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Subject: World Bank Environmental and Social Safeguard Policies Review.

Dear Mr. Raiser,

1. In reference to the document Second Draft for Consultation – Setting Environmental and Social Standards for Investment Project Financing, released on July 1st, 2015 for global consultation, the Government of Brazil (GoB), led by the Ministry of Finance, has examined its content with a view to provide feedback to the World Bank’s environmental and social safeguard policies review. We provide below some overall remarks for consideration as well as specific suggestions for improvement of the text.

2. First, we express our positive view on the World Bank’s initiative to undertake consultations with Borrowers on the environmental and social safeguard policies framework applicable to projects supported through Investment Project Financing (IPF). However, as for the consultation held in Brazil on March 1st, 2016, we take note that the study case choice – Projeto de Desenvolvimento Regional Integrado e Sustentável – Tocantins – was not representative of the array of issues Borrowers may face once they are presented with the new set of standards and requirements from the Bank.

3. Indeed, we understand that the consultation process carried out by the World Bank for this Second Draft could have been more objective, allowing for a meaningful dialogue on the impacts that this proposal will have on Borrowers. The key objective of the consultation process was to assess the costs of implementing the revised Environmental and Social Standards, considering clients with different capacity levels and in varied national and local circumstances. By the end of this process, uncertainty remains on the implementability of the new framework, and it is not clear if the effectiveness of Bank operations will improve as a result of the proposed changes.
4. Taking into account the Draft proposal discussed in the consultations, Brazil suggests the following changes. The justification for the proposed changes is also presented below.

**Use of Borrower's systems**

*Environmental and Social Policy (ESP)*

**B. Use and Strengthening of Borrower’s Environmental and Social Framework**

23. The Bank supports if rely on the use of the Borrower’s existing environmental and social framework in the assessment, development and implementation of projects supported through Investment Project Financing, providing this is likely to be able to address the risks and impacts of the project, and enable the project to achieve objectives materially consistent with the ESSs. The Bank will review the Borrower’s existing environmental and social framework (the ES Framework) relevant to the development and implementation of the project proposed for Bank support.

24. The Bank will consider the use of all, or part, of the Borrower’s existing environmental and social framework relevant to the development and implementation of the project (the Borrower’s ES Framework). The use of Borrower’s ES Framework will be determined in consultation with the Borrower at the discretion of the Bank. Where the Bank has agreed to consider such use, the Bank will review the Borrower’s ES Framework to assess whether such use would enable the project to achieve objectives materially consistent with the ESSs.

26. **Where the Bank has agreed to use all, or part, of the Borrower’s ES Framework for the assessment, development and implementation of the project** The Bank will work with the Borrower to identify and agree on measures and actions to address gaps and strengthen the Borrower’s ES Framework, to the extent that such measures and actions are necessary to ensure objectives materially consistent with the ESSs. The agreed measures and actions, together with the timeframes for completion of such measures and actions, will form part of the ESCP.

[New paragraph proposed]

Even if Borrower's systems are used, all stakeholders and project-affected parties may have access, as appropriate, to project grievance redress mechanisms, local grievance mechanisms, the Bank’s corporate Grievance Redress Service and the World Bank Inspection Panel.

*ESS1: Assessment and Management of Environmental and Social Risks and Impacts*  

**A. Use of Borrower’s Environmental and Social Framework**

18. When a project is proposed for Bank support, the Bank in consultation with the Borrower will may request that the Bank to consider the use of all, or part, of the Borrower’s existing environmental and social framework (the Borrower’s ES Framework) in the assessment,
development and implementation of projects supported through Investment Project Financing, provided that it is likely to be able to address the risks and impacts of the project, and enable the project to achieve objectives materially consistent with the ESSs. For such a request, the Borrower will provide information to the Bank in connection with the Bank’s review of the Borrower’s existing environmental and social framework relevant for the proposed project (the ES Framework).

B. Environmental and Social Assessment

30. The Borrower will ensure that high risk subprojects are prepared and implemented to meet the ESSs, and substantial risk, moderate risk and low risk subprojects are prepared and implemented to meet national law and, when the requirements that the Bank deems relevant, the requirements of the ESSs.

