

ESS6 Biodiversity Standard: Major Policy Dilutions and Failure of Upward Harmonization

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Endorsing Organizations

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Introduction

The proposed Environmental and Social Standard (ESS) 6 on Biodiversity represents an unprecedented dilution of existing safeguard policies on Forests and Natural Habitats, standing in stark opposition to President Kim's promise of "no dilution" of the World Bank's safeguard policies. Furthermore, the scope of the Bank's new Environmental and Social Framework must be expanded to cover the Bank's growing portfolio of development policy loans (DPLs) and other non-project finance. An estimated 40% of all forest-related World Bank investments are channeled through DPLs and therefore would not be subject to environmental and social standards. This is clearly an unacceptable situation and must be addressed in a revised Environmental and Social Framework.

In addition, rather than fostering upward harmonization, the revised language in ESS6 renders the World Bank's protection for natural habitats weaker than policies of other international financial institutions, including the Asian Development Bank. As noted by one Operational Vice President (OVP) in comments on the draft, "language in ESS 6 would severely weaken the protections that currently exist for biodiversity and natural habitats under both IFC's PS6 and the Bank's OP 4.04."

This analysis identifies some of the main dilutions and failures of upward harmonization. The following primary dilutions in ESS6, among others, constitute an unacceptable weakening of protections for forest-dependent people and the environment:

- Reduction in scope of protection for forests;
- Considerations for forest-dependent peoples are removed from ESS and language found elsewhere in the Safeguards Framework does not overcome this dilution;
- New definitions of sensitive habitats substantially dilute the definition of "critical habitat" and also eliminate from the definition habitat of critical importance to local communities;
- Contradictory language allows conversion and degradation of all natural habitats, including critical habitats and protected areas;
- No requirements to protect natural habitats not deemed sensitive;
- Projects within protected areas are explicitly permitted;
- Offsets are permitted in *all* habitats— there are no longer any "no-go zones";
- A new loophole gives the green light for logging in all types of forests;
- Sustainable forest management criteria are eliminated;
- Independent forest certification is no longer required for plantations.

The diluted protections for forests and natural habitats in ESS6 are of even greater concern given that the proposed Environmental and Social Framework, as a whole, represents an overall weakening of existing mandatory safeguards.

Failure to Meet the Challenge of Protecting Forests: A Major Step Backward

Although the World Bank Group is the largest source of multilateral funding for forests,¹ the proposed Environmental and Social Framework eliminates a dedicated forest policy and lacks forest-specific content in the new draft Biodiversity standard (ESS6).

In addition to the World Bank's forest-related investments, the institution has far-reaching influence on forest ecosystems through the World Bank-managed trust funds such as the Forest Carbon Partnership Facility and the Forest Investment Program, one of the Bank's Climate Investment Funds. Furthermore, World Bank investments in infrastructure, energy and extractive industries projects have significant impacts on forests. In light of all this, the absence of a strong mandatory safeguard to protect forests and the communities that depend on them represents a significant dilution of protections.

The draft Environmental and Social Framework also demonstrates a complete disregard for the findings and recommendations of the Independent Evaluation Group (IEG) evaluation "Managing Forest Resources for Sustainable Development – An Evaluation of World Bank Group Experience" of February 2013. IEG findings included:

- Inadequate reflection of social, institutional and political realities on the ground in project design and implementation;
- Insufficient use of participatory approaches;
- A lack of attention to poverty reduction;
- A lack of evidence of environmental sustainability of both tropical timber concessions and protected areas.

Although Management made a commitment to CODE and the public to address the problems identified by IEG in the Safeguards Review, they have clearly not done so.

Elimination of Policy Language Protecting on Forests

Although the existing Forests policy (OP 4.36) was reportedly subsumed into ESS6 in order to strengthen protection for all ecosystems, including forests, ESS6 fails to acknowledge the unique characteristics and values of forest ecosystems. Far from protecting these crucial ecosystems, the only clauses pertaining to forests in the first draft of ESS6 consist of scattered and confusing language on sustainable management of natural resources for production forestry, and an unnecessary paragraph on salvage logging which opens a new potential loophole for deforestation.

