

## **BIC's Guide to a First Look at the World Bank's Revised Environmental and Social Framework**

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Since 2012, the Bank Information Center (BIC) and our global partners have campaigned for the strongest possible safeguard policies to protect communities and the environment affected by World Bank projects. Consistent with our mission to amplify local voices to democratize development, our advocacy around the World Bank safeguards review focuses on improving how the Bank conducts environmental and social impact assessments, and how it engages community stakeholders in the projects that should be designed for their benefit. We also advocate for specific protections within Bank safeguard policies for persons with disabilities, children, women, girls, and SOGIE groups<sup>1</sup>, as well as for forests, natural habitats and our changing climate.

After consulting with governments, civil society organizations (CSOs) and project stakeholders on a preliminary draft, the World Bank has just released a second version of its updated safeguards, which it calls the Environmental and Social Framework (ESF). The second draft contains several positive changes and additions, particularly on impact assessment, labor, climate, land and indigenous peoples. However, the effectiveness of the revised safeguards is compromised by the following overarching issues:<sup>2</sup>

1. **Over-reliance on Borrower frameworks for safeguards implementation and a dangerous rollback of Bank due diligence requirements:** The revised ESF facilitates the transfer of accountability and oversight for the implementation of the safeguards from the World Bank to borrowing countries. Borrowers may also request that their national-level safeguards are used in place of the Bank's Environmental and Social Standards (ESSs), but there are no details on how the Bank will determine whether these offer equivalent protections.
2. **Lack of mandatory timing and procedural requirements for assessment, disclosure and management of environmental and social risk:** The benchmark for Borrower compliance with the Bank's safeguards standards is only that it achieves "objectives materially consistent with the ESSs" in "a manner and timeframe deemed acceptable by the Bank." These terms are subjective and unclear, and would too easily accommodate Borrower non-compliance. They also jeopardize the power of the Inspection Panel to review for compliance against such vague standards.
3. **Absence of budget/implementation plan:** The Bank is proposing to re-allocate resources for environmental and social risk management from "front end" assessment prior to project approval to evaluation throughout project implementation. However, the Bank has not yet released a detailed budget and implementation plan that reflects this shift. Given its poor track record on monitoring and supervision and the clear intention to rely more heavily on borrowers for oversight at the project level, a robust and detailed safeguards budget and implementation plan are crucial.

In addition to these overarching issues, the revised ESF includes brand new standards for communities that were underrepresented or never before included in the Bank's safeguards, such as persons with disabilities. Other groups, such as indigenous peoples, are treated differently under the new draft in both positive and negative ways. On the environmental side, protections for forests are seriously compromised under the new draft while new protections related to climate seem promising, but may not go far enough to ensure Bank projects avoid contributing to the earth's changing climate. In short, the new draft is a mixed bag of both promising and concerning changes to the social and environmental safeguards that were once considered the gold standard in

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<sup>1</sup> SOGIE refers to persons frequently excluded because of their sexual orientation, gender identity and/or expression

<sup>2</sup> BIC and our partners also remain concerned that even if the Bank addresses the issues listed here, the final ESF will only apply to about half of the Bank's total investment portfolio. Projects funded by Bank Trust Funds, Program For Results (P4R) and Development Policy Loans (DPL) will not be covered by the same safeguards, even though they often involve similar risks to communities and ecosystems.

development finance. The following initial reactions summarize BIC’s primary areas of concern in the second draft.<sup>3</sup>



**Disability Rights (Vision Statement, ESS1, 2, 4, 5, 7, 8, 10)<sup>4</sup>**

The Bank is making strides to include disability in its operations, as persons with disabilities are specifically referenced under “disadvantaged or vulnerable groups” and are also referenced and included under “vulnerable workers.” Yet it is paramount to ensure that there is consistency throughout the standards to ensure that persons with disabilities are explicitly referenced and listed among other groups categorized as disadvantaged, vulnerable, poor, or any combination thereof.

Issues of accessibility and inclusion are vital to ensuring that persons with disabilities can participate in stakeholder consultations and are fully able to benefit from Bank projects; therefore, "accessible" and "inclusion" must be defined to include persons with disabilities and ensure that barriers to participation in the design, implementation, monitoring, and evaluation of Bank projects, as well as benefit sharing, are addressed. Principles of universal access must extend beyond the Community Health and Safety standard so that all new construction is accessible for all people, including persons with disabilities.



