

Input to Phase 2 Consultation: World Bank's Environmental and Social Framework

General comments:

1. Scope of the safeguards

We note that the safeguards framework is suggested to only apply to investment lending. In our opinion (ref earlier submissions), it would be preferable to have a common set of safeguards for all of the World Bank's lending instruments. But as the Bank seems determined to limit the environmental and social standards to investment lending, we have two recommendations:

- The Bank must make sure that their other lending (for example development policy lending) is subject to principles consistent with the safeguards. We are particularly worried about for example regulation processes that conflict with indigenous peoples' right to free prior informed consent, and where the results may be involuntary resettlement or deprived access to land and natural resources with no possibility for compensation or redress.
- Where investment lending projects are linked to, or dependent on, prior land regulation or area planning, the WB must ensure that also this area planning or land regulation process has been conducted in compliance with the safeguards framework for investment lending.

2. Vague language leads to weaker safeguards

The draft policy and standards are plagued with vague language such as "where appropriate", "if applicable", "timely", "due consideration", "relevant", "reasonable", "sufficient" etc. The definitions of such words are open, and will probably lead to unequal interpretation by different actors, depending on interest. The language needs to be tightened in both the policy and the standards, in the next version.

3. Requirements for transparency and disclosure of information must be specified

Transparency and access to information for the public is necessary for meaningful participation for civil society and affected groups, and to reduce the risk for corruption and unequal distribution of benefits from investments. We urge the Bank, and member countries, to make it explicitly clear in the safeguards that all impact assessments should be produced and disclosed to the public, with a specific timeframe, before lending is approved. This is a general point relevant for all the specific ESSs, but we have commented on this under ESS10.

4. Rights of indigenous peoples

While we acknowledge the reference to "the human rights of indigenous peoples" and the specific reference to FPIC (ESS7) as very positive steps, we miss an explicit reference to indigenous peoples' rights as stated in both the UN Declaration on Indigenous Peoples

(UNDRIP), and ILO 169. The vague formulation *“Give due consideration to Indigenous Peoples..”* used in the policy framework (e.g. the vision statement) should be replaced by language explicitly recognizing and respecting the rights of indigenous peoples, with reference to international policy such as the UNDRIP.

Assessment and Management of Environmental and Social Risks and Impacts (ESS 1)

The ESS1’s approach of using borrowers’ own ES framework, rather than using the World Bank’s, can potentially become a very large loophole. The language in the existing draft ESS1 is not assuring (e.g. para 19: measures and actions to address gaps in the country’s own ES framework *“may be implemented”*). First, we believe it is important to ensure that the responsibility for adherence to the safeguards remains with the World Bank, until borrower countries have adopted equivalent safeguards systems. Second, the World Bank should provide support to build the capacity for the implementation of borrowers’ own frameworks.

Land Acquisition, restrictions on Land Use and Involuntary Resettlement (ESS 5)

The draft policy on land acquisition and resettlement represents a weakening of safeguards and considerations for affected communities, both by vaguer, less specific language and by opening up for alternatives where it may be difficult or expensive to follow the requirements. The draft should be strengthened to at least the same requirements with regard to affected communities as the current operational policies.

Scope of application: The ESS5 will not apply to *“land titling/regularization activities”*. Such titling or regularization may have major impacts on indigenous peoples and local communities depending on land, forest and other natural resources for their livelihood. It may also have major negative impacts on biodiversity, including biodiversity rich tropical forests. In cases where land titling/regularization activities are linked to planned investments involving loans from the WB, or such investments are dependent on prior land titling/regularization, the World Bank must ensure that the regularization process has been conducted in accordance with the ESS 5.

Eligibility criteria: The census which is to establish the status of affected persons must be conducted in an open and transparent manner, with clear criteria and provision for inputs from the affected communities before it is approved, as basis for project planning.

Compensation: Paragraph 10 allows the borrower to compensate land, including collectively owned land, with cash if *“it is demonstrated that equivalent replacement land is unavailable”*. This is a potential major loophole in the safeguard policy, and should not be an option where it affects indigenous peoples or traditional communities which base their way of life and community on forest and natural resources.

Planning and implementation: While the current Bank procedures on resettlement (OP 4.12 Annex A) require comprehensive household baseline data and other socio-economic studies to

be conducted in the early stages of project preparation, this has been omitted in the draft version of the new Safeguards (ESS5, paragraph 16). Proper baseline data is essential to ensure that resettled communities receive full restitution, and must include household data on income, living conditions and resource use. Resettlement plans should be made with the participation of affected communities prior to the Bank's review and project approval, as required in the current operational policies.

Biodiversity Conservation and Sustainable Management of Natural Resources (ESS 6)

The draft ESS6 on biodiversity recognizes that "protecting and conserving biodiversity and sustainably managing living natural resources are fundamental to sustainable development" and that a "precautionary approach" and "sustainable management" are part of the objective with ESS6. This understanding must lead to a strengthening of the Bank's standards for protection of natural habitats and forests (covered by the current OP 4.04 and OP 4.36). The current draft, however, represents a major weakening of safeguards and should be substantially changed. For more comprehensive comments see the specific submission signed by Rainforest Foundation Norway with a number of other civil society organizations, "ESS6 Biodiversity Standard: Major Policy Dilutions and Failure of Upward Harmonization".

