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World Bank: Draft environment and social safeguards fail to uphold rights of Indigenous Peoples

The third draft of the World Bank's proposed new environmental and social safeguard policy, which will be reviewed for approval by the Bank's Board this week, represents a significant missed opportunity. Representatives of affected communities from all over the world engaged in consultations with the Bank, hoping that it would make a strong commitment to ensure human rights are not violated in the Bank's projects, and reassure affected groups that the Bank intended to take a new direction, after a string of Bank-funded projects which have displaced and impoverished them. Those representatives have voiced bitter disappointment at the draft, the main objective of which appears to be to give the Bank greatly increased freedom to design and manage projects without binding protections for communities. There are a wide range of human rights concerns relating to the draft; this statement focuses on two glaring omissions: The lack of an overall commitment in the draft to respect human rights, and manifest gaps in the protection of Indigenous Peoples' rights.

In its history, the World Bank has overseen projects which have led to forced evictions, arbitrary imprisonment of protesters, the removal of Indigenous Peoples from their ancestral lands without compensation and the large-scale destruction of fragile ecosystems crucial to the health and livelihoods of communities. These projects have significantly damaged the Bank's reputation. Rather than endorsing unacceptably weak environment and social safeguards, the Bank's Board must act now to provide guidance and put in place safeguards that protect against human rights risks arising from its activities. Member States of the Bank - who are ultimately responsible for its actions - must ensure their representatives on the Board fulfil this responsibility.

No explicit commitment to respect human rights

The current reference to human rights in the Vision Statement of the safeguards is weak and avoids any commitment by the Bank to ensure that its activities do not lead to human rights abuses. Nor are there any mechanisms to vet the Bank's policies and projects for consistency with human rights. The provision says: "In this regard, the World Bank's activities support the realization of human rights expressed in the Universal Declaration of Human Rights. Through the projects it finances, and in a manner consistent with its Articles of Agreement, the World Bank seeks to avoid adverse impacts and will continue to support its member countries as they strive to progressively achieve their human rights commitments." The provision should instead clearly require the Bank to refrain from causing, contributing to or exacerbating human rights abuses that result from its activities.

Failing to provide for free, prior and informed consent of Indigenous Peoples

Free, Prior and Informed Consent (FPIC) of Indigenous Peoples is defined vaguely in the draft safeguards as being reached through a "culturally appropriate process" rather than "through their own representative institutions" as required by the UN Declaration on the Rights of Indigenous Peoples. The Bank determines, in a top-down manner, whether the community's "collective support" for a given project exists or not, rather than consent being identified by the community as an expression of their right to self-determination. In practice, this means that the Bank ratifies (or in rare cases, not) the Borrower government's assessment of the existence of

support. The draft safeguard should not be distorted by defining it as “collective support.” Rather, it should be defined to ensure respect for the results of indigenous peoples’ independent and collective decision-making processes, in keeping with international standards.

The safeguards require FPIC only in a restricted set of circumstances. These are: a) whenever there are impacts on Indigenous lands and resources, and these are “adverse”; whether an impact is adverse or not will be in the first instance determined by the borrower government, who is responsible for the impact assessment (in which the Indigenous People concerned has no role); b) when there will be relocation of a community from its land and natural resources; and c) when there are “significant” impacts on cultural heritage which are “material to the identity and/or cultural, ceremonial, or spiritual aspects” of the affected community's lives. Whether impacts are material to a community's identity, or whether they are significant, will in the first instance be determined by the borrower. In the existing World Bank safeguards, although the weaker formulation “broad community support” is used, ascertained after a process of free, prior and informed consultation, such support must be obtained for all activities affecting Indigenous Peoples. The draft safeguards should stipulate that FPIC should be applied to all situations in which projects have an impact on the rights of Indigenous Peoples as defined in the UN Declaration on the Rights of Indigenous Peoples.

The draft safeguards allow conversion of Indigenous Peoples' land title from collective to individual ownership. The borrower merely has to consult with, but not obtain the consent of, the community concerned, after an “assessment of the impacts of such conversion on the communities and their livelihoods” (in which there is no requirement for the affected community’s participation). However, international and domestic jurisprudence on Indigenous Peoples' rights has established that collective land ownership is essential for the protection and promotion of a community's identity and cohesion. The provision allowing the parcelling of indigenous peoples’ collective lands into individual plots, without the FPIC of the community, must be eliminated.

When projects involve commercial exploitation of Indigenous lands/resources, the draft safeguards have watered down requirements for ensuring that the affected community has a share in benefits. This will only be required when such lands and resources are deemed to be “central to the identity and livelihood” of the community and “the usage thereof exacerbates livelihood risk”. In most cases, Indigenous Peoples, in order to protect and support the collective nature of resource ownership and management in their communities, will require that benefit sharing mechanisms are collective; however the new safeguard only requires that “efforts” are made, “where possible” to ensure that this is the case. The existing safeguards require that benefit sharing mechanisms be included in the Indigenous Peoples Plan which is developed in consultation with the community concerned. This requirement has been dropped in the new draft safeguards. The draft safeguards should strengthen the existing requirement that indigenous peoples should benefit from any commercialization of their natural resources, rather than demoted to a consideration only where the natural resource is “central to their identity and livelihood.”

Denial of protection to particular Indigenous Peoples

The Indigenous Peoples safeguard has been retitled “Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities”. This is a compromise to several African governments which reject the use of the term “Indigenous Peoples” in their countries, in violation of the right of Indigenous Peoples to determine and express their identity. This creates legal vagueness, potentially being used to justify breaking the link between the communities in question and their rights under international law. Furthermore, the draft safeguard states that “The World Bank may follow national processes during project screening for the identification” of the communities in question, “where these processes meet the requirements” of the safeguard. However, the text is silent on what those requirements might be. Given that evaluations both by independent observers and the Bank itself have identified multiple failings in Bank-funded projects to protect Indigenous Peoples from irreparable harms, and that in a number of projects

the borrower has asked the Bank for permission not to apply the Indigenous Peoples safeguard, it is unacceptable that the safeguard would permit the Bank to exclude affected Indigenous Peoples even from the limited protections that the safeguard offers. It is essential that the safeguards restore the reference to 'Indigenous Peoples' as the title and predominant reference of the safeguard. References to applying the safeguard to traditionally underserved local communities can be reflected in the text of the document as long as it is made clear that the substantive provisions of the safeguard are applied.

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