



INTERNATIONAL  
LAND  
COALITION

# **First Draft of the revised World Bank Environmental and Social Safeguards Framework**

Synthesis of submissions by members in the ILC  
network to the World Bank e-consultation

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Compiled by ILC Secretariat<sup>1</sup>

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## The ILC consultation process and the nature of this report

This Synthesis<sup>2</sup> aims to advance the profile of **pro-poor land governance** and its benchmarks within the World Bank's revised Environmental and Social Safeguards Framework (ESF) and assesses the Framework's relevance to ILC's mission to **promote secure and equitable access to and control over land for poor women and men**.

This document is the result of an intensive process of dialogue and knowledge sharing between the ILC Secretariat and the ILC constituency. The decision to engage in the World Bank safeguards review process was decided in response to a number of requests from ILC members for a peer-to-peer exchange with the Bank since the disclosure of the first draft of the revised safeguards framework in July 2014.

Contributions come from ILC Members who freely decided to participate in this consultation based on their respective interest in land rights and land governance and the significant potential impact of the World Bank safeguard framework on these issues in many areas of the world. Many organizations have also submitted individual responses to the World Bank, in addition to conveying the desire to do so as part of the larger ILC coalition. As the World Bank is a member of the ILC network, these comments and inputs are made as peers in the spirit of partnership, and in allegiance to the shared vision and mission of the ILC. In so doing, the document's objective is to encourage promotion and uptake of the 10 commitments of people-centred land governance (PCLG), as unanimously agreed through the Antigua Declaration<sup>3</sup> of 2013.

The ILC consultation and feedback process was facilitated by the ILC Secretariat with support from the three regional platforms,<sup>4</sup> through the use of a designated questionnaire (Annex III). Amendments and recommendations proposed in this document were collected and packaged by the ILC Secretariat on the basis of the inputs and suggestions received from ILC members, as well as comments from ILC Secretariat staff. Each proposal is supported by direct quotes of contributors, with a broad overview that highlights the key points as they relate to our common framework of people-centered land governance.

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<sup>2</sup> This document does not constitute an official position of the International Land Coalition, nor of its members or donors. Rather, the views expressed herein should be attributed to the individual authors and contributors. This document does not replace individual submissions to the World Bank's e-consultation on the first draft of the revised Environmental and Social Safeguards Framework. Submissions made by individuals and organisations through the International Land Coalition, included in the Annexes of this document, should be considered as full and additional contributions in their own right.

<sup>3</sup> Antigua Declaration of ILC members: <http://www.landcoalition.org/en/news/antigua-declaration-ilc-members>. The 10 commitments of People-Centred Land Governance:

1. Respect, protect and strengthen the land rights of women and men living in poverty
2. Ensure equitable land distribution and public investment that supports small-scale farming systems
3. Recognize and protect the diverse tenure and production systems upon which people's livelihoods depend
4. Ensure gender justice in relation to land
5. Respect and protect the inherent land and territorial rights of indigenous peoples
6. Enable the role of local land users in territorial and ecosystem management
7. Ensure that processes of decision-making over land are inclusive
8. Ensure transparency and accountability
9. Prevent and remedy land grabbing
10. Respect and protect the civil and political rights of human rights defenders working on land issues

<sup>4</sup> The Coalition is served by a Secretariat currently hosted by IFAD in Rome (Italy), with platforms in Latin America (hosted by Centro Peruano de Estudios Sociales, CEPES, Peru), Africa (hosted by the Southern Alliance for Indigenous Resources, SAFIRE, based in Zimbabwe) and Asia (hosted by the Consortium for Agrarian Reform/Konsorsium Pembaruan Agraria, KPA, based in Indonesia)

The document is structured around the elements of the revised framework that have strongest relevance to ILC's mandate on pro-poor land governance, including the World Bank Environmental and Social Policy, and Environmental and Social Standards (ESSs) 1, 5, 7. These dimensions have arisen from an effort to answer the following key question: ***To what extent does / could the First Draft of the World Bank's revised Environmental and Social Safeguards Framework affect and advance our common mission of promoting secure access to land for poor men and women?***

Amendments proposed in this Synthesis Report refer to the English version of the Zero Draft. Full contributions are in the Annex I, together with a contact list of participants in Annex II.

**Full list of contributors (alphabetical order):**

Asia Indigenous Peoples Pact (AIPP)  
Centre for Development and Environment (CDE)  
Forest Peoples Programme (FPP)  
International Working Group for Indigenous Affairs (IWGIA)  
ILC Secretariat  
JASIL Mongolia  
National Federation of Communal Forests and Pastures of Albania (NFCFPA)  
Oxfam International  
Rural Development Fund (RDF) Kyrgyz Republic  
Social Development Foundation (SDF) India

## Broad Overview

ILC respondents positively welcomed the World Bank's decision to update its environmental and social safeguards policies to better reflect the realities, emergent trends and conditions of today. They also appreciated the decision to open this revision process to multi-stakeholder dialogues, both in online form as well as through numerous face-to-face meetings around the world. For those aware of the revision process, the statements professed by the World Bank that the new framework would not "represent a dilution of the current safeguard policies" but would be meant to "strengthen the management of environmental and social risk" and the "effectiveness of the safeguard policies in order to enhance the development impact"<sup>5</sup> were welcome and created high expectation.

The internal ILC consultation thus provided a chance to engage in a peer-to-peer process with the Bank, a fellow ILC member, under the shared framework of people-centered land governance and in the spirit of constructive dialogue. The comments and feedback contained in this report are to be seen as an *opportunity* to enhance the draft and thus the work of the Bank in fulfilling its own mandate of poverty reduction as well as ILC's mission to promote secure and equitable access to and control over land for poor women and men.

As background, the level of direct interaction and familiarity with World Bank-financed projects overall was varied among the respondents, with three out of nine stating they have not had direct engagement with World Bank projects in the past. However, all respondents are familiar with the broad operations of the Bank, and most (seven out of nine) affirmed previous awareness of the Bank's safeguard review. All expressed a clear interest in engaging the Bank on this issue. In addition, most of those who responded have been heavily involved in the safeguards dialogue as well as other World Bank processes, with six out of nine submitting individual feedback to the Bank and four having participated since the very start of the review process in 2012.

