

United States Comments on World Bank Safeguards Review

April 29, 2014

IMPORTANCE OF WORLD BANK SAFEGUARDS AND ASPIRATIONS FOR THE REVIEW

The United States (US) believes that the World Bank's safeguard policies are an integral part of its comparative advantage and impart value added beyond the financing it provides. The safeguards are an essential tool for avoiding or mitigating environmental and social risks in World Bank-financed projects, and are a key component of borrower and Bank risk management efforts. At a practical level, the Bank's safeguards help to ensure that Bank projects do not result in unintended or harmful consequences to people and the environment, both in the short and long-terms. In addition, the safeguards process provides an opportunity to go beyond a "do no harm" approach and to strive for positive environmental and social outcomes. This is already evident at the project level, where the safeguards not only prevent harm, but are also used to help project sponsors and affected people become more skilled at addressing the environmental and social dimensions of sustainable development.

Moreover, strong safeguards yield benefits beyond individual projects. Through the processes of impact assessment, mitigation planning and implementation of individual projects, the safeguards can help inform Bank and borrower responses to broader challenges faced at the regional, national, and global level such as climate change and biodiversity. Lastly, the Bank can serve as a role model and resource for borrower countries seeking to improve their own environmental and social safeguard standards, regulations, and capacity which are all essential for long-term sustainable development.

The US strongly agrees with the World Bank's stated objective for the ongoing review of its safeguard policies as set forth in the 2012 Approach Paper: "to strengthen the effectiveness of the safeguard policies in order to enhance the development effectiveness of Bank operations." The US also concurs with the desired outcomes articulated by the Bank in the Approach Paper:

- a renewed partnership with borrowers;
- better approaches to addressing environmental and social risks of the next decade;
- increased effectiveness, efficiency, and timeliness;
- policy harmonization; and
- alignment with the evolving nature of the Bank's business.

The US would also like to highlight another high-level outcome that is implicit in these five desired outcomes: improved implementation of the safeguards throughout the project cycle through more robust monitoring and supervision. In considering all the desired outcomes, the US would like to highlight the importance it attaches to World Bank management's commitment that there will be no dilution of Bank safeguards standards.

Throughout the safeguard review process, the US urges the World Bank to continue to share and update its timeline and documents with interested parties on an ongoing basis through the specially established website, as well as engage in a wide-ranging consultation process with external and internal stakeholders.

CURRENT SAFEGUARDS: CONTEXT

Historically, the World Bank has been a global leader in safeguards. Since it first adopted an environmental assessment policy in 1989, the Bank has been recognized as having strong policy requirements and strong due diligence prior to Board approval of development projects. However, the World Bank needs to keep pace with emerging challenges and progress achieved by other multilateral development banks (MDBs) that have more recently put in place new policies reflecting lessons learned from both their own experience and the Bank's. To cite a few examples of what other MDBs have done, the African Development Bank (AfDB) is the latest MDB to apply its safeguards to policy lending as well as investment lending; the Asian Development Bank (AsDB) has meaningfully integrated gender in its safeguards; and the International Finance Corporation (IFC) has led the way in addressing issues pertaining to labor and working conditions.

The 2010 review by the World Bank Group's Independent Evaluation Group (IEG), "Safeguards and Sustainability Policies in a Changing World," identified several areas for potential improvement of the current safeguards. The report noted weaknesses in implementation, and made recommendations on strengthening safeguards supervision arrangements as well as monitoring, evaluation, and completion reporting. The report also identified expanding thematic coverage of the safeguards as an area for improvement, recommending coverage of social effects such as community and gender impacts, labor and working conditions, and health, safety and security issues.

UNITED STATES RECOMMENDATIONS FOR THE SAFEGUARDS REVIEW

The US believes the World Bank safeguards review should result in the establishment of a new and comprehensive institutional approach that recognizes safeguards as critical for advancing the Bank's development goals and meeting clients' needs. The review provides the Bank with the opportunity to put in place up-to-date, systematic, and clear policies that improve project design and implementation and build borrowers' capacity to address environmental and social challenges that go beyond individual projects. Revisions to the safeguards should improve environmental and social outcomes and generate greater country ownership. In fact, we believe improved policies will create a virtuous circle in which better outcomes are reinforced by greater country ownership and vice versa.

