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the Earth
United States**



World Bank Safeguards Draft Proposes Elimination of Environmental and Social Protections

WB Vice Presidents: The Bank will be “Lending More, Lowering Standards”, creating “More Problem Projects” and setting a “Bad Precedent”

Despite World Bank President Kim’s guarantee that that Bank’s “review” of its environmental and social protections would not lead to any “dilution” or weakening of protections, the World Bank’s July 2014 draft environmental and social safeguards plan reveals a shocking attempt to eviscerate protections for the poor while giving a green light for the destruction of forests and the natural environment. It is unclear whether the ongoing review process can be salvaged.

On July 30, the Bank’s Committee on Development Effectiveness is scheduled to vote on whether to send the draft out for public comment.

We urge CODE members to send this draft back to Management with instructions that they re-write it to ensure no policy dilutions and fix the deficiencies, some of which are listed below.

The draft is incomplete, vague, and lacks information necessary for a meaningful consultation (i.e. pg 35 “This [blank page] will specify the issues that need to be addressed in an environmental and social assessment.”¹).² There is no budget or description of staff allocation that will explain how the new burden of substantial analyses of country legal frameworks, country implementation track record, and extensive monitoring will be funded, or whether it will be an unfunded mandate, leading to failure of the new system, and harm to communities and the environment. Information on the procedures for implementing the safeguards Framework is missing.

The draft proposes to eliminate clear and mandatory “up front” requirements designed to protect communities and the environment in exchange for two promises:

¹ World Bank Safeguards, CODE Draft, July 2014, pg 35

² In May, one of the World Bank Vice Presidents had also complained about this, to no avail:

2. With regard to the required procedures, ESS9 requires all FIs to screen all borrowers and all sub-projects against an exclusion list in Annex 1. However, Annex 1 was not included.

(1) instead of having safeguard protections ready prior to disbursement of funds, the draft appears to allow borrowers/clients promise to – at an undetermined time in the future deemed “acceptable to the Bank” -- eventually implement some sort of safeguards and;

(2) (without specifying a budget) that the Bank, during a period of staff cutbacks and budgetary retrenchment, will deploy a new and enormous monitoring effort on a project by project basis to ensure, after the funds have been disbursed, that the client-designed and client self-assessed safeguards are feasible and are being implemented throughout the lifetime of each project.

One of the key safeguards that appears to be eliminated includes the **current right of communities to comment on projects with the potential to significantly affect their lives and livelihoods well prior to the Board vote** to approve funds for a project.

If this interpretation is correct, and the Bank will no longer require environmental and social assessments of projects to be made available for public comment prior to appraisal, the Bank’s new plan would unacceptably deprive communities of the right to voice their concerns prior to the release of funds and would prevent the Board from hearing what risks affected communities perceive from the projects upon which the Board must decide.

As one World Bank Vice President recently stated, this approach presents “potential reputational risks” to the Bank since “it might appear that the Bank is interested in lending more, hence lowering the ex ante safeguards and pushing more onto supervision (in a context of staff reductions and budget cuts) as well as onto borrowers” something which “would likely entail an increase in the number of problem projects.” The new draft safeguards call “for more effective monitoring and supervision. A nice sentiment, but how will this fit with tight (and shrinking) budgets?”³

In May, World Bank Vice Presidents identified shocking dilutions of existing policy in the May 2014 Draft Safeguards. Our assessment shows that Bank management largely ignored the input of the Vice Presidents (except when they called for additional dilutions) and that the dilutions identified by the Bank’s own Vice Presidents have still been retained in the July 2014 Draft Safeguards presented to CODE for the June 30 vote.

These dilutions include:

Dilution 1: Dismantling the safeguards framework; apparently eliminating the right of communities to weigh in on projects affecting their lives, livelihoods and environment prior to the disbursement of funds; eliminating the leverage of the Board to prevent harmful projects from being funded;

Dilution 2: Safeguards are no longer mandatory, but would feature open-ended compliance on a “timeframe acceptable to the Bank”;

Dilution 3: Borrowers can opt-out of applying safeguards: No need to apply Indigenous Peoples safeguard;

Dilution 4: Shift to self-assessment, self monitoring by borrower/client instead of by Bank;

³ Leaked World Bank Vice President memos on proposed draft safeguards, May 2014, pg 19.

Dilution 5: Elimination of Country Systems Safeguard, promotion of use of “borrower systems”/country systems without the clear, independently determined equivalency requirements of the Country Systems Safeguard. Gutting of Inspection Panel role?

Dilution 6: Eradication of protections for biodiversity, forests, and forest-dependent peoples

Dilution 7: Weakening of requirements for Financial Intermediaries

Dilution 8: Categorization, failure to apply robust requirements to projects with “Substantial Risk” of harm to communities or the environment.

