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FROM: Bank Information Center (US), Wetlands International (Argentina), Asociación Ambiente y Sociedad (Colombia), Fundación Cambio Democrático (Argentina), Fundación para el Desarrollo de Políticas Sustentables (Argentina), Center for International Environmental Law (US), Fundación Cauce, Cultura Ambiental - Causa Ecologista (Argentina), Fundación Ambiente y Recursos Naturales (Argentina), ONG Sustentarse (Chile), International Accountability Project (US), Accountabilty Counsel (US), Gender Action (US), Asociación Interamericana para la Defensa del Ambiente-AIDA (Regional), Derecho, Ambiente, y Recursos Naturales-DAR (Peru), Sociedad y Discapacidad-SODIS (Peru), Centro de Incidencia Ambiental de Panama-CIAM (Panama), Comunidades Unidas (Colombia), Instituto de Estudios Socioeconómicos-INESC (Brazil), Asociación Unión de Talleres 11 de Septiembre (Bolivia), Plataforma Internacional contra la Impunidad (Regional), Proyecto sobre Organización, Desarrollo, Educación, e Investigación-PODER (Regional), Centro de Políticas Públicas y Derechos Humanos (Perú EQUIDAD), Fundación Tierra Viva (Honduras), CEDLA (Bolivia), Iniciativa para Inversiones Sustentables China-América Latina (IISCAL), Futuro Sostenible (Perú), BirdLife International (Global)

TO: Grupo Especial encargado del proceso de Modernización de las Políticas Ambientales y Sociales del BID

RE: Recommendations and comments on the IDB proposed Environmental and Social Policy Framework (ESPF)

EXECUTIVE SUMMARY WITH GENERAL RECOMMENDATIONS & COMMENTS

1) All documents accompanying the draft Environmental and Social Policy Framework (ESPF) proposed by the Inter-American Development Bank (IDB) that will go through the Board of Directors for their approval should be previously consulted through a significant participatory process with civil society. This includes the Implementation Plan and the Action Plan. A comprehensive safeguards system is made up of three key components that make it effective, which should be consulted in their entirety to achieve an effective implementation of the ESPF:

- **Regulatory aspect:** It should be clarified when the public consultation will begin regarding the Implementation Guidelines that accompany the ESPF.
- **Mainstreaming:** Refers to the Bank's programming and training activities to strategically address issues. These elements are in the [current Operational Policies](#)¹, but have been left out of the ESPF. We recommend that they be included within the ESPF since it is a much stronger tool than an action plan (where they are intended to be included) to ensure their effective operationalization and compliance.
- **Enabling Environment (incentives, budget, institutional capacity):** There are many elements of this point that should be considered in the Policy Implementation Plan. Due to its strategic importance in defining points related to institutional capacity, incentives, budget, operationalization of the policy, training within the Bank and executing agencies, the Plan should be widely consulted.

¹The following mainstreaming elements included in the [Environment and Safeguard Compliance Policy](#) have been left out the ESPF: OP-703 (Directive A about environmental mainstreaming), OP-765 (Support to development with indigenous people's identity), OP- 704 (programming, management of exposition to natural threats, and operations after disasters), OP-761 (Section A about proactive action to foster gender equality).

2) The Policy should be guided by the principle of ‘do good’ and go beyond ‘do no harm’: The ESPF is not aligned with what is established in the Policy Profile which states that one of its guiding principles will be to “do good” and go beyond “do no harm.” In practice, the application of the Environmental and Social Performance Standards (ESPS) should strengthen and promote positive sustainable impacts for communities on the ground as well as actions aimed at remediation of environmental damage generated by the projects financed by the Bank. Below are some concrete examples of how to integrate the “do good” principle transversally into the ESPF:

- Expand the references to equal access to the benefits of the project considering the role that the distribution of benefits has in promoting equity in our societies.
- **Strengthen the role of the grievance mechanism at the project level:** It must go beyond a mere recipient of complaints and become a mechanism for local social and environmental governance, establishing social and environmental conflict prevention systems, community monitoring, and oversight run by the communities and/or local organizations.
- **For all category A projects and some category B projects (this can be triggered and agreed under the project concept note), the Bank should require the Borrower to have a community monitoring agency or a third party².**
- **Add and clarify minimum procedural requirements in ESPS 1 and ESPS 10.**
- **The link between ESPS 1 and ESPS 10 should be strengthened, it should be clear that both PSs should be applied to all projects that fall within the scope of the ESPF.**
- **Disability issues should be incorporated across the board in the entire ESPF:** emphasizing not only the prevention of adverse impacts but specifically guaranteeing actions that establish the inclusion of persons with disabilities. It should start from the situation of unequal opportunities and exclusion that the group of persons with disabilities faces. For this reason, it is not enough to just provide that projects ‘do no harm’, but instead should prioritize that actions adequately include all populations.

3) No dilution: The new ESPF in many respects represents a step backwards with respect to the current IDB Environmental and Social Policies and international parameters adopted by peer institutions. According to the principle of “No Dilution”, the ESPF should be at least equivalent to them. Likewise, it should be aligned and converge with the strictest international parameters and standards. From an environmental point of view, the ESPF represents a step backwards from current environmental policies. Here are some specific examples:

- The current [Environment and Safeguard Compliance Policy](#) mentions in point 4.7 that “*the Bank will proactively support borrowing member countries and clients in identifying and financing operations designed specifically to: (i) enhance environmental governance, policy development and institutional capacity building; (ii) reverse environmental deterioration; and (iii) promote the conservation and sustainable use of natural resources and ecological services.*” It is imperative that this wording be incorporated into the ESPF.

² The empowerment of project affected people and relevant stakeholder in monitoring projects or programs should prevail in the citizenship approach. This is the best way to verify the concept of generating benefits that are durable or sustainable, that is, a more participatory governance framework. This implies that the costs associated with citizen participation and monitoring must be part of the project's financing structure. **A trust fund could ensure its availability and Independence.**

- **We observe dilution in the lack of detail of the minimum requirements and procedures for Environmental and Social Impact Assessment (ESIA) included in point 4.19 of the current [Environment and Safeguard Compliance Policy](#).** We recommend incorporating point B.5 "Requirements for environmental assessment" in the ESPF. Some examples of requirements that have been left out or have been very blurred in the ESPF are: a) inclusion of the results of environmental assessments in the project design, b) examination of alternatives in which the alternative without project is included as an option, c) analysis of indirect impacts, d) using cumulative and regional baselines depending on route.
- **All components of mainstreaming related to environmental issues³ should be included from the current [Environment and Safeguard Compliance Policy](#).**
- **The ESPF should explicitly include the concept of transboundary impacts,** mentioning that they will be identified and addressed from the beginning of the project cycle, as it written in point B8 of the current [Environment and Safeguard Compliance Policy](#). This section has been removed from the ESPF and such impacts are only mentioned tangentially within the ESPS.

4) Exclusion List: The ESPF should have an exclusion list with activities that are inconsistent with the IDB's commitments to environmental and social sustainability and the objectives and of the ESPs in the initial and social screening. Other peer institutions have adopted exclusion lists as stand-alone policies or by incorporation them in their E&S frameworks. The IDB runs the risk of falling behind its peer institutions if it does not develop an exclusion list. Not having an exclusion list at today's age considering the accelerating climate emergency, reflects poorly on the Bank. [The IFC's list](#) provides a fair starting point, including specifically primary tropical moist forests, although the EIB's more recent list of "[activities excluded from EIB lending](#)" (2013), while less specific, is more complete. Other responsible financing initiatives (e.g. [Harmonized EDFI Exclusion List](#)) have supplemented these areas, to exclude financing of thermal coal, coal-fired power plants, upstream oil & gas, along with their associated infrastructure, and activities resulting in destruction of High Conservation Value areas.⁴ Among the main activities that should be included in the exclusion list are: a) Thermal coal mining and coal-fired coal generation and power plants; and b) Upstream oil and gas exploration development projects, along with their associated infrastructure, and activities resulting in destruction of High Conservation Value (HCV) areas, c) Fracking, d) Any activities involving harmful or exploitative forms of forced labor or child labor.

5) Monitoring and Supervision

- **Flexibility and ambiguity of language in this section should be avoided to avoid discretion and noncompliance.** This section is permeated with ambiguous language. For example, it makes excessive use of expressions such as: "*where appropriate*", "*may require*", "*when necessary*", "*if the Borrower fails to comply with the E&S commitments, the IDB may, to the extend feasible work with the borrower [...] if Borrower fails to reestablish compliance, the IDB may, at its discretion exercise remedies*", "*meet the ESPF's standards in a manner and timeframe acceptable to the*

³ This includes Mainstreaming Environment in Country Programming and Strategies (A.1), Supporting Environmental and Natural Resources Management Operations (A.2), Mainstreaming Environment Across Sectors (A.3), Supporting Regional Environmental Initiatives and International Environmental Agreements (A.4), Tracking Environmental Sustainability Indicators (A.5), and others.

⁴ Destruction means the (1) elimination or severe diminution of the integrity of an area caused by a major, long-term change in land or water use or (2) modification of a habitat such that the area's ability to maintain its role is lost. High Conservation Value (HCV) areas are defined as natural habitats where these values are considered to be of outstanding significance or critical importance, and include most protected areas, critical habitats and heritage sites. (See <http://www.hcvnetwork.org>).