The failure to explicitly incorporate forests into the Environmental and Social Framework—and thereby into the borrower's project-level commitments and the Bank's due diligence—is a major dilution. The Environmental and Social framework represents a major step backward for forests, even though the starting point of existing World Bank forest policy was already lower than some other institutions. The creation of a dedicated forest policy at the World Bank was the result of a hard-won battle against deforestation on

¹ The World Bank Group. May 20, 2013. Forest and Trees in Sustainable Landscapes, Action Plan, FY 14-16, Concept Note, p.5.

the part of governments and global civil society organizations during past decades, and offers some minimum protection for the resources upon which the world's estimated 1.1-1.7 billion forest dependent peoples rely for their livelihoods.² Forest dependent peoples are among the most impoverished and vulnerable people globally, with forest resources directly contributing to the livelihoods of 90% of people living in extreme poverty.³ If the World Bank seeks to eradicate extreme poverty, the Environmental and Social Framework cannot fail to explicitly protect the forests that are the foundation of the livelihood and culture of a significant portion of the world's people living in extreme poverty.

While the World Bank's indication that forest language and that pertaining to the protection of forest peoples will be incorporated into the second draft of the Environmental and Social Framework is very welcome, it is of deep concern that this content may be included solely as supplementary material, rather than within ESS6 proper. Relegating forests to an annex or non-binding guidance is a dilution of current mandatory requirements and risks downgrading forest protections to a mere suggestion or optional best practice. It sends a clear signal that forest conservation and protection of the rights and livelihoods of forest-dependent peoples are no longer considered important World Bank goals, and are not mandatory for project-level consideration, with significant implications for forest dependent peoples and forest ecosystems. **In order to effectively safeguard forest ecosystems and forest dependent communities, dilutions must not be permitted, and the following recommendations must be incorporated into the Environmental and Social Framework as mandatory, binding requirements for all projects with the potential to impact the management, protection or utilization of forests, or to impact forest dependent peoples.**

Dilution: Failure to Recognize the Rights and Role of Forest Dependent Peoples and the Multiple Values of Forests

Any policy language on forests, including ESS6, must explicitly recognize both the importance of forest ecosystems to the livelihoods and culture of local communities and indigenous peoples, as well as the important role that local communities play in managing forest ecosystems.⁴ Forest ecosystems are socio-culturally and economically vital resources to local communities and indigenous peoples, in addition to the key environmental role forests play in biodiversity conservation, climate change mitigation and adaptation and the provision of local and global environmental services.

Unfortunately, ESS6 removes most existing policy language protecting local communities and indigenous peoples. While the existing OP 4.36 applies to projects that affect the rights and welfare of people and their level of dependence upon or interaction with forests, the draft Environmental and Social Framework eliminates this language.

² Chao, Sophie. Forest Peoples Programme. May 2012. *FOREST PEOPLES: Numbers across the world*. http://www.forestpeoples.org/sites/fpp/files/publication/2012/05/forest-peoples-numbers-across-world-final_0.pdf.

³ World Bank. 2004. *Sustaining Forests: A Development Strategy*. <http://siteresources.worldbank.org/INTFORESTS/Resources/SustainingForests.pdf>

⁴ For example, see: Stevens, Caleb et al. July 2014. *Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change*.

In addition, given the importance of forests to indigenous peoples, the existing Natural Habitats policy (OP 4.04) expects the borrower to take into account the views of local communities and NGOs affected by Bank-financed projects involving natural habitats, and to involve such people in the planning, design, implementation, monitoring and evaluation of these projects.⁵ In the context of forest certification systems, OP 4.36 further calls for the recognition of, and respect for, any legally documented or customary land tenure and use rights, as well as the rights of indigenous peoples and workers.⁶

ESS6 removes these requirements and only states the following: “Where applicable, the assessment will consider the use of and dependence on natural resources by Indigenous Peoples and affected communities who live in or around the project areas and whose use of biodiversity resources may be affected by the project, as well as their potential role in the conservation and sustainable use of such biodiversity resources.”⁷ There is no requirement for the active participation of affected communities and Indigenous Peoples and the “consideration” of their use of and dependence upon natural resources only occurs “where applicable.”

