

## Bank on Human Rights

### Key Human Rights Concerns and Recommendations regarding the World Bank's Proposed Social and Environmental Safeguards Framework

March, 2015

#### I. Respect for human rights

The World Bank's draft safeguards do not contain a commitment to respect human rights or to ensure that Bank-financed projects do not contravene borrowers' international legal obligations. While there is a new reference to human rights in the draft, it is located within the vision statement as an aspiration. It is also unclear and limited in scope, stating merely that "the World Bank's operations are supportive of human rights and will encourage respect for them in a manner consistent with the World Bank's Articles of Agreement."

**Recommendation: Require respect for human rights within Bank-financed activities.**

- ESP: Add: "The World Bank will respect human rights and take all necessary measures to ensure that the activities it finances or otherwise supports do not cause, contribute to, or exacerbate human rights violations."
- ESS1: Add: "The Bank will not finance any activity that contravenes the Borrower's human rights obligations under international law. It will identify any relevant human rights obligations that are implicated by proposed funding to ensure that Bank-financed activities are consistent with these obligations."
- ESP: Objectives should include "to design and implement development activities in compliance with international human rights law and standards and in recognition of the development priorities of the host communities and/or the indigenous peoples".
- The Bank should conduct an analysis to compare its proposed safeguards with international human rights standards, publish this gap analysis, and ensure that the new draft is aligned with and explicitly references internationally recognized human rights law and standards.

#### II. Ensuring a minimum level of protection

The proposed draft abrogates Bank responsibility to supervise projects and ensure that Bank-financed activities do not lead to harm. Moreover, the new draft would, in certain circumstances, allow the Bank and its borrowers to rely on national laws and regulations instead of the safeguards. However, the draft provides no clear indication or benchmarks of when this is appropriate or how to ensure an adequate level of protection in countries where the rule of law is weak or governments have not incorporated their human rights obligations within national

legislation, or where enforcement is weak. Under the new framework, even if a risk is known, assessment and due diligence may be deferred until after project approval, delaying disclosure of many types of environmental assessments and some resettlement plans. Additionally, the current draft allows for approval of projects so long as there is an expectation that the project will meet the ESSs at some point in time in “a manner” acceptable to the Bank, suggesting that the Bank can waive these requirements at its discretion. The draft, however, does not provide clear criteria or benchmarks to guide Bank staff in making these decisions. The proposal transfers several aspects of safeguard monitoring to the Borrower, abdicating the Bank’s due diligence obligations.

**Recommendation: Ensure that safeguards serve as a minimum protection floor, maintaining clear Bank responsibility for due diligence, supervision and evaluation. Where a borrower country’s laws and standards differ from the safeguards, the more protective standard should apply. High risk and substantial risk activities should be excluded from any deferral or delegation of risk appraisal or management.**

- ESP: In order to be utilized in lieu of safeguards, Borrower frameworks must demonstrate that they meet or exceed the requirements of the ESSs.
- ESP: If safeguard Objectives are to be utilized as a benchmark for safeguard compliance, they must have enough substance and specificity to guarantee the same outcome as the safeguards, and to ensure that projects do no harm.
- ESP. Require projects to meet the objectives *and the requirements* of the ESSs prior to project approval and throughout the life of a project.
- Exclude all high risk and substantial risk activities from any deferral or delegation of risk appraisal or management, including through use of borrower frameworks, common approach, financial intermediaries or associated facilities.
- ESS1: The Commitment Plan must include time-bound supervision/ monitoring/ evaluation plan, budget, and indicators, and specify how conditionality will be triggered and remedied in instances of non-compliance.
- ESP: Commitment Plan disclosure will require at a minimum the disclosure of a draft Commitment Plan at concept and appraisal stages, as well as annually during project implementation, or if revised at any point after project approval.
- ESP: List activities for which primary safeguard due diligence and monitoring responsibility cannot be delegated, including all high risk and substantial risk activities.
- ESP: Require the Bank to carry out its own human rights due diligence, in order to be able to verify the adequacy of information provided by the borrower, including through site visits and independent consultations with affected people and civil society organizations. While the ESP gives the Bank the ability to carry out independent consultation activities for high risk projects, this should be required for all projects, particularly when the Bank is operating in a challenging context where rights to freedom of expression, assembly, association and related rights, are not protected.
- For High and Substantial Risk projects, require monitoring and reporting updates to the Board.

