Brief Comments on the World Bank’s Second Draft Environmental and Social Framework

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Overall, despite several welcome changes, the World Bank’s Second Draft Environmental and Social Framework (ESF) represents a massive dilution of existing Safeguard protections. Below are examples of some of the major dilutions and problems which were found in the first draft and which still remain in the second draft which still serves to:

- **weaken existing mechanisms for transparency, oversight, and accountability** by eliminating mandatory time-bound requirements, introducing vague flexibility on what safeguards will be applied to each project and when, and by introducing vague requirements for projects classified at a level of “substantial risk” and “moderate risk”:
  * initiate a heavy reliance on the borrowers’ national systems, as well as on the internal systems of financial intermediaries, in place of World Bank safeguards, while eliminating the due diligence currently required under the Bank’s Country Systems Safeguard which supports the strengthening and use of national systems and ensures that their environmental and social protections are least as strong as those of the Bank.
    * See World Bank CSS Operations Manual, Table A1 which outlines over 64 specific components of equivalence testing that are currently mandatory;
    * Compare that to, for example, the four weakened Objectives of ESS1 which are all that a national system must be “consistent with” in terms of ESS1 as evaluated (in an undefined manner) by the Bank;
    * This simple comparison is concrete evidence of the massive safeguard dilution.

- **exclude thousands of displaced people from coverage** by reducing or eliminating existing protections for communities which have been forcibly or involuntarily displaced from their lands and livelihoods. Protections for those subject to involuntarily resettlement are also jeopardized by diluted and more flexible requirements on resettlement planning. Elimination of requirement that draft resettlement plan be disclosed prior to appraisal.

- **result in increased barriers for affected communities accessing the Inspection Panel** and make it difficult for the Panel to assess the Bank’s compliance as a result of the lack of specificity and time-bound standards, limited scope of coverage, and reliance on “national systems”, opaque “gap-filling measures” or safeguards of co-financers under the proposed “common approach”.

• **eliminate the requirement to allow affected communities to provide input on the environmental impact assessment** of any project with significant impacts, prior to appraisal (normally approximately 120 days prior to Board vote.) This is likely to ultimately lead to Board approval of an increasing number of projects with damaging impacts on communities and the environment, which in turn will result in significant delays in implementation, and markedly increased costs.

• **introduce a narrow application of labor standard.** While a welcome inclusion, the proposed labor standard is narrowly drawn and does not mention ILO core labor standards and only guarantees the rights of collective bargaining and freedom of association if found in national law. Unlike the IFC, EBRD and the African Development Bank, the second draft ESF does not require compliance with the ILO core labor standards.

• **weaken existing protections and scope of coverage for biodiversity** and forest-dependent peoples, reversing the ban on financing projects that lead to the destruction of critical habitat, protected areas and nature reserves;

• **allow for the evasion of safeguards altogether** by relying more heavily on borrower sub-projects for implementation and reducing due diligence requirements for financial intermediaries compared to existing Bank safeguards and even compared to the first draft ESF. Only sub-projects that the borrower classifies as "high risk” are required to apply Bank safeguards. Projects classified as having “substantial” environmental and social risks only need to comply with national regulations, which may provide weak safeguards for environmental protection and involuntary resettlement. Naturally the borrower has every incentive to classify projects as having “substantial” as opposed to “high” risks.

**New dilutions have also been introduced in the Second Draft.** Below is a brief draft list of just a few examples. A more complete analysis is currently being produced.

○ **Further weakening of ESS1 Objectives**
  - “Minimize” impacts changed to “minimize or reduce” impacts
  - Compensate for “residual risks” where “financially feasible”. This appears to mean that if a borrower feels that it is “too expensive” to compensate for damage to the environment or communities caused by the project, compensation is not necessary.

○ “identify risks associated with” the project has been narrowed to “identify risks of the project” (footnote 26);

○ **Further clarification that for subprojects, only high risk subprojects are required to be “in accordance with ESSs”, while Substantial Risk, Moderate Risk and Low Risk subprojects only have to be “in accordance with national law”.** ESS1 para 29.

○ Vastly broaden application of adaptive management to all changes in a project (first draft promoted use of adaptive management for “proposed minor project changes”. Draft 2 eliminates “minor.” ESS1 para 39

In addition the term “comply with” has been eliminated in a number of places;
• The overarching principle is that borrowers must only be “consistent with” (at times “materially consistent with”) a small number of vaguely worded and weakened objectives instead of complying with mandatory safeguards; throughout the second draft (compared to the first draft), the phrase “enable the project to achieve objectives materially consistent with the ESSs” has been added repeatedly;
• Deferred compliance is referred to throughout the draft;
• “Common Approach” in co-finance with MDBs which, in the future, are likely to include the AIIB, and bilaterals, some of which are likely to have low safeguard standards) implies that this could well spark a race to the bottom and downward harmonization since even the new, weakened Bank safeguard framework would not apply.
• Further there appears to be a narrowing of scope regarding parties that have access to grievance mechanism and parties with whom consultations will be conducted and the manner of these consultations.
• Financial Intermediaries (FIs) – only High Risk Projects of FIs are required to apply ESSs; Substantial, Moderate and Low Risk projects of FIs only need apply national systems;
• No mandatory environmental/social assessment requirements – borrowers simply choose amongst a “toolkit” of possibilities;

Some positive changes from 1st draft to 2nd draft include:

• Elimination of IP opt-out option – this eliminates one major dilution introduced in the first draft Peoples although, even in this case, a waiver process may still allow borrowers to disregard the requirements of ESS7.
• More complete labor language
• Some positive shifts from “may” => “shall” but so many vague terms remain that the overall impact of the second draft represents a vast dilution of existing safeguards.

There are additional changes in language from the first draft to the second draft and these may be detailed in another document. For the moment, the focus of this brief analysis is on a comparison of the second draft with the baseline of existing safeguards, given the context of President Kim’s commitment to ensuring that the review process would not result in a dilution of safeguards.