Dilution 9: Definition of project, associated facilities, loss of project “area of influence”

Dilution 10: Weasel Words (“financially feasible”, “acceptable to the Bank”, “appropriate”, “disproportionate”, etc.) & Lack of Competent Financial Analysis

Dilution 11: Endless flexibility, requiring more (expensive) monitoring and supervision tailored to each project, without evidence of budgetary support

Dilution 12: Weakening of WB standards through use of IFC approach; Difficulty of applying IFC private sector standards to WB public sector projects

Concerns about land rights, including Bank support for large scale “voluntary” resettlement

Concerns: No binding language regarding human rights.

Concerns: The need for rules about fertilizers, antibiotics, GMOs and nanotechnologies in the pollution prevention section.

Other concerns not raised by VPs: Lack of harmonization of labor standards with best international practice, ILO Core Labor Standards

Background

WB President Kim: “No Dilutions”

In 2011, the World Bank announced plans to review and “update” its mandatory environmental and social protections or “safeguards.” In October 2012, after concerns were raised repeatedly by civil society organizations monitoring the process, World Bank President Kim made a public commitment that the Bank’s Safeguard Review Process would not lead to any weakening or “dilution” of protections for communities impacted by Bank projects or environmental protections.

Leaked Bank Vice Presidents’ Comments on May 2014 Draft Safeguards Documents Pervasive Violations of President Kim’s “No Dilutions” Promise

In May 2014, Vice Presidents of the World Bank were asked to comment on a draft version of the new safeguards and identified massive dilutions of existing environmental and social protections. They requested that these be remedied.

One Vice President commented⁴:

***‘No dilution’:** One commitment given by Bank management was not to dilute its current Safeguards. The new Framework, therefore, while reflecting much of the structure and substantive requirements of the IFC PSs, retains key features of the current Safeguards. Nevertheless, certain fundamental concepts carried over from the IFC PS may give rise to claims of dilution. These include the ability for the Borrower to comply with requirements over time, the narrower definition of project and associated facilities, and the Borrower’s lack of control over third parties.*

Secrecy and lack of consultation with the Bank’s own safeguards experts.

Vice Presidents noted the striking lack of consultation with even with the Bank’s own environmental and social experts and several called for substantial revisions of the draft and the postponement of the meeting of the Bank’s Committee on Development Effectiveness to discuss the draft. It is at that meeting that the decision will be made whether the draft is good enough to launch for public consultation.. One office commented:⁵

OVERALL COMMENTS

As OPCS is aware, there was a very limited review of the draft framework by a selected group of Social and Environmental specialists two weeks ago. Those practitioners provided extensive comments to the drafts and we understand that due to time constraints, those inputs have yet to be fully integrated into this OVP version. We hope that those inputs will be taken into account prior to the draft’s submission to CODE. Due to the magnitude of the change the ESF represents, and its importance for Bank’s operations, it is critical that the range of Environment, Social and operational TTLs who will be key implementers of this new framework be better consulted. While all of us appreciate the sensitivity of these documents, we hope that between now and the eventual CODE meeting, a more structured internal consultation and review process will take place, and we look forward to working with OPCS on refining the drafts.

Given the points we mention below, we would recommend delaying the submission of the draft framework to CODE, and we would recommend a redrafting of the policy statement, ESS1 and parts of ESS 7 on IPs.

Another office commented:

⁴ Ibid, pg 25.

⁵ Ibid, pg 10.

4. Is the proposed timeline and consultation plan acceptable? The ESF (e.g. ESS 1) needs some significant re-drafting to reflect the advice and views of the practitioners. The CODE meeting could be pushed back to September to allow for more consultation with practitioners and to revise the framework to fully incorporate their views.

Another Vice President commented:

Finally, the Region is concerned that the ESF has not been drafted in a very consultative manner, in particular with the environmental and social specialists who ultimately will be working with the Borrowers to implement the Framework. While we appreciate that leaks can certainly undermine the process at this sensitive stage, it is nevertheless important that this process be as inclusive as possible. The Africa Region strongly recommends that the draft Environmental and Social Framework (ESF) be sent to CODE only after the critical issues that require consensus among the environmental and social safeguards practitioners have been satisfactorily addressed and the ESF revised appropriately.

July 2014 Bank Safeguards Draft Ignores Bank Vice Presidents' objections to Dilutions of Environmental and Social Protections

Bank management, however, refused to heed most of this input, although they did implement requests to further weaken the draft – for example, at the request of one of the Vice Presidents, by changing the definition of the goals of pollution management from “minimizing” greenhouse gas emissions to merely “reducing” GHG emissions.⁶

In July 2014, the Bank issued a draft -- leaked to the public by whistleblowers -- which proposes the dismantling of protections for the poorest of the poor and the environment upon which they depend, an evisceration of the Bank's social and environmental protections.