### **III. Human rights due diligence**

The new safeguards purport to strengthen the assessment and management of social risks. The safeguard framework, however, lacks adequate due diligence requirements for the Bank and borrower to identify potential impacts on human rights and to evaluate and categorize projects based on these and other social and environmental risks. Definitions for risk categories are unclear and circular, and may inhibit necessary due diligence and assessment.

**Recommendation: Require both the Bank and Borrower to conduct human rights due diligence. Require the Bank to conduct analysis and screening of all projects to identify human rights and other social and environmental risks. Require assessment of social and environmental impacts for all projects at all stages. Such assessment should explicitly utilize the international human rights framework as a benchmark and include all relevant human rights-related issues and indicators, and should be carried out ensuring participation of potentially affected communities.**

- ESP. The mitigation hierarchy should reflect the fact that human rights violations are to be prevented, not minimized or compensated. E.g. hierarchy should state “a) prevent human rights violations; and b) avoid adverse impacts. Where an adverse impact cannot be avoided, c) minimize or reduce the impact. Where residual impacts remain, d) restore to the original condition or retribute. Where restoration or restitution is not possible, e) provide other effective and acceptable remedies.”
- ESP. Require the Bank to conduct analysis and screening of all projects in order to 1) identify and evaluate project alternatives; 2) inform project risk categorization; 3) identify relevant key issue areas and concerns for further investigation in the ESIA; 4) provide input into stakeholder identification for the Stakeholder Engagement Plan; and 5) inform final project clearance at appraisal.
- ESP. Define social impacts to include *inter alia* the following key factors: 1) direct, indirect, secondary, and cumulative impacts; 2) impacts on the realization or enjoyment of human rights; 3) disproportionate accrual of impacts on different groups due to their experience of marginalization, discrimination or exclusion; and 4) inequitable access to development benefits due to a group’s experience of marginalization, discrimination or exclusion.
- ESS1: Objective should include “to promote sustainable development, poverty reduction, and shared prosperity, and to prevent harm to people and the environment and provide effective remedy in cases of harm.”
- ESS1: Social and environmental assessment is an iterative process. Assessments should be regularly revised and updated as projects evolve. A social and environmental impact assessment, completed through a participatory process with affected communities, should be disclosed as a condition of approval. The ESIA should be revisited and consulted at all project stages, and any major change in project context or conditions, including any

alteration to project plans, as well as any indication of lack of community support such as displays of concern and discontent by affected communities and those working in collaboration with them.

- ESS1 ANNEX 1: Establish minimum requirements for the content of social and environmental assessment regardless of which assessment instrument is utilized.
- ESP: Definitions of risk categories should be redrafted to provide more clarity regarding social risk, and must be included as binding policy.

Proposed risk category definitions (*Note: these definitions are meant to ensure adequate coverage of social risks. Additional factors and provisions will need to be added to encompass risks to the environment*):

1) Unacceptable Risk:

Project fits within Exclusion List.

2) High Risk:

- a) The project is likely to have adverse social impacts significant in terms of scale or irremediability, or
- b) Certain social groups are likely to be disproportionately adversely affected, or
- c) The project type is on Presumptive High/Substantial Risk List.

3) Substantial Risk:

- a) The project may have adverse social impacts significant in terms of scale or irremediability, or
- b) Certain social groups may be disproportionately adversely affected, or
- c) The project type is on the Presumptive High/Substantial Risk List.

4) Moderate Risk:

- a) The project does not pose risk of adverse social impacts significant in terms of scale or irremediability,
- b) The project may have adverse social impacts, but feasible, appropriate and sufficient avoidance and minimization measures can readily be designed and implemented to prevent these, and
- c) Any impacts which cannot be avoided through design alternatives would be readily remediable if they were to occur.

