

World Bank's Draft Safeguards Fail to Protect Land Rights and Prevent Impoverishment: Major Revisions Required

At last year's Annual World Bank Conference on Land and Poverty, the Bank publicly committed to ensuring that its new environmental and social safeguards would be informed by the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forest and Fisheries, which were adopted by all 125 members of the Committee on World Food Security in 2012.¹ President Kim said that "additional efforts must be made to build capacity and safeguards related to land rights."² Civil society groups and UN welcomed the specific focus on land tenure as an 'emerging issue' in the first round of consultations and dedicated significant time, expertise and resources into providing the Bank with detailed input and analysis to inform the process of drafting safeguards on land issues.³

Yet, the draft Environmental and Social Framework currently under consideration fails to reflect the Voluntary Guidelines in every important way and fails to adequately respond to or incorporate years of input from civil society and experts around the world. Not only does the draft Framework fail to include a comprehensive set of safeguard standards on land tenure and land rights, as is acutely needed, alarmingly, it actually acts to *narrow* the scope of the current policies and *weaken* land rights protections for poor and vulnerable groups.

'Opt-out' clause on safeguards for Indigenous Peoples

Most shockingly, the draft Framework provides an opt-out option for governments who do not wish to provide essential land and natural resource rights protections to Indigenous Peoples within their States.⁴ This regressive clause, if adopted, would represent a wink and nod by the World Bank to governments that they should not feel compelled to respect international human rights law, and can violate the fundamental right to land, territories and resources and to self-determination of indigenous peoples. The Executive Directors of the World Bank that represent States that are party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights have an international law obligation to reject this provision.⁵

Major dilutions of involuntary resettlement policy

The primary objective of the Voluntary Guidelines is to promote improved governance of land tenure, including in relation to expropriation and resettlement. In contrast, the draft Framework eliminates key measures in the current Bank policy that are essential to the

¹ [http://www.worldbank.org/en/news/press-release/2013/04/08/world-bank-group-access-to-land-is-critical-](http://www.worldbank.org/en/news/press-release/2013/04/08/world-bank-group-access-to-land-is-critical)

² Ibid.

³ See, for example: <http://tinyurl.com/oynamtt>; <http://tinyurl.com/pztsxy5> and <http://tinyurl.com/p9wdm32>.

⁴ ESS1, para 28.

⁵ See article 1 of the ICCPR and ICESCR, with an affirmation and elaboration of the right of self-determination for indigenous peoples in the United National Declaration of Indigenous Peoples (UNDRIP).

responsible governance of projects that cause physical and economic displacement. It removes the critical requirements in relation to resettlement-planning instruments, including baseline data, and weakens requirements to assess alternatives, in order to avoid or minimize displacement. Contrary to the Voluntary Guidelines and human rights law instruments, it fails to ensure that projects supported by the Bank that result in displacement have a legitimate public purpose and general welfare value. It dilutes requirements for information disclosure, consultation and participation of displaced persons in resettlement planning, implementation and monitoring. It massively dilutes Bank appraisal and supervision responsibilities for resettlement planning and execution, relying on self-assessment and self-reporting by the borrower and approving displacement-inducing projects without conducting due diligence on comprehensive resettlement plans. The effect is that the draft ESF seriously weakens protections for people who will be evicted from their homes, land and livelihoods, increasing the risk that Bank-financed projects will impoverish people, exacerbate inequality and cause human rights violations.

The resettlement policy should be brought into line with international human rights standards and the overall Framework must ensure that the Bank maintains its responsibility for ensuring compliance during the planning and implementation of resettlement.

Exclusion of land-administration projects from resettlement safeguards

Unlike current Bank policy, the draft exempts land titling/regularization and land use regulation activities from ESS5.⁶ That means that people whose land rights are made insecure through a Bank-financed land administration project, because, for example, they are not determined to have ownership rights, are left completely vulnerable to forced eviction by their government, without any safeguards protections from the Bank. This is antithetical to the spirit and letter of the Voluntary Guidelines on Land Tenure and in violation of human rights instruments that promote security of tenure and protect against forced evictions. As those displaced will almost always be the urban and rural poor, it is also manifestly contrary to the goals of extreme poverty eradication and shared prosperity.

The resettlement policy should apply to all Bank-assisted projects, including land administration projects, in order to protect persons whose tenure rights or arrangements are denied, revoked or restricted and are thus subject to displacement.

Insufficient protections against land-grabbing

One of the most important parts of the Voluntary Guidelines is the protections it sets out to ensure that large-scale land acquisitions do not undermine the tenure rights of, inter alia, rural farmers, and indigenous peoples, including pastoralists. The Bank's draft

⁶ ESS5, para 5(d) and (e). OP 4.12 excludes only disputes between private parties in land titling projects from its application (footnote 8), but does not exempt land titling projects wholesale, and has been interpreted to apply to people to be evicted from land registered as State or public land.

safeguards Framework does not incorporate such protections.

