

RETREAT FROM THE SAFEGUARD POLICIES

Recent Trends Undermining Social and Environmental Accountability at the World Bank

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EXECUTIVE SUMMARY

In the past, the environmental and social costs of large-scale development projects were often ignored or dismissed as inevitable. Although these costs have not been eradicated, recognition that sustainable development cannot be achieved through projects that impoverish communities and destroy the environment has increased. Acknowledging the importance of mitigating the negative impacts of development projects, the World Bank and other international financial institutions developed social and environmental policies to guide their project lending in the 1980s and 1990s.

In principle, the World Bank's safeguard policies, as they are called, are important tools to protect communities and the environment. By ensuring environmental assessment standards, consultation with affected communities, information disclosure, compensation and livelihood restoration, the protection of biodiversity, and other goals, the safeguard policies help to reduce the negative impacts of development projects and promote positive outcomes. The safeguard policies were designed to guarantee certain standards of social and environmental protection in World Bank projects, even if these protections are not provided for under national law. Recognition of the power imbalances within countries, through which communities' rights are often subverted, was an important factor in the development of the safeguard policies.

Following the World Bank's lead, many other international financial institutions have adopted similar social and environmental policies. These policies enable the institutions to add value to projects they support through environmental and social protections that improve project quality and sustainability. For example, a number of export credit agencies and private banks with no development mandate have adopted common social and environmental policies, often based on those of the World Bank. These institutions recognize the need for more rigorous due diligence and risk mitigation, understanding that neglect of social and environmental impacts often increases a project's political and financial risk.

Despite the importance of the safeguard policies and their achievements, the World Bank's policy framework has come under increasing pressure since the late 1990s. The Bank has failed to comprehensively implement and to consistently update its safeguard policies based on the latest best practice standards and the findings of multi-stakeholder reviews. Elements of Bank management and some member governments have disingenuously argued that the policies cost too much, and have charged them with slowing down or reducing Bank lending.

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The World Bank has also initiated a number of specific processes supposedly to simplify the safeguard policies. While some of these processes, such as the International Finance Corporation's Safeguard Policy Review and the Bank's Country Systems approach, are ongoing, the intended outcome is clear: a shift from explicit, mandatory policies, to which the World Bank can be held accountable, to flexible principles permitting the investor and/or the borrowing government to determine the project's social and environmental requirements.

Through these processes, the World Bank is undermining the upward harmonization of environmental and social standards globally, an initiative in which it was previously a leader. The changes proposed by the Bank will not reduce costs or promote country ownership and capacity building. If they are approved, the World Bank will instead weaken its social and environmental standards, incur significant reputational risk, derail the movement towards a more level playing field amongst public and private financial institutions, and undermine accountability to affected communities and the poor, in whose name the Bank lends.

In response to these trends, civil society organizations (CSOs) have reiterated their commitment to strong, transparent, specific, and mandatory social and environmental standards that ensure the World Bank and other financial institutions are held accountable for the impacts of their projects. Many CSOs support a strengthening of national and corporate social and environmental standards and capacities, but will oppose any measures that weaken the World Bank's safeguard policies or the Bank's accountability for compliance with these policies. Many CSOs also support an *upward* harmonization of the policies and guidelines of financial institutions to reduce unnecessary costs and bureaucratic delays for borrowing governments. In accordance with these goals, specific recommendations for the World Bank and other international financial institutions include:

1. Adopt an effective system of **positive and negative incentives** for Bank staff and for client companies and governments to ensure safeguard policy implementation;
2. Establish clear mechanisms to make **mandatory policies more enforceable and accountable** and reject self-monitoring by borrowing governments and corporations;
3. Ensure that safeguard policies and frameworks require **compliance with national laws and international human rights, labor and environmental laws, conventions, and norms**;
4. Require full **public access to information, in appropriate languages, in a timely and predictable way** throughout the project cycle;
5. Ensure **respect for indigenous peoples' internationally guaranteed rights**, including rights of ownership over lands and resources traditionally owned, or occupied and used;
6. Include mandatory **participatory human rights impact assessments (HRIA)** as part of social impact studies;
7. Ensure that **conditions are in place for the genuine participation of affected communities** (free, prior informed consent);
8. Support and strengthen **compliance mechanisms** to ensure that citizens and particularly affected communities can hold governments and development institutions accountable for the effective implementation of their respective policies;
9. Develop more agile and responsive **appeals and redress mechanisms** at the project/country level to complement existing compliance mechanisms; and
10. Work towards **upward harmonization of mandatory standards to ensure a level playing field and minimize transaction costs** for governments seeking assistance from international financial institutions.

