



World Bank's Safeguard Policies Review and Update Expert Focus Group on the Emerging Area Human Rights New York, USA April 15, 2013

On April 15, 2013, a focus group of international experts was held in New York, USA, on the subject of Human Rights. This focus group was part of the World Bank safeguard policies review and update process and the topic of Human Rights is one of the emerging areas that stakeholders have asked the Bank to consider during the review. Other emerging areas include: labor and occupational safety, disability, free, prior and informed consent of Indigenous Peoples, gender, climate change, land tenure and natural resources. More information about this process is available on the safeguards review [website](#). The terms of reference for participants of focus groups for emerging areas are available [here](#).

Participants in the focus group comprised human rights experts from a variety of civil society and research organizations from around the world (see [list of participants](#)). It was agreed at the outset that the focus group would be conducted in accordance with Chatham House rules, and that participants would speak in their individual capacities rather than as representatives of their respective institutions. In addition to participating experts, eight World Bank staff members were present. The meeting was facilitated by Anders Zeijlon, Coordinator of the World Bank-administered and World Bank-executed Nordic Trust Fund. The focus group meeting began with a presentation by World Bank staff to help define the purpose and scope of the meeting. The presentation described the rationale, objectives and stages of the overall safeguards review process. A second presentation set the stage for the specific discussion on human rights, the opportunities that the safeguard policies review might present, and the constraints that exist in the context of the World Bank Group's Articles of Agreement, in particular the political prohibitions. This was followed by participants asking a number of clarification questions regarding the application of safeguard policies and possible consequences for projects when safeguards are triggered or violated, and by World Bank staff explaining the relevant procedures.

Following is a synthesis of key observations made by the experts who participated in the focus group meeting. It does not reflect or represent views of the World Bank staff who were present. The synthesis is based, first, on draft minutes prepared after the focus group meeting and, second, on comments and clarifications provided by some of the experts after they had a chance to review the draft. These observations do not necessarily represent the substantive consensus of the focus group. They are instead summarized here as key issues put on the table by one or more individual focus group experts that received attention during the consultation and that were proposed by the focus group for further consideration as the process goes forward.

General observations

While experts in the focus group meeting recognized the constraints imposed on the World Bank by its Articles of Agreement and the current interpretation of its mandate, many of the ideas and suggestions made focused on what could or should be done, notwithstanding the constraints. Thus, the experts expressed a desire for the World Bank to adopt human rights principles. Some also stressed that the constraints should not absolve the Bank from its own responsibility to respect human rights within the activities it supports and should not constrain the Bank to ensure its safeguards policies are in line with international human rights law and standards. Experts suggested incorporating core principles of human rights into the safeguards policies and stressed that an explicit commitment to a human rights approach would help the Bank to increase its development effectiveness.

Other parts of the discussion focused on identifying human rights principles that could contribute to positive development outcomes. Some experts suggested incorporating certain core principles into World Bank safeguard policies so as to support its members in upholding their own human rights obligations, and pointed to the potential benefits of integrating human rights in the World Bank's due diligence, which could include the identification of adverse impacts on human rights through human rights impact assessments. The discussion on these and other issues raised is summarized below.

Core principles. Experts spent part of the discussion trying to identify key principles that can form part of good development practice, while some stated that the Bank should explicitly refer to human rights law and standards to increase clarity of its policies. The experts suggested several principles, including:

- Transparency
- Accountability
- Nondiscrimination
- Good governance / rule of law
- Empowerment
- Participation
- Environmental, social and economic sustainability

On participation, one expert suggested that it is important as a way to empower domestic NGOs while another expert considered it to be too process-focused and would prefer something more substantive. Voice, freedom of elections/expression/association/ assembly were discussed as aspects of a participatory culture, resulting in inclusive development and poverty alleviation as well as respect for human rights and environmental, social, and economic sustainability. Other potential principles mentioned were rule of law and "do no harm."

The key question that the group discussed was how these principles could enhance development outcomes. There was some discussion about identifying one or two key concepts that capture and combine the essence of the principles discussed. Some experts suggested that the causal relationship between inequality and poverty makes nondiscrimination a useful core principle for safeguards. One expert expressed the view that discrimination drives inequality, which in turn is a major cause for poverty (for example, a large proportion of extremely poor households are headed by members of ethnic minorities). According to other experts, non-discrimination as a core principle and as defined by

the international human rights framework, would also capture those stakeholders that tend to be disadvantaged or seldom-heard in the larger development discourse, though another view was that the concept of nondiscrimination could be used to justify assimilation. The concept of inclusive development would be fine for the experts so long as there is a reference to nondiscrimination. It was suggested by experts that the World Bank not refer to “vulnerability” of people, but refer to people in the situation of vulnerability.