[Proposed new paragraph]

Even if Borrower's systems are used, all stakeholders and project-affected parties may have access, as appropriate, to project grievance redress mechanisms, local grievance mechanisms, the Bank’s corporate Grievance Redress Service and the World Bank Inspection Panel.

5. The Bank should always consider the use of Borrower's systems as a means to improve and strengthen national frameworks. This would enable a more sustainable approach to environmental and social safeguards, leading to increased capacities and more effective domestic frameworks.

6. It is therefore our view that the decision on the use of safeguards should always start, as default, from the adoption of the Borrower’s framework and, subsequently, build on the possibilities to achieve the highest standards of the Bank, based on the opportunities for improvement of Borrowers’ own frameworks.

7. The effort to improve Borrowers’ environmental and social frameworks will require the support of the Bank, both financial and technical, for capacity building. This work would involve the adoption by the Bank of initiatives designed to help clients to continuously address social and environmental risks on the national level, on-site training, institutional strengthening and inter-institutional collaboration. The Bank should consider financing from trust funds to carry out such activities.

8. It should be noted that the use of Borrowers’ frameworks does not preclude the provisions on higher grievance redress and accountability mechanisms. Throughout all the project-cycle, all stakeholders and project-affected parties should have access, as appropriate, to the Bank’s corporate Grievance Redress Service and the World Bank Inspection Panel.

GHG emissions

ESS3: Resource Efficiency and Pollution Prevention and Management
A. Air Pollution

15. In addition to the resource efficiency measures described above, the Borrower will consider alternatives and implement technically and financially feasible and cost-effective options to avoid or minimize project-related air emissions during the design and operation of the project. The assessment of options will consider national circumstances, with a view to identify ways to minimize emissions compared to business-as-usual practices. Borrowers will not be constrained to adopt unrealistic approaches or international benchmarks that are inadequate in the local context.

16. For projects that are expected to produce GHG emissions in excess of 25,000 tonnes the threshold established by the Bank of CO₂-equivalent annually, the Borrower will, where technically and financially feasible, estimate (a) direct emissions from the facilities owned or controlled within the physical project boundary; and (b) indirect emissions associated with off-site production of energy used by the project. Estimation of GHG emissions will be conducted by the Borrower annually in accordance with internationally recognized methodologies and good practice, without imposing undue burden on Borrowers. Third party validation or verification will not be a requirement for estimating GHG emissions.

9. The current draft for ESS3 asserts that alternatives should be considered in the design of projects to avoid or minimize emissions, when such alternatives are technically and financially feasible. In order to ensure that the ESS will be applied in a fair and reasonable manner, it should be noted, in addition, that national circumstances must be taken into account in the analysis of such alternatives, considering opportunity costs and which are the most adequate technologies in the local context. The definition of benchmarks for emissions unrelated to the local situation would increase costs and greatly jeopardize the viability of projects, especially in the poorest countries.

10. Considering the threshold for estimation of GHG emissions at the project level, the initial proposal presented in the first Draft of the consultations was adequate (25,000 tonnes of CO₂-equivalent annually), and we suggest that this parameter be defined in the ESS. The use of the proposed threshold would allow for broad coverage of emissions and would prevent the imposition of undue burden in the case of projects without relevant GHG emissions. In addition, it should be stated clearly that Borrowers will not be burdened with the high costs of services for validation and verification of GHG emissions. The estimation of GHG emissions for World Bank projects should be cost-effective and not require third-party consultants simply to fulfill obligations unrelated to the core objectives of the project – the Bank and the Borrower should agree during project preparation on the appropriate methodology for estimating emissions, considering, for instance, the use of available proxies and other cost-effective ways to estimate emissions, and whenever possible relying on national systems for collection of GHG emissions data.
Free, prior and informed consultation

ESS7: Indigenous Peoples

Objectives

- To ensure that the Borrower will carry out consultations with representative institutions of the affected indigenous peoples, in good faith and in a form appropriate to the circumstances, with the objective of obtaining their Free, Prior, and Informed Consent (FPIC) of affected Indigenous Peoples in the three circumstances described in this ESS.

