Forest Peoples Programme

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Re: Draft proposed Operational Policy 9.00: Program for Results (P4R)

Dear Ms Moorehead,

We are writing to inform you of serious concerns that we have regarding the proposed new lending instrument referred to as Operational Policy 9.00, or 'Program for Results' (P4R). After reviewing the documentation provided for public consultation and discussing the proposed new lending framework with partner organisations in Asia, Africa and Latin America, we have serious concerns about the implications of this new lending instrument for the lives and livelihoods of affected peoples. We would like to raise specifically two key areas of concern: the lack of application of safeguard policies without any credible alternative safety net being put into place; and the lack of any effective incorporation of painful lessons learnt by the Bank in developing alternative lending instruments, particularly those instruments which diminish or erase the implementation of safeguards and use instead national level systems of risk mitigation. We see little indication that such lessons have resulted in changed thinking within the Bank, and indeed evidence that past mistakes may be repeated.

The result of such problems is particularly stark in projects impacting on indigenous peoples for it is precisely *because* national systems rarely provide adequate protections for indigenous peoples that international financial institutions have almost universally developed their own requirements to provide some measure of protection.

We also note that the World Bank is currently undergoing a comprehensive review of its existing safeguard policy approach, incorporating 8 safeguard policies and OP 4.00, the policy governing piloting of the 'use of country systems', into the review. We strongly urge the inclusion of OP 9.00 into the review as a relevant part of a comprehensive review of the *application* of the World Bank social and environmental standards.

No credible alternative to the safeguards

The proposed approach under P4R removes the application of safeguard policies to any activity funded through this financing model (OPCS page 63).[1] While the ability of the agency or government department in charge to manage social and environmental risks will be assessed, this assessment will take place against a drastically shortened list of 'key principles' within which every safeguard policy is either reduced to a single sentence, or absent (OPCS page 19).

This is in contrast to the requirements under OP4.00 'Piloting the Use of Country Systems', the first policy approach the Bank proposed to address a perceived need to increase country-level ownership of Bank-financed activities. Under OP4.00 the ability of government agencies to successfully meet social and environmental principles is assessed according to a defined set of criteria drawn in detail from the existing safeguard policies of the Bank. As such, OP4.00 is also incorporated into the above mentioned review of the bank's treatment of social and environmental concerns.

The newly proposed P4R approach discards any set of principles or guidelines by which governments and/or responsible government agencies will be assessed, except the earlier mentioned 6 bullet points. The only response contained in the P4R proposal to the vacuum left behind is that the Bank will conduct a live assessment of the P4R model as it begins to work after its hoped-for approval in late 2011.

The fact that safeguard policies are not to be applied raises questions about the role of the Inspection Panel in reviewing complaints raised under this lending instrument. Although the Bank has specifically stated that the Inspection Panel will be available for complaints arising from activities funded under the P4R, as there is no safeguard policy framework to judge those activities against, it is difficult to see how the Inspection Panel will be able "to determine whether the Bank has complied with its operational policies and procedures (including social and environmental safeguards), and to address related issues of harm".[2] Would such complaints be judged against the aforementioned 6 bullet points?

Lessons need to be learnt

Two significant reviews relevant to the Bank's consideration about how safeguards should be applied in the future have recently been released, the Bank Group-wide evaluation conducted by the Independent Evaluation Group (IEG) and released in 2010[3] and subsequently an internal, and much-awaited, review of the implementation of the World Bank's OP4.10 on Indigenous Peoples released in August 2011.[4] Both of these documents provide detailed evidence that the Bank is struggling to implement the existing safeguards and efforts are needed to strengthen, not abandon, the system. There are real challenges to fostering socially and environmentally just development and these problems stem from national level constraints as well as institutional

[1] All references in this letter are to *A New Instrument to Advance Development Effectiveness: Program-for-Results Financing*, Operations Policy and Country Services (OPCS) July 18 2011 unless otherwise indicated.

[2] www.worldbank.org/inspectionpanel

[3] Independent Evaluation Group (IEG), *Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience*, 2010

[4] All page numbers in this section refer to World Bank, OPCS Working Paper, *Implementation of the World Bank's Indigenous Peoples Policy: A Learning Review (FY 2006-2008)*, August 2011

constraints in the Bank. Ignoring these challenges and transferring responsibility to borrower countries simply ensures that socially and environmentally just outcomes will continue to evade the Bank.

In reference to the Learning Review of the indigenous peoples' policy, the following key weaknesses were revealed in the findings of the review:

- In projects which were assessed as possibly impacting on rights to lands, water or other natural resources (34 in the total 59 projects assessed), only 8 addressed the issue adequately – less than a ¼ of the total (page 26)
- For projects involving the commercial development of the lands and resources (natural or cultural) under the ownership of indigenous peoples, in nearly 1/3 of all these projects "this issue *was not mentioned*" (emphasis added, page 26)
- A low level (66%) of the 59 projects that had proper planning documents, showed adequate attention to the legal framework in which the project would take place (this means that only 39 projects out of a total of 139 paid adequate attention to this key issue)
- Only ¼ of the projects that developed appropriate planning documents (IPP/IPPF) disclosed the project documents in-country in an appropriate manner, form and language to ensure they were accessible to the impacted indigenous peoples (15 projects only)
- A clear lack of monitoring of specific indicators for indigenous peoples, and the lack of information collected or provided (page 26) with only 21 projects addressing this satisfactorily
- High scores for FPICon – which mean a good consultation process – were unmatched by good scores for the existence of broad community support (BCS), which was able to be confirmed in NONE of the projects for which planning documents were available (page 23)

Although difficult to read, most important in our view is that these findings represent those actions taken when a reasonably stringent level of requirements for government action was in place, and they represent significant failures to act. Where those requirements are removed and action on indigenous issues left to national political will, outcomes are far less certain again.

