



Comments on the World Bank's Environmental and Social Framework

March 1, 2015

The Center for International Environmental Law (“CIEL”) welcomes the opportunity to comment on the first draft of World Bank’s Environmental and Social Framework (the “Framework”), released on July 30, 2014. CIEL is a non-governmental organization based in Washington, DC and Geneva, Switzerland that has monitored the evolution of environmental and social standards of international financial institutions for 25 years. Our expertise draws on our past engagement in policy reforms at a number of international financial institutions, as well as our legal and technical support for communities that have brought complaints to the independent accountability mechanisms, including the World Bank’s independent accountability mechanism, the Inspection Panel.

Introductory Remarks

When the World Bank (the “Bank”) created its safeguard policies thirty years ago, they served as a global standard for environmental and social protections related to development projects. We recognize that the Bank currently finds itself in a drastically different operating environment, one characterized by the proliferation of competing streams of financing, some of which (as of yet) do not have safeguards in place. Yet, the need for clear, enforceable, and robust standards are necessary now as ever, given the Bank’s increased appetite for risk taking, including in fragile conflict-affected States and through transformational projects. At the outset, it is important to recall the fundamental purpose of the Bank’s safeguard policies—they were not created for the benefit of borrower countries, nor for Bank management, but for the protection of communities and the environment on which the harms often fall. No doubt the Bank’s policies will continue to serve as a global referential point. Thus, any dilution of these policies will make it more difficult to establish strong protections within the new generation of development banks, signaling a race to the bottom.

While the Framework contains some positive elements, some of which are discussed below, as a whole it suffers from fundamental flaws and an undercutting of international law and best practice. As currently written, it rolls back essential protections for the environment and the communities.

We have limited the scope of this submission to comments on: (1) the architecture and procedural requirements; (2) human rights and human rights due diligence; (3) chemicals; (4) climate; and (5) stakeholder engagement, with particular emphasis on strengthening the grievance redress

mechanism referenced in ESS10.¹ In addition, CIEL contributed to and fully supports the following joint submissions: *ESS6 Biodiversity Standard: Major Policy Dilutions and Failure of Upward Harmonization; Comments on the World Bank Draft Environmental and Social Framework – ESS10 and Implications on Accountability*; and finally, the *Bank on Human Rights Coalition, Key Human Rights Concerns and Recommendations*, as a Steering Committee member of the Bank on Human Rights Coalition. We refer to the recommendations contained in these submissions, but will reference specific recommendations throughout, as applicable.

I. Architecture and Procedural Requirements

First, we would like to express serious concern about the Bank’s paradigm shift away from compliance-based standards. In its totality, the Framework abrogates the Bank’s responsibility for ensuring projects do not harm people or the environment. Clear dilutions include weakly regulated deferral of Bank safeguard responsibility to borrowers, significant carve-outs, the adoption of open-ended compliance, and in general, the absence of clear, explicit minimum procedural requirements with respect to environmental and social due diligence. By way of example, under the Framework, the Bank only “require[s] the Borrower to structure projects so that they meet the requirements of the ESSs *in a manner and timeframe acceptable to the Bank.*”² This is but one example of language providing open-compliance and flexibility on the timing of appraisals and compliance. Under this and similar provisions, projects will go before the Board with incomplete frameworks for risk management and mitigation. Similarly, ESS1 (Assessment and Management of Environmental and Social Risks and Impacts), defining the Borrower’s obligations, states:

If the project comprises or includes existing facilities or existing activities that do not meet the requirements of the ESSs at the time of Board approval, the Borrower will be required to adopt and implement measures satisfactory to the Bank so that, where deemed necessary by the Bank, specific aspects of such facilities and activities, as identified by the Bank, meet the requirements of the ESSs *within a timeframe acceptable to the Bank.*

The implications of these statements and qualifying language are that compliance under the ESSs is not a strict requirement, but rather something to which to aspire.

¹ We understand that ESS10 consolidates the requirements for grievance mechanisms found in ESS4 (Community Health and Safety) and ESS5 (Land Acquisition, Restrictions on Land Use and Involuntary Resettlement). We will not discuss those safeguards here, but we hope the requirements we propose for ESS10 can likewise improve those systems.

² World Bank, *Draft Environmental and Social Framework* (the “Framework”), July 30, 2014, para. 13.

Clearly delineated procedural requirements are needed for the Inspection Panel to fully carry out its mandate. During the first phase of the Safeguards Review, the Inspection Panel submitted comments, stating that:

The Panel's experience shows the importance of clarity of requirements, both for project-affected communities as well as for Bank staff. This is a key ingredient both for effective policies and accountability. To ensure that rights of accountability and recourse remain fully available to affected people, it is important to have core requirements and principles in policy text and not in secondary guidance documents."³

The Framework's increased reliance on flexibility and staff discretion (through phrases/carve-outs such as "in a manner and timeframe acceptable to Bank," among others) and the Bank's constricted scope of responsibility will narrow the scope of the Inspection Panel's review. By substituting the clear, mandatory requirements of the current safeguard policies for policies favoring open-compliance and increased reliance on staff discretion, the Bank blurs the exact thresholds or applicable standards that apply to each project or program. This lack of clarity will make it more difficult for affected people to assess what exact protections they are entitled to under a project, what should be expected of the Bank, and whether the Bank has violated those standards.

