March 15, 2016

Via Electronic Mail

The World Bank
1818 H Street NW
Washington, DC 20433

Re: Comments on the Second Draft Environmental and Social Framework

Dear Safeguards Drafting Team,

Thank you for the opportunity to comment on the proposed “Environmental and Social Framework: Setting Environmental and Social Standards for Investment Project Financing (Second Draft)” (ESF). We began participating in this process when the Approach Paper was released and have continued to actively engage in consultations both through written submission and in-person. We believe that the World Bank (Bank) safeguards are vital to protecting affected communities and the environment. While we appreciate the expansion of these safeguards into new areas including labour rights and climate change, this second draft ESF does not alleviate our concerns about the Bank’s dwindling accountability. In these comments we will do our best not merely to reiterate our previous comments, but to prioritize comments on the areas that continue to be of concern.

We recognize the enormity of the task that the World Bank is undertaking in revising its entire environmental and social safeguard framework, as well as the difficulty of getting all of the Bank’s member countries to agree on the best approach. This second draft ESF has some improvements over the previous ones, and we appreciate the positive aspects of the new draft ESF, such as eliminating the “opt out” clause for ESS7, among others. However, the overall structure of the ESF, particularly in downgrading the importance of the appraisal process and enhancing the Bank’s discretion to approve projects with the hope of future compliance, make the proposed ESF a significant dilution of the safeguards.

In proposing this shift in responsibilities, the World Bank has emphasized its desire to take risks and to fund projects in high risk sectors, and that this approach requires greater flexibility and less strict standards. Of course, the risk of lower standards is not borne by the Bank or the Borrower, but by the communities the Bank purports to benefit and their environment. The communities bear the risk of discretionary safeguards and weaker appraisal, monitoring, and accountability systems. For high risk projects to lead to positive development outcomes, the standards must clearly be protective, monitoring must be robust, and compliance must be assured.

1 World Bank, Environmental and Social Framework: Setting Environmental and Social Standards for Investment Project Financing (Second Draft for Consultation) (July 1, 2015) (providing a framework and system of all the environmental and social safeguards for Investment Project Financing and consisting of A Vision for Sustainable Development, the World Bank Environmental and Social Policy for Investment Project Financing, and ten Environmental and Social Standards) [hereinafter ESF: Second Draft].
To address Borrower concerns over meeting clear standards, the Bank should not decrease or weaken the requirements in the environmental and social standards (ESSs), but rather it should defend the importance of a rules-based approach to assuring positive development outcomes. The Bank’s and Borrower’s narrow focus on the costs of complying with strong standards continues to ignore the benefits—both in terms of better development outcomes and in terms of avoided harm to communities. The Bank should champion the benefits of such standards and explicitly stake out its aspiration to fund high quality—not just high quantity—projects. The Bank’s current draft, if adopted, will erode the Bank’s position as a leader in effective development financing and undermine its competitive advantage among the growing number of international development institutions. Let others do the most and largest projects; the Bank needs to position itself as doing the best projects (which assumes projects meet environmental and social safeguards).

The Bank can and should also focus on improving Borrower frameworks and keeping high environmental and social standards. If the Bank is going to approve projects through Borrower Systems, it cannot do so unless the Borrower Systems are equivalent to the Bank’s own policy or clear requirements and timeframes in which to meet them are enumerated at the time of appraisal. Borrower systems should not be used in High Risk (currently identified as Category A) projects unless at the time of appraisal the Borrower systems are demonstrably equivalent to the ESSs. The Bank should also require that all projects comply with applicable national and international law, including the international treaty obligations of the country in which the project is being developed. To assist in strengthening Borrower frameworks, the new ESF must be accompanied by an increase in resources to improve the capacity of Bank staff and to build Borrower capacity to comply with best practice safeguards both through training and ensuring that the loans include provisions for monitoring and capacity-building to ensure compliance.

Below, we start by detailing our broad concerns with the ESF.

**Appraisal, Disclosure and Accountability at the Board**

A major shift in the ESF from current practice is explicitly to shift the emphasis from the appraisal period to implementation throughout the project. An emphasis on implementation of the ESSs throughout the project is long overdue but it should not come at the expense of a robust appraisal process that adequately informs the Board of the ESS risks prior to project approval. The current draft dilutes the appraisal process and undermines the Board’s role. The dialogue and approval that takes place at the Board has been a significant and important check on the many pressures that otherwise can lead the Borrower (and Management) to shortchange environmental and social risks. The ESF should be clarified to require that all relevant documents, including the environmental and social assessment and the Environmental and Social Commitment Plan (ESCP), shall be disclosed in advance of Board approval. It should also be clear that affected people have had an opportunity to review and consult on the project, with full documentation available, as part of the appraisal and before Board decision. For High Risk (Category A) projects, disclosure of key environmental and social assessment documents, including the Environmental and Social Impact Assessment (ESIA) and ESCP, in the project area should be at least 120 days before Board decision. Any significant changes to the projects that substantially
increase environmental and social (E&S) risk or change the risk categorization should also be submitted to the Board for discussion and approval.

Due Diligence

Under the ESF, the Bank’s primary role is to conduct its own due diligence of proposed projects and to monitor implementation of applicable standards. The Bank’s due diligence obligations need to be significantly clarified. Primarily the Bank is responsible for determining whether the project can be done in accordance with the ESSs or whether it can meet objectives materially consistent with the ESSs when the Bank is relying on the Borrower’s Framework. According to paragraph 34 of the “Bank Procedure: Environmental and Social Procedure, Deliberative Working Draft” (Procedures), to make this determination the Bank relies on information provided by the Borrower. Paragraph 30 of the Environmental and Social Policy (ESP) says that the Bank will “[review] the information provided by the Borrower” and that the “Borrower is responsible for ensuring that all relevant information is provided to the Bank so that the Bank can fulfill its responsibility ….” In undertaking its due diligence, the Bank should review not only the documentation provided by the Borrower, but should also review third-party reports or other information related to the project. Relying solely on the information the Borrower gives creates a situation in which the Bank could miss vital information. As noted in paragraph 35 of the Procedures, when the project is High or Substantial Risk the due diligence process should also always include a site visit; the included caveat “as appropriate” should be removed from paragraph 35.

There is also a lack of clarity on what happens if the risk classification changes following the Bank’s due diligence procedures. If, after undertaking its due diligence and as it can do in accordance with paragraph 37(a) of the Procedures, the Bank determines that a project should have been classified as “High or Substantial Risk”, than the procedures must ensure a site visit by an environmental and/or social specialist. This remains unclear in the ESP and the accompanying Procedures and is a significant gap given the potential risks associated with the projects.

Monitoring

With more discretion being retained to comply with the ESSs later in the project cycle, compliance with the ESSs will require significantly more monitoring. It is welcome that the Bank will monitor the project against the ESSs and the ESCP. However, all monitoring reports, whether conducted by the Borrower or the Bank, should be publicly disclosed and thus open to scrutiny and comment. Just because monitoring reports are currently viewed as belonging to the Borrower does not prevent the Bank from requiring their disclosure as a condition of the lending. Any information sensitive to national security (a concern raised by the Bank in consultation) can be redacted on a case-by-case basis.

This refers to the draft Bank Environmental and Social Procedure released with the second draft of the ESF on July 1, 2015. The Bank Procedures accompany the ESF and provide guidance on the Bank’s obligations as set forth in the Environmental and Social Policy (ESP) of the draft ESF. Thus, it provides an integral part of the Bank’s overall environmental and social safeguard framework. See World Bank, Bank Procedure, Environmental and Social Procedure (Deliberative Working Draft) (July 1, 2015) [hereinafter Draft Procedures].
Moreover, the Bank should use third-party monitors in all projects involving “high” or “substantial” risk. Paragraph 55 of the ESP currently indicates that “where appropriate” the Bank will require the Borrower to have third party monitors. Additionally, third party monitors should be required to monitor the actions identified in paragraph 56. When corrective and preventative measures or actions are required in the ESCP, third party monitors should be required to ensure that these are being undertaken.

Finally, given the emphasis on post-appraisal implementation and compliance with the ESSs throughout the project, the Bank should embrace and enhance the role of its existing, independent third party monitoring institution—namely, the Inspection Panel (Panel). The ESF thus should explicitly endorse the Panel’s role in evaluating the entire project’s compliance with the ESSs throughout the life of the project, and regardless of whether the failure is due to the Bank or the Borrower. The point is not to assign blame, but to promote development effectiveness by ensuring that the project complies with the ESSs and the terms and deadlines in the ESCP.

Accountability

We support the Bank’s general multi-layered, integrated approach to accountability and appreciate that all levels can work together to ensure accountability. We nonetheless have several serious concerns with the ESF’s approach to accountability.

In regard to access to information, it is critical that stakeholders can review all relevant project documents prior to Board approval. The policy needs to set out clear requirements that main E&S documents, including any assessment and the ESCP, are disclosed before appraisal. This will not reduce any discretion or flexibility as the ESCP can still have clear time frames for achieving compliance, but all steps and time frames should be clear before Board approval. The Board’s review informed both by complete documentation and by informed stakeholder engagement is a key avenue for reducing E&S risk on communities.

The shift toward greater flexibility for the Bank and Borrower, more reliance on borrower systems, and an emphasis on achieving project compliance later in the project cycle leaves the Bank’s role mostly procedural and highly discretionary. The proposed approach greatly restricts the standards against which the Inspection Panel will assess compliance in the event a community is harmed. For an accountability mechanism to function properly, there need to be clear and predictable standards that are known and understandable for the community. Instead, the new ESF contemplates regularly delaying compliance based on a project-specific ESCP that can be flexibly adapted throughout the project cycle. The ultimate timeframe for compliance is up to the discretion of the Bank and Borrower. Thus, if a community is harmed by a project, Bank Management or the Borrower could just say that they are working under the ESCP to meet the ESSs in time. The Panel would be limited to seeing whether the Bank had met its procedural due diligence and monitoring requirements, but would have little to say about the substantive compliance with the ESSs. Moreover, the Bank has authority to take steps but is rarely required to, for example in paragraph 27 of the ESP where the Bank has the “right” to require the Borrower to revise the ESCP. If the Bank does not have to take such a step, then what does the Panel evaluate?
To fix this glaring accountability gap and remain faithful to its goal of being more focused on outcomes, the policy should simply enable the Panel to assess outcomes and whether they are materially consistent with the objectives of the ESSs. This would be an effective quid pro quo for introducing so much discretion in the Bank’s due diligence and supervisory roles.

This policy places significantly more emphasis on project-level grievance mechanisms (PLGMs). Although we support the requirement for PLGMs, little evidence yet exists that PLGMs are effective. The ESF (including in ESS10) needs to provide further conditions for establishing effective PLGMs. At a minimum, the mechanisms must be independent, accessible, transparent, legitimate, predictable, effective, and well-resourced. Additionally, they should be developed in consultation with potential users of the mechanism.

Additionally, the Bank’s reliance on the Grievance Redress Service (GRS) is also concerning. The GRS is mentioned in the ESP as a viable option for complainants. However, despite its being operational for a year and numerous meetings with the GRS staff, we remain unclear on the role and functions of the GRS. For it to be a legitimate option for communities there needs to be predictability, and that would require transparent and effective procedures and sufficient resources to respond to claimants. The ESF also suggests in its wording, albeit implicitly, that claimants must first try the GRS before approaching the Panel. This is a very sensitive issue and should be addressed in the final policy.

Disclosure

Significantly, one of the major flaws of the ESF is that it lacks clear requirements for the disclosure of information. The ESF does not provide details on when information will be disclosed to project-affected communities and other relevant stakeholders. The vagueness around disclosure seems to be part of the deliberate effort to place more discretion with the Bank management, but such discretion should not extend to disclosure. The ESF needs to provide clear requirements and timeframes for disclosing critical documents including, but not limited to, at least:

- the environmental and social impact assessment,
- the risk categorization,
- any resettlement action plan (RAP),
- any indigenous peoples plan,
- the ESCP,
- all monitoring reports, and
- any post-approval changes to the ESCP or to risk categorization.

Paragraph 49 of the ESP indicates that documents will be “made available in a timely manner,” however what is timely must be specified. For projects with substantial or high risk, the first four project documents should be disclosed as soon as possible but no later than 120 days prior to project approval. You cannot have effective and meaningful stakeholder engagement without allowing communities an opportunity to consult after having the time to review project documents and before the lending decision is made. In those cases where some elements of the project cannot be fully assessed, the ESCP should set a clear timetable for public disclosure and
the Bank’s financial payments should be phased and conditioned on completion and disclosure of the missing information.

