

**World Bank Safeguards Submission
International Environmental and Human Rights Law: The Foundation Upon Which to
Build Stronger Safeguard Policies
April 2013**

The Center for International Environmental Law welcomes this review of the World Bank (the “Bank”) safeguard policies as a critical opportunity for the Bank to harmonize its policies with international laws and the evolving standards and norms related to the environment and human rights.

Ultimately, at stake during this safeguards review is the position the Bank will play in the progressive development of international standards and norms. Given that its policies carry prominence in normative weight amongst private financiers and other multilateral development banks (“MDBs”), the Bank could provide leadership in ensuring the activities it finances comply with international law and norms and assist its Member States in progressively fulfilling their own obligations under international law. Importantly, by failing to do so, the Bank undermines not only the upward harmonization of its own operational policies and procedures, but of global environmental and social standards.¹

Since their adoption, the Bank’s environmental and social standards (the “safeguard policies”) have been the cornerstone of its efforts to ensure that its operations “do no harm,” or, the minimum requirements needed, to ensure protection of the environment and project-affected communities in Bank operations. Since the safeguard policies were first created, however, international law and best practice have evolved considerably. Likewise, since the creation of the Bank in 1945, development theory and our understanding of poverty have progressed significantly. Consequently, the minimum requirements for sustainable development have also shifted.

Now is the time for the Bank to align its policies with these standards and norms. As a legal subject of international law, a public institution with a development mandate, and a United Nations specialized agency, the Bank should ensure that its safeguards are consistent with, and explicitly reference, international standards, including the best practices of multilateral and bilateral financial institutions, and widely accepted international conventions, treaties, and “soft” law instruments protecting the environment and human rights.

The safeguard review comes at a critical time where more and more Bank projects fall outside the purview of the safeguard policies. To ensure strong protections for the environment and

¹ Shannon Lawrence, *Retreat from the Safeguard Policies, Recent Trends Undermining Social and Environmental Accountability at the World Bank*, January 2005, p. 2.

communities, it is crucial that the new safeguard policies apply to all types of Bank-supported activities, including development policy lending, program for results, financial intermediary lending, technical assistance and other advisory services.²

Section 1 discusses the Bank’s legal obligations, as an international legal organization, UN specialized agency, and through its Member States’ international obligations, to comply with international environmental and human rights law. Section 2, then, discusses linkages between environmental and human rights standards, advancing the proposition that both are necessary to sustainable development, and highlighting gaps in the Bank’s environmental assessment policy. Section 3 argues that human rights standards and norms can deliver better development outcomes and assesses ways in which the Bank can operationalize human rights. Section 4 discusses several areas relevant to environmental protection where current safeguard policies fall short of international law and norms.³ Finally, Section 5 asserts that, in light of deficiencies in the aforementioned key areas and in the absence of strong, mandatory standards, the Bank’s use of the Country Systems approach may be premature and result in a weakening of the protections for the environment and human rights.

As a caveat, the list of key areas discussed below is not exhaustive, nor is the accompanying list of international standards. Rather, these sources are meant to be a starting point to illustrate the minimum standards evinced in the body of international law defined in treaty law, agreements, customary international law, and “soft” law—and to briefly highlight several gaps that should be addressed in this safeguard review process.

1. The World Bank and International Law

The Bank, as an international organization with international legal personality and, in particular, a United Nations specialized agency, is accountable to, and should ensure that its policies are compliant with, the body of international standards and norms, including the emerging body of “soft law,” governing the protection and promotion of the environment and human rights. According to the International Court of Justice, international organizations can be bound by obligations under general principles of international law and capable of possessing international rights and duties.⁴ Further, though it is not fully established which rules of customary

² See *Initial Comments by Civil Society Organizations on the World Bank’s Safeguard Policies Review and Update*, December 2012 (hereafter, “*Initial CSO Comments*”), which was endorsed by the Center for International Environmental Law and discusses this issue further.

³ For purposes of this submission, we define “international law and norms” broadly to encompass all internationally recognized instruments, in addition to treaties, regional and international agreements, and “soft” law, including those that have emerged from multi-stakeholder, participatory processes.

⁴ International Court of Justice Reports of Judgments, Advisory Opinions and Orders, Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, December 20, 1980, at pp. 89-90, para. 37 (providing that “[i]nternational organizations are subjects of international law, and, as such, are bound by

international law apply to international organizations, it is widely recognized that international organizations are bound by certain peremptory norms of international law, such as the prohibition against genocide.

Apart from whether the Bank does or does not have a legal obligation to meet international standards, its Member States do to the extent they have voluntarily undertaken various obligations under international law. These obligations cannot simply be attenuated or discharged by operating through the medium of an international organization. Using the example of international human rights obligations, Raquel Rolnik, UN Special Rapporteur for adequate housing, recently affirmed that “the obligations of States parties to the international human rights treaties should be understood as extending to their membership of the World Bank and their roles as Executive Directors, including decisions to support the adoption of operational policies and to approve lending, credit and grant proposals.”⁵

Finally, separate from issues of its legal obligation and accountability, the Bank has a moral imperative to set the bar high by incorporating international standards and norms. Historically the standard-setter for environmental and social protections amongst public finance institutions, the Bank influences the policies of other MDBs and private financiers and effectively shapes development policy throughout the world.

2. A Human Rights and Environment Agenda for the World Bank

International best practice—or, the minimum threshold—for sustainable development and poverty reduction requires that the safeguard policies be harmonized with international standards and norms relating not only to the protection of the environment, but human rights, including the body of interpretation and elaboration of those rights and instruments developed over time through participatory processes.

The fields of environment and human rights are intertwined, both being integral components of sustainable and inclusive development. Principle 1 of the 1972 Stockholm Declaration demonstrates the critical linkage between the two areas: “Man has a fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”

In more practical terms, environmental degradation can and does interfere with the full enjoyment of the broad range of human rights. In other words, “the full enjoyment of all human

any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.”).

