



**SUBMISSION OF THE RIGHTS AND RESOURCES INITIATIVE ON
THE WORLD BANK DRAFT ENVIRONMENTAL AND SOCIAL FRAMEWORK DATED JULY 30, 2014**

February 27, 2015

The Rights and Resources Initiative (RRI) is a global coalition of 14 Partners and more than 150 Collaborator organizations engaged in forest and land policy reform in Africa, Asia, and Latin America. RRI is participating in the safeguards consultations to provide the World Bank with recommendations that draw on our analytical work on these issues and the experiences of the RRI coalition on the ground.

While the July 30, 2014 draft Environmental and Social Framework includes some positive developments, overall we find that the draft represents a significant weakening of World Bank safeguard standards and procedures. This is of particular concern given that the World Bank has played a leadership role over the last several decades in the establishment of social and environmental safeguards for development finance. Other international financial institutions, private investors, and governments look to the World Bank's safeguards for guidance on issues concerning Indigenous Peoples, resettlement, and sustainable development, and the standards have inspired similar systems within regional development banks, the Equator Principles, UNFCCC and others. A weakening of World Bank standards risks a cumulative, cascading effect on the development community. Instead, the World Bank should strengthen its standards through adoption of a human rights-based approach to development, thus differentiating itself and earning a more valued place in the global arena.

Strong standards are particularly important as the lack of clarity and recognition of indigenous and community land and resource rights across the developing world has become a global crisis, undermining progress on social and economic development, human rights, food security, conservation, and climate change goals. Ownership of roughly one-half of rural, forest and dryland areas of the developing world is contested, directly affecting the lives and livelihoods of over two billion people.¹ A 2014 RRI global analysis of legally-recognized land rights governing forested areas found that 73 percent of forests continue to be directly held and administered by governments, despite widespread customary rights and de facto management by Indigenous Peoples and local communities.² A 2013 report published by the World Bank acknowledges this problem, noting that African governments frequently do not recognize informal land tenure as a source of compensable rights and that this is "a problem in a context where 90 percent of all rural holdings are estimated to be unrecorded."³ Even among countries that legally recognize Indigenous Peoples' and community rights to hold land, implementation is often weak. Inconsistent recognition by borrower governments means that it is particularly important that the World Bank develop strong and consistent safeguards to ensure that Bank projects will not interfere with the land and resource rights of Indigenous Peoples and local communities.

A key overarching concern is that the proposed safeguards framework encourages beneficiaries to assume greater responsibility for the planning and implementation of Bank safeguards, while limiting the Bank's corollary responsibility to verify compliance with the environmental and social standards, allowing the Bank to rely heavily on information supplied by the borrower.⁴ ***If a borrower-led approach to safeguards is to succeed, the proposed safeguards must establish rigorous complementary responsibilities for Bank oversight and verification.*** This involves defining clear, measurable, and enforceable criteria by which to assess both relevant laws and policies of the borrower country and the actual practice of the country in meeting the standards contained in these laws and policies; requiring—where needed—the development of the borrowers' capacity for safeguards planning and implementation; articulating mandatory procedures for the Bank to conduct on-the-ground verification of the borrowers' efforts to plan, implement, monitor, and evaluate safeguards in the context of individual projects; and developing clear mechanisms for enforcement in the event of noncompliance. The absence of rigorous oversight and verification mechanisms will significantly increase the risk that Bank-funded projects will harm communities and degrade natural resources. Moreover, ***the proposed safeguards framework must be applicable to all types of Bank financing, not just investment financing, as indicated in the draft safeguards framework.***⁵

In addition to these overarching concerns and recommendations, the following sections identify shortcomings and summarize key recommendations related to (1) Indigenous Peoples, (2) land acquisition and resettlement, and (3) biodiversity conservation. They supplement and build on the in-depth analyses of RRI Partners and Collaborators such as the Forest People's Programme, the Asia Indigenous Peoples Pact, the Bank Information Center, and Tebtebba.⁶

