

*Full compendium of feedback and suggested amendments by ILC members on the first draft of the World Bank's revised Environmental and Social Framework*



*January 2015*

## **Annex I**

# **Full compendium of feedback and suggested amendments (arranged in sequential order)<sup>1</sup>**

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<sup>1</sup> For an analysis and key excerpts from the contributors related to each relevant section, please refer to the main document.

**A. General assessment and overall comments on first draft**

Background	AIPP	CDE	FPP	IWGIA	JASIL	Oxfam	NFCPFA	RDF	SDF
<b>Q1. Any interaction with WB projects in the past?</b>	Yes	Yes	n/a	n/a	No	Yes	Yes	No	n/a
<b>Q2. Previous familiarity with WB review process</b>	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes
<b>Q3. Some participation in WB consultation process since 2012</b>	Yes	No	Yes	Yes	No	Yes	No	No	No
<b>Q4. Feedback to WB already submitted in addition to ILC</b>	Yes	Yes	Yes	Yes	Not yet	Yes	No	No	Yes

**Q5. General assessment/comments on first draft of revised framework**

<b>AIPP</b> <b>FPP</b> <b>IWGIA</b>	<p><i>"We have serious concerns about the current draft of the revised framework, and call on the World Bank to take serious consideration and action in response to the strong feedback that it has been receiving in this regard over the past months. Our concern is focused largely on the weakening of policy requirements for indigenous peoples with very serious implications, including the outright denial of the existence and rights of indigenous peoples under international human rights laws. Overall, while the standards have been improved in their inclusion of a requirement to obtain free, prior and informed consent (FPIC), the inclusion of an option for borrowing countries to opt-out of applying the policy at all undermines any advances. As currently formulated, the FPIC provisions are also weak and need amendment to be effective and appropriate.</i></p> <p><i>It is also worth noting that the ESSs apply only to one of the Bank's three loan instruments, investment loans. The ESSs are not applied to Development Policy Loans or Program for Results (P4R), which make up a significant proportion of Bank financing. This restriction is problematic, as it ensures that any advances secured in the protections provided to indigenous peoples in ESS7 are NOT applied to projects impacting on indigenous peoples if a different loan instrument is used. This is an opaque and confusing method of standard development, and makes it difficult for affected peoples to be sure of what standards are applied to them. As has been stated repeatedly during the review of these safeguard policies, it is crucial for indigenous peoples that the same policies and protections apply regardless of the loan instrument used, as these rights and protections are entrenched at international human rights law."</i></p>
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<b>AIPP</b>	<i>This is a riskier approach to lending, and it assumes an ability to monitor actual practice that Bank staffs have not shown in the past. It also assumes a willingness to speak up quickly when things are going wrong. The current structure of investment in staff training, and allocated budget for safeguard staff, is not high enough for the staff to take on significantly more responsibility to review and monitor projects at a more detailed level, but there has been no information provided about how staff will be funded and supported to undertake these additional tasks.</i>
<b>CDE</b>	<i>"The [safeguard consultation] team [was] quite open to receive concrete suggestions, but of course stood quite firm regarding the general approach that is taken. They see this not at all as a dilution of the previous regulations."</i>
<b>JASIL</b>	<i>"local people and community engagement is not strong."</i>
<b>Oxfam</b>	<p><i>"It was acknowledged with appreciation that in a number of respects, the proposed ESF contains improvements on the current safeguard policies with respect to land, housing and indigenous peoples' rights. When Environmental and Social Standard (ESS) 5 on Land Acquisition, Restrictions on Land Use and Involuntary Resettlement is triggered and effectively applied, it would prohibit forced evictions, including of informal settlers, who are accorded important entitlements, upon resettlement including "arrangements to allow them to obtain adequate housing with security of tenure." ESS5 also has a broader scope than the current policy with respect to restrictions on land use and access to natural resources. When ESS7 on Indigenous Peoples is triggered and effectively applied, it will respect the right of indigenous peoples' communities to give or withhold their free, prior and informed consent in certain circumstances, including when projects impact on their land and natural resources or cause relocation.</i></p> <p><i>With due regard to these improvements, the case studies nonetheless surfaced many weaknesses in the proposed ESF that create a high level of risk that project-affected people and communities will suffer serious harms and violations of their land, housing and natural resource rights."</i></p> <p><i>"[The current draft contains] Inadequate safeguards on land tenure:</i></p> <ul style="list-style-type: none"> <li><i>• Secure access to land underpins successful development. In addition to its social function, it is both the safety net for poor households and a foundation from which poor households can increase their economic potential.</i></li> <li><i>• As seen in the Guatemala Land Administration Program, World Bank projects can have extremely adverse impacts on land tenure, which are not covered by the involuntary resettlement standards. Yet, the only safeguards that exist in the draft Framework are a sentence in the list of issues to be taken into account by Borrowers in conducting their social assessments and a number of further protections for Indigenous Peoples. This level of protection is not commensurate to the importance of land to people's lives and livelihoods or to the potential for adverse impacts of Bank-financed projects on people's secure access to land.</i></li> <li><i>• Standards on land tenure should include, inter alia:</i> <ul style="list-style-type: none"> <li><i>○ Binding safeguards to ensure that land transactions that occur in connection with Bank-financed projects, including agriculture projects, are truly voluntary ("voluntary land transaction" are explicitly excluded from ESS5 and this issue is only addressed through a non-binding footnote);</i></li> <li><i>○ Protections for project affected communities who are either indigenous or non-indigenous but practice a customary or collective</i></li> </ul> </li> </ul>

	<p><i>tenure system;</i></p> <ul style="list-style-type: none"> <li>○ <i>Safeguards against instigating land conflict and/or weakening of tenure status in both urban and rural areas; and</i></li> <li>○ <i>Safeguards against increased land consolidation and inequality in land holdings, including through projects that encourage land speculation, prioritize individual freehold above other forms of tenure, and empower or incentivize the State to claim land used by others.</i></li> <li>○ <i>Measures to ensure that Bank-supported land projects are strengthening, securing and prioritizing the tenure rights of vulnerable and marginalized people so that they enjoy, at minimum, legal protection against forced eviction and illegitimate use by others of land and natural resources that they depend upon for their housing and/or livelihoods.</i></li> </ul> <p>• <i>Despite commitments that the review of the safeguard would be informed by the Voluntary Guidelines on Tenure, endorsed by the UN Committee on Food Security, one of the basic tenets of the Guidelines is not meaningfully incorporated in the ESF: It fails to meaningfully ensure respect for the multiple tenure forms affected by Bank-financed projects, including through measures that increase tenure security."</i></p>
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<b>Q7, 13, 17, 26, 31. Comments on national or regional-level implications of the framework</b>	
<b>AIPP</b>	<i>"The historical legacy of the World Bank with indigenous peoples has been marked by persistent instances of serious violations of our human rights. Human rights violations of indigenous peoples have taken place across all investment sectors in which the Bank is financing and are structurally linked to the western development model that the World Bank has promoted and financed for the last 6 decades. This policy if set in line with international human rights standards and properly implemented on the ground will reduce the violations against indigenous peoples and other affected communities."</i>
<b>AIPP</b>	<i>"The Bank is also undermining significant progress achieved in the development of national level laws and policies recognizing and protecting the unique rights of indigenous peoples. This danger was highlighted by the African Commission on Human and Peoples Rights (ACHPR) in its communication with the World Bank, through the Working Group on Indigenous Populations. In its communications with the Bank the WGIP stated: '...any 'alternative approach' to indigenous peoples in Africa would undermine the work of the Commission, which has started to bear fruit by gradually inspiring and guiding national laws and policies. Such an 'alternative approach' would also undermine the Commission's on-going work to sensitize stakeholders about what the concept means in Africa." The 'alternative approach' being proposed by the World Bank could also lead to a parallel and conflicting framework that would discourage more African States from developing policies and legal frameworks for indigenous peoples. The 'alternative approach' would as well be in stark contradiction with the various policies, decisions and rulings of the Commission and that of the African Union."</i>
<b>IWGIA</b>	<i>"The proposed 'alternative approach' allowing for opting out of applying the safeguards for indigenous peoples would be a major setback for indigenous peoples in all of the regions where IWGIA works, and in particular in continents like Africa and Asia, where many government</i>

