

## Annex III. Questionnaire to ILC members on the first draft of the revised World Bank Environmental & Social Safeguards Framework

### Instructions

- Please read the First Draft of the World Bank Environmental and Social Framework, particularly the Policy and Standards 1, 5, 7, and 10.<sup>1</sup>
- Answer as many questions as you like.
- Be concise, and suggest alternative wording where possible. You may also submit comments on any other section of the First Draft.
- Please send your responses to Stefania Battistelli ([s.battistelli@landcoalition.org](mailto:s.battistelli@landcoalition.org)) with cc to Michael Taylor ([m.taylor@landcoalition.org](mailto:m.taylor@landcoalition.org)) and Sabine Pallas ([s.pallas@landcoalition.org](mailto:s.pallas@landcoalition.org)) by 15<sup>th</sup> January 2015.

### Questions

#### General Assessment

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| <b>Q1</b> | As an introduction, can you briefly explain your extent of interaction with World Bank-financed projects in the past or present.   |
| <b>Q2</b> | Before reading this briefing note and questionnaire, were you familiar with the safeguards review process currently being undertaken by the WB?  |
| <b>Q3</b> | Did you take part in any of the consultation meetings held by WB between October 2012 to March 2014? If so, which one/s? Are any of the outcomes of the consultation you took part in adequately reflected in the First Draft? |
| <b>Q4</b> | Have you already submitted feedback/input to the WB on the First Draft? If so, did you do so individually or as part of an alliance of organizations?  |
| <b>Q5</b> | Do you have any overall comment on the First Draft of the revised World Bank Environmental and Social Framework?   |

#### The revised World Bank's Environmental and Social Framework (consists of the WB Policy and ten Environmental and Social Standards)

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| <b>A.</b> | <b><i>World Bank Environmental and Social Policy (pages 7-19)</i></b><br>(Sets out the mandatory requirements of the Bank in relation to projects it supports through Investment Project Financing) |
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<sup>1</sup> English: [http://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/first\\_draft\\_framework\\_july\\_30\\_2014\\_0.pdf](http://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/first_draft_framework_july_30_2014_0.pdf)

French: [http://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/fr/materials/french\\_proposed\\_es\\_framework\\_first\\_draft\\_for\\_consultation\\_final\\_july\\_30.pdf](http://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/fr/materials/french_proposed_es_framework_first_draft_for_consultation_final_july_30.pdf)

Spanish: [http://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/es/materials/proposed\\_es\\_framework\\_first\\_draft\\_for\\_consultation\\_final\\_spanish\\_0.pdf](http://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/es/materials/proposed_es_framework_first_draft_for_consultation_final_spanish_0.pdf)

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| <b>Q6</b>  | Do you think the WB Policy effectively considers all of the elements of people-centered land governance? Which elements are weak or missing?   |
| <b>Q7</b>  | What implications would this Policy have in the country/region/context where your organization works?  |
| <b>Q8</b>  | <p>In paragraph 4 (page 9), the WB Policy makes reference to the following environmental and social risks and impacts which the Bank will take into account in its due diligence:</p> <p><i>"(b) Social risks and impacts, including: (i) threats to human security through the escalation of personal, communal or inter-state conflict, crime or violence; (ii) risks that project impacts fall disproportionately on disadvantaged or vulnerable groups; (iii) any prejudice or discrimination toward individuals or groups in providing access to development resources and project benefits, particularly in the case of disadvantaged or vulnerable groups; (iv) negative economic and social impacts relating to the involuntary taking of land or restriction on access to natural resources; (v) risks or impacts associated with land and natural resource tenure and use, including (as relevant) potential project impacts on local land use patterns and tenurial arrangements, land access and availability, food security and land values, and any corresponding risks related to conflict or contestation over land and natural resources; (vi) impacts on the health, safety and well-being of workers and project-affected communities; and (vii) risks to cultural heritage."</i></p> <p>Does this statement adequately reflect a commitment to ensure that considerations for people-centred land governance are examined by the Bank before authorization of a proposed project?</p> <p>If not, how would you rephrase/change it in order to do so? (please make the changes clearly visible in the text, or write an alternative text below)</p> |
| <b>Q9</b>  | <p>The WB Policy makes the following 'Special Consideration' in paragraph 33 (page 15):</p> <p><i>"Where the Borrower has raised valid concerns regarding the application of ESS7, and submitted a request to the Bank to consider an alternative approach, the Bank may agree to the Borrower adopting such an approach, in which risks and impacts of the project on Indigenous People will be addressed through the application of the ESSs other than ESS7. The alternative approach will be structured so that relevant project-affected communities (of Indigenous Peoples) will be treated at least as well as other project-affected people."</i></p> <p>Does this statement sufficiently account for the inherent land and territorial rights of indigenous peoples, consistent with the principles of people-centered land governance? If not, what would you change in order for this special consideration to be adequately taken into account in the WB Framework?</p>  |
| <b>Q10</b> | Paragraph 45 (page 17) of the WB Policy states the following in relation to consultation with Indigenous Peoples, including FPIC:  |

