding safeguards.”

2.2 The current Safeguards policy review

In 2012, the World Bank embarked on a review process of its safeguards policies in response to a critical internal evaluation of its performance by the Independent Evaluation Group (IEG) of the bank.³

³ IEG, Safeguards and Sustainability Policies in a Changing World, An Independent Evaluation of the World Bank Group Experience, 2010

The current safeguards review forms part of a broader reform process and takes place in the midst of a Bank-wide strategic reorganization. The reorganization aims at making lending more cost-effective, with fewer rules in place.

The changes in the international environment, which is becoming more competitive with the emergence of development banks such as the Asia Infrastructure Development Bank and the BRICS bank, motivate the review. Also, other development banks and an increasing number of financial instruments aimed at 'emerging markets' as well as developing countries do not follow equal standards, thus undermining safeguards through increased competition to the Bank's lending activities.

Conditionality to lending, including the safeguards, also have become part of diplomatic wrangling following geopolitical changes, as one might conclude from a recently published article in the New York Times:

“The United States Treasury Department has criticized the new China infrastructure development bank as a deliberate effort to undercut the World Bank and the Asian Development Bank, international financial institutions established after World War II that are dominated by the United States and Japan, senior South Korean and Australian officials said.”⁴

The current draft of the reviewed Safeguards seems to indicate that the Bank wants to increase its overall lending and sets out to relax its own rules because it thinks they are too onerous and will scare off borrowers.

According to Mr. Vinod Thomas, the by head of the Asian Development Bank Independent Evaluation Department and former head of the World Bank Independent Evaluation Group, there is a mistake in the underlying reasoning:

“[...] more financing for infrastructure in Asia will be good for the region's legendary economic growth, but it also raises the stakes for guaranteeing social and environmental defenses. A common myth everywhere is that mitigating socio-ecological harm will detract from (economic) growth. The reality, however, is that lack of conservation will undermine growth, critically in the face of runaway climate change.”⁵

2.3 Concerns regarding the draft Safeguards

Concerned people in and outside the Bank now worry that with the proposed new safeguards the door will be opened to large-scale environmental destruction and a lack of protection for communities affected by projects.

Leaked emails to the English newspaper Guardian reveal that senior staff members of the bank fear that proposed new regulation would lead to an increase in "problem projects":

“Ana Revenga, the bank's vice-president for poverty reduction, says in one of the emails: "It might appear that the bank is interested in lending more, hence lowering standards ... [It] would likely entail an increase in the number of problem projects and cancellations.”⁶

⁴ http://www.nytimes.com/2014/10/10/world/asia/chinas-plan-for-regional-development-bank-runs-into-us-opposition.html?_r=0

⁵ <https://www.devex.com/news/the-real-purpose-for-safeguard-reform-at-mdbs-84495>

⁶ <http://www.theguardian.com/business/2014/jul/06/activists-alarm-world-bank-leak-easier-loans>

3 Main concerns

3.1 Ex-ante requirement versus flexible and non-transparent processes

When reading the draft framework published for comment, more effectiveness for the Bank seems to mean there is a move towards open-ended and vague flexibility on what standards will be applied to each project and when.

Borrowers could make a “promise” to prepare an “Environmental and Social Commitment Plan” for eventual safeguards implementation. They would no longer need to ensure compliance with the Bank’s safeguards prior to Board appraisal of their proposed project. The Commitment plan is only a summary of what the borrower promises to do.

The Bank wants to overcome the defects occurring during the different stages in the project cycle by finding solutions at the moment they occur. The draft proposes to delete the ‘up front’ requirements and it leaves customers of the Bank the freedom to start a project without meeting safeguard requirements from the beginning of projects. When the money is out of the door without well-defined covenants – including ESG aspects – any leverage to assure that projects meet safeguards requirements is lost.