It is imperative that the Framework establish strong, minimum protections for the environment and affected communities and clearly maintain Bank responsibility for due diligence, supervision and monitoring. We caution the Bank in moving forward with an adaptive management approach unless and until the Bank has adequately enhanced implementation, monitoring, and supervision of safeguard policies, including by requiring that staff have the capacity to implement the safeguard policies; creating incentive structures to reward staff for advancing development that respects human rights, and requiring adequate funding for implementation, monitoring and supervision is in place. At present, these conditions are far from being met.

However, in the event the Bank continues with the adaptive management approach, we recommend that the Bank:

- **Require that where a borrower country's laws and standards differ from the ESSs/safeguards, the more stringent standard should apply.**
- **Require all projects and programs meet both the Objectives and the requirements of the ESSs prior to project approval and throughout the life cycle of a project.** Where ESS Objectives are to be utilized as a benchmark for safeguard compliance, they must be revised so that they contain sufficient substance and specificity to guarantee the same outcome as the safeguards.
- **As a corollary of the above, require that all "High Risk" and "Substantial Risk" projects and programs funded by the Bank meet the ESSs requirements,** including those supported through borrower frameworks, common approach, financial intermediaries,

³ Inspection Panel, *Lessons from Panel Cases: Inspection Panel Perspectives*, May 2013, p. 1.

or associated facilities. In addition, as noted below, the Framework should require that “High Risk” and “Substantial Risk” projects are subject to increased due diligence. For instance, this could include independent funding for a community-led impact assessment, and impact assessment verification by an independent panel of social and human rights experts.

- **Exclude “High Risk” and “Substantial Risk” projects from deferral or delegation of risk appraisal or management, either from borrower frameworks, common approach, financial intermediaries, or associated facilities.**

II. Human Rights and Human Rights Due Diligence

The Bank, as an international organization with international legal personality—in particular, a United Nations specialized agency—has obligations under international law to ensure that its policies are compliant with the body of international standards and norms, including the emerging body of “soft law,” governing the protection and promotion of the environment and human rights. Even if one were to question the proposition that the Bank has a legal obligation to meet international standards, it is clear that its Member States do bear this responsibility, to the extent that they have voluntarily undertaken obligations under international law. More than 90 percent of the Bank’s Member States have ratified at least four international human rights treaties.⁴ Accordingly, the obligations of these Member States cannot be attenuated by operating through the medium of an international organization. Beyond the issues of its legal obligation, the Bank has a moral imperative to set the bar high by incorporating international standards and norms because the result of the safeguard review will influence the policies of other multilateral development banks, private financiers, and development finance globally. And finally, as the private sector so clearly demonstrates, assessing and then reducing human rights risks can mitigate legal, reputational and financial risks. There is a strong business case for the Bank to make an explicit commitment to respect human rights and to conduct human rights due diligence, both upstream at the strategic level and downstream at the project level.

And yet, the Framework sends a very clear message that respect for human rights is discretionary--that certain rights can be cherry-picked, that others are subject to “opt out.” While we welcome the explicit mention of human rights in the overarching Vision for Sustainable Development, this aspirational statement is non-binding, unenforceable, and limited in scope – and falls well short of an explicit commitment to respect human rights. This statement also fails to provide an adequate framework to ensure that the Bank’s operations will respect human rights.

⁴ Human Rights Watch, *Abuse-Free Development, How the World Bank Should Safeguard Against Human Rights Violations*, 2013, p. 16 (providing that, at the time of writing, “more than 90 percent of the World Bank’s 188 member countries have ratified four or more international human rights treaties. Human rights are also protected to varying degrees in most countries’ constitutions or legislation.”).

The time has come for the Bank to explicitly commit to not financing projects or programs that would contribute to, cause, or exacerbate human rights violations through its lending, regardless of the funding mechanism used. Specifically, we recommend the Bank:

- **Strengthen the Objectives in the Environmental and Social Policy** to include: “To design and implement development activities in compliance with international law, including those under environmental and human rights treaties and conventions.”
- **Strengthen the Environmental and Social Policy** to include: “The World Bank will respect human rights and take all necessary measures to ensure that the activities it finances or otherwise supports do not cause, contribute to or exacerbate human rights violations.”
- **Strengthen ESS1 (Assessment and Management of Environmental and Social Risks and Impacts)** by adding: “The Bank will not finance any activity that contravenes the Borrower’s obligations under international law. It will identify any relevant treaty that is implicated by proposing funding to ensure compliance with its obligations.”

