



Will Safeguards Survive the Next Generation of Development Finance?

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TABLE OF CONTENTS

Executive Summary	3
1.0 Introduction	6
2.0 What are safeguards?	7
3.0 How have safeguards evolved over time?	8
3.1 Origins at the World Bank	8
3.2 External pressure drives further reforms	9
3.3 Expansion to other multilateral development banks	9
3.4 Experiments with “country systems”	10
3.5 Shift towards greater country ownership of safeguards	11
4.0 Current safeguard reforms	13
4.1 International financial institutions	13
4.2 UN climate change negotiations	14
4.3 Emerging actors in development finance	15
5.0 Case studies from developing countries	16
5.1 Uganda’s energy sector	16
5.2 China’s investments in Cambodia	19
5.3 Large-scale hydropower development in Brazil	22
5.4 Indonesia and REDD+	25
6.0 Lessons learned	28
7.0 Recommendations for designing safeguards	34
8.0 Recommendations for specific institutions	39
9.0 Conclusion	41
Acknowledgments	42
About the case studies	42
Endnotes	43

EXECUTIVE SUMMARY

Governments depend on a variety of international institutions to advance development goals, ranging from the multilateral World Bank and United Nations, to the aid agencies and national banks of individual countries. Each year, these international institutions invest in activities that contribute to broader goals—such as economic growth, food production, or greenhouse gas emission reductions—but that carry significant environmental and social risks. To reduce these risks, many international institutions have adopted policies called “safeguards” to help ensure that their investments do not have unintended consequences on people and ecosystems. While far from perfect, safeguards have played an important role in ensuring that public funds are used in an environmentally and socially responsible way.

Yet international institutions are changing the way they channel public funds to developing countries, which is also changing the way that safeguards are being applied. For the past few decades, safeguard policies have outlined step-by-step procedures that a recipient government is expected to follow to manage the environmental and social risks of development projects. This worked well with specific projects, such as dams or roads, where the international institution could require the completion of an environmental impact assessment or other safeguards before construction began. Development finance has become more complex, however, and international institutions now offer funds in a wider variety of ways to encourage greater country ownership over the development process. Rather than requiring governments to follow a uniform set of step-by-step procedures, for example, international institutions have increasingly committed to rely on local laws and institutions for protecting the environment and human rights.

These reforms bring opportunities as well as significant challenges. On the one hand, country ownership of safeguards can help to empower local laws and institutions, leading to sustainable development. On the other hand, relying on these local laws and institutions can result in poorer development outcomes in the short term. Many countries still lack the comprehensive laws, enforcement capacity, and political will to protect people and the environment from harm while development activities go forward.

Over fifteen international institutions have undertaken safeguard reforms in the past three years. Currently, at least eight institutions are reforming old policies or developing new ones. The purpose of this paper is to explore how international institutions can design safeguards in a way that promotes greater country ownership, while maintaining accountability to the local communities affected by development projects. To better understand the complexities of this challenge, this paper draws on four case studies:

- **Uganda’s energy sector.** For many years, the World Bank and other international institutions supported the growth of Uganda’s energy sector. The Bank’s safeguards provided an important avenue for civil society organizations to raise and resolve concerns with development projects such as the Bujagali Dam. Five years ago, Uganda discovered oil and gas reserves and is developing this resource without financing from traditional international institutions. Many protections brought by safeguards have been lost, leading civil society organizations to seek new avenues of accountability within the government.
- **China’s investments in Cambodia.** In 2011, construction was completed on the Kamchay Dam, Cambodia’s first major hydropower project. The project was built and financed by a Chinese state-owned company that relied almost entirely on Cambodia’s local laws and institutions to resolve environmental and social concerns. Implementation of environmental, human rights, and land laws remains a challenge in Cambodia. Because the Chinese investors did not have their own safeguards in place, conflicts that arose with local communities had to be resolved in an ad hoc manner. While some conflicts were successfully resolved, many of the poorest community members lost half of their income as a result of the project and have not had their livelihoods restored.
- **Large-scale hydropower development in Brazil.** As Brazil’s economy grows, it has become a net donor to international institutions and has been able to self-finance its own infrastructure development. Brazil’s recent efforts to build the Rio Madeira and Belo Monte dams illustrate the complexities of applying national safeguard systems even in a country as developed as Brazil. The national development bank BNDES has started to develop safeguards in recent years, but still faces challenges in applying these safeguards to the conflicts around indigenous people’s rights that have emerged.
- **Indonesia and REDD+.** Indonesia has abundant forests that are not only important locally but globally as a counterforce to the greenhouse gas emissions that are causing climate change. As such, Indonesia has actively sought financing to conserve its forests from international institutions through Reduced Emissions from Deforestation and Forest Degradation (REDD+) initiatives. Meanwhile, tens of thousands of local communities in Indonesia depend on the forests for their livelihoods. Hundreds of conflicts exist over competing titles to land in Indonesia, and REDD+ initiatives must carefully navigate these conditions to be successful. As such, Indonesia faces the challenge of designing its own national safeguard systems for REDD+ initiatives, while coordinating among the different—and sometimes contradictory—safeguard demands of donors.

Although critical in many respects, these case studies are not intended to imply that country ownership of safeguards should not be pursued. Nevertheless, international institutions have not yet found the optimal balance between relying on local laws and institutions, while maintaining

accountability to local populations. Safeguards will survive the next generation of development finance, but the new form they will take remains unclear. We hope that this paper can contribute to meaningful and participatory reforms, so that international institutions can find an approach to safeguards that will lead to better development outcomes.

1.0 INTRODUCTION

Safeguards are a crucial part of the development process. Each year, international institutions invest in activities that contribute to broader development goals—such as economic growth, food production, or greenhouse gas emission reductions—but that carry significant environmental and social risks (see Box 1). Many international institutions have adopted environmental and social “safeguard” policies to help identify and reduce the likelihood that investments cause harm to local people and ecosystems. While far from perfect, safeguards have played an important role in ensuring that public funds are used in an environmentally and socially responsible way.

Yet international institutions are changing the ways they channel public funds to developing countries, by promoting greater country ownership over the development process. To do so, many international institutions increasingly rely on the local laws and institutions of recipient countries, rather than requiring governments to follow a specific set of procedures designed by the international institution itself. This trend is altering the way we think about safeguards.

Promoting country ownership of safeguards can help to strengthen local laws and institutions, leading to sustainable development. Many governments, however, lack comprehensive laws, enforcement capacity, and political will to protect people’s rights and the environment from harm. Comprehensive governance reforms can take years and will not necessarily help development activities that go forward in the short term. As a result, international institutions are still searching for the proper balance between shifting responsibility to recipient governments, while ensuring that they do not channel public funds to activities that cause harm to human rights or the environment.

This paper draws upon four case studies that describe civil society experiences with safeguards. These papers were funded by the C.S. Mott Foundation and published by the Bank Information Center. These papers, from Brazil, Cambodia, Indonesia and Uganda, illustrate some of the complexities and benefits of the growing interest in country ownership of safeguards.

Box 1: What are “international institutions”?

This paper uses the term “international institutions” broadly to refer to a wide range of publicly owned institutions involved in development finance. This includes, for example, international financial institutions such as the World Bank, the institutions that comprise the UN climate change regime, and national export credit and aid agencies. Many of these institutions are owned and governed by governments, and provide financial and technical support to governments and companies to invest in activities that contribute to development. While different in many respects, common themes have emerged in these institutions’ approaches to safeguards.

2.0 WHAT ARE SAFEGUARDS?

Each year, international institutions channel billions of dollars towards development projects under conditions of weak rule of law, corruption, and poverty. When investing under such complicated conditions, these institutions often rely on safeguards to help ensure that their efforts benefit rather than harm people and ecosystems.

Safeguards are generally linked to financing or some other form of support from international institutions. For example, a government might receive funds from a UN agency or development bank for an activity but must agree to follow the safeguards in exchange.

Traditionally, safeguards required governments that seek international financing to follow a specific set of procedures, in order to assess and mitigate environmental and social risks, consult with potentially affected communities, and ensure that people have access to information. Traditional safeguards also provided detailed steps on how to engage with indigenous peoples, restore people's livelihoods after involuntarily resettlement, and minimize pollution.

Safeguards often take the form of institutional policies, but require a supporting framework to be effective. This includes dedicated staff, monitoring and supervision procedures, and public reporting, among others. Many international institutions, especially the multilateral development banks, have established accountability mechanisms where people affected by an investment can raise concerns if they believe that safeguards are not being followed.

Existing safeguard policies are not perfect by any means, but have nevertheless been the primary way of linking community voices with the people at international institutions who make investment decisions. As this paper illustrates, however, the traditional view of safeguards is changing. Increasingly, international institutions are relying instead on local laws and institutions. Rather than follow a specific set of procedures, governments must demonstrate to the international institution that their national safeguard systems can manage the environmental and social risks of the development project.

3.0 HOW HAVE SAFEGUARDS EVOLVED OVER TIME?

3.1 Origins at the World Bank

The use of safeguards for development projects began at the World Bank and later expanded to other international institutions. In the 1970s and 1980s, the World Bank became embroiled in a series of high profile controversies.² In Indonesia, the Bank supported the forced resettlement of millions of non-Javanese people by the Suharto regime.³ In India, the Bank invested in the Narmada dams that displaced 300,000 people. In Brazil, it helped to pave the Polonoroeste BR-364 highway, a 1500 km route through the Amazon, leading to land conflicts, widespread deforestation, disease epidemics, and crime.⁴ With these and other controversies, civil society organizations and the media began to scrutinize the Bank's investments.

The safeguards grew out of the efforts of a small number of Bank staff to adopt binding environmental and social policies in the 1970s and 1980s.⁵ At the time, Dr. Robert Goodland was the Bank's sole ecologist, charged with reviewing hundreds of projects each year for harmful environmental impacts. In an interview for the World Bank Group oral history program, Dr. Goodland described how the World Bank tried at first to respond to environmental concerns on an ad hoc basis, but gradually moved towards a more systematic and predictable approach:

I started off in 1978 as a retailer; that is, on a project-by-project basis. I triaged the gigantic flow of project documents, and focused on the riskiest group with the most serious impacts. It was unsatisfying and time-consuming. The first two projects in the "Major Risks" pile were the Yacyretá hydro project between Paraguay and Argentina, and the Polonoroeste program in the Amazon part of Brazil. I was thrown in at the deep end. They were both designed with zero social or environmental precautions. It was a huge challenge to bring them towards acceptability, which I never fully succeeded in doing: both are still causing damage and intensifying poverty. After less than a year working in the Bank, I realized that fire-fighting, the project-by-project retail approach, while personally challenging, was getting nowhere because the Bank had several hundred new projects every year. Our tiny Office couldn't hope to make a difference if we hewed to the retail approach.⁶

In 1980, through the efforts of resettlement specialist Dr. Michael Cernea, Dr. Goodland, and a few others, the Bank adopted a policy on involuntary resettlement. In 1981, it adopted an indigenous people's policy in anticipation of the controversial Polonoroeste project in Brazil. These policies were not called safeguards at the time, and still took several years to be implemented effectively. Yet they laid the groundwork for more comprehensive safeguards in the coming years.

3.2 External pressure leads to further reforms

While internal champions at the World Bank created the first safeguards, external pressure from civil society organizations and donor governments drove the expansion of the safeguards to environmental issues in the 1980s and 1990s.⁷ As major shareholders in the Bank, the U.S. and European governments were able to insist on policy reforms as a condition of continued financial support.

Throughout the 1980s, at the initiative of civil society organizations, U.S. Congress held a number of hearings on the environmental impacts of the World Bank and other multilateral development banks. The hearings first focused on the impacts of the Polonoroeste project in Brazil, and expanded to examine the broader institutional framework that the Bank had in place to manage environmental risks. As a result of this pressure, the World Bank created a centralized environment department in 1987 and began to expand its environmental staff. At the insistence of U.S. Congress, political space also opened up for civil society organizations to engage with the Bank on a more regular basis.