Policy language on forests and natural habitats must also explicitly address the threat of restricted access to forest resources and forest activities resulting from World Bank interventions. It is commonplace for development projects in extractive industries, agriculture, forestry, conservation, or protection of natural heritage to restrict the ability of nearby communities to access vital natural resources in or near the project area. These involuntary restrictions may cause economic and occupational displacement among forest dependent peoples, thereby endangering their livelihoods.⁸ While the existing Involuntary Resettlement policy (OP 4.12) includes provisions addressing involuntary restriction of access, including a commitment to provide support to the restricted population, these strong, unambiguous provisions have been removed from the current Environmental and Social Framework in favor of scattered, narrower provisions. OP 4.12 explicitly covers the economic and social impacts from Bank investments caused by “the involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of the displaced persons,”⁹ as well as “loss of income sources or means of livelihood, whether or not the affected persons must move to another location.”¹⁰

The restriction of local community access to parks, protected areas, and other sources of natural resources is a critical issue which must be addressed in ESS6 as well as ESS5. Policy language should be incorporated to assess potential restricted access and economic displacement resulting from any World Bank financed interventions and project activities, avoid restricted access to the extent possible, and provide support packages in instances where restricted access is unavoidable.

⁵ World Bank. 2001. OP 4.04- Natural Habitats, para 10.

⁶ World Bank. 2002. OP 4.36- Forests, para 10b.

⁷ World Bank. Environmental and Social Framework. July 2014. ESS6, para 13.

⁸ For further information see: Cernea, Michael M. 2005. *Broadening the Definition of “Population Displacement”: Geography and Economics in Conservation Policy*. Forced Migration Review, No. 23, pp. 48-49.

⁹ World Bank. 2001. OP 4.12, para 3b.

¹⁰ *Ibid*, para 3a.

In light of the close relationship between local communities and forest ecosystems, the scope of all policy requirements on forests and biodiversity must include any World Bank investment which affects the rights and welfare of people and their level of dependence upon or interaction with forests.¹¹ **Specific policy requirements must include:**

- The **ex-ante assessment** and avoidance of negative impacts on local communities, including any restricted access to forest resources and economic displacement;
- The **recognition and protection of forests critical for forest-dependent peoples**, (i.e. retaining the community element of the definition of critical forest);
- The **engagement of local communities** throughout every stage of the project cycle, including Free, Prior and Informed Consent (FPIC) for all projects impacting indigenous peoples' use of natural resources.

Failing to incorporate any less than these requirements represents a substantial dilution of existing policy.

Furthermore, it is important to note the addition of relevant language on commercialization of intangible cultural heritage within ESS8, which should be applied when forests are determined to be intangible cultural heritage.¹² Although it is positive that “natural features with cultural significance” are included in ESS8 as a specific type of cultural heritage,¹³ the limited language on natural features with cultural heritage should be expanded to expressly incorporate forests and community use and management of forest ecosystems.

Clear and Inclusive Definitions

Forests and Plantations

In order for policy provisions on forests to be effective, policy language must be paired with clear, robust definitions for forests, plantations, critical forests, and degradation. Distinguishing between natural forests and plantation forests—which many definitions of forests fail to do—is critical to ensure that the transition from natural forest to plantation is recognized as habitat conversion that therefore must meet policy requirements. The definition of “forest” must exclude palm oil plantations, and natural forests must be distinguished from trees in agricultural systems and planted forests.¹⁴

Critical Forests: Dilution and Failure of Upward Harmonization

To facilitate protection of ecologically and socioeconomically important forests, the Environmental and Social Framework must explicitly define a subset of forests which are considered “critical forests,” and are to be included among the “critical habitats” outlined in ESS6. These critical forests should not be defined solely based on biodiversity value, but must take into account ecosystem services, livelihood value, and cultural value. To do less than this is to dilute current protections at the World Bank and to fall short of policies at

¹¹ As currently articulated in OP 4.36, para 3(b).

¹² World Bank. July 2014. Environmental and Social Framework. ESS8, para 28 and 29.

¹³ World Bank. July 2014. Environmental and Social Framework. ESS8, para 23-26.

¹⁴ For example, the definition of forest used by the Forest Resources Assessment 2015 explicitly excludes “tree stands in agricultural production systems, such as fruit tree plantations, oil palm plantations”: <http://www.fao.org/docrep/017/ap862e/ap862e00.pdf>

other institutions. Critical forests should include areas traditionally recognized as sacred to local communities and indigenous peoples, as well as primary forest, intact forest landscapes¹⁵ and other high conservation value areas.¹⁶ Conversion or degradation of critical forests must be explicitly prohibited by the Environmental and Social Framework, with no exceptions.

