World Bank Safeguards Review – Oxfam Submission to Phase 1

Overarching thematic principles for safeguards review

Oxfam was one of the contributors and signatories to the Civil Society paper. "*Initial Comments by Civil Society Organizations on the World Bank's Safeguard Policies Review and Update*" submitted to the World Bank Safeguards team in December 2012. Many of the overarching themes and guiding principles of that paper are supported by Oxfam. Oxfam wishes to reiterate the concerns around application, architecture and scope of the safeguards review highlighted in the paper. In particular, that the safeguards should apply to all forms of World Bank (the Bank) lending, given that the current application just to investment lending represents a continually shrinking portion of the Bank's lending portfolio; and that an over-reliance on the IFC Performance Standards model has its drawbacks, through placing too much of the responsibility for application of standards onto the client, rather than retaining accountability at the Bank.

Oxfam would like specifically to highlight several of the existing safeguards and identified emerging areas of the review as part of this submission, but would also like to emphasise several overarching principles that we believe the Bank should prioritise as it develops its integrated framework and first iteration of the revised safeguards, to address certain systemic deficiencies and help enhance the development effectiveness of all Bank lending.

- ***Fighting inequality***: Bank President Jim Kim's recent announcement of a draft 2030 Vision paper at the 2013 Spring meetings which outlined two broad goals on poverty eradication and addressing inequality in informing a Bank strategy, is a very welcome step. Placing poverty eradication at the heart of all Bank activities that is in concert with addressing rising inequality is an essential global development priority, with the safeguards being a key tool for informing Bank operations and meeting the President's Vision.
- ***Not taking risks at the expense of a Rights-based approach***; The Bank has an obligation to help improve the lives of all people living in poverty and to this end President Kim has encouraged Bank staff to take risks to reach the places and peoples that it traditionally struggles to reach. However a risk-based approach is not inimical to a rights-based approach; on the contrary, taking increasing risk places additional onus on the Bank to ensure the rights of the poorest and most vulnerable people are adequately protected. To this end, the Bank should align its Safeguards with current international human rights law. In addition, a human rights framework provides the obvious unifying thread across the seven emerging areas – from land and natural resources through to disability and indigenous people's rights.
- ***Opportunity, not risk***: Safeguards make money, not cost money. The view that safeguards are an impediment to development must be vigorously challenged. The positive financial benefits of their application far outweigh the cost of serious social and environmental non-compliance[1]. A better understanding of the local context also leads to a more profitable venture, and such messaging should be at heart of the promotion of Safeguards to both borrowers and donors.

[1] IEG report, 2010.

- ***Going "beyond" do-no-harm, not "from" do-no-harm***; We welcome the acknowledgement that the Safeguards can be a vehicle for doing good and enhancing the development effectiveness of Bank lending. In line with the above notion of 'Opportunity, not risk' they can be a powerful tool to improve the net benefits of projects if adhered to. However this must not be at the expense of their primary objective of being a tool to protect the rights of affected communities. On this point, words matter. The Safeguards must first and foremost be a tool for "doing no harm," with any mandates of "doing good" being additional to this core principle.
- ***Making the implicit, explicit***: The existing safeguards and Bank policies can be comprehensive documents outlining many of the necessary prescriptions for each respective area, however the nature of their application can lead to problems with effective on-the-ground implementation. Too often, non-mandatory and key unenumerated provisions are ignored as implicit inferences (such as social assessments in OP.4.01), when they must be brought forward and made explicit and mandatory to assist Bank staff in effective implementation.
- ***Transparency is the watchword of inclusive development***: On all levels from intra-country transparency, to Bank disclosure of revenues and disclosure of contracts (including pre-deal), improved transparency that empowers affected communities is central to the effective implementation of all of its safeguards. In addition to Human Rights, transparency of lending (which includes meaningful consultation and explicit, demonstrable indicators of public interest) should be highlighted up front as a unifying element of all the safeguards.
- ***Advisory services must be brought in line***: As mentioned, bridging the implementation gap of the safeguards will be of critical importance. All parties acknowledge that weak implementation, facilitated by weak supervision, is almost always what leads to non-compliance. Capacity gaps exist within host countries' ability to implement safeguards, particularly in a manner that is inclusive of local community concerns. The Bank is also increasingly shifting its portfolio away from investment lending towards the advisory services it provides, financial intermediaries, trust funds, Development Policy Lending (DPLs) and Program for Results (P4R)[2] - none of which, under current plans, would necessitate application of the safeguards. Advocating for application of safeguards to these types of investments improves both the quality of the advice given by the Bank, as well as country capacity for implementation, by informing and strengthening national laws and policies, while improving domestic transparency.
- ***Safeguards can help to build country systems:*** In line with Oxfam's position on the Country Systems safeguards (OP 4.00 – see below), and the need to improve and align advisory services, the safeguards can be used to help improve and raise country systems to the highest possible standards that benefit and empower local communities.

