



Oxfam Comments on Second Draft of World Bank Environmental and Social Framework

March 2015

We welcome the opportunity to comment on the second draft of the Environmental and Social Framework (ESF). The Bank's safeguards have historically been a huge added value not just for the Bank but for the many institutions that have adopted similar standards over the years. The Bank is a leader in this field and as such has a responsibility to those most vulnerable and likely to bear the costs of poorly managed development projects; to create strong safeguards that not only align with the highest of international standards, but set the bar itself.

Oxfam has participated strongly in this third phase of the review attending consultations in China, India, Bangladesh, Vietnam, Indonesia, Kenya, Honduras, Brazil, Belgium and the US and meeting with Bank and government representatives in several other countries regarding the ESF. We have provided several written submissions to this process since the review began and thus will focus these particular comments on our outstanding priority concerns with the second draft of the ESF.

I. Adaptive Risk Management Approach

The adaptive risk approach depends heavily on close follow up, supervision and monitoring. The Bank's own Independent Evaluation Group's 2010 Safeguards study¹ identified inadequate supervision as a key shortcoming of the current safeguards regime. We appreciate that the Bank is in part responding to the IEG's recommendations to balance upfront risk assessment with implementation support through this approach, however we do not think that the approach achieves the right balance, nor has the Bank outlined how this approach will become operationalized successfully:

- *Early preparation and disclosure of key documents:* In its attempt to strike the right balance of upfront assessment versus implementation support, the Bank must not forego key safeguarding strategies, as this will completely defeat the purpose of the ESF. In this respect we are extremely concerned about the timing of when Borrowers will be expected to develop and disclose key risk analyses and management plans. Specifically, the ESF does not make clear when the Borrower must prepare and disclose Environmental and Social Impact Assessments (ESIAs); Indigenous People's Plans (IPPs), and Resettlement Action Plans (RAPs), and instead the text suggests that they will be developed after

¹ World Bank Group, 2010, "Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience" found at http://siteresources.worldbank.org/EXTSAFANDSUS/Resources/Safeguards_eval.pdf

Board approval of a project. We see this as a significant weakness of the Bank's proposed ESF and believe that it will severely limit the Bank and Board's ability to properly appraise projects, to account for full costs of projects, and ensure that Environmental and Social Commitment Plans (ESCPs) include the most important steps that Borrowers are expected to fulfill. Critically, it will also mean that project affected people will lose the opportunity to shape key aspects of projects and propose mitigation plans that work for their particular contexts. It is of absolute importance that these drafts and discussions take place before the Board approves a project, as is the case with the current safeguards regime. We recommend that the **ESF clearly state that ESIA's, IPPs and RAPs will be prepared and drafts disclosed and consulted on prior to Board approval.**

- *Resource allocation:* The Bank proposes that the ESF will allocate resources more efficiently by triggering more resources and staff time for higher risk and more complex projects. However, the ESF does not make clear what increased supervision will look like. We suggest that the **Bank further clarify how supervision and resources will be determined and what increased supervision entails.**
- *Incentives:* The current incentives structure of the Bank is not set up for close and long-term follow up of project-level risk mitigation plan implementation. Staff often spend time upfront designing projects and then move on to another project. It is absolutely critical that **the Bank make the structural and incentive changes needed to ensure staff follow up.**
- *Third Party Monitoring:* The Bank references third party monitoring but does not require it. We believe such **independent verification should be required at minimum for high and substantial risk projects, projects involving involuntary resettlement, projects using Borrower frameworks in part or in whole, and in high and substantial risk financial intermediary sub-projects.**
- *ESCP adherence:* The ESF must **make clear the implications of Borrowers failure to fulfill the obligations set out in the ESCP.**
- *ESCP modifications:* Although the ESCP can be modified after Board approval according to the ESF, the Bank must **clarify in which circumstances the ESCP can be modified and to what extent it can be modified before needing to go back to the Board for review and approval.**
- *Upstream Risk Assessment:* Finally, we cannot view risk management in isolation at the project level. By the time a project has reached the project level ESIA, plausible alternatives to addressing the same development priorities are not considered. Rather, risk analysis and mitigation measures are limited to the project already in preparation. Upstream risk assessment is therefore critical and with the development of the Bank's Systematic Country Diagnostic (SCD), we see this process as the most appropriate stage at which to conduct upstream risk *and* opportunity assessment. The SCD should be seen as an opportunity to do country-wide analyses on issues such as land tenure and risks or climate risks and opportunities for example, or do sector-wide risk analyses such as on a country's energy sector. We recommend that such upstream risk assessments take the form of a Strategic Environmental and Social Assessment-type instrument, and that they then be linked directly to the project level, as a reference document for project

identification and risk mitigation and planning. We recommend that **the requirement for upstream risk assessment be made clear in the ESF and that the SCD is referenced as the document in which such upstream analysis should be done.** See [Oxfam's December 2015 joint recommendations for the SCD](#)² for further details.