The World Bank's current Natural Habitats Policy, OP 4.04, includes the following in the definition of critical habitats, and OP 4.36 adopts the same definition for critical forests:

- 1) Existing protected areas;
- 2) Areas initially protected by traditional local communities;
- 3) Sites that maintain conditions that are vital for the viability of protected areas;
- 4) Sites identified on supplementary lists prepared by the Bank.¹⁷

The definition of critical habitat used by the Asian Development Bank may be used as an example of a broad, inclusive definition: "A subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity value, including habitat required for the survival of critically endangered or endangered species; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or that are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic, or cultural importance to local communities."

The World Bank's Environmental and Social Framework not only proposes a significant dilution of the Bank's own definition, by eliminating protected areas and areas protected by traditional local communities, but it also proposes a far weaker definition than the Asian Development Bank. ESS6 calls for the application of the mitigation hierarchy, including biodiversity offsets, when a project occurs within or has the potential to adversely affect an area that is legally protected or internationally recognized or designated for protection.

Instead of proposing a significant dilution of the definition of and protections for critical forest habitat, the Bank must ensure no dilution of the Bank's existing definition and—at a minimum—upward harmonization with the ADB's definition. Conversion or degradation of critical forests and critical natural habitats must be explicitly prohibited by the Environmental and Social Framework, with no exceptions.

The definition of critical and other sensitive habitats becomes all the more essential in the new Environmental and Social Framework, given that the proposed ESS6 removes any

¹⁵ Explicit protection for intact forest landscapes within Forest Stewardship Council (FSC) standards was recently approved by FSC's general assembly with broad multi-stakeholder support, providing a solid precedent for awarding special status to intact forest landscapes: FSC General Assembly. Motion 65. September 11, 2015. [ga2014.fsc.org/download/motion-65.120.pdf](https://www.fsc.org/download/motion-65.120.pdf)

¹⁶ HCV Resource Network. *The Six HCVs*. <https://www.hcvnetwork.org/about-hcvf/the-six-high-conservation-values>

¹⁷ World Bank. 2002. OP 4.04, Annex A- Definitions, para 1b.

restrictions or policy requirements for conversion or degradation of natural habitats that are not deemed critical or otherwise sensitive. This removal of protect presents a tremendous threat to a large portion of the world's natural habitats and forests.

Degradation and Activities on “Degraded” Lands and Forests

The application of policy language on forests or natural habitats will remain ambiguous without a clear definition of degradation, as well as what constitutes “significant” degradation or conversion of forests and other natural habitats. The definition of “degradation” should be scientifically-based, should prevent functioning forest ecosystems from being clear-cut after being labeled as “degraded” and must ensure protection for traditional, ecologically sustainable livelihood uses.

The definition of degradation must be robust enough to ensure that projects which negatively impact the integrity, structure, and function of forest ecosystems are correctly identified as degradation, and are thereby subject to safeguard policy requirements. One example of a robust definition of degradation from the impact of Bank-sponsored projects could include Bank-supported activities which lead to a “reduced supply of goods and services from the site,” limited biological diversity, or a “loss of structure, function, species composition, or productivity” normally associated with the natural forest type.¹⁸ The definition of degradation should also include the ecosystem services on which local communities depend, and be tailored to the project site in question.

Furthermore, the Bank's definition of degradation must ensure that the use of the term, “degradation,” does not lead to Bank-supported destruction of forests or displacement of forest-dependent peoples. In certain countries where the World Bank has been active, the designation of “degraded forest” has frequently been abused in two manners:

- 1) Powerful plantation companies have been able to identify, or convince government agencies to identify, community forests as “degraded” in order to facilitate the seizure and clear-cutting of these forests to establish industrial forest and plantation companies. This has led not only to biodiversity loss but to the impoverishment of vulnerable forest communities. Any Bank definition of “degradation”, therefore, must ensure that activities involving the use of “degraded forest” or “degraded lands” are prohibited from leading to the eviction or resettlement of forest-dependent peoples or the curtailment of their rights.
- 2) Powerful companies have often been able to label healthy forest with substantial standing timber stocks as “degraded” and gain permission to clear-cut these forests as part of “land clearing” for “plantation establishment on degraded lands,” leading to irreversible biodiversity loss, harm to local communities but significant profits to the plantation companies from destructive logging or illegal. Any Bank definition of “degraded forest”, therefore, must therefore prevent the label “degraded” from

¹⁸ Convention on Biological Diversity. Definitions. <http://www.cbd.int/forest/definitions.shtml>. See section on “Indicative definitions taken from the Report of the ad hoc technical expert group on forest biological diversity.”

being applied to forests of significant biodiversity, or provide support which leads to the clearing of so-called “degraded” forests which may actually have high biodiversity.

