March 14, 2016

The Honorable Matthew McGuire  
United States Executive Director of the World Bank Group  
1818 H. Street,  
N.W. Washington D.C. 20433

Dear Director McGuire:

I write on behalf of my international human rights class to contribute our comments to the World Bank’s final phase of consultations on the draft Environmental and Social Framework. I am a Professor of Law at the University of Utah, S.J. Quinney College of Law where I co-chair the Committee for Global Justice. Among other subjects, I teach courses international human rights law and corporate citizenship. Prior to entering the legal academy, I worked for Human Rights Watch in Sub-Saharan Africa. Later, I practiced commercial litigation representing international firms. I study the evolving obligations of private actors under public international law and policy. My current research explores the responsibilities of business enterprises to respect international human rights, various efforts to hold corporations accountable for alleged rights violations, and efforts by corporations to fill voids in global governance.

The Committee for Global Justice at the S.J. Quinney College of Law is an initiative dedicated to examining the role of law in elevating the human condition and exploring the relationship between justice and human dignity. Our research, teaching, and service efforts aim to enhance understanding of the interconnections among human rights, economic development, and security around the world. The Committee hosts multi-stakeholder meetings to enable interdisciplinary discourse on the complex problems confronting humanity. The Committee also facilitates experiential learning opportunities through student internships and fosters collaborative community service projects that connect global issues to local impacts.

Our enclosed comments on the World Bank’s Revised (Second) Draft of the Proposed Environmental and Social Framework speak to the challenges associated with investment and infrastructure development projects that fail to give due regard to environmental and social issues. We have reviewed the proposed safeguards with reference to relevant international human rights instruments. We provide recommendations to bring the proposed safeguards into better alignment with international human rights law. In particular, we address gender equality, resource efficiency and pollution prevention management and cultural heritage.

The outcome of the Bank’s review process and the standards that the Bank ultimately sets could have a profound and positive influence on regional development banks, the BRICS New Development Bank, other public and private financial institutions and commercial enterprises. We believe it is important for the Bank to lead. A robust policy commitment to safeguarding human rights and the environment must be paired with better practices to monitor compliance with the safeguards. Consequences for non-compliance with the safeguards must be clear. Access to mechanisms for affected constituencies to seek remedies for violations of their human rights or environmental injury is also essential.

We commend the Bank for its increased efforts to ensure appropriate protections for the world’s poor and for the changing environment we all share. We respectfully submit our observations on the proposed safeguards with the aim of advancing these important efforts to strengthen protections and improve practices.

Sincerely,

Erika George

www.law.utah.edu • Main Office (801) 581-6833  
383 South University Street • Salt Lake City, Utah 84112-0730
March 11, 2016

Safeguards Policy Review Team
The World Bank
Washington, DC 20433 USA
Safeguardeconsult@worldbank.org

Dear World Bank Safeguards Review Team,

All human beings are born free and equal in dignity and rights; all are endowed with reason and conscience and innate appreciation of freedom, justice and peace in the world. In recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family, the current Safeguard policies have served the development community well for more than two decades. The World Bank’s Safeguards not only identify, avoid, and minimize harms to people and the environment but also provide opportunities to articulate, improve and expand Human Rights.

Enclosed are comments on the World Bank’s Revised (Second) Draft of the Proposed Environmental and Social Framework. We appreciate this opportunity to contribute to the World Banks’s process of reviewing, updating and strengthening its environmental and social policies to keep pace with the changing times.

Sincerely,
International Human Rights Class
Spring 2016, Class No. 7080-002

Sarah Cox        Alexis Jones        Steven Mullen        David Munk

ENCLOSURE
World Bank Safeguards Review
Third Phase of Consultation
Revised (Second) Draft of the Proposed Environmental and Social Framework

Introduction

We, the students of the S.J. Quinney College of Law International Human Rights class at the University of Utah are pleased to submit our comments on the Revised (Second) Draft of the Proposed Environmental and Social Framework. We will begin by identifying the major human rights treaties and summarizing the current state of human rights law. We will then briefly explain how the human rights regime is applicable to the World Bank Safeguards and make recommendations. Our recommendations will include a brief consideration of each Environmental and Social Standard. Appendix A through C contain a more in-depth treatment of issues we found to be of personal interest. We hope our comments will be of value to the Policy Review Team as it finalizes the World Bank Environmental and Social Framework. We salute the many successes and keenly look forward to the potential within the World Bank Safeguards to further the advancement of international human rights.