Bank”, etc. It is problematic because the ambiguity of the language opens the door to different interpretations, including noncompliance and serious mistakes. Likewise, it prevents establishing clear requirements for Borrowers and also for the Bank's own responsibilities.

- **Language should be strengthened so that it makes clear that the Bank is responsible for monitoring and supervising compliance with the ESPSs of projects in accordance with IDB's policies, legal agreement specifications, and other relevant agreements. Likewise, the IDB should clarify how it will address non-compliance of safeguards. This point is particularly relevant in light of OVE's [Environmental and Social Evaluation report \(2018\)](#): “*OVE's desk review found that the safeguards performance rating in about one-third of rated projects was questionable. Even in situations of noncompliance, projects were rated as satisfactory or partly satisfactory on the basis of expectations that the deficiencies would be corrected. The issues surrounding the adequacy and frequency of the safeguards performance ratings also call into question the reliability of aggregate safeguards performance reporting in the Bank's corporate results frameworks*” (page 33). OVE is saying that some Bank projects close without a satisfactory safeguard performance rating, and that non-compliance is not addressed in about one-third of the projects. **The Bank should establish a clear mechanism to monitor and report on Safeguards performance.****
- **To address this loophole, the ESPF should develop and specify procedures and criteria to detail when and under what conditions the IDB will apply corrective measures to a Borrower that does not comply with safeguards.** Corrective measures might range from increasing assistance and supervision, delay disbursements until the Borrower complies, to the withdrawal of financing on the part of IDB. These corrective measures should set forth in the legal agreement. This is particularly significant in light of OVE's report: “*IDB does not systematically follow and document the safeguards implementation performance and results of all the operations it finances. IDB's policies do not uniformly call for borrowers to report on safeguards performance to IDB. Together with limited safeguards supervision, this means that IDB does not have a clear overview of how well the portfolio of operations it finances perform on safeguards, what safeguards results are achieved and whether the policies achieve their objectives*” (page 34). For example, point 3.5 on “Assessment and Management of E&S risks and impacts” requires Borrowers to conduct and E&S assessment of operations in accordance with ESPS 1, and prepare and implement projects so that they meet requirements in “*in a manner and timeframe acceptable to the IDB*” (it uses this expression twice). This expression won't easily allow the Bank to do a systematic follow up. Also, it doesn't explicitly illustrate any corrective action or obligation in the case that “*existing facilities or activities do not meet the requirements of the ESPSs at the time of approval.*” Another example is point 3.6, **the provision is too vague and it's not clear what type of instruments will the IDB use to evaluate appropriateness and the borrower's organizational capacity.** For example, the Bank could establish specific obligations per year, per disbursement milestone, mid-term, and closing.
- **It should be clarified that a project is not considered finished until the measures and actions stipulated in the legal agreement have been implemented.** For example, the ESF of the WB (point 56) clarifies this explicitly: “*A project will not be considered complete until the measures and actions set out in the legal agreement have been implemented. To the extent that the Bank evaluation at the time of project completion determines that such measures and actions have not*

been fully implemented, the Bank will determine whether further measures and actions, including continuing Bank monitoring and implementation support, will be required.”

- **We recommended applying the Principle of proportionality, adding the suggestions in brackets:** *“The extent of monitoring should be [proportionately with the project’s environmental and social risks and impacts]”* instead of *“will be commensurate with the project’s environmental and social risks.”*
- **The IDB should clearly establish that it will assist Borrowers in the environmental and social implementation and performance of the project.** For example, WB’s ESF (point 57) explicitly establishes that: *“The Bank will provide implementation support regarding the environmental and social performance of the project, which will include reviewing the Borrower’s monitoring reports on compliance of the project with the requirements of the legal agreement.”*
- **The ESPF should require for Borrowers to ensure that for all Category A, and some Category B projects (this can be triggered and agreed under the project concept note), third party, independent, community monitoring, should be established to complement and assess in supervision and monitoring.** Instead of just suggesting doing that *“in accordance with project-specific circumstances and in consideration of the nature of the environmental and social risks.”*
- **Oversight and monitoring done by the Bank of threats against community leaders and Human Right Defenders (HRDs) at risk should be ongoing.** Community leaders should not be left in a position of increased vulnerability, particularly but not limited to contexts of restrictive civic space. They should be able to rely on any part of the Bank to scrutinize any aspect of the project or to follow up on acts of retaliation committed against them.

6) Grievance Mechanism and Accountability

- **It should be required to Borrowers to provide project-affected people with information on MICI:** The ESPF should revise all the sections and provisions (ESPS1, paras. 29, 35; ESPS2, para. 21; ESPS 10) that instruct Borrowers to create and provide information on the Borrower’s grievance mechanism and require to Borrowers to provide project-affected people with information on MICI. These provisions fail to require dissemination of MICI information. MICI serves a critical institutional role in assessing the IDB’s environmental and social performance and promoting continuous institutional learning and improvement. However, MICI is not able to fulfill this important role when project-affected people are not aware of MICI’s existence and thus unable to raise concerns with MICI.
- **The ESPS should require the Borrower to design and implement the Borrower Grievance Mechanisms based on Principle 31 of UN Guiding Principles’ “Effectiveness criteria for non-judicial grievance mechanisms”.** In the ESPF, the design and implementation of the Borrower Grievance Mechanism is at the discretion of the Borrower. Aside from instructing Borrower Grievance Mechanisms to make a record of responses to all grievances publicly available and accept anonymous complaints (ESPS 10, Art. 28), the ESPF provides little concrete guidance on how to structure or operate an effective grievance mechanism. The ESPF must establish that Borrowers establish Grievance Mechanisms at the project level that are legitimate, accessible, predictable, equitable, transparent, compatible with rights, culturally appropriate, that prevent,

report and respond to retaliation, and are a source of continuous learning based on commitment and dialogue. Adherence to these principles is key to creating an effective grievance mechanisms.

- **An effective Grievance Mechanism should go beyond being a mere recipient of complaints and become a mechanism for local social and environmental governance**, that establishes socio-environmental conflict prevention systems and is prepared to offer solutions on the ground⁶, that promote community monitoring practices, and/or oversight by communities and/or local organizations⁷. We recommend that grievance mechanisms be handled and managed by representatives of the communities on the ground.
- Likewise, we recommend clarifying that grievance mechanisms should consider the use of accessible formats for the different physical, sensory, and/or cognitive needs.

7) Human Rights and reprisals: There are advances regarding the current Policy, but the ESPF is insufficient in comparison to international parameters related to Human Rights and Environmental and Social Defenders. For example, the ESPF indicates “*IDB is committed to respect internationally recognized human rights standards*”. But in the footnote, it arbitrarily limits it to the rules laid down in “*the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work*”. It is necessary to explicitly include and mention **the Escazú Agreements** as well as the United Nations Declaration on Development Rights, the American Convention on Human Rights and the norms and jurisprudence of the Inter-American Human Rights System, and the United Nations Declaration on the Rights of Indigenous Peoples.

The commitment to Human Rights should be made clear as a transversal cross-section of the ESPF. Human rights appear as a mere commitment but are not effectively and transversally integrated into the ESPF. To strengthen this limitation, we recommend:

- In the analysis of environmental and social due diligence (Art. 3.8), add considerations related to Human Rights and reprisals, especially in contexts of restricted civic space.
- For the evaluation and management of environmental and social risks and impacts, the use of the following tools should be explicitly added and established: Human Rights Impact Assessment, Civic Space Assessment, Risk Assessment of the Threat of Reprisal and Retaliation for marginalized groups and/or groups that oppose the project.
- **Integrate and apply a zero tolerance for retaliation commitment into the ESPF.** The IDB should follow the steps of [IEC \(2018\)](#), and recently [World Bank \(2020\)](#) to take a political commitment against retaliation. Such commitments must be communicated from the outset of a project with the Borrower and reiterated periodically as needed. It must also be backed up with guidelines for concrete actions that should be taken in response to reprisals, if and when they materialize. The IDB has produced a [Practical Toolkit for Independent Accountability Mechanisms](#)

⁵As the United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles) state, failure to effectuate these principles can result in “[p]oorly designed or implemented grievance mechanisms [that] risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.” United Nations Guiding Principles on Business and Human Rights, *Implementing the United Nations “Protect, Respect and Remedy” Framework*, Commentary to Principle 31.

⁶ Because grievance mechanisms are at the front-line and offer a direct connection between the implementing agency and the project affected people.

⁷ Thus, grievance mechanisms must be conceived as bottom-up mechanisms that promote collaboration.

⁸ It commits countries to guarantee the right of all people to have access to information in a timely and appropriate manner, to participate meaningfully in decisions that affect their lives and their environment, and to access justice when these rights have been violated and creates the standard of protection for environmental leaders so necessary in Latin America and the Caribbean.

on Measures to Address the risk of reprisals in Complaint Management (2019), we invite the IDB to incorporate the recommendations produced into the policy.