**High Risk (currently identified as Category A) Projects**

Many of the disagreements between civil society and the Bank over its new policies, including for example the ESF’s vague timeframes and disclosure requirements, the contemplated use of borrower systems, the embrace of adaptive management, and the limits to explicitly adopt human rights norms, result from the Bank envisioning routine projects and civil society envisioning high risk projects. The conflict would be far less intense and compromise more likely, if the Bank agreed to avoid funding Category A projects all together, or at least agreed to treat them differently. The reality is that Category A projects come with such high environmental and social risks, in most cases the risks cannot be mitigated and the project is unlikely to deliver positive development outcomes. Thus, the Bank should agree, for example, that:

- the ESSs will be fully met prior to Board approval of any High Risk (Category A) project,
- any change that occurs through adaptive management to a High Risk (Category A) project must be approved by the Board,
- borrower systems will not be used instead of the ESSs in any High Risk (Category A) project,
- the Bank should apply its own ESSs, and not a “common approach” to High Risk (Category A) projects co-financed with other financiers, and
- no financial intermediary shall lend to a High Risk (Category A) subproject.

By tightening the rules around high-risk Category A projects, it would be easier to expand discretion and flexibility on other projects.

Many of these overarching comments will be addressed in more detail in our specific comments on each section of the ESF, including the vision statement, ESP, and ESSs.

**A Vision for Sustainable Development**

The vision statement provides a good overall framing for the comprehensive safeguards; however, it is not enough to address human rights or other issues in the aspirational vision statement and not in the operational ESF or ESSs. Of primary concern is that the approach to human rights in the ESF must be more than aspirational and must be based in international law. While the duty of complying with human rights treaties belongs primarily to States, the Bank does have the responsibility to ensure that its member states are not engaging in activities that violate their international human rights obligations. States cannot merely forget their responsibilities under international human rights law when undertaking a project funded by the World Bank. In the second draft of the ESF, references to human rights has not been improved, but rather weakened by saying in paragraph 3 that the World Bank “shares the aspirations of the Universal Declaration of Human Rights.” While we support referencing one of the documents that forms the foundations of rights, the Bank undermines its importance by calling it aspirational. Additionally, the Bank should eliminate the phrase “in a manner consistent with its Articles of Agreement” from the following sentence. The Bank has continually relied on a dubious interpretation of its Articles of Agreement to undermine considering human rights at all. The
Bank is striving to achieve shared prosperity and this cannot be done if human rights are not respected, protected, and promoted. The ESP should include a requirement that bank-funded projects will be implemented in a way that respects human rights. At the very least the ESP should require the Bank to respect a Borrower’s international treaty obligations and should ensure that bank-funded projects will not run afoul of them.

**World Bank Environmental and Social Policy for Investment Project Financing**

The Environmental and Social Policy (ESP), which sets forth the binding requirements for the Bank, has made some positive changes and has added needed details at points, but it still has a number of issues.

*Overreliance on the Bank’s Discretion:* We are pleased to see that in this draft, the Bank has made some positive changes to the ESP that reflect comments we made on the previous draft, including the change in paragraph 5 that projects are “required to meet” the ESSs. However, there remain problems throughout the ESP due to its continued reliance on discretionary language. Throughout the ESP, the Bank continues to state that the Borrower can meet the ESSs “in a manner and a timeframe acceptable to the Bank.” We appreciate that the language in the footnote has been moved into paragraph 16 to help define what that phrase means, though we remain concerned that it provides too many opportunities for projects to delay or avoid compliance with the ESSs. Without further defining parameters of “in a manner and timeframe acceptable to the Bank,” beyond that it will be based on the risks of the project and the Borrower’s capacity among other things, means that communities affected by these projects will never be able to rely on a clear standard. Further, it means that Borrower compliance is negotiated on a case-by-case basis. As noted above, this discretion should never be allowed in High Risk (Category A) projects and the Inspection Panel should be enlisted to evaluate compliance throughout the project cycle.

At numerous points in the ESF and the accompanying procedures, the Bank says it will assess whether the Borrower’s system will be able to “achieve objectives materially consistent with the ESSs.” This language is vague especially considering that the objectives for each ESS are not always clear. The objectives of each ESS should be more clearly and comprehensively stated if they are to be given such prominence in the approach to borrower systems.

The Bank’s discretion is again concerning in paragraphs 15-19. The Bank’s requirements specify that the Bank “will require” the Borrower to perform a number of tasks. The Bank should also clarify that its responsibility is to ensure that the Borrower meets these requirements. A failure of the Borrower to comply is a failure of the Bank to supervise.

In order to ensure that the Bank’s discretion does not lead to increased risk for communities, as noted above, the ESP needs to require that project documents, including the ESIA and ESCP, must be disclosed prior to project-approval and that communities have ample time to review and consult before project approval.

*Objectives and Principles:* While building the capacity of Borrowers’ environmental and social frameworks is a lofty goal, the Bank needs to ensure that when it supports a project the
project does not violate the ESF. As such, the final sentence of paragraph 2 should be amended to say that “The Bank will assist Borrowers in their application of the ESSs to projects supported through investment project financing in accordance with this Environmental and Social Policy for Investment Project Financing (Policy) and ensure that the ESSs are complied with.”

Paragraph 3(b): The phrase “as and where required” should be eliminated as the Bank should always support the Borrower in engaging with communities, having meaningful consultations, and providing project-based grievance mechanisms. These are critical to sustainable development and the Borrower must comply with ESS1 and ESS10 for all projects, as such the Bank should always provide support.

Vulnerable People: We commend and support the Bank for including a definition of “disadvantaged or vulnerable” individuals and groups. It is important that the Bank continue to list all vulnerable groups in this definition, including gender, sexual orientation, and gender identity. While we understand the challenges of working in different countries with different cultures and legal regimes, as a public-financing institution the World Bank should ensure that when it finances projects it does not do so in a way that perpetuates discrimination. The Bank cannot meet its goal of “promoting shared prosperity” if it does not ensure that all disadvantaged or vulnerable peoples are protected and treated equally in its projects.

Risk Classification: The risk categorization laid out in the ESP and in the draft binding Bank Procedures (Procedures) is of particular concern. The additional consideration of legal and institutional frameworks and governance structures, among others, in determining risk categorization is welcome. However, the ESP should require the Bank to publicly disclose its risk classification and the reasons for it prior to project approval. Similarly, if a risk classification is changed, as is provided for in paragraph 21 of the ESP, the Bank should again publicly disclose the change and the reasons supporting its decision. Further, in reviewing risk classification the Bank should consider information provided by third-parties.

Additionally, the descriptions of High and Substantial Risk projects in the Bank Procedures are very concerning. The Procedures specify that the Bank will classify a project as High Risk when its likely to have a “wide range of significant adverse risks and impacts on human populations or the environment,” when it’s in a high-value or sensitive area, when some risks and impacts cannot be mitigated, in areas with a history of unrest, and where stakeholder engagement is weak, to name a few. Additionally, under paragraph 24(a), in determining when a project is likely to have a “wide range of significant adverse risks and impacts” the Bank will consider whether the risks or impacts have “the majority or all of the following characteristics: (i) long term, permanent or irreversible … and impossible to avoid entirely due to the nature of the project; (ii) high in magnitude and/or in spatial extent …; cumulative and/or transboundary in nature; and (iv) a high probability of serious adverse effects to human health and/or the environment ….” It seems unfathomable that a project would need to have the majority of the prior characteristics in order to be High Risk, especially if it has other specified risks. It is concerning that projects with these characteristics would still be considered and leads to the serious question of whether any projects are too risky for Bank financing? The Bank should establish an Exclusions List, consistent with past practice and the IFC’s exclusion list.
The description of **Substantial Risk** projects is equally concerning. According to paragraph 25 of the Procedures, **Substantial Risk** projects include projects that “may not be as complex as **High Risk** projects,” that are “mostly temporary, predictable and/or reversible …,” where “a few of the significant adverse ES risk and impacts … cannot be mitigated or specific mitigation measures require complex and/or unproven mitigation or compensatory measures …,” and that “may give rise to significant social conflict or harm or significant risks to human security,” among others. These risks all seem as though they belong to **High Risk** projects. It is particularly concerning given that the amount of due diligence by the Bank and the requirements that the Borrowers must meet for **Substantial Risk** projects is lower than for **High Risk**. Further, subprojects and FI projects that are deemed **Substantial Risk** only have to meet national law requirements and not the ESSs. This means that a number of projects that pose an extreme risk to the environment and communities will be excluded from having to meet the ESSs.

**Use of Borrower Frameworks:** The use of Borrower Frameworks remains a concern. In order for the Bank to have a positive impact, there must be a rigorous and objective test set-up to evaluate the Borrower’s Framework. The Bank needs to provide more detail on the methodology and clear guidance for the evaluation of a borrower’s framework so that the process is transparent and predictable. The current draft, and its standard of assessing whether a Borrower’s Framework is “materially consistent with the ESSs,” remains vague and problematic. Neither the ESP nor the Procedures clearly define what would make a framework consistent. Critically for the proposed approach, the objectives of the ESSs are vague and could mean that a wide-range of frameworks with more or less protection could arguably be consistent with the objectives. Each of the ESSs objectives should be reviewed to ensure they are clear and comprehensive.

More specifically, paragraph 23 should be modified by substituting “will” for “is likely to”; paragraph 23 would then read: “The Bank supports the use of the Borrower’s existing environmental and social framework … providing this will be able to address risks and impacts of the project ….” Additionally, as with other parts of this ESP, Paragraph 27 needs to be modified and the caveat “by the Borrower” should be deleted, so that it reads “Where the Bank has been notified of a significant change in the Borrower’s ES Framework ….” This is vital, as the Bank should not be reliant solely on the Borrower.

The use of borrower frameworks is now fully at the discretion of the Bank (paragraph 24). Borrower systems should not be used for Category A (**High Risk**) projects, and there should be a five-year moratorium on using borrower systems for ‘**Substantial Risk**’ projects. This will limit the risks borne by communities of using an unproven approach to borrower systems instead of the ESSs.

**The Environmental and Social Commitment Plan (ESCP):** The ESCP as described in paragraph 45-47 is a critical part of the Bank’s new discretion-laden approach and is the centerpiece for ensuring compliance with the ESSs according to the Bank. Given the ESCP’s vital importance to the new system, the following revisions are critical to the integrity of the whole approach:
• the ESCP must be disclosed during appraisal before Board approval of the project;
• the Bank must “ensure that” the Borrower meets the requirements and not merely “require” the Borrower to do so as paragraph 46 currently states; the Bank needs to take responsibility for ensuring that the Borrower meets its obligations;
• the legal agreement should always, not “as necessary,” include an obligation for the Borrower to comply with the ESCP (and not just be obligated to support its implementation) (paragraph 45);
• any changes to the ESCP or any significant non-compliance with it should be made public immediately and the Board should be notified;
• paragraph 46 should be modified to specify that the Bank will review the status of the ESCP’s implementation at least annually (and not just in timeframes to be decided) and disclose its report; and
• the Bank should specify what the redress is if the ESCP is not being met.

Additionally, as part of this system the Bank should establish a public registry of all ESCPs as part of its information disclosure requirements laid out in paragraphs 48-49. This ESCP tracking registry should be public, include all changes to the ESCP made after appraisal, all of the environmental and social monitoring reports, and any non-confidential complaints made with respect to the implementation of the ESCP and the project’s compliance with the ESSs. This tracking system would provide a necessary tool for the public and the Bank Board so that delayed compliance does not result in noncompliance. Creating a public ESCP Tracking Registry would help the Bank ensure it had the necessary monitoring provisions in place and would enable greater social monitoring of Bank projects.

Adaptive Risk Management: The Bank has heralded adaptive management as a positive new development. While being able to adjust in the middle of projects is useful given that unforeseen things can happen, it is concerning that the Bank will allow this in all projects. We raised a number of concerns in our previous comments related to adaptive risk management, and those concerns remain.

