Federal Ministry
for Economic Cooperation
and Development

Managing Social and Environmental Risks in World Bank Development Policy Operations

Published by: giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

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April 2015

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The Study “Managing Social and Environmental Risks in World Bank Development Policy Operations” was commissioned as part of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH sector project “International Positioning of German Development Cooperation in Development Economics” on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ). The views expressed in this paper are solely those of the authors and do not necessarily reflect the views or carry the endorsements of BMZ or GIZ.

Content

List of Abbreviations

AAA	Analytic and Advisory Activities
ADB	Asian Development Bank
AfDB	African Development Bank
BIC	Bank Information Center
BP	Bank Procedure
CEA	Country Environmental Assessment
CPF	Country Partnership Framework
CPS	Country Partnership Strategy
CSO	Civil Society Organization
DPL	Development Policy Lending/Loan
DPO	Development Policy Operation
ESMF	Environmental and Social Management Framework
ESW	Economic and Sector Work
FY	Financial Year
GP	Global Practice
GW	Global Witness
IBRD	International Bank for Reconstruction and Development
ICR	Implementation Completion and Results Report
IDA	International Development Association
IEG	Independent Evaluation Group
IL	Investment Lending
ILC	International Law Commission
ISS	Integrated Safeguard System
MDB	Multilateral Development Bank
MDTF	Poverty and Social Impact Analysis Multi-Donor Trust Fund
OM	Operations Manual
OP	Operational Policy
OPCS	Operations Policy and Country Services
PSIA	Poverty and Social Impact Assessment
SEA	Strategic Environmental Assessment
SESA	Strategic Environmental and Social Assessment
SORT	Systematic Operations Risk-Rating Tool
TA	Technical Assistance
ToR	Terms of Reference
WBG	World Bank Group

Executive Summary

Through Development Policy Operations (DPOs), the World Bank (WB) provides budget support to help its borrowers address actual or anticipated development financing requirements and support policy and institutional reforms. Unlike investment lending (IL), DPOs do not fund specific investment projects but support country-owned reforms through non-earmarked financing which disburses into the general budget of the borrowing country and is subject to the borrower's own implementation systems and processes. The supported reform programs can include policy changes, institutional reforms or legislative measures. These reforms are agreed upon by the Bank and the borrower in the form of prior actions, i.e. conditions which need to be fulfilled by the borrower before the World Bank's Board of Executive Directors approves the loan.

This study focuses on a legal evaluation of the existing policy framework for social and environmental risk management in DPOs. It does not attempt to conduct an empirical evaluation of DPO effects nor of implementation practice. In assessing the adequacy of the policies that govern risk management in DPOs, this study aims at determining a balance between risk-taking and risk-avoidance to ensure that adverse social and environmental impacts are effectively mitigated while opportunities for positive impacts are fully realized.

Risk-related characteristics of DPOs

DPOs imply other types of risks than IL and thus require a different approach to risk management. DPO-induced impacts are often indirect and result from complex chains of causation which can involve shifts in public spending, consumption or production patterns. Furthermore, DPO impacts are often delayed, as institutional or policy changes typically take effect years after disbursement is completed. Finally, DPOs require different risk management processes, as they rely on the borrowing country's systems and respective capacities to a much larger extent than IL.

The current legal framework for managing social and environmental and social risks in World Bank DPOs

The Bank's current policy framework for managing social and environmental risks governs risk management in three phases: at the early country level planning stage, during the more advanced design phase of the DPO, and during the actual implementation.

The early planning phase of a DPO begins with the drafting of a Country Partnership Framework (CPF, formerly CAS) by the Bank and the borrower in which medium-term priorities and objectives of the Bank's cooperation with the borrower are set out. Since July 1st 2014, each CPF is informed by an analysis of country specific opportunities and constraints to achieve the WBG's corporate goals in a sustainable manner. These so-called Systematic Country Diagnostics (SCDs) also include an assessment of environmental and social risks which inform subsequent lending operations, including DPOs.

The design phase of a specific DPO is governed primarily by Operational Policy (OP) 8.60. OP 8.60, paras. 9-10, require Bank staff to determine whether a DPO has significant poverty, social or environmental impacts. If such impacts exist, said policy requires the Bank to summarize relevant analytic knowledge of these effects as well as of the borrower's systems for reducing adverse and enhancing positive impacts. If there are significant gaps in the analysis or shortcomings in these systems, the Bank has to describe in the Program Document how such gaps or shortcomings would be addressed before or during program implementation. These requirements differ from the Bank's Safeguard Policies, which aim to prevent and mitigate undue harm to people and the environment from IL, in at least four respects: (a) OP 8.60 does not contain detailed requirements for categorizing risk levels; (b) OP 8.60 does not prescribe mandatory environmental and social impact assessments; (c) OP 8.60 does not regulate the mitigation measures the Bank or the borrower need to take to manage identified risks; and (d) OP 8.60 does not stipulate any specific transparency and participation requirements.

The monitoring of DPO implementation is mostly limited to the Implementation Completion Report (ICR). The ICR, however, is limited in scope as well as regarding the time-period it covers. Another shortcoming of the current DPO-approach to risk management during implementation concerns the time window for access to the Inspection Panel, which is an independent complaints mechanism for people and communities who believe that they have been, or are likely to be, adversely affected by a Bank-funded project. The Inspection Panel only hears complaints for projects in which less than 95% of funds have been disbursed. While this restriction may be adequate for IL that disburse over many years, for many DPOs this leaves a window of only a few weeks between effectiveness of the agreement and the full disbursement of the loan to file a complaint with the Inspection Panel.

Comparison with other MDBs

This study finds that the risk management systems of other Multilateral Development Banks (MDBs) compare favorably to the World Bank's framework, at least on paper. Both the African Development Bank (AfDB) and the Asian Development Bank (ADB) apply one comprehensive safeguard policy framework to all lending instruments, including policy-based lending. Risk categorization for policy lending is mandatory, as are in-depth social and environmental assessments for operations categorized as risky. The AfDB also prescribes a mandatory Environmental and Social Management Plan for the mitigation of high risks. However, since these systems have only been in place since 2013, their actual performance is difficult to assess.

Recommendations

For future reforms at the Bank, this study recommends improvement in all three phases of the DPO cycle:

- **At the planning stage,** diagnostics of environmental and social risks should be strengthened at country and sector level. The consequences of high and substantial risk ratings should be spelled out in more detail. The use of country/strategic environmental assessments (CEAs/SEAs) as well as poverty and social impact assessments (PSIAs) should be expanded and, if necessary, incentivized financially. The knowledge base for country risk diagnostics should be broadened, including through participatory monitoring and consultations in order to capture long-term and indirect impacts of Bank-financed operations.
- **In the design of specific DPOs,** risk categorization as outlined in SORT should become a mandatory requirement in OP 8.60. The factors that determine environmental and social risk categorization as "high" or "substantial" should be defined in more detail in OP 8.60. CEAs/SEAs and PSIAs should be made mandatory for "high" and "substantial" risk DPOs. More concrete and mandatory guidance on how to conduct these assessments is required. OP 8.60 should also spell out in more detail the mitigation measures to be taken by the borrower and make Environmental and Social Management Frameworks (ESMFs) mandatory for "high" and "substantial" risk DPOs. SORT risk categorizations and CEAs/SEAs/PSIAs should be disclosed earlier than and separately from regular project documents.
- **During implementation,** the analysis of environmental and social impacts should be obligatory in the Implementation Completion and Results Report (ICR). Furthermore, "high" and "substantial" risk DPOs should be subject to enhanced, participatory and independent monitoring and evaluation. The Bank should also introduce a long-term feedback loop, namely through planning in the CPF. It should moreover consider expanding the time period for independent review by the Inspection Panel or program-specific grievance mechanisms beyond the disbursement period of a DPO.