POLICY STATEMENT

SPECIFIC COMMENTS AND RECOMMENDATIONS

I. IDB's commitment to Environmental and Social Statement

- **Art. 1.1.** We recommend writing the IDB mission to return to the original mission established in the current [Environment and Safeguard Compliance Policy](#) where it is established that the cornerstone on which the IDB vision should be based is **sustainable development** and not on “*on the intrinsic relationship between economic growth, and environmental and social sustainability.*” This type of language is anachronistic for an Environmental and Social Sustainability policy. Also, if it is compared, for example, with language of the Environmental and Social Framework (ESF) of the World Bank (WB)⁹ or Social and Environmental Policy of the European Bank for Reconstruction and Development (EBRD), the language used by the IDB becomes obsolete. In line with the highest international standards, sustainable development is based on three pillars, the economic, environmental, and social (Brundtland Report of the UN), and that is not clear in the vision of the Policy:
 - **The economic dimension of sustainability** implies that economic growth must be viable, rational, and sustainable in the long term.
 - **The environmental dimension of sustainability.** For example, the language of point 2 of the ESF of the WB offers a language worthy of the challenges of the time: “*including stronger collective action to support climate change mitigation and adaptation, recognizing this as essential in a world of finite natural resources.*”
 - **The social dimension of sustainability which implies making sure that all people can participate in the development process and benefit from it.** The language utilized in the ESF of the WB (point 3) offers some guidelines on this matter: “*For the Bank, inclusion means empowering all people to participate in, and benefit from, the development process. Inclusion encompasses policies to promote equality and nondiscrimination by improving the access of all people, including the poor and disadvantaged, to services and benefits such as education, health, social protection, infrastructure, affordable energy, employment, financial services and productive assets. It also embraces action to remove barriers against those who are often excluded from the development process, such as women, children, persons with disabilities, youth and minorities, and to ensure that the voice of all can be heard.*”
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⁹ For example, the ESF of the WB establishes in point 1 that “*the two goals [ending extreme poverty and promoting shared prosperity] emphasize the importance of economic growth, inclusion and sustainability—including strong concerns for equity.*”

development process, such as women, children, persons with disabilities, youth and minorities, and to ensure that the voice of all can be heard.”

- **Art 1.3.** In general, it is welcome that these commitments have been included in the ESPF of the IDB. Nevertheless,

- **The commitments should be aligned with the applicable international standards.**
- **The commitments should be effectively integrated and aligned with the 10 Environmental and Social Performance Standards (ESPS).**
- **The language should be strengthened so that it implies compulsory obligation and not only good intentions.** Likewise, concepts that are used ambiguously and generate conceptual confusion should be reviewed.
- **Intrinsic considerations should be added to each of the commitments to strengthen its scope.**

a. Respecting Human Rights

- **Strengthen language so that it implies obligation.** For example, instead of "avoid infringing" change to "do not infringe" on human rights. There are many more examples of this ambiguous language, as noted in the previous point.
- **A clear reference should be included on the IDB's commitment to promote and abide by the provisions of The Escazú Agreement, and international standards** such as the United Nations Declaration on Development Rights, the American Convention on Human Rights and the norms and jurisprudence of the Inter-American Human Rights System, and the United Nations Declaration on the Rights of Indigenous Peoples.

b. Fostering gender equality

- It is necessary to explicitly mention that gender equality also implies non-discrimination based on gender.
- In the section that describes *“The IDB requires its Borrowers to address gender-related risks in IDB-supported projects, including gender-based exclusion, gender-based violence, including sexual exploitation, human trafficking and sexually transmitted diseases”*, there should also be explicit mention of sexual harassment.

c. Promoting non-discrimination and inclusion of vulnerable groups

- We recommend changing the expression “vulnerable groups” for “marginalized groups” throughout the ESPF.
- When talking about *“Promoting non-discrimination and inclusion of vulnerable groups”*, it should be emphasized that accessibility measures and the removal of barriers should occur at all stages of the project, from design to implementation and the post-closure stage.
- The Bank should also commit to provide technical advice on measures that projects must incorporate to be inclusive of persons with disabilities.
- It should be explicitly mentioned that the IDB is committed to protection and equal access to opportunities, in particular highlighting the importance of access to project benefits for marginalized groups. Likewise, to guarantee equal access to opportunities, it should be ensured

that marginalized groups are protected against any type of reprisal, threat or intimidation when trying to obtain inclusion.

d. Respecting Indigenous, Afro-descendant, and other Traditional Peoples Rights

- This commitment to respect indigenous, Afro-descendant and other traditional governance structures and their worldview should be strengthened by **explicitly clarifying in footnote 9 that the right not to develop also implies the right to say no to an intervention**. It is important that this be explicit, especially in terms of operationalizing the right to free, prior and informed consent, which is discussed in detail below in various sections of the policy.
- It should also be in the body of the main text and not in a footnote.

e. Enhancing Stakeholder Engagement

- **The language should be strengthened so that the section implies that it is mandatory** clarifying explicitly that the IDB requires *“its Borrowers to identify stakeholders potentially affected by and/or interested in IDB-supported projects, to engage with them in meaningful consultations”* even if stakeholders and groups affected by the project oppose the project and operations.
- **The Grievance Mechanism should be strengthened at the project level**, and the Borrower is required to design and implement the Grievance Mechanism following Principle 31 of the United Nations Guiding Principles on Business and Human Rights.
- **This commitment should mention the existence of the MICI**. It is important to clarify that anyone affected by the project and/or interested parties can access MICI at any time, regardless of whether there is a complaint mechanism at the project level.

f. Minimizing Greenhouse gas (GHG) emissions and promoting resilient development

- **An Exclusion List should be added to the ESPF and an explicit mention of the exclusion list should be made in this commitment**. The exclusion list should prohibit the IDB from financing activities that are inconsistent with this commitment and other commitments that the IDB has made regarding climate change (see recommendation point 4 in the Executive Summary).

g. Protecting the LAC region’s biodiversity, natural resources, and ecosystems

- Explicit mention should be made of the mitigation hierarchy in this commitment.
- The ecosystem approach and its principles should be mentioned, as provided by the Convention on Biodiversity, as an instrument for decision-making, the characterization of benefits and impacts, the participation of communities in decision-making, and in the selection of adaptation measures.
- Mention should be made to international standards such as the Convention on Biological Diversity, the Ramsar Convention, the Sustainable Development Goals, CITES, and the Basel Convention.
- This point should be in line with the commitment to conserve critical habitats and avoid impacts on critical habitat and essential ecosystem services.

- **Art. 1.4.** This point limits the scope of one of the guiding principles of the Policy, established in the Policy Profile, which states that the Policy must “do good” and go beyond “do no harm.” The ESPF states that “*The IDB is committed to the objective of “do no harm” to people and the environment for the projects it supports by promoting the establishment of clear provisions for effectively managing project-related environmental and social risks and impacts, and when feasible, facilitating the enhancement of social and environmental sustainability beyond the mitigation of adverse risks and impacts.*” This statement is not aligned with the provisions of the Policy Profile where one of the guiding principles of the policy establishes to "do good" and go beyond "do no harm." At no time in the policy does it mention the expression "do good." See the recommendations in point 2 of the Executive Summary of this document.
- **Art. 1.5.** Avoid ambiguous language and establish clear requirements with explicit criteria as to how the IDB will only support projects that “*meet the ESPF’s standards in a manner and timeframe acceptable to the Bank*”
 - The expression “*in a manner and timeframe acceptable to the Bank*” should be defined and aligned with best practices in environmental and social sustainability, including clear requirements for draft terms of reference, environmental and social assessments, mitigation plans, resettlement plans, plans and budgets for social and environmental commitments that are prepared before project approval.
 - Likewise, all this information should be made available to people affected by the project, and in consultation with them before the project is approved.
- **Art. 1.6.** The language should be strengthened to offer greater precision that implies mandatory obligation; we recommend writing this point as follows:
 - “*The IDB will refrain from financing projects or projects components, when there are identified environmental and social risks that would contravene the ESPF’s standards or national laws or country obligations under relevant international treaties, conventions and agreements.*”
- **2.1. Objectives:** The objective as stated is very broad and is not aligned with the principle of "do good" and go beyond "do no harm" stated in the [Policy Profile](#). We recommend returning to the objective of the IDB's current Operational Policy on [Environment and Safeguards Compliance \(OP-704\)](#), which establishes a more robust objective since it talks about promoting the generation of long-term benefits, adding what is in brackets “*(i) to enhance long-term development benefits to its members countries by integrating environmental sustainability outcomes in all Bank operations and activities and strengthening environmental [and social] management capacities in its borrowing member countries; (ii) to ensure that all Bank operations and activities are environmentally [and socially] sustainable as defined in this Policy, and (iii) to foster corporate environmental [and social] responsibility within the Bank.*”
 - Likewise, we suggest adding language that makes explicit reference to the IDB's role in supporting Borrower countries in the development and execution of sustainable projects. See, in this sense, point 2 (Objectives and principles) of the WB ESF, which offers language that points to the role of the Bank in this process (see bold): “***The Bank is committed to supporting Borrowers in the development and implementation of projects that are environmentally and***

socially sustainable, and to enhancing the capacity of Borrowers' environmental and social frameworks to assess and manage the environmental and social risks and impacts of projects [...] The Bank will assist Borrowers in their application of the ESSs to projects supported through [this ESF] in accordance with this Environmental and Social Policy."

- **Art. 2.2.** This point should explicitly clarify that roles, responsibilities, and **obligations** are defined for both the IDB and the Borrower. It should also be explicitly stated that Environmental and Social Performance Standards (ESPS) 1 to 10 establish **obligations** of the borrower to identify and address environmental and social risks. At no point in the ESPF is that explicitly stated.

