

March 1, 2015

Via Electronic Mail

The World Bank
1818 H Street NW
Washington, DC 20433

Re: *Comments on the Draft Environmental and Social Framework - ESS10 and Implications on Accountability*

Dear Safeguards Team,

We, the undersigned organizations, provide the following comments on the first draft of World Bank's Environmental and Social Framework (the "Framework"), and in particular on Environmental and Social Standard 10 regarding Information Disclosure and Stakeholder Engagement (ESS10). Many of our organizations have provided technical and legal support to communities harmed by Bank projects and have invested much time and resources to increase accountability at the Bank, including through policy reforms of the Bank's independent accountability mechanism, the Inspection Panel. We appreciate the opportunity to provide recommendations and do so with the expectation that our comments will be taken into account to increase accountability to communities harmed by Bank projects and programs.

We have limited the scope of this submission to: (1) recommendations for improving the grievance redress mechanism referenced in ESS10;¹ and (2) comments on the overall Framework's implications on accountability vis-à-vis the Inspection Panel.

I. ESS10 -- Grievance Redress

We commend the Bank on the addition of a specific safeguard on Information Disclosure and Stakeholder Engagement. Similarly, we appreciate the Bank's efforts to increase access to remedy for communities through the addition of language requiring grievance mechanisms. However, the Bank must set out clear requirements in ESS10 to ensure greater accessibility, transparency and efficacy of these mechanisms. We recommend that the Bank:

- **Benchmark and cite the United Nations Guiding Principles on Business and Human Rights "effectiveness criteria for non-judicial grievance mechanisms"² in the requirements for design and implementation of project-level grievance mechanisms.** The effectiveness criteria, summarized below, elaborate important principles that provide a solid foundation on which a transparent grievance mechanism can be built:

¹ We understand that ESS4 (Community Health and Safety), ESS5 (Land Acquisition, Restrictions on Land Use and Involuntary Resettlement), and ESS7 (Indigenous Peoples) also require a grievance redress mechanism. We will not discuss those ESSs here, but we hope the parameters we set in ESS10 can likewise improve those systems.

² United Nations Guiding Principles on Business and Human Rights, *Implementing the United Nations "Protect, Respect and Remedy" Framework*, Principle 31(a)-(h).

- *Legitimacy*, which enables the trust of stakeholders and requires independence from political influence and internal conflicts of interest stemming from the fact that grievance mechanisms are often operated by the same actors who have allegedly committed the human rights/environmental abuses;
- *Accessibility* in that the mechanism is known to all stakeholder groups and provides assistance to those who may face barriers to access;
- *Predictability*, by way of clear and known procedures, indicative timeframes for each stage of the process and a means of monitoring implementation;
- *Equitability/fairness*, by ensuring that aggrieved parties can engage in a process on fair and equitable terms;
- *Transparency* by keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- *Rights-compatibility* to ensure consistency with internationally recognized human rights standards;
- *A source of continuous learning*, drawing upon relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms; and
- *Based on engagement and dialogue* with the potential users of the grievance mechanism.

The World Bank already has resources from which to draw upon best practice. Specifically, its publication, *Evaluating A Grievance Redress Mechanism*,³ provides evaluative questions for the design and implementation of a grievance mechanism, based on the Guiding Principles effectiveness criteria. The risk of not incorporating these criteria is noted in the Commentary to the Guiding Principles: “[p]oorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.”⁴

³ World Bank, *Evaluating A Grievance Redress Mechanism*, available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/09/08/000442464_20140908140819/Rended/PDF/903910WP0Evaluating0Box385311B00PUBLIC0.pdf.

⁴ United Nations, Guiding Principles on Business and Human Rights, *Implementing the United Nations “Protect, Respect and Remedy” Framework*, Commentary to Principle 31.