**Children’s rights (Vision Statement, ESS1, 2, 4, 5, 10)<sup>5</sup>**

We appreciate the Bank’s consideration of the concerns expressed by BIC and others about whether environmental and social impact assessments will be required by ESS1 to assess separately specific impacts on children or whether a generalized look at vulnerable groups would suffice. We believe that the language in the second draft requiring assessments to examine “risks that project impacts fall disproportionately on individuals or groups who, because of their particular circumstances, may be disadvantaged or vulnerable” represents an improvement in this regard. Similarly, we welcome language in ESS10 that emphasizes the importance of differentiating between groups labeled disadvantaged or vulnerable. We also commend the Bank for setting a minimum age for work in ESS2, as well as strengthening provisions preventing the employment of children in hazardous labor and addressing potential child labor in primary supply chains.

Despite these improvements, other policies are less specific and contain only vague references to “vulnerable” groups, including ESS4 and ESS5. “Vulnerable” is not defined in these policies, and neither contains a specific reference to children. To ensure that resettled children do not suffer deprivations that will have lifelong impacts, it is critical that ESS5 explicitly require borrowers to address the unique needs of children who may be resettled. In addition, in the second draft of ESS10, language was removed that referenced age in a provision requiring the stakeholder engagement plan to remove obstacles to participation. Due to the high barriers to participation that children face, and the need for specificity in the policy to ensure they are considered and included, we feel this represents a slight weakening of this policy from the child rights perspective.



**Gender/SOGIE (Vision Statement, ESS1, 2,10)<sup>6</sup>**

Without a mandatory safeguard for gender and SOGIE, it is unclear how the Bank will protect these communities from harm, or indeed allow them to share in the benefits of a development intervention. The requirement for a mandatory social assessment by the borrower, which considers gender and

<sup>3</sup> See the annex for initial views of some of our partners on these issues, and where to find more information on their campaigns.

<sup>4</sup> For more information on BIC’s disability rights campaign, and further detail on our views about the draft see: <http://www.bankinformationcenter.org/issues/safeguards/disability/>.

<sup>5</sup> For more information on BIC’s child rights campaign, and further detail on our views about the draft see: <http://www.bankinformationcenter.org/issues/safeguards/childrights/>.

<sup>6</sup> For more information on gender/SOGIE and World Bank safeguards see: <http://www.bankinformationcenter.org/issues/safeguards/gender-and-sogi/>.

SOGIE differentiated impacts of a project, has not been included in the revised draft. This means the Bank will be unable to determine the specific and unique risks posed by a project to women, girls and SOGIE communities. In those few instances under the current draft in which a social assessment inclusive of SOGIE communities would be triggered, the Bank has not accounted for the inability of borrower governments to conduct SOGIE responsive assessments in areas where these communities are criminalized. Furthermore, the lack of baseline gender and SOGIE disaggregated indicators ensures that the Bank will be unable to track project outcomes specific to gender and SOGIE, or have a benchmark to offer comparison during the project life cycle.

The World Bank has committed to take measures to ensure that those who are disadvantaged or vulnerable due to their sexual orientation are not excluded from project benefits. This fails to acknowledge the unique situation of transgender individuals and intersex persons and the impacts development projects can have on them. The Bank must include reference to *gender identity and expression*, as well as sexual orientation, in all relevant sections of the ESF.

Finally, the Bank’s commitment to citizen engagement is woefully inadequate when considering the lack of specific measures provided in the draft to ensure active participation of women, girls, and persons frequently excluded because of their sexual orientation, gender identity and/or expression that takes into account the need for the confidentiality and security of participants.



**Environmental and Social Assessment (Environmental and Social Policy, ESS1, 10)**<sup>7</sup>

We welcome the language requiring borrowers to take into account impacts on vulnerable groups separately—including those who are vulnerable due to age, disability, gender, sexual orientation or gender identity/expression—as well as new language on non-discrimination. However, this standard continues to heavily promote the use of national frameworks for the assessment and management of environmental and social risk, despite years of documented problems and failures plaguing World Bank “Country Systems” projects and the lack of Inspection Panel access to national level complaints by affected people. The new proposed ESS1 eliminates existing requirements that, in practice, meant 120 days of public comment prior to Board approval for projects with significant environmental or social impacts. Furthermore, it is not clear that this standard requires the halting of the use of Borrower systems in the event that they fall out of alignment with Bank standards. Borrowers are allowed to monitor their own environmental and social performance in a “manner and timeframe deemed acceptable by the Bank,” and are not required to engage the use of independent third parties for impact assessments of higher-risk projects.