Under-classification of projects is a separate and important issue that has been raised with the Bank repeatedly and complaints raised at both the Inspection Panel and with the Compliance Advisor Ombudsman have revealed inaccurate assessment of social and environmental risks – often because commercial interests were allowed greater priority. Two quick illustrative examples, one from the WB and the other from the IFC:

- Democratic Republic of Congo (World Bank DPL investment)[5]

[5] Where the Inspection Panel found that "…the Bank's early interest in the potential tax and revenue-generating value of increased industrial logging led to **a focus on developing a Project that would facilitate increased levels of industrial forest exploitation**. The Panel finds that there was inadequate consideration of the many important socio-economic and environmental issues of forest use, embedded within Bank safeguard policies, and that this distorted the actual economic value of the country's forests.

- Wilmar Investments (International Finance Corporation investment)[6]

In a lending instrument that is intended only for use in medium and low risk investments, consideration must be given to the demonstrated past failures of the Bank to assign risk categories accurately in key investment areas, including investments impacting on indigenous peoples.

In this regard, lessons learnt in the implementation of the Development Policy Loans (DPL) financing modality are informative. In the above referenced loan to the DRC the Inspection Panel reviewed the use of DPLs more generally and found the following:

> " there appears to be a trend in the Bank that DPLs are very frequently determined to have no significant environmental or social impacts…. This trend is evident in the 27 DPLs which include forest sector reform, most of which have been in Africa. ….The Panel finds that there are potential risks of including components such as forests in DPLs, which lack safeguards. The Panel notes that formerly such forest components were generally handled as projects, subject to safeguard policies. The Panel observes that the use of DPLs for other natural resource components could raise similar issues.[7]

A key similarity between DPLs and the newly proposed P4R is a reliance on the social and environmental safeguard systems at a country level to manage risk. Prior findings of the Inspection Panel with regards to this aspect of DPL lending need surely to be addressed in the design of any lending instrument intended to behave in a similar way, and yet such 'trends' to determine low social and environmental risks go unmentioned.

Where to for indigenous peoples?

Indigenous peoples have long engaged with the Bank to ensure that their rights and interests are recognized in Bank policies and procedures. Since the introduction of the first safeguard policies, there have been specific requirements for projects with potential impacts on indigenous peoples. The impetus for specific attention was partially drawn from the recognition that the rights of indigenous peoples were not being appropriately met by governments where additional requirements were not applied.

In a system where safeguards have been removed and no publicly available and credible alternative has been provided, it is impossible to see where guarantees for indigenous peoples can be found.

This, in turn, contributed to problems of Bank compliance with its social and environmental policies at the stage of Project design and appraisal" Inspection Panel, DRC Report, p xv (emphasis added).

[6] Where the CAO found that the "IFC applied a *de minimis* approach towards assessing each project's supply chain. For each investment, **commercial pressures were allowed to prevail and overly influence the categorization and scope and scale of environmental and social due diligence**. As a result, IFC's development mandate and mission were not robustly represented in the decision-making process. This had the effect of **insulating IFC from obtaining key information** as to how each project would impact the palm oil supply chain. Because commercial pressures dominated IFC's assessment process, **the result was that environmental and social due diligence reviews did not occur as required**" CAO Audit of IFC, C-I-R6-Y08-FO96, p. 2 (June 19, 2009) (emphasis added).

[7] Inspection Panel, Investigation Report, Democratic Republic of Congo, Report No. 40746-ZR (Aug. 2007), at xviii

Recommendations

We are concerned that if OP9.00 is approved as currently proposed, the progressive building up and improving of social and environmental protections for peoples and communities impacted by World Bank funding will simply disappear for a large segment of people. We recommend that the Board immediately take the following steps:

1. Does not consider or approve the current proposed OP9.00 in 2011;
2. Includes the draft OP9.00 in the on-going, two-year, comprehensive review of the World Bank's approach to social and environmental concerns (WB safeguard review);
3. Engages indigenous peoples' organisations and networks in consultations to determine specific requirements for the protection of their rights in a lending strategy like P4R;
4. Requests from the Inspection Panel an independent report on how the Inspection Panel will exercise its functions in relation to activities funded under OP9.00;
5. Brings 'access to information' requirements in OP9.00 up to the Bank-wide standards already contained in the World Bank Access to Information Policy; and
6. Ensures that further revisions to OP9.00 act to bring the policy, at a minimum, into line with the standards exercised elsewhere in the World Bank Group, and further, comply with relevant international laws and standards.

Yours sincerely

Marcus Colchester

Director