I. Questions and Comments on ESS

I explained how I put together these comments and questions in a note to Mark King, also today, March 15, 2016, as part of the consultation phase that is closing today. I hope to receive specific answers to the observations, concerns, questions, and comments expressed below.

Part I of the comments addresses some critical general policy standards issues; followed by, Part II focuses on ESS 5 issues, on Displacement and Resettlement (Michael M. Cernea)

1. “Policy” or “No Policy”?

Question: Will the standards be designated as “operational policy standards” or as “policy standards”? At present, the term “policy standards” is avoided throughout the entire length of the ESS document. What are the reasons for this avoidance?

COMMENT A: If the ESF/ESS are extracted out from the Bank’s policy system architecture OP/BPs, as it appears now to be the case, it would represent a systemic dilution of the existing Safeguard policies themselves by eliminating them from the highest category of Bank normative documents valid for staff and borrowers. The designation as “standards” for borrowers, which are not policy is clearly a much lower rank in terms of normative value. What is the reason for this de-ranking?
Nowhere during the consultation was this reason explained in itself, verbatim.

Not only the Safeguard policies are being weakened. The entire remaining architecture/system of Bank policies is getting weaker by NOT containing safety net policies for the most severe risks and adverse affects the Bank has encountered in its development practice.

In sum, the above comments request an explanation on whether the ESS will or won’t be de-ranked from their normative status as part of the Bank’s OPs/BPs.

COMMENT B: The UNDP solved this same problem correctly. In 2015, it adopted its own new system of “policy vision, principles, and social and environmental standards.” The UNDP has 3 principles and 7 standards in its new systems. But the UNDP firmly defined its 7 standards as policy stating verbatim: “The SES (Social and Environmental Standards) are UNDP policy”.

I propose that the World Bank does the same, and maintain the policy status of the ESS standards with a similar statement like the UNDP policy. These could very well be ‘Policy Standards for both the Bank and the Borrowers’.

There is zero benefit for the Bank in shedding the designation of “policy”; these are norms, in fact minimal norms, which the Bank wants and expects the Borrowers to meet as a minimum, and possible exceed. Therefore, I think and propose that they should be defined for what they are, as norms, which in Bank terminology are policy norms. Withdrawing in 2016 the designation of policy to these Environmental and Social norms, as they have been for 3 decades, would be an explicit & major step back by the World Bank.

My near quarter-century in house experience in the Bank taught me that the culture of our work is a highly potent driving-force of the institution’s performance. In the culture of the Bank’s stuff, the term “policy” has great weight: staff and middle-level managers are vastly more determined to work hard to meet normative requirements, defined as policy, than to meet requirements that the World Bank management itself ranks at a lower-then-normative status.

We have learned recently, from 3 major documents disclosed by President Jim Yong Kim in March 2015, that instances of violation or ignorance of Bank policy and procedures by Bank’s own staff in the last 6-8 years regarding forced displacement and resettlement have exorbitantly increased while these norms still had the official status of “policies” (there are known causes for this worsening performance, worth examining openly, an effort not made yet, that I cannot address here).

I leave it to the reflection and imagination of the colleagues who are now rewriting the safeguard policies into non-policy standards to weigh the risks and long-term consequences of
this normative downgrading on the culture of Bank staff and work, and explicitly the
disempowering effects of this downgrading on our staff’s efforts to persuade borrowers to
respect Bank principles, policies, safety nets, and safeguard norms.

2. The Concept of Safeguarding

The very concepts of “safeguard” or “safeguarding” are deliberately absent from the entire
110 pages text of the ESS. The elimination of these concepts is not necessary. Such elimination
brings zero benefits to the Bank. Conversely, however, tacitly abandoning the term appears as a
surreptitious change in language, because nowhere in the ESF/ESS is it explained openly WHY
after decades of using this concept, the Bank is dropping it. The issues that until now were
considered by WB as imperatively requiring actions of a “safeguarding nature” remain the same.
If these issues (risks) remain the same, is safeguarding against them not equally imperative any
longer?