There was an overall recognition that there are elements in the revised framework that demonstrate a solid improvement and upgrading of the safeguards. This is particularly true for the prohibition and adequate compensation of forced evictions even in cases of informal and traditional settlement (in ESS5), as well as the inclusion of the need to obtain free, prior and informed consent (FPIC) from indigenous communities when projects impact on them (in ESS7), mainly relating to land and resources as well as cultural heritage. At the same time, however, these kinds of advances may be weakened by the presence of certain clauses and references in the document which risk causing great harm to project-affected people and communities, as well as affecting the Bank's own capacity to effectively carry out its mission. Overall, the general sentiment was that the revised framework as it currently stands appears a dilution of existing standards, not in line with the Voluntary Guidelines or international human rights law, and so represents a potentially dangerous signal to other donors and investors that look to the Bank for direction.

When it comes to evaluating the first draft of the revised Environmental and Social Framework from the ILC's shared commitment to people-centered land governance, the ILC consultation concluded that commitments 1, 4, 5, 7 and 8 of PCLG<sup>6</sup> would benefit from increased

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<sup>5</sup> World Bank safeguards consultation website, [http://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/ga\\_safeguards\\_review\\_-\\_august\\_2014\\_-\\_140822.pdf](http://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/ga_safeguards_review_-_august_2014_-_140822.pdf).

<sup>6</sup> The original wording of these six commitments are as follows:

- 1) Respect, protect and strengthen the land rights of women and men living in poverty
- 4) Ensure gender justice in relation to land
- 5) Respect and protect the inherent land and territorial rights of indigenous peoples

attention and robustness. Respectively, these are related to the overall protection and strengthening of land rights of women and men living in poverty, gender justice, respecting and protecting the rights of indigenous peoples, inclusivity in decision-making processes, and transparency and accountability. An overview of major feedback on these specific commitments is below.

*Commitment 1) Respect, protect and strengthen the land rights of women and men living in poverty*

Consistent with the mandate of the ILC, respondents overall maintained that the framework's treatment of land issues could be more commensurate with the critical importance of land to people's lives and livelihoods. They stressed the missing link with existing standards and instruments that have been agreed at international level, notably the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forest and Fisheries*, the *UN Declaration on the Rights of Indigenous Peoples*, but also the *UN General Assembly's Outcome Document of the World Conference on Indigenous Peoples*, *ILO Convention 169* and the Bank's own *2012 World Development Report on Gender Equality*. They encourage a firm anchoring of the safeguard framework to the tenets and commitments contained therein.

While ESS5 contains a number of improvements as specified above, respondents advised the Bank to ensure that downstream impacts are effectively considered and that activities related to land titling/regularization activities and to regulation or planning of natural resources or land use to promote sustainability are not exempted from application of this standard's protections, as currently stated. In the present formulation, such activities are presupposed to be beneficial, and yet they might contain deleterious consequences if not assessed adequately with the participation of communities affected. In addition, they encourage the framework to keep the scope of the resettlement at a minimum as articulated in OP 4.12. This would ensure that ESS5 apply to any activity that the Bank contributes to, directly or indirectly, which results in physical or economic displacement, and not just to land acquisition and restrictions on land use.

Respondents also encouraged the Bank to consider application of benefit sharing in instances of displacement, so that those who have been impacted in this way are not made worse off but actually become ongoing beneficiaries of Bank-financed projects. It is also recommended that benefit sharing should account for the specific needs of women, children, persons with disabilities, elders and the poorest of the poor to prevent elite capture of benefits. It was stressed that, while the Framework makes a solid effort to recognize the diversity of tenure systems present around the world, the eligibility criteria for "affected persons" under ESS5 would be better able to capture diverse realities by being expanded beyond the individual level to encompass also the land rights of communities and collectives.

*Commitment 4) Ensure gender justice in relation to land*

The opportunity to better consider specific realities was brought up in relation to the gender dimension as well. Respondents pointed out that gender issues could be better mainstreamed in the framework in order to increase the quality of interventions and diminish gender-based inequalities, particularly in light of the Bank's own *Gender and Development Operational Policy*, which offers a concrete reference and foundation for the Bank's approach to gender issues and its implementation in Bank-financed projects. By fully integrating the Policy's commitments within the safeguards framework, the Bank would be better able to ensure higher accountability both for itself *and the Borrower* for integrating improved gender standards and gender sensitive interventions.

*Commitment 5) Respect and protect the inherent land and territorial rights of indigenous peoples*

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- 7) Ensure that processes of decision-making over land are inclusive
  - 8) Ensure transparency and accountability.

One of the strongest points made by ILC members participating in the consultation referred to the inclusion of a clause that makes reference to the possibility of Borrowers applying an "alternate approach" in cases where "*the Borrower has raised valid concerns regarding the application of ESS7 [on indigenous peoples]*". This 'special consideration' has raised alarm among many civil society and indigenous peoples' organizations in that it gives space for Borrowers to disregard ESS7 completely. Dropping this consideration would bring the Bank's framework back in line with international standards on indigenous peoples' rights, and ensure consistency in the application of the framework itself, with no need for an ambiguous 'alternative approach' to be implemented instead. In the same vein, while the inclusion of the need to obtain FPIC is new in the framework, its current formulation (pages 78-79) could be strengthened according to internationally-agreed standards and lessons learned in the implementation of FPIC.

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*Commitment 7) Ensure that processes of decision-making over land are inclusive*

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Respondents emphasized the critical importance of inclusive decision-making and proper consultation with all potential project-affected communities, including for those living downstream. In ensuring the adequate reflection of all community members, respondents called for a stronger emphasis on meaningful consultation with particular groups that might otherwise be marginalized from consultation processes, including women, youth and minority groups, and taking into consideration the possibility of holding separate consultations if necessary.