	<p><i>continue to violate indigenous peoples' rights – while at the same time denying their existence – and where the opt out clause would play into the hands of those repressive governments.</i></p> <p><i>The proposed 'alternative approach' is not aligned with internationally recognized standards and frameworks and would also be a major set-back for the positive and encouraging developments that has taken place at the regional level in Africa with regards to the recognition and protection of indigenous peoples.</i></p> <p><i>For more than a decade the African Commission on Human and Peoples' Rights has - through its Working Group on Indigenous Populations/Communities and in collaboration with other international, regional and national actors - made great strides in promoting and protecting indigenous peoples' rights in Africa. In this regard, the 2003 landmark conceptualisation Report of the African Commission that was formally endorsed by the African Union clearly recognized the existence of indigenous peoples in Africa and the need for protection of their human rights, and it continues to inspire national, regional and international processes.</i></p> <p><i>The African Commission has officially expressed deep concern to the President of the World Bank over the proposed 'alternative approach'." (IWGIA)</i></p>
<b>FPP</b>	<p><i>"Where the proposed 'alternative approach' is triggered, which could potentially include countries in Asia and Africa, and possibly Latin America, the fundamental rights of indigenous peoples to effective consultation on measures impacting them, rights to land and resources rights to specific, culturally appropriate consultation processes, and rights to refuse forced relocation from traditional lands are all placed in doubt. Where borrower systems are triggered in countries with insufficient capacity to fulfil existing laws and policies on land securing and indigenous peoples' rights, the safeguards could unintentionally contribute to rights abuses through lack of appropriate implementation."</i></p>
<b>FPP</b>	<p><i>"Significant impacts on the affected communities of any project which avoids application of ESS7 either through application of the 'alternative approach' or through use of national systems which are insufficient to provide the same protections. Significant impacts are also expected more generally on the progressive development of national laws to protect the rights of indigenous peoples if the World Bank codifies an 'exception' to protecting rights in cases where governments are reluctant. This impact is expected on national legislative processes as well as on the possible development of similar exceptions in the safeguard policies of other multilateral public banks and private finance standards."</i></p>
<b>JASIL</b>	<p><i>"Any possible negative impacts of the project shall be preliminarily informed to the likely affected people and should get their comments from them. According to the local specifics of Mongolia such information in the type bulletins (briefs), newspaper announcements, radio messages, ot etc. should be distributed to each affected families and households, because Mongolian traditional nomadic agriculture society based more on individual household decision making process, rather than stronger "social community" processes in Europe or in other East Asian countries.</i></p> <p><i>Borrowers and sub-contracted companies, as well as other stakeholders should be trained for Participatory study tools, and techniques (Participatory Rural appraisal, Social and Gender analysis, Livelihood analysis and Stakeholders analysis) for the successful implementation</i></p>

	<p><i>of proposed impact assessment. These tools and principles should be followed and attached in the regulatory framework for stakeholders engagement and helps for the transparency (anti-corruption measures at all stages of the processes) and the public involvement in the decision making on the new development and infrastructure projects.</i></p> <p><i>This will help to clarify roles and responsibilities of stakeholders, and outline legal binding mechanisms for its violation, as well as establish time frame for stakeholders engagement in each of the stages of SES, determine information disclosure mechanism, and regulate who will finance all these processes. The SES should establish two ways co-management system for determining and solving problem with affected local people, to plan and mitigate negative impacts of the project, and to support local community development, on the base of recognizing them (local communities) as unit of economic development of the locality, region and the state." [sic]</i></p>
<p><b>SDF</b></p>	<p><i>"Useful positively but to a limited extent. Because, the state has diluted the consent provision. Even the existing consent provision is not followed."</i></p> <p><i>"Will continue the prevailing climate of displacement. So far millions were displaced without proper compensation and relocation. Cultural heritage is not taken into account."</i></p>

## B. The World Bank Environmental and Social Policy

### Q6. On the satisfactory application of the 10 pillars of people-centred land governance:

*"There is absence of the international legal framework (human rights law) but also of non-binding agreements (VGGT, RAI), which I think should be mentioned as presenting the general framework to which the Bank is committed." (CDE)*

*"Our gravest concern is related to the land rights of indigenous peoples, and we will recommend to include more specific references to the obligation of the World Bank to secure that the Free, Prior and Informed Consent of Indigenous Peoples is obtained (as per the UN Declaration on the Rights of Indigenous Peoples and the UN General Assembly's Outcome Document of the World Conference on Indigenous Peoples) in relation to all activities/projects impacting on the lands and land tenure security of indigenous peoples." (IWGIA)*

*"The new system of ESP and ESSs separate out the responsibilities of the Bank and the borrowers. In doing so, responsibility to actually implement and meet the standards is largely turned over to the borrowers (to the governments). The Bank's role is to conduct due diligence and a monitoring and follow-up role for most types of projects. Firstly, the due diligence process is said to be based almost exclusively on review of information provided by the borrowers, which is highly problematic in that that information is likely to be incomprehensive and biased, and perhaps not adequately reflective of emerging problems that a borrower government feels are 'manageable' and therefore do not need to be raised with Bank staff. This is a riskier approach to lending which puts the onus of responsibilities largely on the borrower, thereby removing the World Bank's own real accountability." (IWGIA) (FPP)*

*"This approach in particular puts indigenous peoples' land rights at risk since many governments/borrowers are increasingly driving/facilitating land grabbing of indigenous peoples' lands due to economic interests in these (often natural rich) lands, such governments/borrowers would be likely to provide biased and incorrect information." (IWGIA)*

*"This may be addressed with a comprehensive re-working of the way that the Bank addresses its own responsibilities for follow-up, but this is a significant change in staffing incentives and project management skills and there has been no information from the Bank to-date with regards to how this culture shift would happen." (FPP)*

*"In terms of the protections offered by the proposed ESS standards, our gravest concern is related to the rights of indigenous peoples and to the accountability processes (commitments 5 and 8 of people-centered land governance). Overall, we see a failure to incorporate meaningful standards on land tenure governance and failure to apply ESS5 requirements to land titling / land administration, or natural resource management / conservation projects." (FPP)*

*"Need more recognition of traditional land use rights of local communities, particularly nomadic pastoral herders, any projects should accept it as strong social safeguard." (JASIL)*

*"Weak: decision-making over land/forest are not inclusive; there is a gap in the implementation of such policies." (NFCPFA)*

*"We suppose the WB Policy include all elements of people-centered land governance." (RDF)*

*"No. Involvement of Financial Intermediaries gives in to corruption and laxity in commitment, and weakens the procedures. The only way is local people's consent, a provision which is being undermined by most governments including India. India's new ordinance for land acquisition to do away with people's consent. [Government is also trying to get private FDIs which do not have any ESSs.]" (SDF)*

**Q8. On the environmental and social risks that the World Bank pledges to take into account in its due diligence (page 9, paragraph 4):**

*"We would recommend including specific risk assessment for indigenous peoples to be mentioned here as well, to ensure that ESS7 is appropriately triggered in the future (in light of significant problems with regional variations of the triggering of the current OP4.10)." (FPP)*

*"Its good wording, but in real case its implementation is poor, depending of country specifics and various level of capacity in local and national level." (JASIL)*

*"Weak due diligence requirements: (a) No requirement to assess whether the displacement impacts are reasonable and proportionate to the development benefits of the project; and (b) over-reliance on E&S assessment by the Borrower*

- There is no requirement to demonstrate that the project is justified by taking into account both its intended development benefits as well as its displacement impacts. International human rights law standards require that evictions, including involuntary resettlement, are only undertaken for the promotion of the general welfare and are reasonable and proportionate to the benefits that will ensue. The ESF pre-supposes that the project development rationale justifies the displacement, regardless of its magnitude and impacts.*
- The ESF should require that the Bank assess the benefits that will accrue to the general welfare and weigh this against the magnitude of displacement and the risk of harms to affected people. As a part of the Bank's due diligence, it should be asking: Is the risk proportional to the public good that the project will achieve? This requires a cost-benefit analysis that includes a realistic assessment of whether the risks of harm due to displacement can and will be effectively mitigated. If risks are disproportionate to the public good, or if risks are unlikely to be effectively mitigated, then the project should not be approved. The political economy environment in the Borrower country, and the relevant track record of the government, must be taken into account in this analysis.*
- Under the ESF, the Bank is only required to conduct E&S due diligence based on an E&S assessment provided by the Borrower. It can at its discretion seek further information, but is not required to confirm the accuracy or rigor of the Borrower's own assessment by actively seeking a range of views from a variety of sources, including potentially affected people.*



• *Incentive structures and past experience would suggest that the Bank will usually not use its discretion in a manner that could instigate tensions with the Borrower, and thus would be unlikely to seek alternative and independent-third party views to verify the Borrower's assessment, unless it is compelled to do so by the ESF.*" (Oxfam)

*"Forests and forest users might be included in the phrase."* (NFCPFA)

*"[Does not take into adequate account the principles of people-centered land governance]. Insert additional clause which makes them viii in total: (v) reconsideration of the project including reversal and paying compensation, if the project is found approved against the proper consent of people but through concocting consent by wrong means; [change numbering accordingly]."* (SDF)

**Q9. On the 'Special Consideration' on page 15, paragraph 33, on the application of ESS7 and the application of a possible 'alternative approach':**

*"This section directly and seriously undermines the specific and fundamental rights that indigenous peoples have over their lives, their lands and resources and the course of their own development, as already enshrined in international human rights law. To enable governments to opt-out of applying protections for indigenous peoples implies an endorsement of the idea that the protections due to indigenous peoples, as a matter of law or of policy, are dependent on the governments under which they live. This fundamentally violates international law on the rights of indigenous peoples as progressively developed over the past thirty years. Encroachment on the lands, resources and territories of indigenous peoples is often undertaken with the implicit or explicit consent of governments whose decisions often adversely impact indigenous peoples. If the decision on whether international human rights are to be respected or not rests solely with national governments, then the Bank is acting to further undermine agreed international human rights standards, protected by UN and regional human rights instruments."* (AIPP)