Sustainable Forest Management Practices

Dilution: Sustainable Forest Management Criteria

Although responsible forest stewardship is crucial to enable sustainable management of forests, as well as to prevent illegal logging, encroachment, and conversion of forested land to other land uses, forest certification has long had a troubled history and has not yet been shown to be effective in the World Bank context. **These shortcomings will only be exacerbated by ESS6’s omission of the sustainable forest management criteria delineated in OP 4.36, and the absence of requirements regarding the substance of third party certification systems.** While OP 4.36 establishes minimum requirements for sustainable forest management and independent forest certification systems required in order for the Bank to finance commercial harvesting operations,¹⁹ ESS6 removes existing references to conservation of ecological functions, tenure and land use rights, forest management planning, enhancing multiple benefits accruing from forests, minimization of adverse impacts, monitoring, and maintenance of critical areas. Requirements for a forest management system proposed under ESS6 are now devoid of any elements that address the action of forest management itself.

Instead, ESS6 accepts any “globally, regionally, or nationally recognized standards,” that follow the four criteria of “achievable,” founded on a multi-stakeholder process, “step-wise,” and providing for independent verification.²⁰ Examples of dubious certification schemes abound, including in Bank client countries, and “step-wise” certification has proven very problematic.

In addition to removing criteria for sustainable forest management, **independent verification or certification of plantations is no longer required by ESS6.** While OP 4.36 requires certification for all “industrial-scale commercial harvesting operations,”²¹ ESS6 only requires that forests be sustainably managed “when the Borrower invests in production forestry in natural forests.”²² This oversight allows industrial logging to proceed without any standards or requirements for forest management practices.

With the use of unclear, non-binding language, in this case “where feasible,” ESS6 introduces a new “degradation loophole” for industrial logging and plantation establishment on forested lands, as follows: “Where feasible, the Borrower will locate land-based commercial forestry and agricultural projects... on land that is already converted or highly degraded.”²³ This loophole not only fails to protect local communities from eviction

¹⁹ World Bank. 2002. OP 4.36, para. 10.

²⁰ World Bank. July 2014. Environmental and Social Framework, pg. 69, para. 26.

²¹ World Bank. 2002. OP 4.36, para 9.

²² World Bank. July 2014, Environmental and Social Framework. pg. 69, para 25.

²³ *Ibid.*

and land seizures as a result of Bank investments—since community agro-forests could be labeled as “degraded” and slated for clearing—but it also allows Bank support for industrial logging operations even in tropical rainforest if it is not “feasible” for them to be located on “converted or highly degraded” lands.

Forest certification is clearly no guarantee of sustainable forest management—particularly in moist tropical forests—as highlighted by IEG’s findings that “the record indicates continued challenges in achieving certification and ensuring sustainable forest management,”²⁴ and “evidence is also lacking that concessioned natural forests are being managed sustainably.”²⁵

Broadening the scope of industrial logging, loosening sustainable forest management criteria, and exempting plantations from certification requirements is clearly neither a good faith effort by Management to address IEG’s findings, nor a path towards long-term sustainability of forest ecosystems; rather, it represents a substantial dilution of existing protections.

Failure to Facilitate Participatory Forest Management

A key conclusion of the IEG’s 2013 forest sector evaluation was that participatory forest management has livelihood enhancing benefits, but “its potential is often hampered by the failure to devolve true authority to communities.”²⁶ To address this finding, IEG issued a recommendation to “expand support for participatory forest management with help to level the playing field for community based forest enterprise.” Bank Management accepted this recommendation, stating “the Bank will continue to support forest operations which incorporate strong participatory elements.” However, a requirement for participatory forest management is omitted in the Environmental and Social Framework.

In addition to clearly defined criteria for sustainable forest management, the Environmental and Social Framework must explicitly recognize, require and facilitate community forest management and participatory forest management. Policy language on forests must prioritize participatory and community-led forest activities. Community forest management must be held to sustainable forest management standards as well, which provides further rationale for explicitly including sustainable forest management criteria within the Environmental and Social Framework.

Dilution: Weakening of Protection for Critical Habitats and Expansion of Biodiversity Offsets: Even Critical Habitats Aren’t Off-Limits

The current World Bank ban on conversion or degradation of “critical forests or related critical natural habitats” appears to be overturned in ESS6, and biodiversity offsets are permitted in even the most sensitive critical habitats. The language in ESS6

²⁴ IEG. February 2013. *Managing Forest Resources for Sustainable Development: An Evaluation of the World Bank Group Experience*, pg. 61.