⁵ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, A/HRC/22/46, December 2012, para. 9.

rights depends on a supportive environment”⁶ and sufficient environmental protections. For example, climate change will directly impact the enjoyment of a wide range of human rights, including rights to food, water, housing, and the highest attainable standard of health.⁷

John Knox, the UN Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, has stated:

[T]he exercise of certain rights can and does benefit environmental policymaking, resulting in better environmental protection and, as a consequence, greater protection of the human rights that may be threatened by environmental degradation. These protective rights include rights of free expression and association, rights of information and participation, and rights to remedy. . . .⁸

Making this connection can create a virtuous circle: strong compliance with procedural duties produces a healthier environment, which in turn contributes to a higher degree of compliance with substantive rights such as rights to life, health, property and privacy. The converse is also true. Failure to meet procedural obligations can result in a degraded environment, which interferes with the full enjoyment of other human rights.⁹

To a limited extent, the Bank has already operationalized international standards and norms related to environmental protection into the current safeguards. But, there remain significant shortfalls. Discussed below, OP/BP 4.01 (Environmental Assessment) requires clients to conduct an environmental assessment to consider a project’s potential impacts on surrounding communities, which permits consideration of “social aspects,”¹⁰ such as involuntary resettlement, presumably touching upon human rights, but misses the opportunity to fully assess the range of human rights impacted by the Bank’s activities. As another example, while OP 4.01 expressly states that Bank support for projects is reliant on the non-violation of the country’s

⁶United Nations General Assembly, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox*, A/HRC/22/43, December 24, 2012, para. 19.

⁷ See e.g., UN Office of High Commissioner for Human Rights, “*If we fail our environment, we fail to protect human rights*,” warn UN experts on Earth Day, April 22, 2013, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13257&LangID=E> (last accessed April 23, 2013) (providing that “when governments around the world fail to restrict emissions of greenhouse gases leading to global climate change . . . they fail to protect many human rights, including rights to life, health, property, development, and self-determination, of people living in vulnerable communities . . .”).

⁸ *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox*, para. 34.

⁹ *Id.* para. 42.

¹⁰ OP 4.01, para. 3 (stating that the “EA takes into account the natural environment (air, water, and land); human health and safety; social aspects (involuntary resettlement, indigenous people, and physical cultural resources); and transboundary and global environmental aspects.” (internal citations omitted).

obligations, including those arising “under relevant international environmental treaties and agreements,”¹¹ the Bank has failed to adopt parallel obligations related to human rights. The Bank should address these inconsistencies and shortcomings in the safeguard review.

a. Environmental, Social, and Human Rights Assessment

One place where these two issues come together is the Bank’s policy on assessment. The IEG identified numerous problems with OP 4.01, including that the Bank’s environmental assessment policies have become out of step with the Bank’s portfolio and that safeguard supervision and accountability for social and environmental safeguard outcomes are oft-neglected.¹²

Currently, OP/BP 4.01 does not explicitly require the assessment of the full range of human rights and, thus, it fails to adequately capture the full impact of Bank-financed activities. Rather, OP 4.01 requires clients to conduct an environmental assessment to consider a project’s potential impacts on surrounding communities, which touches upon potential “social aspects” that could be associated with human rights, limited to three areas: involuntary resettlement, indigenous peoples, and physical cultural resources.¹³

To strengthen the policy, it must also explicitly reference and/or incorporate international human rights standards and norms as guidance for the process of conducting the impact assessment or understanding the substance of rights in question. This would be consistent with the UN Framework and Guiding Principles on Business and Human Rights, which requires human rights due diligence including human rights impact assessments. This assessment does not have to be a separate process, but rather could be part of a larger environmental and social impact assessment.

To further strengthen the environmental aspects of the assessment policy, the Bank should draw on the following international standards, which constitute best practice:

- The UN/ECE Convention on Environmental Impact Assessment in a Transboundary Context (the “Espoo Convention”) sets out the obligations of Parties to assess the environmental impact of activities at an early state of planning. The Protocol on the Strategic Environmental Assessment, which supplements the Espoo Convention, requires Parties to evaluate environmental consequences and provides for extensive public participation.

¹¹OP 4.01 para. 3; *see also* OP 4.36, para. 6 (providing that “[t]he Bank does not finance projects that contravene applicable international environmental agreements.”).

¹² *See, Initial CSO Comments*, at p. 6 (citing *Independent Evaluation Group*, “Evaluative Directions for the World Bank Group’s Safeguards and Sustainability Policies,” Evaluation Brief No. 15, 2011, p. 20).

¹³ OP 4.01, *supra* n. 9.

- The UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the “Aarhus Convention”), a multi-lateral environmental agreement, places increased emphasis on the rights of the public to be consulted on projects that will have environmental and social impacts. The Aarhus Convention is based on three pillars: (1) access to environmental information; (2) public participation in environmental decision-making; and (3) access to justice in environmental matters. The Bank should draw from the provisions of the Aarhus Convention to ensure that project-affected communities have access to information, such as environmental, social, and human rights impact assessments, early in the decision-making procedure and in an adequate, appropriate, and timely manner so as to ensure their effective and meaningful participation.
- Article 8(j) of the United Nations Convention on Biological Diversity contains the Akwe: Kon Guidelines for the development of cultural, environmental, and social impact assessments regarding proposed developments likely to impact sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. The voluntary Akwe: Kon Guidelines constitute best practice with respect to impact assessments. In particular, the Akwe: Kon Guidelines emphasize detailed participatory environmental and social impact assessments, and suggest a ten-step process for impact assessments that includes respect for, and use of, indigenous knowledge and a joint assessment of risks with affected groups. The Akwe: Kon Guidelines further recognize Free, Prior and Informed Consent (“FPIC”) as being of crucial importance in the protection of indigenous peoples’ traditional knowledge.
- Various international legal instruments discussed, for instance, in the sections specific to Forests and Ecosystems and Biodiversity, reference standards with respect to impact assessments.¹⁴ These standards should also inform the Bank’s updated safeguard policies.

3. Human Rights Standards and Norms

Below, we discuss the obligation of the Bank and its Member States to respect human rights, how a broad human rights framework enriches the Bank’s analysis and operations, and, finally, how the Bank may choose to operationalize human rights.

¹⁴ *See, for example*, United Nations Convention on Biological Diversity, Art. 14.1(a) requires an EIA where significant adverse effects on biological diversity are likely, with a view to avoiding or minimizing such effects.

a. The Bank and its Member States have the Legal Obligation to Respect Human Rights

Despite the fact that overwhelming evidence demonstrates that Bank operations impact the broad range of civil, political, economic, social and cultural rights, the current safeguard policies do not adequately assess and address the effects of Bank projects on the full range of human rights. The Bank's position regarding human rights in its operational activities has been characterized by some as "contradictory": while the Bank has adopted some strategies that implicitly address human rights issues, it has not adopted a systematic approach and, further, it continues to refute the proposition that it has a formal obligation to respect human rights.¹⁵

As noted above, the Bank remains a subject of, and is bound by, international law. As a United Nations agency, in particular, the Bank has obligations to act consistently with the Charter of the United Nations, including the purposes and principles set forth in Article 55 for the "universal respect for and observance of, human rights and fundamental freedoms for all," as elaborated by Universal Declaration of Human Rights and the evolving body of international law built upon it.

