



WORLD BANK'S SAFEGUARD POLICIES REVIEW AND UPDATE

EXPERT FOCUS GROUP ON THE EMERGING AREA

“LAND ADMINISTRATION, TENURE and NATURAL RESOURCES”

Pretoria/Johannesburg, South Africa

February 20, 2013

On February 20, 2013, a focus group with international experts was held in Johannesburg, South Africa, on the subject of Land Administration, Tenure and Natural Resources. This focus group is part of the World Bank safeguard policies review and update process and the topic of land is one of the emerging areas that stakeholders have asked the Bank to consider during the review. Other emerging areas include: climate change, disability, free, prior and informed consent of Indigenous Peoples, gender, human rights, labor and occupational health and safety. More information about this process is available on the safeguards review [website](#). The terms of reference for participants of focus groups for emerging areas are available [here](#).

Participants in the focus group comprised land experts from a variety of civil society, inter-governmental, donor and research organizations from around the world (see [list of participants](#)). It was agreed at the outset that the focus group meeting would be conducted in accordance with Chatham House rules, and that participants would speak in their individual capacities rather than as representatives of their respective institutions. In addition to participating experts, three World Bank staff members were present. The meeting was facilitated by a facilitator from the University of Cambridge Programme for Sustainability Leadership.

SUMMARY

The focus group meeting began with two presentations by World Bank staff to help define the purpose and scope of the meeting.

- [The first presentation](#) described the rationale, objectives and stages of the overall safeguards review process.
- [The second presentation](#) focused on the nexus between land and safeguards. It stressed the centrality of land to the Bank's development agenda, noting that the prominence of land is evident not only in Bank-supported land administration projects, but in many infrastructure,

agriculture, forestry, private sector competitiveness and other operations across all sectors. Land issues are frequently complex and sensitive, reflecting a complicated interplay between diverse legal, economic, political, cultural and environmental factors, and carrying with them particularly acute risks for vulnerable and marginalized people if not handled well. The presentation summarized the treatment of land under current Bank safeguards, noting that there is no “lands safeguard” per se but that issues related to land tenure, access and use were dispersed across a number of policies, in particular OP 4.12 on involuntary resettlement, and OP 4.10 on Indigenous Peoples.

The presentation concluded by posing **four questions** on which the Bank sought guidance from the experts:

1. How should land issues be addressed in the environmental and social assessment process?
2. What are the gaps in the current safeguard policies?
3. If we move toward using country systems, what impact will this move have on land issues?
4. What are areas outside the safeguards that the World Bank should consider and address?

These questions served as the framework for the remainder of the day, and were the focus of a number of small group breakout sessions and facilitated plenary discussions. Participants noted that there was inevitably overlap between the four questions. In particular, questions 2 and 4 were seen as closely intertwined, since whether an issue was characterized as a “gap” in the current safeguards or as something important that should be addressed outside the safeguards framework depended on one’s conception of how wide or narrow the scope of safeguards should be. Because of these acknowledged inter-linkages between topics, the discussion did not rigidly follow the sequence of questions set forth above. For example, relatively little time was allocated to addressing promising steps that could be taken “outside” the safeguards (Question 4) in favor of devoting greater attention to what group members felt should fall “within” the safeguards.

Following is a synthesis of key observations of participants during the day. It should be emphasized that these observations are not reported here as necessarily representing the substantive consensus of the group. They are instead summarized here as key issues put on the table by one or more individual experts that received attention during the consultation and that were proposed for further consideration as the process goes forward.

1. General observations

Emerging from the group’s discussions of the specific questions were a number of overarching observations about the nature and scope of the Bank’s safeguards regime, and how land concerns might better fit into that regime going forward. These observations included the following:

- **Reorient safeguards away from “do no harm” to “doing good.”** While risk avoidance remains an important role for safeguards, the safeguards should be refocused towards embracing opportunities for achieving better development results.
- **Raise the profile of land in safeguards.** A less fragmented approach to land issues should be an objective of the new safeguards approach, perhaps through a specific land safeguard.

- **Protect and enable vulnerable and marginalized people.** The new framework should more explicitly reflect that such people are intended to be the principal beneficiaries of safeguards. There should be a clear emphasis on achieving more “equitable outcomes.”
- **Achieve a better balance between flexibility and prescription.** The safeguards need to be more sensitive to variations between specific local contexts, while at the same time maintaining some core standards and principles that would apply universally. Getting this balance right may entail some shift away from the current emphasis on prescribed procedures towards a more principle based approach.
- **Adopt a broader view of land-related impacts and outcomes.** Rather than the current emphasis on avoiding and addressing individual harm, often through a one-time compensation payment, the process should explore the possible expansion of treatment of land issues geographically (landscape approach; better recognition of land-water linkages) and temporally (more emphasis on induced and long-term impacts).
- **Reflect more up-to-date international consensus on land issues.** The safeguards should seek to reflect or exceed contemporary international standards such as those expressed in the Voluntary Guidelines and the African Land Policy Guidelines.
- **Give emphasis to strengthening “voice”.** Safeguards should provide a framework that gives prominence to the importance of voice – particularly for women and other vulnerable groups – in designing projects, in identifying and assessing impacts, and in crafting long term benefits rather than short term compensation.