In 1989, U.S. Congress passed a law that became known as the “Pelosi Amendment” after Congressperson Nancy Pelosi. The law requires U.S. officials sitting on the boards of the World Bank or other multilateral development banks not to vote in favor of any investment unless an environmental impact assessment (EIA) has been conducted at least 120 days before the board’s vote. For the United States to support the project, the EIA also had to be made available to the board of directors, Bank staff, civil society organizations, and affected communities. Because the U.S. government was such an important shareholder, this was enough to incentivize the World Bank to require borrowers to conduct transparent environmental assessments.

In the early 1990s, the U.S. and European governments supported further reforms, such as creation of the World Bank Inspection Panel, where affected communities could raise complaints if they believed the Bank was not complying with these policies.⁸ In 1997, World Bank senior management first labeled these together as the Bank’s “safeguard policies,” giving them stronger political backing within the Bank.⁹ Over time, the Bank revised and updated the safeguard policies.

3.3 Expansion to other multilateral development banks

The World Bank began to share its experiences with other multilateral development banks through inter-agency workshops. In the 1990s, several of these banks, such as the Asian Development Bank (ADB) and Inter-American Development Bank (IDB), adopted their own safeguards based on the Bank’s. The ADB released its policy on involuntary resettlement in 1992¹⁰ and indigenous people in 1998.¹¹ The IDB, in turn, adopted its first involuntary

resettlement policy in the late 1990s.¹² Safeguards caught on at other development banks as well.¹³ Over time, some banks went even further than the World Bank, adopting policies that filled key gaps that the Bank has not yet addressed—such as requirements for social impact assessments and labor rights.¹⁴

Civil society networks also emerged to monitor these banks and engage in safeguard policy reforms. In 1991, for example, 20 civil society organizations created the NGO Working Group on the Asian Development Bank, which later became the NGO Forum on the ADB. The network now has over 250 member organizations.

3.4 Experiments with “country systems”

By the mid-2000s, the concept of “country ownership” grew in importance in the international development community.¹⁵ The 2005 Paris Declaration on Aid Effectiveness, followed by the 2008 Accra Agenda for Action, reflected a new global consensus that governments receiving international development assistance should forge their own national development strategies with their parliaments and electorates.¹⁶ To promote greater country ownership, donors committed to use national systems wherever possible rather than imposing additional systems from the outside.

In 2004, in the run-up to the Paris Declaration negotiations, the World Bank began to pilot the use of a “country systems approach” for environmental and social safeguards.¹⁷ Under this approach, the World Bank relied on a country’s existing laws and institutions instead of expecting the recipient government to follow its safeguard policies line-by-line.¹⁸ The key to this approach was that the Bank would carefully assess the country’s systems and determine if they were substantially equivalent to the Bank’s safeguards. If the systems were found inadequate in some way, the Bank and government would agree to fill the gaps. In 2010, for example, the World Bank agreed to use South Africa’s national systems for environmental assessment and involuntary resettlement when financing the Medupi coal-fired power plant.¹⁹ In the wake of the Bank’s initiative, ADB and IDB also began to experiment with the country systems approach to safeguards.

By 2010, the World Bank had piloted the country systems approach in 13 countries. The pilot projects had mixed results. According to an assessment by the Bank’s Independent Evaluation Group (IEG),²⁰ the pilots did not save time and costs as anticipated, nor did they meet borrowers’ expectations that safeguard responsibilities would be fully transferred to borrowers.²¹ Civil society groups also criticized the country systems approach, among other reasons, for being used to invest in quasi-autonomous government agencies such as state-owned electricity utilities that were not accountable to citizens or their political representatives.²² Currently, the World Bank has scaled down its plans to use the country systems approach and has explored other innovative approaches to safeguards.

3.5 Shift towards country ownership of safeguards

Political momentum remains strong to expand country ownership of safeguards (see Box 2). Because the World Bank's "country systems" approach has not gained broad acceptance, international institutions have begun to look for other ways to promote country ownership of safeguards.

Box 2: Politics of country ownership and safeguards

Safeguards were originally designed at a time when developed countries dominated the investment decisions that were made by international institutions. This is now changing. Emerging economies such as Brazil, China, and India have started to make large contributions to development finance. Since 2008, recipient governments that sit on the World Bank's board of directors have begun to occasionally take public, joint positions on complex issues such as climate change. As recipient countries gain a stronger voice in the governance of international institutions, they are also promoting greater country ownership of the development process, including safeguards.

International institutions are also financing new types of projects, often supporting broader policy changes rather than specific development projects. Safeguards were originally intended for a specific type of development finance, where international institutions invested in clearly defined projects such as a road or dam. Over the past decade, however, a growing percentage of development finance has been directed toward broader investments in government programs and policies rather than individual projects. Rather than invest in a power plant, for example, international institutions will invest in a country's energy sector. Institutions have found it more difficult to apply the traditional notions of an environmental impact assessment, public consultations, and other safeguards to such an investment. Greater reliance on local laws and institutions offers one potential solution to this challenge.²³

In 2012, the World Bank approved a new results-based lending structure called "program for results" (PforR).²⁴ PforR goes a step further than the country systems approach by shifting even greater responsibility for the implementation of safeguards onto the recipient government. The Bank's traditional safeguards do not apply. Instead, Bank staff members conduct an initial assessment of the country's relevant social and environmental protections based on more broadly-worded principles.²⁵ Civil society organizations have sharply criticized this new approach, expressing concerns that it would reduce the accountability of World Bank finance and trigger a "race to the bottom" in safeguards at international financial institutions.²⁶ It is still too early to evaluate the performance of PforR.

Similarly, UN climate change negotiators are interpreting safeguards as broadly defined principles. Governments will use these principles to guide their own safeguard approaches and report back to the international community on progress. The negotiators of REDD+, for example, reached agreement on a broad set of principles in 2010.²⁷

While many international institutions remain committed to shifting responsibility for safeguards to recipient governments, there is not yet consensus on how to best do so. Many of the approaches described above remain largely untested. Some institutions are using more than one approach simultaneously. The World Bank, for example, currently applies five different approaches to safeguards.²⁸ The Asian Development Bank adopted new safeguards in 2009, but each policy also includes a set of less specific “policy principles” that is used for some types of financing.²⁹ Each financing mechanism under the UN climate change regime is also negotiating its own set of safeguards. It remains unclear if international institutions’ approaches to safeguards will continue to diverge or become more coherent.

4.0 CURRENT SAFEGUARD REFORMS

At least fifteen international institutions have undertaken safeguard reforms in the past five years. Currently, at least eight institutions are reforming old policies or developing new ones. This section provides a brief overview of some of the safeguard reforms currently underway (see summary in Box 3).

Box 3: Recent safeguard reforms	
Multilateral development banks	European Bank for Reconstruction and Development (2008)
	Asian Development Bank (2009)
	Forest Investment Program (2009)
	International Finance Corporation (2011)
	Forest Carbon Partnership Facility (2011)
	World Bank (in progress)
	African Development Bank (in progress)
UN climate change negotiations	REDD language at UNFCCC (in progress)
	Green Climate Fund (in progress)
Emerging actors	China Export Import Bank (2008)
	Brazil National Development Bank, BNDES (in progress)
Multilateral agencies	UN REDD (in progress)
	UN Environment Management Group (in progress)
	Global Environment Facility (in progress)
Bilateral donors	German Development Agencies (2011)

4.1 Multilateral development banks

Multilateral development banks have the most sophisticated safeguards, including detailed procedures and years of staff experience. In the past five years, several have updated their safeguards, including the Asian Development Bank, International Finance Corporation, and European Bank for Reconstruction and Development. Civil society organizations have played an influential role in each review.

Now, the World Bank—which arguably has the most influential safeguards among public international institutions—is reforming its policies. Following the recommendations of an internal audit in 2010,³⁰ the World Bank announced plans to overhaul its environmental and social safeguards.³¹ The scope of this reform is limited to only a small percentage of the Bank’s total portfolio. The World Bank currently applies five different approaches to safeguards,³² but only two approaches are currently part of the review.³³ Unless the Bank examines its safeguards in a more holistic manner, it is unlikely to emerge from its safeguards review with a consistent approach to delegating responsibility to recipient governments.

While the multilateral development banks are no longer the only large-scale players in development finance, they continue to be at the forefront of conversations over safeguards and have large staff capacity dedicated to safeguards. Reforms at the World Bank tend to signal broader trends, and the Bank's approach to country ownership could influence the approach that other international institutions choose.

4.2 UN climate change negotiations

Safeguard discussions are also taking place as part of the negotiations at the United Nations Framework Convention on Climate Change (UNFCCC). Most of the UN climate change regime's financing mechanisms are developing their own approaches to safeguards.

The REDD+ initiative, in particular, has spurred a great deal of innovation around safeguards, though many of the approaches are in the early stages and largely untested. In December 2010, governments agreed on a framework for REDD+ that outlines broad principles for safeguards.³⁴ The UNFCCC approach is still being designed, but generally it delegates full responsibility to REDD+ countries to determine how they will implement and report back to the international community on the safeguards.³⁵ Although international institutions have worked to delegate responsibility for REDD+ safeguards to recipient governments, they have actively monitored progress and provided technical advice to REDD+ countries throughout the process.

Several international funds have emerged to support countries in preparing for REDD+. These so-called "readiness" funds are overseen by the World Bank and UN, each of which has developed its own approach to safeguards.³⁶ The UN-REDD program has developed a set of "social and environmental principles and criteria" using the UN's human rights based approach to development.³⁷ The World Bank's Forest Carbon Partnership Facility (FCPF), in contrast, requires clients to develop a "strategic environmental and social assessment" that feeds into an "environmental and social management framework."³⁸ A 2011 evaluation of the FCPF highlighted that the FCPF's and UN REDD's different approaches to safeguards "are creating a degree of confusion in those countries where both programs operate."³⁹

In addition to REDD+, a conversation around safeguards has also emerged in the context of the Green Climate Fund, though this conversation is still in its early stages. UN negotiators established the Fund in December 2010, which is intended to become the major mechanism for financing the global response to climate change.⁴⁰ The Fund was officially launched in Durban, South Africa in December 2011.⁴¹ The World Bank was selected as interim trustee for the fund and negotiations continue on the design of the Fund's safeguards.

4.3 Emerging actors in development finance

The global safeguards debate, like so many other policy debates, has now turned to the question: “what about China?” China’s decades-long growth has made it the second largest economy in the world, surpassing Japan in mid-2010 and soon to eclipse the United States.⁴² Other major economies, such as Brazil and India, are also growing and expanding outward. State-owned financial institutions are an important part of all of these countries’ strategies for outward expansion. They have quickly become dominant players in development finance. In 2009 and 2010, for example, China’s Export Import Bank and its Development Bank lent more to developing countries than the World Bank did.⁴³ Similarly, Brazil’s leading national development bank, BNDES, lends more in Latin America than the World Bank and the Inter-American Development Bank combined.⁴⁴

Government-backed banks in China and Brazil have tended to apply few, if any, safeguards to their foreign investments. Instead, they have committed to abide by the local laws of recipient countries, and tend to rely exclusively on the recipient government to handle environmental and social concerns. However, safeguards are beginning to emerge at a few leading Chinese and Brazilian financial institutions.