Standards and Application

The international human rights community expressly prohibits human rights abuses by state actors and recognizes an obligation on the part of states to protect human rights. The primary foundation of these protections is the International Bill of Rights, which includes Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In addition, other relevant instruments include the Convention on the Elimination of Discrimination Against Women (CEDAW), and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Human rights violations exist in every nation. “Of all the human rights failures today, those in economic and social areas affect by far the larger number and are the most widespread across the world’s nations and large numbers of people.”1 Appropriately, human rights abuses committed or perpetrated by state actors have garnered the attention of the international, domestic, and local communities across the world. More must be done to address human rights abuses by state actors, particularly abuses in countries with populations vulnerable to abuse by virtue of a lack of a human-rights respecting regime. Such violations are perpetuated by a lack of adequate legal protection, access to education, political voice, resources and opportunities. The World Bank has shown a strong commitment to protecting and furthering human rights. We have been inspired by the World Bank and offer the following recommendations to aid the Review Team as it fulfills and applies the standards outlined above.

---

## Recommendations

<table>
<thead>
<tr>
<th>Draft</th>
<th>Item and Relevant Provisions</th>
</tr>
</thead>
</table>
| ESS1  | Environmental and Social Management Plan (ESMP)  
The environmental and social management plan is “an instrument that details (a) the measures to be taken during the implementation and operation of a project to eliminate or offset adverse environmental and social impacts, or to reduce them to acceptable levels; and (b) the actions needed to implement these measures. The Borrower is responsible for generating the ESMP. In the ESMP, the Borrower establishes monitoring objectives and parameters and reporting procedures to be used throughout the project’s execution. Although the Borrower is required to facilitate site visits by Bank staff or consultants and encouraged to work with appropriate government agencies or NGOs, the Safeguard contains no mandatory oversight provision to ensure Borrower compliance with the Environmental and Social Impact Assessment and other Assessments and Plans made as required by ESS1. |

**Recommendation**  
i. Please consider requiring the Borrower to designate a third party monitor within the ESMP to ensure compliance with the ESIA and other Assessments and Plans made in connection with the ESIA. |

| ESS2  | Worker’s Organizations  
Where national law restricts workers’ organizations, the project will not restrict workers from developing alternative mechanisms to express their grievances and protect their rights regarding working conditions and terms of employment. Furthermore, the Borrower should not seek to influence or control these alternative mechanisms. The new Safeguard makes no reference to ILO conventions or core labor standards. It also excludes workers defined as “government civil servants.” It does not provide adequate protection for freedom of association or collective bargaining and establishes inappropriate client discretion over compliance. |

**Recommendation**  
i. Please consider expanding ESS2.16 to include the following: “Where national law restricts workers’ organizations … The Borrower should not seek to influence or control these
alternative mechanisms. *The Borrower should seek to provide information needed for meaningful develop of alternative mechanisms.*

ii. Include explicit reference to the ILO’s core labor standards and ensure compliance with the four core labor standards as defined by the ILO.

iii. Include coverage for all project workers.

iv. Prohibit acts of discrimination and retaliation against workers who seek to freely associate and bargain collectively in Bank-financed projects.

v. Remove the discretion of borrowers to determine which requirements of the labor standard apply.

vi. Ensure effective procedures for monitoring implementation and responding to complaints about non-compliance.

**Relevant Provisions**

ICESCR Article 7 & 8, UDHR Article 23, ICCPR Article 22, and ILO’s eight conventions.

---

**ESS3**

**Air Pollution**

For projects that are expected to produce GHG emissions in excess of the threshold established by the Bank, an estimation of GHG emissions will be conducted by the Borrower annually in accordance with internationally recognized methodologies and good practice.

**Recommendation**

i. Please consider adding a footnote to ESS3.16 affirming “internationally recognized methodologies and good practice” requires producing Open Data that is data freely available for anyone to use and republish for any purpose.

*Please see Appendix for expanded recommendation*

**Relevant Provisions**

UN Secretary-General’s Independent Expert Advisory Group on a Data Revolution for Sustainable Development, SDG7, SE4All.

---

**ESS4**

**Security Personnel**

The new Safeguard’s provisions referencing security personnel do not clearly cover both private and public security forces. It allows World Bank clients to permit the use of force for ‘preventative and
defensive purposes’ and only ‘reasonably inquire’ as to whether contract workers hired for security purposes have been implicated in past abuses. World Bank clients are not required to disclose security arrangements or take needed steps to ensure that government security personnel do not use excessive force. The new Safeguard also removes the requirement for grievance mechanisms.