2. Treatment of land issues in the environmental and social assessment process

A majority of participants emphasized the importance of deepening the coverage of land issues in the environmental and social assessment process. Key suggestions included:

- **Strengthen assessment of land tenure.** Land tenure deserves to be looked at separately, either through a separate tenure assessment, or through deeper and more robust incorporation of land issues into existing social and environmental assessments.
- **Take into account the full range of rights and uses that are important to affected people.** Assessments need to be better sensitized to the full range of rights, including secondary rights and rights not formally recognized by law that may co-exist in a given area. This should include looking not only at land tenure but tenure over other resources such as water, common property resources and biodiversity. The links between land and water rights was particularly emphasized.
- **Assessments should look at a wider range of potential land-related consequences of a particular operation.** A project’s land impacts may extend beyond individual loss of land rights, to wider impacts such as gentrification, increasing land prices, increasing inequality, windfall profits for some while others are excluded from land markets, disproportionate impacts on women, etc. It is important to bear in mind that many well-meaning efforts to strengthen land rights have disproportionately benefited the strong.

- **Government administrative capacities should be part of the assessment.** The capacity of local land administration agencies, for example, to undertake tenure formalization in a manner that benefits the poor and vulnerable needs to be assessed.
- **Build continuing assessment into project design.** Assessment should not be a one-off affair. It should be a continuing responsibility, leading to adjustments to operations as they go forward. This implies a stronger commitment to independent monitoring and evaluation during implementation.
- **Assessment needs to help empower and respond to “voice”.** Assessment should avoid being an outside study, and instead be a process that helps to give expression to, and respond to, the voice of local people and communities. This in turn should feed into project design, not just into impact assessment. Too often, there is no requirement that consultation results actually get taken on board in terms of defining solutions.

3. Addressing gaps in current safeguard policies.

The group recognized that virtually all suggestions for improving the safeguards could be characterized as responding to “gaps” in the current policies. Hence, the observations in 1 and 2, above, should be understood as helping to inform the discussion of gaps. Some additional gaps were identified, including the following:

- **Define public interest narrowly.** The policy currently does not restrict acceptable land acquisition to takings in the public interest. This should be made explicit and “public interest” defined narrowly to steer the Bank away from potential support for “land grabs.” At the same time, however, some participants cautioned that the Bank should be cautious of imposing its own definition of public interest in potential contradiction to national law.
- **Distinguish between public and private uses.** A distinction should be made between land taken for public uses and land taken to facilitate private investment, with a higher level of scrutiny and community consent (FPIC) applied in the latter situation.
- **Give stronger prominence to land based solutions.** This is particularly critical when the takings involve agricultural land.
- **Compensation standards need to be better designed to reflect the full range of equity impacts.** People compensated at a “public interest” rate may find they have been excluded from benefits associated with rapid appreciation in property values as a result of an investment, while instead such benefits are often reaped by elites who are better able to take advantage of formalized land rights. A shift towards focusing on how to incorporate local people into project design so that they can share in benefits over time, rather than depending on one-time compensation, should be explored.
- **Include better protection in the case of “voluntary” land transactions.** More explicit guidance is required on the issue of “voluntary” land donations. There is a significant danger that what is characterized as voluntary can in some circumstances be the result of coercion.
- **Consider incorporation of FPIC.** A number of participants suggested that Bank safeguards should adopt free, prior, and informed consent (FPIC) for situations involving Indigenous Peoples, as this is consistent with international practice. Others raised the question whether it

might also be appropriately used for other marginalized groups or for local communities, particularly in Africa where application of the concept of Indigenous Peoples has proven difficult.

- **Clarify how safeguards should deal with historical injustices.** Projects may take place in settings where current land relations are themselves a reflection of previous injustices – for example, where the Government has previously acquired land without adequate compensation. The Bank needs to think through how it should evaluate and address such so-called “legacy issues.” There is a practical concern here, however, as to how far back in time safeguard principles should apply.

4. Implications of moving towards greater use of country systems.

A number of participant contributions underscored, in principle, that a greater respect for, and deeper engagement in building, country systems is very desirable. Overall, the Bank should support projects that acknowledge and reinforce good national laws and institutions. There were varying views and questions raised about how to reflect this in a new safeguards approach as it relates to land:

- **National land law systems should be relied upon cautiously.** The treatment of land rights, land values, compensation, formalization and related issues by national laws is sometimes ambiguous, weak or full of loopholes that could disadvantage vulnerable groups. Even where laws are generally aligned with international best practice, they may be poorly implemented.
- **Any reliance on country systems needs to ensure core standards are in place.** The safeguards should define those core standards, and explain how the Bank should support operations where there are significant gaps between those core standards and country laws and practices. Reliance on country systems cannot come at the expense of backing away from core standards established by Bank safeguards. Some participants cautioned that standard setting for borrowing countries needs to be realistic.
- **A stronger emphasis on capacity building is essential.** There was considerable support within the group for more capacity building to strengthen country management of safeguard risks. At the same time, some questioned whether effective capacity building can always be done within the framework of specific investment projects, or is better handled within separate, focused Bank support.
- **Assessing the adequacy of national systems.** The group discussed whether the assessment of country systems was best done by the Bank or member countries themselves. Some proposed inclusion of a third party through a peer review mechanism, referring to approaches used by OECD.
- **Reference to other international standards to assist engagement with country systems.** Widely adopted standards such as the Voluntary Guidelines – to which all Bank borrowers subscribe – could be useful tools for helping build and evaluate country systems. The Voluntary Guidelines, for example, could be used to define “no go” zones. Several participants submitted that regional standards could be a useful point of reference as well, including the African Land Policy Framework and Guidelines.