In 2004, China Export Import Bank developed a short set of environmental guidelines for its overseas lending, and publicly disclosed more robust guidelines in 2008.⁴⁵ The guidelines require borrowers to complete an environmental and social impact assessment before any loan is approved, properly manage resettlement issues, and hold open consultations with affected people. It remains unclear whether China Export Import Bank has also developed the institutional framework necessary to implement these guidelines. In at least some cases the Bank has withdrawn financing from projects on environmental grounds.⁴⁶

Similarly, BNDES is in the process of strengthening its safeguards.⁴⁷ In 2009, the government received a \$1.3 billion loan from the World Bank, which included support to develop stronger environmental and social standards for BNDES.⁴⁸ BNDES announced its intention to adopt an integrated environmental and social institutional policy and 52 sectoral guidelines, but it remains unclear whether this policy was implemented.⁴⁹ As part of this effort, the BNDES board also decided that the institution should become more transparent. In 2007, BNDES began its “Transparente” Initiative that included a series of meetings with civil society organizations. In 2008, BNDES created an ombudsman. In 2010, BNDES began posting basic information about its environmental and social review procedures on its website.⁵⁰

The movement of emerging actors toward adopting safeguard policies has been slow, however. It thus remains to be seen how these actors’ safeguards will evolve.

5.0 CASE STUDIES FROM DEVELOPING COUNTRIES

To better understand how safeguards are being applied in the changing landscape of development finance, the C.S. Mott Foundation, World Resources Institute, and Bank Information Center commissioned four case studies in Uganda, Cambodia, Brazil, and Indonesia. Although critical in many respects, these case studies are not intended to imply that country ownership of safeguards should not be pursued. Rather, these case studies illustrate the opportunities and complications that arise when international institutions rely on local laws and institutions for environmental and social protections.

5.1 Uganda's energy sector

Henry Mugisha Bazira of the Water Governance Institute analyzed the value of international institutions' safeguards in the development of Uganda's energy sector.⁵¹ Uganda's energy sector has long been a recipient of foreign investment and development assistance. For many years the World Bank and other multilateral development banks were active in helping Uganda design its energy sector with a focus on large-scale hydropower projects. The development banks applied a "traditional" safeguards approach to their investments, in which they required the Ugandan government to follow step-by-step procedures for safeguards. Five years ago, Uganda discovered oil and gas and began to develop these resources without the support of development banks. Now Ugandan civil society faces the challenge of holding the Ugandan government accountable for the current oil and gas development in the absence of strong domestic or international safeguards.

5.1.1 Bujagali Dam

In the late 1990s, the Ugandan government turned to the World Bank and African Development Bank to help develop hydropower along the Nile River. In 2007, Uganda began constructing the 250MW Bujagali Dam as one of the pillars of its energy strategy, which is scheduled to begin operating in 2012 after several delays. The project brought significant impacts for local communities. The dam flooded the Bujagali Falls area held sacred by local people, and displaced communities along the shore of the Nile River, while the dam's power transmission lines caused deforestation and displaced many small farmers. Resettled communities did not receive adequate compensation, and consultations often excluded key stakeholders, especially known opponents of the project. Some people were reportedly threatened with losing all of their compensation if they did not express support for the project. Civil society organizations also criticized the project's environmental impact assessment for not considering the cumulative impacts of a cascade of dams on the Nile River.

5.1.2 Seeking justice through the development banks

Uganda has a number of laws and policies intended to protect people and the environment from harm. These include, for example, laws on access to information, worker safety, pollution prevention, and respect for cultural heritage. While these laws and policies exist on paper, they are often poorly implemented and enforced.

As a result of the weaknesses in national laws, civil society organizations tried to seek improvements to the Bujagali Dam using the banks' safeguards. The World Bank's and African Development Bank's environmental and social safeguards both applied to the project. With the help of Ugandan civil society, local communities brought two petitions to the World Bank Inspection Panel in 2001 and 2007, and one to the African Development Bank's Compliance Review and Mediation Unit in 2007.

Through interviews with project-affected people and civil society organizations, Bazira gathered local perspectives on the value of the World Bank's safeguards and complaint mechanisms. The people interviewed by Bazira expressed that they were better off because of these petitions. Use of the complaint mechanisms gave them an independent and credible set of facts about environmental and social conditions, which improved their negotiating position with the government and project companies. Afterwards, project proponents reportedly used fewer threats and coercion against community members who opposed the project. Resettled people believed they received better compensation packages and housing.

At the same time, the complaint mechanisms did not provide a complete solution, and many concerns and unfulfilled promises remain unresolved within the communities over a decade later. Bazira expressed concern that the complaint mechanisms can only be effective if they can clearly measure "compliance" and "non-compliance" with the safeguards. In the African Development Bank complaint mechanism's 2008 investigation report, for example, the panel stated that it "was concerned about how bank management and staff had handled certain issues, but because of gaps and lack of clarity in the Bank's policies and procedures, it was unable to make clear determination of compliance or non-compliance." As a result, the complaint mechanism was limited in its ability to make meaningful recommendations. This is an important lesson, Bazira noted, as international institutions begin to design safeguards that are based on broadly worded principles rather than specific step-by-step procedures. Bazira emphasized the important role that the safeguards play in the absence of strong national laws, and recommended that "these mechanisms need to be promoted and enhanced."

5.1.3 *Uganda's oil boom*

In 2006, oil was discovered in Uganda. Since that time, investment has flowed into the country as multinational companies compete to gain access to the deposits. Exploration companies have drilled at least 64 exploration wells, and major international companies are entering the industry. Development has so far been self-financed by oil companies and commercial banks, although it is reported that the China Export Import Bank may soon become a major investor.

Bazira interviewed government officials about whether any lessons from the banks' safeguards are being carried over to the oil and gas sector. He found no indication that this is the case. The one exception is Tullow Oil, an Irish company, which has committed to use the International Finance Corporation's Performance Standards. For the most part, however, the environmental and social sustainability of Uganda's oil and gas sector now depends on the strength of Uganda's national safeguard systems. As such, the Government of Uganda is attempting to develop the laws and institutions necessary to govern the rapidly growing oil and gas sector. But weak governance and corruption still plague implementation.

As a result, environmental and social concerns are already emerging in relation to the emerging oil sector. Negotiations between the government and oil companies have occurred in secret, and not even parliamentarians have access to key contracts, let alone local communities who are uninformed of what to expect and are unable to negotiate fair resettlement and compensation packages. The various ministries involved are not coordinating on environmental and social issues. The government has not disclosed EIAs or a strategic environmental assessment, although the development is taking place in the Albertine Graben, a major tourist attraction and one of Africa's most biodiverse regions. At the community level, people are uninformed of what to expect, and have not been able to negotiate fair resettlement and compensation packages. Tensions are rising as individuals allegedly grab community land in the hopes of selling it to the oil companies.

Bazira reported, "at the national level, there is hope among the Ugandan population that the discovery of oil and gas will result in economic transformation, growth, development, and prosperity." At the same time, however, "there is also fear, anxiety, and concern that the emerging oil and gas industry presents significant challenges that the country's governance systems are not in a position to effectively handle, leading instead to social, economic and environmental deterioration, insecurity, and abject poverty for many."

5.2 China's investments in Cambodia

The Kamchay Dam is Cambodia's first ever large-scale hydropower project and is seen by many as a symbol of the strengthening ties between Cambodia and China. It provides an example of the important and growing role that emerging actors such as China now play, and the challenge that these actors face in relying on local laws and institutions to manage the environmental and social risks of their investments. The Kamchay Dam helps illustrate the difficulties that can result when an investor lacks comprehensive safeguards, and demonstrates the value that international institutions' safeguards can add by providing a more systematic approach to environmental and social risk management.

Through interviews with local communities, civil society organizations, local authorities and project officials, Mark Grimsditch examined the roles of the Cambodian government and Chinese investors in managing the environmental and social risks of the project.⁵²

5.2.1 *Kamchay Dam*

The Kamchay dam is a 193MW dam, which began operations in December 2011. The dam is located in the coastal province of Kampot in southern Cambodia and is part of the Cambodian government's effort to improve the reliability of electricity and stabilize energy costs in the country. Cambodia has applied to have the project listed under the "Clean Development Mechanism" of the UN climate change regime.⁵³

The project was developed by Sinohydro, China's largest state-owned hydropower company, with financing from the China Export Import Bank, a state-owned bank that supports many of China's largest overseas investments. The Chinese premier and Cambodian prime minister signed an agreement to build the dam in a high profile ceremony in 2006. At the time of signing, it was the single most expensive infrastructure project in Cambodia's history. Since construction began, China Export Import Bank has started to finance even larger hydropower dams in Cambodia. As the first project of its kind, the Kamchay Dam is an important test case for how environmental and social safeguards are applied in Cambodia and also an important example of how safeguards are applied in China's overseas investments.

The people living near the project earn their income primarily from agriculture, with durian fruit and rice being two primary crops. Many also work as laborers or vendors in the local tourist industry. Most of the area's poorest families collect and sell non-timber forest products, such as rattan or bamboo, from the nearby forests of Bokor National Park. These collectors, who represent some of the poorest residents in the area, reportedly experienced a reduction in income of 50-60 percent when the dam blocked their access to the forest.

5.2.2 China's reliance on local laws and institutions

The Chinese investors relied entirely on Cambodia's local laws and institutions to protect people and the environment, rather than applying their own safeguards. Even where Cambodia has adopted environmental and social laws on paper, however, they are often not effective in practice.

Many people in Cambodia lack full recognition of land tenure and are still awaiting receipt of full land titles. While provisions do exist in the land law to protect the rights of those yet to receive land titles, people across the country who have found themselves in the path of development projects have often been labeled illegal squatters. Relocation and expropriation procedures exist on paper, but have not been fully implemented. In addition, Cambodia has laws on environmental protection and regulations for conducting EIAs, but projects are often approved before the EIA is completed, and the government does not have clear requirements for how to conduct public consultations.

In the case of the Kamchay Dam, the EIA still awaited full approval in November 2011, even though the project's four year construction period was to be completed the following month. The project company did not have a comprehensive environmental management plan in place during the construction period, and still does not appear to have one, at least one that is open to public scrutiny. The project developer appears to have organized consultations, but these were attended only by government officials. No actual public consultations took place with local communities, and civil society involvement was minimal due to a lack of information about the project. Many local people only learned about the project through word of mouth and after construction vehicles moved into the area.

Despite these weaknesses in implementation, some community members were able to resolve their problems through negotiations with the company and local government officials. Sinohydro planned from the onset to compensate farmers. The company organized meetings with durian farmers who lost trees to the project development, and the farmers successfully negotiated with the company to receive compensation for their lost crops. For the most part, these people were pleased with the levels of compensation that they received.

However, other issues arose during the implementation of the project that were not anticipated by Sinohydro. Blasting at the quarry caused flying rocks to damage villagers' homes and crops. The project developers were able to negotiate a compromise with affected people, but only after local communities organized protests. No predetermined plan existed to resolve such grievances. As Grimsditch describes, "throughout the implementation of the Kamchay project's construction, in the absence of a full management plan for dealing with the project impacts, many problems were dealt with on a case-by-case basis as and when they emerged."

As a result of this case-by-case approach, many of the region's poorest people were excluded from negotiations with the project developer. The most severely affected have been the non-timber forest product collectors. After construction began, bamboo collectors were not able to access many of the forests where they had previously harvested, and those interviewed reported a reduction in income of 50 to 60 percent. Similarly, those working in the tourist industry at the local resort of Tuek Chhou also reported a loss of up to half of their income. Tuek Chhou is located at the edge of Bokor National Park, and its landscape and rapids made it a popular tourist attraction for many years. After construction began, the landscape changed and water quality was severely affected, as construction debris and untreated human waste from the project workers' toilets was dumped into the river.

A number of serious impacts of the Kamchay Dam remain unmitigated, including the loss of livelihoods for many poor Cambodians. Neither Sinohydro nor the Cambodian Government compensated any of the non-timber forest product collectors or those working in the tourist industry. The company has not yet established any livelihood restoration programs aimed at the people who lost income because of the project. A more coordinated effort might have prevented such problems from the outset.

The Kamchay Dam illustrates the challenges associated with relying only on local laws and institutions to deal with social and environmental risks, and the role that safeguards could play in China's overseas investments. Through such reforms, Grimsditch concluded, China's overseas investments are more likely to contribute to positive development outcomes in the long term, and China's global image as a responsible donor and strong development partner will continue to improve.

