

March 1, 2015

Via Electronic Mail

The World Bank
1818 H Street NW
Washington, DC 20433

Re: Comments on the Draft Environmental and Social Framework

Dear Safeguards Drafting Team,

Thank you for the opportunity to comment on the World Bank's "Environmental and Social Framework: Setting Standards for Sustainable Development (First Draft for Consultation)" ("draft policy"). We appreciate the World Bank's efforts to create a comprehensive and cohesive set of safeguard policies to govern their work and with the aim of ensuring that communities and the environment are protected in the pursuit of development. We also recognize and support the Bank's willingness to extend the safeguard standards explicitly to areas previously uncovered (or only covered implicitly), such as climate change, community health, discrimination based on gender and sexual orientation, and labour rights.

As the first international financial institution to adopt environmental and social safeguards, the World Bank has been a leader in this area for the past two decades. The World Bank started an important trend by acknowledging that having a rules-based environmental and social framework of standards and safeguards could improve development outcomes and enhance poverty alleviation, while avoiding disproportionate negative impacts on vulnerable populations and the environment. This pursuit of sustainable development remains as important today as it did when the safeguard policies were initiated.

The safeguard policies fill an important gap in the Bank's credibility and legitimacy. The Bank, like other multilateral development banks (MDBs), claims immunity from national law and argues that international law, including human rights law, does not apply to them. The result is that the Bank operates with impunity as no court can inquire into the Bank's effect on communities or the environment. As a result, the Bank filled the standards gap with the safeguard policies and the lack of an enforcement mechanism with the Inspection Panel. The Bank now proposes to remove the one set of rules it purports to follow to protect communities and the environment. Moving away from a rules-based set of standards, as is proposed in this draft, thus undermines accountability. Creating a system of non-binding standards that do not have to be met before the project begins undermines people's ability to ensure compliance with the standards.

Through its current draft, however, the World Bank is backsliding from a rules-based approach with the result that vulnerable communities and the environment will be less protected, and the Bank will cede its leadership role in the pursuit of sustainable development. The Bank has chosen to move toward a discretion-laden system that depends on an ongoing dialogue between staff and borrowers throughout project implementation. For the first time, it allows the Bank to approve projects that do not, in fact, meet minimum environmental and social standards at the time of appraisal, based on the promise that compliance will come later. The Bank's interest in shifting some of the focus from the appraisal period to

an adaptive management approach to project implementation is laudable, as is the desire to enhance environmental and social performance of its borrowers, but the shift must only be done in the context of ensuring that the community and the environment is protected by minimum standards; otherwise, the shift towards dialogue and adaptive risk management places the risk of poor performance (while countries are learning and the Bank is adaptively managing) entirely on unprotected communities and the environment.

What is missing in the Bank's vision is recognition that the Bank's environmental and social professionals will have little leverage to improve performance of its projects once the projects are approved. Internal pressures to lend and borrower pressures to short-cut conditionalities will leave the Bank's environmental and social staff with little power to ensure stronger performance. And with standards written explicitly to allow discretion, the environmental and social staff will not be able to point to clear rules to strengthen their position. The result will be weaker development outcomes generally and increased harms on affected communities and the environment.

The Bank needs to strike a better balance between discretion and a rules-based approach that can ensure minimum protection of the community. In this regard, reliance on the appraisal stage remains important. The system also needs to identify key standards that must be met in all risky projects at all times; a robust and transparent system of oversight that includes stronger Bank monitoring of environmental and social performance; clear, transparent and credible remedies tied to loan disbursements that can be used to enforce environmental and social performance; and an expanded role for the Inspection Panel to oversee compliance with the standards in light of project implementation and the resulting development outcomes.

In the shared spirit of building a workable and protective system of safeguards, we offer the following general comments as well as more detailed comments on the draft Environmental and Social Framework, including the Vision for Sustainable Development, World Bank Environmental and Social Policy, and the ten Environmental and Social Safeguards (ESSs).

Sincerely,

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GENERAL COMMENTS

The World Bank's existing environmental and social safeguards have provided important and necessary protections for the environment and vulnerable and marginalized communities. They have also provided a public good to the international development community, often reflecting best practice in sustainable development. As the development finance community has shifted, the World Bank's leadership in sustainable development safeguards remains crucial, but is not assured. We believe the Bank's current draft does not position the institution to be a future leader in sustainable development. To reverse this and to ensure adequate protection of communities and the environment, the Bank's approach should reflect the following principles:

Rules-based. The Bank’s standards in each area should include clear minimum standards that must be met by all projects throughout the life of the project. These minimum standards should not be open to dialogue, compromise, or variance. Communities should be able to rely on the Bank to ensure these minimum standards are met at all times, in all countries, and in all projects.

Compliance with Law. The Bank should clarify that all of its projects shall at all times be in compliance with all applicable international, national, and local law. The Bank should also acknowledge its responsibility to respect and promote the realization of human rights through all of its operations.

No Dilution. The Bank’s new policies should not dilute the protection offered by its existing policies. This “no dilution” commitment from the Bank remains an important benchmark by which to measure any final Bank policy.

Enhanced Role for the Inspection Panel. For over twenty years, the World Bank Inspection Panel has played a vital role in ensuring that communities’ rights under the policies are upheld. The current draft policy, which embraces broader discretion in project implementation, undermines the Panel’s oversight role. The policy offers nothing in its place, except reliance on the discretion of Bank staff who will be facing pressures from Bank financial staff and the borrowers. Under the draft policy, the Panel can investigate whether the Bank exercised its procedural responsibilities for due diligence, but any substantive decisions and any outcomes on the ground will be shielded by the claim of discretion. What is needed is to expand the Panel’s role into evaluating whether project implementation has met the substantive obligations set forth in the standards—and not just whether the Bank has met its procedural responsibilities for project preparation and supervision.

Upward Harmonization of IFI standards. The Bank’s safeguard policies have always had a significant harmonizing impact on the policies of other development institutions and in this context the Bank has often been a leader in setting the global standards for other development finance institutions to follow. In recent years, however, several development institutions have adopted standards that go beyond the Bank’s standards in important ways. Rather than press for clear standards, this draft policy frequently adopts standards lower than best practices at other international institutions. The World Bank appears to be lowering its standards to compete with new development institutions that have few environmental and social standards, ceding its potential leadership role in the hope of maintaining a shrinking share of the development finance market. The World Bank should rather emphasize quality of projects by ensuring that it imposes the most protective environmental and social standards for development finance. In this way, and only in this way, will the Bank be able to justify its value-added and continue to attract donors. With the new environmental and social policy framework, the Bank should focus on upward harmonization and creating the strongest existing environmental and social safeguards that serve as a global public good for the protection and promotion of human rights, the environment, and international law.

A VISION FOR SUSTAINABLE DEVELOPMENT

The World Bank’s draft “Vision for Sustainable Development” lays out broad goals and how to achieve them. Much of this vision represents positive developments, such as recognizing the needs for stronger action to support climate change mitigation and adaptation, and the need to ensure equality and promote non-discrimination. It is commendable that the Bank wants to use its position to help promote these goals and work with countries to achieve them.

International Law and Human Rights. In order to provide positive development outcomes, the World Bank’s environmental and social safeguard vision should reflect international law and standards.

The Bank primarily lends to public sector clients -- countries with international legal obligations, not companies that do not have the same legal obligations (as the IFC does). As such, the Bank should explicitly state that it will not support projects that are inconsistent with the international legal obligations and policies of its Member States and Borrowers. Basing the safeguards in international law and ensuring compliance with international law will benefit the Bank and the Borrowers by helping ensure its Member States are acting in compliance with and meeting their international legal obligations, for example, under international environmental and human rights agreements.

This is particularly true with respect to human rights. Despite decades of dialogue regarding the Bank's obligations to respect human rights, the Bank once again pays lip service to its obligations by referring (weakly) to human rights only in this overarching vision and in ESS7. The language in paragraph 3 says "the Bank's operations are supportive of human rights and will encourage respect for them in a manner consistent with the Bank's Articles of Agreement." As an UN specialized agency, the World Bank is required to respect human rights and ensure that its activities comply with the UN Declaration of Human Rights and other relevant human rights instruments. It cannot opt out by referencing its Articles of Agreement. Countries that are obligated to respect human rights cannot insulate themselves through the creation of an intergovernmental organization that then claims it is above international law. Moreover, the Bank's Member States have all ratified at least one of the core international human rights treaties.¹ These states are bound by international legal obligations, including those related to human rights, and are still bound by these obligations when borrowing from the Bank to implement projects. The Bank is obligated to respect human rights, to help States comply with their obligations and, at the very least, not be complicit in a State violating its human rights. If the Bank does not say so clearly it will continue to weaken its credibility as an international development institution as it falls further behind other development institutions that have more fully incorporated human rights in their approaches to safeguards.²

¹ See Letter from Special Procedures mandate holders of the U.N. Human Rights Council to World Bank President, Dr. Jim Yong Kim, p. 4 (Dec. 12, 2014).

² European Bank for Reconstruction and Development, "Environmental and Social Policy," para. 9 (May 7, 2014) ("The EBRD recognizes the responsibility of clients and their business activities to respect human rights and that this is an integral aspect of environmental and social sustainability. This responsibility involves respecting human rights, avoiding infringement on the human rights of others, and addressing adverse human rights impacts") International Finance Corporation, "Policy on Environmental and Social Sustainability," para. 12 (Jan. 21, 2012) ("IFC recognizes the responsibility of business to respect human rights, independently of the states duties to respect, protect, and fulfill human rights. This responsibility means to avoid infringing on the human rights of others and to address adverse human rights impacts business may cause or contribute to."). European Investment Bank, "The EIB Statement of Environmental and Social Principles and Standards" (2009) (Throughout the policy, the EIB mentions human rights, including that it will not fund projects that violate human rights and that it will take a human rights-based approach). Adaptation Fund, "Environmental and Social Policy" para. 15 (Nov. 2013) ("Projects/programmes supported by the Fund shall respect and where applicable promote international human rights."). United Nations Development Programme, "Social and Environmental Standards," paras. 12-16 (June 2014) (UNDP's "Principle 1: Human Rights" includes numerous provisions including paragraph 12 which states that "UNDP recognizes the centrality of human rights to sustainable development, poverty alleviation and ensuring fair distribution of development opportunities and benefits and is committed to supporting 'universal respect for, and observance of, human rights and fundamental freedoms for all.'" Additionally, paragraph 14 states that "UNDP shall both refrain from providing support for activities that may contribute to violations of a State's human rights obligations and the core international human rights treaties, and seek to support the protection and fulfillment of human rights."). Asian Development Bank, "Safeguard Policy Statement," Indigenous Peoples Safeguard (June 2009) ("The objective is to design and implement projects in a way that fosters full respect for Indigenous Peoples' identity, dignity, human rights").

WORLD BANK ENVIRONMENTAL AND SOCIAL POLICY STATEMENT

The Discretionary Loophole. Throughout the Environmental and Social Policy Statement (“E&S policy”), the Bank caveats the policy’s requirements, including the Borrower’s obligations to comply with them, with discretionary language. In paragraph 5, the Bank shows fear of its own shadow when it says borrowers are “expected to meet” the standards. Why not “required to” meet the standards? A primary problem with the proposed policy is that it establishes a system where the Board may approve a project without the Bank ensuring the project complies, or ever will comply, with the ESSs. In various paragraphs, including paragraph 13, the policy says that the Bank will only require the Borrower to develop projects so that they will eventually “meet the requirements of the ESSs in a manner and timeframe acceptable to the Bank.” This provides the Bank with the discretion to work with clients throughout the project cycle, but it also means that all of the standards are negotiable in any given project or context. Communities will never be able to rely on any standard as a clear rule. This lies at the heart of the problem with the current approach.