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*Commitment 8) Ensure transparency and accountability*

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Major feedback on issues of transparency and accountability was provided. Respondents felt that, with the splitting of responsibilities between the Bank and the Borrower according to a 'policy' on the one side and 10 'standards' on the other, the overwhelming majority of responsibility for implementing the framework would now be turned over to the borrower, thereby lifting the Bank from major accountability for itself. Rather, the Bank's role appears to be largely in due diligence and monitoring, albeit with unclear indicators, resources and processes/mechanisms for doing so. While respondents welcome the increased emphasis by the Bank on implementation, those familiar with the Independent Evaluation Group's past reports of the World Bank mentioned that adequate supervision and monitoring and evaluation has been a long-standing problem. Hence they invite the Bank to provide more information about how this increased follow-up role, with the effective participation of affected communities in monitoring, will be committed in practice.

In addition, in the comments there was consistent mention of the fact that the safeguards framework applies only to one of the Bank's three loan instruments, i.e. investment loans, and do not apply to Development Policy Loans or Program for Results (P4R), which make up a significant proportion of Bank financing. Respondents feel that this leads to confusion about which standards apply among borrowers but also among project-affected people. Advocating for a more coherent approach of the standards across the board of lending instruments would improve the quality of the Bank's support as well as its transparency.

It was also suggested that the Bank could improve its accountability by engaging in a comprehensive cost-benefit analysis as part of the due diligence process, weighing a project's intended development benefits to the overall social public good. The current draft of the ESF does not specify that this be done, but seems to pre-suppose that the project development rationale justifies any effects. Instead, a cost benefit analysis, including social and cultural dimensions, would provide a clearer picture of potential impact, thereby enabling a clearer decision on whether to discontinue a proposed intervention or ensure proper mitigation.

Finally, the sourcing and transparency of information was mentioned by respondents as being of critical importance. The framework states that monitoring and diligence will be based on

information provided primarily by the borrower itself, which ILC respondents say in many cases is likely to be biased and skewed out of vested interest. Likewise, the "Use of the Borrower's ES Framework" has significant limitations in that it 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 policies and laws in place and 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 Bank standards. Instead of relying on Borrower submissions, therefore, information would be more robust if triangulated through other forms, particularly by counting on civil society and indigenous experts (in the case of indigenous issues), as well as based on a clear verification process.

Given the high proportion of development funding that is administered by the World Bank to recipient governments, ILC members argue that the policies that govern the disbursement and implementation of Bank funds have a direct and significant impact on people and the environment, with far-reaching implications on the overall governance of land and natural resources, and broader local, national, regional and international impacts. At a time when we are witnessing intensifying global competition for land, water, and forest resources, ILC members hold strong appreciation for any and all efforts promoting openness, transparency and accountability to people depending on land and living in conditions of poverty.

The Bank's safeguards are a crucial element also due to the relative weight of the World Bank as an institution worldwide, thus the importance of ensuring that the revised framework is a positive example for other institutions of similar calibre and functioning. Indeed, many respondents considered the Bank's previous environmental and social protections pioneering at the time of their development. Ultimately, the feedback and suggestions made above and in more detail in the following pages are to be seen as a contribution to this mission and as an opportunity to further strengthen the safeguards at a time when economically, socially and environmentally responsible development is becoming increasingly important.

### **Synthesis and Recommendations on the first draft of the revised safeguards framework**

Feedback into the World Bank's first draft of its revised Environmental and Social Safeguards Framework is based on those sections of the framework that most relate to land rights and pro-poor, people-centred land governance, consistent with the mission and vision of the ILC. The synthesis of responses from ILC participants is thus structured around the following: general assessment on the first draft as a whole, input into the overall World Bank Environmental and Social Policy, input into the Environmental and Social Standards 1, 5, and 7, and finally, additional comments including on the overall compatibility with ILC's mission and the satisfactory integration of gender considerations. Each section specifies the main concerns, proposed suggestions and recommendations, and, where applicable, refers to direct changes proposed in the text. These inputs are complemented and supported by direct quotations from respondents.

Full contributions under each section can be found in Annex I.



## A. General assessment on first draft

Critical points and issues raised	Suggestions & recommendations
<ul style="list-style-type: none"> <li>• The current draft displays a number of shortcomings in relation to the ILC's mission of pro-poor and people-centered land governance but has potential to make a significant step forward in the protection against environmental and social risks in development</li> </ul>	<ul style="list-style-type: none"> <li>➤ A call for thoughtful consideration by the World Bank on the feedback received</li> </ul>
<ul style="list-style-type: none"> <li>• Particular apprehension about the fate of indigenous peoples, especially as regard the 'alternative approach' clause for ESS7</li> </ul>	<ul style="list-style-type: none"> <li>➤ Drop the 'opt out' clause for ESS7 (more on this below)</li> </ul>
<ul style="list-style-type: none"> <li>• Absence of the international legal framework for land rights, IPs, gender equality, etc.</li> <li>• There is a missing link with key international human rights standards and instruments, notably the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forest and Fisheries (VGGTs) and the UN Declaration of the Rights of Indigenous Peoples (UNDRIP)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Anchor the Framework to the most important international human rights standards and instruments, particularly the VGGTs and UNDRIP</li> </ul>
<ul style="list-style-type: none"> <li>• Provisions for Free, Prior and Informed Consent could better reflect international benchmarks, albeit recognition of its inclusion</li> </ul>	<ul style="list-style-type: none"> <li>➤ Strengthen the provisions for FPIC (more on this below)</li> </ul>
<ul style="list-style-type: none"> <li>• The restricted application of the framework to investment lending and exclusion of other modalities, including Development Policy Loans or Program for Results (P4R) may create confusion among borrowers, project-affected people and communities, and limits the coherence of World Bank development assistance</li> </ul>	<ul style="list-style-type: none"> <li>➤ Apply the 10 standards to all Bank lending mechanisms for greater coherence and clarity</li> </ul>
<ul style="list-style-type: none"> <li>• Positive endorsement of the Bank's increased commitment to monitoring of implementation, but preoccupation with actual human and financial capacity for closer review and follow-up, especially given reportedly limited application in the past</li> </ul>	<ul style="list-style-type: none"> <li>➤ Clarify how the Bank's greater monitoring role will be committed in practice</li> </ul>
<ul style="list-style-type: none"> <li>• No robust engagement of local people and communities, as well as particular groups</li> </ul>	<ul style="list-style-type: none"> <li>➤ All potentially affected peoples and communities must be consulted and included in decision-making processes, with purposeful inclusion of potentially marginalized groups such as women, youth and minorities</li> <li>➤ Ensure potential affectees downstream are properly included in consultation, restoration and compensation</li> </ul>
<ul style="list-style-type: none"> <li>• Recognized improvements on the current safeguard policies with respect to land, housing and indigenous peoples' rights, but the presence of loopholes and 'exemption' clauses in key parts of the framework facilitate evasion in applying some of the standards and decrease accountability by Bank and Borrower, including:</li> </ul>	<ul style="list-style-type: none"> <li>➤ Drop the 'opt out' clause for ESS7</li> </ul>