In this assessment, we examine dilutions identified by Bank Vice Presidents in the May 2014 version of the draft Safeguards, which the Bank has refused to correct and which appear in the July 2014 draft which has been presented to the Committee on Development Effectiveness (CODE) for a vote on 30 July. In addition, we provide information on several dilutions and concerns not raised by the Vice Presidents. We note that this is not a full list of dilutions.

DILUTIONS

Dilution: Dismantling the safeguards framework; apparently eliminating the right of communities to weigh in on projects affecting their lives, livelihoods and environment prior to the disbursement of funds; apparently eliminating the leverage of the Board to prevent harmful projects from being funded;

The Bank's current safeguards require that -- prior to the vote by the Bank's Board of Directors (representing the member countries of the Bank) on the disbursement of funds for projects which could have significant negative impacts on communities or the environment -- a series of key steps must be taken. The Bank's OP 4.01 on Environmental Assessment requires that:

“The Bank advises the borrower on the Bank's EA requirements. The Bank reviews the findings and recommendations of the EA to determine whether they provide an adequate basis for processing

⁶ “Defining pollution management as including *minimizing* GHG emissions is too strong (note that the statement of objectives refers only to reducing them).” Italics in original, Leaked WB VP memos, pg 9. May 2014

the project for Bank financing.” BP 4.01 further fleshes this out and explains that the “EA is an integral part of project preparation.” “For all Category A projects and for Category B projects that are proposed for IDA funding and that will have a separate EA report, the T[ask] T[eam] advises the borrower in writing that (a) before the Bank proceeds to project appraisal, the EA report must be made available in a public place accessible to affected groups and local NGOs and must be officially submitted to the Bank, and (b) once the Bank officially receives the report, it will make the report available to the public through its InfoShop.”⁷

This process has historically enabled local communities a substantial time – usually at least 120 days prior to Board approval - to examine and provide comments on the environmental (and social) impact analysis of the proposed Bank-funded activity. Other financial institutions have similar requirements – for example, the Asian Development Bank requires a 120 day public comment period prior to Board approval on activities with the potential for significant harm.

The dilutions identified by World Bank Vice Presidents include the fact that the Bank appears to propose dismantling 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 which 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.

The Bank’s current approach means that, prior to the crucial moment of disbursement of funds, Board members have the right to examine a relatively complete data set pertaining to the potential impacts of proposed activities – including information from the communities likely to be affected by the projects. The Board could vote to prevent potentially damaging activities from being funded or require that potentially damaging approaches be corrected *prior to the disbursement of funds*. Once the funds have been disbursed, the Board has little leverage.

In a massive dilution of environmental and social protections, Bank management now proposes to dismantle this ex ante approach – with the promise that there will, instead, somehow be a vast increase in monitoring and supervision efforts – a sort of “**endless monitoring**.” However, the Bank has a documented track record of failure to ensure appropriate monitoring and supervision of Bank activities. Currently, the Bank is undergoing substantial staff and budgetary cuts. Nowhere in this draft is there any calculation of the budgetary requirements for the expensive proposed “endless monitoring” approach.

In the words of one Bank Vice President:

“What is the estimated impact on Bank lending? Noting that we are shifting from ex ante to ongoing monitoring, does this suggest we will have no ex ante reviews or tests before proceeding to a loan, then find upon implementation that there is a problem, and declare the project in suspension or cancelled?”

The shift from ex ante to ongoing monitoring or ex post review has potential reputational risks. Numerous issues around this:

⁷ OP.4.01, section 5; BP 4.01, sections 7, 9

- (i) *It might appear that the Bank is interesting **lending more, hence lowering the ex ante standards** and pushing more onto supervision (in a context of staff reductions and budget cuts) as well as onto borrowers.*
- (ii) *Pushing the safeguards 'downstream' to supervision **would likely entail an increase in the number of problem projects**, project suspensions, cancellations. Are we good at cancellations? Will we actually suspend or cancel if safeguards problems are found? And if we do suspend or cancel extensively, will we be adding to the problems in the portfolio and undermining our lending in the medium run?*
- (iii) *...This clause calls for **more effective monitoring and supervision. A nice sentiment**, but how will this fit with tight (and shrinking) budgets? Not clear how we will square the circle of rising supervisory burdens and declining resources and staff.”⁸*

Dilution: Safeguards are no longer mandatory but would feature open-ended compliance on a “timeframe acceptable to the Bank”;

Bank Vice Presidents pointed to several examples of this including:

- Borrowers could make a “promise” – an “Environmental and Social Commitment Plan” to prepare for eventual safeguards implementation, no longer actually preparing for safeguards implementation prior to Board appraisal of their proposed project. It is unclear whether the Board may only be able to examine the “Commitment Plan” instead of assessing the extent/worthiness of actual safeguards preparation prior to their vote.
- Safeguards don’t have to be implemented when the project begins – they can be implemented later – on an unidentified “timeframe acceptable to the Bank”, specified in the “Commitment Plan”;

