

Amnesty International

Submission to the World Bank Safeguards Policies Review and Update

April 2013

1. Introduction

Amnesty International (AI) welcomes the review of the World Bank's (the Bank) environmental and social safeguards policies and is calling for the incorporation of human rights due diligence in the Bank's revised editions. The present submission highlights the centrality of human rights due diligence in strengthening the Bank's capacity to ensure the effective implementation of its safeguards policies and ensure that activities it supports do not cause or contribute to human rights abuses.

Amnesty International welcomes the commitment made by World Bank President Kim that the review process will not dilute the content of existing safeguards. AI also welcomes the Bank's intention to consider Human Rights, Land Tenure and Natural Resources, the Free Prior and Informed Consent of Indigenous People, Disability, Gender, Labour and Occupational Health and Safety, and Climate Change – described as “emerging issues” - as part of the review process.

While AI appreciates the number of country consultations organized by the Bank, the organisation is concerned about some aspects of the **process of consultation adopted by the Bank**. Amnesty International's main concerns are as follows:

Separate expert meetings on the key issue areas. Given the interconnectedness and interdependence of all the ‘emerging issues’, both in relation to each other and to other issues covered by the safeguard policies, the organization is concerned that these issues are discussed in isolation during expert meetings. It is also disappointed to note that these meetings have been organized - and in particular confirmed - with very little notice, making it difficult for relevant experts to attend because of prior commitments or difficulties in making travel arrangements within the time frame.

Short, multi-stakeholder consultations are not fit to gather meaningful input. Similarly, with regard to the multi-stakeholder consultations, the period of time allocated for most of these meetings is short, making it very difficult to have meaningful exchanges. Each of the consultations is announced on the website between three to six weeks before it is held. Some have been announced with shorter lead times than this - for example, the one held in South Africa for which only a few days notice was given. This has reportedly resulted in poor participation in some of the consultations. Feedback that we have received from consultations already held in Washington, Oslo, Paris, Brussels, Ottawa, London and Lima underpins the concerns raised here, with numerous participants reporting a lack of opportunity for in-depth discussions of specific issues, a lack of outreach to national non-governmental organisations and very short consultation times. Concern has also been expressed by some participants that the reports of the consultations or feedback on some experts meeting have “watered down” the issues they raised.¹

Consultations with Project Affected Persons. Amnesty International is also particularly concerned about the lack of adequate participation of project-affected communities in the consultation process. In response to a question on this issue, raised at the consultation meeting in London in March 2013, Bank representatives informed participants that the process to identify key project-affected

¹ Brussels consultation and initial feedback provided by the Bank on the human rights experts meeting of New York.

communities was underway and consultations with them would begin after this was completed. While the Bank, has reported some progress in the identification of the groups, it has still not made public the list of the 8-10 affected communities that will be consulted, or details of how, when and where these communities will be able to provide their input.

2. The World Bank and Human Rights

It has been argued that International Financial Institutions, such as the World Bank “are so powerful today that they have enormous influence on the policies and programmes of national governments, particularly in the poorest weaker countries.”² In November 2012 Amnesty International, Human Rights Watch and the Centre for International Environmental Law sent President Jim Kim a letter which underlined the need for the Bank to commit to human rights;³ President Kim’s answer stated that “...the Bank is bound to operate in accordance with the mandate vested in it by the shareholders, as reflected in the Article of Agreement ”⁴ However, as a specialized agency of the United Nations (UN), the World Bank is required, as a minimum, to respect the purpose set forth in article 55 of the Charter of the United Nations, including “universal respect for, and observance of, human rights.”⁵ It is important to note that incorporating explicit human rights safeguards within the policies of the World Bank does not contradict the Bretton Wood articles, i.e. this does not amount to political interference by the World Bank in the sovereign affairs of states. In fact, in doing so, the World Bank merely assures that its own activities do not harm the rights of affected people, in other words, the World Bank merely assures that its own activities respect human rights. The Special Rapporteur on Adequate Housing has also recently emphasized that “the obligations of States parties to international human rights treaties should be understood as extending to their membership of the World Bank and their role as Executive Directors, including decisions to support the adoption of operational policies and approval of lending, credit and grant proposals.”⁶ These obligations include the duty of States parties to the International Covenant on Economic Social and Cultural Rights to respect the rights recognised in the Covenant and take steps through international assistance and cooperation, to the maximum of their available resources, with a view to achieving progressively the full realization of these rights.⁷

Because of its significant role in development assistance and cooperation, as well as its role in providing technical assistance and shaping reform agendas in numerous countries, both of which are likely to have an impact on human rights, a number of UN special Procedures and Committees have increasingly been addressing the human rights responsibilities of the Bank and the need for the Bank to take steps to uphold these responsibilities.⁸

² The Right to Food: Report of the Special Rapporteur on the Right to Food, Jean Ziegler, UN Doc. E/CN.4/2006/44 (2006) para 39.

³ <http://www.amnesty.org/en/library/info/IOR80/005/2012/en>.

⁴ <http://www.amnesty.org/en/library/info/IOR80/006/2012/en>.

