

April 2013

FPP E-Newsletter Special: Safeguarding Human Rights in International Finance



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Cover photos:

Main picture: Gas pipeline construction in the Peruvian Amazon, partly funded by the Inter-American Development Bank, as part of the controversial Camisea gas development project © A.Goldstein, Películas Atabamba

Top right picture: Baka women in Cameroon returning from a trip into the forest, which they equate with a pharmacy, supermarket and real home © Samuel Nnah

Middle picture: Nahua hunter-gatherers in South-East Peru. The possible expansion of the Camisea gas pipeline threatens their lands and livelihoods, and those of other isolated peoples in the area © Johan Wildhagen

Bottom right picture: Woman and child living on the Nakai Plateau, Laos. More than 120,000 people are directly affected by the Nam Theun 2 in Laos financed by the Asian Development Bank. The dam has destroyed livelihood options, affected water quality and caused the flooding of river bank gardens © Virginia Morris & Clive Hills/ International Rivers

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¹ David worked as a consultant for FPP between November 2012 and January 2013

1. Introduction: Why safeguards matter

So-called “safeguard standards” for international finance institutions emerged as a consequence of destructive forestry, agricultural colonisation and extractive megaprojects financed by the World Bank in the Amazon, Indonesia and India in the 1970s and 1980s.¹ Since then many other multilateral development banks and development agencies have adopted their own safeguard policies and related complaints mechanisms. In addition to the need to protect community rights from destructive development investments, it is increasingly recognised that even well-intentioned conservation and ‘community development’ projects can cause damage and violate rights if they are poorly designed and fail to protect human rights and fragile habitats.²

Safeguard standards and measures are meant to ensure that finance agencies and their programmes and investments “do no harm” to people and the environment. At a minimum, effective safeguards should ensure that an agency or investor is able to identify potential harm and therefore enable them to take measures to avoid adverse impacts. They are a much needed and vital part of sustainable and accountable finance for development because they establish clear rules and guidelines for staff on how to deal with social and environmental issues. At the same time, safeguard policies can assist agencies to “do good” by promoting sustainable development and encouraging positive policy and legal reforms to enhance local livelihoods and assist communities to realise their rights.

Properly implemented, safeguard measures increase development effectiveness and are proven to help deliver positive results for poverty reduction. Crucially, binding policies and commitments backed by independent complaints mechanisms can help citizens and affected communities hold finance and development agencies to account by allowing them to claim and exercise their rights when problems and failures occur in project planning and implementation.

Need for expanded and strengthened safeguards

At the beginning of the 21st century, safeguards for the protection of human rights and the environment in international development finance are needed more than ever before. There is alarming evidence that

pressures on community lands, forests and resources are intensifying. Agribusiness, extractive industry, energy and infrastructure developments are expanding as Southern countries rush to achieve rapid economic growth and meet growing global demands for fuel, food, fibres and raw materials.³

Public and private finance bodies channel huge volumes of money into these investments that threaten to displace literally millions of people.⁴ In the case of the World Bank alone, for example, it is estimated that at any point in time over one million people are affected by involuntary resettlement in Bank-financed projects.⁵ In addition to threats from agro-industry and other sectors, millions of forest dwellers are facing a ‘green land grab’ as the private sector and governments seek to commodify and trade forest carbon and ‘ecosystem services’.

This special edition FPP E-Newsletter on safeguards is being issued at a time when measures needed to tackle threats of a massive global land grab are key topics of national and international debate. The World Bank is reviewing and updating its safeguard framework, assessing how it must deal with human rights and land tenure ([Article 5](#)), while the African Development Bank is soon to adopt a newly revised safeguard framework ([Article 9](#)). Meanwhile, developing countries are grappling with how to develop national safeguard systems in order to meet obligations required by the 2010 Cancun Agreements under the UN Climate Convention ([Article 10](#)). The private sector is likewise reviewing its own safeguards for social and environmental responsibility in response to new standards adopted by the International Finance Corporation (IFC) in 2012 and guidance from UN human rights bodies on business responsibilities to uphold human rights ([Article 11](#)).⁶

The first part of this bulletin aims to feed into current international and national policy discussions on safeguard standards from the point of view of indigenous peoples and civil society organisations in Africa, Asia and Latin America. Experience from both Asia and Africa ([Articles 2 and 4](#)) shows that even where safeguard policies for indigenous peoples’ rights are applied by agencies like the World Bank and Asian Development Bank, measures

³ Boucher, D, Elias, P, Lininger, K, May-Tobin, C, Roquemore, S and Saxon E (2011) *The Root of the Problem: what's driving tropical deforestation today?* Union of Concerned Scientists, Cambridge M.A

⁴ RRI (2012) *New research predicts rising trend in India's violent land conflicts; 130 districts struggle*, Press Release, December 2012

⁵ Independent Evaluation Group (2010) *Safeguards and Sustainability in a Changing World - An Independent Evaluation of the World Bank Group* Experience IEG, Washington DC at page 20

⁶ See, for instance, the work of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises, elaborating the ‘UN Guiding Principles – Respect, Protect, Remedy’, at: <http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>

¹ Griffiths, T and Colchester M (2000) *Indigenous Peoples, Forests and the World Bank: a synthesis paper* FPP, Moreton in Marsh

² Colchester, M (2003) *Salvaging Nature* World Rainforest Movement, Montevideo

and agreements to safeguard the rights are often not implemented effectively, if at all. Experience with the Inter-American Development Bank safeguards for isolated indigenous peoples teaches us that without long-term guarantees for human rights and forest territories and ecosystems in international investments, safeguards can become meaningless and empty instruments ([Article 3](#)). In Brazil, shortcomings in the safeguards of the Brazilian Development Bank (BNDES) underline the need for effective oversight mechanisms to monitor and ensure compliance with social and environmental policies, including through independent monitoring arrangements ([Article 8](#)).

Emerging lessons from the World Bank lending to palm oil developments demonstrate the vital need for much more effective IFI due diligence to pinpoint and address indirect social and environmental risks linked to the supply chain and “associated facilities” outside and beyond the specific area where a project or programme is financed ([Article 6](#)). Experience within the palm oil industry more widely reveals that safeguard standards are increasingly common in the private sector, and face similar implementation and due diligence challenges ([Article 11](#)).

Early experience with safeguards in forest and climate policies suggests that both governments and international agencies lack capacity and effective arrangements to apply safeguard requirements. A growing number of complaints by indigenous peoples are emerging about a lack of meaningful attention to rights issues in several countries preparing for future REDD programmes, including in Panama where indigenous peoples’ organisations have pulled out of the UN-REDD forest programme due to alleged violations of rights, including the UN Declaration on the Rights of Indigenous Peoples ([Article 10](#)). Promised investigations by the UN into these complaints must get to the root of safeguard implementation problems and pinpoint measures needed to ensure that UN staff and government partners improve due diligence.

In relation to the World Bank’s safeguard update process, it is highlighted that a revamped safeguard framework for the World Bank Group must cover all finance instruments (not just so-called ‘project finance’), including Development Policy Loans (DPLs).⁷ Without developing new standards to manage risk in programmatic lending and finance through intermediary bodies, the Bank is set on a dangerous course that could lead it to adopting a safeguard framework that’s not fit

for purpose ([Articles 5 and 7](#)).

Need to respect human rights

Safeguards have developed in an ad hoc manner among many different agencies and global bodies and there is a pressing need for upwards harmonisation to ensure all safeguards meet international norms and obligations on human rights, environmental protection and sustainable development ([Articles 5 and 11](#)). Indigenous peoples have consistently argued that safeguards applied to their lands and resources, or affecting their lives, must be coherent with the UN Declaration on the Rights of Indigenous Peoples. Civil society and social justice groups likewise stress that the World Bank must bring its standards into line with international human rights norms and the related obligations of Borrower countries. They maintain that the safeguards of public and private finance institutions do not stand outside international law and that as a specialized UN agency the Bank has a duty to uphold and promote human rights.⁸ UN human rights experts have emphasised this in their recent call for the Bank to ensure consistency with international human rights standards in the current review.⁹

Ensuring effective implementation

Most of the articles in this newsletter emphasise the need for public and private international financial institutions, including the World Bank, to put in place more robust arrangements to ensure the implementation of agreed standards in project design and on the ground. Without the establishment of more effective risk assessment mechanisms to trigger safeguard measures upstream in project design, and without better oversight and monitoring, safeguards will not deliver their intended results.¹⁰ From the earliest point of project conception and preliminary impact assessment through until the measurement of long-term outcomes, social and environmental risks and impacts should be at the forefront of Bank analysis.

⁸ See *inter alia* C.F. Amerasinghe, *Principles of the Institutional Law of International Organizations* (Cambridge: Cambridge University Press, 1996); Henry G. Schermers & Niels M. Blokker, *International Institutional Law: Unity within Diversity*, 3rd rev. ed. (The Hague: Kluwer Law International, 1995); Sigrun Skogly, *The Human Rights Obligations of the World Bank and International Monetary Fund* (London: Cavendish Publishing, 2001), 84-87; Mac Darrow, *Between Light and Shadow. The World Bank, The International Monetary Fund and International Human Rights Law* (Oxford: Hart Publishing, 2003), and Philippe Sands & Pierre Klein (eds.), *Bowett’s Law of International Institutions*, 5th ed. (London: Sweet & Maxwell, 2001), 458-59.

⁹ Press Release, Office of the High Commissioner for Human Rights, April, 2013. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13248&LangID=E>

¹⁰ <http://www.forestpeoples.org/sites/fpp/files/publication/2013/04/implementation-submission-wb-april-2013-english.pdf>

⁷ Bank Information Center (BIC) and Global Witness (2013) *World Bank Safeguards & Development Policy Lending: A Primer on Why DPLs Should be Part of the Safeguard Review* <http://www.forestpeoples.org/sites/fpp/files/publication/2013/04/dpl-primer-april2013.pdf>

Conclusion

While the volume of official development finance flowing from Northern to Southern countries may stagnate due to the on-going credit crisis, financial flows from Southern Banks and the private sector are set to increase. The BRICS have just announced plans to establish a new Southern Development Bank to fund biofuel, hydroelectric and nuclear developments,¹¹ while massive private sector investment is being made in oil palm and other agribusiness development schemes (sometimes running to billions of dollars for individual oil palm plantations in Africa and Asia). The massive scale of development finance and the potential for negative impacts on forest peoples and other communities underlines an ever more pressing need for public and private financial institutions to apply effective and robust social and environmental safeguards. Southern development banks will need to put in place effective safeguard systems and accountability mechanisms. The private sector must also up its game to ensure that its investments are sustainable and fully respect human rights.

In 2013-14, the World Bank is now in a pivotal position to set an example for international development finance. It must use its safeguard review and update initiative to upgrade its standards to meet human rights norms and obligations and extend its safeguard coverage to diverse finance instruments. It must also correct systemic shortcomings in safeguard implementation through far-reaching institutional reform and meaningful measures to put principles into practice.

Tom Griffiths and Helen Tugendhat (FPP Responsible Finance Team)

Further reading:

- World Bank Safeguard review and update: <http://www.forestpeoples.org/tags/update-and-consolidation-world-bank-safeguard-policies-2010-13>
- Asian Development Bank: <http://www.forestpeoples.org/topics/responsible-finance/asian-development-bank-ADB>
- African Development Bank: <http://www.forestpeoples.org/topics/responsible-finance/african-development-bank-AfDB>
- Inter-American Development Bank: <http://www.forestpeoples.org/topics/responsible-finance/inter-american-development-bank-IDB>
- Global Environment Facility: <http://www.forestpeoples.org/topics/responsible-finance/global-environment-facility-GEF>
- World Bank's International Finance Corporation:

<http://www.forestpeoples.org/topics/responsible-finance/international-finance-corporation-ifc>

Indigenous peoples' experiences with safeguards

2. The experience of Asian indigenous peoples with the finance lending policies of international financial institutions: A select overview

Projects and programme interventions of multilateral development banks have a record of systematic and widespread human rights violations for indigenous peoples in Asia. In many countries, indigenous peoples have been subjected to widespread displacement and irreversible loss of traditional livelihoods. Behind these human rights violations is the denial of indigenous peoples' rights to their lands, territories and resources and to their right to give their free, prior and informed consent (FPIC) to projects and programme interventions, including those in the name of sustainable development and human development. Among them, the large infrastructure (dams and highway construction) and environmental "conservation" projects have had the most detrimental adverse impacts on indigenous peoples. There are a good number of examples of such projects that have negatively impacted indigenous peoples' communities in Asian countries, some of which follow below.

While both the World Bank and the Asian Development Bank (ADB) have their own mandatory environmental as well as social safeguard operational policies, the requirements for respecting the human rights and collective rights of indigenous peoples are weak and implementation has proved problematic. While there are projects today that are better designed from the perspective of indigenous peoples, compared to those implemented in the 1960s and 70s, the desired positive impacts of the implementation of these safeguards in ensuring environmental protection and in avoiding adverse social consequences have not been achieved.