The existing mandatory safeguards and the ex-ante requirement for mandatory compliance with safeguard protections for communities and the environment are going to be replaced with an open-ended time table for compliance with environmental and social standards within “a timeframe acceptable to the Bank”. Thus the Bank moves in an opposite way from seeking community consent to the projects it supports, which actually would be an essential requirement to ensure the support of the Bank responds to locally driven development aspirations.

Specifically, with respect to involuntary resettlement the open-endedness could imply that a hydropower project receives approval for a loan from the Bank before potentially affected people are being informed, consultations are being held, or a resettlement action plan is designed and being shared with them.

“The Bank’s “ex ante” safeguards framework, a framework which assured that communities would have the right to provide input to decision makers about projects that affect their lives and livelihoods when it counts prior to the disbursement of funds, when there is maximum leverage over the project so that changes that prevent harm to local communities or the environment can be required before any funds are disbursed. Once the money is out the door there is far less likelihood that the voices of impacted communities will be heard.”⁷

It also implies that Board members are no longer receiving the inputs of public consultations needed to be able to base their decision making on a fully informed basis.

What the Bank proposes is conflicting with the precautionary principle that is guiding both Dutch and European Union’s social and environmental policies.

⁷ ‘World Bank Safeguards Draft Proposes Elimination of Environmental and Social Protections’, Friends of the Earth U.S.,2014

3.2 Responsibility of implementation with client countries

According to the draft new policy the client countries will be allowed to monitor their own projects.

Current safeguards provide the Bank with a clear mechanism for supporting the use of “country systems”: where national systems are determined adequate to replace the Bank’s safeguards, they must provide environmental and social protections at least equivalent to those required by Bank safeguards. This requirement is eliminated in the new proposal. The Bank’s proposal moves to a reliance on national systems, in the absence of the assessment of the equivalence with Bank safeguards.

Rayyan Hassan of NGO Forum on ADB states:

“As a result of the realities of governments in our region, where human rights abuses are frequent, due process is rare, those who raise concerns may “disappear”. The World Bank’s proposal to eliminate the Bank’s robust Country Systems Safeguard and replace it by a push for the direct use of ‘national systems’ in the absence of a rigorous evaluation represents a direct danger to communities and environment posed by the influx of international finance.”

The role and mandate of the Inspection Panel comes into question with the newly proposed structure as well. If project activities undertaken using “national systems” violate the borrower’s laws and harm local communities or their environment, do the victims have the right to seek redress through the Bank’s Inspection Panel?

Vinod Thomas, head of the Asian Development Bank Independent Evaluation Department, expressed his concern:

“The most contentious draft proposal concerns the shift to be made from achieving safeguard requirements at project approval to agreeing on a framework for fulfilling safeguard standards during project execution — with the responsibility for implementation on client countries. The nub is whether this flexibility in approach and self-assessment will be accompanied by enhanced oversight and accountability.”⁸

A question can be raised here about the capacity of the Bank to do so: It can be questioned whether there is an enabling environment for enhancing the oversight and accountability now the Bank is re-organizing and cutting costs. This would be in contrast to the IEG’s recommendation that safeguards monitoring, evaluation and completion reporting needs to be strengthened.⁹

Moreover, in a previous re-organization the position of vice-president for environmental and social policies was cancelled and it has never been restored in the new organizational structure. This means it is harder for staff working on safeguards to counter decisions at the top management level, which with the new strive for effectiveness in mind will be even more based on the banking rationale of disbursing money as much and quickly as possible.

⁸ <https://www.devex.com/news/the-real-purpose-for-safeguard-reform-at-mdbs-84495>

⁹ http://siteresources.worldbank.org/EXTSAFANDSUS/Resources/Safeguards_eval.pdf, p.xxiii

3.3 Dilution of Scope

The proposed safeguards apply only to investment lending, and not to the two other main lending instruments that the Bank has, Program for Results (P4R) and Development Policy Loans (DPL). Given that (at current levels) half of all Bank funding is channelled through instruments other than Investment Lending, the safeguards should apply to all instruments to ensure consistency over all Bank financed activities and avoid excessive risk-taking and reputation-damage in large parts of the Bank's portfolio.