Of utmost concern, in this draft, the word “minor” has been eliminated as a modifier for “project changes” in paragraph 47. This allows the Borrower to have almost endless discretion to modify the project provided that it takes the proper steps, which are unknown, in accordance with the ESCP. Potentially, this could allow a project to change from one that is low risk to substantial risk or high risk without having undergone the proper pre-approval procedures. The ESP contemplates that the Bank will monitor projects and adjust the risk classification as necessary. While the Bank acknowledges, for instance in paragraph 38 regarding subprojects, that when a risk-classification is changed, the Borrower, in consultation with the Bank, will have to apply the relevant requirements of the ESSs for the new classification; it does not specify how this will be done. For instance, if a project starts as Low or Moderate Risk and is reclassified as Substantial or High Risk, will new environmental and social impact assessments have to be done? Will the project be halted so as to allow for disclosure of documents and consultation with affected communities? The ESF needs to be significantly clearer on the procedures for recategorization and must require that any proposed change to a higher risk categorization will be disclosed publicly and subject to Board approval.
Additionally, the ESP needs to specify conditions that must be met for the Borrower to make post-approval changes to the project as part of adaptive management. These conditions should include, at a minimum, the public release of a report identifying the reasons for the change, the proposed modifications, and the new timelines and details on how compliance with the ESSs will be achieved, consultation with affected stakeholders about the proposed changes, and notification to the Board of any changes that will affect project outcomes.

**Co-Financing/Common Approach:** The development finance world is expanding as new banks and new funds come into existence to provide project financing. As such, we appreciate the Bank’s desire to harmonize its approach with other institutions and recognize that this will benefit Borrowers. As with Borrower Frameworks, there needs to be greater clarity on what “will enable the project to achieve objectives materially consistent with the ESSs” means. The Bank must ensure that when co-financing a project, the standards used, if they are not the Bank’s, must be equivalent or better than the Bank’s standards. The Bank cannot use co-financing as a way to fund projects that do not meet the ESF. The Bank’s ESSs should apply to all High Risk (Category A) projects regardless of any cofinancing.

Accountability is also of concern in regards to the common approach. If the Bank agrees on a common approach or allows for the application of another agency’s environmental and social requirements, it is unclear who will be able to assess compliance. The ESP and accompanying Procedures indicate that the Bank will consider policies, standards, and implementation procedures when determining whether to use a common approach, however, it is unclear whether this will include the an evaluation of the accountability mechanism. Further, a common approach that deviates from the Bank’s environmental and social standards will make it more difficult for the Inspection Panel to assess compliance in the event that a community is harmed and files a complaint.

**Subprojects and Associated Facilities:** The inclusion of details regarding the Bank’s responsibilities regarding subprojects is welcome especially given that subprojects have the potential to cause substantial harm. However, paragraph 35(a) should be changed so that the Borrower’s environmental and social assessment of both High Risk and Substantial Risk subprojects must be in accordance with the ESSs and not just national law. As discussed earlier, the Substantial Risk classification potentially includes projects that may cause irreversible harm. Further, the clause “as appropriate” should be deleted from the second sentence. Ideally, the Bank should prohibit any subproject that is High Risk (Category A). At the very least, when the Bank is not satisfied with the Borrower’s capacity, it should undertake prior review and approval of all High or Substantial Risk projects. In paragraph 37, Substantial Risk subprojects should also be required to meet the ESSs and not merely national law.

Similarly, we also appreciate the inclusion of associated facilities in the draft and appreciate the improvement from the first draft so that Borrowers are now required to demonstrate why they cannot exercise control or influence over the facilities.

**Consultation and Monitoring:** We commend the Bank for eliminating the opt-out clause in regards to indigenous peoples. Additionally, we appreciate that the Bank is taking on the responsibility of evaluating whether Indigenous Peoples are in the project area and the
responsibility of consulting the Indigenous Peoples (paragraph 51). We also support the inclusion of Free, Prior, and Informed Consent (FPIC).

We remain concerned about monitoring as is detailed above. Additionally, the Bank should “ensure” that the Borrowers consult with stakeholders (paragraph 50). Further, the Bank should engage in consultation activities for High and Substantial Risk projects, so that it can ensure that the Borrower is conducting them in a manner consistent with ESS10. The provision should also specify that the Borrower will consult interested stakeholders during the appraisal phase and prior to project approval. Further, the consultation should include consultation on the ESCP, the RAP, the indigenous peoples plan, and the ESIA, among others.

Grievance Redress & Accountability: The paragraphs regarding accountability and grievance mechanisms in the ESP lack clarity and mischaracterize the role of the Inspection Panel and its relationship to other grievance redress systems. Paragraph 58, related to grievance mechanisms and accountability has significant problems. It needs to include the World Bank Inspection Panel (“Project-affected parties may submit complaints regarding a Bank-financed project to the project grievance mechanism or appropriate local grievance mechanism, the World Bank’s corporate Grievance Redress Service (GRS), or the independent accountability mechanism for the World Bank, the Inspection Panel.”) Further, the following sentence should clarify the role of the GRS … “The GRS is the World Bank management’s window for receiving complaints directed at management. The GRS ensures that complaints received are promptly directed to the appropriate unit of the Bank so that they can promptly address project-related concerns.”

Additionally, the sentence about the Inspection Panel needs to be accurate. As currently worded, paragraph 58 implicitly suggests that the Panel is the last resort after the project level grievance mechanism and the GRS. Further, the sentence describing the Panel does not accurately reflect the eligibility requirements for filing a complaint with the Panel and instead requires more than the Panel requires. While complainants do have to try and alert Management, they do not need to give Bank Management “a reasonable opportunity to respond.” The sentence should instead read, in its entirety, “Project-affected parties may submit their complaint to the World Bank’s independent Inspection Panel.”

Further, Paragraph 57, should be amended to include that project level grievance mechanisms will disclose the existence of the Panel. The following sentence should be added: “The Borrower is required to disclose the existence of the World Bank Inspection Panel. Additionally, the project-level grievance mechanism must disclose the existence of the World Bank Inspection Panel.”

Environmental and Social Standards (ESSs)

We appreciate the expansion of coverage embodied in the ESSs, however, safeguards are on as good as they are enforced and complied with. The following comments are specific to each of the ESSs and highlight the areas in which we think they should be improved.
ESS1: Assessment and Management of Environmental and Social Risks and Impacts

We would like to thank the Bank for considering civil society’s comments submitted on the previous draft. We appreciate the improvements the Bank has made to this ESS, including the expansion of the social risks and impacts listed in paragraph 26(b) and the inclusion of the various annexes that further detail the ESIA and ESCP requirements. We are still gravely concerned with the dependence on the Borrower to provide crucial information – upon which the successful application of these Standards to a project depends – without any requirements for the Bank or a third party to verify the information.3 Below are further comments related to the changes made to ESS1.

Use of Borrower Frameworks. As noted above, we have significant concerns about the Use of Borrower Frameworks. The following paragraphs highlight concerns specifically related to paragraphs regarding Use of Borrower Frameworks in ESS1.

We commend the Bank for taking into consideration the many concerns we and other members of civil society have voiced about the use of the Borrower’s Environmental and Social Framework in implementing a project. We appreciate that the ESS has further clarified that use of Borrower frameworks is not the default approach, but something the Borrower may request (paragraph 18).4 Despite clarifying that Borrower Frameworks will be considered only on request, the additional language does not provide much clarity on when using Borrower Frameworks may be acceptable to the Bank. It is worrisome that the Bank did not create any specific guidance that further explains exactly how Bank staff will be analyzing the Borrower’s existing environmental and social framework. We recognize that footnote 13 outlines what is considered to be the Borrower’s ES Framework, but we find this to be insufficient. As we expressed in our previous comments,5 the section of this ESS that outlines the use of Borrower’s frameworks does not actually require the national system to meet the requirements of the ESS, but instead requires that they “enable the project to achieve objectives materially consistent with the ESSs.”6 This ambiguous language allows the Bank and Borrower considerable discretion to determine what exactly would constitute ‘materially consistent’ with the objectives of the ESSs, particularly given the existing objectives of the ESSs are sometimes vague.

Environmental and Social Assessments: Mitigation Hierarchy Concerns. The mitigation hierarchy established in the Objectives section of ESS1 provides Borrowers far too much discretion in determining what the risks and impacts are that need to be mitigated. For example, subsection (b) of the mitigation hierarchy in the “Objectives” for ESS1 states “where avoidance is

3 Including the identification of stakeholders, information relating to the Borrower’s national E&S Framework, all the information collected and included in the environmental and social assessments, etc.
4 ESF: Second Draft, supra note 1, at ESS1, para. 18 (stating “the Borrower may request the Bank to consider the use of all, or part, of the Borrower’s existing environmental and social framework.” (emphasis added)).
6 ESF: Second Draft, supra note 1, at ESS1, paras. 18-20.
not possible, minimize or reduce risks and impacts to acceptable levels.” There is a significant difference between “minimizing” and “reducing”; by presenting “minimize” and “reduce” as equal options, it allows the Borrower to choose the easier of the two options (reduction) regardless of what is best for the community and environment. The discretion is reinforced through use of the undefined term “acceptable levels.”

Additionally, the qualifier “where technically and financially feasible” needs to be eliminated from paragraph 25, with respect to compensating or offsetting residual risks or impacts. All residual risks or impacts should be compensated or offset—and if such compensation or offset is not feasible—you must move back up the hierarchy and eliminate the risk or impact. The Bank should ensure that the Borrower has the capacity and means to compensate or offset impacts that cannot be mitigated and this should be built into the loan. It is not enough for the Bank to “provid[e] guidance to assist the Borrower in developing appropriate measures consistent with the mitigation hierarchy …” as is required by paragraph 30 of the ESP. If significant risks and impacts cannot be offset or compensated or eliminated, then the Bank must not approve the project and that should be reflected in this policy.

Environmental and Social Assessments: Risk Classification. In addition to the concerns we have expressed previously in these comments regarding risk classification, we are also extremely concerned with the Bank’s lack of explanation of the risk classifications in ESS1, especially since it determines the scope of the application of this ESS. The different classifications are referenced in 4 different paragraphs in ESS1, but they are not defined or explained in any way in the ESS. Given the impacts these classifications have on the implementation of this ESS and the success of these safeguards, ESS1 should explicitly reference the ESP and Bank Procedures in reference to what the categories are and their identifying characteristics.

Further, and as we highlighted in regards to other sections of the ESF, both High and Substantial Risk subprojects should have to comply with the ESSs and not just national law in regards to the level of environmental and social assessment, project preparation, and implementation. Paragraphs 29 and 30 should be amended accordingly.

Similarly, Paragraph 33 should include projects that are Substantial Risk given that Substantial Risk projects can have serious environmental and social risks. Additionally, “may” should be eliminated from Paragraph 33 as the Borrower should be required to engage independent experts to advise and oversee these projects. Thus, paragraph 33 should read “For projects that are High or Substantial Risk or contentious, or that involve serious multidimensional environmental or social risks or impacts, the Borrower will engage one or more internationally recognized independent experts.”

 Adaptive Risk Management. In line with our comments on the ESP above, we are concerned about the consequences of changing a risk categorization. Paragraph 31 needs to be modified to specify how the Borrower will apply the new relevant requirements of the ESSs. Further, it needs to specify that the revised ESCP will be publicly disclosed immediately.

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7 Id, at ESS1, paras. 23, 29, 30, 33.
Further, the proposed change to a higher risk categorization should be publicly disclosed and subject to Board Approval.

Overlap with ESS10. We commend the Bank for including various references to ESS10 throughout ESS1, and for highlighting the importance of the nexus between stakeholder engagement and participation and information disclosure and environmental and social assessments. As noted earlier in these comments, it is important that the Bank continue to list all vulnerable groups in its definition of disadvantaged or vulnerable people and we appreciate the Bank expanding slightly on its definition of disadvantaged or vulnerable people in footnote 22.\(^8\) We appreciate these inclusions, though we remain concerned that our previous comments and suggestions relating to disadvantaged and vulnerable groups – including a requirement for the Borrower to perform proper due diligence and determine how these disadvantaged and vulnerable groups may be affected by a project – are still missing.\(^9\)

Further the consideration of social risks and impacts should also consider the risks to human rights and environmental advocates and defenders, and other political and social advocates, activists, and defenders who may be affected by a project. The Bank must ensure not only that the Borrower, in all instances, allows for these groups and individuals to be consulted and considered in the development of the ESCP, but also that the Borrower is providing security and protecting the rights of these marginalized groups as needed. The world has witnessed far too many suspicious deaths and injuries to environmental and human rights advocates challenging extractive and infrastructure projects. The Bank must ensure that the Borrower is creating a safe climate for dissent and one that protects the participation of marginalized individuals and groups throughout the project life cycle. Additionally, in the event that the Borrower is not doing so, the Bank must take action to protect vulnerable groups, including human rights advocates and defenders, from retaliation.