Country Systems – OP 4.00

Effective development that sees borrower governments lead their countries responsibly towards peace, inclusive economic growth and stability, relies on responsible state ownership that is accountable, transparent and empowering of all citizens. Country systems, or borrower systems, through the use and development of a government's own domestic environmental and social safeguard mechanisms, can be a vehicle towards this end.

---

[2] For example, Safeguards only apply to 50% of the Banks portfolio in 2010. ~ 80% of the Bank's forestry projects are done through DPLs.

In the context of the Word Bank's safeguards review, country systems are meant to demonstrate "equivalence" to Bank safeguards by adhering to specific objectives and operational principles as set out in the pilot program of OP 4.00. The Bank also assesses the "acceptability" of the borrower's implementation practices, track record and capacity. The Bank makes the determination on the equivalency and acceptability of a borrower's systems, and does so at a project by project basis. The pilot program was designed in 2005 for a two year process, and has since been temporarily put on hold with a complete review needed. Of particular concern, the pilot found especially wide gaps of equivalency on resettlement and indigenous people's issues[3].

Country systems and international safeguards are not mutually exclusive principles, but rather can be mutually reinforcing. The ideal scenario would be for all country systems to be raised to the highest possible standard in design and implementation, exceeding that of international safeguards and best practice. Safeguards have a role to play in informing and defining country systems towards this goal, and should be with a key element of the advisory role of the Bank in helping develop country capacity towards this end.

Oxfam's position on country systems and safeguards

Country systems – specifically environmental and social safeguards designed and administered through national, accountable, participatory and inclusive institutions - could be complemented by international monitoring, technical advice, oversight and feedback so as to help build country capacity in their design and implementation that sees full CSO and local community participation. Country systems should be demonstrably in accordance with and informed by international safeguards, best practices and principles.

Specific asks of the Safeguards review should include:

- Strengthen procedures to determine "equivalence" and "acceptability" of design and implementation of country policies, through participatory and inclusive processes that include local communities and CSOs, and ensure that there is a strong demonstrable emphasis on inclusivity and a public purpose benefit in making these determinations. Mechanisms should be in place for such measures and assessments to be independently and externally verifiable.
- Bank assessments of country systems should not be conducted on a project basis, but should rather be built from national laws and regulations, and have a strong emphasis on transparency, accountability, strengthening country institutions, capacities and democratic governance towards the benefit of all citizens.
- As per the provisions of the pilot program OP 4.00, the Bank should not only base its assessments of equivalence and acceptability in a manner that is proportional to the potential impacts of the projects, but ensure a standardized approach that is in line with national laws and regulations and international standards.
- Supervision, redress and accountability mechanisms within the country systems should be a key element in the Bank's equivalence and acceptability assessments. The Bank should ensure that it increases its ability and resources to maintain a stronger level of its own supervision and assessments of the country systems.

[3] Bank Information Center - 2011

- The Bank should promote training and capacity on the use of specific diagnostic tools like the Land Governance Assessment Framework.
- The Bank should explore the promotion of certain multilateral internationally agreed upon tools of best practice, such as the UNFCCC national reporting frameworks and the UNCFS Voluntary Guidelines on Land Tenure (which the Bank recently announced would form the basis of its work on land tenure – see Land as emerging area below).
- Bank support of country systems could specifically include the provision of legal assistance for borrower governments and civil society to improve their capacity in making investment decisions, and improve domestic accountability.

Land as an emerging thematic area

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

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

We welcome the Bank's acknowledgement of Land and natural resources as an emerging issue in the evolution of the safeguards that deserves special consideration. Specific issues relating to community rights and land will be addressed in the review of existing Safeguards, for example in Involuntary Resettlement, Indigenous Peoples and Environmental Assessment (see below for specific recommendations on these). However in light of the increasing pressures on land and the detrimental impacts that this has on food security and communities' access to land and natural resources, the Bank should prioritise additional provisions to improve security of tenure, transparency and community consultations.

Land tenure safeguard submission

Oxfam in partnership with Inclusive Development International has developed a draft land-tenure safeguard which has already been submitted to the World Bank Safeguards team highlighting the nature, scope and details of the necessary requirements to protect tenure across all Bank lending.