ESS5 excludes from its scope of application voluntary market transactions.⁷ A footnote adds that: Special care must be taken with respect to voluntary transactions of significant areas of land (for example in the case of *large-scale transfers of land for agricultural investment purposes*) to ensure: (a) that land and land use rights of all affected people have been respected; (b) that individuals, groups or communities affected by the transfer are informed of their rights, have full access to reliable information concerning environmental, economic and social impacts and have the capacity to negotiate fair value and appropriate conditions for the transfer of their land; (c) that appropriate benefits-sharing and grievance redress mechanisms are put in place; and (d) that terms and conditions of the transfer are transparent.⁸

While the description of conditions for voluntariness are welcome, the footnote raises more questions than it answers. The inclusion of the reference to large-scale transfers of land begs the question as to why the Bank would be supporting activities that involve or encourage large-scale land transfer for agricultural investment in the first place. The footnote displays a recognition by the Bank that such transfers are, in practice, often involuntary in nature and cause forced displacement. And yet all that is asked by the Bank of its borrowers is that they take care in ensuring the conditions are present. Beyond this request, no further safeguards apply to protect against large-scale land grabbing, a phenomenon that has reached crisis proportions in the global south.

Bank safeguards must ensure that agriculture projects do not infringe the tenure rights and arrangements of people and communities with land and natural resource-based livelihoods, including smallholder food producers, fisher folk, herders and forest dwellers. These land and natural resource users should be the primary beneficiaries of any such project, including through the strengthening of their tenure security and increasing their access to productive resources. As one way to ensure this, the types of conditions of a voluntary transfer currently described in the footnote should be included as actual safeguard requirements whenever a Bank-supported operation involves or facilitates land transactions for agricultural investments.

No objectives or serious measures to protect land rights of the poor

Under the draft framework, amongst the list of social risks and impacts that the Bank and Borrower should take into account in their due diligence and social assessment, respectively, are:

“risks or impacts associated with land and natural resource tenure and use, including (as relevant) potential project impacts on local land use patterns and tenurial arrangements, land access and availability, food security and land values, and any corresponding risks related to conflict or contestation over land and natural resources.”⁹

⁷ ESS5, para 5(a).

⁸ ESS5, footnote 11.

⁹ ESP, para 4(b) and ESS1, para 26(b).

While we agree that such risks and impacts should be assessed, the inclusion of this clause alone is a far cry from ensuring that the safeguards framework is informed by the Voluntary Guidelines. There are no objectives pertaining to each of these potential risks, and no measures are outlined to ensure that identified risks are avoided and mitigated. Instead there are vague requirements of assessment of risk and the application of a “mitigation hierarchy”, which only requires adverse impacts to be compensated when “technically and financially feasible.”¹⁰

During the first phase of consultations, civil society groups recommended a range of substantive safeguard measures to ensure that Bank-assisted operations that impact on land rights:

- Do not weaken, impede or restrict tenure rights to land, housing or natural resources in any manner that violates human rights, including the right to adequate housing, the right to food, the right to non-discrimination and the right to equal protection of the law;
- Avoid and minimize the risk of conflict over land and natural resources, and make every effort to address any conflicts that arise from Bank operations;
- Support and strengthen recognition of the specific land tenure and resource rights of indigenous peoples and the particular protections developed to ensure the development process does not weaken or impact on these rights;
- Strengthen, secure and prioritize the tenure rights of vulnerable and marginalized people so that they enjoy, at minimum, legal protection against forced eviction and illegitimate use by others of their land and natural resources;
- Promote more equitable use of, access to and control over land, housing and natural resources, with particular attention to the rights of women.

If the Bank is serious about supporting the implementation of the Voluntary Guidelines on Land Tenure and doing no harm, as it has repeatedly professed, it must ensure that its own policies and procedures actually safeguard the land rights of the poor.

Signed by:

1. Accountability Counsel
2. ACT NOW! PNG
3. Africa Europe Faith and Justice Network
4. Africa Faith & Justice Network
5. African Resources Watch (AFREWATCH)
6. Aksi! – Indonesia
7. Alyansa Tigil Mina – Philippines
8. American Jewish World Service
9. Asia Pacific Forum on Women, Law and Development
10. Asian Indigenous Peoples Network on Extractive Industries and Energy

¹⁰ ESS1, para 25.