Moreover, the Bank cannot simply ignore its obligation to respect Member States' human rights obligations in its operations. States, as the primary duty-bearers under international law, retain their duties to respect, protect, and fulfill the human rights of individuals within their jurisdiction and/or territory, which includes the duty to protect against human rights abuses by third parties (including business enterprises).¹⁶ All States have ratified at least one of the nine core international human rights treaties or instruments, and most have ratified several,¹⁷ thereby committing to core minimum human rights principles, in theory. Professor John Ruggie, in his 2008 report to the UN Human Rights Council, further echoed:

Greater policy coherence is also needed at the international level, including where States participate in multilateral institutions that deal with business-related issues, such as

¹⁵ Christina Gille and Stefanie Ricarda Roos, *World Bank, IMF and Human Rights: Conference held at Tilburg University, 11-13 October, 2001*, 3 *German Law Journal* (2002) (citing a presentation by Dr. Koen de Feyter); Galit A. Sarfaty, *Measuring Justice: Internal Conflict over the World Bank's Empirical Approach to Human Rights*, chapter in *Mirrors of Justice: Law and Power in Post-Cold War Era*, Cambridge Univ. Press 2009, pp. 2-4 (discussing Bank's divergent approaches to human rights).

¹⁶ United Nations Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/17/31, March 21, 2011, Annex: Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (hereafter, the "Ruggie Framework"), p. 1.

¹⁷ At the time of writing, 164 have ratified International Covenant on Economic, Social and Cultural Rights has 160 parties, while 170 have ratified the International Covenant on Civil and Political Rights; *see also* Human Rights Watch, *Human Rights Watch Safeguard Submission: Safeguarding against World Bank Complicity in Human Rights Abuses*, p.11 (stating that "[a]t this writing, more than 90 percent of the World Bank's 188 member countries have ratified four or more international human rights treaties.")

international trade and financial institutions. States retain their international human rights law obligations when they participate in such institutions.¹⁸

Explicitly adopting international standards for human rights protections would enable the Bank to assist its Member States in fulfilling their international obligations under human rights.

b. A Human Rights Framework Delivers Better Development Outcomes

The Bank's Articles of Agreement, which were once narrowly interpreted to preclude governance issues, should now be interpreted to permit the consideration of human rights issues because they relate to development and poverty reduction goals.¹⁹ Not only is adoption of a human rights framework permissible under the Articles of Agreement, it would, in fact, improve the quality of Bank operations by adding a fundamental dimension currently lacking in this iteration of the safeguards—it would focus on the needs and interests of project-affected people and their avenues of redress for violations of those entitlements as *rights-holders*. This shift in framework would place greater weight on meaningful participation, non-discrimination, accountability, and transparency, bringing an emphasis to vulnerable groups, who are often those most in need of the Bank's support. In the words of Magdalena Sepúlveda Carmona, UN Special Rapporteur on extreme poverty and human rights, “[a] human rights approach provides a framework for the long-term eradication of extreme poverty based on the recognition of persons living in extreme poverty as rights holders and agents of change.”²⁰

Indeed, given the growing body of research from development experts that illustrates the intimate and mutually reinforcing link between human rights, development, and poverty reduction,²¹ the promotion and protection of human rights is not outside the boundaries of the

¹⁸ The Ruggie Framework, Guiding Principle 10, p. 13.

¹⁹ For further discussion, see former World Bank General Counsel Roberto Danino, *Legal Opinion on Human Rights and the Work of the World Bank*, January 27, 2006, which, regardless of the debate as to the legal force of the opinion, put to rest the claims that the Bank cannot legally take into account human rights and acknowledged that, in some cases, the Bank may be required to consider human rights in its operations.

²⁰ Report on the United Nations Special Rapporteur on extreme poverty and human rights, *Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona*, July 18 2012, p. 6.

²¹ See, for example, World Bank Institute, *The Way Forward: Human Rights and the World Bank*, October 2006 (“It is now widely recognized that human rights have relevance for several international goals, including development.”); United Nations General Assembly, *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, A/65/259*, August 9, 2010, para. 67 (stressing, among other things, that “a rights-based approach to social protection programmes will maximize their potential for ensuring the achievement of the Millennium Development Goals”); Report on the United Nations Special Rapporteur on extreme poverty and human rights, *Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, A/HRC/21/39*, July 18, 2012, para.1 (discussing the link between poverty and human rights and that “eradicating extreme poverty is not only a moral duty but also a legal obligation

Bank's poverty reduction objectives, but central to it. Finally, given that the Bank's safeguards apply to a significant number of projects that pose serious human rights risks, it has a moral, if not legal, obligation to lead in the field of sustainability and the management of human rights risks associated with development.

c. Operationalizing Human Rights in the Safeguard Policies

In updating its safeguard policies, the Bank should take into account current best practice for human rights due diligence, as reflected in the UN Framework and Guiding Principles on Business and Human rights, a widely-accepted framework to help elaborate the responsibilities of businesses and the duties of states with regard to corporate impacts on human rights. In particular, the Framework requires robust human rights due diligence, including: (1) a human rights policy; (2) a human rights impact assessment; (3) tracking and reporting on implementation; and (4) access to effective remedies.²²

The best practice for human rights would require the Bank to assess the impacts on and ensure respect for all human rights—and not parse out specific human rights over others, as denial of one right necessarily impedes the enjoyment of other rights. Human rights should be understood to mean that fundamental freedoms are causally indivisible, interdependent, and interrelated.²³ Simply put, all human rights—that is, civil, political, cultural, economic, and social—are part and parcel of sustainable and inclusive development. The Declaration on the Right to Development, adopted by the United Nations General Assembly in 1986, states that:

[A]ll human rights and fundamental freedoms are indivisible and interdependent, and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights. . .²⁴

under existing international human rights law.”); United Nations Office of High Commissioner for Human Rights, *Human Rights and Poverty Reduction, A Conceptual Framework*, 2004, pp. 5-12 (discussing the view that poverty constitutes a denial or non-fulfillment of human rights).

²² For discussion of human rights due diligence, please see the UN Framework, Guiding Principle 17.

²³ For further discussion on the indivisibility and the interdependence of human rights, *see generally* to Human Rights Watch, *Human Rights Watch Safeguard Submission: Safeguarding against World Bank Complicity in Human Rights Abuses*, April 2013; ESCR-Net Submission, *Instituting Human Rights Due Diligence into World Bank Safeguard Policies*, April 2013.