I. Introduction

DPOs: Basic information and context

Through Development Policy Operations (DPOs), the World Bank (the Bank) provides budget support to borrowers who agree to implement specified institutional or policy reforms. DPOs differ from investment lending (IL) in that they do not fund specific investment projects but disburse into the general budget of the borrower. The supported country-owned reform program can include policy changes, institutional reforms or legislative measures. The majority of DPOs deal with public sector governance, human development and social protection. Others aim at supporting financial and private sector development, urban development, transport, agriculture, water, natural resources, environment and energy.[1]

DPOs make up an important share of the Bank's business. With 60 to 70 approved DPOs per year, these typically represent a third of the Bank's annual lending volume and peaked at over 50% during the recent financial crisis.[2] Between financial year (FY)10 and FY12, loan commitments in the form of DPOs amounted to $37 billion for IBRD[3] countries and $7.4 billion for IDA[4] clients. The majority of DPOs (60%) supported client countries in Latin America, Europe and Central Asia with the Africa region making up the smallest share (11%). An increasing number of DPOs is allocated to political subsovereign entities of client countries, such as federal states in India or even cities.

DPOs have existed in their current form since 2004 when the Bank merged the old Sectoral Adjustment Loans, Structural Adjustment Loans and other policy-based instruments. All policy-based lending is now governed by one set of internally binding rules, Operational Policy (OP) and Bank Procedure (BP) 8.60. The Policy specifies the fundamental criteria for the choice of the instrument, namely an adequate policy-, institutional- and macroeconomic framework of the borrowing country.[5] It also requires Bank staff to assess the environmental and social risks of the policy-lending operation and to analyze country systems for risk mitigation and participation.[6] As DPO funds are not earmarked for specific (investment) projects, the objectives and risks of an operation primarily relate to the institutional and policy reforms which the borrower plans to undertake.[7] These reforms are agreed upon as so-called prior actions in the loan agreements between the Bank and the borrower. Prior actions must be completed before the Board approves the loan; if this is not the case, the loan will not come into effect.[8]

Development policy lending (DPL) enables the Bank to address policy and institutional constraints and systemic development problems in a manner that project-focused lending cannot. It thus complements other lending instruments and can outperform them in terms of aid effectiveness, donor coordination and borrower ownership.[9] For the Bank and its staff DPOs are attractive as they typically disburse larger sums in shorter timeframes than IL projects. At the same time, due to their size and policy implications, DPOs may bear social and environmental costs that dwarf the adverse impacts of an investment project. In the 1980s and early 1990s, policy conditionality came under criticism for its negative impact on the poor and on government capacities.[10] Recent DPOs have been criticized by civil society organizations (CSOs), evaluators and by the Bank's Inspection Panel for their adverse social and environmental impact.[11]

While OP 8.60 requires an assessment of social and environmental risks, the requirements are much less detailed and robust than the Bank's Environmental and Social Safeguard

1 For an overview, see World Bank, 2012 Development Policy Retrospective, Washington 2012, p. 10, 12. Hereafter cited as Restrospective 2012. See also Bank Information Center/Global Witness, World Bank Safeguards and Development Policy Lending, April 2013. Hereafter cited as BIC/GW, DPO Primer. Available at https://consultations.worldbank.org/Data/hub/files/dplprimerapril2013safeguardreviewsubmission.pdf (1.2.2015).

2 All figures in this paragraph are drawn from Retrospective 2012, pp. xi, 5-10.

3 International Bank for Reconstruction and Development

4 International Development Association

5 OP 8.60 paras. 3-4. See in detail below, part. III.

6 OP 8.60 paras. 9-10.

7 Although DPOs disburse into the general budget of the borrower, they are associated with specific reform programs circumscribed by the prior actions. If these programs involve increased government spending, for instance for the extension of a cash transfer program, it is not unlikely that loan proceeds are in fact used for that purpose. Unlike with IL, however, recipients are not required to prove to the Bank that they incurred specific expenditures. It is therefore important to ensure that DPOs are not used to circumvent the rules and safeguards applicable to physical investment projects.

8 Prior actions are a form of ex-ante conditionality that does not legally oblige borrowers to take these actions. Countries can choose to forego the loan, while the Bank no longer relies on unenforceable government promises in Letters of Development Policy (LDPs). On the general structure of conditionality, see Dann, Law of Development Cooperation, 2013, pp. 358 et seq., 417 et seq.

9 Retrospective 2012, p. 17.

10 Cornia, Jolly, Stewart (eds), Adjustment with a human face, 1987. For earlier reviews, see: World Bank, Structural Adjustment Lending: A First Review of Experience, Operations Evaluation Report No. 6409, World Bank, Sep¬tember 24, 1986; Report on Adjustment Lending: Policies for the Recovery of Growth (R90-51, IDA/R90-49), March 26, 1990; and The Third Report on Adjustment Lending: Private and Public Resources for Growth (R92-47, IDA/R92-29), March 24, 1992.

11 See e.g. BIC/GW, DPO primer, 2013, and below, part II.

Policies for IL.[12] IL Safeguards contain detailed requirements for environmental and social impact assessments, public consultations and special protections for particular resources (forests, natural habitats), groups (indigenous people) and with regard to particular risks (involuntary resettlement). Project-affected people who suffer harm as a result of non-compliance with safeguard policies can lodge a complaint with the Bank's independent Inspection Panel. In comparison, DPOs are much less regulated and review by the Inspection Panel is more restricted as well as, consequently, very rare.[13]

In light of these differences, several member states as well as CSOs have asked the Bank to include DPOs in the current Safeguard review process and to extend the reformed environmental and social standards to policy-based lending.[14] Bank management, however, has limited the current review process to IL.[15] In autumn 2014, Bank management introduced a new Framework for Management of Risk in Operations, including a new risk-assessment tool for all lending instruments and has announced another periodic DPO retrospective for 2015.[16] Likewise, the Bank's Independent Evaluation Group (IEG) is currently assessing the implementation of the existing DPOs policy framework, including social and environmental risk management, in a representative sample of DPOs and is expected to publish its evaluation in early 2015.

Approach of the study and its evaluative standards

As to the approach, the present study analyzes the Bank's existing policy and legal framework for social and environmental risk management in DPOs, compares it to that of other Multilateral Development Banks (MDBs) and develops policy recommendations for future reforms. The focus is on a legal evaluation of the policy framework and does not include an empirical assessment of actual implementation practice. It should be noted, however, that there is relatively little reliable and systematic empirical evidence of the impacts of DPOs and of Bank-effectiveness in identifying and possibly mitigating these impacts. The above mentioned evaluation by the IEG is expected to provide further insight into this. Consequently, the present study largely relies on the Bank's own DPO Retrospectives. These are periodically prepared by Bank management and are not designed as an independent evaluation. References and statistics used in this study rely on the most recent DPO Retrospective conducted in 2012.

With regard to the evaluative standards and assumptions that inform this study, it should be noted that the analysis and recommendations are based on the understanding that the overall aim of Bank policy is to avoid and mitigate as effectively as possible adverse impacts of social and environmental risks while not missing out on opportunities to strengthen positive impacts. A central instrument to achieve these ends is better knowledge and awareness of the relevant risks. Such knowledge can be generated through further and better informed research as well as through enhanced consultation and participation of stakeholders. Improved organizational, procedural and budgetary structures can also contribute to the achievement of this aim. When considering reforms of the existing framework, a convincing balance needs to be struck between risk-taking, risk-management and risk-avoidance.