II. Use of Borrower Frameworks

Effective development relies on responsible country ownership that is accountable, transparent and empowering of all citizens. Country systems, or Borrower Frameworks, through the use and development of a government's own domestic environmental and social safeguard mechanisms, should be a vehicle towards this end. However, greater clarity is needed in this ESF to ensure that the objectives of country ownership and strengthening of Borrower Frameworks do not inadvertently override the protection of people and the environment. As such there should be a strong and clear methodology for assessing when Borrower Frameworks are adequate to use. In the case of World Bank financed projects, the Borrower's Framework should be measured against the objectives *and* requirements of the Bank's Environmental and Social Standards (ESSs). This assessment must be a consultative process that considers the environmental and social management systems that are in place but also the track record of how they have been implemented. We have previously recommended³ that the Bank consider using the SCD as an opportunity to conduct a baseline assessment of the Borrower's institutional frameworks and capacity. This could then be built on at the project level. When Borrower Frameworks are used, the Bank must ensure adequate supervision and accountability of environmental and social outcomes. Specifically:

- *Clear threshold for use of Borrower frameworks:* In order to determine if a Borrower's framework is adequate to use in part or in whole, the framework must first be determined to meet a threshold that ensures the same or higher protections as those of the ESF. The ESF's current proposed threshold of "[achieving] objectives materially consistent with the ESSs" is inadequate, given that it obligates the Borrower to achieve material consistency with only the limited ESS objectives, rather than the substantive requirements within each ESS. We strongly recommend that the **threshold be changed to "achieve consistency with the objectives and requirements of the ESSs."**
- *Consistency in policy and practice:* Before agreeing to use the Borrower's framework in part or in whole, the Bank must first ensure that the framework is **consistent with (or more stringent than) the objectives and requirements of the ESSs.** We recommend that the Bank **update OP 4.00 Table A1** to reflect the new ESF and that that the Borrower's framework be assessed against the applicable operational principles in that table. In addition to the framework on paper, the Bank must also **assess the implementing agency's track record, capacity and commitment to social and environmental protection,** including through demonstrated good governance and an enabling environment for citizen engagement.

² Bank Information Center, Center for International Environmental Law, Oxfam, Dec 2015, "Recommendations for Guidelines for Systematic Country Diagnostic" found at <http://www.bankinformationcenter.org/wp-content/uploads/2015/03/Recommendations-re-SCD-Guidelines-Dec-2015.pdf>

³ Ibid

- *Consultation and disclosure of assessment:* The draft Borrower framework assessment must be **subject to meaningful citizen consultation and the final assessment must be subject to Board approval. The draft and final assessments must be disclosed** on the Bank’s relevant project webpage.
- *Supervision:* When Borrower frameworks are used, in part or in whole, the Bank should **maintain responsibility for the supervision of projects** to at least the same degree as it would if its own ESF were being used. The Bank should **routinely and regularly monitor for material changes in Borrower frameworks** or in their implementation capacity, track record and/or commitment that could affect their ability to achieve consistency with the objectives and requirements of the ESSs. The **ESF should require the use of independent third party monitors** when Borrower Frameworks are used to enhance supervision.
- *Access to Inspection Panel:* The ESF should clarify that **communities can access the Bank’s Inspection Panel when they believe policies have been violated in a Bank-financed project, regardless of whose systems have been used** (the Borrower’s Framework or the Bank’s ESF). In other words, the Bank’s accountability mechanism should act as a “safety valve” if country processes fail citizens.
- *Capacity building:* Where a determination is made that the Borrower’s framework does not meet the threshold for consistency, the Bank and Borrower may agree on gap-filling measures. We recommend that **those measures be subject to public comment and are completed before the Borrower undertakes the relevant project activities**. As part of its country programming, the Bank should also be prepared to commit time and resources to the **systematic, institutional capacity building of these frameworks** should the Borrower request the support and we recommend that that be built in to the Country Partnership Framework.