*"This clause raises questions. If an alternative approach is needed, it should be made more clear, that the Bank will examine the procedure and outcomes of the alternative approach critically and also will reserve the right to get additional inputs from concerned organisations of civil society."* (CDE)

*"To enable governments to opt-out of applying protections for indigenous peoples implies an endorsement of the idea that the protections due to indigenous peoples, as a matter of law or of policy, are dependent on the governments under which they live. This fundamentally violates international law on the rights of indigenous peoples as progressively developed over the past thirty years. The inclusion of this special consideration amounts to an "opt-out", making it far easier to apply for ESS7 to be set aside, and as a matter of written policy, easier for the Board to justify its approval of the request.*

*The land and resource rights of indigenous peoples are strongly protected by international law and by many national laws, for very good reasons. Earlier safeguard policies of the World Bank at least acknowledged and attempted to respond to these rights. The opt-out allows for direct violation of these rights by removing any requirement for consent in any form.*

*It is completely unknown to what extent this opt-out would be applied for, or approved, but the mere inclusion of the potential to opt-out amounts to a weakening of protections for indigenous peoples. The 'alternative approach' has presumably been included because the Bank sees that there are situations*

*in which it would approve such an approach, yet there is no clarity on how and when it would happen. To approve such an approach, in which protections for consultation, consent and other key rights is removed, amounts to a direct endorsement of the idea that rights are context-specific, not universal." (FPP)*

*"World Bank financing is rendered to a wide number of interventions and investments that have immense importance and impact for indigenous peoples worldwide, including within such areas as infrastructure, agribusiness, extractive industries and financing for climate change-related initiatives including those aimed at reducing deforestation and those designed to improve the adaptive capacity of both eco-systems and communities. It is therefore of paramount importance for indigenous peoples that the World Bank upholds high standards for its Safeguard Policies that are fully aligned with international human rights standards – and the World Bank has indeed historically been a leader in developing strong environmental and social protections. However, in an unprecedented move, the World Bank proposes in its draft document that governments can request the World Bank to engage in an "alternative approach" whereby it can 'opt-out' of requirements designed to protect indigenous peoples from unintended and negative consequences from development activities funded by the World Bank, including forced evictions, land dispossession and land grabbing. According to the draft document (paragraph 9 of the ESS7), the World Bank is proposing that borrowers (mainly but not exclusively governments) can request that they should not apply Environmental and Social Standard (ESS) 7 on Indigenous Peoples. Borrowers may request this if they consider that identifying indigenous peoples would, in some way, heighten ethnic tensions or increase conflict, or if recognizing culturally distinct groups is contrary to their national constitutions. This directly and seriously undermines international human rights standards as they comply to indigenous peoples, including the UN Declaration of the Rights of Indigenous Peoples (UNDRIP), ILO's Convention 169 and the specific and fundamental rights that indigenous peoples have over their lives, their lands and resources and the course of their own development, as enshrined in international human rights law. [...]*

*The proposed 'alternative approach' allowing for opting out of applying the safeguards for indigenous peoples would be a major setback for indigenous peoples around the globe, and it would seriously threaten indigenous peoples' land tenure security and pave the way for potential forced evictions and land dispossession. In particular on continents like Africa and Asia, where many government continue to violate indigenous peoples' rights – while at the same time denying their existence – and where the opt out clause would play into the hands of those repressive governments.*

*The proposed 'alternative approach' would also be a major set-back for the positive and encouraging developments that has taken place at the regional level in Africa with regards to the recognition and protection of indigenous peoples.*

*IWGIA finds it is deeply worrying and unacceptable that the World Bank via its proposed 'alternative approach' disregards international law on indigenous peoples' rights and undermines achievements and standards of regional human rights mechanisms. The proposed alternative approach is most likely welcomed by those governments (mainly from Africa and Asia), which continue to deny the existence of indigenous peoples while at the same time violating their rights and dispossessing them of their lands and livelihoods and for whom solid safeguards on indigenous peoples' rights are inconvenient. However, as a powerful and influential global player, the World Bank should stand its ground and continue to comply with international human rights standards and uphold its high standards for safeguards on indigenous peoples.*

*IWGIA will therefore like to urge the World Bank to immediately remove the proposal put forward in paragraph 9 of the ESS7 that governments can simply 'opt-out' of applying the policy requirements intended to protect indigenous peoples." (IWGIA)*

*"Very careful ESS7 need screened and scoped in real case of projects, and public participation, particularly affected communities voices and comments should be taken, and they shall involve in all stages of ESS." (JASIL) [sic]*

*"Yes [this statement sufficiently account for the inherent land and territorial rights of indigenous peoples]." (RDF)*

*"This provision of 'alternative approach' should be dropped. Considering indigenous people as 'relevant communities' or 'other people' for this purpose is to practice injustice." (SDF)*

**Q10. On consultation with indigenous peoples, including FPIC (page 17, paragraph 45):**

*"Although this issue is dealt with in more detail in ESS7, it is necessary that consent processes with indigenous peoples are carefully thought through and certain key principles protected. It is understood that consent processes must be tailored to the communities and peoples involved, but the principle that customary decision making processes need to be respected and protected needs to be clear. The following language has been proposed by indigenous peoples' organisations 'Customary decision making processes of indigenous peoples respect and recognize collective decisions of the community, resulting in an independent decision free from coercion or manipulation. Conflicting views shall be resolved by communities members and the Bank and Borrower must adhere to the final outcome of the decision making process, taking into account the legitimate views and issues raised by community members as the basis for the decision reached.'"(FPP)*

*"This paragraph is an important and positive development in terms of the recognition of the World Bank of indigenous peoples' right to FPIC since the Bank requires the States to obtain the FPIC of affected IPs and it clearly states that in the case that the Bank is unable to ascertain that the FPIC is obtained from IPs "the Bank will not proceed further with the aspects of the project that are relevant to those Indigenous Peoples". However, the paragraph considerably weakens the scope and application of FPIC by referring to the "no definition" and by saying that in the case that indigenous peoples do not agree to the proposed intervention/project, the only thing that the bank will require is that the State ensures that the project won't cause adverse impacts on the IP's. The paragraph does not ensure the meaningful participation of indigenous peoples as there is no description of the processes related to consultation and decision making that are needed to ensure its correct application according to internationally recognized standards such as the UNDRIP and the ILO169." (IWGIA)*

*"How the IP take part on decision making about the project? How they make comments, in which way, and what is the size of involvement of community members, 51%, 80% 100%?" (JASIL)*

*"Yes, consultation with Indigenous Peoples, including FPIC is important and WB Policy included all [necessary] statements in this passage." (RDF)*

*"When the Bank is unable to ascertain that such consent is obtained from the affected Indigenous Peoples, Bank will drop the project." (SDF)*

**Q11. Additional comments:**

*"Para 34-35: These sections stipulates that environmental and social assessment will be conducted consistent with ESSs 1-8 and 10 only for High Risk projects and its subprojects. All other projects will carry out appropriate environmental and social assessment in accordance with national law. [However] some national laws/regulations are below international standards and some countries do not have the necessary laws and regulations. The ESS should be applied in projects regardless of the classification. The application of the Borrower's or other agencies' will have to be reviewed and that the common approach should not deviate from what is stipulated in the WB ESS." (AIPP)*

*"Para 42: the Borrower [...] has to set up the mechanism for project affected people to access the information and provide their inputs. Project affected people should be made aware of this information disclosure mechanism." (AIPP)*

*"Para 50-51: Many project affected communities are not aware of the project grievance mechanism and most of the time directs their complaints to the Inspection Panel. The Bank and the Borrower should ensure that project affected communities are fully informed of the Grievance Redress Service (GRS)." (AIPP)*

*"I think early information is important to allow all stakeholders to collect information and assess potential benefits and risks of a project. Initial information, even not yet complete, should be made available. Para 42 (Information disclosure). I would suggest to replace the wording "in a timely manner" with "starting at early stage in the identification process and with continuous up-date during the project cycle"." (CDE)*

*"The World Bank's new commitment to paying attention to implementation is welcome. However, the Bank to date has a very poor track record in monitoring and supervising the implementation of its projects throughout the project cycle. This has been amply documented by the Bank's own OED/IEG evaluation reports over the past 20 years, and specifically highlighted in the internal desk review of projects applying OP4.10 on indigenous peoples. Therefore, it is not clear how World Bank monitoring will be improved to meet these new responsibilities. Relatedly, the current structure of investment in staff training, and allocated budget for safeguard staff, is unclear and appears not high enough for the staff to take on significantly more responsibility to review and monitor projects at a more detailed level. There has been little or no information provided about how staff will be funded and supported to undertake these additional tasks. So while the declared commitment of the Bank to follow up closely the whole process of review, monitoring and follow-up, we have serious doubts about the Bank's capacity for this in practice, which would put the safeguards at risk." (FPP)*