5) Low Risk:

The project poses little or no risk of adverse social impacts.

- ESP: Specify the levels of due diligence required for each risk category (disclosure, type of assessment, consultation, experts, monitoring). A decision to downgrade a project's

risk categorization must be approved by the regional safeguard advisor and the Board, and communicated to communities.

- ESP: Require independent monitoring for High and Substantial risk projects.
- ESP: Clarify Bank role in defining outcome indicators, monitoring methods, and reporting requirements. Provide for participatory monitoring.
- ESP: Adopt presumptive or indicative high/substantial risk activity list as well as an exclusion list.
- ESS1: Clarify that groups identified as “vulnerable” will be examined separately in a social assessment and that a generalized analysis of all “vulnerable” groups is unacceptable.
- ESP: Build in monitoring procedures to evaluate whether Bank “operations are supportive of human rights.”

#### **IV. Non-discrimination**

While the new safeguards include encouraging provisions on inclusion and non-discrimination, those provisions do not reflect international standards because they leave out discrimination on the basis of language and political or other opinion, and do not explicitly mention race, color, and descent, including caste.

**Recommendation: State a commitment to non-discrimination and to advancing substantive equality within Bank activities, including all forms of discrimination identified in international law. Ensure that all marginalized or discriminated against populations are guaranteed opportunities to participate in all phases of development projects, including the crafting of development initiatives, particularly when proposed development projects will directly or indirectly affect them. The impact of Bank activities across marginalized groups should be measured through disaggregated data.**

- ESS1. Objective should include ensuring non-discrimination and advancing substantive equality in Bank-financed activities.
- Remove language designating certain groups as “vulnerable” and replace it with “discriminated against, marginalized, or excluded.” To describe groups as inherently vulnerable is inappropriate and disempowering; while individuals and groups may be particularly vulnerable to human rights abuses or adverse impacts of projects, they are not inherently vulnerable.
- Specify how each group’s rights and interests will be adequately taken into account in the project design, monitoring and implementation.
- ESS10: Specify how such affected groups would be identified, what “stakeholder engagement” entails, and how the borrower will reflect their views and concerns in the project design, monitoring and implementation. Revise language to ensure that open-ended terms such as “as appropriate,” “where applicable” and “where appropriate” do not serve as loopholes to exclude potentially affected groups from meaningful and effective engagement and participation.

- Require that impacts on each group vulnerable to negative impacts be assessed and monitored on the basis of disaggregated baseline, risk and outcome data, and that this data be collected in a manner that does not create or increase security risks for those groups or individuals.

## V. Indigenous peoples

The proposed indigenous peoples' standard does not reference and track international legal standards, especially the UN Declaration on the Rights of Indigenous Peoples. Moreover, the proposed opt-out, or alternative approach, provision should be removed, as it undermines internationally agreed upon standards regarding the rights of indigenous peoples, and would leave indigenous peoples unprotected in the situations in which they are most vulnerable to project-related harm.

**Recommendation: Ensure protection of indigenous peoples' collective land and resource rights and management systems, and require respect for right of self-determination and Free, Prior, and Informed Consent (FPIC) throughout all project stages, in line with the UN Declaration on the Rights of Indigenous Peoples.**