The Evolution of the World Bank’s Social and Environmental Safeguard Policies

In the 1980s, controversy surrounding several major World Bank projects – including the Polonoroeste highway project in the Brazilian Amazon and dam projects in India’s Narmada valley – drew international attention to some of the disastrous impacts of Bank lending. At that time, projects were designed and implemented with seemingly no attention to the consequences for local communities, indigenous peoples, natural resources and the environment. For example, the World Bank supported the establishment of huge timber plantations on tribal lands in central India, with devastating effects on the displaced Muria people. In Indonesia, the World Bank provided loans for “transmigration” (forest colonization) projects, despite the government’s explicit policy of denying indigenous peoples’ rights and forcibly assimilating them into the national mainstream. Rather than fostering sustainable development and poverty reduction, these and other Bank projects actually exacerbated poverty, destroying forests, farmland, water resources and livelihoods.²

Additionally, World Bank operations were shrouded in secrecy and locally affected communities were not informed about, much less asked to participate in, project development. The public had little knowledge about how the World Bank operated and project documents typically were not disclosed. By foreclosing effective community participation, this level of confidentiality only aggravated the negative social and environmental impacts of Bank projects.

Finally, the “loan approval culture,”³ which persists at the Bank today, contributed to inadequate social and environmental due diligence and information disclosure. The emphasis on moving big loans instead of achieving poverty reduction and other sustainable development outcomes further undermined project quality.

Fortunately, the growing national and international public outcry against rainforest destruction and human rights violations as a result of environmentally and socially negligent World Bank lending programs made it impossible for the Bank to continue with business as usual. The World Bank began to recognize that sustainable development could not be achieved through projects that impoverish communities and destroy the environment. In the late 1980s and 1990s, the World Bank developed a set of disclosure, social and environmental policies to “prevent and mitigate undue harm to people and their environment in the development process.”⁴ The goal of these policies was to protect vulnerable communities and the environment by encouraging the sustainable use of natural resources, providing for sufficient public access to information, and enabling affected communities to participate in project design and implementation.

A strengthened environmental policy was established in 1989 and other issue specific policies, including the first information disclosure policy, were developed in the 1980s and 1990s (*see Box A*). In 1998 and 1999, the World Bank’s private sector arms, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), also adopted safeguard policies which resembled those of the Bank’s public sector lending arms.⁵

² For more examples, see Bruce Rich, *Mortgaging the Earth*, 1994, Ch. 2.

³ World Bank, “Effective Implementation: Key to Development Impact” (Wapenhans Report), 1992, p. 14.

⁴ World Bank website, <http://lnweb18.worldbank.org/ESSD/sdvext.nsf/52ByDocName/SafeguardPolicies>

⁵ The International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA) are the Bank’s public sector arms.

A. The World Bank's Safeguard Policies

Environmental Assessment: The environmental assessment (EA) policy is the cornerstone of the other nine safeguard policies. It requires that an EA be completed in the early stages of project development and identifies other safeguard policy issues that need to be addressed. The EA helps to ensure that alternative projects and project designs are assessed, and that environmental factors are considered in the decision making phase of project financing.

Natural Habitats: This policy requires the protection and restoration of natural habitats and their functions. It states that the Bank does not support projects that involve significant conversion or degradation of critical natural habitats.

Pest Management: The Pest Management policy encourages the use of biological pest control and restricts the use of chemicals that harm humans and the environment.

Forests: The Forestry Policy was developed in response to global concern over the Bank's role in the destruction of massive tropical forest areas and the associated loss of biodiversity, ecosystem services, and forest resources. It previously prohibited Bank financing of commercial logging operations in primary tropical moist forest. In 2002, the policy was revised and the prohibition of financing for commercial logging operations in tropical forests was removed, replaced by vague guidelines and significant discretion for Bank staff. NGOs have questioned the justification for the policy revision and criticized the Bank for ignoring the feedback provided during global consultations. IFC has not yet adopted the revised Forest Policy. After intense advocacy by NGOs, the new policy did finally retain the crucial safeguard that the Bank will not finance operations that contravene or may cause a borrower to contravene its obligations under international environmental agreements.

Projects on International Waterways: For projects that impact other countries as a result of shared water bodies, it requires prior notification of affected countries and encourages the negotiation of agreements.

Indigenous Peoples: This policy addresses the unique challenges and potential for irreversible harm in projects that involve indigenous peoples (IPs) or their lands. The objective of the IP Policy "is to ensure that indigenous peoples do not suffer adverse effects" from Bank-financed projects, "and that they receive culturally compatible social and economic benefits." It also states that efforts to address issues pertaining to indigenous peoples "must be based on the *informed participation* of the indigenous people themselves." IP organizations have called for significant revisions to the policy and the recognition of their right to free prior and informed consent (FPIC). The policy is currently under revision and a new IP policy is expected in February 2005.

Involuntary Resettlement: The Involuntary Resettlement Policy mandates that involuntary resettlement be avoided or minimized "where feasible" and that all viable design alternatives be explored. Where involuntary resettlement is carried out, it states that affected people "should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them." The Bank revised the policy in 2001 and failed to incorporate key civil society recommendations for improved safeguards.

Projects in Disputed Areas: This policy requires the Bank to attain the agreement of both governments involved in the dispute before proceeding with a proposed project.