A link to the safeguard can be found here:
http://www.inclusivedevelopment.net/landtenuresafeguards/

In line with World Bank President Kim's recent April 8 2013 statement on land on the eve of the 2013 World Bank land and poverty conference, specifically "*We are working to provide more access to finance for women farmers and entrepreneurs. But additional efforts must be made to* *build capacity and safeguards related to land rights—and to empower civil society to hold governments accountable*," the proposed tenure Safeguard helps answer this call. In particular, the proposed land tenure safeguard provides concrete recommendations to align the safeguards with the UN CFS Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security ("the VGs"), which the April 8 statement also refers to. The Expert meeting on Land reached specific conclusions that the VGs be used as the minimum standard for the Bank in the Safeguards review..

Climate Change and Resilience as an emerging thematic area

Oxfam supports and endorses submission made by the Sierra Club and other organizations, "*Sustainable Development in a Changing Climate: Designing a Climate Sensitive Safeguard Policy Framework*." Specific sections taken from that submission which we wish to highlight are contained below.

The World Bank has recognized that "[g]lobal efforts to overcome poverty and advance development can no longer ignore an urgent need of addressing global climate change."[4] Therefore, as Dr. Kim stated in the Bank's recent Turn Down the Heat report, the challenge for the Bank is "ensuring all [its] work, all [its] thinking, is designed with the threat of a 4°C degree world in mind." Towards this end, the Bank has taken some important steps to make its operations more climate sensitive and resilient, including adopting the Strategic Framework on Development and Climate Change (2008), and agreeing to integrate reduction of near-term climate pollution into its activities as part of the Climate and Clean Air Coalition.[5]

However, like many institutions, the Bank has not yet fully integrated climate issues into its operational policies. Most notably, the current Safeguard Policy framework does not adequately address the challenges a changing climate presents to client governments, affected communities, local ecosystems and the global commons. At present, the Bank lags behind other financial institutions that have gone further to address climate-related issues in their environmental and social policies, including IFC, all of the regional development banks, and many bilateral and private-sector actors.

The Safeguard Policy Review presents an important opportunity for the Bank to adopt best practices for promoting climate sensitive and resilient development in its operational policies. As a guiding principle, the Bank should recognize that the goals of climate sensitivity and resilience need not be in tension with its mandate to alleviate poverty in an environmentally responsible manner. Ample opportunities exist for the Bank to support projects that capture synergies among these objectives. Therefore, in accordance with the Bank's new Environment Strategy, the Safeguard Policy should narrowly focus the Bank's efforts on systematically identifying and capturing these synergies, and should preclude support for activities with significant tradeoffs until these synergies are fully exploited.[6]

---

[4] World Bank, 2008. Development and Climate Change: A Strategic Framework for the World Bank Group, at 6.

[5] Fact Sheet: G-8 Action on Energy and Climate Change (Camp David, USA, 19 May 2012); http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSDNET/0,,contentMDK:23180642~menuPK:64885113~pagePK:7278667~piPK:64911824~theSitePK:5929282,00.html .

[6] See, World Bank, 2010. 2010 Environment Strategy: Analytical Background Papers: Assessing the Environmental Co-Benefits of Climate Change Actions, at 4. (The bank should support "win-win-win' solutions which are robust

Promote Climate Resilience

The Safeguard Policies should require project sponsors to assess and manage (a) the climate-related risks facing supported projects and the resilience to climate impacts of those projects; and (b) the impacts they will have on the resilience of local communities and ecosystems.

The proper assessment and management of climate-related risks are critical to ensure that supported projects remain viable, deliver their intended development benefits, and continue to "do no harm" as local climactic conditions change over time. Towards this end, the safeguards should require sponsors to assess the climate-related risks of projects and programs, and the impact they will have on the climate change resilience and adaptive capacity of host communities.

In order to assess the overall development impacts of a project under various potential climate scenarios, project sponsors should assess how issues such as water stress, vulnerability to severe weather events, effects of increasing temperature (on crops, for example), sea-level rise, glacial melt, and other impacts of climate change will affect the viability and development impacts of their projects, and the ways in which those projects and programs may affect the ability of host communities to adapt to climactic changes. In addition to the development risks, sponsors should also assess the business risks (how their business plans are likely to be altered if climate change affects the local/regional economy and resource base) and regulatory risks (how their operations are likely to be affected by potential regulatory responses to climate change such as carbon-pricing schemes or more stringent efficiency requirements) of a changing climate. Importantly, this need to assess climate risks and resilience is not limited to long-lived projects; it also is relevant to other projects--such as those in agricultural areas--that may be significantly affected by climate change.

