Initial Comments by Civil Society Organizations on the World Bank's Safeguard Policies Review and Update

December 2012

This paper is a preliminary statement of input and perspective by a coalition of civil society organizations intended to inform the World Bank safeguard review and update process. The paper addresses a broad range of issues, meaning that certain sections fall beyond the mandate or expertise of endorsing organizations. As such, endorsement of the paper as a whole does not necessarily imply full endorsement of the conclusions and recommendations of every thematic section. The paper in no way precludes additional input, further clarifications or other submissions from any of the endorsing organizations.

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Overview

We, members of civil society organizations from around the world, welcome the review and update of the World Bank's safeguard policies. If designed carefully, the safeguard policies will allow the Bank to contribute to development in a way that avoids social and environmental harm. With these comments, we offer our recommendations on how the Bank can address new and emerging issues and align its safeguard policies with the international human rights obligations of the Bank's member states and clients, while meeting its own international responsibilities. Our intent is to begin a broad and open discussion on how the safeguards and the framework for their implementation can be improved to better serve the Bank's commitment to poverty alleviation and deliver sustainable development results.

Over the past thirty years, the World Bank and other public and private financial institutions have developed mandatory rules or "safeguards" designed to prevent harm to communities and their surrounding environment. These safeguards emerged in large part as a result of pressure from communities suffering from negative social and environmental impacts of projects and programs funded by the World Bank and other international financial institutions.

Safeguards have a human face. They are inextricably linked to poverty reduction because they provide protection to people and their environment. Analysis by the Bank's Independent Evaluation Group (IEG) has recognized the role of safeguards in helping "to avoid or mitigate large-scale social and environmental risks in the projects financed by the [World Bank Group]."[1] When well-designed and reliably implemented, safeguards lead to improved upstream screening for potential impacts, participatory planning processes, and better outcomes for vast numbers of marginalized, impoverished and vulnerable people – in other words, increased development effectiveness.

While we welcome the Bank's renewed emphasis on its mission to eliminate poverty, there are early indications that the Bank may seek to weaken the safeguards through the upcoming review and update, potentially replacing them with vague principles and non-mandatory "flexible" implementation standards. We are encouraged by the recent statement made by World Bank President Jim Yong Kim that the World Bank has "absolutely no intention of diluting the safeguards."[2] However, we remain concerned that the President's aim to quicken the safeguard screening process in order "to get through the process more efficiently and effectively" carries a risk of weakening standards.[3] It will require vigilance and collaboration between Bank staff, governments and civil society to ensure that President Kim's commitment to "no dilution" of the safeguards is met and that standards and implementation processes are improved in this review and update.

Strengthening borrower country systems to protect people, their rights and the environment is essential, including by providing support for borrowers to fulfill their international obligations. However, this must not be done at the cost of diluting the Bank's own responsibility for the activities it supports. This becomes even more important as the Bank prepares to engage in higher risk activities, such as those resulting in involuntary resettlement or adverse impacts to critical natural habitats.

The proposed risk-based approach for the management of its portfolio must first and foremost consider those who bear the greatest risks. Among them are the millions of people who are forcibly or economically displaced to make room for infrastructure projects or as a result of other development policies and projects, and thereby become deeply impoverished or dependent on welfare programs. Industrial plantations, extractive industries, large-scale energy infrastructure, and other high risk ventures often push local and indigenous peoples off their lands, despoiling their environment, and

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[1] Independent Evaluation Group, "Safeguards and Sustainability Policies in a Changing World- An Independent Evaluation of the World Bank Group Experience," 2010, p. xiii. http://go.worldbank.org/ZA4YFV9OL0 (hereinafter "IEG Safeguards Evaluation")

[2] Statement by World Bank President Jim Yong Kim at CSO Town Hall Meeting, World Bank Annual General Meeting, November 10, 2012.

[3] Ibid.

depriving them of their livelihoods. Such circumstances place heavy burdens, on women, people with disabilities, indigenous peoples, ethnic minorities, and other marginalized or vulnerable people. Moreover, the penalty for delayed action to climate-proof development and restore ecosystem services will fall hardest on the poor.

Overarching Considerations

The human face of safeguards should guide the World Bank's safeguard review. Many provisions of the existing safeguards must be updated to reflect current knowledge and methodological innovations that would better protect people, their rights, and the environment. This would be in line with the IEG's recommendations.[4] As the Bank proceeds with the first phase of consultations of the safeguard review, we underscore the following points, which are critical to protecting people, their rights and the environment, and ultimately the sustainability of Bank operations:

- **No dilution:** Given the fundamental importance of safeguards in the Bank's development model, we believe that the review should prioritize the human face of safeguards, resulting in stronger rather than weaker safeguard protections for affected people and the environment. As such, there must be no dilution of the Bank's safeguard provisions.
- **Upward Harmonization:** The existing safeguard policies and procedures must be strengthened to provide, at a minimum, consistency with international laws and the highest standards and norms.
- **Filling the Gaps:** The scope of existing Bank safeguards must be expanded to address gaps in the current framework. This includes the need to develop additional safeguard policy standards to address human rights, including labor rights, women's rights, children's rights, rights of people with disabilities, and land rights; ecosystems and their values; and climate change mitigation and adaptation.
- **Comprehensive Application:** The new safeguard framework must apply to all types of Bank-supported activities including development policy lending (DPL), program for results (P4R), financial intermediary lending, technical assistance and other advisory services, and the use of country systems, as well as to the broad scope of Bank-supported activities, including associated facilities and recurrent expenditures.[5] The safeguards review should result in comprehensive, effective, and consistent risk management in all stages of the lending cycle, ensuring greater relevance to a more diversified World Bank lending portfolio.
- **Full Implementation:** Consistent with reports from the IEG, the Bank should reform its staff and management incentive systems, provide sufficient funding to ensure effective safeguard implementation, and address the long-standing weaknesses in monitoring, evaluation and supervision. The Bank must elaborate in detail on mandatory due diligence procedures to ensure that safeguard requirements are fully met by project proponents.
- **Designed for Accountability:** The safeguard review must result in strengthened public accountability of the Bank. People affected by all types of Bank investments should have full access to information, participation in decision-making, and access to redress. Prior to deciding on investments, the Bank should ensure that all who are involved in implementing the investment are aware of their responsibilities to respect human rights and the environment. The final policies must provide sufficient detail to allow the Inspection Panel to assess compliance and ensure meaningful redress for affected communities.

[4] IEG Safeguards Evaluation.
[5] The evolution of the Bank's lending portfolio suggests that investment lending, which benefits from full safeguard coverage, may fall to less than 50% of World Bank Group lending over the next decade. Separate policies for new instruments do not measure up to the requirements in OP 4.01 and other Bank safeguards and point to the fragmentation of safeguard standards. See further the recommendations of the IEG, World Bank, "External Review of the Oversight and Accountability Units of the World Bank Group," COGAM2011-0014, June 9, 2011, p. 21. IEG has observed the challenges of effective safeguard application for programmatic lending, particularly for subproject transparency and supervision.

The Review Process

We call on the World Bank to ensure a transparent, effective, and inclusive consultation process, which is sensitive and responsive to communities impacted by World Bank loan operations, including groups in society that are often neglected in decision-making processes, such as women, indigenous peoples, ethnic and religious minorities, people with disabilities, and all other marginalized or vulnerable groups.

The consultation process should have a particular focus on reaching communities affected by Bank activities in the past and those likely to be most affected in the future. Meaningful and targeted consultations should be conducted at the global, regional, national and local levels, reaching all corners of the globe. Adequate funding should be set aside to provide for this. The Bank should ensure that sufficient information about the review is available and easily accessible for all, including those unfamiliar with Bank activities, well in advance of consultations. The Bank should ensure that all consultations are conducted in accessible, culturally appropriate ways that enable the most vulnerable and marginalized populations to actively participate and provide input in an informed manner.

In order to provide for a meaningful consultation process, the World Bank should:

- Publish a detailed budget for the consultation process, to show that the Bank is dedicating the necessary resources to this process.
- Disclose relevant information in a timely manner, ensuring that the information is provided in an accessible form, including by translating such information into the national languages of Bank client countries and particularly of the country where the consultation is taking place.
- Publish and widely disseminate early notice of the time and place of consultations, ensuring that invitations are open.
- Open consultation agendas for public comment in advance of meetings.
- Hold targeted consultations with specific groups, including women and indigenous peoples.
- Allow participants to contribute anonymously in countries where they may face repercussions from criticizing their government or the World Bank.
- Host focused consultations on key thematic issues (e.g. on resettlement, land acquisition) and ensure that both experts and affected people are involved in these consultations.
- At the conclusion of consultation meetings, circulate draft minutes to participants and provide time for comment (suggestion: 30 days) to ensure their opinions have been accurately reflected. Publish final, agreed minutes on the Bank’s accessible safeguards review website.
- Provide feedback to rights holders and external stakeholders on how their comments and inputs have been addressed in the Bank’s draft safeguard update proposals (as part of the proposed second round of public consultations on revised policies).

Part 1: Safeguard Policies

Social and Environmental Assessment

Environmental assessment is the cornerstone of the World Bank's safeguards framework. Yet the Bank's Environmental Assessment Operational Policy and Bank Procedure (OP/BP 4.01) and related guidance have not been fully revised since they were last reformulated in 1989, and do not formally include requirements for social assessment.[6] The IEG has identified numerous problems with the Bank's environmental assessment policy. Two such problems articulated by the IEG include: that environmental assessment policies have become increasingly out of step with the Bank's own portfolio and the changing demands of its clients; and that safeguard supervision and accountability for social and environmental safeguard outcomes are routinely neglected.[7]

The Bank needs to strengthen the requirements for environmental and social risk assessment. Gaps that need to be addressed include: a stronger risk categorization, in part through upward harmonization between the Bank and IFC; a more robust Environment and Social Assessment (ESA) process, including the quality control of Environmental Impact Assessments (EIA) through the introduction of social, ecological, and climate metrics, pricing all relevant externalities; a clearer standard of consent of affected communities; measures to protect ecosystem services and promote resource efficiency; the routine use of environmental performance bonds; streamlined rules to ensure a readily accessible focus on the most highly ranked impacts; and alignment with international best practices principles for social, environmental and cultural impact assessment (e.g. Akwé: Kon Guidelines).[8]

The Bank should strengthen and clarify thresholds and requirements for shifting risk assessment upstream– including more explicit requirements and guidance for Country Environmental Assessment, Strategic Environmental and Social Assessment and cumulative impacts assessment–and more attention to indirect and supply chain impacts, without substituting for high quality EIA.[9] As discussed below, it is also essential to assess the potential adverse human rights, gender, climate change, and downstream impacts of projects, which could be built into the ESA processes. Assessment criteria and options for filling gaps in institutional capacity should be clarified, and disclosure requirements for ESA should ensure that affected communities are fully informed of the costs and benefits of a proposed and executed operation in a timely and comprehensible manner.