<ul style="list-style-type: none"> <li>○ The possibility of utilizing an 'alternative approach' instead of ESS7</li> <li>○ Exclusion of 'downstream' project-affected peoples</li> </ul>	
<ul style="list-style-type: none"> <li>● Inadequate safeguards on land tenure in the current draft</li> </ul>	<ul style="list-style-type: none"> <li>➤ Standards on land tenure could be strengthened through the inclusion of, inter alia: <ul style="list-style-type: none"> <li>○ Binding safeguards to ensure that land transactions that occur in connection with Bank-financed projects, including agriculture projects, are truly voluntary</li> <li>○ Protections for project affected communities who are either indigenous or non-indigenous but practice a customary or collective tenure system;</li> <li>○ Safeguards against instigating land conflict and/or weakening of tenure status in both urban and rural areas; and</li> <li>○ Safeguards against increased land consolidation and inequality in land holdings</li> </ul> </li> </ul>

**Significant quotes from respondents:**

*"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." (AIPP, FPP, IWGIA)*

*"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. [...]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." (AIPP, FPP, IWGIA)*

*"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. [...]there has been no information provided about how staff will be funded and supported to undertake these additional tasks." (AIPP)*

*"The Bank is [...] undermining significant progress achieved in the development of national level laws and policies recognizing and protecting the unique rights of indigenous peoples." (AIPP)*

*"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." (CDE)*

*"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." (FPP)*

*"This impact [of the exemption clause for ESS7] 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." (FPP)*

*"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 governments 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." (IWGIA)*

*"The African Commission has officially expressed deep concern to the President of the World Bank over the proposed 'alternative approach'." (IWGIA)*

*"Local people and community engagement is not strong." (JASIL)*

*"Any possible negative impacts of the project shall be preliminarily informed to the likely affected people and should get their comments from them." (JASIL)*

*"...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 [...]." (JASIL)*

*"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. [...]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." (Oxfam)*

*"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." (Oxfam)*

*"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." (Oxfam)*

**B. The World Bank Environmental and Social Policy**

Critical points and issues raised	Suggestions & recommendations	Proposed changes to specific text/wording (where applicable)	
<ul style="list-style-type: none"> <li>Absence of international legal framework</li> </ul>	<ul style="list-style-type: none"> <li>Anchor the framework to key internationally-recognized standards and benchmarks, particularly the VGGTs and UNDRIP</li> </ul>		
<ul style="list-style-type: none"> <li>The 'scope of application' gives the Bank too much discretion to decide acceptable compliance</li> </ul>	<ul style="list-style-type: none"> <li>Ensure that the language of the frameworks reflects a commitment to objective evaluation of project risks, rather than unfettered discretion by the Bank</li> </ul>	<p><i>Page 10, Paragraph 7</i></p>	<p>The Bank will only support projects that are consistent with, and within the boundaries of, its Articles of Agreement and are expected to meet the requirements of the ESSs in a manner and within a timeframe acceptable to the Bank. (Apply this to all similar references throughout the document)</p>
<ul style="list-style-type: none"> <li>Particular apprehension for the treatment and fate of indigenous peoples, especially in relation to the 'alternative approach,' which may cause great harm to IPs if not awarded the necessary protections of ESS7</li> </ul>	<ul style="list-style-type: none"> <li>Remove the 'opt-out' clause in paragraph 9 of ESS7. ESS7 must be applied in any instance in which there are indigenous peoples present.</li> </ul>	<p><i>Page 15, Paragraph 33</i></p>	<p><del>33. In order to determine the applicability of ESS7, the Bank will undertake a screening to determine whether Indigenous Peoples are present in, or have collective attachment to, the project area. 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</del></p>

			<p><del>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. The agreement between the Bank and the Borrower regarding this approach will be set out in the ESCP</del></p>
<ul style="list-style-type: none"> <li>• Responsibility for implementing the standards largely turned over to the Borrower, which dilutes the Bank's own accountability</li> </ul>	<ul style="list-style-type: none"> <li>➤ The Bank should take equal responsibility for implementation of the standards in addition to the Borrower</li> <li>➤ Equal responsibility would strengthen the quality of the Bank's engagement and overseeing functions</li> </ul>		
<ul style="list-style-type: none"> <li>• As currently stated, the due diligence process depends on information provided by the borrower (page 14, paragraph 29). This does not guarantee objective information upon which to make major financing decisions</li> </ul>	<ul style="list-style-type: none"> <li>➤ The due diligence process would be much stronger if triangulation of information occurs: within the ESF, include a requirement to determine the accuracy and rigor of information provided by the Borrower through other sources (civil society, individual experts, community resource persons, etc.)</li> </ul>	<p><i>Page 14, Paragraph 29</i></p>	<p>The Bank's due diligence responsibilities will include, as appropriate: (a) reviewing the <del>information provided by the Borrower relating to the environmental and social risks and impacts of the project, and requesting additional and relevant information where there are gaps that prevent the Bank from completing its due diligence</del> <u>information from multiple sources, including from the</u></p>

