

Civil Society Statement on ESS6- Biodiversity, World Bank Environmental and Social Framework CODE Draft

July 25, 2014

Endorsing Organizations:

Asia Indigenous Peoples Pact
Bank Information Center
Center for International Environmental Law
Conservation International
Environmental Investigation Agency
Forest Peoples Programme
Global Witness
Indigenous Perspectives
Inclusive Development International
Non-Timber Forest Products- Exchange Programme
Programa Salvadoreño de Investigación sobre Desarrollo y Medio Ambiente (PRISMA)
Rainforest Foundation Norway
RECOFTC – The Center for People and Forests
Sierra Club
Ulu Foundation
Urgewald

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. 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. As noted by one Operational Vice President (OVP) in a leaked document of OVP 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.”¹

We find the following primary dilutions in ESS6, among others, to constitute an unacceptable weakening of protections for environment and people, and request that CODE send the safeguard draft back to Management for substantial revisions:

- New definitions of sensitive habitats substantially narrow the definition of “critical habitat”
- Contradictory language allows conversion and degradation of all natural habitats, including critical habitats
- Projects within protected areas are explicitly permitted
- Offsets are permitted in *all* habitats— there are no “no-go zones”
- A new loophole gives the green light for logging in any forests
- Sustainable forest management criteria are eliminated

¹ World Bank Vice President memos on proposed draft safeguards, May 2014, pg. 7

- Independent forest certification is no longer required for plantations
- Considerations for forest-dependent peoples are removed from the policy

Dilutions in the Environmental and Social Framework Threaten Ecosystems and Communities

The diluted protections for forests and natural habitats in ESS6 are even more concerning when considered in the context of a severely weakened policy framework with substantial loopholes, which would render ineffective even a strong ESS6. As outlined in a civil society letter to CODE members², the Environmental and Social Framework represents a massive dilution of current policy. Despite the Bank's repeated claims that "frontloading" of safeguard requirements would be compensated by expanded supervision and monitoring, the draft simply removes "front-end" requirements without outlining how the Bank will expand supervision and monitoring, nor how such monitoring costs will fit into the Bank's shrinking budget. Without a carefully designed, accompanying plan for more robust Bank implementation and supervision support, we are left with little assurance that promised safeguard outcomes are likely to be delivered.

Examples of framework-level dilutions that will significantly undermine the ability of the safeguards to protect people and the environment include, but are not limited to: the move towards open-ended and vague flexibility regarding which standards will be applied to each project and when; the over-reliance on self-reporting by Borrowers; vague requirements related to projects classified as "substantial risk;" a narrower definition of a project's area of influence; the elimination of the requirement to submit comprehensive, policy-compliant resettlement plans to the Bank for review and approval as a condition of appraisal; the elimination of a requirement that ESIA's for high-risk projects are disclosed prior to appraisal; and the exclusion of all subprojects not classified by Borrowers themselves as "high risk" from the need to comply with Bank's safeguards requirements. The new Environmental and Social Framework relies on a drastic shift of responsibility to borrowers, which is accompanied by neither clearly delineated responsibilities nor clarity regarding when or how it will be acceptable to use a country's national framework. Finally, the absence of clear compliance requirements raises questions as to the ability of affected communities to bring complaints to the Inspection Panel, thereby severely weakening accountability for the framework.

In the context of these significant dilutions to the structure of the policy framework, coupled with the dilution of language in ESS6, the draft Environmental and Social Framework offers no effective assurance for protection of natural habitats. Given the significant dilutions to ESS6 and the Environmental and Social Framework as a whole, **we, as a community of civil society stakeholders with expertise and long engagement in sustainable development and natural resources management, express our deep concern and strongly recommend that CODE send the draft back to management** for systematic changes before proceeding to phase two consultations.