The ADB undertook a review of its environmental and

¹¹ "BRICS Countries Agree to US\$50 Billion Development Bank" *Asian Scientist Magazine*, Monday 15 April 2013

social safeguard operational policies in 2008-2009 and issued a revised Safeguard Policy Statement that includes a more progressive Indigenous Peoples (IP) Policy. The ADB IP Policy now requires the application of the free, prior and informed consent of indigenous peoples on projects and programme interventions that affect their land, territories and resources, their cultural heritage and on their potential displacement. However, the operational policy remains weak in respecting the collective decision-making process of indigenous peoples. It is also weak in its definition of consent as “broad community support.” Furthermore, the commitment of the ADB Management and the responsible counterpart agencies in borrower governments to implement the IP Policy still remains to be tested.

The World Bank (WB) continues to apply an outdated policy on indigenous peoples, Operational Policy 4.10 (although this is under review). This policy is the only policy of the multilateral development banks that does not recognise the right of indigenous peoples to free, prior and informed consent (FPIC). The Bank has yet to effectively respond to the findings of a 2011 internal review of the implementation of Operational Policy (OP) 4.10.¹² This review was damning, with findings including the following:

- Although most projects did identify benefits for indigenous peoples, in many projects they did not address potentially negative impacts on indigenous peoples, especially the long-term or indirect ones;
- Significant disregard of the protection or promotion of indigenous peoples rights to lands and resources;
- Lack of appropriate grievance mechanisms established by projects;
- Where resource rights are not recognised, projects that affect land and water often did not consider measures to address the land and resource rights which are essential for the long-term wellbeing and sustainability of indigenous peoples’ societies and cultures;
- Project information and documentation of project processes is substantially lacking.

The review found that evidence of broad community and verifiable information on how the process of obtaining support was done had been limited and is another area that needs substantial improvement.

The following cases exemplify the experiences of indigenous peoples impacted by projects and programme interventions financed by international financial institutions.

¹² World Bank, *Implementation of the World Bank’s Indigenous Peoples Policy: A Learning Review* (FY 2006-2008), August 2011

Laos

Khammouane Province, Vientiane and Xieng Khouang Provinces

The government of Laos PDR (GoL) considers hydro energy to be the main thrust of growth and economic development. It aims to transform the country into “the battery of Southeast Asia” by harnessing the power of rivers. To achieve this goal, GoL is receiving financing from major International Finance Institutions (IFIs) including the World Bank and the Asian Development Bank. In its power sector development plan, GoL includes 72 new large dams, 12 of which are under construction and nearly 25 more are at advanced stages of planning.¹³ In the case of large dams such as Nam Theun 2 (NT2) and Nam Ngum 3 (NN3), indigenous peoples in the affected communities have suffered serious economic and social dislocations in addition to loss of biodiversity.

The NT2 dam in Khammouane Province directly affected more than 120,000 people downstream by destroying livelihood options and fisheries, flooding riverbank gardens and affecting water quality. 6,300 indigenous persons in the Nakai Plateau were resettled to make way for the reservoir. The numerically small Vietic people, the most vulnerable of the indigenous peoples in Laos, were forcibly relocated to resettlement villages in violation of both the WB and ADB operational policies on indigenous peoples. It has been reported that many of them have died as a result of living in a resettled village, for both psychological and physical reasons. As of today, affected indigenous peoples in the resettlement villages have not been provided with land and have not received compensations for the loss of their properties.



Children on the Nakai Plateau in Laos before the Nam Theun 2 Dam was built. This village is now flooded by the reservoir and community members have been forcibly relocated to resettlement villages © International Rivers

¹³ International Rivers, data available at: <http://www.international-rivers.org/campaigns/laos>

The commitments for land and compensation described in detail in the project's planning documents remain partly unfulfilled. Due to loss of land and natural resources, food security has remained a concern of the affected indigenous peoples. Although the material needs for housing, electricity, roads, schools, and health centres, are provided at the resettlement villages, there is serious doubt that indigenous peoples' livelihoods will be restored to the pre-resettlement level, will be culturally appropriate and will be sustainable in the future. The poor quality of the land in the resettlement villages continues to pose severe problems for villagers, who are unable to grow sufficient food to feed their families, and to pay for the electric bills. The long-term production of the reservoir fisheries is also in doubt, and, as opposed to arrangements agreed in the project's Indigenous Peoples Development Plan, outsiders are encroaching on the villagers' community forest areas.¹⁴ In the meantime, the Nam Ngum 3 dam (also proposed to be funded by ADB) in Vientiane and Xieng Khouang Provinces, which is expected to be completed by 2016, will submerge an area of 3,769 km² affecting Lao-Tai (42%), Khmu (33%), Hmong (25%) and Yao indigenous peoples.



Construction workers at the Nam Theun 2 Dam - 2008. The dam has had major negative impacts on local communities whose livelihood resources have been adversely affected © Marcus Rhinelanders/International Rivers

North-East India

Meghalaya, Manipur, Nagaland

In North-East India, major IFIs including the WB, ADB and Japan Bank for International Cooperation (JBIC) are most active in providing support in the sectors of transportation, power and energy, trade and private sector participation, urban development, agribusiness

¹⁴ The ADB Indigenous Peoples Policy current at the time of financing NT2 required an 'Indigenous Peoples' Development Plan (IPDP)' to be established where indigenous peoples may be impacted. In some countries these IPDPs may be referred to by different terms due to political sensitivities, as is the case in Lao PDR where they are called 'Ethnic Minorities Development Plans'. The requirements are identical.

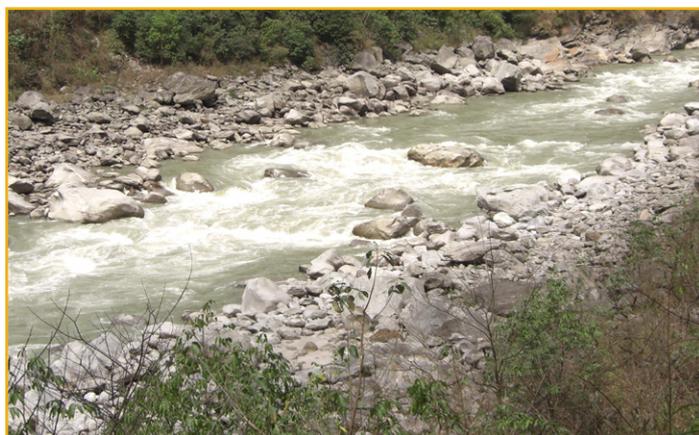
and tourism. In most projects in North-East India, indigenous peoples have not been properly consulted before mega development projects are undertaken. One such example is the Lafarge Surma Cement (LSC) plant, the first project of the South Asia Subregional Economic Cooperation (SASEC), an initiative for borderless Asia being financed by ADB. The LSC plant, which is actually in Bangladesh but sources its raw materials from Meghalaya, India, has affected the indigenous Khasi people in Meghalaya. As of today, the affected families have been struggling to get compensation for loss of lands and livelihoods due to the LSC. As well as IFI projects, large transport and energy projects have been undertaken or are being initiated by private companies and government agencies in North-East India. For example, the Tipaimukh Multipurpose Hydroelectric Project (TMHEP) in Manipur, and Mapithel dam in Nagaland pose serious threats to Hmar, Naga and Kuki indigenous peoples. The TMHEP will flood around 311 sq. km. of land, permanently displacing 90 villages mostly of the indigenous Hmar and Zeliangrong peoples, and 7.8 million trees and 27,000 bamboo groves will be felled in the 25,822 ha forested area.



The Lafarge Surma Cement plant, partly funded by the Asian Development Bank, has affected the indigenous Khasi people in Meghalaya, India, who have lost their lands and livelihoods due to the project © Ram Wangkheirakpam (AIPP)

Nepal

In Nepal, apart from financing health and education projects, the WB and ADB are financing transport systems and hydropower dams. Current examples include two hydropower projects – ‘Kabeli A Hydropower’ and ‘Tanahu Hydropower Project’ - which are in the pipeline. The detailed impacts of these hydropower projects on indigenous peoples have not yet been ascertained. At the same time, the “do no harm” projects financed by the IFIs, e.g. agriculture development projects, do not necessarily bring good results to indigenous peoples either due to lack of adequate participation or wrongful assessments of the projects by the IFIs. A case study on a commercial agriculture development project financed by ADB, concluded that the high value crop provided by the project, despite the increase in income in the short-term, affected the traditional seeds, soil fertility and pest management systems of indigenous peoples.



Construction of mega dams in Nepal threaten river ecosystems and local livelihood security © FPP

Malaysia

Sarawak Province

The Batang Ai Hydro Electric Power (HEP) project in Sarawak was constructed between 1980 and 1985 in the heartland of the Iban traditional territory. It displaced about 3,000 Iban people from 21 longhouses and they were forcibly resettled in the Lemanak-Batang Ai area on land that was managed by the Sarawak Land Consolidation and Rehabilitation Authority. Funded partly by the ADB, this largest HEP in Malaysia occupies some 40,000 acres of land, 21,000 of which have now been flooded, destroying large areas of forests and lands held under customary tenure, including swidden farms, crops and ancestral lands.

The resettled Iban people face numerous problems and

feel that they have been treated unfairly. The following is a long list of socio-economic woes that the 18,000 indigenous peoples in the Batang Ai state constituency still have today, even though the Batang Ai hydro electric dam has been operating for 25 years¹⁵:

- Instead of the eleven acres of cleared land that they had been promised, each family received only one acre.
- They did not receive any support for re-building as promised.
- Many families were unprepared for this new way of living; so many could not cope.
- Land certificates were only issued one per family and were issued to men; women were deprived from land ownership.
- In 2009, not only the displaced families but the whole of the constituency of Batang Ai had no access to public transport, limited telecommunication, poor electricity supply, frequent water-supply interruptions, poor health and medical facilities, as well as limited job opportunities.



3,000 Iban people were forcibly resettled due to the construction of the Batang Ai Hydro Electric Power in Sarawak © Iban Longhouse in Lemanak, Sarawak

The ADB, on the other hand, has described the resettlement of 2,800 Iban by the dam as an example of a “culturally sensitive and economically sound programme” because “the policies and plans...were carefully investigated and prepared.”¹⁶ Others, however, are more sanguine. A review paper commissioned by the World Commission on Dams as part of its assessment of the impact of dams on indigenous peoples states: “The Iban were persuaded to move in exchange for promises of free housing, free water, free electricity and 11 acres of land per family. The reality has proved a bitter experience.

¹⁵ <http://thestar.com.my/news/story.asp?file=/2009/4/1/trielection/20090401150731&sec=trielections>

¹⁶ Asia Development Bank quoted in Colchester, M., 1999, <http://www.the-cornerhouse.org.uk/resource/dams-incorporated#index-01-01-00-00-fn061>.

Not only were they resettled on a government land scheme, but they were also forced to change their way of life radically. Rice cultivation proved impossible on the terraces prepared for them and they were obliged to set up as small-holders on a plantation scheme. Incomes fell to the point that, according to one study, 60% of households were below the State poverty line, with the majority of respondents reporting that lack of land was their main problem.¹⁷ The State-owned Sarawak Land Consolidation and Rehabilitation Authority ran the plantation on which the Iban were resettled. Women suffered disproportionately from the resettlement procedures. For example, compensation, which should have been paid to both men and women as co-owners of the land, was only paid to male “heads of household”.

Indonesia

PT WEDA Bay Nickel, Halmahera island, North Maluku

The Forest Tobelo (Tugutil) are the nomadic people inhabiting the inland forests of Halmahera island whose subsistence is based on hunting, gathering, and foraging for sago in lower areas. The Tobelo Forest Community are broadly categorised into two groups. The first group are those who have been resettled in the villages, but may still return regularly to old use sites in the forest. The second group remain fully nomadic and identify themselves as *O hongana ma nywa* or ‘forest people’. Although total numbers are difficult to estimate, the latter group is composed of roughly 100 individuals¹⁸.

In 2004, the government of Indonesia declared 167,300 hectares of this territory as the Aketajawe Nature Reserve and the Lalobata Protected Forest to protect at least 23 bird species; it was claimed that these bird species are found nowhere else in the world. However, PT Weda Bay Nickel (WBN) has been allowed to undertake exploration and other mining development activities inside these national parks. The WBN Project’s Contract of Work covers 54,874 hectares which are part of the proposed buffer zone for the reserves. This area contains mangrove and fresh water swamp forest, various lowland forest habitat types, and lower montane forest. Less than half of the total area is designated Protected Forest by the Ministry of Forestry.