COMMENT A: The concept of “safeguards” has gained virtually world-wide citizenship by
now. Millions of development practitioners are using this concept for decades. I’d like to
understand what became now intrinsically wrong with this concept? To take an example: the
Cultural Heritage Safeguard Policy is a safety net policy that the Bank has developed to protect
valuable cultural heritage assets. Are we informing the world that this “safety net” idea must
suddenly be withdrawn by the World Bank and that the very term is expurgated as unnecessary
and illicit?

I’d appreciate a clear explanation, on the Consultation web-site, of what damage will result
to the World Bank if the concept of “safeguarding” is maintained!! Or what benefit will the Bank
gain by appearing in everybody’s eyes as abandoning the concept of “safeguarding”?

In fact, the Bank holds high today, among its main merits, the contribution it makes through
its “safety net policies.” “Safety net policies” are “safeguard” policies. What is the logic of
maintaining “adequate social safety nets in place”, as the Bank strongly states today as well,
while at the same time dumping the “safeguards’” conceptual terminology?

COMMENT B: I’m inspired and happy that the Bank’s last major document, which was just
published a few weeks ago, proclaims loudly and verbatim, the Bank’s pride and commitment
for “ensuring that adequate social safety nets are in place.”

Perhaps then, why not use the term ‘safety net policies’ for the safeguards policies as well?

The Bank document is our “Annual Report 2015”, which states verbatim:

“In the effort to reach the Bank Group’s goals, it is important to recognize that it is not
enough to address the causes of extreme poverty. There must also be systems in place
that buffer individuals from the effects of shocks and disasters that can reverse the
progress made in lifting people out of poverty. Building societies’ resilience
requires... ensuring that adequate social safety nets are in place.” (my italics)
(WORLD BANK ANNUAL REPORT 2015, p. 24)

The above definition highlighted in blue applies exactly to forced-displacement and
annihilation of family productive systems built by affected families over years/decades. Whoever
worked in projects which forcibly and suddenly displacing large numbers of people would surely
agree that this is one of the “shocks and disasters that can reverse the progress made in lifting
people out of poverty.” The safeguard policy on displacement-resettlement fits precisely the
other part of that statement: “There must also be systems in place that buffer individuals from the
effects of shocks and disasters that can reverse…”

There cannot be a clearer language, and a more recent language, about where the World
Bank Senior management (who certainly approved and cleared this Bank’s 20215 Annual Report
about itself) stands in its philosophy and in terms of assurances given to the rest of the world.
The Bank is committed to “ensure” that there are “systems in place that buffer individuals from…”
and that “adequate social safety nets are in place.” This document speaks NOT about
“standards” for the borrower that are not named “policy standards”; it speaks about the Bank’s
commitment to “ensure” social safety net policies.
3. **Country Systems**

The goal of building country systems that are equally robust on environmental and social issues like the Bank policy safeguards is a fully justified objective.

The fact which worries me personally to no end is that the vast majority -- and I repeat, the vast majority -- of our borrowing countries do not have such country systems: simply, is it not premature and ill-guided to create the impression that country systems exist regarding, for instance, forced-displacement and resettlement with reconstruction? No such legislation exists in the vast majority of our borrowing countries. Policy statements are not country systems.

At this late point and time I can only, once again, urge that reality be recognized. The Bank cannot predicate the safety of people affected negatively and the counter risk responsibilities, on nonexistent legal systems. It is fully justified and indispensable to invest much resources and Bank work in helping by all means the building of such systems in all borrowing countries. The presence or absence of legislation covering the broad span of environmental and social issues encompassed now under the ESF/ESS varies vastly from country to country and from one set of issues and risks to another.

**COMMENT:** Rather than simplifying Bank work, as the ESF/ESS promised, the unanticipated outcome, in my experience, will be a massive increase of “transaction costs”, time, and efforts, which will overwhelm TTLs instead of easing their work.