Further, an updated safeguard policy framework should ensure effective and consistent risk classification for all Bank instruments (P4R, DPLs, Use of Country Systems, and trust fund finance) under OP 4.01 or some equivalent single policy. If needed, ESA policy should encompass the design of new ESA instruments to achieve the objective above (e.g. a "programmatic EA" to cover P4R programs).

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[6] Environmental assessment policies and procedures were introduced by the Bank in 1989, updated as Operational Directive 4.01 in 1991 and again as OP/BP 4.01 1999. Along with a series of updates to the 1993 Environmental Assessment Sourcebook, the most recent revision to OP 4.01 was in Feb. 2011, when the concept of SESA was added. See World Bank Group, World Bank Operational Safeguard Policies: Environmental Assessment, http://go.worldbank.org/OSARUT0MP0 (accessed October 4, 2012).

[7] Independent Evaluation Group, "Evaluative Directions for the World Bank Group's Safeguards and Sustainability Policies," Evaluation Brief No. 15, 2011, p. 20. (hereinafter "IEG Evaluative Directions")

[8] Secretariat of the Convention on Biological Diversity (2004). Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities, http://www.cbd.int/doc/publications/akwe-brochure-en.pdf (accessed October 4, 2012).

[9] See Robert Goodland, "WRI's Informative Memo for Access Law & Practice: Environmental and Social Assessment," http://www.accessinitiative.org/sites/default/files/ESAMemo.pdf (accessed October 4, 2012), Updates 4 (Sectoral EA), 15 (Regional EA), 26 (Public Consultation – A Strategic Approach).

Human Rights
The World Bank should adopt safeguard policies aligned with the international human rights obligations of its member states and clients. Incorporating human rights protections will bring the Bank into alignment with recent developments at the UN, support member states in the fulfillment of their human rights obligations, and improve development outcomes by ensuring respect for the rights of those the Bank seeks to benefit.

The World Bank must act consistently with the UN Charter, which requires "[u]niversal respect for, and observance of, human rights and fundamental freedoms for all."[10] The Bank should support member states in the fulfillment of their duty to protect against human rights abuses, which can arise in the context of Bank programs. The UN Committee on Economic, Social and Cultural Rights (CESCR) has also stated that the World Bank (among other international agencies) "should act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights."[11]

A cornerstone of the policies should be a requirement that the Bank undertake and require borrowers to undertake human rights due diligence – to identify all potential impacts on human rights for every project or program that the Bank finances, and to take all necessary measures to address adverse impacts. An overarching human rights policy is needed that is comprehensive, covering the full range of relevant human rights issues such as, but not limited to, labor rights, non-discrimination, the rights of persons with disabilities, and women's rights. It should also ensure that its response to the findings of its accountability mechanisms provide concrete redress for communities and adequate remedy for any human rights violations resulting from Bank operations.

Discrimination
Exclusion and discrimination continue to be key factors driving and deepening poverty. Economic development initiatives that do not incorporate human rights obligations and principles can deepen marginalization, discrimination, and injustice. [12] The World Bank should specifically adopt a safeguard protecting the principle of non-discrimination on the basis of race, color, sex, age, sexual orientation or gender identity, language, religion, political or other opinion, national or social origin, property, birth, disability, or other status. World Bank activities must not discriminate on any prohibited grounds in its design or implementation, for example, by adversely affecting a particular group or excluding a particular group from receiving its benefits. The Bank should commit with renewed vigor to ensuring that development aid reaches and benefits the most vulnerable and marginalized members of society**.**

Indigenous Peoples
The World Bank should bring its safeguard protections for indigenous peoples (OP/BP 4.10) into line with applicable international human rights, social, and environmental standards, including the United Nations (UN) Declaration on the Rights of Indigenous Peoples.[13] This declaration articulates the

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[10] Charter of the United Nations, Art. 55.

[11] United Nations Committee on Economic, Social and Cultural Rights, General Comment 2 (1990), para. 6 and 8 (d).

[12] See, for instance, Human Rights Watch, "Development without Freedom: How Aid Underwrites Repression in Ethiopia," October 9, 2010, http://www.hrw.org/reports/2010/10/19/development-without-freedom-0 (accessed October 4, 2012).

[13] For more discussion, see Open letter to the World Bank President, Indian Law Resource Center, July 11, 2011, http://www.indianlaw.org/sites/default/files/07%2011%202011%20Indian%20Law%20Resource%20Center%20Ltr%20to%20Pres%20%20Zoellick.pdf; Open letter to the World Bank President from Indigenous Peoples (98 signatory IPOs, 43 signatory NGOs), July 23, 2012, http://www.forestpeoples.org/sites/fpp/files/publication/2012/06/indigenous-peoples-letter-incoming-president-world-bank-english.pdf; and Open letter to the World Bank Vice President of Operations Policy and Country Services (130 signatories, both indigenous organizations and NGOs), October 18, 2011, http://www.forestpeoples.org/sites/fpp/files/publication/2011/10/indigenous-peoples-letter-2011-october.pdf.

agreed minimum standards for recognition and respect for the rights of indigenous peoples. Indigenous peoples have consistently called on the World Bank to:

- Strengthen OP/BP4.10, while maintaining it as a standalone policy.
- Establish more effective consultative and participatory mechanisms.
- Adopt free, prior and informed consent (FPIC) standards for projects impacting on indigenous peoples.
- For indigenous peoples broadly, and with specific attention to the needs and interests of peoples living in voluntary isolation, strengthen protections for the land and resource rights of indigenous peoples;
- Explicitly prohibit forcible removal of indigenous peoples from their lands or territories in accordance with international law.

