

## **United States Comments on World Bank Safeguards Review – Phase 2**

### **March 26, 2015**

The United States (U.S.) believes that the World Bank’s Safeguards Review is an important opportunity to continue to strengthen and update the safeguards at the World Bank, both in terms of the actual written standards and in their effective implementation. We appreciate management and staff’s efforts in preparing the draft Environmental and Social Framework (ESF) presented to the Committee on Development Effectiveness (CODE) in July 2014. As the ESF will govern World Bank investment lending for years to come and have significant influence on the environmental and social standards of other development finance institutions, it is imperative that the ESF not be weaker than the current safeguards and provide protection at least as strong as the current safeguards with respect to both affected peoples and the environment. Moreover, the ESF is fundamentally part of the World Bank’s added value to countries, with the potential to contribute to lasting environmental and social outcomes, above and beyond the impact of specific projects. We urge the World Bank to prepare the next draft document with care to avoid any potential weakening from current standards.

We see a number of areas in which the draft ESF represents an improvement to the current safeguard policies, including the introduction of new protections in areas such as climate and labor; a more comprehensive approach to social impact assessments; a new focus on vulnerable and disadvantaged groups<sup>1</sup>; the addition of project-level grievance mechanisms; a stronger focus on safeguards implementation throughout the project cycle; a greater alignment with the environmental and social standards of other multilateral development banks (MDBs); and a new, more logical structure that is likely to be easier for staff and borrowers to understand and implement. These are important examples of best practice and upward harmonization with other MDB safeguards.

If further developed and implemented well with sufficient resources, the new safeguards framework will support the efforts of the World Bank and its borrowers to: (i) achieve environmentally and socially sustainable development outcomes; (ii) strengthen the capacity of borrowers to avoid, minimize, and mitigate environmental and social risks in their own development activities; and (iii) improve consultations with project-affected peoples, including disadvantaged or vulnerable groups. To achieve these important objectives, we believe that there are a number of areas in which the draft ESF must be revised and clarified.

Many of the priorities described in this document reinforce points made in our comments to the World Bank on April 29, 2014 and July 30, 2014, and our overall support for best practice and upward harmonization with other MDBs. Our comments are also informed by our knowledge of World Bank projects and our desire to see all projects, including difficult, high-risk ones with the potential to make important contributions to countries’ development, designed, implemented, monitored, and evaluated well. We have organized our comments into three sections:

- Strengthening the ESF – timing for the preparation of assessment and mitigation documents, the new risk classification system, and the use of borrower frameworks;

---

<sup>1</sup> In the definition of “disadvantaged or vulnerable groups” in the ESF, we recommend referring to “disability” rather than “physical or mental disability.”

- Improving the Environmental and Social Standards (ESSs) – in numerous areas, including associated facilities; biodiversity and sacred sites; climate change; disadvantaged or vulnerable groups; environmental and social assessment process; Environmental, Health and Safety Guidelines (EHSGs) and related issues; framework operations; human rights; Indigenous Peoples; involuntary resettlement; labor; land and natural resources in ESS1; and, project consultations; and,
- Implementation – consultation process, implementation, and resource considerations.

## I. Strengthening the ESF

***Timing for the preparation and disclosure of assessment and mitigation documents.*** The timely identification and assessment of risk is at the heart of an effective safeguards framework. The new ESF should require the preparation and disclosure of Environmental and Social Impact Assessments (ESIAs), and related documents (such as resettlement action plans and Indigenous Peoples plans) in a timeframe and manner that support the “meaningful consultation” requirements of ESS10. The preparation and disclosure requirements should also be explicit for financial intermediary (FI) and framework project and subproject documents, including ESIAs and Environmental and Social Management Frameworks (ESMFs). For any documents that are proposed for preparation after Board review of a project, the Board should be provided with advance information in the Project Appraisal Document on the nature and content of the documents, the rationale for post-Board preparation, and the timeframe for such preparation and disclosure.