As Bank management begins to draft a full proposal for consideration by the Board's Committee on Development Effectiveness later this year, we are conveying the US' current views on priorities for the review. These views have been developed through an assessment of existing MDB policies and practices, US policies and practices, relevant bilateral and multilateral agreements, and recognized best practice standards and principles. The views put forth in this paper aim to provide a basis for a renewed partnership with borrowers and maintain the Bank's role as a leader in environmental and social safeguards.

The rest of this paper is organized in four sections that present our current recommendations to the Bank. We welcome further discussion with Bank management and other shareholders on all the issues covered. The first section addresses the overall framework and cross-cutting issues related to the organizational structure, scope, and breadth of the safeguards. Section 2 covers recommendations for enhancements to themes already covered in the current safeguards. In section 3, we focus, primarily, on what the Bank has identified as “emerging” thematic areas of focus. The final section focuses on recommendations for implementing the safeguards, including strengthened monitoring and supervision.

I. Safeguard Framework and Cross-cutting Issues

This section includes recommendations related to the organizational structure, scope, and breadth of the safeguards.

- ***An integrated safeguard framework.*** Best practice among MDBs is to establish: (1) integrated safeguards consisting of an umbrella policy that articulates general principles defining basic roles and responsibilities as well as general commitments and objectives; (2) issue specific policies that spell out concrete substantive aims and requirements pertaining to environmental and social impact assessment; and (3) guidance documents that provide practical details for implementing the policy requirements. The issue specific policies, while also conveying expected outcomes, should continue to include ex-ante assessment requirements. The AfDB¹ is the most recent MDB to adopt this approach to improve the clarity, coherence, efficiency, and effectiveness of its operations.
- ***Delineated responsibilities.*** The current safeguard policies outline the Bank’s and the borrower’s responsibilities, but they lack sufficient clarity on respective roles. The new safeguards framework would benefit from separate clear statements of the Bank’s and borrower’s responsibilities. We believe the Bank must continue to oversee ex-ante assessments of environmental and social risks, and be accountable for overseeing safeguards compliance throughout the project cycle and assisting the borrower when problems arise during implementation. At the same time, it is the borrower that is responsible for the implementation of safeguards through appropriate systems and policies as well as project-specific actions. To promote positive outcomes and project compliance, we believe the Bank should continue a high level of engagement with borrowers, as needed, throughout the project cycle.
- ***Use of country systems.*** Part of the Bank’s development contribution is to help strengthen borrowers’ capacity so that ultimately their systems are strong enough to provide necessary environmental and social protections for the preservation of their valuable environmental and social resources. However, the conditions under which borrower systems can be used must be clearly defined and benchmarked and, where relevant, accompanied by technical assistance and capacity building to establish and implement standards equivalent to the Bank’s. We urge the Bank to reach out to other providers of development assistance, both bilateral and multilateral, to coordinate capacity building efforts.

¹ African Development Bank Group’s Integrated Safeguards System (ISS), December 2013.

- ***Financial intermediary projects, framework projects, and strategic environmental assessments.*** To provide flexibility to adapt to borrower needs, the Bank’s investment lending approaches include lending to financial intermediaries and to borrowers that are using a framework approach. Projects financed through such mechanisms may have environmental and social impacts that should be identified and mitigated with appropriate rigor. (For example, frameworks establish broad approaches but need to be followed by appropriate impact assessment and mitigation at the sub-project level.) In this regard, we believe that financial intermediary and framework sub-projects (Category A and B) should be held to the same standards as Category A and B projects financed directly by the Bank. The Bank should also promote the greater and timely use of Strategic/Sector Environmental and Social Assessments for framework projects and other appropriate circumstances, such as when it undertakes multiple projects in the same sector.
- ***Scope of the safeguards review.*** The review is currently limited to investment lending and excludes Development Policy Loans (DPLs). DPLs represented close to 30 percent of Bank financing in 2013. Consistent with this significant share of lending, the Bank should include DPLs in the review. We note that other MDBs, such as the AfDB and AsDB, have explicitly applied their safeguards policies to their DPL-equivalent instruments and a recent IEG report² on the forest sector specifically demonstrated the weaknesses of the DPL safeguards. Leaving DPLs outside of the scope of the review puts the World Bank’s approach at odds with that of other MDBs and would leave a significant portion of Bank lending vulnerable to environmental and social risks.