Environmental and Social Commitment Plan (ESCP). In addition to the comments we made earlier in this, especially in the section on the ESP, we have additional concerns with the ESCP specific to ESS1. The Bank did not make many changes to the section on the ESCP (paragraphs 36-44). We do appreciate the inclusion in paragraph 36 that the ESCP will be disclosed, but as noted above, it should specify that the ESCP must be disclosed prior to Board approval. Additionally, we are concerned that it did remove the requirement for the ESCP to set out a summary of the training that will be provided by the Borrower, which is quite concerning, considering the important role training plays in ensuring the proper implementation of these policies by a Borrower.\(^10\) The other changes appear to be mainly structural, moving (or

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\(^8\) The definition is improved with the inclusion of “physical, mental, or other disability” and “social, civic or health status” to the definition of disadvantaged or vulnerable (emphasis added). See infra the discussion on vulnerable peoples in the section on the ESP.


\(^10\) We do recognize that the requirements for training was moved to Annex 2 of ESS1, however many of the other requirements in Annex 2 are also included in the main text of the ESS. It is worrisome that the Bank chose to remove from the main text the one paragraph that would help the Bank ensure that Borrowers are allocating proper training and resources for training in their ESCPs. See World Bank, Environmental and Social Framework: Setting Standards for Sustainable Development (First Draft for Consultation), ESS1, para. 39 (July 30, 2014).
repeating) paragraphs relating to the content and implementation of the ESCP to Annex 2. However, the Bank still needs to clarify the impact on the legal standing of the ESCP when it uses adaptive management and the ESCP changes to correspond to the change in risk categorization. When this happens the Bank should make all changes public and the Board should be notified.

Annexes. We greatly appreciate the Bank adding in Annexes 1-3 detailing the ESIA process, the ESCP, and contractor management. The inclusion of Annex 1 is an improvement over the last draft of the Bank’s ESF. We commend the Bank for outlining the various methods and tools that can be used to conduct a proper assessment, but we are greatly concerned with the utter lack of language specifying the assessment requirements for each risk category. We are also concerned with the ambiguous language related to the timing of the initiation of these assessments. Paragraph 8 only states that the Borrower should initiate an assessment as early as possible. The Bank needs to establish a point during project appraisal and prior to Bank approval by which the ESIA process must be initiated in order to ensure a proper ESIA is conducted and that the ESSs are complied with. Additionally, it must specify that for High Risk projects, at a minimum, the ESIA be disclosed 120 days before the Board decision on that project.

Annex 2, as mentioned in the section above, explains the expected content and implementation of the Borrower’s ESCP. We are concerned that the Bank did not substantially expand on the Content section compared to the last draft, but instead chose merely to separate these paragraphs and place them in an Annex. We also feel that as the basis for monitoring the environmental and social performance of the project, the ESCP must include a section summarizing what the environmental and social risks and impacts of the project are. Although these ESCPs are required to be disclosed to stakeholders, we feel that it is crucial that these plans also be required to be available to the general public more broadly in an ESCP Tracking Registry, as suggested earlier in these comments and in our previous comments on the first draft ESF. Independent third party monitoring is crucial to ensuring that the ESCP is being met and the Bank must improve its requirements regarding monitoring in ESS1 and throughout the ESF as discussed earlier in these comments.

Application of the EHSGs. We would finally like to express our continued concern about the application of the EHSGs by Borrowers only for specific projects. Unfortunately, in both paragraph 19 of the ESP and paragraph 17 of ESS1 allows for Borrowers to take less stringent levels and measures than those in the EHSGs. The Bank allows the Borrower to do so when it is “appropriate in view of the Borrower’s limited technical or financial constraints.” We remain concerned that this sets a dangerous precedent and that by allowing the Borrowers to pick and choose what standards it needs to meet undermines the entire safeguard system and shifts the risks to the communities and their environments. While we appreciate that the Borrower needs to explain their reasons and the Bank has to be satisfied by them, it still provides for too much

11 ESF: Second Draft, supra note 1, at ESS1, Annex 2, para. 8.
12 Paragraph 3 corresponds to former paragraph 35, 4 to former 38, 5 to former 39, 6 to former 40, 7 appears to be an expansion on former 35, and 9-11 to former 42-44. Paragraph 8 had to be added due to the fact that now the Bank is not mandating the use of the Borrower’s ESF.
13 AUWCL PICEL Comments on ESF: First Draft, supra note 5, at 7.
discretion. It should also be subject to review by independent third party monitors and not just the Bank.

**ESS2: Labor and Working Conditions**

In this draft, ESS2 is dramatically stronger on several fronts (such as including “to support the principles of freedom of association and collective bargaining of workers” in the objectives), but it still falls short of international law and other development finance institutions. Noticeably, it fails to mention the ILO Core Labour Standards. This should be a minimum requirement and ESS2 should be amended to explicitly require Borrowers to comply with the ILO Core Labour Standards in all projects.

*Disclosure of Labor Management Procedures.* Given the overarching concerns related to monitoring and accountability, there needs to be greater clarity in Paragraph 9 about the “labor management procedures.” We appreciate the requirement that Borrowers “have in place written labor management procedures applicable to the projects” (emphasis added), however it is unclear if these procedures will be available to project workers. Paragraph 9 must be amended to include that these written procedures will be publicly available and accessible to project workers. Providing procedures to workers will foster trust and will help with the functioning of the grievance mechanism required by paragraph 21. These procedures can be given to workers when they are given documentation about the terms and conditions of their employment and their rights in accordance with paragraph 10. We also appreciate that all project workers will have access to a grievance mechanism.

*Scope and Applicability.* We appreciate the expanded coverage of ESS2 to include not only direct workers, but also contracted workers, workers in community labor, and primary supply workers. However, we remain concerned about the lack of application to civil servants (paragraph 8). Further, we are pleased that the Bank has included paragraph 15 requiring the Borrower to provide measures to protect and assist vulnerable groups of workers. We also appreciate the clarification in footnote 10 that voluntary work is work “done with the free and informed consent of a worker” without coercion.

*Freedom of Association.* Paragraph 16 on workers’ organizations is improved and we appreciate the Bank’s attempts to include provisions to allow for formation of workers’ organizations or an alternative version when the country’s national laws restrict such organizations. The reference to national law in regards to supporting freedom of association and collective bargaining needs to not be used by the Borrower to restrict these freedoms. It is critical that allowing for alternative mechanisms for the exercise of these rights be retained. Further, paragraph 16 needs to explicitly say that regardless of the Borrower’s national framework, for purposes of the project, the Borrower must not discriminate or retaliate against workers who seek to collectively organize and bargain.

*Migrant Workers.* To operationalize the objective to protect migrant workers, ESS2 needs a provision requiring the Borrower to avoid any physical or psychological coercion of migrant workers, including unnecessary restrictions on movement or retention of workers’ identity documents, such as passports, or personal belongings by the Borrower, contractors, or first-tier suppliers. Without this provision, migrant workers remain particularly vulnerable.
**Child Labor.** We appreciate the expanded protections for children embodied in paragraphs 17-19. We welcome the increased clarity in footnote 8 of the definition of hazardous work for children, but example (e) should remove the modifiers “particularly” before “difficult conditions” and “unreasonable” before confinement. Thus, example (e) in footnote 8 should read: “under difficult conditions such as work for long hours, during the night or in confinement on the premises of the employer.” Further, the policy should include a provision specifying that children, by virtue of their age, have the distinct right of being protected from economic exploitation. Thus it should say that “the Borrower is prohibited from employing, using, or benefiting from the economic exploitation of children.” Additionally, paragraph 19 on “harmful child labor” needs to reference the best interests of the child as a standard and needs to identify a compulsory age of education.

**Due Diligence.** In regards to due diligence in ESS2, paragraph 37 should be amended to remove the qualifying language “significant” because any risk of harmful child labor is significant. As such it should read: “Where there is a risk of harmful child labor or forced labor related to primary supply workers, the Borrower will identify those risks ....” Additionally, while ESS2 correctly includes requirements for the Borrower to identify risks of child labor and forced labor where there are “workers in community labor” and “primary supply workers,” this requirement is absent in regards to “third parties.” The Borrower should be required to identify risks of child labor and forced labor where third parties and contracted workers may be used.

**ESS3: Resource Efficiency and Pollution Prevention and Management**

Given the threat of climate change, ESS3 must set forth standards to address climate change alongside its standards to prevent pollution and promote resource efficiency. ESS3 is an important step forward for the Bank, which has yet to incorporate climate change in its safeguards despite its recognition of the dangers.14

**Relationship to UNFCCC & Broader Climate Change Commitments.** ESS3 should explicitly reference the UN Framework Convention on Climate Change (UNFCCC) and its related agreements, including the Paris Agreement. Given that countries recently agreed to the Paris Agreement, they should also be willing to agree to responsibilities in ESS3 that are consistent with the Paris Agreement and that will help them implement their commitments under it. The Paris Agreement is based on countries developing and committing to their own specific mitigation and adaptation plans. These plans should be considered and serve as the basis for project approvals based on estimated GHG emissions. All projects should meet efficiency standards through either design or mitigation which abide by these commitments. Currently, footnote 11 says “Guidance to be provided.” This is concerning given that it is unclear how the Bank is going to establish the threshold for GHG emissions. In developing this guidance, the Bank should indicate that the threshold for GHG emissions will be based on best available science, the country’s commitments under the UNFCCC, relevant regional agreements, or national standards, and in line with keeping global temperature rise well below 2 degrees Celsius or the goal to limit the rise to 1.5 degrees Celsius.

Furthermore, we agree with the comments submitted by the Sierra Club and Bank Information Center (BIC) recognizing that one of the primary objectives of the Paris Agreement is to ensure that “finance flows [are] consistent with a pathway towards low greenhouse gas emissions and climate resilient development.”\(^{15}\) All the parties agreed to this as one of the ways to strengthen the global response to climate change “in the context of sustainable development and efforts to eradicate poverty.” As one of the primary development finance institutions, the Bank should ensure that its investments are consistent with the Paris Agreement and that it is supporting projects with lower GHG emissions and increased climate resilience. This will help the Bank achieve its goals of poverty eradication and increasing shared prosperity. Thus, in the ESP and ESS3, the Bank should commit to not financing GHG intensive projects.

**Measuring and Monitoring Greenhouse Gas (GHG) Emissions in Bank Projects.** Borrowers should be required to quantify the GHG emissions of their projects. This is crucial to addressing climate change. While we recognize that Borrowers are concerned about the cost of doing so, quantifying GHG emissions is in line with other international standards, including the International Finance Corporation’s and the European Bank for Reconstruction & Development’s. Additionally, given that countries are committing to reducing emissions, quantifying GHG emissions is crucial to meeting these commitments. To assist Borrowers in this, the Bank should include the cost of GHG accounting in the loan.

**The “Technical and Financial Feasibility” Loophole.** As we commented in response to the prior ESF draft (and as we have done in other sections of these comments), we remain concerned about the “technical and financial feasibility” loophole. Despite making numerous changes to ESS3, the Bank has retained the caveat of “where technically and financially feasible” in reference to Borrower obligations in numerous paragraphs, including paragraphs 4, 5, 6, 15, and 16. This is a significant loophole and way to avoid clear standards. Additionally, it is inconsistent with the mitigation hierarchy introduced in ESS1. ESS3’s continued reference to only requiring efficiency measures where “technically and financially feasible,” should be eliminated and instead, efficiency measures should be done in accordance with the mitigation hierarchy. We agree with the comments submitted by the Sierra Club and BIC that ESS3 efficiency measures will be evaluated in the same way as other avoidance strategies under the mitigation hierarchy.\(^ {16}\) Considering the financial feasibility discounts the potential for the action to have benefits. A measure can have a high incremental cost, and also have a high incremental benefit. Thus efficiency and GHG reduction measures should not be dismissed merely because the Borrower decides they are not “financially feasible.” For similar reasons, in paragraph 15, “cost-effective” should also be eliminated.

**Estimating and Reducing GHG Emissions.** Just as measuring GHG emissions is vital so is estimating and reducing GHG emissions. To ensure the quality of GHG emissions estimations, the final sentence of paragraph 16 should be amended to say that “Estimation of GHG emissions

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\(^{15}\) Paris Agreement, Art. 2, para. 1(c), FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015).

will be conducted by the Borrower annually in accordance with internationally recognized methodologies and best practice, and verified by an independent expert.” Further, GHG emissions should be reduced in line with the country’s commitments under the UNFCCC or national law.