Indigenous peoples have reflected on the negative outcomes that have resulted from the failure to implement existing standards effectively and negative outcomes stemming from the inherent weaknesses in these standards. Internal reviews by the World Bank confirm these observations. It is necessary for both the standards for indigenous peoples to be improved, in line with UNDRIP and other applicable standards, and for the implementation mechanisms for this policy to be vastly improved. The UN Permanent Forum on Indigenous Issues has also called on the World Bank (among other UN specialized agencies) to adopt a human-rights based approach to development.

Involuntary Resettlement

Involuntary resettlement places significant and irreversible risks of impoverishment on affected people unless it is carried out in a manner that respects international human rights standards. OP/BP 4.12 remains an essential safeguard in many developing countries with incomplete or inadequate legal and regulatory frameworks. However, anecdotal evidence suggests that the policy often fails to achieve its core objective of avoiding or mitigating adverse impacts of displacement, and Bank projects have frequently caused violations of human rights. Problems related to involuntary resettlement have been the third most cited complaint in cases submitted to the Inspection Panel, while the IEG estimates that approximately 30% of World Bank projects trigger OP 4.12,[14] and at any point in time over one million people are affected by involuntary resettlement in active Bank financed projects.[15]

The review of OP/BP 4.12 should be used as an opportunity to identify and strengthen areas in which the policy falls short of international human rights standards, including in particular the UN Basic Principles and Guidelines on Development-based Evictions and Displacement, as well as the policy and performance standards of other development and financial institutions. Among other key principles, the policy should include a prohibition of forced evictions in violation of international law and, at minimum and without discrimination, ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities.[16] Further, the policy

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The UN Permanent Forum on Indigenous Issues, Report of the Tenth Session, paragraph 39 states: "the Permanent Forum calls on all United Nations agencies and intergovernmental agencies to implement policies, procedures and mechanisms that ensure the right of indigenous peoples to free, prior and informed consent consistent with their right to self-determination as reflected in common article 1 of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, which makes reference to permanent sovereignty over natural resources." A forthcoming separate submission being prepared by indigenous peoples' organizations will provide additional detail regarding the specific demands that indigenous peoples have in this safeguard review process.

[14] IEG Safeguards Evaluation, p. 84.

[15] Ibid, p. 20.

[16] UN Basic Principles and Guidelines on Development-based Evictions and Displacement, A/HRC/4/18, para. 52.

should explicitly aim to improve the standards of living of affected people, particularly vulnerable groups.

We note that there is a dearth of public aggregated data and information on involuntary resettlement caused by Bank-financed projects. We strongly urge the Bank to commission an independent study on the outcomes and lessons learned from the implementation of OP/BP 4.12 since its adoption in 2001. Without such an independent evaluation, there can be no meaningful consultation and effective review of this critical World Bank safeguard policy.

Land Rights

Commercial pressure on land globally is growing dramatically.[17] There is little evidence of such land acquisitions being implemented in a fair and responsible way, and while much has been made of large-scale land acquisitions providing much-needed investment in agriculture in developing countries, the reality is widespread evidence of 'land-grabbing.'[18] In many cases, either the necessary regulations or safeguards are not in place to prevent land grabbing, or where they do exist, they are failing to protect vulnerable communities.

We welcome the Bank's acknowledgement of land and natural resources as an emerging issue in the evolution of the safeguards that deserves special consideration in the review and update process.

Specific land issues will directly feature in the review of OP/BP 4.12 on Involuntary Resettlement. However in light of the rapid acquisitions of land and the detrimental impacts that this has had on food security, the Bank should develop and adopt new safeguard standards on land acquisition and prioritize additional provisions on land investments based around improved security of tenure, transparency, and community consultations.

The Bank should develop an exclusion list which includes any support for large agricultural land grabs, including those of government-owned or public lands used by peasants for family farm production; customary lands of indigenous peoples; and those lands subject to a government's agrarian reform laws.

Labor Rights

Given that the World Bank is a UN specialized agency, it is all the more important for it to uphold UN standards, including the core labor rights conventions of the International Labor Organization (ILO). The World Bank is behind the curve with regards to the adoption of labor standards for lending requirements, which were adopted by the IFC (2006) and the EBRD (2008); included in the MDBs' harmonized conditions of contract for construction (2010); and are currently under development at the AfDB. This policy gap has been highlighted by trade unions, other civil society groups, and the IEG.[19]

The World Bank should develop a labor safeguard requiring compliance with all four of the core labor standards as defined by the ILO (which is a condition of ILO membership). The core labor standards include elimination of forced and compulsory labor (Conventions 29 and 105), abolition of child labor

[17] Although comprehensive information on domestic and foreign land deals and investments is in many cases either not available or reliable, the latest cross-checked estimates by the Land Matrix Partnership suggest that of over 76 million hectares of land that have been acquired since the year 2000, 48% has been acquired in Africa and 10% of investors account for 79% of the land acquired.