In addition, while the Framework includes new language on various human rights issues, such as labor rights, non-discrimination, and Free Prior Informed Consent (“FPIC”) for indigenous peoples, major exclusions and carve-outs would effectively render these positive additions meaningless. Therefore, we recommend the Bank:

- **Strengthen ESS2 (Labor and Working Conditions) to explicitly provide comprehensive coverage for all workers, including contract and sub-contract workers as defined by International Labor Organization standards. The Framework should also explicitly reference the International Labor Organization’s eight fundamental conventions.** The provision on labor rights omits the core International Labor Organization Standards of collective bargaining and freedom of association, and does not apply to contract or sub-contract workers, which is inconsistent with international law.
- **Explicitly commit to non-discrimination and to advancing substantive equality within all Bank activities, including all forms of discrimination, as consistent with international law.** While we welcome an explicit requirement to analyze discrimination, the language on discrimination leaves out discrimination based on color, language, race, and political or other opinion, and therefore is inconsistent with international law. Human rights law prohibits discrimination on the basis of a wide range of prohibited grounds. For instance, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights prohibit discrimination on the grounds of race, color, sex, language, religion, political

or other opinion, national or social origin, property, birth or “other status.”⁵ In addition, and to further operationalize its commitment to non-discrimination, the Bank should specify how groups designated as vulnerable, marginalized, or discriminated against are taken into account in project design, monitoring and implementation.

- **Delete the “opt out” clause in ESS7 (Indigenous Peoples).** As another example, while we welcome the application of FPIC for indigenous peoples under ESS7, under the Framework, borrower countries could apply to “opt out” of applying ESS7 protections. This is inconsistent with the treatment of indigenous peoples under international law.

We appreciate the Bank’s more comprehensive treatment of social risks and impacts in its overall environmental and social assessment. This is an improvement from the previous safeguard policies. However, the Bank should take into account current best practice for human rights due diligence, as reflected in the United Nations Framework and Guiding Principles on Business and Human rights, a widely-accepted framework that elaborates the responsibilities of businesses and the duties of states with regard to corporate impacts on human rights. In particular, the Framework should require robust human rights due diligence, including: (1) a human rights policy; (2) a human rights impact assessment; (3) tracking and reporting on implementation; and (4) access to effective remedies.⁶ This requires acknowledging the realities of the environment in which the Bank is working, analyzing the risks, and taking the necessary measures to avoid or mitigate the risks. In order to strengthen ESS1, we recommend the Bank:

- **Require human rights impact assessment for all projects at all stages. In the alternative, social assessment should be defined to utilize the human rights framework as a benchmark and include all relevant human rights-related issues and indicators.** In particular, the mitigation hierarchy should reflect the fact that human rights violations are to be prevented, not minimized or compensated.
- **Require, as a precondition of approval, that a human rights impact assessment, which is completed in consultation with affected communities in their native language, is disclosed.**
- **Specify the levels of due diligence required for each risk category and require increased due diligence for riskier projects and programs.** The Framework should require that “High Risk” and “Substantial Risk” projects are subject to increased due

⁵ Universal Declaration of Human Rights, adopted December 10, 1948, G.A. Res. 217A(III), U. N. Doc. A/810 at 1 (1948), Article 2; International Covenant on Economic, Social and Cultural Rights, adopted December 16, 1966, G.A. res. 2200A(XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, Articles 2-3; International Covenant on Civil and Political Rights, adopted December 16, 1966, G.A. res. 2200A(XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, Articles 2-3, 26.

⁶ United Nations, Guiding Principles on Business and Human Rights, *Implementing the United Nations “Protect, Respect and Remedy” Framework*, Principle 17.

diligence. For instance, this could include independent funding for community-led assessment, and impact assessment verification by an independent advisory panel of social and human rights experts.

- **Require that any decision to downgrade the risk category of a project must be approved by the regional safeguard advisor and the Board and communicated to affected communities.** Notably, enabling affected community consultation at the risk categorization level is consistent with the Bank’s aim of increasing stakeholder engagement. In this regard, this should be referenced in ESS10.
- **Require that groups identified as “vulnerable” will be examined separately in a social impact assessment and that a generalized category of “vulnerable” groups is unacceptable.**
- **Require, when a project impacts or is likely to impact sacred sites and on lands and waters traditionally occupied and used by indigenous peoples, that participatory environmental, cultural and social impact assessments are to be conducted, as is best practice under Article 8(j) of the United Nations Convention on Biological Diversity, the Akwe: Kon Guidelines.** The voluntary Akwe: Kon Guidelines emphasize detailed participatory environmental and social impact assessments, and suggest a ten-step process for impact assessments that includes respect, preservation and protection of traditional knowledge and a joint assessment of risks with affected groups. The Akwe: Kon Guidelines further recognize FPIC as being of crucial importance in the protection of indigenous peoples during the assessment process, including how Prior Informed Consent may correspond to several phases of the environmental and social impact assessment process.

III. Chemicals

We welcome the addition of ESS3 on Resource Efficiency and Pollution Prevention, as well as ESS4 on Community Health and Safety. We note that these standards are a positive improvement, as the previous safeguards were limited to pesticide management. It bears noting that nearly every sector of the Bank’s projects and programs implicates potential sources of exposure to hazardous chemicals during various stages of the chemical life cycle.