⁵ Note also Article 59. See Mac Darrow *Between Light and Shadow* (Oxford, World Bank, the International Monetary Fund and International human rights law, 2003). Skogly. *The Human Rights obligations of the World Bank and International Monetary Fund* (London, Cavendish 2001).

⁶ A/Hrc/22/46/Add. 3 para 9.

⁷ International Covenant on Economic, Social and Cultural Rights Article 2. See also Committee on Economic Social and Cultural Rights General Comment n. 15 (2002) on the right to water, para 36.

⁸ 1) The Special Rapporteur on adequate housing in her addendum report to her mission to the World Bank A/HRC/22/46/Add.3

2) Committee on the Rights of the Child General comment n16 (2013) - On State Obligations of regarding the impact of the private sector on children’s rights

3) <http://dadds-ny.un.org/doc/UNDOC/GEN/G11/118/72/PDF/G1111872.pdf?OpenElement>

International financial institutions have played a vital role in providing financial and institutional support to many developing countries during crises and in their aftermath; however, onerous conditionality raise several human rights concerns. States that are members of these institutions should ensure that human rights are prioritized in all policies and measures. This obligation lies particularly with those States with the greatest powers of participation, voting and decision making in the institutions. They must ensure that the actions of the institutions do not impede the realization of human rights. Moreover, States should remain committed to undertaking major reforms of the governance of these institutions to be more inclusive

The Bank has a responsibility to respect human rights and as a minimum, to discharge its responsibility Amnesty International maintains that the Bank should:

- 1) Put in place a robust human rights due diligence mechanism, fit to adequately identify and prevent risk to human rights as a result of all activities supported by the Bank**
- 2) Present Member States with and encourage them to adopt safeguards policies which are fully in line with international human rights law and standards.**

Increasingly States have recognised that the responsibility to respect human rights extends to companies and international organizations, including financial institutions. The World Bank has been lagging behind in terms of recognising its own responsibilities to respect human rights and the human rights responsibilities of business and international organizations. The safeguards review offers the Bank an important opportunity to address this deficiency. This has also been raised by a group of UN human rights experts, who called on the Bank to “to adopt human rights standards [...] during the review of its environmental and social policies— also known as ‘safeguard policies’— which apply to project finance”⁹

The Bank’s current social and environmental safeguards are an acknowledgement of some of the risks associated with the Bank’s activities. While Amnesty International notes and appreciates the Bank’s recent commitments to move from “do not harm” to “do good” policies, the Bank’s failure to adequately and explicitly reflect human rights law and standards within its risk management framework leaves affected individuals and communities exposed to serious human rights abuses which can deepen their poverty and further entrench marginalization. For example the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda said that “Unfortunately, economic development can have negative as well as positive impacts. Often, the poorest of the poor do not benefit from development, or even worse, it is undertaken at their expense. In order to avoid adverse impacts of development projects and maximize the benefits to the poorest and most marginalized, the World Bank should adopt a requirement to undertake human rights due diligence, including a human rights impact assessment, on all activities proposed for World Bank financing, particularly regarding the rights of the poorest and most vulnerable persons,” she underlined.

A clear, stated objective of the World Bank safeguard policies should be to ensure that the Bank’s investments do not cause or contribute to human rights violations. Such an objective would be consistent with the mission of the Bank and the duties of Member States, and similar commitments have been adopted by other development and investment banks.¹⁰ It would also ensure the Bank reflected the corporate responsibility to respect human rights – the minimum standard that has gained international acceptance.

In order to attain this objective the Bank should incorporate an explicit identification of risks to human rights. It is also important that the Bank ensures that the process of assessment of risk is itself

and representative, and to enhance transparency and accountability. In their negotiations and agreements with international financial institutions, States’ obligations under the International Covenant on Economic, Social and Cultural Rights should be taken into account to ensure that economic, social and cultural rights are not undermined. In the context of responding to the crises, States must take care not to agree to loan conditions that might compromise their ability to meet their obligations regarding the realization of human rights.

⁹ UN experts urge World Bank to adopt human rights standards on the eve of key gathering in Washington

¹⁰A) **The European Investment Bank (EIB)** explicitly provides that it “will not finance projects which result in a violation of human rights.” It further commits to a human rights-based approach, based on the principles of the Charter of the Fundamental Rights of the European Union, the UN Universal Declaration of Human Rights, and international good practices. See, EIB, “Statement of Environmental and Social Principles and Standards,” 2009, http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf, paras 6, 30, 46. Further, it will not finance projects in countries declared “off-limits” by the European Council for EU financing, particularly due to violations of human rights, see para 46. B) **The European Bank for Reconstruction and Development (EBRD)** similarly seeks to ensure that the projects it finances respect the rights of affected workers and communities and provides that it will not knowingly finance projects that would contravene country obligations under relevant international human rights treaties and agreements. European Bank for Reconstruction and Development (EBRD), “Environmental and Social Policy” May 2008, <http://www.ebrd.com/downloads/research/policies/2008polipdf>, paras 3, 9. C) **African Development Bank**

in line with human rights standards and is carried out using a human rights framework. This would include ensuring that people are able to participate in the process of identifying risks and formulating preventive strategies, that their knowledge and views are respected and given due weight, and that the process reflects principles of non-discrimination.