5.3 Large-scale hydropower development in Brazil

As Brazil's economy grows, it has become a net donor at the World Bank and other institutions, while also self-financing many of its own recent development projects using its national safeguard system. The Brazil government has been a leading advocate for international institutions to shift more responsibility for safeguards to recipient governments, based on its decades of experience as a major international borrower.

Yet as the Rio Madeira and Belo Monte hydropower projects illustrate, successful implementation of safeguards at the national level is challenging in highly politicized development projects. Roland Widmer of OneAdvisory reviewed these two projects and analyzed how effectively Brazil's laws and institutions upheld people's rights and environmental protection.⁵⁴ The study demonstrates the value of integrating safeguards for national development banks into the overall national safeguard system.

5.3.1 The Rio Madeira and Belo Monte Dams

Almost all of the financing for the Rio Madeira and Belo Monte dams comes from local Brazilian sources. Brazil's national development bank BNDES is a major investor in both projects and has provided financing through a variety of means—such as direct investments, support to financial intermediaries that invested in the project, and equity ownership in the project companies. Brazil's safeguards for these two projects consist of a complex web of domestic legislation, international agreements, voluntary standards, and bank policies.

The Rio Madeira Dam is one of the cornerstones of a regional integration process in South America, called IIRSA, which seeks to build 335 large-scale infrastructure projects across the continent. The project is also the “crown jewel” of Brazil's first Accelerated Growth Program (PAC 1), a package of infrastructure projects proposed in 2007. The project consists of two giant hydroelectric dams, the 3,150MW Santo Antonio dam and the 3,300MW Jirau dam. Brazil's environmental agency IBAMA granted a full installation license to the Santo Antonio dam in 2008, and to the Jirau dam in 2009, and construction began a few days later in both cases.

The Madeira River is the principal tributary of the Amazon River, and its basin covers about one-quarter of the Brazilian Amazon and extends into Bolivia. The dam will likely have transboundary impacts in Bolivia and Peru. Despite Bolivia's request that Brazil conduct a strategic environmental assessment to look at basin-wide, transboundary impacts, none was ever conducted, sparking diplomatic tensions between the two countries. Brazilian civil society organizations have already documented a number of cases of environmental damage and harm to indigenous peoples. In the federal state of Rondônia, social problems have arisen during construction. The number of murders increased 44% between 2008 and 2010. During the same

period, sexual abuse of children and adolescents increased by 18% and rapes increased by 76.5%. Most of the cases occurred near the construction sites.

The Belo Monte Dam, in turn, is a proposed project that has been embroiled in controversy for over 20 years. If built, it would become the world's third largest hydropower project. The project consists of two dams, two reservoirs, and many large dikes. It would impact an area of 1,500 square kilometers, forcibly displace 20,000 to 40,000 people, and impact at least 800 indigenous tribes. To build the project, more earth would have to be dug than was moved to build the Panama Canal. An estimated 100,000 people would move into the region within three years, leading to social impacts similar to what was experienced with the Rio Madeira complex. In June 2011, IBAMA approved an installation license for the project even though the developer had not fulfilled the 40 socio-environmental prerequisites previously mandated by the government.

5.3.2 *Reliance on Brazil's national safeguard system*

In principle, Brazil's national safeguard system applies to both of these projects and includes protections from both BNDES safeguards and the national legal framework. Yet as Widmer illustrates, both of these hydropower projects highlight key gaps in this system.

Widmer concluded that BNDES' policies have had little effect on the Rio Madeira and Belo Monte projects. BNDES has reportedly adopted 52 sectoral guidelines to address environmental and social issues, but has only made public its guidelines for the cattle, sugarcane, and thermoelectric sectors. Existing guidelines do not address the types of concerns that have arisen in the Rio Madeira and Belo Monte projects. They do not include, for example, an access to information policy, an indigenous people's policy, or grievance mechanisms where affected people can raise concerns. Indeed, BNDES has not provided any evidence of having a sectoral guideline for infrastructure projects.

Implementation of BNDES policies also appears to be a challenge in part due to unclear lines of responsibility and accountability. Widmer's interviews revealed, for example, that BNDES staff members perceive that they have little choice but to fund energy projects that the Brazilian government has decided to implement. BNDES staff members also indicated that they view the judicial system as the best mechanism to deal with grievances and disputes. Widmer thus concluded that BNDES' safeguards have not yet found their place within Brazil's broader national safeguard system.

Meanwhile, Brazil's environmental legal framework has not fully withstood the politicization of these two, large-scale development projects. The government of Brazil retains the authority to reject or modify environmentally or socially harmful projects primarily through the environmental licensing process. According to the law, large infrastructure projects such as Rio

Madeira or Belo Monte should not proceed until after IBAMA carefully reviews and approves the environmental impact assessment and public consultations. Yet IBAMA has approved the EIA for both projects although major environmental and social concerns remain unaddressed. Widmer's interviews with project stakeholders suggested that IBAMA faced political pressure not to impede the projects' timeline.

Widmer further suggested that IBAMA allowed the wrong type of environmental impact assessment to be used in both projects. For large hydropower projects that affect an entire river basin, "strategic environmental assessments" are the appropriate tool for assessing impacts on a basin-wide level.⁵⁵ Yet despite the fact that the Madeira River basin spans a region of one million square kilometers, the project developers conducted a more limited environmental impact assessment that only covered the 5,000 square kilometers immediately surrounding the project area. As a result, the developers were not required to analyze the transboundary impacts of the Rio Madeira dams on Bolivia and Peru, meaningfully consult the people who will suffer impacts downstream, or consider the cumulative impacts of the entire complex.

Brazil's national safeguard system depends on the effectiveness of its courts. Public prosecutors and civil society organizations in Brazil often use legal action to hold project developers and government agencies accountable. This has not always proved to be effective, however. In the case of Belo Monte, the federal prosecutors of Pará state have filed 13 legal actions so far, none of which has reached a final ruling. Legal actions have been frequently moved between jurisdictions, and judgments have often been overturned, leaving the system very unpredictable. According to Widmer, the judicial system does not operate in a timeframe that is compatible with the urgency of preventing damage from the construction of the dams.

In particular, Widmer identified a need for greater transparency and a stronger commitment to public consultations. Governments and BNDES should reach out to civil society organizations as legitimate stakeholders. The Brazil government would also benefit from a fundamentally new approach to environmental and social impact assessment, so that projects cannot go forward unless the full range of impacts is addressed. As Widmer described, "the lack of requirements for strategic environmental assessments for projects with potentially high impacts is a paramount weakness in the Brazil country system." Furthermore, the judicial process has not proved to be a reliable way for affected people to have their concerns addressed. Institutions such as BNDES can play a role in filling this gap by creating complaint mechanisms.

All of these reforms will undoubtedly take years. As Widmer pointed out, this case study is an important cautionary note for international institutions. If successful in overcoming these challenges at the national level, BNDES could eventually serve as a useful model for international institutions that are trying to more successfully rely on local laws and institutions to manage the environmental and human rights risks of their investments.

5.4 Indonesia and REDD+

In recent years, REDD+ initiatives have generated a great deal of innovative thinking around safeguards. Bernadinus Steni and Nadia Hadad analyzed efforts to apply safeguards to REDD+ initiatives in Indonesia.⁵⁶

Deforestation and forest degradation are the primary source of greenhouse gas emissions in Indonesia. Indonesia also has one of the highest rates of deforestation in the world. Since 2007, the Indonesian government has actively sought financing for REDD+ pilot projects, and has agreed to reform its governance of forests in exchange. Safeguards have become an important part of Indonesia's REDD+ debate. As Steni and Hadad noted, "forests are not only for trees and carbon." Communities, companies, and government institutions all compete for use of the forests.

At least 25,000 villages in Indonesia are located within and in surrounding areas of forests. Many people depend heavily on forests but do not have formal title to land. Many local communities are still regarded as illegal residents and are reportedly vulnerable to criminal sanctions and punishment for residing in forests. Hundreds of conflicts over land are ongoing. Steni and Hadad reported that the main triggers of conflict are overlapping land claims between communities and private actors who have been granted licenses by the government.

Indonesia faces the challenge of designing a national system for environmental and social protections in its forestry sector, which continues to be the source of intense and long-standing land conflicts. At the same time, international institutions investing in REDD+ in Indonesia face the challenge of coordinating with one another's diverse safeguard approaches while supporting Indonesia's efforts. At the UN climate change negotiations, Indonesia is a strong proponent of relying on local laws and institutions rather than internationally designed safeguards. As Steni and Hadad reported, the Ministry of Forestry played a crucial role in developing the concept of "safeguard information systems" for REDD+, where recipient governments develop their own national systems and report back to the UN on progress. Indonesia is an important test case for how this approach to safeguards will work.

5.4.1 *Indonesia's emerging REDD+ safeguard system*

The Indonesian government has recognized the need for safeguards in REDD+ initiatives, and has expressed the position that REDD+ safeguards should predominantly rely on local laws and institutions. The Indonesian government does not yet have a binding document to put this approach into practice, however, and to date this commitment has mainly resulted in broadly worded principles. Currently there are about 44 REDD+ pilot projects in Indonesia. So far these

rely on a combination of national safeguard systems and more “traditional” safeguards from international institutions to reduce environmental and social risks.

On the one hand, Indonesia has made progress in developing its own safeguard systems for REDD+. For instance, an Indonesian Task Force has led the development of a REDD+ National Strategy, including the creation of policies and institutions to govern REDD+ initiatives. During the formulation of its REDD+ National Strategy, the government held public consultations in 2010, where many land conflicts long “kept silent in tension” were openly discussed for the first time. According to Steni and Hadad, this may have been “the most massive national policy making process ever attended by the highest number of direct stakeholders of forests, including communities living inside and in the surrounding area of forest.”

Civil society input into the REDD+ National Strategy has also been strong. Civil society organizations prepared several position statements that outlined their expectations for REDD+ safeguards, including “The Common Platform on Saving Indonesia’s Forests to Protect the Global Climate” and “Beyond Carbon: Rights-Safeguard Principles in Law.” These statements had a clear influence on the latest draft of the national strategy.

Despite progress in developing local REDD+ institutions, many challenges remain. For instance, the Indonesian government has not managed to consistently inform local communities about REDD+ and the potential benefits and risks that it entails. A 2011 study by the NGO HuMA of the Kalimantan Forests and Climate Partnership found that many villagers have still not been told that their area is designated a “REDD+ area,” creating anxiety over how it might affect their rights to land. Although local communities have a right to free, prior and informed consent over use of their lands, this right is often not enforced.

5.4.2 Challenges of coordinating safeguards at the local level

Many actors are involved in determining how an Indonesia version of REDD+ safeguards will be designed, which has led to coordination challenges. Steni and Hadad observed that “it is still unclear who will be responsible for determining the content of safeguards and how they will work.” Indonesia’s REDD+ Task Force has formulated safeguard principles in the draft National Strategy, while at the same time the Ministry of Forestry has set up its own safeguards information system. Meanwhile, other government officials have resisted the use of safeguards altogether. This conflict among institutions remains unresolved.

Indonesia is also grappling with how to manage the multiple safeguards of its international donor partners. Examples include the safeguards of the World Bank’s Forest Carbon Partnership Facility, the UN-REDD program, and the safeguard principles of the 2010 Indonesia-Norway letter of intent. The safeguards of each initiative are different and, at times, contradictory. While

some institutions' safeguards are binding, others are voluntary or only consist of vaguely worded principles. Some have complaint mechanisms where affected communities can raise complaints, and others do not. This creates confusion among government officials and local communities on whose safeguards to follow.

Steni and Hadad noted, for example, the challenge of implementing the principle of free, prior and informed consent (FPIC). The Indonesian government has committed to seek the FPIC of local communities affected by REDD+ initiatives before allowing these initiatives to go forward. In practice, this has not yet been fully implemented. The UN REDD program is developing safeguards to help facilitate the FPIC process. In contrast, the World Bank does not recognize FPIC and instead requires its clients to follow a process of “free, prior and informed *consultation*.”

