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TO: IDB Invest, Team responsible for the Sustainability Policy Review Process

RE: Recommendations and comments on IDB Invest's draft Environmental and Social Sustainability Policy

EXECUTIVE SUMMARY WITH GENERAL RECOMMENDATIONS & COMMENTS

Conducting a review that adopts the Performance Standards (PSs) of the International Finance Corporation (IFC) without the possibility of proposing changes, represents a missed opportunity for IDB Invest to strengthen the PSs. The draft of the new IDB Invest Environmental and Social Sustainability Policy (the Policy) adopts the PSs of the IFC without opening space to make changes to them. It is a missed opportunity since the PSs and, the Guidance Notes (GNs), were last updated in 2012 and in many aspects are outdated to meet the current environmental and social challenges of the region. Particularly, in terms of mitigation and adaptation to climate change, gender, the use of security forces, contextual risk analysis, persons with disabilities, stakeholder engagement, and indigenous peoples.

By adopting the PSs without the possibility of reviewing and updating them, IDB Invest does not address the policy gaps in the PSs, many of which have been identified by the IFC itself through

additional policy reforms and guidelines¹, during the nearly 8 years of experience in their application. For this reason, IDB Invest is urged to incorporate lessons learned from IFC and the World Bank, as well as from IDB Group and MICI experience, taking into account the following recommendations:

1) Add two additional standards to the 8 PSs of the IFC: A standard on Gender Equality and a standard on Stakeholder Engagement and Information Disclosure.

- **Do not eliminate the current Operational Policy on Gender Equality in Development (OP-761; 2010) of the IDB in the new Environmental and Social Sustainability Policy of IDB Invest:** By adopting only the PSs of IFC, IDB Invest would be leaving behind the existing gender policy currently used by the IDB Group. The IDB Group has been a leader in gender as the first Multilateral Development Bank (MDB) to adopt a stand-alone operational gender policy (OP-761) in 2010, which has served to successfully incorporate and elevate the gender perspective in the projects and operations it finances. Excluding this existing gender focus in the new Policy would imply a setback for IDB Invest in terms of social and environmental risk management and gender mainstreaming in all operations that IDB Invest finances.
- **Adopt a standard for Stakeholder Engagement and Information Disclosure:** Stakeholder engagement and information disclosure has been a problem area for MDBs in general, and the IDB has been no exception² (projects such as Ituango Hydroelectric Project and Mareña Renovables provide clear evidence³). Learning from their own experiences, the World Bank recognized the need to adopt a normative standard for [Stakeholder Engagement and Information disclosure \(ESS10\)](#) in its new Environmental and Social Framework (ESF). PS1 of the IFC covers elements of stakeholder engagement and information disclosure, however, PS1 is not a stakeholder engagement policy. In fact, PS1 is an ‘umbrella’ policy that covers the broad principles related to several topics that then are picked up in the more topic specific PSs related to involuntary resettlement, labor, indigenous peoples, biodiversity, etc. Stakeholder engagement and information disclosure is a complex process and needs a high level of detail and specificity that requires its own policy to minimize client discretion and thus

1 For example: In [Financial Intermediaries, use of security forces, contextual risk analysis and due diligence, accountability reforms, reprisals against civil society in the process of project participation](#)

2 The report “[Lessons from four Decades of Infrastructure Project-Related Conflicts in Latin America and the Caribbean](#)” (2017) prepared by the IDB, investigates the nature and consequences of conflict in infrastructure projects in Latin America and the Caribbean. It identified that the lack of stakeholder engagement and adequate consultation, along with deficient planning, reduced access to resources, and lack of community benefits were the most prominent conflict drivers in the region. In many cases, conflicts escalated because grievances and community concerns accumulated and went unresolved for many years.

3 With respect to the Ituango Hydroelectric Project (Hidroituango) in Colombia, the affected communities have publicly stated the errors and failures in the determination and identification of the population affected by the project and, therefore the lack and/or limited participation of those communities in the consultations that were carried out. The inadequate identification of the affected population produced censuses that did not include the entire population. These incomplete and deficient censuses have a direct connection with the lack of information and lack of adequate and effective participation of the population in the consultations on the Hidroituango project. Additionally, the resettlement plans, that are a critical part of the Hidroituango project, were based on incomplete and erroneous censuses, which means that there is a large part of the population that was never included or consulted regarding those plans. These deficiencies with regards to inclusion and participation continue to have direct consequences on people in the Antioquia region because the project causes both physical and economic displacement.

maximize the benefits of the project, especially for the most marginalized. A stakeholder engagement and information disclosure policy should:

- Provide clear minimum requirements for what is considered acceptable with respect to stakeholder identification and participation, information disclosure and consultation, and grievance mechanisms especially for, but not limited to, high or substantial risk projects.
- Ensure that stakeholder participation is made accessible and safe.
- Commit the client to being deliberately inclusive and participatory, such that all stakeholders are empowered to participate in and benefit from the disclosure of information and the stakeholder engagement process.
- Include specific actions to be taken by the client in identified contexts of restricted civic space, to ensure safe participation of all stakeholders and to prevent and respond to retaliation.

By adopting two additional standards, one of gender and the other of stakeholder engagement and disclosure of information, IDB Invest will begin a new era with a solid set of standards that incorporates the lessons learned from almost 8 years of implementation of the PS by the IFC, as well as from IDB Group and MICI experience.

