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## Sustainable Development Strategies Group

### **Comments to the World Bank on the Proposed Changes to the Safeguard Policies**

Sustainable Development Strategies Group has reviewed the proposed changes to the World Bank's Safeguard Policies. While we find the goal of providing a more efficient and clear set of standards to be admirable, we have some concerns that are outlined below.

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

ESS1 weakens the equivalence standards provided in OP4.00 and provides that any subprojects undertaken under the auspices of a larger project will only have to comply with the ESS if the subprojects are classified as "High Risk." This creates a substantial loophole and leaves much up to the discretion of individual World Bank officials.

#### **Environmental and Social Standard 2. Labor and Working Conditions (ESS2)**

ESS2's objectives include protecting project workers and promoting fairness. However, it does not protect freedom of association or collective bargaining rights. Furthermore, ESS2 does not apply to contract or sub-contract workers and exempts civil servants in most situations.

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

Under ESS5, one of our major concerns is the change to standards for Resettlement Plans. Currently, borrowers must perform socio-economic studies before relocating people from affected project areas. Under the proposed changes, this requirement is eliminated. While there may be an efficiency benefit of both time and money by avoiding studying the impacts on local people, we do not think that this benefit outweighs the importance of properly considering the needs of a borrower country's citizens. Additionally, the changes would allow borrowers to file their plans after they receive funding. While this will also produce an efficiency benefit by accelerating project timelines, it removes the incentive for borrowers to produce comprehensive Resettlement Plans.

Another major concern is that ESS5 exempts government land titling/regularization and administration projects from World Bank standards. In developing countries that borrow from the World Bank, land is often one of the most valuable and most contested assets that a government or its people own. By exempting government land projects from ESS5 requirements, the World Bank may allow governments to more easily divest their citizens of their land in order to promote development. Especially in countries where rule of law and transparency have not yet progressed to the point that poor landowners are effectively protected, the robustness of the World Bank's Safeguard Policies is critical.

## **Environmental and Social Standard 6. Biodiversity Conservation and Sustainable Management of Living Natural Resources (ESS6)**

Environmental protections under the ESS are largely restricted to “critical habitat.” While the requirement that biodiversity offsetting result in a net biodiversity gain for critical habitat is laudable, the fact that environmental protections are largely limited to projects affecting endangered or threatened species is disconcerting. The requirements for sustainability under ESS6 are particularly weak; land-based commercial agriculture and forestry projects need only be located “on land that is already converted or highly degraded” “where feasible.” This feasibility requirement, like much of the language in the ESS, is so flexible as to avoid providing any meaningful, substantive protection.

ESS6 is consistent with the troubling opt-out of FPIC discussed below. It does not require consent, only “meaningful participation of locally-affected communities” in forestry projects.

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

Under current World Bank standards, free, prior and informed consent (FPIC) is the standard for compliance for borrowers. We believe that FPIC has progressed beyond the uncertain and evolving standard of several years ago to a meaningful and increasingly widely-adopted international best practice. Under ESS7, borrowers will effectively be able to opt out of the FPIC requirement by requesting an “alternative approach.” The language that allows them to do so is very discretionary, and borrowers are only required to adopt “other” standards. It is unlikely that such standards will afford the same protections and respect for indigenous peoples that FPIC does.

ESS7 does provide for FPIC, but only in limited circumstances. Generally, “meaningful consultation” rather than “consent” is required. Also, “FPIC does not require unanimity and may be achieved even when individuals or groups within or among affected Indigenous Peoples explicitly disagree.” Without laying out what level of agreement constitutes consent, this standard, like the other proposed standards, is subject to too much discretion.

## **Administration and other concerns**

We are concerned that the proposed changes would weaken the role of the Inspection Panel. Where the proposed rules and the mechanisms for complying with them become very flexible, the Inspection Panel must take such flexibility into consideration. This could leave concerned parties with no recourse for their grievances.

Additionally, the ESS (which replace various Operational Policies) would only apply to Investment Project Financing, and would not apply to Programme for Results and Development Policy Loans. Investment Project Financing only makes up about half of World Bank lending, and will likely make up an even smaller share in the future. This means that the ESS, which are less protective than current World Bank policies, will also apply to far fewer projects.

As part of the impetus for these changes, the World Bank has expressed a desire to clarify its standards. By moving to a set of standards that focuses on due diligence and flexibility, rather than bright-line rules explicitly laid out by World Bank standards, there is a very real risk of more ambiguity and less clarity in interpreting the ESS. Significantly, the phrase “where feasible” appears five times in ESS5-7. Furthermore, the shift to emphasis on the discretion of World Bank officials is likely to lead to less consistent application of the ESS across countries and over time, making it harder for borrowers to navigate the lending process and possibly giving undue power to individual decision-makers.

**Final thoughts**

Statements by the World Bank about some of the greatest concerns of the modern era (e.g. climate change and the effects of projects on the disabled, elderly, and those of non-majority sexual identity or orientation) led many to eagerly anticipate greater protections being implemented in the ESS. Unfortunately, the new standards fail to increase the breadth or depth of the World Bank's safeguards.

We recognize that the global landscape of development finance has changed dramatically since the World Bank's creation, and there is increasing competition with other financial institutions. However, we believe that the proposed changes, if implemented, will lower global standards. Now, more than ever, developing countries need the World Bank's leadership on environmental and social lending standards to protect their best interests.