**Recommendation**

i. For ESS4.24, please consider strengthen the provisions on security to prevent excessive use of force in connection with Bank-financed activities.

ii. Require Borrowers to disclose security agreements and take all necessary measures to prevent, investigate, report, prosecute, and remedy human rights violations by public or private security forces connected with Bank-financed activities.

iii. Include a provision of project-level grievance mechanisms equipped to address security-related complaints from affected communities.

**Relevant Provisions**

UDHR Article 3, ICCPR Article 9, ICESCR Article 7.

---

**Land Acquisition, Restrictions on Land Use and Involuntary Resettlement**

The new Safeguard fails to ensure that physical or economic displacement only occurs where a project has shown a legitimate public purpose and no other alternatives exist. It also does not apply to sub-projects or displacement caused by land use regulation, natural resource management, or impacts that are not a direct result of land acquisition. This leaves out communities such as those living downstream of dams. It also reduces existing requirements on information disclosure, consultation and participation of displaced persons in resettlement planning. Land titling projects would also no longer have to comply with the resettlement Safeguard, despite the fact that these projects often result in displacement.

**Recommendation**

i. Ensure that displacement is used only as a last resort.

ii. Require preparation and disclosure of resettlement plans and budgets prior to project approval.

iii. Ensure the resettlement Safeguard applies to all project and sub-project-related physical and economic displacement.
iv. Strengthen measures to support livelihood restoration.

v. Ensure that the policy continues to provide protection for those without formal title or recognized rights.

vi. Prohibit activities that contribute directly or indirectly to forced evictions.

vii. If resettlement is unavoidable, require the borrower to inform potentially displaced persons about their rights, provide resettlement alternatives of similar or better quality than existing conditions, and consult with affected people about options prior to resettlement. Borrowers should provide opportunities for affected persons to challenge resettlement and provide alternative proposals.

viii. As a condition of project appraisal, the Borrower should be required to provide the Bank with the relevant draft resettlement and livelihood support plans and budgets and make them available at a place accessible to displaced persons and local NGOs, in a form, manner, and language understandable to them. The Borrower’s obligation to carry out the resettlement instrument must be provided for in the legal agreements for the project.

ix. Affected persons should be provided with legally binding agreements regarding security of tenure and entitlement to rehabilitation assistance as outlined in project plans.

x. Summarize results of consultations and describe how concerns raised and recommendations provided were considered in project plans.

Relevant Provisions

ESS6

Sustainable Management of Living Natural Resources
The Safeguard recognizes the importance of sustainability, and encourages Borrowers to incorporate sustainable management practices and technologies. The Safeguard also recognizes the potential impacts of primary production projects on local peoples. However, exclusively encouraging Borrowers to rely on good management practices and available technologies could adversely impact the employment opportunities of local people.

Recommendation
| ESS7 | Meaningful Consultation; Free, Prior and Informed Consent  
The Safeguard establishes circumstances under which the free, prior and informed consent must be obtained from indigenous peoples in order for a project to proceed; however, it doesn’t establish a mechanism through which the authority of the individual or individuals giving FPIC on behalf of indigenous peoples can be verified.  
Recommendation  
i. Please consider including within ESS8.17 a requirement that those negotiating on behalf of indigenous peoples establish and document their authority to represent the interests of said peoples.  
Relevant Provisions  
ICESCR Article 1, UDHR Articles 13 and 17, ICCPR Articles 1, 12, and 27. |

| ESS8 | Cultural Heritage Management Plan  
ESS 8 recognizes that cultural heritage provides continuity in tangible and non-tangible forms between the past, present and future, and that, where appropriate, as either a stand-alone document or as part of the ESCP, the Borrower will develop a Cultural Heritage Management Plan.  
Recommendation  
i. Please consider expanding Section ESS8.9 to include a robust description of the tangible and non-tangible cultural heritage, meeting both (i) viewer neutral criteria of Universalism and (ii) viewer specific aspects of Cultural Relativism;  
ii. Cultural Heritage Management Plan notice and public comment timeline;  
iii. Cultural Heritage Management Plan implementation timeline; and  
iv. Estimate of resource needs for each mitigation measure. |
Please see Appendix for expanded recommendation

Relevant Provisions
ICCPR Article 27, ICESCR Article 15, UNDRIP Article 11.