As noted by the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, development activities, designed and implemented in a manner which is consistent with human rights, often **lead to improved inclusive development results**¹¹ and, as recently noted by UN experts "...strengthen the protection of the world's poorest from unintended adverse impact of activities financed by the Bank."¹² Projects where communities affected feel they have been genuinely consulted are more likely to run smoothly; where communities have been excluded and their concerns ignored, they are more likely to protest and can stall the completion of projects for many years.

In April this year a ruling of the Indian Supreme Court stated that Indigenous communities will have the final decision on plans for a bauxite mine by a subsidiary of UK-based Vedanta Resources Plc in the Niyamgiri hills of Orissa.¹³ Last year the Inter-American Court of Human Rights (IACHR) ruling in *Sarayaku v. Ecuador*, ended a decade-long legal battle by the Sarayaku Indigenous People after a foreign oil company was allowed to encroach on their traditional lands in the early 2000s without consent.¹⁴ These ruling are a clear vindication of the protests by local communities, and the sustained campaign carried out by many organizations which exposed how the communities' views had long been ignored.

3. Incorporating human rights in the World Bank Safeguards Policies

While the World Bank Safeguard Policies lay out the basic due diligence processes of the Bank as an investment institution, these processes do not explicitly incorporate human rights due diligence. Human rights due diligence, should be at the centre of any serious effort by the Bank to identify risks to the human rights of communities affected by the projects and policies promoted by the Bank.

The following sections of this submission outline Amnesty International's main recommendations for amending the Safeguards Policies in order to incorporate adequate human rights due diligence mechanisms.

- The World Bank Safeguard Policies should include a clear policy commitment to human rights and a statement that the Bank will not support activities that are likely to cause or contribute to human rights abuses. This policy statement should also provide that the Bank will undertake (and require borrowers to undertake) adequate human rights due diligence both for the projects it supports and for the policy advice it gives to governments.
- The Policies should be expanded to broaden their scope in key areas related to human rights, such as disability, gender, labour, and health and land tenure.
- We understand that the review will only look at investment lending and the use of the Country Systems; however, given that these form of investments only apply to an increasingly small percentage of Bank's activities, Amnesty International strongly

¹¹ Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, undated, <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWATER/Pages/SRWATERIndex.aspx>

¹² UN Experts urge World Bank to adopt human rights standards on the eve of key gathering in Washington issued on the 18th of April 2013

¹³ Amnesty Hails Indian Supreme Court Ruling On Vedanta Bauxite Mining

¹⁴ <http://www.amnesty.org/en/for-media/prereleases/ecuador-inter-american-court-ruling-marks-key-victory-indigenous-peoples-20>

recommends that the future safeguards apply to all Bank-supported activities, including policy loans and technical advise to governments.

- All of the Bank Operational Policies which lay out the impact assessment and social and environmental management processes should be revised to incorporate the assessment of impacts on human rights, as well as processes for ongoing monitoring of and accountability for adverse human rights impacts of projects and policies supported by the Bank.
- All of the Bank's Operational Policies should be revised and be brought in line with relevant human rights standards. When doing this, the Bank should refer to and use the language of human rights instruments in order to avoid any confusion or misunderstanding with regard to the content or rights. For example, the IFC Performance Standard on land acquisition and involuntary resettlement now includes a requirement to avoid forced evictions, among its objectives. While this is a step forward from the previous version, the language provided by the IFC on forced evictions is incorrect. The IFC states that: "Forced evictions will not be carried out except in accordance with the law and the requirements of this Performance Standards."¹⁵ However, international law is clear - forced evictions can never be carried out; they constitute a serious violation of human rights. An eviction is a forced eviction if it is carried out without due process safeguards and/or if it results in people being made homeless or suffering other human rights violations. The safeguards against forced eviction are articulated in the Basic Principles and Guidelines on Development-Based Evictions and Displacement, which is a practical guide. However, by failing to reflect the international standards and existing human rights guidance, the IFC Performance Standards have established a parallel and inconsistent standard with regard to evictions (for further examples of the current human rights gaps in the World Bank current Safeguard Policies please refer to the last section below).
- In looking at Country Systems, while action to strengthening the capacity of country institutions can be valuable, there are a number of factors which the Bank should address in this process. Firstly, the Bank must ensure it promotes safeguards that are consistent with human rights obligations; otherwise the Bank risks promoting – and indeed incentivising - adherence to standards which are lower to those human rights obligations to which countries have committed. Secondly, the Bank must adequately assesses enforcement of laws and regulations; the accessibility of judicial and non-judicial mechanisms for people affected by state and corporate actions; and the extent to which corporate influence affects both legal frameworks and enforcement. Finally, no matter which system the Bank decides to apply, delegating responsibilities to the recipients' countries will not absolve the Bank of its own human rights responsibilities. As an institution the Bank remains responsible for what it provides funds to. The Bank's responsibility exists regardless of what the country does or does not do.
- Systems related to the implementation of the safeguards policies and oversight of the impact of projects should be overhauled to increase effectiveness. In particular the World Bank's systems for receipt and assessment of critical information on project impacts, engagement by the Bank with affected communities and individuals, and the Bank's current monitoring mechanism should all be reviewed in light of the objective to prevent human rights abuses.