Cultural Property (Operational Policy Note): This policy was developed to safeguard sites having archeological, historical, religious, and unique natural values.

Other important policies:

Information Disclosure: The Information Disclosure policy outlines detailed requirements for the public disclosure of World Bank strategy, policy, project, program and Board documents. The disclosure policy was updated and strengthened in 2002. Currently, the Bank is considering a number of additional revisions to the disclosure policy.

Child and Forced Labor (IFC): This policy states that IFC will not support projects that use child or harmful forced labor.

Adoption of the disclosure and safeguard policies at the time established the World Bank Group as a leader in international efforts to minimize the negative impacts of investment operations and project finance in the developing world. The policies held, for the Bank and its partners, the potential to “add value” by ensuring levels of transparency, consultation, social and environmental protection and risk mitigation. The Bank acknowledged the importance of the safeguard policies to achieving its overall mission: “The effectiveness and development impact of projects and programs supported by the Bank has substantially increased as a result of attention to these policies.”⁶

For their part, affected communities and environmental and social justice campaigners hoped that the safeguards would reduce environmental destruction and rights violations, as well as provide a vital hook for holding the Bank accountable to the public. However, while the new policy framework was broadly heralded, insufficient attention was provided to critical issues of Bank staff incentives and accountability for policy implementation (*see Box B*). In the early 1990s, an independent commission headed by former United Nations Development Program head Bradford Morse documented the Bank’s dramatic failure to implement its policies in the Sardar Sarovar dam project in India. The findings of the Morse Commission Report moved the Bank’s Executive Board to establish an independent accountability mechanism. In 1993, the Bank’s Board created the Inspection Panel to “address the concerns of people who might be affected by Bank projects and to ensure that the Bank adheres to its operational policies and procedures in the design, preparation and implementation of such projects.”⁷ Since its establishment, the Inspection Panel has received 30 requests for inspection from affected communities and their representatives.

B. Implementation of World Bank Safeguard Policies

Since the establishment of the Inspection Panel, the safeguard policies have served as a critical accountability tool for communities when the Bank’s pledge to “do no harm” has not been met. These policies also helped to steer the Bank away from funding some of the most destructive projects, such as logging operations and large-scale resettlement projects. However, despite more than a decade of experience, the true potential of the World Bank’s safeguard policies has not yet been realized. Year after year, the World Bank’s Operations Evaluation Department (OED), the IFC’s Compliance Advisor and Ombudsman (CAO), and the Inspection Panel confirm that safeguard policies are not being implemented fully:

“The Bank’s performance on safeguard policies remains contentious. Implementation has been mixed. ... Compliance shortfalls highlighted in highly visible projects have cast doubt on the integrity of quality assurance processes.” (OED, “Promoting Environmental Sustainability in Development,” 2002, p. 19)

“Overall, performance in the area of safeguards has been only partially satisfactory. Fundamental reform of implementation and accountability processes is critical.” (OED 2002, p. 21)

“Supervision of environmental aspects of category A and particularly category B projects has been weak, and monitoring of action plan implementation spotty. This aggravates the systematic weakness in compliance monitoring and reporting. As a result, it is nearly impossible to verify the effectiveness of mitigation measures.” (OED 2002, p. 20)

“These wide-ranging findings indicate that necessary systems in place to guide the implementation and interpretation of the [safeguard policies] are either lax or absent.” (CAO, “A Review of IFC’s Safeguard Policies,” 2003, p. 21)

“the review can confirm the existence of ‘the big B phenomenon,’ wherein projects are categorized as B to avoid the additional requirements of category A, which are mainly public consultation.” (CAO, 2003, p. 25)

⁶ Ibid.

⁷ World Bank Inspection Panel, “Accountability at the World Bank: The Inspection Panel 10 Years On,” 2003, p. 3.

Where the World Bank Leads, Others Follow

Since its establishment in the mid-1940s, the World Bank Group has committed nearly \$600 billion to governments and corporations to promote sustainable economic growth and poverty reduction in developing countries. The Bank's influence, however, extends far beyond the projects funded and the reforms supported by these billions in loans, grants, guarantees, and equity investments. For better or for worse, the World Bank has had a tremendous impact on national and international development debates, as well as on the policies of governments and of other international financial institutions.

Following the World Bank's past leadership on safeguard issues, other public and private international financial institutions, including more than 25 leading commercial banks, have adopted disclosure, environmental and social policies. Working in countries where legal frameworks may be weak, environmental regulations and resources for their enforcement may be lacking, and public health and human rights protections may not be upheld, more and more institutions understand the need for clear transparency requirements and social and environmental policies to guide their lending and official aid.

In the 1990s, some regional multilateral development banks, such as the Asian Development Bank, developed disclosure, environmental and social policies for project lending. While a number of these policies fell short of the World Bank's standards and suffered from the same implementation problems, their very existence demonstrated the critical shift in thinking about acceptable social and environmental costs of development. Some of the policies were in fact stronger than those of the World Bank.