- **Provide meaningful opportunities for affected communities and beneficiaries to inform the design of the project-level grievance mechanism as part of a robust participatory consultation process** so as to ensure that the mechanism is culturally appropriate, sensitive and accessible to diverse members of the community, including to those who may face additional barriers to access. Barriers to access may include a lack of awareness of the mechanism, literacy, language, costs, physical location and fear of reprisals. The Office of the Compliance Advisor/Ombudsman advisory note, *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*, found that involving the community in the design of the grievance mechanism to identify key factors was one core marker of an effective, credible grievance mechanism.⁵ The community should be involved to identify key factors, such as the kind of disputes that could arise during the project cycle, the availability of local resources to resolve conflicts, and the methods in which people in the community actually want to raise concerns. According to that advisory note, an effective grievance mechanism should use and publicize multiple points of entry, including face-to-face meetings, written complaints, telephone and e-mail, in order to decrease barriers to access.⁶ Further, to address the literacy or language barriers to access, the threshold for submitting a complaint to the mechanism should be low.
- **Require the borrower to conduct outreach and provide informational materials and services in all primary languages spoken by project-affected people** so as to ensure access to the mechanism. All documents generated by the mechanism in a particular case, including any contracts or agreements, should be translated into local language(s). Furthermore, grievance mechanism outreach activities and documents explaining the purpose of the mechanism, its functioning and the rights of project-affected people should also be in the local language(s). Wherever project-affected people are illiterate, the mechanisms should be required to conduct verbal outreach efforts and other activities in the local language(s).
- **Require the borrower to inform project-affected communities of the existence of the Inspection Panel and its procedures.** Information related to the existence and role of, and access to, the Inspection Panel, including brochures and other resources should be publicly available in the local language(s), including being distributed by the project grievance mechanism. This information should also specify that accessing the Inspection Panel does not preclude filing of a complaint to the grievance mechanism, or vice versa.
- **Provide, without qualification, for anonymous complaints.** Currently, ESS10 paragraph 23(b) states, “Where there is threat of reprisal, the mechanism will allow for anonymous complaints to be raised and addressed.” We recommend omitting the conditional phrase, “[w]here there is threat of reprisal.” In situations in which the grievance mechanism cannot move forward with a complaint and maintain anonymity, the borrower should be required to notify the user and determine how to proceed in consultation with the user. The borrower

⁵ The Office of the Compliance Advisor/Ombudsman, *Advisory Note: A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*, June 2008, at pp. 2-3 (discussing good practice markers for an effective grievance mechanism).

⁶ *Id.*

should also be required to inform affected people in all outreach materials and activities and at the start of a grievance process that they may request anonymity.

- **Require the borrower to establish procedures for addressing instances of reprisal.** The ESS should go beyond mere anonymity provisions to ensure that mechanism users are protected from reprisal or fear of reprisal for filing a grievance. We recommend that the Bank require that the borrower have procedures in place based on best practices in the event that reprisal occurs or the user fears that it will occur.
- **Ensure that mechanism users are allowed access to independent legal counsel or other advisors.** Access to outside legal counsel or other advisors is fundamental to promoting a fair and equitable process for users of the mechanism. We recommend that the Bank require that the grievance mechanism allow affected people to consult with counsel or advisors of their choosing, and to have counsel or advisors present, at any time during the grievance process. Borrowers should also be required to inform affected communities that they have a right to consult with outside parties, including legal counsel, before and at any time during the grievance process. The Commentary to Principle 29 of the United Nations Guiding Principles on Business and Human Rights states that “[o]perational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either. They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms.”⁷
- **Require the borrower to maintain an updated publicly available registry, available in local languages, of each complaint received by the grievance mechanism, the status of the complaint, relevant timeframes, the response of the borrower/implementing agency and resolutions reached, if any. Appropriate steps should be taken to preserve the anonymity of complainants.** In addition to increasing transparency and thus engendering trust in the mechanism, this will allow for regular analysis of patterns and causes of grievances and can assist the borrower and the Bank in improving policies and practices, managing risk and prioritizing supervision.
- **Preserve the right of communities to access the Inspection Panel directly, without first using or exhausting the project-level grievance mechanism and/or the corporate Grievance Redress Service.** Where the grievance mechanism provides for “an appeals process,” as currently envisaged in ESS10, Annex 1, it is critical that the Bank does not prevent communities from accessing the Inspection Panel directly. Further, the Bank should require the borrower to inform communities that access to or exhaustion of these procedures is not a precondition to accessing the Inspection Panel.

⁷ United Nations, Guiding Principles on Business and Human Rights, *Implementing the United Nations “Protect, Respect and Remedy” Framework*, Commentary to Principle 29.

In addition to the grievance mechanism envisaged in ESS10, the Framework provides that communities adversely impacted by a Bank project may also submit a complaint to the Bank's corporate Grievance Redress Service. Specifically, the Framework states:

Project-affected communities and individuals may submit complaints regarding a Bank-financed project to the project grievance redress mechanism, appropriate local grievance mechanism, or the World Bank's corporate Grievance Redress Service (GRS). . . . After bringing their concerns directly to the World Bank's attention and giving Management a reasonable opportunity to respond, project-affected communities and individuals may submit their complaint to the World Bank's independent Inspection Panel . . .”⁸

This language could be construed to suggest that communities must first utilize the Grievance Redress Service or grievance redress mechanisms as a predicate for accessing the Inspection Panel. This would pose an unreasonable barrier to access and remedy. We recommend that the language be modified to make clear that communities can access the Inspection Panel directly, after raising their concerns with Bank Management in whatever way they choose.