- ESS7 should be the governing policy within the ESF for projects affecting indigenous peoples.
- ESS7. Non-discrimination, full and effective participation, and self-determination should be the main principles that guide all project activities.
- Delete Section 9 in ESS7 and Section 33 in the ESP where governments can “opt out” of applying the policy requirements intended to protect indigenous peoples.
- ESS7: Ensure that the determination of whether indigenous peoples are present in, or have collective attachment to, the project-affected area involves indigenous experts and indigenous representatives, and consideration of regional and international human rights jurisprudence.
- ESS7: The assessment of social and environmental risks and impacts must involve the potentially affected indigenous peoples, including indigenous experts.
- ESS7. As an objective, include “to ensure that indigenous peoples present in, or with collective attachment to, the project-affected area are fully consulted about, and have opportunities to actively participate in, project design and the determination of project implementation arrangements.”
- ESS7. The Borrower, along with the affected indigenous peoples and indigenous experts, will design and implement the project in a manner that provides affected indigenous peoples with equitable access to project benefits. The concerns or preferences of indigenous peoples will be addressed through the process of seeking and securing FPIC. Agreements and plans arising from this process should have a clear monitoring tool and budget.
- ESS7: The formulation of the Indigenous Peoples Plan or the broader community development plan shall involve the meaningful participation of the affected indigenous peoples and indigenous experts. Such plan shall have specific indicators and measures for equitable access to project benefits, including at a minimum: written agreement on

project benefits; the establishment of a project-level grievance mechanism; and clear sanctions and enforcement mechanisms. The terms of the project benefits included in the plan must be established through the process of securing and maintaining FPIC.

- ESS7. The plan must also reflect the self-determined development priorities of indigenous peoples, contain a clear budget, timeline, and monitoring indicators, and be subject to regular participatory assessment. A draft framework plan should be provided as an annex to ESS7. A clear monitoring tool should be developed for the implementation of any plans and agreements with indigenous peoples. Any diversion from the plan/agreement should have clear sanctions.
- ESS7: 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 provide for separate consultations with women and youth to ensure that their views are taken into account.
- ESS7: [para 24] Where a project is located on the lands or territories of indigenous peoples or involving their resources, the Borrower shall not only acquire the FPIC of the affected community, but the project should be conducted in partnership with the indigenous peoples themselves through a clear mechanism.
- ESS7. Borrower will obtain the FPIC of the affected indigenous peoples in the framework of respecting and recognizing their rights to their lands, territories and resources. FPIC applies to all projects and programs affecting indigenous peoples (negative or positive) in general, and in particular when the project will: (a) have impacts on land and natural resources subject to traditional ownership or under customary use or occupation; (b) cause relocation of indigenous peoples from land and natural resources subject to traditional ownership or under customary occupation or use; or (c) have significant impacts on indigenous peoples' cultural heritage. In these circumstances, the Borrower will engage independent specialists to assist in the identification of the project risks and impacts.
- ESS7. Where projects are likely to have significant impacts on the lands, territories and resources that indigenous peoples possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired, the Borrower in partnership with the indigenous peoples themselves will prepare a plan for legal recognition of the indigenous peoples' rights. The plan must be time-bound, designed against clear indicators and with sufficient budget allowance.
- ESS7: Any commercialization of indigenous peoples' knowledge requires the Borrower not only to ensure fair and equitable benefit sharing, but also the intellectual property rights of indigenous peoples (i.e. patenting should be determined by indigenous peoples).
- ESS7: Where a project involves indigenous peoples' collective lands or resources, the FPIC of the affected community must be obtained, regardless of whether the land is held in individual or collective title. Footnote 14, which allows for safeguards regarding the relocation of indigenous peoples to be ignored if national legislation does not recognize collective land title, will encourage violations of the rights of indigenous peoples and should be deleted.
- ESS7. Projects that may have potential impacts on peoples in voluntary isolation or initial contact require appropriate measures to recognize, respect and protect their *rights* to their

land and territories and environment, health and culture, as well as measures to strictly avoid all undesired contact as a consequence of the project.

## **VI. Labor**

While the addition of a labor standard in the new safeguards is a welcome development, the formulation of the standard has significant flaws, undercutting international law and best practice among other development institutions, and opening the door to discrimination or repression against workers who try to organize. The new labor standard fails to reference International Labor Organization (ILO) core labor standards and does not protect the rights to freedom of association and collective bargaining. Additionally, by excluding contract workers and restricting coverage for civil servants, the standard will leave most workers involved in Bank projects unprotected.