			<p><u>Borrower, recognized experts, civil society, and community representatives.</u></p> <p>The Borrower <u>and Bank</u> <del>is</del> <u>are</u> responsible for ensuring that all relevant information is <del>provided to the Bank</del> <u>consulted</u> so that the Bank can fulfill its responsibility to undertake environmental and social due diligence in accordance with this Policy.</p>
<ul style="list-style-type: none"> <li>• Obtaining consent by wrong means is a significant preoccupation in many parts of the world, but the framework does not account for this possibility</li> </ul>	<ul style="list-style-type: none"> <li>➤ Risks and impacts to be assessed include a consideration on whether consent was appropriately given</li> </ul>	<p>Page 9, Paragraph 4(b)</p>	<p><u>(viii) 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></p>
<ul style="list-style-type: none"> <li>• Recognition of multiple forms of land tenure and customary practice is limited, including communal and traditional, as well as for some specific stakeholder groups who are little mentioned</li> </ul>	<ul style="list-style-type: none"> <li>➤ Strengthen attention to diverse and traditional forms of cultural practice and land governance, including those in voluntary isolation</li> <li>➤ Make consistent mention of all kinds of stakeholders, including nomadic pastoral herders and forest users</li> </ul>	<p>Page 9, Paragraph 4</p>	<p>(ii) risks that project impacts fall disproportionately on disadvantaged or vulnerable groups, <u>and groups in voluntary isolation</u></p>
		<p>Page 9, Paragraph 4</p>	<p>(vii) risks to cultural heritage and <u>traditional/customary governance systems and practices</u></p>
<ul style="list-style-type: none"> <li>• Inadequate due diligence requirements, particularly in assessing project risks of displacement proportional to the greater public good</li> </ul>	<ul style="list-style-type: none"> <li>➤ Strengthen due diligence (page 9, paragraph 4) requirements through: <ul style="list-style-type: none"> <li>○ Inclusion of the need to undertake a concrete cost-benefit analysis weighing the project's potential displacement</li> </ul> </li> </ul>	<p>Page 14, Section C</p>	<p>Include following statement:  <u>The due diligence process will include a cost-benefit analysis which will evaluate the risk of displacement against the overall</u></p>

	<p>impacts to society/public good as a whole</p> <ul style="list-style-type: none"> <li>○ Inclusion of a specific risk assessment for indigenous peoples with their full and effective participation</li> </ul>		<p><u>expected development benefits. If risks are disproportionate to the public good, or if risks are unlikely to be effectively mitigated, then the project will not be approved.</u></p>
<ul style="list-style-type: none"> <li>● Some limitations in the application of FPIC and in the realization of inclusive consultation processes that are respectful of customary decision-making procedures</li> </ul>	<ul style="list-style-type: none"> <li>➤ Strengthen the provisions for FPIC and inclusive consultation (more under ESS7)</li> <li>➤ Ensure that project-affected communities are fully informed of both information disclosure mechanisms and the Grievance Redress Service (GRS). This will increase legitimacy and mutual trust/collaboration</li> </ul>	<p>Page 17, Paragraph 45</p>	<p><del>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.</del></p>
		<p>Page 15, Paragraph 34</p>	<p>For all projects involving the 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</u></p>



			<p><u>sub-borrowers' conduct of environmental and social assessment of proposed subprojects is done in close cooperation with local communities and the public.</u></p>
		<p>Page 16, Paragraph 42</p>	<p>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 update 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.</p>
<ul style="list-style-type: none"> <li>• Over-reliance on E&amp;S assessment by the Borrower. Requirement of the Borrower to conduct an environmental and social assessment only in the case of "High Risk" sub-projects may incentivize lower classifications in order to avoid this obligation</li> </ul>	<ul style="list-style-type: none"> <li>➤ Apply the ESSs to all projects and sub-projects regardless of the classification.</li> <li>➤ Remove specification that environmental and social assessment should be done only in the case of 'high risk' sub-projects</li> <li>➤ The Bank must be involved in the classification of project risk, rather than relying on the Borrower's judgement call</li> </ul>	<p>Page 15, Paragraphs 34-35</p>	<p><del>34. [...] Where the Bank is not satisfied that adequate capacity exists on the Borrower's part, all High Risk subprojects, including the environmental and social assessment, will be subject to prior review and approval by the Bank.</del></p> <p>35. The Bank will require the</p>

			<p>Borrower to carry out appropriate environmental and social assessment of all subprojects in accordance with national law <del>ESSs 1 to 8 and ESS10</del>. Where subprojects are classified as <del>High Risk</del>, the environmental and social assessment will be consistent with ESSs 1 to 8 and ESS10. The Bank will require the Borrower to ensure that subprojects are structured to meet national regulatory requirements relating to environmental and social risks and impacts, and where subprojects are classified as <del>High Risk</del>, they are also structured to meet ESSs 1 to 8 and ESS10.</p>
<ul style="list-style-type: none"> <li>• Very weak requirements for evaluating outcomes</li> </ul>	<ul style="list-style-type: none"> <li>➤ Strengthen the evaluation procedures at outcome level, possibly by implementing the IEG's 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."</li> </ul>	<p>Page 17, Paragraph 46</p>	<p><del>A project will not be considered complete until the measures and actions set out in the legal agreement (including the ESCP) have been implemented.</del> A project will not be considered complete until the measures and actions set out in the legal agreement (including the ESCP) have been implemented, and performance indicators on environmental and social outcomes are evaluated.</p>
<ul style="list-style-type: none"> <li>• Uncertainty in how the Bank's greater review,</li> </ul>	<ul style="list-style-type: none"> <li>➤ Strengthen and clarify Bank supervision and</li> </ul>		

monitoring and supervision role will be committed	monitoring arrangements, so that the Bank's capacity is commensurate with its increased role and the framework has greater guarantees for being effectively implemented		
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**Significant quotes from respondents:**

*"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 [...]in relation to all activities/projects impacting on the lands and land tenure security of indigenous peoples." (IWGIA)*

*"[...] 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)*

*"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)*

*"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." (Oxfam)*

*"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." (Oxfam)*

*"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)*

*"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." (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)*

*"...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)*

*"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." (FPP)*

*"This paragraph [45] 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." (IWGIA)*