Such a balance between risk-taking, risk-management and risk-avoidance takes into account two key elements: on the one hand, there is a "minimum core" of substantive standards which no operation is justified to neglect. This minimum standard or bottom line would be found in human rights and international environmental law standards.[17] On the other hand, the Bank has rightly underlined that the overall risk framework should not make Bank staff too risk averse.[18] Not improving country policy and institutional frameworks as a result of excessive risk aversion also carries significant (opportunity) costs.

Risk management tools should be understood not simply as accountability mechanisms, but just as much as instruments of learning. Where uncertainties remain despite careful ex-ante analysis, adverse consequences that materialize should increasingly be considered an opportunity for future learning and not for accusation of the Bank or its staff members. This notion should be reflected in staff performance reviews and other evaluation systems.

12 Contained in OPs 4.01 et seq.

13 See below, II.

14 BIC, World Bank Excludes Policy Lending from Safeguard Coverage, September 2, 2014. Available at http://www.bicusa.org/world-bank-excludes-policy-lending-from-safeguard-coverage/.

15 Draft Standards released on 30 July 2014 exclude DPLs, see http://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies, BIC 2014.

16 2012 Retrospective, http://go.worldbank.org/3M7EPD0GB0; 2009 Retrospective http://go.worldbank.org/DUXLYU6OZ0; 2006 Retrospective, http://www.rrojasdatabank.info/saprin/367720rev0pdf.pdf.

17 For a concretization of this idea, see III. below and considerations on Art. 14 of the International Law Commission Draft Articles on the Responsibility of International Organizations. Available at: http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_11_2011.pdf.

18 OPCS, Framework for Management of Risk in Operations, August 21, 2014, para. 33 (Pillar Three).

II. Risk-related characteristics of DPOs

DPOs imply other types of risks than IL and thus require a different approach to risk management. This sub-section describes the risk-related characteristics of DPOs that need to be considered by a DPO-specific risk management framework.

Types of impacts of DPOs – direct and indirect

In IL, risks often involve direct, physical impacts at the project site, such as the cutting of trees to make way for a road or the flooding of villages due to a dam construction. In contrast, DPO-related risks are characterized by indirect impacts and more complex chains of causation. Similar to other forms of development assistance, DPO resources are fungible and free up fiscal space for other public expenditures that may create risks for sustainable development. The influx of such resources may potentially enhance the risk of corruption. The Bank seeks to manage these types of risks by applying macroeconomic, policy and institutional conditionality to the choice of DPOs as a funding instrument.

Adverse impacts of Bank-supported prior actions or other activities[19] are often economic and occur through shifts in government spending, market prices or economic incentive structures. Fiscal consolidation may reduce subsidies for public transport or social security systems on which vulnerable groups depend. Privatization of water utilities may lead to unaffordable tariffs. Trade liberalization may increase the use of pesticides on export cash crops. Reforms to timber concession regimes may incentivize exploitation of forests as productive assets. Identifying and attributing such environmental and distributional consequences is complex because the impact of prior actions depends not only on program design, but also on implementation and the economic, social and political context.

To assess the ex-post effects of DPOs, the Bank relies mainly on project documents, such as Implementation Completion and Results Report (ICR) and the Results Framework. These documents typically content themselves with analyzing direct short-term effects. This is also the case with the 2012 Retrospective which only focuses on direct and short-term impacts.[20] This approach limits the available evidence on indirect and long-term impacts (both positive and negative). In the absence of systematic empirical evidence, this study thus draws – necessarily selective – on sector-specific evaluations, Inspection Panel cases and critical CSO investigations of specific DPOs.

Belated impacts – the temporal dimension of DPO risks

Another characteristic that sets DPO-related risks apart from IL is the temporal dimension. The duration of most DPOs is significantly shorter than IL projects, while their adverse impacts often materialize at a much later stage than in IL. Prior actions in the areas of public sector governance, finance, private sector development, and human development typically have gestation periods of a few years as laws are passed, regulations developed, institutions restructured and implementation is rolled out. Bank analysis typically addresses only direct and short-term distributional or environmental consequences. Hence, Bank program documents assess most prior actions as having “no” or only “positive” distributional or environmental effects in the short term.[21]

19 While prior actions as pre-conditions for disbursement can pose specific risks, other elements of the agreement (such as the formulation of objectives, results, milestones or triggers) between Bank and borrower or decisions made in the implementation phase can also bear risks.

20 Retrospective 2012, p. 42. The next Retrospective planned for 2015 will look at some long-term effects of selected DPOs, cf. World Bank, 2015 Development Policy Financing Retrospective Concept Note, paras. 34-36. Available at https://consultations.worldbank.org/Data/hub/files/consultation-template/2015-development-policy-financing-retrospectiveopenconsultationtemplate/materials/concept_note_dpf_retrospective_2015_2.pdf.

21 Retrospective 2012, 37-8, 41.

In addition, DPOs typically create much less public awareness while they are ongoing than IL, and affected groups have little means of their own to anticipate adverse impacts before they actually occur. The temporal lag also limits their ability to make use of the Inspection Panel process as the Panel only hears complaints for projects in which less than 95% of funds have been disbursed. In single tranche DPOs, this leaves a window of a few weeks between effectiveness of the agreement and full disbursement of the loan.

Relevant capacities to manage risks

DPOs also differ from IL in terms of the actors and capacities relevant to manage risks. In IL, the Bank makes substantial use of its own standards, staff and expertise to ensure that borrower's plans to identify and mitigate risks are technically sound; Bank experts directly work with local counterpart engineers, urban planners, etc. In DPOs, the Bank relies more strongly on country institutions and has less direct ability to assist with its own capacities. Most DPO-driven reforms heavily rely on country capacity for implementation. At the same time, over 60% of DPOs identified insufficient implementation capacity as a risk, namely weak human capacity in the civil service. This was especially the case in Development Policy Loans (DPL) to local governments.[22] To mitigate implementation risks, many DPOs thus include a technical assistance (TA) component. In some cases, TA was used to precede a DPO and to build the relevant capacity upfront for implementing the prior actions in the later DPO.

22 Retrospective 2012, 42.

III. The current legal framework for managing social and environmental risks in World Bank DPOs

The following section surveys the normative sources of the current DPO risk framework (subsection 1.) and then describes the risk management techniques currently applied in the three phases of the Bank lending process, country-level planning (subsection 2.), DPO-specific risk analysis (subsection 3.), and implementation, monitoring and accountability (subsection 4.).

Current normative sources

The Bank's approach to manage risks in DPOs is in flux and derives from several normative sources and levels:[23] at the level of binding policy, OP 8.60, enacted in 2004 and last updated in July 2014, contains a requirement to assess social and environmental risks in concrete programs; this requirement is binding but relatively vague (see Box 1).

More concrete guidance for DPO risk assessment is contained in so-called Good Practice Notes[24], which are not binding for Bank staff and not phrased as clear instructions.

The new Systematic Operations Risk-Rating Tool (SORT), introduced by management in a 2014 interim Guidance Note[25], lays out a unified framework for risk assessment applicable to all lending instruments, including DPOs, and takes into account all types of risks, including environmental and social impacts. While SORT is anchored in Bank systems and templates, as a Guidance Note it is not binding.[26]

At the country planning level, the new "Directive on Country Engagement" replacing the old BP 2.11 on Country Assistance Strategies as of January 2015 mandates systematic country diagnostics, including analysis of social and environmental sustainability and risks.