Dilution: Borrowers can “opt out” of applying safeguards – for example, if they don’t want to, they don’t have to apply safeguards for Indigenous Peoples; they can invent “alternative arrangements”;

According to one Vice President:

“The “Alternative Arrangements Clause” as currently drafted will also be highly problematic and potentially set a bad precedent. While recognizing the challenges of implementing the IP policy in several regions, it will be important to clarify how the alternative arrangements would assure that essential elements of ESS 7 – including direct consultations with Indigenous Peoples and, in some categories of projects, determination of FPIC (if FPIC is ultimately adopted) – would be achieved since these are among the elements some borrowers find most objectionable. There is also concern that allowing for alternative arrangements may establish a bad precedent, both in encouraging other countries to “opt out” from straightforward management of Indigenous Peoples issues and, potentially, from other environmental or social policy issues that they find difficult or objectionable.”⁹

Dilution: Shift to self-assessment, self monitoring by borrower/client instead of by Bank; In addition, the Bank’s environmental and social safeguard requirements can be replaced by those of private equity funds and other financial intermediaries as long as they do not “materially deviate” from the “objectives” of the ESS.

⁸ Page 19 PREM VP

⁹ WB VP Memos, pg 12

“10. Where the Bank is providing support to a project involving a Financial Intermediary, and other multilateral or bilateral funding agencies have already provided financing to the same Financial Intermediary, the Bank may rely on the requirements of such other agencies, including the institutional arrangements already established by the Financial Intermediary, in place of all or some of the requirements set out in the ESSs, provided that, in the view of the Bank, such requirements will not materially deviate from the objectives of the ESSs.”¹⁰

Dilution: Elimination of Country Systems Safeguard, promotion of use of “borrower systems”/country systems without the clear, independently determined equivalency requirements of the Country Systems Safeguard; gutting of Inspection Panel role?

According to one Vice President:

“Reliance on National Laws and Regulations and the Use of Country Systems

*In the Policy and within the various ESSs, the borrower can follow its own national laws, provided that they satisfy the requirements of the specific policy/standard considered. While this is likely to increase Borrower’s ownership, it also adds a considerable burden on the Bank to evaluate the national laws and ascertain whether it meets the Bank’s standards and minimum requirements. It is also not clear when this assessment would be done, how it would be commissioned in the face of the budgetary constraints, and whether it needs to be carried out per project, per sector, etc. **self-assessment is likely to be problematic. We suggest delegating this assessment to the Bank, similar to the practice followed under the existing OP 4.00 [Country Systems Safeguard].**”¹¹*

The Bank’s current Country Systems Safeguard requires that “**equivalence**” of national systems with Bank safeguards will **be determined on a policy by policy basis** and that “before deciding on the use of borrower systems, **the Bank also assesses the acceptability of the Borrower’s implementation practices, track record and capacity.** ... The borrower is responsible for achieving and maintaining equivalence as well as acceptable implementation practices, track record, and capacity, **in accordance with the Bank’s assessment...** Bank Responsibility: **The Bank is responsible for determining the acceptability of borrower systems and for appraising and supervising pilot projects that use these systems.** ... prior to beginning appraisal, the **Bank makes publicly available its analysis** of the equivalence of borrower systems and Bank requirements and its assessment of the acceptability of borrower implementation practices, track record, and capacity. In addition, the **Bank ensures that relevant project-related environmental and social safeguard documents**, including the procedures prepared for projects involving subprojects, **are disclosed in a timely manner before project appraisal formally begins**, in an accessible place and understandable form and language to key stakeholders.”

After eliminating the Country Systems Safeguard, the current draft defines the Bank’s due diligence as relying on self-reported information from the borrower - a perversion of the concept of independent due diligence:

“The Bank’s due diligence responsibilities will include, as appropriate: {a} **reviewing the information provided by the Borrower** relating to the environmental and social risks and impacts of the project,²² and requesting additional and relevant information where there are gaps that prevent the Bank from completing its due diligence; and {b} providing guidance to assist the Borrower in developing appropriate measures consistent with the mitigation hierarchy to address environmental and social risks and impacts in accordance with the ESSs.

¹⁰ WB Safeguards Draft, July 10, 2014 (CODE Draft), para 10, E& S Policy

¹¹ WB VP Memos, May 2014

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.”¹²

In addition, the Bank’s currently required assessment of the borrower’s “implementation practices, track record and capacity” has been replaced with an assessment of the borrower’s “capacity and commitment.” Utilizing a borrower’s “commitment” – a promise -- instead of a borrower’s “track record” represents another clear dilution of existing policy.

