

**World Bank Safeguards: July 30 Draft -  
Comments from Conservation International  
December 23, 2014**

**General comments**

We welcome the World Bank's openness to receiving input from civil society. As a non-profit organization working from local to national and international levels to improve people's lives through more sustainable natural resources management, Conservation International has extensive experience in designing and achieving sustainable development pathways. We also have frequently collaborated with multilateral institutions in executing projects; this experience has led to the development of our own safeguards, recognized by our accreditation as a GEF project agency (one of only two NGOs so accredited to date) and a rights-based approach to conservation. It is in this context and on this basis that we have reviewed the Bank's draft ESSs and propose line-in, line-out changes to the policies. We also have a number of overarching concerns with the draft Safeguards that we would emphasize.<sup>i</sup>

**Portfolio Coverage.** Limiting the safeguards' proposed application to investment projects fails to cover Bank finance channelled through Development Policy Operations and the Program for Results, which account for nearly half of Bank lending. This increases the fractured nature of safeguards in the World Bank and will lead to further weakening of a safeguard system that is already underfunded and lacking in independence, effective supervision, and support for borrowers during implementation and on the ground monitoring of project impacts.

**Bank Responsibility.** The draft safeguards make clear the responsibilities of Borrowers consistent with the goal of using country systems. However, building country capacity to implement safeguards will not happen automatically as a result of transferring this responsibility to them. The Bank retains responsibility for ensuring that safeguards are effectively implemented, and this oversight role needs to be clarified and emphasized throughout, particularly for high and substantial risk projects and the monitoring and reporting of safeguard outcomes. Moreover, it will be critical that the Bank devote time and budget to building countries' safeguards implementation capacity, particularly given the significant portion of its portfolio supporting fragile and conflict states.

**Exceptions and Exclusions.** While we understand the Bank's and borrowers' desire for "flexibility," the broad wording of exceptions and exclusions in certain policies renders them ineffective as even minimum standards/safeguards. This was most notable with respect to borrowers having the option not to apply ESS 7 (on Indigenous Peoples), exclusion of land titling/ regularization and limited resettlement plan requirements in the Involuntary Resettlement standard (ESS5), and the multiple options allowing development of critical habitats in ESS 3. The lack of clear standards would reduce the effectiveness of the Bank's development support even if Borrowers can absorb the cost of safeguards implementation.

**Harmonization.** While the Policy Framework makes reference to accepted international principles, the ESSs themselves avoid reference to these, to other multilaterals ESSs, or even (for the most part) to the IFC Performance Standards. The draft thus misses an opportunity to harmonize with such principles and standards and to continue the trend of “upward harmonization” that has prevailed among multilateral institutions for at least the past decade.

### **Policy-specific comments**

We have reviewed in detail those draft policies with respect to issues where we have experience and expertise and have proposed specific edits to each. In sum:

#### Environmental and Social Policy, and ESS 1, Environmental and Social Assessment:

Edits here have three major objectives:

- 1) expand the scope to include all types of Bank financing (development policy and program-for-results as well as investment project loans), since the lack of coverage of DPLs and P4R can be easily fixed by relatively small adjustments to the text, and is a logical extension of Bank rhetoric/policy to function as "one World Bank."
- 2) clarify the Bank's responsibilities and stakeholders' rights in the context of Environmental and Social Assessment; and
- 3) strengthen requirements that are lower/looser than is consistent with best practice (e.g. by having certain requirements apply to "substantial" as well as "high" risk projects).

ESS 2, Labour & Working Conditions: We have left comments on this to those groups focused on labour issues.

ESS 3, Resource Efficiency & Pollution Prevention: The edits have been primarily to broaden coverage, ensure transparency, and make Bank responsibilities more explicit. We have added a related standard for Climate Change Assessment drafted by the Bank Information Center with input from multiple environmental NGOs and previously submitted. We believe that this additional standard (denoted 3b) makes the ESS more consistent with the WBG goal of mainstreaming climate change in its portfolio. It includes what may be considered best practice and is in line with the goal of upwardly harmonizing MDB standards.

ESS 4, Community Health and Safety: The primary goal of our edits here is to ensure proper observance of the mitigation hierarchy, acceptance by the Bank of its oversight role, appropriate reporting and disclosure of risks and impacts, and consultations with affected communities and other stakeholders.

ESS 5, Land Acquisition, Restrictions on Land Use, and Involuntary Resettlement: The main gaps that we have addressed are clarification of consultation and disclosure requirements, Bank

responsibilities, and affected persons' compensation options. We also found it important to clarify and limit the exclusion of land titling/regularization activities (para. 5d).

ESS 6, Biodiversity Conservation and Sustainable Management of Living Natural Resources:

Given that this is our area of greatest expertise and experience, and its importance to our work, we have devoted the most attention to this policy. In it, we have sought to:

- 1) Clearly define sustainable development and the vital role played by biodiversity and natural ecosystems.
- 2) Strengthen the integration of ecosystem services (along with biodiversity) as key for sustainable development, and a value that ESS6 seeks to conserve and enhance.
- 3) Provide more detailed objectives which better capture the specific provisions of ESS6, thereby ensuring that borrower countries are held to appropriately high standards when using Country Systems.
- 4) Expand the scope of the policy to include modified habitats, in recognition of the important biological, socio-cultural, and economic role of many modified natural areas.
- 5) Ensure full inclusion of natural resource dependent local communities and Indigenous Peoples in ESS6 by: including relevant provisions in the scope of the policy, including areas of socio-cultural and economic importance to local communities as "critical habitat," strengthening language on consideration of local communities in assessment, requiring participation of local communities in all stages of the project cycle, and ensuring appropriate inclusion/coverage of Indigenous Protected Areas.
- 6) Expand the definition of critical habitat to include a wider array of natural areas and values.
- 7) Clarify and limit the conditions under which projects may develop or impact critical habitats, including no conversion or degradation of critical habitats.
- 8) Strengthen language on the mitigation hierarchy, emphasizing biodiversity offsets as a last resort.
- 9) Include language which sets limits on conversion of natural habitats that are not included in one of the three categories of "sensitive" habitats.
- 10) Provide minimum guidance on implementation of biodiversity offsets, including an example of "no-go" areas where offsets would not be allowable.
- 11) Ensure that Biodiversity Action Plans are substantive and reflect existing knowledge.
- 12) Strengthen language on sustainable management of natural resources by requiring forest certification for all commercial forestry, and reintroducing the sustainable forest management criteria in OP 4.36.
- 13) Provide more detail regarding acceptable circumstances for salvage logging.
- 14) Recognize importance of, and include additional protections for, Wetland, Coastal and Marine Areas.
- 15) Incorporate a standard on monitoring and evaluation.

- 16) Make provision for (considering) climate impacts on biodiversity and living natural resources, as well as recognition for the vital role that biodiversity and living natural resources play in climate change mitigation and adaptation.
- 17) Strengthen language on supply chains to include clearer requirements and actions.
- 18) Promote the use of ecosystem-based management.

ESS 7, Indigenous Peoples: The most contentious issue in this draft is para. 9, which provides an option for opting out of the safeguard; we have tried to restrict this option sufficiently so that it will be rarely used and maintains a minimum of protections for Indigenous Peoples who may be impacted. We have also sought to clarify what happens when FPIC is not obtained, and that ESS 7 applies to project *affected* areas and to Indigenous Peoples' lands, territories, and natural resources (as well as the Peoples themselves). Finally, we have sought to reinforce the requirements that information be shared in full, timely, and transparent manner, and that agreements between Borrowers and Indigenous Peoples be freely agreed and fairly bargained.

ESS 8, Cultural Heritage: The main edits have been to better define cultural heritage, including natural cultural heritage, to clarify Borrower and Bank responsibilities, and to ensure appropriate consultation and redress for affected communities (heritage owners).

ESS 9, Financial Intermediaries (FIs): The main goal of the edits is to ensure the same level of environmental and social safeguards among WB-financed FIs as is required by the Bank's own safeguard policies. A second goal is to ensure ESS coverage of sub-borrowers on sub-projects classified as *High Risk or Substantial Risk*. Third, the edits provide for greater transparency and disclosure by FIs with respect to risks.

ESS 10, Stakeholder Engagement: Edits to this ESS are to ensure timely, transparent and inclusive Stakeholder Engagement, including as part of the environmental and social assessment process, and to ensure appropriate disclosure and Bank oversight.

Information Note 1, Environmental and Social Risk Classification: We support the move to a four-tier system (i.e. *High, Substantial, Moderate* and *Low Risk*). Our main concerns here are to provide for the Borrower and other stakeholders, especially project-affected communities, to be engaged in the process; to ensure that the objectives of managing and addressing risk and impacts (i.e. to reduce them) are clear; to set an appropriate threshold for High and Substantial risk (not requiring that a "majority" of the enumerated risk characteristics be present); to note examples of "High Risk;" and to add further specificity/clarity where needed.

Information Note 2, Use and Strengthening of Borrower's Environmental and Social Framework: We also support good development practice, of which the use and strengthening of borrowers' environmental and social frameworks is a positive example. However, such frameworks must

still meet the objectives and requirements of the Bank's ESSs in an inclusive way that engages stakeholders generally, and affected communities in particular, and we have made edits throughout reflecting this concern. Other edits are to ensure that direct, indirect, and cumulative impacts, as well as sub-national processes, are considered in (Bank review of) Borrower ES Frameworks; and that the ESS objectives with which the Borrower frameworks are (asked to be) materially consistent are re-worded to be the same as those we are proposing for the objectives of the ESSs themselves. The goal in all cases is to add specificity/clarity and in some cases to promote more comprehensive/inclusive safeguards.

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<sup>i</sup> This is intended to be consistent with the main issues that the IUCN-convened group of environmental NGOs highlighted in its initial review, shared with Bank staff 12 September 2014, and most of which continue to apply:

- Lacks specific detail- there is substantial danger of variable interpretation;
- Lacks reference to places where guidance notes would amplify or clarify recommended actions;
- Lacks details on how to define high/substantial/moderate/low risk projects;
- Lacks details on Bank accountability;
- Lacks recommendations on how to treat no-go or high risk areas, such as World Heritage Sites or AZE sites;
- Lacks references to areas of impact or cumulative impacts, both identified as major risks to biodiversity in project implementation;
- Lacks mention of do no harm or net positive impact;
- Lacks substantive integration of climate considerations;
- Is substantively different from existing IFC performance standards, so implying dual standards and process for environmental safeguards within the World Bank Group;
- Lacks specifics about how country systems would be strengthened to uphold safeguard standards;
- Lacks references to specific tools such as Environmental Action Plans (in their place it offers Environmental & Social Commitment Plans prepared by the Borrower);
- Lacks a second consultation period after December that would hopefully allow for a review of accompanying guidance.