Scope

- **Art. 2.3/4.7—Policy based Loans (PBLs) and Technical Cooperation (TC).** We recommend expanding the scope of application of PBLs without initial restrictions: a) that the ESPF also apply to PBLs that have social impacts; b) eliminate the condition of “*direct*” effects and derivation in “*geophysical and/or biotic changes associated with a particular operation*” made by the ESPF. All PBLs that cause significant effects on the environment, natural resources and the society and inhabitants of that country should be included.
 - **The language regarding the conditions of coverage and type of coverage is restrictive and limiting.** There are two problems that make the application of ESPF in PBLs almost null (or very restrictive). The specifications in point 4.7 restrict the coverage of the ESPF to situations in which the PBLs “*will have significant and direct negative effects on the country's environment and natural resources, this encompasses related social, cultural and economic aspects to the extent that these aspects are derived from geophysical and/or biotic changes associated with a particular operation.*”
 - **The result of this is that, for practical purposes, the ESPF will only end up being applied to investment loans** since it establishes that the ESPF only applies to: a) Environmental and not social PBLs; b) PBLs with direct effects on the environment and natural resources of the country that includes social, economic, and cultural aspects derived from “*geophysical and/or biotic changes associated with a particular operation*”. The direct effect of the PBL is the change in the policy itself (hence its name), instead, the environmental and social effects derive from the implementation of the policy change promoted by the PBL (which is generally seen once the Bank has already closed the project). PBLs have enormous impacts once a series of reforms and institutional changes are implemented, for example, in land tenure rights where the economic and social impacts are not “*geophysical and/or biotic*” nor “*direct.*”
- **Art. 2.3/4.8-- Technical Cooperation:** We recommend expanding the scope of application of TC without initial restrictions so that the expected results of TCs, such as improving capacities or the implementation of a facilitated program, are also covered by the ESPF. With respect to TC, the existing requirement makes the scope quite limited or relatively useless since TC's "terms of reference and products of studies " are generally limited to meetings, workshops, studies, reports and investigations. Without considering of the very reason for the TC, it loses sight of the real impacts and consequences of IDB intervention on the population in a region or country. For example, we can point to the IDB's support through TC in the creation and design of large-scale hydroelectric and infrastructure projects. Therefore, we recommend that TC abide by the requirements of the ESPF and

only then will it be analyzing the very consequences of this initial investment and with a vision for future investments of both the IDB and IDB Invest in subsequent phases.

- **Art. 2.3 Footnote- Pre-investment Loans:** The footnote mentioning that the ESPF does not apply to pre-investment loans and other contingencies should be deleted. Pre-investment loans should be within the scope of the ESPF. This is critical since pre-investment loans, in many cases, end up defining the general elements of the policies and projects to be designed and implemented. Likewise, the modification of the language violates the concept of no dilution (or the principle of environmental non-regression) given that in the current safeguards framework (Environment and Safeguard Compliance Policy) it is stated that “*the Bank will only finance operations and activities that comply with the guidelines of this policy*”(section B.1).

General Borrower Roles and Responsibilities

- **Art. 3.1.** We recommend strengthening the language in this point so that it implies that it is mandatory. It should be added that the requirements are mandatory and that the Bank requires the Borrower to comply with them. See recommendations in brackets: “*The IDB has adopted a comprehensive set of Environmental and Social Performance Standards (ESPS), which describe the [mandatory] requirements that [the Bank requires the] Borrower [to] meet in the development and implementation of operations that are financed by the IDB.*”
- **Art. 3.2.** In this point, prior to listing the ESPS, we recommend further clarifying that “*Bank-supported projects that are within the scope of the ESPF must comply the following Environmental and Social Performance Standards (ESPS).*”
- **Art.3.3. The General Environmental, Health and Safety Guidelines of the World Bank Group (EHSGs)^[1]:**
 - We recommend strengthening the language so that it is clear that this is a requirement that the IDB requires of the Borrower. The ESPF states that “*the Borrowers will also refer to the World Bank Group’s Environment Health and Safety Guidelines (EHSGs)*”. We recommend using the language of point 19 of the ESF of the WB which is clearer by requiring that “*the Bank will require the Borrower to apply the relevant requirements of the World Bank Group’s EHSGs.*”
 - In case of conflict, the most rigorous requirements should be applied, and this must be made clear. We recommend adding “*when the Borrower’s requirements and legal framework differ from the levels and measures presented in the EHSGs, the Bank will require the Borrower to achieve or implement those that are more rigorous*” before “*if Borrower’s limited technical or financial constraints*”.
- **Art. 3.5.** We recommend modifying the text of this point because it should be read like IDB Requirements towards the borrower and not simply "Evaluation and management of environmental and social risks and impacts." The use of ambiguous language should be avoided when referring to the IDB's responsibility in the role of supervision and implementation. Also, it should specify what it meant by “*in a manner and timeframe acceptable to the IDB*”. Expressions such as these should be accompanied by details about what the Bank will consider in order to determine what

"a reasonable manner and time" entails. For example, point 18 of the WB's ESF, gives details about this: *"In determining satisfactory measures and an acceptable timeframe, the Bank will take into account the nature and scope of the project and the technical and financial feasibility of the proposed measures."*

- **At the beginning of point 3.5, the following should be added: "The Bank will require the Borrower" to carry out an environmental and social assessment of the operations that have been proposed in order to receive support from the IDB and not simply "Borrowers are required to".** It should be stressed/emphasized that, ultimately, it is the Bank's role to demand that.
- **It should be specified what it means to the IDB that Borrowers prepare and execute projects that meet the requirements of the PS in "a manner and timeframe acceptable to the Bank."** By not specifying what the IDB considers to be "an acceptable manner and timeframe," there is much room for discretion that can lead to noncompliance. For example, point 16 of the WB's ESF (page 6) offers some more specific details on what is considered an acceptable manner and timeframe: *"In establishing the manner and an acceptable timeframe, the Bank will take into account the nature and significance of the potential environmental and social risks and impacts, the timing for development and implementation of the project, the capacity of the Borrower and other entities involved in developing and implementing the project, and the specific measures and actions to be put in place or taken by the Borrower to address such risks and impacts."*
- **It should be specified what it means to the IDB that Borrowers must adopt and apply measures in existing facilities or activities to meet requirements "in a manner and timeframe acceptable to the IDB."**
- **Under Associated Facilities,** it would be useful to add here that in any case the borrower would be required to assess potential cumulative impacts.
- **Add and explicitly mention other tools or instruments used for risk and impact assessment and management such as:** Human Rights Impact Assessment, Civic Space Assessment, Assessment of Threat of Reprisal and Retaliation against marginalized groups and/or groups that oppose the project.

Monitoring and Supervision

- **Art. 3.8.** This item contains broad, ambiguous, weak language that opens up a lot of room for discretion on the part of the Borrower to correctly implement the Environmental and Social Performance Standards (ESPS). It is not aligned with the best standards established by other peer institutions such as the Asian Development Bank (ADB) and the WB.
 - **It can be compared, for example, with the ADB Safeguard Policy Statement which offers much more robust language to detail what is expected of the Borrower is expected to monitor to follow and supervise the progress of ESPS implementation:** *"[Monitoring requirements include] (iii) document and disclose monitoring results and identify necessary corrective and preventive actions in the periodic monitoring reports, (iv) follow up on these actions to ensure progress toward the desired outcomes, (v) retain qualified and experienced external experts or qualified NGOs to verify monitoring information for projects with significant impacts and risks, (vi) use independent advisory panels to monitor project*

- implementation for highly complex and sensitive projects, and (vii) submit periodic monitoring reports on safeguard measures as agreed with ADB.”*
- **We recommend, in order to define the expectations of the Environmental and Social Management System (ESMS), that the language of the WB’s ESF be incorporated with respect to the Environmental and Social Commitment Plan (ESCP) because it creates clearer and more robust expectations for the Plan:** *“The ESCP will set out the material measures and actions required for the project to meet the ESSs over a specified timeframe. The ESCP will form part of the legal agreement. The legal agreement will include, as necessary, obligations of the Borrower to support the implementation of the ESCP.”* (point E)
 - **Art. 3.9. This point is not aligned with best standards set by peers ADB and WB.**
 - If the ADB’s Policy Statement is compared, the ADB establishes that *“ADB will post the following safeguard documents on its website: [...] (iv) environmental, involuntary resettlement, and Indigenous Peoples monitoring reports submitted by borrowers/clients during project implementation upon receipt.”*
 - The section on disclosure of the WB’s ESF also sets a much more rigorous standard than the ESPF (page 9, item E): *“The Bank will require the Borrower to implement the measures and actions identified in the ESCP diligently, in accordance with the timeframes specified in the ESCP, and to review the status of implementation of the ESCP as part of its monitoring and reporting. The draft ESCP will be disclosed as early as possible, and before project appraisal. The Bank will require the Borrower to prepare, submit to the Bank for approval and implement a process that allows for adaptive management of proposed project changes or unforeseen circumstances. The agreed adaptive management process will be set out in the ESCP. The process will specify how such changes or circumstances are to be managed and reported, and how any necessary changes will be made to the ESCP and the management tools used by the Borrower.”*

These recommendations are particularly important in light of the [Evaluation of Social and Environmental Safeguards of the Office of Evaluation and Oversight \(2018\)](#): *“IDB does not systematically follow and document the safeguards implementation performance and results of all the operations it finances. Unlike IDB Invest, IDB’s policies do not uniformly call for borrowers to report on safeguards performance to IDB. Together with limited safeguards supervision, this means that IDB does not have a clear overview of how well the portfolio of operations it finances perform on safeguards, what safeguards results are achieved and whether the policies achieve their objectives.”*

