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ED Sundaran Annalamalai

AED Boonchai Charassangsomboon

Malaysia, Myanmar, Nepal, Thailand, Indonesia,
Brunei Darussalam, Fiji, Lao People's Democratic Republic,
Singapore, Tonga, and Vietnam
The World Bank Group

Re: Redraft of the new safeguards framework of the World Bank before a new round of consultations

Dear ED Annamalai and AED Charassangsomboon,

We write as concerned citizens and stakeholders of the country represented by your office at the World Bank. **We want to bring your attention to our urgent call for a redraft of the new safeguards framework of the World Bank before a new round of consultations takes place. We identified serious dilutions and major gaps in the draft safeguards proposed by the Management.**

We urge you to consider the concerns in our submission as your office develops its position before the July 30 CODE meeting. We fear that if the significantly weakened safeguards draft goes un-rectified, this office and other EDs would be seen as legitimizing a new generation of safeguards that will further disempower the poor from defending their rights to participation, equity and accountability while weakening minimum protection for the environment linked with World Bank investments and non-lending activities.

Like other citizens in many countries, we share their concerns with the draft. For us in Nepal, the draft provides measures not to reverse, but to perpetuate, ill-conceived and less-supervised projects such as our appalling experience with the Arun III Hydropower project and the Power Development Project. These two project cases highlight not just the policy violations but also the

lack of Bank supervision and delegation of too much design, monitoring and reporting responsibilities to the borrower with weak institutional capacity, which led to involuntary resettlement, violation of Indigenous Peoples' communal land and livelihood rights, peoples' inability to access and scrutinize design documents and inability to participate meaningfully in project decision making. Your office should recall that this project did not improve their economic well-being; instead they have contributed to further impoverishment, livelihood insecurity and a damage to their cultural property.

The fact that our government has hydropower, water infrastructure and other project loans with the World Bank using investment loans (and recently a Program for Results lending instrument) presents considerable social and environmental risks that need to be addressed by strong safeguards. As the Bank is looking to negotiate further project loans with Nepal under a volatile political environment, it warrants a mandatory safeguards that clearly provide the specific supervision roles of the Bank, the government's responsibilities and the important function of independent monitors. We are not seeing these in the draft.

Among the most concerning for us are the dilutions in *ESS5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement*. The dilutions we have identified are the following:

- It removes the critical requirements in OP/BP 4.12 that the Borrower submits a comprehensive resettlement-planning instrument, including all relevant censuses and baseline studies to the Bank, and the Bank reviews the resettlement instrument and satisfies itself that it conforms to Bank policy prior to submitting the project for approval. The new framework allows the Bank to move forward with financing projects that uproot people from their land, homes and livelihoods, with nothing more than a vague commitment from borrowers to comply with the ESS in an open-ended manner and with no details on how they intend to do so. This gutting of resettlement appraisal requirements represents the single most dangerous dilution and abdication of Bank responsibility to avoid and mitigate adverse impacts of displacement caused by Bank-supported projects.
- It removes the key objective, which was in line with the Bank's goal of shared prosperity, that "resettlement activities be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits." The renewed emphasis on compensation for lost assets in the draft ESS5 is a significant regression in the Bank's approach to resettlement, going against 30 years of empirical research, much of which has been commissioned and endorsed by the Bank, that shows that compensation without sustained development support cannot prevent impoverishment.
- It narrows the policy's scope to exclude land titling/regularization activities, regulation of land use on regional or national level, and all other activities resulting in displacement that are "directly and significantly related" to Bank-assisted projects, which are currently covered by OP 4.12, para 4. This means that people whose land rights are made insecure through a Bank-financed land administration project, because, for example, they are not determined to have ownership rights, are left completely vulnerable to eviction by their government, without any safeguards protections from the Bank.
- It removes current policy requirements that all sub-projects involving resettlement must comply with Bank safeguards. Under the new framework, only sub-projects involving

resettlement that are classified - by the Borrower - as “High Risk” must comply with ESS5. This means that projects that are classified as having “Substantial Risk” need not comply with ESS5 but only national regulations. Under the current policy, the Bank requires that a satisfactory resettlement plan, including baseline socioeconomic survey information, be submitted to the Bank for approval before the subproject is accepted for financing. Under the new framework, borrowers (including financial intermediaries) are not required to submit resettlement plans to the Bank for prior approval, even for High Risk sub-projects.