For an overview of the regulated process, its different stages and instruments see Table 1.

World Bank OP 8.60 (revised July 2014), para. 9 + 10:

9. Poverty and Social Impacts. The Bank determines whether specific policies supported by the operation are likely to have significant poverty and social consequences, especially on poor people and vulnerable groups. For policies with likely significant effects, the Bank summarizes in the Program Document relevant analytic knowledge of these effects and of the Member Country's systems for reducing adverse effects and enhancing positive effects associated with the specific policies being supported. If there are significant gaps in the analysis or shortcomings in these systems, the Bank describes in the Program Document how such gaps or shortcomings would be addressed before or during program implementation, as appropriate.

10. Environmental, Forests, and other Natural Resource Aspects. The Bank determines whether specific country policies supported by the operation are likely to cause significant effects on the Member Country's environment, forests, and other natural resources. For policies with likely significant effects, the Bank assesses in the Program Document the Member Country's systems for reducing such adverse effects and enhancing positive effects, drawing on relevant country-level or sectoral environmental analysis. If there are significant gaps in the analysis or shortcomings in these systems, the Bank describes in the Program Document how such gaps or shortcomings would be addressed before or during program implementation, as appropriate.

23 On the normative sources and their hierarchies see World Bank, Bank Policy and Procedure Framework, July 2013; on this system and its evolution see Dann, Law of Development Cooperation, 2013, pp. 187-192.

24 See in particular: World Bank, Good Practice Note 2, Using Poverty and Social Impact Analysis to Support Development Policy Operations, August 2008; Good Practice Note 4, Environmental and Natural Resource Aspects of Development Policy Lending, October 2004; Good Practice Note 5, Supporting Participation in Development Policy Operations, October 2004.

25 World Bank, Interim Guidance Note Systematic Operations Risk-Rating Tool (SORT), 2014, in World Bank, OPCS, Framework for Management of Risk in Operations, August 21, 2014. Hereafter cited as Interim Guidance Note SORT.

26 See World Bank, Bank Policy and Procedure Framework, 2013, para. 10-11.

Table 1: Overview of DPO & IL risk management processes

Phase	Instruments and requirements	
Planning: Country Level	**Country Partnership Framework (CPF)** Table 1: Overview of DPO & IL risk management processes	
1.	CPF includes Systematic Country Diagnostic (taking into account environmental, social and economic sustainability); CPF uses SORT to categorize risks to Country Partnership Objectives	
2.	… in case of a categorization as high or substantial risks, systematic assessments of environmental and / or social risks (Strategic Environmental Assessments/SEA or Poverty and Social Impact Assessments/PSIA) may be conducted (not mandatory).	
Planning: Specific intervention	**Development Policy Operations (DPO)**	**Investment Lending (IL)**
3.	Country eligibility test (OP 8.60, para 4-5)	–
4.	Concept stage	Concept stage
5.	Preparation of Program Document, including…	Preparation of Program Document, including…
5a	Risk categorization • using SORT methodology (based only on non-binding Interim Guidance Note)	Risk categorization • using SORT methodology (but based on binding OP 4.01)
5b	… in case of high risk: • DPO becomes subject to Vice-Presidents- or Managing Directors-level review • Bank has to “summarize relevant analytical knowledge” and “describe … how gaps would be addressed” (OP 8.60, para. 9-10) • Good Practice Notes suggest PSIA or SEA, but no mandatory separate study or freestanding report	… in case of high risk: • mandatory Impact Assessment >> Borrower has to conduct environmental and social impact assessment, consult with communities and publish reports (OP 4.01, para. 8-18)
5c	Mitigation … in principle governed by country systems, … Bank has to describe the respective borrower system and how shortcomings can be addressed	Mitigation … borrower is required to design measures to avoid, mitigate or compensate for risks … Environmental and Social Management Frameworks (ESMFs) are devised. … details are prescribed in Safeguard Policies
6.- 8.	Appraisal - Negotiation - Approval	Ibid.
Implementation / Accountability		
9.	Implementation and Supervision; Short window for Inspection Panel review	Implementation and Supervision; Review by Inspection Panel during longer implementation period possible
10.	ICR (12 months after disbursement)	ICR (whenever project is completed)

Planning and ”upstream“ impact assessments

Before specific DPOs or investment projects are designed, the Bank and the borrower undergo a planning process in which medium-term priorities and objectives are set out at country level in a CPF. The former BP 2.11 on medium-term planning, in force until December 2014, made no reference to environmental or social risks at this stage. In practice, the Bank has developed instruments to analyze social and environmental risks “upstream”, i.e. before a project is designed. Country or Strategic Environmental Assessments (CEAs or SEAs) identify sector-wide or systemic environmental risks. With regard to social aspects, Poverty and Social Impact Assessments (PSIAs) are used to support programmatic DPOs.[28] Where such upstream assessments were conducted, they proved useful in informing DPO preparation and design at later stages. However, upstream assessments are not the norm and were conducted less frequently during the financial crisis when the Bank moved quickly on DPOs to provide urgently needed liquidity.

Where systematic social and environmental data is missing, DPO risk classification and design cannot rely on pre-existing empirical evidence regarding country or sectoral context. In reaction to this deficit, the new Directive on Country Engagement now prescribes Systematic Country Diagnostics for all future CPFs. These diagnostics must take into account “environmental, social and economic sustainability”. On the basis of the assessment and analysis in the Country Diagnostics, the CPF “systematically evaluates risks and identifies any relevant high or substantial risks to achieving the CPF objectives, including any risk that the Bank engagement may result in unintended adverse country impacts. The CPF identifies how the Bank, working with the country, will manage these high or substantial risks”. In order to undertake this evaluation, the Bank has to deploy the new risk-rating tool SORT, which requires a systematic categorization of risks to the CPF objectives (as low, moderate, substantial or high) in nine areas, including environmental and social risk.[29]

These reforms are in part direct reactions to weaknesses identified in recent DPO Retrospectives and are to be welcomed. This research suggests that reforms should be continued and solidified to ensure that the new requirements are properly implemented in practice and that the knowledge generated is actually taken into account in further strategic planning and DPO design. For detailed recommendations, see below, section V.

Risk analysis and management in concrete DPOs

A DPO is prepared and designed in several steps some of which differ from IL projects. As a first measure, Bank staff has to determine whether a country is eligible for DPOs. While in principle, all member states are eligible for IL, OP 8.60 restricts DPOs to borrowers with an adequate macroeconomic, policy and institutional framework, which includes the economic situation, governance, environmental/natural resource management as well as poverty and social aspects.[30] This general conditionality is a first step in managing social and environmental risks as borrowers without sufficient capacity to manage risks are not eligible for DPOs in the first place. The subsequent steps of DPO preparation include a concept stage, preparation of a program document, appraisal by Bank staff, negotiation of the loan agreements with the borrower and approval by the Bank’s Board of Executive Directors.[31]

Management of risks in DPOs signifies management of risks as posed or created by prior actions. Once the borrower and the Bank have reached agreement on the basic components and structure of the program, prior actions, objectives, indicators, possible triggers for future programmatic DPOs etc. have to be designed and agreed upon. Prior actions specify certain policy actions by the borrower that are intended to underpin the reform program supported by the DPO; they are thus the Bank’s key tool to influence the borrower’s reform program. Therefore, the selection and design of these prior actions is particularly sensitive.