As one of the members of the Inter-organization Programme for the Sound Management of Chemicals, the World Bank participates in the Strategic Approach to International Chemicals Management process (“SAICM”), the overarching goal of which is the achievement of sound management of chemicals throughout their lifecycle so that by 2020, chemicals are produced and used in ways to minimize significant adverse impacts on human health and the environment. Integration of chemicals management into development agendas is critical to SAICM implementation and the 2020 goal. Recognizing this, SAICM emphasizes the importance of all stakeholders, including the World Bank Group, to take appropriate action for the “integrati[on of]

chemicals issues into the broader development agenda.”⁷ The World Bank should help support borrowers in the development of sound chemicals management.

The addition of these standards affords the Bank a distinct opportunity to ensure sound chemicals management throughout the project life cycle. However, to ensure that Bank lending strengthens borrower capacity for sound chemical management and for fulfillment of their obligations under international law, we recommend the Bank:

- **Strengthen the Objectives in ESS3 to:**
 - **Ensure that in avoiding or minimizing pollution from project activities, the risks to populations most vulnerable to exposure to chemicals and hazardous wastes are explicitly considered.** We recommend the following objective: “To avoid or minimize adverse impacts on human health and the environment by avoiding or minimizing pollution from activities throughout the project life cycle, with consideration of the risk to groups or populations that may be more vulnerable to, or stand to be disproportionately impacted by, exposure to chemicals or hazardous materials.” An emphasis on populations particularly vulnerable to the exposure of chemicals is consistent with the objectives of SAICM.⁸
 - **Include an objective for the elimination of the production, use and release of chemicals that pose unreasonable risks to the right to health or to the environment.**
- **Require the use of best available technologies that are best suited to avoid, or where avoidance is not possible, minimize the adverse impacts on human health and the environment.** As currently drafted, ESS3 provides “a project-level approach to resource efficiency, cleaner production processes and pollution management in line with *internationally disseminated technology and practices*.”⁹ However, “[i]nternationally disseminated technology” can include sub-par technologies. As the leading public development institution, the Bank should hold itself and its clients to a higher standard. We recommend revising this language to “best available technologies and practices.”

Further, the Bank should omit the use of qualifying language such as “technically and financially feasible” when referring to requirements on the borrower. This leaves too much discretion on the part of the borrower. Specifically, ESS3 provides that “[t]he Borrower will consider ambient conditions and apply *technically and financially feasible* resource efficiency and

⁷ SAICM, GPA, para. 8.

⁸ SAICM, *Overarching Policy Strategy*, para. 14 (b) (providing as one objective of the Strategic Approach is “to ensure that humans and ecosystems and their constituent parts that are especially vulnerable or especially subject to exposure to chemicals that may pose a risk are taken into account and protected in making decisions on chemicals.”).

⁹ Framework, ESS3, para. 1 (emphasis supplied).

pollution prevention measures in accordance with the mitigation hierarchy.”¹⁰ Likewise, the Framework provides that “[t]he Borrower will implement technically and financially feasible measures for improving efficiency in its consumption of energy and water, as well as other resources and material inputs . . .”¹¹ The approach provided for in the Framework would undermine the chemicals management policy directions issued by government and stakeholders in SAICM, enabling donors and borrowers under the guise of Bank funding to implement alternative, weaker approaches to chemicals management. For instance, the Overarching Policy Strategy for SAICM does not condition risk reduction on financial or technical feasibility,¹² as the current Framework proposes.

- **Strengthen the borrower’s obligations for the management of hazardous materials.** As currently written, the Framework states:

The Borrower will avoid the manufacture, trade and use of chemicals and hazardous materials to *international bans, restrictions and phase-outs* unless for an acceptable purpose as defined by the conventions or protocols *or if an exemption has been obtained by the Borrower*, consistent with Borrower government commitments under applicable international agreements.

Moreover, the scope of “international bans, restrictions and phase-outs” is too limited. Hundreds, if not thousands, of chemicals of concern are not subject to international restrictions that would help ensure safe and appropriate use. This would provide insufficient protections for communities and would enable the transfer of polluting second rate activities to developing countries. Moreover, the clause allowing the borrower to gain an exemption from applying these standards is ambiguous and should be clarified. Additionally, the Framework provides that “[t]he Borrower will *consider* less hazardous substitutes where hazardous materials are intended to be used in manufacturing processes or other operations.” We recommend substituting the word “consider” with “use.”

- **Require borrowers to assess the risks of chemicals and hazardous materials on the human rights of communities for all projects and programs, as part of a human rights due diligence system.** ESS3 currently provides that “[t]he Borrower will minimize and control the release and use of hazardous materials. The production, transportation, handling, storage and use of hazardous materials for project activities will be assessed through the environmental and social assessment.”¹³ It is imperative that any assessment of chemicals and hazardous wastes also looks at implications of exposure on the human rights of populations. Within the context of sound chemicals management, human rights due diligence should therefore include a health and safety assessment of populations that would be most vulnerable to chemicals exposure, bio-monitoring, pre-project baseline studies for

¹⁰ Framework, ESS3, Requirements (emphasis supplied).

¹¹ Framework, ESS3, Resource Efficiency (emphasis supplied).

¹² SAICM, *Overarching Policy Strategy*, para. 14.