ESS9

Financial Intermediaries
We commend the World Bank on its inclusion of a reporting requirement in Provision 19, and make the following recommendation:

Recommendation
i. That the World Bank include an additional provision indicating its own obligation to review the reports generated under Provision 19 and take appropriate action where the Financial Intermediaries measures are deemed insufficient.

Relevant Provisions
ICCPR Art. 2 and 5.

ESS10

Stakeholder Engagement and Information Disclosure
We commend bank on its expansive definition of Stakeholders by including individuals or groups affected or likely to be affected by the project and those who may have an interest in the project. We also make the following recommendations:

Recommendation
i. We recommend incorporating the language of human rights in provision 7 by specifically referencing the right of all peoples to self-determination under international law and the right of indigenous peoples to free, prior and informed consent.
ii. We also recommend including an additional sub-provision to provision 2 of Annex 1 (regarding the grievance mechanism), to require an impartial judge in the grievance process.

Relevant Provisions
ICCPR article 1, UNDRIP Article 10, 29 and 32.
Appendix A

Gender

The new World Bank Safeguards do not include a gender Safeguard or gender concerns. A freestanding gender Safeguard is necessary because the Bank’s Gender and Development Policy, ESS4.20, lacks the do-no-harm mandate of Safeguards for project staff and would also strengthen the Inspection Panel’s ability to respond to gender discrimination complaints. It would provide commensurate gender guidance to staff as do the environment, indigenous and involuntarily resettled peoples’ ESSs.

Another considerable Draft 2 shortcoming is that half (five out of ten) of the ESSs never mention gender or women at all, not even in a string of vulnerable populations, including: ESS3: Resource Efficiency and Pollution Prevention ESS4: Community Health and Safety ESS6: Biodiversity Conservation and Sustainable Management of Living Natural Resources ESS8: Cultural Heritage and ESS9: Financial Intermediaries.

The Safeguards, as they are now, fail to require respect for the rights of women and girls and fail to sufficiently assess and address disproportionate impacts on them. The Bank’s forthcoming new Gender Strategy is also inadequate without gender Safeguards. Gender Safeguards are vital in preventing or mitigating extremely harmful gender impacts of Bank projects. We strongly urge the World Bank to incorporate gender Safeguards during Phase 3 consultations.

Recommendations

a) Establish a freestanding gender Safeguard standard that requires respect for the rights of women and girls, consistent with the UN Convention on the Elimination of All Forms of Discrimination Against Women.

b) Integrate gender issues systematically throughout the Safeguards, including measures to ensure the full participation of women and girls, the assessment of impacts on women and girls, and the prevention of gender discrimination in Bank-financed activities.

c) Outline mandatory measures to ensure the participation of and assessment of impacts on women and girls.

d) Ensure that development initiatives advance women and girls’ human rights, consistent with CEDAW.

e) Explicitly prevent and proactively address gender-based discrimination and gender-specific impacts such as gender-based violence.

f) Require use of indicators and other data to assess differential development impacts on women and girls and to monitor women’s and men’s participation and decision-making roles.

g) Ensure that all Bank initiatives advance women’s rights consistent with CEDAW

Relevant Provisions

CEDAW, UHDR Article 2, ICCPR Article 2 & 26, ICESCR Article 2(2).
Appendix B

Environmental and Social Standard 3 (ESS3)

ESS3 is strong guidance and is complimented by the *Sustainable Energy for All* (SE4All) initiative which leverages the global leadership of the United Nations and the World Bank. ESS3 aptly acknowledges increased economic activity and urbanization consumes finite resources and generates pollution. ESS3 and SE4All are critical additions to the three pillars of sustainable development; fostering conditions that will enable a massive scale-up of private investment in energy access and clean energy; and ensuring these objectives are pursued in a transparent, accountable manner.

ESS3 should be consistent with United Nations *Sustainable Development Goal 7* (SDG7) just as SE4All’s objectives on energy access, energy efficiency and renewable energy are consistent with the targets of SDG7. The goal of SDG7 is to ensure access to affordable, reliable, sustainable and modern energy for all. With its huge network of partners across governments, business, international organizations, finance and civil society, SE4All undoubtedly plays a leading role in supporting implementation of SDG7. ESS3 is an opportunity to facilitate progress towards the UN Goal and clearly illustrates the World Bank’s commitment to define objectives in a transparent, accountable manner.