**Resource efficiency.** We agree with the Sierra Club and BIC that ESS3 should “strengthen the resource efficiency requirements and require the use of ‘best available technologies.’” Resource efficiency is vital to developing low-carbon energy systems and to helping projects achieve mitigation objectives.

**Internationally Banned Chemicals or Hazardous Materials.** As we noted in our comments on the previous draft, we are pleased that in paragraph 19 the Bank requires Borrowers not to manufacture, trade, or use internationally banned chemicals and hazardous materials. However, we remain concerned that the final sentence of paragraph 19 still includes the Borrower being able to get an exemption and then use banned substances “consistent with Borrower government commitments under the applicable international agreements.” The Bank should eliminate this and clarify that it will not support projects that involve the manufacture, trade, or use of an internationally banned substance regardless of the Borrower’s status in relation to the relevant convention.

**ESS4: Community Health and Safety**

We appreciate the modifications to paragraph 14 in line with our previous comments related to assessing the impacts on ecosystem services. However, many of the concerns expressed in our comments on the prior draft ESS4 remain. Of particular importance are continued concerns regarding gender, climate change, and inclusion of caveats that allow a Borrower not to implement important measures to protect the health and safety of affected communities.

**Gender-Distinct Issues.** Assuming the Bank continues to reject calls for a gender specific safeguard and insists instead on incorporating gender considerations into other safeguards, ESS4 needs to be modified to explicitly acknowledge that there are gender-distinct situations relating to health and safety. In many instances, language specific to women and children in affected communities could be incorporated. For example, language should be added to paragraphs 15 and 16 to specifically address health issues of women. Paragraph 15 addresses the risks related to water-borne diseases, and given that women are the primary people who fetch water in many communities, this paragraph should discuss the risk of disease exposure to women specifically. Additionally, paragraph 16 relates to communicable disease associated with the influx of project laborers. Again, this is likely to disproportionately affect women and paragraph 16 should be amended to explicitly require Borrowers to take measures to protect women. Lastly, paragraph 27 requiring Borrowers to “review allegations of unlawful or abusive acts of security personnel” should be expanded to specifically include the need to “investigate” and not merely “review” gender-based violence. Additionally, it should be amended to go back to the previous version which said the Borrower would “investigate” rather than “review” all allegations.

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Climate Change. Given the impacts already being seen due to climate change, climate change resilience and adaptation should be considered a central consideration of all projects. This includes considering the need to consider climate change resilience in regards to infrastructure. As mentioned in our comments on ESS3, “technical and financial feasibility” should not be a caveat when considering climate change. Therefore, it should be eliminated from the final sentence of paragraph 6 which should instead read “Structural design will take into account climate change considerations.” The addition of “technically and financially feasible” to this sentence in this version of ESS3 was in fact a step backwards from the prior draft.

The “Technical and Financial Feasibility” Loophole. Similarly, and as mentioned in relation to ESS3, in the newly added paragraph 7, “where technically and financially feasible” should be eliminated from the second sentence. Paragraph 11 should also be amended to eliminate this caveat; it should read: “The Borrower will identify road safety measures and incorporate road safety components into the project design to prevent and mitigate potential road safety impacts on the local affected communities.” Including the caveat makes it too easy for the Borrower to not implement measures and puts the communities at risk.

Emergency preparedness and response. We appreciate the explicit mention in paragraph 19 of extreme weather or lack of early warning. However, we still believe that paragraph 21 should be amended to include “other communication tools” in clause (d) so that it would say “(d) diverse media channels and other communication tools for notification of the affected community and other stakeholders”. The best way to communicate with communities varies from country to country and region to region, as such the Emergency Response Plan (ERP) should have to consider the ways in which communities communicate so that it is designed in the most effective way for that project area. Not including consideration of a wide-array of communication tools to determine what is best in the creation of the ERP misses an important opportunity to better ensure community health and safety.

ESS5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

Involuntary resettlement is extremely disruptive and can have catastrophic effects on people’s lives. We appreciate that the Bank has made improvements to ESS5 to ensure that displacement is avoided if possible, and if it cannot be, that no harm is done. Additionally, we are pleased that the Bank has indicated that resettlement activities will be included in the total cost of the project. It is vital that if resettlement cannot be avoided, that the resources exist to ensure that no harm is done and that peoples’ livelihoods are restored or improved. Additionally, we welcome the inclusion of the new objective identifying resettlement as a development opportunity, though dislike the inclusion of the qualifier “as the nature of the project may warrant.” However, we are concerned about the operationalization of this objective. To adequately realize this objective, it is important to explicitly recognize that women, children, the elderly, minorities, and persons with disabilities are disproportionately affected by involuntary resettlement. Further, despite these improvements, we remain concerned about the weaknesses that remain in this draft.

Scope and Applicability: The scope of ESS5 should be expanded to include economic as well as physical displacement that is caused by project activities that affect people’s livelihood and food resources or access to those resources. Further, the scope should be expanded to include

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any activities that are directly related to the project and that result in economic or physical displacement. Limiting the scope to only land acquisitions or land use restrictions does not adequately address the problem. The risk of harm to people stemming from economic or physical displacement is not limited in scope to actual land takings or restrictions, and so ESS5 should not be either. Relatedly, downstream impacts, natural resource management programs, and subprojects should all be covered under ESS5.

Forced Evictions. Forced eviction must be strictly prohibited. We appreciate that one of the objectives of ESS5 is “To avoid forced eviction,” and that paragraph 31 states that the Borrower will not resort to forced evictions. However, to be consistent with international law and policies of other development finance institutions, forced evictions should be prohibited explicitly. For instance, the AIIB’s new Environmental and Social Framework says that the AIIB “does not knowingly finance a Project that: (a) either involves or results in forced evictions.”18 Additionally, in paragraph 31, when the eviction meets the definition of not being a forced eviction, the Bank should require the Borrower to provide justification and supporting documentation verified by an independent third party.

Avoidance of Involuntary Resettlement. In order to align with international law, ESS5 should state, in a clear manner, that the Borrower will only resort to involuntary resettlement when it is solely for the purpose of promoting the general welfare and undertaken in a manner that is reasonable and proportional to the project benefits. To this end, priority should be given to exploring strategies that minimize displacement.

Minimum Standards for Resettlement. In the event that affected persons have to be resettled, ESS5 needs to be clear about the type of places available for relocation and needs to have greater emphasis on improving the livelihoods of those displaced. Thus, ESS5 should outline minimum standards for relocation sites, including that they are not situated on polluted lands or in immediate proximity to pollution sources and not on lands used by communities that have been displaced due to violence or conflict. Furthermore, the sites must have the capacity to absorb the influx of resettled persons. Additionally, for people covered by paragraph 10(a)-(b), improvement – rather than restoration – of livelihoods and living standards should be the standard. Plus, a restoration objective should be applied for those covered under paragraph 10(c). Lastly, in paragraph 14, “replacement in kind” is not specific enough. Language should be added to better define this phrase such that it means better in size, quality, location, and legal status.

Appraisal, Due Diligence, Monitoring, and Evaluation

Resettlement Action Plans (RAPs). ESS5 must have a clear requirement that draft Resettlement Action Plans and budgets will be prepared and publicly disclosed during project appraisal. RAPs must be made available to project affected peoples in their local language(s), and affected people must be given the opportunity to provide informed comments on the plan and propose alternatives that will be given due consideration. Both the RAP and any feedback from project affected peoples should be presented to the Board prior to project approval. Projects involving significant displacement should not go to the Board without a RAP, budget for

implementing the RAP, and a baseline livelihood survey, and should additionally define acceptable outcomes for different categories of affected persons.

**Due Diligence.** The Bank’s due diligence requirements need to be strengthened and not primarily reliant on information provided by the Borrower. Instead the Bank should look at third party information and seek views from a variety of sources, including project-affected people and independent third-party specialists, to help verify the Borrower’s assessment and the adequacy of resettlement plans. The Bank must also verify that displacement impacts are reasonable and proportionate to the expected development objectives and must confirm that all viable alternative project designs to avoid or minimize displacement have been explored and considered.

**Monitoring.** Similar problems arise in regards to monitoring. Shortcomings identified in the Bank’s Involuntary Resettlement Portfolio Review included a “lack of monitoring or implementation reports, lack of reporting on economic rehabilitation and income restoration, poor quality progress reports, [and] Bank supervision undermined by lack of reporting.”19 Given these findings, the policy should require independent verification of the Borrower’s assessment and monitoring of resettlement in all cases. To ensure accuracy of information, third parties should be contracted by the Bank not by the Borrower. Additionally, for projects with significant social and environmental impacts, the Bank should employ a panel of experts that can help with resettlement plans, monitor implementation, and design corrective actions where necessary. Doing so is critical to ensuring positive development outcomes. Given the importance of monitoring, in order to retain critical leverage, disbursements should be tied to monitoring.

Paragraph 33 of the draft currently states that “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.” It is critical to evaluate both output and outcomes, such that projects are not closed until the objectives of the ESSs have been achieved. Additionally, the Bank needs to have binding guidance on monitoring arrangements after the project ends, as the portfolio review revealed that the Bank has little knowledge of long term impacts and impoverishment.

**ESS 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources**

We appreciate that in this draft of ESS6, the Bank has incorporated necessary changes on which our submission on the first draft ESF touched. For example, the new draft is improved by the inclusion of references to ecosystem services and necessary definitional changes. However, there is still work that must be done to protect and conserve biodiversity.

**Assessment of Risks and Impacts.** In assessing risks and impacts to biodiversity, Borrowers should take a watershed approach and consider the entire watershed. Given the interconnectedness of ecosystems, this is vital. Additionally, the Borrower must be required to look at cumulative impacts in addition to direct and indirect impacts.

**Monitoring.** In addition to the comments about monitoring in other sections, independent third party monitors should be required in paragraph 37. The final line of paragraph 37 indicates that Borrowers will monitor operations with the participation of locally-affected communities, but it should be modified to include that independent third-party monitors will be required for verification.

**Critical Natural Habitats:** We appreciate that in this draft the definition of critical habitat has been expanded to include “unique ecosystems” (paragraph 23(a)) and “endemic species” (paragraph 23(c)), both of which are essential criteria for critical habitat. However, the definition is still missing other critical elements. The definition should also include protected areas that are recognized as protected by traditional local communities. This is an important part of the definition in the current policy (OP 4.04, Annex A) and it should be retained. Additionally, it should include forests that are important to forest-dependent peoples.

While we believe that areas of critical habitat should be no-go areas, and the Borrower should not be able to implement any project activities in such areas, we do appreciate the expansion of the criteria that must be met before a Borrower can undertake activities in a critical habitat area. We appreciate that paragraph 24(b) has been changed from “any due process …” to “all due process required under international obligations or national law …,” however, the “or” should be changed to “and” to ensure that a Borrower considers both. Additionally, we appreciate the expansion to include that “new or renewed forestry or agricultural plantations will not convert or degrade any critical habitat, either on-site, in adjacent or downstream areas” and the assurance that projects will not involve “significant conversion or degradation of critical habitats, including forest areas,” though we believe that the word “significant” should be eliminated. These changes should be retained to ensure necessary protections for critical habitats especially if the Bank is going to allow for projects in areas of or adjacent to critical habitat.

Further, biodiversity offsets are not appropriate in areas of critical habitat. Critical habitats are too important and any reference to offsets in critical habitat areas should be removed. Thus, paragraph 26 should be eliminated and should be replaced by a statement that the mitigation hierarchy for projects in areas of critical habitat may not include biodiversity offsets.

**Primary Suppliers.** We appreciate that the potential impact of the supply chain, now identified as primary suppliers, on significant conversion of degradation of natural or critical habitats is being recognized. To operationalize and strengthen these provisions, several points must be made clear. In paragraph 41(d) “where possible” should be eliminated as Borrowers should be required to shift to using sustainable suppliers and not suppliers who adversely impact natural and critical habitats. To do this, supply chain issues must be considered during project development so that the resources necessary to monitor primary suppliers is built into the loan. Further, there needs to be a clear set of criteria for defining when suppliers are “not contributing to significant conversion or degradation of natural or critical habitats ….” Currently, footnote 14 defines it as “delivery of certified product, or progress towards verification or certification under a credible scheme in certain commodities and/or locations.” This provision must include clear criteria on how to properly select sustainable suppliers. Further it needs to provide for oversight and accountability for projects with low capacity. Third-party monitoring should be required to
verify the information provided by the Borrowers about their suppliers. Additionally, paragraph 42 should be deleted.