1. Indigenous Peoples

World Bank projects should recognize Indigenous Peoples' rights without exemptions; instead, the Safeguards Framework as currently proposed will weaken protections for Indigenous Peoples. The provisions of ESS7 should be consistent with international frameworks on rights of Indigenous Peoples, particularly the UN Declaration on the Rights of Indigenous Peoples. Furthermore, all other ESS should refer to ESS7 when Indigenous Peoples will be affected.⁷ In addition:

- ***Borrowers should not be allowed to opt out of the safeguards protecting Indigenous Peoples (ESS7).*** The proposed framework allows borrowers to ask the Bank to avoid applying the safeguards related to Indigenous Peoples in the event that (1) identifying indigenous "groups" conflicts with the country's constitution or (2) poses a risk of exacerbating ethnic tensions.⁸ This suggests that the World Bank believes that borrower governments have the authority to refuse to recognize the rights of Indigenous Peoples, a proposition that undermines internationally-recognized Indigenous Peoples' rights to self-determination and control of their lands and resources.⁹ Both the United Nations Office of the High Commissioner for Human Rights and the African Commission on Human and Peoples Rights (ACHPR) oppose the inclusion of the opt-out provision or any other "alternative approach" that would enable borrower countries to avoid applying the protections of ESS7 on the grounds that this would be incompatible with the United Nations Declaration on the Rights of Indigenous Peoples.¹⁰

- ***Additional provisions are needed to ensure effective consultation and participation of Indigenous Peoples in the processes of (1) determining whether Indigenous Peoples are present in the project area, and (2) identifying the extent to which Indigenous Peoples will be affected by a project.***¹¹ In the existing safeguards, Indigenous Peoples are consulted during the process of screening to determine whether the protections for Indigenous Peoples apply; the same requirement to engage Indigenous Peoples should be retained in the proposed safeguards.¹² Consultation with Indigenous Peoples should also be an integral part of the assessment of project impacts.
- ***Plans for land recognition need to be developed in partnership with Indigenous Peoples and include time-bound provisions, clear indicators and budgetary allocations.*** The draft standard notes that where borrowers undertake projects that are likely to have “significant impacts on land that is traditionally owned or under customary use or occupation by Indigenous Peoples,” they are required to prepare a plan for the legal recognition of custodial or use rights.¹³ These plans, as well as action plans for community development or benefit sharing, should incorporate indigenous groups’ self-determined priorities, and contain specific budget allocations, written agreements on project benefits, specific indicators and grievance mechanisms.¹⁴ Protections should also extend beyond land to include significant impacts on other natural resources.
- ***The requirements for Free Prior and Informed Consent (FPIC) should be strengthened, and FPIC should be obtained from the whole project-affected community even where individuals hold legal titles to property.*** The Bank’s definition of FPIC should be strengthened to include additional procedural and substantive requirements, including verification and agreement on the scope of potential impacts, mitigation plans for potential risks, agreements on benefit sharing or development plans, provisions for monitoring and evaluation of compliance with agreements, and remedies in the event that agreements are violated.¹⁵ Additionally, the benefit sharing agreements or development plans that underpin the FPIC result should be time-bound, costed, and have clear indicators to allow affected peoples to monitor and ensure compliance with the agreements reached. FPIC should also apply irrespective of whether legal titles are held communally or individually.¹⁶ Moreover, while the proposed safeguards note that unanimity is not needed to achieve FPIC,¹⁷ the safeguards should instead expressly recognize indigenous communities’ decision making processes, whether or not those decision making processes require unanimity.

2. Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

Despite the World Bank’s commitments to actively support the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, the proposed safeguards weaken the protection of land rights and reduce the likelihood that communities will be adequately compensated if projects displace them or impact their livelihoods. Specific recommendations include:

- ***Avoid weakening the existing procedural and substantive resettlement planning requirements that are included in the current safeguards.*** For example, the draft framework no longer requires resettlement plans as a condition of project appraisal; it weakens the requirement to assess

alternatives that would avoid or mitigate resettlement where possible; and it narrows the requirement that projects share benefits with displaced communities.¹⁸

This is particularly problematic because corruption among borrower governments in the area of land rights and land tenure makes World Bank oversight essential. A 2009 survey by Transparency International and the Food and Agriculture Organization surveyed people in 69 countries, finding that the land tenure and land administration sector was one of the economic sectors most likely to face corruption. “[M]ore than 1 out of every 10 people who contacted a land authority reported paying a bribe”, and 34 percent of people identified corruption as a “very serious problem” among government agencies administering land, although the results did vary by region.¹⁹

- **Take account of traditional or customary rights in relation to provisions on compensation and benefits for affected persons.** The proposed safeguards framework has the potential to classify those with customary or traditional rights in the same class as those with “no recognizable legal rights”²⁰ where national laws do not recognize customary or traditional tenure arrangements.
- **Remove the provision exempting land titling and land use regulation projects from the proposed resettlement policy.**²¹ In countries where the government fails to recognize customary or traditional land tenure or where customary tenure regimes remain largely unimplemented, this proposed exemption opens the risk that Bank funds could be used for a titling or land use project that fails to take customary tenure into account and results in displacement of communities from their traditionally held lands without their consent and compensation. Eliminating these exemptions would allow Bank safeguards to reduce the risk of displacement.
- **Apply the proposed resettlement standard (ESS5) to large-scale land acquisitions (LSLAs).** ESS5 contains an exemption for voluntary, legally-recorded market transactions, and it specifically recognizes in a footnote that large-scale land acquisitions (LSLAs) may fall within the exception.²² LSLAs are reshaping land tenure in some developing countries. For example, 40, 35, and 30 percent of the land area in Peru, Liberia, and Indonesia, respectively, have been allocated for various types of concessions, and reviews of specific concessions in those countries found that between 92 and 100 percent of the concessions were inhabited.²³ Draft Environmental and Social Standard (ESS) 5, footnote 11 mentions that special care would be needed in the case of LSLAs and raises important issues such as ensuring that parties are informed of their rights.²⁴ However, footnote 11 does not comprehensively address or provide compensation for the risks associated with LSLAs.

The World Bank should not apply the exemption from the resettlement safeguards to voluntary market transactions if the contracted lands are subject to competing claims under customary or traditional tenure systems. The four measures described in footnote 11 should be required as actual safeguard requirements along with the other safeguards on resettlement. Moreover, the World Bank should not finance large-scale land acquisitions that do not secure the free, prior and informed consent of the affected communities, including the right to refuse consent. This is in line with past publications by the Bank. A 2013 World Bank report on land rights in Africa

specifically recommended that African governments should not apply their power to take land for public purposes to support commercial investments.²⁵

- ***Remove broad exceptions that could be used by borrowers to avoid mitigation and compensation in the event of damage to land tenure and natural resource use.*** The draft Environmental and Social Policy (ESP) and ESS1 require the consideration of risks and impacts to land tenure and natural resource use as part of a broader range of social risks and impacts.²⁶ ESS1 then asks borrowers to apply a mitigation hierarchy that “favors” avoidance of impacts over minimization or reduction of impacts, and then compensates for any residual impacts “whenever technically and financially feasible”.²⁷ The use of the term “favor” implies that the mitigation hierarchy may be elective not mandatory. Moreover, the definition of “technically and financially feasible” allows borrowers to avoid compensating injured parties based on local factors such as “governance, capacity and operational reliability” or in situations where the cost of compensation would render the project “nonviable.”²⁸ This broad language should, instead, be replaced with narrowly tailored, mandatory criteria.