III. Financial Intermediaries

Oxfam has been following the International Finance Corporation’s (IFC) financial intermediary portfolio for many years and our experience has shown that there is a high possibility for missing extremely high risks, and that there are many opportunities for improved risk management when it comes to this type of lending. It is critical that the World Bank incorporate the lessons learnt⁴ from the IFC’s financial intermediary lending into ESS9. It is likely that the IFC will incorporate many of those lessons learnt into the Performance Standards once they are reviewed again, and it would be a huge missed opportunity for the Bank to fall behind. Please refer to Oxfam’s 2015 report “[The Suffering of Others](#)”⁵ for detailed examples and recommendations on IFC’s risk

⁴ Those lessons have been documented through CSO reports such as Oxfam International, April 2015, “The Suffering of Others: The Human Cost of the International Finance Corporation’s Lending through Financial Intermediaries”; Bretton Woods Project, April 2014, “Follow the Money: The World Bank Group and the use of Financial Intermediaries”; Compliance Advisor Ombudsman, February 2013, “Compliance Audit of IFC’s Financial Sector Investments”, and the IFC’s own Environmental and Social Lessons Learnt Board presentations.

⁵ Oxfam International, April 2015, “The Suffering of Others: The Human Cost of the International Finance Corporation’s Lending through Financial Intermediaries” found at https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/ib-suffering-of-others-international-finance-corporation-020415-en.pdf

management approach in financial intermediary lending. With respect to the World Bank, our specific recommendations are as follows:

- *Expanding criteria for adherence to ESSs:* Currently, ESS9 paragraph 7 states that "the FI will apply the relevant requirements of the ESSs to any FI subproject that involves 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." By limiting ESS application to these scenarios, the Bank could inadvertently miss applying its standards to incredibly high risk projects where for example there is a major risk of land conflict or human rights abuses. Instead, the **FI should apply the ESSs to all high and substantial risk projects, and all projects that involve resettlement, adverse risks or impacts on Indigenous Peoples or significant risks or impacts on the environment, community health, biodiversity or cultural heritage.**
- *Clarify disclosure requirements:* There is currently no information about the Bank disclosing information about subprojects, only saying that (ESS9, para 18): "The FI will list on its website the link to any environmental and social assessment reports for high risk FI subprojects which it finances." While this is welcome, we highly recommend that in addition the ESF clarify **that the World Bank will (through the project page) disclose FI subproject information, including project name, location and sector, as well as all environmental and social related documents for high and substantial projects, and FI monitoring reports.**
- *Grievance mechanisms and Inspection Panel:* The ESF must clarify the requirements for the FI to set up a grievance mechanism. Currently ESS9, paragraph 17 states that: "The relevant provisions of ESS10 will be included in the FI's environmental and social procedures."
It should be clarified that **FI must set up a grievance mechanism for at minimum, high and substantial risk sub-projects. It must also be clear that communities affected by FI subprojects can access the Inspection Panel.**
- *Third Party Monitoring:* The Bank does not specify its role in monitoring FI subprojects, or how it will verify information from FI clients about its subprojects. **The Bank must specify its obligation to perform the necessary due diligence of FI subprojects, including site visits to at minimum high and substantial risk projects. The Bank should require the use of independent third party monitors to monitor and verify reports on high and substantial risk FI sub-projects.**

IV. Land and Resettlement

The link between land tenure security and overcoming poverty is well established and it is essential that the Bank protect and promote secure land tenure through its safeguards. The Bank

has explicitly endorsed⁶ the Voluntary Guidelines on the Responsible Governance of Tenure of Land (VGGTs), and we recommend that it **reference and implement the VGGTs** through the ESF in order to advance that agenda effectively. We have submitted a [full set of recommendations related to land and resettlement](#)⁷ with Inclusive Development International, which we hope the Bank will strongly consider. For the sake of this submission, we would like to highlight just some of those points which we have taken for the most part directly from that submission. For more details, please read that submission.