Operationalization of Ecosystem Services. We are pleased that “ecosystem services” has been added to ESS6, as we proposed in our previous comment. However, we agree with the comment submitted by the Biodiversity Consultancy that there remains a lack of clarity about ecosystem services particularly as it relates to the sustainable management of living natural resources (paragraph 2). ESS6 appears to equate the sustainable management of living natural resources with provisioning ecosystem services despite the fact that both are defined differently and no explicit relationship is made between the two. Further, while Ecosystem Services appears in the Introduction for ESS6 and in the Objectives, which is appreciated given that when the Bank relies on Borrower Systems the Borrower must demonstrate that its policies are materially consistent with the objectives, it is not elaborated on or operationalized in the text of ESS6. Instead, the related operational focus appears to be entirely on sustainable management of living natural resources (paras. 32-39). Thus, the relationship between the two terms must be clarified so the provision on Ecosystem Services can be operational.

Role of national law with regards to protecting and conserving natural and critical habitats. We appreciate the inclusion of areas important to critically endangered or endangered species under national law in the definition for critical habitat. However, it must be made clear that this recognition also includes habitats recognized as critical by indigenous peoples in a way that is consistent with their customs. Additionally, ESS6 must clarify that abiding by the IUCN Red List is the baseline, and that national law should be used when it includes other areas and imposes more stringent standards on those species and their habitats. National laws that provide for less protection than the ESS requires or than would be required in line with the IUCN red list cannot be used in their place. Thus, national law should only be additional to what is required internationally.

Offsets and Net Gains for Biodiversity

Criteria for biodiversity offsets, including consideration of project benefits. Biodiversity offsets are difficult to design and implement and as such should not generally be considered as a mitigation option. ESS 6 needs to include clear standards surrounding the mechanisms and metrics for measuring biodiversity offsets. Further, ESS1 and ESS6 appear to contradict one another in regards to offsets. In discussion of the mitigation hierarchy in ESS1 paragraph 25, it says “where residual risks or impacts remain, will compensate for or offset them, where technically and financially feasible.” While in ESS6, paragraph 18, it says “the mitigation hierarchy includes biodiversity offsets, which will be considered as a last resort.” This provision

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20 The Biodiversity Consultancy, Comments on World Bank ESF second draft (Jan. 21, 2016).
is stronger than the one in ESS1 and should be followed, and the policy must clarify this. Additionally, it must be required that Borrowers consult with independent experts who can perform assessments of feasibility and necessity of offsets prior to them being used. In the event that offsets are going to be used, independent experts should also be required to assist in the design and implementation.

**Definition and application of net gains for biodiversity.** Paragraph 19 correctly recognizes that “certain adverse residual impacts cannot be offset.” However, this phrase is ambiguous and needs to be more clearly defined to ensure that Borrowers do not discount these impacts. We also appreciate that if an impact cannot be offset, especially in unique and irreplaceable areas, the Borrower will not undertake the project. To ensure that offsets are not being overused and that there is a net gain in biodiversity, the policy should define a clear system of accountability including the use of independent third-party monitors.

**ESS7: Indigenous Peoples**

We welcome the removal of the opt-out clause from the first draft, as doing so was critical to bring the Bank more in line with international standards. However, we find it concerning that in the Committee on Development Effectiveness’s (CODE’s) list of issues to be considered for Phase 3 Consultations one of them was “Circumstances … in which a waiver may be considered” in the context of ESS7. We reiterate that a waiver of ESS7 should not be an option and reverting back to including a waiver or an “opt-out” clause would be a step backward. Additionally, there are various provisions in ESS7 that still must be changed to ensure that it is in line with international standards.

**Definition of Indigenous Peoples.** Paragraph 6 defining “indigenous peoples” is still too narrow. Self-identification as indigenous is widely recognized as the determining factor, and this should be reflected in ESS7. The phrase “and recognition of this identity by others” should be eliminated from paragraph 6(a) as should the phrase, “a distinct language or dialect” in 6(d). This narrow definition is not in line with ILO Convention 169, which broadly defines indigenous peoples and does not tie self-identification to being recognized by others.

**Benefit-sharing.** Paragraph 25 was changed so that the Borrower has to “enable Indigenous Peoples to share equitably in the benefits …” rather than the prior language requiring the Borrower to “ensure fair and equitable sharing of benefits ….” This shift away from outcomes to outputs is less amenable to effective development outcomes.

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22 For example, a parallel could be drawn to the Asian Development Bank’s definition of convert or degrade, which says:

Significant conversion or degradation is (i) the elimination or severe diminution of the integrity of a habitat caused by a major, long-term change in land or water use; or (ii) the modification of a habitat that substantially reduces the habitat’s ability to maintain viable populations of its native species. Significant conversion may include, for example, land clearing; replacement of natural vegetation (for example, by crops or tree plantations); permanent flooding (by a reservoir for instance); drainage, dredging, filling, or canalization of wetlands; or surface mining.


Indigenous Peoples Living in Voluntary Isolation. We welcome the Bank’s recognition of peoples living in voluntary isolation and the fact that projects should include “measures to avoid all undesired contact with them.” However, by definition, all contact with such groups is undesired. Thus, merely taking measures to avoid contact is not enough. ESS7 should explicitly prohibit projects that will impact their lands, territories, or natural resources, whether directly or indirectly.

Free, Prior, and Informed Consent (FPIC). We appreciate the inclusion of the requirement that Borrowers must obtain FPIC of affected Indigenous Peoples in certain circumstances as it brings the World Bank more in line with international law and standards. However, certain changes still must be made to ensure that the FPIC processes meet international law and standards. In documenting the process for obtaining FPIC (paragraph 18(c)), the Borrower should determine and ensure that consent was given according to the customary laws and guidelines of the indigenous peoples involved. Additionally, procedures for obtaining FPIC of affected Indigenous Peoples must ensure that they are informed not only of their rights under national law, but also under the ESF. Paragraph 22(e) should be modified to reflect that.

ESS7 is unclear on what happens when FPIC is not obtained. Paragraph 19 indicates that if FPIC cannot be obtained, then the parts of the project relevant to those Indigenous Peoples will not go forward, which is good. However, it is problematic that the paragraph now says that when the project goes forward in regards to other aspects, the Borrower only has to ensure that there are no adverse impacts on Indigenous Peoples during implementation. This creates a loophole whereby adverse impacts occurring after implementation need not be considered. This loophole could in fact undermine the importance of requiring FPIC. Additionally, the paragraph should clearly state that when FPIC of the affected Indigenous Peoples cannot be obtained and ascertained by the Bank and the aspects of the project that affect Indigenous Peoples cannot be distinguished from the project as a whole then the project cannot go forward.

We appreciate the provisions in Paragraph 23 indicating that FPIC must be obtained prior to any relocation of Indigenous Peoples. Additionally, we appreciate the ban on forced evictions. However, priority, not mere consideration, must be given for alternative project designs that avoid or minimize displacement of indigenous peoples. Thus, paragraph 23 should be amended to reflect that.

Appraisal, Due Diligence, and Monitoring.

Paragraph 8 should be modified to make clear that independent specialists will be brought in for all projects affecting Indigenous Peoples, whether positively or negatively. As such “may be required” should be replaced with “will be required” and the word “independent” should be added to describe the specialists. The sentence would then read, “Following a determination by the World Bank that Indigenous Peoples are present in, or have collective attachment to the project area, the Borrower will be required to seek inputs from appropriate, independent specialists to meet the consultation, planning, or other requirements of this ESS.”
Due Process. Due process must not be limited to contexts involving the commercialization of land, but rather applied to all consultations with Indigenous Peoples. ESS7 should explicitly extend the application of due process to projects promoting the commercial development of Indigenous Peoples’ cultural heritage and resources, as well. Further, ESS8 should be strengthened and clarified to be consistent with ESS7 and require due process where a project promotes commercialization of cultural heritage and resources.

Consultation. We appreciate the inclusion of consultations tailored specifically to Indigenous Peoples so as to reflect their processes. However, the provisions related to gender need to be strengthened. Paragraph 17 should include a provision that in some instances, as determined by the Bank and Borrower in consultation with independent specialists, there must be separate consultations for women whose voices may not otherwise be captured.

Disclosure. It is crucial that ESS7 require the Borrower to disclose the final draft of the Indigenous Peoples’ plan for consultation in appropriate language(s) and in a culturally appropriate manner during project appraisal and prior to Board approval.

Relocation. We appreciate the modification of footnote 14 so that ESS5 will apply “in addition to” ESS7 rather than “instead of.”

Preservation of Traditional and Collective Land Rights. Paragraph 21, which relates to land titling or related activities, has substantial flaws that undermine the rights of Indigenous Peoples. Currently, paragraph 21 requires Borrowers to develop a plan for the legal recognition of land ownership, occupation, or usage respecting the Indigenous Peoples’ land tenure systems if a project is contingent on establishing the legally recognized rights to land or acquisition. However, it states that an “objective of such plans will be … (b) conversion of customary usage rights to communal and/or individual ownership rights.” Providing for the conversion of land to individual ownership rights is contrary to the collective nature through which Indigenous Peoples may assert their land rights and should thus be removed. Additionally, the provision for “long-term renewable custodial or use rights” should be removed and the Indigenous Peoples’ Plan should include measures for the recognition of perpetual ownership rights.

Grievance Mechanism. We appreciate the requirement that the Borrower must ensure that a grievance mechanism is established in accordance not only with ESS10, but also in a way that is culturally appropriate and accessible to affected Indigenous Peoples. As noted in our comments to ESS10, Annex 1, much more detail should be provided to ensure that all project grievance mechanisms are fair and effective in responding to complaints. In the case of grievance mechanisms established on projects affecting indigenous peoples, the grievance mechanism framework should be presented to the community as a starting point for community engagement. Local and traditional approaches to dispute resolution should be explored and incorporated – in whole or part – into the grievance mechanism. For example, a mechanism could use tribal council

24 Allowing for conversion to individual ownership rights is contrary to the UN Declaration on the Rights of Indigenous Peoples. Article 26(2) states: “Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.” U.N. Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, Art. 26(2), U.N. Doc A/RES/61/295 (Sept. 13, 2007).
meetings as an opportunity for dialogue and a place where Borrower representatives could hear complaints and propose appropriate responses; decisions could then be made through appropriate tribal council procedures.

**ESS8: Cultural Heritage**

We appreciate the expansion of the definition of cultural heritage to include intangible cultural heritage, as it is of great importance across generations and needs to be protected from adverse project impacts. ESS8 includes many positive aspects including considering direct, indirect, and cumulative impacts on cultural heritage and the provision to ensure confidentiality when it is determined that disclosure would compromise or jeopardize it. However, changes still need to be made to ensure that all cultural heritage is protected.

*Intangible cultural heritage.* ESS8 is improved by the inclusion of intangible heritage as part of cultural heritage. However, to define intangible cultural heritage the Bank should look to UNESCO’s universally accepted definition of intangible cultural heritage. This definition is widely-accepted across the world, including by Borrowers, and therefore should not necessarily impose new obligations beyond what a country has already accepted. Additionally, paragraph 7 should not limit the application of ESS8 to intangible cultural heritage as this may have significant negative impacts on communities.

*Use of experts.* The inclusion in many provisions that cultural heritage experts should be included in assessments, identification, and ways to preserve, among others, is welcome and necessary given the complicated nature of cultural heritage. To ensure this good practice, the caveat “where necessary” should be eliminated from the first sentence of paragraph 12. So it should read: “The Borrower will ensure that the environmental and social assessment involves participation of cultural heritage experts.” Further, in paragraph 25 the Borrower alone should not determine whether it is possible to transfer the cultural heritage or sacred characteristics of a place to a new location. Instead, given the potential negative ramifications of moving cultural heritage, this should be done in consultation with the project-affected parties (who helped in the identification of such places) and independent experts. Thus, paragraph 25 should be amended to require this.

*Relocation of cultural heritage.* Relocation of cultural heritage should be avoided. If relocation cannot be avoided, then how and where to relocate it should only be undertaken after there has been meaningful consultation with project-affected communities and individuals, and cultural heritage experts.

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25 The UNESCO Convention for the Safeguarding of the 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.” U.N. Educational, Scientific & Cultural Organization, Convention for the Safeguarding of the Intangible Cultural Heritage, Art. 2(1) (2003).
**Commercialization of cultural heritage.** Paragraph 28 is vital to protecting individuals and communities from potential consequences of commercialization of their cultural heritage. This should also apply to intangible cultural heritage. Intangible cultural heritage, such as knowledge or traditional practices, should not be exploited without informing the project-affected parties of their rights. Ensuring that all potentially affected parties’ rights are protected in the event that a project is going to commercialize cultural heritage is important. As such, paragraph 29 should explicitly require that meaningful consultation take into account gender and inter-generational issues when identifying stakeholders. Additionally, to be consistent with ESS7, ESS8 should ensure that due process rights are respected when using Indigenous Peoples’ cultural heritage for commercial purposes.