- **Art. 3.10. This point does not make explicit that any person affected by the project and/or interested parties can access MICI at any time, regardless of the project-level grievance mechanism required by the ESPF. This provision should add and apply all the recommendations of point 6 of the Executive Summary under "Grievance and Accountability Mechanisms."**

IDB Roles and Responsibilities

- **Art. 3.13. Avoid the use of ambiguous language when referring to the responsibility of the IDB in its role of supervision and implementation. Expressions such as, “The Bank is committed to supporting”, among others, are ambiguous and may give rise to non-compliance.**

- This point should start with “the Bank shall support” instead of “is committed to” supporting its borrowers in the development and implementation of environmentally and socially sustainable operations. Add “*and to strengthen*” before “*their capacity to assess and manage environmental and social risks and impacts at the project level.*”
- What follows is limited; it only mentions the commitment to support the borrower in the implementation [accompaniment, technical monitoring, and training] determining methods for the identification of tools.
- That is why here we suggest using the language of point 3 of the WB’s ESF, which makes more explicit the different functions of the World Bank to carry out its own policy: “*To carry out this Policy, the Bank will: (a) Undertake its own due diligence of proposed projects, proportionate to the nature and potential significance of the environmental and social risks and impacts related to the project; (b) As and where required, support the Borrower to carry out early and continuing engagement and meaningful consultation with stakeholders, in particular affected communities, and in providing project-based grievance mechanisms; (c) Assist the Borrower in identifying appropriate methods and tools to assess and manage the potential environmental and social risks and impacts of the project; (d) Agree with the Borrower on the conditions under which the Bank is prepared to provide support to a project, as set out in the Environmental and Social Commitment Plan (ESCP); and (e) Monitor the environmental and social performance of a project in accordance with the ESCP and the ESSs.*”

Screening and Environmental and Social Categorization

- **Art. 3.15/3.16. Impact and risk classification**

- In both cases, it should be added that the Bank will disclose the project classification and its rationale on the Bank's website and in the project documents.
- It is positive to introduce flexibility in assessing the risk classification, enabling it to increase
- **The introduction of flexibility when assessing the risk classification is positive, enabling it to increase.** “*This risk classification will be reassessed “on an ongoing basis throughout the project cycle and be adjusted in accordance with the developments and circumstances of implementation and the findings of the IDB’s monitoring and supervision.”* However, we recommend adding what is in brackets, since the people affected by the project and/or stakeholders are in the best place to identify if a risk may increase. “*Key factors considered in the ESRR are cause (direct environmental and social impacts), contribution (indirect environmental and social impacts), as well as additional areas of risk that may be relevant to the delivery of environmental and social mitigation measures and outcomes. These could include legal and institutional considerations; the nature of the mitigation measures and technology being proposed; governance structures and legislation; and contextual factors relating to stability, conflict or security. [In order to promote the constant identification of new areas of additional risks, the Borrower shall comply with the requirements of the Environmental and Social Performance Standard 10].*”
- **In addition, the ESPF should require that risk assessments include a comprehensive analysis of the risks of reprisals.** This involves contextual and project-related risks, as well as an enabling environment for effective public participation and human rights, the engagement

process, risks related to clients, governments or third parties, and the vulnerability of affected communities and defenders.

- **Category A projects should include all projects that will have an impact on critical habitat and or critical ecosystem services.** This would also have to apply to all FI projects that would have impact on critical habitat. Critical habitat should be an important screen.

Due Diligence

- **Art. 3.17./3.18/3.19.**

- **It should be clear that it is the Bank's requirement that the analysis of environmental and social due diligence of operations be carried out in accordance with ESPF and to ensure proper compliance on the part of the borrower of all social and environmental requirements established in the ESPs:** We recommend adding *“It is a requirement to complete an analysis in due diligence as regards to environmental and social matters, and to ensure the Borrower’s complies of the environmental and social requirements established in the ESSs.”*
- **We recommend adding that the purpose of environmental and social due diligence is to allow the Bank to determine if a project complies with the ESPF and if it is eligible for financing.** If it does not comply, it must remedy the non-compliance within a certain period, and it will not be able to access the financing while it is in non-compliance.
- **Art. 17:** We recommend adding the suggestions in brackets to strengthen and clarify the function of due diligence: *“The scope of the environmental and social due diligence is determined by the nature and scope of the proposed operation, and it shall be consistent [proportionate] with the [environmental and social] risks and impacts that can be related with it, [with the proper consideration of mitigation hierarchy] and the context prevailing in the country for its execution. [In the due diligence, it shall be assessed if the project can be developed and executed in accordance with the ESSs.]”*
- **Art. 3.18:** We recommend adding what is in brackets in order to expand and strengthen the due diligence analysis that allows for the analyzing of potential Human Rights risks, limitations to civic space, potential risk of discrimination, harassment, and reprisals: *“The Bank's due diligence in terms of management of environmental and social risks and impacts is integrated in the general process of due diligence of the operation, including the risk analysis for the reputation, and other important risks that could affect the environmental and social sustainability [such as in human rights potential risk analysis, the civic space limitations, and the potential risk of discrimination, harassment, and reprisals against people or communities with different views on the project.]”*
- **The IDB should have the effective capacity to execute robust human rights due diligence:** The IDB should have the necessary resources and fulfill its responsibility to execute its own due diligence, conduct investigations, and consult with stakeholders and third parties on Human Rights. The IDB should also conduct robust due diligence on financial intermediaries, including an explicit analysis of past behavior responding to the risks of reprisals, current reprisals, or allegations thereof.
- **Art. 3.19:** We recommend adding that part of the due diligence responsibilities of the Bank and the Borrower include: *“providing guidance to assist the Borrower in developing appropriate measures consistent with the mitigation hierarchy to address environmental and*

social risks and impacts in accordance with the ESSs. The Borrower is responsible for ensuring that all relevant information is provided to the Bank so that the Bank can fulfill its responsibility to undertake environmental and social due diligence in accordance with this Policy.” (WB, ESF point 32).

- **Art. 3.20: In order to be effective, should consider the Borrower’s capacity.** This text is straight from the private sector. It may work in public sector especially in cases where the capacity is already good. In the cases it’s not, and the Borrower has no E&S coordination, only requiring an Environmental and Social Plan (ESAP) will likely not work unless it stipulates the minimum requirements.
 - **The action plan, agreed upon by the IDB and the borrower in the event that gaps are detected with regard to the requirements of the ESPF, should always be part of the legal agreement, and not “as applicable”.** “As applicable” should be removed to make it clear that the plan should always be in legal agreement.
 - **The ESPF should establish that large-scale development projects carried out in areas and contexts affected by historic and/or ongoing armed conflict should require heightened due diligence – including serious analysis of the option of tabling a given project until violence and the risk of reprisals have significantly diminished or subsided – as well as additional measures to guard against reprisals if projects do go forward.** Patterns of violence, symptoms of closing civic space, including restrictions on the freedoms of expression, association, and assembly, raise significant red flags and indicate a heightened the risk of reprisals, and should be addressed explicitly.
 - **The IDB should include in its due diligence conducting an initial analysis of the operators of grievance mechanisms at the project level to ensure that they have no history of having been involved in abuse or intimidation and that they have an adequate level of trust within the community.** The agreements in contracts should stipulate specific penalties when they detect that the staff of project level grievance mechanisms were involved in reprisals or the mismanagement of the risks of reprisals.
 - **Due diligence should include verification by the Bank that public or private entities implementing projects have adequate evacuation protocols in risk situations for persons with disabilities** (physical, sensory, intellectual, and psychosocial).
- **3.21. Monitoring and Supervision: This provision should apply and take into account all the recommendations and comments mentioned in point 5 of the Executive Summary under “Monitoring and Supervision.”**

Provisions for Specific Instruments

- **4.2. Financial Intermediaries (FIs):** IDB needs to address FIs more directly, as well as the issue of consequences if FIs are found out of compliance with the provisions of section 4. This section only addresses monitoring and reporting by the FI, which is largely under its own control. The World Bank, for example, went with a separate ESS (9) that is more comprehensive, since it requires The FI to “*develop and maintain organizational capacity and competency for implementing the ESMS with clearly defined roles and responsibilities.*” It also requires stakeholder engagement. To strengthen this section, the IDB should incorporate the following recommendations:

- **FI subprojects should be categorized by risk.** IFC requires that (see FI interpretation note), and even the AIIB requires it.
- Add “and assess the FI track record in addressing E&S risks and impacts, and identify gap measures to strengthen the FI's E&S risk management” after “in order to appropriately identify the environmental and social risks associated with a proposed FI project during the IDB's due diligence process, the IDB will review a sample of the existing activities of the FI.”
- **Point A. This point should be strengthened and should provide details and specificity on the requirements for FIs to develop and operate an Environmental and Social Management System (ESMS) that is commensurate with the level of environmental and social risks in its portfolio.** The ESMS should incorporate all relevant principles of all the relevant ESPSs and not only ESPS1 (as stated in the ESPF).
 - **The MPSA should add a section to describe what an ESMS should include for FIs. As a minimum, an FI's ESMS should include:**
 - Environmental and Social policy.
 - Clearly defined procedures for the identification, assessment and management of the E&S risks and impacts of subprojects, including roles and responsibilities of the FI's ESG specialists and staff.
 - Organizational capacity and competency within an ESG unit, its specialist and staff.
 - Supervision, monitoring and review procedures of E&S risks of subprojects and the FI's portfolio.
 - Transparency and disclosure policy of project level information including E&S risk and impacts documentation and measures plans.
 - Appropriate internal mechanisms and systems for the disclosure of information including project level information in the FI's website.
 - A Grievance Mechanism.
 - **FIs should be required to develop a transparency and disclosure policy and set up the appropriate internal mechanisms for disclosure and transparency as part of the ESMS.** For example, FIs should be required to disclose on their own website, and on IDB's website, all higher risk (high and substantial) subproject information including clients/projects names, sector, location, including environmental and social safeguard related information of those higher risk subprojects. FIs should be required to publish the FI involvement on higher risk sub-projects at the project sites among affected communities, including information of their grievance mechanism and that the FI client is a client of IDB. Transparency and disclosure of information is an integral part of the ESMS.
 - **FIs should be required to develop and operate a grievance mechanism for people and communities impacted by the FI projects.**
 - **All provisions of the ESPS10 should be included in the FI's E&S policy and procedures including the ESMS.** According to the ESPF, the FI will require the FI subprojects to conduct a stakeholder engagement in a manner proportionate to the risks and impacts of the FI subproject.
- **Point C: It should include a requirement that if the risk profile of the FI's portfolio and/or an FI subproject increases, then IDB requires the FI to notify the Bank immediately, apply all relevant**

ESPSs, implement all necessary measures, and report back regularly. But also, that the Bank will increase its oversight and supervisory role in that case. The requirements of the ESPSs apply to all FIs that receive support from the IDB, either from the Bank or the Borrower, or through the Borrower or other FIs, as follows:

- Where the Bank support is provided to the FI to fund clearly defined FI subproject, the requirements of the ESPSs will apply to each of the FIs subprojects;
- Where the support is provided to the FI for a general purpose, the requirements of the ESPSs will apply to the entire portfolio of the FI's future subprojects.
- Where the FI receiving support from the Bank provides financing or guarantees to other FIs, that FI will require the other FIs to apply the requirements of the ESPSs (as specified in points i and ii), and will require each subsequent FI to apply the requirements of the ESPSs (as specified in points i and ii).

Use of Borrower's Framework

- **5.1/5.2. It should be clear that the IDB will support the strengthening and use of all or part of Borrowers Frameworks for IDB projects, with a mandatory, clear and extensive review and assessment system to determine the equivalency of the Borrower's Framework with IDB's ESPF, prior to IDB agreement for their use.**
 - This point should specify that the IDB will: a) require public input into IDB determination of the Borrower's Framework equivalence; b) prohibit the use of Borrower systems for highly complex and sensitive projects; c) underscore IDB's responsibility for due diligence; d) and will provide detailed equivalency requirements; e) emphasize on the borrower's implementation practices and track record.
 - **The term "functional equivalence" should be defined and clarified.** Functional equivalence can be defined as achieving all the substantive requirements and objectives of the ESPSs. Functional equivalence includes applying the mitigation hierarchy to avoid, minimize and address all the risks and impacts of the project necessary to meet the objectives of the ESPSs. Experience shows that an equivalence assessment is only a meaningful task when an **acceptability assessment and an organizational capacity assessment are an explicit part of the assessment. Also, this process assessment needs to be ongoing throughout the entire project cycle.**
 - **The IDB should disclose the intention to conduct a Borrower's Assessment as early as possible and specify the aspects of the Borrower's framework are being considered for assessment and potential use.** There is no mention of disclosure of the IDB's assessment of the Borrower's Environmental and Social Framework. Even the AIIB's ESF states (paragraph 53) that: *"The review is conducted in consultation with the Client and Project stakeholders, and the Bank discloses its findings in accordance with paragraph 58 of this ESP."*
 - **Footnote 17: It should clarify that in order to perform such assessment, the IDB will engage with relevant stakeholders, including civil society and potentially impacted communities, so their views can inform the assessment and gap filling measures.** The IDB will disclose the assessment on its website before any decision is made on the use of all, or part, of the Borrower's frameworks.
 - **When compared with its other peer institutions, the ESPF is weak and does not provide enough specifications.** For example,

- The ADB ESF (page 16-18): “*Equivalence and acceptability are two prerequisites for deciding on the use of CSS [Country System Safeguards]. ADB would consider a borrower’s CSS to be equivalent to ADB’s if the former’s system is **designed to achieve the same objectives and adhere to the policy scope, triggers, and applicable principles set out in ADB’s Safeguard Policy Statement. ADB also assesses the acceptability of borrower’s implementation practice, track record, and capacity, before deciding on the use of the borrower’s system.***”
 - The AIIB uses the following language: “*Review by the Bank of the Client’s existing environmental and social management system relevant to the Project, including its scope and effectiveness, and a determination by the Bank that the relevant parts of this system are adequate to address the environmental and social risks and impacts of the Project in a manner **materially consistent with the objectives of the ESP and relevant ESSs**”; and “*Review by the Bank of the performance of the Client’s environmental and social management system proposed for use in the Project, and a determination by the Bank of the Client’s ability to apply the system, and the system’s capacity to enable the Project to achieve the desired environmental and social outcomes. An element of this review is **an assessment of the Client’s implementation practices, capacity and commitment.***”*
- **Art 5.4.** This provision should clarify that the Borrower should inform the IDB of any changes in their frameworks that may impact the functional equivalence with the ESPF. In such cases, the IDB will review such changes and require revisions to the ESAP and financing agreement as necessary to meet the requirements of the ESPF and take any measures necessary as deemed appropriate including applying the Bank's remedies.

Arrangements for Project Co-Financing

- **Art. 6.2.** There should be an express statement here that recognizes that in circumstances where the common approach is used.

Grievance Mechanism and Accountability

- **Art. 7.1.** It is critical that the Borrower-operated, project-level Grievance Mechanisms referred to in the ESPF does not in any way impede the ability of project-affected communities to access MICI. It is critical for all project-affected communities to have awareness of and ability to access MICI.
 - **Similar to how the ESPF requires Borrowers to notify project-affected communities of grievance mechanisms, the ESPF should also require Borrowers to inform project-affected people of the MICI.** Borrowers have logistical advantages for conducting effective and efficient outreach to local communities about project-related information, including information about MICI. Involving Borrowers in the dissemination of MICI information can significantly bolster awareness of its existence among project-affected people.
 - **MICI serves an important role for project-affected people that is distinct from the Borrower’s grievance mechanisms.** Borrower mechanisms operating on the project-level can potentially provide for prompt resolution of grievances. When a Borrower’s mechanism is well designed and implemented, project-affected people may choose to avail themselves of it without needing to raise concerns through other avenues. However, Borrower mechanisms are

- frequently inhibited by a variety of issues, such as lack of independence. Even when properly designed and implemented, Borrower mechanisms are not often equipped for handling certain types of grievances, especially serious ones such as human rights abuses.
- **Housed within the IDB and structured to operate independently from IDB management, MICI is frequently perceived by project-affected people to be a uniquely trustworthy mechanism for addressing environmental and social issues.** By virtue of its institutional-level placement, MICI also has the resources and expertise to address a broader range of project-related harm. This is why project-affected people must be able to bring a complaint to the MICI regardless of the availability of other grievance mechanisms.
 - **The importance of MICI as an independent and accessible mechanism for communities to use to raise concerns and as a source of continuous institutional learning for the IDB should be clearly stated.**
- **Art. 7.3. This provision should state the full mandate of the MICI and should explicitly make clear that project-affected people and their representatives can bring a complaint to the MICI instead of or in addition to raising concerns with the Borrower’s grievance mechanisms.** As currently written, this point fails to specify who can trigger MICI’s process, which risks creating confusion about whether MICI can be accessed directly by project-affected people.
 - **The description of MICI in paragraph 7.3 fails to give a complete picture of MICI’s mandate for addressing project-related environmental and social harm.** In addition to describing MICI’s role in investigating alleged noncompliance, the provision should state that project-affected people can also request that MICI facilitate a dialogue between them and the Borrower, Bank management, and others.

ANNEX 1 – ESPF Glossary

We recommend including in the Glossary some frequently used terms in the area of disability. Such as:

- **Universal design:** Involves the creation of products and environments designed so that they are usable by all people to the greatest extent possible, without the need to adapt or specialize.
- **Accessibility:** Refers to the possibility that all people have access to a service or to visit a place or use an object without exclusions of any kind, whether they be cultural, physical or technical.
- **Accessible technologies:** Digital information in simple formats through a simplification system that favors cognitive and communicational accessibility for all people according to their different needs.
- **Reasonable adjustments:** Are those necessary and adequate (reasonable) modifications and adaptations (adjustments) required to guarantee a person with physical, sensory, mental and/or intellectual disabilities the full exercise of their rights under equal conditions as other workers.
- **Disability:** Disability is the result of an erroneous way of organizing society: therefore, persons with disabilities face prejudices and barriers that impede their full participation on equal terms.