¹³ Framework, ESS3, para. 17(emphasis supplied).

chemicals and their metabolites, and within a mitigation framework, an assessment of hazardous chemicals utilized by the project and potential waste generated, and alternatives to avoid those impacts. Assessment should also include examination of whether the area has a significant issue of historical pollution.

- **Require the borrower to have a national system in place and institutional capacity for sound chemicals management, consistent with international best practices.** While necessary steps are being taken under SAICM to build capacity in developing countries, the overall capacity for sound chemicals management will remain inadequate in many borrowing countries for several years, if not decades. The Framework must be attuned to this reality. Before use of a borrower's system, the Bank should require an assessment of the borrower's actual practice and institutional capacity to implement and enforce its policies and regulatory framework for sound chemicals management. This assessment must include, for example, examination of whether systems are in place for disposal of chemicals and hazardous wastes, as well as mitigation and control technologies. After this full analysis, borrower systems should only be used if and when they are more stringent than the Bank's standards.

It is worth noting that assessment of borrower capacity can be conducted at several points in the project cycle, including through a strategic environmental and social/human rights assessment as part of the formulation of the Systematic Country Diagnostic and Country Partnership Framework, which then informs the Bank's lending portfolio in a borrower country. Indeed, the need to improve the consideration of health effects due to chemicals in strategic environmental and social assessments and other impact assessments has been recognized.¹⁴ In addition, the Framework should require that communities—and particularly those who may be more vulnerable to the impacts of the project or program—have an opportunity to express their views when the use of a borrower's laws are proposed in place of Bank standards and should provide opportunities for stakeholder consultation on this issue. The Bank has a role to play in ensuring that these views can be expressed freely and without risk of retribution.

- **Implement a “no go” list based on international best practice for use both at the project level and upstream, including in the Bank's risk categorization.** Certain chemicals cannot be soundly managed and therefore the Bank should implement a “no go” list for use not only at the project level, but also when informing the project or program risk categorization and when scoping is conducted to determine the risk categorization (and therefore the level of due diligence required) for a project or program. By way of reference, the ChemSec SIN list¹⁵ comprises chemicals that have been identified as “Substances of Very High Concern,” in line with the criteria set forth by the European Union chemicals regulation REACH. Moreover, the Bank should also use and reference the Food and

¹⁴ The Budapest Declaration on Environment and Health (2004) calls for taking “significant health effects into account in the assessment of strategic proposals.” See also World Health Organization (WHO), *Health and strategic environmental assessment* (2009), available at: http://www.euro.who.int/_data/assets/pdf_file/0006/112749/E93878.pdf.

¹⁵ International Chemical Secretariat, SIN list, available at: <http://www.chemsec.org/what-we-do/sin-list>.

Agriculture Organization of the United Nations Highly Hazardous Pesticides list,¹⁶ including in reference to ESS4.

- **Within the context of labor and occupational safety, ensure that the borrower provide safe and healthy work facilities and take appropriate precautionary measures to protect workers from work-related hazards, such as exposure to hazardous chemicals. Where safety equipment or other measures are necessary to protect workers' health, workers should have full and free access to such equipment.** In this regard, we recommend that the pollution prevention language in ESS3 directly refer to ESS2.

IV. Climate

The World Bank has recognized that “[c]limate change is a fundamental threat to sustainable development and the fight against poverty,”¹⁷ rightly emphasizing that “immediate global action is needed.”¹⁸ Accordingly, the Bank has stated that “it will increasingly look at all [Bank] business through a climate lens.”¹⁹

We appreciate the Bank’s inclusion of climate language into the Framework’s “Vision for Sustainable Development,” for instance. We also appreciate that the revised environmental and social assessment contained in ESS1 will consider greenhouse gas emissions and climate change mitigation and adaptation. Yet, despite these additions, we note with concern that the Framework remains devoid of any meaningful integration of climate consideration and does not reflect an institutional commitment to integrate climate change considerations at the project level. In fact, the Framework falls short of best practice in key areas related to the assessment and management of climate-related risks and the impacts on the resilience of affected communities. It also fails to adequately address the challenges that climate change presents to borrowers, communities, and local ecosystems.

The Bank must do more to put its commitment to tackling climate change into practice. CIEL contributed to, and fully supports, the recommendations advanced in Sierra Club’s submission on the Framework,²⁰ which sets forth best practice for project appraisal and alternatives assessment for accounting of the risks and uncertainties of climate change. We refer to those recommendations in whole, and echo the importance of using best available technologies and requiring a full life-cycle

¹⁶ Food and Agriculture Organization of the United Nations, Highly Hazardous Pesticides list, available at: <http://www.fao.org/agriculture/crops/thematic-sitemap/theme/pests/code/hhp/en/>.

¹⁷ World Bank website, *Climate Change*, available at: <http://www.worldbank.org/en/topic/climatechange/overview#1>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Sierra Club, *Comments on the Climate and Resource Efficiency-Related Provisions of the Draft Environmental and Social Framework*, January 2015.

accounting of greenhouse gases and short-lived climate pollutants for all Bank lending – at the very least, for projects involving fossil fuels.