Of course, we recognize that there is value in the Bank working with Borrowers to improve their environmental and social performance over the lifetime of the project. There is also value in taking an adaptive management approach to being able to adjust to developments in projects over time. Neither of those arguments validates a categorical approach that subjects all standards to discretion. Rather, the Bank should explain the circumstances that might trigger discretion, and the limits on that discretion should be clarified. In particular, the Bank should establish which core requirements will always require compliance at entry – those standards in each of the ten ESSs that will not be compromised. In addition, the Bank needs to be clearer on what leverage the Bank, and just as importantly affected stakeholders, will have in ensuring that projects do meet the standards in the “time and manner” approved.

The Borrower System Loophole. In its discussion of the use and strengthening the Borrower’s environmental and social framework (paragraphs 23-26), the Bank emphasizes its support for using the Borrower’s system when it can do so in a manner consistent with the ESSs. However, in paragraphs 23, 24, and 25, it notes that the Bank will evaluate only whether the Borrower’s framework “enables the project to achieve objectives materially consistent with the ESSs.” If the Bank is going to allow Borrowers to implement projects based on their environmental and social framework, then it has to ensure that the policy does not just “achieve objectives,” but rather meets the “requirements” of the ESSs. The Bank does acknowledge the need to meet the requirements of the ESSs in paragraph 26 in discussing the potential need to amend the ESCP to ensure the project meets the requirements of the ESSs if the Borrower’s own framework changes in a way that may allow for negative impacts. In allowing the use of Borrower’s systems, the Bank needs to ensure the systems meet the requirements of the ESSs to ensure that the projects do not negatively impact the environment and communities. Moreover, any use of the Borrower’s systems must still be in the context of a transparent and robust monitoring effort by the Bank. Annual monitoring reports and any material changes in the ESS Framework noted in paragraph 26 should be publicly released as part of the “ESCP Tracking Registry” proposed below.

Scope of Application. The safeguards should apply to all Bank lending and not be limited to investment project financing (paragraph 7) as it is only a fraction of Bank lending and leaves the environment and communities open to harm caused by other Bank-funded actions. Particularly if the Bank continues with its discretion-centered approach, then the policies should be available to be applied (at the Bank’s discretion) to all projects.

Classification. The Bank shall ensure that it publicly discloses its decision on the risk classification of all projects prior to approval. Its decision on the classification must be accompanied by an explanation and documentation describing why the risk categorization was selected.

Associated Facilities Loophole. Paragraph 11 takes a positive step forward by “require[ing] all Associated Facilities to meet the requirements of the ESSs,” but then puts in the caveat “to the extent the Borrower has control and influence over” them. The policy also attempts to increase oversight over *subprojects* in the same way and, unfortunately, with the same caveat.

Environmental and Social Due Diligence. The Bank’s description of its due diligence responsibilities are vague, reflect a passive view of due diligence that would never meet the standards of the private sector, and rely almost exclusively on information provided by the Borrower. The Bank’s goal of its due diligence should be to ensure that it can certify to the Board in its appraisal documents that the *project complies with or will comply with the ESSs through implementation of the ESCP*—not that the project is “capable of being developed and implemented in accordance with the ESSs.” Capability is not the issue; performance and outcomes are. The Bank’s due diligence should not rely solely on Borrower-provided information (para. 29); it should explicitly include review of all reasonably attainable, publicly available information on the project as well as any third-party submissions made to the Bank. The due diligence should also include a site visit and consultation with affected stakeholders in all projects.

High Risk Subprojects. Paragraph 35 only requires subprojects that are categorized as “high risk” to comply with the ESSs. Subprojects that pose a “substantial risk” should also have to comply with the ESSs because they also have the potential to significantly harm the environment and communities.

The Indigenous Peoples Opt Out. In paragraph 33 (and ESS7), the Bank provides the ability for the Borrower to “opt-out” of applying ESS7 on indigenous peoples by raising concerns and submitting a request to the Bank to allow it to take an alternative approach.³ This is an unacceptable step backward from the current safeguard policy, the practice at other IFIs, and international law. It will leave vulnerable groups of indigenous peoples unprotected. The Bank gives itself vast discretion because it has “sole responsibility” to decide if the Borrower’s concerns are valid and merit an exemption from ESS7, with only vague criteria identified. The result is the Bank cannot be questioned or held accountable for its decision to ignore protections for indigenous peoples in a particular project. Among other implications, the opt out also negates part of the gains made in paragraph 45 in which the Bank, rightly, adopts free, prior, and informed consent (FPIC) for Indigenous Peoples in certain situations. The Bank simply must eliminate the opt-out clause.

The ESCP. The ESCP is critical to the Bank’s entire approach and the following modifications or clarifications to paragraphs 39-41 should be made:

- (1) It should be clarified that the ESCP shall be completed as part of the appraisal process and fully released to the public in advance of any decision to finance a project.
- (2) The legal agreement shall always (not “as necessary”) include an obligation that the Borrower “shall comply with the ESCP” (not just its obligations to “support implementation” of the ESCP) (para. 39).
- (3) Any material subsequent change to the ESCP, or any significant non-compliance with schedules set forth in the ESCP, should be made public immediately and the Board should be notified.
- (4) The Bank’s “review of the status of the implementation of the ESCP” (para. 40) shall be at least annual, and should always be made public.

The Adaptive Management Loophole. Adaptive management is clearly a valuable environmental and social management technique for addressing “minor” changes or “unforeseen circumstances” as they

³ Draft Environment and Social Policy Statement, para. 33, states “where the Borrower has raised valid concerns regarding the application of ESS7, and submitted a request to the Bank to consider an alternative approach, the Bank may agree to the Borrower adopting such an approach, in which risks and impacts of the project on Indigenous People will be addressed through the application of the ESSs other than ESS7.”

arise in project implementation. As the Bank staff has said in consultation, they need to have flexibility to respond to unforeseen consequences. But adaptive management is also frequently misused to provide unnecessary discretion by justifying the approval of projects based on weaker analyses with the promise that the project will address any significant problems if they arise through the miracle of “adaptive management”. The Bank in its policy and in statements at consultations is using the promise of adaptive management as a justification for weakening the appraisal process.

The Bank needs to add rigor and criteria to its approach to adaptive management as outlined in Paragraph 41. The “process” allowing for adaptive management, particularly for unforeseen circumstances must be spelled out in the policy. Changing the ESCP due to “minor project changes” could be allowed but such changes should be announced publicly, adaptive management should be used to address “unforeseen circumstances” only in the context of a clear procedure. Changes to the ESCP after appraisal, done in the name of adaptive management, must be done only: (1) after release of a public report that identifies any unforeseen circumstances, describes the proposed modification to the ESCP, and how and when full compliance with the ESSs will be achieved; and (2) after public consultation with affected stakeholders; and (3) with notification to the Board of material changes in circumstances that can affect the outcome of the project.

Project Monitoring: A Missed Opportunity. The Bank’s discretion-centered approach relies heavily on its ability to monitor projects over the life cycle of the operation, yet the E&S Policy says virtually nothing about strengthening the Bank’s approach to project monitoring. The Bank references OP 10.00 (footnote 7 and paragraph 46), but OP 10.00 sets out no meaningful criteria for project monitoring other than what appears in the loan agreement. If the Bank wants to adopt an adaptive management model dependent on robust monitoring then it needs to spell out minimum criteria for the monitoring. Particularly for projects with significant risks or that have been given time to comply with any environmental and social standard, the monitoring program should (1) be made public; (2) require annual environmental and social monitoring reports; (3) all monitoring reports should be made public; and (4) include community-based monitoring initiatives. This monitoring protocol should be subject to Inspection Panel review.

Creating an ESCP Tracking Registry. Given the importance of the ESCP to the Bank’s discretion-centered approach, the Bank should commit in paragraphs 42-43 to providing a public registry that includes an easily searchable copy of the ESCP for every project. The registry should include any change made after appraisal to the ESCP for whatever reason; every E&S monitoring report; and any non-confidential complaints made with respect to the implementation and compliance of the ESCP and the underlying ESSs. Such an “ESCP Tracking System” would allow for greater community-based accountability over the Bank’s exercise of discretion. It would also ensure the Board of Directors had access to information about post-appraisal changes to the ESCP. This is the Bank’s responsibility as part of its monitoring system and as a trade-off for pushing more of the compliance to the post-appraisal period.

Misrepresentation of the Inspection Panel Role. The draft policy (paragraph 51) at least implicitly misrepresents the function of the Panel and mischaracterizes the criteria for when a claimant can bring a claim to the Panel. Given the sensitivity of these issues and the Bank staff’s well known antipathy toward the Panel as well as staff’s repeated efforts to question the Panel’s role, we are surprised to see it attempt to characterize the Panel process at all in these policies. The safeguard policy should include a separate paragraph solely on the Panel (not linking it to the project grievance mechanisms). That paragraph should read: “Project-affected communities and individuals may submit complaints regarding compliance with these policies to the World Bank Inspection Panel, in accordance with its operating procedures. The World Bank staff cooperates fully with the Inspection Panel in recognition of its vital role in ensuring enhanced development outcomes.”

ENVIRONMENTAL AND SOCIAL STANDARDS (ESSS)

ESS 1: ASSESSMENT AND MANAGEMENT OF SOCIAL RISKS AND IMPACTS

Many of the comments regarding the discretion built into the E&S Policy, and the need for transparent and robust monitoring of the ESCP, are also applicable to, and should be reflected in, ESS1. We have not repeated those comments here.

The Missing Objective. The objectives of ESS1 are very clearly intended to reflect the Bank's approach of deference to the Borrowers, but lost in the objectives is the focus of the safeguards on protecting communities and the environment from bearing disproportionate and unreasonable environmental and social harms from projects supported by the Bank. We fear this reflects the Bank's shift away from a rules-based approach that ensures minimum protection to a capacity-building approach that is freed from any accountability for averting serious harm.

Objective of Compliance. The objective of ESS1 should not be for projects to be "consistent with the ESSs" but to *comply with* the ESSs through the lifecycle of the project. Given that compliance may be achieved over time through an ESCP, the ultimate goal of any standard should be to meet the standard—not to be vaguely consistent.

The Borrower Systems Loophole. ESS1 reflects the Bank's shift to using the Borrower's environmental and social framework. We have grave concerns that the Bank will not apply Borrower's systems in a way that will protect communities and the environment as required by the ESS framework. In integrating the Borrower's system into its own operations, the Bank must ensure that the national systems being used will ensure the project *meets the requirements* of the ESSs. For example, in several paragraphs, including paragraph 4, the Bank should not agree to use the Borrower's framework if it "will enable the project to achieve objectives consistent with the ESSs," but rather should only allow for the use of the Borrower's framework if it enables the project *to meet the requirements* of the ESSs. The draft policy should include a clear requirement that an alternative approach, relying on a Borrower's framework, shall not use lower standards than the standards set forth by the World Bank.