II. Enhancing Coverage of Themes in the Current World Bank Safeguards

The following section provides suggestions for the areas covered by the current environmental and social safeguard policies, including OP 4.01 (Environmental Assessment), OP 4.04 (Natural Habitats), OP 4.10 (Indigenous Peoples), OP 4.11 (Physical Cultural Resources), OP 4.12 (Involuntary Resettlement), OP 4.36 (Forests), and OP 4.37 (Safety of Dams). We recognize and value the work the World Bank is already doing in these areas and encourage the Bank to continue to strengthen its approach to these issue areas in the context of the new environmental and social standards.

Environmental and Social Impact Assessment (ESIA). We believe ESIA should be conducted in an integrated manner, provide for public involvement and transparency, and utilize the best available science. The assessment of social and environmental impacts should be inclusive, paying particular attention to potential impacts on vulnerable and marginalized groups and individuals, consistent with the conclusions of the World Bank’s report, “Inclusion Matters.” Under the current safeguards, social impact assessments have generally been limited in scope and isolated from environmental assessments. This was pointed out in the IEG review that indicated that social impacts derived from environmental impacts, and vice versa, may not have been adequately addressed in all instances. Where the environmental and/or social impacts of a project are likely to be significant, the ESIA should

² “Managing Forest Resources for Sustainable Development: An Evaluation of World Bank Group Experience,” February 5, 2013, page 48.

cover cumulative impacts and associated facilities. Analysis of alternatives should be commensurate with the complexity and potential impact on the area of influence, consider cumulative impacts, and continue to include the “no project” alternative. It is important that the assessment process begin as soon as possible in the project process. An early start will help establish sound baseline data to fully inform decision makers and identify gaps or limitations of the baseline data. In assessing project activities, the ESIA should take into account all of the borrower’s international obligations related to those activities.

- **Consultations.** We attach particular importance to establishing and maintaining a robust, meaningful consultation process with project-affected communities throughout the project cycle. The Bank should improve the quality of consultations during the project design phase, requiring borrowers to provide opportunities for effective community participation in identifying potential effects and avoidance/mitigation measures, and also continue effective community consultation and participation during project implementation. To be effective, consultation processes must be inclusive and overcome linguistic, institutional, cultural, economic, historical, sex-based, gender-identity based or sexual orientation-based barriers, and other potential barriers to effective participation. Documents, notices and hearings should be readily accessible to affected communities.
- **Pollution Prevention.** We recommend using the IFC’s Performance Standard 3 (PS3) requirements on pollution prevention as a model for the Bank because it covers a broad range of hazardous and non-hazardous waste and other pollutants. In addition, the World Bank Group Environmental, Health and Safety (EHS) Guidelines provide an appropriate benchmark for pollution prevention, while allowing for alternative levels and measures to be used for specific projects. However, any alternative levels or measures that represent lower standards than the EHS benchmark should only be applied where warranted by project-specific circumstances. In such (rare) cases, we believe the Bank should seek a review of the proposal to use lower standards by a credible third party to assess the impacts of the lower standards.
- **Indigenous Peoples.** Indigenous Peoples are often particularly vulnerable and yet can bring great value as partners in a sustainable development process. We recommend that the Bank develop an approach to provide project-specific, focused capacity-building to Indigenous Peoples³ affected by World Bank-financed projects to facilitate their effective and constructive participation at all stages of the project process. We also recommend that any social impact assessment incorporating Indigenous Peoples encompass their political status and legal rights pertaining to land and natural resources affected by the project. The Bank should encourage countries to complete relevant legal recognition processes as soon as possible in the project process. In those cases where the Indigenous Peoples possess the land and natural resources in question, we suggest that, unless prohibited by domestic law and subject to the consent of the Indigenous Peoples, recognition of this fact be in the form of collective ownership. Similarly, access and usage rights should be recognized on a collective basis.