Export credit and investment insurance agencies (ECAs) – bilateral agencies that help finance, guarantee, or insure a country's exports and investments abroad – are collectively the world's largest public or publicly backed financiers of big projects in developing countries. In the mid-1990s, organizations from around the world began to draw attention to these secretive institutions and the environmental and social impacts of ECA-backed projects. Without an explicit poverty-reduction mandate or social and environmental policies, ECAs supported projects that have caused significant damage to the environment and local livelihoods, such as the Three Gorges dam in China. A global movement developed to expose this destruction and to pressure governments to adopt environmental and social policies and requirements for consultation with affected communities. In December 2003, the nations of the OECD (an organization of the world's 30 major industrialized countries) agreed to minimum common environmental, social, and transparency standards for ECAs, which included modified versions of some of the World Bank's safeguard policies. Some ECAs have gone beyond these to adopt standards that in some respects are closer to, or even exceed, those of the World Bank.

In 2003, 10 leading private banks acknowledged increasing concerns about the social and environmental impacts of the projects they finance, particularly in the developing world. Facing community resistance, environmental and social costs, reputational risk, and damage to employee morale, these banks decided to act. As part of a platform called the "Equator Principles," the 10 private financial institutions announced that they would follow the environmental and social policies of the World Bank's IFC in the projects they finance in developing countries. This move was heralded as a dramatic step for these private institutions, but they were quickly joined by many other large commercial banks, persuaded by the argument that environmental and social corporate

responsibility makes good business sense. As of January 2005, 28 “Equator Banks” representing more than 80 percent of global project finance have pledged to follow the World Bank’s IFC policies. Although these commitments remain to be implemented, the Equator Principles nevertheless represent a critical advancement in corporate social responsibility for major international private banks.

The World Bank’s Failure to Adopt Best Practice and Strengthen Standards

In the decade since the creation the World Bank’s safeguard policies, experience, technology, international and national law and standards, and even the concept of development have all progressed significantly. Unfortunately, the social and environmental policies adopted by the Bank have not kept pace with these advancements. Whereas certain World Bank policies may once have been considered “best practice,” there are now institutions and accepted standards that offer superior social and environmental protections.

For example, several private banks including Citigroup, ABN AMRO, Bank of America and HSBC have stronger biodiversity conservation and forest protection policies than the World Bank Group. The U.S. export credit agency, OPIC, uses significantly more rigorous standards than those of the World Bank to guide its support for large dams and ensure biodiversity conservation. The European Bank for Reconstruction and Development, the UK export credit agency, ECGD, ABN AMRO and others explicitly address principles of democracy and human rights in their policies and requirements. Corporations such as Alcoa, BP, DuPont and Shell have also eclipsed the Bank in setting greenhouse gas emissions reduction targets to address the primary driver of climate change.⁸

In a marked contrast to these and other financial institutions, the Bank and some of its clients seem to consider safeguard policies to be *obstacles* to lending⁹ rather than the key component of the Bank’s claims of added value, sustainable development, and risk mitigation. The Bank has not strengthened its environmental and social policies by adopting the latest best practice standards. Instead, it has tended to weaken its existing policies and reject the findings and recommendations of independent, multi-stakeholder reviews that the Bank itself commissioned in response to increasing protests by affected communities around Bank-supported projects.

World Commission on Dams

In 1998, the World Bank and the World Conservation Union (IUCN) launched the World Commission on Dams (WCD) process. The WCD was an independent body comprised of 12 commissioners who led the first comprehensive, participatory, multi-stakeholder evaluation of large dams. The WCD brought together representatives from civil society, industry, government, and dam-affected people to review the development effectiveness of large dams through a two-year consultative process. The WCD report, released in 2000, provides clear guidelines and criteria for equitable, efficient, participatory and sustainable water resources and energy development.

⁸ For more examples, see “NGO Gaps Analysis: Examples of Stronger Environmental and Social Standards than IFC’s Proposed Performance Standards,” <http://www.grrr-now.org/doc/NGO%20Gaps%20Analysis.doc>.

⁹ World Bank, “Enhancing World Bank Support to Middle Income Countries. Revised Version. Management Action Plan,” April 12, 2004.

The recommendations of the final WCD report were welcomed by a broad array of organizations and governments globally, including the UN Environment Program (UNEP), the World Health Organization (WHO), the U.S. Export-Import Bank, as well as by some companies and governments such as Germany and the South Africa. Most recently, IUCN member governments and NGOs endorsed a recommendation urging financial institutions not to fund any major dam projects unless it respects the WCD's strategic priorities.¹⁰ Additionally, a proposed European Commission "Linking Directive" stipulates that under the Clean Development Mechanism of the Kyoto Protocol, large hydropower projects must comply with international standards, including the recommendations of the WCD.¹¹ However, the World Bank, one of the two original sponsors of the WCD, has refused to incorporate the WCD recommendations into Bank policies.