*"The World Bank has an independent Indigenous Peoples' Advisory Body that should play an important role in monitoring compliance with the established standards for indigenous peoples." (FPP)*

"Open-ended compliance and abdication of Bank responsibility: Unlike the current safeguard policies, which spell out clear rules that are immediately binding on both the Bank and the Borrower, under the draft Framework, the Bank must only "require the Borrower to structure projects so that they meet the requirements of the ESSs in a manner and timeframe acceptable to the Bank." This formulation makes it very difficult to hold the Bank accountable to its own safeguard policies. It provides Bank staff with unfettered discretion to decide what constitutes compliance on the part of Borrowers. The institutional incentives and accountability structures at the Bank are skewed towards maintaining good relationships with Borrowers and pushing loans out the door, which indicates that this new discretion will not be used to ensure better social and environmental outcomes." (Oxfam)

"The IEG report identified the lack of adequate supervision and monitoring and evaluation as a long-standing problem. However, rather than strengthening Bank supervision arrangements and increasing independent and community monitoring and evaluation of safeguards, as recommended by IEG, the draft Framework relies much more heavily on Borrowers' monitoring reports and evaluations as the basis of Bank supervision. Under the ESF, the Bank's monitoring and supervision role may be limited to reviewing annual reports provided by the Borrower. The draft Framework fails to incorporate the IEG's important recommendation that the Bank "include performance indicators on environmental and social outcomes in project results frameworks and ensure systematic collection of data to monitor and evaluation safeguards performance." If the Bank is going to continue to finance displacement, then it has a responsibility to ensure accurate baseline data collection prior to displacement and a transparent accounting at project completion that no displaced people were left worse off than without the Bank project. The monitoring and evaluation provisions in the ESP, ESS1 and ESS5 fail to ensure this, and represent a dilution of the current provisions in OP/BP 4.12, which are themselves inadequate. The Bank claims that the ESF would lead to better E&S outcomes. Yet, there are very weak requirements for evaluating outcomes. The Policy states only that: "A project will not be considered complete until the measures and actions set out in the legal agreement (including the ESCP) have been implemented." This requires an evaluation of outputs – the completion of measures and actions - rather than outcomes: whether ESS objectives have been achieved. The Bank is obliged only to verify that the measures and actions in the ESCP have been executed." (Oxfam)

Suggestions on specific wording				
Respondent	Page & Paragraph	Original text	Proposed Amendment	Comment
JASIL	Page 8, Paragraph 2	The Bank is committed to supporting Borrowers in the development and implementation of projects that are environmentally and socially sustainable..	The Bank is committed to supporting Borrowers in the development and implementation of projects that are <u>economically sustainable, environmentally friendly and socially responsible</u> ...	Need to include full sustainable development approaches
	Page 10	Environmental and Social Standard 5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement	Environmental and Social Standard 5: Land Acquisition, <u>Restrictions on violation of Land Use rights</u> and Involuntary Resettlement	Protect Land use rights of local people
	Page 15,	For all projects involving the preparation	Add new: For all projects involving the	When sub-borrowers'

	<i>Paragraph 34</i>	and implementation of subprojects, the Borrower is responsible for classifying the subprojects, carrying out environmental and social assessment, and reviewing the results of such assessment.	preparation and implementation of subprojects, the Borrower is responsible for classifying the subprojects, carrying out environmental and social assessment, reviewing the results of such assessment, and <u>ensuring sub-borrowers' conduct of environmental and social assessment of proposed subprojects is done in close cooperation with local communities and the public.</u>	<i>conduct environmental and social assessment of proposed subprojects, it needs to involve local communities</i>
<b>AIPP</b>	<i>Page 9, Paragraph 4</i>	(ii) risks that project impacts fall disproportionately on disadvantaged or vulnerable groups;	(ii) risks that project impacts fall disproportionately on disadvantaged or vulnerable groups, <u>and groups in voluntary isolation</u>	<i>Include those in voluntary isolation in the list</i>
	<i>Page 9, Paragraph 4</i>	(vii) risks to cultural heritage	(vii) risks to cultural heritage and <u>traditional/customary governance systems and practices</u>	
<b>CDE</b>	<i>Page 16, Paragraph 42</i>	In line with ESS10 and the World Bank Policy on Access to Information, the Bank will require the Borrower to ensure that sufficient information about the potential risks and impacts of the project is made available in a timely manner, in an accessible place, and in a form and language understandable to project-affected people and other stakeholders, so they can provide meaningful input into project design and mitigation measures.	In line with ESS10 and the World Bank Policy on Access to Information, the Bank will require the Borrower to ensure that sufficient information about the potential risks and impacts of the project is made available <u>starting at early stage in the identification process and with continuous up-date during the project cycle</u> , in an accessible place, and in a form and language understandable to project-affected people and other stakeholders, so they can provide meaningful input into project design and mitigation measures.	
<b>SDF</b>	<i>Page 9, Paragraph 4</i>		<u>(v) reconsideration of the project including reversal and paying compensation, if the project is found approved against the proper consent of people but through concocting consent by</u>	<i>Add this consideration to the list of risks and impacts that will have to be assessed and managed.</i>

			<u>wrong means</u>	<i>Change numbering as necessary.</i>
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### C. Environmental and Social Standard 1 (ESS1): Assessment and Management of Environmental and Social Risks and Impacts

#### Q12. On overall satisfaction with ESS1:

*"A key concern with ESS1 is the section on the use of borrower systems, and the application of the full suite of ESS (or not) to projects funded through financial intermediaries, addressed in Q15 below." (FPP)*

*"Good [satisfaction]. Accountability can be added as well." (NFCPFA)*

*"In our opinion, the paragraph 28 on page 27 assures the principles of people-centred land governance by providing an alternative plan for the Indigenous People, where should be counted risks and impacts of the project." (RDF)*

*"Not fully satisfied. The very adoption of a mitigation hierarchy approach [2nd objective] is wrong. Moreover, the second sub-clause "(b) Where avoidance is not possible, minimize risks and impacts" should be dropped. On what ground, avoidance is judged impossible? If project is harmful, it should be dropped." (SDF)*

#### Q14. On the environmental and social risks and impacts that will have to be assessed and managed by the Borrower (page 27, paragraph 26):

*"We would recommend including specific risk assessment for indigenous peoples to be mentioned here as well, to ensure that ESS7 is appropriately triggered in the future (in light of significant problems with regional variations of the triggering of the current OP4.10)." (FPP)*

*"Weak and significantly diluted requirements for resettlement planning: Externalizing the costs of displacement*

- The current OP 4.12 requires: "As a condition of appraisal of projects involving resettlement, the borrower provides the Bank with the relevant draft resettlement instrument which conforms to this policy, and makes it available at a place accessible to displaced persons and local NGOs, in a form, manner, and language that are understandable to them." This crucial requirement has been removed in favor of the 'deferred appraisal' approach, which is intended to make project approval easier, quicker and less costly. Under the draft, all that is required prior to project approval – even for high-risk projects causing large-scale displacement – is an Environmental and Social Commitment Plan (ESCP). According to an annex to the ESF, in some cases the ESCP will capture all relevant obligations of the Borrower, and in others, it may simply set out a timeline for resettlement and livelihood plans to be prepared after project approval. It is therefore left to the discretion of the Bank in consultation with the Borrower when comprehensive resettlement plans and corresponding budgets are to be developed.*

- ESS1 prohibits the Borrower from commencing activities that may cause harm such as evictions and resettlement until relevant plans have been completed as agreed in the ESCP to the satisfaction of the Bank. However, after the project has been approved and funds are disbursed, the Bank loses the vast majority of its leverage to ensure displacement does not occur without a comprehensive resettlement plan in place. And affected people and NGO*



*monitors would lose the critical opportunity to evaluate and comment on draft resettlement plans and budgets before the Board votes on the project. History shows that the Bank is reluctant to suspend disbursements for an already approved project to compel compliance with E&S safeguard requirements. This is realistically the only legal remedy available to the Bank post-approval for non-compliance by the Borrower with the ESCP. It is foreseeable that without comprehensive pre-approval planning, the consequence will be an increase in problematic projects causing serious harms, ultimately resulting in significant unexpected delays, suspensions and increased costs for the Bank.*

- *Unlike the current OP 4.12, which states that “the full costs of resettlement activities necessary to achieve the objectives of the project are included in the total costs of the project,” the ESF treats the costs of resettlement as ancillary to the costs of the project. In fact, due to the deferred appraisal approach, the full cost of the project may not even be known when the project is approved because there is no requirement for a comprehensive resettlement plan (with baseline socio-economic studies, inventories of losses and an economic analysis of the cost of asset replacement and livelihood restoration) during the project appraisal stage. Without this knowledge, the Bank has no way to assure itself that the Borrower is willing and able to provide the full resources necessary to cover the costs of resettlement. The result of this is certain to be cost externalization, in which cost burdens are shifted on to the families being displaced.*