2) The Sustainability Policy should be guided by the principle of “do good” beyond “do no harm”. The Sustainability Policy should respond to the guiding principle of ‘do good’ beyond the mere mitigation, prevention or minimization of negative impacts. The Sustainability Policy should aim at sustainable development focused on a proactive commitment on the part of clients to increase the positive externalities of the operations they finance in order to generate genuine benefits that improve people's quality of life. In practice, the application of PSs should strengthen and promote positive sustainable impacts for communities. Given the current challenges in the region and the mandate of the IDB Group to support sustainable development, we recommend that the guiding principle of ‘do good’ to affected communities in the area of influence of their investments should be the main objective of the IDB Invest Sustainability Policy.

3) Do not dilute the supervision responsibilities of IDB Invest in the implementation of safeguards. IDB Invest's responsibilities for supervision should be expanded and strengthened to ensure that the client effectively implements the PSs.

- **Include specific requirements, procedures and criteria that define responsibilities and clear times for supervision, reporting and remedial measures** for the “*regular program of supervision of the management of environmental and social risks and impacts*” (page 9) that IDB Invest agrees with clients in the legal arrangements.
- **Avoid the use of ambiguous language when referring to IDB Invest's responsibility in the role of supervision and implementation.** Expressions such as, “*may take remedial measures,*” “*site visits when necessary,*” “*may withdraw financial support,*” “*reasonable time frame,*” among others, are ambiguous and may result in non-compliance.
- **Expand the responsibilities of IDB Invest, considering the articles mentioned below of the Sustainability Policy and the Environmental and Social Review Procedures of the IFC, which offer a much more robust framework for the supervision and due diligence of IDB Invest:** The Policy adopts the IFC system that requires clients to develop

an environmental and social management system (which is found in the PSs). However, IDB Invest neglects many of IFC's responsibilities for environmental and social due diligence, and supervision of client compliance found in the [IFC Sustainability Policy](#) (i.e., art 23 to 27 / 29 to 39) and in [the Environmental and Social Review Procedures \(2016\)](#). For example, in many of the articles indicated there are provisions on risk assessment, verification of free, prior and informed consent (FPIC), monitoring, among others, which are not considered in the Policy. The IFC system is based on the following logic: more flexible requirements for the client, but a more rigorous system of due diligence, supervision, and technical strengthening by the Bank to ensure effective socio-environmental management by the client. It is not acceptable for IDB Invest to adopt the most flexible standards for the client and ignore the requirement of due diligence and supervision of the IFC Sustainability Policy and in the Environmental and Social Review Procedures. To ensure that its clients adhere to and comply with the standards, IDB Invest should expand its responsibilities, considering the articles mentioned above of the IFC Sustainability Policy and Environmental and Social Review Procedures that offer a much more robust framework for the supervision and due diligence by IDB Invest.

- **Specify procedures and criteria to apply corrective measures that include withdrawing financing in case a client does not comply with safeguards:** Develop procedures and criteria to detail when and under what conditions IDB Invest will apply corrective measures to clients, ranging from increasing assistance and supervision to the withdrawal of financing on the part of IDB Invest.
- **Establish clear objectives and incentives to ensure that the Safeguards Unit (SEG) has the mandate, budget, staff, and sufficient capacity to carry out its supervisory function effectively** and to help clients address all types of problems that arise related to project affected communities.
- **Due diligence should be continuous throughout the project cycle and not only focused on pre-approval requirements as indicated in section IV “Implementation of the Sustainability Policy”:** Failures and deficiencies in due diligence and supervision of IDB Invest should be addressed based on the incorporation of lessons and learning from MICI cases and other IDB studies.

4) Incorporate lessons learned from the IFC regarding the actions of Financial Intermediaries.

- **Provide clear guidance, guidelines and requirements that incentivize greater transparency and disclosure of information on high-risk projects financed by financial intermediaries.** The challenge of transparency in the financial sector is to change the behavior and culture of the sector.
- **Establish clear objectives and incentives with specific deadlines for those working within financial intermediary institutions** to incorporate a culture of transparency, good governance and progress towards a more systematic approach of disclosing information on high-risk projects.
- **Include mechanisms in its contracts for “general loans” that allow it to track and identify the projects, activities or operations in which they invest.** In addition to the responsibility assumed by IDB Invest to evaluate a financial intermediary's portfolio, in

indirect activities IDB Invest should be carefully selective in evaluating its financial intermediaries, avoiding high-risk activities.

5) Learning and adaptation functions of IDB Invest should be made explicit to clarify how lessons learned, experiences, and recommendations of MICI will be incorporated and taken into account: The Policy should specify how MICI experiences should help IDB Invest improve its performance and how IDB Invest will incorporate MICI's learning and recommendations on an ongoing and constant basis to improve and strengthen the supervision and implementation of sustainability policies.

6) We request that IDB Invest clarify how it will incorporate and take into account the recommendations made considering that the consultation plan does not establish a second phase of consultation on the draft Policy. We strongly urge at least one other consultation phase to consult on the draft Policy to make sure that feedback received is taken into account.