An example of a DPL is a program loan to Democratic Republic of Congo to improve governance in the forest sector. It put in place a regulatory framework for industrial logging concessions in the tropical rainforests. The Bank determined there would be no significant social and environmental impact. This resulted in a complaint to the Inspection Panel brought by indigenous peoples. The Inspection Panel concluded that "the policy's system for determining whether there will be significant effects on the environment and natural resources is flawed and questioned whether a DPL was the right choice of instrument given the social and environmental risks associated with DRC's forest sector."¹⁰

In case safeguards would have been applied to program loans the effects on environment and natural resources would have been detected beforehand and measures could have been taken to mitigate impacts.

3.4 Financial intermediary lending

According to the leaked documents to the Guardian, the Bank's legal department identified a serious dilution of existing Bank safeguards for "Financial Intermediaries (FIs)".

The current safeguards require all FI sub-projects to carry out appropriate Environmental Assessments and that the FI verifies that the subproject meets national requirements. The new draft only requires 'high risk' projects to be carried out in accordance with the safeguards.¹¹

The proposed rules are weaker than the ADB requirements for financial intermediaries, which require the ADB to assess and 'clear' category A subprojects of FIs

3.5 Opt out of Indigenous Peoples rights

The draft Framework provides an opt-out option for governments who do not wish to provide essential land and natural resource rights protections to Indigenous Peoples (IP) within their States.¹²

For many Indigenous Peoples (and other resource-dependent communities), the loss of traditional agriculture and fishery grounds/domains signify, in effect a loss of culture, which results in social dislocation, psychological trauma and increased health risks. Often they are forced by their governments to assimilate to the dominant culture and relegated to the lowest rung of the economic structures of non-indigenous society. No so-called 'opt out' options for IP policies should be offered to governments.

¹⁰ World Bank Safeguards and Development Policy Lending, a Primer, Bank Information Center and Global Witness, April 2013.

¹¹ World Bank Vice Presidency Memos, May 2014.

¹² World Bank Safeguards, July 2014, CODE draft, ESS1, par. 28

3.6 Biodiversity offsetting

The draft proposes the use of “offsets” to compensate for the destruction of critical habitats and “priority biodiversity features”.

Priority “biodiversity features” are defined as a subset of biodiversity that is particularly irreplaceable or vulnerable, but at a lower priority level than critical habitat.¹³

The notion that a loss of any protected ecosystem can be compensated by restoration/ reforestation in another ecological system lacks any scientific basis.¹⁴ Moreover the draft allows the destruction of critical habitat and even protected areas and nature reserves as well as forests and biodiversity of importance to local communities.

The new draft moreover does not recognize the rights of forest peoples, and therewith is a massive dilution of the existing safeguard on Forests and Natural Habitats.

3.7 Involuntary resettlement

The draft fails to include a comprehensive set of safeguard standards on land tenure and land rights and weakens land rights protections for poor and vulnerable groups.

It removes the critical requirements in relation to resettlement-planning instruments, including baseline data, and weakens requirements to assess alternatives, in order to avoid or minimize displacement.

It dilutes requirements for information disclosure, consultation and participation of displaced persons in resettlement planning, implementation and monitoring.

It dilutes Bank appraisal and supervision responsibilities for resettlement planning and execution, relying on self-assessment and self-reporting by the borrower and approving displacement-inducing projects without conducting due diligence on comprehensive resettlement plans.

No further safeguards apply to protect against large-scale land grabbing.