ENVIRONMENTAL AND SOCIAL PERFORMANCE STANDARD 1

Environmental Assessment & Management of Risks and Impacts

GENERAL RECOMMENDATIONS AND COMMENTS

ESPS 1 should be modified to reflect an approach consistent with best practice at other multilateral development banks through upward harmonization. Overall, the Bank's ESPF reflects little effort to improve, address gaps, or be innovative in terms of its approach. The ESPF needs to advance the practice of Environmental Assessment & Management of Risks and Impacts, by including all these recommendations:

- 1) **The ecosystem approach¹⁰ must be properly explained and integrated in ESPS 1:** The ecosystem approach considers humanity as part of the environment and its interrelationships, based on an understanding of ecosystem functions and ecosystem services that derive from them and that are subjectively valued by different societies. The terminology is ambiguous and, in many cases, contradicts the obligations that emanate from international and multilateral commitments. These include the UN Strategic Plan for Biodiversity (and the proposed post-2020 Global Biodiversity Framework, once adopted, being developed the CBD¹¹) and other key conventions (e.g. Ramsar¹², CMS¹³, CITES¹⁴, World Heritage Convention, UNFCCC) as well as the Sustainable Development Goals (SDGs), which should be considered as guiding texts.
- 2) **Apply a landscape perspective:** IDB investments should require project sponsors to demonstrate that they have engaged with local planning and environmental authorities to have their project considered at the landscape scale, with the aim of avoiding cumulative impacts, particularly from new or upgraded linear or power¹⁵ infrastructure, on priority biodiversity and ecosystems. Consistent with the ecosystem approach, the assessment of project-related impacts at the landscape-level should include analysis of risks to biological and physical connectivity, for example through wildlife corridors and migratory flyways and the flows of energy and matter between the landscape and its context. Given the significance of LAC's biodiversity for the region's sustainable development, ESPS1 should also focus more on ecological connectivity and international cooperation, embedding conservation of site networks and ecological processes into spatial planning and development activities, at ecologically relevant scales, which may be transboundary.
- 3) **Adopt and apply the concept of Environmental mainstreaming from the mainstreaming section (IV.A) of the current Operational Policy (2006) of the IDB:** This means that environmental impacts need to be considered in all phases of program development and project design and execution. This includes Mainstreaming Environment in Country Programming and Strategies (A.1), Supporting Environmental and Natural Resources Management Operations (A.2), Mainstreaming Environment Across Sectors (A.3), Supporting Regional Environmental Initiatives and International Environmental Agreements (A.4), Tracking Environmental Sustainability Indicators (A.5), and others. This may be achieved in part by referring to each country's National Biodiversity Strategy and Action Plan (NBSAP), which represent the country's commitment to

¹⁰ The ecosystem approach is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way'. Source: [Convention on Biological Diversity \(CBD, 1992\)](#)

¹¹ [Convention on Biological Diversity \(CBD, 1992\)](#)

¹² Ramsar Convention on Wetlands of International Importance (1971), also known as the Convention on Wetlands or simply Ramsar.

¹³ Convention on the Conservation of Migratory Species of Wild Animals (1979), also known as the Convention on Migratory Species (CMS) or the Bonn Convention.

¹⁴ Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1973).

¹⁵ Inappropriately located and/or operated facilities may significantly impact biodiversity, such as wind turbines harming birds and bats, and these risks should be appropriately identified using tools and methodologies, such as wildlife sensitivity mapping.

achieve goals under the Convention on Biological Diversity and in line with Sustainable Development Goals 15 and 14 (for littoral states).

- 4) **ESPS 1 should include and mention the precautionary principle**, which implies that when danger of serious harm exists, the absence of scientific certainty should not be used as a reason to postpone the adoption of measures to prevent harm, **and of prevention** that involves operating before damage occurs to avoid the occurrence of expected negative impacts.
- 5) **The mitigation hierarchy should be developed in detail, not only as a tool, but also as a governing approach to ensure sustainability in project identification, design and development.** This must be explained in this ESPS1, with the appropriate terminology and clarity, with additional references in other ESPSs to clarify its application, e.g. in ESPSs 3, 4, 5 and 6. The mitigation hierarchy¹⁶, as a framework for managing risks and potential impacts, begins with measures taken to avoid impacts from the outset of development activities and, where this is not possible, to implement measures that would minimize, mitigate, then restore and, as a last resort, offset any potential residual adverse impacts. It is commonly applied in Environmental and Social Impact Assessments (ESIAs). Likewise, alternative 0 should be considered in this section, or the possibility that the project will not be carried out when the expected benefits do not justify the possible damages or risks.
- 6) **Focus on early avoidance which typically means changing the location or scope of a project to prevent damage to values protected by the ESPSs, such as biodiversity:** Even before the project comes to the bank, the Borrower should demonstrate that the project has been designed to avoid negative impacts, e.g. to critical habitat, or has been designed to avoid harmful impacts to, for example, intact forests. This early screening as part of project identification can greatly reduce impacts and risk (see f.5 below). It can be facilitated by national or regional assessments that spatially define areas of particular importance for biodiversity, such as the countries' National Biodiversity Strategy and Action Plans (NBSAP).
- 7) **Provide detailed screening criteria and process for the selection of projects with expected impacts, the phases of the projects, and the ways in which the communities will participate in the whole process, including assessment of the ecosystem services and the risks of the projects.** Project identification and impact avoidance should be undertaken in parallel with the identification of all potentially impacted stakeholders and genuine consultation right from beginning of the project planning –and continued throughout the implementation, monitoring and evaluation of the project lifecycle in a participatory manner.
- 8) **No Greenfields:** Exclude from support projects which have already cleared large areas [say, 100 ha. or more] of natural habitat in a proposed project area prior to the request for investment or financing.
- 9) **Critical Habit Avoidance: IDB must commit not to invest in projects at these High Conservation Value sites** both for biodiversity¹⁷, (e.g. Key Biodiversity Areas)¹⁸, and for other values, whether for ecosystem services or community/cultural values, (e.g. resources of special

¹⁶ As defined by CSBI (2015). A cross-sector guide for implementing the mitigation hierarchy: <http://www.csbi.org.uk/wp-content/uploads/2017/10/CSBI-Mitigation-Hierarchy-Guide.pdf>

¹⁷ Wildlife sensitivity mapping for development projects is one tool to identify such sites.

¹⁸ KBAs as used here include Important Bird & Biodiversity Areas (IBAs) and Alliance for Zero Extinction (AZE) sites. KBAs will often – and AZE sites will always – qualify as 'critical habitat' as defined in IFC Performance Standard 6 and Guidance Note 6. Given that AZE sites hold the last population of a Critically Endangered or Endangered species, any negative impacts on these sites could lead to the global extinction of these species.

significance to local residents or sacred sites). Borrowers should demonstrate early avoidance and work with independent institutions to review data and plans prior to finalizing any financing request to identify important sites for conservation. This can be facilitated by national or regional assessments that spatially define areas of particular importance for biodiversity, such as each country's National Biodiversity Strategy and Action Plan (NBSAP), or by the use of Strategic Environmental Assessment (SEA) in IDB operations. This forms part of the broader support for avoiding risks early in design.

- 10) Identify and apply Decision Support Tools.** Spatial analysis tools such as the Integrated Biodiversity Assessment Toolkit (IBAT) can aid in categorizing projects and identifying critical habitats and priority areas for conservation. IBAT can support Environmental and Social Impact Assessments (ESIAs) by listing potential species of importance that may be present in a particular area (e.g. those threatened according to the IUCN Red List of Threatened Species), as well as assessing if a project may negatively impact, or overlap with, KBAs or Protected Areas and Other Effective area-based Conservation Measures (OECMs).¹⁹
- 11) Offsets & Net Gains:** Apply multiplying factors to mitigation and offsets targets that incorporate risk of failure. Thus, net Gain will always be the target.
- 12) Mitigation & Offset Finance:** Require mitigation and offsets to be financed up front. All compensation/offset investment should be part of IDB financing so that programs to reduce impacts can be initiated immediately. In fact, one should consider the cost of mitigation as a direct project cost in the feasibility calculation of the overall investment (and maybe as part of the loan). Consider also:
 - ESPS1 could require that the borrower develop its mitigation plan including offsets, and budget for offset implementation costs and risks.
 - The mitigation plan cost (or some percentage) could be put into a third-party account (escrow, conservation trust fund) to fund the mitigation management plan over the project's lifetime.
 - Any mitigation cost balance should be paid within the loan disbursement period into the third-party account and be guaranteed via insurance or a bond.
- 13) Offset training & disclosure:** Invest in training staff and governments on No Net Loss (NNL) policies and actions so that governments can establish standards to achieve NNL. Given the potentially important role of offsets when needed in achieving mitigation goals, and the expectation that they will be used rarely (i.e. only as a last resort after avoidance, minimization, mitigation, and restoration or rehabilitation), it is important that IDB maintain and disclose all approved offsets. This includes their location, financing, management, legal status, and the values for which they are being conserved.
- 14) Specify that for all high-risk projects,** the Bank will intensify monitoring, oversight, and supervision processes, including through Borrower capacity building.
- 15) Avoid dilution in the lack of detail of minimum requirements and procedures of the Environmental and Social Impact Assessment (ESIA) included in point 4.19 of the current [Environment and Safeguard Compliance Policy](#).** We recommend incorporating point B.5 "Requirements of environmental assessment" in the ESPF. **Clear deadlines and procedures need to be included.**

¹⁹ As defined by the CBD. See: [CBD/SBSTTA/22/L.2, 6 July 2018](#).

16) Gender considerations: Mandate implementation of ESPS 9 Gender Assessments (GAs) within ESPA 1 while requiring GAs apply to all projects. ESPS 1 contains no mention of gender and no reference to ESPS 9, which includes a robust description of GA requirements but mandates GAs only “for operations with potential gender-based risks and impacts that may disproportionately affect people by their gender” without clarifying how a project’s potential for “gender-based risks” is determined.