SPECIFIC RECOMMENDATIONS AND COMMENTS

I. PURPOSE OF POLICY

- **Art. 1:** We recommend a rewrite of the mission of IDB Invest so that it returns to the original mission established in the [current IIC Environmental and Social Sustainability Policy \(2013\)](#) where it is established that “The IIC's mission is to promote sustainable economic development” instead of just “promoting economic development”, and ceases to prioritize small and medium-scale investment. Today, a development bank cannot promote economic development that is not sustainable. To strengthen the language of Art.1, we recommend replacing the article with the following: *“the Inter-American Investment Corporation (IDB Invest), a member of the Inter-American Development Bank (IDB Group), is an international organization that promotes the **sustainable** economic development of its regional developing member countries by encouraging the establishment, expansion, and modernization of private enterprises **in a sustainable way**”*.
- **Art. 2:** We recommend strengthening the language of the purpose of the Sustainability Policy by taking into account the following change: We recommend replacing the statement with the following: *“The purpose of the IDB Invest Environmental and Social Sustainability Policy (the Sustainability Policy) is to **integrate** IDB Invest’s commitment to sustainable development, **as the foundation** of its approach to risk management, as well as its development **process**. The Sustainability Policy applies to all activities undertaken and operations financed by IDB Invest, including, among others, direct and indirect financing and technical assistance services”*.
- **Art. 5:** We recommend clarifying what criteria that will be used for revisions to the Sustainability Policy. Article 5 states that *“the Sustainability Policy will be subject to revision for purposes of incorporating best practices, international trends on environmental and social sustainability issues, and lessons learned during its implementation”*. However, it is not specified when or how often such revisions will be carried out (for example, every three or four years). This should be clearly stated in the policy to avoid ambiguities. It also contradicts what is stated in Article 2 of the section ‘IDB Invest Commitments’ where it is indicated that *“any subsequent revisions to the Sustainability Policy Standards will apply to this Sustainability Policy unless otherwise determined by IDB Invest’s Board of Executive Directors”* (page 4).

II. IDB INVEST COMMITMENTS

- Language should be strengthened throughout the section to ensure that the commitments are binding in order to establish concrete mandated requirements for IDB Invest and its clients. By definition, the policy should be a mandate for action and, in no case, should it be a tool to communicate good intentions. Therefore, the use of declarative language, of good intentions through terms like ‘strives’, ‘promotes’, ‘considers’, ‘seeks to ensure’, or ‘issues to be considered’ should be avoided. The

language is particularly weak with respect to gender, marginalized groups, stakeholder engagement and persons with disabilities (from Art. 2 to 7 and in the footnotes). For example, it is suggested that gender and the inclusion of people with disabilities, are “*an integral aspect that clients will be required to take into account when applying PS1*” (footnote 8 and 9) and that “*guidance on gender, and persons with disabilities will be included in PS 1 to PS 8*”. This implies that clients will be required to include and take into account gender and disability only when applying PS1 and not when applying the other PSs. Also, it mentions that the IDB “*strives to ensure that other vulnerable groups are not disadvantaged in sharing development benefits*” (footnote 11). In the same way, in the commitments of “*Climate Change Adaptation, Mitigation and Low Carbon Development*” (art.5), “*Biodiversity, Ecosystem Services and Protected Areas*” (art.6) and “*Social Aspects, Labor, Health and Safety*” (art 7), the Policy promises to develop a series of actions such as IDB Invest “*promotes*”, “*provides*”, “*contributes*”, “*considers*”, without establishing concrete requirements, and specific binding actions, to ensure that compliance is measurable, reportable and verifiable.

- **Art. 1: We recommend strengthening the language of the statement taking into account the following additions and modifications:** “*IDB Invest has the responsibility to ensure through its environmental and social appraisal and supervision process that the projects in which it invests and to which it provides technical assistance services are environmentally and socially sustainable by requiring that the projects be structured and designed and implemented to meet the standards referred to in this Policy in a comprehensive manner.*” By just “*striving to ensure*” the sustainability of projects, the Bank simply weakens the responsibility it has for supervision to ensure the correct implementation of the PSs by its clients.
- **Art. 2: We recommend clarifying that the PSs of the IFC are adopted with their respective Guidance Notes that accompany them:** “*This Sustainability Policy incorporates the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation (IFC) with their respective Guidance Notes and the World Bank/IFC Environmental Health and Safety (EHS) Guidelines-including both General EHS guidelines and Industry Sector EHS Guidelines (the ‘Sustainability Policy Standards’)*”.

Pollution Prevention and Resource Efficiency

- **Art. 4: We recommend strengthening language by considering the following change:** “*IDB Invest promotes and requires good industrial practice and resource efficiency strategies to minimize waste and pollution, including greenhouse gas emissions, resulting from the projects it finances in accordance with PS3.*”

Climate Change Adaptation, Mitigation and Low Carbon Development

- **Art. 5: We recommend including a binding commitment with respect to mitigation and adaptation to climate change, especially important for the region, which is very vulnerable to impacts.** The PSs of the IFC are not updated to meet this challenge and does not currently fall under any PS. Mitigation and adaptation to climate change should be a priority consideration for any project to be implemented in the region. PS3 refers to the reduction of greenhouse gases and the sustainable use of resources (focusing on water and energy), but the Policy itself does not provide tools to ensure that climate mitigation and adaptation are an integral part of all Bank operations.
Considering the increasingly acute importance of responding to climate change and the environmental crisis, IDB Invest should be very clear and specific in the way it proposes to contribute to the global response to the problem, and this should be specified in the Policy or in a note that complements it. It should ensure it is supporting necessary efforts and providing necessary funding for renewable energy, mitigation and adaptation, and support to countries for the transition to low carbon economies.