Extractive Industries Review

In 2001, World Bank President Wolfensohn established the Extractive Industries Review (EIR) to examine how and if the Bank's support for oil, gas, and mining projects contributes to its poverty reduction mission. The independent review was headed by Dr. Emil Salim, the former Indonesian Environment Minister under Suharto, the former director of Indonesia's largest coal company, and chair of the 2002 United Nations Johannesburg World Summit on Sustainable Development (WSSD). The final report of the EIR, released in December 2003, concluded that World Bank interventions in the oil, gas, and mining sectors could only contribute to poverty reduction if the "right conditions" are in place. The EIR report put forward a series of recommendations on environmental, human rights, transparency, and governance issues to establish these "right conditions." The EIR recommendations were heralded by civil society organizations, indigenous peoples groups, Nobel Peace Laureates, parliamentarians, the renewable energy industry, socially responsible investors, religious groups, and many others. In its response to the EIR, however, the World Bank agreed to implement only a few of the EIR recommendations, leaving most of its policies unchanged and largely continuing with business as usual in the contentious extractive industries sector.

World Bank Safeguards Under Attack

Despite the critical advancements of the safeguard policies in terms of promoting participation and more equitable, sustainable development, as well as sound due diligence and risk mitigation, their very existence has come increasingly under attack. In fact, the policies established to protect people's livelihoods and minimize risks to communities, the environment, and investors, have been *criticized* by Bank staff and some member governments for fostering "risk aversion" at the Bank.¹²

A 2001 World Bank study, "Cost of Doing Business," was used to support this argument. Although the study found that the effect of fiduciary and safeguard policies "on project quality has been positive," and that the incremental cost of applying safeguard policies in World Bank projects was

¹⁰ IUCN Recommendation 3.24 "Financial institutions and the World Commission on Dams recommendations," approved at the 3rd World Conservation Congress, Bangkok, Thailand, November 2004.

¹¹ The Commission has recently confirmed that it interprets "international standards" for dams to include WCD recommendations. See letter from Pascal Lamy, European Commission, to Judith Neyer, FERN, Nov. 19, 2004.

¹² The Bank typically focuses on risks to the Bank and not on the economic, financial, environmental and other risks to affected peoples. (Letter from former WCD Commissioners to World Bank President Wolfensohn, July 12, 2002, <http://www.irm.org/wcd/021008.wbletter.pdf>). Additionally, while Bank management, contractors, and investors are insured against most types of risk (except reputational), project-affected communities have no such guarantees.

just a fraction (about one-third) of the cost of implementing the Bank's procurement and financial policies, it was disingenuously seized upon by safeguard policy critics to justify a weakening of social and environmental due diligence.¹³

Additionally, some Bank staff felt that safeguard policy implementation interfered with speedy project processing, effectively slowing down their ability to push money and projects out the door. More stringent transparency, consultation, and environmental and social due diligence requirements – designed to improve project quality – meant more time would be needed for project preparation and appraisal. The Bank argued that companies and governments would borrow elsewhere if safeguard requirements became too burdensome, but failed to consider whether or not the Bank's resources should support projects that have access to other sources of finance.

Pressure on the safeguard policies intensified in 2003 and early 2004 when the Bank announced plans to dramatically scale-up support for infrastructure projects and middle-income countries. It was hoped that through the Infrastructure Action Plan and Middle-Income Country (MIC) Strategy, the downward trend in lending to IBRD's middle-income borrowers, like China, India, and Brazil, would be reversed. Referring to the findings of the "Cost of Doing Business" study, the MIC strategy declared that according to "statements from clients", "IBRD has been losing ground due to increasing compliance costs (and other costs of doing business with the Bank such as long processing times)."¹⁴

However, what the "Cost of Doing Business" and the safeguard policy critics failed to examine was the cost of doing business *without* these critical social and environmental protections. These policies were in fact developed to make projects more successful and sustainable, and therefore to reduce the significant costs of failed projects. These costs include increased debt for unsustainable investments, heightened degradation of natural resources, destroyed livelihoods, conflict, and increased reputational risk for the World Bank, investors, corporations, and governments. The policies were developed to ensure that sound environmental and social standards were followed consistently and did not vary project-by-project and country-by-country. It seems clear that if there is to be any credibility in the Bank's poverty alleviation mandate, social and environmental safeguard policies and institutional accountability for their enforcement are essential minimum conditions.

However, since the late 1990s, the World Bank has endeavored to replace its mandatory social and environmental policies with flexible principles or national standards through processes such as the safeguard policy conversion, IFC's Safeguard Policy Review, and the Country Systems approach. The changes proposed by the Bank will not reduce costs or promote country ownership and capacity building. If they are approved, the World Bank will instead weaken its social and environmental standards, incur significant reputational risk, transfer responsibilities that should remain within the Bank, and undermine its accountability to affected communities.