OP 8.60 contains some basic requirements for environmental and social risk management in DPOs. These requirements are much less detailed than IL Safeguards – three paragraphs for DPOs compared to ten policies with several pages each for IL. They also differ from IL Safeguard Policies in at least four substantive respects, which will structure the following analysis: (a) OP 8.60 does not contain detailed requirements for categorizing risk levels; (b) OP 8.60 does not prescribe mandatory environmental and social impact assessments;

27 Good Practice Note 4, 2004, supra, p. 9 Box 4.1.

28 On these instruments and the following description, see Good Practice Note 2, 2008, supra, passim; and Retrospective 2012, p. 39-40. For examples of upstream consideration of Poverty and Social Impacts in Vietnam and Dominican Republic, see Retrospective 2012, p. 40. PSIAs can be conducted as free-standing products, namely as TA, or they can be part of the preparation of a DPO, or more often a series of programmatic DPOs. They can thus be instruments of both planning and concrete DPO design.

29 World Bank, Framework for Management of Risk in Operations, August 2014, para. 10-15.

30 OP 8.60 paras. 4-5; Dann, Law of Development Cooperation, 2013, pp. 417-421.

31 BP 8.60

(c) OP 8.60 does not regulate in any detail the mitigation measures the Bank or the borrower need to take to manage identified risks; and (d) OP 8.60 does not stipulate any specific transparency and participation requirements.

a) Risk categorization

Risk categorization is a prima facie assessment of the possible social and environmental impact which determines the degree of scrutiny a proposed operation receives in the further risk management process. For IL, OP 4.01 requires the Bank to undertake an initial "screening" of the social and environmental impacts of a proposed project and defines criteria for classifying the project in three risk categories, from "A" for highest risk[32] to "C" for lower risk levels. OP 4.01 names the impacts[33] that must be taken into account which are defined in further detail in the ten subsequent Safeguard Policies (e.g. on natural habitats, forests, resettlement, indigenous peoples).

For DPOs, OP 8.60 does not define such risk categories. It only requires the Bank to determine whether specific policies supported by the operation are likely "to have significant poverty and social consequences, especially on poor people and vulnerable groups" (para. 9) or are likely "to cause significant effects on the Member Country's environment, forests, and other natural resources" (para. 10). The Policy does not contain further criteria on how these effects are to be determined and does not prescribe classification of DPOs in particular risk categories. Nor does it address the question of whether longer-term and indirect consequences should be considered.[34]

Thus far, this framework has resulted in the vast majority of DPOs being assessed as having "no", "positive" or "neutral" social or environmental impacts. According to the 2012 Retrospective, only 0.3% of prior actions were assessed to potentially have adverse environmental consequences; for adverse social impacts, that number was 8%.[35] It remains to be seen whether these low numbers will withstand scrutiny by IEG.

The Bank itself recognized that the existing risk classification scheme was insufficient and introduced the new risk-rating tool SORT in October 2014. The non-binding Interim Guidance Note on SORT, which Bank staff are recommended to follow, requires systematic categorization of the social and environmental risks posed by a specific lending operation (in line with the revised Safeguard categorizations[36]) as "high", "substantial", "moderate" and "low".[37] It mandates that "the team assesses to what extent the policies supported by the operation are likely to (i) cause significant effects on the country's environment, forests and other natural resources; or (ii) have significant poverty and social consequences, especially on poor people and vulnerable groups".[38] The Guidance Note defines high-risk projects to "include those that support policies in sectors such as infrastructure and natural resource management that could have severe negative environmental impacts".[39] If DPOs are qualified as "high" or "substantial" risk, responsibility for risk management rises within the management hierarchy to the Global Practice Manager or even the Managing Director level. This is aimed at ensuring that risky DPOs receive more procedural attention and scrutiny, compared to most IL projects.[40]

Although SORT improves risk categorization, deficits remain. As a guidance note, SORT is not binding.[41] A clear reference to SORT in OP/BP 8.60 would be appropriate. With regard to substance, the SORT definitions and guideposts do not imply much more tangible definitions for environmental and social risk levels than the ones already contained in applicable OPs and BPs. How many DPOs will actually be classified as high risk and thus receive enhanced scrutiny remains to be seen. For detailed recommendations, see below section V.

32 Category A is defined as involving "significant adverse environmental impacts that are sensitive, diverse, or unprecedented", OP 4.01 para. 8 a).

33 The impacts are listed as follows: "the natural environment (air, water, and land); human health and safety; social aspects (involuntary resettlement, indigenous peoples, and physical cultural resources); and transboundary and global environmental aspects", OP 4.01 para. 3.

34 Good Practice Note 4, 2004, paras. 15-6, uses the language of "screening" to describe an initial step in environmental analysis but does not clearly mark this as a separate procedural step, and is, in any event, not binding.

35 Retrospective 2012, pp. 37-38, 41.

36 World Bank, Environmental and Social Framework, First Draft for Consultation, July 2014, p. 12 (Environmental and Social Policy, para. 20)

37 An evaluation on whether the new four categories are an improvement with regard to the earlier three levels will depend on their concrete use and application, which will show their effective scope and contours.

38 Interim Guidance Note SORT, para 51.

39 Interim Guidance Note SORT, box following para. 51.

40 See Interim Guidance Note SORT, paras. 28-32. It is not easily apparent, however, what this heightened scrutiny entails, in particular, what the substantive standards of acceptable risk are.

41 See World Bank, Bank Policy and Procedure Framework, 2013, para. 10-11.

b) Risk assessment

Risk assessment entails the collection and analysis of data regarding social and environmental impacts. In contrast to the earlier prima-facie categorization, this requires in-depth and on the ground analysis.

If an investment project is classified as category A or B under OP 4.01, the borrower is required to conduct environmental impact assessments of varying intensity, to consult with affected communities and to publish the assessments in separate reports prior to project appraisal.[42] Impact assessments involve the collection of new data and are typically contracted out to specialized service providers, e.g. consulting firms hired by the borrower.

Until 2004, the requirement for environmental assessments under OP 4.01 also extended to some types of policy-based lending; when a project was likely to have sectoral or regional environmental impacts, sectoral or regional environmental assessments were mandatory.[43] This requirement was replaced in 2004 with the less stringent OP 8.60. Under the current policy, if a prior action has been determined to have no significant environmental or social effects, no further action is required. If such effects are found to be likely, OP 8.60 only requires that "the Bank summarizes in the Program Document relevant analytic knowledge of these effects and of the Member Country's systems for reducing adverse effects..." (paras. 9/10).

Unlike in IL, the likelihood of significant adverse impacts does not necessarily trigger a separate, stand-alone social or environmental impact assessment.[45] The provision of "objective evidence" to support the analysis in the program documents is deemed sufficient for meeting the requirement of OP 8.60.[45] In practice, most DPO program documents include a section on social and environmental impacts, which often draws on existing data and publications. Finally, OP 8.60 does not prescribe particular participation or transparency requirements for high or substantial risk projects, as it is the case with high-risk IL projects.[46]

Best practices for the conduct of PSIA and sectoral/strategic environmental assessments are spelled out in some detail in the Good Practice Notes. The note on environmental aspects, for instance, lists typical linkages of reforms to environmental impacts. These notes, however, are not binding and their content includes some generalizations regarding (often allegedly positive) impacts of reforms such as privatization.[47] This does not change with the introduction of SORT: the tool does not - and is not meant to - spell out detailed requirements for the subsequent environmental and social assessments, mitigation measures or substantive protection standards.[48]

As a result of the existing framework, few in-depth social or environmental impact assessments are carried out for DPOs - even when a DPO has been classified as having significant adverse effects and an additional assessment would thus be mandatory. According to the 2012 Retrospective, for 29% of the DPOs that were assessed to have potential adverse effects no social impact assessment was undertaken at all. In the 71% of cases where an assessment was conducted, the quality of the assessments varied.[49] Many of the social impact assessments conducted were funded through the Poverty and Social Impact Analysis Multi-Donor Trust Fund (MDTF).[50] The MDTF financed more than 150 PSIAs over the course of six years. It appears that such funding had considerable impact on the incentives and continued attractiveness of PSIA as an instrument. Even in the absence of policy reforms, providing resources for separate TA or Analytic and Advisory Activities (AAA) may thus enhance quality in the preparation of DPOs. A primary goal should be, however, to make PSIAs mandatory for all DPOs assessed as "high" or "substantial" risk under SORT and to create a similarly robust required assessment for environmental impacts. For both kinds of assessments the required funding needs to be made available.