The Bank’s proposed move to a reliance on national systems, in the absence of the rigorous assessment of the equivalence of Bank safeguards and national systems currently required under the Country Systems Safeguard has several implications:

- The Bank will now have to monitor compliance of the Borrower with the Borrower’s own myriad laws and regulations;
- The Bank’s increased monitoring burden will require a substantial budgetary increase, as well. A budget must be presented with this draft in order to make a meaningful analysis possible.
- Grievance mechanism – 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? Or has the Bank, in a staggering dilution, removed such project activities from Inspection Panel purview? The role and reach of the Inspection Panel must be made explicit in this draft prior to consultation on the draft.

According to the Bank’s legal department, “Following on from the point regarding national law ... where the project is relying on the Borrower’s E&S Framework for delivery of all or part of the project or compliance with national law for satisfaction of ESS requirement, we anticipate that the Bank will need to carry out due diligence on national law requirements and form a judgment as to whether or not they meet the relevant requirement of the ESSs.”¹³

Dilution: Eradication of protections for biodiversity, forests, and forest-dependent peoples

One of the Bank’s Vice Presidents stated:

“ Biodiversity Conservation and Sustainable Management of Living Natural Resources (ESS6)

“ENV has provided extensive technical comments on this ESS. The Region agrees that some of the language in ESS 6 would severely weaken the protections that currently exist for biodiversity and natural habitats under both IFC’s PS6 and the Bank’s OP 4.04.”¹⁴

Another Vice President’s office stated:

“Some of the language in ESS 6 would weaken the protections that currently exist for biodiversity and natural habitats under both IFC’s PS 6 and the Bank’s OP 4.04. Moreover, it does not include many of the important components of the Forestry Policy (OP 4.36) which will be subsumed under ESS 6

¹² Paragraph 29, pg 14, “WB Safeguards Draft for CODE Meeting, July 30”

¹³ WB VP memos, pg 26

¹⁴ WB VP memos, pg 7.

More broadly, ESS 6 (as now drafted) is less operationally clearcut, and leaves too much room for interpretation, which will make effective implementation more difficult and more expensive.”¹⁵

In addition eviscerating existing protections for forests and biodiversity, the July draft goes even so far as to **eliminate the protections for forest dependent peoples** – protections recognized in current Bank Safeguards OP 4.36 (Forests) and OP 4.04 (Natural Habitats). Both of these policies, eliminated by the new draft recognize the rights of forest peoples. The Forest Policy aims to protect “the vital local and global environmental services and values of forests” and its scope applies to “projects that affect the rights and welfare of people and their level of dependence upon or interaction with forests.”¹⁶

The Bank’s forest policy requires that “The Bank does not finance projects that, in its opinion, would involve significant conversion or degradation of critical forest areas or related critical natural habitats.”¹⁷

Period. That’s it. No weasel words, no exceptions. Simple. To repeat:

“The Bank does not finance projects that, in its opinion, would involve significant conversion or degradation of critical forest areas or related critical natural habitats.”

In an incredible dilution, the new (July) safeguards draft proposes the use of “offsets” to make up for the newly proposed allowable destruction of critical habitats and destruction of “priority biodiversity features.”¹⁸ “Priority biodiversity features” “are defined as a subset of biodiversity that are particularly irreplaceable or vulnerable, but at a lower priority level than critical habitat.”¹⁹

Comment from Vice President’s office:

“Since ‘like-for-like or better’ is an art as well as science and remains challenging to do in practice, it is debatable if offsets should be an option for addressing significant residual impacts on critical habitats.”²⁰

We did not find comments from Vice Presidents on this topic, but the Bank’s current safeguards remark on the “important biological, social, economic, and existence value” of “all natural habitats”²¹ and include in the definition of critical habitat, “areas initially recognized as protected by traditional local communities (e.g. sacred groves), and sites that maintain conditions vital for the viability of these protected areas... or sites identified on supplementary lists prepared by the Bank or an authoritative source determined by the Regional environment sector unit (RESU). Such sites may include areas recognized by traditional local communities”.²²

¹⁵ WB VP memos, pg 12.

¹⁶ OP 4.36 para 2, 3.

¹⁷ Ibid, para 5.

¹⁸ WB Safeguards, July 2014 CODE draft, pg 66, para 15, pg 67 para 16

¹⁹ ibid, Glossary, pg 98

²⁰ WB VP memos, pg 9

²¹ OP 4.04, Annex A, paragraph 1(a)

²² ibid, paragraph 1(b)(i) and (ii)

In a blow to forest-dependent communities, and yet another dilution, this language – and any recognition of forests critical to forest-dependent peoples as “critical habitat” -- has been eliminated in the new draft.

