CI’s Comments on new draft World Bank Environmental and Social Framework

[Page numbers refer to the tracked changes version of the ESF.]

Overarching Issues

1. **Flexibility to delegate safeguard responsibility to potentially weaker safeguard systems**: Four potential opt-out clauses pose the greatest overall loopholes for the entire ESF (ESP ¶8-13, 23-27), Use of Borrower Frameworks, FIs, Common Approach for co-financing multi-donor or advanced stage projects and Associated Facilities). All of these opt-outs allow delegation of Bank safeguard responsibility to a third party, and rest on ESF flexible requirement that Borrower only achieve **material consistency with the objectives of the ESS**. Not only is there no strengthening of the somewhat aspirational ESS1 objectives, greater discretion and flexibility is introduced. ESS1 Objectives, bullet 2 b - "to acceptable levels;" and bullet 2d -- "where technically and financially feasible;" and bullet three "whenever appropriate." One minor change is the requirement that the common approach agreement will be included in ESCP (ESP ¶9, fn. 16), which would at least guarantee partial disclosure of the agreement, perhaps in draft form. Associated Facility definition remains far too narrow, weakening chances for any meaningful application in high risk sectors.

**Recommendation 1:** The Bank’s ESF must ensure all World Bank supported activities meet the requirements of the ESS (not only “material consistency with the objectives”).

**Recommendation 2:** All high risk and substantial risk activities will be excluded from any delegation, either through the use of borrower frameworks, common approaches, financial intermediaries or associated facilities. All high and substantial risks will be fully appraised and reflected in the project documents before board approval.

**Recommendation 3:** The ESF will clarify minimum standards for what needs to be reported to the Board in all cases of delegation. Reporting protocol should define what type of information is required about risk, borrower capacity to manage risk, and probability of key assumptions occurring. Simultaneous disclosure to the public for these projects is required, with penalties outlined for misleading, or omitted information.

**Recommendation 4:** Define Associated Facilities as new or expanded works or infrastructure without which a World Bank financed project would not function as intended.

**Recommendation 5:** The triggers for the range of corrective action remedies should the borrower be unable to meet the environmental and social risk related loan covenants will be explained in the ESCP. A period of 90 days is the maximum period to elapse after a deadline for a major commitment is missed and deficiency has not been resolved before a borrower faces a disbursement suspension.

2. **Flexibility to defer appraisal and adopt open-ended compliance timeframes**: Adaptive management, otherwise known as open-ended compliance, or the flexibility to assess, determine, and disclose relevant information about or enforce compliance in a "**timeframe and manner satisfactory to the Bank**" (ESP ¶ 7, ESS1 ¶ 13) is the second fundamental loophole of the entire ESF. The core flexible language
remains unchanged from the original ESF draft. The scope for adaptive management is potentially expanded by the elimination of the limiting clause "minor change" from the 2nd draft (ESP ¶ 47, ESS1 ¶ 39). Significant detail about the specifics of ESCP content is relocated from ESS1 (¶ 38, 40, 42) to Annex 2. The ESCP will clarify compliance roles and responsibilities, capacity strengthening activities, timing, monitoring and budget, but does not explain how or by what standard. Borrower implementation track record is missing from key articles (ESS1, ¶ 13, fn. 20; ¶ 18, fn. 23).

**Recommendation 1:** Appraisal and management of all high risk and substantial risk activities will be excluded from any deferral through an ESCP. All high and substantial risks will be fully appraised and reflected in the project documents before board approval.