² Priority Concerns with Safeguard Draft, July 2014. <http://www.bicusa.org/wp-content/uploads/2014/07/Collective-NGO-response-to-Safeguards-draft-July-2014.pdf>

Dilutions in ESS6

Protected Areas and Natural Habitats are Left Defenseless

ESS6 is structured around the classification of natural habitats into three categories of sensitive habitats: “critical habitat,” “legally protected and internationally recognized areas of biodiversity value,” and “priority biodiversity features.” Although this classification scheme is more specific than OP 4.04’s binary classification of “critical natural habitats” and “natural habitats,” the language used to define each category narrows the scope of habitats that are conferred any degree of safeguard coverage under ESS6, and weakens protections for the highly sensitive habitats that *are* covered. Although ESS6 includes an aspirational statement claiming that the Bank seeks to “conserve or rehabilitate biodiversity and natural habitats,”³ **the policy does not include any language or restrictions on the conversion or degradation of “natural habitats” that do not fall into the three categories of sensitive habitats.** In other words, conversion or degradation of natural habitats not identified as “critical,” “priority,” or “legally protected” is permissible and not subject to any requirements. Furthermore, **loopholes in language on sensitive habitats would allow Bank funding for projects which convert or degrade even critical habitats, including those of great importance to forest peoples** (described subsequently). ESS6 also does not address modified or degraded habitats, which constitute a growing portion of habitats around the world, and provide environmental and cultural values that merit protection.

Compared to OP 4.04, **the definition of “critical natural habitat” has also been substantially narrowed.** “Critical habitat” as defined in ESS6 focuses on species biodiversity to the exclusion of other values, e.g. ecosystem service provision or livelihood and cultural values. Although imperfect, the definition of critical natural habitat in OP 4.04 includes protected areas and “areas initially recognized as protected by traditional local communities,” and allows for the preparation of supplementary lists of critical habitats based on evaluations of “integrity of ecosystem processes.”⁴ Not only does the removal of these criteria in ESS6 destroy the protections for communities and protected areas afforded by “critical natural habitat” status, but **ESS6 explicitly permits projects within legally protected areas** as long as such projects are demonstrated to be legally permitted and “consistent with government recognized management plans.”⁵

Additionally, altered language regarding siting of projects constitutes a dilution to the scope of ESS6. While OP 4.04 requires that all “Bank-financed projects be sited on lands already converted (excluding any lands that in the Bank’s opinion were converted in anticipation of the project),”⁶ the new draft includes a footnote with similar language that pertains only to “plantations”⁷ instead of all “Bank-financed projects.” Additional language similar to the OP 4.04 reference exists in the body of ESS6, but again narrows the scope of coverage by addressing only “land-based commercial agriculture and forestry projects,” and not including land “converted in anticipation of the project.” This language considers only agriculture and forestry sectors in restrictions regarding siting of projects, and allows conversion of

³ World Bank Proposed Environmental and Social Framework, CODE Draft, July 2014, pg. 65

⁴ World Bank OP 4.04, Annex A

⁵ World Bank Proposed Environmental and Social Framework, CODE Draft, July 2014, pg. 68, para 20-21

⁶ World Bank OP 4.04, para 5

⁷ World Bank Proposed Environmental and Social Framework, CODE Draft, July 2014, pg. 65, footnote 3

natural habitats in anticipation of projects to satisfy siting requirements for all projects besides plantations.

Biodiversity Offsets: Even Critical Habitats Aren't Off-Limits

Biodiversity offsets are strongly entrenched in ESS6, based on an apparent assumption that “like-for-like” compensation is possible for all habitats— an assertion not supported by the available scientific evidence. The circumstances for which biodiversity offsets are accepted as a mitigation mechanism has expanded markedly from OP 4.04 , and **offsets are now permitted in all classes of sensitive habitat identified by ESS6, including critical natural habitats**. 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*”⁸ (emphasis added). More troubling still, a footnote in ESS1 notes that “the requirement to offset will take into account financial and technical feasibility,”⁹ providing an easy loophole for borrowers to escape from even these weak requirements.

The language in ESS6 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— including national parks and areas of importance to forest communities**. On the one hand, 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,¹⁰ while paragraph 17 provides a number of conditions allowing for conversion of critical habitats.¹¹ 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,” there should no conditions allowing for conversion of critical habitat.

Insufficient guidance is provided for implementation of biodiversity offsets. ESS6 provides limited criteria and no timeline for implementation or demonstrating outcomes of offsets. ESS6 states that Good Industry International Practice “should” be followed and offsets “should” be developed with relevant stakeholders.¹² Furthermore, offsets are “designed to compensate for adverse biodiversity impacts,” neglecting the need to ensure long-term provision of habitat, delivery of ecosystem services, and local community use. The omission of these values is consistent with ESS6’s lack of provisions for ecosystem services and consideration of affected communities. As aptly noted by one of the World Bank’s OVPs in response to the safeguard draft, “Since ‘like-for-like or better’ is an art as well as science and remains challenging to do in practice, it is debatable if offsets should be an option for addressing significant residual impacts on critical habitats.”¹³