*"[...] 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)*

*"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 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)*

**C. Environmental and Social Standard 1 (ESS1): Assessment and Management of Environmental and Social Risks and Impacts**

Critical points and issues raised	Suggestions & recommendations	Proposed changes to specific text/wording (where applicable)	
<ul style="list-style-type: none"> <li>• Use of financial intermediaries is unclear and the application of the ESSs only in light of "high risk" sub-projects may incentivize the Bank and Borrower to design projects so that they are implemented through subprojects wherever possible, and to classify subprojects at lower risk in order to reduce the costs and attention required in terms of E&amp;S management</li> </ul>	<ul style="list-style-type: none"> <li>➤ All projects funded by World Bank financing must be subject to the same standards, not only "high risk"</li> <li>➤ The Bank must be involved in the classification of project risk, rather than relying on the Borrower's judgement call</li> <li>➤ As many countries do not have a solid national framework on land acquisition and resettlement, the Bank can divert serious risks to potential affected peoples and communities by demanding that all Bank-financed projects are subject to the ESSs.</li> </ul>	<p>Page 18, Paragraph 29</p>	<p>If the project involves the preparation of subprojects, the Borrower will carry out appropriate environmental and social assessment of each subproject in accordance with national law <u>ESSs 1 to 8 and ESS10</u>. <del>Where subprojects are classified as High Risk, the environmental and social assessment will be consistent with ESSs 1 to 8 and ESS10. Borrowers will ensure that subprojects are structured to meet national regulatory requirements relating to environmental and social risks and impacts, and where subprojects are classified as High Risk, they are also structured to meet ESSs 1 to 8 and ESS10.</del></p>
<ul style="list-style-type: none"> <li>• Environmental and social assessment by the Borrower is limited in scope</li> </ul>	<ul style="list-style-type: none"> <li>➤ The assessment would be much stronger if based on both current but also past information.</li> </ul>	<p>Page 26, Paragraph 26</p>	<p>The environmental and social assessment will be based on current <u>and past</u> information [...]</p>
<ul style="list-style-type: none"> <li>• Significantly diluted requirements for resettlement planning compared to previous safeguards, including:</li> </ul>	<ul style="list-style-type: none"> <li>➤ Resettlement and livelihood support plans to be prepared as part of ESF and budgeted <i>prior</i> to project approval and included in the total</li> </ul>	<p>Page 29, Paragraph 34</p>	<p>The Borrower <u>in close consultation with project affected communities/</u></p>

<ul style="list-style-type: none"> <li>○ No requirement for a comprehensive resettlement plan during the project appraisal stage</li> <li>○ No need for the borrower to provide the Bank and project-affected people and civil society with the relevant draft resettlement instrument before project approval, but rather a simple Environmental and Social Commitment Plan (ESCP), which would not guarantee that they can effectively evaluate and comment on draft resettlement plans and budgets before the project is voted</li> <li>○ The full costs of resettlement activities necessary to achieve the objectives of the project are not necessarily known beforehand due to the fact that a comprehensive resettlement plan is not requested during the project appraisal stage. This means there is no way for the Bank to know whether the Borrower is willing and able to provide the full resources necessary to finance resettlement needs</li> </ul>	<p>project budget; revision of these plans and budgets would provide the Bank a significantly stronger basis upon which to determine whether a project can really abide by the ESSs and hence whether or not to support the project. In addition, knowing this information beforehand would prevent potential delays caused by unexpected or unaccounted for instances of non-compliance by a borrower. This would save potential cost implications to the Bank as well.</p> <p>➤ The preparation of the Environmental and Social Commitment Plan would be stronger and more legitimate if done in cooperation with project-affected communities</p>		<p><u>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.</p>
<ul style="list-style-type: none"> <li>● Obtaining consent by wrong means is a significant preoccupation in many parts of the world, but the framework does not account for this possibility</li> </ul>	<p>➤ The Bank could specify enforcement actions and sanctions in the ESF to affect the behavior of the Borrower in cases of non-compliance during the life of the project. This would clarify to the Borrower the consequences that it could expect if expectations are not met, heightening the capacity to monitor compliance.</p>	<p>Page 27, Paragraph 26(b)</p>	<p><u>(viii) 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></p>

	<ul style="list-style-type: none"> <li>➤ Protection against consent by wrong means in the ESF would decrease the risk particularly by vulnerable communities and peoples</li> </ul>		
<ul style="list-style-type: none"> <li>• The environmental and social risks and impacts of the project that have to be gauged within the environmental and social assessment do not consider indigenous peoples as a distinct and specific deliberation</li> </ul>	<ul style="list-style-type: none"> <li>➤ Add a specific risk assessment for indigenous peoples to the environmental and social risks and impacts that will have to be assessed and managed by the Borrower with the full and effective participation of affected indigenous peoples' communities (page 27, paragraph 26)</li> </ul>	<p>Page 27, Paragraph 26(b)</p>	<p><u><i>ix) Specific risks and impacts associated with indigenous peoples and their unique customs and rights</i></u></p>
<ul style="list-style-type: none"> <li>• "Use of the Borrower's ES Framework" has significant limitations in that it requires the Bank only to assess the laws and policies in place in a given country, with: <ul style="list-style-type: none"> <li>○ No attention required on the actual practice of policies and laws in place</li> <li>○ 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 Bank standards</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ Inclusion of a complementary review of a country's actual practice of policies and laws would significantly strengthen the bank's understanding of whether the borrower's ES framework is sufficient to manage, mitigate and compensate risk. One very effective way to cross-check this issue is to consult with individual experts and potential project-affected peoples.</li> </ul>		
<ul style="list-style-type: none"> <li>• The 'mitigation hierarchy' in page 26, paragraph 25 seems to imply 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</li> </ul>	<ul style="list-style-type: none"> <li>➤ Clarify the 'financial feasibility' of paragraph 25 to state that 'non-viability' should mean the project does not proceed, not that the Borrower need not compensate affected families in order to make the project "viable"</li> </ul>	<p>Page 26, Paragraph 25</p>	<p>The environmental and social assessment will apply a mitigation hierarchy, which will favor the avoidance of impacts over minimization or reduction of impacts to acceptable levels, and where residual impacts remain, will compensate for/offset them, <del>whenever technically and financially</del> feasible.</p>