11. Association of Fisherfolk of the Gulf of Fonseca - Honduras
12. Anuak Justice Council
13. Anuak Media
14. Asian Indigenous People's Pact
15. Bangladesh Krishok Federation - Bangladesh
16. Bank Information Center – US
17. Both Ends – Netherlands
18. Business & Human Rights Resource Centre
19. Center for International Environmental Law - US
20. Cambodian Peace-Building Network – Cambodia
21. Caney Fork Headwaters Association – US
22. Castan Centre for Human Rights Law, Monash University – Australia
23. Center for Women’s Global Leadership, Rutgers University – US
24. Centre national de coopération au développement, CNCN-11.11.11 - Belgium
25. Citizens for Justice – Malawi
26. Coalition for Equitable Land Acquisitions and Development in Africa (CELADA)
27. Cornucopia Network/NJ/TN Chapter – US
28. CREED Alliance – Pakistan
29. Cubit Family Foundation - Australia
30. Cumberland Countians for Ecojustice – US
31. Eco Foundation for Sustainable Alternatives, Rights & Responsibility Collective – India
32. Ekta Parishad - India
33. Equitable Cambodia – Cambodia
34. FIAN International
35. Focus on the Global South
36. Food Tank: The Food Think Tank
37. Forest Peoples Program
38. Forum Syd
39. Foundation for the Development of Sustainable Policies - Argentina
40. Four Regions Slum Network - Thailand
41. Friends of the Earth – US
42. Fundar, Centro de Análisis e Investigación – Mexico
43. Global Exchange
44. Global Justice Clinic, New York University Law School - US
45. Grassroots International
46. Green Advocates International – Liberia
47. Habi Center for Environmental Rights - Egypt
48. Highlander Association – Cambodia
49. Housing and Land Rights Network – Habitat International Coalition
50. Housing Rights Task Force – Cambodia
51. Human Settlement Foundation - Thailand
52. IBON International
53. Inclusive Development International
54. Indigenous Peoples Links – UK
55. Indigenous Peoples Movement for Self Determination and Liberation

56. Institute for Policy Studies, Climate Policy Program – US
57. International Rivers
58. Jamaa Resource Initiative – Kenya
59. Kairos: The Center for Religious, Rights and Social Justice – US
60. Kalpavriksh - India
61. Kenya Human Rights Commission – Kenya
62. Kenya Land Alliance - Kenya
63. Khulumani Support Group - South Africa
64. Labour, Health and Human Rights Development Centre – Nigeria
65. Le Cercle Pour la Défense de l'Environnement (CEDEN) – Democratic Republic of Congo
66. Leaders and Organizations of Community Organizations in Asia (LOCOA)
67. League of Boeung Kak Women Struggling for Housing Rights – Cambodia
68. Local Futures/International Society for Ecology & Culture – UK
69. London Mining Network – UK
70. Lumière Synergie pour le Développement – Senegal
71. MiningWatch Canada
72. Movement for the Survival of the Ogoni People – Nigeria
73. Namati
74. National Center for Advocacy Studies – India
75. National Peasants Coalition of Pakistan - Pakistan
76. Natural Justice
77. Network of Environmental & Economic Responsibility of United Church of Christ - US
78. Network Movement for Justice and Development – Sierra Leone
79. Nicaragua Center for Community Action (NICCA)
80. Ole Siosiomaga Society Incorporated – Samoa
81. Oxfam
82. Pakistan Fisherfolk Forum - Pakistan
83. Planet Wheeler Foundation - Australia
84. Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo
85. Posco Pratirodh Sangram Sati - India
86. Project on Organizing, Development, Education, and Research (PODER) - Latin America
87. Proyecto de Derechos Económicos, Sociales y Culturales (ProDESC) - Mexico
88. Sahmakum Teang Tnaut - Cambodia
89. Social Justice Connection – Canada
90. Society for Conservation and Protection of Environment (SCOPE) - Pakistan
91. Solidarity Movement for a New Ethiopia
92. Southeast Asia Development Program
93. The Global Initiative for Economic, Social and Cultural Rights
94. The International Network on Displacement and Resettlement
95. The Oakland Institute
96. Ulu Foundation
97. Urgewald - Germany

The statement is also endorsed by the following individuals:

1. Professor Jonathan Fox, American University - US
2. Professor Raquel Rolnik, Universidade de São Paulo - Brazil
3. Professor Ted Downing, University of Arizona - US
4. Professor Naomi Rohn-Arriaza, University of California - US
5. Associate Professor Susan Randolph, University of Connecticut - US
6. Professor Vinodh Jaichand, Dean of the School of Law, University of the Witwatersrand – South Africa
7. Assistant Professor Dr. Usha Natarajan, The American University of Cairo – Egypt
8. Barbara Rose Johnston, PhD, Senior Research Fellow, Center for Political Ecology - US
9. Joanne Bauer, Adjunct Professor, Columbia University - US
10. Geoffrey Payne, Geoffrey Payne & Associates - UK
11. Charles Scheiner, La'o Hamutuk, Timor Leste Institute for Development Monitoring and Analysis – Timor Leste
12. Franchezca Serrano, Research Université du Québec à Montréal - Canada
13. Evelyne Schmid – Switzerland
14. William Nicholas Gomes, Human Rights Ambassador for Salem-News.com - UK
15. Lea Jellinek – Australia
16. Axel C Ringe – US
17. Miles Litvinoff - UK