The Sliding Scale ESIA Loophole. Not wanting to commit to any specific benchmarks, the Bank is deliberately vague about the requirements for the type of assessment that needs to be carried out for each of the four categories (high risk, substantial risk, moderate risk, and low risk). Paragraph 21 says that the impact assessment will be "commensurate and proportional with the potential risks and impacts of the project and the project classification assigned by the Bank." Other provisions link, for example, the extent of community engagement, the scope of the management tools, and the extent of monitoring, to the same sliding scale. Flexibility can be useful but should be allowed only in the context of guarantees of certain minimum procedural safeguards for every project. ESS1 should thus specify the requirements for doing the environmental and social impact assessment (ESIA) for each risk category. It should also state which projects always require a full ESIA, including at least all projects that are high risk or substantial risk. Conducting an ESIA should also not be dependent on a Borrower's capacity and this should be clarified in the draft. Further, the need to conduct an ESIA regarding subprojects (paragraph 29) should not be limited to only subprojects that are high risk, but should also include, at least, substantial risk projects. Relatedly, the assessment should include Associated Facilities and any associated facilities should have to comply with the requirements of the ESSs.

The Variance in EHS Guidelines Loophole. We commend the Bank in clearly stating that projects "will comply with" the Environmental Health and Safety Guidelines (EHS) (paragraph 17). This is a marked improvement over the existing policy's vagueness. It should be noted that many of the EHS's, themselves, are written in discretionary terms, but the Bank nonetheless allows a Borrower to justify non-

compliance with the EHS on the basis of the Borrowers' "limited technological or financial constraints or other specific project circumstances." We recognize the value of allowing for some variance from the EHSs, but the criteria for such a variance should be more clearly and narrowly drawn. The criteria should include, as the Bank recognizes, that the variance is "unlikely to result in any significant environmental or social harm." The criteria regarding "technological" constraints, however, are too vague. "Financial constraints" should never be a reason for any variation from the EHS, given that the loan for a project should be sufficient to allow compliance with the EHS from the beginning. The Bank's review of a request for a variance from the EHSs should be a transparent part of the appraisal process, and any variance should be documented and monitored as part of the ESCP.

Disadvantaged or vulnerable groups. Further the social risks and impacts listed in paragraph 26(b) are limited. The Bank fails to include language, race, color, or political minority in the definition of disadvantaged or vulnerable groups. This exclusion means that with regard to these groups, Borrowers will not have to take the action to ensure that disadvantaged or vulnerable groups receive the benefits and opportunities of the projects. Additionally, the policy should require the Borrower, prior to appraisal, to determine how these disadvantaged or vulnerable groups may be affected. By comparison, the EIB requires the promoter to determine, among others listed: "the current legal status regarding gender relations and the rights and status of women and girls, indigenous peoples or minorities and associated parameters, such as land tenure indicating basis for recognition, customary use of the land, any potential claims/actions, as relevant within the operation's area of influence" and "the type, scope and extent of project-related risks and potential impacts, both positive and negative, on such individuals and groups, against the backdrop of the country's institutional legal framework and existing or anticipated discriminatory norms and practices against them."⁴ This information is then used to determine the potential for such vulnerable groups to be adversely affected by a project. Where such potential exists, an in-depth assessment must be undertaken and include, for example, an assessment of the history of the discrimination, exclusion, and marginalization, and the potential impacts and their effect on the vulnerable groups.⁵

Consultation Requirements. ESS1 must ensure the ability of communities to engage in the project assessment, including consultations early in the process, in line with the requirements of ESS10. As noted above, ESS1 should include specific procedural benchmarks that ensure that at least some consultation occurs in all projects; these explicit, minimal procedural benchmarks should be linked to the risk categorizations. In conducting public consultations, the Borrower must ensure that consultations take place in a culturally appropriate manner and language. Additionally, ESS1 should require that accommodations should be made to allow disadvantaged and vulnerable groups, including women and minorities, to have the ability to participate in the consultations in a way that is culturally appropriate.

ESS 2: LABOR AND WORKING CONDITIONS

We appreciate the Bank's steps to harmonize with other international financial institutions by adopting a safeguard on labor and working conditions. To reflect the policies of other institutions as well as the obligations of international law, ESS2 should explicitly require Borrowers to comply, at a minimum, with the ILO Core Labour Standards. ESS2 should include workers' rights, including freedom of association and collective bargaining, and ensuring safe and healthy working conditions. Further, the Borrower must ensure that workers engaged directly by the Borrower or through third parties, such as contract workers, supply chain workers, and civil servants are protected consistently with the standards of ESS2. In addition to the ILO Core Labour Standards, ESS 2 should reference other international

⁴ European Investment Bank, "Environmental and Social Handbook," Vol. I EIB Environmental and Social Standards 7, para. 19(d) (2013) (hereinafter EIB Environmental and Social Handbook).

⁵ EIB Environmental and Social Handbook, Vol. I EIB Environmental and Social Standards 7, para. 20.

conventions, including the UN Convention on the Rights of Persons with Disabilities in regards to how information should be given to workers, and the UN Convention on the Rights of the Child in regards to child labour.

For more details on specific suggestions for how ESS 2 could meet best practice and comply with international law, see the chart in Annex I to these comments.

ESS 3: RESOURCE EFFICIENCY AND POLLUTION PREVENTION

ESS3 sets forth important standards to address climate change alongside its standard to prevent pollution and promote resource efficiency. This is an important step forward for the Bank, which has acknowledged the dangers of climate change, but had yet to incorporate climate change into the safeguards. We also commend the Bank for taking steps to ensure that the Borrower assesses the potential cumulative impacts of water use on communities and the environment, and that they take mitigation measures to reduce these impacts. Water scarcity is often a problem in project areas, thus it is important that when assessing the impacts of a project, the Borrower considers both the potential pollution impacts on water and the impacts the project would have on overall water supply in the area.

The Lack of any standards. Paragraph 1 introduces ESS3 as a set of “guiding principles” and emphasizes that its approach allows for flexibility based on GIIP (i.e. discretion) and technical and financial feasibility. ESS3 has a section titled “requirements” (paragraph 3) but it only requires a number of factors be considered in determining what, if any, pollution prevention or resource efficiency standards should actually be met. ESS3 references “internationally disseminated technologies and practices,” which provides little in terms of minimal quality control. The Bank should finance modern projects that meet high standards. Thus, the Bank should require projects to meet the EHSs as well as the “best available technology that is available internationally” as the default standard in all projects. The Bank should allow for flexibility through project-specific variances that are documented and justified at the time of appraisal and explicitly included and monitored as part of the ESCP.

The Technical and Financial Feasibility Loophole. The Bank introduces technical and financial feasibility throughout ESS3 as a way to avoid clear standards. As noted above, technical and financial feasibility can provide for a variance from the best internationally available standard and/or the EHS but only when it has been documented in advance as part of the project approval process. In addition, variances based on technical or financial feasibility should not be allowed if the resulting project would have a significant impact on the health of affected stakeholders. When financial feasibility is the only bar to the project achieving high standards, the Bank should require the project be redesigned so that it includes the costs of appropriate pollution prevention or resource efficiency measures.

Greenhouse gases (GHGs). The Bank’s approach to GHGs is welcomed but somewhat tepid in comparison to the Bank’s leadership in highlighting the impact of further climate change on the poor. The Bank should place its approach to GHGs in this standard in the context of the broader ambition needed to avert climate change. ESS3, for example should ensure that projects are in line with the various national climate plans currently developed or that will be developed under the UN Framework Convention on Climate Change. Additionally, it should require the assessment and accounting of greenhouse gas emissions for all projects, including all indirect emissions associated with larger projects. To the loopholes relating to “technically and financially feasible” as discussed above, the Bank has inexplicably added a “cost-effective” caveat to paragraph 5 as well. It should be removed.

Internationally Banned or Prohibited Compounds. We commend the Bank for requiring that Borrowers not manufacture, trade, or use internationally banned chemicals and wastes. The last phrase in paragraph 16, however (“consistent with Borrower governments’ commitments under the applicable

international agreement”) is confusing to us. To be clear, the Bank should clarify that it will not support a project involved in the manufacture, trade, or use of an internationally banned substance, even if the Borrower is not a party to the relevant convention.

ESS 4: COMMUNITY HEALTH AND SAFETY

Ecosystem Services. Ecosystem services refer to both the direct and indirect contributions of ecosystems to the wellbeing of individuals and communities. As the World Resources Institute (WRI) stated in their comments on the World Bank’s proposed policy, “[a]ssessing an investment’s impact on ecosystem services allows actors to understand and address the social implications of the project’s environmental effects” and “[l]eaving out ecosystem services in the Bank’s safeguards will create confusion and go against the goal of a harmonized World Bank Group.”⁶ Thus, the Bank should amend the safeguards to require an evaluation of direct impacts on ecosystem services and how those may impact affected communities.

Gender-Distinct issues. ESS4 should acknowledge that there are gender-distinct situations, such as men’s and women’s unique health issues and disparate representation among health and safety personnel.⁷ The African Development Bank’s (AfDB) Environmental Policy, for example, discusses the importance of addressing public health issues specifically relating to women and children. The AfDB states that effects “on the health of women...need to be properly addressed” and that “decisions and measures to support good health shall be the aim in all groups of society, especially in vulnerable groups such as children.”⁸ Language could be incorporated into this section that includes health-related assessments of project-related activities that is specific to women and children in the affected communities. Similarly, paragraph 19, in regards to water-related diseases, should discuss the risks of disease exposure not just to the community, but specifically to women because they are often the primary people who fetch water in many countries. Lastly, paragraph 30 requires Borrowers to “investigate all allegations of unlawful or abusive acts of security personnel.” This should be expanded to specifically include the need to investigate gender-based violence.

Conflict and Post-Conflict Areas. Paragraph 1 should incorporate mention of “conflict and post-conflict” areas and how the level of risks and impacts described in the proposed policy may be greater in these areas. The World Bank should incorporate the language from the IFC’s Performance Standard (PS) 4 which states: “the risks that a project could exacerbate an already sensitive local situation and stress scarce local resources should not be overlooked as it may lead to further conflict.”⁹

Avoiding risks to community health and safety. In evaluating the risks to and impacts on the health and safety of affected communities during project life-cycles, paragraph 6 of the draft policy says that the Borrower should establish preventive and control measures consistent with applicable international conventions and protocols and national legal requirements and, if these are absent, then the Borrower should comply with GIIP. The reference to international conventions here should also be

⁶ WRI Comments on the Draft Social & Environmental Framework, at 5-6 (Jan. 2015), available at https://consultations.worldbank.org/Data/hub/files/wri_comments_on_wb_draft_env_and_soc_framework.pdf.

⁷ See Elaine Zuckerman (Gender Action), *Gender Review and Recommendations on the World Bank Environmental and Social Framework: Setting Standards for Sustainable Development* (September 2014), available at https://consultations.worldbank.org/Data/hub/files/ga_gender_analysis_of_world_bank_july2014_safeguard_draft.pdf.

⁸ African Development Bank, “African Development Bank’s Group Policy on the Environment,” Article 5.3.6 (Feb. 2004), available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/10000027-EN-BANK-GROUP-POLICY-ON-THE-ENVIRONMENT.PDF>.