- *The ESF must require resettlement and livelihood support plans to be prepared and budgeted prior to project approval and included in the total project budget, and Bank social scientists and economists must assess those plans and budgets as a key determinant of whether or not to support the project. Furthermore, the ESF should outline the enforcement actions and sanctions available to the Bank during the life of the project to affect the behavior of the Borrower in cases of non-compliance. The high-stakes option of disrupting disbursement is, by itself, insufficient to provide Bank staff with the leverage needed to affect real change to the manner in which problematic projects are being implemented and where sustained non-compliance has been identified.*

- *Resettlement plans are also likely to be less comprehensive, since crucial requirements for what needs to be included in these plans - clearly set out in the current OP/BP 4.12 - are not described in the ESF. The Bank claims that these details will be included in forthcoming procedures or directives, however at the time of the event, the Bank had not clarified when drafts of these documents will be finalized and publicly released, whether drafts will be subject to public consultations, and whether final procedures and directives will be binding on the Bank and Borrowers.” (Oxfam)*

*“Yes, [this statement adequately assure that considerations for people-centred land governance are examined by the Borrower during the assessment stage of a proposed project], especially in iv, v and vi subtitles.” (RDF)*

*“Insert additional clause which makes them viii in total: (v) reconsideration of the project including reversal and paying compensation, if the project is found approved against the proper consent of people but through concocting consent by wrong means; [change numbering accordingly].” (SDF)*

#### **Q15. Additional comments:**

*“In the paragraph 19-21 on “Use of the Borrower’s ES Framework”, the proposal to use country systems, or national laws and policies, as written, relies entirely on information provided to the Bank by the borrower, and requires the Bank only to assess the laws and policies in place in a given country, with no attention required on the actual practice of a given government against the policies and laws in place. There is also no requirement to consult with peoples*

*or communities affected by the project about their views on the use of the country laws in place of Banks standards. Rather, the use of a country's own laws and policies in place of Bank standards must be allowed only after a higher threshold is met. This includes assessment of the actual practice of that country in meeting the standards incorporated into its national laws and policies, and must include open consultation with the affected peoples or communities for whom the Bank standards would be set aside." (AIPP) (FPP)*

*"From paragraph 29 on sub-projects under a financial intermediary, it is deduced that the effect of the paragraph is to effectively remove from Bank standards sub-projects implemented with Bank financing from the requirements of the ESSs, including ESS7, for all but the highest risk rating. These risk classifications are not defined clearly, but it is clear that in addition to 'high risk' classifications there are "substantial risk", "moderate risk" and "low risk". All three of these risk categories would be exempt from applying the standards of the ESSs if they were implemented as sub-projects. Ultimately, all projects funded by World Bank financing and impacting on indigenous peoples must be subject to the same standards. To do otherwise is to establish an incentive for more complex projects to be bundled under sub-project classification where a requirement for Free, Prior and Informed Consent (for example) was not applied. While the very highest risk projects are not in danger of this, sub-projects with 'substantial risk' to the lives and livelihoods of indigenous peoples could be financed by the Bank without reference to the requirements of ESS7." (AIPP) (FPP)*

*"Environmental and Social Commitment Plan: Project affected communities should be involved in the preparation of this plan." (AIPP)*

*"As currently worded, the mitigation hierarchy appears to only require compensation for "residual impacts" where it is "technically and financially feasible." Footnote 22 states: Financial feasibility is based on relevant financial considerations, including relative magnitude of the incremental cost of adopting such measures and actions compared to the project's investment, operating, and maintenance costs, and on whether this incremental cost could make the project nonviable for the Borrower. The implication appears to be that if the cost of compensating or otherwise offsetting remaining adverse impacts, which are not addressed through other mitigation measures, would make the project nonviable for the Borrower, it does not need to compensate affected people for these harms. The high costs of addressing the adverse impacts of large-scale displacement may make a project non-viable; but non-viability should mean the project does not proceed, and not that the Borrower need not compensate affected families in order to make the project "viable". The language of paragraph 25 of ESS1 and footnote 22 must be clarified to reflect this." (Oxfam)*

*"...under the ESF, subprojects classified as having a "substantial" or lower E&S risk only need to comply with national regulations, including on land expropriation and resettlement. In most Borrower country jurisdictions the legal framework on land acquisition and resettlement are very weak and often incomplete. This sub-projects loophole applies to both real and financial sector investments. This is one of the most dangerous dilutions in the ESF. It is the Borrower's responsibility – both in the case of governments and financial intermediaries, such as commercial banks and private equity funds - to classify the project. The Bank can at its discretion require that all high-risk subprojects be first approved by the Bank, but the classification itself is made by the Borrower. The Framework incentivizes the Bank and Borrower to design projects so that they are implemented through subprojects wherever possible, and to classify subprojects as having a 'substantial' rather than a 'high' risk, in order to reduce the costs and attention required in terms of E&S management." (Oxfam)*

Suggestions on specific wording				
Respondent	Page & Paragraph	Original text	Proposed Amendment	Comment
JASIL	Page 24, Paragraph 16	The Borrower will: (a) Conduct environmental and social assessment of the proposed project, including stakeholder engagement;	The Borrower will: (a) Conduct environmental and social assessment of the proposed project, including with local communities, <u>particularly those whose livelihoods depend from the natural resources around mining, such as nomadic herders, fisheries, and all related stakeholder engagement</u>	<i>"Borrower's" responsibilities</i>
	Page 26	The environmental and social assessment will be based on current information..	The environmental and social assessment will be based <u>on current and past information..</u>	<i>For effective assessment shall also use past information</i>
AIPP	Page 29, Paragraph 34	The Borrower will develop and adopt an ESCP, which will set out measures and actions required for the project to achieve compliance with the ESSs over a specified timeframe.	The Borrower <u>in close consultation with project affected communities/stakeholders</u> will develop and adopt an ESCP, which will set out measures and actions required for the project to achieve compliance with the ESSs over a specified timeframe.	<i>Project affected communities should be involved in the preparation of this plan</i>
SDF	Page 27, Paragraph 26		<u>(v) reconsideration of the project including reversal and paying compensation, if the project is found approved against the proper consent of people but through concocting consent by wrong means</u>	<i>Add this consideration to the list of risks and impacts that will have to be assessed and managed. Change numbering as necessary.</i>

#### D. Environmental and Social Standard 5 (ESS5): Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

##### Q16. On overall satisfaction with ESS5:

*"Despite commitments received from the President of the World Bank during the consultation period, the new standards on land (incorporated into ESS5 and joining existing standards on involuntary resettlement) do not adhere to the standards already existing in the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forest and Fisheries. In particular, the requirements of ESS5 do not provide sufficient protection from the real and increasing threats of large-scale land-grabbing for industrial agriculture specifically mentioned in the Voluntary Guidelines." (FPP) (IWGIA)*

*"I think involvement or engagement of local community on project evaluation\ implementation decision making looks not much stronger. It's very important for the common resources, such as , grassland/ pastureland, forests and water management. Effective public consultation can provide a number of benefits to a project, such as: foster an atmosphere of trust and cooperation with local people; give early indications of public misunderstandings about the project; generate detailed local knowledge about the characteristics of the development site; generate ideas from local communities on how the positive benefits of the project could be enhanced; and detect potential negative impacts on local people as early as possible so that impacts can be avoided, or fairly compensated to prevent hardship and controversy." (JASIL)*

*"The current OP 4.12 contains an important clause that is essential to protecting project-affected people who are displaced in order to achieve the objectives of Bank-financed projects. OP 4.12 states: 'This policy applies to all components of the project that result in involuntary resettlement, regardless of the source of financing. It also applies to other activities resulting in involuntary resettlement, that in the judgment of the Bank, are (a) directly and significantly related to the Bank-assisted project, (b) necessary to achieve its objectives as set forth in the project documents; and (c) carried out, or planned to be carried out, contemporaneously with the project.' This critical paragraph, which is instrumental in ensuring that the Bank does not contribute to forced displacement and impoverishment impacts, has been omitted from ESS5. Instead, ESS5 is explicitly limited to displacement due to land acquisition and restrictions on land use. ESS5 should apply to any activity that the Bank contributes to, directly or indirectly, which results in physical or economic displacement. At minimum, the language in OP 4.12 para 4 must be maintained to ensure no dilution." (Oxfam)*

*"Not fully satisfied, because consent principle or voluntary settlement is diluted on conditions." (SDF)*

##### Q18. On the sufficient ensuring that "involuntary resettlement" is avoided:

*"...the exclusion list included in ESS5 (for activities NOT covered by the policy) represents a significant narrowing of the scope of the existing Involuntary Resettlement policy of the World Bank. By excluding land titling and land regularization processes, the Bank risks excluding large scale and long-term impacts of resettlement from the policy designed specifically to address such impacts." (FPP) (IWGIA)*

*"An objective of the current OP/BP 4.12 is for resettlement to be treated as a development opportunity and to structure the project so that those displaced can share in project benefits. Under ESS5, these are no longer objectives. Benefit-sharing can be one of the most effective and sustainable methods for ensuring those displaced are not made worse off and instead become beneficiaries of Bank-assisted projects. For example, a share of the profits from a large hydropower dam could go to the people who invested their land and livelihoods to make the project possible. This would mean that ongoing dividends could be provided in a sustainable manner to affected people over the project's lifetime or for as long as benefits are being generated (whichever is longer). Benefit sharing is an international best practice, which should be a requirement of ESS5 whenever it is possible to structure a project in such a manner." (Oxfam)*