In another attack on the rights of forest communities, and another dilution, the following language in the current safeguards has also been eliminated:

“ The Bank expects the borrower to take into account the views, roles, and rights of groups, including local nongovernmental organizations and local communities affected by Bank-financed projects involving natural habitats, and to involve such people in planning, designing, implementing, monitoring and evaluating such projects.”²³

In addition, the new draft allows projects with “the potential to adversely affect an area that is legally protected.”²⁴

Scope dilution? The current Natural Habitat policy “applies to subprojects under sectoral loans or loans to financial intermediaries.”²⁵ It is unclear the extent to which this is true in the proposed safeguards. If not, this would represent yet another dilution.

Dilutions in scope:

Current safeguards state, “Wherever feasible, Bank-financed projects are sited on lands already converted (excluding any lands that in the Bank’s opinion were converted in anticipation of the project).”²⁶

The new draft states “Where feasible, the borrower will locate land-based commercial agriculture and forestry projects (particularly projects involving land clearing or afforestation) on land that is already converted or highly degraded.”²⁷ There is a more stringent requirement for plantations which appears in a footnote, but existing safeguards refer to “Bank-financed projects”.

Dilution: Financial Intermediaries

The Bank’s legal department identified a serious dilution of existing Bank safeguards for “Financial Intermediaries”

ESS9 Financial Intermediaries

8. **Para 13:** Current Safeguards require all sub-projects to carry out appropriate EA (in accordance with OP 4.01), and that the FI verifies that the subproject meets the environmental requirements of appropriate national and local authorities and is consistent with OP 4.01 and other applicable environmental policies of the Bank. However, ESS9 only requires *High Risk* projects to be carried in accordance with the ESSs. All other sub-projects are required to comply with national law only. This could give rise to claims of dilution.

In addition, the proposed rules for Financial Intermediaries are far weaker than those at other institutions, including the Asian Development Bank, which require the ADB to “clear” any “category A” subprojects of financial intermediaries.

²³ *ibid*, paragraph 10

²⁴ WB Safeguards, July 2014, CODE draft, pg 68, para 20

²⁵ *ibid*, paragraph 8

²⁶ OP4.04, para 5

²⁷ WB Safeguards, CODE Draft, July 2014, pg 69, para 25

Dilution: Categorization, failure to apply robust requirements to projects with “Substantial Risk” of harm to communities or the environment.

According to the Bank’s Independent Evaluation Group, ²⁸

Unless the requirements for projects with Substantial Risk are clearly differentiated from those with Moderate Risk, the policy’s objective of adopting a risk-based approach will not be achievable. Projects with Substantial Risk are those with potentially significant and adverse impacts, which may affect an area broader than the physical footprint of the project, similar to the effect of High Risk projects. Yet the policy has higher requirements of risk mitigation only for projects with High Risk. If category B has been subdivided, stronger provisions are needed for projects with Substantial Risk.

The intention of adopting an outcome-based approach “... is to ensure that projects with Substantial Risk...

Throughout the new draft safeguards, higher level mitigation requirements continue to apply only for projects categorized as “High Risk”. Despite IEG’s input, projects with “Substantial Risk” of harm to communities or the environment are not subject to higher requirements.

The Bank’s legal department warned, “We note the change in categorization, both in terms of nomenclature and in substance. This will need to be carefully reviewed, to address any claims of dilution.”²⁹

Dilution: Definition of project, associated facilities, loss of project “area of influence”

According to one Vice President, “We note that the definition of ‘project’ and Associated Facilities is narrower than the current Safeguards. While we value the enhanced clarity, there is a danger that the narrower definitions may raise a claim of dilution. Related to this point, we note that the ESSs only apply to the Associated Facilities to the extent of the Borrower’s control or influence over such facilities.”³⁰

The Bank’s Independent Evaluation Group commented:

- Projects that result in cumulative impacts can lead to much greater adverse effects than stand alone impacts, but the policy is silent on this. We view the definition of Associated Facilities as being limited to those that are contemporaneous with the project is narrow and ignores cumulative impacts. We suggest that references to transboundary or global impacts include provisions for cumulative impacts.

This input was ignored.

Dilution: Weasel Words & Lack of basic Financial Analysis

Like the July draft, the May draft was filled with “weasel words” -- ambiguous terms which act to eviscerate clear and clean safeguards protections. Vice Presidents identified some of them, for example, the often-used “**financially feasible**” clause which shows up at least eight times in the new draft.³¹

²⁸ WB VP memos, pg 30

²⁹ WB VP memos, pg 26

³⁰ WB VP memos, pg 27.

³¹ WB VP memos, pg 8

- ESS1, para 31 and footnote 18. As worded, the paragraph seems to allow “financial infeasibility” to be a rationale for limiting compensation for unmitigated harms. But if a project does not generate enough overall net benefit that compensation for residual losses is financially feasible, the project should not be implemented!