**Recommendation 2:** Deferred appraisal will meet the following ESS requirements
- 3rd party monitoring
- Full ESCP disclosed in public before approval, including common approach agreement
- Monitoring of ESCP disclosed (primary evidence of discrete actions to enable assessment of compliance w/ESS)
- Routine audit of deferred appraisal activities and ex-post impact evaluation for representative sample of activities over first 5 years of ESF implementation.
- Adequate Board information (see Recommendation on ESCP content requirements below)

**Recommendation 3:** ESCP content requirements to be consulted with affected groups and delivered to the Board under provisions for simultaneous disclosure, include:
- Detailed rationale for post-Board preparation
- Broad siting info for subprojects
- Nature, content and timetable for preparation and disclosure of pending ESIA documents
- Pre-Board documents must include all RAPs, IPPs, Labor action plans, ESMPs, or ESMF
- Budget, responsible party, robust performance indicators, monitoring and reporting requirements
- Disclosure requirements before/during implementation
- Explicit references to remedy for non-compliance, rather than ref. to OP 10.0
- Specific provisions for linking non-compliance to disbursement suspension.

3. **Assessment and Use of Borrower Frameworks.** The use of Borrower Environmental and Social Frameworks remains a core demand of many large Borrowing governments and a critical threshold for dilution of the current World Bank safeguard policies. The revised ESF now suggests that the use of Borrower Frameworks will not be the default. The 2nd draft ESF states an assessment of a Borrower Framework will only be initiated after express interest by Borrower and Bank validates the merit to devoting time and resources. "The use of Borrower's ES Framework will be determined at the discretion of the Bank." (ESP ¶24).

**Recommendation 1:** Bank assessment of Borrower Frameworks should be based the how they meet the ESS requirements as well as the ESS Objectives. To provide adequate detail for assessment methods, text in ESS1 ¶ 18 footnotes 23 and 24 should be elevated to the policy text.
Recommendation 2: All Bank-financed high risk and substantial risk activities will be excluded from any delegation, either through the use of borrower frameworks, common approaches, financial intermediaries or associated facilities for the a five year period of initial ESF implementation. IEG evaluation of ESF performance in management of low and moderate risk activities under Borrower Framework approaches shall inform their future use for substantial risk activities.

Recommendation 3: (ESP ¶ 30, 33) Clarify mechanisms for the verification of borrower information and the required use of independent advisors and/or monitors, including the provision of a roster of credible human rights monitoring agencies at the national and international levels as designated "reputable third parties." (ESS1, ¶ 18, fn. 24.)

Recommendation 4: The ESF will clarify that assessment of Borrower track record must demonstrate that over a minimum retrospective period of five prior years, adequate capacity exists in proportion to actual and likely future spread of portfolio risk in the areas of institutional rules, human resources, financial resources (budget), stakeholder engagement and transparency. Track record will also consider any past project affected community grievances, including those related to significant violations of human rights as reported by national and international agencies, during the previous decade and the extent of relevant sector experience.

4. FI and Other Framework Sub-projects: Frameworks for sub-projects and financial intermediary lending involves a subset of delegation opt outs and represents a core issue of WB and IFC harmonization. Some positive changes have been introduced for FIs and other projects with frameworks, but there are inconsistencies (between ESS1 and ESS9) with regard to prior review and disclosure. The Bank (not Borrower, as ESF 1st draft stated) is responsible for classifying the risk of each sub-project, conducting due diligence, and approving sub-projects (ESP ¶ 34). The ESP will require the Borrower to assess sub-projects with substantial, moderate or low risks in accordance with any ESS requirements that the Bank deems relevant (ESP ¶ 34). All high risk sub-projects come back to WB for prior review and clearance. Sub-project prior review is to be done by the Bank “as appropriate” (ESP ¶ 36).

Recommendation 1: High risk and substantial risk sub-projects must be required to meet all ESS requirements. Partial requirement for substantial risk sub-projects to possibly meet some ESS requirements is not adequate.

Recommendation 2: Bank will review all high risk sub-projects financed through FIs or projects using frameworks. Substantial risk sub-projects should also be subject to prior Bank review, particularly when Bank is not satisfied that Borrower has adequate capacity.

Recommendation 3: High risk sub-projects should have their own ESCP.