As the world becomes more data-driven, what is technically and financially feasible for one project will necessarily hinge upon Open Data collected from multiple projects, industries, and governments. As beneficiaries of Open Data, projects should do their part to add to the collective set of Open Data. Please consider adding a footnote to ESS3.16 affirming “internationally recognized methodologies and good practice” requires producing Open Data that is data freely available for anyone to use and republish for any purpose. We believe adding this clarity to ESS3.16 would amplify the World Bank’s commitment to accelerating the use of Open Data and advanced analytics to improve access to reliable, affordable and sustainable electricity.² This clarity would also align with recommendations of the United Nations Secretary-General’s Independent Expert Advisory Group on a Data Revolution for Sustainable Development.

In sum, we believe adding this clarity will provide further evidence supporting the observation that “[w]ith the right focus, approach and implementation, Open Data can have a high economic and social return on investment for countries in all regions and at all stages of development.”³

---

Appendix C

Cultural Heritage (ESS8)

The World Bank is to be commended on its thorough consideration of the effects of development projects on cultural heritage. Particularly appreciated is the expansive reading of “cultural heritage” as including both tangible and intangible cultural heritage, the requirement that the provisions in ESS 8 apply to cultural heritage regardless of its status of legal protection or previous identification, and the World Bank’s commitment to ensure the Borrower protects cultural heritage throughout the project life-cycle. However, to improve upon the provisions of ESS 8, we recommend that the World Bank consider recognizing explicitly the protection of cultural heritage as a human right, and the human rights of indigenous peoples, whether legally recognized or not, to the protection of their cultural heritage.

Recognizing Cultural Heritage as a Human Right. World heritage is at the foundation of our global existence; “It is the wellspring of social identity.” And there are both ideological and practical reasons for its global importance. Ideologically, it constitutes both global and local identity and symbolizes human dignity. Practically, it binds us together in common humanity. However, as development increases across the world, these cultural landscapes, some of which have survived for millennia, are today being altered in such a way that a focus on their preservation is rapidly becoming a necessity. But, the protection of cultural heritage is more than just a positive ideal. It is a human right, as reflected in the ICCPR, ICESCR, and the UNDRIP. In particular, it is recognized as such in the following provisions: Article 27 of the ICCPR states that “persons belonging to [ethnic, religious or linguistic minorities] shall not be denied the right … to enjoy their own culture.” Article 15 of the ICESCR recognizes “the right of everyone: (a) to take part in cultural life” and that state parties must take steps “to achieve the full realization of this right,” including the “conservation…[of] culture.” And, Article 11 of the UNDRIP states that “[i]ndigenous peoples have the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts.” As such, we recommend the World Bank recognize cultural heritage as a human right explicitly in ESS 8.

Recognize Explicitly the Rights of Indigenous Peoples. As noted in section A above, the protection of cultural heritage in the human rights framework makes particular reference to the protection of the cultural heritage of indigenous groups. Our concern in making the following recommendations is that States refusing to recognize the rights of local indigenous populations will continue to violate the human rights of such groups unless placed under an obligation to recognize and respect them. For these reasons, we make the following recommendations:

a) Provision 5 states that ESS 8 will apply to all projects likely to have a risk or impact on cultural heritage, but specifically denotes five included categories. We recommend

---

altering sub-provision (c) to define “recognized cultural heritage site” to include sites recognized by local indigenous populations that are not legally recognized by their State.

b) Provision 10 indicates that the Borrower will identify stakeholders relevant to cultural heritage known to exist or likely to be encountered during the project life-cycle. We recommend this provision make it a specific requirement that Borrowers consult with groups culturally-affiliated to the area. This may include groups that have been forcibly removed in the past or groups still locally present.

c) Provisions 17 and 25 indicate that Borrowers are to identify the presence of legally protected cultural heritage areas and natural features with cultural heritage significance affected by the project. We recommend that these provisions be expanded to include an obligation on Borrowers to consult with local and culturally affiliated groups to identify the presence of cultural heritage areas that are not legally protected.

d) Provision 18, Footnote 8 indicates that “[f]or more recent burial places connected directly to project-affected peoples, appropriate mitigation measures can be defined in consultation with descendant’s and the project’s social team.” However, due to the connection many groups feel to ancestors from a more deeply rooted past, we recommend that this provision be expanded to include mitigate measures for burial places connected through cultural affiliation to project-affected peoples.