²⁴ Paragraph 3 of OP 4.01 provides, in relevant part, that:

EA considers natural and social aspects in an integrated way. It also takes into account . . . the country's overall policy framework, national legislation, and institutional capabilities related to the environment and social aspects; and *obligations of the country, pertaining to project activities, under relevant international*

Stressing the indivisibility and interdependence of all human rights, the Committee, in General Comment 2 discussing the International Covenant on Economic, Social and Cultural Rights, has stated:

[T]he two sets of human rights are indivisible and interdependent. This means that efforts to promote one set of rights should take full account of the other. United Nations agencies involved in the promotion of economic, social and cultural rights should do their utmost to ensure that their activities are fully consistent with the enjoyment of civil and political rights.²⁵

The World Bank would not be the first MDB to recognize its responsibility to refrain from financing activities that could cause or contribute to human rights abuses. Notably, the European Bank for Reconstruction and Development has already committed in its 2008 environmental and social policy not to “knowingly finance projects that would contravene obligations under international treaties and agreements related to environmental protection, human rights and sustainable development, as identified through project appraisal.”²⁶ Similarly, the European Investment Bank has also adopted a policy that “[t]he EIB restricts its financing to projects that respect human rights and comply with EIB social standards, based on the principles of the Charter of the Fundamental Rights of the European Union and international good practices.”²⁷

We call upon the Bank to adopt safeguard policies that: (1) contain a clear statement that the Bank will not finance projects that contribute or are likely to contribute, either directly or indirectly, to human rights abuses, which applies across the gamut of all human rights and equally to all Bank projects, regardless of the lending mechanism employed; and (2) adopt human rights due diligence measures, including a human rights impact assessment as described above; and (3) are consistent with, and explicitly reference, international standards and norms pertaining to both environment and human rights. If the Bank fails to adopt standards that adequately manage the human rights implications of its operations, it will continue to fall behind.

environmental treaties and agreements. The Bank does not finance project activities that would contravene such country obligations, as identified during the EA.

(Emphasis supplied.)

²⁵ Office of the High Commissioner for Human Rights, *International technical assistance measures (Article 22)*; CESCR General Comment 2, para. 6.

²⁶ European Bank for Reconstruction and Development, *Environmental and Social Policy*, para. 9.

²⁷ European Investment Bank, *The EIB Statement of Social and Environmental Standards and Practices*, 2009, paras. 46; see para. 6 (“The Bank will not finance projects which result in violation of human rights”); para. 30 (The Bank follows a rights-based approach when considering the social aspects of a project, with reference to the Charter of Fundamental Rights of the European Union and the UN Universal Declaration of Human Rights).

4. International Environmental Standards and Norms

We call upon the Bank to update its existing environmental protections by incorporating and referencing international standards and norms related to: (1) chemicals management; (2) climate; (3) forest protection; (4) biodiversity, ecosystems and natural habitats; and (5) dams.

a. Chemicals Management

Chemicals are inherently a development issue insofar as they are necessary for economic growth; but chemical management is closely linked to dimensions of poverty alleviation and human development. The current safeguard policies lack a comprehensive sound chemicals management framework that is consistent with best practices and obligations under the global framework for chemicals management.²⁸ The need to improve the consideration of health effects due to chemicals in strategic environmental and social assessments and other impact assessments has been recognized.²⁹ Recent changes to the International Finance Corporation's Performance Standards integrate a more comprehensive approach to chemicals management.³⁰

Activities and projects funded by development institutions can increase the risk of harm to people and communities in developing countries from hazardous chemicals. Recent UN reports reveal two dangerous, converging factors: (1) development-related increases in the production, use, release and disposal of hazardous chemicals in developing countries over the next several decades; and (2) relatively weaker institutional capacities in these countries to ensure sound chemicals management.³¹ Nearly every sector of the Bank's projects and activities implicates potential sources of exposure to hazardous chemicals during various stages of the chemical lifecycle.³²

A number of international agreements have emerged to address the challenge of sound chemicals management at the global level. Given the implications of Bank activities for the production,

²⁸ See generally World Bank Operational Policies 8.60 (Development Policy Lending), 4.01 (Environmental Assessment), 4.09 (Pest Management), and 10.04 (Global Externalities).

²⁹ The Budapest Declaration on Environment and Health (2004) calls for taking "significant health effects into account in the assessment of strategic proposals." See also World Health Organization (WHO), *Health and strategic environmental assessment* (2009), available at: http://www.euro.who.int/_data/assets/pdf_file/0006/112749/E93878.pdf (last accessed April 28, 2013).

³⁰ IFC, *Update of IFC's Policy and Performance Standards on Environmental and Social Sustainability, and Access to Information Policy* (2011), available at: http://www1.ifc.org/wps/wcm/connect/fca42a0049800aaaaba2fb336b93d75f/Board-Paper-IFC_SustainabilityFramework-2012.pdf?MOD=AJPERES (last accessed April 28, 2013).

³¹ UNEP, *Global Chemicals Outlook* (2012); WHO/UNEP, *Cost of Inaction* 2012.

³² These include agriculture; transportation; energy and mining; education; finance; health and other social services; industry and trade; and water, sanitation and flood protection.

use, release and disposal of chemicals in the Global South, these agreements should inform the Bank's review of its safeguard policies.

The broadest agreement at the global level is the Strategic Approach to International Chemicals Management ("SAICM"), which provides an overarching policy framework. SAICM's primary objective is to ensure that, by 2020, chemicals are produced and used in ways that minimize significant adverse impacts on human health and the environment (the "2020 Goal").³³ The World Bank participates in the SAICM process as one of nine members of the Inter-organization Programme for the Sound Management of Chemicals ("IOMC").

The SAICM process resulted in a Global Plan of Action ("GPA") for governments, the private sector, international organizations and other stakeholders in pursuit of sound chemicals management. The Global Plan of Action is explicitly informed by several approaches and principles of international environmental law, as well as several key international instruments for chemicals management.³⁴ Objectives of the GPA include measures to support risk reduction; strengthening knowledge and information; strengthening institutions, law and policy; building capacity; and the promotion of safer chemicals and alternatives. Notably, the GPA emphasizes a lifecycle approach to chemicals management, with keen awareness to upstream issues that create downstream impacts from chemicals and waste management.