*"As far we understood the objectives are to avoid involuntary resettlement but if it is not possible than minimize its implications." (RDF)*

*"No. Because, consent principle or voluntary settlement is conditionally diluted." (SDF)*

**Q19-20. On the satisfactory incorporation of inclusive decision-making over land and FPIC:**

*"FPIC is not incorporated into ESS5." (FPP)*

*"There are insufficient specific references to/incorporation of the human rights principle of FPIC and no reference to the UNDRIP nor ILO 169. Since indigenous peoples are particularly vulnerable to land dispossession, such references/incorporation should be strengthened." (IWGIA)*

*"Yes, in paragraph 4 it describes very clearly [effective governance processes for proper consultation, negotiation, consent and/or compensation]." (RDF)*

*"Definitely, decision-making procedures agreed between community and Borrower." (RDF)*

*"No. In India, compensation is not given where land is being acquisitioned in areas where customary rights prevail, also where government claims to own the land and other resources particularly common property resources, just because customary rights are not converted into legislation; for instance, State of Mizoram. ESS5 does not take such cases into account." (SDF)*

**Q21. On sufficient commitment to and methods for ensuring adequate compensation, sound physical resettlement, economic recovery and/or improvement in cases where affected persons experience a form of land acquisition and/or restrictions on land use due to the project:**

*"Paragraph 10 of ESS5 dealing with compensation to land based persons is rather weak. Land based persons and communities include indigenous peoples, whose rights are protected by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). We therefore recommend that provisions for compensation of indigenous peoples must specifically refer to/comply with the UNDRIP paragraph 28." (IWGIA)*

*"Sure, the list of regulations were included in Paragraph B." (RDF)*

*"Since the Borrower is given chance to consider feasible alternative project designs to avoid or minimize land acquisition or restrictions on land use, especially where this would result in physical or economic displacement, commitment does not turn out to be firm." (SDF)*

**Q22. On the proposed exemptions to the application of ESS5 (pages 57-58, paragraph 5):**

*"Exemptions (d) and (e) raise concerns. Although these activities are distinct from other investment projects that the bank is funding, and therefore not all the regulations in ESS5 are immediately applicable, we know that these activities can represent important risks to local populations and therefore any Bank financing for such activities should undergo equally strong assessment. For instance, land use planning could lead to eviction from land declared as forest although used traditionally for swidden agriculture, or land titling could lead to dispossession or eviction from formally communally held land." (CDE)*

*"ESS5 does not apply in all instances that the World Bank directly funds the resettlement of peoples or persons. There are a number of restrictions granted, in which the two following appear:*

*(d) Land titling/regularization activities; or*

*(e) Regulation or planning of natural resources or land use on a regional or national level to promote sustainability.*

*There is no provided definition of (d), land titling or regularization activities, although the potential scope of this item would seem to include any project intended to redistribute land titles or formalize informal tenure arrangements. In a context where a government is denying the existence or specific rights of indigenous peoples, such an exception would prove disastrous and would allow for wholesale re-arrangement of traditional tenure with no safeguards at all. For the exception granted by (e), again with no definition of scope, it appears to include any conservation related rezoning or denial of customary tenure. Indigenous peoples have faced decades of alienation from their lands and violent evictions based on misguided conservation policies that see conservation as the sole prerogative of a national government, and this exclusion ignores such history." (FPP)*

*"Non-participatory land titling and regularization activities without proper consultation can have devastating impact on indigenous peoples' land tenure security if conceived and implemented in a manner that is unfriendly to indigenous peoples and their livelihoods, and we therefore recommend that these activities should be removed from the list and be covered by the ESS5." (IWGIA)*

*"ESS5, like OP4.12, would not cover people suffering downstream displacement impacts, because its scope is limited to impacts of land acquisition and restrictions on land use. This means that people who are physically or economically displaced due to downstream impacts will not be accorded the protections required by ESS5 to ensure they are not made worse-off. For example, fishing villages that lose their livelihoods because of the adverse impacts to the river eco-system that diminish fish resources caused by hydropower dam constructed upstream would not be covered. Downstream impacts would need to be caught in the general E&S Assessment (ESS1) and the vague mitigation hierarchy, which has a compensation standard, rather than a restoration*

*standard. Despite the fact that the experience of economic displacement due to a Bank-financed project is the same whether it be due to land acquisition or downstream impacts, the level of protection under the Framework is highly differentiated. This is likely to result in countless people who are economically displaced being impoverished by Bank-financed hydropower and other projects, as we have seen in the case of the Nam Theun 2 dam in Laos." (Oxfam)*

*"Land titling and national or regional planning for natural resources or land use are excluded from ESS5. These new exclusions are a major dilution of the current policy, and, if maintained, will foreseeably result in the forced displacement of many poor urban households and rural and communities without the safeguards contained in ESS5. These exclusions are antithetical to the Bank's development or poverty eradication mission and seek only to absolve the Bank from its responsibility to do no harm with respect to projects with potentially wide-ranging and complex effects on land rights and tenure arrangements." (Oxfam)*

*"As currently phrased, the exclusion of 'regulation or planning of natural resources or land use ...to promote sustainability' is an extraordinarily wide exemption from the safeguards provided in ESS5 and could incorporate any conservation-related projects or any interventions to alter land use arrangements for ill-defined 'sustainability' reasons. This exemption could technically have been applied to the Kenya Natural Resource Management Project, despite widespread impacts tied directly to access to and control over land." (Oxfam)*

*"Excluding land titling (or regularization) activities means that households deemed not to have ownership rights under a Bank-financed land sector project that are then threatened with forced eviction will not have any protections under the ESF. This predicament is common for urban poor communities living on land claimed by the State, and the well-documented result is the exacerbation of urban homelessness and poverty as well as increased squatting in unsafe locations (eg. Cambodia Land Management and Administration Project)." (Oxfam)*

*"The Bank should only agree to support land sector programs that include the development and adoption of a resettlement policy that meets the requirements of ESS5. This is a critical element of ensuring that land sector programs are designed to reduce poverty and promote shared prosperity. It is consistently the poorest households that are made vulnerable to eviction under such programs and need the protections of the resettlement policy." (Oxfam)*

*"No [reservations about these exemptions.]"(RDF)*

*"Yes [we have reservations about these exemptions.]The last clause '(e) Regulation or planning of natural resources or land use on a regional or national level to promote sustainability' should be dropped. Moreover, there is no provision in ESS5 when parts of 'common property' and 'open' resources are taken over." (SDF)*

**Q23. On the definition of "affected persons" under ESS5 (page 58, paragraph 6):**

"It is notable that eligibility is determined on an individual basis as 'affected persons,' thereby undermining the ability of the project to account for collective forms of tenure. We therefore recommend a stronger focus on communities and community land rights." (FPP) (IWGIA)

"Assets could be defined. Which assets?." (NFCPFA)

"...it also might be added usage of the land according to tradition without formal legal rights." (RDF)

"Not sufficient. Insert in addition '(d) Who claim land or land use rights, even where the national legislation could not include customary rights the people followed traditionally, and the project is infringing these rights.'" (SDF)

**Q24. Additional comments:**

"In the scope and application of ESS5, it should be clearly stipulated that when it is established that indigenous peoples will be affected it will be ESS7 that will be applied for them."(AIPP)

Suggestions on specific wording				
Respondent	Page & Paragraph	Original text	Proposed Amendment	Comment
JASIL	Page 57, Paragraph 4(c)	Restrictions on land use and access to natural resources that cause a community or groups within a community to lose access to resource usage where they have traditional or customary tenure, or recognizable usage rights.	Restrictions on land use and access to natural resources that cause a community or groups within a community to lose access to resource usage where they have traditional or customary tenure, or recognizable <u>and respectable traditional usage rights.</u>	People policy
	Page 59, Paragraph 10	...the Borrower will also provide opportunities to displaced communities and persons to derive appropriate development benefits from the project.	...the Borrower will also provide opportunities to displaced communities and persons to derive appropriate development benefits from the project, <u>which will fully compensate their livelihood in long run.</u>	Resettlement may be socially equitable, if affected communities are fully compensated
NFCPFA	Page 57-58, Paragraph 5	(e) Regulation or planning of natural resources or land use on a regional or	(e) Regulation or planning of natural resources or land <u>and forest</u> use on a regional or	



		national level to promote sustainability."	national level to promote sustainability."	
<b>SDF</b>	<i>Page 58, Paragraph 6</i>		<u>(d) Who claim land or land use rights, even where the national legislation could not include customary rights the people followed traditionally, and the project is infringing these rights</u>	<i>Add new</i>