Recommendation 4: FI lending must adhere to an exclusion list of prohibited activities (suggested adherence to IFC’s current exclusion list), without exception in the form of minimal thresholds for business activity. IFC exclusion list prohibits investment in Production or activities involving harmful or exploitative forms of forced labor/harmful child labor.
5. **Human Rights**: The current draft ESP/ESS fails to align with the international treaty obligations of their borrowers and provides no recognition of a World Bank responsibility to ensure human rights are not abused as a result of activities the Bank supports. The ESP and ESS1 leave unclear how the Bank or Borrower will apply specific aspects of the non-discrimination requirement in complex social and political contexts, including where recognition of certain groups is not in accordance with national law.

**Recommendation 1**: The World Bank should put in place a robust human rights due diligence mechanism, fit to adequately identify and prevent risk to human rights as a result of all activities supported by the Bank.

**Recommendation 2**: ESP and ESS 1 should ensure that all Bank-supported activities respect the international treaty obligations of borrowers, including their human rights obligations, referring to international conventions/agreements relevant to a project.

**Recommendation 3**: ESS1 Objectives should include pursuing/maximizing the opportunity for positive development benefits of the project in a manner that ensures non-discrimination of vulnerable or disadvantaged groups through differentiated measures. *(See issue 2 for why strengthening ESS1 objectives is of strategic significance)*

6. **Disclosure.** The ESP continues to **not require procedural minimum thresholds** for disclosure throughout the project cycle, thus leaving the critical timing and content of disclosure for affected groups and the Board too vague to be consistent and effective in practice. Disclosure to stakeholders as early as possible is the only principle. ESS1 states merely that "the ESCP will be disclosed." (¶ 37). These are inadequate as thresholds to ensure minimum safeguards standards and consistency across all projects. However, the ESF adds that meaningful engagement requires that in most cases, all material E/S assessment tools and methods must be completed before project appraisal.

**Recommendation 1**: Minimum disclosure requirements for high risk and substantial risk projects are prior to appraisal mission or 120 days before Board approval, whichever is more, and shall include a draft ESIA and ESMP, draft stakeholder engagement plan, preliminary E&S framework assessment/gap analysis, final /updated ESIA, ESCPs & resettlement plans and IP plans. This includes broad siting information and generic assessment and risk management parameters for subprojects for which the location is not identified prior to Board approval.

**Recommendation 2**: A completion date, budget, performance indicator, monitoring method, responsible party and redress mechanism for each action will be specified in the ESCP.

**Recommendation 3**: The Bank will provide the Board the information necessary to assess the potential risks and benefits of deferring appraisal of any known project risks, the use of borrower frameworks, or common approach agreements. The Board will have a complete and detailed assessment or gap analysis of any third party framework, proposed gap filling actions, and estimated

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1 While CI’s mission is to improve human well-being through better caring for nature, we have pioneered a **rights-based approach to conservation**, recognizing that environmental and social sustainability go hand-in-hand.
probabilities that risk or proposed actions will occur and likelihood that the framework in question will perform effectively. The Board will provide and disclose an explanation of any decisions to use borrower’s frameworks, or common approach agreements. The Bank discloses any decision to change the project risk rating during implementation, including justification based on two prior monitoring reports.

**Recommendation 4:** The Bank will maintain a tracking of environmental and social risk and impact performance for the lending portfolio, based on a small number of outcome indicators. Management tracking will include indicators of disbursement gaps which inform the intensity and frequency of Bank project supervision activities. The Bank will report annually to the public on these indicators.

**7. Monitoring and Reporting, including Independent, Third Party Monitoring.** Given the pre-eminent philosophical importance in moving safeguards away from a prescriptive approach to an implementation outcome-oriented one, the lack of detail about how the ESF will overcome known Bank competence issues in the Monitoring and Reporting is of deep concern. Monitoring and reporting responsibilities are stated in generic terms (ESS1, ¶ 45-50). For example, ESS1 and the E/S Procedure identify an ESCP implementation report and Annual Monitoring report, which among other things must include a report on stakeholder engagement during implementation (¶ 28). However, there is no explicit requirement to disclose either report to the public (only to the Bank). Stakeholder disclosure is couched in ambiguous terms with provision required "*in a manner appropriate to the nature of their interests and the potential environmental and social risks and impacts of the project*" (ESS1, ¶ 51). The looming gap is the absence of any explicit disclosure procedure for the main compliance mechanism - the ESCP, as part of borrower prepared monitoring reports. The ESP does not clarify the Bank’s role in reviewing or defining the project’s outcome indicators.