42 OP 4.01 paras. 8-18. For low-impact category C projects, the screening is considered sufficient and no further studies on the part of the borrower are required.

43 OP 4.01 in the version of January 1999. Available at http://siteresources.worldbank.org/INTFORESTS/Resources/OP401.pdf (1.2.2015), para 7 and para 10. The latter reads: "10. Sector adjustment loans (SECALs) are subject to the requirements of this policy. EA for a SECAL assesses the potential environmental impacts of planned policy, institutional, and regulatory actions under the loan." Footnote 15 specified: "Actions that would require such assessment include, for example, privatization of environmentally sensitive enterprises, changes in land tenure in areas with important natural habitats, and relative price shifts in commodities such as pesticides, timber, and petroleum."

44 OP 8.60 itself does not explicitly require additional evidence to be collected, and the Good Practice Notes remain vague. For instance, Good Practice Note 4 on environmental aspects in DPOs stipulates that after an initial screening, "one may have to proceed with analytic work" including a CEA or SEA (para. 16). Good Practice Note 2 on PSIA reads "Ideally, if time and resources permits, PSIA should be carried out for all key reforms identified as having likely significant distributional impacts", para. 27.

45 Retrospective 2012, p. 38.

46 The respective country arrangements for participation and consultation must be discussed in the DPO project documents (cf. OP 8.60 para. 6), but there is no differentiation according to the risk level and no sense that these consultations and participation could be used as knowledge generation device to complement the social or environmental assessments. On transparency and participation in more detail below, III.

47 See Good Practice Note 4, 2004, p. 12 Table 4.1 on linkages. The same Note maintains that certain reforms, such as privatization, typically have positive effects on the environment; these general claims do not seem sufficiently substantiated and are not supported with independent empirical evidence; see: ibid, para. 13.

48 Exceptions to this are internal responsibilities for risk decisions and monitoring, which go up the hierarchy the higher the risk level found.

49 Retrospective 2012, pp. 38-41.

50 Cf. Retrospective 2012, p. 40. The MDTF is supported by Germany, the Netherlands, Norway, Switzerland, and UK. It provided approximately $20 million over a six-year period to support the Bank's work on the poverty and distributional analysis of policy impacts. More than 150 PSIAs had been approved under the MDTF as of December 2013.

c) Mitigation measures

A crucial step in risk management is the mitigation or compensation of the adverse impacts identified in the social and environmental assessments. Based on these assessments, a borrower is required to take additional measures to avoid, mitigate or compensate impacts on people and the environment in IL projects. The content of the required measures is prescribed in detail in the ten Safeguard Policies and is agreed upon between Bank and borrower in ESMFs which are in turn incorporated into the loan agreements.[51] For instance, the Bank's Policy on Involuntary Resettlement contains detailed requirements for compensation of displaced persons which must be spelled out in a detailed resettlement plan. If the precise impacts are not clear in advance, the borrower must draft a resettlement framework that sets out procedural steps ultimately leading to compensation in the implementation phase.[52]

In contrast, mitigation of adverse effects of DPOs is largely governed by country systems. OP 8.60 only requires the Bank to describe the borrower systems for reducing adverse effects in the program document. In case of significant shortcomings in these systems, the Bank must describe how these will be addressed before or during program implementation.[53] There is no requirement for particular mitigation measures or for the design of ESMFs. Given this normative situation, it is not surprising that a 2009 Bank study on the use of PSIA in lending operations found that "a number of DPL Task Team Leaders are unclear about how distributional analysis influenced their operations, even in cases where such work was referenced in Program Documents".[54]

Hence, there is a need for further guidance on how to mitigate environmental and/or social risks that have been identified by risk categorization, SEA or PSIA. While the Bank cannot take responsibility for every deficit in country systems and causation is surely complex, the Bank has to actively address identified risks of its prior actions and other DPO-related activities. A mere discussion of country systems is not enough for high and substantial risk DPOs. Risks identified by SEA or PSIA should be addressed by risk- and sector-specific mitigation measures. These measures should be planned during project design and prescribed as mandatory requirements in OP 8.60. They should take two distinct forms: First, for important risks that are predictable in detail in the design stage and that can be mitigated ex-ante, prior actions as well as adequately formulated objectives, triggers or benchmarks can be used as mitigation measures. Second, for adverse impacts that manifest themselves indirectly and/or belatedly, mitigation measures should be taken at the implementation stage and be described in a mandatory ESMF. This document should be incorporated into the loan documents and, thus, become binding for the borrower. Such frameworks are already required in IL with regard to impacts that cannot be localized or predicted in detail in the design stage; these frameworks prescribe a process for the later management of possible risks as they appear. It seems appropriate to apply this procedural approach for the specific risk structure of DPOs.

The use of Bank-supervised ESMFs in high and substantial risk DPOs is arguably required by international law. Art. 14 of the Draft Articles on the Responsibility of International Organizations, formulated by the International Law Commission (ILC)[55] states clearly that an international organization which aids or assists a state in the commission of an internationally wrongful act can internationally be held responsible for that act.[56] As a consequence, the Bank must not fund reforms which violate international legal obligations that are binding for both the borrower and the Bank.[57] Such obligations include in particular economic, social and cultural rights and other rights potentially affected by environmental degradation, such as the right to life and to health.[58] The Bank is thus required to apply due diligence in DPOs so as to avoid violation of these rights by the programs it supports. In other words, these rights represent a minimum protective standard that the Bank must comply with through adequate risk management and mitigation measures.

51 Dann, The Law of Development Cooperation, 2014, pp. 366.
52 OP 4.12.
53 OP 8.60, paras. 9-10.
54 World Bank, Assessing the use of Poverty and Social Impact Analysis in World Bank Development Policy Loans, 2009, p. 9.
55 International Law Commission (ILC), Yearbook of the International Law Commission, 2011, vol. II, Part Two. On the ILC, based on Art. 13 I UN Charta and set up by resolution of the UN General Assembly see http://www.un.org/law/ilc/.
56 The conditions are that "(a) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that organization."
57 Dann, Law of Development Cooperation, 2014, pp. 267-272 with further references.
58 For a similar concept of human rights as "social floor" in sovereign financing and debt operations see Special rapporteur on debt and human rights, Guiding principles on foreign debt and human rights (A/HRC/20/23), endorsed by Human Rights Council in its resolution 20/10.

d) Transparency and participation

Broader and better knowledge of potential risks and their mitigation are central to improving the quality of operations. Transparency and participation in risk categorization, assessment and mitigation measures are therefore a cross-cutting aspect: transparency and input from a variety of stakeholders are key elements in generating enhanced knowledge. OP 8.60 para. 6 contains a rather vague requirement for the Bank to advise its clients on public consultations and to describe the borrower systems for participation. Disclosure, in principle, follows the Bank's 2010 Access to Information Policy under which selected Board papers, including DPO program documents of DPOs, are eligible for "simultaneous disclosure".[59] Simultaneous disclosure means that (if the borrower has given written consent) documents are made publicly available before the Board has considered them and taken a decision. Hence, stakeholders' input may still be effective. Since 2010, 29% of approved DPOs were disclosed prior to Board approval.[60]