## E. Environmental and Social Standard 7 (ESS7): Indigenous Peoples

### Q25. On overall satisfaction with ESS7:

*"The development of ESS7 and other protections for indigenous peoples are intended to protect them from 'profound impacts on their lives and communities', acknowledging that their ability to defend their rights is 'limited' and that they do not gain 'equitable access to benefits' from development initiatives conceived and implemented from outside. These are the conclusions of the Bank itself in reviewing the impact of past development initiatives on indigenous peoples, and led to the development of particular protections.*

*ESS7 should be the main reference of the Bank and the Borrower for projects affecting indigenous peoples. All other ESS should give reference to ESS7 when it is identified that indigenous peoples will be affected. Further, there is a need to ensure that the provisions in ESS7 is aligned with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) particularly on the recognition of the rights of indigenous peoples to their land, territories and resources, development, Free Prior and Informed Consent (FPIC) and cultural heritage among others.*

*Considering this, it is our opinion is that ESS7 as it currently stands is weak and insufficiently accounts for the rights of indigenous peoples accorded by international human rights laws." (AIPP) (FPP) (IWGIA)*

*"There is a need to improve respect for land rights as part of protecting the rights of indigenous peoples in ESS7. The land rights of indigenous peoples have been recognized again and again under international and regional human rights law as fundamental to the very survival of the peoples themselves. Given the importance of this set of rights, it is critical that requirements intended to ensure that such rights are protected are clearly formulated. As such, the required 'plan for legal recognition of ... perpetual or long-term renewable custodial or use rights' must be developed in partnership with the peoples themselves, time-bound, designed against clear indicators, and with sufficient budget allowances." (AIPP)*

*"ESS7 on Indigenous Peoples envisions the identification of a distinct social and cultural group, rather than a majority indigenous population. What does this mean for projects in countries in Africa and the Pacific, such as Papua New Guinea, where the majority of the population is indigenous and practices a customary collective form of tenure? In these countries customary forms of tenure govern a majority of the landmass, with individual clans having a collective attachment to distinct territories. ESS7 may not be triggered in these circumstances; indeed, currently there is uneven and inconsistent application of OP 4.10 in such contexts. In cases in which the indigenous peoples' policy is not applied, there are no robust safeguards to protect the customary land tenure systems of these populations. As a result these land tenure systems are vulnerable to being dismantled by World Bank land administration and other projects that promote individualized land tenure to facilitate integration of land into global finance systems. Indigenous clans are vulnerable to dispossession from their collective territory as a result. Either the scope of ESS7 should be broadened to encompass circumstances in which the majority of the population in a country practices a customary form of tenure, or this important issue should be addressed in a separate set of standards on land tenure, to ensure no harm is done to these populations." (Oxfam)*

*"We assume that all conditions related to the rights and decision making on land were included in the draft." (RDF)*

*"Average [satisfaction]. Development of indigenous people and projects with least displacement are given edge in the ESS7. Instead, no projects if affected should be the principle of bank involvement, and not borrower-oriented." (SDF)*

**Q27. On the 'alternative approach' to ESS7 suggested on page 76, paragraph 9:**

*"This section directly and seriously undermines the specific and fundamental rights that indigenous peoples have over their lives, their lands and resources and the course of their own development, as already enshrined in international human rights law. To enable governments to opt-out of applying protections for indigenous peoples implies an endorsement of the idea that the protections due to indigenous peoples, as a matter of law or of policy, are dependent on the governments under which they live. This fundamentally violates international law on the rights of indigenous peoples as progressively developed over the past thirty years.*

*Encroachment on the lands, resources and territories of indigenous peoples is often undertaken with the implicit or explicit consent of governments whose decisions often adversely impact indigenous peoples. If the decision on whether international human rights are to be respected or not rests solely with national governments, then the Bank is acting to further undermine agreed international human rights standards, protected by UN and regional human rights instruments.*

*The Bank is also undermining significant progress achieved in the development of national level laws and policies recognizing and protecting the unique rights of indigenous peoples. We recommend to remove Section 9 where governments can simply "opt out" of applying the policy requirements intended to protect indigenous peoples." (AIPP) (FPP) (IWGIA)*

*"The so-called 'alternative approach' proposal is a startling inclusion into any system of environmental and social safeguards, and allows a Borrower government to request that an entire Standard, ESS7 on Indigenous Peoples, can be set aside if compliance with the Standard is claimed to be against national constitutional law or that it would in some way exacerbate ethnic tensions. There is no convincing development justification for this proposal, and it appears to be a political compromise by the Bank in response to pressure from some Borrower countries. The proposal removes from affected indigenous peoples ALL of the safeguards specifically developed to shield indigenous peoples from the worst possible outcomes of imposed development. The Bank has safeguards for indigenous peoples because of a real and lived history of dispossession, impoverishment and rights violations occurring as a direct result of ill-thought out development interventions that have alienated peoples from the lands, territories and resources on which their economic, social and cultural survival depends. In the absence of ESS7, the alternative approach calls for other ESSs to be applied to projects impacting on indigenous peoples. However these are simply ill-suited and inadequate to provide protection from the particular social and environmental harms experienced by indigenous peoples. In particular, the special collective attachment to land of indigenous communities is not adequately recognized, respected and protected under ESS5. Critically, ESS5 presumes the exercise of compulsory land acquisition and does not require a process of FPIC prior to resettlement or restrictions on land use. Nor does it require culturally appropriate consultation for other activities that affect indigenous peoples. The 'alternative approach' therefore undermines hard-won rights established in international law." (Oxfam)*

"Undoubtedly that each case demands a unique resolution and it is complicate to elaborate a universal decision. Therefore, it is necessary to have an alternative approach." (RDF)

"Alternative approach to avoid the concerns of the indigenous peoples should be avoided at any cost." (SDF)

**Q28. On the satisfactory treatment and application of FPIC in paragraphs 19-22 (page 78-79):**

"The inclusion of a requirement for obtaining the free, prior and informed consent is of fundamental importance in that the requirement achieves the objective of ensuring indigenous peoples can exercise their right to self-determination and are full partners in the development process. The current formulation proposed in paragraphs 19-22 fails to achieve this, and the following important amendments, are at a minimum, required:

1. The process of decision making and agreements reached with communities must be described and verified by the Bank together with independent experts, including time-bound actions necessary to ensure that agreements are met and clear budget allocations made to agreed actions.
2. In any case of violation or non-compliance with agreements reached with communities or in any cases of violation of the policy requirements in ESS7 there must be a clear and accessible grievance mechanism that affected communities and peoples can access to redress, including but not limited to direct access to the Inspection Panel. Technical support for use of grievance mechanisms and/or Inspection Panel must be available upon request.
3. Disclosure of information must be required to be in a language and in appropriate forms to be fully understood by the affected communities.
4. The involvement of indigenous peoples' representative bodies and organizations must specifically include women, youth and other community members in addition to councils of elders, village councils or chieftains.
5. Respect for decision-making processes of indigenous peoples should be mandatory (not where applicable) and must ensure respect for the independent and collective decision-making processes free from intimidation, manipulation and any form of undue pressure.

We suggest Paragraph 20(a) to be rephrased as follows: Customary decision making processes of indigenous peoples respects and recognizes collective decision of the community resulting to an independent decision free from coercion or manipulation. Conflicting views shall be resolved by community members, and the Bank and Borrower shall adhere to the final outcome of the decision making process taking into account the legitimate views and issues raised by community members as bases for their decision." (AIPP) (FPP) (IWGIA)

"[on the Meaningful Consultation Tailored to Indigenous Peoples] The consultation process shall involve not just indigenous peoples' representative bodies and organizations but also other community members. The process shall likewise ensure transparency and the meaningful participation of women and youth and where needed to conduct separate consultations with them to ensure that their views are taken into account." (AIPP)

"As described in the text the FPIC could be obtained without total agreement by IP but it should be ascertained by the Bank." (RDF)

"Cancellation is not provided; avoiding or minimising risks and impacts entertained." (SDF)

**Q29. Additional comments:**

*"Para 18: Based on our research, engagement process with local people, if done through elders, village councils or chieftains) may not always end in a truly inclusive consultation and distribution of benefits/compensations. Especially it may be necessary to mention women and other minority groups (also former immigrants)." (CDE)*

*"In paragraph 8 it is stated that additional inputs will be requested from the Borrower "Following a determination by the World Bank that Indigenous Peoples are present in, or have collective attachment to the project area [...]." In fact, the determination of whether indigenous peoples are present in, or have collective attachment to the project area should not rely solely with Bank. It should involve indigenous experts and indigenous own institutions and representatives from the proposed project area." (AIPP) (FPP) (IWGIA)*

*"In paragraph 13, it states that "When Indigenous Peoples are the sole, or the overwhelming majority of, direct project beneficiaries, the elements of an action plan may be included in the overall project design and preparation of a stand-alone plan is not necessary." Our opinion is that, for the action plan referred to here, and any other form of Indigenous Peoples' Plan or related planning document, the plan must be developed in close partnership with the affected indigenous peoples. The plan must reflect the self-determined development priorities of indigenous peoples, contain specific budget allocated against planned activities or objectives, have an associated clear time line agreed in advance, include associated monitoring indicators for assessment of results gained, and be subject to regular participatory assessment with the affected peoples. A draft framework plan should be developed and provided as an annex to ESS7 to provide consistency and clarity for borrowers and certainty for affected peoples." (AIPP) (FPP) (IWGIA)*