As in the other case studies described above, the situation in Indonesia emphasizes the importance of strengthening local laws and institutions, but also the difficulty of relying on national systems alone for the protection of people's rights and the environment. In addition, Indonesia's REDD+ efforts show the challenge of coordinating different safeguard systems. If designed successfully, Indonesia's national safeguard system could ensure that REDD+ initiatives remain an important source of development financing in the future. Donor governments could also learn important lessons in coordinating on large-scale reforms of national systems for environmental and social protections. Despite the challenges, Steni and Hadad remain hopeful of success.

6.0 LESSONS LEARNED

As the case studies illustrate, international institutions' approaches to safeguards are complex and changing. Greater country ownership of safeguards has become an important political priority. As a result, international institutions are now using the "traditional" approach to safeguards for only a limited percentage of their portfolios. At the same time, however, few institutions have shifted full responsibility for safeguards to recipient governments. Several international institutions are experimenting with safeguard approaches that seek a balance between relying on local laws and institutions, while also guaranteeing that the international institution remains accountable to local communities. (see Box 4). The optimal balance has yet to be found.

Box 4: The wide range of safeguard approaches		
Approach	Description	Examples
Traditional approach: <i>Institution determines the steps that the host government must follow</i>	No reliance on local laws and institutions, Extensive oversight	World Bank's investment lending
Country systems approach: <i>Institution relies on some local laws and institutions, after conducting a rigorous review and filling gaps in coverage</i>	Some reliance on local laws and institutions, Extensive oversight	World Bank's investment lending
Principles approach: <i>Institution provides broad principles for the host government to follow, and then governments design their own national safeguard systems and report back</i>	Heavy reliance on local laws and institutions, Limited oversight	UN climate change funds UNFCCC agreement on REDD+ World Bank's PforR
No safeguards approach: <i>Institution relies entirely on local laws and institutions without further investigation</i>	Full reliance on local laws and institutions, No oversight	China's recent approach to overseas investments

6.1 Investing in longer-lasting environmental and social protections

Under the traditional approach described in Box 4, safeguards generally only apply for a discrete time period and do not lead to more sustainable reforms in local laws and institutions. After the international institution's loan or contribution to the development activity finishes, the safeguards no longer apply. Ultimately, successful development depends on local laws and institutions that are capable of protecting the rights of local people and maintaining healthy ecosystems.

The case studies show some evidence that the increased reliance on local laws and institutions can strengthen environmental and social protections within countries. Indonesia has actively involved stakeholders in the formulation of the national REDD+ strategy. According to Steni and Hadad, this involvement was unprecedented in the country, as was civil society's influence on the draft National REDD+ Strategy. In Uganda, civil society organizations have achieved some governance reforms that will improve the Ugandan government's handling of oil revenue.

At the same time, however, building effective laws and institutions can take years. This may not always be compatible with the timeframe in which an international institution wants to invest or a government wants to pursue a development project. In such cases, more short-term approaches to safeguards may be necessary.

6.2 Defining what we mean by “country ownership”

As reflected in the 2005 Paris Declaration and the ongoing UN climate negotiations, the international community has generally agreed that governments should have control over their own development path. Greater reliance on local laws and institutions can contribute to increased ownership of the development process by recipient governments. But this may not be enough to ensure that meaningful environmental and social protections are in place.

During the negotiations over the 2005 Paris Declaration and Accra Agenda, a coalition of civil society organizations emphasized that “government ownership” should provide local people with a voice in how the government chooses a development pathway.⁵⁷ In 2008 before the Accra High Level Forum on Aid Effectiveness, over 300 organizations signed a statement that outlined their expectations for “country ownership”:⁵⁸

Country ownership of development programs should be understood not simply as government ownership, but as democratic ownership. Democratic ownership means that citizens' (women and men) voices and concerns must be central to national development plans and processes... They must have access to resources, meaningful and timely information, and be active in

implementation, monitoring and evaluation. It also means establishing legitimate governance mechanisms for decision making and accountability, which involve parliaments, elected representatives, national women's machineries and organizations, CSOs representatives and local communities.

6.3 Relying on local laws that are properly implemented

Although environmental and human rights laws may exist on paper, the case studies illustrate how difficult it can be to implement these laws in practice. If international institutions rely blindly on assurances that laws have been adopted, without examining the track record of implementation, there is a risk that the promised environmental and social protections might not actually be in place. As Grimsditch wrote:⁵⁹

[Cambodia's laws] provide important safeguards to protect the rights of affected people and the environment. ... However, due to various reasons, including lack of capacity and expertise, inadequate human and financial resources – and in some cases a lack of political will, implementation of these laws is often inconsistent. Monitoring and enforcement in many cases is non-existent.

6.3.1 Environmental and social impact assessments

Environmental and social impact assessments (ESIAs) play an important role in helping to ensure that investments are conducted in a manner that does not result in harmful environmental and social impacts. If used properly, ESIAs can help guide investments toward socially and environmentally sustainable projects, and away from initiatives that will result in harm.

As all of the case studies in this paper demonstrate, however, the current model of ESIAs is not working in many countries. International institutions cannot be assured that an effective and comprehensive ESIA will be in place, just because the host country has a law requiring environmental impact assessments. In Cambodia, for example, the government allowed the project developers to finish construction on the Kamchay Dam before the ESIA was even fully approved by the Ministry of Environment. In Brazil, the government did not insist on a strategic environmental assessment for the Rio Madeira project, despite the potential for impacts across the entire river basin and into Bolivia. Similarly, in Uganda the ESIA failed to consider cumulative impacts of the many dams on the Nile River, and so the dam is now less likely to provide the level of economic benefits originally expected. These examples all point to the need for international institutions to conduct careful due diligence on the quality of ESIAs before approving investments.

6.3.2 Access to information

Closely linked to the issue of ESIA's are questions of transparency and access to information. ESIA's can help provide information to all stakeholders about the potential impacts of a project, but the need for transparency and information goes beyond impact assessments. Transparency is key to avoiding mismanagement and corruption, and to allowing affected people to understand and participate in decisions that affect them.

Lack of adequate information is a frequent problem in the case studies. In Uganda, despite the recent passage of an access to information law, civil society organizations are struggling to gain access to information about the government's plans regarding the growing oil sector, the impacts of projects, and how the oil revenue will be used to benefit the country. As Bazira states, "the veil of secrecy and mystery surrounding oil companies is creating unwarranted fear and anxiety at the community level, which is a recipe for rumour and conflict."⁶⁰ In Cambodia, many local people learned about the Kamchay Dam only as they witnessed the beginning of construction, leaving them little chance to express their needs. In Indonesia, many local communities remain uninformed about REDD+ initiatives and their potential effects, despite laws requiring that they be informed.

6.3.3 Public participation

While access to information is vital to ensuring that local people and ecosystems are protected in the face of development projects, information alone is not enough. Proper risk management depends on the ability of local communities to provide meaningful input into the design of development activities, including the ways that impacts are mitigated and benefits distributed.

As the case studies demonstrate, national laws often require that public consultations take place, but this has not always been sufficient. In Cambodia, consultations on the Kamchay dam largely took place with government representatives in a city far from the project location. Although the company and local people were able to negotiate certain agreements, these negotiations often excluded the most vulnerable, who did not have land or other resources with which to bargain. In Indonesia, the government has committed to seeking the free, prior and informed consent of local communities affected by REDD+ initiatives before allowing these initiatives to go forward. In practice, however, this has not been fully implemented. In Uganda, consultations over the Bujagali Dam reportedly excluded key stakeholders known to be opponents of the dam. In Brazil, a lack of consultations with indigenous peoples has become one of the most contentious issues surrounding the Rio Madeira and Belo Monte dams.

6.4 Guaranteeing access to justice when harm occurs

In light of the many challenges and risks associated with development projects, it is important to hold relevant actors accountable to their responsibilities. This is often a challenge when affected people do not have access to independent and cost effective courts in their own countries.

One important way in which international institutions help to ensure such accountability is through mechanisms that allow affected communities to bring complaints directly to the institutions. The World Bank's Inspection Panel is the most well-known example of such a mechanism. Accountability mechanisms exist at other multilateral development banks and international institutions as well.⁶¹ The Uganda case study illustrates the valuable role that these mechanisms can play. In Uganda, stakeholders appealed both to the Inspection Panel and the African Development Bank's Compliance Review and Mediation Unit to express their grievances. While these bodies were unable to remedy all of the local communities' concerns, they were nonetheless able to make some improvements and to influence the actions of the investors and Ugandan government.

The emerging actors in development finance, including BNDES and the China Export Import Bank, do not yet provide functioning accountability mechanisms. While BNDES has an ombudsman, Widmer observed that it has had "no discernible effect" on any of the projects studied for this report. Many development projects today thus do not have an applicable accountability mechanism, and instead rely on the ability of national courts to protect local people and the environment. It is often challenging for national court systems in developing countries to function effectively, efficiently and independently. According to Widmer, the judicial system in Brazil does not operate in a timeframe that is compatible with the urgency of preventing damage from the construction of the dams.

6.5 Sharing responsibility for safeguards among multiple actors

Protecting human rights and the environment is complicated and often involves multiple laws, policies, and institutions. As a result, there is not always clarity over which actors should take responsibility for which safeguards. This is evident in some REDD+ initiatives where multiple international institutions are involved. A 2011 evaluation of the Forest Carbon Partnership Facility, for example, highlighted that the FCPF and UN-REDD program's different approaches to safeguards were "creating a degree of confusion in those countries where both programs operate."⁶² The proliferation of actors in Indonesia has left many people unclear about the roles of each entity, as well as the methods for holding everyone accountable for their responsibilities.⁶³ The Indonesian government is faced with multiple (and sometimes

contradictory) obligations from several international institutions, and has the extra burden of repackaging information to meet the reporting requirements of different donors.

Having multiple safeguards also poses a risk for local communities, who are unclear on which of their rights are enforceable. In some cases, for example, local communities might be able to raise complaints at an international institutions' accountability mechanism or in local courts, while in other cases they may have no access to justice available.

7.0 RECOMMENDATIONS FOR DESIGNING SAFEGUARDS

Country ownership is becoming an integral part of the design of international institutions' safeguards, but going forward it is unlikely that international institutions will rely entirely on local laws and institutions to provide environmental and social protections. International institutions can and should continue to play a vital role in protecting local communities and ecosystems from unintended harm associated with their investments.

7.1 Finding a balance between country ownership and accountability

As international institutions reform their safeguards, the primary challenge in the coming years will be to design an approach that promotes country ownership to the extent possible, while also guaranteeing that international institutions remain accountable to local communities. The following recommendations could help to achieve this balance.

7.1.1 Choose investments wisely

Safeguard reforms should start at the point when investment decisions are made. The World Bank, for example, has staff members who specialize in safeguards but who do not have much influence over which investments go forward in the first place. There is a need for closer coordination between the staffers who try to identify beneficial, environmentally and socially sustainable projects upfront and the staffers who ensure that harm does not occur as a result of the projects that are selected. The World Bank's internal audit of its safeguards, for example, notes "a growing separation between the work on safeguards and the work on environmental sustainability."⁶⁴ Separate units within the Bank work on safeguards and environmental sustainability, and few incentives or opportunities exist for them to coordinate. Closer integration of safeguards staff can help to ensure that higher quality investments go forward from the start. By placing early emphasis on investing in "good" projects, the institution can ease the costs of fixing problems that happen later in the project.