Requirements

9. A key purpose of this ESS is to ensure that Indigenous Peoples present in, or with collective attachment to, the project area are fully consulted about, and have opportunities to actively participate in, project design and have opportunities to actively participate in the determination of project implementation arrangements. The scope and scale of consultation, as well as subsequent project planning and documentation processes, will be proportionate to the scope and scale of potential project risks and impacts as they may affect Indigenous Peoples.

10. The Borrower will assess the nature and degree of the expected direct and indirect economic, social, cultural (including cultural heritage), and environmental impacts on Indigenous Peoples who are present in, or have collective attachment to, the project area. The Borrower will prepare a consultation strategy and identify the means by which the rights and interests of affected Indigenous Peoples will be taken into account participate in project design and the way in which they will participate in the implementation of the project. Subsequently, effective project design and documentation will be developed as set out below.

Avoidance or Mitigation of Adverse Impacts

16. There may be exceptional situations in which projects involving the exceptional vulnerability of remote groups or peoples with limited external contact, also known as “isolated peoples” or peoples in “voluntary isolation” or “in initial contact”.

16bis. In these situations, the aspects of the project with potential impacts on peoples in "voluntary isolation" will not be processed further, in order to preserve, respect and protect lands, territories, environment, health and culture, avoiding forced contact. In the case of projects that involve uncertainty over the incidence of may have potential impacts on the territorial integrity of these peoples, require appropriate measures should be taken, in accordance with national legislation, to enable previous studies that help identify the area and the use of traditionally occupied recognize, respect and protect their land and territories, for the assessment of potential impacts, environment, health and culture, as well as measures to avoid all undesired contact with them as a consequence of the project.

16tris. In the case of projects with potential impacts on peoples in “initial contact”, the Borrower will carry out consultations with representative institutions of the affected indigenous peoples, in
good faith and in a form appropriate to the circumstances, with the objective of obtaining their Free, Prior and Informed Consent (FPIC).

Meaningful Consultation Tailored to Indigenous Peoples

17. (…) In addition, this process will:

(a) Follow the guidelines for consultations and consent set out in UNDRIP Articles 19 and 32, ILO 169 Articles 6, 15 and 16.

(b) Involve Indigenous Peoples’ representative bodies and organizations (e.g., councils of elders or village councils, or chieftains) and, where appropriate, other community members;

(c) Provide sufficient a reasonable amount of time for Indigenous Peoples’ decision-making processes; and

(d) Where applicable, allow for take fully into account Indigenous Peoples’ rights as well as the concerns expressed by them during the consultation process, effective participation in the design of project activities or mitigation measures that could potentially affect them either positively or negatively.

B. Circumstances Requiring Consultations Aimed at Obtaining Free, Prior and Informed Consent (FPIC)

18. Indigenous Peoples may be particularly vulnerable to the loss of, alienation from or exploitation of their land and access to natural and cultural resources. In recognition of this vulnerability, in addition to the General Requirements of this ESS (Section A) and those set forth in ESSs 1 and 10, the Borrower will carry out consultations aimed at obtaining the FPIC of the affected Indigenous Peoples when the project will: (…) For the purposes of this ESS, FPIC is established as follows:

(a) The scope of FPIC applies to project design, implementation arrangements and expected outcomes related to risks and impacts on the affected Indigenous Peoples;

19. In case the Borrower has not consulted When the FPIC of the affected Indigenous Peoples in order to obtain their FPIC cannot be ascertained by the Bank, the project will not be processed further. (…) 

22. If the Borrower proposes to locate a project, or commercially develop natural resources, on land traditionally owned by, or under the customary use or occupation of, Indigenous Peoples, and adverse impacts can be expected, the Borrower will take the following steps aimed at obtaining their FPIC: (…)
Cultural Heritage

24. Where a project may significantly impact cultural heritage16 that is relevant to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples’ lives, priority will be given to the avoidance of such impacts. Where significant project impacts are unavoidable, the Borrower will carry out consultations with representative institutions of the affected indigenous peoples, in good faith and in a form appropriate to the circumstances, with the objective of obtaining their FPIC of affected Indigenous Peoples.

