

# German Comments on the World Bank Safeguards Review

Germany welcomes the Safeguards Review launched by the World Bank in October 2012 and appreciate the importance of the reform process. The World Bank plays an important role in development and sets international standards. Well-designed and carefully implemented World Bank safeguards can serve as guidance for other multilateral and bilateral development and financial institutions and for the private sector.

World Bank Group President Jim Yong Kim has assured us that the Review will not end up diluting the safeguards. Germany strongly supports this goal and has been participating in the ongoing review process along these lines. Close consultation with the World Bank, other member states and civil society will continue to play a major role as we continue our involvement in the reform process.

In our opinion the first draft of the new Environmental and Social Framework that was discussed on July 30, 2014 in the Bank's Committee on Development Effectiveness, serves as a basis for an integrated framework with clearer, more coherent safeguards. The draft addresses important issues for Germany, however, there are still some central issues that are unclear.

Germany considers the following overarching issues to be essential in the Safeguards Review:

1. make the **consultation process** as transparent, thematically open, and inclusive as possible;
2. **improve the effectiveness** of the safeguard system, for instance through better monitoring of the application of the safeguards, by strengthening complaint mechanisms, and by introducing an effective outcome tracking system;
3. strengthen and, where appropriate, **use country systems** while making sure that this will not weaken the safeguards; and
4. **include new issues and broaden the existing safeguards**. Germany attaches priority to the following issues: **address human rights appropriately** (including labor rights and the rights of indigenous peoples), **protect land rights**, and address **climate change mitigation and adaptation** (including the protection of biodiversity and functioning ecosystems).

## 1. Consultation process

The German government welcomes the comprehensive efforts undertaken by the Bank to have a transparent, inclusive, and thematically open consultation process. The World Bank should continue to pursue this course in the third phase of the Review. The format and scope of the consultations should be based on the need for consultation arising from the revised draft, and should include further consultation events in recipient and donor countries if needed.

## 2. Improving the effectiveness of the safeguard system

### 2.1 Introduction of an integrated framework

Germany welcomes the introduction of an integrated framework. However, we feel that there is still some room for improvement. The vision statement and the objectives and principles it contains should include, in particular, reference to the sustained promotion of human rights. For improvements on ESP and ESS, see below.

### 2.2 Improved monitoring and supervision of safeguards

Any framework will only be as good as its implementation. So it is crucial to place special emphasis on safeguard implementation. This should include clear requirements and rules, better monitoring and supervision, and adequate human and financial resources.

It is therefore very important to monitor the safeguards' effective implementation up to the end of a project and, if necessary, even after its end, based on a functioning monitoring system

with results-oriented indicators. The focus should be on whether the requirements defined at the beginning of the project have been met. Responsibility for monitoring (including responsibility for the monitoring budget) should rest with an entity that is separate from that which is responsible for project implementation. Responsibilities and competencies need to be defined in precise terms so as to ensure coherent compliance with the safeguards. The World Bank should publish the findings and reports of its monitoring exercises in a timely fashion.

We greatly welcome the fact that the new framework includes the option of making stakeholders and third parties part of the monitoring of safeguard compliance. Consideration should be given to making involvement of third parties a standard procedure for monitoring of particularly sensitive projects.

We welcome the establishment of effective complaint mechanisms at the project level and a central Grievance Redress Service in addition to continued direct access to the Inspection Panel (IP).

### 2.3 Categorization of risks

The practice of risk categorization in World Bank projects has - so far - not been entirely adequate in terms of certain aspects (among other things, there is an excessively large number of category B projects). Germany therefore welcomes the proposed changes. However, thought should be given to whether increased requirements should not only apply to high-risk projects but also to substantial-risk projects.