⁹ IFC Performance Standard 4, para. 2.

reflected in paragraph 3 with a reference to “*international*, national and local law.” Additionally, the proposed policy should include a provision like in the IFC’s PS4 that in adopting measures the *avoidance* of risks and impacts is preferred over the *minimization* of risks and impacts.¹⁰ This would also be consistent with the mitigation hierarchy referenced in ESS1.

Climate Change. ESS4 should place community health and safety more explicitly in the context of climate change and the need to consider resilience and adaptation. Paragraph 8, which references climate change, should eliminate “where appropriate and feasible” from the final sentence and instead state “Structural design will take into account climate change considerations.” Taking climate change into account should be required of all projects.

Environmentally sound management of wastes. Paragraph 21 on hazardous materials management and safety states that the Borrower “will exercise all feasible efforts to control the safety of deliveries of hazardous materials, and of transportation and disposal of hazardous wastes, and will implement measures to avoid or control community exposure to such hazardous material.”¹¹ The AfDB’s policy includes promoting “treatment of waste disposal in an environmentally acceptable manner, and incorporat[ing] adequate safeguards to protect sources of safe drinking water.”¹² The Bank should accept such a provision requiring Borrowers to address waste disposal in an “environmentally acceptable manner.”

Emergency preparedness and response. Natural hazards, such as floods or landslides, should be listed along with the already mentioned man-made hazards in paragraph 22. Further, paragraph 24 should say “diverse media channels *and other communication tools* for notification of the affected community and other stakeholders” (as suggested in CERFE’s comments), as this would provide additional, and perhaps more effective, ways to communicate in cases of emergencies and further strengthen emergency preparedness and response.¹³

ESS 5: LAND ACQUISITION, RESTRICTIONS ON LAND USE AND INVOLUNTARY RESETTLEMENT

It is vital that ESS 5 provide strong, clear safeguards to protect communities from losing their land or being involuntarily resettled (or involuntarily resettled without compensation). ESS5 must, first and foremost, ensure that all project-affected people are entitled to share in the project’s benefits; recognize that women, children, the elderly, minorities, and persons with disabilities are disproportionately affected by involuntary resettlement; and that those displaced should not be responsible for any costs of resettlement. Additionally, ESS5 should state that displacement is a last resort that should be avoided. If people are displaced, they should be compensated for loss of land with land of commensurate quality, size and value, or better.¹⁴ Additionally, when displacement occurs, ESS5 should guarantee that people with formal land title, land use rights, customary or traditional rights to the land as well as those who occupy/use the land, but have no formal title for objective reasons are eligible for compensation for the land.¹⁵ Further, the policy should provide squatters with resettlement assistance.

¹⁰ IFC Performance Standard 4, para. 5.

¹¹ See African Development Bank Group’s Policy on the Environment, Article 5.3.6.

¹² Id.

¹³ CERFE Comments on WBG Safeguard Consultations, p. 3 (Dec. 2014), available at <http://consultations.worldbank.org/Data/hub/files/safeguardpcons-cerfecomments.pdf> (hereinafter CERFE Comments).

¹⁴ See EIB Environmental and Social Handbook, Vol. I EIB Environmental and Social Standards, std. 6.

¹⁵ See id.

For more details on how ESS5 can comply with international best practice, please see the chart attached in Annex I.

ESS 6: BIODIVERSITY CONSERVATION AND SUSTAINABLE MANAGEMENT OF LIVING NATURAL RESOURCES

We commend the Bank for proposing a comprehensive standard addressing biodiversity conservation and the sustainable management of living natural resources. We offer a few suggestions below and also support the comments submitted by the World Wildlife Fund, the World Resources Institute, and the Biodiversity Consultancy regarding this standard.

Narrow Definition of Critical Natural Habitats. The definition of critical natural habitats has been significantly narrowed in the new draft policy to consider only biodiversity, and now excludes values such as ecosystem services, resource-dependent livelihoods, and cultural values. The landscapes subject to ESS6 are complex socio-ecological systems shaped by various human-nature interactions leading to myriad land uses and a diversity of values related to the land.¹⁶ Compared with the current operational definition, the proposed definition removes both protected areas and areas important to traditional communities. The current Operational Procedure defines critical natural habitats as:

- 1) Existing protected areas; 2) Areas initially recognized as protected by traditional local communities; 3) Sites that maintain conditions vital for the viability of these protected areas; 4) Sites identified on supplementary lists prepared by the Bank.¹⁷

The proposed definition now has Critical Habitat defined as:

- Areas with high biodiversity value, including (a) the presence of highly threatened habitats; (b) Endangered or Critically Endangered species as listed on the International Union for the Conservation of Nature (IUCN) Red List of Threatened Species; (c) geographically restricted species; (d) migratory or congregatory species; or (e) biodiversity features that are vital to maintaining the viability of biodiversity features described above in (a) to (d).¹⁸

The proposed definition should continue to include protected areas and areas that are recognized as protected by traditional local communities. The protection of traditional communities' lands provides a vital conceptual and practical link between ESS6 and ESS7, for example. Also the criteria listed in the definition of Critical Habitat are largely consistent with the IFC's PS6, but omit a few important criteria for critical habitat—namely, “unique ecosystems” and “endemic species.”¹⁹ These categories would add important protections and would improve harmonization with IFC.

Ecosystem Services. As in ESS4, ESS6 excludes mention of ecosystem services. “Ecosystem services” refers to the direct and indirect contributions of ecosystems to human well being. Assessing an investment's impact on ecosystem services allows actors to understand and address the social implications of the project's environmental effects. The Bank should incorporate the consideration of and protection of ecosystem services in ESS6. Like the IFC, the Bank should explicitly incorporate

¹⁶ See WWF Comments on the World Bank's Environmental and Social Standard 6 (ESS6): Biodiversity Conservation and Sustainable Management of Living Natural Resources at 2 (Nov. 2014) (hereinafter WWF Comments).

¹⁷ World Bank OP 4.04 - Annex A, paragraph 1b.

¹⁸ Draft Policy, Environmental and Social Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources, footnote 1.

¹⁹ See The Biodiversity Consultancy, “World Bank Environmental & Social Framework Review: Comments from The Biodiversity Consultancy,” para. A2, ii (Nov. 2014).

maintaining benefits from ecosystem services as one of the three main objectives of the policy.²⁰ This will ensure that the contributions of the environment to economic growth go beyond natural resources to address the broad ranges of public goods and services supplied by functioning ecosystems, such as regulation of water timing and flow, protection from landslides and floods, and pollination.²¹

The recognition and protection of ecosystem services under ESS6 would also assist the Bank in promoting climate change mitigation and adaptation strategies. The current draft does not recognize the link between carbon sequestration, critical habitat, and the role of local communities in environmental stewardship.²² Other MDBs, such as the ADB²³ and the EIB²⁴, recognize ecosystem services as a crucial criterion for critical habitats, and the AfDB allots ecosystem services so much importance that it is described in its own operational standard.²⁵

ESS 7: INDIGENOUS PEOPLES

ESS7 contains a number of provisions that are in line with international law and the safeguards related to indigenous peoples at other international financial institutions. Most importantly, the draft ESS7 takes an important step forward by adopting free, prior, and informed consent (FPIC) in certain situations. FPIC is an important part of international law and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

The Opt-Out Clause. The Bank's adoption of the "opt out" clause in Paragraph 9 undermines any claim that the Bank can make that its policy adequately safeguards indigenous peoples. Paragraph 9 allows Borrowers to propose an "alternative approach" rather than complying with the requirements of ESS7. This will seriously undermine the rights of indigenous peoples to self determination and collective ownership of land and resources. It also undermines the growing international consensus around the legal protections for indigenous peoples that arose in large part because of the attempts to take their land and resources. The opt-out clause is a poor attempt to address the concerns of certain countries regarding

²⁰ IFC, Performance Standard 6, introduction & objectives. *See also* paras. 24 and 25 of PS6 for IFC management of ecosystem services requirements.

²¹ *See* WRI Comments on the Draft Social and Environmental Framework, at 6.

²² *See* WWF Comments, at 1.

²³ ADB Safeguard Policy Statement, Appendix 1, footnote 5 at 35 (*defining* Critical Habitat as "Critical habitat includes areas with high biodiversity value, including habitat required for the survival of critically endangered or endangered species; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or that are associated with key evolutionary processes **or provide key ecosystem services; and areas having biodiversity of significant social, economic, or cultural importance to local communities.**" (emphasis added)).

²⁴ EIB Environmental and Social Handbook, at p. 5 (*Defining* ecosystem services as "the benefits that people, including businesses, derive from ecosystems. Ecosystem services valued by humans are often underpinned by biodiversity. Impacts on biodiversity can therefore often adversely affect the delivery of ecosystem services. Ecosystem services are organized into four types: provisioning services, regulating services, cultural services and supporting services."). *See also* Vol. I Environmental and Social Standards, std. 3, paras. 44-46.

²⁵ AfDB Integrated Safeguard System, OS3: Biodiversity and Ecosystem Services, at 39, footnote 20 (*defining* ecosystem services as "the benefits that people derive from ecosystems. There are four types of ecosystem services: (i) provisioning services, which are the products people obtain from ecosystems (food, freshwater, wood and fiber, fuel), (ii) regulating services, which are the benefits people obtain from the regulation of ecosystem processes (climate regulation, flood regulation, disease regulation, water purification), (iii) cultural services, which are the nonmaterial benefits people obtain from ecosystems (aesthetic, spiritual, educational, recreational), and (iv) supporting services, which are the natural processes that maintain the other services (nutrient cycling, soil formation, primary production)").

indigenous peoples' rights and should be eliminated. It also represents a significant dilution of the existing policy.

Adoption of FPIC. Adopting FPIC brings the World Bank more in line with international law and standards. It is unclear whether the processes describe in ESS7 to obtain FPIC meet international human rights law and standards, including meaningful consultation with affected indigenous peoples. It is critical that the Bank and Borrowers ensure that the consultation process involves all stakeholders and is gender and inter-generationally inclusive. Further, Borrowers should determine whether consent was given according to the customary laws and guidelines of the indigenous peoples involved.

Definition of Indigenous Peoples. The proposed definition of indigenous peoples (paragraph 6) is too narrowly defined and not in line with ILO Convention 169. ILO Convention 169 provides a broad characterization of indigenous and tribal peoples in Article 1.²⁶ The Bank's approach in ESS7 paragraph 6 is similar, but includes a requirement that the people should have a distinct language or dialect.

Meaningful consultation. The full consultation and participation of indigenous peoples in project design and implementation is critical. It is thus imperative that the Bank require early disclosure of project information and the ESIA findings so as to ensure adequate time for meaningful consultation. Additionally, we appreciate the Bank's effort to ensure that the Borrowers engage in meaningful consultation tailored to indigenous peoples as explained in paragraph 18. To ensure meaningful consultation, Borrowers should provide support for securing technical and legal advisors and for community trainings, particularly for women and other marginalized groups, so that they are able to effectively and meaningfully participate in the consultation process. The Bank should also accept the standards found at the EIB and ADB, which require their Borrowers to "publicly disclose the final draft of the IPDP [Indigenous Peoples Development Plan] to the affected indigenous peoples' communities in an appropriate form, manner, and language."²⁷ ESS7 should also be clarified to ensure that the consultation process will be "gender and inter-generationally inclusive."

Land Rights. Indigenous peoples' relationship to land is vital. In paragraph 23, the Bank should guarantee that when projects are likely to have significant impacts on traditionally owned land, the Borrower will prepare a plan for legal recognition of their perpetual ownership rights and not just their long-term custodial or use rights.