²⁵ *Ibid*, pg. xv.

²⁶ *Ibid*, pg. xxxii.

that facilitates biodiversity offsets in critical habitats is in apparent contradiction to language earlier in the ESS6 text, and seems designed to provide a justification for Bank-financed projects that convert or degrade even the most sensitive critical natural habitats, as well as national parks and areas of importance to forest communities.

While paragraph 10 of ESS6 states that the borrower cannot use Bank funds to support plantations that involve any conversion or degradation of critical habitats, or other projects that involve significant conversion of critical habitats, paragraph 17 provides a number of conditions allowing for conversion of critical habitats.²⁷ If the provisions in paragraph 17 are intended to mitigate impacts of interventions that compromise “ecological integrity,” such actions should unquestionably be considered “significant conversion or degradation” and would be in violation of paragraph 10. Particularly given the weakened definition of “critical habitat,” the conversion or degradation of critical habitat must be strictly off-limits.

Furthermore, the use of biodiversity offsets is expanded and strongly entrenched in ESS6, based on an apparent assumption that “like-for-like” compensation is possible for all habitats, even critical and protected habitats- an assertion not supported by the available scientific evidence. The circumstances for which biodiversity offsets are an allowable mitigation mechanism have expanded markedly from OP 4.04. Conversion and degradation offsets are now permitted in all classes of sensitive habitat identified by ESS6, including critical natural habitats. The use of biodiversity offsets cannot compensate for the loss or degradation of critical forests or critical natural habitat.

The allowance of biodiversity offsetting in critical habitats is particularly troubling, and signifies that truly no environments are “no-go,” out-of-bounds areas for World Bank projects, no matter how rare, threatened, or valuable. Projects may be implemented in critical habitats if there are reportedly no viable alternatives and the project is “*designed to deliver net gains for critical biodiversity features*”²⁸(emphasis added). More troubling still, a footnote in ESS1 notes that “the requirement to offset will take into account financial and technical feasibility,”²⁹ providing an easy loophole for borrowers to escape from even these weak requirements.

Dilution: Introduction of Salvage Logging

Salvage logging should be considered a last resort measure only employed in specific, exceptional circumstances, given that the practice of salvage exacerbates damage caused by natural disturbance and triggers negative impacts which are additional to the original disturbance. The body of existing scientific research demonstrates that salvage logging often negates the positive ecological benefits provided by a natural disturbance, and frequently alters the structural complexity of the ecosystem, the ecosystem processes and functions, and/or the populations of species and community composition.³⁰ At the national level, for example in the United States, salvage logging is used to circumvent existing

²⁷ World Bank. July 2014. Environmental and Social Framework, pg. 67-68, para 17(a)-(f).

²⁸ *Ibid*, pg. 67, para 17.

²⁹ *Ibid*, pg. 21, footnote 1.

³⁰ Lindenmayer, DB and RE Noss. April 2006. *Salvage Logging, Ecosystem Processes, and Biodiversity Conservation*.

regulations and justify timber harvesting in areas where harvesting is otherwise not legally permitted. The language on salvage logging in ESS6 appears to provide a similar loophole,³¹ and it is unclear why this provision is necessary in the context of World Bank projects, particularly given an apparent lack of precedent in other MDB policies. This language—which is one of the few forest-specific provisions in ESS6—should be removed to avoid encouraging salvage logging in inappropriate circumstances, particularly in light of the vague, weak requirement that logging areas simply “be kept to a minimum.”

Failure to Address Illegal logging, Financial Crimes, and Supply Chain Assessment

According to the World Bank’s landmark *Justice for Forests* report, illegal logging generates approximately US\$10–15 billion annually worldwide, encompassing up to 90% of timber exports in some countries.³² There is growing global recognition that plantation establishment, associated illegal logging and linked financial crimes are some of the principal threats to forests, particularly in the low governance environments in which the World Bank frequently engages. In *Justice for Forests*, the World Bank itself seems to have acknowledged that forests are fundamental and threatened resources, which should be reflected and throughout the Environmental and Social Framework. The World Bank should use the momentum and recommendations generated by the *Justice for Forests* report to combat illegal logging and financial crimes in World Bank engagement— both by working with borrower countries to develop higher level criminal justice strategies for destructive or illegal logging and illicit financial flows, and by strengthening relevant language in the Environmental and Social Framework.