The current draft maintains this approach: “The environmental and social assessment will apply a mitigation hierarchy, which will favor the avoidance of impacts over minimization or reduction of impacts to acceptable levels, and where residual impacts remain, will compensate for/offset them, whenever technically and financially feasible.”³²

The definition of “financially feasible” in the footnote pertaining to the above paragraph states “Financial feasibility is based on relevant financial considerations, including relative magnitude of the incremental cost of adopting such measures and actions compared to the project’s investment, operating, and maintenance costs, and on whether this incremental cost could make the project non-viable for the Borrower.”

As explained by the Bank Vice President, (and ignored by drafters of the safeguards) a project that does not generate enough overall benefits to ensure that compensation for losses is feasible should not be supported by the Bank.

Other weasel words which dilute safeguards – to the point of meaninglessness -- in the new draft include:

“in a manner and timeframe acceptable to the Bank” – this phrase or similar phrases used at least 11 times in the draft;

* Instead of the Bank supporting **projects that comply with safeguards**, the Bank supports projects that “are expected to meet the requirements of the ESSs in a manner and within a timeframe acceptable to the Bank.”

“where appropriate” – used at least 18 times in the new draft. Meaning? Who knows. Introduces vague terminology, most likely impossible for affected communities to prove violations of safeguard provisions using “where appropriate.”

“48. **Where appropriate**, the Bank will require the Borrower to engage stakeholders and third parties, such as independent experts, local communities or nongovernmental organizations (NGOs) to complement or verify project monitoring information. “

4. In assessing, developing and implementing a project supported by Investment Project Financing, the Borrower may, **where appropriate**, agree with the Bank to use all or part of the Borrower’s national environmental and social framework to address the risks and impacts of the project, providing such use will enable the project to achieve objectives consistent with the ESSs.

Where appropriate, the Borrower will undertake a road safety audit for each phase of the project and routinely monitor incident and accident reports to identify and resolve problems or negative safety trends.

15. The Borrower will identify, evaluate and monitor the potential traffic and road safety risks to workers and potentially affected communities throughout the project life-cycle and, **where appropriate**, will develop measures and plans to address them.

³² WB Safeguards, July CODE draft, pg 25, para 25

“disproportionately” - The Bank will assess:

Social risks and impacts, including: (i) threats to human security through the escalation of personal, communal or inter-state conflict, crime or violence; (ii) risks that project impacts fall disproportionately on disadvantaged or vulnerable groups;⁹

The Bank should assess risks that project impacts fall on disadvantaged or vulnerable groups, “disproportionately” or not.

In addition, the word “may” (instead of “shall” or “must”) is used repeatedly throughout the text.

Dilution: Endless flexibility, requiring more (expensive) monitoring and supervision tailored to each project, without documentation of budgetary support

According to one Vice President:

“Resource Requirements

The proposed system is a paradigm shift from the OPs, in that it allows for a greater flexibility through, inter alia, allowing for a phased implementation of the environmental and social requirements, over a time frame acceptable to the Bank. The proposed Standards also delegate much responsibility to the Borrower in terms of assessment This would call for a greater level of resource allocation, in terms of accessibility to qualified environmental and social specialists throughout the life of the project, and especially during the implementation. In light of the current budgetary constraints, this could be a challenge.”

Another Vice President stated:³³

“Additional burdens for Borrowers and Bank Staff: The document proposes a number of additional tasks for the Borrower and the Bank...while broadening the range of environmental and social issues that need to be covered. In addition, more efforts will be required to prepare the social risk and labor assessments in the ESIA. The proposed framework imposes a significant burden on our clients, who do not have the capacity to carry out current obligations, and it would be much more challenging for them to fulfill the additional commitments proposed in the Framework....The new/additional requirements in the proposed policy would require more administrative budget from the Bank at a time when the Bank is striving to reduce Bank expenditure. So, the Banks commitment about resources needs to be explained more fully.”

The Bank’s legal department added:

1. From LEG’s perspective, we welcome the clarity in the Framework between the Bank’s role (in the Policy) and the Borrower’s role (in the ESSs). However, our view is that the proposed Framework will create in the short to medium term, significant resource demands, both for the Bank and Borrowers, which need to be taken into account. Resource demands will arise partly as a consequence of the Bank’s expanded due diligence role and the implications of adopting a progressive compliance regime. While the ESSs apply to the Borrower, the Bank will need to assure itself that the project will be capable of complying with the ESSs. The Bank will need to carry out due diligence in respect of the requirements of the ESSs (some of which will be new for Bank projects), and will require the Bank to ensure it has the expertise and resources to do so. We note that the Policy (para 57) commits the Bank to allocate appropriate resources to ensure effective implementation of the Policy.

³³ WB VP memos, pg 3.