3. Biodiversity Conservation and Sustainable Management of Natural Resources

- ***Approach biodiversity and conservation with a focus on both natural habitats and the communities that depend on them.*** The current safeguards governing forests are triggered not only based on ecological criteria, but also in instances where projects “affect the rights and welfare of people and their level of dependence upon or interaction with forests;” they also require meaningful participation by and the consideration of local communities.²⁹ While some of the requirements for meaningful participation are retained in the draft, other provisions require the consultation of Indigenous Peoples and affected communities “as appropriate.”³⁰ Instead, consultations with affected communities should be integrated into considerations of biodiversity throughout each step of the project cycle.
- ***Retain the criteria specific to sustainable forest management and the forest certification requirements for timber harvesting operations from the current safeguards.*** The Bank’s current safeguards set forth detailed criteria for forest certification systems; whereas, the proposed safeguards provide only vague criteria that defer heavily to national laws without providing a clear, substantive definition.³¹
- ***Expand the definition of critical habitat to include protected areas identified by national governments and local communities.*** The current safeguards provide protections for a broad range of critical habitats and critical forest areas, including protected areas, areas recognized as sacred or protected by traditional local communities, and “sites that maintain conditions vital for the viability of these protected areas.”³² These areas should also be given the same level of protection as the narrowly defined critical habitats under the proposed safeguards.

In conclusion, the Bank has the opportunity to use the revised safeguards to reaffirm its commitment to the principle that member states can achieve national sustainable economic development goals without

sacrificing the rights of local people or the forests and other natural resources on which these communities rely for their livelihoods. This commitment, however, must be demonstrated through clear and binding requirements that reaffirm that security of local tenure and sustainable management of natural resources are sound investment policies. We trust that the World Bank will continue to play a leading role in global development by adopting and adhering to high standards, rather than catalyzing a trend of rollbacks that leave Indigenous Peoples and local communities exposed to harm.

¹ International Institute for Sustainable Development (IISD). 2013. A Summary Report of the International Conference on Scaling-Up Strategies to Secure Community Land and Resource Rights. *Community Land and Resource Rights Bulletin*. Vol. 213, N. 1, 23 September 2013. <http://www.iisd.ca/download/pdf/sd/crsvol213num1e.pdf>.

²Rights and Resources Initiative. 2014. *What Future for Reform? Progress and Slowdown in Forest Tenure Reform Since 2002*. Washington, D.C.: Rights and Resources Initiative. <http://www.rightsandresources.org/publication/what-future-for-reform/>

³Byagumisha, F. *Securing Africa's Land for Shared Prosperity: A Program to Scale Up Reforms and Investments*. p. 104. Washington, D.C.: World Bank. <http://documents.worldbank.org/curated/en/2013/01/17782306/securing-africas-land-shared-prosperity-program-scale-up-reforms-investments>

⁴World Bank. 2015. *World Bank Environmental and Social Framework Setting Standards for Sustainable Development First Draft for Consultation* (hereinafter "Draft for Consultation"): Environmental and Social Policy (ESP), para. 29. Washington, D.C.: World Bank. https://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/proposed_es_framework_first_draft_for_consultation_final_july_30.docx.

⁵ Draft for Consultation: ESS1, para. 7, footnote 6.

⁶Asia Indigenous Peoples Pact (AIPP) and Forest People's Programme (FPP). 2015. Comments on the World Bank proposed safeguards for Indigenous Peoples (ESS7: Indigenous Peoples), Environmental and Social Policy, and Associated Environmental and Social Standards (1-10). Moreton-in-Marsh, England: Forest People's Programme. <http://www.forestpeoples.org/topics/safeguard-accountability-issues/news/2015/02/joint-aipp-and-fpp-submission-world-bank>.

Bank Information Center (BIC). 2014a. Joint Statement. Washington, D.C.: Bank Information Center.

<http://www.bicusa.org/wp-content/uploads/2014/10/ESS5-Land-and-Resettlement.pdf>

BIC. 2014b. Talking Points on the World Bank's Proposed Biodiversity Standard (ESS6). Washington, D.C.: Bank Information Center. <http://www.bicusa.org/wp-content/uploads/2014/10/ESS6-Biodiversity.pdf>

BIC. 2014c. World Bank Environmental and Social Standards Risk Turning the Clock Back on Recognition of the Rights of Indigenous Peoples. Washington, D.C.: Bank Information Center. <http://www.bicusa.org/wp-content/uploads/2014/10/ESS6-Biodiversity.pdf>

Tebtebba 2014. Meetings on Indigenous Peoples and the Safeguards Review, Washington, DC July 22-24, 2013.