A policy that seeks to protect and conserve biodiversity or promote sustainable management of natural resources—the two objectives of ESS6—would neglect a primary threat to forests by failing to incorporate provisions to address illegal logging and the associated financial crimes, including tax evasion and money laundering. In the context of project level policy, illegal logging is best addressed through supply chain monitoring and environmental and financial due diligence. **Chain of custody standards must ensure that forest products are sourced from legal locations, using legal practices, comply with tax and anti-money laundering requirements, and are legal products.**

The inclusion of new language on supply chains included in ESS6 is a positive addition, but unfortunately too weak to ensure sustainable sourcing of raw materials. It also fails to address IEG’s critical findings that “the record indicates continued challenges in achieving certification and ensuring sustainable forest management,” and “evidence is lacking that concessioned natural forests are being managed sustainably.”³³ There is insufficient attention to the due diligence requirements necessary to attack the financial aspects of forest crime.

³¹ World Bank. July 2014. Environmental and Social Framework. ESS6, para 30.

³² Goncalves, Marilyne Pereira et al. 2012. *Justice for Forests: Improving Criminal Justice Efforts to Combat Illegal Logging*. http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Illegal_Logging.pdf

³³ IEG. February 2013. *Managing Forest Resources for Sustainable Development: An Evaluation of the World Bank Group Experience*, p. 61, xv.

In the proposed language in ESS6, which represents a dilution of existing safeguards, requirements apply only “where there is risk of significant conversion of natural and/or critical habitats,” and the borrower is only required to take action to shift its supply chain “where possible,” and only under conditions where “the borrower has control or influence over its primary suppliers.”³⁴ This provision must be strengthened to commit to zero deforestation or degradation within supply chains, in line with the commitments of many organizations and companies. Strong supply chain language must require the borrower to address supply chain impacts under conditions where the borrower has influence over its suppliers, rather than “control.” Rather than applying supply chain requirements “where possible,” the borrower must be required to shift their supply chain for any project activities representing high or substantive risk to forests. The burden must be on the supplier to demonstrate that they are not contributing to deforestation or forest degradation, and the Bank must carry out the necessary due diligence to verify sourcing of materials. Verification of sustainable supply chain sourcing must be reported and disclosed annually.

The supply chain language in the European Bank for Reconstruction and Development’s Environmental and Social Policy serves as an example of a more stringent requirement.³⁵ EBRD’s supply chain requirements cover a broader range of circumstances in which “suppliers have the potential to significantly impact ecosystems and the biodiversity that they support,” and also provides a set of characteristics for the mandatory procurement policy, management procedures, and verification systems required by the policy.

Project Identification and Design

Failure of Upward Harmonization: Prohibited and High Risk Forest Activities

Even with strong safeguard language to protect forests and promote sustainable forest management practices, **certain classes of forest-related projects should be automatically ineligible for World Bank financing on the basis of their risky nature and high likelihood of negative impacts to local communities and forests.** These activities should be included in a separate exclusion list, along with projects in other sectors. Examples of categorically prohibited projects should include interventions which deforest or degrade critical habitats, financing plantations which require conversion or degradation of natural habitats, and the use of natural forest for pulp and paper production. ADB’s prohibited investment activities list provides a precedent for prohibited forest activities in MDB policy, such as prohibition of projects supporting “commercial logging operations or the purchase of logging equipment for use in primary tropical moist forests or old-growth forests.”³⁶ The World Bank’s 1993 Forestry safeguard policy incorporated strong language prohibiting the support for certain types of investment, including language analogous to the aforementioned ADB language prohibiting commercial logging in tropical moist forests, as well as a clause specifying that in “forest areas of high ecological value,” World Bank financing should support “only preservation and

³⁴ World Bank. July 2014. Environmental and Social Framework. ESS6, para 32.

³⁵ European Bank for Reconstruction and Development. 2014. Environmental and Social Policy, Performance Requirement 6, para 35 and 36.

³⁶ ADB. June 2009. Safeguard Policy Statement, Appendix 5, para ix.

nonextractive use of forest resources.”³⁷ This language, which should be taken up in the Environmental and Social Framework, suggest that any extractive forest activities should be prohibited in areas of high ecological value, e.g. the three categories of sensitive habitats outlined in ESS6, including those of importance to forest-dependent communities. The topic of sustainable forest management in tropical forests or otherwise—has not been definitively addressed in the safeguard review, despite IEG’s identification of these areas as highly problematic.