**Climate Change (Vision Statement, ESS1, 3, 4, 6)**<sup>8</sup>

While the revised ESF reflects important changes made to the Bank’s climate policy, including language on assessing the climate-related impacts on ecosystems and communities, there is a troubling absence of language on greenhouse gas (GHG) emissions. Whereas the first proposed ESF contained reference to a “threshold” on GHG emissions accounting, this threshold has been removed from the new draft, to be included in a forthcoming non-mandatory guidance note. The Bank must ensure that it is not funding the release and use of materials that are hazardous to human and environmental health. The benchmarks for compliance it proposes to use in ESS3 are the Bank’s own Environment, Health and Safety Guidelines (EHSGs), “available industry standards,” “applicable” international agreements and conventions, and Borrower legislation. These benchmarks must be made more explicit and ensure upward harmonization with highest international standards for resource efficiency and pollution prevention and management.

<sup>7</sup> For more information on environmental and social assessment and World Bank safeguards see: <http://www.bankinformationcenter.org/issues/safeguards/environmental-and-social-assessment/>.

<sup>8</sup> For more information on BIC’s climate campaign, and further detail on our views about the draft see: <http://www.bankinformationcenter.org/issues/safeguards/climate-change/>.



### **Forests and Natural Habitats (ESS6)<sup>9</sup>**

The proposed Biodiversity standard represents a weakening of safeguard protections for natural habitats, forests, and forest-dependent peoples. Although some improvements have been made to the second draft of ESS6 compared to the first draft, these changes leave most key concerns from the first draft unaddressed. The resulting proposed policy is weaker, in many aspects, than both current Bank policy and safeguards of other IFIs. Principal among ESS6's weaknesses are the failure to consider and protect environmental values other than biodiversity, such as ecosystem services and livelihood and sociocultural value. Contrary to indications from World Bank staff, content from the existing WB Forests Policy was not reintroduced into ESS6.

The standard's definition of the most sensitive "critical habitats" excludes key characteristics which are covered in other IFI definitions of critical habitat—including the World Bank's existing policies—such as areas traditionally important to indigenous peoples and local communities, and legally recognized protected areas. Furthermore, unclear and concerning language on biodiversity offsetting in sensitive habitats remains, which puts natural resources that are critical to both to ecosystems and communities at risk.

Finally, specific criteria for sustainable forest management (SFM) practices are absent, and language on independent verification of SFM is inconsistent and confusing. Requirements are notably absent for production forestry in natural forests. ESS6 also introduces unnecessary, new language on salvage logging which may provide a loophole to clear natural forest.



### **Information Disclosure and Stakeholder Engagement (ESS1, 10)**

As with the first draft of the ESF, we are pleased that the Bank is demonstrating the importance of stakeholder engagement and information disclosure by including a stand-alone safeguard on the subject. Stakeholders will now have the opportunity to input on the development of the Stakeholder Engagement Plan (SEP) prior to it being finalized. However, we find it a major flaw that this draft removes or omits all minimum requirements for timing of information disclosure, for specifics on what to disclose, and for meaningful consultation with project stakeholders.

There are some marked improvements on ESS10 in this draft, but many of them must go a step further. For example, a positive development is the reference to independent third party specialists assisting in stakeholder identification in certain circumstances—a critical addition—especially in cases where governments are actively restricting space for civil society. On the other hand, the language on what would trigger this requirement is notably absent, and there is no mention of how independence of these third parties would be guaranteed.

The revised ESF also includes an important new requirement that the Borrower consult with project-affected parties if changes in the project result in additional risks and impacts. However, there is no requirement for the Borrower to review the identification of stakeholders in the event of project changes and to update the SEP accordingly, thereby potentially weakening this new requirement. Additionally, Borrowers are not required to disclose or promote the existence of the Inspection Panel within stakeholder engagement or as part of meaningful consultation efforts. The existence of the Inspection Panel should be a mandatory requirement within the disclosure of project-related information.

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<sup>9</sup> For more information on BIC's forest campaign, and further detail on our views about the draft see: <http://www.bankinformationcenter.org/issues/safeguards/forests/>.