Quezon City, Philippines: Tebtebba. <http://www.tebtebba.org/index.php/content/268-meetings-on-indigenous-peoples-and-the-safeguards-review>.

⁷AIPP and FPP 2015.

⁸ Draft for Consultation: ESS7 para. 9.

⁹*Compare* Draft for Consultation (ESS7 para. 9) with The United Nations Declaration on the Rights of Indigenous Peoples. <http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>. See also AIPP and FPP 2015.

¹⁰Draft for Consultation: ESS5 para. 6. See Lawyers for Community Tenure. 2014. Community Tenure, Climate Change, and the World Bank Safeguards. Joint Opinion Brief. Lima, Peru: Lawyers for Community Tenure. <http://lawyersforct.org/wp-content/uploads/2014/11/LCT-Joint-Opinion-PDF.pdf>

¹¹ ESS7 (para. 8) requires the World Bank to determine whether projects will affect Indigenous Peoples and then require the engagement of appropriate specialists. Instead, indigenous people should be consulted from the outset to determine whether or not they will be impacted by the project. AIPP and FPP 2015.

¹² *Compare* Draft for Consultation ESS7 para. 8 with OP 4.10, para. 8.

World Bank. 2013. *World Bank Operational Manual*. OP 4.36. Washington, D.C.: World Bank.
<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064668~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

¹³ Draft for Consultation: ESS7 para. 23.

¹⁴ Draft for Consultation: ESS7 paras. 15-16. *See also* AIPP and FP 2015; BIC 2014c.

¹⁵ AIPP and FPP 2015 contains additional information on the types of requirements needed to fully realize FPIC, including a more protective definition of FPIC, which was enacted by the Government of the Philippines.

¹⁶ The draft safeguards framework exempts land titled to indigenous individuals from the FPIC requirement, and instead applies the resettlement standard (ESS5) in situations involving individual titles. (Draft for Consultation: ESS7, para. 25, FN 14.) However, in some cases, lack of recognition of customary, communally held lands has led Indigenous Peoples to obtain individual titles, even where land is still managed and held communally in day-to-day decision-making within the community.

¹⁷ Draft for Consultation: ESP para. 45, ESS7 para.20(d).

¹⁸ For additional procedural and substantive comments on the resettlement policy, please see BIC 2014a.

¹⁹ Arial, A., C. Fagan and W. Zimmerman. 2011. Corruption in the Land Sector, Transparency International Working Paper 4/2011. p. 3. Berlin, Germany: Transparency International.

http://www.transparency.org/whatwedo/publication/working_paper_04_2011_corruption_in_the_land_sector

²⁰ Draft for Consultation: ESS5 para. 6.

²¹ Draft for Consultation: ESS5 para. 5(d)-5(e).

²² Draft for Consultation: ESS5 para. 5(a).

²³ The Munden Project and the Rights and Resources Initiative. 2014. *Communities as Counterparties: Preliminary Review of Concessions and Conflict in Emerging and Frontier Market Concessions*. pp. 1-2. Washington, D.C.: Rights and Resources Initiative. http://www.rightsandresources.org/wp-content/uploads/Communities-as-Counterparties-FINAL_Oct-21.pdf.

²⁴ Draft for Consultation: ESS5 para. 5(a), FN 11.

²⁵ Byagumisha 2013: 104.

²⁶ Draft for Consultation: ESP para. 4(b), ESS1 para.26 .

²⁷ Draft for Consultation: ESS1 para. 25.

²⁸ Draft for Consultation: ESS1 para. 25, footnotes 21 and 22.

²⁹ OP 4.36, paras. 3(b), 12-13.

³⁰ *Compare* Draft for Consultation ESS6 para. 29 *with* para. 21.

³¹ *Compare* Draft for Consultation ESS6 (paras. 25-26) *with* World Bank 2013: OP 4.36 (paras. 9-11) on forests.

³² World Bank 2013: OP 4.36, Annex A(c).