**Recommendation 1:** Bank monitoring missions are a minimum of 2 per year for all substantial and high risk projects, with this frequency increasing in response to change in risk rating, non-compliance with ESCP, monitoring reports or adaptive management needs.

**Recommendation 2:** A draft ESCP will be disclosed before appraisal mission and before Board approval. Detailed ESCP reporting, as part of annual monitoring reports will include environmental and social safeguard implementation indicators, particularly any issues related to resettlement, indigenous peoples, critical natural habitat protection, protection and non-discrimination of benefits for vulnerable and disadvantaged people, and stakeholder engagement. ESS implementation cost and benefit metrics will be reported where possible. The Bank will verify the quality of the information provided and include the results in the track record of the Borrower performance.

**Recommendation 3:** The Borrower will establish independent and/or community monitoring mechanism, providing capacity strengthening and resources for the following circumstances:

- where human rights risks or impacts are considered high or substantial
- for any use of Borrower Frameworks during the first five years of ESF implementation
- for high risk resettlement, IP related or CNH affected activities
- where deferred appraisal of any high or substantial risk activity is piloted
- where Borrower capacity is weak

8. ESF Implementation Capacity. Management will prepare an implementation plan as part of the final ESF submission to CODE at the end of the 3rd phase of consultation. Management does not propose to increase baseline funding to support capacity - building work, rather it will establish a multi-donor trust fund (MDTF) to which shareholders will be asked to contribute.

**Recommendation 1:** Increase dedicated World Bank Group safeguard staffing capacity and budget (by at least 100%) and skill mix are needed to enhance safeguard support and effective policy compliance during all stages of the project cycle. Minimum annual safeguard budget should be $80 million.

**Recommendation 2:** RSA/ESSA clearance is required for all Bank projects at concept and appraisal, including any use of Borrower Frameworks or deferred appraisal activities. RSA clearance also required for major changes (risk rating) during implementation

**Recommendation 3:** For areas of expanded social risk, particularly for implementing non-discrimination of vulnerable and disadvantage peoples, safeguard staff should ensure H-level specialists available for each geographic region.

### Specific Comments & Text Revisions

**Vision**

Para. 2, p. 5: We welcome this articulation of the World Bank’s commitment to climate change mitigation.

Para. 3: We welcome reference to the Universal Declaration on Human Rights. However, this should go beyond an aspirational statement. ESP and ESS 1 should ensure that all Bank-supported activities respect the international treaty obligations of borrowers, including their human rights obligations, referring to international conventions/agreements relevant to a project.

Para. 5, 2nd bullet, p. 6: We welcome this addition, which would benefit also from inclusion of the concept of sustainability. For grammatical sense, suggest revising to read: "and use natural resources and ecosystem services efficiently, equitably, and sustainably."

**Policy**

Para. 4a, p. 10: We welcome inclusion of ecosystem services here.

Para. 9, p. 12: We welcome the positive standard of consistency rather than a negative standard of not deviating. It could be useful to provide a standard for (determining) materiality. [This also applies to the references to “material consistency” elsewhere, e.g. paras. 12-13 and 23-24.]

(Former) para. 17, p. 14: This seems a very reasonable requirement, i.e. ensuring a basic level of consistency with the ESSs for new facilities, so why is it being deleted??
Environmental & Social Risk Classification, Para. 20, p. 15: If these classifications are not defined here, there should at least be a footnote referring to where they are defined. We recommend adding: "A proposed project is classified as: High Risk, if it may have potentially significant adverse social or environmental impacts that are diverse, irreversible, or unprecedented; Substantial Risk, if it may have potentially significant adverse social or environmental impacts but less diverse, not unprecedented, and more likely reversible, than High Risk; Moderate Risk if it may have potentially limited adverse social or environmental impacts that are few in number, generally site specific, largely reversible, and readily addressed through mitigation measures; and Low Risk if the project has minimal or no adverse social or environmental impacts, including certain financial intermediary projects with minimal or no adverse risks."