In addition, we wish to underscore the role the Bank can and should play in advancing borrowers' transition from fossil fuels to cleaner and renewable energy sources. As part of its new World Bank Group Strategy, the Bank has committed to being more selective when deciding, with a borrower country, what its interventions will be, with an aim to identifying the Bank's comparative advantage. We welcome this evidence-based approach and contend that these priorities lend further support for the Bank's prioritization of low carbon projects over emission-intensive projects. While it is realistic to assume that some borrower countries may have national development plans that involve coal, the Bank's comparative advantage should not be in funding those projects. Rather, the Bank should avoid expanding the supply of fossil fuel-based energy and use its comparative advantage to finance projects that incorporate on End-Use Energy Efficiency and Renewable Energy. In so doing, the Bank can operationalize its commitment to tackling climate change and position itself as a solutions provider.

Moreover, the Bank should draw from and strengthen linkages between the country strategy processes and the safeguards in order ensure that risks related to climate change are systematically integrated at both the strategic and project levels. As discussed previously, the Bank should use a strategic environmental and social/human rights impact assessment at the country level to assess, mitigate or avoid the impact of the Bank's portfolio on climate change, as well as the effect of climate change on the human rights of affected communities. By way of comparison, the European Investment Bank requires the use of Strategic Environment Assessment at a country or sector level, in order to ensure that relevant environmental and social information, including climate change considerations, are taken into account in the decision-making process.²¹ We also recommend that this assessment include an examination of any shortcomings in the regulatory and policy framework, as well as the borrower's record of implementation. These assessments should be integrated into the Systematic Country Diagnostic, which then informs the Bank's project decision-making vis-à-vis the Country Partnership Framework. The Bank should provide clear guidance as to what projects may or may not merit support, given identified shortcomings. Further, country or sector-specific strategic assessments must be coupled with human rights due diligence at the project level, as we discuss throughout this submission. At the project level, this assessment should include a component on climate mitigation and adaptation, which would assess whether the project will have significant, absolute or relative GHG emissions, as well as whether the project or impact of the project on the environment, communities or ecosystems would be significantly affected by climate change projects.

Finally, the World Bank should lend its analysis and voice to enable opportunities for civil society and community groups to participate in the upstream decision-making process, within the context of addressing climate change and beyond. This is critical, given the current environment of shrinking space for civil society in many parts of the world, including the increasing attacks on

²¹ European Investment Bank, *Environmental and Social Handbook*, Volume 1, para. 13.

environmental and human rights defenders. The Bank should systematically assess the environment for discrimination and marginalization when analyzing the risks related to and impacts of proposed projects and programs.

V. Stakeholder Engagement and Grievance Mechanisms

We welcome the addition of a specific safeguard on Information Disclosure and Stakeholder Engagement. However, in order to make stakeholder engagement effective, the Bank must set out minimum requirements to ensure that engagement is as inclusive as possible and enables groups that may be discriminated against or more vulnerable to project impacts, including women, people with disabilities, children, migrants, and the LGBTQ community, to meaningfully participate in and inform decision-making during the design and implementation of the project.

As part of a robust participatory consultation process, the Bank should ensure that project information is accessible and there is full disclosure of project-related impacts so as to ensure that affected communities can make informed decisions about a project or program. It is of particular concern that one of the few binding legal instruments between the borrower and Bank, the Environmental and Social Commitment Plan (“ESCP”), will merely consist of a summary. Currently, the ESCP “will be developed as information regarding potential risk and impacts become known.” Thus, full disclosure of the potential risks and impacts of the project is not required and does not have to be contained in a complete environmental and social assessment to sanction the Commitment Plan or as a condition for project approval. As described here, “[f]or some projects, the ESCP will capture all relevant obligations of the Borrower, and there will be no requirement for additional plans. For other projects, the ESCP will refer to other plans, either plans that already exist *or plans to be prepared* . . . which set out detailed project requirements.”²²

Consequently, while disclosure of the ESCP during project implementation is required under ESS10, these summaries may not fully reflect a full assessment of all potential project impacts. While we acknowledge the fact that the Framework contains some adequate language regarding disclosure, such as in the event of “material changes to the project that result in additional risks and impacts of concern to the project-affected communities, the Borrower will inform them how these risks and impacts are being addressed and disclose an updated ESCP,”²³ this should be the exception and not the rule.

The Bank should take all necessary measures to ensure that it meaningfully consults with affected people and civil society, including marginalized groups, in creating development agendas (including through the Systematic Country Diagnostic and Country Partnership Framework), reforming policy, and identifying, preparing, and carrying out projects. We recommend that the Bank:

²² Framework, ESS1, Annex 2. Environmental and Social Commitment Plan, para. 4 (emphasis supplied).

²³ Framework, ESS10 (Information Disclosure and Stakeholder Engagement), para. 22.

