Subject: World Bank Environmental and Social Safeguard Policies Review

Dear Mrs. Deborah Wetzel,

In reference to the document First Draft for Consultation – Setting Standards for Sustainable Development, released on July 30, 2014 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 anticipate below some overall remarks for consideration. Specific suggestions for improvement of the text follow by attachment to this letter.

First, we welcome the intent to consolidate and modernize current safeguard policies, aiming at enhancing their clarity and cohesion, determining the roles and responsibilities of both the Bank and the Borrower, providing latitude for the use of national systems, and shifting the Bank’s efforts from an a priori static assessment to a risk management approach and support throughout the project life-cycle, from its identification to the closing date. It is, nevertheless, a more complex approach and care has to be taken to avoid the need for cumbersome and costly implementation and follow up procedures and mechanisms.

We also appreciate 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). Open dialogue shall help the Bank collect a wider range of views and better understand the challenges that Borrowers face to deliver superior environmental and social outcomes in the development projects and programs the Bank supports, and to calibrate the scope of the safeguards framework review.

In fact, cumbersome requirements by the Bank vis-à-vis Borrower’s circumstances may lead to unbearable “conditionalities” for project design and implementation, and prevent the achievement of the proposed development objective through the envisaged project. This unveils
a startling risk attached to the proposed new framework: that the Borrowers whose own environmental and social standards do not compare to the Bank’s safeguards policies will have to apply the most rigorous of the two, and that, if those Borrowers’ institutional context and capacities do not allow for the straight implementation of Bank’s policies, there will be a substantial increase in the cost of doing business with the Bank. In those circumstances, the effort by such a country to work with the Bank may generate a distortion in the allocation of resources vis-à-vis its development needs and choices.

Considering the commitment of the Bank to reduce the time of design and approval of Bank supported projects – currently an average of 18 months – as well as the reduction in Bank budget support to monitoring and implementation of projects, this may lead to a self-selection of projects for Borrowers who already have well established, state-of-the-art institutions and environmental and social policies that need no or little refinement to meet the Bank’s standards, to the detriment of the least developed countries or regions.

This brings up questions on what kind of project the Bank intends to support in order to deliver the twin goals of ending extreme poverty and promoting shared prosperity in a sustainable manner, and what sort of operational policies are required to implement those projects.

While recognizing that protecting people and the environment is key, the Bank’s safeguard policies review should convey a set of standards that (i) build on advances already attained internationally and within the client country; (ii) tackle some emerging challenges – without prejudging undergoing negotiations in other fora; (iii) prevent uncertainty – which is known to deteriorate the business climate; and, foremost, (iv) are implementable.

It is certainly good practice to acknowledge internationally agreed concepts, approaches, treaties and declarations on major social and environmental issues that bear the weight of more comprehensive discussions and are aligned with global governance regimes. We highly advise that the Bank refer to decisions, conventions and resolutions from ILO, WHO, UNESCO, UNEP, UNFCCC, among others; and that the Bank refrain from citing international guidelines, standards, initiatives, practices or methodologies that are not undersigned or recognized by the majority of countries, in particular those resulting from organizations or institutions with limited membership and unaccountable or concentrated governance or financing.

In this respect, it raises particular concern the fact that the Bank’s environmental and social policies framework softens the language on forced and child labor, to read “[t]o avoid the use of forced and child labor” (ESS2, Objectives). ILO fundamental Conventions – whose principles member States should respect, promote and realize, regardless of ratification – have set the goal to totally eliminate forced and child labor. Hence, the Bank should not be seen as downplaying this objective by any means if it is to include a policy on labor standards, even if taking into account the specific circumstances of individual projects.

Additionally, the three main multilateral documents concerning the rights of indigenous peoples, namely ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the World Conference on Indigenous Peoples’ Outcome Document (WCIP-OD), require that indigenous peoples be “consulted in order to obtain” their free, prior and informed consent (FPIC) with regard to the “adoption” or “implementation” of projects, administrative and legislative measures that affect them. Only in exceptional cases is the achievement of FPIC an absolute condition: (i) when it involves relocation of indigenous peoples (ILO 69 Art. 16; UNDRIP Art. 10); or (ii) when it involves the storage or disposal of hazardous materials in their lands or territories (UNDRIP Art. 29). The language proposed by the Bank in the current draft requires FPIC for an extended list of circumstances which are not covered by the aforementioned
or by any other multilaterally agreed document in this domain. It is for this reason that we cannot endorse the provisions concerning FPIC as they now stand.

On a different note, although the proposed document hints at proportionality of the assessment and management of risks and impacts of projects, commensurate with the nature, scope of financing and significance of potential risks and impacts related to the project, there seems to be an intrinsic divergence. It is stated that ESS1 and ESS10 are mandatory in their entirety to all projects, in order to guide the applicability of other proposed standards. As such, the scope and depth required to the assessment of those standards do not a priori differentiate big high-risk from small low-risk projects, especially regarding ESS1. In practice, this may unduly impose a disproportionate burden on and eventually prevent the feasibility of small low-risk projects.

If an exhaustive pre-assessment and anticipation of all potential risks and impacts is required, the safeguards, instead of becoming simpler and based on risk management during the project, are set to become bulkier and to remain a priori. On top of this, reassessment of risk ratings may result in adjustment of the Environmental and Social Commitment Plan (ESCP). Therefore, if the ESCP is an integral part of the legal agreement, an ordinary change of the risk profile and mitigation measures will cause (and in the case of Brazil this is certain to cause, due to our legal system) a need for revisiting the project and its legal agreement.

In light of those observations, it seems to us that as presently drafted, the new environmental and social safeguards of the World Bank will increase costs, in terms of money and human and institutional resources, of the project itself, and of monitoring and management by the Borrower and by the Bank.

The GoBI 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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Secretary for International Affairs

CC:
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