International Rivers Network
Linking Human Rights and Environmental Protection

NGO Concerns on the Use of National Safeguard Systems in World Bank Projects

A Critique of the World Bank Paper,
Issues in Using Country Systems in Bank Operations, August 23, 2004

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Executive Summary

The World Bank has discussed using national safeguard, procurement and fiduciary systems rather than the Bank's own policies and procedures in Bank projects since 2002. A new paper that proposes the use of country systems was discussed by the Board of Directors on September 14, 2004.

This paper summarizes concerns of International Rivers Network (IRN) regarding the new proposal. It covers only the proposed changes regarding social and environmental safeguard policies, and not procurement and fiduciary policies.

The new World Bank paper contains the following major loopholes and problems:

- An initial analysis regarding the Bank's resettlement policy shows that the proposed new framework would weaken the existing operational policy in important aspects.
- Bank Management proposes to accept national safeguard systems as equivalent even if improvements in policy or practice are only being planned, and have not yet been implemented.
- Management proposes that governments themselves, among other actors, can assess the equivalence of their safeguard systems with Bank policies, and the quality of their compliance with national systems.
- The point of reference for investigations by the Inspection Panel in future pilot projects will no longer be the Bank's existing operational policies, but the brief synthesis of policy objectives and operational principles included in the new framework. This will seriously weaken the purview of the Panel.
- In contrast to earlier assurances from senior Bank representatives, the paper proposes to apply the use of country systems also to Category A projects during a two-year pilot phase.

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- The new paper does not clarify the accountability of the Bank for the public access to documents that are covered by individual safeguard policies rather than the Bank's disclosure policy.
- The new approach is likely to increase the cost of project supervision even beyond the transition phase. This will put pressure on the quality of supervision, and raises questions regarding the real motifs of the proposed approach.
- The new paper presents an overly optimistic picture regarding the current implementation of environmental policies, and ignores important findings of OED reports. Consequently, Bank management ignores the need for strengthening rather than qualifying or weakening the implementation of the Bank's safeguard policies.

1. Background

World Bank management and member governments have argued for the use of national safeguard systems rather than the World Bank's own safeguard policies in Bank projects since 2002. The concept was first proposed in a discussion note in June 2002.[1] It was taken up again by a memorandum that proposed increasing World Bank lending to Middle Income Countries (the MIC strategy) in February 2004, and a note that concretized the use of national safeguard systems in April 2004.[2]

The recommendations of the MIC strategy and the discussion note of April 2004 would have seriously undermined the role of the Inspection Panel, and the effectiveness of the Bank's safeguard policies. The MIC strategy proposed that once national safeguard systems had been certified as being equivalent to the Bank's operational policies, the national safeguards and not the Bank's policies should become the point of reference for Inspection Panel investigations in the case of complaints.

The Board of Directors first discussed the use of national safeguard systems on May 20, 2004. The Inspection Panel strongly criticized the attempted weakening of its purview. Many Executive Directors criticized the lack of clarity of the Management proposal, the weakening of the Panel's role, and the potential dilution of the Bank's safeguard policies. The Board asked Management to integrate this feedback, and prepare a new document for Board discussion. The new paper of August 23 covers not only the social and environmental safeguards, but also a proposed shift to national procurement and fiduciary guidelines. It was discussed by the Board on September 14.[3]

Before adopting the underlying approach to safeguard policies, the Board already approved pilot projects for the use of national safeguard systems in Poland (Road Maintenance and Rehabilitation Project, March 2004), India (Elementary Education Project, April 2004), and the

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[1] World Bank, Safeguard Policies: Framework for Improving Development Effectiveness, June 7, 2002
[2] World Bank, Enhancing World Bank Support to Middle Income Countries, February 26, 2004, and Use of Country Systems – Operationalizing the Approach, April 27, 2004. For a critique of these document, see IRN, the World Bank's Safeguard Policies Under Pressure, May 17, 2004, available at www.irn.org/programs/finance/irn_wb_critique.pdf.
[3] World Bank, Issues in Using Country Systems in Bank Operations, August 23, 2004

Mexican state of Guanajuato (Decentralized Infrastructure Reform and Development Project, May 2004).