Simultaneous disclosure enables stakeholders to potentially influence the vote on the DPO but it does not give them the possibility to influence the scope and/or focus of the social and environmental analysis. To ensure that stakeholders can make use of this opportunity, IL safeguard documents and environmental assessments are routinely disclosed during stakeholder participation.[61] For DPOs, OP 8.60 para. 6 only requires that "[r]elevant analytic work conducted by the Bank, particularly on poverty and social impacts and on environmental aspects, is made available to the public as part of the consultation process, in line with the Bank's disclosure policy". As the Bank's Access to Information Policy does not specifically mandate disclosure of social and environmental analysis prior to Board presentation, this requirement is somewhat ambiguous. The SORT framework stipulates, with similar ambiguity, that SORT is "included in the project, program or CPF documents. All ratings will be disclosed in the public documents related to the operation or CPF."[62] Both rules should be interpreted to require disclosure of the SORT risk classification and any SEA or PSIA during country consultations, even if this information would ordinarily not be contained in a separate document but included in the body of the program document. This should be clarified by rephrasing OP 8.60 para. 6 and by including specific timelines for such disclosure.

Implementation, monitoring, accountability

As prior actions are completed by the time the loan agreement comes into effect and disbursement is rapid, the actual implementation phase of a DPO is brief. Monitoring the effects of prior actions is thus typically limited to the ICR (ICR, BP 8.60, para. 22(e), 33). This report is drafted by a separately constituted task team twelve months after disbursement of the loan (this deadline has recently been extended from six months).[63] The ICR includes a self-assessment of the operation's performance, measured against the results framework and baselines defined in the program document. Inclusion of environmental and social issues in the ICR is not mandatory.[64] So far, BP 8.60, para. 33 (b) only mentions "other significant outcomes and impacts" to be assessed, which could be interpreted to include environmental and social outcomes. No compiled information is available with regard to the number of ICRs that actually discuss adverse social and environmental impacts. IEG validates these self-assessments on the basis of the documents provided. If environmental or social aspects of performance are not substantively addressed in the ICR, IEG validation has little means to corroborate findings on adverse impacts.

Another aspect of implementation is related to the recent reorganization of internal Bank structures, which might create a moral hazard problem: country directors are now mainly responsible for the design of projects until approval, after which the newly formed, thematic Global Practices (GPs) take over implementation and supervision. This could create frictions as country directors might have incentives to speed up approval processes of projects, while GPs have to deal with remaining uncertainties later.

59 World Bank, The World Bank Policy on Access to Information 2010, para. 23 (b), (ii); see also OP 8.60 para.29.
60 Retrospective 2012, p. 53.
61 OP 4.01 paras. 16-19.
62 Interim Guidance Note SORT, para. 8.
63 For the details on ICR see OP/BP 13.55.
64 BIC 2013, p. 2.

It is important to stress again the distinction between risk assessments and evaluation on the one hand and accountability/responsibility of the Bank for adverse impacts on the other hand. These do not have to be identical. While the assessment, monitoring and evaluation of risks in the CPF as a multi-year planning tool as well as in the DPO project document and ICR for concrete interventions should be comprehensive, the Bank's responsibility in a strict sense is clearly limited as the causation of impacts is complex and linked to various external factors. In this context, it might therefore be helpful to further distinguish, for example, by differentiating between first or second order impacts.

Independent feedback channels for external voices of stakeholders and affected communities could create more transparency on the side of the Bank. While ICRs will normally take into account feedback from various stakeholders (although this is not mandatory), their credibility may be weakened due to their official nature.

Moreover, independent review mechanisms such as the Inspection Panel are hardly used in DPOs to date.[65] A DPO reform should thus consider increasing participation mechanisms, an extension of the review phase as well as the creation of alternative review processes, such as operation-specific grievance mechanisms.

65 See above, part II.

IV. Comparison with other MDBs

The African Development Bank (AfDB) approved new environmental and social safeguard policies in December 2013[66] to update and replace its decade-old policies and procedures. The new Integrated Safeguard System (ISS) covers all lending instruments, including policy lending. The system comprises five Operational Safeguards that describe procedural steps as well as protected resources and persons in some detail. These Safeguards are spelled out in about 30 pages; the Resettlement Policy, for instance, is comparable in detail to the Bank's OP 4.12.

According to Operational Safeguard 1, all policy loans are screened for environmental and social risk and categorized according to the level of potential risk. Every DPO has to be categorized as having "no", "moderate" or "significant" impact. For policy loans deemed to have moderate or significant risk, the AfDB requires the execution of a Strategic Environmental and Social Assessment (SESA), which is to serve as a basis for public consultation. While SESAs are normally conducted by the client, the AfDB can and does support these financially as well as with TA.

A heightened risk rating also triggers the preparation of an ESMF to manage the risks identified in the SESA. In this regard, the new AfDB ISS surpasses the standard of the World Bank.[67] The new ISS also contains specific provisions on disclosure, as transparency is considered an important principle. The terms of reference (ToR) of SESA are published for Category 1 and 2 projects (heightened risk). For Category 1 public sector projects, all assessment and planning documents are released 120 days before Board consideration; for Category 2 projects the timeline is 30 days.

These rules have been in force for little more than a year and there is thus no systematic evidence yet as to their practical effect. The interviews conducted for his study revealed that a rating of heightened risk is very rare in practice. Accordingly, few assessments have been conducted so far, which is also due to the additional costs and time that such an assessment would take. Within the AfDB, this practice is seen as problematic, at least with regard to sector-specific budget support, as environmental risks are considered the norm rather than the exception in some sectors (e.g. the energy sector). There is neither a mandatory screening for environmental and social risk at the medium-term planning level and nor a policy-lending-specific, independent review mechanism or long-term feedback loop.

The Asian Development Bank (ADB) reformed its safeguard policies with the Safeguard Policy Statement of 2009, updated in December 2013. This provides a comprehensive, 68-page framework for environmental and social risks, applicable to all lending instruments including DPOs.[68] Environmental and social assessments are integrated at the planning level as well as at the level of concrete DPOs.

A Country Environmental Analysis as well as a Social Analysis is mandatorily form part of the mid-term planning document prepared by the ADB, the Country Partnership Strategy (CPS).[69] This analysis informs the way in which environmental and social risks are approached in the planning and implementation of individual projects. With regard to appraisal of individual DPOs, ADB policies require that the environmental and social impacts of policy actions associated with policy-based loans are evaluated. This evaluation forms the basis for the policy-based loan's environmental and social safeguards categories (OM F1/OP para. 40).[70] The policy provides the classification criteria and four risk categories that are applicable to all ADB investments (OM F1/OP, paras. 6-11).

The ToR of a SEA and the social analysis are disclosed as an appendix of a project preparatory TA measure for a policy-based loan. The SEA and social analysis itself are disclosed on the ADB website before a policy-based loan is approved by the Board (OM F1/OP, para. 40). If a policy-based loan is classified as Category A, an SEA must be disclosed 120-days before the project is approved by the Board (ibid.).