ESS 8: CULTURAL HERITAGE

ESS8 contains several improvements when compared with the current World Bank policy. For example, including in the objectives of ESS8 that addressing cultural heritage is an integral part of sustainable development is a positive addition. Further, stating in paragraph 1 that cultural heritage is "a source of valuable scientific and historical information, as an asset for economic and social development, and as an integral part of people's cultural identity, practices, and continuity" is an improvement that should be maintained. However, it would also be useful to expand upon the significance of cultural heritage in the opening paragraph.²⁸

²⁶ International Labour Organization, Convention concerning Indigenous and Tribal Peoples in Independent Countries, art. 1 (1991) (hereinafter ILO Convention 169).

²⁷ EIB Environmental and Social Handbook, Vol. I: EIB Environmental and Social Standards, std. 7, para. 30.

²⁸ See CERFE Comments suggesting that paragraph 1 include the following language: "[c]ultural heritage increases awareness and reinforcement of community and inhabitants of the areas concerned identity, as well as their self-esteem; can contribute to the reduction in the 'stigma' attached to particular areas and their inhabitants and to the production of communication-flow between the more deprived and more privileged areas."

Definition of cultural heritage. The definition of “cultural heritage” in paragraph 4 could be more detailed and should explicitly include tangible and intangible cultural heritage. The proposed definition is ambiguous and limited, and does not explain the significance of both tangible and intangible cultural heritage as well as the distinction between the two types. The IFC’s definition of cultural heritage, as an example, includes more specifics in its definition and includes intangible forms of cultural heritage in addition to physical ones.²⁹ Further, the World Bank should include the definition of intangible cultural heritage from the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.³⁰

Field-based Study. In paragraph 10, the policy says that borrowers must “ensure that internationally recognized practices for field-based study, documentation and protection of cultural heritage are implemented, including by contractors and other third parties,” when implementing projects that may impact cultural heritage. The term “internationally recognized practices” is vague and should be further defined in the proposed policy so that Borrowers ensure that appropriate professional practices are employed with its project-related activities.³¹

ESS 9: FINANCIAL INTERMEDIARIES

We are pleased that the World Bank has decided to include financial intermediaries (FIs) in the safeguard policies, given the increase in lending through FIs and the fact that projects involving FIs can, and do, cause significant environmental harm and violate the rights of communities. ESS9 evokes the axiom that a chain is only as strong as its weakest link. One goal of ESS9 must be to assure that FIs handling World Bank funds uphold the same standards as the Bank itself. In the context of the broader goals of the ESSs, application of the Bank’s safeguards to FIs receiving or distributing Bank funding will be effective both for securing the goals of the Bank and protecting the Bank’s investments. The standards that apply to FI subprojects should be the same with respect to risk assessment, interaction with stakeholders, monitoring, transparency, and the expectation that all subprojects will meet the requirements of ESSs 1-8, and ESS10.

Applying the ESSs to all FI Subprojects. All FI subprojects should be required to meet all ESSs, particularly given that the Bank is proposing to apply a sliding scale that applies the standards in a way that is “commensurate” with the underlying risk. There is no reason such a sliding scale should not also be applied to the FIs. At the very least, the ESSs should apply to all subprojects that present any significant risk to affected communities, not just those that are categorized as “high risk” (paragraph 7). The only projects that would then be exempted from meeting the ESSs would be those subprojects “likely to have minimal or no adverse environmental or social risks or impacts” (paragraph 13). This should be

²⁹ IFC Performance Standard 8, para. 3 (“(i) tangible forms of cultural heritage, such as tangible moveable or immovable objects, property, sites, structures, or groups of structures, having archeological (prehistoric), paleontological, historical, cultural, artistic, and religious values; (ii) unique national features or tangible objects that embody cultural values, such as sacred groves, rocks, lakes, and waterfalls; and instances of intangible forms of culture that are proposed to be used for commercial purposes, such as cultural knowledge, innovations, and practices of communities embodying traditional lifestyles.”).

³⁰ Defining intangible cultural heritage as: “[T]he practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.”

³¹ See IfA Response to Consultation on World Bank Draft Environmental and Social Framework at 3-5 (Nov. 2014), available at https://consultations.worldbank.org/Data/hub/files/ifa_response_to_consultation_on_world_bank_environmental_and_social_framework.final_.pdf (hereinafter IfA Response).

workable for FIs, given the flexibility already reflected in paragraphs 20-22 of the Environmental and Social Policy Statement, i.e.: (1) not all ESSs will be applicable to each project, (2) low-risk projects will ultimately demand less attention (i.e. monitoring), and (3) determination of risk is best made on an on-going basis.

Providing information to stakeholders. ESS9 should clarify that stakeholders affected by subprojects can communicate directly with the Bank, not just through the FI, and that the Bank is also able to communicate directly with the stakeholders. This also applies to the availability of the Bank's Grievance Redress System to individual stakeholders (paragraphs 50-51, of the Environmental and Social Policy Statement). Stakeholders must be made aware – directly, by World Bank personnel – that they may bypass an FI and report concerns directly to the Bank.

Accreditation of FIs. Assessment of an FI in advance of providing funding or commencing a project must be thorough in order to minimize risk and lessen the needed degree of continuous monitoring. This concern is addressed in the Due Diligence requirements of paragraphs 27-32 of the Environmental and Social Policy Statement and, more specifically, in paragraphs 36-38 of that overarching statement, which deals specifically with FIs. Any FI that does not meet the standard necessary to ensure its subprojects are likely to comply with the relevant ESSs should not be funded. The Bank could also provide partial accreditation for FIs that would allow those FIs only to provide support to subprojects that pose little or no significant environmental or social risk.

Supervision of FIs. As discussed above, the World Bank must enhance its monitoring and supervision capacity to ensure that FI-financed subprojects are not presenting significant environmental and social risk. Reliance on self-monitoring by FIs³² is appropriate, but the Bank needs to ensure robust and transparent oversight, including publicly available reports on the environmental and social risks of all subprojects in an FI portfolio. Otherwise, the Bank runs the risk of empowering corrupt or unreliable FIs to fail to report accurately.³³ Supervisory monitoring by the Bank, as described in paragraphs 46-49 of the Environmental and Social Policy Statement, is therefore essential to ensure transparency, to determine the reliability of FI-generated reports, and to ensure that stakeholders' concerns are addressed. Self-conducted monitoring by the FI is obviously not useful, as it limits transparency.

ESS 10: INFORMATION DISCLOSURE AND STAKEHOLDER ENGAGEMENT

The Bank's efforts to create an articulate policy that requires Borrowers to engage with stakeholders and disclose relevant project-related information throughout the investment project cycle is appreciated, yet there are some aspects of the policy that need to be clarified and strengthened. This standard is very closely related to ESS1, and the two must be considered together. If the necessary information is not disclosed in a timely manner, it will be very difficult for affected communities and other stakeholders to thoroughly engage with the Bank, project proponents, and the Borrower governments in a constructive manner. We also would like to take this opportunity to strongly urge the Bank to recognize important relevant international law and adopt Articles 6, 7, and 9 of the Aarhus Convention.

Clear Procedural Benchmarks Before Appraisal. The Bank's proposal needs to ensure that stakeholder engagement in all projects meets at least certain minimum standards. For all projects that present medium or higher risk, the policy should clearly state that constructive stakeholder engagement

³² Draft ESS9, paras. 6, 10, 14, 18.

³³ Consider, for example, the IFC CAO 2013 Audit Report, which found that clients in roughly 10 percent of cases examined failed to meet IFC's requirements. The report is available at http://www.cao-ombudsman.org/publications/documents/CAO_AR13_ENG_high.pdf.

shall mean at least one public consultation, in a culturally appropriate manner and language, in the project-affected area before a decision is made by the Bank to finance the project.

Timing of Stakeholder Engagement. In general, ESS10 fails to ensure that stakeholder engagement takes place in a timely manner—particularly while it is still possible for consultation to affect the project design. The Bank needs to ensure that some meaningful consultation takes place in every project *before* the decision has been made by the Borrower’s authorities to go forward with the project and before the Bank’s Board of Directors votes to approve a project. All consultations should also take place after disclosure of the full ESIA. For projects presenting high environmental and social risks, the ESIA must be disclosed at least 120 days before the Board decision on the project.

Identification of Stakeholders. According to the draft framework policy, the Borrower is in charge of identifying the stakeholders including the impacted communities (as described in paragraph 12) and community representatives including CSOs (as described in paragraph 16) without any means to verify the accuracy of this identification. There needs to be a mechanism incorporated into the ESS to ensure that Borrower governments are not excluding any stakeholders that should be included in the process to ensure that meaningful consultation is achieved and that all relevant stakeholders are engaged. This is particularly true of vulnerable groups.

We thus support the comments of the Bank Information Center (BIC) that in order to achieve the proper inclusion of all relevant stakeholders, “clear criteria should be set for the identified stakeholders. For each project the Bank, as a neutral party, should be involved in the identification of the different parties who should be represented in an advisory group. This advisory group should also include rights based organizations who work on the specific issues implicated by the project. The advisory group will then work with the borrower government on:

- identifying the different individuals/orgs/parties... who should be invited;
- developing the Stakeholder Engagement Plan (SEP);
- deciding on the formats and venues for each consultation session;
- deciding on the materials that need to be translated into local languages;
- reviewing the SEP when needed.”³⁴

Stakeholder Engagement Plans. The borrower is required to develop a Stakeholder Engagement Plan (SEP) that describes the timing and methods of engagement with the project-affected communities and other stakeholders throughout the life cycle of the project.³⁵ Since the goal of the SEP is to maintain constructive engagement between the stakeholders and the government, the parties who are the subject of this plan should also be engaged in designing it (see above on the role of the advisory group). Paragraph 14 also does not provide any clear language relating to when the SEP should be disclosed. The Bank needs to clarify the timing requirements of SEP disclosure, requiring borrowers to disclose a draft SEP prior to the initial environmental and social impact assessment to be carried out under ESS1.

The draft in paragraph 16 also states that the SEP should include “differentiated measures to allow the effective participation of those identified as disadvantaged or vulnerable.” This critical concept requires further explanation and clarification. Specific language should be added to the policy to include specific or common *minimum requirements*, such as accessibility to the consultation venues to different vulnerable groups and the development of different communication materials to fit the different age groups and education levels of all stakeholders and impacted communities.

³⁴ Submission from Bank Information Center at 1 (Nov. 2014).

³⁵ See Draft Policy, Environmental and Social Standard 10: Information Disclosure and Stakeholder Engagement, paras. 14, 17.

Should a project be one in a larger regional or national program, it is imperative that both individual SEPs are done for each project (and subproject) as well as an overall program SEP that considers the cumulative impacts and effects of the entire program. This needs to be incorporated into the ESS10 provisions on SEPs.

Consultations. The language used in regard to meaningful consultations is, unfortunately, vague and open to interpretation. Understandably, the Bank is hesitant to set specific deadlines for certain aspects of information disclosure in order to ensure some flexibility for projects of varying complexity, however to use broad language such as (paragraph 20) “the Borrower will inform those who have participated in the public consultation process in a *timely manner* of the final decision on the project” provides the Borrower too much flexibility and limits the public’s ability to engage with the borrower and/or begin the process of accessing and utilizing grievance mechanisms, that themselves have set deadlines to bring forward a complaint.