The Mexico DIRD project will have major environmental impacts and will likely cause involuntary displacement. Mexico's regulations on environmental impact assessment are weaker than the Bank's policy, and Mexico does not have a law on involuntary displacement. The state authorities of Guanajuato committed to developing 'good practice procedures' on resettlement to make up for this gap. Good practice procedures are clearly not equivalent to the binding operational policy of the World Bank.

On June 7, 2004, 186 NGOs from 60 countries (primarily from borrowing countries) protested against the weakening of safeguard policies by the proposed MIC strategy and the Mexico DIRD project in a letter to Executive Directors. President Wolfensohn responded to this letter on June 29.[4]

2. General comments

The new document points out that the variety of differing requirements of donor institutions "imposes high transaction costs on recipient countries and strains their administrative resources".[5] The paper further argues that relying on national rather than World Bank safeguard systems would strengthen 'country ownership' and help build institutional capacities.

Civil society has always promoted the strengthening of social and environmental standards and institutional capacity on the national level. Frequently, their efforts have been undermined by policy advice and structural adjustment programs of international financial institutions. Even now, the Bank's proposed approach to using country systems does not include any concrete measures to effectively strengthen national capacities. It is not evident why relying on country systems in itself would strengthen these capacities.

The diverse requirements of funders are indeed burdensome and cause unnecessary costs. NGOs have always promoted an international harmonization of social and environmental standards. However, these standards must be harmonized upwards. The new approach to using country systems would cause a downward harmonization of important aspects. This is unacceptable.

3. Serious weakening of the role of the Inspection Panel

Before the Mexico DIRD project was approved, the Inspection Panel and Bank management signed a memorandum which clarified that "the country systems strategy would not change the role of the Inspection Panel as set forth in the 1993 Resolutions establishing the Panel". Specifically, the Panel would be able to investigate the assessment of the equivalence of national

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[4] See www.bicusa.org/bicusa/issues/safeguard_policies_at_the_world_bank/1469.php for a copy of the NGO letter, and www.irn.org/programs/finance/ResponseByJDW.doc for the response by World Bank President Wolfensohn

[5] Issues in Using Country Systems in Bank Operations, p. 1

policies with Bank policies by the Bank's Management if complaints were filed regarding future pilot projects.

The new paper seriously undermines this commitment. It clarifies that when investigating Management's assessment of equivalence, the Panel will no longer be able to investigate whether national safeguard systems are indeed equivalent with the Bank's operational policies, but only with the synthesis included in Annex A of the new paper. Since this synthesis weakens the substance of the policies (see below, section 6), the proposal seriously undermines the purview of the Inspection Panel.

4. Loophole I: relying on plans instead of track records

Annex A of the new document summarizes the objectives and operational principles of the World Bank's social and environmental safeguard policies. According to the document, "Management proposes to consider a country's own rules and procedures to be equivalent to this framework if they are designed to achieve these objectives and adhere to these operational principles".[6] (See section 6 for an initial critique of the provisions of Annex A.)

The paper further elaborates:

> "In assessing the acceptability of country systems, the Bank would go beyond the applicable country rules and examine also the implementation practices, track record, and capacity of relevant country institutions, and the risk environment."[7]

This is positive. Unfortunately, the principle of equivalence is undermined by a major loophole. Annex A states that

> "[i]n determining equivalence, the Bank may take account of *planned* and realized improvements in the borrower's rules and their implementation, including Bank-supported efforts to strengthen relevant rules and procedures, institutional and human capacity, and incentives and methods for implementation".[8]

The note also says that "pilots will be considered in countries that have, *or are in the process of developing,* an appropriate legal framework, institutional capacity, and implementation track record" (emphasis in both quotes added).[9]

Considering legal frameworks and institutional capacities (and let alone track records) that are only being planned or developed to be equivalent with the existing, binding operational policies of the World Bank does not make sense. If accepted, this practice would open the door to accepting national systems whenever it is politically expedient. This practice would contradict

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[6] ibid., p. 9
[7] Ibid., p. iii
[8] ibid., p. 27
[9] ibid., p. 23

the Bank's commitment to monitor the track record of governments in effectively implementing their policies, and would make a mockery of the concept of equivalence.