**Recommendation: Provide comprehensive coverage for all workers, and ensure compliance with the four core labor standards as defined by the ILO.**

- ESS2: Explicitly reference and require compliance with the ILO’s eight fundamental conventions, which affirm: the freedom of association and the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination with respect to employment and occupation.
- ESS2: Ensure safeguard coverage for contract workers.
- ESS2: Ensure effective procedures for monitoring implementation and responding to complaints about non-compliance.

## **VII. Evictions and resettlement**

The draft new policy fails to meet standards set by international law, as it does not ensure that projects resulting in physical or economic displacement have a legitimate public interest purpose or require that project proponents demonstrate that there are no viable alternatives to displacement. If resettlement cannot be avoided, it should be treated as a development opportunity. The new draft removes critical requirements in relation to resettlement-planning instruments, including baseline data collection. It also dilutes existing requirements on information disclosure, consultation and participation of displaced persons in resettlement planning, implementation and monitoring. Moreover, under the new policy, land titling projects would no longer have to comply with the resettlement safeguard, despite the fact that these projects often result in displacement.

**Recommendation: Prohibit activities that contribute directly or indirectly to forced evictions. Displacement should be used only as a last resort, and only where it has met a “general welfare” threshold. Resettlement activities should follow international law and relevant standards, including the UN Guidelines on Development-based Evictions and Displacement and the UN Guiding Principles on Security of Tenure.**

- ESS5: [Para 5 (b)] Delete the exclusion of “Impacts on incomes or livelihoods that are not a direct result of land acquisition or land use restrictions...”
- ESS5: Ensure that the scope of ESS5 covers all physical and economic displacement that occurs in connection with project and project-related activities, including as a result of reduced access to productive resources, land titling/regularization activities and land use and natural resource regulation, deleting exclusions.
- ESS5: Prohibit projects and project-related activities that will cause forced evictions, as defined by international human rights law. Reference the Basic Principles and Guidelines on Development-Based Evictions and Displacement and the Guiding Principles on Security of Tenure.
- ESS5: The definition of forced eviction in the current draft is distorted to exclude use of eminent domain even where a project has not been shown to meet a public interest test or to meet international human rights standards. Any acquisition of land under processes of compulsory acquisition or eminent domain should demonstrate that it is being carried out in the public interest and should be subject to protections against forced evictions within international human rights law and standards, national law and the provisions of ESS5.
- ESS5: In cases of displacement, after consultation with all potentially affected people regarding alternative options other than displacement, the borrower must demonstrate that there are no viable options before taking action in relation to the displacement. This decision must be open to the public and affected stakeholders for consideration before displacement takes place.
- ESS5: If resettlement is unavoidable, require the borrower to inform potentially displaced persons about their rights, provide resettlement alternatives of similar or better quality than existing conditions, and consult with affected people about options prior to resettlement. Borrowers should provide opportunities for affected persons to challenge resettlement and provide alternative proposals.
- ESS5: [Para 7] Require borrowers to consult with affected persons in preparing alternative project designs that avoid or minimize land acquisition and restrictions on land use. Resettlement plan should include explanation of what alternative proposals were considered and why they were deemed not feasible.
- ESS5: The Bank’s due diligence, monitoring and evaluation requirements must be strengthened, including by (i) verifying that a proposed project promotes the general welfare, taking into account its displacement impacts and risks of harms, and (ii) seeking a range of views from a variety of sources, including potentially affected people, about the project, resettlement plans and their implementation.
- ESS5: As a condition of project appraisal, the Borrower should be required to provide the Bank with the relevant draft resettlement and livelihood support plans and budgets and make them available at a place accessible to displaced persons and local NGOs, in a form, manner, and language understandable to them. The Borrower’s obligation to carry out the resettlement instrument must be provided for in the legal agreements for the project.
- ESS5: [Para 16] Include an annex to ESS5 setting out the required components of resettlement and livelihood plans and other instruments, and the requirements for baseline data and socioeconomic studies of affected persons and communities.