Experts observed that many of the principles discussed as well as some political considerations are already taken into account by the World Bank when it prepares projects. There was some discussion about whether the World Bank could reflect these principles explicitly as human rights issues, rather than as important contributors to development outcomes. Some experts thought that such principles could also help to mainstream a World Bank commitment throughout all operations and might help treat issues related to such principles in an integrated and consistent fashion while others thought that core principles could be supported by all client and donor countries without committing the World Bank to a human rights approach. The group agreed that, as a minimum, the Bank should state in its policies its commitment (as an increasing number of other multilateral banks have been doing) to ensure that the activities it promotes will not contribute to human rights violations.

National and international legal obligations. Experts suggested that the World Bank may have a role in supporting countries to uphold their legal human rights obligations, ensuring that its safeguards policies are inline with human rights law and standards. One focus group participant suggested that a culture-relativist approach to human rights would not reflect any progress in the World Bank’s approach to development in the past decades and suggested that the World Bank could maintain the core of human rights values by helping countries uphold their own legal obligations. A number of human rights treaties have been ratified by donor and borrower countries (it was stated that over 90% of World Bank shareholders have signed or ratified key human rights treaties). A view was also expressed within the group that the World Bank should strive to not undermine the efforts undertaken by countries to uphold their legal obligations and not interfere with regional human rights bodies and their judgments. One expert suggested that the World Bank could decide to not work in countries where certain minimum standards of public participation are not met, as meaningful development might be hindered under such circumstances. The view was also expressed that the World Bank should aim at building an enabling environment for the poor through supporting governments in upholding their obligations.

Sources of law. Experts acknowledged that there is a distinction between different human rights instruments and processes, in particular between binding international treaty obligations and the pronouncements of international courts or the United Nations Security Council on one hand, and declarations or recommendations of treaty monitoring bodies on the other hand. One expert asked the Bank to implement binding decisions of regional human rights bodies and not undermine them.

Human rights impact assessment. Experts discussed the way in which human rights impact assessments are currently prepared and used by different parties. A suggestion was made by an expert that the World Bank could take an active role in guiding countries on appropriate assessments needed ex ante and preparing and disclosing assessments. If this were done, a view was also expressed that human rights impacts assessment? would need to be clearly operationalized through indicators and that the

necessary depth of assessment could be determined depending on the country and its human rights record, and also the likely adverse impact of certain projects on communities likely to be affected. One expert suggested combining human rights impact assessment with operational risk assessment tools that the World Bank already has in place.

Engagement and dialogue. Experts expressed the view that the World Bank could act as a convener of an ongoing human rights dialogue with client governments. Domestic civil society could be included in this dialogue. A suggestion from a focus group member was that the World Bank could use the safeguard policies and other tools to initiate this dialogue, for instance, recommendations from the Inspection Panel, to ensure that human rights are part of the country strategy and the operational risk assessment framework and part of discussions about policy loans.

Development effects of human rights. Experts noted increasing international efforts and evidence based research to link human rights and development effectiveness, although numerous factors influence development. In light of this, some experts proposed that the World Bank should ensure respect for human rights in the activities it funds or supports and might have an interest in promoting human rights (within the constraints of its mandate) as part of its overarching goal of alleviating poverty.

Human rights language. Experts expressed different views on whether safeguard policies should include explicit human rights language. Some experts suggested that explicit references to human rights were not necessary. Others suggested that language used should clearly and explicitly reflect the human rights framework as this would help to define relevant issues clearly. Language could be affirmative and address equality and social justice. An expert stated that the use of human rights concepts could contribute to building a culture supportive of human rights. It was also suggested within the focus group that the World Bank could use tools other than safeguard policies to make an explicit link to human rights language, such as ensuring its policies contain a general statement on the Bank commitment to respect human rights.

Compliance, sanctions, and grievance mechanisms. It was suggested by some experts that the World Bank might consider not funding projects that are likely to violate or contribute to the violations of international human rights standards and avoid the danger of being associated with human rights violations. To support this approach, it was suggested that the potential human rights impacts of projects would need to be identified during the upstream phase of the project and continuously monitored by the Bank. Experts recommended that any policy addressing human rights issues would have to include grievance mechanisms and allow affected communities to address the Inspection Panel.

Guidance. A view was expressed that extensive guidance on human rights issues in the context of development projects is necessary to ensure that upholding safeguards or human rights standards does not become a matter of “checking the box.”

Larger human rights discourse. Experts discussed how the World Bank could consider the ongoing discourse in the broader development community and especially in the United Nations system, when considering safeguards and human rights. Safeguard policies are only a part of the larger engagement between the World Bank and its member countries. Some suggested that this discourse could be unified within the World Bank Group and across development institutions.

Capacity. It was pointed out that in some countries, lack of compliance with human rights treaties may be an issue of low capacity. The World Bank could help build this capacity through ensuring that its safeguards policies are in line (adequately reflects and explicitly refer to) with human rights law and standards. While empowerment of the poor was mentioned earlier, other experts thought it is important for the World Bank to support governments to build up capacity for environmental and human rights protection and social development.

Conflict. Some experts suggested special attention to human rights in conflict situations.