In this phase of WBN’s mining operations, it has asked the Multilateral Investment Guarantee Agency (MIGA), a specialised arm of the World Bank Group, to guarantee the project with respect to political risks. The MIGA board approved the insurance for the feasibility phase of

the project on 13 July 2010 in the amount of USD207 million for three years.¹⁹ This guarantee covers war, civil disturbance expropriation, non-transfer and breach of contract. However, in the Environmental and Social Review undertaken by the MIGA on due diligence conducted in mid-2010, key significant potential impacts of the project were identified that will occur during the construction and operations phases. These impacts include potential erosion of biodiversity, solid residues disposal and population influx. With respect to the forest dwellers, it states: “It is possible that Project activities may hamper their movements and cause changes to livelihood patterns and distress.... It may also be possible to discover heritage sites belonging to the local indigenous groups.”²⁰ The planned mining area is still part of the proposed buffer zone for the reserves. The forests are also the lands of the Forest Tobelo indigenous peoples, and represent important habitats for a number of endemic and protected species.

Concerns have been expressed that the project will have numerous adverse impacts on biodiversity, such as the destruction of at least 4,000 - 11,000 ha of moist tropical forest, as well as the destruction of at least 2,000 -6,000 ha (30%) of the Protected Forest in the mine project area²¹. Most importantly, the sociocultural survival of the Forest Tobelo people is threatened due to the severe impact of this mining project in their territory.

To overcome this legacy of failed or damaging projects in indigenous peoples’ lands and territories, financial institutions working in Asia need to pay more than just lip-service to the safeguard standards they have set themselves. Financing institutions need to address the significant barriers to better implementation of their safeguard policies, including weak political will on the side of some Asian governments. Furthermore, the standards themselves need to be improved and brought into line with the international obligations of governments, including the obligation to implement the UN Declaration on the Rights of Indigenous Peoples.

This article has been provided by the Asia Indigenous Peoples Pact (AIPP). The Asia Indigenous Peoples Pact (AIPP) is a regional organisation founded in 1988 by indigenous peoples’ movements. AIPP is committed to the cause of promoting and defending indigenous peoples’ rights and human rights, including advocacy work on indigenous issues and concerns of indigenous peoples in Asia.

17 <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/damsipsethnicminoritiesnov00eng.pdf>

18 http://www.earthworksaction.org/files/publications/EW_review_WedaBayNickel_biodiversity.pdf

19 <http://www.miga.org/projects/index.cfm?stid=1759>

20 Information on the Forest Tobelo and the impacts of the mining operations of WEDA on them are sourced from http://www.miga.org/documents/WedaBay_ESRS.pdf

21 www.earthworksaction.org/pubs/EW_review_WedaBayNickel_biodiversity.pdf

3. The IDB, Camisea and Peru: A sorry, sorry safeguards story

The Inter-American Development Bank (IDB) played a catalytic role in the development of the Camisea gas project in the Peruvian Amazon in 2002/2003 despite having no specific policy for projects impacting indigenous peoples. When the Bank adopted one in 2006, a key provision on isolated peoples was ignored when it made a US\$400m loan the following year. Meanwhile, attempts by the Bank to ‘protect’ a reserve for indigenous peoples in ‘voluntary isolation’ directly impacted by the Camisea project have proven almost entirely ineffective and are now being further undermined by plans to expand operations within the Reserve. The IDB is required to approve these plans and *could do so imminently*.

The IDB has played a catalytic role in the development of the Camisea gas project in the Peruvian Amazon. For example, in 2002 it approved a US\$5m loan to Peru’s government to strengthen its capacity to monitor ‘environmental and social aspects’ of the project and establish sustainable development initiatives in its area of influence,²² and in 2003 a US\$75m loan to a private consortium, Transportadora de Gas del Peru (TGP), for downstream operations.²³ The IDB’s involvement was particularly significant because it encouraged the loans of other financial institutions. This in turn was especially important following the fierce criticism of the Camisea project on social and environmental grounds by civil society, and the fact that some financial institutions, like Citigroup, the US’s Export-Import Bank and the US Government’s Overseas Private Investment Corporation (OPIC), had refused to get involved.

One key criticism was that the Camisea project was operating in territory inhabited by indigenous peoples in ‘voluntary isolation.’ Indeed, 74% of the most important concession in the Camisea region – called ‘Lot 88’ and operated by a private consortium led by Pluspetrol – is superimposed over the Kugapakori-Nahua-Nanti Reserve (KNNR), which was established to ‘guarantee the right of the Kugapakori and Nahua native peoples over the lands where they live in a traditional way.’²⁴

22 <http://www.iadb.org/en/projects/project-description-title.1303.html?id=PE0233>

23 <http://www.iadb.org/en/projects/project-description-title.1303.html?id=PE0222>

24 Ministry of Agriculture, Ministerial Resolution No. 00046-90-

Surely the IDB’s loans in 2002 and 2003 violated its policies on projects impacting indigenous peoples? Yes and no. Yes, because the IDB’s Environment and Social Impact Guidelines then in effect stated that indigenous peoples must be in agreement with projects affecting them, and no because it *didn’t have a specific policy on indigenous peoples at the time*.²⁵



Rivers in the Kugapakori-Nahua-Nanti Reserve could become contaminated if the Camisea gas project expands © Johan Wildhagen

In 2007 the IDB increased its involvement in Camisea by approving a US\$400m loan to another private consortium, Peru LNG, for new downstream operations.²⁶ This was approved despite consistent and detailed criticism of the Camisea project’s social and environmental impacts, particularly on indigenous peoples, including those in ‘voluntary isolation.’ It was also approved despite the IDB’s adoption in 2006 of a specific policy on indigenous peoples, titled ‘Operational Policy on Indigenous Peoples’. This policy provided specific protection for ‘isolated peoples’ establishing that the Bank will ‘recognize, respect and protect (‘isolated’ peoples’) lands and territories, health, environment and culture’ and only ‘finance projects that respect the right of these peoples to remain in said isolated condition and to live freely according to their culture.’²⁷ Despite this, prior to approving the US\$400m loan, the IDB had admitted that the new operations’ ‘associated facilities’ would further impact on ‘indigenous peoples living in voluntary isolation within the Nahua-Kugapakori Territorial Reserve.’²⁸ How does this respect their ‘isolated’ condition?

AG/DGRAAR, 14 February 1990.

25 Anne Deruyttere, Perceived Challenges to Recognition on Prior and Informed Consent of Indigenous Peoples and other Local Communities: The experiences of the Inter-American Development Bank, **Sustainable Development Law & Policy**, Volume 4, Issue 2 Summer 2004: *Prior Informed Consent*: p. 40.

26 <http://www.iadb.org/en/projects/project-description-title.1303.html?id=PE-L1016>

27 <http://tinyurl.com/cym78p4>

28 IDB (2006) Environmental and Social Strategy: Peru LNG Project Project Number: PE-L1016, IDB, Washington, July, 2006.



Materials bound for use in the Camisea gas project in the Peruvian Amazon - Iquitos, Peru © David Hill

Although the ‘Operating Guidelines’ for the IDB’s policy on indigenous peoples acknowledge its obligation to abide by national and international laws, including the Inter-American system’s case law, the fact is that the policy now falls well short of evolving international standards about ‘isolated’ indigenous peoples. Last year the UN’s Office of the High Commissioner for Human Rights (OHCHR) issued ‘guidelines’ recommending that ‘isolated’ peoples’ territories should be made ‘untouchable’, echoing calls made by indigenous organisations for years. Similarly the Inter-American Commission on Human Rights has consistently emphasised states’ duties to protect ‘isolated peoples’, and the UN Committee on the Elimination of Racial Discrimination (CERD) has expressed concern about extractive activities on their territories and recommended their suspension. Indeed, in March this year CERD called on Peru’s government to ‘immediately’ suspend expansion of the Camisea project within the KNNR.²⁹ More generally, the International Labour Organisation (ILO) and Inter-American Court on Human Rights have emphasised indigenous peoples’ rights to participate in decision-making about projects affecting them – which is impossible to do with ‘isolated’ peoples without seriously endangering them. Despite all these standards and legal rights clearly outlined, the IDB’s policy on indigenous peoples states it is prepared to finance projects with *‘the potential of directly or indirectly impacting (‘isolated’) peoples, their lands and territories, or their way of life.’*

The IDB might try and defend its involvement in Camisea by citing a series of social and environmental commitments that it insisted on as a condition of its loans in 2002 and 2003 – some of which applied to operations financed by the IDB, e.g. TGP downstream, *as well as operations it didn’t finance*, e.g. Pluspetrol

²⁹ <http://www.forestpeoples.org/tags/expansion-peru-s-camisea-gas-project-peruvian-amazon>

upstream. However, civil society organisations in Peru have reported that many of these conditions haven’t been met,³⁰ and even when they have they have sometimes meant little or nothing. For example, arguably the most important commitment made by Peru’s government regarding ‘isolated’ peoples was to further protect the KNNR by raising its legal status. That was implemented with a Supreme Decree in July 2003 which stated that ‘development of economic activities’ and ‘new rights to exploit natural resources within the Reserve’ are ‘prohibited’, yet that Decree is now being ignored by Pluspetrol’s plans to expand its operations in the reserve. An Environmental Impact Assessment (EIA) for the construction of three wells was approved by Peru’s Energy Ministry in 2012, and another EIA for 18 further wells, a 10km pipeline and 2D and 3D seismic tests – *almost all of which is scheduled to be deeper into the KNNR – is now pending approval.*

In a further twist it now appears that the expansion cannot go ahead without formal approval by the IDB, under certain (as yet undisclosed) commitments made on condition of its US\$75m loan to TGP. An IDB document dated June 2003 stipulates that ‘If there are any subsequent expansion or new works (e.g., pipeline looping, etc.) that may have potentially significant impacts or risks relating to environmental and social matters, the Project Component company shall: (a) develop and fully implement an Environmental Impact Assessment in form and substance satisfactory to IDB. . .’³¹ The IDB’s Office of External Relations (OER) recently confirmed this: ‘The EIAs have to be satisfactory to the IDB. This wasn’t included in the common terms agreement since TGP was not responsible for the upstream component but rather in the Upstream Consortium Support Agreement (UCSA).’ The OER has advised that the UCSA is ‘confidential’ and, as of 24 April, neither of the EIAs were ‘yet satisfactory to the IDB.’ *But how can they ever be ‘satisfactory’, given the IDB’s commitment to ‘protect’ the KNNR and its policy on indigenous peoples in which it claims to ‘recognize, respect and protect (‘isolated’ peoples) lands and territories, health, environment and culture’?*

Moreover, in what seems to be a gross irony, the IDB announced last December that it will give US\$1m to Peru’s government partly to protect ‘isolated’ peoples’ reserves by altering their legal status and converting them from ‘*reservas territoriales*’, as the KNNR is now, into ‘*reservas indígenas*’, a new category established

³⁰ For two examples see DAR, 2007 ‘Diagnóstico Situacional del Nivel de Cumplimiento de los Compromisos asumidos por el Gobierno del Perú en el ámbito del Proyecto Camisea’ and DAR/Acción Ciudadana Camisea, 2007, ‘Los 21 Compromisos Socioambientales de Camisea: Mucho Camino por Andar.’

³¹ The IDB’s 2003 Environmental and Social Impact Report lists a large number of these commitments

by a law in 2006.³² This law states that the ‘*reservas indigenas*’ are ‘untouchable’ and prohibit ‘any kind of activity different from that of the ancestral customs and uses of its indigenous inhabitants’, but it also includes a loophole. Specifically, Article 5, Clause C, says that natural resources can be exploited if considered ‘necessary’ by the government. In the KNNR’s case, conversion from a ‘*reserva territorial*’ to a ‘*reserva indigena*’ will mean removing the ‘protection’ provided by the Supreme Decree, thereby *further undermining the IDB’s commitments to ‘protect’ the KNNR and weakening it even more.*

Given all this, it is not surprising that in recent condemnations of the Camisea project’s expansion indigenous organizations in Peru have repeatedly highlighted the IDB’s responsibility. In a statement last December announcing their intention to take Peru’s government and the ‘company responsible’ to court to stop the expansion, AIDSESP, FENAMAD, ORAU and COMARU stated that the government had failed to meet the social and environmental commitments agreed to as a condition of its IDB loan. Daysi Zapata, AIDSESP’s vice-president, says that the experience of Camisea shows that *‘the IDB needs to establish much stricter standards for operations in such sensitive areas, especially those that affect isolated peoples.’*³³ The question that now remains is whether the IDB will finally meet its commitments and obligations to protect the KNNR Reserve and its inhabitants and withhold permission for the expansion plans.

*David Hill, Independent Journalist and Consultant*³⁴



Indigenous peoples, including isolated peoples, in the Kugapakori-Nahua-Nanti Reserve are likely to be negatively affected if plans are approved to permit the expansion of the Camisea gas project within the Reserve © Johan Wildhagen

³² <http://www.iadb.org/en/projects/project-description-title,1303.html?id=PE-T1258> and <http://www.iadb.org/en/projects/project-description-title,1303.html?id=PE-T1276>

³³ Daysi Zapata, personal communication.