- An objective of ESS5 should be to treat resettlement as a development opportunity, including by assisting poor households to improve their livelihoods and living standards through appropriate and sufficient project investments and the sharing of project benefits. ESS5's required measures should reflect this objective.
- ESS5: The impacts of involuntary resettlement should be measured and monitored using participatory tools to determine the value of acquired assets and community resources. Resettlement action plans should have a provision for community asset mapping. Affected persons should be invited to present their independent assessment of the value of their community assets.
- ESS5: [Para 25] Alternative land, livelihood assistance and rehabilitation should be provided in addition to cash compensation to physically displaced persons, whether or not their land or ownership rights are considered legally recognizable.
- ESS5: Require security of tenure, access to public services and facilities, and access to effective remedies in any resettlement.
- ESS5: [Para 19] Ensure borrowers produce monitoring reports in consultation with affected persons. Community-based monitoring should be integrated into the planning and implementation of resettlement.
- ESS5: Replace the term “poor and vulnerable” with language that acknowledges different experiences of displacement. Include terms such as “discriminated against, marginalized, excluded or resource dependent.”
- ESS5: Affected persons should be provided with legally binding agreements regarding security of tenure and entitlement to rehabilitation assistance as outlined in project plans.
- ESS10: [Para 19 (c)] Summarize results of consultations and describe how concerns raised and recommendations provided were considered in project plans.
- The Bank's specific responsibilities for safeguard measures for economic and physical displacement throughout the project cycle must be clearly set out in binding procedures corresponding to ESS5.

## VIII. Gender

The new safeguards framework does not include a gender safeguard, nor does it mainstream gender concerns. The framework fails to require respect for the rights of women and girls, or to ensure that impacts on women and girls are adequately assessed and addressed.

**Recommendation: Require respect for the rights of women and girls, outline mandatory measures to ensure the participation of and assessment of impacts on women and girls, and ensure that development initiatives advance women and girls' human rights, consistent with the UN Convention on the Elimination of All Forms of Discrimination Against Women.**

- Systematically integrate gender dimensions into the safeguards framework.
- Explicitly prevent and proactively address gender-based discrimination and gender-specific impacts such as gender-based violence.

- Require use of indicators and disaggregated data to assess differential development impacts on women and girls and to monitor women’s and men’s participation and decision-making roles.
- Include staff incentives to promote gender equality.
- Ensure that all Bank initiatives advance women’s rights consistent with the UN Convention on the Elimination of All Forms of Discrimination Against Women.

## **IX. Sexual Orientation, Gender Identity/Expression, and Bodily Diversity**

The new safeguard framework includes sexual orientation and gender identity in the definition of “vulnerable groups,” yet it fails to recognize the unique circumstances of these communities and others in terms of ensuring non-discrimination, participation, and access to responsive development and equitable benefits.

**Recommendation: Include explicit requirements regarding how non-discrimination will be achieved and how persons with a non-conforming sexual orientation or gender identity/expression, or who are bodily diverse can fully benefit from development efforts.**

- Social Impact Assessments which are responsive to gender, sexual orientation, gender identity/expression, and bodily diversity.
- Where projects are likely to have differing impacts on persons based on their gender, sexual orientation, gender identity/expression, or bodily diversity, including lack of access or abuse, require use of disaggregated data and indicators to assist in determining project risks and impacts.
- Specific measures to ensure meaningful participation, engagement, and consultation with persons with a non-conforming sexual orientation, gender identity/expression, or who are bodily diverse, including by providing for confidentiality and security of participants.
- Universal Accessibility and Inclusion Plan to ensure access to services, safe from criminalization, discrimination and violence.

## **X. Persons with disabilities**

The safeguards draft includes promising new language on universal access, however, the rights of persons with disabilities are not sufficiently protected throughout the safeguards framework. It is critical that the safeguards ensure persons with disabilities are able to benefit from and not be harmed by World Bank projects.

**Recommendation: Incorporate language throughout the safeguards framework that advances the rights of persons with disabilities, consistent with the UN Convention on the Rights of Persons with Disabilities.**

- ESS1. Objective should include ensuring non-discrimination and substantive equality in Bank-financed projects and enhancing accessibility and inclusion by all stakeholders in equitable sharing of project benefits.
- Reference as a benchmark the UN Convention on the Rights of Persons with Disabilities.