[18] "Large-scale land grabbing" has been defined as: "acquisitions or concessions that are one or more of the following: (i) in violation of human rights, particularly the equal rights of women; (ii) not based on free, prior and informed consent of the affected land-users; (iii) not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered; (iv) not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing; and (v) not based on effective democratic planning, independent oversight and meaningful participation. Tirana Declaration, endorsed by the International Land Coalition Assembly of Members which included civil society organizations and international organizations, including the World Bank, on 27 May 2011.

[19] IEG Safeguards Evaluation.

(Conventions 138 and 182), elimination of discrimination in respect of employment and occupation (Conventions 100 and 111), and freedom of association and collective bargaining (Conventions 87 and 98). The labor safeguard should also include properly adapted requirements found in IFC's PS2 for other basic working conditions, namely the provision of information to workers on conditions of employment, retrenchment procedures, grievance mechanisms, migrant worker protections, occupational health and safety standards and supply chain standards.

Gender Equality and Women's Rights

The Bank's World Development Report 2012 states that gender considerations in Bank lending are crucial to achieve core development objectives, including gender equality. Yet, women are often disproportionately affected by negative impacts of development projects, including displacement, increased instances of violence against women, HIV/AIDS, sexually transmitted diseases, loss of livelihoods, land and income, pollution, and degradation of the living environment. The Bank's new safeguards should explicitly protect women's rights and promote gender equality in all stages of Bank activities and measure the gender impact of outcomes. Too often the Bank does not address gender considerations in project design; preparation and evaluation of outcomes or in social and environmental assessments; and developing programs and drafting of policies. Frequently, the Bank does not proactively engage women in decisions that influence and affect their lives, families, and communities.

To live up to its own commitment to protect people and their environment against harm and promote gender equality, the World Bank's safeguards should include specific mandatory measures to:

- Conduct gender impacts and risk assessments of potential changes in livelihood and living environment and heightened violence directly or indirectly related to projects, programs and policies;
- Ensure the involvement of women in decision-making in all Bank supported activities;
- Collect sex-disaggregated data to measure every investments' impacts on men and women;
- Provide full and complete project, program, and policy information to women in languages, forms and ways understood by them; and
- Develop gender-sensitive and gender-responsive grievance mechanisms at project and program level.

Children's Rights

Children are among the groups most susceptible to the risks associated with development projects financed by the World Bank. The realization of children's rights is necessary to reach the core development objectives of the Bank. However, children are often negatively impacted by development projects. The detrimental effects of poverty and deprivation are magnified on children because a lack of sufficient nutrition, health care, access to clean drinking water, and educational opportunities early in a child's life have impacts that linger for years and prevent a child from reaching his or her full potential. Current World Bank safeguard policies on involuntary resettlement and indigenous people recognize the heightened protection needs of children by listing them among "vulnerable groups" and those with "special needs." The revised safeguards should go further and require Bank funded activities take all necessary measures to protect the rights of children.

As the UN has previously noted "the child, by reason of his physical and mental immaturity, needs special safeguards and care."[20] It is therefore crucial that safeguard policies provide protection for the rights of children, in line with the UN Convention on the Rights of the Child. Such policies should include, among other measures, prohibiting the use of child labor in World Bank funded activities, ensuring that projects do not interrupt children's access to appropriate educational services (including inclusive education for children with disabilities), and preventing gender based exploitation of minors.

[20] Declaration of the Rights of the Child G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

Rights of Persons with Disabilities

Disability and poverty are inextricably linked. Poor infrastructure creates barriers to inclusion in mainstream society, including through employment, education, and participation in community life. People with disabilities also face barriers to accessing food and health services, and malnutrition and lack of adequate healthcare frequently leads to or exacerbates disabling conditions. War and conflict in many developing and transitioning countries results in a higher number of people with disabilities due to violence and trauma, and also results in higher levels of violence targeted at vulnerable populations, including people with disabilities.

Disability affects approximately one billion people around the world, a large majority of whom live in developing countries but have been systematically left out of development programs and policies. This exclusion hinders their rights and subsequent opportunities to benefit from national programs, including poverty reduction projects.

It is critical that the needs and rights of persons with disabilities are explicitly and systematically ensured through the adoption of strong, clear policy language on disability mainstreaming and inclusive development when planning for certain types of programs and projects in sectors such as transportation and tourism; building infrastructure; communication and information technology infrastructure; social programs such as education, employment, and health; and reconstruction work in the aftermath of disasters. The policy language should be consistent with the UN Convention on the Rights of Persons with Disabilities, the most robust international standard on the human rights of people with disabilities.

Projects in Disputed Areas

The World Bank's Policy on Projects in Disputed Areas (OP/BP 7.60) should be included in the review. The reported revision in March 2012 without public engagement has not addressed the flaws in the policy.

The Bank has an unclear definition of 'disputed.' Its application of the word indicates that it refers to a situation in which two or more countries have claims over the same territory. This avoids far more complex issues such as indigenous peoples' lands, 'autonomous regions' fought for by organized movements, and long struggles for self-determination not recognized by a dominant state(s). The Bank should broaden the definition of 'disputed' to include these issues, and to count the inhabitants of such areas as legitimate stakeholders in project decisions.