Other steps can help an international institution ensure that it chooses investments wisely, as well. By the time an international institution becomes involved in a development project, it is often difficult to prevent harm from occurring. The host government has already planned out a sector-wide approach to development, or otherwise given approval for harmful projects to go forward. If the government conducts upstream policy planning in a transparent and participatory way, however, many future environmental and human rights impacts can be identified early and prevented.⁶⁵

If international institutions adopt an “early warning system,” some of these sector-wide concerns can be identified upfront. For example, before approving an investment, international institutions might screen the upstream policy making process to look for evidence of lack of public participation, land disputes, human rights violations, and conflict.⁶⁶ The presence of strategic environmental and social assessments could be a positive sign. Having this early awareness could help investments lead to better development outcomes.

7.1.2 Combine investments with capacity building

If the international institution’s screening of an investment identifies concerns with the host government’s upstream policy making or human rights conditions, this should not necessarily prevent an investment from taking place. In many cases, the development activity may go forward with or without the international institution’s involvement, because recipient governments can approach another funder for support.

Instead, if time permits, the international institution can build the capacity of the host government to address concerns. Several REDD+ initiatives, including FCPF and UN-REDD, have set aside a number of years to improve governance of forests in potential recipient countries.⁶⁷ This capacity building approach has become an important part of REDD+, and international institutions have injected a great deal of support for the Indonesian government’s reforms of its forestry laws, policies, and institutions in order to make the government ready for greater country ownership. It is too early to evaluate the effectiveness of this approach. If designed successfully, Indonesia’s national safeguard system could ensure that REDD+ initiatives remain an important source of development financing in the future.⁶⁸ At the same time, it is unclear if this model can be replicated for other types of development activities, because sufficient time may not always exist to support this type of capacity building.

7.1.3 Empower the people behind safeguards

The effectiveness of safeguards depends on the people behind them. Even the most detailed safeguard policies rely heavily on the professional judgment of a number of people for successful implementation. This includes, for example: staff at international institutions, officials at government ministries, sustainability experts at project companies, advocates at civil society organizations, and members of local communities. In the past, safeguard reforms have concentrated on policy language without giving due regard to the role of various actors in implementing safeguards. Going forward, safeguard reforms could benefit from providing greater focus on empowering these actors (see Box 5). Prior to each investment, international institutions and recipient governments should set aside time to jointly map out the role of various actors in upholding safeguards and seek a mutual understanding on how to fill the gaps, in consultation with other stakeholders.

Box 5: The people behind safeguards

A wide range of actors are involved in implementing safeguards. Each of these faces challenges in fulfilling their roles.

- **International institutions:** Many employees of the World Bank and other multilateral development banks are rewarded for the volume of financing they push out the door rather than the quality of the investments. An artificial separation exists between safeguards staff and investment decision-makers. By removing these perverse incentives, international institutions could prevent many problematic investments from going forward.
- **Government ministries:** In many countries, the effectiveness of national safeguard systems depends on the institutional arrangements in place to implement them. In Cambodia, for example, many officials in the development ministries have little awareness of the importance of EIAs and thus do not require that they be completed. International institutions could work with recipient governments to understand institutional dynamics and resolve tensions.
- **Project companies:** Some companies have employees dedicated to environmental and social issues, but these employees may lack the internal support from senior management to raise concerns. Many companies are not aware of the benefits of building a strong relationship with local communities, and do not set up project level grievance mechanisms so that local communities can raise concerns quickly and peacefully. Recipient governments could identify these issues upfront by conducting pre-screening on companies' environmental and social management systems before they are licensed to participate in the proposed development activity.
- **Civil society organizations:** Civil society organizations (CSOs) face challenges in participating in the development process. Chinese and Brazilian investors, for example, still do not recognize CSOs as legitimate stakeholders and thus do not carve out space for their participation in designing development projects. Civil society organizations have also not been able to participate in safeguard policy reforms in China and Brazil. In Cambodia, CSO advocates have faced threats and dangers for speaking out against government approved projects and policies, and thus are not always in a position to raise concerns about sensitive issues. International institutions and recipient governments could map out and seek to understand the value that CSOs can contribute to the implementation of safeguards.
- **Local communities:** Affected communities face challenges in accessing information about the projects, participating in decisions, and finding ways for their grievances to be heard. International institutions and recipient governments could guarantee that accountability to affected communities is in place before a development activity goes forward.

7.1.4 Demonstrate commitment to human rights

Many governments have already voluntarily agreed to uphold international human rights and environmental treaties and conventions, and have integrated these commitments into their own national systems. These commitments spell out universally accepted standards regarding the treatment of people and ecosystems, and provide a basis for many safeguards that are in place today.⁶⁹ By developing safeguards in line with international human rights standards, international institutions might be able to expand their reliance on local laws and institutions, while continuing to ensure accountability for affected communities. As Steni and Hadad suggested, Indonesia “is a party to international covenants and conventions that protect, respect, and provide remedy for rights and safeguards. Therefore, REDD+ donors do not need to reinvent the wheel, they just need to take guidance from these other commitments and reinforce them.”

Rather than prescribing a specific set of safeguards, international institutions might ask recipient governments to demonstrate their ability to uphold the human rights that are likely to be implicated by the investment.⁷⁰ This does not impose any conditions beyond what the recipient government has already agreed to do. International institutions could focus their investments on activities where the government can demonstrate that it is respecting, protecting, and fulfilling these rights; where affected people are aware of their rights; and where affected people are able to have their concerns resolved if they think their rights are being violated. Several international institutions—including the UNFCCC, the European Bank for Reconstruction and Development, and arguably the World Bank—already use this approach to a certain extent.⁷¹

7.2 Coordinating and harmonizing safeguards

The case study on Indonesia illustrates the challenge of having several international institutions simultaneously invest in a development activity, each with its own set of safeguards.⁷² This poses a challenge for the host government, which faces multiple and sometimes contradictory obligations. Governments face the extra burden of repackaging information in different ways, as well as reporting to numerous donors. If international institutions work with separate ministries and government agencies—such as the Ministry of Forestry and the REDD+ Task Force in Indonesia—these institutions could inadvertently contribute to an intra-governmental power struggle.

The World Bank’s Forest Carbon Partnership Facility (FCPF) is making an attempt to resolve these complications. Through its “common approach,” the FCPF allows multiple international institutions to coordinate and ensure that the highest available safeguards apply. The common approach requires each delivery partner to achieve “substantial equivalence” to the “material elements” of the World Bank’s existing social and environmental safeguard policies. With this level of coordination, it may be possible to save time, reduce costs, and prevent overlaps.

Should international institutions agree on a single set of safeguards for a given country? As Steni and Hadad suggest, civil society organizations are working to ensure that any coordination among institutions on safeguards leads to “upward harmonization” rather than a “race to the bottom.” The best way to find a common ground could be for governments to use their commitments under international human rights and environmental law as a basis for finding common ground. In this way, international institutions could promote strong safeguards while respecting national sovereignty.

7.3 Changing the discourse on safeguards in developing countries

The safeguards of international institutions are not perfect. At times, recipient governments have criticized safeguards as conditionalities and costly, time consuming, and unnecessary restrictions on funding. Governments are also sensitive to notions of sovereignty and the idea that international institutions and donors should not intervene in domestic activities. The staff of international institutions, in turn, have occasionally perceived safeguards as a hindrance to their ability to swiftly and effectively support countries and people in need. While safeguards may sometimes be challenging to implement, they ought not to be seen as superfluous burdens to effective development. The safeguard teams of international institutions and civil society advocates have not spent significant time or research in providing a strong defense of the value of safeguards or their crucial role in the development process.

Safeguards can help governments and international institutions systematically consider and mitigate risks associated with investments, to the benefit of all involved.⁷³ This can lead to more equitable, efficient, and successful development outcomes. Evidence of this can be seen in all four of the case studies. In Brazil, large-scale resistance has been witnessed against both the Rio Madeira and Belo Monte hydropower projects. Better recognition of the voice and needs of local communities would likely have avoided some of this conflict. In Cambodia, Sinohydro was forced to implement an *ad hoc* approach in responding to protests from the local community and as a result, many grievances remain unresolved. A more coherent and consistent plan from the outset would likely have avoided much confusion and animosity. Likewise, the Ugandan government is now being forced to reevaluate the benefits that the Bujagali Dam which are significantly less than promised. Adherence to strong safeguards from the outset would likely have avoided much of the costs that the government now faces. Finally, in Indonesia, use of safeguards is helping the government and funders to address long-standing, complex conflicts over land tenure and forest resources. These are a few of the benefits that safeguards can provide to developing countries, but there is a need for more documentation of the benefits that safeguards can bring.

8.0 RECOMMENDATIONS FOR SPECIFIC INSTITUTIONS

In light of these findings and general recommendations, we propose the following institution-specific actions:

8.1 World Bank

- Currently the safeguards review only covers two of the Bank's five safeguard approaches. Expand the scope of the review to all five approaches in order to seek greater consistency, coherency, and predictability in how the Bank will shift responsibility to national systems.
- Currently the Bank's safeguards take into account the borrowing government's multilateral environmental obligations. Expand this requirement to include the borrowing government's obligations under international human rights obligations, as a way to promote greater country ownership over safeguards.
- Develop a more coherent and predictable approach to environmental and social impact assessments. Incorporate requirements for strategic environmental assessment and cumulative impact assessment into the Bank's new approach.
- Ensure that the World Bank Inspection Panel is able to provide affected people with access to justice under all five of the safeguard approaches.

8.2 UNFCCC Green Climate Fund

- When the Fund delegates responsibility for safeguards to recipient governments, ensure that this is matched by accountability to local communities. Consider a capacity building phase, similar to the REDD+ initiatives, for investments that are likely to carry significant environmental and social risks.
- Establish a complaint mechanism where affected communities can raise concerns directly to the Fund, drawing on the host country's international human rights and environmental obligations.

8.3 UNFCCC REDD+

- In countries where multiple international institutions invest, coordinate on a common approach to safeguards that is aligned with the country's commitments under international human rights and environmental law.
- Establish a complaint mechanism where affected communities can raise concerns, drawing on the host country's international human rights and environmental obligations.

8.4 Chinese and Brazilian financial institutions

- Move beyond relying solely on host countries' environmental licensing processes and laws. Begin to conduct independent environmental and social due diligence to ensure that risks are effectively identified and managed.
- Establish open channels of communication directly with affected people and civil society organizations in host countries. Keep local communities informed about the project, and allow people to raise concerns directly to company offices and embassies in the host country.
- Expand the number of staff members dedicated to environmental and social sustainability, and hire full-time staff with expertise on implementation of safeguards.
- Create opportunities for Chinese and Brazilian civil society organizations to bring concerns about specific projects to investors, and to engage in safeguard policy reforms.

9.0 CONCLUSION

The international institutions involved in development finance are reforming their approaches to environmental and social safeguards, in order to reflect the global consensus that development should promote country ownership. Many of these institutions are exploring ways to rely more extensively on local laws and institutions. Such approaches create an important opportunity to support governments that seek wider-reaching and longer-lasting protection of people's rights and the environment.

Yet as the case studies from Uganda, Cambodia, Brazil and Indonesia illustrate, relying on local laws and institutions also carries a number of risks for an international institution. When national systems do not work, affected people can be left without basic human rights and environmental protections. Investments under such circumstances are more likely to lead to poor development outcomes. As a result, international institutions are still searching for the optimal balance between delegating responsibility to recipient governments, while maintaining strong accountability to local people and the environment.

Because of the complexity of this issue, safeguard reforms cannot be an afterthought that is attached to the back of larger institutional reforms. They require careful, meaningful consultations with stakeholders, as well as rigorous debate among competing interests. International institutions should set aside sufficient time and staff support to make this happen. This paper does not pretend to provide all of the answers, but we hope we have provoked some ideas for how the next generation's safeguards can lead to better development outcomes.

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ABOUT THE CASE STUDIES

The case studies that are referenced in this paper are available in their entirety on the Bank Information Center website at <http://www.bicusa.org/en/Article.12621.aspx>.

Henry Mugisha Bazira, Water Governance Institute, *Uganda's Civil Society Perspectives on International Reforms of Environmental and Social Safeguards for Development Finance* (2012).