## **Additional analysis/commentary provided by BIC’s partners**

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**Labor (ESS2)**<sup>10</sup> The new draft now includes protections for contract workers and a requirement that workers be given a written document detailing the conditions of their employment. However, it fails to ensure upward harmonization with the strongest labor standards of other multilateral banks. The revised ESS2 also avoids any mention of the ILO’s Core Labor Standards as a benchmark for ESS2 requirements. It only guarantees workers’ rights to freedom of association and collective bargaining if these rights are already fully protected under national law. Other international financial institutions make these rights a mandatory requirement notwithstanding national laws.

Furthermore, it cements the right of borrowers to opt out of applying *all* aspects of ESS2 to the project in question: “The applicability of ESS2 is established during the environmental and social assessment described in ESS1, during which the Borrower will identify the *relevant* (emphasis added) requirements of ESS2 and how they will be addressed in the project” (ESS2 ¶2).

**Involuntary Resettlement (ESS5)**<sup>11</sup> The new draft does not require borrowers to prepare a draft resettlement plan and budget or make it available in a manner accessible to affected persons prior to project appraisal. Removing these requirements from the ESF means the Board will not know the full displacement impacts and costs of mitigation at the time of project appraisal, which must be factored into the economic analysis of the project to determine its viability. Removing this requirement denies the Board the ability to perform basic due diligence on World Bank investments.

While we appreciate that the scope of this draft has been broadened to include land titling projects, ESS5 still excludes economic displacement caused by project activities that reduce access to productive resources; for example, the construction of a hydropower dam that changes a river’s ecosystem and depletes fish resources relied upon for food security and livelihoods. ESS5 also excludes displacement caused by land use regulation and natural resource management. The experience of displacement for people affected by these types of projects is no different, and protections set out under ESS5 are necessary for restoring their livelihoods and living standards.

Also troubling is that despite evidence that an independent panel of experts (POE) can improve resettlement outcomes, the revised ESS5 still does not require a POE, even for high-risk projects that cause large-scale displacement and require complex and long-term mitigation measures.

**Community Health and Safety (ESS4)** The language in the revised ESS4 leaves Borrower compliance dangerously open-ended, making it easy for Borrowers to ignore health, safety and security risks and impacts on affected communities with impunity. It allows Borrowers to sanction the use of force for ‘preventative and defensive purposes’, to withhold security arrangements from the public, and to only ‘reasonably inquire’ as to whether contract workers hired for security purposes have been implicated in past abuses. The first draft ESF cited the United Nation’s (UN) Code of Conduct for Law Enforcement Officials, and UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These important principles and codes of conduct have

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<sup>10</sup> For more information on labor and World Bank safeguards see: <http://www.bankinformationcenter.org/issues/safeguards/labor-safeguard/>. See also, International Trade Union Confederation at [www.ituc-csi.org](http://www.ituc-csi.org).

<sup>11</sup> For more information on involuntary resettlement and World Bank safeguards see: <http://www.bankinformationcenter.org/issues/safeguards/resettlement/>. See also views from our partners including Inclusive Development International at <http://www.inclusivedevelopment.net>; Accountability Project at <http://accountabilityproject.org>; and Oxfam at <https://www.oxfam.org/en/tags/land-rights>.

been removed from the 2<sup>nd</sup> draft. Furthermore, ESS4 does not require the use of the steps listed in the Voluntary Principles on Security and Human Rights.<sup>12</sup>

ESS4 treats the issue of securing Bank project sites as though the Borrower and ‘government security personnel’ are not one in the same. For example, it requires that borrowers ‘seek to ensure’ that government security personnel ‘encourage the relevant authorities’ to publically disclose and conduct public consultation on proposed and existing security arrangements. It does not make mandatory that Borrowers prevent, investigate, report, prosecute and remedy attacks by public and private security forces on affected communities.

We appreciate that the revised draft ESF maintains that the Borrower should apply the principle of ‘universal access’ to the design and construction of new buildings/structures created under a Bank project. However, the introduction of the phrase “where technically and financially feasible” provides a way to opt out these protections and endangers those who by virtue of their age or ability are less likely to benefit from, and more likely to be harmed by, the construction process and/or inaccessible buildings or structures. It would be important to apply the concept of universal access to all ESSs, again to ensure that all persons benefit from Bank projects, regardless of their age or ability.

