The use of Alternative Systems

(Country systems/borrower frameworks, financial intermediary, and co-financing)

In the proposed Environmental and Social Framework

1. **Country Ownership and Strengthening of Borrower Environmental and Social Frameworks.**
   We understand that the use of alternative systems are not subject to an "all or nothing", but their assessment **must be measured against the substantive requirements of the ESSs, not just the objectives.** And **those substantive requirements should be clear and mandatory.** It is of vital importance to ensure no dilution of current safeguards pertaining to the use of alternate systems. We are very concerned in the way in which alternative systems in its various forms, including use of country systems or borrower frameworks, financial intermediary loans, and co-financing with other financial institutions are going to assessed and utilized. We are concerned due to the use of vague language and lack of clarity on how alternative systems would be assessed and how they would be operationalized. As it currently stands, the draft ESF states that projects may be governed by the systems of co-financiers, borrower countries, or FIs, where they are likely to "*enable the project to achieve objectives materially consistent with the ESSs*". This phrase improperly lacks clarity and lends itself to many interpretations, excessive discretion and therefore represents a flagrant dilution of existing policy.

   The goal of increased country ownership of development programs and projects is widely shared. Strengthening borrower systems should be a primary objective of World Bank support/lending, as this is the only way that Bank-financed development projects will be effective and sustainable in the long run. WB efforts to strengthen borrower systems should not be limited to procurement and financial management, but should include social and environmental systems as well. It should also be emphasized that country ownership should not be narrowly defined as the purview of one or two government ministries, but should be understood as involving a broad range of national stakeholders.

   Many borrowers have built the capacity and established the conditions necessary to manage environmental and social risks and impacts through national frameworks or systems. Many others are willing to build this capacity and create enabling conditions given appropriate incentives and guidance. Lending through borrower systems or frameworks for the management of social and environmental risks in its various forms, including program for results, use of borrower frameworks, financial intermediary loans, and co-financing with other financial institutions recognizes these advances as well as the potential advantages of scaling up the reach and impact of Bank support without loss of risk management capability. However, **the Bank plays a critical role to support countries in strengthening borrower's frameworks and implementation capacity not only through technical support but also critical financial resources for gap-filling measures.** We encourage the Bank to identify and make accessible the financial resources needed to support the strengthening of borrower's frameworks and implementation capacity at early stages of the Bank's engagement and dialogue with client countries –during the SCD and CPF- as well as at the project/program level when considering the use of borrower's frameworks –applying ESF and ESSs.

2. **Upstream Assessment, Screening and Scope for the use of Borrower's Environmental and Social Frameworks.** With the Bank's proposed shift towards scaling up the use of Borrower Frameworks in place of the Bank's own policies, be they procurement or environmental and social safeguards, the Systematic Country Diagnostic (SCD) should also be seen as a primary instrument and opportunity to help inform whether and when to use Borrower's frameworks. The SCD would

provide a baseline assessment of the consistency and implementation capacity for environmental and social risk management of key sectors, institutions and policy frameworks at the national and subnational level. A baseline that can be measured and updated every 4-5 years. One of the main constraints a country has to address to achieve an effective and sustainable development is the strengthening of their institutional capacity to manage environmental and social risks and impacts through frameworks and systems. As it currently stands, the stated purpose of the SCD is to "present a systematic and evidence-based assessment of the constraints a country has to address and the opportunities it can embrace to accelerate progress toward the goals of ending extreme poverty and promoting shared prosperity in a sustainable way."

Considering that environmental and social risk management and institutional capacity are integral aspects of development, and as such cannot be divorced from it they must be considered in any analysis looking at key drivers and barriers to achieving the Bank's twin goals. Given the importance in understanding these types of risk and opportunities at a country-wide level, the SCD is also the most appropriate vehicle through which to do so. It is a significant opportunity missed not to include such analysis at the SCD stage. Once the Bank has a baseline assessment of the constraints and opportunities in terms of the borrower's existing environmental and social frameworks and implementation capacity, the SCD should inform directly the CPF and the strategic dialogue between the World Bank Group and its clients on how to address the gaps and strengthen the borrower's framework and implementation capacity.

The ESF should include clear language establishing clear links to the SCD as well as when and how in relation to the Country Engagement Approach an assessment of the Borrower's Environmental and Social Frameworks will take place.

3. **Clear Assessment of Threshold for the use of Borrower Environmental and Social Frameworks at the project level.** A country, sector, or agency may qualify for the use of borrower framework lending approach, only depending on the results of predictable Bank's assessment. The ESF, ESSs and its procedures should establish clear, phased requirements and provide adequate support to ensure that Borrowers are qualified to manage risks. At the project level, where country systems are to be used, those systems must first be determined to meet an unambiguous threshold in order to ensure the same minimum level of protection for people and the environment as that provided by World Bank safeguards. As it currently stands, the draft ESF states that projects may be governed by the systems of co-financiers, borrower countries, or FIs, where they are likely to "enable the project to achieve objectives materially consistent with the ESSs". This phrase unfortunately lacks clarity and lends itself to many interpretations.