To avoid future diplomatic rows, risks of perpetuating conflicts, and to ensure that people living in disputed areas are not simply excluded from development initiatives, OP/BP 7.60 should be reviewed and strengthened. As a first step, the Bank should commission an independent assessment of activities executed in all disputed areas.

Climate Change Mitigation and Adaptation

The World Bank has recognized that "[g]lobal efforts to overcome poverty and advance development can no longer ignore an urgent need of addressing global climate change."[21] However, the Bank has not yet fully integrated climate issues into its operational policies. Most notably, the current safeguard policy framework does not adequately address the challenges a changing climate presents to client governments, affected communities, local ecosystems and the global commons. At present, the Bank lags far behind other financial institutions that have gone further to address climate-related issues in their environmental and social policies.

The Safeguard Policy Review presents an important opportunity for the Bank to adopt best practices for promoting climate sensitive and resilient development in its project selection, appraisal, and alternatives assessment. Specifically, the Environmental Assessment Policy should be strengthened to:

[21] World Bank, Development and Climate Change: A Strategic Framework for the World Bank Group, October 12, 2008, para. 1.

1. Require the use of full life-cycle accounting;
2. Prioritize end-use resource efficiency improvements;
3. Assess the climate resiliency of supported projects and the impact of projects and programs on the climate change resilience and adaptive capacity of local communities;
4. Require clients to manage the risks to the project and its impacts on local communities and ecosystems in a changing climate;
5. Ensure coherence between World Bank supported initiatives and national climate strategies;
6. Quantify the emissions of long-lived greenhouse gases and short-lived climate pollutants of the project, and account for their costs;
7. Refuse to support projects that net-produce hydrofluorocarbons;
8. Adopt rigorous efficiency standards for the plant and equipment of the projects it supports,
9. Apply the "mitigation hierarchy" to issues of resource efficiency, energy use, and emissions;
10. Require the use of Best Available Technology as part of the mitigation hierarchy;
11. Establish criteria to shift from fossil-fuel dependent development paths and prioritize support for low and no-carbon initiatives, including off-grid and mini-grid renewable energy, and improved end-use resource efficiency where regulations and/or market distortions incentivize throughput and investments in fossil fuel-based supply expansion.

Natural Habitats
The safeguard policy on natural habitats, OP/BP 4.04, must be revised to ensure consistent application of a "precautionary approach" to natural resources management, per OP 4.04 para. 1. First and foremost, the Bank must not finance activities that lead to conversion or degradation of critical natural habitats –including activities that propose biodiversity offsets to compensate for adverse impacts to critical natural habitats. Insufficient empirical evidence exists to support the effectiveness of biodiversity offsets in mitigating such impacts. Second, the Bank should provide a clearer definition of "critical" that is based on participatory procedures and includes those areas essential for maintaining forest-dependent communities' livelihoods, and cultural identities. Further, "degradation" should be redefined so that it is scientifically-based and allows for community use of the resources so long as the above-mentioned essential functions are maintained. Third, the policy should effectively address the social and environmental risks posed by weak governance and incentivize measures to address governance issues, including illegal logging. The Bank's efforts to improve governance should include support for rule of law. The Bank must prioritize community-based management of natural resources, which has regularly proven to be the most effective in conservation and poverty alleviation. The policy should also address the customary rights of natural resource dependent peoples who are not covered under OP/BP 4.10, while maintaining and strengthening protections for the unique rights of indigenous peoples.

It is imperative that the Bank ensure that all lending and non-lending activities have consistent goals and approaches–including transparency requirements–to protecting natural habitats.

Forests
The Forests policy, OP/BP 4.36, builds on the Natural Habitats policy and therefore must be revised to incorporate the recommendations made above. In line with prohibiting the conversion or degradation of critical natural habitats, the Bank should prohibit the financing of industrial-scale forest harvesting in intact forests, particularly in the tropics, while allowing and supporting small-scale, ecologically sustainable management by local communities and indigenous peoples in such forests. Additionally, the Bank should redefine "forests" to properly distinguish between natural forests and tree plantations. The Bank should not rely on existing certification schemes as a proxy for demonstrating the sustainable management of forests, as these schemes do not ensure ecological sustainability or adequate protections for the rights and livelihoods of local communities and indigenous peoples, particularly in tropical forests. In addition to the need for strengthened protections for the land and territorial rights of indigenous peoples noted above, the Bank must establish adequate safeguards for the land tenure and resource rights of the 800 million forest-

dependent people who are not indigenous peoples but depend on forests for their livelihoods.[22] The Bank should also ensure that investments do not adversely impact the resilience of intact forest ecosystems to climate change and their adaptation benefits for local communities.

The Bank is increasingly funding forest-related work through Development Policy Lending (OP 8.60), which is not subject to the safeguard policies. However, project preparation teams face serious obstacles in applying OP 8.60 to manage forest-related social and environmental risks, including identification of "likely significant effects" and indirect impacts on forests.[23] The Bank has long promised an inter-sectoral approach to forests. The new safeguards should ensure that all lending and non-lending activities that directly or indirectly affect forests are subject to the same robust assessment and safeguard standards mentioned above.

Dam Safety

Climate change presents new challenges to dam safety, design, and economic feasibility. Increased hydrological variability as a result of climate change will require better safeguards for risk management and reassessment of safety aspects including spillway capacity, in view of likely increases in probable maximum precipitation and maximum flood. OP/BP 4.37 and BP 4.37 Annex A should be updated to reflect the best and most current knowledge on increasing resilience to social and environmental risks that occur as a result of insufficient dam safety measures, and the update should occur in a transparent, participatory fashion.