More specifically, the ESF should include the following requirements, at least as strong as currently, whether in the ESF policy, mandatory procedures, or other mandatory instructions:

### *ESIAs/ESMFs for projects and subprojects with likely significant impacts*

- For directly financed projects with likely significant impacts<sup>2</sup>: disclosure of the ESIA on the World Bank’s website at a minimum before appraisal, as is currently the case, and at least 120 days in advance of Board consideration;
- For subprojects (e.g., in FI or framework projects) with likely significant impacts, for which the location is identified prior to Board consideration: disclosure of the subproject ESIA on the World Bank’s website before appraisal of the project, and at least 120 days in advance of Board consideration of the project. As with directly financed projects, this is needed so that all potentially significant project-related (including subproject) impacts have been identified and meaningfully considered prior to Board consideration.
- For subprojects (e.g., in FI or framework projects) with likely significant impacts expected but for which the location is not identified prior to Board consideration: comprehensive information on the broad area in which subprojects will be sited and assessment of the environmental and social framework that the sponsor will use, at least 120 days in advance of Board consideration of the project; and disclosure of the

---

<sup>2</sup> “Significant impacts” may be direct, indirect, cumulative and/or from associated facilities.

subproject ESIA on the Bank's website at least 120 days in advance of the decision by the borrower to proceed, or not, with the subproject. The ESMF or comparable document should include a robust discussion of the broad area in which subprojects will be sited, including any potential environmental and social vulnerabilities of the area (such as fragile ecosystems or endangered species) as well as the potential "generic" or "typical" impacts likely to occur and mitigation measures that might be expected to be used.

*Other environmental/social due diligence documents*

- Documents in the pre-Board due diligence/consultation process: the Bank should provide clear timing requirements for the preparation and disclosure of these documents, maintaining requirements at least as stringent as in the current policies and procedures.
  - This should include all impact identification and assessment documents and most mitigation planning documents, such as resettlement action plans, Indigenous Peoples plans, and labor action plans; and Environmental and Social Management Plans (ESMPs), ESMFs, and Environmental and Social Commitment Plans (ESCPs) or a draft ESCP.
  - For mitigation planning documents, the default requirement should be pre-Board disclosure, except for detailed, limited-scope mitigation documents where there is a sound justification for post-Board preparation and disclosure (see below).
  - Any amended ESCP, ESMP or ESMF developed during the implementation phase should be disclosed promptly.
- For monitoring documents: reports should cover implementation of environmental and social safeguards and be posted on the World Bank's website in a timely manner.
- For all environmental and social due diligence documents that might be proposed for development after Board consideration of a project: requirements that information be provided to the Board when it considers the project that includes: (i) the circumstances that justify preparation of these documents after Board consideration; (ii) the procedures to inform the Board and other stakeholders, at the time of Board consideration, about the type, rationale and anticipated content of any documents that are recommended to be prepared after Board consideration; and (iii) the timeframes and procedures for disclosing the document (when prepared) for consultation/review and receiving input. This information should be provided for directly-financed projects and, separately, for operations with subprojects expected to be developed after Board approval, such as framework operations. The World Bank should establish robust procedures so that post-Board documents are prepared and disclosed as planned.

***Risk classification system.*** Assigning an appropriate environmental/social risk rating is critical to ensuring that the World Bank and borrowers devote sufficient resources and oversight to managing the environmental and social risks in a project. We welcome the World Bank's proposal for a new environmental/social risk classification system that considers a broader range

of risk factors than the current system, and will be an important part of the World Bank's overall risk management framework. We believe that the shift to a four-tiered rating system designed to consider both the scope and likelihood of risks and borrowers' capacity to manage risks is positive. Ultimately, successful implementation of the new risk classification system is what will matter. We thus offer several recommendations on the application of the system.

- Any project or subproject (e.g., in FI or framework projects) with likely significant environmental and/or social impacts should initially be classified as a *High Risk* project (regardless of a borrower's implementation capacity), and should retain the *High Risk* rating. The risk rating should reflect the potential for significant impacts of the entire undertaking, including associated facilities, not just the project.
- Subprojects (e.g., in FI or framework projects) classified as *High Risk* or *Substantial Risk* should be required to meet ESSs 1 to 8 and ESS10. The application of the ESSs to these subprojects will better address their environmental and social risks. We look forward to further information in the next draft of the ESF on how the risk classification of subprojects will be operationalized. FIs and framework project implementing agencies should be able to change the risk classification during implementation, subject to prior review and approval by the World Bank.
- Subprojects (e.g., in FI or framework projects) classified as *High Risk* or *Substantial Risk* should be subject to prior review and approval by the World Bank, when the World Bank is not satisfied that the borrower possesses adequate capacity.
- ESS1 (footnote 19) should require that the borrower retain independent specialists external to the project for *High Risk* and *Substantial Risk* projects.
- The ESF should include requirements for public disclosure and providing information to the Board, both for a project's initial risk rating and at any time a rating is changed. This information should include the basis for classification and whether any significant environmental and/or social impacts are likely.