Integration of chemicals management into development agendas is critical to SAICM implementation and the 2020 Goal. Recognizing this, SAICM emphasizes the importance of all stakeholders, including the World Bank Group, to take appropriate action the "integrati[on of] chemicals issues into the broader development agenda."³⁵ The World Bank's safeguard policies should help support borrowers in the development of sound chemicals management.

In addition to SAICM, a cluster of international instruments covers specific issues in chemicals management. These agreements include, among others, the Basel, Rotterdam and Stockholm Conventions, a future treaty on Mercury pollution, as well as conventions under the International Labour Organization ("ILO"), in particular ILO Convention no. 170 concerning safety in the use of chemicals at work. Moreover, elements of an influential regional agreement over industrial chemicals, the European Union's "REACH" regulation, have quickly taken hold in industrialized and developing countries around the world, including the individual substances and classes of substances that are considered to be of very high concern. In addition, the Global Harmonized System provides a means of increasing access to information in the developing world.

³³ WSSD, 2002; *see also*, SAICM OPS, ICCM3 statements, and EU's 7th Environmental Action Plan.

³⁴ *See* SAICM Over-Arching Policy Strategy, Section VI.

³⁵ SAICM GPA, para. 8.

In sum, the Bank stated in 2004 that it “strongly supports” a course of action that includes technical and financial assistance for sound chemicals management.³⁶ While necessary steps are being taken under SAICM to build capacity in developing countries, the process is vastly underfunded and overall capacity for sound chemicals management will remain inadequate in the Global South for several years, if not decades. It is imperative that the safeguard policies are attuned to this reality. The World Bank should ensure the sound management of all chemicals produced, used and released throughout the lifecycle of all its projects, including products manufactured.

b. Climate

At the World Economic Forum in Davos, Bank President Jim Yong Kim acknowledged the potentially devastating impacts that could occur in a world 4 degrees Celsius warmer by the end of the century.³⁷ In its 2012 report, *Turn Down the Heat, Why a 4C Warmer World Must be Avoided* (hereafter, the “*Turn Down the Heat* report”), the Bank stated that “[t]he lack of action on climate change not only risks putting prosperity out of reach of millions of people in the developing world, it threatens to roll back decades of sustainable development.”³⁸ Most recently, Christiana Figueres, Executive Secretary of UNFCCC, spoke of the need for World Bank coal investments to end, emphasizing that, while “[i]t is one of the very serious challenges that the World Bank has, and it’s very understandable, because [coal] was a fuel that was critically important to developing countries at a certain stage in their development ... it is no longer necessary to do that, because we have many other technologies that can come forward.”³⁹

Over the past two decades, States have established an international legal regime to address climate change. Specifically, the 1992 United Nations Framework Convention on Climate Change (“UNFCCC”), which has near-universal membership, and its Kyoto Protocol have set in place a framework for common but differentiated responsibilities for the reduction of greenhouse gas emissions. Most importantly, Article 2 of the UNFCCC sets forth the overarching objective of UNFCCC and related legal instruments, such as the Kyoto Protocol, which is to stabilize

³⁶ World Bank, *The Global Pursuit of Sound Chemicals Management*, February 2004.

³⁷ See e.g., World Economic Forum website, available at: <http://www.weforum.org/content/top-ten-quotes-davos-2013> (last accessed April 11, 2013).

³⁸ World Bank, *Turn Down the Heat, Why a 4C Warmer World Must Be Avoided*, November 2012, Foreword.

³⁹ London Mining Network, *Time for World Bank coal investment to end*, April 27, 2013 (citing Tck Tck Tck, The Global Call for Climate Action, *Figueres: Time for World Bank coal investment to end*, April 24, 2013, available at: http://tcktck.org/2013/04/figueres-time-for-world-bank-coal-investments-to-end/50799?utm_source=rss&utm_medium=rss&utm_campaign=figueres-time-for-world-bank-coal-investments-to-end (last accessed April 29, 2013)).

greenhouse gas concentrations "at a level that would prevent dangerous anthropogenic [human induced] interference with the climate system."⁴⁰

While developed countries have primary responsibilities,⁴¹ all countries must work together to achieve the objective stated in Article 2 of the UNFCCC. To that extent, developing countries will require finance, technology and capacity-building to meet their obligations. Article 3.3 of the UNFCCC reflects the precautionary principle, and thus Parties to the UNFCCC have endorsed the proposition of taking action to prevent impacts that could be severe or irreversible even when there is a lack of full scientific certainty.

The safeguard review presents a critical opportunity for the Bank to align its policies with evolving best practice for promoting climate sensitive and resilient development and to accelerate the transition from fossil fuels to cleaner energy sources.⁴² Though we welcome the Bank's Strategic Framework for Development and Climate Change as a first step to assist its investment decisions in considering climate change and in conducting due diligence regarding climate risks, the Bank has an obligation to do more. As a standard-setter, it should utilize the safeguard review process as an opportunity to create standards that exceed the minimum. Therefore, and consistent with its Environment Strategy, the Bank should narrowly focus its lending on development activities that contribute to climate mitigation and adaptation goals.

The Bank must ensure that climate considerations are incorporated into front-end assessments and planning. There are a number of tools the Bank may employ, including cumulative impact assessments, integrated resource planning, full life-cycle accounting, greenhouse gas accounting, low-carbon development strategies and nationally appropriate mitigation actions, and national adaptation plans. As one example, OP/BP 4.01 (Environmental Assessment) should require full life-cycle accounting of greenhouse gas emissions. The updated safeguard policies must ensure that comprehensive assessment tools are used to identify alternative options. It is also imperative that the Bank strengthen the mitigation hierarchy.

The updated safeguard policy should make clear that low carbon projects are prioritized over emission-intensive projects. The Bank should avoid expanding the supply of fossil fuel-based energy and should fund strategic transitions away from coal. To the extent that the Bank finances energy sector activities, these activities should focus on end-user efficiency and supporting renewable energy.

⁴⁰ The term "dangerous" has not been defined, though the Cancun Agreements refer to 2 degrees and 1.5 degrees warming limits.

⁴¹ UNFCCC, Art. 4.

⁴² For further discussion, see Sierra Club, *Sustainable Development in a Changing Climate: Designing a Climate Sensitive Safeguard Policy Framework*.