**Significant quotes from respondents:**

*"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." (FPP)*

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

*"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)*

*"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." (Oxfam)*

*"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." (Oxfam)*

*"...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." (Oxfam)*

*"Yes, [paragraph 26 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)*

*"...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)*

*"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." (AIPP) (FPP)*

*"As currently worded, the mitigation hierarchy appears to only require compensation for "residual impacts" where it is "technically and financially feasible." [...] 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"." (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. [However] In most Borrower country jurisdictions the legal framework on land acquisition and resettlement are very weak and often incomplete." (Oxfam)*

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

Critical points and issues raised	Suggestions & recommendations	Proposed changes to specific text/wording (where applicable)	
<ul style="list-style-type: none"> <li>• ESS5 does not adhere to the standards existing in the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forest and Fisheries</li> </ul>	<ul style="list-style-type: none"> <li>➤ Ensure better reflection of the principles and tenets of the VGGTs in this standard</li> <li>➤ ESS5 should apply to any activity that the Bank contributes to, directly or indirectly, which results in physical or economic displacement, and not just to land acquisition and restrictions on land use</li> </ul>		
<ul style="list-style-type: none"> <li>• ESS5 is significantly diluted compared to its predecessor in OP 4.12:                             <ul style="list-style-type: none"> <li>○ The scope of resettlement is severely narrowed compared to before.</li> <li>○ Resettlement is no longer seen as a development opportunity</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ Maintaining the language from OP 4.12 paragraph 4 would ensure no dilution to the resettlement scope</li> <li>➤ The Bank may consider engaging in benefit sharing (under ESS5) in instances of displacement, thereby ensuring those displaced are not made worse off and instead become beneficiaries themselves. This has the potential to transform resettlement into a development opportunity instead.</li> </ul>	Page 55	<p><u>'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.'</u> (re OP 4.12)</p>
		Page 59, Paragraph 10	<p>...the Borrower will also provide opportunities to displaced communities and persons to derive appropriate</p>

			development benefits from the project, <u>which will fully compensate their livelihood in long run.</u>
<ul style="list-style-type: none"> <li>• Exemptions to the application of ESS5 (pages 57-58, paragraph 5) raise serious questions, particularly (d) Land titling/regularization activities, and (e) Regulation or planning of natural resources or land use on a regional or national level to promote sustainability. <ul style="list-style-type: none"> <li>○ No definition or scope provided for these two elements</li> <li>○ Does not capture the potential misuse of such activities (for example the displacement of communities due to misguided conservation efforts)</li> </ul> </li> </ul>	➤ Remove elements (d) and (e) captured in paragraph 5, page 57-58, from the exemption list for ESS5	Page 57-58, Paragraph 5	<del>(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.</del>
<ul style="list-style-type: none"> <li>• Downstream displacement impacts are not captured by ESS5 because it is limited to impacts of land acquisition and restrictions on land use, risking great harm to potential affectees of a project</li> </ul>	➤ Include a clause specifying that downstream impacts are accounted for and compensated/restored as per ESS5 safeguards. In this way the Bank and borrower can ensure all displacement risks are effectively accounted for.		
<ul style="list-style-type: none"> <li>• Eligibility for 'affected persons' under ESS5 (page 58, paragraph 6) is defined in individual terms, thereby excluding collective forms of tenure</li> </ul>	➤ Refine eligibility criteria under 'affected persons' (page 58, paragraph 6) to focus more on communities and community land rights	Page 58, Paragraph 6	<p>Affected persons may be classified as persons <u>or communities.</u></p> <p>Add: <u>(d) Who claim land or land use rights, even where the national legislation does not include customary rights the people followed traditionally.</u></p>

			<u>and the project is infringing these rights</u>
<ul style="list-style-type: none"> <li>• Involuntary resettlement in relation to indigenous peoples needs more articulate mention in ESS5</li> </ul>	<ul style="list-style-type: none"> <li>➤ UNDRIP paragraph 28 offers the most effective and accepted reference for provision of compensation of indigenous peoples. The text can refer to this for greater scope and adherence to international standards.</li> <li>➤ ESS7 to remain the reference for any instance in which indigenous peoples are present. Clearly state in ESS5 that in instances in which indigenous peoples are affected it is ESS7 that will apply.</li> </ul>		<p><u>Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.</u></p> <p><u>Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.</u></p>

**Significant quotes from respondents:**

*"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)*

*"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." (Oxfam)*

*"...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.[...] 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)*

*"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)*

*"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." (CDE)*

*"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)*

*"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)*

*"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..." (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. [...] 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." (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)*

*"It is notable that eligibility [of "affected persons" under ESS5 (page 58, paragraph 6)] 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)*

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

Critical points and issues raised	Suggestions & recommendations	Proposed changes to specific text/wording (where applicable)	
<ul style="list-style-type: none"> <li>• Critical shortcomings in this standard, first and foremost the clause which leaves open the possibility of Borrowers adopting an 'alternative approach'                             <ul style="list-style-type: none"> <li>○ Is not in line with international standards and conventions , particularly UNDRIP</li> <li>○ Can undermine significant progress made at national level with regards to indigenous peoples</li> <li>○ Other standards cannot satisfactorily ensure the protections that indigenous peoples must have; they are in no way inter-changeable</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ Remove Section 9 where governments can simply “opt out” of applying the policy requirements intended to protect indigenous peoples.</li> <li>➤ Remove footnote 14, Page 81, Paragraph 25: the reference to ESS5 superseding in cases where IPs hold individual tenure. The existence of individual land holders does not mean collective tenure is absent, hence ESS7 and FPIC should be applied whenever IPs are present and cannot be replaced by ESS5. Ensuring the application of ESS7 in such individual tenure cases also upholds the relocation-related provisions of this standard.</li> <li>➤ Page 76, paragraph 8: The determination of whether indigenous peoples are present in, or have collective attachment to the project area, would be much more effective if it involved indigenous experts and indigenous own institutions and representatives from the proposed project area.</li> </ul>	<p><i>Page 76, Paragraph 9</i></p>	<p><del>Where the Borrower is concerned that the process of identifying groups for purposes of applying this ESS would create a serious risk of exacerbating ethnic tension or civil strife, or where the identification of culturally-distinct groups as envisioned in this ESS 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. [...]</del></p>
		<p><i>Page 81, Paragraph 25, Footnote 14</i></p>	<p>Remove</p>
		<p><i>Page 76, Paragraph 8</i></p>	<p>Following a determination by the World Bank <u><i>in consultation with indigenous experts and indigenous own institutions and representatives</i></u> that Indigenous Peoples are present in, or have collective attachment to the</p>