***Use and strengthening of borrower frameworks.*** The increased use of country systems over time, when the appropriate capacities exist, is a core tenet of development effectiveness. The World Bank's effort to propose a new, more effective approach to the greater use of borrowers' environmental and social safeguards systems is thus in line with global good practice. Strengthening borrower environmental and social frameworks provides an opportunity for the World Bank to have positive development impacts beyond the individual projects it finances. We also acknowledge that some borrower governments have promulgated their own laws and procedures for the management of environmental and social impacts since the World Bank's safeguards were adopted more than two decades ago. And we appreciate the World Bank's effort to learn from the 2005 "use of country systems" pilot<sup>3</sup> and to present a new, project-based approach that can lead to systemic change incrementally.

---

<sup>3</sup> Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects.

The use of borrower environmental and social frameworks provides opportunities but also poses serious risks and challenges, as evidenced during the “use of country systems” pilot where all the pilot projects experienced problems. A careful, gradual, and long-term commitment by the World Bank is needed to continue helping borrowers achieve their objectives as well as to prepare and resource World Bank staff adequately. We strongly recommend that the following key elements be incorporated in the ESF’s approach to using borrower frameworks.

1. A shared understanding that using a borrower framework is an option, *but not the default*.
  - An assessment of a borrower framework should be initiated only when the World Bank believes there is merit to devoting the time and resources to such an assessment and there is expressed interest by the borrower in strengthening or using its framework.
2. Greater clarity about the conditions under which the World Bank would agree to use a borrower framework, including whether such framework materially achieves the same level of protection as the World Bank’s ESSs. The final recommendation to the Board on whether a particular borrower framework should be used should come from the World Bank’s Chief Safeguards Officer and the regional safeguards advisors.
  - The ESF should include a requirement that, for the World Bank to use a borrower framework, either (i) the environmental and social risk of the project is low (e.g., equivalent to a Category C project in the current system), or (ii) the risk related to a borrower’s capacity<sup>4</sup> is “low.” That is, if the project is likely to have moderate or significant impacts (equivalent to Category B or A in the current system), the borrower’s capacity should be high.
  - The ESF should underscore that the basis and frame of reference for all discussions about use of a borrower framework are the ESSs.
  - Borrower ES frameworks should be used only when they, among other requirements, enable the project to “achieve objectives and outcomes materially consistent with ESSs.”<sup>5</sup>
  - There should be an effective and timely recourse mechanism available to project-affected people for redress in the case of borrower non-compliance with its own relevant policies and procedures. In its assessment of the borrower framework, the World Bank should assess the availability and capacity of local recourse mechanisms, including the local court system and any administrative (non-judicial) mechanisms, to provide adequate redress to project-affected peoples in the case of borrower non-compliance. This assessment should take into account the track record of any local recourse mechanisms.<sup>6</sup>

---

<sup>4</sup> This is an element of the project’s risk assessment rating and also of the “institutional capacity for implementation and sustainability” factor of the World Bank’s risk management framework.

<sup>5</sup> Environmental and Social Policy (ESP), paragraphs 23 and 24, World Bank Proposed Environmental and Social Framework (First Draft).

<sup>6</sup> This is separate from assessing the borrower framework for whether the borrower provides a project-level grievance mechanism as required by ESS10.