Safeguard Policy Conversion

The World Bank initiated a process to review and supposedly simplify its safeguard policies in the mid-1990s. While modifications to make the safeguard policies stronger and more efficient are

¹³ World Bank, "Cost of Doing Business: Fiduciary and Safeguard Policies and Compliance," 2001.

¹⁴ World Bank, "Middle-Income Country Strategy," 2004, p. 18.

something that civil society has always supported, the Bank's intention was clearly the opposite. The motivation for the "conversion" process, as it was called, was to separate mandatory safeguard policy requirements from best practice statements that "would be nice to have," as Operational Directives (OD) were divided into mandatory Operational Policies (OP) and voluntary Bank Procedures (BP). Internal documents showed that the safeguard conversion process was initiated largely as a reaction to the Inspection Panel's work.¹⁵ Detailed directives with clear requirements to which Bank staff could be held accountable were converted to vague, shorter, and more "Panel proof" policies.

The conversion process affected five policies, including the Forest Policy and the Involuntary Resettlement Policy. Civil society groups charged that despite years of consultations and a number of written submissions, their input into the policy revisions was effectively ignored. With the exception of the Information Disclosure Policy, the new policies dropped key requirements, contained vague language that left much to the interpretation and sole discretion of Bank staff, and effectively weakened social and environmental protections for World Bank project lending.

*Country Systems Approach*¹⁶

Since 2002, World Bank management and member governments have argued for the use of national safeguard systems rather than the World Bank's own safeguard policies in Bank projects. In September 2004, the World Bank's Board of Directors discussed a Country Systems Issues Paper and "consultations" on the approach followed between November 2004 and January 2005. During these meetings, civil society organizations from Delhi to Brasilia expressed significant concerns about the proposed policy shift.¹⁷ A revised Country Systems paper is scheduled to be presented to the Bank's Board in February 2005.¹⁸

The Country Systems approach would enable the Bank to rely entirely on the borrowing government's environmental and social systems (e.g. a country's relevant national, sub-national, or sectoral implementing institutions and applicable laws, regulations, rules, procedures, and track records) rather than its own safeguard policies for the projects the Bank finances. Although Bank projects have always been required to comply with national laws and regulations in addition to the requirements of Bank policies, under the Country Systems approach Bank environmental and social safeguard policies would no longer directly apply. Instead, national systems would be evaluated against a simplified set of Bank safeguards and, if judged "equivalent," would be used for project preparation and implementation.

¹⁵ Office memorandum from Myrna Alexander, World Bank OPRDR, to various Bank staff. March 15, 1996. For more information see Bruce Rich, "The World Bank under James Wolfensohn" in *Reinventing the World Bank*, Jonathan R. Pincus and Jeffrey A. Winters, eds., 2002.

¹⁶ Taken from Peter Bosshard, IRN, "NGO Concerns on the Use of National Safeguard Systems in World Bank Projects," September 2004 (<http://www.irn.org/programs/finance/safeguardcritique09.04.pdf>) and Bruce Jenkins, BIC and Anne Perrault, CIEL, "Country Systems Approach to World Bank Social and Environmental Safeguards: Concerns and Challenges," December 2004 (http://www.bicusa.org/bicusa/issues/misc_resources/1775.php).

¹⁷ Letters and statements available at http://www.bicusa.org/bicusa/issues/misc_resources/1843.php, www.bicusa.org/bicusa/issues/misc_resources/1844.php, <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1097257794915/AmigosDaTerra.pdf>, <http://www.irn.org/programs/finance/pdf/050405ngocomments.pdf>.

¹⁸ For more information: www.worldbank.org/countrysystems, www.irn.org, www.ciel.org, and www.bicusa.org.

To facilitate the equivalency assessment, the Bank has condensed 65 pages of its operational policies, procedures, and annexes into a short table that drops many important safeguard provisions. It is only against this weakened, vague restatement of the Bank's safeguards that national systems will be judged. Furthermore, equivalency assessments may consider "agreed" or planned improvements in a borrower's laws and environmental and social systems, instead of evaluating only existing national laws and capacity or actual implementation track record.

The implementation of the Country Systems approach will also undermine the ability of the Inspection Panel to assess World Bank compliance with its policies. The point of reference for Panel investigations will no longer be the Bank's existing policies but the brief synthesis of the policies' "objectives and principles." This will seriously weaken the purview of the Panel and cripple its ability to provide accountability to project-affected persons and groups (*see Box C*).

Even before adopting the underlying approach to use country systems instead of safeguard policies, the Bank's Board approved pilot projects for the use of national safeguard systems in Poland, India, and the Mexican state of Guanajuato (Decentralized Infrastructure Reform and Development Project, May 2004). In the Guanajuato project, for example, the Mexican systems were found to be equivalent despite the fact that Mexico's environmental assessment (EA) policy does not require an analysis of alternatives or public consultations – two key components of the Bank's EA policy and of widely accepted international EA standards.¹⁹

The Bank's Country Systems Issues Paper points out that the variety of differing requirements of donor institutions "imposes high transaction costs on recipient countries and strains their administrative resources".²⁰ The paper further argues that relying on national rather than World Bank safeguard systems would strengthen country ownership and build institutional capacities.