### 2.4 Flexibility

The new framework provides greater flexibility to the World Bank and to the borrower in terms of implementing the safeguards. In principle, this is an important element for a viable safeguard system. However, there need to be appropriate guidelines and examples in order to ensure that rules will be applied in a uniform manner. In instances where there is no choice but to use vague legal terms (such as "where appropriate"), there must be clear criteria for people to exercise their discretion. Moreover, World Bank staff members who take decisions on the interpretation of the rules on a case-by-case basis need to be given appropriate resources, incentives and decision-making powers to enable them to exercise their responsibility on a long-term basis.

### 2.5 Harmonization of environmental and social safeguards under the various World Bank instruments

In principle, Germany welcomes the potential expansion of the scope of the safeguards to cover further World Bank instruments such as Development Policy Loans (DPLs). However, in view of the far-reaching operational differences between the various instruments and the fact that the current review process is already extremely complex, we should have a separate process for reviewing and revising the rules for DPLs. Germany would welcome such a review as part of the 2015 DPL Retrospective. In our view, the IEG evaluation of risks concerning DPLs (envisaged to be completed in the first half of 2015) should play a prominent role in that context.

## 3 Strengthen and use country systems

Germany welcomes the commitment to using and strengthening country systems and institutions. This is an important way of ensuring compliance with environmental and social safeguards on a broad-based, long-term basis, beyond individual projects. The Bank should therefore use a gradual approach to strengthen partner systems through targeted action and begin to use them (on a step-by-step basis if appropriate). In the medium to long term, the use of country systems could become the standard option for the Bank, provided the quality of the systems is good enough.

In order to ensure the success of this type of approach, the Bank needs to make available, on a permanent basis, adequate resources and staff to strengthen country systems, and it needs to provide appropriate (monetary and non-monetary) incentives. Whenever the Bank uses country systems, it must not allow its safeguards to be diluted. So the responsibility for monitoring compliance with safeguards needs to remain with the World Bank.

#### 4 Include new issues and broaden existing safeguards

##### 4.1 Address human rights appropriately

Even if the World Bank has no explicit human rights agenda of its own, the safeguards are making a major contribution toward securing and strengthening human rights. So human rights standards and principles should be mainstreamed to a greater extent in the safeguard system.

In the vision statement, the framework should make reference to universally recognized human rights and human rights principles, and it should make the respect, protection and fulfillment of human rights a fundamental principle. In its ESP, the Bank should make a commitment in future to take account of the human rights impacts of its projects and not to finance or otherwise support any projects that evade international human rights obligations or other international obligations (for instance on environmental issues) that the borrowing country has entered into.

Bank-funded projects should foster gender equality, reduce inequalities between women and men as well as discrimination based on gender or gender identity, and ensure equal access to services and participation in decision-making. In light of this, Germany welcomes the mainstreaming of gender equality in the safeguards. The incorporation of gender equality in ESS 7 and ESS 10 is welcome, but the Bank should also increase the reflection of this issue in ESSs 2, 4 and 5 (inheritance, land acquisition).

Germany welcomes the explicit mention of persons with disabilities in the new framework. However, the Bank could go beyond this by developing options for the safeguards to identify and remove physical, communication-related, attitude-related and legal barriers faced by persons with disabilities. Reference should also be made to the UN Convention on the Rights of Persons with Disabilities (2006).

##### 4.1.1 Labor rights, health and safety

Germany expressly welcomes the creation of a separate safeguard on working conditions. This safeguard should be based on international treaties and agreements (such as the ILO core labor standards, which have been ratified by almost all World Bank members; the UN Guiding Principles on Business and Human Rights; and the ILO declaration of principles concerning multinational enterprises and social policy). It should address, in particular, fundamental workers' rights (with a special focus on the rights of children and young people under the age of 18).

In our view, improvements are required, above all, in terms of the scope of the safeguard. So far, the safeguard seems to provide inadequate protection to contracted workers and supply chain workers, even though these groups make up the majority of workers in many projects, especially in large-scale infrastructure projects. It would also be very desirable to make sure that safeguards concerning child labor will not fall behind the standards of other institutions (e.g., IFC). The draft does not make any reference to the freedom of association, either, even though all ILO members are required to comply with this (human) right simply by virtue of their ILO membership. The same goes for the ban on discrimination, which is not only part of agreements under international law but is in fact a fundamental universal human right that is part of customary international law.