- To assess if a borrower framework (i) is likely to be able to address the potential risks and impacts of the project, and (ii) will enable the project to “achieve objectives and outcomes materially consistent with ESSs,” the World Bank should undertake a review as follows:<sup>7</sup>
    - ✓ The World Bank’s review of a borrower framework should consider its requirements and objectives, and the potential environmental and social outcomes that would result from its application, including any specific measures and actions that may be agreed with the World Bank. A borrower framework may be used, in whole or in part, if it embodies the relevant requirements and objectives of the ESSs (without requiring an exact correspondence); can address the potential risks and impacts of the project and any associated facilities<sup>8</sup>, and is commensurate with those risks and impacts; includes appropriate procedural requirements (see next bullet); and, in the World Bank’s informed judgment, can be expected to materially achieve the same level of protection as the World Bank’s ESSs.
    - ✓ “Appropriate procedural requirements” should include requirements on the timing of document preparation and disclosure, including the requirements for timing of preparation and disclosure of ESIA’s and, where relevant, Indigenous Peoples plans, resettlement action plans, and other action plans, at least as strong as in the World Bank’s ESF procedures.
    - ✓ The assessment of the borrower framework should be done at an appropriate time, after the initial environmental and social assessment and mitigation planning, so that the full range of potential project impacts, mitigation plans and environmental and social outcomes can be evaluated in the assessment of the borrower framework. A particular focus of the assessment of the borrower framework should be treatment of disadvantaged or vulnerable groups and non-discrimination.
    - ✓ The assessment should include review of the borrower framework’s track record, to understand whether there is demonstrated capacity to manage effectively the environmental risks and impacts of projects comparable to the project proposed for World Bank financing in size, type of impacts and mitigation measures, and complexity.
    - ✓ The assessment should assess the adequacy of the country’s human and financial resources for project due diligence and implementation.
3. A gradual, portfolio-wide approach to increasing use of borrower frameworks, with an initial five-year period of limited use, followed by a five-year evaluation of the experience.

---

<sup>7</sup> The ESP discusses two other situations where it proposes a similar standard: when it develops a “common approach” with other multilateral or bilateral funding agencies (paragraph 9), and when the World Bank is providing support to an FI, where other multilateral or bilateral funding agencies have already provided financing to the same FI (paragraph 10). In these cases, we recommend that the ESP use the same standard (“achieve objectives and outcomes materially consistent with ESSs”), disclosure, recourse and assessment requirements as for borrower frameworks.

<sup>8</sup> For associated facilities, to the same standard as in ESS1, paragraph 30.

- During the first five years after the new ESF becomes effective, use of borrower frameworks should be expanded to a limited number of borrowers, and should not include projects with a “*High*” or “*Substantial*” risk rating.
  - Operational and Independent Evaluation Group (IEG) evaluations of the effectiveness of the application of the new approach to the use of borrower frameworks should be undertaken five years after the policy becomes effective. The results should be presented to the Board for its consideration and for decision on whether the approach is working or should be modified.
4. A requirement that any recommendation to the Board to use a borrower framework include the rationale and a discussion of any associated challenges and risks, including how such challenges and risks will be addressed.
  5. A clear role for the World Bank in strengthening borrower frameworks, whether or not the World Bank agrees to use a borrower framework in whole or in part.
    - The Environmental and Social Policy (ESP) and ESS1 should state that the outcome of an assessment could result in a decision not to use the borrower framework, although the option of strengthening it would still remain.
    - The draft ESP is not clear about the World Bank’s role and should track with the corresponding language on capacity-building measures in ESS1 paragraph 19. (ESP paragraph 25 should state that the measures and actions to address gaps in the borrower framework will include capacity-building measures, where necessary, and that the World Bank will develop a plan to support the agreed capacity-building measures, if needed.)
  6. An option, if the borrower framework is changed in a manner inconsistent with the ESSs and the ESCP, that use of the borrower framework will be discontinued.
    - As part of its standard oversight procedures, the World Bank should have a process to review the status of a borrower framework and its implementation on a periodic basis, including through consultations with expert international organizations when appropriate, rather than relying solely on information provided by the borrower.
  7. A clear resource and budgeting plan, so that the World Bank has the resources it will need to assess and assist in strengthening borrower frameworks.

## **II. Improving the Environmental and Social Standards (ESSs)**

***Associated facilities definition.*** We recommend that the ESF adopt the definition of an associated facility as “new or expanded works or infrastructure without which a World Bank-financed project would not function as intended.” Associated facilities should not be limited to contemporaneous activities.

***Biodiversity and sacred sites.*** We welcome the new emphasis on biodiversity. The ESF should strongly encourage broad and “upstream” assessment and planning, such as landscape planning, river basin planning, and other strategic approaches, to improve project selection and design and maximize sustainability. We recommend a prohibition on offsets for impacts on critical habitat. The effective implementation of biodiversity offsets is extremely challenging, even in countries with extremely high capacity. Given the potentially catastrophic impacts on endangered species, we believe the risks are simply too high. ESS6 should require assessment and avoidance/mitigation of impacts on ecosystems, including by maintaining sufficient operational flows in river basin ecosystems to protect the ecosystems and critical natural habitats. ESS6 should also include protections for forests at least equivalent to those found in OP 4.36. The protections for sacred sites, which are called “natural features with cultural significance” in ESS8, should include protections equivalent to the current prohibition on significant conversion or degradation of such sites. Impacts on these sites should be considered in conjunction with ESS6.