Use and Strengthening of Borrower’s Environmental and Social Framework, Para. 24, p. 16: While we similarly support the use of Borrower Frameworks where these are able to address the risks and impacts of the project, and to achieve objectives materially consistent, this could be improved by also mandating that Borrowers apply the relevant requirements of the ESSs.

Project Types, (former) para. 33, p. 18: We welcome this deletion (of former para. 33)!

Para. 35 (b), p. 19: It would be more reasonable to require that substantial risk subprojects also be subject to environmental and social assessment in accordance with the ESSs since their risks, by definition, are not trivial. Indeed, such assessment is needed to ensure that such risks are able to be adequately addressed.

Para. 38, p. 19: This requirement as worded is very weak. See our recommendations under Section H below.

Para. 48, p. 21: This fails to require 3rd party or independent monitoring except "where appropriate". We recommend defining specific risk circumstances (e.g. for high and substantial risk projects) which would require the Borrower to retain independent third party monitoring specialists.

Para. 51, p. 22 (top): As currently drafted, this essentially says “we’ll consult with the Indigenous Peoples concerned to determine if they’re Indigenous Peoples.” In this case you’ve already identified them as indigenous peoples! First and foremost, the Bank should apply its own guidance for determining identification. Using other guidance if consistent then becomes secondary. Therefore, we strongly recommend revising the text of the 3rd -5th sentences to read (additions in red):

The Bank will also consult the individuals and communities concerned and the Borrower. The Bank will follow ESS7 for the identification of Indigenous Peoples during project screening. The Bank may follow the Borrower’s framework for identification of Indigenous Peoples during project screening, only when the Bank determines that the framework is consistent with this Policy.

Section H, p. 22: Although (or because) this section has not been significantly changed from the first draft, the need for more detailed procedural requirements for the Bank and for Borrower responsibilities in the monitoring of ESS compliance, particularly of the ESCP, remains a top concern. We strongly recommend:
1) Bank monitoring missions be held a minimum of 2x per year for all substantial and high risk projects, with this frequency increasing in response to change in risk rating, non-compliance with ESCP, monitoring reports or adaptive management needs.

2) A draft ESCP must be disclosed before appraisal mission and before Board approval.

3) Detailed ESCP reporting, as part of annual monitoring reports, must include environmental and social safeguard implementation indicators, particularly any issues related to resettlement, indigenous peoples, critical natural habitat protection, protection and non-discrimination of benefits for vulnerable and disadvantaged people, and stakeholder engagement. ESS implementation cost and benefit metrics should be reported where possible. The Bank must verify the quality of the information provided and include the results in the track record of the Borrower performance.

ESS1
Para. 1, p. 26: This is a troubling deletion and in our view represents a weakening of ESA requirements. Why would a serious E&S assessment not consider the requirements of ESSs 2 to 10?

Para. 8, p. 28: This deletion is also troubling and in our view represents a weakening of ESA requirements. Why would the Bank not require that "new facilities and new activities to be financed by the Bank [be] designed to meet the requirements of the ESSs," given in particular that the ESS requirements are risk-adjusted?

Para. 18, p. 32: While it is useful to have this information regarding requirements for the Borrower to use its existing environmental and social framework, the Bank should clarify here that this is not the default option and the basis on which such a request may be refused, i.e. if any of the conditions outlined herein are not fulfilled.

Para. 23, p. 33: Good to see “Substantial” included here.

(ex-) Para. 27, p. 35: We welcome former para. 27’s deletion, as needed to ensure that ESS7 is effective.

Paras. 29 (b) and 30, p. 36: We continue to have concerns (w/r/t this and para. 30) that substantial risk projects, if not assessed with respect to the requirements of the other ESSs, may have risks not adequately addressed.