⁸ *Ibid*, July 2014, pg. 67, para 17

⁹ *Ibid*, pg. 21, footnote 1

¹⁰ *Ibid*, July 2014, pg. 65, para 10

¹¹ World Bank Proposed Environmental and Social Framework, CODE Draft, July 2014, pg. 67-68, para 17(a)-(f)

¹² *Ibid.*, July 2014, pg. 66, footnote 5

¹³ World Bank Vice President memos on proposed draft safeguards, May 2014, pg. 9

Logging is Permitted and Sustainable Forest Management Requirements are Undermined

ESS6 gives the green light for Bank-financed logging operations, even in critical habitats and critical forests previously off-limits in OP 4.04.¹⁴ This loosening of restrictions flies in the face of the Independent Evaluation Group's (IEG) evaluation of the World Bank Group's forest sector engagement, which found that "evidence is lacking that the World Bank's support for industrial timber concession reform has led to sustainable and inclusive economic development."¹⁵ However, IEG's central recommendation to undertake a review of the outcomes associated with World Bank support for industrial timber concession reform in moist tropical forests was met with disagreement from Bank Management, who declined to undertake such a review and responded that "the safeguard review process which is already underway will take the relevant evaluative evidence from this review into account."¹⁶ The draft of ESS6 provides no evidence that IEG's findings have been taken into account, and in fact eliminates the existing Forests safeguard policy.

ESS6 clearly allows the Bank to finance plantations that do not involve the conversion or degradation of (now narrowly defined) critical natural habitats.¹⁷ The Bank may finance plantations in any natural habitat classified as "legally protected and internationally recognized areas of biodiversity value," "priority biodiversity features," and all other natural habitats that do not fall into the new "critical habitat," without any obligation to undertake sustainable forest management practices. In a huge loophole, **ESS6 introduces a new provision that allows "land clearing and salvage logging"—apparently in any habitat including critical habitat—if such activities "cannot follow internationally recognized certification."**¹⁸ Such land clearing must simply be "kept to a minimum," which is one of many examples of vague and ambiguous language in ESS6.

ESS6 omits sustainable forest management criteria delineated in OP 4.36, providing no requirements regarding the substance of third party certification systems. While OP 4.36 establishes minimum requirements for independent forest certification systems 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 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 In addition to gutting 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

¹⁴ World Bank OP 4.04, para. 8

¹⁵ IEG. *Managing Forest Resources for Sustainable Development*, pg. 45

¹⁶ *Ibid.* pg. xxvi.

¹⁷ World Bank Proposed Environmental and Social Framework, CODE Draft, July 2014, pg. 65, para. 10

¹⁸ *Ibid.* July 2014. pg. 70, para. 30

¹⁹ World Bank OP 4.36, para. 10

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

²¹ World Bank OP 4.36, para. 9

natural forests.”²² This oversight allows industrial logging to proceed without any standards or requirements for forest management practices.

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,”²³ and “evidence is also lacking that concessioned natural forests are being managed sustainably.”²⁴ 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.

The Rights of Forest-Dependent Peoples are Excluded

Despite the close relationship between forest-dependent peoples and the natural environment, **the draft removes forest-dependent peoples from the scope of ESS6.** While the scope of OP 4.36 included “projects that affect the rights and welfare of people and their level of dependence and interaction with forests,”²⁵ the scope of ESS6 is defined as projects that potentially affect biodiversity and involve primary production of living natural resources. As previously mentioned, **ESS6 also removes language on indigenous peoples and local communities from the definition of critical habitats.** Due to the policy’s single-minded focus on biodiversity values, local communities and cultural values are absent from the definition of all three categories of sensitive habitats.

Language on local communities in ESS6 is vague and non-committal, and the values of natural habitats to local communities are ignored.

A reference to indigenous peoples and affected communities is relegated to the introduction of ESS6, which contains the unclear statement that “ESS6 addresses the need to consider the livelihoods of indigenous people and affected communities.”²⁶ Although the requirements section of ESS6 mentions that the policy “will take into account the differing values attached to biodiversity by affected communities and other stakeholders,”²⁷ it is unclear *how* the policy will do so. Furthermore, the reference to the values of “other stakeholders” seems to provide a ready justification for conversion of natural habitat. Whether this provision is employed to protect or destroy habitats is dependent upon the stakeholder in question. Finally, ESS6 notes that that consideration of indigenous peoples’ and affected communities’ use of natural resources should be considered in the Borrower’s environmental and social assessment “where applicable,” without any guidance as to what constitutes “applicable.”²⁸ Given the vulnerability of forest-dependent peoples and the strong likelihood of projects in natural habitats adversely impacting the livelihoods of forest-dependent peoples, such vague, non-binding language is unacceptable.