**Indigenous Peoples (ESS7)**<sup>13</sup> The new draft ESS7 has been improved from the first in that it no longer provides an alternative approach when it comes to protecting Indigenous Peoples’ rights. But, another possible ‘opt-out’ option remains in force; Borrowers that don’t want to implement ESS7 may “in rare instances” still be able to initiate a waiver process.

The revised ESF also still lacks detail on the disclosure and substantive requirements of an Indigenous Peoples Plan, which the Bank mandates but cannot enforce without establishing clear guidelines for compliance. Additionally, even though ESS7 expressly states that if “Free, Prior, Informed Consent of the affected Indigenous Peoples cannot be ascertained by the Bank the project will not proceed further”, which would be fully in accordance with international legal standards, the ESF nullifies the provision by allowing the continuation of other aspects of the project as long as they cause no adverse impacts on such Indigenous Peoples during project implementation. ESS7 should make reference to ILO Convention 169<sup>14</sup> and international human rights standards regarding the proper implementation of the right to free, prior and informed consent in requiring that FPIC be obtained from indigenous project stakeholders before *any* aspects of the project can proceed further.

**Cultural Heritage (ESS8)** The proposed updated standard allows borrowers to carry out projects that are “located in a legally protected area or legally defined buffer zone” as long as impacts on any identified cultural heritage is mitigated (ESS8, ¶17). There is no requirement to reconsider a) the location of the proposed project, b) a possible change to the project or c) to decide to cancel the project altogether due to potential impacts on or risks to tangible or intangible cultural heritage<sup>15</sup> that could not be mitigated appropriately.

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<sup>12</sup> The Voluntary Principles require assessment and identification of security risks, the risk of the potential for violence and the human rights records of public and private security forces. Risk assessments should consider the available human rights records of public security forces, an assessment of the rule of law (including a risk assessment of the local prosecuting authority and judiciary’s capacity to hold accountable those responsible for human rights abuses in a manner that respects the rights of the accused), conflict analysis and an assessment of the risk of equipment transfers – i.e. if a Bank-supported company provides equipment to public or private security forces. The fact that the principles are voluntary is a weakness and there have been substantial weaknesses in their implementation, detailed by EarthRights and others. However, the language in these principles is far stronger than that found in the Bank’s first draft ESF, which appears to leave the door wide open for violent abuses by security forces associated with Bank-funded projects.

<sup>13</sup> For more information on indigenous peoples and World Bank safeguards see: <http://www.forestpeoples.org/>.

<sup>14</sup> ILO Convention 169 deals specifically with the rights of tribal and indigenous peoples.

<sup>15</sup> For the Bank’s definitions of tangible and intangible cultural heritage, see ESS8 ¶4

**Financial Intermediaries (Environmental and Social Policy, ESS9)** The main problem with ESS9 deals with the risk classification of projects funded by financial intermediaries (FIs) with support from the Bank. The Bank is only responsible for assessing the environmental and social risk associated with its loan to an FI based on the FI's existing portfolio and the level of risk associated with FI subprojects. FIs must comply with the 'relevant requirements' (not all of the requirements) of the ESSs only for subprojects that *they themselves deem* may "involve resettlement (unless the risks or impacts of such resettlement are minor), adverse risks or impacts on Indigenous Peoples or significant risks or impacts on the environment, community health, biodiversity or cultural heritage" (ESS9 ¶7). The Bank will only step in to review and approve FI subprojects that meet the above description if they have determined that the FI itself is not capable of doing so. For projects that the FI determines will not have significant environmental and/or social risks or impacts, the FI is only required to comply with standards set by national law. No detailed steps and remedies are described in case of non-compliance at the sub-project or project level for FIs, leading to a sense of Borrower impunity.

Furthermore, the FI is only required to review and monitor environmental and social risks of its subprojects on a portfolio basis, rather than on a project basis. The first draft required Financial Intermediaries to "screen, appraise and monitor all subprojects in accordance with the environmental and social risk profile of the individual subprojects." The second draft eliminates reference to risk profile of individual subprojects and replaces it with portfolio profiles: "The FI will review and monitor the environmental and social performance of its portfolio of FI subprojects in a manner proportionate to the risks and impacts of the portfolio of subprojects" (ESS9 ¶9).