Paras. 33 and 45, pp. 37 & : Both clauses are flexible and non-committal in even the most high risk circumstances.

Para. 35, fn. 45, p. 37: It could be helpful to define greenhouse gases here, and/or in ESS 3, fn. 6, as proposed below.

Para. 40 (former 38), p. 39: Deletions here mark a weakening of what is expected from Borrowers that, taken with other changes, signal a weakening of commitment to implementation of measures to improve environmental and social performance. If this is not the intent, the Bank should explain how that commitment is to be maintained.

Paras. 51 & 52, p. 41: These two paras. are welcome additions.

Annex 1, p. 42 et seq.: This section is a useful addition.
Para. 5e, p. 43: Conservation International (CI) welcomes the addition of this instrument [Social and Conflict Analysis] since conservation planning is inherently conflictual: it involves addressing the competing - and sometimes incompatible - interests of different natural resource stakeholders. CI's Policy Center for Environment and Peace is committed to demonstrating and fostering nature's role in conflict prevention and mitigation through an environmental peace-building approach.

As part of our efforts to build internal capacity to better manage and respond to conflict issues, CI offers training on Environmental Conflict Analysis to examine factors that drive or mitigate conflict, map the roles of stakeholders involved, and identify opportunities to build peace and reinforce community cohesion. The information gathered through this collaborative, multi-stakeholder process is helping CI's partners to understand the conflict risks associated with conserving and sustainably managing biodiversity and act on peace-building opportunities. We would welcome working with the Bank and its borrowers on this as well.

Para. 10, fn. 7 (p. 46): It should be recognized here that in the case of complex and unusual projects, assessment timelines may not be fully predictable, and assessments should not be cut off merely because other elements of the project are ready to proceed. Having a completed assessment that fully exposes and weighs project risks should be a priority, and an incomplete assessment would in itself be an added risk. Projects should remain subject to assessment requirements without reference to other processing steps.

Annex 2 (p. 55): The additional information on the ESCP, its status as part of the legal agreement, and its implementation is welcome.

ESS2
Objectives, p. 58: We welcome the additional and more detailed objectives. However, since several of these relate to ILO core labor standards enshrined in ILO Conventions, we recommend that those Conventions be referenced in the objectives.

pp. 63-64: We welcome the additions in para. 26 and following sections (F, G, and H).

ESS3
Objectives, last bullet (p. 67, top): While we appreciate that the footnote specifies that "This includes all GHGs and black carbon (BC)," this really deserves inclusion in the main text. The footnote could then be used to define greenhouse gases, as proposed below.

(New) Footnote 6:
Greenhouse Gases are those that trap heat in the atmosphere. They include:
Carbon dioxide (CO2): Carbon dioxide, which enters the atmosphere through burning fossil fuels (coal, natural gas and oil), solid waste, trees and wood products, and as a result of certain chemical reactions (e.g., cement manufacture).
Methane (CH4): Methane is emitted during production and transport of coal, natural gas, and oil. Methane emissions also result from livestock raising and other agricultural practices and the decay of organic waste in solid waste landfills.
Nitrous oxide (N2O): Nitrous oxide is emitted during agricultural and industrial activities, and combustion of fossil fuels and solid waste.
Fluorinated gases: Hydro-fluorocarbons, per-fluorocarbons, sulfur hexafluoride, and nitrogen trifluoride are synthetic, powerful greenhouse gases emitted from some industrial processes. These gases are typically emitted in smaller quantities, but because they are potent greenhouse gases, they are sometimes referred to as High Global Warming Potential gases ("High GWP gases"). [Source: US EPA.]

Para. 8, p. 68: While we agree with this functional definition, it would still be useful to include guidelines in a footnote, e.g.:

As a rule of thumb, this may be assumed where the project has a water demand of greater than 5,000 m3/day, or a lower threshold based on a percentage of water [normally 10%] available to the project-affected community.

Para. 9, p. 68: It would be helpful to specify here "following the mitigation hierarchy."