- *Avoiding/minimizing displacement:* First and foremost, the Bank must aim to avoid displacement whenever possible. In that regard the Bank’s **ESF and procedures must ensure that displacement impacts are reasonable and proportionate to the expected development objectives and general welfare benefits of the project and confirm that all viable alternative projects and project designs** to avoid, where feasible, or minimize, displacement have been explored.
- *Scope of ESS5:* The **scope of ESS5 must be broadened to include physical and economic displacement that is caused, in whole or in part, by any or all project activities that affect people’s livelihood and food resources or access to these resources.** The scope should not be limited to land acquisitions and land use restrictions, but **include any activities that are directly and significantly related to the project that result in physical or economic displacement.** We are pleased that displacement resulting from a project-supported determination that the land in question is state land is now included in the scope of ESS5. However, we remain deeply concerned that other affected persons and communities that will be displaced by Bank-supported projects remain excluded from the protections of the involuntary resettlement standard. The risk of harm to these people is no different whether their displacement is caused by land acquisition or another type of activity and the same safeguards are necessary to prevent their impoverishment.

Activities that cause displacement that should be covered by ESS5, guaranteeing the restoration of livelihoods include:

- i. **Activities that reduce access to productive resources such as downstream impacts of dams** which can have disastrous and impoverishing impacts on fishing and agricultural communities, and are not currently covered by the draft ESF. Instead the draft proposes to cover those impacts in ESS1, which requires only compensation “when technically and financially feasible,” rather than the restoration of incomes and livelihoods that is required by ESS5. Compensation will not prevent impoverishment and with the Bank planning more “transformational projects” such as large-scale hydropower dams, it is vital that the Bank ensure that affected people are not

⁶ World Bank, press release April 8, 2013, “World Bank Group: Access to Land is Critical for the Poor”, found at <http://www.worldbank.org/en/news/press-release/2013/04/08/world-bank-group-access-to-land-is-critical-for-the-poor>

⁷ Inclusive Development International, Oxfam, Feb 2015, “Submission on Land Rights and Involuntary Resettlement in the World Bank Proposed Environmental and Social Framework” found at http://consultations.worldbank.org/Data/hub/files/idi_and_oxfam_submission_on_land_and_resettlement_-_phase_3_consultation_final.pdf

- impoverished as a result of such projects. Closing this loophole would be coherent with other institutions, including the Asian Development Bank and the Asian Infrastructure Investment Bank.
- ii. **Land use regulation and natural resource management programs** which are not covered in ESS5 or in other sections of the ESF but which can drastically change the tenure status of targeted areas.
- *Application of ESS5:*
 - i. Despite pushback by some borrower governments on this longstanding principle, **ESS5 must provide an adequate level of protection to those people without formal rights who are economically or physically displaced as a result of a Bank-financed project.** Households and communities lacking legal title or other recognized legal rights to their land are immensely vulnerable to being impoverished when the land they are using is impacted or taken from them. They are at risk for being labeled as squatters or encroachers, even though they may have settled on land for years and established community structures such as schools and health clinics, as well as farms and markets. But because they have no formal title to the land, and the land is sought by others - often much more powerful - it can be both convenient and cheap to classify them as squatters and subject them to forced eviction. Affected persons falling into category 10(c) of ESS5 (those without formal rights) must continue to receive protections and entitlements including resettlement and livelihood assistance, and these entitlements should be strengthened to ensure fulfillment of the human right to adequate housing, including security of tenure, access to services, facilities and adequate employment or other livelihood opportunities suited to the skills and capacities of affected people. People and households without recognizable legal rights to the land they occupy or use are almost always poor and vulnerable due to, inter alia, their tenure insecurity, and, in line with ESS5 objectives, their resettlement should be conceived and executed as a development opportunity with compensation, assistance and support measures sufficient to ensure they are able to improve their livelihoods and living standards.
 - ii. The ESF must **acknowledge and protect the rights of all individuals and communities with customary (including collective) land tenure regardless of whether or not those rights are recognized in national laws.** ESS5 must protect those with customary land tenure systems who may be excluded from ESS7. As is established in the VGGTs, ESS5 should explicitly recognize all people and communities that have customary tenure rights as having legitimate land claims. The Borrower should treat such communities with the same protections and provisions as are required for those with formal land rights.
 - *Preparation and Disclosure of Resettlement Action Plans:* **There must be a clear requirement for draft resettlement plans and budgets to be prepared during project appraisal and made available in a manner accessible to affected persons, allowing them the opportunity to provide informed comments prior to Board approval of the project.** Current Bank policy and procedure require, as a condition of appraisal, the Borrower to submit to the Bank a draft resettlement plan, which is made publicly