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|            | <p><i>"Where Indigenous Peoples are present in, or have a collective attachment to, the proposed project area, the Bank will require the Borrower to undertake a process of meaningful consultation with the affected Indigenous Peoples in a culturally appropriate and inclusive manner. In addition, the Bank recognizes that Indigenous Peoples may be particularly vulnerable to the loss of, alienation from or exploitation of their land and access to natural and cultural resources. In recognition of this vulnerability, the Bank will require the Borrower to obtain the Free, Prior and Informed Consent (FPIC) of the affected Indigenous Peoples when such circumstances described in ESS7 are present. There is no universally accepted definition of FPIC. It does not require unanimity and may be achieved even when individuals or groups within or among affected Indigenous Peoples explicitly disagree. When the Bank is unable to ascertain that such consent is obtained from the affected Indigenous Peoples, the Bank will not proceed further with the aspects of the project that are relevant to those Indigenous Peoples. In such cases, the Bank will require the Borrower to ensure that the project will not cause adverse impacts on such Indigenous Peoples."</i></p> <p>Is this passage sufficient to ensure that meaningful participation and FPIC of Indigenous Peoples is included in decision-making processes related to their customarily held land in a proposed project area? If not, what would you include to ensure this during project identification and planning processes?</p> |
| <b>Q11</b> | Do you have any additional comments or inputs for the WB Environmental and Social Policy?   |

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| <b>B.</b>  | <p><b>Environmental and Social Standard 1: Assessment and Management of Environmental and Social Risks and Impacts (pages 21-32)</b></p> <p>(The ESSs sets out the "Borrower's" responsibilities for assessing, managing and monitoring environmental and social risks and impacts associated with each stage of a project supported by the Bank through Investment Project Financing)</p>  |
| <b>Q12</b> | Please express your level of satisfaction with ESS1 in guaranteeing the principles of people-centred land governance, and why.  |
| <b>Q13</b> | What implications would this standard have in the country/region/context where your organization works?   |
| <b>Q14</b> | <p>In paragraph 26 (page 27), ESS1 makes reference to the following environmental and social risks and impacts that will have to be assessed and managed by the Borrower:</p> <p><i>"(b) Social risks and impacts, including: (i) threats to human security through the escalation of personal, communal or inter-state conflict, crime or violence; (ii) risks that project impacts fall disproportionately on disadvantaged or vulnerable groups; (iii) any prejudice or discrimination toward individuals or groups in providing access to development resources and project benefits, particularly in the case of disadvantaged or vulnerable groups; (iv) negative economic and social impacts relating to the involuntary taking of land or restriction on access to natural resources; (v) risks or impacts associated with land and natural resource tenure and use, including (as relevant) potential project impacts on local land use patterns and</i></p> |

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|            | <p><i>tenurial arrangements, land access and availability, food security and land values, and any corresponding risks related to conflict or contestation over land and natural resources; (vi) impacts on the health, safety and well-being of workers and project-affected communities; and (vii) risks to cultural heritage."</i></p> <p>Does this statement adequately assure that considerations for people-centred land governance are examined by the Borrower during the assessment stage of a proposed project?</p> <p>If not, how would you rephrase/change it in order to do so?</p> |
| <b>Q15</b> | Do you have any additional comments or inputs for ESS1?   |

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| <b>C.</b>  | <b>Environmental and Social Standard 5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement (pages 55-65)</b>   |
| <b>Q16</b> | Please express your level of satisfaction with ESS5 in guaranteeing the principles of people-centred land governance, and why.  |
| <b>Q17</b> | What implications would this standard have in the country/region/context where your organization works?   |
| <b>Q18</b> | Does the WB Framework as it currently stands ensure that "involuntary resettlement" <sup>2</sup> is avoided in proposed projects? If so, why not?   |
| <b>Q19</b> | Are land-related rights and effective governance processes adequately covered in ESS5 in order to ensure that proper consultation, negotiation, consent and/or compensation are guaranteed in areas where traditional or customary tenure exists?   |
| <b>Q20</b> | Are the principles of inclusive decision-making over land and FPIC adequately incorporated in this Standard?  |
| <b>Q21</b> | Does ESS5 sufficiently outline a firm 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?   |
| <b>Q22</b> | <p>Paragraph 5 (page 57-58) defines the following contexts in which this ESS does not apply:</p> <p><i>(a) "Voluntary, legally recorded market transactions in which the seller is given a genuine opportunity to refuse to sell the land and to retain it, and is accurately informed about available choices and their implications"<sup>3</sup>;</i></p> |

<sup>2</sup> Defined as impacts from "physical (relocation, loss of residential land or loss of shelter)" and/or "economic displacement (loss of land, assets or access to assets, leading to loss of income sources or other means of livelihood)" caused by project-related land acquisition or restrictions on land use.