³⁴ David worked as a consultant for FPP between November 2012 and January 2013

4. Experiences of indigenous peoples in Africa with safeguard policies: Examples from Cameroon and the Congo Basin

The notion of indigenous people has sometimes been controversial in Africa. There are some opinions that consider all Africans as indigenous people liberated from colonial powers, while others simply stress that it is very difficult to determine who is indigenous in Africa. The setting up in 2001 by the African Commission on Human and Peoples’ Rights (ACHPR) of a Working Group on Indigenous Populations/Communities and the Group’s report submitted to and adopted by the ACHPR in 2003 have brought a new perspective to this problem. In this report for the first time there was a unanimous acceptance of the existence of indigenous peoples in Africa and this kicked off discussions on how countries could begin to integrate the rights of these peoples into the human rights mainstream. The indigenous peoples of Central Africa include the mostly hunter gatherer peoples commonly called the “Pygmies” and a number of pastoralist peoples. These peoples still suffer discrimination experienced through the dispossession of their land and destruction of their livelihoods, cultures and identities, extreme poverty, lack of access to and participation in political decision-making and lack of access to education and health facilities.



Traditional Baka shelter. The Baka indigenous people in Central Africa often suffer from discrimination, and rights to their ancestral lands are not properly recognised by national governments © Samuel Nnah

There are positive trends related to protecting the rights of indigenous peoples in Africa. The Central

African Republic has ratified the International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples, the Republic of Congo has passed a special law on Indigenous Peoples, and Kenya is making good progress on policies respecting and protecting indigenous peoples' rights, all illustrating these trends. Many African countries also voted for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Some countries, like Cameroon and the Democratic Republic of Congo (DRC), are also now implementing National Indigenous Peoples Development Plans through World Bank-supported programmes. However, the sad experience is that many of these initiatives exist only on paper and are not being translated into concrete acts creating positive impacts for indigenous peoples.

UNDRIP, the African Charter on Human and Peoples' Rights and ILO Convention 169 are some of the international legal and policy instruments that recognise the rights of indigenous peoples to be consulted, seek their free, prior and informed consent and to participate in the running of public affairs and in any initiative that is likely to affect them. As mentioned earlier, in Cameroon there are specific Indigenous Peoples Development Plans (IPDPs) attached to main World Bank-supported development programmes like the Participatory Community Development Programme (commonly known by its French acronym as PNDP) and the Forest Environment Sector Programme (FESP) that intend to address the specificities of indigenous peoples.



Participatory mapping by indigenous peoples of their land is the only means to ensure their full and effective participation and for seeking FPIC on processes concerning their ancestral land and territories © Samuel Nnah

However the key questions must be how safeguards are integrated into policies and programmes and how they are **implemented**. In Cameroon, most of the IPDPs are well written by consultants to meet World Bank

requirements, but their implementation is found wanting as the principles they uphold are hardly respected. Several cases have been documented in Cameroon where IPDPs are shoddily implemented and end up far from the principles they espouse. RACOPY, the "Pygmy" Action Network in Cameroon, has documented cases where the IPDP of the FESP was supposedly 'implemented' simply by distributing handouts: bags of rice and other foodstuff, machetes, hoes and other tools. These actions were carried out without consulting indigenous peoples and these materials were later found in the keeping of Bantus (non-indigenous community).

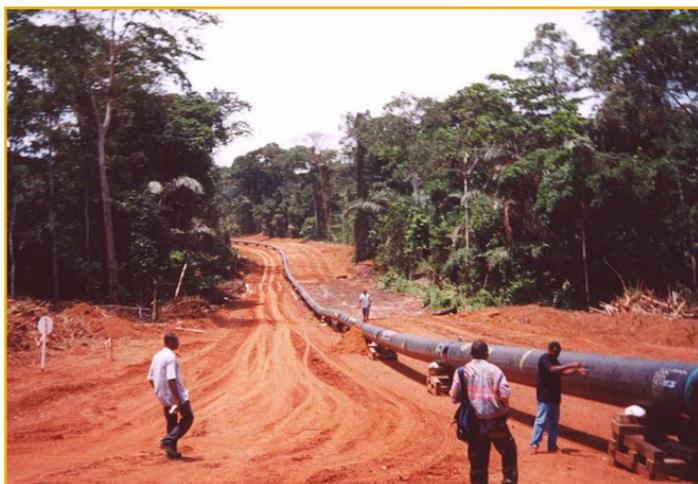
In many African countries, discrimination against indigenous peoples is reflected in the policies and programmes formulated by the state. Discriminatory laws and policies deprive indigenous forest peoples of their lands and resources. Land laws and development projects affecting indigenous territories often reflect the reality that the state does not recognise ancestral land rights. The Bagyeli indigenous forest people (also called "Pygmies") in Cameroon were seriously affected by the construction of the Chad-Cameroon Oil Pipeline project (partly funded by the World Bank) that cut across a significant portion of their forest territory, bringing with it varied problems like reduced forest resources, inappropriate compensation, new forms of conflicts with neighbouring Bantus and displacement due to the creation of the Campo Ma'an National Park. This project was constructed in violation of the World Bank's safeguards against harming indigenous peoples, as detailed in a lengthy Inspection Panel Report³⁵.

During the construction of the Chad-Cameroon Oil Pipeline, the indigenous populations whose lands were traversed were not entitled to compensation since according to the Cameroonian land law of 1974 they had no legally recognised land titles, and their traditional hunting and gathering activities were not seen as valuing the land and were hence "invisible" under the unjust and outdated national laws.

Under the World Bank's policy on indigenous peoples, the Baka, Bagyeli, Bakola and Bedzang – all Cameroonian indigenous hunter gatherers - are considered as 'Indigenous peoples' and the government has recognised and taken ownership of the Pygmy/Indigenous People's Development Plans of the Chad Cameroon Pipeline, the National Participatory Development Programme and the Forest Environment Sector Programme.

Despite this, the official government terminology for indigenous peoples in Cameroon in other contexts not

35 <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ChadInvestigationReporFinal.pdf>



The Bagyeli indigenous forest people in Cameroon were seriously affected by the construction of the World Bank-financed Chad-Cameroon Oil Pipeline © John Nelson

related to World Bank projects is “marginalised people”. This groups them with groups like disabled people, elderly people and other socially vulnerable people. This grouping makes no sense, as within indigenous peoples we have disabled people, elderly people and other vulnerable social segments just as any other segment of the population. Moreover, indigenous peoples are not identified by their level of vulnerability but rather by their specific relationships to lands and resources, and by the rights stemming from these relationships. It is not clear why Cameroon does not want to officially call the hunter gatherers and pastoralists Indigenous Peoples as portrayed by the United Nations.

In December 2005, Congolese civil society organisations, including representatives of forest-dependent indigenous peoples, filed a complaint to the World Bank’s Inspection Panel, concerning the impacts of forest sector reforms supported by the Bank. The complaint alleged that the Bank’s failure to comply with its safeguard policies in its promotion of forest sector reforms, such as forest zoning and the concession allocation system, was likely to harm indigenous, forest-dependent peoples. The Panel found that yes, indeed the Bank had failed to respect its safeguard policies, including those protecting the rights of indigenous peoples. Furthermore, very recently, a study by the Bank’s own Inspectors, the Independent Evaluation Group (IEG), showed that the investments in forestry over the past 10 years have done little to reduce poverty, improve conservation, tackle climate change or benefit local communities in developing countries ([Article 7](#)). It is clear that the presence of safeguards alone is not enough. Safeguards must be properly financed, staffed and implemented for there to be any impact on the outcome of a project. The implementation of safeguard requirements must also take into consideration

the political realities of a given country, supporting rather than diminishing the rights they are accorded.

African civil society and indigenous peoples’ organisations will continue to monitor the implementation of International Finance Institutions’ safeguard policies to ensure that indigenous peoples’ rights are protected and their ancestral lands secured.

Samuel Nnah Ndobe

Further information

- [*African Development Bank set to introduce Indigenous Peoples standards for the first time*](#)



Indigenous forest Baka people discuss among themselves issues related to the forest; challenges of logging and REDD+ in this case © Samuel Nnah

Safeguards at the World Bank

5. Forwards or backwards? The World Bank's safeguard review and update (2012-14)

The World Bank is currently undertaking a two-year "review and update" of eight of its ten social and environmental safeguard policies. NGOs have highlighted how the World Bank must use the review as an opportunity to upgrade its standards and bolster implementation and compliance systems to increase Bank accountability and deliver sustainable development outcomes. At the same time, they have raised concerns that the Bank's plan to "consolidate" its policies, with greater emphasis on the use of country systems to address safeguard issues, could end up in weakened standards and less accountability of the Bank and borrower governments to affected communities and the public.

In November 2012, World Bank Group President Jim Yong Kim publicly committed the Bank to ensuring that the review process will not result in dilution of existing standards. NGOs have welcomed this pledge, but serious concerns remain about both the content and scope of the review and the process for public consultation on the development of a new safeguard framework. This article provides a summary of the review and sets out some key NGO concerns on content and process alongside recommendations for addressing gaps in the review and measures needed to strengthen the Bank's safeguards framework.



Even community-based projects financed by the World Bank have had harmful impacts on forest communities due to poor design and weak implementation of social safeguards © Tom Griffiths

Some key recommendations of civil society and indigenous peoples³⁶

- A revised safeguard framework must include measures to ensure effective policy implementation, including reforms to staff incentive structures and provision of more resources for safeguard application and monitoring
- Any consolidation and simplification of policies must not result in dilution of standards
- Binding standards for Bank staff and borrowers must be maintained
- Safeguards must be harmonised upwards to bring them into line with international human rights and environmental standards, including those enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and related human rights instruments
- A new integrated framework must include binding standards on key emerging issues, including human rights, FPIC and land acquisition, among others
- The review and new framework must address social and environmental risks in all forms of Bank lending instruments (including programmatic loans), not just investment finance
- Consultations on the review and policy update must be meaningful and ensure targeted outreach to communities and vulnerable groups affected by Bank loan operations
- The review and update process must result in strengthened accountability of the World Bank Group to affected communities and the public

Content and aims of the review and update process:

The policies under review include the Bank's policies on Environmental Assessment (OP4.01); Involuntary Resettlement (OP4.12), Indigenous Peoples (OP4.10), Forests (OP4.36), Natural Habitats (OP4.04), Pest Management (OP 4.09), Physical Cultural Resources (OP4.11) and Safety of Dams (OP4.37). The policy for Piloting the Use of Borrower Systems for Environmental and Social Safeguards (OP4.00) is also under review.

According to the Bank's Approach Paper launched in October 2012, one of the main stated objectives of the review is "to strengthen the effectiveness of the safeguard policies in order to enhance the development

³⁶ *Initial Comments by Civil Society Organisations on the World Bank's Safeguard Policy Review and Update* December 2012 <http://www.forestpeoples.org/sites/fpp/files/publication/2013/01/initial-comments-civil-society-organizations-world-bank-safeguards-review-dec2012.pdf>

outcomes of Bank operations”, while noting that the Bank is “aware of advances in regional and international practices to address environmental and social issues, and the emergence of sustainability frameworks in use by the broader international and development finance community”.³⁷ To this end, in addition to the policies noted above, the review will also explore how the Bank might address seven “emerging areas” not adequately covered by existing policies, including:

- human rights
- free, prior and informed consent (FPIC) and Indigenous Peoples
- land tenure and natural resources
- labour and occupational health and safety
- gender
- disability
- climate change

Review schedule:

The revision process is divided into three phases as follows.

Phase I: October 2012-April 2013 [internal and external consultations and “analytical work”]

Phase II: May-November 2013 [consultations on a new draft “integrated framework”]

Phase III: December 2013-June 2014 [finalisation, final consultations and presentation to Board]³⁸

Phase I is already coming to a close. Consultation meetings and dialogues during this first phase have been held around the world, beginning with an NGO information meeting in Washington in November 2012. Several one-day meetings with “expert focus groups” selected to analyse each “emerging area” have also been held in the first quarter of 2013. Summaries of both the general consultation meetings and expert discussions are posted on the Bank’s safeguard review website (see Further Information section below).

Shifting timetable:

As this article goes to press, there are signs that the whole safeguard update schedule may be put back as the World Bank indicates that any new safeguard framework must be consistent with its forthcoming new ‘modernization’ agenda. This modernization plan is currently not expected to be launched until October 2013, meaning

that any first draft of a new safeguard framework may not appear until the end of this year.

Filling the implementation gap?