¹⁵ IFC Performance Standards 5

4. Major shortcomings of the World Bank Operational Policies

Amnesty International believes there are four major shortcomings in the current versions of Safeguard Policy. A summary of these concerns is presented below, followed by recommendations for improving the Safeguards:

(a) No explicit recognition of World Bank responsibility to ensure the Bank's activities and funding do not cause or contribute to human rights violations.

(b) Weakness in the process used to identify potential negative impacts of projects and policies the World Bank supports and/or promotes, and in the Bank's project monitoring and supervision processes.

Because international human rights standards are not fully reflected in the Safeguard Policies, the Bank is currently unable to adequately identify the potential impact of projects or policies on human rights. The importance of human rights impact assessments as a mean to identify risks to human rights has been widely recognised.¹⁶ An additional concern is that even when the Bank monitors project impacts over the lifetime of the project it often relies heavily on information provided by the borrower. The Bank has recently declared its intention to follow the IFC model, which is now increasingly delegating the responsibility for identifying risks to the client; this model, as Amnesty International has stated previously, presents fundamental problems, as it relies on information provided by actors that have a vested interest in ensuring the project is funded. This information is not subject to independent verification, but is very often the basis upon which the Bank takes critical decisions. The practice of relying largely on assessments and information provided by borrowers is insufficient to ensure the Institution itself has taken adequate steps to become aware of and prevent human rights abuses.

(c) Shortcomings in community engagement processes, including failure to effectively engage with and ensure the meaningful participation of affected communities in decisions that affect their human rights.

Allied to the over-reliance on information provided by the borrowers, the Bank does not appear to give adequate weight to information provided by affected communities and other independent sources. There is no clear process whereby the Bank proactively seeks information from project-affected people in relation to potential and actual impacts of projects on them. The process for, and the purpose of, engagement with affected communities need to be clearly articulated. In practice, the public consultation with project-affected groups, as specified in OP 4.01, is entirely carried out by the borrower government. The Bank does not provide sufficient guidance to borrowers to ensure that communities have been appropriately consulted, informed and enabled to participate in decisions that affect their rights. While borrower governments clearly have human rights obligations, the failure of these governments to uphold their obligations does not absolve the Bank of responsibility for negative impacts of projects or policies to which it provides support. The Bank's responsibility to

¹⁶ The Guiding Principles on Business and Human Rights <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples> state in the commentary of article 18 that "...While process for assessing human rights can be incorporated within other processes such as risks assessments or environmental and social impact assessment, they should all include all internationally recognised human rights as a reference point, since enterprises may potentially impact virtually on all these rights." Also the recent report commissioned by the Nordic Trust Fund, *Human Rights Impact Assessments— a review of the literature, differences with other forms of assessments and relevance for development* states: "HRIA are an indispensable part of making human rights considerations operational in a range of legal and policy contexts. In recent years there has been an increasing demand for various actors to undertake HRIAs before adopting and implementing policies, projects, agreements and programs. The development of this tool is part of a growing effort by the human rights community to operationalize the relevance of human rights in different fields, including development, and thus advance an understanding on the ways in which public policies and development projects affect the enjoyment of human rights"

respect human rights is independent of the actions or failures of borrower governments.

(d) Lack of effective accountability mechanisms

Weaknesses in the compliance system:

The Bank, through the World Bank Inspection Panel, has in place a process to address situations where individuals or communities believe that companies have not complied with the Safeguards. While the Inspection Panel can provide some measure of oversight, it cannot be viewed as a fully effective accountability mechanism, as there remain significant weaknesses in the mechanism. Specifically:

- The Bank does not consistently implement the findings of the Inspection Panel (the compliance function).¹⁷
- The Bank's Board frequently ignores the Panel's findings.¹⁸
- Inspection Panel recommendations are not binding on the World Bank or recipient governments.

Recommendations

In order for the WB to bring its risk management framework in line with the objective of ensuring that the projects and policies it promotes do not cause or contribute to human rights abuses, the following revisions are critical. The main elements of a World Bank human rights due diligence approach are the following:

1. Formulate a clear policy statement on preventing human rights abuses

- The revised Safeguards should include a clear policy commitment that the Bank will take all reasonable measures to ensure that the potential impact of projects it supports, as well as World Bank activities and policies, are assessed against international human rights standards with the aim of preventing projects from causing or contributing to human rights abuses. The Bank should make clear that it will take appropriate action to address cases where projects and or policies it supports cause or contribute to abuses. This policy commitment should inform all policies and projects supported by the World Bank.
- The Operation Policies on Environmental Assessments (OP4.01) and all social impact assessments policies disseminated throughout the Safeguards Policies should be put under one policy that should be renamed to incorporate human rights in the title, in order to ensure clarity of purpose and signal the Bank's commitment to ensuring that both loans and policies promoted by the Bank do not cause or contribute to human rights abuses.
- All Safeguard Policies, including those on the use of Country Systems, should be aligned to international human rights law and standards.