Biodiversity, Ecosystem Services and Protected Areas

- **Art. 6: This commitment should make it clear that IDB Invest should always aim to protect natural habitats, biodiversity and the ecosystem services they support, and not only ‘when possible’.** As the main financing actor in the region, it is not acceptable for the IDB Invest Policy to state that ‘*when possible*’ natural habitats, biodiversity and ecosystem services they support will be protected, particularly when they provide the means of support for the development of the life of communities that depend on forests for whom they can have a special traditional value. The current environmental crisis does not allow financial institutions (especially the most important ones such as the IDB) to disregard the natural assets of local, regional and global importance that still remain in the region when it finances operations. It also should make clear that cumulative and synergistic effects should **always** be evaluated and addressed in high-risk projects. Finally, we recommend modifying the text to take into account the following: “[...] *Depending on project type and location, this will include specific **direct, indirect, associated, and cumulative impact analysis to determine potential synergistic and long-term effects of a project and management plans for protecting natural and critical natural habitats in accordance with this Sustainability Policy and its reference standards.***”

Social Aspects, Labor, Health and Safety

- **Art. 7: We recommend changing the language ‘demand, without limitation’ to “IDB Invest will require and demand clients to comply with the items below”:**
 - (i) ‘robust public consultation, outreach and communication to affected communities, implementation of grievance redress mechanisms commensurate with the nature of the social risks and impacts and the environmental and social risk category of the project in accordance with PS1.’

Add and adopt a standard for Stakeholder Engagement and Information Disclosure. A stakeholder engagement and information disclosure policy should:

- **Provide clear minimum requirements for what is considered acceptable with respect to stakeholder identification:** In addition to identification, this involves an analysis to identify mechanisms for mitigating harm and promoting benefits. Also, depending on the magnitude of the risk, requiring the client to hire independent third-party specialists to assist in the identification and analysis necessary to support the design of an inclusive participation process.
- **Provide clear minimum requirements for what is considered acceptable with respect to the stakeholder engagement plan:** This should include disclosing and consulting with stakeholders on the draft plan in the initial phase of the project, detailing the methods and moments of stakeholder participation throughout the project cycle, describing measures that will be used to eliminate obstacles to participation, which details how information will be disclosed, consultations, and the way in which opinions of differently affected stakeholders will be obtained. Likewise, it should identify the entity responsible for receiving complaints and grievances and detail all information related to the implementation of the complaints and grievance mechanism, including measures that will be carried out to protect those who make complaints from retaliation.
- **Provide clear minimum requirements for what is considered acceptable with respect to the disclosure of information:** Ensure that project information is accessible, within a timeframe that allows for meaningful stakeholder consultations on project design, highlight potential risks and impacts that may disproportionately affect marginalized groups and describe the differentiated measures taken to avoid and mitigate them, add the time and place of proposed public consultation meetings, and the process by which they will be notified, summarized and reported, disclose information in relevant local languages, in a manner that is accessible and culturally appropriate, taking into account any specific needs of groups that may differently or disproportionately affected by the project or groups of the population with specific information needs (such as disability, literacy, gender, mobility, differences in language or accessibility).
- **Provide clear minimum requirements for what is considered acceptable with respect to meaningful consultation:** Meaningful consultation should provide stakeholders (as well as interested parties and social actors in general) with opportunities to express their views on project design, identification and mitigation of project risks and impacts, and allows the client to consider and respond to them. Meaningful consultation should be carried out on an ongoing and uninterrupted basis as the nature of issues, impacts and opportunities evolves.
- **Provide clear minimum requirements for the implementation of grievance redress mechanisms:** Develop procedures to publicly announce the complaint and grievance mechanism at the project level and as well as how to access MICI; specify different ways in which users can submit their

grievances; keep a record where grievances are registered in writing and maintained as a database; publicly advertised procedures (setting out the length of time users can expect to wait for acknowledgement, response and resolution of their grievances); and ensure transparency about the grievance procedure, governing structure and decision makers.

- **Spaces of participation, consultations, information and communications about consultations, and grievance mechanisms should be done in accessible formats.** In addition, disability should be included as an obligatory element to be taken into account in the social impact assessment of a project. That way, the needs of people with disabilities will be included in the design of projects.
- **Include specific actions to be taken by the client in identified contexts of restricted civic space,** to ensure safe participation of all stakeholders and to prevent and respond to retaliation.

(ii) ‘Good labor relations and practices, including a worker grievance redress mechanism for workers in accordance with PS2’:

- Although PS2 indicates that the labor requirements contained therein are based on the International Conventions and Treaties of the ILO and the United Nations, **it should expressly state that clients should comply fully with national legislation, as well as all the Conventions and Treaties duly ratified by the country in which the operations are carried out.** Ensuring that, even in the absence of ratification by such countries, the international human rights protection framework is guaranteed as a minimum protection threshold.

(iv) ‘Gender equality, including the avoidance of gender-based exclusion, gender-based violence, including sexual exploitation or human trafficking and sexually transmitted diseases in the projects financed by IDB Invest (e.g. in the workplace and in public consultation’:

- **We recommend not to exclude and rather to adopt the current Operational Policy on Gender Equality in Development (OP-761; 2010) of the IDB as a performance standard that regulates in detail the consideration of gender in operations financed by IDB Invest.** Considering that the IDB has an operational gender standard, it would be a missed opportunity for IDB Invest to exclude the current standard from its new Sustainability Policy.
- **We recommend incorporating and explicitly mentioning the provisions of Convention 190 of the ILO (Convention Concerning the Elimination of Violence and Harassment in the World of Work, 2019):** In this commitment, there are many aspects related to gender equality that are mentioned in broad, abstract terms, and exclude the consideration of the private sphere (homes, domestic and caretaking roles, and families) of workers. Convention 190 of the ILO particularly covers the private sphere

of workers and establishes specific protection and prevention measures (articles 7, 8 and 9); control of the application and avenues of recourse and reparations (article 10); orientation, training and awareness raising (Article 11) and methods of application (Article 12) in order to promote an inclusive, integrated approach that takes into account gender considerations to prevent and eliminate violence and harassment in the world of work. Such an approach includes, among other things: legally prohibiting violence and harassment; ensuring that relevant policies address violence and harassment; adopting a comprehensive strategy to implement measures that prevent and combat violence and harassment; establishing control mechanisms of implementation and of monitoring or strengthening existing mechanisms; ensuring that victims have access to avenues of recourse and reparations and support measures; providing sanctions; developing tools, orientations, education and training activities, and awareness raising activities, in an accessible manner, as appropriate; and ensuring that there are effective means of inspection and investigation of cases of violence and harassment, including through labor inspection or other competent bodies.