In response to key recommendations stemming from the 2010 Independent Evaluation Group (IEG) review of the Bank’s safeguard system highlighting the need for strengthened application of safeguard standards³⁹, the Bank’s Approach Paper notes that the review process is an opportunity to carry out several actions to improve safeguard policy implementation, monitoring and supervision (at Section V). The same paper claims that the Bank will consider ways to “transform” the “approval culture” to one that focuses on results and outcomes. Notwithstanding these positive public commitments, current indications suggest that the safeguard review process is not paying adequate attention to the crucial question of safeguard implementation. To date, the initiative appears to be mostly focused on *re-writing* policies and guidelines, rather than re-vamping the whole safeguard framework as an integrated system. Meanwhile, the Bank’s recently concluded and controversial Investment Lending Reform (ILR) initiative, which consolidated many distinct policies in one new shortened policy instrument, has slackened supervision requirements. This weakening has occurred despite assurances from the Bank that the ILR process would not lower standards.

In its formal response to the IEG safeguards review, Bank management had promised to carry out a review of current practices with respect to responsibility, accountability, incentives, staffing, and budgeting for safeguard processing and supervision.⁴⁰ Repeated requests for information on this vitally important review have so far drawn a blank from the Bank. Questions raised in the Phase I consultations have so far not generated any meaningful response to NGO questions enquiring about Bank plans for institutional reforms to improve safeguard implementation.

NGOs, including FPP, maintain that the review must embrace the need to radically overhaul the implementation and compliance framework of the Bank to ensure that revised and new standards which are adopted are applied effectively in its projects and programmes. This means that the new integrated framework must include a specific chapter on implementation, compliance and measures to secure positive outcomes for communities and the environment. Civil society organisations warn that

³⁷ *The World Bank’s Safeguard Policies: Proposed review and Update Approach Paper* World Bank, Washington DC, October 10, 2012 <http://siteresources.worldbank.org/EXTSAFEPOL/Resource-584434-1306431390058/SafeguardsReviewApproachPaper.pdf>

³⁸ <http://siteresources.worldbank.org/EXTSAFEPOL/Resource-584434-1306431390058/>

³⁹ IEG (2010) *Safeguards and Sustainability in a Changing World: An Independent Evaluation of World Bank Group Experience* IEG, Washington, DC <http://go.worldbank.org/ZA4YFV9QL0>

⁴⁰ http://siteresources.worldbank.org/EXTSAFANDSUS/Resource/mgmt_response_mar.pdf

without clear plans to improve implementation, any new integrated safeguard framework will fail to deliver useful results.

Learning lessons?

The Bank claims that the safeguard review will be informed by past and ongoing sector and thematic reviews (Approach Paper, paragraph 36), yet it remains unclear how the new framework will take project implementation experience as well as official and independent evaluations on board. NGOs have consistently asked how the Inspection Panel investigations and findings on compliance will shape the new safeguard framework and they are calling on the Bank to provide the Inspection Panel with a formal role in the review process.⁴¹ Civil society has similarly drawn attention to the key evaluations undertaken by the IEG, which provide detailed recommendations to the Bank on the implementation of safeguards. Bank management advise that they are talking to the Panel and have invited comments, but that any formal participation of the Panel in the review process is something for the Board to decide. For its part, the Board advises that it is Bank management who is managing the review process.⁴²

NGOs are requesting that the Bank make public its discussions with the Inspection Panel so far, and insist that systematic documentation of lessons from the Panel must inform the design of any new safeguard framework. NGOs further request that the Bank make clear in the safeguard review how it is responding to relevant IEG evaluations.

Narrow scope for the review:

While civil society organisations have welcomed attention to “emerging areas”, they have repeatedly questioned why the Bank review is so tightly confined to consideration of only the eight identified safeguard policies and their application to “investment projects”. All other financing instruments are barred from the safeguard review discussions, removing a significant portion of Bank financing from revision of changes needed to the Bank’s social and environmental safeguard framework. The Bank’s current response is that extending the scope of the review is a decision for the Board and this request from civil society will be passed to the Committee on Development Effectiveness (CODE). Civil society has pushed consistently for all financing instruments to be covered by the review, pointing out the need for Development Policy Loans to be included⁴³ and arguing that any new financing instruments must be part of an

integrated Bank-wide system of assessing, avoiding and managing social and environmental risk.⁴⁴

Civil society organisations insist that the scope of the safeguard review must be extended to cover all financing instruments, including Development Policy Loans (DPLs) and Program for Results (P4R).

Clear binding rules or vague guiding principles?

Bank presentations and its Approach Paper on the safeguard review propose that a new framework would include a tripartite set of documents on safeguard principles, policies and guidelines. They note that “emerging areas” like human rights might be dealt with through non-policy options, such as overarching broad “principles”, rather than in new and specific safeguard rules and standards. There is a genuine concern that the bank will lump all complex and thorny emerging issues into its new proposed “principles” bag, without adopting meaningful and specific policy standards.

Civil society organisations stress that the Bank must incorporate core emerging issues such as land tenure, gender, labour and human rights as a key elements in the new policy framework setting out binding requirements on Bank staff and Borrowers, including the option to adopt a new stand-alone safeguard policy on land rights and land acquisition.

Flawed start to consultations:

In addition to concerns on the content and scope of the Bank’s safeguards review, after five months of on-going dialogues and discussions there is mounting criticism of the Bank’s process for public consultation in Phase I.⁴⁵ Although referred to as ‘consultations’, they have taken the form of information sharing discussions with limited time for meaningful discussion meant to cover fifteen distinct policy topics as well as other issues linked to improvement of development outcomes (see below). The compressed nature of the process has meant that meetings are usually held for half a day (as short as 3.5 hours) and are all intended for a range of stakeholders to attend, thereby sharply reducing the ability for any one group to discuss its views at length.

Attendees at the Washington meeting drew attention

⁴⁴ Program for Results (civil society moderated page): <http://www.p4rcomments.org/>

⁴⁵ See, for example, Indigenous peoples’ letter to the World Bank on the conduct of the safeguards review consultations, March 4, 2013 <http://www.forestpeoples.org/sites/fpp/files/publication/2013/03/aipplet-rerwbmarch-2013-2.pdf>; See also CSO letter to World Bank Board expressing concerns over defective consultation in Lima, 14th February 2013 at: [http://www.forestpeoples.org/sites/fpp/files/news/2013/02/LatAm%20CSO Letter WorldBank SG Review Consultation Feb2013 English.pdf](http://www.forestpeoples.org/sites/fpp/files/news/2013/02/LatAm%20CSO%20Letter%20WorldBank%20SG%20Review%20Consultation%20Feb2013%20English.pdf)

⁴¹ NGO Joint letter to Chairman of CODE, 1 March, 2013

⁴² Reply from Chair of CODE, March 21, 2013

⁴³ Bank Information Center and Global Witness: <http://www.forestpeoples.org/sites/fpp/files/publication/2013/04/dpl-primer-april2013.pdf>

to the short time made available for plenary discussions where views and ideas could be exchanged. NGOs in Paris noted a tiny turnout (six people) due to a lack of outreach. Those attending in Norway noted that they were restricted to talking about overarching concerns as time was lacking for any detailed discussion of emerging issues. Participants in the meeting in Lima sharply criticised the format of the meeting there, stating “we consider that the format of these sessions is insufficient to gather the points of view and main concerns of the interested stakeholders”. Participants of the meeting in Jakarta complained repeatedly of a lack of requested information being provided to them. Concerns have also been raised about the lack of timely and clear information on the expert focus group meetings. The list goes on.

For their part, indigenous peoples have collectively and directly condemned the lack of specific outreach to them, and expressed general concerns about the conduct and design of consultations (the Bank is now trying to raise funds to enable a targeted consultation with indigenous peoples in Phase II, though this is not yet guaranteed).

Changes to consultation process essential in next phase:

As the first phase draws to a close, attention now turns to what will happen in Phase II. This Phase will open with the presentation of a draft outline of a possible new approach to safeguards – though it is unclear what level of detail will be contained in this first draft. During the first phase, Bank staff involved in public consultations meetings have indicated that the new framework will propose a “completely new structure” for safeguard policies, which the Bank admits carries risks of accusations of policy dilution (Approach Paper, paragraph 40).

Given that the Bank is planning a major overhaul of its safeguard policies, it is essential that faults in the consultation process are corrected to enable robust public scrutiny of the Bank’s proposals. The consultation process needs serious re-thinking and a re-design to allow people to effectively engage.

The listening Bank?

Civil society organisations and indigenous peoples have sent clear and consistent messages to the World Bank during the first phase of its public consultations on its safeguard framework. The call for widening the scope of the review, for example, has been made in most of the public meetings held over the last five months. The Bank’s safeguard review team advise that concerns and recommendations raised by external stakeholders will be passed to the Bank’s Committee on Development Effectiveness (CODE) at the end of Phase I, and that any changes to the review mandate and scope as well as the consultation process will require Board approval.

The question at the close of Phase I is: will CODE and the wider World Bank Board listen to civil society and communities affected by World Bank projects and programmes? Will they grasp the safeguard review as an opportunity to develop a safeguard system fit for the 21st century?

Whether the Bank will use the safeguard review and update activity to move forwards on standards and to increase public accountability remains to be seen. What is very clear already is that without serious intervention by the Bank’s Board and governmental shareholders, the most serious shortcomings in the review process will not be fixed, and the Bank could even risk going backwards with a new framework that is not fit for purpose. However, the World Bank and its new President still have the room to ensure that this reform process is not wasted. Rich and detailed lessons on the past problems plaguing the Bank safeguard system exist and must be drawn on to inform the safeguard update. If the Bank is serious about strengthening its safeguard framework, then its ‘modernization’ reform measures must include significant improvements to its arrangements for safeguard implementation and compliance.

Tom Griffiths and Helen Tugendhat (FPP Responsible Finance Programme)

Further information:

- World Bank safeguard update web site: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,contentMDK:23275156~pagePK:64168445~piPK:64168309~theSitePK:584435,00.html>

Indigenous organisations:

- Indian Law Resource Center: <http://www.indianlaw.org/mdb>
- Asia Indigenous Peoples Pact Foundation: <http://www.aippnet.org/home/statement/908-indigenous-peoples-letter-to-the-incoming-president-of-the-world-bank>

Civil society:

- FPP World Bank page: <http://www.forestpeoples.org/tags/update-and-consolidation-world-bank-safeguard-policies-2010-13>
- Bank Information Center: <http://www.bicusa.org/issues/safeguards/>
- Program for Results (civil society moderated): <http://www.p4rcomments.org/>
- Development Policy Loans (bank Information Center and Global Witness): <http://www.forestpeoples.org/sites/fpp/files/publication/2013/04/dpl-primer-april2013.pdf>

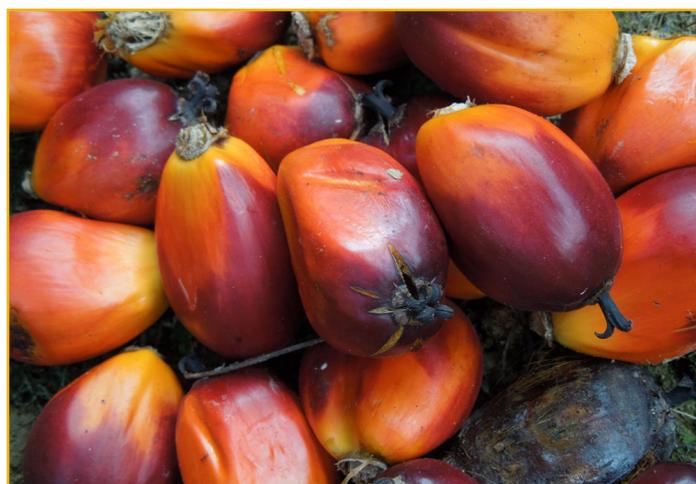
6. The World Bank's Palm Oil Policy

In 2011, the World Bank Group (WBG) adopted a Framework and Strategy for investment in the palm oil sector. The new approach was adopted on the instructions of former World Bank President Robert Zoellick, after a damning audit by International Finance Corporation's (IFC) semi-independent Compliance Advisory Ombudsman (CAO) had shown that IFC staff were financing the palm oil giant, [Wilmar](#)⁴⁶, without due diligence and contrary to the IFC's Performance Standards. Wilmar is the world's largest palm oil trader, supplying no less than 45% of globally traded palm oil. The audit, carried out in response to a series of detailed [complaints](#)⁴⁷ from Forest Peoples Programme and partners, vindicated many of our concerns that Wilmar was expanding its operations in Indonesia in violation of legal requirements, Roundtable on Sustainable Palm Oil (RSPO) standards and IFC norms and procedures. Almost immediately after the audit was triggered, IFC divested itself of its numerous other palm oil investments in Southeast Asia.

The Framework and Strategy highlights the need for an 'enabling policy and regulatory environment' which *inter alia* should provide: clear land rights for local communities and indigenous peoples; standardised, clear negotiation systems between companies and farmers; capacity building so farmers can negotiate favourable agreements and; conflict resolution mechanisms to address disputes notably over land, debt and smallholder arrangements. It also instructs WBG staff to assess the capacity of the relevant government to administer lands properly and requires IFC staff to use a special screening tool to ensure national frameworks are adequate before investing in the sector. It strongly encourages client companies' adherence to the RSPO's standards. When the new strategy was launched with much fanfare, the IFC also announced that it would soon adopt a similar approach for the whole agribusiness sector.