In a joint statement about the World Bank’s Draft Safeguards Failure to Protect Land Rights and Prevent Impoverishment, Both ENDS and others state that:

“Bank safeguards must ensure that agriculture projects do not infringe upon the tenure rights and arrangements of people and communities with land and natural resource-based livelihoods, including smallholder food producers, fisher folk, herders and forest dwellers. These land and natural resource users should be the primary beneficiaries of any such project, including through the strengthening of their tenure security and increasing their access to productive resources.”¹⁵

3.8 Human rights

Human rights are not mentioned in the safeguards other than in the preamble.

¹³ WB Safeguards, July 2014 CODE draft, pg 66, para 15, pg 67 para 16, 19 ibid, Glossary, pg 98

¹⁴ <http://www.sciencedirect.com/science/article/pii/S0006320712002716>. Also: Environ Manage. 2006 Mar;37(3):351-66.

¹⁵ <http://www.inclusivedevelopment.net/joint-statement-world-banks-draft-safeguards-fail-to-protect-land-rights-and-prevent-impoverishment-major-revisions-required/>

The draft safeguard policy fails to articulate how it will operationalize its stated commitments to human rights, which must underpin an effective safeguard system. Human rights are universal. The respect for human rights is necessary for attaining development goals. The safeguard policy must explicitly identify how the Bank will adequately identify risks to human rights for activities it intends to support through the establishment of a robust human rights due diligence process.

The Bank should not delegate human rights responsibilities to its borrowers. In the words of a Forest Peoples Program statement on the draft (signed by Both ENDS):

“If the decision on whether international human rights are to be respected or not rests solely with national governments, then the Bank is acting to undermine agreed international human rights standards, protected by UN and regional human rights instruments.”¹⁶

3.9 Climate change

The draft includes only sporadic mention of climate change and fails to require assessments of greenhouse gas emissions for all high-emission projects or to take steps to reduce emissions.

4 Recommendations to the Dutch government

As a member of the World Bank and one of the largest contributors, the Dutch government should take a firm position to ensure the Safeguards get strengthened instead of weakened:

- a) Ensure that the requirement for the Bank to conduct its own due diligence is maintained, including adhering to the requirements of the existing Country Systems Safeguard, and not deferring responsibilities to clients or rely on dubious client “self-assessment”;
- b) The Netherlands supported the revised ADB safeguards in 2009. In many respects the Dutch position on ADB safeguards is a recommendable example for the definition of a current Dutch position on the World Bank, including its stance on a 120 days consultation period prior to project approval, instead of promised notes;
- c) Ensure the safeguards apply to all Bank activities, as in the case of the ADB safeguards;
- d) Ensure the World Bank retains authority over its due diligence, and monitoring, including when lending through Financial Intermediary (FI subprojects). The ADB requires ADB assessment and approval of any category A FI subproject. While this should be the minimum safeguard standard for the World Bank, we strongly recommend that, given the well-recorded failure of environmental and social due diligence at the subproject level, the Bank prohibits investment in Category A subprojects by Financial Intermediaries.
- e) No so-called ‘opt out’ options for Indigenous Peoples policies should be offered to governments, since Bank investments could be misused by governments in projects that do not respect the rights of IPs;

¹⁶ Significant concerns with the proposed World Bank safeguards for indigenous peoples, Forest Peoples Program, June 2014.

- f) Protections for natural habitat, biodiversity and forest people must be kept in place;
- g) Bio-diversity offsetting should not be introduced as an instrument, since the unicity of one eco-system cannot simply be replaced by replanting species in another;
- h) In line with Minister Ploumen's commitment in October 2013¹⁷, ensure that the new World Bank Safeguards policy incorporates adequate human rights due diligence;
- i) Push for and be prepared to contribute to an adequate budget and structural changes needed at the World Bank to ensure adequate implementation and monitoring of the Safeguards (in line with the IEG recommendation);
- j) Organize European World Bank members to come to a unified position that reflects the above.

¹⁷ <http://www.rijksoverheid.nl/nieuws/2013/07/23/mensenrechten-belangrijk-punt-van-aandacht-bij-wereldbank.html>