It is also concerning that the Bank has incorporated “where appropriate/applicable” language in paragraph 19(c) and 19(f). By including “where appropriate” in 19(c)³⁶, the Bank is making the incorporation of feedback from public consultations completely voluntary for Borrowers, potentially rendering the entire consultation process useless for affected stakeholders. This language provides Borrowers with too much flexibility and power, since they can choose to ignore feedback and claim it was not appropriate to be included. The same holds true with 19(f), which states that the consultation process must “enable meaningful participation, where applicable.” This again provides the Borrower with far too much flexibility and allows the government to completely avoid providing meaningful participation solely by claiming it is not applicable to the situation.

Engagement during implementation. There should be explicit minimum requirements of the frequency of receiving feedback and the diversity of stakeholders giving this feedback especially for high and substantial risk activities, and for all activities in fragile and conflict states. Paragraph 21 of the draft policy requires the Borrower to “provide ongoing information to the project-affected communities,” and also requires the Borrower “to receive feedback on the effectiveness of the project and the implementation of the mitigation measures in the ESCP.” It is also important that “appropriate stakeholder engagement practices” during implementation include at least one consultation in affected communities annually for high and substantial risk projects. The feedback from a balanced range of project stakeholders throughout the project cycle should be reflected in periodic Implementation Status Reports (ISRs), given that this report should report on, and provide evidence of, safeguard performance. The ISRs and any changes to the ESCP should be publicly disclosed as part of the ESCP Tracking Registry described above (in our comments regarding the E&S Policy).

Grievance Mechanisms. We support the comments regarding the Grievance Mechanism submitted by Accountability Counsel, the Center for International Environmental Law, and the Centre for Research on Multinational Corporations (SOMO).

Thank you for this opportunity to comment and we look forward to reviewing the next draft of the standards.

³⁶ Id. at para. 19(c) (stating that the Consultation process must “incorporate feedback, where appropriate”).

ANNEX 1

As referenced above, below is a chart regarding **ESS2: Labor and Working Conditions** and what best practice is. The blue text lays out what is needed to meet best practice as set forth by the EBRD, unless otherwise noted; while the teal text lays out what is necessary to supplement best practice based on the EIB unless otherwise noted; and the red text lays out what is necessary to set new best practice based on International Law.

| | Comments | ESS2 |
|------------------------------|---|--|
| Introduction | <ul style="list-style-type: none"> Reference workers' rights, including freedom of association and collective bargaining, safe and healthy working conditions | <p>1. ESS2 recognizes the importance of employment creation and income generation in the pursuit of poverty reduction and economic growth. By ensuring that workers in the project are treated fairly and provided with safe and healthy working conditions, Borrowers can promote sound worker- management relationships and enhance the development benefits of a project.</p> |
| Objectives | <ul style="list-style-type: none"> Reference ILO Core Labor Standards: C29, C105, C87, C98, C100, C111, C138, C182 Prevent the use of forced and child labor | <ul style="list-style-type: none"> To promote safe and healthy working conditions. To promote the fair treatment, non-discrimination and equal opportunity of project workers. To protect project workers, including vulnerable categories of workers such as women, children (of working age, in accordance with this ESS), and migrant, indigenous peoples, and illiterate workers. To avoid the use of forced and child labor. |
| Scope of Application | <ul style="list-style-type: none"> The Borrower will ensure that workers engaged directly by the Borrower or through third parties, such as contract workers, supply chain workers, and civil servants are protected consistently with the standards of this ESS | <p>3. The term "project worker" is used to refer to people employed or engaged directly by the Borrower, the project proponent and/or project implementing agencies to work specifically in relation to the project. ESS2 applies to full-time, part-time, temporary, seasonal and migrant workers.</p> <p>4. Where government civil servants are working in connection with the project, whether full-time or part-time, they will remain subject to the terms and conditions of their existing public sector employment agreement or arrangement. ESS2 will not apply to such government civil servants, except for the provisions of paragraphs 15 to 19 (Protecting the Work Force) and paragraphs 20 and 21 (Occupational Health and Safety).</p> |
| General Requirements | <ul style="list-style-type: none"> The Borrower is required to comply, at a minimum, with ILO Core Labor Standards outlines in the ILO Declaration on Fundamental Principles and Rights at Work – the Borrower will ensure adherence to these minimum standards for primary contractors and first-tier suppliers | |
| Working Relationships | <ul style="list-style-type: none"> Information should be accessible to workers and made available in the main languages spoken by the workforce and should be made available and communicated to disabled workers, which may mean providing them with alternative formats such as large print, Braille, audio tape, etc. – should reference ILO C159 and the UN Convention on Disability Benefits (such as leave for illness, maternity/paternity or holiday) | <p>5. The Borrower will have in place labor management procedures applicable to the project. These will set out the way in which project workers will be managed, consistent with the requirements of national law and this ESS.</p> <p>6. Project workers will be provided with information that is clear and understandable regarding their terms of employment. The information will set out their rights under national labor and employment law (which will include any applicable collective agreements), including their rights related to hours of work and breaks, wages,</p> |

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| | | <p>overtime, compensation and benefits (such as leave for illness, maternity/paternity or holiday). This information will be provided at the beginning of the working relationship and when any material changes occur.</p> <p>7. Project workers will be paid on a regular basis as required by national law. Deductions from payment of wages will only be made as allowed by national law and project workers will be informed of the conditions under which such deductions will be made. All project workers will be provided with adequate periods of rest per week, annual holiday and sick leave, as required by national law.</p> |
| Child Labour | <ul style="list-style-type: none"> the Borrower will not employ children in a manner that is economically exploitative Reference UN Convention on the Rights of the Child The Borrower will not employ, use, or benefit from the exploitation of child labor Projects involving the worst forms of child labor (as defined in ILO C182) will not be eligible for financing The Borrower will oversee that its primary contractors and first-tier suppliers apply the same standards and practices concerning child labor | <p>15. Labor management procedures will specify a minimum age for employment in connection with the project, as determined by national law and in accordance with ILO C138</p> <p>16. Children under the age of 18 may not be employed in connection with the project in a manner that is likely to be hazardous or interfere with the child's education or be harmful to the child's health or physical, mental, spiritual, moral or social development.</p> <p>17. Where children under the age of 18 may be employed in connection with the project, an appropriate risk assessment will be conducted, together with regular monitoring of health, working conditions and hours of work, in addition to the other requirement of this ESS.</p> |
| Forced Labour | <ul style="list-style-type: none"> The Borrower shall avoid any restriction of freedom of movement of its labor force and will not engage in or tolerate the use of corporal punishment, mental or physical coercion and verbal abuse of personnel If forced labor, as defined in ILO C29 and ILO C105 is identified in the Borrower's workforce, including direct and contracted workers throughout its supply chain, immediate steps should be taken to terminate the practice, offer conditions of work that are not coercive and refer the case to the competent law enforcement authorities | <p>18. Forced labor, which consists of any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty, will not be used in connection with the project. This prohibition covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor, or similar labor-contracting arrangements. No trafficked persons will be employed in connection with the project.</p> <p>19. Where community labor may be a component of the project, such as in community-driven development projects, appropriate measures will be implemented to ascertain whether such labor will be provided on a voluntary basis, as an outcome of individual or community agreement.</p> |
| Migrant Workers | <ul style="list-style-type: none"> The promoter will avoid any physical or psychological coercion on migrant workers, including unnecessary restrictions on movement or retention of worker's identity documents, such as passports, or personal belongings. The promoter will ensure that its primary contractors and first-tier suppliers uphold the same principles. Reference ILO C97 | |
| Non-Discrimination and Equal Opportunity | <ul style="list-style-type: none"> The Borrower will take measures to prevent and address sexual harassment, bullying, intimidation and/or exploitation Workplace policies and complaints mechanism shall be put in place to deal with sexual harassment Reference ILO C100, ILO C111, ILO C159, UN Convention on the Rights of Persons with Disabilities | <p>9. Decisions relating to the employment of project workers will not be made on the basis of personal characteristics unrelated to inherent job requirements (such as gender, race, nationality, political opinion, affiliation to a union, ethnic, social or indigenous origin, religion or belief, marital or family state, disability, age, sexual orientation or gender identity). The employment of</p> |

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| | <ul style="list-style-type: none"> • The Borrower will ensure that human resources' decisions are not affected by the reproductive role of women | <p>project workers will be based on the principle of equal opportunity and fair treatment, and there will be no discrimination with respect to any aspects of the employment relationship, such as recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment (including reasonable adaptation of the workplace related to disabilities), access to training, job assignment, promotion, termination of employment or retirement, or disciplinary practices. The human resources policies and procedures will set out measures to prevent and address harassment, intimidation and/or exploitation. Where national law is inconsistent with this paragraph, the project will seek to carry out project activities in a manner that is consistent with the intent of this paragraph to the extent possible without contravening national law.</p> <p>10. Special measures of protection or assistance to remedy past discrimination (or the promotion of local employment opportunities) or selection for a particular job based on the inherent requirements of the job will not be deemed as discrimination, provided they are consistent with national law.</p> |
| <p>Workers' Organizations</p> | <ul style="list-style-type: none"> • The Borrower will not discourage workers from electing workers' representatives, forming or joining workers' organizations of their choosing or from bargaining collectively • The Borrower will not discriminate or retaliate against workers who act as representatives, participate, or seek to participate in such organizations or bargain collectively • Where national law doesn't recognize workers' rights to form and join organizations and bargain collectively, the Borrower will establish an independent process for workers to express their grievances and protect their rights regarding working conditions and terms of employment and will not seek to control such mechanisms or adversely influence their establishment and function • The promoter will respect collective bargaining agreements undertaken with workers' organizations and will promote fair working conditions. These should not be less favorable than comparable national conditions and industrial relations. When comparability cannot be assessed, at the very least compensations must be adequate to satisfy the basic needs of workers and their families. To this end, the promoter may need to calculate the living wage (the amount needed to allow a family to experience a decent standard of living) for the town/area where the project is located. When existing compensations are inferior, the promoter shall take adequate steps to provide such a living wage. | <p>11. In countries where national law recognizes workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, the project will comply with national law. In such circumstances, the role of legally established workers' organizations and legitimate workers' representatives will be respected, and they will be provided with information needed for meaningful negotiation in a timely manner.</p> |
| <p>Wages, benefits and conditions of work</p> | <ul style="list-style-type: none"> • Wages, benefits and conditions of work offered (including hours of work) should, overall, be at least comparable to those offered by equivalent employers in the relevant country/region and sector concerned | |