Since 2011, IFC investments in large palm oil companies have virtually stopped (although the IFC is considering three requests), and IFC efforts have focused on how to channel funds into the sector through financial intermediaries while ensuring fair provisions for smallholders. This has raised the so-far-unanswered questions of how the new Framework and Strategy will be applied to financial intermediaries and how World Bank Group staff will assess client compliance and the

performance of such lending. Discouraged by such puzzles and the resulting restrictions on lending, the WBG has backed off from applying the approach adopted for palm oil to other crops, although the risks to local communities and indigenous peoples from land grabs from other agribusinesses are not much different.



IFC investments in large palm oil companies have virtually stopped © Marcus Colchester

Another important outcome of the Wilmar case is that it clarified that the IFC Performance Standards apply to the full 'supply chain' from producer to retail (for all commodities not just palm oil). Accordingly, the new Strategy, requires clients in the palm oil sector to carry out a detailed assessment of their suppliers, develop a purchasing policy and adopt management and monitoring systems to ensure compliance with these standards and progressively effect a transition towards the purchase of oils which are produced in compliance with the RSPO standard or equivalent. Over the past six years, FPP have been persistently demanding that this approach should be applied to the full supply chain of the Wilmar Group, but so far neither the IFC nor the CAO, much less Wilmar itself, have been able to address this concern.

Meanwhile, on the ground, most disputes between Wilmar subsidiaries and communities remain unresolved and indeed continue to proliferate, both in Indonesia and now in [Nigeria](#)⁴⁸.

Marcus Colchester (FPP)

46 <http://www.forestpeoples.org/tags/wilmar-international>
47 <http://www.forestpeoples.org/tags/cao-story-contesting-procedural-irregularities-and-standards-violations-wilmar-and-ifc-through->

48 <http://www.forestpeoples.org/topics/palm-oil-rspo/news/2012/11/nigerian-csos-challenge-wilmar-s-palm-oil-expansion-plans-cross-ri>

7. The World Bank's Forest Policy

As the World Bank reviews its environmental and social standards, a major opportunity to overhaul World Bank approach to forests must not be missed.

The negative impacts of World Bank-financed projects on tropical forests have been an issue of concern for civil society and forest peoples for decades. In the 1980s, World Bank megaprojects in the Amazon and in Indonesia in support for infrastructure projects, agricultural colonisation and transmigration generated major criticism from the public. This in turn generated the political pressure that was a key factor in leading the World Bank Group to adopt mandatory social and environmental standards, known as safeguards, to demonstrate its commitment to preventing harm to people and the environment [\[See Article 1\]](#).

The first specific safeguard policy on Forests was adopted by the Bank in 1991. It represented a new approach by promising to focus on poverty reduction and respect for local rights. It also introduced a proscription against Bank finance for large-scale logging in primary moist tropical forests. However, internal opposition at the Bank against this Policy was strong from the beginning. Bank management claimed that the Policy was too conservationist and that the ban on Bank support for industrial logging had created a 'chilling effect' on its lending. It argued that the policy was preventing the institution from enabling positive forest sector reform. Although an evaluation by the Bank's own evaluation group found that the systematic lack of monitoring of project implementation was the key problem⁴⁹, Bank management did not address the problems related to safeguard compliance. Instead, after a prolonged process of implementation review and strategy development, the World Bank threw out the 1991 Forest Policy and adopted a revised forest safeguard policy and strategy in 2002. This new Policy lifted the proscription on Bank finance for industrial logging, subject to independent certification of sustainable timber harvesting or a plan to achieve certification at some undefined point in the future. At the same time, the 2002 policy established the rule that the Bank would not finance "commercial harvesting operations" in "critical" forests, but did not state who would define an area as "critical" forests (OP4.36 at paragraphs 8, 9 and 10)⁵⁰. The policy also

left serious loopholes that would permit the destruction of critical forest habitats.

Problems with the existing policy and strategy:

At the time, NGOs, including FPP, pointed out major problems and gaps in the Bank's Forest Policy and Strategy, and the Bank's related Natural Habitats policy (OP4.04), **which are unresolved until today**. Key remaining problems include:

- the lack of adequate protections for the tenure and resource rights of non-indigenous forest dependent communities;
- the lack of a cross-sectoral approach to forests to ensure that all types of World Bank Group programmes, including projects in the energy and transportation sectors would be consistent with forest protection;
- major loopholes in the Natural Habitats Policy that permit logging, forest clearance and development activities in critical habitats (thus undermining the "critical forests" safeguard)
- exclusion of safeguard coverage for Development Policy Loans and other forms of programmatic lending;
- reliance on uncertain certification standards.⁵¹



The 2002 World Bank forest policy established the rule that the Bank would not finance "commercial harvesting operations" in "critical" forests, but left serious loopholes that would allow for the conversion of "critical forests" © Tom Griffiths

As well as highlighting these gaps, NGOs repeatedly made calls on the Bank to carry out an implementation

49 Operations Evaluation Department (OED), *A Review of the World Bank's 1991 Forest Strategy and its Implementation*, The World Bank, January 13, 2000.

50 <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0..contentMDK:20064668-menuP>

[K:64701637-pagePK:64709096-piPK:64709108-theSitePK:502184,00.html](http://www.fpp.org/files/publication/2010/08/wbforestsjointpubapr05eng.pdf)

51 Carrere, R and Colchester M (2005) "The World Bank and forests: a tissue of lies and deception" pp.4-5 in *Broken Promises: how World Bank Group policies and practice fail to protect forests and forest peoples' rights* FPP-WRM-RF-UK-EDF--Global Witness <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/wbforestsjointpubapr05eng.pdf>

evaluation on its Natural Habitats Policy, in order to learn lessons and pinpoint ways to implement the critical habitats safeguard effectively. Given the controversy surrounding this policy, the World Bank promised that an external advisory group would be set up to ensure transparency and provide independent guidance on policy implementation; a new mechanism would be established to address forests in adjustment lending and a forest sourcebook (manual) would be developed to explain to staff and Borrowers how the critical forests safeguard should be applied, whilst the International Finance Corporation (IFC) would adopt a revised version of the policy for private sector loans to the forest sector.

Weak follow up:

Although the Bank did set up the External Advisory Group (EAG) in 2003⁵², its impact on Bank operations has not been significant. Recent EAG communications calling on the Bank to adopt international human rights standards, including alignment of Bank policies with UNDRIP⁵³, have so far received no direct reply.⁵⁴ Other promises have been broken or have not yet been fulfilled. The IFC never adopted the policy as a distinct standard, but rather swallowed up forests in its Performance Standard 6 on “Biodiversity Conservation and Sustainable Management of Living Natural Resources”.⁵⁵ This IFC standard leaves large loopholes for conversion of natural forests for industrial development and even allows for the financing of activities that destroy critical habitats as long as an off-set plan is put in place, even though biodiversity offsets are highly controversial.⁵⁶ The Sourcebook on Forests was finally published in 2008⁵⁷, but the Bank’s 2004 policy on Development Policy Lending makes only passing mention of forests with only minimal requirements to address potential negative impacts on forests and forest peoples (OP8.60 at paragraph 11).⁵⁸

52 <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTARD/EXTFORESTS/0,,contentMDK:20458311-menuPK:1601741-pagePK:210058-piPK:210062-theSitePK:985785,00.html>

53 External Advisory Group (2011) *Letter to Vice President of the Sustainable Development Network (SDN) re Implementation of the World Bank Forest Strategy*, November 30, 2011

54 The Bank reply to the EAG in March 2012 did not address rights issues raised, but rather gave a selective response to other issues (e.g. applying a landscape approach to forests) – see <http://siteresources.worldbank.org/INTFORESTS/Resources/RK-EAG-response-March2012.pdf>

55 http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/sustainability+framework/sustainability+framework+-+2012/performance+standards+and+guidance+notes+2012/performance+standards+-+2012

56 On the problems with biodiversity offsets, see, for example, FPP (2011) Submission to the Convention on Biological Diversity relating to innovative financial mechanisms and the rights of indigenous peoples and local communities: http://www.forestpeoples.org/sites/fpp/files/news/2011/08/FPP%20submission%20to%20CBD_July_2011_final_version.pdf

57 <http://worldbank.org/forests/sourcebook>

58 <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20471192-pagePK:>

Despite repeated requests, implementation of the World Bank’s safeguard on Natural Habitats has not been subject to an evaluation (implementation review) by the Bank’s own evaluation group.

Steps in the right direction:

Despite the above serious shortcomings, some positive steps have been taken by the Bank in its engagement with the forest sector. These include progressive community-based forest management projects in Mexico, efforts to support communities through the Growing Forest Partnerships (GFP), capacity building and support for FLEGT (Forest Law Enforcement, Governance and Trade) through the Program on Forests (PROFOR), and recent efforts to set up a dedicated grant mechanism for forest peoples under the Forest Investment Programme (FIP), as well as useful analytical work on forest governance. Among the latter is an important study on the significant role of illegal logging in many of the Bank’s client countries. The said study urges the Bank (and other development agencies) to assist countries in strengthening their criminal justice and anti-money laundering systems.⁵⁹ In addition, it is noteworthy that the FIP prohibits support for conversion, deforestation or degradation of natural forests through *inter alia* industrial logging and tree plantations (FIP Design Document).⁶⁰ Unfortunately, these important initiatives are not integrated into the Bank’s wider portfolio on forests. Poor safeguard implementation and ineffective treatment of social and poverty issues continue to plague the Bank’s approach to forests. Examples are forest management projects in Asia which were meant to be participatory, but have failed to empower communities and have even included harmful resettlement schemes.⁶¹

On-going implementation problems and flawed strategy:

Problems in the implementation of the Bank’s forests safeguards and related policies are well documented in official evaluations, civil society reports and community complaints submitted to the IFC Compliance Advisor Ombudsman and the Inspection Panel.⁶² The 2007

[64141683-piPK:64141620-theSitePK:502184,00.html](http://siteresources.worldbank.org/INTFORESTS/Resources/RK-EAG-response-March2012.pdf)

59 Pereira Gonclaves, M, Panjer, M, Greenberg, TS and Magrath, W B (2012) *Justice in the Forests: Improving criminal justice efforts to combat illegal logging* World Bank, Washington, DC ; Castro T and Pillai, M (2011) *Forest Governance 2.0: a primer on ICT and governance*, PROFOR Washington, DC

60 http://www.climateinvestmentfunds.org/cif/sites/climateinvestmentfunds.org/files/FIP_Design_Document_July_final.pdf

61 IEG (2011) *Project Performance Assessment Report. India Integrated Watershed Development Project; Karnataka Watershed Development Project; Andhra Pradesh Community Forestry Management Project; and Managing Watershed Externalities in India Project*. Washington, DC: World Bank

62 Regarding: Request for Inspection, the Development Forest Sector Management Project (Liberia) Sustainable Development Institute, September 24, 2010: <http://siteresources.worldbank.org/EXTIN->

mid-term review of the Forest Strategy, for example, found that poverty concerns and potential adverse social impacts had not been given adequate attention in the Bank's projects or economic and sector analysis. It also found that World Bank staff tended to treat safeguard policies as obstacles to project processing, instead of seeing them as key instruments to reduce risk and improve development outcomes.⁶³ Similar problems with weak implementation have been found in a recent Independent Evaluation Group (IEG) review, which found no evidence that Bank support for policies and investments supporting industrial logging concessions have led to sustainable development (see box below).⁶⁴



In 2007, the World Bank Inspection Panel found the Bank's financial support for forest sector reforms in the DRC failed to comply with its safeguard policies © John Nelson

Some key findings of the 2013 IEG evaluation of World Bank engagement in the forest sector⁶⁵

- Attention to rural poverty has been lacking in World Bank supported concession reforms
- Only 2 out of 37 forest protected area projects achieved their intended livelihood aims
- Three-quarters of forest protected area projects triggered OP 4.12 (Involuntary Resettlement), but only two reported on whether the adverse impacts on livelihoods had been mitigated

[SPECTIONPANEL/Resources/01_SD1_Complaint.pdf](#) and Letter of complaint regarding New Forests Company, Namwasa Plantation; IFC financing via Agri-Vie Fund PCC (project Number: 27674): http://www.cao-ombudsman.org/cases/document-links/documents/Complaint_AgriVie_MubendeNamwasa_122011_web.pdf See also http://www.illegal-logging.info/uploads/WB_Inspection_Panel_Cambodia.pdf

⁶³ Contreras Hermosilla, A and Simula, M (2007) *Mid-term Review of Implementation of the World Bank Forest Strategy IEG*, World Bank, Washington D.C

⁶⁴ IEG (2013) *Managing Forest Resources for Sustainable Development: An Evaluation of World Bank Group Experience* IEG, Washington, DC http://ieg.worldbankgroup.org/content/dam/ieg/forest/forest_eval.pdf

⁶⁵ Ibid

- Less than half of the Bank-financed projects using wood from natural or plantation forests achieved certification as required
- Monitoring and reporting systems for forest projects are not sufficient to assess if the Bank is supporting forest management in an environmentally and socially sustainable way
- Gender considerations have not been adequately addressed
- Most projects did not take due account of climate change issues and challenges

Among multiple recommendations, the 2013 IEG evaluation advised that the Bank should undertake a thorough review of Bank-financed concession reforms and commercial logging projects to verify if the concession model for forest development has contributed to poverty reduction outcomes in order to inform further revisions in Bank policies and strategies for the forest sector. In February 2013, the Bank's management and the Board's Committee on Development Effectiveness (CODE) flatly rejected this recommendation. Bank management repudiated much of the IEG's findings, alleging that they were based on methodological errors in the evaluation.⁶⁶ It appears that once again, the Bank's internal goals of meeting lending targets is taking precedence over learning lessons from past experience and ensuring socially and environmentally sustainable development outcomes.