- **Require consultation that is gender inclusive of and responsive to those marginalized, discriminated against and vulnerable to project impacts.**
- **Ensure that affected communities and other stakeholders have a role in decision-making, including in the design and implementation of the project. This should require consultation at the earliest stages of considering a project.** In this regard, ESS10 should refer back to the Systematic Country Diagnostic and Country Partnership Framework, discussed above. In addition, as noted previously, any decision to downgrade the risk categorization of a project or program should be approved by the regional safeguard advisor and the Board and communicated to affected communities.
- **Ensure increased community engagement in higher risk projects, as a method for increased due diligence.** The Framework should require that “High Risk” and “Substantial Risk” projects are subject to increased due diligence. For instance, this heightened due diligence could include independent funding for a community-led impact assessment.
- **Take measures to ensure that the environment enables affected communities and other stakeholders can participate freely in discussions both upstream at the country level and at the project level, and provides the freedom to organize as they choose, without fear of reprisal or retribution.** This necessitates a systematic assessment of the environment for discrimination and marginalization, including obstacles to substantive equality, when analyzing the risks related to and the impacts of proposed projects. Again, this is another point that should refer back to the Systematic Country Diagnostic and Country Partnership Framework.
- **Require that the ESCP be disclosed at the concept and appraisal stages and include all proposed project plans or activities resulting from an assessment of potential risks and impacts, as well as implementation plans on supervision, monitoring, while also specifying how conditionality will be triggered and remedied in instances of non-compliance. As noted below, the ESCP should also include grievance mechanism implementation, including budgetary allocation and capacity building.**
- **Disclose, through the ESCP and other documents, a comprehensive assessment of the environmental, social and human rights impacts (both positive and negative) of the project or program, in an accessible form that enables people to make informed decisions.** Disclosed documents should include: sectoral or regional environmental and social impact assessments, strategic environmental and social assessments, strategic conflict assessments, the Environmental and Social Management Plan, and the Environmental and Social Management Framework. Disclosure of these documents would also be consistent with best practices in line with the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, the aim of which is to ensure that project-affected communities have access to information, such as environmental, social, and human rights impact assessments, early in the decision-making

procedure and in an adequate, appropriate, and timely manner so as to ensure their effective and meaningful participation.

- **Require that meaningful consultation is not only “documented by the Borrower,” but also that such documentation be publicly available to affected community and other stakeholders.**
- **Require that, when indigenous peoples are impacted by a project or program the borrower will obtain FPIC throughout all project stages in a framework of respecting and recognizing their rights to the land, territories and resources,** in line with the UN Declaration on the Rights of Indigenous Peoples. In this regard, ESS10 should cross-reference ESS7.

Similarly, we appreciate the Bank’s efforts to increase access to remedy for communities through the addition of language requiring grievance mechanisms. However, again, the Bank must set out clear, minimum requirements in ESS10 and the accompanying Annex 1 in order to facilitate resolution of stakeholders’ concerns and grievances. Many of our recommendations, below, draw from our joint submission, *Comments on the World Bank Draft Environmental and Social Framework – ESS10 and Implications on Accountability*. Please refer to that submission for a more detailed discussion of the benchmarks for an accessible, transparent, independent, and effective grievance mechanism. Briefly, we recommend the Bank:

- **Strengthen the Objectives in ESS10 to include:**
 - **“To provide project-affected communities, particularly those who may be discriminated against, marginalized or more vulnerable to project impacts, access to remedy for the adverse impacts of a project or program.”**
 - **“To establish grievance mechanisms early in the project cycle and throughout the life of the project that are legitimate, accessible, transparent, independent, timely, adequately staffed, and designed in collaboration with project-affected communities and mechanism users.”**
- **Benchmark and cite the United Nations Guiding Principles on Business and Human Rights “effectiveness criteria for non-judicial grievance mechanisms”²⁴ in the requirements for design and implementation of project-level grievance mechanisms.** The effectiveness criteria of Principle 31 are legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility, a source of continuous learning, and based on engagement and dialogue. We recommend that the World Bank reference and draw from

²⁴ United Nations Guiding Principles on Business and Human Rights, *Implementing the United Nations “Protect, Respect and Remedy” Framework*, para. 31(a)-(h).

the best practices in its publication, *Evaluating A Grievance Redress Mechanism*,²⁵ which provides evaluative questions for the design and implementation of a grievance mechanism, based on the Guiding Principles effectiveness criteria.

- **Provide meaningful opportunities for affected communities and beneficiaries to inform the design of the project-level grievance mechanism as part of a robust participatory consultation process** so as to ensure that the mechanism is culturally appropriate, sensitive and accessible to diverse members of the community, including to those who may face additional barriers to access, consistent with the recommendations of the Office of the Compliance Advisor/Ombudsman advisory note, *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*.²⁶ In particular, the community should be involved to identify key factors, such as the kind of disputes that could arise during the project cycle, the availability of local resources to resolve conflicts, and the methods in which people in the community actually want to raise concerns. Enabling affected community to input into the design of the grievance mechanism is also consistent with the World Bank Group’s emphasis on increased stakeholder engagement.
- **Require the borrower to conduct outreach and provide informational materials and services in all primary languages spoken by project-affected people** so as to ensure access to the mechanism. All documents generated by the mechanism in a particular case, including any contracts or agreements, and outreach materials should be translated into local language(s). Wherever project-affected people are illiterate, the mechanisms should be required to conduct verbal outreach efforts and other activities in the local language(s).
- **Require the borrower to inform project-affected communities of the existence of the Inspection Panel and its procedures.** Information related to the existence and role of, and access to, the Inspection Panel, including brochures and other resources should be publicly available in the local language(s), including being distributed by the project grievance mechanism. This information should make clear that accessing the Inspection Panel does not preclude filing of a complaint to the grievance mechanism, or vice versa.
- **Provide, without qualification, for anonymous complaints.** ESS10 paragraph 23(b) states, “Where there is threat of reprisal, the mechanism will allow for anonymous complaints to be raised and addressed.” We recommend deleting the conditional phrase, “[w]here there is threat of reprisal.”