Furthermore, some forest-related projects should automatically be categorized as high risk, in order to guarantee consistent assessment and due diligence that is required prior to project approval and which is commensurate to project risk. In nearly all cases, projects that entail impacts to forest ecosystems or promote changes to the management of forest resources, or changes in access to forest resources, pose risks to forest dependent peoples. Examples of projects which should be universally classified as high risk may include those which present risks of weakening management or protection; where conditions of weak governance, including forest governance, is a risk; projects which may result in significant conversion or degradation of natural forests; large-scale afforestation and reforestation projects; or projects undertaken in protected areas, community forest areas, World Heritage Sites and IUCN Protected Area categories.

Development Policy Lending

In the period FY02-FY12, an estimated 40% of forest sector funding was supported by Development Policy Loans (DPLs, including support for policy and institutional reforms of tropical timber concession management).³⁸ Despite the magnitude of forest sector finance channeled through DPLs, the draft Environmental and Social Framework will only apply to the Bank’s shrinking portfolio of project finance— not to policy-based loans.

The IEG calls for the consistent application of safeguards across all types of Bank-lending: “It is vital to seek consistency among the approaches followed in these growing segments of the portfolio to ensure coherence in environmental and social sustainability outcomes.”³⁹ The planned 2015 DPF Retrospective cannot ensure the policy coherence that IEG has called for and that plain common sense would consider essential.

Dilution of Scope: Upstream and Intersectoral Planning

Forests depend strongly on policies and interventions beyond the forest sector.

Minimizing negative impacts to forests, and all other ecosystems, requires an intersectoral approach and full consideration of activities in other sectors which may impact forests or forest peoples, including mining, transportation, energy, infrastructure, and agriculture. The Bank’s current Forest Policy, OP 4.36, applies to projects that have or may have an impact on the health and quality of forests regardless of sector. ESS6 omits specific references to forests, and does not include an inter-sectoral or cumulative approach to impacts on forests. If true environmental and social costs of

³⁷ World Bank. September 1993, OP 4.36, para (c).

³⁸ The World Bank Group. May 20, 2013. *Forests and Trees in Sustainable Landscapes, Action Plan, FY 14-16*. Concept Note, pg.5.

³⁹ IEG, 2011. *Evaluative Directions for the World Bank Group’s Safeguards and Sustainability Policies*, p.17.

impacts on forests from activities in all sectors impacting forests are incorporated into cost-benefit analysis and assessment of alternative project scenarios, resulting projects are less likely to cause harm to forest ecosystems and forest dependent peoples. Although the Systemic Country Diagnostics and Country Partnership Framework processes are distinct from safeguard implementation, these processes provide an important opportunity to facilitate upstream planning for management of forests and other natural resources. However, if they are not undertaken in a participatory and transparent manner, they are not likely to protect biodiversity, including forests and forest-dependent communities.

Sincerely,

Rachel Baker
Bank Information Center
rbaker@bicusa.org

Stephanie Fried, Ph.D.
Ulu Foundation
stephf99@gmail.com

Korinna Horta, Ph.D.
Urgewald
korinna@urgewald.org

Rio Ismail
Ecological Justice
rio.ismail@gmail.com

On behalf of:

Pol Vandervoort
11.11.11
Belgium

Pieter Jansen
Both ENDS
The Netherlands

Margarita Florez
Asociación Ambiente y Sociedad
Colombia

David Ugolor
ANEEJ
Nigeria

Susan Kandel
PRISMA
El Salvador

Ane Schjolden
Rainforest Foundation Norway
Norway

Teklemariam Berhane
Human Rights Council- Ethiopia
Ethiopia

Jaybee Garganera
Alyansa Tigil Mina (ATM)
Philippines

Rivani Noor
Yayasan CAPP, Jambi
Indonesia

Rayyan Hassan
NGO Forum on ADB
Philippines

Juan Carlos Carrillo
CEMDA
Mexico

Phinyada Atchatavivan
RECOFTC
Thailand/Asia-Pacific

Iván Zúñiga
CCMSS
Mexico

Tom Griffiths
Forest Peoples Programme
UK

Ali Hines
Global Witness
UK

Mark Roberts
Environmental Investigation Agency
USA

Allison Silverman
CIEL
USA