Major reforms needed to deliver sustainable outcomes:

NGOs, including FPP and Urgewald, are urging the World Bank to use the current safeguard review and update process ([see Article 5](#)) to strengthen its safeguard framework for forests and forest-dependent peoples. In summary, civil society organisations are emphasising the need for the World Bank to:

- Improve oversight, supervision and compliance arrangements in Bank and borrower systems to ensure effective implementation of forest-related safeguards, including the tracking of governance, poverty and livelihood outcomes, in Bank projects and programmes;
- Focus on promoting forest sector and tenure reforms to secure community ownership and control of community forests, community conserved areas and indigenous peoples' forest territories, including measures to recognise and protect customary rights;
- Ensure effective participation and involvement of forest peoples and communities in efforts to identify and tackle the direct and indirect drivers

⁶⁶ World Bank (2013) *Managing Forest Resources for Sustainable Development: An Evaluation of World Bank Group Experience* Management Response, February 6, 2013

of deforestation, including measures to secure customary land rights

- Pay special attention to the gender impacts of the Bank's projects and programmes affecting forests;
- Redirect Bank finance away from industrial-scale logging towards support for community-based forest management and empowerment of forest peoples, based on secure tenure and respect for their rights which are proven to be effective measure to protect forests;⁶⁷
- Use more robust measures to identify and protect High Conservation Value Forests in World Bank projects, in cooperation with forest peoples and civil society organisations
- Adopt a genuine cross-sectoral approach to forest protection, by addressing the drivers of deforestation, including the Bank's own support for agribusiness, extractive industries and infrastructure programmes
- Expand the scope of a revised forest safeguard policy beyond investment lending, including extension of policy coverage to Development Policy Loans and other Bank lending instruments;

The World Bank Group needs to act on all of the above recommendations in order to ensure strengthened safeguards to protect forest peoples, forests and natural habitats. The Bank must maintain and upgrade a specific World Bank operational policy on Forests designed to avoid negative social and environmental impacts and promote sustainable forest development.

Tom Griffiths (FPP) and Korinna Horta (Urgewald)

Other international safeguard standards

8. The lack of an effective safeguards policy at the Brazilian Development Bank

Despite the Brazilian Development Bank (BNDES) being a signatory of the Green Protocol, which ties favourable lending rates and terms to the adoption of social and environmental standards, and the Bank's initiative to develop a specific policy for the cattle sector, the Bank's environmental policy is still very vague and lacks transparency and concrete criteria.

According to the provisions of the 1981 National Environmental Policy Act and the 1998 Environmental Crimes Act, the BNDES is jointly responsible for any social or environmental damage caused by the undertakings that it finances; this fact should prompt it to establish proper mechanisms to monitor the impacts and effectiveness of compensatory actions.

The BNDES has had a specific environmental division since 1989, within which the requirements for the approval of projects are analysed, and so-called sustainable businesses are financed. According to information published on the Bank's website, all projects submitted to the BNDES receive an environmental risk classification and socio-environmental recommendations to be observed in the analysis process. In cases where there would be a significant impact on land, the projects are supposed to be subject to a specific policy for operating in the setting in question.

Formally, the only procedure recognised as significant to be considered as a safeguard in the analysis process for projects to be financed by the Bank is verification of the legal compliance of the projects and the suitability of the implementation team. That analysis takes into account the Register of Employers who have kept workers in slave-like conditions; penalties or convictions relating to acts of racial or gender discrimination, child or slave labour, psychological or sexual harassment, or environmental crimes; and the validity of environmental permits duly certified by relevant authorities.

With regard to the potential environmental impacts of

⁶⁷ <http://www.forestpeoples.org/topics/environmental-governance/news/2011/10/peer-reviewed-cifor-and-world-bank-studies-find-communi>

the undertakings in question, the BNDES considers presentation of the environmental permit for the project to be sufficient, limiting its checks to verifying the validity of the permit, irrespective of the administrative penalties arising from failure to comply with the conditions and other obligations concerning the prevention, mitigation and compensation of impacts. The Bank is not interested in monitoring the impacts of the projects, let alone the effectiveness of the compensation measures specified for the social and environmental damage resulting from each undertaking.

The Bank claims to verify the socio-environmental compliance of its projects by applying a simple checklist of formal compliance with environmental and labour legislation. This is in spite of the fact that the BNDES is aware of the limitations of the official monitoring, control and surveillance systems of the relevant authorities for each case.

Theoretically, in addition to the official reports, the Bank should adopt measures such as: “conducting supplementary studies; recommending project adjustments; offering resources to strengthen mitigation measures; stimulating social and environmental investment at an internal (employees and supply chain) and external (local development, society and environment) level; withholding financial support in the event of non-compliance or social and environmental risks. In the case of automatic indirect operations carried out by accredited financial institutions, the Bank entrusts the financial agents with checking the social and environmental compliance of the client and undertaking receiving support”.⁶⁸

However, the situations in which such options are implemented or even considered are rare.

In addition to the lack of clear procedures for demanding compliance with the policies established and penalties in the event of non-compliance, their monitoring is also very weak. With regard to compliance with environmental permits and their conditions, the BNDES bases its evaluation on the reports issued by the environmental authorities which, in turn, base their evaluation on the accounts of the project implementers.

In other words, there is not currently a system that ensures the independent monitoring of Bank projects, with regard to compliance with safeguards. Therefore, it is essential for the BNDES to develop guaranteed

mechanisms to assess the impacts of the projects it finances, using pre-defined methodologies and criteria, and with transparency, to enable social oversight and real monitoring of the investments.

Adriana Ramos⁶⁹ and Biviany Rojas Garzon⁷⁰

9. African Development Bank set to introduce Indigenous Peoples standards for the first time

The African Development Bank (AfDB) is nearing completion of its new set of environmental and social safeguard policies. The AfDB is currently the only multilateral development bank without a standalone safeguard policy on indigenous peoples, and the new environmental and social safeguards are not expected to change this. This is despite strong advocacy from indigenous peoples’ organisations in Africa, and despite the existing jurisprudence and standards on indigenous rights in the African human rights system.

The new standards do, however, explicitly recognise the rights of indigenous peoples in some form, and this is a positive step forward for AfDB and reflects a growing acceptance of indigenous peoples’ rights on the continent.

The question of indigenous peoples has proven controversial at the African Development Bank, where many members of the Board and staff are resistant to the notion that indigenous communities merit specific treatment and are imbued with certain rights. The [CSO Coalition on the AfDB](#) and [Indigenous Peoples of Africa Coordinating Committee](#) (IPACC) have collaborated to advance and elevate the issue of indigenous peoples at AfDB, producing a joint paper⁷¹ calling for a standalone safeguard policy on indigenous peoples and requesting a formal dialogue between indigenous peoples and the Bank.

In response, AfDB President Donald Kaberuka agreed to host a forum on indigenous peoples in February 2013, the first event of its kind at the AfDB. This forum convened

⁶⁸ Socio-environmental Policy of the BNDES: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Areas_de_Atuoacao/Meio_Ambiente/Politica_Socioambiental/ accessed in March 2013. UNOFFICIAL TRANSLATION

⁶⁹ Assistant Executive Secretary of Instituto Socioambiental (ISA) www.socioambiental.org

⁷⁰ Lawyer for the Instituto Socioambiental (ISA) Xingu Programme.

⁷¹ <http://www.coalitionafdb.org/wp-content/uploads/2012/09/Why-A-Standalone-IP-Policy-in-AfDBs-ISS.pdf>

indigenous peoples' representatives, members of the African Commission on Human and Peoples Rights, government ministers, AfDB senior management, and CSOs. This served as a useful exchange to begin dispelling misconceptions within the Bank about the existence of indigenous peoples in Africa.

The AfDB Board of Directors is expected to approve its new safeguard policies in the coming weeks, once a consensus is reached on references to protections for indigenous peoples and other outstanding issues. By all indications, AfDB management will recommend some additional specific provisions regarding indigenous peoples, but will fall short of meeting the standards demanded by indigenous peoples' organisations and authorities. It appears unlikely that the final provisions will require that indigenous peoples are asked to grant or withhold their free, prior and informed consent for projects impacting on their rights.

While the inclusion of indigenous peoples' protections would represent a first step in the right direction for AfDB, the prospect of weak implementation – a constant challenge at AfDB and for all multilateral banks - remains a concern. To guard against this, and to support the effective use of the new standards, indigenous peoples' advocates and organisations have asked that the Bank establish a senior staff position to provide a liaison point for indigenous peoples and tasked with advancing the application of new standards, to convene an advisory board of indigenous peoples, and to devote sufficient attention and resources to training its own staff. Without such efforts, the Bank risks approving standards that it cannot live up to.

Josh Klem, Bank Information Center

Further information:

www.coalitionafdb.org

www.ipacc.org.za

www.bicusa.org/afdb

10. Safeguards in REDD+ financing schemes

Among the many aspects of REDD+⁷² under close scrutiny by indigenous peoples and civil society organisations, the issue of safeguards and their implementation is the one that continues to attract the most concern. This is particularly true now in the current debate on REDD+ and its degree of implementation and operationalisation. Since 2010, when the 16th Conference of the Parties of the UN Framework Convention on Climate Change adopted its decision on REDD+ and related safeguards, a continuous process of elaborations, negotiations, and adjustments has taken place at various levels. The debate on safeguards has become both an opportunity for indigenous peoples and civil society to further enhance their calls for respect of internationally recognised rights and standards, and a leverage opportunity for donors to seek compliance for the use of funds transferred to REDD+ countries. As with other REDD+-related issues the safeguard debate has developed in a very complex manner, and has bifurcated into two streams. One stream is aimed at establishing norms and tools to prevent REDD+ from doing harm to the environment and forest peoples, the other is aimed at ensuring a proper assessment of potential benefits, known in technical jargon as a “do good” approach.

As the whole debate on safeguards moved from theoretical elaboration towards a translation of principles into operational tools, problems began to arise. The problems included a lack of capacity and interest among government agencies at the national level, and questions about excessive transaction costs. These ‘problems’ pose a substantial risk of dilution of safeguards, with the expressed purpose of accelerating disbursement of funds for readiness. In order to fully grasp the significance of this scenario, it is worthwhile going back in time and reconstructing the process that led to the development of various safeguard mechanisms and regimes in different REDD+ related initiatives, such as the Forest Carbon Partnership Facility (FCPF), the Forest Investment Programme (FIP) and the UN-REDD.

The Cancun Agreements adopted by UNFCCC COP 16 listed a series of safeguards that would have to be taken into account in REDD+ policies, programmes and projects. With regard to indigenous peoples, the safeguards noted the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and provided protections ranging from ensuring their full and effective participation, to respecting the “*traditional*

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knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws". The UNFCCC also adopted a work plan for one of its subsidiary bodies (the Scientific Body for Technical Advice – SBSTA) that would develop guidance on a system of information on how safeguards would be addressed and respected.



A member of the indigenous caucus campaigning on safeguards and REDD at the UNFCCC COP17 © Conrad Feather

After some diplomatic wrangling, Parties adopted a text that provides important political backing to the relevance of social and environmental safeguards in REDD+, as well as of international human rights obligations and instruments such as UNDRIP, albeit conditioned to national circumstances and laws. In spite of its limitations, such a formulation offered space for further elaboration of safeguards within the various on-going REDD+ programmes and initiatives.

One of these REDD+ initiatives is the Forest Carbon Partnership Facility which recognises in its charter the obligation to respect the rights of indigenous peoples. Once the Cancun Agreements had been adopted, the FCPF put more effort into the development of its own safeguard regime. It should be noted here that the specific nature of the activities supported by the FCPF - notably REDD+ readiness plans, rather than projects - led to the "re-elaboration" and adaptation of traditional safeguard regimes, such as those of the World Bank, into more analytical and diagnostic tools like the SESA (Strategic Environmental and Social Assessment).