(Former D, para. 24, p. 72) If this deletion holds, what assurance remains that this will in fact be monitored? Monitoring of environmental discharges should be required.

ESS 4
Objectives, bullet 2, p. 74: Typo—event should be events [plural].

Para. 5: This deletion represents a significant weakening of the proposed standard. Proposing mitigation measures in accordance with the mitigation hierarchy is meaningless if there is no overarching requirement. Requirements below are set out for Infrastructure and Equipment Design and Safety, services to communities, and traffic & road safety, but not for other types of investments.

Para. 14, p. 77: But impacts on ecosystem services that will not be exacerbated by climate change don't matter? This really doesn't make sense; ecosystem services may be important for people regardless of whether project impacts on them will be exacerbated by climate. We suggest deleting the phrase "that may be exacerbated by climate change."

ESS 5
Para. 2, p. 84: This enumeration of the issues is helpful.

Objectives, p. 85: We welcome these additional objectives.

Paras. 15 & 25, pp. 90 & 93: These are helpful additions.

Annex 1, pp. 97-104: We welcome the addition of this section [on Resettlement Plans, Frameworks etc.].

ESS 6
Para. 4, p. 105: We welcome the inclusion of ecosystem services here and in the Objectives, along with the definition and context provided in paras. 5 & 6 below. However, the coverage of ecosystem services remains insufficient. While the introduction explains that ESS6 uses biodiversity as a proxy for protection of ecosystem services, there are forests that could be excluded from ESS6 based on an assessment of biodiversity alone. ESS6 safeguards “habitat upon which biodiversity values depend,” but this does not necessarily include critical ecosystem services, as well as other biodiversity values such as concentrations of biodiversity (different from congregations of a single species, which is referenced in the critical habitat definition), habitat intactness, and cultural or subsistence values associated with
biodiversity and ecosystem services (again, possibly implied but not clear). These are referenced in the objective but then largely excluded in the actual safeguards. The concern is that services such as water filtration, erosion control, and carbon storage will be compromised for areas that do not meet ESS6 definitions for critical habitat (see paragraph 23).

Para. 18, p. 108: We welcome the addition specifying that biodiversity offsets will be considered only “as a last resort.”

Para. 24, p. 111: sub-para. (f) should include ecosystem services [recommend adding, after “critical habitat:” ”or the ecosystem services derived therefrom”]; sub-para. (g) – should provide criteria (perhaps in a footnote) to state how “significant” conversion/degradation is defined.

Para. 35, p. 114: This needs to be strengthened, i.e. by changing to say "commit to and apply" (instead of "commit to applying").

Para. 36 & following: We recommend much stronger language for verification of responsible management of production forestry (especially in natural forests!). Reference to production forestry in natural forests should have a separate paragraph, following Para 36.

Suggested language:

When the Borrower invests in production forestry in natural forests, these forests will be managed sustainably, consistent with this ESS, and shall include:

a. Conservation of ecological functions, including biodiversity;

b. Respect for customary and legal rights of Indigenous Peoples and forest-dependent communities;

c. Implemented protection measures to ensure management for ecological integrity and intactness of forest;

d. Minimization of adverse impacts; and

e. Only allow limited development of intact forest cores if such operations produce clear, substantial, long-term conservation and social benefits

Para. 38: It is unclear what is the intended value (and potential loophole) of this paragraph on salvage logging. The reference may be to infrastructure projects such as dams or road-building projects. However, if a non-forestry project carries out an appropriate ESA and applies ESS6, paragraph 38 should not be necessary. If an area is deemed to not have biodiversity values, then ESS6 would not apply and a specific paragraph to allow salvage logging is thus also unnecessary.

Para. 39, p. 114: This also needs to be strengthened, i.e. by adding that Borrowers will follow [in line 1] relevant national and international law [and GIIP] to minimize risks and impacts [in line 2] including in ecosystems.