Promoting a Progressive Biodiversity Policy

World Bank Management has undeniably proposed an unprecedented dilution of safeguard provisions for forests, natural habitats, and forest-dependent peoples. The first draft of the Environmental and Social

²² World Bank Proposed Environmental and Social Framework, CODE Draft, July 2014, pg. 69

²³ IEG. Managing Forest Resources for Sustainable Development, pg. 61

²⁴ *Ibid*, pg. xv

²⁵ World Bank OP 4.36, para. 3

²⁶ World Bank Proposed Environmental and Social Framework, CODE Draft, July 2014, pg. 64, para. 3

²⁷ *Ibid*. pg. 65, para. 8

²⁸ *Ibid*. pg. 66, para. 13

Framework represents a failure to strengthen protections for the environment and people and to promote a progressive, upwardly-harmonized policy. For example, Bank Management's proposal to narrow the definition for critical habitats and weaken protections for critical habitats is in opposition to best practices of other MDBs (e.g. the Interamerican Development Bank²⁹), other international frameworks and agreements, and voluntary guidelines such as the Voluntary Guidelines on the Governance of Tenure and High Conservation Value. The draft also demonstrates clear disregard for civil society recommendations to expand critical natural habitats and enact an absolute prohibition on their conversion. Rather than removing protections for non-critical natural habitats, as proposed by ESS6, the Bank needs to strengthen protections for all natural habitats, moving towards a "no deforestation" policy now gaining ground among corporations.

Minimizing negative impacts to natural habitats also requires an intersectoral approach, including upstream planning tools such as Strategic Environmental and Social Assessment (SESA). Any mention of intersectoral planning or cumulative impacts are absent from ESS6, and SESA is only mentioned in a footnote within ESS1 as a non-mandatory option for environmental assessment. In line with the World Bank's rhetoric around a landscape approach and its Wealth Accounting and the Valuation of Ecosystem Services (WAVES) Partnership, ESS6 and the rest of the Environmental and Social Framework should mainstream an ecosystem approach which looks beyond biodiversity to incorporate ecosystem services and livelihood values. Any attempt to incorporate climate change into the Environmental and Social Framework as an "emerging issue" should also acknowledge forests and other natural habitats for their role as carbon sinks whose conservation and sustainable management is an important component of climate change mitigation and adaptation.

Furthermore, ESS6 ignores marine and coastal areas and the people who rely on them. While marine and freshwater areas are included within the definitions of habitat and biodiversity, no mention is made of the importance of conserving and sustainably managing marine and coastal areas, despite their importance as stores of biodiversity and providers of key ecosystem services and livelihoods for poor and vulnerable communities. In order to truly safeguard natural habitats, marine and coastal areas need to be explicitly acknowledged and included.

In addition to fully integrating considerations for indigenous and local communities into ESS6, gender considerations must be mainstreamed throughout the policy, given the disproportionate impacts felt by women due to climate change and environmental degradation and the important role of women in forest and natural resource management.

Finally, although ESS6 introduces several new concepts with the potential for positive impact, the lack of detail renders these instruments unclear and likely to be infrequently implemented and ineffective. For example, no information is provided regarding what would be included in a "Biodiversity Action Plan" nor what constitutes a "long-term biodiversity monitoring and evaluation program." Although the inclusion of supply chain impacts is a welcome addition to ESS6, limitations to "regions where there is a risk for significant conversion" and the disclaimer that the "ability of the Borrower to fully address these risks

²⁹ Inter-American Development Bank. Environment and Safeguards Compliance Policy, pg 11, para B9. and pg. 16 para VI.

will depend upon the Borrower's level of management control or influence over its primary suppliers"³⁰ severely limits the application of supply chain assessment.

We encourage the World Bank to undertake substantial revisions to the draft Environmental and Social Framework before proceeding to consultations, setting the bar far higher for ESS6 in order to promote progressive, standard-setting protections for natural habitats and the people who depend on them.

³⁰World Bank Proposed Environmental and Social Framework, CODE Draft, July 2014, pg. 70, para. 32