***Climate change.*** We welcome the inclusion of important new provisions on climate change. These represent a strengthening over the current safeguards policies that are silent on climate issues. However, the ESF should strongly encourage broad and “upstream” consideration and evaluation of climate change impacts as early in the project cycle as possible so that projects can best support low-carbon, climate-resilient development. ESS3 should clarify that the borrower will also consider alternatives and options to *avoid* greenhouse gas emissions. Quantification of greenhouse gas emissions as outlined in ESS3 should be required without the qualifications included in the text. Requirements for assessment and consideration of climate resilience risks should be strengthened and expanded, and should address resilience of the projects themselves as well as resilience of the communities and ecosystems affected by these projects. The vision statement (paragraph 5) should address climate change resilience.

***Disadvantaged or vulnerable groups.*** We welcome the inclusion of language concerning women and girls, persons with disabilities, and LGBTI persons in the Vision Statement, among the groups of persons identified as “disadvantaged or vulnerable,” and, as members of that group, throughout the ESF. We encourage the World Bank to strengthen the ESSs, where relevant, to reduce risks unique to each of these groups throughout the project cycle, including through robust and meaningful engagement with the affected persons and their representative organizations. We also encourage the World Bank to improve its staff engagement, and to support improvements in borrower capacity, to enable better analysis, planning, and outcomes for these populations and vulnerable and disadvantaged groups more broadly.

***Environmental and social assessment process.***

- ***Alternatives analysis.*** The alternatives analysis required in ESS1, paragraph 22, should consider alternatives in a comparable manner, so as to provide for meaningful consideration of the distinctions among alternatives, and should be of a nature and depth commensurate with the potential impacts of the proposed project.
- ***Multi-facility undertakings.*** The World Bank due diligence process should consider multi-facility undertakings – typically a project and associated facilities – in an integrated manner. The result should be a single environmental and social risk classification (as noted above) and a comprehensive, integrated assessment that both reflect a holistic understanding of the risks and impacts of the total undertaking.



- *Hydropower projects.* The ESS4 Annex on the safety of dams includes a reference to a broad range of environmental and social considerations beyond dam safety. Accordingly, the annex should be attached to ESS1, with a more robust discussion of the environmental and social issues unique to dams, and with the engagement on environmental and social impacts called for in the Annex appropriately integrated with the process and analysis called for in ESS1.

***Environmental, Health and Safety Guidelines (EHSGs) and related issues.***

- The environmental and social requirements that will be applied to a specific project, based on the Good International Industry Practice (GIIP), should be spelled out in the environmental and social assessment document, or in a document available alongside it. The discussion of the project-specific requirements should specify the EHSGs, or where EHSGs are not available, the GIIP to be used. Additionally, where a standard lower than an EHSG limit is proposed, the discussion should provide a technical justification.
- Any proposed alternatives that are weaker than the EHSGs should be subject to third-party review. The circumstances that would justify an alternative should be project-specific, such as commercially available skills, equipment and materials and operational reliability.
- The discussion of GIIP in ESS3, footnote 3, should require the use of the more protective of either the global or regional practice.
- Borrowers should not site projects with uncontrolled emissions and releases in pristine areas as an alternative to provision of controls in degraded areas. The preferred alternative is robust controls.
- The goal of any corrective actions during the implementation phase related to the project-specific environmental and social requirements should be to maintain or achieve compliance with those requirements. This should be reflected in any revised ESCP.
- The ESF should be clear that all requirements referring to the ESSs include the EHSGs. This applies not only to directly financed green-field projects, but also to projects concerning existing facilities, subprojects, associated facilities, projects subject to a common approach, FI projects where the FI has worked with another MDB, and projects using borrower frameworks, all of which have requirements referring to the ESSs.