The Bank staff is being burdened with a vast transaction cost of assessing in each project case whether or not what the country defines as a “country system” is or is not consistent with what the Bank policy and standards are. My question: has the revision team assessed the gigantic added burden of new transaction costs added to the plate of each TTL and on countless other stuff? Then, if something mid-project doesn’t go right, the TTL would have again to convince his/hers counterparts in the country that they are not consistent with their country system. Do you imagine how this discussion will unfold in different countries? How this difference of interpreting country system will be reflected in ad memoirs? This is only part of the cost of departing from Bank policies, which are accepted for decades by our borrowers as integral to the loan, not to be renegotiated at every project.

This is an additional heavy and onerous task that Bank staff does not have now, but will have to perform. In addition, subjectivity would be rampant. The judgment of countless individuals about similar things will vary on a very long spectrum and respect for norms will drop precipitously.

My strongest concern is that the current recommendations are pushing the Bank on an adventurous downslope, which will boomerang primarily on the people affected adversely by Bank financed projects (without the Bank safeguards being in place any longer); while borrowers will be ready to vouch in most situations that the standards defined by the Bank had been met according to their “country system”. Is the Bank staff put in the role of a better interpreter of the “country system” than the countries’ own officials? In sum, I am highly concerned that the premature transition to “country systems” will boomerang on actual project quality, performance, and on the Bank’s reputation.

**Proposal:** to introduce a measure of (a) professional competence and (b) uniformity in assessing if a country legal system can be relied upon as meeting Bank criteria, I propose that this task should not become an additional burden on each TTL on every project and in every set of issues covered by the 10 safeguards. Such competence exists in the Bank’s Legal Department. I propose that the Bank’s Legal Department should exercise the Bank’s analysis and evaluation on whether a “country legal system” on one or another set of issues is adequate for the respective project TTL to count upon, and rely on it. Surely, the Legal Department is best equipped for such a professional and responsible assessment, rather than leaving it to the happenstance evaluation by non-legally trained rank and file staff or middle-level managers. The Legal Department is a proponent, I understand, of replacing the Bank’s current normative policies with whatever is can be labeled as “country system.” Therefore, it would be much safer to have the determination of what is or is not a country system done and confirmed by the Legal Department, instead of
leaving it to countless staff members spread in various Global Practices for projects in different sectors of the same countries.

I’d appreciate receiving an explicit response to whether this proposal is accepted, or the reason for not accepting it. In this case, kindly clarify how and by whom would the validation of country systems be done?

4. **Bank Procedures: General Comments and Questions**

My key question on procedures in this consultation stage is: Will the Bank continue to regard certain key procedures as indispensible for achieving the Bank’s policy objectives? This has been and remains the principle upon which all current Bank “OPs” have their specific and mandatory “BPs”, reflecting the Bank’s historic knowledge that some key procedures are so germane to reaching the objective of a policy that they must be standard “Bank procedures” and followed in each case: the penalty for their absence is project failure (obviously, this refers to a limited number of procedures, not to all).

**Question:** If this logic is still considered correct, what document specifies the limited number of Bank procedures in the case of each specific standard that the Bank expects the borrower to carry out?

Compressing the prior Bank Procedures for each safeguard policy into one single document with procedures for all the ten ESS standards is a huge loss of content and a wholesale disposal of precious and valuable knowledge that the Bank has built into such procedures so far.

I did not understand so far from the consultations to date what will be the distinct set of procedures that the Bank proposes the borrower to use in the case of each of the ten environmental and social standards.

**Please clarify: are such specific procedures being defined by the Bank? If they are, will or will they not be subject to informed public discussion?**