5. Loophole II: governments to assess their own performance

Annex B of the new paper describes how the use of country systems is to be implemented. This Annex is extremely vague and does not define any clear procedures that the Bank could be held accountable for.

The Annex however allows for borrowing governments to assess the equivalence of their own laws and regulations, and the quality of their implementation, with World Bank policies. Clearly, such a self-evaluation would create an unacceptable conflict of interest. In comparison, the Annex does not mention any role for civil society in such assessments.

6. Dilution of safeguard policies

World Bank representatives, including President Wolfensohn, have repeatedly assured NGOs that "this move toward using country systems will not weaken our existing safeguard policies".[10] A three-page table in Annex A of the new paper summarizes the objectives and operational principles of the Bank's environmental and social safeguard policies. According to the paper,

> "Management proposes to consider a country's relevant rules and procedures to be equivalent to the applicable Bank policy framework if they are designed to achieve the same objectives as, and to adhere to the operational principles of, that framework".[11]

NGOs have so far not had the time to compare the objectives and operational principles as summarized in the new paper in detail with the contents of the Bank's various safeguard policies. Even an initial analysis by the International Accountability Project (IAP) found that the synthesis proposed in Annex A would weaken or ignore important requirements of the Bank's operational policy 4.12 on involuntary resettlement.[12] This can be demonstrated for the following provisions:

(1) Overall objective: OP 4.12 stipulates that "persons displaced by the project (…) share in project benefits", and that "[d]isplaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them".[13] Annex A of the new paper drops the first objective, and reverses the emphasis of the goals formulated in the second objective.

(2) No displacement without resettlement: The Bank's OP 4.12 stipulates that

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[10] Letter of President Wolfensohn to IRN, June 29, 2004
[11] Issues in Using Country Systems in Bank Operations, p. iii
[12] See International Accountability Project, Resettlement Critique of Annex A of OPCS document 'Issues in Using Country Systems in Bank Operations' dated August 20, 2004, available from dana@accountabilityproject.org
[13] World Bank, Operational Policy 4.12, Involuntary Resettlement (Revised April 2004), paragraph 2

> "[t]he implementation of resettlement activities is linked to the implementation of the investment component of the project to ensure that displacement or restriction of access does not occur before necessary measures for resettlement are in place".[14]

This crucial element of resettlement programs is frequently violated in projects that cause involuntary displacement. Annex A of the new paper does not include any such requirement.

(3) Access to information: OP 4.12 provides that

> "the borrower provides the Bank with the relevant draft resettlement instrument which conforms to this policy, and makes it available at a place accessible to displaced persons and local NGOs, in a form, manner, and language that are understandable to them".[15]

Annex A simply requests that resettlement plans be disclosed in a timely manner, and does not require the disclosure of draft resettlement plans.

7. Inclusion of category A projects

The new paper explains that the use of national safeguard systems will initially be tested in a pilot program that is likely to comprise about eight to twelve projects over the next two years. Several senior representatives of the Bank's Management have assured NGOs that during this pilot phase, the new approach would not apply to Category A projects, which pose particularly high environmental risks.[16] In contrast to these assurances, the new paper states that "[i]n the case of environmental and social safeguard policies, there is a presumption that relatively few cases would involve Category A projects".[17]

8. Unclear access to information

The new paper says that the Bank will make the analyses regarding the equivalence of national systems publicly available. It further states that the use of national safeguard systems "would not alter (…) institutional obligations under the Bank's disclosure policy".[18] This is positive, but not quite sufficient.