Finally, the safeguard review also presents an opportunity for the Bank to take into account international developments on forests and climate change, and, in particular, lessons learned from the pilot of REDD+ programs and projects. The climate regime further provides an example of how Bank measures must take into account and cover the human rights consequences climate change will generate, which will require the protection of, and assistance for, those displaced by climate. For this reason, addressing climate change must ultimately take into account the human rights implications and be grounded in a human rights framework.

c. Forest Protection

The World Bank has played a major role in shaping the dialogue on the role of forest governance and climate change. Yet, its current policies governing forest protection fall short of what is needed to ensure that indigenous peoples and forest-dependent communities, as well as the environment, are actually protected. We briefly highlight international standards below and refer to other civil society submissions that delve further into the topic.⁴³

There are a number of international agreements and treaties that delineate duties as to the protection of forests, including:

- With respect to species protection, the Convention on International Trade in Endangered Species of Wild Flora and Fauna (“CITES”), an international agreement to which 178 States are Parties, prohibits international commercial trade in all species listed as endangered and requires the regulation of such trade for species designated as threatened.
- The 1983 International Tropical Timber Agreement and its 1994 successor agreement set forth objectives for sustainable trade and management of tropical forests by encouraging market benefits, along with environmental protection. Both treaties identified the conservation of tropical forests and increased transparency in the international timber market as objectives.
- In addition, the Bank can draw from UN-REDD best practices and lessons learned from the pilot of REDD+ programs and projects are applicable to forest lending outside REDD+. UN-REDD has adopted a human rights-based approach to programming, with particular reference to the UN Declaration on the Rights of Indigenous Peoples and the UN Development Group Guidelines on Indigenous Peoples’ Issues, which mainstreams and integrate indigenous peoples’ issues in processes for operation activities and

⁴³ See, for example, *CSO Submission on World Bank Forests and Natural Habitat Safeguards*, April 2013, which has also been endorsed by the Center for International Environmental Law.

programs at the country level.⁴⁴ Of note, the UN-REDD Programme Guidelines on Free, Prior and Informed Consent should be considered best practice.⁴⁵

OP/BP 4.36 (Forests) sets forth the Bank's management, conservation and sustainable development of forest ecosystems as a component essential to poverty reduction and sustainable development. Paragraph 5 of the OP 4.36 states that "[t]he Bank does not finance projects that, *in its opinion*, involve significant conversion or degradation of critical forest areas or related critical natural habitats."⁴⁶ However, paragraph 5 goes on to state that, where a Bank project does involve significant conversion or degradation of natural forests or related natural habitats that the Bank deems non-critical, *and* where the Bank determines there are no other feasible alternative exists to the project and its siting, *and* a comprehensive analysis demonstrates that overall benefits from the project substantially outweigh the environmental costs, the Bank may finance a project if it incorporates appropriate mitigation measures.

As noted by other civil society groups, definitions with respect to "critical natural habitats" or "critical forests," and other key terms, should be refined and aligned to meet best practice, including relevant definitions in international instruments, such as the CBD.⁴⁷ In addition, the Bank's mitigation hierarchy should prioritize avoidance over compensation and minimization. Furthermore, consistent with UNFCCC REDD+ safeguards, the policy should ensure that support for REDD+ activities (at least) does not lead to conversion of natural forests, regardless of whether they are critical natural habitats or natural habitats.

The policy requires that "the rights and welfare of people and their level of dependence upon or interaction with forests" be taken into account.⁴⁸ Unfortunately, the assessment tools referenced, including OP/BP 4.10 (Indigenous People) and OP 4.12 (Involuntary Resettlement), must

⁴⁴ UN-REDD has adopted a rights-based approach, which is evident from the following statement in the Framework Document agreed to by the UNDP, UNEP, and FAO: "The application of UNDP, UNEP and FAO rights-based and participatory approaches will also help ensure the rights of indigenous and forest-dwelling people are protected and the active involvement of local communities and relevant institutions in the design and implementation of REDD plans."

⁴⁵ UN-REDD Programme, *Guidelines on Free, Prior and Informed Consent*, January 2013, available at: http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8717&Itemid=53 (last accessed April 30, 2013).

⁴⁶ Annex A to OP/BP 4.04, paragraph 1(b), defines "critical forest areas" to include: (1) existing protected areas and areas officially proposed by governments as protected areas; areas initially recognized as protected by traditional local communities; and sites that maintain conditions vital for the viability of these protected areas; and (2) sites identified on supplementary lists prepared by the Bank or an authoritative source determined by the Regional environmental sector unit, including sites recognized by traditional local communities.

⁴⁷ See *CSO Submission on World Bank Forests and Natural Habitat Safeguards*, April 2013, pp. 5-6.

⁴⁸ *Id.*, para. 3 (footnote referencing assessment).

themselves be strengthened in order to meet international best practice and standards. The assessment tools should reference and incorporate the UN Declaration on the Rights of Indigenous Peoples, the International Labor Organization’s Indigenous and Tribal Peoples’ Convention 169; and the International Covenant on Economic, Social, and Cultural Rights and the UN Basic Principles and Guidelines On Development-Based Evictions and Displacement, respectively. That analysis is beyond the scope of this submission and addressed in other civil society submissions.

Further, it is imperative that the updated safeguard policies increase access for indigenous peoples and local communities so that they can meaningfully engage in the project process, including in planning, implementation, and monitoring. At a minimum, the forests policy (as other operational policies) should be strengthened to incorporate the right of indigenous peoples to free, prior, and informed consent, which has evolved into a norm of international law and is critical to the realization of rights set forth in the UNDRIP.

Finally, while we appreciate that the current forest policy prohibits the Bank from financing projects that contravene applicable international environmental agreements,⁴⁹ OP/BP 4.36 should be strengthened to include language that the Bank will not finance projects that contravene a country’s international human rights obligations.

d. Biodiversity, Ecosystems and Natural Habitats

OP/BP 4.04 (Natural Habitats) acknowledges that the conservation of biodiversity is fundamental to long-term sustainable development. As noted below, however, the current policy falls short of international best practices and standards.

Overlapping with the forest governance discussion above, there are a number of additional international agreements and treaties that require the protection of ecosystems and habitats, which should inform the review of the current safeguard policies. These include, but are not limited to:

General

- The United Nations Convention on Biological Diversity (“CBD”), a comprehensive binding global agreement to which 193 States are Parties, addresses all aspects of biological diversity, including ecosystems, genetic resources, and species. The Convention has three main goals: (1) the conservation of biological diversity; (2) the sustainable use of its components; and (3) the fair and equitable sharing of benefits from the use of genetic resources. It requires signatories to ensure that biodiversity considerations are included in their environmental impact assessment procedures and to establish a system of protected area(s) where special measures must be taken to conserve

⁴⁹ OP 4.36, para. 6.

biodiversity. In particular, the supplementary guidelines to the CBD also contain important guidance that must inform the Bank’s safeguard review, such as Akwe: Kon Guidelines (discussed above) and the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity (“AAPG”), which consists of fourteen principles and operational principles, which focus, *inter alia*, on environmental stewardship and management of agricultural diversity.