- It further weakens already inadequate requirements to assess alternatives, including a no-project option, with full participation of potentially affected people, in order to avoid or minimize physical or economic displacement impacts. The draft fails to ensure that projects supported by the Bank that result in displacement have a legitimate public interest/general welfare value in accordance with international law requirements. It contains none of the provisions, currently found in BP 4.12, requiring the Bank task team must work together with the Borrower to explore alternative project designs to avoid or minimize displacement and to satisfy itself that such alternatives have been adequately considered.
- It removes the requirement for comprehensive household baseline data and other socio-economic studies, currently required in OP 4.12, Annex A. This baseline data is indispensable to resettlement planning, monitoring and evaluation and to ensuring that affected people receive restitution for impacts suffered.
- It dilutes requirements for information disclosure, consultation and participation of displaced persons regarding resettlement planning, implementation and monitoring. The new draft removes any reference to informing displaced persons about their rights pertaining to resettlement. It significantly dilutes the language in OP 4.12 regarding the provision of choices among resettlement alternatives to affected people. There is also no requirement in ESS10 to actually take the views of affected people into account; borrowers are only expected to “incorporate feedback, where appropriate.” By contrast, in the current policy, borrowers must not only take the views of resettlers into account, but they must document how they did so in the draft Resettlement Action Plan and the Bank task team must appraise whether this has been done satisfactorily, per the requirements of BP 4.12.
- It massively dilutes Bank supervision responsibilities. The four paragraphs on supervision of resettlement in the current BP 4.12 have been reduced to three sentences in the draft *Environmental and Social Policy* (ESP) and two sentences in the recently revised OP 10.00, which are extremely vague, not specific to resettlement, and based primarily on a review by the Bank of self-reporting by the Borrower.

We note that President Kim has made a public commitment that the World Bank will not dilute the strong provisions in current standards. Yet, this promise is not upheld by the management’s draft. What we see are provisions that eviscerate the minimum protections for the public to scrutinize, participate and offer alternatives at the design and implementation stages of projects.

We also share the concerns of other citizens about **major dilutions** detected in the draft safeguards:

- Draft allows projects to go ahead without meeting safeguard requirements as long as it's within a "timeframe acceptable to the Bank" (ESP 13 p11; a loose and open-ended timeline for policy compliance undermines time-sensitive public access to information and participation);
- Draft has replaced previous environmental A/B/C risk categories with high/substantial/moderate/low risk (ESP 20 p12) with no explanation of how each would receive separate treatment (without clear assessment and determination criteria, the Bank and the government will mis-categorize a high risk project to a low risk one just to fast track approval and avoid a reasonable time for public scrutiny);
- It eliminates a requirement that ESIA's for high-risk projects are disclosed prior to appraisal; ([OP 4.01](#) 16);
- Its introduction of "biodiversity offsets" seriously weakens existing protections as it allows the destruction of previous "no-go" areas for critical natural habitats and protected areas (ESS 6 15 p66; this is viewed to open up these "no-go areas", many which are protected via effective measures such as 'community-based forestry', for economic concessions, forest clearance or even agribusiness and plantation expansion).