available, and for Bank staff to assess its compliance with the policy and feasibility of measures and the Borrower's commitment to and capacity for implementing it. Bank management must present a full resettlement plan and budget to the Board prior to approval. Without these requirements, the Board will not know at the time of its consideration of the project the full displacement impacts, the risks of impoverishing people, and costs of mitigation, which could amount to a significant project cost that renders the project economically unviable. ESS5, in paragraph 22, requires the full costs of resettlement activities to be included in total project cost. Full costs can only be ascertained against a resettlement plan (setting out the mitigation and compensation measures). Moreover, people who stand to be displaced by a Bank-supported project have the right to know and be consulted on resettlement plans before a project is approved, so that they can respond to the proposed plan before project approval and/or communicate their views and concerns to the Board.

- *Monitoring and Supervision of Involuntary Resettlement:* The Bank's internal resettlement audits that were released in 2015 highlighted the inadequacy of Bank supervision and follow up of resettlement implementation. It is essential that the Bank's monitoring and supervision responsibilities are strengthened, including by **requiring the Bank to support implementation of, and ensure compliance with, ESS5** (and other applicable ESSs). The Bank should be **required to seek independent third-party verification of the Borrower's monitoring reports**. Resettlement monitoring and supervision requirements must be set out in a Bank procedure that is specific to involuntary resettlement, which could be included as an annex to the proposed Environmental and Social Procedure.

V. Indigenous Peoples

As an organization working to protect and promote land rights of indigenous communities, we are pleased to see the Bank's inclusion of Free, Prior and Informed Consent (FPIC) in its draft ESF. We are extremely relieved that the Bank has removed the opt-out clause that was in the first draft. However, we remain deeply concerned about the ongoing discussions around ESS7 and the pushback on FPIC and its operationalization.

- *Maintain Free, Prior and Informed Consent requirement:* Free, Prior and Informed Consent is guaranteed under international law (ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples) and considered even by the Bank as a "necessary feature of successful decision making" and that "the lack of FPIC makes for unsustainable decisions and costly mistakes."⁸ It is absolutely essential that the Bank **maintain in its final draft that consent of indigenous communities is a necessary condition for projects being considered on lands which indigenous peoples use and depend on**. It is important to note that this concept is not new, including for those African governments which we understand are having difficulty accepting FPIC. In fact, since 2009, the Economic Community of West African States (ECOWAS), the African Commission on Human and People's Rights (ACHPR), Pan-African Parliament,

⁸ The World Bank. 2015. "Indigenous Latin America in the Twenty-First Century". Washington, DC: World Bank.

and Africa Mining Vision have all called on States to respect the FPIC of local communities that face potential impacts from mining, hydrocarbon development, or natural resource projects more broadly.⁹ Companies and industry associations (like the International Council on Mining and Metals and the China Chamber of Commerce of Metals Minerals & Chemicals Importers & Exporters), multi-stakeholder initiatives (such as the Forest Stewardship Council and Roundtable on Sustainable Palm Oil), and banks (like the Equator Principles Financial Institutions) now incorporate FPIC in their policies and standards.¹⁰

- *Defining FPIC:* It is of utmost importance that **neither the ESF nor guidance notes describe FPIC as “broad community support” or consultation with the aim of achieving consent.** We believe a sound definition of Free, Prior and Informed Consent (FPIC) is the principle that indigenous peoples and local communities must be adequately informed about projects that affect their lands in a timely manner, free of coercion and manipulation, and should be given the opportunity to approve or reject a project prior to the commencement of all activities. FPIC processes must be ongoing. Project developers should facilitate community participation in decision making throughout the life of the project, and communities should have the opportunity to give or withhold their consent at each phase of project development where changes to project design entail potential impacts on communities.
- *Operationalizing FPIC:* Consistent with the above, operationally, **FPIC should mean that communities can choose to give or withhold their consent to the project** (or project activity) that impacts their lands. How a community defines consent must be a community-specific decision rather than one the Bank or borrowing government imposes. This is consistent with the very essence of FPIC which derives from indigenous peoples’ right to self-determination.
In practice, FPIC requires that an ongoing relationship be built early between the project proponent and the communities, allowing the project to become one of partnership and participation. In this situation a ‘no’ becomes much less likely. In the event that consent is withheld though, this likely means that negotiations have not finished, or that the project (or project activity) represents a real threat to the communities.
- *Closing loopholes:* Although the Bank has removed the problematic opt-out clause from ESS7, we are concerned that Borrowers will seek to use the Bank’s vague Waiver Policy to get out of applying ESS7. We have heard some concerns that efforts to protect indigenous rights may privilege certain ethnic groups over others or even lead to ethnic conflict. ACHPR has responded to these concerns emphasizing that recognition of indigenous peoples does not aim to privilege a particular ethnic group over another, but rather to protect the rights of groups that have been marginalized and discriminated against