A Vice President's office commented that the fact that "the appropriate mitigation measures will take place during implementation rather than prior to the Board approval" also "means more involvement from the Bank side to continuously assess and monitor progress. It further carries the risk of increased inconsistencies across regions and GPs as to what is appropriate and what is acceptable. And of course it will have cost implications that we will need to take into account in our new norms."³⁴

Concerns about land rights, including Bank support for large scale "voluntary" resettlement

A Bank Vice President's office commented as follows:³⁵

Land Acquisition, Restoration of Land use and IR (ESS5)

In general, this standard is well written however several issues still need to be resolved and/or provisions strengthened including: the distinction between voluntary and involuntary resettlement and clarifying the operational arrangements, provisions relating to forced eviction or security of tenure, loss of access to natural resources and other restrictions on land use, livelihood restoration; and the importance of considering the environmental consequences of large-scale resettlement.

The current draft exempts from the safeguard on land acquisition and involuntary resettlement "voluntary transactions" including for "large-scale transfers of land", non-land impacts on incomes or livelihoods, land-titling activities, or regional or national "planning of natural resources or land use...to promote sustainability." This is a substantial concern. The current draft notes that "Special care must be taken with respect to voluntary transactions of significant areas of land (for example in the case of large-scale transfers of land for agricultural investment purposes)."³⁶ This will involve additional due diligence (and additional budgetary support), as one Vice President noted:

ESS5 Land Acquisition, Restrictions on land Use and Involuntary Resettlement

1. **Para 5, Footnote 11:** We note the additional wording on voluntary land acquisitions for significant areas of land, particularly in the case of large scale transactions for agricultural investment purposes. This provision (designed to provide assurance) will also require increased due diligence on such transactions to ensure their true voluntary nature.

Dilution: Weakening of WB standards through use of IFC approach; Difficulty of applying IFC private sector standards to WB public sector projects

Vice Presidents commented on the difference between the IFC's private sector lending and the Bank's portfolio:

³⁴ WB VP memos, pg 2

³⁵ WB VP memos, pg 12

³⁶ WB Safeguards, July CODE Draft, pg 56, footnote 11

Public sector lending: The IFC Performance Standards (*IFC PSs*), both the system and substantive requirements, were designed specifically for the private sector, reflecting the nature of private entities, their operating environment and the type of projects they develop. While the scope of requirements set out in the IFC PSs is broader than that of Safeguards, they are typically applied within narrower geographical boundaries than a Bank-funded project. Further, the IFC PSs recognize that it may not be appropriate or practical to expect a private sector client to be responsible for actions by third parties, including the Government, regardless of their influence on project related impacts. This illustrates the inherent differences between a Bank Borrower, who typically has sovereign national jurisdiction, and an IFC Borrower, whose responsibilities are limited to the project. Furthermore, there are certain matters that one can ask of a private sector borrower that are simply inappropriate to ask of a sovereign borrower. Among

Specific comments

Aligning Bank, IFC and MIGA standards

We welcome the framework's integrated World Bank Group perspective. Having one common framework and a single set of environmental and social guidance for the World Bank, the IFC and MIGA would help our staff and our clients. However, unifying the safeguards will be challenging because the responsibilities of a World Bank Borrower and an IFC Borrower differ substantially. We recommend additional

Concerns: No binding language regarding Human Rights

In the words of a Vice President:

"Our key comments are as follows:

*The Vision Statement: We believe that this should be totally revised to better express the vision and role of the Bank. As currently drafted, there appears to be a very limited "vision". Indeed, the Statement could be perceived as simply a way of containing language on human rights in a non-mandatory statement.*³⁷

Other concerns: One VP office flagged the need to include in the section on pollution prevention, rules about fertilizers, antibiotics, GMOs and nanotechnologies³⁸

ESS 3 (Resource Efficiency and Pollution Prevention): Except for the part on pesticide use, ESS3 is focused on industrial processes which are less relevant in the Bank's portfolio. More emphasis could be put on sectors that are important to IDA, such as agriculture, since both high-input intensive agriculture and low-input agriculture need to evolve towards rational and effective use of resources and pollution prevention. Producing more food will become more challenging with the constraints of available land, water, inputs (fertilizers and pesticides). Thus, the application of ESS3 to agricultural activities should not be limited to the use of pesticides, but should also include issues related to fertilizers (especially nitrogen), antibiotics, Living Modified Organisms, and nanotechnologies.

Concerns about Labor Standards: Although these concerns were not raised by the Vice Presidents, current draft Labor Standards are far weaker than that of other multilateral institutions and, unlike them, does not refer to or require fulfillment of ILO conventions or Core Labor Standards. In addition, contract workers are not appropriately covered.

³⁷ WB VP memos, pg. 25

³⁸ WB VP memos, pg 6.