- The Convention on the Conservation of Migratory Species of Wild Animals, also known as the Bonn Convention,⁵⁰ an intergovernmental treaty concluded under the United Nations Environment Programme, is the only global convention established for the conservation and management of migratory species, their habitats, and migration routes. It requires conservation of habitat and restrictions on the exploitation of any listed endangered migratory species.

Wetlands

- The Convention on Wetlands of International Importance, or the Ramsar Convention,⁵¹ an intergovernmental treaty with 165 Contracting Parties, provides the framework for national action and international cooperation for the conservation and “wise use” of wetlands. “Wise use” of wetlands is defined as “the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development.”⁵² Under the Convention, Parties have committed to: (1) working towards the wise use of all their wetlands through national land-use planning, appropriate policies and legislation, management actions and public education; (2) designate suitable wetlands for the List of Wetlands of International Importance and ensure their effective management; and (3) cooperate internationally regarding transboundary wetlands, shared wetland systems, shared species, and development projects that may affect wetlands.

Fisheries

- Given that fishing is a critical component of the livelihoods and nutrition of many project-affected communities, it is necessary that the Bank create stronger standards for better governance of these natural resources. With respect to fisheries, the 1982 United Nations Convention on the Law of the Sea establishes a framework for marine

⁵⁰ Convention of Migratory Species of Wild Animals Act, May 31 1985, *amended* S.R.O. 40 of 1998, at Article II (Fundamental Principles).

⁵¹ Convention on Wetlands of International Importance especially as Waterfowl Habitat. Ramsar (Iran), 2 February 1971. UN Treaty Series No. 14583. As amended by the Paris Protocol, 3 December 1982, and Regina Amendments, 28 May 1987.

⁵² Article 3.1; Resolution IX.1 Annex A (2005).

governance, sustainable fisheries management, and certification. Article 192 places on States the obligation to protect and preserve the marine environment, while Article 194 requires States to take measures to prevent, reduce, and control marine pollution.

- The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the “Straddling Fishing Stocks Agreement”) sets out principles for the cooperative conservation and management of fisheries resources.
- The 1995 FAO Code of Conduct for Responsible Fisheries (the “FAO Code”) provides principles and standards for the conservation, management, and development of all fisheries. Though voluntary, the FAO Code itself draws upon rules of international law and aims to prevent and eliminate overfishing.
- In addition, although there are a few international instruments, the majority of agreements are regional due to the nature of fisheries. The regional fisheries management organizations are generally either organized by migratory species or by geographical area,⁵³ and vary in terms of conservation objectives and achievements.

Importantly, paragraph 4 of OP 4.04 prohibits the Bank from supporting projects that, *in the Bank’s opinion*, involve the significant conversion or degradation of “critical natural habitats.”⁵⁴ However, paragraph 5 provides an exception for natural habitats deemed by the Bank to be “non-critical,” allowing the Bank to support projects that can cause significant loss or degradation, where it determines there are no feasible alternatives for the project and its siting and comprehensive analysis demonstrates that overall benefits from the project substantially outweigh the environmental costs.⁵⁵ The policy continues: “If the environmental assessment indicates that a project would significantly convert or degrade natural habitats, the project includes mitigation measures acceptable to the Bank.”⁵⁶

The current language of OP/BP 4.04 does not adequately protect natural habitats. The safeguard policy should be revised to ensure consistent application of the “precautionary principle” to

⁵³ See European Commission, Regional Fisheries Management Organisations, <http://ec.europa.eu/fisheries/cfp/international/rfmo/> for an extensive list of agreements (last accessed April 28, 2013).

⁵⁴ OP 4.04, Annex A, paragraph 1(b) defines “critical natural habitats” to include: (1) existing protected areas and areas officially proposed by governments as protected areas; areas initially recognized as protected by traditional local communities; and sites that maintain conditions vital for the viability of these protected areas; and (2) sites identified on supplementary lists prepared by the Bank or an authoritative source determined by the Regional environmental sector unit, including sites recognized by traditional local communities.

⁵⁵ OP 4.04, para. 5.

⁵⁶ *Id.*

natural resources management,⁵⁷ including for areas with possible high conservation areas that may not yet be “known.”

The updated safeguard policy should contain a commitment that the Bank will not finance activities that lead to the conversion or degradation of critical natural habitats, including activities that propose biodiversity offsets to compensate for adverse impacts to critical natural habitats.⁵⁸ Moreover, as with the forest policy, the Bank’s mitigation hierarchy should prioritize avoidance over compensation and minimization.

Similar to the forest policy, the natural habitat policy should acknowledge the critical role of indigenous peoples and local communities in environmental protection and should therefore ensure that their rights are protected. The updated safeguards should include strengthened participatory procedures for project-affected communities and, particularly, recognize the right of FPIC for indigenous peoples, in addition to other best standards governing effective and meaningful consultation and participation with local communities. Finally, as noted in the forest policy, definitions, including those of “critical natural habitat” and “degradation,” must be refined and aligned with international standards.

e. Dams

The current safeguard policies include a policy on Dams, OP/BP 4.37 (Safety of Dams), but this policy falls short of international standards and best practices insofar as it does not incorporate the World Commission on Dams (“WCD”) recommendations.

In particular, the World Bank and the World Conservation Union launched the WCD process in 1998. The mandate of WCD included a review of the development effectiveness of large dams, to assess alternatives for water resources and energy development, and to develop internationally acceptable guidelines for the planning, construction, and operation of dams.

The WCD report was published in 2000 and provided clear recommendations, establishing the most comprehensive framework on the provision of water and energy services, based on a “rights and risks” intended to protect the environment and affected communities. Specifically, WCD identified seven broad strategic priorities to be included in environmental and social management systems.⁵⁹ The WCD report also proposed 26 guidelines to inform the decision-

⁵⁷ *Initial CSO Comments, supra* n. 2, p. 12.

⁵⁸ For further discussion on this topic, *see CSO Submission on World Bank Forests and Natural Habitats Safeguards, supra* n. 45, p. 6.