**Cultural heritage that has not been legally protected or previously identified or disturbed.** CODE identified how to apply cultural heritage requirements to cultural heritage that has not been legally protected or previously identified or disturbed as one of the issues for phase 3 consultations. Prior status of cultural heritage should not affect whether it is considered cultural heritage under ESS8. It may be that the cultural heritage was unknown because it had yet to be discovered. ESS8 should apply to all cultural heritage identified during the environmental and social assessments conducted prior to project approval and in consultation with project-affected communities and other interested stakeholders. Limiting cultural heritage to that which has been previously identified or legally protected would undermine this ESS.

**ESS9: Financial Intermediaries**

We commend the Bank for including a safeguard on Financial Intermediaries (FI). As has been seen by FI lending at the IFC, FI lending can, and often does, include projects that cause significant environmental and social harm and they are often difficult to track. We appreciate the strengthening of the provisions regarding the Bank’s role when it lends to FIs in the ESP. Particularly we appreciate the expansion in paragraph 43 to apply to *Substantial* as well as *High Risk* subprojects. Given the potential impacts of *High* and *Substantial Risk* projects, it is essential that the Bank have prior review and approval of those FI subprojects. However, we do think that paragraph 43 of the ESP should not only be invoked when the Bank does not believe that the FI has the capacity for categorizing, conducting the ESIA, or reviewing the results of the ESIA, but rather the Bank should be involved in reviewing all FI subprojects that are *High* or *Substantial Risk* prior to approval. Additionally, we appreciate the changes to ESS9 to expand its application to all FI subprojects.

*Application of other ESSs.* Despite the gains mentioned above, ESS9 remains vague on FI projects’ and FI subprojects’ compliance with all of the ESSs and this needs to be clarified. At various points, for example paragraph 7, it says that the “FI will apply the relevant requirements of the ESSs to any FI subproject that involves resettlement (unless the risks of resettlement are minor), adverse risks or impacts on Indigenous Peoples, or significant risks or impacts on the environment, community health, biodiversity or cultural heritage” and paragraph 10 applies ESS2 to the FI itself. However, this allows for a great deal of discretion. As such, ESS9 should be amended to require that all FI subprojects comply with all of the ESSs. At the very least, all of the ESSs should apply to all subprojects categorized as *High* or *Substantial Risk*. Additionally, the resource implications associated with ensuring that FI subprojects comply with the ESSs
should be taken into consideration during project appraisal and the resources necessary for subprojects to comply with the ESSs should be identified and they should be included in the loan or the Bank and Borrower should determine other sources from which they could come.

Paragraph 11 should also be modified to require the FI to ensure that its “environmental and social procedures” are compliant with the ESSs and relevant national and international Law. Also, the first sentence of paragraph 7 should be modified to require the FI to comply with relevant international law for all FI subprojects. Additionally, the caveat “unless the risks of resettlement are minor” should be eliminated from paragraph 7 as the risks of resettlement are rarely minor.

Adaptive Management. We remain concerned about how adaptive management will work in regard to FIs. We appreciate the addition of paragraph 44 of the ESP and paragraph 16 of ESS9 requiring the FI to notify the Bank if the risk of an FI subproject increases. However, we are concerned about the potential for impacts on communities and the environment prior to this notification. Additionally, we think that the word “significantly” should be deleted from the first sentence of paragraph 44 of the ESP and from the second sentence of paragraph 16 of ESS9, as an FI should be required to report any increase in the risk profile of an FI subproject to the Bank. Further, the Bank should not solely rely on the notification from an FI. If the Bank is notified of an increase in risk of an FI subproject by any person or entity, it should work with the FI to ensure that relevant requirements of the ESSs are applied and that appropriate measures are in place and appropriate actions are taken.

Grievance Redress. Further, ESS9 does not mention grievance redress nor if/when a grievance redress mechanism needs to be set-up. ESS9 should include a provision specifying that that FI projects and sub-projects should put in place an appropriate project-level grievance mechanism that meets the requirements of ESS10. Additionally, it should specify that project-affected peoples can use other local or national grievance redress systems or submit complaints to the World Bank Inspection Panel. Explicitly requiring a grievance mechanism would also make ESS9 more consistent with the IFC and the Equator Banks which do so in their policies relating to FIs.

Transparency. Transparency is of great concern in regards to FIs, particularly in regards to subprojects as it is often difficult to follow the money when it goes through an FI. The Bank must require FIs to publicly disclose all of its subprojects in the language(s) and manner that is culturally appropriate and accessible to the affected communities and other interested stakeholders. It is not necessarily enough to disclose subprojects on its website. Further, paragraph 18 should be amended so that FI is required to “list on its website the link to any environmental and social assessment reports for High Risk and Substantial Risk FI subprojects which it finances.” Additionally, all of the annual Environmental and Social Reports that the FI is required to submit to the Bank under paragraph 19 should be publicly disclosed by the FI and the Bank in the language(s) and manner that is culturally appropriate and accessible to the affected communities and other stakeholders.
Monitoring. ESS9 should be amended to require third-party independent monitors to review FI projects and subprojects and the reports submitted to the Bank in accordance with paragraph 19 to ensure accuracy. Reliance on self-monitoring and self-reporting by the FI is not enough and the Bank should ensure robust oversight.

Harmonization with IFC and Equator Banks. In its list of issues to consider during Phase 3 Consultations, CODE indicated that one issue to address was harmonization of the Bank’s approach to FIs in ESS9 with the IFC and Equator Banks. The IFC Interpretation Note on Financial Intermediaries\textsuperscript{26} states that “The FI is required to undertake lending/investment-level actions commensurate with the level of E&S risk related to the FI activities supported by the IFC, ranging from a simple review against the IFC’s Exclusion List to application of the Performance Standards.”\textsuperscript{27} Thus, to be consistent with the IFC, ESS9 should indicate that FI projects and subprojects, at least ones that are High or Substantial Risk, must apply all the ESSs. The Equator Banks similarly require projects, based on categorization, to meet the Equator Principles.\textsuperscript{28}

ESS10: Stakeholder Engagement and Information Disclosure

Information disclosure and stakeholder engagement provides the foundation for the system and can help ensure that the ESF works properly. We would like to thank the Bank for reviewing and incorporating some of the comments and concerns that many members of civil society voiced throughout phase 2 of the safeguard review process. We are pleased that the Bank has ensured that the basic concepts of stakeholder engagement and information disclosure are not just in ESS10, but also incorporated into ESS1.\textsuperscript{29} That being said, we remain concerned with certain aspects of ESS10 as it is presented in the second draft. In addition to the comments on specific paragraphs below, we would again like to strongly urge the Bank to recognize important relevant international law and adopt by inclusion Articles 6, 7, and 9 of the Aarhus Convention.

Roles of the Bank and of Borrowers in Stakeholder Engagement. We remain concerned with the Bank’s decision to not have a more active role in stakeholder engagement, and instead to leave most aspects of it to the Borrower. Though we support the goal of assisting Borrowers to improve their own frameworks and capacity, we are concerned that it is not realistic for the Bank depend entirely on the Borrower to identify the stakeholders, create a Stakeholder Engagement Plan (SEP), promote and implement meaningful consultation throughout the life cycle of the project, and provide a legitimate, responsive, and effective grievance mechanism.\textsuperscript{30} Having the Borrower solely responsible for stakeholder engagement could result in ineffective engagement in instances where the Borrower has little capacity or experience. Further, independent third-party monitoring is necessary to ensure that stakeholder engagement has occurred prior to project approval, that it continues throughout the life of the project, and that it is done in a way that ensures meaningful consultation of project stakeholders.

\textsuperscript{26} International Finance Corporation, Interpretation Note on Financial Intermediaries (Jan. 1, 2012).
\textsuperscript{27} Id. at para. IN8.
\textsuperscript{28} The Equator Principles (June 2013), available at www.equator-principles.com (noting that the Equator Principles refer to the IFC Sustainability Framework, which includes the Performance Standards, as “the then applicable standards” for its Principle 3: Applicable Environmental and Social Standards).
\textsuperscript{29} ESF: Second Draft, supra note 1, ESS10, paras. 51-52.
\textsuperscript{30} See also section on Borrower Systems in ESP & ESS 1.
Identification of Stakeholders. Paragraphs 10 and 11 establish that the Borrower must identify the different stakeholders, including disadvantaged and vulnerable parties.\(^\text{31}\) We appreciate the recognition that vulnerable groups may require separate forms of engagement and for including “other interested parties” as stakeholders. However, this dependency on the Borrower’s ability to identify all potential stakeholders and vulnerable groups is alarming. Not only does this demonstrate the Bank giving Borrowers too much discretion in the management and oversight of environmental and social protections in projects, it is also demonstrative of the Bank not taking responsibility for ensuring the effective implementation of projects it funds. Potential stakeholders should not just include those who the Borrower identifies, but should also include those who self-identify as stakeholders. Additionally, independent third-party specialists should not be limited by the potential risks and impacts of the projects as specified in paragraph 12. Instead, independent third party specialists should be frequently used to ensure that potential stakeholders and, in particular, vulnerable groups and historically marginalized people are not overlooked and are meaningfully consulted when a project may affect them.

As we mentioned in our comments on the previous draft, a mechanism needs to be incorporated into the ESF to ensure that borrower governments are not excluding any stakeholders that should be included in the process. Having an independent oversight mechanism or expert will help ensure that there is meaningful consultation and engagement with all project-affected people. Unfortunately, many vulnerable groups are often overlooked by governments around the world during their scoping processes, so it is crucial that there be an independent mechanism or person to assess the borrower’s identification of relevant stakeholders.

Identification of stakeholders is especially important in countries where there is shrinking space for civil society. Recently there has been a noticeable trend of countries implementing regulations to curtail activities of civil society and public discourse. The Bank needs to create an enabling environment for civil society to voice their concerns about the projects it is funding. The ESF must clarify how it will ensure that all stakeholders have a voice in these countries. As the Latin American Mining Monitoring Programme noted in their comments,\(^\text{32}\) the overreliance on the Borrower and the lack of human rights due diligence being done by the Bank when evaluating the Borrower’s systems,\(^\text{33}\) is quite concerning and could lead to the Bank and Borrower overlooking whether the country in which the project will take place is one in which civil society is repressed. The ESF must require the Bank to perform better due diligence prior to accepting the use of a Borrower’s framework, and the Bank needs to clarify how it will verify the information provided by the Borrower about its system, including how it treats civil society generally and environmental and human rights defenders specifically.

\(^{31}\) ESF: Second Draft, supra note 1, ESS10, paras. 10-11.

\(^{32}\) Latin American Mining Monitoring Programme, LAMMP’s Statement for the World Bank’s Second Draft Environmental and Social Framework (Jan. 26, 2016).

\(^{33}\) Footnote 13 of ESS 1 outlines what is considered by the Bank as the Borrower’s ES Framework, which is what the Bank considers when evaluating the Borrower’s capacity to implement the ESF. Considering the Borrower’s treatment of Human Rights (as well as the criminalization of human rights defenders and other activists) is not part of the evaluation. See ESF: Second Draft, supra note 1, ESS1, fn. 13.
Protection Against Retaliation. As mentioned in our comments on ESS1 above, increasingly, environmental and human rights defenders and others who speak out against governments or development projects are facing reprisals. The Bank must develop procedures for preventing retaliation and protecting people. The Bank should be clear that it welcomes dissent and that criticism of a project does not hinder development. The ESF should explicitly prohibit the Borrower from retaliating against or criticizing people who are critical of the proposed project.

Stakeholder Engagement Plans. We commend the Bank for incorporating a more comprehensive explanation of what constitutes meaningful consultation. Paragraph 21 requires the Borrower to undertake meaningful consultation in a manner that “provides stakeholders with opportunities to express their views” and “allows the Borrower to consider and respond to them.”34 While this initially seems sufficient, this language provides the Borrower with the ability to ignore and not incorporate the views and concerns of the stakeholders into the project plans. This language needs to be strengthened by changing the phrase “allows the Borrower to consider and respond to them” to “requires the Borrower to consider and respond to them.” We also appreciate that paragraph 22 gives further details on what meaningful consultation means including that it is ongoing, based on timely disclosure and dissemination of relevant information, responsive, and is documented and disclosed by the Borrower, among others. Paragraph 22(h) should require not only that the consultation is documented and disclosed by the Borrower, but also that the stakeholders be given an opportunity to review the documentation of the consultation to ensure that it is accurate and to provide feedback when it is not. Additionally, the Borrower must provide information about the consultation, including any feedback on it from the stakeholders to the Board prior to its approval.