			project area, the Borrower may be required to seek inputs from appropriate specialists to meet the consultation, planning, or other requirements of this ESS.
<ul style="list-style-type: none"> <li>• ESS7 does not account for instances in which indigenous peoples are the majority population and where customary forms of tenure hence govern a majority of the territory. Rather, it envisions indigenous peoples as a distinct social and cultural group</li> </ul>	<ul style="list-style-type: none"> <li>➤ ESS7 would be better able to capture the multitude of indigenous realities around the world by either encompassing circumstances in which the majority of the population in a country practices a customary form of tenure, or by formulating a separate set of standards on land tenure to address this issue, to ensure no harm is done to these populations.</li> </ul>		
<ul style="list-style-type: none"> <li>• Inclusion of FPIC is positive and welcome, but: <ul style="list-style-type: none"> <li>○ It cannot be set aside along with the whole standard in favour of an 'alternative approach'</li> <li>○ The current formulation in paragraphs 19-22 does not comply with international standard</li> <li>○ The requirement for FPIC should be based on the full recognition and respect of their collective rights to their lands, territories and resources and not simply on their “vulnerability”</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ The section on FPIC would be better aligned with agreed benchmarks by including those principles already articulated in key international standards (see right)</li> </ul>	Page 78-79, Section B	<p><u>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.</u></p> <p><u>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</u></p>

		<p>Page 79, Paragraph 20(d)</p>	<p><u>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.</u></p> <p><u>3. Disclosure of information must be required to be in a language and in appropriate forms to be fully understood by the affected communities.</u></p> <p><u>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.</u></p> <p><u>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.</u></p> <p><u>Customary decision making processes of indigenous peoples respect and recognize collective decisions of the community</u></p>
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			<u>resulting in 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>
<ul style="list-style-type: none"> <li>• The 'meaningful consultation' process does not sufficiently account for involvement of key community members and constituencies other than representative bodies and organizations, in particular women and youth</li> </ul>	<ul style="list-style-type: none"> <li>➤ Consultation processes would be more transparent and meaningful by ensuring participation of women, youth and other minority groups. This may require separate consultations with these constituencies if necessary to ensure their views are taken into account.</li> <li>➤ Any form of Indigenous Peoples' Plan or related planning document to be developed in close partnership with the affected indigenous peoples</li> </ul>	Page 78, Paragraph 18(a)	(a) Involve Indigenous Peoples' representative bodies and organizations (e.g., councils of elders or village councils, or chieftains) and, <del>where appropriate,</del> other community members <u>including women, youth and minority groups.</u>
<ul style="list-style-type: none"> <li>• On the grievance mechanism</li> </ul>	<ul style="list-style-type: none"> <li>➤ Specify that sanctions will apply within grievance mechanism (paragraph 31) and effective access by indigenous peoples</li> </ul>	Page 82, Paragraph 31	Add: <u>Clear sanctions shall be identified for any violations committed. I.e. Grave violations committed against indigenous peoples shall result in the discontinuity of the project</u>

**Significant quotes from respondents:**

*"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." (AIPP) (FPP) (IWGIA)*

*"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)*

*"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." (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." (Oxfam)*

*"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)*

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

*"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." (AIPP) (FPP) (IWGIA)*

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

*"[...]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)*

**F. Additional comments: overall compatibility with PCLG, reflections on gender sensitivity & mainstreaming, and final points**

Critical points and issues raised	Suggestions & recommendations
<ul style="list-style-type: none"> <li>• Overall, the framework is not sufficiently compatible with the ILC's 10 commitments of people-centered land governance</li> </ul>	<ul style="list-style-type: none"> <li>➤ The improvements stated above can make it into a strong promoter of PCLG</li> </ul>
<ul style="list-style-type: none"> <li>• Gender issues are not sufficiently integrated in the text</li> <li>• Borrowers are not held accountable to ensuring concrete attention to gender issues</li> <li>• Women's land rights not sufficiently promoted in the framework</li> <li>• No linkage with the Bank's own Gender and Development Operational Policy</li> </ul>	<ul style="list-style-type: none"> <li>➤ The greatest benefit would come from a stand-alone gender standard, but at a minimum greater mainstreaming of gender issues in the framework and attention to gender-differentiated needs, impacts and opportunities would increase the Bank's capacity to contribute to decreasing gender-based inequalities</li> <li>➤ Greater mention of women's land rights as an issue to be properly assessed and promoted within Bank-financed projects would also make a significant contribution</li> <li>➤ Link the framework to the Bank's Gender and Development Operational Policy, and integrate the principles of the policy into the framework to make the two compatible</li> <li>➤ These provisions would guarantee higher accountability both for the Bank and the Borrower in applying gender-related principles and objectives</li> </ul>
<ul style="list-style-type: none"> <li>• On the Inspection Panel:               <ul style="list-style-type: none"> <li>○ Its mandate has not been revised as necessary to fulfil the new duties under the revised ESF</li> <li>○ Its accountability has been reduced</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Clarify the role and accountability of the Inspection Panel within the revised framework and the Bank's stated greater monitoring role</li> </ul>

**Significant quotes from respondents:**

*"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)*

*"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.[...] 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[...]. Measures to provide Joint rights or Women's rights to own land shall be made conditional in Bank-related programs." (SDF)*

*"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." (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." (FPP)*

*"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)*