Climate change necessitates stronger technical assessments to influence project design in view of possibilities of increased and sudden high intensity precipitation, and water and silt inflows. Improved technical-economic feasibility plans for infrastructure should assess the structural risks associated with sudden disasters caused by climate change. Appropriate design changes should be incorporated to siting, turbine type, wall height, and reservoir design, to make infrastructure more resilient to climate change. Decentralized, run-of-the-river, and small-scale dam infrastructure is safer and often performs better under climate change than large storage. River basins with multiple planned or existing dams require cumulative disaster potential assessments in view of possibilities of simultaneous flood releases and disaster probabilities.

Building multipurpose water storage infrastructure will place greater demands on a more variable supply, as well as greater costs on freshwater ecosystems and biodiversity. Climate variability assessments should be required to measure projected hydrological flow, and environmental flows assessments should be required to measure and mitigate the impacts of dam infrastructure on freshwater fisheries, floodplain nutrient balance, sedimentation, and water and soil quality. Finally, greenhouse gas assessments should be required to measure net carbon emissions from dam infrastructure, including diffusion and ebullition from reservoir surfaces and degassing and diffusion from spillways, turbines and downstream areas.

Country Systems

The World Bank defines a "country system" as "a country's legal and institutional framework, consisting of its national, subnational, or sectoral implementing institutions and applicable laws, regulations, rules, and procedures."[24] Increasingly, the World Bank has committed to utilizing a country systems-type approach to provide financial support directly to developing country government agencies without applying the normal suite of mandatory Bank environmental and social safeguards.

[22] S. Chao, "Forest peoples: Numbers across the world FPP briefing paper," May 4, 2012, http://www.forestpeoples.org/topics/climate-forests/publication/2012/new-publication-forest-peoples-numbers-across-world (accessed October 4, 2012).
[23] A. Contreras-Hermosilla & M. Simula, "The World Bank Forest Strategy: Review of Implementation," World Bank, 2007, p. 11-12.
[24] World Bank Group, OP 4.00 - Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects, March 2005, footnote 3, http://go.worldbank.org/A23ULAUDG0 (accessed October 4, 2012).

A functional judiciary system and adherence to the rule of law are important prerequisites for the protection of the rights of marginalized communities and their surrounding natural environment. This presents a particular challenge if a country systems-type approach is to be utilized in countries with authoritarian or military governments or where there are weak or poorly-enforced laws on transparency, corruption, environmental protection, or social welfare, ensuring the protection of the lives and livelihoods of project-affected communities is likely to be difficult. In the absence of this, there are substantial concerns that a move to a country systems-type approach accompanied by a reduction in Bank due diligence, consultation, supervision, and reporting requirements could lead to a substantial increase in corruption and to significant harm to communities and the environment.

There is truly a need to strengthen country systems– in the genuine sense of empowering citizens and governments to determine national development goals, accompanied by the empowerment of communities, civil society, and all people –particularly project-affected people– to ensure that they are involved in decision-making about the development of their own country and about projects, programs and policies which impacts their lives and livelihoods. Until such conditions have been achieved, the World Bank must ensure, through mandatory enforcement of the highest environmental and social safeguards, that project-affected communities and the environment are protected from negative impacts of projects, programs, and policies supported by the Bank.

Part 2: Implementation

The IEG 2010 evaluation, Safeguards and Sustainability Policies in a Changing World, points to a number of issues with the Bank's implementation policies and procedures, indicating that many of the problems identified in the 1992 Wapenhans report are yet to be resolved.[25] The Safeguards review needs to take into account the IEG's recommendations in addressing these issues.

Transparency

We welcome the Bank's presumption of disclosure, but stress that this presumption as well as other transparency requirements must be consistently applied to ensure robust outcomes. This policy should not be rendered meaningless by the wide use of exceptions. The Bank should increasingly mandate disclosure of project documents and strategies in advance of Board consideration, rather than leaving this decision with governments. The Bank should ensure the disclosure of all identified environmental and social risks–including those that developed during implementation or that were left to be determined later by contractors. Finally, the Bank should enhance transparency of Board decisions.

Project Appraisal and Economic Evaluation

While the IEG's 2010 evaluation found the Bank's attention to safeguards has been reasonably good during project appraisal, the Bank has not consistently followed the current policy on economic evaluation. Measures to mitigate the environmental and social risks and impacts of projects must be informed by an analysis of full costs associated with project externalities and benefits provided by alternatives. In its 2010 evaluation, the IEG found "little evidence of a prior systematic effort to compare alternatives to a chosen project."[26] The Bank's recent revision of Operational Policy 10.04, Economic Evaluation of Investment Projects, as part of Investment Lending Reform, indicates substantive dilutions to the past policy, with negative implications for Bank practice. OP 10.04 is quite clear in qualifying any economic analysis of a Bank investment in terms of net benefits exceeding costs relative to other project alternatives. The revisions to Investment Lending Policy 10.00 drop this language entirely, relaxing the requirements for robust alternatives analysis.[27]

Economic appraisal of Bank investments should require early, independent (peer reviewed), high quality, and accountable cost-benefit analysis for all investments as well as the proper incentives and quality control to ensure analysis informs operation design and effective implementation. Given how central this policy is to addressing project risks, including the prospective discussion of expanding the scope of social and environmental externalities for estimating operation costs or benefits (such as in the case of carbon accounting or ecosystem service valuation) , any discussion of OP 10.04 should be fully aligned with the Bank's safeguard review.