- **Ensure that the grievance mechanism has the authority, resources, independence and capacity necessary to be effective.** The effectiveness of any redress mechanism hinges not only on strong standards, but also adequate implementation and whether there are sufficient resources allocated and an institutional commitment to the process. Furthermore, grievance mechanisms must be housed, staffed and granted authority in a manner that promotes their ability to maintain independence. We note that historically grievance implementation and resource allocation is not an area in which the Bank has excelled. One finding of the Bank's report, *Global Review of Redress Mechanisms in World Bank Projects*, was that although grievance redress mechanisms were included in project documents, they simply were not put in place.⁹ Bank staff pointed to a few root causes, namely that Bank budgets are allocated primarily to project preparation, not implementation; the Bank does not systematically document or measure grievance mechanism implementation; grievance mechanisms are rarely included in results frameworks and therefore not monitored; and finally, grievance mechanisms are not a priority for clients.¹⁰ Where good practice was found, the report attributed it to the “individual conviction of a Task Team Leader” rather than from “an institutional commitment of the Bank.”¹¹ In this regard, the Bank should provide clear guidelines and practical tools to support grievance mechanism implementation and borrower capacity. The Bank should also conduct an assessment of the

⁸ Framework, *Overview of the World Bank's Environmental and Social Framework*, para. 10; see also *Environmental and Social Policy*, para. 51.

⁹ World Bank, *Global Review of Redress Mechanism in World Bank Projects*, available at: http://www-wds.worldbank.org/external/default/WDSCContentServer/WDSP/IB/2014/09/08/000442464_20140908134740/Rend ered/PDF/903880WP0Box380edressMechanismsinWB.pdf, at para. 3.17.

¹⁰ *Id.* at para. 3.17.

¹¹ *Id.* at para. 3.20.

availability, credibility, independence and capability of local and national authorities to operationalize a grievance mechanism, which should then inform an action plan to implement/strengthen grievance capacity. *The World Bank's Approach to Grievance Redress in Projects*,¹² also benchmarked to the effectiveness criteria, provides guidance on strengthening grievance mechanism capacity in Bank projects. In addition, the Bank should require borrowers to provide project-affected communities regular, periodic opportunities to submit feedback on the mechanism's performance. Grievance mechanism implementation, including budgetary allocation and capacity building, should also be included in the Environmental Social Commitment Plan, which is a legally binding document.

- **Require that stakeholders have an opportunity to participate in the design and implementation of a mechanism monitoring system.** Although ESS10 mentions the monitoring and implementation of stakeholder engagement activities under paragraph 24, there is no requirement that stakeholders be allowed to comment on the design and implementation of a monitoring system that assesses the performance of the mechanism itself. Because grievance mechanisms are intended for the use of affected community members, it is imperative that any monitoring and evaluation of those mechanisms incorporates the direct feedback of those user groups through monitoring site visits and other means. We recommend that the Bank state a separate requirement that, as part of overall monitoring and evaluation efforts, affected communities shall be provided clearly communicated, regular, periodic opportunities to submit feedback on the mechanism's performance.

Monitoring activities should pay particular attention to common risks, such as mechanisms failing to make independent, un-biased decisions, or a lack of fairness and equitability in grievance proceedings involving affected people with no other options for redress. To promote the collection of accurate information and candid responses, an independent, third party should conduct monitoring activities. Conversations should be held with affected people in private to promote a safe, neutral space for open dialogue.

- **Ensure that the mechanism is a continuous source of learning.** Beyond their role in resolving individual grievances, grievance mechanisms can serve a valuable role by providing feedback and lessons learned.¹³ A well-functioning grievance mechanism can serve as an early warning system regarding larger, systemic problems and indicate necessary changes to project management and implementation.¹⁴ Currently there is no guidance on the importance

¹² World Bank, *The World Bank's Approach to Grievance Redress in Projects*, available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/09/08/000442464_20140908140040/Rendered/PDF/903900WP0Box380nceRedressinProjects.pdf.

¹³ United Nations, Guiding Principles on Business and Human Rights, *Implementing the United Nations "Protect, Respect and Remedy" Framework*, para. 31(g).