The World Bank policy on disclosure of information defines the access to many key documents, including environmental impact assessments, resettlement plans, and indigenous peoples' development plans. The access to other documents – including mitigation plans regarding natural habitats, forests, pest management etc. – is however not defined by the Bank's disclosure policy, but by individual safeguard policies. Under the proposed approach to the safeguard policies, borrowing governments would implement their own safeguard systems. The World Bank needs

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[14] ibid., paragraph 10
[15] ibid., paragraph 22
[16] This assurance was for example given by Warren Evans, Director of Environment, in a meeting with Dutch NGOs on June 21, 2004
[17] Issues in Using Country Systems in Bank Operations, p. 20
[18] ibid., p. 16

to clarify that even if national systems are used, the Bank will continue to be responsible for the public release of all relevant documents, not just those that are covered by its disclosure policy.

9. Additional costs of doing business

According to the new paper, the costs of dealing with differing safeguard systems are an important reason for the proposed use of national systems. However, the analysis of policy equivalence and the complex supervision of projects implemented under national systems will make the new system more and not less expensive. In the case of the Mexico DIRD project, "the country director estimated that project preparation costs were about twice the amount for comparable operations that did not use country systems, and supervision costs are also expected to be comparably high".[19] The paper also warns that the "risks associated with higher up-front costs, heightened public scrutiny, and unexpected delays", among other factors, "can lead to reluctance to use country systems on the part of both staff and borrowers".[20]

The paper argues that the costs of the new approach will decrease over time, in that the equivalence of national systems does not need to be assessed for every individual project. While this is true for assessments, the supervision of projects under the proposed system will always be complex and expensive, and the paper does not provide any arguments as to why supervision costs would fall over time.

The high cost of doing business under the new approach raises two concerns: If cost savings are indeed a goal of the new approach, this will put pressure on the Bank to reduce its supervision efforts in future projects that are based on national safeguard systems. If cost savings are not the actual goal, this raises concerns that the real goal, at least for some proponents, is to weaken the safeguard policies through the various loopholes of the proposed approach.

10. Wishful thinking on current environmental practices

The new paper states the following about the World Bank's current environmental practice:

> "A 2001 evaluation by the Operations Evaluation Department (OED) concluded that Bank projects are usually well designed to avoid environmental damage and have good environmental management plans (EMPs). They have also contributed to strengthening local capacity to carry out environmental assessments and implement EMPs."[21]

This is, at best, a very selective summary of the OED's findings on the Bank's environmental performance. An evaluation report of 2002 also found the following:

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[19] ibid., p. 17
[20] ibid., p. 22
[21] ibid., p. 5

> "The Bank's performance on environmental safeguard policies remains contentious. Implementation has been mixed."[22]
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> "Supervision of environmental aspects of category A and particularly category B projects has been weak, and monitoring of action plan implementation spotty."[23]
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> "The quality of the EA process deteriorated [after 1996]. (…) Overall, performance in the area of safeguards has only been partially satisfactory."[24]
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> "The environment has too often been viewed as a luxury that can wait rather than as a central part of the Bank's development objectives."[25]
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> "The Bank should review its environmental safeguard oversight system and processes to strengthen accountability for compliance."[26]

It is important to recall these findings of the World Bank's own evaluation department. They indicate that in order to achieve its development objectives, the Bank needs to strengthen, and not weaken or put in doubt, the implementation of its environmental safeguard policies. The new paper on the use of national systems does not address this imperative.

11. Next steps

The Board of Directors discussed the new paper on September 14, 2004. The Executive Directors asked Management for further clarifications regarding the implications of the paper, and particularly the provisions of Annex A. Once these clarifications have been made, Management will consult civil society on the proposed changes during a two-months period, both through web-based consultations and face-to-face meetings. The private sector will also be consulted on the proposed changes regarding the Bank's procurement guidelines.

An international meeting on the harmonization of policies will take place in Paris in March or April of 2005. Management aims to get the new approach approved by the Board of Directors ahead of the Paris meeting, or by the end of FY 2005 (June 2005) at the latest. The new approach will then be tested in a pilot program of eight to twelve projects, before it will eventually be finalized.

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[22] World Bank Operations Evaluation Department, Promoting Environmental Sustainability in Development, An Evaluation of the World Bank's Performance, 2002, p. 19
[23] ibid., p. 20
[24] ibid., p. 21
[25] ibid., p. 23
[26] ibid., p. 26