³ Similar capacity building efforts should be applied to other vulnerable populations.

- **Cultural Heritage.** We recommend that the Bank adopt the concept of “cultural heritage,” including intangible as well as tangible cultural heritage, in lieu of “physical cultural resources,” to align with international standards. Given the specialized knowledge needed to address preservation of cultural heritage, we also recommend that the Bank require the use of outside experts in any assessment and preservation process pertaining to cultural heritage. Furthermore, we believe it is important that the Bank assess the adequacy of borrowers to manage cultural heritage that may be affected by Bank-financed projects and incorporate capacity building where the assessment determines that capacity needs strengthening. Finally, we recommend that the Bank not include any language that may prejudice ongoing international negotiations at the World Trade Organization and at the World Intellectual Property Organization related to the protection of intangible cultural heritage.
- **Involuntary Resettlement.** First, the revised safeguards should go beyond the current “restore or improve” objective and aim, in all cases, to establish conditions for improving living standards. Second, the Bank should require that any project with the potential for significant resettlement have the resettlement activities be a separate component of the project (with its own cost-benefit and risk analyses), including meaningful participation of affected persons throughout the project cycle and access to an effective project level grievance mechanism. Third, resettlement experts should be engaged throughout the project cycle. Finally, the Bank should also adopt procedures aimed at thwarting “pre-resettlement activities” that negatively impact affected communities while a project is still in concept.
- **Water.** Water resources have not, to date, been an explicit focus of World Bank safeguards. However, given growing pressures on the availability and quality of water, we recommend that the revised safeguard policies place a heightened focus on water resource management, including considerations related to climate change. The safeguards should reinforce best practices and procedures for making informed decisions for managing a country’s or region’s water resources, including meaningful consultation with affected stakeholders, and be supported by capacity building that better enables countries to implement these practices in a timely fashion. The viability and feasibility of any proposed dam should be considered within the context of the river basin using cumulative impact assessment and management approaches and integrated resources planning. Assessments should take into account potential impacts and avoidance/mitigation measures. The technical capacity, available resources, and governance of the host country should be strong enough to help ensure that the decisions made can be fully implemented and enforced. Large dams, in particular, can have long-term profound impacts on people and the environment and should be subject to more rigorous attention. We encourage the Bank to adopt best practices related to dam development and safety.⁴
- **Habitats and Ecosystems.** We encourage the Bank to consolidate various ecosystem issues into one safeguard that would simplify and clarify policy requirements. Bank requirements and guidance should reflect the critical role that ecosystems and environmental services play in maintaining the Earth’s basic biological “operating systems” and in sustainable economic

⁴ In the US, for example, the Federal Energy Regulatory Commission, the U.S. Army Corps of Engineers, the Federal Emergency Management Agency, and the Bureau of Reclamation have developed guidelines related to dam development and safety.

development. The report by the World Bank and the Global Tiger Initiative entitled, “Smart Green Infrastructure in Tiger Range Countries: A Multi-Level Approach”⁵ illustrates the stakes involved and the actions needed to balance environmental sustainability with economic development, including adoption of “no go” zones. In this regard, we urge the Bank to commit to implementing the mitigation hierarchy in the projects it finances. However, our position remains, consistent with when we discussed the adoption of the IFC Sustainability Framework, that offsets should not be allowed for impacts in critical habitats. We also expect the Bank to adopt best practices established by other MDBs in the area of habitats and ecosystems, such as the AsDB’s definition of critical habitat and the provisions on invasive species adopted by the IFC, Inter-American Development Bank (IDB), and AfDB.