¹⁴ Office of the Compliance Advisor/Ombudsman, *Advisory Note: A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*, p. 11, available at: <http://www.cao-ombudsman.org/howwevork/advisor/documents/implemgrieveng.pdf>.

of extracting lessons from the grievance mechanism to inform ongoing and future project operations. This is a missed opportunity to encourage borrowers to see the grievance mechanism as a source of learning and a way to generate lessons to improve project operations. We recommend that a provision be added explicitly encouraging the borrower to implement procedures to receive operational feedback and extract lessons from the grievance mechanism in order to improve overall project implementation and monitoring.

II. Implications of the Framework on Accountability vis-à-vis the Inspection Panel

We express serious concern regarding the Bank's shift away from requirements-based safeguard policies to a system of weakly regulated deferral of Bank safeguard responsibility to borrowers and open-ended compliance. As currently written, the responsibilities of the Bank, particularly with respect to its environmental and social due diligence system, lack specificity and are subject to much discretion. As one example, the Framework states that the Bank "only supports projects that [...] are expected to meet the requirements of the ESSs *in a manner and within a timeframe acceptable to the Bank.*"¹⁵ This provision allows for a phased-in approach to compliance, thereby enabling the Bank to move forward with a project even if, at the time of completion of the due diligence assessment, a project does not meet the requirements of the ESSs. Taken together, similar provisions and qualifying statements found in the Framework define the scope of the Bank's responsibility too narrowly, abrogating the Bank's responsibility for ensuring its projects do not harm communities or the environment.

Clearly delineated procedural requirements are needed for the Inspection Panel to fully carry out its mandate. In the first phase of the Safeguards Review, the Inspection Panel submitted comments, noting that "[t]he Panel's experience shows the importance of clarity of requirements, both for project-affected communities as well as for Bank staff."¹⁶ Without a clear standard against which to assess performance, the Inspection Panel will not be able to clearly identify instances of non-compliance by the Bank.

Further, under the draft Framework, the scope of the Inspection Panel's review will be significantly narrowed. As currently written, only sub-projects classified by the borrower as "High Risk" are subject to the ESSs—sub-projects classified by the borrower as having a "Substantial Risk" or lower risk categorization only need to comply with national legislation. This loophole also applies to private sector investments through financial intermediaries. This carve-out removes a significant portion of the Bank's lending from the purview of the ESSs and therefore from the Panel's mandate. At the very least, we recommend that all "High Risk" and "Substantial Risk" activities funded by the Bank must meet the ESSs requirements, including those supported by borrower frameworks.

¹⁵ World Bank, *Draft Environmental and Social Framework*, July 30, 2014, para. 13 (emphasis supplied).

¹⁶ Inspection Panel, *Lessons from Panel Cases: Inspection Panel Perspectives*, May 2013, p. 1.

Likewise, this lack of clarity will make it more difficult for affected people to have a clear understanding of what minimum protections apply, what should be expected of the Bank and whether the Bank has violated those standards. To meet the Inspection Panel's eligibility requirements, requesters must allege that the Bank violated its own policies and procedures and they have or are likely to suffer material adverse impacts as a result of those policy violations. As stated in a December 2014 letter sent to President Kim by 28 United Nations Special Rapporteurs, "it is particularly troubling that the structure and language of the draft ESF will make it much harder . . . for requesters to be able to comply with this eligibility requirement [of the Panel], effectively a barrier for complainants."¹⁷ Indeed, the imprecise language in the Framework, coupled with a lack of minimum time-bound thresholds, presents a barrier for potential requesters to access the Inspection Panel and undermines the Panel's effectiveness. The implications of these statements and qualifying language are that compliance with the Framework is not a strict requirement, but rather something to which to aspire. By substituting the clear, mandatory requirements of the current safeguard policies for policies favoring open-compliance and increased reliance on staff discretion, the Bank blurs the exact thresholds or standards that apply to each project.

Finally, it is worth noting the fundamental purpose of the Bank's safeguard policies: they were not created for the benefit of borrower countries, nor for Bank management, but for the protection of communities and the environment on which the harms can and often unduly fall. Given the Bank's increased appetite for risk taking, including in fragile conflict-affected States and through large, transformational projects, clear, enforceable standards and strong accountability mechanisms are needed—arguably more than ever.

Thank you for your attention to these issues. We appreciate the opportunity to comment on the Framework, and we look forward to the results of the consultation and consideration of our comments.

Respectfully,

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¹⁷ Letter to President Jim Yong Kim from Alston et. al., December 12, 2014, pp. 14-15.

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