***Framework operations.*** The ESF should allow framework operations to be used only when they can be well-implemented and are an appropriate project structure (for example, “repeating” or similar subprojects managed by one agency). The ESF should include criteria on when a framework operation is an acceptable approach to addressing environmental and social impacts of a set of projects, including borrower capacity, in light of the risk assessment, mitigation planning, implementation and oversight challenges such operations can pose. Borrower capacity should be commensurate with the anticipated risks and impacts. In addition, implementation of frameworks should always include development and implementation of detailed site-specific plans.

***Human rights.*** We welcome the acknowledgement in the Vision Statement that the World Bank’s operations are supportive of human rights. The explicit reference to World Bank operations encouraging respect for human rights is progress, although we think the Vision

Statement could be bolder in this regard. We believe that an important contribution of the draft ESF to preventing adverse human rights impacts from World Bank projects is the clear emphasis on robust social impact assessments, especially with respect to disadvantaged or vulnerable groups. Done well, social impact assessments and related mitigation can be the vehicles for assessing and addressing human rights impacts. Accordingly, we urge the World Bank to develop robust procedures and guidelines for social impact assessment and mitigation, including where development activities can impact human rights.

***Indigenous Peoples.*** It is important to address the unique realities, history, and needs of Indigenous Peoples. We welcome new provisions in ESS7 that represent a strengthening over current policy, for example, in recognizing pastoralists and peoples “in voluntary isolation.” Nonetheless, we cannot support the proposed “alternative approach” and strongly recommend that it be removed from the next draft of the ESF. We believe that ESS7 without the “alternative approach” is a solid basis for addressing the needs of the vast majority of World Bank-financed projects. ESS7, paragraph 25 provides protections related to the possible relocation of Indigenous Peoples from communally held or attached lands and natural resources subject to traditional ownership or customary use or occupation. It should be modified, and footnote 14 deleted, so that any such relocation of Indigenous Peoples complies with both ESS5 and paragraph 25.

***Involuntary resettlement.*** Involuntary resettlement occurs in a significant portion of World Bank-financed projects and is likely to become more prevalent as the World Bank increases its support for the construction of infrastructure projects. A sound ESS on involuntary resettlement (ESS5) as well as its effective implementation, therefore, is central to World Bank lending. We are very concerned by the recently released reports that outline significant weaknesses in the World Bank’s implementation of its own involuntary resettlement policy. We note Management’s Action Plan and urge Management to consult with a panel of external experts to determine if the Action Plan is sufficiently robust. Implementation of this Action Plan should include a focus on sound baseline data and careful assessment of existing land and water ownership and usage patterns and rights, to provide a basis for robust impact assessment, mitigation planning, monitoring, and, if needed, adaptive management, throughout the project cycle. We recommend that resettlement activities be conceived and executed as sustainable development programs with meaningful consultation and participation. We also recommend that ESS5 emphasize improvement of livelihoods in cases of resettlement (not just “restoration”), including through opportunities for affected peoples to derive benefits from the project. ESS5 should include requirements for recognition of individual and/or collective ownership and usage rights, and should consider the water resources and water rights associated with any land acquisition. Regarding the proposed exemption from ESS5 for “voluntary, legally recorded market transactions” (paragraph 5.a) and the option for relinquishing land rights (paragraph 4.f), the ESF should include mandatory directions to staff on how to evaluate whether these transactions are truly voluntary. The ESS5 exemptions for “land-titling/regularization activities” and “regulation or planning of natural resources or land use on a regional or national level to promote sustainability” should be deleted.

***Labor.*** We welcome the inclusion of an ESS on labor issues for the first time. The inclusion of ESS2 represents a strengthening over the current safeguards policies, which are silent on labor

issues. However, as drafted, ESS2 has important gaps that should be addressed in a revised ESF. Regarding its scope, we recommend that “government civil servants” be more clearly defined and that “project workers” include contractors and sub-contractors, as well as workers in the primary supply chain. We urge the World Bank to incorporate reference to the International Labour Organization (ILO) Declaration on the Fundamental Principles and Rights at Work (FPRW) in ESS2, including stronger protections with regard to freedom of association and collective bargaining consistent with the FPRW. ESS2 should include a requirement that “whether or not provided by national law, the borrower/contractor/ subcontractor will not discourage, interfere, discriminate or retaliate against workers seeking to freely associate and/or bargain collectively.” Where there are legal prohibitions on worker rights to associate and to bargain collectively, the World Bank should explore a policy dialogue with the borrower and the ILO, as part of its broader country-wide strategy to support policy reform on these issues.