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| | <ul style="list-style-type: none"> • The Borrower will identify migrant workers and ensure that they are engaged on substantially equivalent terms and conditions of non-migrant workers carrying out the same work | |
| Worker Accommodation | <ul style="list-style-type: none"> • Ensure access to adequate, safe and hygienic basic facilities • The Borrower will provide basic services including water, sanitation and, in cases where the nature and scale of the activity being carried out so requires, availability of medical care based on the principles of nondiscrimination and equal opportunity • Workers' accommodation quarters must meet minimum size and hygiene standards (including adequate ventilation; water supply for drinking, cooking, bathing, and laundry purposes; toilet facilities; sewage and waste disposal facilities) and respect basic living needs. Accommodation shall provide adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, ensuring the physical safety of occupants. Access to cooking/meal facilities should also be provided. When the promoter is responsible for providing the food, it shall ensure that food handling facilities comply with food hygiene regulations. Policies on the quality and management of the labor camps (including accommodation, sanitary facilities, kitchens and dining halls) will be put in place and implemented. • Workers' freedom of movement to and from the employer-provided accommodation shall not be unreasonably restricted | <p>21. All project workers will be provided with facilities appropriate to the circumstances of their work, including access to canteens, hygiene facilities, and appropriate areas for rest. Where accommodation services are provided to workers, policies will put in place and implemented on the management and quality of accommodation, including safety, access and the provision of basic services.</p> |
| Retrenchment | <ul style="list-style-type: none"> • Project workers will be given adequate notice prior to dismissal. Severance payments will be paid directly to project workers on or prior to dismissal • Borrower will consider alternatives to retrenchment. If no viable alternatives exist, the Borrower will prepare a plan to assess, reduce and mitigate the adverse impacts of dismissal on workers based on principles of non-discrimination and consultation. The selection process will be transparent, based on fair, objective, consistently applied criteria, and subject to an effective grievance mechanism • The outcome of consultations will be reflected in the final plan | <p>8. On termination of the working relationship, all project workers will receive notice of dismissal and severance payments as required by national law in a timely manner. All outstanding back pay, social security benefits, pension contributions and any other entitlements will be paid on or before termination of the working relationship, either directly to the project workers or where appropriate, for the benefit of the project workers. Where payments are made for the benefit of project workers, project workers will be provided with evidence of such payments.</p> |
| Grievance Mechanism | <ul style="list-style-type: none"> • Mechanism should allow for confidential complaints to be raised and addressed • Grievance mechanism will be free and easy to access | <p>12. An effective grievance mechanism will be provided for all project workers (and, where relevant, their organizations) to raise workplace concerns. All project workers will be informed of the grievance mechanism at the time of recruitment and measures will be taken to make it easily accessible to them.</p> <p>13. The grievance mechanism will be designed to address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned, without any retribution, and will operate in an independent and objective manner.</p> |

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| | | 14. The mechanism will not impede access to other judicial or administrative remedies that might be available under the law or through existing arbitration procedures, or substitute for grievance mechanisms provided through collective agreements. |
| Supply Chain | <ul style="list-style-type: none"> • The Borrower will identify and assess the risk of child labor and forced labor being used in its supply chains of goods and materials which are central to the core functions of the project (core supply chains). • If the client learns that child labor or forced labor in contravention of ILO standards are present in a core supply chain, the client will take appropriate steps to remedy this in accordance with the requirements below. • If child labor is detected, good faith efforts should be made to remediate or mitigate the problem. The client should only continue to procure such goods or materials from that supplier, having received satisfactory undertakings or evidence that the supplier is committed to implementing a program in line with GIP to eliminate such practices within a reasonable time frame. The client will report on progress with the implementation of such program on a regular basis. • In relation to forced labor, the client should only continue to procure such goods or materials from that supplier having received satisfactory undertakings or evidence that the supplier has taken appropriate steps to eliminate the conditions that constitute forced labor. • The ability of the client to fully address these risks will depend on the client's level of management control or influence over its primary suppliers. The client will shift the affected primary supply chain over an agreed time frame to suppliers that can demonstrate that they are complying with this PR. | |
| Security Personnel | <ul style="list-style-type: none"> • Security forces or private service providers will be expected to comply with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the UN Code of Conduct for Law Enforcement Officials and the International Code of Conduct on Private Security Providers and the UN Voluntary Principles on Security and Human Rights • When the client retains employees or contractors to provide security to safeguard its personnel and property, it will agree a standard of practice and behavior for the security personnel, guided by the principle of proportionality and GIP, in terms of hiring, rules of conduct, training, equipping and monitoring of such personnel. The client will make reasonable inquiries to satisfy itself that those providing security services are not implicated in past abuses, will ensure they are trained adequately in the use of force (and where applicable, firearms) and appropriate conduct towards workers and the local community, and require them to act within the applicable law. The client will not sanction any use of force except when used for preventive and defensive purposes in proportion to the | |

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| | <p>nature and extent of the threat. The client will establish and maintain an effective grievance mechanism to allow the affected community and workers to express concerns about the security arrangements and actions of security personnel, and will inform communities and workers of the availability and use of the grievance mechanisms</p> <ul style="list-style-type: none"> • The Borrower will investigate any allegations of unlawful or abusive acts of security personnel, take action (or urge appropriate parties to take action) to prevent recurrence, and report unlawful and abusive acts to public authorities. • The Borrower should incorporate these requirements in the contracts and agreements to be signed with the security providers | |
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As referenced above, below is a chart regarding **ESS5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement** and what best practice is. The blue text lays out what is needed to meet best practice as set forth by the EIB unless otherwise noted and the red text lays out what is necessary to set new best practice based on International Law.

| | Comments | ESS5 |
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| Introduction | <ul style="list-style-type: none"> • All project affected people are entitled to share in the project's benefits • Recognition that women, children, the elderly, minorities, and persons with disabilities are disproportionately affected by involuntary resettlement • Those displaced should not be responsible for any costs of, or associated with, resettlement | <p>1. ESS5 recognizes that project-related land acquisition and restrictions on land use can have adverse impacts on communities and persons. Project-related land acquisition or restrictions on land use may cause physical displacement (relocation, loss of residential land or loss of shelter), economic displacement (loss of land, assets or access to assets, leading to loss of income sources or other means of livelihood), or both. The term “involuntary resettlement” refers to these impacts. Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use or access to productive resources that result in displacement.</p> <p>2. Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for those affected, as well as environmental damage and adverse socio-economic impacts in areas to which they have been displaced. For these reasons, involuntary resettlement should be avoided. Where involuntary resettlement is unavoidable, it will be minimized and appropriate measures to mitigate adverse impacts on displaced persons (and on host communities receiving displaced persons) will be carefully planned and implemented.</p> |
| Objectives | <ul style="list-style-type: none"> • Ensure the equal right of men and women to legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property as established in the Pinheiro Principles | <ul style="list-style-type: none"> • To avoid involuntary resettlement or, when unavoidable, minimize involuntary resettlement by exploring project design alternatives. • To avoid forced eviction. • To mitigate unavoidable adverse social and economic impacts from land acquisition or restrictions on land use by: (a) providing timely compensation for loss of assets at replacement cost regardless of the character of existing land tenure arrangements or income-earning |

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| | | <p>and subsistence strategies and (b) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed, active, free and meaningful participation free of coercion, pressure, or intimidation of those affected. ☐</p> <ul style="list-style-type: none"> • To assist displaced persons in their efforts to improve, or at least restore, their livelihoods and living standards. ☐ • To improve living conditions of poor or vulnerable persons who are physically displaced, through provision of adequate housing, access to services and facilities, and security of tenure. |
| Scope of Application | <ul style="list-style-type: none"> • This standard applies to all World Bank projects, including associated facilities, regardless of the source of financing • This standard applies to involuntary resettlement that is either directly or substantially related to World Bank-supported projects, including economic or physical displacement resulting from restricted access to productive resources | <p>5. This ESS does not apply to:</p> <p>(a) Voluntary, legally recorded market transactions in which the seller is given a genuine opportunity to refuse to sell the land and to retain it, and is accurately informed about available choices and their implications;</p> <p>(b) Impacts on incomes or livelihoods that are not a direct result of land acquisition or land use restrictions imposed by the project on the land of the affected persons or communities;</p> <p>(c) Management of refugees from, or persons internally displaced by, natural disasters, conflict, crime and violence;</p> <p>(d) Land titling/regularization activities; or</p> <p>(e) Regulation or planning of natural resources or land use on a regional or national level to promote sustainability.</p> |
| Project Design | <ul style="list-style-type: none"> • Priority given to exploring strategies that minimize displacement • The Borrower will demonstrate that displacement is for the purpose of promoting the general welfare and is reasonable and proportionate in regards to the general welfare • When determining the feasibility of projects requiring displacement, resettlement costs will be included in the total cost of the main investment project | <p>7. The Borrower will demonstrate that involuntary land acquisition or restrictions on land use are limited to direct project requirements for clearly specified project purposes within a clearly specified period of time. The Borrower will consider feasible alternative project designs to avoid or minimize land acquisition or restrictions on land use, especially where this would result in physical or economic displacement, while balancing environmental, social, and financial costs and benefits, and paying particular attention to impacts on the poor and vulnerable.</p> |
| Compensation and Benefits | <ul style="list-style-type: none"> • Where land has been taken, affected persons should be compensated with land of commensurate quality, size and value, or better. • The Borrower is required to offer to the affected persons an informed choice of either compensation in kind (land-for-land; land plot and house to replace affected land plot and house) or monetary compensation at the outset. The promoter is expected to comply with the choice stated by the affected persons. Whenever replacement land is offered, affected households should be provided with land for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the land taken. In exceptional cases when this is not possible, adequate | <p>8. When land acquisition or restrictions on land use (whether permanent or temporary) cannot be avoided, the Borrower will offer affected persons compensation at replacement cost, and other assistance as may be necessary to help them improve or at least restore their standards of living or livelihoods, subject to the provisions of paragraph 22 through 32 of this ESS.</p> <p>9. Compensation standards for categories of land and fixed assets will be disclosed and applied consistently (though compensation rates may be subject to upward adjustment where negotiation strategies are employed). In all cases, a clear basis for calculation of compensation will be documented, and compensation distributed in accordance with transparent procedures.</p> |

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| | <p>compensation must be provided.</p> <ul style="list-style-type: none"> • The promoter must ensure that compensation and income restoration measures are implemented without discrimination based on gender, race, ethnicity, color, language, religion or belief, political or other opinion, national or social origin, disability, sexual orientation or gender identify, or other prohibited grounds. Regarding gender, the promoter must ensure equal treatment of women during compensation and income restoration processes, especially with regard to women’s rights and interests in land, property, assets, and compensation and relocation assistance, even where these are not recognized in formal law. • replacement land and structures will be issued in a manner that allows for women to be sole or joint title holders | <p>10. Where livelihoods of displaced persons are land-based, or where land is collectively owned, the Borrower will offer the displaced persons an option for replacement in kind, unless it can be demonstrated that equivalent replacement land is unavailable. As the nature and objectives of the project may allow, the Borrower will also provide opportunities to displaced communities and persons to derive appropriate development benefits from the project. In the case of affected persons under paragraph 6 (c), resettlement assistance will be provided in lieu of compensation for land, as described in paragraphs 25 and 30(c).</p> <p>11. The Borrower will take possession of acquired land and related assets only after compensation in accordance with this ESS has been made available and, where applicable, resettlement sites and moving allowances have been provided to the displaced persons in addition to compensation.</p> |
| <p>Community Engagement</p> | <ul style="list-style-type: none"> • Resettlement plan shall clearly indicate how affected populations, including women, female-headed households, the elderly, persons with disabilities, minorities and other vulnerable groups have been effectively consulted and how their views were taken into account. • Separate consultations should be held for women, broken down by age group where possible • Host communities shall participate in the resettlement planning process • particular attention should be paid to the location and scheduling of consultation activities to ensure that people of all ages and social groupings can attend and participate with confidence and ease, and information should be disseminated with careful consideration as levels of literacy and networking may differ according to age, gender, economic status and other lines of social hierarchy/discrimination (AfDB) | <p>14. The Borrower will engage with affected communities, including host communities, through the process of stakeholder engagement described in ESS10. Decision-making processes related to resettlement and livelihood restoration will include options and alternatives from which affected persons may choose, where applicable. Disclosure of relevant information and participation of affected communities and persons will take place throughout the planning, implementation, monitoring, and evaluation of the compensation process, livelihood restoration activities, and relocation process. Additional provisions apply to consultations with Indigenous Peoples, in accordance with ESS7.</p> |
| <p>Grievance Mechanism</p> | <ul style="list-style-type: none"> • Grievance mechanism must be effective, independent, easily accessible, culturally appropriate, widely publicized, and well-integrated in the Borrower’s project management system | <p>15. The Borrower will ensure that a grievance mechanism for the project is in place, in accordance with ESS10 as early as possible in project development to address specific concerns about compensation, relocation or livelihood restoration measures raised by displaced persons (or others) in a timely fashion. Where possible, such grievance mechanisms will utilize existing formal or informal grievance mechanisms suitable for project purposes, supplemented as needed with project-specific arrangements designed to resolve disputes in an impartial manner.</p> |
| <p>Resettlement Planning and Implementation</p> | <ul style="list-style-type: none"> • All resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, must be consistent with the present guidelines and internationally recognized human rights principles, and completed before those who are to be resettled are moved from their original areas of dwelling • Regardless of the circumstances and without | <p>16. Where land acquisition or restrictions on land use are unavoidable, the Borrower will, as part of the environmental and social assessment, conduct a census to identify the persons who will be affected by the project, to establish an inventory of land and assets to be affected, to determine who will be eligible for compensation and assistance, and to discourage ineligible persons, such as opportunistic settlers, from claiming benefits. The social</p> |