²⁵ World Bank, *Evaluating A Grievance Redress Mechanism*, available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/09/08/000442464_20140908140819/Rend ered/PDF/903910WP0Evaluating0Box385311B00PUBLIC0.pdf.

²⁶ The Office of the Compliance Advisor/Ombudsman, *Advisory Note: A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*, June 2008, at pp. 2-3 (discussing good practice markers for an effective grievance mechanism).

- **Require the borrower to establish procedures for addressing instances of reprisal.** We recommend that the Bank require that the borrower have procedures in place based on best practices in the event that reprisal occurs or the user fears that it will occur.
- **Ensure that mechanism users are allowed access to independent legal counsel or other advisors.** We recommend that the Bank require that the grievance mechanism allow affected people to consult with counsel or advisors of their choosing, and to have counsel or advisors present, at any time during the grievance process. Borrowers should also be required to inform affected communities that they have a right to consult with outside parties, including legal counsel, before and at any time during the grievance process.
- **Require the borrower to maintain an updated publicly available registry, available in local languages, of each complaint received by the grievance mechanism, the status of the complaint, relevant timeframes, the response of the borrower/implementing agency and resolutions reached, if any. Appropriate steps should be taken to preserve the anonymity of complainants.**
- **Preserve the right of communities to access the Inspection Panel directly, without first using or exhausting the project-level grievance mechanism and/or the corporate Grievance Redress Service.** Where the grievance mechanism provides for “an appeals process,” as in ESS10, Annex 1, it is critical that the Bank does not prevent communities from accessing the Inspection Panel directly. Further, the Bank should require the borrower to inform communities that access to or exhaustion of these procedures is not a precondition to accessing the Inspection Panel.

In addition to the grievance mechanism envisaged in ESS10, the Framework provides that communities adversely impacted by a Bank project may also submit a complaint to the Bank’s corporate Grievance Redress Service. This language in paragraph 10 of the Overview and in paragraph 51 of the Environmental and Social Policy suggests that communities must first utilize the Grievance Redress Service or grievance redress mechanisms as a predicate for accessing the Inspection Panel. We recommend that the language be modified to make clear that communities can access the Inspection Panel directly, after raising their concerns with Bank Management in whatever way they choose.

- **Ensure that the grievance mechanism has the authority, resources, independence and capacity necessary to be effective. Grievance mechanism implementation, including budgetary allocation and capacity building, should also be included in the Environmental Social Commitment Plan.** The effectiveness of any redress mechanism hinges not only on strong standards, but also adequate implementation and whether there are sufficient resources allocated and an institutional commitment to the process. In addition, grievance mechanisms must be housed, staffed and granted authority in a manner that promotes their ability to maintain independence. The Bank should provide clear guidelines and practical tools to support grievance mechanism implementation and borrower capacity. The Bank should also conduct an assessment of the availability, credibility, independence and capability of local and national authorities to operationalize a grievance

mechanism, which should then inform an action plan to implement/strengthen grievance capacity. *The World Bank's Approach to Grievance Redress in Projects*,²⁷ also benchmarked to the effectiveness criteria, provides guidance on strengthening grievance mechanism capacity in Bank projects. In addition, the Bank should require borrowers to provide project-affected communities regular, periodic opportunities to submit feedback on the mechanism's performance.

- **Require that stakeholders have an opportunity to participate in the design and implementation of a mechanism monitoring system.** We recommend that the Bank require, as part of overall monitoring and evaluation efforts, affected communities shall be provided clearly communicated, regular, periodic opportunities to submit feedback on the mechanism's performance.
- **Ensure that the mechanism is a continuous source of learning.** Grievance mechanisms can serve a valuable role by providing feedback and lessons learned.²⁸ We recommend that a provision be added explicitly encouraging the borrower to implement procedures to receive operational feedback and extract lessons from the grievance mechanism in order to improve overall project implementation and monitoring.

Thank you for the opportunity to submit these comments. Please contact Jocelyn Soto Medallo (jmedallo@ciel.org) or Carla García Zendejas (cgarcia@ciel.org) if you have any questions regarding this submission.

²⁷ World Bank, *The World Bank's Approach to Grievance Redress in Projects*, available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/09/08/000442464_20140908140040/Rended/PDF/903900WP0Box380nceRedressinProjects.pdf.

²⁸ United Nations, Guiding Principles on Business and Human Rights, *Implementing the United Nations "Protect, Respect and Remedy" Framework*, para. 31(g).