Forests: The replacement of the World Bank policies on Natural Habitats and on Forests with the current draft ESS6 represents a substantial weakening of the forest policy and will open up for deforestation, irreversible loss of biodiversity and critical loss of livelihood for local communities caused by investment supported by World Bank loans.

A new policy on biodiversity, natural habitats and forest must explicitly state that the Bank will not finance projects causing deforestation or conversion of natural forests. In REDD+ activities, the Bank is already committed to the Cancun safeguards, including the one on natural forest: "That actions are consistent with the conservation of natural forests and biological diversity, ensuring that REDD+ actions are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits". Standards for the World Bank's investment lending must have equally explicit commitment to avoiding destruction of natural forest, and this must be reflected both in the ESS6 and the ESS1, including annexes on environmental and social impact assessments.

Industrial scale logging: The new ESS6 opens up for financing industrial scale unsustainable logging, as independent certification of industrial-scale commercial harvesting operations (plantations) no longer will be required, and the new language in ESS6 allows for land clearing and logging to proceed if the operation is unable to follow a certification scheme (paragraph 30). While there are a number of problems related to forest certification schemes, the proposed language is a step in the wrong direction. More efforts should be put into strengthening the schemes, and to develop sustainable forest practices. The changes in ESS6 draft will undermine such efforts.

Critical habitats: The definition of critical natural habitats is narrowed to consider only biodiversity, removing *areas important to traditional communities* and *protected areas* from the category *critical*

We are concerned that these changes i) exclude valuable areas from both protection, and from requirements to assess biodiversity values given by the current safeguards; and ii) disregard the close link between biodiversity and traditional use and knowledge of biodiversity a development contrary to the CBD and the Nagoya protocol of the Biodiversity Convention which recently entered into force, emphasizing the link between biodiversity management and local use and knowledge of the resources.

Encouraging the use of *biodiversity offsetting* also in critical or priority areas, further weakens the protection of these valuable natural habitats.

Biodiversity offsets, protected areas and critical habitats: Biodiversity offsets in general requires systematic and regulated natural resources management on both national and sub-national level. In countries without national biodiversity plans and clear, implemented policies to fulfill their commitments with regard to biodiversity conservation (such as the CBD Aichi targets), biodiversity offsets may lead to irreversible destruction of habitats before they have been assessed as part of a national biodiversity strategy. No biodiversity offsets should be undertaken where the biodiversity plans are not in place or not implemented. Biodiversity offsetting should not be used to facilitate project development within protected areas or areas important to indigenous peoples or traditional forest communities, or in critical habitats such as primary tropical rainforests.

Indigenous peoples (ESS 7)

We are content that the ESS 7 refers to the human rights of indigenous peoples in the objectives and that the Bank has finally embraced the concept of Free, prior, informed consent. These achievements must not be regressed in the future revisions. However, the application of FPIC is limited to three circumstances (land & natural resources, involuntary resettlement and impacts on cultural heritage). This is a narrower approach than in the UNDRIP, where FPIC are to be applied to all processes impacting on indigenous peoples, be it of administrative/political or physical character.

The paragraph describing why FPIC is needed (para 19) focuses on the vulnerability of indigenous peoples. While this is often true, we believe the paragraph should be rephrased to better anchor the FPIC in the rights of the indigenous peoples as described in international law (ILO 169) or the UNDRIP, rather than just on indigenous peoples' vulnerability to loss of, or alienation from, land.

However the most aggravating in the ESS7 is the opportunity for borrowers to opt out and ask for an *alternative approach* that effectively opens up for completely disregarding the rights of indigenous peoples. Such an "alternative approach" will be particularly relevant in Africa, where many countries do not recognize indigenous peoples and their

special rights, despite the fact that these are established by a number of international human rights instruments. Such an opening for ignoring the rights of indigenous peoples in the World Bank's safeguard policies could have serious negative consequences and is completely unacceptable. The "alternative approach" should therefore be deleted (also in other ESSs which reference it).

Last, on paragraph 23 in ESS7, we support the idea that borrowers should make a plan for legal recognition of indigenous peoples' rights in projects [that] are likely to have significant impacts on land that is traditionally owned or under customary use or occupation by indigenous peoples. However, this paragraph must specify that also *collective rights* should be recognized in such a plan. *The plan must be developed with the meaningful participation of the indigenous peoples, including in defining who the Indigenous Peoples with rights are in this specific area.*

Information disclosure and stakeholder engagement (ESS 10)

The ESS 10 is an example of where vague language really makes it difficult to understand what type of information will have to be disclosed to whom, when and how. We believe this ESS must be revised to clearly state a minimum disclosure requirement of 120 days prior to Board approval. 120 days makes a key difference in the country and community level for translation and local understanding of the issues.

Furthermore, it needs to explicitly require the sharing of ESIA's, and clarify what should be the basis for the discussion/information about risk to the affected people (as described in para 10 c). The paragraphs describing the stakeholder engagement plan (para 14-17) need to specify also who should verify the plan, as such plans might be of very varying quality.

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