The use of borrower's environmental and social frameworks **must be measured against the substantive requirements of the ESSs, not just the objectives.** And those substantive requirements should be clear and mandatory. For this to happen we suggest adopt a standard of "**consistency with the objectives and requirements of the ESSs**", and "**demonstrated implementation capacity**", where "**consistency**" is defined as **to achieve objectives and requirements of the ESSs and adhere to applicable operational mandatory principles found in an updated OP 4.00 Table A1.** "**Demonstration of implementation capacity**" is defined in terms of mandatory assessment of track record, including implementation practices in terms of good governance and adherence to the rule of law, low corruption risk, the existence of a functional judiciary system, social and environmental management institutions, and record of compliance with human rights norms relevant to the environmental and social risk factors present in the project, and enabling environment for public participation. As well as institutional capacity in terms of adequate safeguards staffing level, staff retention and experience record.

At the project level where country systems are to be used, the Bank should take into account the results of the SCD and assess in greater detail the "consistency" with the objectives and requirements of the ESSs, and "demonstrated implementation capacity". The consistency and implementation capacity assessments should be judged on a country's existing capacity and track record, not on future commitments (or "capacity going forward"), especially in areas as sensitive as safeguards. Taking into account the results of the SCD, at the project level where the country system and its implementation is not found to be consistent with the objectives and requirements of the ESSs, the Bank and Borrower may agree on gap-filling measures and devise an action plan for their implementation, including with Bank support. Such measures must be subject to public comment and are to be completed, with documentation of completion subject to public comment before the borrower undertakes the relevant project activities. In this case, **the use of borrower's frameworks should not be launched until gap-fillings measures are actually in place**. It is our understanding that Bank projects need to be in compliance with Bank policies at the time of Board consideration.

The following types of projects or contexts should be excluded from use of country systems: 1) complex projects or those with high or substantial risk; 2) projects in fragile and conflict affected states, or states with significant governance challenges; and 3) projects involving financial intermediaries.

4. **Public Participation in Reviewing and Determination to use Borrower's Environmental and Social Frameworks.** In order to serve their "do-no-harm" safety-net function, the World Bank's safeguards must serve as the default policy framework for Bank-financed activities. The determination of consistency and demonstrated implementation capacity must be subject to **meaningful public consultation, with no less than 120 day comment period on any draft assessment of borrower's environmental and social frameworks, implementation capacity, and board approval**.

   Civil society organizations should be actively involved in the assessment, review and selection of borrower frameworks, and establishment of key benchmarks for determining whether the use of borrower's environmental and social frameworks will lead to strengthening of a borrowing country's safeguard systems, as sought by stakeholders in that country.

5. **Dedicated resources for supporting country systems.** Dedicated financial and human resources, beyond a trust fund, must be identified within an implementation plan, to allow for capacity building and implementation of gap-filling measures. For this, it is important that the Bank make initiate a discussion on the implementation plan for the ESF and ESS and the estimation cost for it. The estimates should reflect the necessary budget to ensure Bank due diligence requirements are met, including proper training and safeguards certification for Bank staff, as well as enhanced supervision and monitoring mechanisms for successful implementation of the ESF, ESSs alternative systems and adaptive risk management approach.

6. **Supervision and Monitoring.** The Bank should play an active and pro-active supervisory role in any use of alternative systems. The Bank should routinely and regularly monitor for material changes in alternative systems or in their implementation capacity, track record and/or commitment that could affect their ability to achieve consistency with the objectives and requirements of the ESSs. Projects relying on country systems must have community or third-party monitoring arrangements in place to ensure independent evaluation of country performance. Additional human and financial resources for monitoring and supervision should be identified in an implementation plan.

7. **Accountability and Inspection Panel**. Communities impacted, or potentially impacted; by projects implemented under the ESSs or alternative systems must have the same recourse to the Inspection Panel as those affected by projects implemented under the current safeguard policies. This includes, but is not limited to, recourse for the following situations: where the analysis of consistency and/or demonstrated implementation capacity of country systems was inadequate, where Bank supervision and due diligence was inadequate, where the project did not comply with objectives and operational principles in an updated Table A1 or other applicable policies, where gap-filling measures are inappropriate or inadequate to prevent or mitigate harm, or where a change in legislation or implementation context should have affected eligibility for use of country systems. The Bank should either be bound by the fulfillment of the ESSs themselves, as it is currently bound by its safeguard policies, or the Panel's authority should be extended to allow investigations of instances of borrower non-compliance with the applicable standards.

8. **Contingency Plan.** A contingency plan should be developed for restoring the livelihoods of communities affected by any country system projects, in the event that a country system approach fails to protect the environmental and social well-being of project-affected communities.

9. **Contractual remedies.** It is of vital importance to have binding contractual remedies for changes in country systems that would render the system no longer consistent with the objectives and requirements of the ESSs for implementation failure. The Bank must include legal agreements to allow the Bank to suspend the use of Country Systems and revert to the Bank's own safeguards if the client country stops implementing the "gap filling measures" in any agreed-upon country systems action plan. When using borrower frameworks, the Bank should not obviate its responsibilities for safeguard review before Board approval of proposed projects and if the country system is changed in a manner inconsistent with the legal agreement between the client country and the Bank, the Bank's contractual remedies should apply.