**II. Question and Comments on ESS 5**

Forced-displacement and impoverishment. The fundamental issue about ESS 5 is in-built set of risks of impoverishing large populations, which are displaced and leaving them worse-off. This is not a theoretical cluster of risks: it is embedded in the nature of the process. By definition, displacement is a process that dis-possesses large numbers of people of the productive foundations of their existence: their lands, their jobs, their houses; often also, dispossession of their commonly owned natural resources. There are also well-known severe risks of food insecurity and malnutrition for the transition period; and health risks highly increased by forced-displacement; as well as “boom-town risks” of the kind that erupted to international knowledge just 5-6 weeks ago in the World Bank’s Uganda project, and led to the decision of the World Bank’s President to immediately and decisively completely suspend all Bank support of that project and withdrawing the Bank from it, because of the irresponsible way the borrowing authorities conducted that project (and also because of years of myopic supervision by Bank staff of that project). This decision is unprecedented in the presidency of Dr. Jim Yong Kim. Yet, “boon-town risks” are known to the Bank for at least 60 years. These are the most common risks in all large infrastructure projects, and yet, it was ignored and discovered much too late causing tragic results on the ground and a major reputation problem for the Bank.

My question is: what in the Bank’s ESS 5 reflects adequately the history and content of the Bank’s multisided knowledge regarding the risk of impoverishment, social disorganization, and boomtown that are intrinsic to the construction of large-scale infrastructure projects.
The ESS 5 is totally inadequate in warning explicitly about the exceptional risks of impoverishment and social disorganization and upheaval created by forced-displacements. The Bank developed already a model of typical impoverishment risks, which is confirmed and reconfirmed repeatedly by tragic experiences in Bank-financed projects, yet the ESS 5 omits to include it in the guidance given borrowers. This omission boomerangs back on the Bank’s poverty reduction policy and outcomes, allowing borrowers to omit the explicit recognition, responsibility, and accountability for risks knowingly imposed on displaced people.

My question: I am unable to understand the reason for not including in ESS 5 an explicit warning about real project impoverishment risks? Please explain this reason, namely: why are those risks not identified by their specific names according to the Bank’s own IRR model discussed by Bank management and the Bank’s Board endorsed formally since 1994? The ESS 5 is disconnected from the lessons of Bank practice and from Bank’s current recommendations. For instance, the IRR model is contained in the Bank’s “Sourcebook on Resettlement”, yet it is precisely missing in ESS 5.

My proposal is: to create a special sub-section in the ESS 5 that identifies the typical risks of impoverishment embedded in displacement, which are well-known, therefore predictable. Borrowers standards and Bank work must focus explicitly on these risks and design their resettlement reaction plan as a counter-risk set of actions and as a reconstruction model for recovering and improving affected people’s livelihoods. As long as this is not done, the ESS 5 would remain chronically impaired.

As part of this consultation, I’d much appreciate an explicit public response of the ESS team on the Bank’s website to this fundamental point about the treatment of impoverishment risks in projects predicated on population forced displacement and involuntary resettlement.

5. 

5. Compensation

The ESS 5 addresses the single most toxic effect of development projects predicated on expropriation of productive assets and of. The basic remedy prescribed by ESS 5 remains compensation. This is one of the most telling examples of the ESS falling behind the existing knowledge level.

Expropriation de-capitalizes people and families. Compensation does not re-capitalize them. This makes ESS 5 inadequate for guiding borrowers to overcome the deficit imposed on displaced families. In economic terminology this is externalization of project costs on vulnerable and poor people. of project’s cost on the poorest people affected by the Bank financed projects.

My questions and proposals: Since this structural limitation of compensation is well-known and empirically reconfirmed repeatedly, why is this knowledge kept hidden and not incorporated in the ESS 5, where it belongs? The Bank’s standards ought to reflect the state of knowledge correctly and candidly and this omission on a crucial issue must be corrected.

My proposal: The Bank should employ this knowledge preventively by providing borrowers with correct standards and guidance on how to complement compensation with additional means and approaches to make reconstruction and recovery possible and real.

6. Resettlement Action Plan (RAP)

The RAP remains the main planning instrument upon which the Bank and ESS 5 would rely both for the population displacement phase, as well as for the resettlement and recovery phase. My concern is that the requirements for the design content and due diligence work to prepare sound RAPs are not met by the existing provisions of ESS 5.