The purpose of the SESA is to anticipate potential harm and opportunities related to REDD+ very early in the planning cycle, and identify safeguards that would be triggered. With its analytical and diagnostic character, SESAs should have offered space for indigenous peoples to elaborate and provide substantial inputs on ways to ensure that REDD+ would not harm their livelihoods and rights. However, the record of indigenous peoples' engagement in the definition of the Terms of Reference

of the SESAs and the related Environmental and Social Management Framework is thus far mixed. It should be noted that one of the safeguards that indeed applies to the REDD+ readiness preparation process is related to access to information and public participation. Hence, the protracted lack of proper engagement and access to information evidenced in some countries is therefore in violation of the relevant safeguards.

The FCPF itself has also changed. Initially established as a financing scheme primarily within the World Bank (established with the Bank as trustee) the FCPF has developed into a more complex financing mechanism. Although the Bank remains the trustee, FCPF financing can be delivered through a number of possible identified 'delivery partners', including the United Nations Development Programme (UNDP), the Inter-American Development Bank (IDB) and the Food and Agricultural Organisation (FAO). This expansion in delivery partners meant additional further effort was needed to find a common approach to safeguards. The pattern adopted by the FCPF, the IDB and the UNDP (the FAO is still lagging behind in its process of alignment) envisages that the highest standards and safeguards would apply in case of divergence between the standards of the delivery partner and the World Bank and that the latter would in any case be the minimum threshold. This means that in cases where the UNDP is the delivery partner (and, being the UNDP, anchored to a rights-based approach) the UNDRIP and relevant provisions such as free, prior and informed consent (FPIC) would apply. This far though, as almost all REDD+ readiness activities are still being elaborated, no strong evidence exists about whether these standards are being met. Rather, as stated in the recent "*Country needs assessment: a report on REDD+ readiness among UN-REDD Programme and Forest Carbon Partnership Facility member countries*" (2012) the subcomponent of safeguards and public consultation, as well as Monitoring, Reporting and Verification still requires further support. The report underlined that: "The sub-component on safeguards also came up as an area of high priority, particularly for Asian and Latin American countries, and even in Africa the response rate was over 60 percent".⁷³

The Forest Investment Program (FIP) has followed a similar pattern to that of the FCPF, whereby each Multilateral Development Bank (MDB) is responsible for the use of funds transferred by the World Bank in accordance with its own fiduciary framework, policies, guidelines and procedures. Furthermore, the FIP programming approval and supervision processes will

⁷³ <http://www.forestcarbonpartnership.org/sites/forestcarbon-partnership.org/files/Documents/PDF/Oct2012/Country%20Needs%20Assessment%20report%20UN-REDD%20Programme%20and%20FCPF,%2012%20October%202012.pdf>

follow the relevant MDB's policies and procedures. However, the FIP has not developed a common approach to ensure consistency between the Trustee (the Bank) and the other MDBs' policies and safeguards. The lack of a standardised and consistent safeguard framework poses significant challenges both in terms of accountability and consistency, within the FIP, and between the FIP, the FCPF and the UN-REDD.

With regard to the UN-REDD, safeguards have been approached in a different manner. As a matter of fact, the UN-REDD adopted a set of guidance papers and guidelines related to stakeholder engagement which include a requirement to secure the FPIC of indigenous peoples, and the Social and Environmental Principles and Criteria (SEPC), which use a "rights-based approach". The guidelines apply to UN Agencies as multiple delivery partners. The SEPC are subdivided into three principles: social issues, social and environmental policy coherence and environmental issues. They contain a number of relevant provisions for indigenous peoples, including requiring their full and effective participation, and requiring respect and promotion of their rights to land, territories and resources, FPIC and recognition of traditional knowledge and livelihoods. However, the associated Benefit and Risk Assessment Tool has not yet been finalised and adopted, thereby potentially crippling their application.⁷⁴

Concerns grow over weak safeguard implementation

A recurrent pattern therefore seems to emerge at various levels. While on paper the translation of the UNFCCC political mandate on safeguards seems to have led to some significant achievements in terms of recognition of indigenous peoples' rights, when it comes to operationalisation and implementation the picture is so far less encouraging.

The FCPF has received multiple complaints from indigenous peoples and civil society about violation of Bank standards on public participation and contravention of its own participation and consultation guidelines. In Honduras, for example, some community organisations have rejected the government's readiness proposals outright due to the lack of consultation and failure to ensure inclusive policy making.⁷⁵ In countries like Suriname, despite repeated redrafting of national readiness proposals, government plans for REDD+ continue to omit any meaningful measures to uphold

the land and territorial rights of forest peoples.⁷⁶

In February 2013, indigenous peoples' organisations in Panama withdrew from collaboration with the UN-REDD Programme and National Joint Programme in Panama due to longstanding concerns about the UN and government failure to ensure effective participation and the lack of effective and timely actions to uphold FPIC and ensure alignment with the UN Declaration on the Rights of Indigenous Peoples.⁷⁷ The UN is now planning to investigate the complaint to find out what has gone wrong in the national programme.⁷⁸

The UN-REDD programme is also coming up against problems in Indonesia and other parts of Asia. The programme admits that FPIC processes in Vietnam have been flawed (failing to explain risks and costs of REDD+ to communities). In the programme's pilot REDD+ project in Central Sulawesi in Indonesia, locals complain that no meaningful FPIC process has yet taken place. Meanwhile, the same pilot project has so far paid little attention to securing land and resource rights and has focused on an outdated exclusionary approach to forest conservation which has resulted in intense criticisms from affected communities.

In Peru, the Amazonian indigenous organisation AIDSESEP has growing concerns over the treatment of rights and land issues in the the process to develop a national Forest Investment Strategy financed by the Forest Investment Programme (FIP). In short, AIDSESEP has been dismayed that previous pledges to address land tenure with adequate national budgets for demarcation and titling were broken when the government unilaterally redrafted the investment plan without consultation at the start of 2013. AIDSESEP is now considering use of various complaints mechanisms if its safeguard concerns are not addressed.⁷⁹

Community concerns over the lack of timely and effective safeguard implementation are increasingly being backed up by independent verifiers. In Guyana, for example, the verification body for the Guyana-Norway MoU on REDD+ found in November 2012 that after three years Guyana has failed to take suitable actions to uphold indigenous peoples land rights, while ineffective public consultations and a lack of transparency continue to

⁷⁴ http://www.un-redd.org/multiple_benefits_sepc/tabid/54130/default.aspx

⁷⁵ See, for example, letter from COPINH in Honduras sent to the FCPF in August 2012 <http://www.forestcarbonpartnership.org/sites/fcp/files/2013/carta%20SOBRE%20PROYECTOS%20REDD%20HONDURAS%20final.pdf>

⁷⁶ See <http://www.forestpeoples.org/sites/fpp/files/publication/2013/03/comments-suriname-rpp-march-20132.pdf>

⁷⁷ <http://www.forestpeoples.org/sites/fpp/files/news/2013/03/COONAPIP%20RESOLUCION%202013%20Retiro%20de%20ONUREDD%20.pdf>

⁷⁸ http://un-redd.org/UNREDD_Launches_Panama_NP_Evaluation_EN/tabid/106063/Default.aspx

⁷⁹ <http://www.forestpeoples.org/id/topics/forest-investment-programme-fip/news/2013/02/indigenous-peoples-peruvian-amazon-denounce-fail>

plague the development of sustainable REDD+ policies in the country.⁸⁰

The implementation of guidance on the System of Information on Safeguards, as well as on Monitoring, Reporting and Verification of their application in REDD+ finance at the UNFCCC offers further critical evidence that forest nations are being sluggish in acting on safeguard-related obligations under the Convention. It furthermore shows the need for an effective safeguard regime to be anchored in relevant national legislation and related legal and governance reforms, (as in the case of land tenure, or FPIC), such processes are still in their infancy, or not yet even started, in many countries. There are signs that the slow rate of action on safeguards may be due to a serious lack of government capacity on safeguards and reporting issues.

Indigenous peoples and NGOs, including FPP are emphasising that an effective national safeguard system has to be linked to a robust and effective compliance framework that includes performance indicators for safeguard implementation. Unfortunately this is something that most countries at the UNFCCC are strongly opposed to, either to make access to funds easier, protect their own “sovereign” space, or to accelerate readiness processes in order to start implementing projects and benefit from related carbon payments.

Unless forest countries start to heed the calls for stronger actions on safeguards being made by indigenous peoples and social justice organisations, more complaints like the recent one to UN-REDD in Panama are likely to emerge. For now, civil society and indigenous peoples continue to call for safeguards anchored to a strong compliance framework that would include the recognition of the right to FPIC, effective and accessible grievance and complaint mechanisms, robust governance reforms (in particular recognising indigenous peoples’ rights to land, territories and resources) and funding institutions’ and governments’ acknowledgement and support of community monitoring schemes, that include performance indicators for safeguard implementation.

Francesco Martone and Tom Griffiths (FPP)

11. Safeguards and the Private Sector: Emerging lessons from voluntary standards and commodity roundtables

Public indignation about the depredations of ill-regulated business has led to a growing recognition of the responsibilities of businesses to respect human rights, as well as the need for stronger regulations to improve the way products are made and ensure that environments and peoples’ rights are respected and protected. There is now greater awareness that what is urgently needed is strengthened environmental stewardship and land governance, reforms of land tenure, and improved enforcement of revised and just laws. Such reforms have been slow to take effect, so consumers and buyers have pressed for faster change. This has given rise to standard-setting by the private sector for the regulation of commodity production and processing to respect rights, secure favourable and sustainable livelihoods and divert pressure away from areas crucial to local livelihoods and of high conservation value. Standards, which recognise the importance of protecting customary rights in land and other natural resources and the right to free, prior and informed consent (FPIC), have now been developed for *inter alia* forestry, timber estates, palm oil, soya, sugar, aquaculture, biofuels and carbon sequestration.

Principles of transparency and information-sharing in private sector voluntary standards mean that providing data about business operations and projects is now an obligation of member companies towards all stakeholders. This has opened up space for civil society groups and communities to react more quickly to such projects, with more chance of changing them before they do harm. The complaints mechanisms and grievance panels, of companies, certification bodies and commodity roundtables are now being actively used to initiate independent mediation and resolve disputes. The multi-stakeholder character of voluntary standards also means that both environmental and social NGOs and CSOs have some say in the decisions and actions of these bodies and their member companies. The concern of certification bodies and companies for their reputations provides some leverage when complaints are not dealt with adequately.

Looking across commodity standards, however, one finds that while processes of text negotiation among

⁸⁰ [http://www.forestpeoples.org/sites/fpp/files/news/2013/03/Rainforest Alliance NorwayGuyana ReddAgreement 2013.pdf](http://www.forestpeoples.org/sites/fpp/files/news/2013/03/Rainforest%20Alliance%20NorwayGuyana%20ReddAgreement%202013.pdf)

stakeholders have encouraged an important degree of shared 'ownership' of the standards, a result of their separate evolution is that the various schemes have developed disparate and sometimes even contradictory approaches to the way they address critical issues such as human rights, land tenure, legality and permit issuing, livelihood security, risk avoidance and dispute resolution. Efforts need to be directed not only to implementing these standards, but also to improving and harmonising them. Sustained civil society monitoring and verification have proven indispensable, even in the limited number of success stories to date. In the course of 2012 – 2013, Forest Peoples Programme, working closely with SawitWatch and other partners, has also been pushing for improvements in the Round Table on Sustainable Palm Oil's Principles & Criteria. Some gains have been secured in the new draft text, which the members voted to adopt in April 2013.



One of the aims of private sector voluntary standards is to protect and enhance High Conservation Value Areas © Sophie Chao

While working through voluntary private standards can help raise the ceiling in terms of requirements for respect for human rights, working towards legal and governance reform is essential to help raise the floor as well. But these two are not separate processes: in recent years, private sector voluntary standards have been used to engage with governments and identify areas for legal reform so that companies are better able to abide by voluntary requirements, notably where national laws make it difficult or even impossible for them to comply.

Human rights activists face difficult questions when engaging with voluntary standards that require much further reflection: what is the jurisdiction of voluntary standards over local communities who are not members or who may not even be aware that these standards exist? Given that none of the standards' procedures have to date been activated by local communities without the help of local (and sometimes international) NGOs, how

does one avoid the risk of substituting the voice of these communities, rather than facilitating their own self-determined access to these procedures? And are voluntary standards really being used to secure fundamental and non-negotiable rights and principles, such as free, prior and informed consent, or merely to mitigate the impacts of projects on the lives of affected communities on the basis of compromise?

It is perhaps most useful to conceive voluntary standards as one tool among others in the toolbox of human rights advocacy. There evidently remains a wide gap between how they ought to function and what they are actually able to achieve. But at the same time, having access to an imperfect system is surely better than nothing?

Sophie Chao (FPP)

Relevant sources:

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