Accountability for Results and Operation Supervision

As safeguards systems evolve, greater focus on results opens opportunities to expand the role of safeguards to ensure verifiable, sustainable outcomes. An emphasis on outcomes places a greater premium on the quality and reliability of operation supervision. There are supervision requirements in most, if not all of the Bank's Safeguard policies that call for social and environmental risks to be monitored and evaluated. Yet supervision after project approval, particularly for social and environmental impacts, remains a major weakness in the World Bank's safeguard policy framework. IEG found that "monitoring and evaluation of safeguards is the weakest aspect of Bank supervision, followed by lack of candor in supervision reporting."[28] Assessing safeguard results is often made

[25] Willi Wapenhans, ed., Effective Implementation: Key to Development Impact. Report to the World Bank's Portfolio Management Task Force. World Bank, 1992.
[26] Andrew Warner, Independent Evaluation Group, "Cost Benefit Analysis in World Bank Projects," 2010, p. 19, http://siteresources.worldbank.org/EXTOED/Resources/cba_full_report.pdf (accessed Dec. 12 2012).
[27] Operations Policy and Country Services, Investment Lending Reform: Modernizing and Consolidating Operational Policies and Procedures. World Bank (November 1, 2012), Annex C, BP 10.00 para. 17.
[28] IEG Safeguards Evaluation, p. 38; "Three key concerns emerge from supervision deficiencies. First, projects with substantial impact (category-B) are not being adequately supervised and monitored. Most of these are delegated to respective sectors in the interest of increasing ownership and efficiency. This is having the perverse

more difficult by weak monitoring and evaluation frameworks, which often exclude safeguard related outcome indicators and therefore fail to ensure needed data collection.[29] In turn, assessment of the true benefits and costs of safeguards proves challenging.[30] Far from addressing this weakness, adopting IFC's model of monitoring and evaluation, which relies heavily on self-reporting from the client, may further undermine sustainable outcomes.

Delivery on the Bank's commitment to results will require changes to project supervision at all stages of the programming cycle. New instruments should be explored for improving the quality of supervision such as enhanced supervision plans; annual monitoring reports; post-appraisal update of safeguard risks; objective, binding standards for frequency and skill mix of missions; and more robust feedback mechanisms. The Bank needs a stronger mandate to systematically integrate clearly specified indicators of social and environmental performance, invest in client systems to collect and analyze operation monitoring data that is disaggregated, and clarify use of independent and community participation in project supervision and evaluation.

The Bank has simplified the supervision policy (OP 13.05) within the new Investment Lending OP 10.00. Far from strengthening supervision, this revision seems likely to seriously undermine, if not eliminate, key safeguard supervision requirements in the name of consolidation. Discussion of reforms to OP 13.05 or related Safeguard Policies should be part of the Bank's safeguard review.

Safeguards and Bank Incentive Structures

In its 15-year review, the Inspection Panel found that inadequate budget and staff resources for supervision of safeguards is a major cause of project failures leading to Inspection Panel claims from people harmed by Bank operations. Similarly, the IEG noted in 2011 that "Staff incentives and predictability of resources for supervision need to be improved for greater effectiveness."[31]

At least since the 1992 Wapenhans report, the Bank has struggled to correct a "culture of approval" and to balance the Bank's responsiveness to client demands with the investment of institutional knowledge of development effectiveness. A recent IEG evaluation shows that the operation design and trend in declining operational quality are related to favoring the client's short-term needs over operational quality.[32] Without substantial changes, "the institution risks losing global relevance on both the knowledge and the lending side."[33]

Changes to the Bank's incentive structure are needed. The Safeguard Policies Review and Update should explore how to better align Bank staffing requirements and incentives for the environmental and social assessment priorities of the future, considering the state of high staff turnover and declining average levels of in-house safeguard experience. The organization of Safeguards advisory staff should explore how to maximize independence and quality of decision-making. Such options would ensure a robust, central unit of environmental and social expertise with adequate budget and appropriate reporting line. Following the lead of the Latin American region, the Bank should transfer budget authority for social and environmental staff across the Bank to sector managers. Performance evaluations should transparently reward quality of operation outcomes or impacts in addition to volume of lending approvals. The requirements governing the use of third party, independent monitoring mechanisms should be clarified.

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effect of leaving the effects of safeguards unsupervised in a large number of projects" IEG Evaluative Directions, p. 6.

[29] IEG Safeguards Evaluation, p. 31.

[30] Ibid., p. 73.

[31] IEG Evaluative Directions, pp. 10-14.

[32] Independent Evaluation Group, "The Matrix System at Work: An Evaluation of the World Bank's Organizational Effectiveness," April 2012.

[33] See V. McElhinny, "World Bank Modernization Agenda Moving Forward," Bank Information Center Update, May 2012.

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11. Another Development for Burma (ADfB)
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20. Bank Information Center
21. Bedar- har-Moe Civil Society Organization, Myanmar
22. Bedar Rural Development Programme, Myanmar
23. Beyond Copenhagen Collective, India
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25. Bretton Woods Project
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27. Burma Partnership
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180. Worldview - The Gambia
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