<sup>3</sup> "Where such voluntary land transactions result in the involuntary displacement of persons, other than the seller, who occupy or use the land in question, this ESS will apply to such displacement. Special care must be taken with respect to voluntary transactions of significant areas of land (for example in the case of large-scale transfers of land for agricultural investment purposes) to ensure: (a) that land and land use rights of all affected people have been respected; (b) that individuals, groups or communities affected by the transfer are informed of their rights, have full access to reliable information concerning environmental, economic and social impacts and have the capacity to negotiate fair value and appropriate conditions for the transfer of their land;

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|            | <p>(b) <i>Impacts on incomes or livelihoods that are not a direct result of land acquisition or land use restrictions imposed by the project on the land of the affected persons or communities;</i></p> <p>(c) <i>Management of refugees from, or persons internally displaced by, natural disasters, conflict, crime and violence;</i></p> <p>(d) <i>Land titling/regularization activities; or</i></p> <p>(e) <i>Regulation or planning of natural resources or land use on a regional or national level to promote sustainability."</i></p> <p>Do you have any reservations about these exemptions from ESS5?</p> |
| <b>Q23</b> | <p>In paragraph 6 (page 58), "affected persons" under ESS5 are classified as follows:</p> <p>(a) <i>"Who have formal legal rights to land or assets;</i></p> <p>(b) <i>Who do not have formal legal rights to land or assets, but have a claim to land or assets that is recognized or recognizable under national law;</i></p> <p>(c) <i>Who have no recognizable legal right or claim to the land or assets they occupy or use."</i></p> <p>Is this classification sufficient to capture those that may be affected by project-related land acquisition or restrictions on land use?</p>                            |
| <b>Q24</b> | Do you have any additional comments or inputs for ESS5?   |

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| <b>D.</b>  | <b>Environmental and Social Standard 7: Indigenous Peoples (pages 74-83)</b>   |
| <b>Q25</b> | Please express your overall satisfaction with ESS7 in ensuring that land recognized and/or held by IPs is respected and protected, and that transparent and inclusive decision-making processes are guaranteed in circumstances that affect indigenous territories, and why.   |
| <b>Q26</b> | What implications would this standard have in the country/region/context where your organization works?  |
| <b>Q27</b> | <p>Paragraph 9 (page 76) states the following:</p> <p><i>"Where the Borrower is concerned that the process of identifying groups for purposes of applying ESS7 would create a serious risk of exacerbating ethnic tension or civil strife, or where the identification of culturally-distinct groups as envisioned in ESS7 is inconsistent with the provisions of the national constitution, the Borrower may request the Bank to agree on an alternative approach, in which risks and impacts of the project on Indigenous Peoples will be addressed through the application of the ESSs other than ESS7."</i></p> <p>Do you have any reservation about this statement and its capacity to hold Borrowers accountable to internationally-accepted principles about engagement with Indigenous Peoples? If so, what is your suggestion to the WB in this regard?</p> |

*(c) that appropriate benefits-sharing and grievance redress mechanisms are put in place; and (d) that terms and conditions of the transfer are transparent."*

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| <b>Q28</b> | Is the treatment and application of FPIC in paragraphs 19-22 (page 78-79) sufficient, including to cancel the proposed project should FPIC not be obtained? |
| <b>Q29</b> | Do you have any additional comments or inputs for ESS7?   |

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| <b>E.</b>  | <b>Environmental and Social Standard 10: <i>Information Disclosure and Stakeholder Engagement (pages 92-97)</i></b>  |
| <b>Q30</b> | Please express your overall satisfaction with ESS10 in ensuring transparency and accountability in land-related processes throughout the whole project cycle, and why. |
| <b>Q31</b> | What implications would this standard have in the country/region/context where your organization works?  |

### Final comments and suggestions

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| <b>Q32</b> | Please reflect on the extent to which this WB Framework is compatible with ILC's mission of promoting people-centred land governance?  |
| <b>Q33</b> | Are you aware of similar safeguards policies or standards from other institutions (regional development banks, etc.)? Which ones? How do you think the WB's revised framework compares to these?   |
| <b>Q34</b> | Does the WB Framework adequately consider gender-related issues, including ensuring that Bank-funded projects do not have a negative impact on women's land rights and participation in decision-making, but rather facilitate their full and effective participation and promote their tenure security? What is your suggestion to the WB in this regard? |
| <b>Q35</b> | Please add any additional comment on the First Draft of the World Bank Environmental and Social Framework and/or any specific sections of it, and propose amendments by using the table below.   |

| Chapter | Paragraph | Comment | Suggestion |
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**Thank you for your time and effort in providing this valuable feedback.**