*"Footnote 14 of paragraph 25 on the application of ESS7 in instances where indigenous peoples hold individual legal titles. According to international human rights law, FPIC should be applied in all processes/aspects of any project affecting Indigenous Peoples or affecting any member of indigenous peoples' communities. Where individual titles exist within indigenous territories, such legal ownership must of course be recognized, but the requirements of paragraph 25 of ESS7 must be retained. Traditional and customary collective tenure is often unrecognized, leading to individual titles being secured in the absence of any available collective tenure. However this does not mean collective tenure is absent, and certainly does not mean that a project affecting an entire community need only gain approval from individual land holders. FPIC must be obtained from the whole project affected community irrespective of tenure arrangements." (AIPP) (FPP) (IWGIA)*

*"In the section on grievance mechanisms (paragraph 31) we suggest to include the following statement: Clear sanctions shall be identified for any violations committed. I.e. Grave violations committed against indigenous peoples shall result to the discontinuity of the project." (AIPP) (FPP) (IWGIA)*

*"In addition, the relocation-related provisions of ESS7 are suspended in cases "where indigenous peoples individually hold legal title, or where the relevant national law recognizes customary rights for individuals" (ESS7, paragraph 25, footnote 14). This removes the specific protections of ESS7 from indigenous peoples based on actions of the government, and with no input or active involvement of the affected indigenous peoples. As mentioned, many countries*

with indigenous peoples have no recognition of collective tenure and instead impose individual tenure arrangements on these people as the only form of tenure recognition available. This cannot be a justifiable basis on which to exclude such peoples from ESS7 protections under paragraph 25 of the standard." (FPP) (Oxfam)

"The Article 32 of United Nations Declaration on the Rights of Indigenous Peoples noted that "Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources and shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact." (JASIL)

Suggestions on specific wording				
Respondent	Page & Paragraph	Original text	Proposed Amendment	Comment
JASIL	Page 92	Objective: To outline a systematic approach to stakeholder engagement that will help Borrowers build and maintain a constructive relationship with their stakeholders, in particular project-affected communities.	Objective : To outline a systematic approach to stakeholder engagement that will help Borrowers build and maintain a constructive relationship with their stakeholders, in particular project-affected communities, <u>starting with information disclosure in all the stages of the project.</u>	<i>Transparency and accountability in land-related processes</i>
IWGIA FPP AIPP	Page 79, Paragraph 20(d)	(d) FPIC does not require unanimity and may be achieved even when individuals or groups within or among affected Indigenous Peoples explicitly disagree.	(d) <u>Customary decision making processes of indigenous peoples respects and recognizes collective decision of the community resulting to an independent decision free from coercion or manipulation. Conflicting views shall be resolved by community members and the Bank and Borrower shall adhere to the final outcome of the decision making process taking into account the legitimate views and issues raised by community members as bases for their decision.</u>	
IWGIA	Page 82,		<u>Clear sanctions shall be identified for any</u>	<i>Add this sentence to the</i>

<b>FPP</b>	<i>Paragraph 31</i>		<u>violations committed. I.e. Grave violations committed against indigenous peoples shall result to the discontinuity of the project.</u>	<i>original text.</i>
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## F. Environmental and Social Standard 10 (ESS10): Information Disclosure and Stakeholder Engagement

### Q30. On overall satisfaction with ESS10:

*"Concretize the level and the methods of stakeholders engagement in all stages of project: Screening, Scoping, Forecasting, Evaluation, Compiling and Auditing. Development projects, mining, infrastructure, all are considering only short term impact during the project cycle, however "actual impacts" are in many case long run, even then after the project cycle, therefore environmental and social impact shall be consider much long perspective. In all stages of ESS, starting from the preparation, development of detailed assessment, its approval, implementation all related information (it's also need that Law articles on confidentiality was supportive ID) shall be open and accessible for the public." (JASIL) [sic]*

*"It seems that all sides of stakeholder engagement were mentioned in the standard. As well as was included chapter of meaningful consultation." (RDF)*

*"Theoretically fine. Yet to see the practical results." (SDF)*

## G. Additional comments

### Q32. On compatibility with ILC's mission of promoting people-centred land governance:

*"The draft Safeguard Policy of the WB does not reflect people-centred land governance as the Bank mainly deals with Borrowers, FIs, etc. It is the responsibility of the Borrowers, FIs to ensure that the rights of the people are respected. Decision making in the WB framework is top-down." (AIPP)*

*"Oxfam would argue that the new draft of the world bank safeguards mark a retreat from previously stronger provisions, that they do not uphold international human rights law, and that referring to such rights as FPIC as optional undermines the many higher standards out there. In sum, the draft safeguards are not compatible with ILC's mission." (Oxfam)*

*"The document of the WB has a detailed plan and explanation of people-centred land governance, it describes more technical procedures. Meanwhile, the ILC pays more attention on general issues. However, this document and the mission of ILC have one goal related to promotion of people-centred land governance." (RDF)*

*"WB Framework is borrower-oriented while ILC's mission is people-centred." (SDF)*

### Q34. On gender mainstreaming and women's land rights and participation in decision-making:



*"The World Bank's first Draft Environmental and Social Framework presents some relevant criticisms from a gender perspective. These can be summarized as follows: no mandatory gender standard is present, gender issues are not adequately mainstreamed and there is no explicit reference to any do-no-harm gender sensitive provision. [...] vocabulary in the safeguards hides gender differences and do not recognize gender-distinct situations: mention of gender issues (and of women) is mostly at theoretical level and the word itself is merely listed among other vulnerable categories.*

*ESS5 on Land Acquisition mentions women's perspectives, including intra-household analysis concerning relocation processes, but the gender dimension should be addressed more extensively. For example taking into account issues such gender-related differences in land titling and property and addressing different effects on men and women of restrictions on land use, involuntary resettlement and people displacement.*

*The Bank's Gender and Development Operational policy seems the main reference for [the] Bank's approach to gender issues and its implementation in any Bank loan and activity might be [...] an explanation for the lack of [a] specific gender-oriented Environmental and Social Standard. However besides being non-mandatory in itself, it is not even mentioned in the text which also fails to reflect the commitments of the 2012 World Development Report on Gender Equality. There is need for mechanisms to ensure higher accountability both for the Bank and the Borrower for gender discrimination and gender sensitive issues." (ILC Secretariat)*

*"In the document mentioned more general rights on land, without stressing on women. Probably, should be better to include proper information on participation of women and their rights." (RDF)*

*"Women's land rights are not considered in agriculture as well as in the common ownership like orchards, ponds, lake etc . Such provisions limited to hutments and benefit cards [e.g. ration card] are now given in some schemes for the marginalised and poor in India. Measures to provide Joint rights or Women's rights to own land shall be made conditional in Bank-related programs." (SDF)*

### **Q35. Final comments:**

*"The new proposed safeguard system does not change the mandate of the Inspection Panel, which is set out under the relevant Resolutions. However it materially and directly impacts on the Panel's ability to meet its mandated responsibilities and on the level of utility that the Panel will have for affected peoples and communities in the future. The inclusion of phrases in the ESP and ESS such as projects being expected to meet the standards 'in a manner and timeframe acceptable to the Bank' , or 'where appropriate', 'in a reasonable timeframe', among many others is very problematic. Who is assessing what is reasonable, acceptable and feasible? The Inspection Panel will no longer be asked the simpler question of whether a requirement was met or not (a clear yes or no), but rather whether it was met, and if it was not met, whether that was necessary or feasible. For indigenous peoples, all the specific protections provided under ESS7 are therefore able to be delayed or adjusted according to staff judgment, and the Panel can only assess whether a staff member judged compliance to be required only under a longer timeframe, or in a manner different from that expected by the affected peoples. This has the direct effect of making the Inspection Panel a less effective tool for indigenous peoples and thereby reducing avenues for redress in cases of violations of Bank requirements. We therefore stress to ensure that requirements are clear and mandatory, and that all projects shall meet the requirements of the ESS. Instead of standards being presented as flexible expectations to be met over time, they are required to be fully met throughout the life of the project." (FPP)*

*"Finally, it is crucial to realize that the influence that the Bank exerts in the development of its social and environmental risk and management frameworks is considerable, over both other multilateral public banks and over bilateral and private sector financing. It is incumbent upon Bank management and particularly on the Bank Board to consider the sphere of influence of the Bank in making decisions regarding future changes to the social and environmental policies of the Bank." (FPP)*

*"Reduced accountability through Inspection Panel: The clear separation of obligations in the ESF, which places the responsibilities for meeting the standards squarely on the Borrower, and the vague due diligence, monitoring and supervision requirements of the Bank that allow for open ended compliance, mean that there are fewer sharp hooks against which the Inspection Panel can assess compliance. This could result in reduced accountability of the Bank through the Inspection Panel process and diminish access to effective remedies for project-affected people." (Oxfam)*