- Require an analysis of the project’s unique impacts on persons with disabilities, rather than a general analysis of how the project impacts ‘disadvantaged or vulnerable groups’.
- ESS1. Require documentation in a Universal Accessibility and Inclusion Plan of all relevant Borrower project actions, activities, and mitigation measures associated with the human element of the project that do or may potentially affect accessibility and inclusion adversely, or are to ensure equitable sharing in project benefits.
- ESP and ESS1. Definition of social risks and impacts should include: social barriers to human interactions and any barriers to the built environment such as those for persons with disabilities regarding accessible infrastructure which include but are not limited to buildings, health centers, shopping facilities, transportation, workplace spaces, markets, walkways, educational materials, and accessible technology.
- ESS10. Require accessibility needs to be met to ensure full participation of affected communities and stakeholder engagement.
- ESS5. Require that resettlement activities ensure accessibility for persons with disabilities.

## **XI. Land, land rights, and security of tenure**

Despite the growing land-grabbing crisis displacing indigenous communities, small farmers, fisher-folk and pastoralists throughout the Global South, the current draft fails to incorporate any serious protections to prevent Bank funds from supporting land-grabs or to strengthen protection of the land rights of poor and other marginalized groups. Instead, it undermines them, such as by excluding the application of ESS5 to projects concerning land titling and land use planning.

**Recommendation: Incorporate robust standards on land rights, land access, and security of tenure**, including inter alia:

- Binding safeguards to ensure that land transactions that occur in connection with Bank-financed projects, including agriculture projects, are truly voluntary (“voluntary land transactions” are explicitly excluded from ESS5 and this issue is only addressed through a non-binding footnote);
- Protections for all project affected communities who have a customary or collective tenure system;
- Safeguards against instigating land conflict and/or weakening of tenure statuses; and
- Safeguards against increased land consolidation and inequality in land holdings, including 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.
- Measures to ensure that Bank-supported land projects are strengthening, securing and prioritizing the tenure rights of marginalized people so that they enjoy, at minimum, legal protection against forced eviction and infringement on their ability to enjoy and utilize the land and natural resources that they depend upon for their housing and/or livelihoods.

## **XII. Participation and access to information**

The safeguards draft includes promising language requiring borrower governments to undertake stakeholder engagement throughout the project cycle. Unfortunately, detailed procedural requirements critical for meaningful disclosure and consultation were either eliminated or have not been included in the new draft.

**Recommendation: Ensure full and effective participation by potentially affected communities and marginalized groups, consistent with international law. Require that all information on appraisal, mitigation and benefit-sharing (including a detailed Commitment Plan) for any high or substantial risk activity financed by the project, be disclosed prior to project approval and made available in a form and language accessible to potentially affected communities.**

- Set out clear parameters for meaningful consultation and stakeholder engagement, including requirements regarding when the Stakeholder Engagement Plan will be disclosed and consulted with affected communities and when re-evaluation of the Stakeholder Engagement Plan is warranted in the event there are material changes to project and/or environmental, social, and human rights risks associated with the project.
- ESS10. Set out minimum requirements to ensure that stakeholder engagement is as inclusive as possible, promotes substantive equality, and enables groups that may be discriminated against or more vulnerable to project impacts, including women, persons with disabilities, children and youth, migrants, and racial, linguistic, religious, sexual and gender minorities, as well as those who may be discriminated against on the basis of their political or other opinion, to meaningfully participate in and inform decision-making.
- ESS10. Benchmark procedural requirements for stakeholder engagement to the World Bank Consultation Guidelines.
- Restore precise bottom-line minimum requirements on disclosure, consultation, and other types of stakeholder engagement which were eliminated in the current draft.
- For high and substantial risk projects, require the borrower to submit to the World Bank the following documents for disclosure on the World Bank’s website and directly to affected communities:
  - (a) draft environmental and social impact assessment and management plan, along with a draft stakeholder engagement plan;
  - (b) preliminary/draft borrower framework assessment/gap analysis; draft common approach agreement for multi-donor projects; draft gap analysis of multi-donor projects in advanced state of construction; draft environment and social commitment plans, draft resettlement frameworks and/or plans, draft Indigenous Peoples planning frameworks and/or plans, and draft Universal Access and Inclusion Plan at least 120 days before Board consideration or before project appraisal;
  - (c) final or updated versions of the documents listed in (a) and (b) above;