(v) ‘Participation and inclusion of persons with disabilities, including access to the physical environment, equality of opportunity in employment for persons with disabilities, and avoidance of discrimination’:

- **We recommend explicit adherence to the Principles of the United Nations Convention on the Rights of Persons with Disabilities**, where specific requirements for persons with disabilities are specified.
- **Change the text of the statement taking into account the following additions:** *“participation and inclusion of persons with disabilities, guaranteeing access to the physical environment, equality of opportunity in access to employment, health, education, justice and other rights as provided for in the Convention on the Rights of Persons with Disabilities. Avoid all forms of discrimination based on disability.”*

(vi) ‘Participation and inclusion for indigenous peoples and other vulnerable groups, prevention or minimization of adverse impacts on indigenous peoples and other vulnerable groups in accordance with PS7 (Indigenous Peoples)’:

- **Change the text of the statement taking into account the following additions:** *“Participation and inclusion for indigenous peoples and other marginalized groups, not only prevention or minimization of adverse impacts on indigenous peoples and other marginalized groups in accordance with PS7 (Indigenous Peoples), but also promotion of their inclusion in spaces impacted by the project”*.
- **We recommend indigenous peoples living in voluntary isolation be incorporated and mentioned in the Policy:** By adopting the PSs of the IFC, IDB Invest is leaving behind the current Indigenous Peoples policy of the IDB Group that has provisions and regulatory standards on indigenous

peoples in voluntary isolation. In the PSs of the IFC, there is no reference to indigenous peoples in voluntary isolation, a particularly relevant issue for the region.

- **We recommend explaining that free, prior, and informed consent (FPIC) should be obtained prior to the approval of the investment project:** This recommendation aims to fill a gap in the PS7 policy where it indicates that there may be cases in which, "[...] *the process of participation with affected communities of indigenous peoples is not yet advanced enough to have obtained FPIC at the time of project approval*". This statement suggests that a project could be approved before securing the FPIC of indigenous peoples for that project. The consultation and FPIC processes have an objective to ensure that indigenous communities have the opportunity to participate in decision-making around development projects that affect their lands, cultural identity and livelihoods. FPIC means that communities receive adequate and timely information about the projects and have the opportunity to approve or reject projects. In other words, if indigenous communities do not give their prior consent for a project, then project financing should not be approved. In addition, consent must be sought and granted continuously through the exchange of information and dialogue throughout the entire project cycle. As indicated by the Inter-American Commission on Human Rights (2016) as well as the Honduras (2018) and Mexico (2018) reports by the United Nations rapporteur Michel Forst, there is an obligation to respect the processes of consent on the part of investments and states, as a way to avoid violence, conflicts and deaths of human rights defenders and of indigenous peoples.
- **Marginalized persons and groups should be identified, evaluated and included in the mitigation plans for all high and substantial risk projects,** including children, persons with disabilities, and those who identify as LGBTQ+, and should include the ways in which they can be affected differently by projects. In addition, more details on risk prevention related to the sexual exploitation or abuse (SEA) of children as well as gender-based violence (GBV) should be provided. When an assessment identifies risks (including the SEA of children or gender-based violence) that may arise from the interaction of project workers with local communities, the environmental and social documents of the project should describe those risks and measures to address and mitigate them.

(vii) 'Preservation of Cultural heritage in accordance with PS8 (Cultural Heritage)':

- **We recommend making explicit reference to the protection of traditional knowledge of indigenous peoples** and to the international regulatory framework that promotes their protection in terms of access as well as to the fair and equitable sharing of the benefits derived from the use of such knowledge (Nagoya Protocol).

(viii) ‘Fair compensation and livelihood restoration of any persons or groups physically displaced or restricted from their household, community or livelihood in accordance with PS5 (Land Acquisition and Involuntary Resettlement)’:

- **Forced displacement should be avoided as a primary condition and should be applied in accordance with the mitigation hierarchy of PS 1 and PS5.** In this statement, forced displacement appears to be something that implies a simple duty of compensation. We recommend modifying this statement as follows: *“Avoid forced displacement as a primary condition, and if, in accordance with Performance Standard 1 and 5, it cannot be avoided, compensation and restoration of the means of livelihood must be guaranteed to any person or group displaced or limited access to their home, community, or livelihood, considering universal accessibility and design, in accordance with Performance Standard 1 and 5”*.

(ix) **We recommend adding one more point to these commitments in accordance with PS4 that requires clients not to execute threats, intimidation or attacks on human rights defenders, where explicit recognition of the Escazú Agreement is made.**

- Latin America is the region where there is the greatest violence against human rights defenders on environmental matters and it is growing. Considering the advances in international regulations such as the Escazú Agreement, IDB Invest should strengthen its commitment to human rights and include an explicit reference demanding that its clients not be involved in and/or execute threats, intimidation or attacks on human rights defenders.