Country ownership means ownership by proposed beneficiaries, affected populations, civil society and the poor, as well as by national government bureaucracies and finance ministries. The proposed Country Systems approach, however, emphasizes ownership by certain government agencies and does not include mechanisms for ensuring country ownership amongst all stakeholders.

Civil society has always promoted the strengthening of social and environmental standards and institutional capacity on the national level. Frequently, their efforts have been undermined by policy advice and structural adjustment programs of international financial institutions. Even now, the Bank's proposed approach to using country systems does not include any concrete measures to effectively strengthen national capacities. The Bank should support processes to strengthen national systems, but should do so without diluting its own responsibilities or the purview of the Panel.

Furthermore, according to the Issues Paper, moving to a Country Systems approach will actually increase costs for the Bank and borrowing governments as a result of the new analytical tools, expertise, and supervision that will be required. And while the diverse requirements of donors are burdensome and harmonization is necessary, social and environmental standards should be harmonized upwards to efficient global standards and best practices. Rather than promoting harmonization, the Country Systems approach may lead to adhocism in the policies and standards

¹⁹ The Bank maintains that for this particular project it did require that the Mexican authorities address these gaps on an ad hoc basis. However, the information on this requirement initially was not publicly disclosed.

²⁰ World Bank, "Issues in Using Country Systems in Bank Operations," p. 1.

to be followed, both for different projects in the same country and for projects in different countries. This will undermine the relatively level playing field that has been established with the existing World Bank/IFC safeguard policies through the adoption in 2003 of the Equator Principles and the OECD Recommendation on Common Approaches to the Environment for Export Credit Agencies.

C. The World Bank's Country Systems Approach: Key Concerns

- The Center for International Environmental Law's (CIEL) analysis of the Bank's country systems approach identifies nearly 150 areas of policy weakening and approximately 20 areas of strengthening (available at www.ciel.org).
- Bank management proposes to accept national safeguard systems as equivalent even if improvements in policy or practice are only being planned, and have not yet been implemented. World Bank evaluations have shown that it is very risky to base projects on promised improvements.
- The Bank proposes that the borrowing governments themselves, among other actors, could assess the equivalence of their safeguard systems with Bank policies and the quality of their compliance with national systems. Such borrower analyses would raise questions of independence and potential conflicts of interest.
- If affected people file complaints with the Inspection Panel against projects under the new approach, the point of reference for Panel investigations will no longer be the Bank's existing policies, but the brief synthesis of the policies in Annex A of the Bank's paper. This will seriously weaken the purview of the Panel.
- In contrast to earlier assurances from senior Bank representatives, the paper proposes to apply the use of country systems also to Category A projects during a two-year pilot phase.

*IFC Safeguard Policy Review Process*²¹

The IFC, the World Bank's private sector lending arm, has safeguard policies that are similar, and in some cases nearly identical, to those of the Bank's public sector lending arms.²² These policies outline a set of minimum standards to which the IFC and its clients are to be held accountable. In August 2004, the IFC launched a fundamental revision of the disclosure, environmental and social policy requirements that govern its lending operations. This process followed an initial review in 1998 and a policy review by the IFC's Compliance Advisor and Ombudsman's (CAO) office in 2002. Civil society groups have long sought adoption, implementation, and strengthening of the IFC's safeguard policies to ensure that the rights of communities impacted by IFC-financed projects are respected.

The IFC's proposed safeguard policy revision represents a complete reworking of its environmental and social policy framework. Instead of safeguard policies, the IFC would now have one Policy on Social and Environmental Sustainability and a set of Performance Standards for its private-sector clients. These proposed "standards" are actually vague principles, designed to allow much greater flexibility in implementation. Critical questions remain since the key Guidance Notes have not been made available to the public. However, the revised Performance Standards are clearly weaker than the existing safeguard policies in a number of important aspects (*see Box D*).

²¹ Adapted from Andrea Durbin, "Overall Analysis of IFC's 'Draft' Performance Standards," October 2004. For more information: <http://www.ifc.org/ifcext/policyreview.nsf>, www.grrr-now.org, and www.banktrack.org.

²² The main differences in IFC policies are the various business confidentiality exceptions provided for in IFC policies and IFC's requirements for financial intermediaries (FIs).

The IFC's proposed policy framework rejects binding standards in favor of a more discretionary, subjective system. This policy framework will not enable IFC to better advance its core mission – sustainable development and poverty reduction through private sector operations – or to establish standards that should become models for other financial institutions. The IFC has also failed to use the policy review process to address its ongoing problems with safeguard policy implementation.