2. Carry out a preliminary assessment on the potential impact on human rights

- Amnesty International recommends that the World Bank itself should undertake

¹⁷ Tess Bridgeman

http://baseswiki.org/en/An_Independent_Evaluation_of_the_World_Bank_Inspection_Panel,_Tess_Bridgeman,_2007

¹⁸ *ibid*

preliminary assessment of the human rights context and potential impacts of any proposed projects/policies or other activities it intends to fund. In cases where the World Bank is considering finance for a project that is already underway, the preliminary human rights assessment should identify any existing problems in relation to human rights impact and the steps taken to address them.

- The importance of the Bank carrying out its own preliminary assessment is to determine when a full human rights impact assessment should be incorporated into the environmental and social impact assessments. A preliminary assessment would also help mitigating against the risk outlined in the report commissioned by the Nordic Trust Fund that: “One significant risk is that governments or business companies carrying out a HRIA may be tempted to manipulate the findings and misuse the human rights rhetoric to validate a policy or project they are trying to promote”.¹⁹ An independent preliminary assessment will enable the Bank to effectively vet the results of successive assessments carried out by the borrowers and also define what level and scope of human rights assessment is required for a specific project.
- The preliminary assessment should be made public, in order to allow interested parties to also validate the basis of the decision of the Bank to fund/support a certain projects or policy.

3. Ensure ongoing, effective monitoring of human rights impacts, in consultation with affected people

- Improvements to the content of the risk management framework will only be effective if supported by robust monitoring and implementation systems. The World Bank should establish a clear, effective and transparent system for monitoring projects and policy impacts with specific reference to risks to human rights identified in impact assessment processes. The Bank should undertake regular reviews of the project/policies, which should include consideration of the impact and implications of changes in project context or operation, as well as issues of causality and cumulative or aggregated impacts, in order to be able to foresee new risks that may emerge. Monitoring processes should be established for all projects including for projects that are already underway when the Bank becomes involved (such as when the Bank is only providing funding for one phase of a project or a particular section of it).
- The Bank should proactively inform those likely to be affected by projects about its role, as investor in the project and assure itself that people are aware of the full potential impact of the project, have access to all relevant information and adequate time to understand and participate in the impact assessment process, and (if funding goes ahead) the development of any measures to avoid adverse impact. The Bank should also ensure that communities are made aware of the existing accountability mechanisms, such as the World Bank Inspection Panel, and how they can be accessed. This should not be left to the responsibility of the recipient government but done directly by the Bank.
- The Bank should directly engage, throughout each phase of the project cycle, with communities likely to be affected by project. This engagement should respect the principles of non-discrimination and inclusiveness, and apply a clear and transparent methodology aimed at seeking information directly from the community on project impacts.
- The Bank should make public the basis upon which it categorizes a project and the methodology it has used to make the determination. This information should be made public sufficiently in advance of sending the project for Board approval, in order to give communities or other interested actors the possibility to challenge the determination.

¹⁹ Nordic Trust Fund Human Rights Impact Assessment Executive Summary

4. Strengthen compliance and accountability mechanisms

- While the responsibility for preventing violations of human rights, and taking appropriate steps to hold those responsible accountable, rests with the state, the Bank can and should take appropriate action when recipient governments do not implement adequate or agreed due diligence measures, as well as situations where there are credible allegations of human rights abuses associated with the operations of the client company or the project as a whole. These actions can range from intervention and support to redress a situation, to sanctions including withholding further loan disbursement or requiring immediate repayment of the loan. The potential human rights impacts of any sanctions on project-affected communities should be fully considered before any action is taken.

5. A key element of the Bank's own due diligence is ensuring that those entities to which it provides support are committed to respecting human rights.

In the case of states, the Bank should examine whether they have reflected relevant human rights obligations in national legislation and policies. The Bank should also require the borrower to carry out adequate due diligence in relation to the project or policy for which Bank support is sought. Where business actors are contracted to carry out project activities the Bank should also ensure that they carry out corporate human rights due diligence. This would require revision of each of each Operational Policies and in particular those related to impact assessments and the use of Country Systems.

A) Building human rights due diligence of the borrower into Bank Operation Policies. The UN Special Representative on Business and Human Rights stated that: "While [human rights] assessments can be linked with other processes like risk assessments or environmental and social impact assessments, they should include explicit references to internationally recognized human rights. Based on the information uncovered, companies should refine their plans to address and avoid potential negative human rights impacts on an ongoing basis." OP 4.01 should be amended in title and substance to become, 'Human Rights and Environmental Assessment and Management Systems'. It should incorporate adequate human rights due diligence process. This should be a compulsory requirement on borrowers and should be embedded in the Operational Policies and not be left as a voluntary element for high risk projects (as is the case with IFC Performance Standard 1).

B) While the field of human rights impact assessment is a developing one, the following principles should guide assessment processes.²⁰

I. Explicit application of the human rights framework

The process of assessing risks to human rights must be explicitly based on the relevant (i.e. pertinent to the projects, policy or activity the Bank intends to fund) human rights standards. As noted previously in this paper, failure to properly reflect human rights standards can result in errors and standards that are inconsistent with state's legal obligations.