⁹ For more information about FPIC in the African context, please see, Greenspan, Emily, “Free, Prior, and Informed Consent in Africa: An emerging standard for extractive industry projects,” Oxfam America Research Backgrounder series (2014) found at <http://www.oxfamamerica.org/static/media/files/community-consent-in-africa-jan-2014-oxfam-americaAA.PDF>

¹⁰ For more detail see Oxfam’s “Community Consent Index 2015: Oil, gas and mining company public positions on Free, Prior, and Informed Consent” found at www.oxfam.org/communityconsent.

because of their particular culture, mode of production, and position within the state. They also note: “conflicts do not arise because people demand their rights but because their rights are violated.”¹¹ It is crucial that the Bank **clarifies the conditions under which Borrowers may be granted a Waiver, and lays out the specific processes for obtaining the waiver.**

- *Land-based redress for indigenous peoples:* The Bank must clarify that **when indigenous peoples are subject to involuntary resettlement, they will be guaranteed equal or greater ownership rights over any replacement lands, and that replacement lands should be equal in quality, size and legal status, unless their free, prior and informed consent has been obtained for alternative redress.**

VI. Climate

The ESF’s further incorporation of language on climate is welcome, however as it was written prior to the December 2015 UNFCCC Paris agreements, the final draft must capture and respect the commitments agreed upon by all parties including specific commitments made by the Bank and by Borrower countries. We are especially keen to see more language in the ESF supporting the global adaptation goal of enhancing adaptive capacity strengthening resilience and reducing vulnerability to climate change, as well as supporting (Intended) Nationally Determined Contributions (NDCs) through means of implementation: finance, technology transfer and capacity building. To that end, several areas on climate change assessments within the ESF need to be strengthened for all Bank lending to be consistent with these plans, and the Paris outcome.

- *Project selections:* The ESF, especially ESS1 should aim to ensure that **project selections are coherent with the Borrowing country’s NDCs, including countries’ National Adaptation Plans, Nationally Appropriate Mitigation Actions and other plans** being developed to mitigate and adapt to the risks of climate change.
- *GHG emissions reporting:* We are disappointed that the Bank removed the specified 25,000 ton threshold for greenhouse gas (GHG) emissions reporting from the ESF with the stated intention of moving it to the guidance notes. We strongly recommend that the **25,000 ton threshold be reinstated in the final draft.** It is, after all, the ESF that the Bank and Borrowers will be held accountable to. We also would like to see the Bank remove the text “where technically and financially feasible” (Ess3, para 16). A clear requirement, free of qualifiers will promote proper adherence by Borrowers. Such transparency and tracking will not only allow stakeholders including affected communities, investors, and project implementers to have the information available to implement mitigation measures at the needed timeframes during project planning, implementation and monitoring, but it will also help show the extent to which the Bank’s finance flows are contributing towards the goal of “making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development”.¹²

¹¹ African Commission on Human and Peoples’ Rights and International Work Group for Indigenous Affairs, “Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities,” Adopted by ACHPR at its 28th ordinary session, 88 (2005), http://www.iwgia.org/iwgia_files_publications_files/African_Commission_book.pdf.

¹² See Article 2(c) of COP21/CMP agreement

- *Assess the resilience of local communities:* It is essential that people’s needs and livelihoods in the face of climate change impacts be assessed pre-project approval and designed into the life-cycle of the project to ensure that they too are protected against the impacts of climate change, and that their benefits of the projects are not impacted upon. We welcome ESS4’s addition that potential risks and impacts on ecosystem services that are exacerbated by climate change will be identified and avoided or mitigated, however we **recommend the removal of the words “where appropriate and feasible” and propose that in addition to ecosystem services, the Bank also require an assessment of climate impacts on communities, especially women.**
- *Alternatives analysis that take into account full externalities:* It is our view that the Bank must **ensure that project selections are made based on the full accounting of costs, including externalities, both negative and positive ones.** We recommend **that in addition to assessing risks, the Bank aim to quantify such risks so as to conduct a full cost-benefit analysis when assessing alternatives.** Quantifying the projected carbon footprint of a project for example would help the Bank make more informed decisions about low-carbon alternatives. In addition to climate-related costs, the Bank could benefit from internalizing costs on land, employment, health, women’s access to project benefits, and others. Such internalization of costs and benefits would allow for the full picture of pro-development benefits to be realized when assessing alternatives and low carbon options.