***Land and natural resources in ESS1.*** We welcome the explicit ESS1 requirements for assessing and mitigating the risks and impacts associated with land and natural resource tenure and use, which represent a strengthening over current safeguards policy. We recommend that the next draft of the ESF provide more explicit protections in ESS1 to project-affected people whose use of land and natural resources, including water, is affected or restricted. The protections should include legal recognition of ownership and usage (including for collective ownership and usage), when appropriate, compensation, appropriate project benefits, and livelihood improvement (not just livelihood restoration). This process should consider the water resources and water rights associated with any land acquisition.

***Project consultations.*** We welcome the overall strengthening of consultation requirements in ESS10 relative to current requirements, including the new requirements for a stakeholder engagement plan and meaningful consultations. Meaningful consultations should be available for all project-affected people (not, as suggested by ESS 10, paragraph 10, only when they may be subjected to “significant” adverse impacts). Demonstrable public acceptance of the project is among the desired outcomes of the consultation process. The meaningful consultation requirements of ESS10 should explicitly include consultation during the scoping process. Design of project-level grievance mechanisms should include consultation with project-affected people to support the design of an effective mechanism, and should include protections against reprisal in addition to anonymity. Where relevant, for example for large infrastructure projects, document disclosure should include timely public access to project documents, including feasibility studies, economic and risk analyses, and revenue management plans, with appropriate exceptions for proprietary information, and to related documents, such as resource management plans and river basin management plans, which should be developed using full stakeholder participation.

### **III. Implementation**

***Consultations.*** We appreciate the World Bank’s commitment to holding a third round of consultations as part of the Safeguards Review. We expect the “phase 3” consultations to be transparent, accessible, inclusive, and robust, and to provide for meaningful engagement with a full range of interested stakeholders. In addition, we expect that all the necessary documentation will be provided with sufficient time for review so that stakeholders are able to gain a

comprehensive understanding of the proposed safeguards framework. We expect the documentation to include at least the following:

- A revised ESF document updating all the material in the July 2014 CODE paper, including implementation planning, and also including all Annexes;
- All mandatory staff requirements (e.g., directives and procedures, however named);
- Information Note on Risk Assessment (mandatory); and,
- Information Note on Borrower Frameworks (mandatory).

***Implementation and resources.*** We reiterate the comments in our April 2014 and July 2014 statements. No matter how well drafted, the ESF’s ultimate success hinges not only on the words on paper, but on how they are implemented on the ground. We expect the World Bank to address the weaknesses in the implementation of the current safeguards highlighted by the IEG’s 2010 review and two recent internal reports on involuntary resettlement. The World Bank’s processes and resourcing for implementing the new safeguards framework will be key to its success.

The draft ESF document includes discussion of several measures “under consideration.” We urge the World Bank to present a fully developed plan to improve implementation with the next draft of the ESF. As part of this plan, we encourage the World Bank to consider establishing a larger, integrated safeguards unit, in order to support the autonomy, resource allocation, and career opportunities of specialist safeguards staff. We emphasize the importance of close collaboration on safeguards issues between all relevant units.<sup>9</sup> We also underscore the importance of the World Bank’s independent review of information provided by the borrower and encourage the World Bank to use third-party monitoring routinely, not only in exceptional cases. Lastly, we reiterate the importance of training and staff incentives to a successful safeguards system.

The World Bank has stated that the new proposed safeguards framework will require even more professional capacity and judgment on the part of its safeguards staff than the current system. We agree with that assessment and strongly emphasize the importance of ensuring that the World Bank has a sufficient number of environmental and social expert staff with the requisite experience and skills to deliver on the vision and ambitions of the new ESF. It is also critical that incentives for both task team leaders and safeguards staff align with this new approach. We urge the World Bank to develop a resourcing plan which provides baseline and projected data for ESF implementation and to share the plan with stakeholders either in the next draft of the ESF or in a parallel communication.

We look forward to further discussions with World Bank management and staff as well as other stakeholders on these issues, and to a revised draft ESF that addresses all of these concerns and suggestions.

---

<sup>9</sup>This includes Operations Policy and Country Services, the Environment and Natural Resources Global Practice, the Social, Urban, Rural and Resilience Global Practice, and – where appropriate – other global practices, such as the Social Protection and Labor Global Practice, and cross-cutting solutions areas, including climate change, gender, and jobs.