In reading and discussing ESS 5 repeatedly, I feel that the team working on the ESS has not yet fully understood that the World Bank’s resettlement policy is primarily an economic policy. In our daily vernacular we call it “social policy”, and indeed the policy does have a very important and multivariate cultural component, and also deals with deliberately changing existing patterns of social organization and with patterns of territorial distribution of human groups in space and their mutual cultural and ethnic interaction.
Nonetheless, the core substance of the ESS 5 inevitably is and must be indisputably and overwhelmingly economic, since it has to deal with issues such as: property valuations, property transfers, market price assessment, monetization of losses, cost comparisons, compensation calculations, economic and financial risks, economic analysis, budget construction, etc. etc. This listing still refers only to the displacement phase.

In addition, the RAP has to deal also with the economics of resettlement, recovery, and livelihood improvement, above pre-project levels. This is a totally different body of economic knowledge, distinct and deeply different from the economics of “creative destruction” (Werner Sombart’s and Schumpeter’s concept) by expropriation and physical removal. It must be solidly and professionally thought-through, since it means reconstructing anew farming systems on greenfield as viable systems, new commercial businesses, artisanal workshops, etc., all in new surroundings, with uncertain customer bases, new supply systems, etc., and, obviously, facing a new cluster of economic risks, distinct from the impoverishment risks cluster.

In total contrast with the economic complexity of displacement, the quality of RAPs in Bank projects has reached the lowest level known in the period covered by the resettlement review of 2012 and 2014. As I commented during the public consultation organized by the US Treasury Department and the Bank (Feb. 22-24), there is an obvious disconnect between ESS 5 and the findings reported in the Bank’s two resettlement reviews (2012 and 2005) and in the advisory report of the Bank’s Vice President for Auditing, which documents a severe erosion and deterioration of the Bank’s internal work culture on resettlement and flagrant violations of normal work rules regarding the attributions of social specialists (these are the three documents disclosed by Dr. Jim Yong Kim). It is about the situation factually and numerically documented in those reviews that the Bank’s President forcefully stated that the strong need to immediately improve Bank performance on these issues.

Question: what lessons from Bank experience regarding resettlement and the design of RAPs has the Safeguard Team derived and incorporated into the ESS 5 from the Bank’s own review of Bank practices in resettlement. I would appreciate an explicit response to this question, which I asked also in the recent public consultation. Despite promise of response, none was given so far.

COMMENT: I reexamined the proposed ESS 5 myself in light of the critique and commitment expressed by the Bank’s President very specifically about handling displacement and resettlement by Bank projects. I regret to say that the ESS 5 as drafted now remained impervious to the guidance given by the Bank’s President. Examples abound and, if asked I will be ready to list specifically what issues in these analytical documents require improved standards in the Bank’s new policy and highly improved Bank procedures compared to the existing procedures. A positive increase in staff number is in process, but the main issues that are now ill-treated go much beyond staffing and pertain to the general respect in the Bank for the basic rules of due diligence for a project and the rules about full reporting at the project’s ends in the ICR document (implementation completion reports), the absolute basic data about numbers of people displaced, numbers of people resettled, whether or not incomes were improved or whether they were even restored. This and other issues are precisely those that require the introduction of explicit language in the ESS 5 “standards” and in the Bank’s procedures.

I would collegially recommend that the team working on the revision of safeguard policies reexamines the entire ESS 5 in light of the specific findings reported in those documents to make sure that the remedies necessary become incorporated in the ESS 5. A workshop inviting outsiders (researchers and scholars specialized in this domain) jointly with the OPCS revision team could be good practice to this purpose.

Proposals: several specific proposals to the text ESS 5 follow below. They are in nature precautionary provisions, indispensible for carrying out large-scale resettlement-displacement operations in future Bank projects with some assurances that the gate for loopholes will be closed and the risks of impoverishment effects will be prevented or reduced.

A. Since many resettlement plans that are included in Bank projects are prepared only by social specialists without inputs from Bank economists as indicated above, the Bank has been critiqued publicly for accepting RAPs which are more wishful thinking than product of deliberate economic and social analysis. RAPs are currently not subject to the elementary feasibility analysis, which is a Bank staple. This means that RAPs may be considered acceptable
without any economic test on whether, even on paper, they would achieve the Bank’s policy objective of improving incomes and livelihoods, nor is there any correlation between any measures included in RAPs and the budget allocated for a RAP.