⁵⁹ This included: (1) gaining public acceptance; (2) comprehensive, multi-criteria assessment of the full range of alternative options; (3) addressing existing dams; (4) sustaining rivers and livelihoods; (5) recognizing entitlements and sharing benefits; (6) ensuring compliance; and (7) sharing rivers for “peace, development and security” (or the development of measures to cooperate on issues involving transboundary rivers).

making process for the review and approval of projects involving dams, energy and water management, which were welcomed by an array of organizations and governments globally.⁶⁰

Nonetheless, and despite being one of the sponsors of the WCD, the World Bank has not adopted the WCD recommendations in its operational policies. In the World Bank's own comparison of the 26 guidelines and its safeguard policies, it noted key areas in which it fails to meet the standards set forth by WCD:

The World Bank believes that the adoption of the World Commission of Dams principle of 'prior informed consent' amounts to a veto right that would undermine the fundamental right of the state to make decisions in the best interests of the community as a whole. Second, while there is agreement on stimulating good faith negotiations on international rivers, World Bank experience and policies are based on proactive engagement rather than disengagement from countries that are not already negotiating with their neighbors on international waters, as advocated by the World Commission on Dams. And, third, while there is agreement on the importance of consultation and public acceptance, experience suggests that multi-stage, negotiated approach to project preparation recommended by the World Commission on Dams is not practical and would virtually preclude construction of any dam.⁶¹

As a financial institution that provides support to dams and associated infrastructure projects, the Bank should ensure that its policies are based on the WCD recommendations. In particular, and as a risk management tool, the Bank should ensure that a comprehensive options assessment is carried out.

5. Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects

In 2005, the Bank authorized the use of country systems to be governed by OP 4.00 (Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects), under which the Bank relies on the Borrower country's laws and institutions, rather than the safeguard policies and procedures, to help avoid, mitigate, and minimize the adverse impacts of Bank projects.⁶²

⁶⁰ Shannon Lawrence, *Retreat from the Safeguard Policies, Recent Trends Undermining Social and Environmental Accountability at the World Bank*, p. 8 (noting that the recommendations of the final WCD report were welcomed by organizations and governments globally, including the UN Environment Programme, the World Health Organization, and the U.S. Export-Import Bank.)

⁶¹ World Bank, *Water Resources Sector Strategy, Strategic Directions for World Bank Engagement*, 2004, p. 38 (noting the World Bank's position on the WCD report).

⁶² Center for International Environmental Law, *The Use of Country Systems in World Bank Lending: A Summary of Lessons from the Pilot Projects and Recommendations for a Better Approach*, p. 1.

Strong and robust safeguards that explicitly reference and draw from international standards and norms will advance the use of Country Systems. Particularly for social-related risks to projects, it remains premature to rely on Country Systems, where the borrower country may not have sufficient capacity and/or where there is no equivalency between the Bank’s safeguard policies and the Country System. A report examining lessons learned from two years of implementation of the initial phase of the pilot project for the use of borrower systems notes that, while country safeguard systems can help achieve the objectives of the Bank in two areas (Environmental Assessment and physical cultural resources), the Country Systems approach remains ill-suited to certain policies, such as Involuntary Resettlement:

[Involuntary Resettlement] is a policy area in which individual pilots may not be the ideal vehicle for achieving the objectives of OP. 4.00. With respect to IR, the gaps are typically at a more fundamental policy level concerning objectives, eligibility and the basis for compensation. . . It is unlikely that such changes could be accomplished over the life of one of the projects and impossible within the period of project preparation, even if the Bank had a government counterpart agency with which to work. Without fundamental changes in the national land law and perhaps even in the constitution of at least one country (Ghana), these gaps could not be bridged.”⁶³

The shift to Country Systems could open the door for a weakening of the Bank’s environmental and human rights protections, where such fundamental governance gaps may exist, including the absence of rule of law and/or a functioning, independent and impartial judiciary. In addition, the Bank’s questionable track record regarding monitoring and supervision of projects under investment lending practices ⁶⁴ calls into question the extent to which such implementation and supervision will truly be effective in a Country Systems approach.

Upward harmonization with respect to the Country Systems approach requires the Bank to ensure, “through the mandatory enforcement of the highest environmental and social safeguards, that the environment and project-affected communities are protected from the negative impacts of [Bank-supported] projects, programs, and policies.”⁶⁵ This means that the correct and logical threshold by which Borrower systems should be assessed are the international laws and best

⁶³World Bank, *Evaluation of the Initial Phase of the Pilot Program for Use of Country Systems for Environmental and Social Safeguards: Lessons Learned and Management Proposal for an Incremental Scale Up of the Program*, Annex 1 (An Evaluation of Pilot Projects Since Approval of Operational Policy 4.00), p. 5, para. 11.

⁶⁴ According to the IEG 2010 report, “[m]ore than one third of the Bank projects had inadequate environmental and social supervision, manifested mainly in unrealistic safeguards ratings and poor or absent monitoring and evaluation.” See Independent Evaluation Group World Bank, *Safeguards and Sustainability Policies in a Changing World, An Independent Evaluation of the World Bank Group Experience*, 2010, p. xvii.

⁶⁵ *Initial CSO Comments*, supra n. 2, p. 14.

practice, which should be reflected in Bank policies. This will assist borrower countries in progressively strengthening their own frameworks in line with international best practices.

Equally important, the Bank must ensure that the ability of local communities to access accountability is not reduced under the Country Systems approach. Specifically, the Bank must maintain its own responsibility and avenues of accountability for project-affected communities. In the absence of these measures, a Country Systems approach could likely lead to environmental and social risks, a substantial increase in governance issues, and significant harm to communities and the environment.

Conclusion and Recommendations

The safeguards review is a defining moment for the international protection and promotion of international best practice governing both environment and human rights, two fields central to the Bank's poverty reduction mandate. The Bank, as an international organization and a United Nations specialized agency, should ensure that its safeguard policies are compliant with international best practice and standards governing protections of the environment and human rights. A stronger and explicit approach to human rights can strengthen development outcomes.

In conclusion, we call upon the World Bank to:

- Conduct, and make public, a systematic analysis of gaps in existing policies with respect to international environmental and human rights standards, which would include, where applicable, extensive review of the research conducted by human rights treaty bodies, international courts and consultation with civil society, affected communities, and other key stakeholders.
- Harmonize its policies with international laws and the evolving standards and norms related to the protection of the environment and human rights.
- In relation to human rights:
 - Commit to refrain from financing activities that contribute or are likely to contribute, either directly or indirectly, to human rights abuses, which applies across the gamut of all human rights and equally to all Bank projects, regardless of the lending mechanism employed; and
 - Adopt human rights due diligence measures, including a human rights impact assessment.
- For Country Systems, ensure that borrower systems are assessed against standards that explicitly reference and incorporate international standards and norms.