III. CLIENT RESPONSIBILITIES

- **We recommend including the Interpretation Notes of the PSs of the IFC:** This will help the client to guide implementation, leaving less room for free interpretation.
- **Change the text of the statement taking into account the following addition:** *“The identification, management and mitigation of environmental and social risks, **which involves planning, design, implementation, human and economic resources**, and potential impacts of activities financed by IDB Invest are the responsibility of the client in accordance with the Sustainability Policy”*.

IV. IDB INVEST IMPLEMENTATION OF THE SUSTAINABILITY POLICY

- **We recommend adding a sub-title to this section as follows:** *“IDB’s Invest role and responsibilities”*
- **Strengthen the responsibilities of IDB Invest in its supervisory role in the implementation of safeguards:**
 - **Include specific requirements, procedures and criteria that define responsibilities and clear times for supervision, reporting and remedial measures** for the *“regular program of supervision of the management of*

environmental and social risks and impacts” (page 9) that IDB Invest agrees with clients in the legal arrangements.

- **Avoid the use of ambiguous language when referring to IDB Invest's responsibility in the role of supervision and implementation:** Expressions such as, “*may take remedial measures,*” “*site visits when necessary,*” “*may withdraw financial support,*” “*reasonable time frame,*” among others, are ambiguous and may result in non-compliance.
- **Expand the responsibilities of IDB Invest, considering the articles mentioned below of the Sustainability Policy and the Environmental and Social Review Procedures of the IFC, which offer a much more robust framework for the supervision and due diligence of IDB Invest:** The Policy adopts the IFC system that requires clients to develop an environmental and social management system (which is found in the PSs). However, IDB Invest neglects many of IFC's responsibilities for environmental and social due diligence, and supervision of client compliance found in the [IFC Sustainability Policy](#) (i.e., art 23 to 27 / 29 to 39) and in [the Environmental and Social Review Procedures \(2016\)](#). For example, in many of the articles indicated there are provisions on risk assessment, verification of free, prior and informed consent (FPIC), monitoring, among others, which are not considered in the Policy. The IFC system is based on the following logic: more flexible requirements for the client, but a more rigorous system of due diligence, supervision, and technical strengthening by the Bank to ensure effective socio-environmental management by the client. It is not acceptable for IDB Invest to adopt the most flexible standards for the client and ignore the requirement of due diligence and supervision of the IFC Sustainability Policy and in the Environmental and Social Review Procedures. To ensure that its clients adhere to and comply with the standards, IDB Invest should expand its responsibilities, considering the articles mentioned above of the IFC Sustainability Policy and Environmental and Social Review Procedures, that offer a much more robust framework for the supervision and due diligence for IDB Invest.
- **Specify procedures and criteria to apply corrective measures that include withdrawing financing in case a client does not comply with safeguards:** Develop procedures and criteria to detail when and under what conditions IDB Invest will apply corrective measures to clients, ranging from increasing assistance and supervision to the withdrawal of financing on the part of IDB Invest.
- **Establish clear objectives and incentives to ensure that the Safeguards Unit (SEG) has the mandate, budget, staff, and sufficient capacity to carry out its supervisory function effectively** and to help clients address all types of problems that arise related to affected parties.
- **Due diligence should be continuous throughout the project cycle and not only focused on pre-approval requirements as indicated in section IV “Implementation of the Sustainability Policy”:** Failures and deficiencies in due diligence and supervision of IDB Invest should be addressed based on the incorporation of lessons and learning from MICI cases and other IDB studies.
- **We recommend updating the list of Excluded Activities of IDB Invest:** The draft policy mentions several times IDB Invest’s “*list of excluded activities*”, which includes, for

example, substances that deplete the ozone layer subject to international phase-out (regulated by the Montreal Protocol). Considering the challenges related to climate change and the key role that the region can play in its mitigation, this list should also incorporate those activities that aggravate the impacts of climate change as well as activities that negatively impact natural or critical habitats, indigenous territories and cultural sites of spiritual, traditional, or archaeological importance.

APPROACH FOR INVESTMENT PROJECTS

- **Art. 1:** ‘Environmental and social appraisal is an integral part of the IDB Invest appraisal process which covers relevant risks, including among others reputational risk and positive and negative impacts and risks. When carrying out appraisals, IDB Invest considers three primary aspects of a project.’
 - **Lack of distinction between key concepts such as ‘impacts’ and ‘risks’:** It should specify that positive and negative environmental and social impacts will be considered.
 - **We recommend adding a point (IV) that considers the existing international conventions and frameworks particularly relevant for Latin America,** such as ILO Convention 169, Escazú Agreement, and the new EITI standards.
- **Art. 2: We recommend strengthening the language of the statement:** We recommend changing the sentence that follows, *‘IDB Invest will only finance operations that are expected to meet the Sustainability Policy’s environmental and social requirements within a reasonable time frame[...]*’ for the statement ***“IDB Invest will finance operations that comply with the Sustainability Policy’s environmental and social requirements”***. We recommend changing the sentence that follows, *“Persistent delays in meeting these requirements can lead to loss of financial support from IDB Invest”* for the statement ***“If there are persistent delays and materialized environmental and social damages, IDB Invest can withdraw its financial support and carry out actions to rectify and mitigate such impacts and retribute, restore and / or compensate affected communities”***. Likewise, it should define with measurable criteria when and under what conditions it considers there to be *“frequent delays”* and define specific requirements to withdraw financial support as well as establish a procedure to rectify, mitigate, retribute, restore or compensate communities in case social and environmental damages have been detected and materialized.
- **Art. 4: Local knowledge should be incorporated as a source of key information in projects design:** This article mentions that the environmental and social appraisal of direct investments should include different sources of information. However, it does not explicitly incorporate local knowledge as a source of information. Local knowledge should be incorporated as a source of key information when designing projects.
- **Art. 4, point ii** *“a site visit and interviews with client staff and relevant stakeholders”*: We recommend adding to the end of the sentence ***“including potentially affected communities in the direct and indirect impact area of the IDB Invest client project.”***