We are also concerned with the lack of a requirement for the timing of the creation and disclosure of the SEP, and it must be clarified in the policy. Paragraph 13 only states that a draft of the SEP will be disclosed35 after it is created. There is no timeline requirement for the SEP to be created, however paragraph 2 reiterates the fact that stakeholder engagement is “most effective when initiated at an early stage of the project process, and is an integral part of early project decisions.”36 The SEP should be created and disclosed during project appraisal and prior to Board approval. When the Board examines a project, it should be able to review information gathered during consultation with stakeholders. Additionally, paragraph 13 should require the Borrower to not only seek, but also consider and incorporate stakeholders’ views in developing the SEP. Thus, the second sentence of Paragraph 13 should say, “A draft of the SEP will be disclosed, and the Borrower will seek, consider, and incorporate the views of the stakeholders ….” Further, as we mentioned in our comments on the previous draft ESS10, where a project is part of a larger regional or national program, it is imperative that individual SEPs are done for each project (and subproject) alongside 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.

34 ESF: Second Draft, ESS10, para. 21.
35 Id. at ESS10, para. 13.
36 Id. at ESS10, para. 2.
Information Disclosure. Throughout these comments we have mentioned the importance of disclosing information in a comprehensive manner and doing so in accordance with specific timelines. To have meaningful consultation, there must be robust policies requiring disclosure of information. In addition to referencing the Access to Information Policy, the ESF, including ESS10, should incorporate provisions into the text to provide clarity. We appreciate the expansion of paragraph 19 to provide greater detail for what information the Borrower must be given including the scope of the project, date of consultation, potential risk and impacts, and duration of projects, among others. However, it is concerning that paragraph 19 does not specify any documents that must be disclosed in paragraph 19.37 In addition to highlighting the important pieces of information that the potential stakeholders need to know, paragraph 19 should specify that all environmental and social assessment documents must be disclosed. Further, ESS9 and ESS10 should both clarify that ESS10 and the disclosure requirements apply to FIs and that FI subprojects must be disclosed.

Timing of Disclosure of Key Documents. Further, there needs to be clarity about when information is shared with project affected communities and with the Board. It needs to be made clearer throughout the ESF that key risk assessment and mitigation documents, including, but not limited to, the ESIA, ESCP, RAP, and indigenous peoples plan, must be released during project appraisal and before Board consideration and approval. The ESIA should be disclosed 120 days before the project is going to the Board for approval. Any delays should only be granted on an exceptional basis. Additionally, monitoring reports must be disclosed. Paragraph 19 should also give specific timeframes for when information should be disclosed for each of the pieces of information it includes. Further, all of the information must be disclosed during project appraisal and prior to Board Approval.

Concerns related to how documents are disclosed. We appreciate the inclusion of paragraph 20 requiring that information is disclosed in local languages and in ways that are accessible and culturally appropriate. However, the policy needs to further specify that key documents must be translated into the local languages with enough time to be disclosed to the communities and that the timing requirements for documents, includes the translated documents. Additionally, the Bank needs to address the issue of ensuring that these translations are accessible to the affected communities. For example, the translated documents cannot only be accessible on the Bank’s website and by going through webpages entirely in English.

Grievance Mechanisms. We welcome the promotion of additional grievance mechanisms to ensure that people’s concerns are adequately addressed. It is a welcome improvement to have additional avenues for redress. However, we remain concerned about grievance mechanisms as described in ESS10 and its Annex 1. Not only does the dependence on the Borrower’s implementation of this ESS worry us, but we are very concerned with the fact that the grievance mechanism described in the ESS is highly dependent on the Borrower’s domestic judicial and remediation frameworks. Depending on Borrower systems for remedy and

37 We agree with other groups that have submitted comments expressing their concern that paragraph 19 does not have specific disclosure requirements for Environmental and Social Assessment documents, including those of the JACES. See Japan Center for a Sustainable Environment and Society, Comments on the Second Draft of World Bank’s Environmental and Social Framework (Jan. 2016).
grievances can isolate vulnerable and disadvantaged stakeholders, potentially making it difficult for these stakeholders to use these mechanisms. The Bank needs to create supplemental guidelines to further explain how Borrowers can and should develop grievance mechanisms while avoiding the potential of further alienating stakeholders who are already marginalized.

Additionally, project-level grievance mechanisms (PLGMs) are often ineffective. ESS10 needs to provide enhanced guidance on how to develop an effective PLGM. The Bank should develop criteria based on international best practices and should consult outside information and with outside experts. Project-affected people also should be consulted on the design of the PLGM.

Harms often fall on the poorest people and on the communities who are supposed to be benefiting from development projects. Thus, it is imperative that the PLGM is effective. To be effective a PLGM must be predictable, transparent, accessible, fair, rights-compatible, and legitimate. Additionally, it must have clear standards so the communities can ensure accountability and the policy that it is assessing compliance with (i.e. the ESF) must be transparent and clear. Lastly, the PLGM should provide lessons learned for both itself and the Borrower and Bank.

Though an effective PLGM may be capable for addressing harm in many situations, the Bank should identify times when the PLGM is not appropriate and what should happen then. Using a PLGM in the event of severe human rights abuses or involuntary resettlement is often problematic because the PLGMs are ill-equipped to deal with it. The Bank must include parameters in the ESCP about what to do in these instances. Further, the ESCP should include how PLGMs will be monitored and evaluated.

Annex 1 of ESS10 should provide greater detail on the PLGMs.

**Mechanism’s Scope:** The mechanism will receive complaints regarding adverse impacts from both project operations and the Borrowers’ workers (including any reprisals).

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38 *See, e.g.* UN Office of the High Commissioner of Human Rights, *Guiding Principles on Business and Human Rights*, Principle 29 (2011) (discussing the importance of establishing Project-Level Grievance Mechanisms because it is important for grievances to be addressed early and remediated directly. This principle is part of Section III of the Principles which focuses on Access to Remedy).  
39 Potential experts include the IFC Compliance Advisor/Ombudsman (CAO), as the CAO has guidance on developing PLGMs, other independent accountability mechanisms, and other independent experts and stakeholders.  
Structure of the Mechanism

- Public information centers must provide information on the complaint process and access to resources for securing land title and legal recourse – all of which should be available in local languages and in a culturally appropriate manner.
- There should be an internal procedure and database for managing and tracking complaints and their resolution, using a central point of contact – independent of the Borrower operational agencies – to receive and log complaints.
- There should be a zero-tolerance policy on retaliation, along with clear procedures for addressing instances of reprisal.

Information Disclosure about the Mechanism

- Borrowers should disclose the existence of the grievance mechanism in a wide-range of places and fora. This could include at community meetings, posting in places where people gather, requiring Borrowers and their employees to disclose, etc.
- Disclosure should be done in local languages and in a culturally appropriate manner.
- Pamphlets should be created and be available in local languages in all communities and public information centers.
- Audio recordings in local languages accessed through toll-free number
- Information that should be disclosed includes, issues the mechanism is designed to address; details on different points of access; how to register a complaint; the complaint process; potential outcomes; timelines for the addressing of a complaint; the appeals process; potential monitoring arrangements; available resources; the Borrower’s and grievance mechanism’s policies on reprisals; existence of the complaint registry; and how to submit feedback regarding the mechanism itself.
- It should also be made known that access to the mechanism will not prejudice complainants’ rights to legal recourse; complainants can request confidentiality or anonymity

Accessibility

- The mechanism should be independent from the Borrower and should be accessible in numerous ways, including via a toll-free number; grievance forms that are simple, easy to follow, and translated into the local languages; verbally during community meetings with a frequency based on agreement between the Borrower and the communities; and through community liaison officers (who provide additional support by helping people fill out grievance forms) or public information centers.
- Additionally, the mechanism should permit collective complaint submissions.

Confidentiality and Anonymity. Complainants’ names will remain confidential upon request. If it is not possible to resolve the matter with the complainant’s identity remaining confidential, the investigation team will inform the complainant and discuss whether and, if so, how, the complainant wants to proceed. The mechanism should also allow complaints to be submitted anonymously, though complainants should be advised that anonymous complaints may be more difficult to investigate and therefore the complaint should be as detailed as possible. Complainants may also communicate through authorized representatives to ensure anonymity.

Procedure. The mechanism shall publicly disclose a set of procedures that it will follow from the time it receives a complaint to the time the complaint is closed out.
Transparency and Monitoring

- The grievance mechanism should maintain a case registry that includes the complaint (redacted if complainant has requested confidentiality) and outcome. This registry should be available to the public, including in local languages, and in a culturally appropriate manner and form that is understandable by all affected communities.
- The mechanism should have periodic meetings with project-affected communities to receive feedback from them on the mechanism itself.
- Performance indicators for the mechanism and a process for incorporating lessons learned should be developed by the Borrower.
- Audits should be conducted by an independent third-party at least once a year, if not more frequently, (including unannounced visits to communities) and assessed based on the United Nations Guiding Principles on Business and Human Rights’ effectiveness criteria.

Role of the Inspection Panel. As noted in our overall comments, the Inspection Panel should be explicitly given the role of reviewing project outcomes and whether projects have met the ESSs throughout the life-cycle of the project. This is increasingly important given the shifting focus of the ESF on to working with Borrowers to achieve compliance at later stages in the project cycle. Further the Panel should be able to look at outcomes to determine if they are materially consistent with the objectives. Management and Borrowers should be required to disclose the presence of the World Bank Inspection Panel to project-affected communities in a way that is understandable and culturally appropriate. The PLGMs must also make it clear that project-affected people can file a complaint directly with the Panel and is not required to use a PLGM or other local or national grievance mechanism prior to doing so.

Accountability in Borrower Frameworks and Common Approach. In allowing for the Use of Borrower Frameworks, the World Bank is allowing for the Borrower’s system to be used in place of the safeguards provided they are sufficient to meet the objectives of the safeguards. Similarly with the common approach, the Bank may approve a project that does not have to adhere to the Bank’s safeguards specifically. This has the potential to create an accountability gap because the communities and other interested stakeholders will be unsure of both what the policies are that the Borrower is supposed to be compliant with and who is responsible for ensuring compliance. This will likely create confusion as to who is responsible for any grievance that may arise. If the Bank insists on continuing with the use of Borrower systems, it must clarify this issue in this Standard and also clarify that the Inspection Panel will continue to review projects implemented under Borrower Frameworks and the Common Approach.

41 Although it is clear that the Bank still has the Inspection Panel and the management-led GRS, which provides a window where communities can file a grievance and the GRS will identify which project team can address the issue and send it to them for redress, available for grievances – as well as the project-specific grievance mechanism, the reliance on the borrower systems for implementation of all the ESSs can make it difficult for stakeholders to: (1) know which mechanism is the proper venue for their complaint, (2) bring a complaint in a timely fashion (particularly with mechanisms that, like the Panel, have time restrictions on when a complaint can be brought), and (3) know which party to identify when claiming environmental and social framework violations or who to contact when trying to get access to remedial measures.
Conclusion

Thank you for considering our comments on the draft ESF. The World Bank safeguards and their effective enforcement are critical to ensuring effective development outcomes that will help the Bank meet its goals of eradicating extreme poverty and promoting shared prosperity. The Bank cannot achieve these goals if the communities it is purporting to help and their environments are placed at risk by Bank-funded projects. We are concerned that the overall structure of the ESF is still inadequate for safeguarding communities and, despite its expansion to new topics, is overall a significant dilution of the current policies. The Bank has enhanced its own discretion to approve projects that are not in compliance, based on commitments that the project will comply in the future. Such a system requires far more transparency in project preparation and more robust monitoring than has been demonstrated by the Bank to date. This is especially concerning given that the Bank is proposing greater flexibility so that it can take risks and fund projects in high risk sectors. Our comments hope to ensure that communities do not have to bear the risks of such discretionary safeguards and weaker appraisal. We hope the Bank will consider these comments, make the necessary changes, and champion strong safeguards as a key to ensuring quality projects.

We look forward to continuing to engage with the Bank on the revision of its safeguards. If you have any questions, please feel free to contact Erika Lennon (elennon@wcl.american.edu).

Sincerely,

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