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| | <p>discrimination, the promoter will ensure that affected persons or groups identified in the census, especially those who are unable to provide for themselves, have, during and after resettlement, safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood and subsistence sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. Particular focus should be paid to women, children, the elderly, and those with disabilities</p> <ul style="list-style-type: none"> • Resettlement plans should be based on recent information about size, cultural, economic and ecological characteristics of the population and the likely impact of displacement. Socio-economic surveys should describe i) the scale of displacement; ii) the standard household characteristics and full resource base of the affected population, including income derived from informal sector and non-farm activities, and from common property; iii) the extent to which groups will experience total or partial loss of assets, including control over resources, knowledge and skills; iv) public infrastructure and social services that will be affected; v) formal and informal institutions that can assist with designing and implementing the resettlement programs; and (vi) attitudes on resettlement options. | <p>assessment will also address the claims of communities who, for valid reasons, may not be present in the project area during the time of the census, such as seasonal resource users. In conjunction with the census, the Borrower will establish a cut-off date for eligibility. Information regarding the cut-off date will be well documented and disseminated throughout the project area.</p> <p>Fn.18 Where national law and tenure systems do not recognize the rights of women to hold or contract in property, measures should be considered will be taken to provide women as much protection as possible with the objective to achieve equity with men.</p> <p>17. To address the issues identified in the environmental and social assessment, the Borrower will prepare a plan commensurate with the risks and impacts associated with the project:</p> <p>(a) For projects with minor land acquisition or restrictions on land use, as a result of which there will be no measurable impact on incomes or livelihoods, the plan will establish eligibility criteria for affected persons, set out procedures and standards for compensation, and incorporate arrangements for consultations, monitoring and addressing grievances;</p> <p>(b) For projects causing physical displacement, the plan will set out the additional measures relevant to relocation of affected persons;</p> <p>(c) For projects involving economic displacement with impacts on livelihoods or income generation, the plan will set out the additional measures relating to livelihood improvement or restoration; and</p> <p>(d) For projects that may impose changes in land use that restrict access to resources in legally designated parks or protected areas or other common property resources on which local people may depend for livelihood purposes, the plan will establish a participatory process for determining appropriate restrictions on use and set out the mitigation measures to address adverse impacts on livelihoods that may result from such restrictions.</p> |
| <p>Forced Eviction</p> | <ul style="list-style-type: none"> • Recognition that forced evictions constitute violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, freedom from cruel, inhuman and degrading treatment, and freedom of movement. | <p>“Forced eviction” is defined as the permanent or temporary removal against the will of individuals, families, and/or communities from the homes and/or land which they occupy without the provision of, and access to, appropriate forms of legal and other protection, including all applicable procedures and principles in this ESS. The exercise of eminent domain, compulsory acquisition or similar powers by a Borrower will not be considered to be forced eviction providing it complies with the requirements of national law, international standards, and the provisions of ESS5, and is conducted in a manner consistent with basic principles of due process (including provision of adequate advance notice, meaningful opportunities to lodge grievances and appeals, and avoidance of the use of unnecessary, disproportionate or excessive force).</p> |

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| <p>Relocation Site</p> | <ul style="list-style-type: none"> • Relocation sites shall fulfill as a minimum the following conditions: <ul style="list-style-type: none"> ○ not be situated on polluted land or in immediate proximity to pollution sources that threaten the right to mental and physical health of the inhabitants; reference UN Committee on Economic, Social and Cultural Rights: General Comment 14 on the Right to the Highest Attainable Standard of Health ○ not be located in zones identified as potentially subject to disaster risk followed by a natural hazard; ○ not be on land used by communities which have been displaced as a result of violence or conflict; ○ be available and have the capacity to absorb the influx of resettled persons at acceptable density levels, i.e. resettlement should not lead to new resettlement. • Identified relocation sites must fulfill the criteria for adequate housing according to international human rights law. These include:(a) security of tenure; (b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants; (e) accessibility for disadvantaged groups, such as the elderly and those with disabilities; (f) access to employment options, health-care services, schools, childcare centers and other social facilities, whether in urban or rural areas; and (g) culturally appropriate housing. • Where persons with disabilities are identified, replacement housing will reflect principles of universal design • Relocation sites will be located as close as possible to the original place of residence and source of livelihood of those displaced • Resettlement sites in rural areas should consider the size of the resettled population in relation to the host community, specifically for environmental issues such as deforestation, overgrazing, soil erosion, sanitation, and pollution (OECD guideline) | <p>23. If people living in the project area are required to move to another location, the Borrower will: (a) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation; and (b) provide relocation assistance suited to the needs of each group of displaced persons. New resettlement sites built for displaced persons will offer living conditions at least equivalent to those previously enjoyed, or consistent with prevailing minimum codes or standards, whichever set of standards is higher. If new resettlement sites are to be prepared, host communities will be consulted regarding planning options, and resettlement plans will ensure continued access, at least at existing levels or standards, for host communities to facilities and services. The displaced persons' preferences with respect to relocating in preexisting communities and groups will be taken into consideration. Existing social and cultural institutions of the displaced persons and any host communities will be respected.</p> |
| <p>Physical Displacement:</p> | <ul style="list-style-type: none"> • People with formal land title, land use rights, customary or traditional rights to the land as well as those who occupy/use the land but have no formal title for objective reasons are eligible for compensation for land • Squatters shall be provided with resettlement assistance in lieu of land they occupy • Recognizing that cash compensation does not replace real compensation in the form of land and common | <p>24. In the case of physically displaced persons under paragraph 6(a) or (b) [<i>those with formal legal rights to land or assets (or without legal rights but with claim recognized or recognizable under national law)</i>], the Borrower will offer the choice of replacement property of equal or higher value, with security of tenure, equivalent or better characteristics, and advantages of location, or cash compensation at replacement cost. Where livelihoods of displaced persons are derived primarily</p> |

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| | <p>property resources (UNDP standard and OECD guideline), where livelihoods of displaced persons are derived primarily from land, preference will be given to culturally appropriate compensation in kind</p> | <p>from land, compensation in kind will, where possible, be considered in lieu of cash.</p> <p>25. In the case of physically displaced persons under paragraph 6(c) [those without recognizable legal right or claim to the land or assets they occupy or use], the Borrower will provide arrangements to allow them to obtain adequate housing with security of tenure. Where these displaced persons own and occupy structures, the Borrower will compensate them for the loss of assets other than land, such as dwellings and other improvements to the land, at replacement cost. Based on consultation with such displaced persons, the Borrower will provide relocation assistance in lieu of compensation for land sufficient for them to restore their standards of living at an adequate alternative site.</p> |
| <p>Physical Displacement: other provisions</p> | <ul style="list-style-type: none"> Measures, will be taken to ensure that those who encroach after the cut-off are not rendered homeless as a result of the project, and compensation for shelter measured at replacement cost will be provided where necessary | <p>26. The Borrower is not required to compensate or assist those who encroach on the project area after the cut-off date for eligibility, provided the cut-off date has been clearly established and made public.</p> <p>27. The Borrower will not resort to forced evictions of affected persons.</p> <p>28. As an alternative to displacement, the Borrower may consider negotiating in situ land development arrangements by which those to be affected may elect to accept a partial loss of land or localized relocation in return for improvements that will increase the value of their property after development. Any person not wishing to participate will be allowed to opt instead for full compensation and other assistance as required in this ESS.</p> |
| <p>Economic Displacement Plan</p> | | <p>29. In the case of projects affecting livelihoods or income generation, the Borrower's plan will include measures to allow affected persons to improve, or at least restore, their incomes or livelihoods. The plan will establish the entitlements of affected persons and/or communities and will ensure that these are provided in a transparent, consistent, and equitable manner and implemented without discrimination based on gender, race, ethnicity, color, language, religion or belief, political or other opinion, national or social origin, disability, sexual orientation or gender identity, or other prohibited grounds. The plan will incorporate arrangements to monitor the effectiveness of livelihood measures during implementation, as well as evaluation once implementation is completed. The mitigation of economic displacement will be considered complete when the completion audit concludes that affected persons or communities have received all of the assistance for which they are eligible, and have been provided with adequate opportunity to reestablish their livelihoods.</p> |
| <p>Economic Displacement</p> | <ul style="list-style-type: none"> Compensation in kind is the preferred approach when | <p>31. Economically displaced persons will be provided opportunities to improve, or at least restore, their means</p> |

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| <p>Compensation</p> | <p>livelihoods are land-based and such land should be situated as close as possible to the original place of residence</p> | <p>of income-earning capacity, production levels, and standards of living.</p> <p>(a) For persons whose livelihoods are land-based, replacement land that has a combination of productive potential, locational advantages, and other factors at least equivalent to that being lost will be offered where feasible. Where provision of suitable replacement land is not possible, economically displaced persons will be compensated at replacement cost for land (and other lost assets);</p> <p>(b) For persons whose livelihoods are natural resource-based and where project-related restrictions on access envisaged in paragraph 4(c) apply, measures will be implemented to either allow continued access to affected resources or to provide access to alternative resources with equivalent livelihood-earning potential and accessibility. Where common property resources are affected, benefits and compensation associated with natural resource usage may be collective in nature; and</p> <p>(c) If it is demonstrated that replacement land or resources are unavailable, the Borrower will offer economically displaced persons options for alternative income earning opportunities, such as credit facilities, skills training, business start-up assistance, employment opportunities, paying particular attention to the needs of women and persons with disabilities, or cash assistance additional to compensation for assets. Cash assistance alone, however, frequently fails to provide affected persons with the productive means or skills to restore livelihoods.</p> |
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