- **Footnote 13: We recommend specifying the social and environmental appraisal requirements that should not be met for lower-risk direct investments** since the footnote indicates that for some low-risk investments it will not be necessary to comply with all social and environmental appraisal requirements. Permission to not meet certain requirements for low-risk projects is risky because of possible project fragmentation. Many times, clients divide projects into different sub-projects so that they are appraised as multiple low-risk projects, which could lead to important requirements of environmental and social appraisal being overlooked. Likewise, the inclusion of local knowledge should always inform project appraisals, regardless of the size of the project, including through participation and consultation with stakeholders and those affected by the project.

INVESTMENTS THROUGH FINANCIAL INTERMEDIARIES

- **Point iii and footnote 14:** Footnote 14 points out that IDB Invest financial intermediary clients should apply the PSs to the highest risk sub-projects. The Environmental and Social PSs should be applied to any project or initiative, not only to those with the highest risk. Those of substantial risk cannot be left out.
- **In this section, IDB Invest should establish clear objectives and incentives with specific deadlines for those working with financial intermediary institutions to incorporate a culture of transparency, good governance and progress towards a more systematic approach of disclosing information on high and substantial risk projects.** For this, IDB Invest should incorporate the following points into the Policy:
 - **Require and support all of its financial intermediary clients to develop a policy of information disclosure and transparency** and establish appropriate mechanisms for the disclosure of information on high-risk projects as an integral part of the Environmental and Social Management System (ESMS) required by the PSs.
 - **Identify and do not invest in financial intermediary clients who are not willing to develop a policy of transparency and information disclosure.**
 - **Develop and offer incentives for intermediary financial clients who agree to develop said policy** and to disclose, at a minimum, the name of the project, the sponsor, the sector, and the location of the highest risk projects, and the documentation related to social and environmental impact appraisals, not only on the IDB Invest website, but also on the intermediary client's website, regardless of the financial instrument (loan, capital or bonds). Incentives could include demanding more stringent standards and supervision when such information is not disclosed, providing more favorable financing terms when there is disclosure, or establishing commitments with specific deadlines to incorporate greater disclosure of all financing. Transparency and disclosure of project information is an integral part of the Environmental and Social Management System.
 - **Through these incentives, IDB Invest should support its intermediary clients so that they understand and obtain their clients' consent,** and how to disclose information within their respective legal context.
 - **Require that financial intermediary clients disclose on their websites the high- and substantial risk projects that are IDB Invest clients.**

- **Require the financial intermediary to disclose at the project sites of its high-risk projects that they are clients of IDB Invest**, including the existence of MICI, ensuring that it is clearly visible and understandable to affected communities.

APPROACH FOR TECHNICAL ASSISTANCE ACTIVITIES

- **Art. 7:** We recommend including at the end of the paragraph or in a footnote, the mechanisms for measuring the impact of technical assistance offered to companies. For example, detail and specify procedures on how to verify that technical capabilities were installed. At least quantitative and qualitative measurement indicators should be included.
- **Art. 8:** In the procedure for the approval of technical assistance, we recommend including a point (iii) where IDB Invest verifies that the technical assistance and advice they provide to companies is consistent with the current international framework for access to information, transparency and protection of defenders, in line with the new standards of the EITI, Escazú Agreement and the 2018 reports of Honduras and Mexico by the rapporteur Michel Forst, as well as the reports of Mexico, Peru and Honduras (2018-2019) of the United Nations Working Group on Business and Human Rights. As a regional entity, IDB Invest should be governed by the highest international standards and not only by the legislation of each country.

ENVIRONMENTAL AND SOCIAL RISK CATEGORIZATION

- **Art. 10:** We recommend strengthening the language of the statement taking into account the following consideration: *“The category of a project is determined by the category of its most environmentally sensitive or risky social component, including direct, indirect, associated, cumulative and induced impacts in the area of influence of the project. For direct investments, IDB Invest categorizes operations as A, B or C. Each project is analyzed taking into account its type, location, scale and sensitivity, and the magnitude of potential environmental and social impacts. The category indicates the appropriate extent of environmental and social impact assessment, information disclosure and stakeholder engagement required.”*
- **Art 11, footnote 15:** We recommend adding projects of high social and environmental impact in critical natural habitats, indigenous territories, and/or cultural sites of spiritual and traditional importance to the exclusion list. Ultimately, IDB Invest should specify what type of projects, if any, and under what conditions, it could invest in a project that has a significant impact on “sensitive areas” such as “natural or critical habitats, indigenous territories and cultural sites of spiritual, traditional, or archaeological importance.”
- **Art. 14, footnote 16:** We recommend expanding the definition of Environmental and Social Impact Assessments (EIAs). Add that EIAs is a process whose breadth, depth and type of analysis depend on the nature, scale and potential environmental and social impact of the proposed activity. The EIAs is an instrument to identify and evaluate the environmental and social impacts of a project proposal, evaluate alternatives and design

appropriate mitigation, management and monitoring measures. It examines the project or program and policy alternatives based on an independent and responsible analysis, identifying ways to improve project selection, location, planning, design and implementation through the rigorous application of the mitigation hierarchy. The EIAs considers natural, environmental and social risks and impacts in an integrated manner. The EIAs takes into account the environment (air, water and land); individual and community human health and safety; social aspects (involuntary resettlement, indigenous peoples and physical cultural resources) and human rights related to development, including, among others, the rights associated with indigenous peoples, land, gender, work, people with disabilities, children and the elderly. In addition, the EIAs includes direct, indirect, associated facilities', cumulative, cross-border and global environmental impacts such as climate change, substances that deplete the ozone layer, pollution of international waters and adverse impacts on biodiversity.