While the IFC wants to foster “social responsibility” in its corporate clients, it runs the risk of making corporations instead of affected populations its primary stakeholders. The draft Performance Standards contain no articulation of IFC's responsibilities to local communities and vulnerable groups, nor any articulation of the IFC's responsibilities to ensure that the projects it selects and finances accomplish a basic level of poverty reduction at the local level. The draft Performance Standards shift the focus to the responsibilities of the private-sector client, but the responsibilities of the IFC – as a publicly owned development institution – lack clarity and definition.

The revised policy framework also fails to define the role of IFC's accountability mechanism, the CAO, to ensure proper oversight of the Policy on Social and Environmental Sustainability and the Performance Standards. The draft policy framework should be revised to ensure more accountability, greater transparency, and better implementation of the safeguard policies.

The IFC is pursuing an extremely rapid and selective plan for engaging external stakeholders on these critical policy revisions. Unlike past World Bank safeguard policy revisions which have often involved several years of consultation on just *one* policy, the IFC originally planned to revise *all* its safeguard policies (plus its disclosure policy) at once and to directly engage external stakeholders for only *four* months. Frustrated by the problematic consultation process, many civil society groups have opted not to engage in the process. In December 2004, as a result of pressure from external stakeholders, including some Equator Banks, the IFC extended its review process by several months until September 2005. However, there are no guarantees that many of the remaining process issues – regarding translation, appropriate consultation – and substantive concerns expressed by CSOs will be acted upon.²³

D. Examples of IFC Safeguard Policy Weakening

IFC's proposed new Policy and Performance Standards:

- No longer require that environmental assessments be conducted by an independent party.
- No longer require that all adversely affected people have their standard of living improved or at least restored. Some - such as those who do not own land - are only entitled to restoration.
- No longer require land-based rehabilitation for people who are displaced from land-based livelihoods.
- No longer require independent monitoring of resettlement plans.
- Change the process of screening whether or not the project area impacts indigenous peoples so that it will be done by the client and not by the IFC.
- Drop the prohibition on financing projects that “contravene any relevant international environmental agreement to which the member country concerned is a party”.
- No longer impose minimum specific criteria for the use of certain pesticides.
- Allow the private-sector client to make critical determinations of cultural heritage.
- Reference the use and treatment of radioactive materials when previous policy prohibited support for nuclear power or weapons material.

²³ For more information on process concerns, see www.grrr-now.org and www.banktrack.org. The revised IFC schedule is available at <http://www.ifc.org/ifcext/policyreview.nsf>.

Conclusion and Recommendations

While there is no “one size fits all” approach to development, there are minimum mandatory standards that should be upheld and defended by international financial institutions. These institutions have established environmental and social policies over the course of almost two decades of engagement with multiple stakeholders. Although these policies continually require improvements to reflect changes in international law and best practice, the progress made over the past 20 years should not be abandoned.

Large numbers of public and private institutions, acknowledging the importance of environmental and social standards to promote sustainable development, improve project quality, and mitigate risk, have gravitated towards – and beyond – the Bank’s safeguard policies. Now the World Bank is moving in the opposite direction, undercutting transparent criteria, requirements, and objectives to which it can be held accountable, and leaving communities, yet again, to bear the highest risks.

In response to these trends, civil society organizations have reiterated their commitment to strong, transparent, specific, and mandatory social and environmental standards that ensure the World Bank and other financial institutions are held accountable for the impacts of their projects. Many CSOs support a strengthening of national and corporate social and environmental standards and capacities, but will oppose any measures that weaken the World Bank’s safeguard policies or the Bank’s accountability for compliance with these policies. Many CSOs also support an *upward* harmonization of the policies and guidelines of financial institutions to reduce unnecessary costs and bureaucratic delays for borrowing governments. In accordance with these goals, specific recommendations for the World Bank and other international financial institutions include:

1. Adopt an effective system of **positive and negative incentives** for Bank staff and for client companies and governments to ensure safeguard policy implementation;
2. Establish clear mechanisms to make **mandatory policies more enforceable and accountable** and reject self-monitoring by borrowing governments and corporations;
3. Ensure that safeguard policies and frameworks require **compliance with national laws and international human rights, labor and environmental laws, conventions, and norms**;
4. Require full **public access to information, in appropriate languages, in a timely and predictable way** throughout the project cycle;
5. Ensure **respect for indigenous peoples’ internationally guaranteed rights**, including rights of ownership over lands and resources traditionally owned, or occupied and used;
6. Include mandatory **participatory human rights impact assessments (HRIA)** as part of social impact studies;
7. Ensure that **conditions are in place for the genuine participation of affected communities** (free, prior informed consent);
8. Support and strengthen **compliance mechanisms** to ensure that citizens and particularly affected communities can hold governments and development institutions accountable for the effective implementation of their respective policies;
9. Develop more agile and responsive **appeals and redress mechanisms** at the project/country level to complement existing compliance mechanisms; and
10. Work towards **upward harmonization of mandatory standards to ensure a level playing field and minimize transaction costs** for governments seeking assistance from international financial institutions.