III. “Emerging” Thematic Areas of Focus

The following section addresses topics that are not addressed under the current set of safeguard policies but that are identified as “emerging areas” in the Bank’s Approach Paper. These include climate change, gender, labor, human rights, disability, and land tenure. This section also addresses LGBTI⁶ issues.

- ***Climate Change.*** We recommend that the Bank adopt requirements for assessment and mitigation of the climate change impacts of and on its projects and programs, as part of the environmental and social impact assessment. The Bank should use all the tools at its disposal to encourage broad and “upstream” consideration of climate change impacts in borrowing countries and support low-carbon climate-resilient development across its portfolio. Bank policies and guidelines should aim to prevent maladaptive investments by requiring that program and project design identify and avoid, minimize, or manage risks of climate change impacts on the project, as well as risks of negative impacts from the project on populations and ecosystems that may be exacerbated by climate change. Implementation of practically feasible measures to reduce project- or program-related greenhouse gas emissions, and quantification, reporting, and disclosure of emissions for projects with greenhouse gas emissions beyond a certain threshold (such as the 25,000 tons annually of CO₂-equivalent threshold established by the IFC) should be required. For projects and programs with high potential emissions of greenhouse gases or black carbon, the Bank should consider additional requirements, such as expanding the assessment of policy and economic considerations relevant to the sector and to the selection of project design with an emphasis on project efficiencies and on greenhouse gas emissions reduction; and including a discussion of environmental and health externalities, even if they are not quantified.
- ***Gender.*** As part of the broader social impact assessment recommended for the revised safeguards process, we recommend that the Bank proactively make the safeguards more gender-sensitive and gender-inclusive. In particular, we recommend that when safeguards are applied in Bank projects, the Bank require gender-sensitive impact assessments and gender-differentiated measures, where appropriate, to avoid or mitigate adverse gender-

⁵ *Smart Green Infrastructure in Tiger Range Countries: A Multi-Level Approach* (<http://www.globaltigerinitiative.org/download/GTI-Smart-Green-Infrastructure-Technical-Paper.pdf>).

⁶ Lesbian, gay, bisexual, transgender, and intersex.

related impacts, and pay particular attention to vulnerable groups. We also suggest that the Bank integrate requirements into specific safeguards where guidance may be helpful, either because gender-impacts and risks are predictable, or because such risks and impacts could be especially harmful. This may be the case with involuntary resettlement, labor, indigenous peoples, pest management, and climate change.

- **Labor.** We believe there is a compelling need for a separate labor safeguard policy. Almost all Bank projects affect workers in some way, and good jobs and “decent work” are acknowledged to be cornerstones of development, as documented in the 2013 World Development Report. We believe that an appropriate basis for the substantive provisions of a labor safeguard policy can be found in the IFC’s Performance Standard 2 on Labor and Working Conditions (PS2), the EBRD’s Performance Requirements on Labor and Working Conditions, including occupational health and safety (PR2 and PR4), and the AfDB’s Operational Safeguard on Labor Conditions, Health and Safety (OS5). These labor safeguard policies require borrowers to respect the “core” or “fundamental” labor rights set forth in the 1998 International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work and to adhere to other requirements that promote the fair treatment of workers, protect children from exploitative child labor and all workers from harm, and foster positive worker-management relationships.
- **Human Rights.** We believe the World Bank has a role to play in protecting human rights where development activities and human rights are interrelated. There are wide zones of overlap between substantive areas covered by international human rights treaties and areas in which the Bank operates. We recommend that the Bank explicitly commit to respect human rights, include relevant human rights issues in environmental and social assessments, and guard against human rights violations and abuses in its projects and programs. We believe these human rights issues should be addressed throughout the project cycle, not only in impact assessment and mitigation planning, but also project supervision, monitoring, reporting, and evaluation.
- **Disabilities.** Given the cross-cutting nature of the issues related to persons with disabilities, we recommend that persons with disabilities and pertinent disability concepts be mainstreamed in the safeguard policies throughout the project cycle, including screening, consultations, and monitoring and evaluation, rather than have a specific, stand-alone safeguard. Persons with disabilities should be explicitly referenced among groups of people identified as “vulnerable.” Bank projects should also be consistent with standards reflected in relevant international instruments, such as the Convention on the Rights of Persons with Disabilities.
- **Land Tenure and Natural Resources.** Adequately protecting affected peoples’ tenure rights and arrangements (both formal and informal), and preventing associated conflict, requires more consistent attention. Accordingly, we recommend that the Bank require that land tenure issues be systematically considered for all projects that may affect access to and use of land and natural resources in the impact assessment, impact avoidance and mitigation planning, and implementation processes. The Bank’s approach should reflect the variety of formal and informal mechanisms through which people’s relationship to, and use of, land and natural resources is recognized. It should pay particular attention to vulnerable people.

