The University of Antwerp Law and Development Research Group welcomes the efforts to bring World Bank’s safeguard framework into the 21st Century. We believe that the experiences of individuals and communities who have been negatively affected by World Bank-funded projects attest to a pressing need for a stronger and more comprehensive safeguard and accountability framework. Having participated in the three rounds of European stakeholder consultations, we would like to hereby reiterate our concerns raised during these consultation meetings on a number of salient issues and shortcomings that need to be addressed in order to ensure that the proposed framework delivers its promise.

**Human Rights**

1. In paragraph 3 of “A Vision for Sustainable Development”, it is stated:

   a. In this regard, the World Bank shares the aspirations of the Universal Declaration of Human Rights and helps its clients fulfill those aspirations.

   In order to realize its aim of being “the most advanced of its kind within the international financial community”, it is indispensable that the new framework contains stronger language on human rights. First of all, we strongly urge the text to be modified and the qualification of human rights as ‘aspirations’ to be taken out of the text. Human rights are protected under international law, give rise to corresponding legal obligations and are not merely aspirations.

2. Human rights law consists not only of human rights treaties that States have ratified but has other sources, such as customary international law and general principles of international law. In this regard, we wish to stress that the Universal Declaration of Human Rights is widely considered to have gained the status of customary international law. Thus, it should be kept in mind that a borrower State’s human rights obligations are not limited to their treaty obligations but are more broadly construed in line with their obligations under international law.

   The current draft in “ESS1. Assessment and Management of Environmental and Social Risks and Impacts” paragraph 24, reads:

   The Borrower will ensure that the environmental and social assessment takes into account in an appropriate manner all issues relevant to the project, including: (a) the country’s applicable policy framework, national laws and regulations, and institutional capabilities (including implementation) relating to environment and social issues; variations in country conditions and project context; country environmental or social studies; national environmental or social action plans; and obligations of the country directly applicable to the project under relevant international treaties and agreements …

   In this vein, we urge the text to be amended to include all international legal obligations of borrowers, not only their treaty obligations and to refer not to “directly applicable” obligations but all obligations relevant to the project.
3. The clear expression of the principle of the full respect for the human rights of indigenous peoples (listed as one of the objectives of ESS 7 on Indigenous Peoples) is very welcome but we urge the World Bank to include the full respect for the human rights of each and every individual as a more general principle, embodied in the standards.

4. The special protection extended to indigenous peoples under the framework is much needed. We urge the framework to also entail the heightened protection to communities who do not fall under the definition of indigenous peoples but may find themselves in similar marginalized situations (e.g. tribal communities that are not indigenous to the region).¹

**Due Diligence and Accountability**

1. The proposed (draft) framework should bring more legal clarity to the responsibility of the World Bank staff and management in reviewing impact assessments undertaken by borrowers and project sponsors and ensuring continued compliance with the World Bank standards throughout the project cycle.

This recommendation is in light of the Independent Evaluation Group’s (IEG) finding in its report *Safeguards and Sustainability Policies In a Changing World* that the WBG lacks a clear framework to assess the impacts of their safeguards and sustainability policies. Environmental and social outcomes of Bank projects are not clearly articulated, performance indicators are rarely specified and integrated in the project’s results framework, and data to monitor and evaluate are not routinely collected and used. The Bank relies primarily on compliance with the environmental and social management plans as a proxy for assessing mitigation of adverse impacts. (page 61)

   a. The World Bank’s overall impact assessment monitoring process should be strengthened. The Bank staff should proactively oversee that social impact assessment to ensure that assessments systematically address all pertinent human rights concerns. We believe, in this respect, that United Nations Universal Periodic Review (UPR) conclusions on a given borrower country would be a useful starting point to guide World Bank staff in identifying relevant key issues. As UPR conclusions for a given country are may be outdated, due diligence would dictate the Bank staff would need to consult up-to-date information on the latest situation with regards to relevant human rights issues.

   b. Stakeholder review of borrower-led impact assessments prior to World Bank staff’s appraisal of the project and the possibility of stakeholders to raise concerns that have not been addressed may introduce an additional safeguard to ensure no communities or issues fall through the cracks.

   c. Project Appraisal Documents should systematically engage with social and environmental impacts of projects, including whether these impacts present risks that run in contravention to the national law and international obligations of a borrower.

   d. When borrower and sponsor impact assessments are not comprehensive enough in their coverage of social impacts or do not address important issues such as non-discrimination, the situation of marginalized groups, indirect impacts, the Project Appraisal Documents presented to the Board should

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¹ See e.g. Inter-American Court of Human Rights, Moiwana Village v. Suriname, Ser. C, no. 124, § 133 (15 June 2005).
explicitly note the shortcomings and present relevant information on these aspects.

2. The framework should bring clarity to the due diligence role and responsibility of the World Bank in assisting the borrower to engage in capacity building, especially with regards to assessing, preventing, monitoring and mitigating the impacts of projects.

3. The current draft of the proposed new framework’s “World Bank Environmental and Social Policy for Investment Project Financing” paragraph 33 states:

   Depending on the potential significance of environmental and social risks and impacts, the Bank will determine whether the Borrower will be required to retain independent third party specialists to assist in the assessment of environmental and social impacts.

   We urge the text to be amended to ensure that all projects may be subject to independent assessment, independent of the ex ante perception of potential significance of risks and impacts.

**Children’s rights**

1. The text refers to *minors* in a number of contexts related to marginalization on the basis of age (e.g. footnote 11). We urge the text to be amended to refer to “children and youth”, as not only children, but also youth – those who are making the transition from childhood to adulthood – may find themselves in a vulnerable situation.

2. We welcome the prohibition of forced labor and harmful child labor in ESS 2 on Labor and Working Conditions but would like to underscore that children themselves often claim a right to work in dignity. We believe that it is important to ensure that children are not exploited or harmed while working, but that it is equally important to respect their right to participate in decisions that affect them. In this sense, the standards and obligations contained within the ILO Convention No. 182 on the Prohibition of the Worst Forms of Child Labor seem to best express the forms of exploitative and harmful labor to be eliminated. Conversely, the expression of a minimum age of work for children may constrain children’s right to work in dignity without offering additional protection.