Furthermore, Germany proposes that ESS 2 should also pay appropriate attention to the social protection of workers who suffer an accident or fall ill.

#### 4.1.2 Rights of indigenous peoples

Germany expects the Bank to continue to champion the protection of indigenous peoples in multilateral development cooperation. One first step has been taken in this direction through the proposal that indigenous people should, in certain cases, not just be entitled to free prior and informed consultation but also to free prior and informed consent (FPIC).

What would not be acceptable, in our view, would be what is called the "alternative approach" in its current form. It is absolutely vital that all Bank-funded projects respect, at all times and on a comprehensive scale, the dignity, rights, culture and economic options of indigenous peoples. The alternative approach proposed in the first draft will not allow the Bank and the borrowers to do that.

#### 4.2 Protection of land rights

The protection of land rights is vital for agricultural productivity and food security. Germany therefore expressly welcomes the enhancement of the safeguard on land rights and involuntary resettlement.

The World Bank should pay greater attention to sequencing. Prior to any investment decision that might have an impact on land rights, a tenure assessment should be carried out in order to make sure that the human right to housing will not be violated by the envisaged intervention, and in order to put in place a basis for an appropriate process of consultation and, if necessary, compensation. In particular, alternatives should be discussed and explored prior to the start of the project with a view to avoiding resettlement.

In general, the land rights safeguard should put a stronger focus on avoiding resettlement. Where the resettlement of population groups is inevitable, it should be determined through a transparent, inclusive and cooperative procedure. All individuals concerned need to have a say in the procedure through mandated representatives. It may also be helpful to give an active role to civil society groups or farmers' associations, and the Bank should carry out independent reviews of the land rights situation more often.

In addition, Germany would like to see the World Bank align its approach even more closely with the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, particularly with regard to the handling of grievances.

Compensation payments should always be based on a fair and transparent evaluation that takes account of all legitimate land rights and land use rights (informal, traditional and secondary rights) and of access to water. In principle, in-kind compensation is preferable to financial compensation. In any case, compensation payments need to be high enough to ensure that people's livelihoods are protected.

The land rights safeguard should place special emphasis on vulnerable groups (e.g., women, persons with disabilities, informal settlement dwellers, indigenous people), as the livelihoods of such groups are often very closely linked to land tenure and land use.

#### 4.3 Environmental and climate protection

Germany expressly welcomes the inclusion of aspects related to environmental protection and climate action. This particularly applies to the rules on the quantification and reduction of greenhouse gas emissions. However, in Germany's view there is still a need to improve the wording of the relevant policies, as they leave too much room for interpretation at this point. Germany would greatly welcome it if the Bank could take action, as part of the revised safeguards, to mitigate short-lived greenhouse gas emissions (such as black carbon, methane, ozone).

The impact of Bank-funded projects on the climate vulnerability and adaptation capacity of natural, social and economic systems should be identified clearly and taken into account in an appropriate manner. Bank-funded projects should also address, at an early point, any current and expected negative climate change impacts.

The safeguards should help to halt the loss of biodiversity. Germany therefore expressly welcomes the separate safeguard on biodiversity and on the sustainable management of natural resources. However, the Bank should define even stricter criteria for compensation measures and offsets. Interventions in high-biodiversity ("critical") habitats should be banned as a matter of principle. And more comprehensive account should be taken of the economic and social value of ecosystem services. The justified concerns of stakeholders and of indigenous groups that are dependent on biodiversity resources should be taken into consideration.

Intensive livestock farming may entail negative impacts on the environment, human health, and animal welfare. The present safeguards fail to address such negative impacts on a comprehensive scale. In paragraph 27 of ESS 6, the Bank should lay down that its lending and support policies require compliance with animal protection standards. The safeguards should not only make general reference to good industry practice but also to the guidelines of the World Organisation for Animal Health (OIE).