Finally, we recommend that IDB Invest develop and update detailed guides on criteria and methodologies for EIAs and Strategic Environmental Assessments (SEA) of Projects that take into account the specificities of the region. We recommend that they be developed through open processes in which the scientific community and stakeholder communities can participate.

- **Art. 14: Make clear how a project is going to be defined that 'does not include a substantial transformation or expansion'.** The end of the article indicates that *“for lower impact category B projects, such as those that include for example, modernization and upgrade of existing production facilities, not involving major expansion or transformations, a limited or focused environmental and social analysis may be sufficient.”* More precision should be offered in an additional footnote on what is considered as a modernization and upgrade of facilities that do not include a considerable transformation or expansion.

SUPERVISION

SUPERVISION OF INVESTMENT PROJECTS

- **Art. 20: The monitoring of the environmental and social performance of IDB Invest investments should promote, establish and include participatory processes with affected communities and stakeholders.** Community monitoring mechanisms for projects or from third parties should be taken into account.

SUPERVISION OF INDIRECT INVESTMENTS THROUGH FINANCIAL INTERMEDIARIES

- **Art. 22: We recommend establishing requirements to promote active control with clear procedures from IDB Invest in regard to higher risk sub-projects.** IDB Invest should verify for itself that higher risk sub-projects do not contravene the list of excluded activities, comply with social and environmental commitments, as well as with national laws; and IDB Invest should not be limited to reports produced by financial intermediaries. The Policy currently indicates that *“in the case of FI investments, IDB Invest will review the client's Annual Environmental and Social Monitoring Report including progress on*

screening subprojects against IDB Invest exclusion list, compliance with national environmental and social laws and regulations, as well as effectiveness of the Environmental and Social Management System developed". The review of sub-projects through annual reports prepared by financial intermediaries is an insufficient tool for the due control of indirect investments of IDB Invest.

V. COLLABORATION AND LIAISON WITH PUBLIC AND PRIVATE SECTOR PARTNERS

- **Art. 2: The Policy should detail with greater precision and clarity how this "collaboration and harmonization" of the environmental and social measures required from the client will be carried out when there are joint investments with other financial institutions.** Mentioned as an example of IDB Invest's work with other institutions in the public and private sectors is that of *"collaborating closely with other financial institutions working on joint projects or co-investments and promoting close coordination and harmonization among participating institutions regarding the environmental and social actions required from a client"*. The same applies to national systems of environmental and social regulations of the countries where projects are carried out.

VI. GOVERNANCE

Corporate Governance

- **Art 1: A more emphatic commitment on the part of IDB Invest should be established to not only promote good practices in corporate governance, but also to avoid financing and involvement of companies and/or projects that are linked to corruption cases.** At this point, IDB Invest understands that there is a strong relationship between a company's governance culture and its commitment to sustainability. Good corporate governance practices help businesses operate more efficiently, attract capital, *avoid corruption* and mismanagement, and improve their relationships with stakeholders. Considering the wave of corruption in Latin America that has involved not only the public sector but also the private sector, it is noteworthy that there is only a reference made to good corporate governance practices to prevent corruption.

Governance for Projects in the Extractive Industry

- **Art. 3: IDB Invest should promote transparency and an effective strengthening of governance in the extractive projects it finances.** We recommend that IDB Invest not only requires clients to publicly disclose income payments to host governments, but also requires their clients to publicly disclose the economic and financial benefits given by the host government (such as fiscal stability and tax deductions). We recommend that IDB Invest includes in this article the new EITI standards (2019), for access to information and disclosure of environmental information from investment projects as well as gender equality and non-violence towards women in the areas of development projects, to also

demand that their clients publicly disclose this information in accordance with these standards.⁴

VII. INDEPENDENT CONSULTATION AND INVESTIGATIVE MECHANISM (MICI)

- **The learning and adaptation functions of IDB Invest should be made explicit so that it is clear how lessons learned, experiences, and recommendations of MICI will be incorporated and taken into account regarding complaints submitted by affected communities:** MICI has much to say about the way in which the Bank's Sustainability Policy is being implemented, particularly about the way in which local communities affected by projects perceive it. The policy should specify how MICI experiences should help the IDB Invest improve its performance and how it will incorporate MICI's learning and recommendations on an ongoing and constant basis to improve and strengthen the supervision and implementation of sustainability policies.
- **The Policy should require that IDB Invest clients and staff socialize, disseminate, and publicize at all opportunities the existence and accessibility of MICI to communities within the area of influence of IDB Invest investments, starting at the planning stage of projects.**
- **The Policy should require that IDB Invest clients and staff socialize, disseminate, and publicize at all opportunities the existence and accessibility of the Grievance Redress Mechanism at the project level to communities within the area of influence of IDB Invest investments.**
- **The Policy should require that IDB Invest clients and staff socialize, disseminate, and publicize at all opportunities the existence of mechanisms that protect whistleblowers from retaliation within the area of influence of IDB Invest investments.**

⁴ For more information see: <https://www.oxfamamerica.org/press/eiti-takes-positive-step-toward-greater-transparency-and-gender-equality/> <https://eiti.org/news/eiti-launches-2019-eiti-standard>