II. Adapt to different circumstances and phases of the projects

The potential and actual human rights impact of each project will vary. Therefore indicators of human rights impact must be selected in order to best reflect the likely impact of the specific project. A generic tool is likely to lack the specificity to assess the actual human rights impact of a specific project.

²⁰ These are adapted from Professor Paul Hunt, United Nations Special Rapporteur on the Right to the Highest Attainable Standard of Health and Gillian McNaughton, Senior Research Officer, Human Rights Centre, University of Essex, Impact Assessment, Poverty and Human Rights: a case study using the right to the highest attainable standard of health, 31 May 2006, p 32. http://www.essex.ac.uk/human_rights_centre/research/rth/dolimpact_Aents_9Dec06%5B1%5D.doc

An approach, which genuinely sought to identify and mitigate human rights impact, would seek to identify direct and indirect human rights impacts. Many of these impacts, such as potential changes to the overall legal framework in a country or the impact on the rights of a community downstream of the project may not be effectively addressed if the impact assessment's focus is geographically limited to immediate area of the project.

III. Uphold rights to participation and information

Policies should incorporate a right of people to participate in decisions that affect their human rights.²¹ For participation to be meaningful and respect rights, people must be informed sufficiently in advance of the process, and informed in a manner and through mediums that fully respect the principles of accessibility of information and non-discrimination. Where necessary, assistance should be provided to support people's participation.

A commitment to disclose all relevant information to people whose rights may be affected, should be incorporated in the policies (in some cases people whose rights are affected will be wider than "local communities"). Borrowers should not have too great a degree of discretion in deciding what will be disclosed and when. Affected people should be part of process of identifying what, if any, negative impacts a project may have.

IV. Ensure non-discrimination and equality

Equality and non-discrimination should be ensured throughout the impact assessment process. From a human rights perspective there must be consideration of both procedural and substantive issues in relation to non-discrimination and equality. All persons likely to be affected by the project should be enabled to participate in the assessment process on a non-discriminatory basis, including those individuals or groups that may be differently or disproportionately affected by the project. They should be part of the process to identify potential impacts and should be able to participate in deciding what measures are appropriate to address adverse impacts and thereby ensure the project does not result in, contribute to or exacerbate discrimination or inequality. Applying non-discrimination and equality principles to the process of identification of risks will ensure that all different interest groups directly or indirectly affected by the Bank's activities will be included into the development plan.

V. The management program and action plan

An impact assessment is not an end in itself and should form part of a holistic human rights centred process of project development and implementation. An Action Plan is required where the client identifies specific mitigation measures and actions necessary for the project / policy to comply with applicable laws and regulations and to meet the requirements of all the Safeguard Policies. Affected people should be involved in decisions on how potential negative impacts will be managed. The process of developing the Management Program and Action Plan should also fully reflect requirements of consultation in cases of interference with or threats of interference with the exercise of rights. An Action or Management Plan should include ongoing monitoring against agreed benchmarks, but also have sufficient scope that new or unexpected risks to or impacts on human rights that emerge during the project's lifetime can be identified and addressed.

VI. Complaint mechanisms

Projects or other World Bank activities should have in place mechanisms to allow affected communities to raise issues with and make complaints to the government body involved in the implementation of the project. Such mechanisms must operate in a manner that is fully consistent with principles of accessibility, non-discrimination and transparency. They must ensure fair and

²¹ The Human Rights Committee, e.g. in *Apirana New Zealand*, found that participation in decision-making which may affect the realisation of their rights is a necessary element in the enjoyment of cultural rights.

predictable processes, and should operate in a rights-compliant manner.

Human rights gaps within the Resettlement Safeguard Policy

This section provides an example of the human rights gaps existing in the Resettlement Safeguard Policy and suggests ways in which it can be made consistent with human rights standards using guidance that already exists.

Forced Evictions

The World Bank's Safeguard Policy on Involuntary Resettlement, while recognising the severe economic, social and environmental risks of unmitigated involuntary resettlement, fails to ensure that resettlement, involuntary or otherwise, does not result in the violation of human rights of affected communities. As noted by the UN Special Rapporteur on Adequate Housing: "Involuntary resettlement amounts to a forced eviction when it occurs without the provision of, and access to, appropriate forms of legal or other protection."²² The effects of forced evictions can be very serious, especially for people who are already living in poverty. The UN Commission on Human Rights has described forced evictions as a "gross violation of human rights, particularly the right to adequate housing."²³

In light of the above it is essential that the revised policy contain an explicit commitment to ensure that World Bank funded projects do not directly or indirectly result in or contribute to forced evictions. Amnesty International recognises that OP4.12 on Involuntary Resettlement contains useful elements, such as ensuring that resettlement activities are carried out in consultation and with the informed participation of affected persons and communities. The policy, however, does not include all the protections necessary to ensure that involuntary resettlement does not result in human rights violations. This is a significant omission and opens the Bank, as well as the borrower government, to the risk that Bank-funded projects could result in forced evictions. The protection measures that should be applied to all evictions have been clearly articulated in the Basic Principles and Guidelines on Development-based Evictions developed by the UN Special Rapporteur on Adequate Housing.²⁴ They reflect existing standards and jurisprudence on this issue. They include detailed guidance on steps that should be taken prior to, during and following evictions in order to ensure compliance with relevant principles of international human rights law. A revised policy on Involuntary Resettlement should clearly state that the World Bank will not support projects that involve evictions if mandatory safeguards, as clarified in international human rights standards, are not in place before such evictions are undertaken. It should also clarify that it will not proceed to support the project if the Bank discovers, in the course of its due diligence and preliminary impact assessment, that forced evictions have taken place in advance of the project and unless suitable corrective action is taken in situations where there is a risk of forced evictions.