- (d) annual environmental, social, Resettlement, and Indigenous Peoples Plans and other monitoring reports submitted by borrowers during project implementation.

### **XIII. Remedy and accountability**

The safeguards draft includes promising language requiring the borrower to provide a redress grievance mechanism to facilitate resolution of stakeholders' concerns and grievances. The draft however, lacks sufficient detail to ensure that grievance mechanisms are effective.

**Recommendation: Establish requirements for the design of grievance mechanisms that ensure greater accessibility, transparency, and independence, ensure security of complainants, and provide access to remedy.**

- ESS10. Benchmark and cite as best practice the United Nations Guiding Principles on Business and Human Rights effectiveness criteria for non-judicial grievance mechanisms (i.e. legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility, a source of continuous learning and based on engagement and dialogue) in designing and implementing grievance mechanisms.
- ESS10. Prohibit all reprisals against people or organizations that participate in or are critical of World Bank-financed projects, or that access grievance mechanisms or the Inspection Panel.
- ESS10. Require that project-affected communities are informed of the existence of the Inspection Panel and its procedures. Information related to the existence, role and means of accessing the Inspection Panel, including brochures in the language(s) of the affected people, and other related resources, should be made publicly available in a means easily accessible to local people at the earliest stages of the project.
- ESS10. Provide meaningful opportunities for affected communities and beneficiaries to inform the design of the project-level grievance mechanism so as to ensure that the mechanism is culturally appropriate, sensitive and accessible, including for those who may face additional barriers to access. Likewise, provide communities with an opportunity to participate in the design and implementation of a grievance mechanism monitoring system.
- ESS10. Provide, without qualification, a grievance mechanism that allows for the filing of anonymous complaints, is developed to prevent reprisals, and requires the borrower to establish procedures for addressing instances of reprisal, with significant oversight from the Bank. (Currently, ESS10 para. 23(b) states, “Where there is threat of reprisal, the mechanism will allow for anonymous complaints to be raised and addressed.”)
- ESS10. Require the borrower to:
  - Conduct outreach and provide information materials and services in all primary languages spoken by project-affected people so as to ensure access to the grievance mechanism.
  - Ensure that the mechanism users are allowed access to independent legal counsel or other advisors so as to promote a fair and equitable process for users of the mechanism.

- ESS10. Ensure that the grievance mechanism has the authority, resources, independence and capacity necessary to be effective. A provision should be added explicitly encouraging the borrower to implement procedures to receive operational feedback and extract lessons from the project-level grievance mechanism in order to improve overall project implementation and monitoring.
- ESP and ESS10: Ensure that affected communities have the right to access the Inspection Panel directly, without first using or exhausting the local grievance mechanism or the corporate Grievance Redress Service. (Currently, the ESP suggests that communities must first utilize the Grievance Redress Service or grievance redress mechanisms as a predicate for accessing the Inspection Panel.)
- Ensure that safeguards apply to all types of lending, including development policy lending (DPL), program for results (P4R), financial intermediary lending, technical assistance and other advisory services, and the use of country systems, as well as to the broad scope of Bank-supported activities, including associated facilities and recurrent expenditures. Eliminate all loopholes that exclude certain financing instruments from safeguard applicability (e.g. Bank-Executed Trust Funds (BETFs)).

Bank on Human Rights is a global coalition of social movements, civil society organizations, and community groups working to ensure that all development finance institutions respect, protect, and fulfill human rights.

**[www.BankonHumanRights.org](http://www.BankonHumanRights.org)**