- **LGBTI.** LGBTI persons have been subject to exclusion to varying degrees throughout much of the world. Impact assessments should consider risks to LGBTI persons to help ensure that Bank projects do not directly or indirectly contribute to exclusion based on sexual orientation or gender identity. As highlighted above, Bank management should make certain that there are no barriers to LGBTI persons being included in consultations.

IV. Implementation, Monitoring, and Supervision

This paper makes a number of recommendations to strengthen the safeguards, but perhaps nothing would do more to strengthen the safeguards than to focus more relentlessly on implementation. The safeguards, as written, will have little meaning without an effective management of safeguards issues within the Bank.

We recommend that the current review process be used to improve the downstream phase of the safeguards. In addition to the IEG's 2010 report, a 2013 report commissioned by Germany⁷ also notes the current weaknesses in the implementation phase and makes several recommendations for improvement with which we agree.

Broadly, we recommend that the World Bank:

- Adopt a much more rigorous, transparent, and user-friendly approach to project monitoring and supervision, including expanded use of third-party monitoring and input from independent experts.
- Adopt the AsDB policy of requiring that the borrower establish and maintain a project-level grievance redress mechanism to receive and facilitate resolution of affected people's concerns and grievances about the borrower's social and environmental performance. Steps should be taken to help ensure these mechanisms are accessible to all, regardless of their status, gender, or affiliation.
- Provide the safeguards central office and specialists with sufficient budgetary and decision-making authority throughout the project cycle so they can effectively support and oversee safeguards implementation. This should include the following:
 - ✓ Establishing "budgetary separation" such that there are separate resources for environmental and social safeguards control under the authority of safeguards experts, separate from the task team leader-controlled project resources;
 - ✓ Having safeguards specialists (not sector managers/task team leaders) be responsible for monitoring and assessing safeguards compliance; and
 - ✓ Being prepared to provide additional budget resources to strengthen the effectiveness of the safeguards system.
- Incorporate the goal of effective safeguards into the relevant project evaluation, staff performance, and training systems. This should include the following:

⁷ "Reforming the World Bank's Safeguards: A Comparative Legal Analysis,." By Jochen von Bernstorff and Philipp Dann, July 2013

- ✓ Including environmental and social safeguards outcomes as core indicators in project development objectives, and performance on safeguards in evaluating the project's overall performance rating;
- ✓ Rewarding staff for the responsible management of environmental and social risks, including in annual performance evaluations; and
- ✓ Providing more training on safeguards for the Bank's general staff and for borrower staff responsible for safeguards implementation.

Conclusion

Finally, we applaud the Bank for its demonstrated commitment to a robust consultation process as the safeguards review moves forward. The first phase of the Bank's review process included a rich discussion on a range of topics. We look forward to continued outreach in the second phase, including regular updates of key dates and milestones for the review process, and openness to constructive ideas on how the Bank can improve. The US continues to view the World Bank's safeguards as a key component of its contribution to sustainable development globally.