Alternatives to Evictions

Under international human rights law, evictions should be undertaken as a last resort and only after all feasible alternatives have been explored in consultation with affected persons.²⁵ Although Policy Objective 2 (a) in OP 4.12 and 2 (b) in BP 4.12 state that involuntary resettlement should be avoided

²² Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Raquel Rolnik; Mission to the World Bank; 15th February 2013, A/HRC/2/46/Add.3, Para.16.

²³ Commission on Human Rights, Resolution 1993/77, para 1

²⁴ Basic Principles and Guidelines on Development-Based Evictions And Displacement, Annex 1 of the report A/HRC/ 4/18 of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, were considered by the Human Rights Council in 2007, available at http://www2.ohchr.org/english/ies/housing/doguidelines_en.pdf

²⁵ Committee on Economic, Social and Cultural Rights General Comment No. 7, para 13; and General Comment No. 4, para 18

where feasible, or minimized, exploring all viable alternatives to project design, it falls short of incorporating requirements in accordance with international standards. In order to strengthen this policy objective, there should also be greater clarity on the steps that the borrower-government should take to meet the requirement of exploring alternatives to eviction in genuine consultation with affected persons. The Basic Principles outline the steps that should be taken in this regard and these requirements should be reflected in the revised policy.²⁶ Borrower governments should be required to undertake impact assessments that inform alternatives to evictions and strategies to minimize negative impacts on affected communities and take into account the possible differential impacts of evictions on the most disadvantaged groups. The Bank should, in its revised policy, also require the borrower government to make public and, in particular, accessible to affected persons, results of consultations on all viable alternative project designs and plans in order to avoid or minimise evictions.

Right to Adequate Housing

While OP and BP 4.12 contain some positive elements in relation to resettlement, such as requirements in terms of information, consultation and informed participation of those affected in resettlement activities and planning, there are some critical gaps in the requirements, which could be addressed by incorporating key guidelines in the Basic Principles. Some of the main areas of concern are: weak requirements in terms of providing land-based resettlement; lack of a clear requirement to provide alternative adequate housing in all situations where people may be unable to provide for themselves and may be left homeless as a result of the eviction; lack of a clear requirement that resettlement sites must comply with *all seven* criteria for adequacy of housing under international law.

The revised policy should stipulate that resettlement sites comply with *all* the requirements for adequacy of housing as required by international human rights standards.²⁷ The Basic Principles, which reflect both international standards and many years of experience of monitoring impacts of evictions, stress that “cash compensation should under no circumstances replace real compensation in the form of land and common property resources”.²⁸ Considering the impact that evictions can have on communities, especially if undertaken without necessary safeguards, it is essential that the World Bank closes the gaps in protection in the current review process. It is worth noting that the Committee on Economic, Social and Cultural Rights has expressly stated “international agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account”.

Widening the scope

The scope of Safeguard Policy OP and BP 4.12 needs to be widened to explicitly cover not only physical or economic displacement as a result of project-related land acquisition, but also a variety of situations including where individuals and communities are forced to relocate due to adverse project impacts other than those resulting from land acquisitions, such as pollution. OP4.12 also does not apply to resettlement from voluntary land transactions. Lack of adequate protections in the context of displacement and resettlement regardless of the circumstances, can negatively impact the rights of individuals to an adequate standard of living. For this reason OP 4.12 should be framed in a manner that clearly covers all situations of physical and economic displacement and evictions related to the project, and not just those that are a consequence of involuntary project-related land acquisition.

²⁶ Basic Principles and Guidelines on Development-Based Evictions And Displacement, Annex 1 of the report A/HRC/ 4/18 paras 28-36

²⁷ Committee on Economic, Social and Cultural Rights General Comment No. 4, para 8

²⁸ Basic Principles and Guidelines on Development-Based Evictions And Displacement, Annex 1 of the report A/HRC/ 4/18 para 60

Operational Policy OP 4.10 and the rights of Indigenous Peoples

Given that the last update of this policy was carried out in 2005 the current review of OP4.10 ought to use – as its primary normative guide – the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The UNDRIP is the result of over twenty years of negotiations between indigenous peoples and states and now represents the most authoritative set of human rights standards for Indigenous Peoples. Over 140 states have now endorsed the Declaration. The UNDRIP affirms and builds on the fundamental human rights protections provided for Indigenous Peoples under the international Covenants and the Universal Declaration on Human Rights (UNDHR). The UNDRIP takes these rights and principles and adapts them to the specific circumstances of Indigenous Peoples, emphasizing the collective nature of their rights, and their right to maintain their cultural distinctiveness.