ESS7

Objectives, bullet 2, p. 116: To be consistent with the UN Declaration on the Rights of Indigenous Peoples, we strongly recommend adding “and their lands, territories, and resources," after "Indigenous Peoples."

p. 118: We very much welcome deletion of former para. 9.
Para. 15, p.120: Again, to be consistent with the UN Declaration on the Rights of Indigenous Peoples, we strongly recommend adding “and their lands, territories, or resources,” after "Indigenous Peoples." Also add, before "where possible: "consistent with the intention and objectives of this ESS."

Para. 18, p. 120: Note-- Paragraph numbers here and following have changed from the first draft. This para. combines former paras. 19 & 20, and the following paras. thus are all 2 lower than in the original draft. [This is not shown as a tracked change, so reviewers might be confused.]

Para. 18, p. 121: To provide context and rationale for the FPIC process, we recommend adding that [FPIC is] a process for ensuring respect for the rights of project-affected peoples, and in particular Indigenous Peoples (whose rights are elaborated in the United Nations Declaration on the Rights of Indigenous Peoples and International Labor Organization Convention 169, among other international legal instruments),...." 

Para. 19 (last line), p. 121: Again, to be consistent with the UN Declaration on the Rights of Indigenous Peoples, we strongly recommend adding "and their lands, territories, or resources," after "Indigenous Peoples." Moreover, this is severely inadequate as currently worded as no protection is provided once the project is completed. Should add (after "during"): "or as a result of" [implementation of the project].

Para. 22, p. 122: The grammatical construction here requires some re-wording, e.g. "and, to obtain their FPIC, will [do all of the following]; additionally, it would be useful to clarify that these are conditions for moving forward, i.e. by adding: "to proceed or not proceed with the project:"

ESS8
Para. 2, p. 126: The deletion of the reference to national and international laws is troubling and represents a weakening, in our view. This sentence could be improved by restoring this reference, adding at the end "recognizing the importance of respecting national and international laws protecting cultural heritage."

Para. 4, p. 126: We welcome the inclusion of “natural features and landscapes” in the definition of tangible cultural heritage.

Para. 7, p.127: Limiting ESS8’s applicability to “only in so far as it relates to a physical component of a project” could be interpreted as voiding protection of intangible cultural heritage, which as defined above “includes practices, representations, expressions, knowledge, skills events or living traditions, ideas, beliefs, artistic and literary works,” as these could clearly be impacted by non-physical components of a project, such as support for government institutions or staff that ignore or oppose these elements. We strongly recommend deleting this para./text.

Para. 9, fn. 2, p. 127: Mitigation measures should also include re-locating or modifying the physical footprint of the project.

Para. 11, fn. 7, p. 128: This definition is much weaker and essentially provides no guidance whatsoever regarding the content or process of the procedure. We strongly recommend restoring the (very reasonable) definition provided in previous footnote 4.

ESS9
Para. 7, p. 134: Although we welcome the specific requirements laid out in the new para. 7, these shouldn't replace the old para. 7, which we would strongly recommend restoring, since the two don't necessarily overlap and indeed are quite complementary. We would additionally recommend extending this requirement to Substantial Risk subprojects. A partial requirement for substantial risk subprojects to possibly meet some ESS requirements is not adequate.

Paras. 14 & 16, p. 136: While these procedures are useful, we additionally recommend that:

1) the Bank review all high risk subprojects financed through FIs or projects using frameworks. Substantial risk subprojects should also be subject to prior Bank review, particularly when Bank is not satisfied that Borrower has adequate capacity.

2) High risk subprojects should have their own ESCP.

3) FI lending must adhere to an exclusion list of prohibited activities (*http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/ifcexclusionlist* IFC's current exclusion list), without exception in the form of minimal thresholds for business activity. The IFC exclusion list prohibits investment in production of or activities involving harmful or exploitative forms of forced labor/harmful child labor.

ESS10
Para. 12, p. 141: The requirement to retain independent third party specialists to assist in the stakeholder identification and analysis to support a comprehensive analysis and the design of an inclusive engagement process, if applied appropriately, is a welcome addition.

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