VII. Accountability

A key component of a strong environmental and social management system is having a strong accountability mechanism in place. Though it is important that Borrowers will also provide a grievance mechanism/process, it is absolutely essential to have an objective/independent body that affected communities can turn to. This is why the Inspection Panel is crucial. We are concerned that the draft ESF weakens the scope of the Inspection Panel and recommend that the text be made more specific such that the Panel can assess clearly when there have been policy violations, and that it has the mandate to investigate whether the ESS’s (or their equivalent in the case of other systems being used such as Borrower Frameworks or Financial Intermediaries) have been applied correctly.

Some examples of language we worry is weakening the Panel’s mandate and that we recommend changing are:

- *Adhere vs. ensure:* The Bank will “require the Borrower” to adhere to the ESSs, versus, the Bank will “ensure that the Borrower” is adhering to the Safeguards. With the latter, the onus is on the Bank to ensure the Borrowers has fulfilled its obligations, but with the former and as the draft ESF is worded, it appears that the responsibility lies solely with the Borrower. We are concerned that the **Panel would only be able to investigate whether the Bank has done its due diligence rather than if the ESSs have been applied correctly.** This would be unacceptable.

- *Discretionary language:* Multiple references to asking the Borrower to fulfill certain requirements “**in a manner and timeframe deemed acceptable to the Bank**”. This is highly problematic as it **leaves discretion wide open and accountability unclear**.
- *Non-compliance:* Additional questions remain on what the **steps are for dealing with Borrowers’ non-compliance** with the ESSs.

VIII. Gender

Oxfam has pushed for a stand-alone gender safeguard in previous phases of the review, which we believe would help ensure that the unique impacts on women are systematically considered while the potential project benefits are maximized. We regret that this addition was not made, and strongly recommend that at this stage of the review:

- *Incorporating unique impacts on women:* The Bank should rewrite the final draft through a gender-sensitive lens, making sure that **women are not only accounted for but are prioritized explicitly throughout the document**. We are pleased to see that ESS5 has incorporated more gender-specific language, but **specific impacts and protections for women must be mainstreamed in all the ESSs**. There are many more opportunities to make sure that Bank-financed projects are benefitting rather than harming women.

IX. Human rights

Upholding human rights is central to development and while the Bank’s reference to human rights in the vision statement is welcome, it is merely aspirational and does not go far enough.

- *Strengthen human rights commitment:* We recommend that the Bank **remove the term “aspirational” and move its human rights statement into the ESP**, thereby articulating that this is at minimum a responsibility of the Bank itself to uphold.
- *Human Rights Impact Assessments:* The Bank should require the **use of Human Rights Impact Assessments, especially those that are community based**, so that basic rights – such as the right to food or the right to adequate housing are not violated.¹³
- *Protection of critical stakeholders:* We recommend that the **Bank include in ESS10 a provision explicitly prohibiting the retaliation or punishment of individuals, communities or organizations** that are aiming to make their views heard in a project, however critical their views of the project may be.

X. Final remarks

We have yet to see a draft implementation plan for the ESF and strongly recommend that the Bank move forward on that quickly. The development of such a plan could also help expose further areas that require strengthening in the ESF and procedures.

¹³ Oxfam has produced a report on how to conduct strong community-based HRIAs and their added value. See Oxfam America, 2015, “Community Voice in Human Rights Impact Assessments” found at http://www.oxfamamerica.org/static/media/files/COHBRA_formatted_07-15_Final.pdf

We would like to note that we believe the Bank has missed an important opportunity to streamline its environmental and social risk management across its lending instruments by limiting the scope of the ESF to Investment Project Finance. We recommend that the Bank moves swiftly to ensure that environmental and social risk management is aligned across instruments.

Finally, we welcome any comments or questions you may have on our submission and look forward to continuing to be involved in the review process.