Clients should be required to avoid, minimize and mitigate these risks and impacts, in accordance with the mitigation hierarchy. Towards this end, the outcomes of these assessments should be integrated at the project design stage to facilitate proactive risk management.[7] Where the identified risks and impacts cannot be avoided, the Safeguards should require the client to develop an Action Plan for achieving excellent development outcomes across a range of potential climate scenarios. The Plan should describe the mitigation and performance improvement measures and actions that it will take to minimize and mitigate the identified risks to the project, and the environmental and social risks and impacts on local communities and ecosystems in a changing climate.[8]

Involuntary Resettlement – OP 4.12

Oxfam supports and is a signatory to the submission prepared by Inclusive Development International (IDI), International Accountability Project (IAP), Bank Information Center (BIC), and

---

under a range of future climate scenarios and which create environmental benefits while simultaneously contributing to development, adaptation, and mitigation.")

7 IFC, IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information: Report on the First Three Years of Application, at 31 (2009).

8 See, IFC, 2012. Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts, paras. 15, 16.

Habitat International Coalition – Housing and Land Rights Network (HIC-- ‐ HLRN); "*Reforming the World Bank Policy on Involuntary Resettlement*."

Indigenous Peoples – OP 4.10

The rights of indigenous peoples (IPs) require special priority given the specific rights that they are entitled to under international law and the UNDRIP. They have among others a right to self-determination, self governance, and specific cultural rights. FPIC inclusion to IPs was considered as one of the major wins in the IFC performance standards review. Given it is a basic right under international law, as a minimum our main ask for OP 4.10 would be the application of FPIC for IPs.

Environmental Assessment – OP 4.01

The IEG has identified that the OP 4.01 has not been properly revised since its formulation since 1989, specifically towards the Bank's portfolio which has changed significantly.

Oxfam wishes to note its support for the submission by Bank Information Centre on Environmental and Social Assessment and management Policy (ESAM) of March 2013. In line with this submission Oxfam urges the Bank to as an overarching SG, OP 4.01 should ensure the following:

- Specific **climate change mitigation and adaptation criteria** included in the social and environmental assessments that ensure Bank investments are as low-carbon, pro-poor and resilient as possible.
- Project, programme and policy alternatives considered as a first step, based on **cost-benefit analyses** that price all relevant externalities
- Strengthen the **risk categorization** process to include upstream, downstream, cumulative and global environmental assessments, as well as making such assessments standard across all lending instruments.
- Update the **disclosure requirements**, including specifically towards financial intermediary lending. OP 4.01 could be the avenue to achieve both revenue and contract transparency (including pre-deal disclosure – see below), which would apply to all the safeguards through the social and environmental assessments. For projects and programmes with major impacts (Category A), Stakeholder Participation Plans should be prepared.
- Undertake additional **due diligence** for high-risk projects – including field visits and desk review of ESAs, and in highly complex and sensitive projects, engaging independent advisory panels during project preparation and implementation. Social experts should be included in addition to the existing requirements of environmental experts for the independent advisory panels.
- Strengthen **implementation** through a full project performance management system, that includes social and environmental indicators. If failures are identified, the Bank seeks corrective measures to ensure compliance. The borrower or client must establish a **Grievance Redress Mechanism** to facilitate resolution of affected people's concerns and grievances, using a transparent process that is gender responsive, culturally appropriate and accessible.

Land and natural resource investments are directly linked to local communities' right to food and right to adequate housing. Improved transparency is essential to protect these rights of affected communities, particularly such that they have the capacity to access, understand and use all the relevant project information. Improved disclosure is specifically needed during the pre-project planning and post-implementation stages, and should be part of the amendments to the Environmental Assessment safeguard. Resources are often allocated during the contract negotiation stage – the point at which local community rights are typically disregardedand when the most damaging impacts can occur. Full details of the project including the purchase price, the buyers, the boundary of operations, as well as the potential risks and impacts must be made publically available and easily accessible to all affected communities. Similarly post-project, downstream monitoring of the impacts and mutually-agreed benefit-sharing arrangements need to be clearly stipulated and be coupled with the provision of a functioning grievance mechanism and accountability framework. Such changes to improve transparency should also be part of the Bank's advisory role in informing country systems, so that domestic regulatory frameworks reflect such disclosure provisions to the fullest extent possible.

A core labor standard

Oxfam supports the efforts in securing a core labor standard in the safeguards. Presently the Bank is lagging behind other institutions in the adoption of labor standards including the IFC, EBRD and other MDBs. Specific asks, based on that submitted by allies include:

- A definitive commitment to develop a labor standard that is in compliance with the four core labor standards as defined by the ILO[9].
- Adoption of additional requirements on basic working conditions found in IFC PS2 such as the provision of information to workers on conditions of employment, retrenchment procedures, grievance mechanisms, migrant worker protections, occupational health and safety standards and supply chain standards.

[9] (1) eliminate all forms of forced or compulsory labour; (2) effectively abolish child labour; (3) eliminate discrimination in respect of employment and occupation; and (4) ensure the freedom of association and the right to collective bargaining.