Nevertheless, Amnesty International recognizes that many states – and companies – as yet do not have clear standards of FPIC that are consistent with these obligations, or struggle to implement the standards in practice. As a result, in such cases it is critical that the Bank establish, in conjunction with the affected communities and – where possible – the participation of the relevant state authorities, a process to seek FPIC that is consistent with UNDRIP. While the recipients may be involved in implementing the process steps to seek FPIC, the Bank should ensure robust oversight, including by ensuring that an independent monitor, agreed with the affected communities, is engaged. Affected Indigenous communities should have full information on the proposed project, expected impacts, and on the process and their rights within that process. In aligning OP 4.10 with international standards on the rights of Indigenous Peoples, the Bank should pay particular attention to the following:

Self-identification

A demand of Indigenous Peoples involved in drafting UNDRIP, was that the key criterion for identifying Indigenous Peoples ought to be self-identification by a community as such. This was a response to many years of being categorized and defined by states and their connection with assimilation policies designed to integrate Indigenous Peoples into the dominant culture. The World Bank Indigenous Peoples' Policy describes Indigenous Peoples as “groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged.” The definition of indigenous peoples speaks of communities with close attachments to their ancestral lands etc. As recognized by the UNDRIP Indigenous Peoples are historical self-determining communities (see article 3 of UNDRIP). They are more than distinct, vulnerable, social and cultural groups. The heavy emphasis in the Bank's definition of indigenous peoples on cultural difference, without recognition of their status as historical communities is likely to lead to stereotyping and the reification of tradition. If OP4.10 continues to refer to a set of objective criteria/characteristics, it should ensure that self-identification is accorded greater weight than other criteria and that emphasis is placed on their historical struggle to maintain their distinct political institutions and territorial rights.

Relocation of Indigenous Peoples from traditional or customary lands

One of the most prominent international standards for Indigenous Peoples is their right not to be removed from their traditional or customary lands without their consent. OP4.10 needs to be revised to incorporate this human right. The relevant international standard is Article 28 of UNDRIP. The standard is also contained in the International Labour Organization Convention 169 (1989).

Free, Prior and Informed Consent (FPIC)

The UNDRIP requires states to seek free, prior and informed consent from Indigenous Peoples. The Bank must endorse the right to informed consent as outlined in the UNDRIP. Other multilateral organizations have done so,²⁹ as have International Human Rights Treaty Body decisions, including

²⁹ 7

those of the UN Committee on Economic, Social and Cultural Rights,³⁰ UN Committee on the Convention on the Elimination of all forms of Racial Discrimination,³¹ the African Commission on Human and Peoples' Rights,³² the UN Human Rights Committee,³³ and Inter-American Court of Human Rights.³⁴ While companies and States have pointed to the challenges in operationalizing the right to FPIC, World Bank officials have to engage with communities to determine how they will give their consent to any project.

In relation to recognition of Indigenous Peoples traditional and customary lands, it is important to emphasize that while land rights may not have received formal, legal, or official recognition domestically (e.g. through some grant of title), the right of Indigenous peoples to traditional lands and resources is recognized in international human rights law. Under international law, Indigenous Peoples' ancestral land rights are an inherent right, established by the custom and practices of the Indigenous Peoples, and not dependent on any domestic laws of recognition. [I/A HR Court, *Awas Tingni Mayagna (Sumo) Indigenous Community v. Nicaragua*, Series C (No. 79) (2001); As noted by the Special Rapporteur on Rights of Indigenous Peoples: "According to the international normative consensus, the right of indigenous peoples to lands, territories and natural resources originates in their own customary law, values, habits and customs and, therefore, is prior to and independent of State recognition in the form of an official property title." See UN Special Rapporteur on Rights of Indigenous peoples Report to the UN Human Rights Council, A/HRC/15/37/PARA 54.] In addition, under international treaty body law, the nature and extent of traditional and customary lands is determined from the perspective of Indigenous Peoples. For example, ordinarily, traditional lands are not confined to areas occupied and used on a regular basis but also include lands used according to season or otherwise used and occupied according to tradition. There is much authority for this in international law.

³⁰ Committee on Economic, Social and Cultural Rights General comment No. 21 Right of everyone to take part in cultural life Forty-third session on 2–20 November 2009 E/C.12/GC/21, para 36

³¹ UN Committee on the Elimination of Racial Discrimination, "General Recommendation XXIII: Indigenous Peoples" (18 August 1997) A/52/18, annex V, Para 5

³² Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003, African Commission on Human and Peoples' Rights, 4 February 2010, available at: <http://www.unhcr.org/refworld/docid/4b8275a12.html>

³³ UN Human Rights Committee, *Ángela Poma Poma* 27/3/2009, Communication No. 1457/2006

³⁴ *Saramaka People v. Suriname*, Judgment of the Inter-American Court of Human Rights, Series C (No. 172), 28 November 2007. http://www.corteidh.or.cr/docs/asos/articulos/seriec_185_ing.pdf