A. I propose that “economic feasibility analysis of RAP” be introduced as a required analysis in the due diligence procedure for every RAP.

B. Similarly, a financial analysis of each RAP should become standard due diligence procedure to confirm that the budgetary allocation for the RAP component is commensurate with the costs entailed by the content of the RAP and able to provide what is necessary for achieving the expected level of livelihood recovery and improvement.

Bank’s policy has provided so far that the option of processing projects with large resettlement component as twin projects to create the local capacity for carrying out the operations of thousands and often tens of thousands of people. This policy provision was left mostly unused for no good reasons. The one case in which it was used produced a rare success: the Xiaolongdi Dam Project in China processed by the Bank and borrower as twin projects successful resettled more than 180,000 people.

C. Experience has demonstrated that treating large resettlement operations as simple components in the technical project results in a secondary status for the resettlement component detrimental to quality, managerial attention, consistent implementation, and follow-up post displacement. I propose that the existing provisions on twin projects not only be maintained (ESS 5 does maintain it) but also quantified, specifying that any time the number of individuals to be displaced and resettled exceeds the 4-5 thousand people the resettlement component should be treated by the borrower under a Bank loan through twin projects. That will stimulate both the borrower and the Bank to create adequate capacity for the chronically underrated resettlement component.

D. One of the most stunning findings about the recent state of the Bank’s resettlement portfolio was that hundreds of projects causing displacement do not have a resettlement action plan at all. They Bank’s own 2012 review reports that in 59% of all 1470 projects, RAPs were substituted with RPS (Resettlement Policy Framework). This replacement was made possible by a loosely formulated provision in the Bank’s policy OPBP 4.12 permitting (in exceptional circumstances) the temporary substitution of the RAP with a resettlement policy framework (a commitment of the borrower that will respect the Bank’s resettlement policy and will produce a full scale RAP soon after the project starts). This loose provision was abused on a large scale by borrowers with the rather complacent consent of many Bank TTLs. Before the Bank realized it 59% of all Bank projects with resettlement dispensed of all their IEPs as a requirement at the project’s start replacing it with a vague RFP promise. Inadequate Bank supervision tolerated the further violation of the commitment to transform the RFP into a well quantified, organized, and budgeted RAP. The Bank’s own review…:

“…showed that 58% of projects that prepared only RFPs by the appraisal stage did not prepare an RAP (throughout the entire project) and did not provide any explanation about this issue in the ICRs.”

(World Bank Review of Involuntary Resettlement Portfolio Phase 1: 1990-2010, p. viii)

This represents an astounding violation on a very large scale of a basic requirement of the Bank’s policy. The economic, social, and cultural damages which this systematic violation caused to the large populations that were forcibly displaced by the 58% of projects mentioned above, yet were not subject to Bank approved RAPs are incalculable in retrospect. This was unacceptable externalization of project cost on a mass scale and violation of the Bank’s overarching policy reduction mission and policy (I’m not sure if any retroactive action to correct the legacy consequences is being undertaken now or is planned).

In light of the above, I’m surprised that the ESS 5 maintains the loophole virtually in tact continuing to allow the substitution of RAPs with RFPs and with RPFs. This is a certain recipe for further social, economic, financial damage to people in displaced projects.
E. I propose, as indispensible, a restriction of this option to genuinely exceptional cases, which in practice are not numerous. It is possible when necessary to restrict the option of resettlement policy framework with explicitly spelled out conditions. To prevent in the future the abusive dilated interpretation of this provision (if is at all left in the ESS 5), such exceptional project cases should require the approving signature of the Chief environmental and Social Officer of the Bank him or herself.

I hope that the above comments and proposals will receive due consideration from the team in charge and that both these questions and the answers will be transparently reflected as part of this consultation phase.

March 15, 2016  Michael M. Cernea