Roland Widmer, OneAdvisory, *The Brazilian Safeguard Regime, Its Application and Recommendations for the Future* (2012).

Bernadinus Steni & Nadia Hadad, Bank Information Center, *REDD+ Safeguards in Indonesia* (2012).

Mark Grimsditch, *China's Investments in Hydropower in the Mekong Region: The Kamchay Hydropower Dam, Kampot, Cambodia* (2012).

ENDNOTES

¹ Kirk Herbertson works for the Southeast Asia team of International Rivers and previously worked at the World Resources Institute.

² Bruce Rich (1995), *Mortgaging the Earth: The World Bank, Environmental Impoverishment, and the Crisis of Development*. Boston, Massachusetts: Beacon Press. See also, Shannon Lawrence (2005), *Retreat from the Safeguard Policies: Recent Trends Undermining Social and Environmental Accountability at the World Bank*, http://apps.edf.org/documents/4279_RetreatSafeguardPolicies_0105.pdf.

³ Rich 1995, at pp. 34-48.

⁴ Rich 1995, at pp. 27-29.

⁵ As Robert Goodland, former ecologist at the World Bank, described: “If project designers needed help, they asked us for help which was a very different situation from us asking designers to do something that was not mandated by a policy. Slowly, designers started to follow the new policies, so that when the projects came to us, they were already much better designed, and the whole system was more reliable and prudent.” Marie T. Zenni (26 Jan. 2005), The World Bank Group Oral History Program: Transcript of Interview with Robert Goodland, Washington, DC.

⁶ Zenni 2005.

⁷ For a detailed history, see Ian A. Bowles & Cyril F. Kormos (1995), *Environmental Reform at the World Bank: The Role of the U.S. Congress*, 35 Virginia Journal of International Law, pp. 777-839, http://belfercenter.ksg.harvard.edu/publication/134/environmental_reform_at_the_world_bank.html. See also, Rich 1995.

⁸ For a detailed history of the creation of the World Bank Inspection Panel, see Rich 1995; Maartje van Putten (2008), *Policing the Banks: Accountability Mechanisms for the Financial Sector*, Quebec, Canada: McGill-Queen’s University Press.

⁹ World Bank Independent Evaluation Group (IEG) (2011), *Evaluative Directions for the World Bank Group’s Safeguards and Sustainability Policies*, Washington, DC: World Bank Group, p. 3.

¹⁰ See http://www.adb.org/Documents/Policies/Involuntary_Resettlement/involuntary_resettlement.pdf.

¹¹ See http://www.adb.org/Documents/Policies/Indigenous_Peoples/ADB-1998-Policy-on-IP.pdf.

¹² IDB, Involuntary Resettlement policy, OP 710 (1998).

¹³ Other development banks have begun to adopt safeguards in varying degrees, including the African Development Bank, Islamic Development Bank, CAF (the development bank of Latin America), European Investment Bank, among others.

¹⁴ World Bank IEG Evaluation Directions 2011. According to the IEG, p. 3: “the existence of an umbrella policy for Environmental Assessment provided an open-ended mandate for engaging with borrowers and clients on the environmental agenda. By contrast, the restriction of social safeguards at the Bank to two policies focused attention on these two effects but narrowed the relevance of social safeguards to a much smaller segment of the portfolio. ... Current Bank social safeguards do not provide adequate coverage of community impacts; labor and working conditions; and health, safety, and security issues at the project level.” Page 9: “Nor do other social risks, such as impacts on gender or other vulnerable groups or risks covered by the World Bank Group’s Environmental Health and Safety Guidelines, receive adequate attention by safeguards practitioners even in projects where these risks are relevant since they are not defined as safeguard risks.”

¹⁵ For more information about the origins of the Paris Declaration, please see Elliott D. Stern, Ministry of Foreign Affairs of Denmark (2008), *The Paris Declaration, Aid Effectiveness and Development Effectiveness: Evaluation of the Paris Declaration*, <http://www.oecd.org/dataoecd/59/28/41807824.pdf>.

¹⁶ OECD, Paris Declaration and Accra Agenda, http://www.oecd.org/document/18/0,3343,en_2649_3236398_35401554_1_1_1_1,00.html. The key principles of the declaration are: “It is now the norm for aid recipients to forge their own national development strategies with their parliaments and electorates (ownership); for donors to support these strategies (alignment) and work to streamline their efforts in-country (harmonization); for development policies to be directed to achieving clear goals and for progress towards these goals to be monitored (results); and for donors and recipients alike to be jointly responsible for achieving these goals (mutual accountability).”

¹⁷ In 2005, the World Bank began to pilot use of the “country systems” approach to safeguards. The Bank described its justification for this decision: “To ensure appropriate use of the resources it provides, the World Bank—like most other development institutions—has specific and detailed operational requirements for the projects it supports. This has generally meant the creation of special units outside existing government structures solely to implement Bank-

funded projects. But isolating projects from the government systems of the client country limits institutional strengthening and capacity building and thus the impact of development assistance...Further, the parallelism with existing structures has often increased the transaction costs of working with the World Bank.” World Bank website, “Expanding the Use of Country Systems in Bank-Supported Operations,” June 2010, <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20266649~menuPK:538163~pagePK:41367~piPK:51533~theSitePK:40941,00.html>.

¹⁸ As described by the World Bank IEG: “Before agreeing to use country systems, the Bank assesses the strengths and weaknesses of borrower safeguards systems and identifies targeted—or gap-filling—measures to strengthen such systems. The Bank has developed a tool for this analysis: the Safeguards Diagnostic Review. This tool evaluates the equivalence of the borrower’s system (the extent to which it is designed to achieve the same objectives and adhere to the same principles as the Bank’s safeguard policies) and the acceptability of borrower implementation practices, track record, and capacity. Measures to achieve and sustain equivalence and acceptability are identified, included in the legal agreement for the project, and then actively supervised during implementation.” World Bank IEG Evaluation Directions 2011, p. 15.

¹⁹ See World Bank Safeguards Diagnostic Review for the Eskom/Medupi project (2010),

<http://siteresources.worldbank.org/PROJECTS/Resources/40940-1097257794915/FinalSDR-EISP.pdf>.

²⁰ A recent internal audit within the Bank found that the country systems pilot studies were not successful enough to scale up. World Bank Independent Evaluation Group (2010), *Safeguards and Sustainability Policies in a Changing World*, <http://www.worldbank.org/ieg>. The IEG found that although the principles behind country systems were sound, “that the country systems approach adopted for safeguard policies was too self-limiting and not sufficiently robust and flexible for scaling up, and had lost ownership among Bank staff and clients,” pp. 85-87; IEG Evaluation Directions 2011, p. 15. The IEG further noted that “the primary weakness of the [country systems approach] has been the decision to adopt a piecemeal approach, with ‘country systems’ being applied in practice to individual projects, rather than to a country’s, or at least a sector’s, environmental and social management system; and to individual Bank safeguard policies, rather than to the Bank’s safeguard policy suite as a whole.” IEG Evaluation Directions 2011, p. 15.

²¹ “Managers interviewed by IEG, including some involved in developing the country systems approach, said that the rationale was to scale up development impact by encouraging the use of improved systems for government expenditures to increase country ownership, build institutional capacity, promote donor harmonization, and increase cost effectiveness for both the Bank and the borrower.” IEG 2010, p.85. The IEG further reported that the Bank’s social safeguards had “irreconcilable differences with national laws.” pp. 85-87. Civil society groups also criticized the country systems approach for the resulting investments in quasi-autonomous government agencies that are not accountable to citizens or their political representatives Bank Information Center & Center for International Environmental Law, “Country Systems Approach to World Bank Social and Environmental Safeguards: Concerns and Challenges,” 1 Dec. 2004, <http://www.bicusa.org/en/Article.1775.aspx>. See also, Lawrence 2005, in endnote 3.

²² Bank Information Center & Center for International Environmental Law, “Country Systems Approach to World Bank Social and Environmental Safeguards: Concerns and Challenges,” 1 Dec. 2004, <http://www.bicusa.org/en/Article.1775.aspx>. Bruce Rich argues that when parastatals receive international financing, they are often able to act as “technocratic autocracies unaccountable to democratic political channels.” Rich 1995, p. 13.

²³ Kirk Herbertson, World Resources Institute, “World Bank vs. World Bank: Protecting Safeguards in a ‘Modern’ International Institution,” 16 May 2011, <http://www.wri.org/stories/2011/05/world-bank-vs-world-bank-protecting-safeguards-modern-international-institution>.

²⁴ See World Bank, “Program for Results Financing,” <http://www.worldbank.org>.

²⁵ World Bank press release, 24 Jan. 2012,

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTRESLENDING/0,,contentMDK:22748955~pagePK:7321740~piPK:7514729~theSitePK:7514726,00.html>. In previous papers, the World Bank distinguished the PforR safeguards approach from the country systems approach: “While Program-for-Results will contribute to the broad agenda of country systems, it will be different from the country systems pilots in two ways. First, it will recognize that institutional performance is not homogenous within a given country, and that it may be possible to work with some institutions even when there are wider national weaknesses. Second, while maintaining the Bank’s overall commitment to high international standards, Program-for-Results will not see procedural equivalency to the Bank’s policies and procedures designed for [investment lending] operations.” World Bank, Program for Results Policy Paper (2011), p. 11, para 20, http://siteresources.worldbank.org/EXTRESLENDING/Resources/Program_for_Results_policy_paper1.pdf.

²⁶ For example, see Forest Peoples Programme, “World Bank controversial Programming-for-Results (P4R) proposal raises alarm bells,” 6 December, 2011, <http://www.forestpeoples.org/topics/world-bank/news/2011/12/world-bank-controversial-programming-results-p4r-proposal-raises-alar>. See also, Civil society letter to World Bank Group President Robert Zoellick regarding the World Bank’s safeguard review, 31 Aug. 2011, <http://www.bicusa.org/en/Article.12530.aspx>.

²⁷ UNFCCC, Decision 1.CP16, UN Doc. FCCC/CP/2010/7/Add.1.

²⁸ As of 2012, the World Bank is using five approaches to safeguards. The World Bank’s ongoing “safeguards review,” however, only focuses on the first two of these approaches. These approaches include: (1) the traditional use of safeguard policies, which apply to investment lending for specific development projects; (2) the country systems approach, which applies to some investment lending for specific development projects; (3) Strategic environmental and social assessment, leading to an environmental and social management framework, which is used in the Bank’s support for REDD+ funds; (4) environmental and social “systems” assessment, to be used in the Bank’s new “program for results” lending; and (5) the “no safeguards” approach, which is used for the Bank’s development policy lending that comprises about 40 percent of the total portfolio. For a discussion on the lack of safeguards in development policy lending, see Bank Information Center, “World Bank defends integrity of development policy lending, evidence lacking,” 25 Jan. 2012, <http://www.bicusa.org/en/Article.12592.aspx>.

²⁹ Asian Development Bank, Safeguard Policy Statement (2009), <http://www.adb.org/Documents/Policies/Safeguards/Safeguard-Policy-Statement-June2009.pdf>.

³⁰ The World Bank safeguards review follows the recommendations of a 2010 report by the Bank’s Independent Evaluation Group (IEG). See endnote 21. The IEG report reviewed the World Bank Group’s portfolio from FY1999 to 2008. During this period, IEG found that half of World Bank projects had significant environmental and social effects (1402 projects). The report concluded that “the World Bank Group’s safeguards and sustainability policies have helped avoid or mitigate large-scale social and environmental risks in the projects it financed, but many projects with substantial environmental and social impacts remain of concern primarily because of inadequate supervision and follow-up. Policy implementation must be improved to get better results going forward.” IEG 2010, p. 1. The IEG recommended that reforms not only examine policy language, but also look at the institutional structure and staffing that are needed to implement the policies effectively.