25. Where a project proposes to use the cultural heritage including knowledge, innovations, or practices of Indigenous Peoples for commercial purposes, the Borrower will inform the affected Indigenous Peoples of: (a) their rights under national law; (b) the scope and nature of the proposed commercial development; and (c) the potential consequences of such development. The Borrower will also carry out consultations with representative institutions of the indigenous peoples concerned, in good faith and in a form appropriate to the circumstances, with the objective of obtaining their FPIC. The Borrower will also enable Indigenous Peoples to share equitably in the benefits to be derived from commercial development of such knowledge, innovation, or practice, consistent with the customs and traditions of the Indigenous Peoples.

11. With respect to ESS7, Brazil understands that the institution which has the mandate and the legitimacy to define norms referring to indigenous peoples is the United Nations and its affiliated bodies. Any standards and procedures developed by the World Bank in this domain shall be consistent with norms agreed at the UN System.

12. The formulation proposed above is consistent with the three main UN documents in this domain, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP – Articles 19 and 32), the Outcome Document of the World Conference on Indigenous Peoples (WCIP-OD §§ 3 and 20), and Convention 169 of the International Labour Organisation (ILO 169 –Articles 6, 15 and 16).

13. UNDRIP, WCIP-OD and ILO-169 require that indigenous peoples be "consulted" with regard to the "adoption" or "implementation" of projects, administrative and legislative measures that affect them. These provisions ensure that their rights and interests are protected and taken into account. The aforementioned documents do not require the "participation" of indigenous peoples in the project design phase. Their "participation" in project design is not necessary to safeguard their rights and interests, and would significantly complicate this stage of the project, which is of a technical nature.

14. In addition, neither ILO-169, nor UNDRIP, nor the Outcome Document of the World Conference on Indigenous Peoples (WCIP-OD) mention the provision of "sufficient time" for Indigenous Peoples’ decision-making processes. We understand that the word "reasonable" is preferable to "sufficient" because it conveys the idea that the amount of time to be allocated has to be justified, improving the effectiveness of this process.
15. In the case of projects, administrative and legislative measures that affect indigenous peoples, the general requirement of ILO-169 (Art. 6), UNDRIP (Art. 19, 32) and the WCIP-OD (§§ 3, 20) is that governments carry out consultations "in order to obtain" their free, prior and informed consent. Such consultations have to be carried out "in good faith", but the achievement of FPIC is only an absolute condition in exceptional cases involving relocation of indigenous peoples (ILO 69 Art. 16; UNDRIP Art. 10) or storage or disposal of hazardous materials in their lands or territories (UNDRIP Art. 29). The proposed ESS should be amended to reflect the true nature of the FPIC process, as defined in the relevant international standards.

**Transparency**

**ESS10: Information Disclosure and Stakeholder Engagement**

**Information Disclosure**

[Proposed new paragraph]

21. All documents prepared for the fulfillment of the ESSs should be made available publicly, with a view to allow the informed participation of interested parties in the process of engagement and consultation, observing the World Bank Policy on Access to Information as well as national legislation on confidential documents.

16. The success of development projects supported by the World Bank requires effective social participation. In order to promote fruitful engagement with stakeholders, transparency should be the norm in the implementation of the environmental and social standards. Therefore, disclosure of information should be the rule, and documents should remain secret only as an exception.

17. The proposed paragraph aims to ensure that the information made available will be integral and authentic, promoting the disclosure of primary documents to interested parties. This would reduce the risk that stakeholders be given access only to documents prepared for the consultation process, while relevant information remain outside of their purview.

**Final remarks**

18. In light of the observations presented above, it seems to us that as presently drafted, the new environmental and social standards may increase the cost to Borrowers, not only in financial terms, but also in terms of human and institutional resources, besides monitoring and management by the Borrower and by the Bank, which may work, in practice, to the disadvantage of the achievement of the Bank's twin goals.
19. The GoB concurs with the efforts by the Bank to promote equality of opportunities, including for the poor and most disadvantaged, for the current and future generations. However, the added complexity to project design and implementation of the proposed safeguards can represent an impediment to the very benefit of those excluded from the development process. The partnership for development should build on developing countries’ context, circumstances and policies, and an understanding by the Bank of the feasible advances for each one, providing the means for ownership and sustainability of the development attained.

Yours sincerely,

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CC:
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