In practice, however, ADB provides considerably less DPOs than other MDBs. In the past four years, DPOs made up only 10% of the granted projects. Of the 43 DPOs approved, only one had a moderate risk rating (an education sector program in Lao PDR and Cambodia). All other DPOs were screened and classified as low risk. This might reflect the fact that most of these operations were conducted in the public and financial management sector.

66 http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB%E2%80%99S_Integrated_Safeguards_System__-_Policy_Statement_and_Operational_Safeguards.pdf

67 http://www.bicusa.org/african-development-bank-safeguards-coverage-sets-standard-for-the-world-bank-to-emulate/

68 http://www.adb.org/site/safeguards/main

69 Operations Manual (OM) A2 / OP on Country Partnership Strategy, para. 4; OM C3 / BP on Incorporation of Social Dimensions in ADB Operations, para. 6.

70 http://www.adb.org/sites/default/files/institutional-document/31483/om-f1-20131001.pdf

V. Conclusion and recommendations

Planning stage

1. **Further strengthen diagnostics of environmental and social risks at country and sector level at the planning stage.**
   More tangible and binding guidance for Bank staff is needed with regard to the procedure and methodology of country risk diagnostics, including rules on how to apply the Systematic Operations Risk-Rating Tool (SORT) framework. So far, the SORT guidance note appears to have been written with specific operations in mind; but staff will also need guidance with regard to long-term planning for countries or sectors to properly fulfill the new country risk diagnostics requirements.

2. **Clarify and concretize consequences of high and substantial risk rating in a Country Partnership Framework (CPF).**
   The consequences of a particular CPF risk rating, namely findings of "high" or "substantial" environmental and social risk, need to be spelled out more clearly. While the SORT framework prescribes a heightened level of management and Board review for individual high-risk Development Policy Operations (DPOs), the consequences of risk ratings in CPFs at the planning stage are not entirely clear. One element could be to prescribe upstream Strategic Environmental and Social Assessments (SESAs) or similar assessment instruments for operations in sectors where the CPF diagnostics anticipated substantial or high environmental or social risks.
   Also, the CPFs should contain more explicit guidance on how to complement lending activities with non-lending instruments to manage environmental and social risks. The CPF should consider enhanced Analytic and Advisory Activities (AAA), namely technical assistance (TA) and Economic and Sector Work (ESW), in areas of lending which country diagnostics identified as environmentally or socially sensitive.

3. **Provide financial resources for conducting Strategic Environmental Assessments/ Poverty and Social Impact Assessments (SEAs/PSIAs) and other AAA.**
   Such resources are necessary to ensure that appropriate measures are taken as a result of risk classifications. Funding could be earmarked for such assessment work. Furthermore, SEAs/PSIAs and other AAA have the additional advantage of generating knowledge that can improve subsequent operations.

4. **Broaden the knowledge base upon which country social and environmental risks are assessed, in particular to capture long-term and indirect impacts of CPFs.**
   Groups and individuals affected by a Bank CPF have a natural interest to bring such impacts to the attention of the Bank. Hence, CPF consultations with local civil society, in particular in the context of country diagnostics, should highlight environmental and social issues and attempt to capture local knowledge. This requires early disclosure of SORT ratings for discussion in the consultations. Similarly, the role of civil society organizations (CSOs) in the execution of SESAs could be strengthened.

5. **Through improved consultations, use CPF as a tool to advance understanding of and learning from long-term impacts DPOs in countries.**
   As many DPO impacts materialize years after program closure, learning requires longer-term feedback loops and evaluations that go beyond the lifetime of a DPO. Hence, the CPF should strategically define areas in which long-term DPO effects are to be expected and plan for retrospective evaluations of particular DPOs.

Individual DPOs

Categorization

6. **Make risk categorization for DPOs, as outlined in SORT and required in other Multilateral Development Banks (MDBs), a mandatory procedural requirement in Operational Policy (OP) 8.60.**

7. **Define in OP 8.60 the factors that determine environmental and social risk categorization as "high" or "substantial" in more detail.**
   These factors can be based on the current Good Practice Notes for DPOs, the prior requirements under OP 4.01 (1999), existing and reformed standards in Investment Lending (IL) Safeguards, new empirical evidence from the 2015 IEG evaluation as well as the 2015 Retrospective and consultations with relevant stakeholders. Relevant factors should include, without being limited to,
   - the unequal distribution of economic and social costs, namely to the disadvantage of vulnerable groups,
   - low implementation capacity of borrower,
   - known conflicts in the country,
   - association of the sector with category A IL projects,
   - specific sectors that proved risky in the past (namely forests, natural resource extraction, energy, slum clearance, privatization of environmentally sensitive enterprises, changes in land tenure in areas with important natural habitats),
   - likely causation of relative price shifts in sensitive commodities such as pesticides, timber and petroleum.

Assessment

8. **Amend OP 8.60 to make Country Environmental Assessments (CEA), SEA and PSIA mandatory for DPOs with a "high" and "substantial" risk-rating.**

9. **Provide clearer and mandatory guidance on how to conduct CEA/SEA and PSIA.**
   In particular, the procedural standards should be elaborated in more detail and assessment of indirect and longer-term impacts, both adverse and positive, should be compulsory. Such an assessment should involve the collection of new data, if necessary; should be conducted by independent specialists in the respective fields and include participatory processes both in the assessment design and its implementation. The specific technical requirements for conducting these assessments will mostly be sector-specific and should thus draw on the experience from respective IL Safeguards and relevant AAA in the particular sector, with due regard to the different nature of the DPO instrument.

Mitigation

10. **Spell out in OP 8.60 more detailed requirements for mitigation measures to be taken by the borrower and to be supervised by the Bank.**
    In particular, make Environmental and Social Management Frameworks (ESMFs) mandatory for "high" and "substantial" risk DPOs. These frameworks should mandatorily reflect the findings of the CEA/SEA and PSIA. As a minimum, they should mitigate or compensate any adverse social and environmental impact that would constitute a violation of the borrower's obligations to respect, protect and fulfill economic, social and cultural rights as well as other rights affected by environmental degradation, such as the right to life and to health. Adverse impacts that are already foreseeable in detail at the design stage and can be mitigated ex-ante should be addressed through appropriate prior actions, in addition to the frameworks for ex-post measures.

11. **Disclose the SORT risk classification and CEA/SEA as well as PSIA** in documents separate from regular project documents. Disclose such documents **as early as possible** during country consultations. Define strict timelines for disclosure for "high" and "substantial" risk DPOs, comparable to category A IL projects.

Implementation

12. **Make the analysis of environmental and social impacts in Implementation Completion and Results Report (ICRs) mandatory.**

13. **Prescribe in OP 8.60 that "high" and "substantial" risk DPOs should be subject to enhanced, participatory and independent monitoring and evaluation.**

14. **Consider a long-term feedback loop** (beyond 12 months for ICR), namely by planning for ex-post evaluations in the CPF (see Recommendation 5) that serve and encourage knowledge generation (and are thus distinct from accountability mechanisms).

15. **Consider creating an Independent Review Mechanism for DPOs** that is still accessible after loans have been disbursed. Include program-specific grievance mechanisms for high and substantial risk DPOs.

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Acknowledgements

This study has greatly benefited from substantial input by members of staff of the Word Bank Group, the African Development Bank and the Asian Development Bank which the authors gratefully acknowledge.

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Asian Development Bank
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Published by
Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

Registered offices
Bonn and Eschborn,
Germany

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Design and layout
Nikolai Krasomil, Wiesbaden, www.design-werk.com

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As at
April 2015

On behalf of
Federal Ministry for Economic Cooperation and Development (BMZ),
Division 'World Bank Group; IMF; Debt Relief'

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