³¹ The World Bank began consultations in 2011, plans to release an approach paper in late 2012 or 2013, and plans to adopt new policies by 2013. However, the safeguards review only focuses on the “traditional” and “country systems” approach, which are used in the one of the Bank’s three lending instruments, called investment lending. As of early 2012, the Bank has not decided to simultaneously review its safeguards for its other lending instruments, namely development policy lending and programming for results.

³² See endnote 28.

³³ The World Bank began consultations in 2011, plans to release an approach paper in late 2012, and plans to adopt new policies by 2013. However, the safeguards review only focuses on the “traditional” and “country systems” approach, which are used in the one of the Bank’s three lending instruments, called investment lending. As of early 2012, the Bank has not decided to simultaneously review its safeguards for its other lending instruments, namely development policy lending and programming for results.

³⁴ The 2010 agreement of the UNFCCC-LCA text specifically mentions safeguards in the context of REDD+. Decision 1.CP16, UN Doc. FCCC/CP/2010/7/Add.1 When undertaking REDD+ activities, the paragraph 2 provides that “the following safeguards should be promoted and supported”:

- (a) That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;
- (b) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;
- (c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;
- (d) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision;
- (e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;(Footnote 1)

(Footnote 1): “Taking into account the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the International Mother Earth Day.

(f) Actions to address the risks of reversals;

(g) Actions to reduce displacement of emissions.

The decision also calls for countries to maintain a “system for providing information on how the safeguards . . . are being addressed and respected throughout the implementation of [REDD+], while respecting sovereignty.”

In addition to the specific REDD+ component of the Cancun agreement, Parties also agreed that human rights should be respected throughout all climate-related actions, and this applies to REDD+ activities. Decision 1.CP.16, UN Doc. FCCC/CP/2010/7/Add.1, para. 8 (2010).

³⁵ Parties also agreed to implement a “Safeguard Information System” for reporting on “how safeguards are being addressed and respected.”

³⁶ Leony Aurora, CIFOR, 8 Dec. 2011, “World Bank: More donors supporting REDD+,”

<http://blog.cifor.org/6113/world-bank-more-donors-supporting-redd>. For a description of REDD+ funds, see Athena Ballesteros et al., World Resources Institute (2010), *Power, Responsibility, and Accountability: Re-Thinking the Legitimacy of Institutions for Climate Finance*, Washington, DC: WRI, <http://www.wri.org/publication/power-responsibility-accountability>. See also, Eduard Merger et al. (2011), *Options for REDD+ voluntary certification to ensure net GHG benefits, poverty alleviation, sustainable management of forests and biodiversity conservation*, Forest Carbon Portal, pp. 550–577, <http://www.forestcarbonportal.com/resource/options-redd-voluntary-certification-ensure-net-ghg-benefits-poverty-alleviation-sustainable>.

See also, Deborah Murphy, International Institute for Sustainable Development (May 2011), *Safeguards and Multiple Benefits in a REDD+ Mechanism*, Winnipeg, Canada: IISD, p. 4. As summarized by Murphy, p. 10: “Merger, Dutschke and Verchot (2011) compared 10 standards and found that most consider rights and livelihoods of local stakeholders affected by projects and programs, and require compliance with national laws, program or policies. The standards also require that land tenure and property rights over forest resources are clarified or dispute resolution mechanisms are in place, and that stakeholders participate and are consulted. Most require that projects or programs facilitate capacity building and provide guidance on benefits-sharing mechanisms. Most standards also promote sustainable management of forests and biodiversity conservation. The standards differ in their monitoring and reporting approaches.”

³⁷ For more information, please visit <http://www.un-redd.org>.

³⁸ World Bank Operational Policy 4.01 (1999, updated 2011), “Environmental Assessment.” See also, World Bank, Forest Carbon Partnership Facility (June 2011), “*Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners*.”

³⁹ Baastel & Nordeco (June 2011), First Program Evaluation for the Forest Carbon Partnership Facility, Prepared for the FCPF Participants Committee, p. 10,

http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Jun2011/5.%20Final%20FCPF_EVALUATION_REPORT_June%2013th.pdf; see also, CIFOR, 8. Dec 2011, “World Bank: More donors supporting REDD+,” in endnote 36.

⁴⁰ Athena Ballesteros, World Resources Institute, 14 Feb. 2011, “The Road to the Green Climate Fund,”

<http://www.wri.org/stories/2011/02/road-green-climate-fund>.

⁴¹ Green Climate Fund, Report of the Transitional Committee,

http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_gcf.pdf.

⁴² Justin McCurry & Julia Kollewe, The Guardian, 14 Feb. 2011, *China Overtakes Japan as World’s Second-Largest Economy*, <http://www.guardian.co.uk/business/2011/feb/14/china-second-largest-economy>.

⁴³ Geoff Dyer & Jamil Anderlini, Financial Times, 17 Jan. 2011, *China’s lending hits new heights*,

<http://www.ft.com/intl/cms/s/0/488c60f4-2281-11e0-b6a2-00144feab49a.html#axzz1jUI7oput>. The article reports that “China Development Bank and China Export Import Bank signed loans of at least \$110bn (£70bn) to other developing country governments and companies in 2009 and 2010, according to Financial Times research. The equivalent arms of the World Bank made loan commitments of \$100.3bn from mid-2008 to mid-2010, itself a record amount of lending in response to the financial crisis.”

⁴⁴ Based on the 2010 annual reports of the three institutions.

⁴⁵ For an unofficial English translation, please visit International Rivers, 28 Aug. 2009, “Guidelines for Environmental and Social Impact Assessments of the China Export and Import Bank’s Loan Projects,”

<http://www.internationalrivers.org/en/node/3139>.

⁴⁶ Adina Matisoff, 10 July 2010, Credit where it’s due (2), ChinaDialogue.Net,

<http://www.chinadialogue.net/article/show/single/en/3742>.

⁴⁷ See BNDES website, “Social and Environmental Responsibility,”

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en.

⁴⁸ For more information about the World Bank development policy loan (DPL) to Brazil, please visit

<http://web.worldbank.org/external/projects/main?pagePK=51351038&piPK=51351152&theSitePK=40941&projid=P095205>.

⁴⁹ To date, the results of the World Bank development policy loan are mixed. It is not clear whether the initiative achieved implementation of a broad safeguards policy framework at BNDES. A possible second loan was discussed in 2010, but BNDES rejected it. A number of the performance indicators from the first loan remain unfulfilled as of April 2012. See also, BNDES, “Annual Report 2009,” pp. 28, 124.

⁵⁰ The operating procedures are available in Portuguese at the following page:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/BNDES_Transparente/Responsabilidade_Social_e_Ambiental/Politica_Socioambiental/analise_ambiental.html.

⁵¹ Henry Mugisha Bazira, Water Governance Institute (2012), *Uganda’s Civil Society Perspectives on International Reforms of Environmental and Social Safeguards for Development Finance*. Please see this paper for citations to the details described in this case study.

⁵² Mark Grimsditch (2012), *China’s Investments in Hydropower in the Mekong Region: The Kamchay Hydropower Dam, Kampot, Cambodia*. Please see this paper for citations to the details described in this case study.

⁵³ UNFCCC, CDM database, “Kamchay Hydroelectric BOT Project,”

<http://cdm.unfccc.int/Projects/Validation/DB/QFMTTATFT920BBVX9JOKGOIHX2ES5Y/view.html>.

⁵⁴ Roland Widmer, OneAdvisory (2012), *The Brazilian Safeguard Regime, Its Application and Recommendations for the Future*. Please see this paper for citations to the details described in this case study.

⁵⁵ Since 2004, Brazil has used a version of a strategic environmental assessment called Avaliação Ambiental Integrada” In practice, however, the policy has not been used to assess cumulative impacts of development projects located within a single river basin

⁵⁶ Bernadinus Steni & Nadia Hadad, Bank Information Center (2012), *REDD+ Safeguards in Indonesia*. Please see this paper for citations to the details described in this case study.

⁵⁷ As ActionAid explains, “national ownership of development programs is not just a matter of government engagement: the involvement of communities and civil society stakeholders in the formulation and delivery of policy and programs should be seen as an integral part of ensuring effective development.”

http://actionaidusa.org/assets/pdfs/climate_change/equitable_adaptation_finance.pdf.

⁵⁸ Better Aid, *A civil society position paper for the 2008 Accra High Level Forum on Aid Effectiveness*,

http://www.democraticownership.org/documentation/CSO-Policy_Paper.pdf.

⁵⁹ Grimsditch p.6.

⁶⁰ Widmer p 38.

⁶¹ Examples include the African Development Bank’s Compliance Review and Mediation Unit (CRMU), the Asian Development Bank’s Accountability Mechanism, the Inter-American Development Bank’s Independent Consultation and Investigation Mechanism, and the European Bank for Reconstruction and Development’s Project Complaint mechanism. Other international institutions, such as some export credit agencies, have developed similar mechanisms.

⁶² Baastel & Nordeco (June 2011), First Program Evaluation for the Forest Carbon Partnership Facility, Prepared for the FCPF Participants Committee, p. 10,

http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Jun2011/5.%20Final%20FCPF_EVALUATION_REPORT_June%2013th.pdf; see also, CIFOR, 8. Dec 2011, “World Bank: More donors supporting REDD+,” in endnote 36.

⁶³ See generally, Murphy IISD 2011, in endnote 36, which discusses the challenges of coordinating multiple donors on safeguards.

⁶⁴ IEG Evaluative Directions 2011, pp. 21-22.

⁶⁵ The World Resources Institute has designed several toolkits to improve governance around the policy making process: The Access Initiative, Governance of Forests Initiative, and Electricity Governance Initiative. See

<http://www.wri.org/governance>.

⁶⁶ Kirk Herbertson, Kim Thompson & Robert Goodland (2010), *A Roadmap for Integrating Human Rights into the World Bank Group*, Washington, DC: World Resources Institute, <http://www.wri.org/publication/roadmap-for-integrating-human-rights-into-world-bank-group>.

⁶⁷ For example, the World Bank Forest Carbon Partnership Facility requires a “strategic environmental and social assessment” leading to the creation of an “environmental and social management framework” that can ensure public

involvement in upstream decision-making for REDD. See World Bank, Operational Policy 4.01 (1999, updated 2011), “Environmental Assessment.”

⁶⁸ Murphy IISD 2011, p. v, in endnote 36.

⁶⁹ See, for example, the Universal Declaration on Human Rights, its associated covenants, and the official interpretations provided by UN human rights mechanisms.

⁷⁰ Herbertson, Thompson & Goodland (2010), pp. 38-39, in endnote 66.

⁷¹ The *UNFCCC’s 2010 Cancun Agreements* require that REDD+ initiatives “complement or are consistent with...relevant international conventions and agreements” and that human rights should be respected throughout all climate-related actions. Decision 1.CP.16, UN Doc. FCCC/CP/2010/7/Add.1, para. 8 (2010). Similarly, the *European Bank for Reconstruction and Development (EBRD)* “will not knowingly finance projects that would contravene country obligations under relevant international treaties and agreements related to environmental protection, human rights, and sustainable development, as identified during project appraisal.” EBRD (2008), Environmental and Social Policy, <http://www.ebrd.com/pages/about/principles/sustainability/policy.shtml>. Furthermore, the World Bank Inspection Panel has already interpreted the safeguards to incorporate certain elements of international human rights law. See Herbertson, Thompson & Goodland (2010), pp. 27-28, in endnote 66. The World Bank’s safeguards require environmental assessments to take into account borrowers’ obligations under international environmental treaties and agreements. World Bank operational policy 4.01 (1999), “Environmental Assessment.” This could potentially be expanded to human rights obligations as part of the current safeguards review.

⁷² See generally, Murphy IISD 2011, in endnote 36, which discusses the challenges of coordinating multiple donors on safeguards.

⁷³ For an analysis of the value to investors of obtaining the consent of local communities see Steven Herz Antonia La Vina & Jonathan Sohn, *Development without Conflict: the Business Case for Community Consent* (2007), Washington, DC: World Resources Institute.