We are also concerned with the fact that because the World Bank has adopted the IFC Performance Standards as its model, the draft proposes in all the ESS the **deferral of responsibility from the Bank to the borrower**. The draft makes provisions that removes the Bank's supervision and implementation support functions and transfers them to the borrower whose policy equivalence or policy implementation capacity remains low and questionable both at the national and sub-national levels. Don't get us wrong; we support country ownership and the need to protect national sovereignty. However, these must be matched with clear obligations and predictable measures to protect the rights of the affected communities and concerned citizens in the governance of Bank investments. The Bank and the borrower must have clearly delineated roles in the design, implementation, supervision, monitoring, reporting and evaluation of projects that these cannot simply be delegated to the borrower simply because of the often-abused rhetoric and narrow understanding of country ownership. However, the draft proposes to rely extensively on the borrower's own systems (ESP 24 p13), or those of other development partners (ESP 9 p11) or financial intermediaries (ESP 10 p11), without clear criteria on when and how this would be acceptable. With the evisceration of Bank's oversight function comes a heavy reliance on self-reporting by borrowers on progress in meeting environmental and social commitments during implementation (ESP 47 p17). Meanwhile, there is no explicit commitment to independent monitoring, which is critical to verify or prevent compromised reporting.

Our organization works with indigenous peoples, whose communal land and livelihood sources have been threatened by World Bank investments in mining and other medium to high-risk investments. Safeguard policies provide them the minimum procedural rights to assert their rights to information, participation and accountability. The draft is weakening these minimum protections due to the **"opt out" clause for Indigenous Peoples Policy**.¹ This would seriously undermine the rights of indigenous peoples to self-determination and collective ownership of lands, territories and resources. This provision also contradicts the international consensus that has grown around these crucial legal protections, which arose in part because of previous attempts by governments to usurp the lands and resources of indigenous peoples. Further,

¹ We note that there are some positive aspects of the proposed indigenous peoples standard (ESS 7) including the limited application of free, prior, informed consent (FPIC). However, these advances are significantly undercut by the provision allowing borrowers to propose an "alternative approach" that amounts to opting out of applying the standard altogether in certain situations (ESS 7 9).

allowing borrowers to “opt out” of applying policies they find unpalatable would set a dangerous precedent. The “alternative approach” provision must be removed.

The draft offers nothing but a business-as-usual approach to addressing climate change.

It does not require climate change risk assessments for Bank projects with climate-related impacts, which is deeply worrying considering the Bank’s growing billions of investments in disaster-risk reduction investment such as its policy-based lending instrument for a post-Yolanda reconstruction projects in the Philippines and other countries most vulnerable to sea level rise and erratic weather patterns. Despite the Bank’s prominence in warning of the dangers that a warming world poses to development, there is only sporadic mention of climate change in the safeguard proposal and nowhere is it laid out clearly what governments have to do to assess if their projects will exacerbate climate change. And although the draft proposes that the Bank will start accounting for some Greenhouse Gas (GHG) emissions of its projects, it does not require that GHG accounting takes place for all Bank projects and it remains unknown how the information collected on GHG emissions will be used and for what purposes. Around half of Bank’s portfolio will not be subjected to any safeguards, leaving large programmatic fields, with potential climate impacts, completely outside safeguards coverage.

ED Annamalai and AED Charassangsomboon, we believe that the **draft is a non-starter, offers insufficient detail as a basis for consultation.** In addition to the above-mentioned dilutions and major gaps, the draft has **missing parts there that make it difficult for us and all WB Board members to provide informed and comprehensive comments.** These missing pieces are the implementation guidance and budget, information and management systems and guidance notes. There’s no point of endorsing the draft when this is incomplete, riddled with ambiguities and unacceptable provisions, and is for further consultations. We urge your office to bring the draft back to the Management to re-draft. You can learn from your counterpart in ADB where they had to delay the consultation process until the first draft, very poorly done, was substantially revised. Without these key pieces, there is simply not enough detail to merit 3 months of consultations.

We look forward to the response of your office. We are open to participating in next round of consultations, offering informed and grounded recommendations. However, it is our collective view that these consultations would be futile if we you are consulting on a non-starter draft. **Have this draft revised to be acceptable for external consultations.**

Sincerely,



Ratan Bhandari
Coordinator