SPECIFIC RECOMMENDATIONS AND COMMENTS

- **Art. 1.** The language should be strengthened to make it clear that ESPS1 establishes the responsibilities of the borrower for the assessment, management, and monitoring of environmental and social risks and impacts associated with each stage of the project.
 - It should be specified that ESPS 1 was designed to manage project risks and impacts and improve environmental and social performance through the preparation and life cycle of the project from the design phase, which is critical in the determination of impacts and results and to identify mitigation measures and actions to improve the decision-making process. Avoid the vague language used in this first point where expressions such as these are used: *"Highlights the importance of", "an effective environmental management system", "ESMS is a dynamic process that the borrower sets in motion"*.
- **Footnote 20.** More precise and differentiated definitions of environmental and social risks should be included. The footnote defines environmental and social risk as *"Environmental and social risk is a combination of the probability of certain hazard occurrences and the severity of impacts resulting from such an occurrence."* The definition of risk is limited and vague. To clarify and ensure that the definition captures the risks derived from the project, change "certain" to "any" and after "occurrence" add *"derivatives, direct or indirect, of the project"*. Likewise, *"Industrial activities, construction, among others"* should also be added to commercial activities.
- **Footnote 21:** We recommend adding “government” before “businesses” and then “non-profit organizations” before “activity”. Since the Bank has clients and project implementers from all sectors. The IFC text appears to have been copied and pasted directly. Expand also “the impacts on the surrounding community” to include “others that may be impacted, e.g. downstream/downwind or neighboring” and “government” as well as “business activity.”
- **Footnote 22:** We recommend that the language be strengthened to make the role of the borrower explicit. For example, compared to World Bank’s Environmental and Social Standard (ESS) 1, Footnote 1 *"It is recognized that the Borrower may not be the entity directly implementing the project. Nevertheless, the Borrower is responsible for ensuring that the project is prepared and implemented so that it meets all applicable requirements of the ESSs in a manner and timeframe agreed with the Bank. The Borrower will ensure that any entity involved in implementing the project supports all obligations and commitments of the Borrower in accordance with the requirements of the ESSs and the specific conditions of the legal agreement, including the ESCP. Contractors retained by or acting on behalf of the Borrower or an implementing agency are considered to be under the direct control of the Borrower."*

- **Footnote 23: A preventive approach should be incorporated into risk analysis.** The repair of the damage should involve the effective participation of those who have been negatively impacted, so that, together with them, relevant remediation measures can be considered. Sometimes compensation is not sufficient and/or adequate, but other measures are required on a case-by-case basis.
- **Art. 2: The concept of limited liability should be eliminated:** It must be the responsibility of the Bank and the Borrower to address the inherited problems related to the environmental and social impacts caused by decisions made and/or activities carried out to facilitate the project before IDB participation, such as, for example, the selection of a construction site, the design or acquisition of land, among others. This point represents a gap in terms of how and when environmental and social risk assessment and management is carried out. Especially critical are issues related to land acquisitions. Any impact inherited due to a decision made before the IDB considers investing should be taken into account, and the IDB must use its influence to address such inherited problems and find solutions before agreeing to invest or support the operation.
- **Art. 3: In order for projects to be implemented with due respect for Human Rights, the IDB should request the Borrower establish Human Rights due diligence processes as part of the ESMS.** Such diligence involves communicating, offering transparency and being accountable to people or groups that may be affected and to other stakeholders, including investors and sources of financing. It also involves establishing clear grievance and redress mechanisms and the role that each could play in this process.
 - **The Environmental and Social Management System should be aligned with the specifications of the Policy Statement, which includes respect for Human Rights** and, therefore, should be considered a due diligence process on Human Rights to be carried out by the Borrower in order to receive IDB support.
 - **Principle 4 on the [Guiding Principles on Business and Human Rights](#) specifies that if development finance institutions do not explicitly consider the negative consequences, real or potential, on Human Rights of the activities of implementing companies, they put themselves at risk** - in financial, political and possibly legal terms. - by contributing to this violation, aggravating the human rights problems of the receiving State.
 - **A Human Rights impact assessment, including the healthy environment, carried out by the Borrower can provide the Bank with more information on pre-existing situations and allow it to carry out an assessment of the development contribution of said project and thus better consider its financing.** The importance of contextual and historical risk should be considered by the IDB in order not to finance projects that have previously caused negative impacts on Human Rights and the environment.
- **Objectives. We recommend strengthening the language taking into account the following recommendations:**
 - **1st bullet:** Change “identify and evaluate” to “identify, evaluate, and reduce” since the ultimate goal of the assessment is not only to know about risks, but to reduce them. References and studies related to barriers and the measures to be taken into account for the access of persons with disabilities to the benefits of the project should also be considered in project assessments, facilitating, in turn, access to resources and relevant services.

- **2nd bullet:** Add “and apply” after “adopt” since this clarifies that the goal is not only to have the mitigation hierarchy as a framework, but to use it.
- **3rd bullet:** Add “and facilitate” after “promote” to clarify that the goal is actually to help improve performance, not only to recommend it.
- **4th bullet:** Add at the end: “And addressed in an appropriate, effective, expeditious manner and with the participation of the people affected.” Also add that grievance mechanisms at the project level should be more than mere mechanisms that receive complaints, instead, they should operate as real environmental and social governance mechanisms on the ground.
- **5th bullet:** Define “relevant” - the complete information about the project must be shared with sufficient time prior to its financing and launch to all interested parties.
- **Add a 6th bullet:** Address legacy issues related to environmental and social impacts caused by decisions made and/or activities done to facilitate the project before the IDB’s involvement.

Scope of Application

- **Art. 4:** **ESPS 1 should apply to all projects financed by the Bank that are under the tutelage of ESPF. It should be explicitly clear that “ESPS 1 applies to all projects and operations within the reach by the application of ESPF”.**
 - **The stages of the project should be detailed as requirements and not as suggestions.** It mentions that “*Project components may, as appropriate*” but it should be changed to “*the components include at least*”.
 - **External review processes of Environmental and Social Impact Studies should be included,** by stakeholder communities and external experts, especially in projects where important potentially adverse impacts are identified or that involve complex technical issues.

Requirements—Environmental and Social Assessment and Management System

- **Art. 5:** **The language should be strengthened since the expression “The Borrower will conduct a process of environmental and social assessment” does not refer to the obligatory nature of the process, and should say “The Borrower shall conduct a process of environmental and social assessment”.** Likewise, it should be clarified that the Environmental and Social Impact Assessment (ESIA) must meet all the requirements established in ESPS1. For example, the World Bank’s ESS 1, Paragraph 14, mentions that “*The Borrower will assess, manage and monitor the environmental and social risks and impacts of the project throughout the project life cycle so as to meet the requirements of the ESSs.*” This language is much more appropriate to clarify what the roles and responsibilities of the borrower in this process are.
 - **Incorporate information disclosure as a key element:** After “will establish” add “publish and disclose information” about the ESMS, including management programs, organizational capacity and competency for the project, emergency preparedness and response plans, the stakeholder engagement plan, all monitoring and supervision reports, monitoring reports (if applicable), mid-term evaluation reports, all impact assessments, resettlement plans and action plans, as well such as contracts, legal agreements, terms of reference, in their preliminary and final versions, among other documents. All documents accompanying the ESMS and information related to the project should be available for review by all stakeholders and the general public to strengthen transparency, accountability, and reduce social and environmental risks.

- **Specific deadlines for disclosure of information and clear procedures should be established for the borrower to disclose the information to affected persons and stakeholders**, ensuring sufficient time for feedback of such information.
- **Strengthen the language so that it implies obligation:** The expression “*The ESMS will incorporate the following elements*” should be changed for “*The Borrower shall incorporate the following elements into the ESMS*”.
- **We recommend changing the provisions in point VI for the following:** “develop the stakeholder participation and disclosure process in line with the provisions of ESPS10” and add “[*The Borrower will include in the ESMS*] *“the following elements: (i) environmental and social project-specific framework; (ii) identification of risks and impacts; (iii) management programs; (iv) organizational capacity and competency; (v) emergency preparedness and response; (vi) stakeholder engagement; and (vii) monitoring and review.”*”
- **It should be added and clarified that the environmental and social assessment process will be based on existing and recent information, baseline and social information, including data disaggregated by gender and the appropriate level of detail.** This is in line with ESP 1 of the EBRD (page 19). And at the end, add “*and all the measures and actions provided in the legal agreement will be implemented*”.
- **The expression “when appropriate” should be modified to “when the IDB requires it”, the borrower will complement the ESIA with additional studies.**
- **It should add among the requirements that the inclusion of persons with disabilities is an integral aspect that clients should take into account when applying this ESPF.** It should emphasize that projects with social impact should respond to an approach of inclusion and universal access for persons with disabilities.

Environmental and Social Framework specific to the project

- **Art. 6: The language should be strengthened so that it implies obligation.** In the first sentence, add “implement and publish” after “establish” to ensure compliance with monitoring and transparency regarding the Borrower's Environmental and Social Framework (ESF). After “principles”, add “objectives and requirements” since principles are abstract and open interpretation, while objectives and requirements are clearly stated - this statement will reduce confusion and add clarity. At the end of the last sentence, add “and publish the information in a timely manner and appropriate format for stakeholders, including the Bank” since a fundamental value of the Specific Framework Agreement is that stakeholders understand the environmental and social risks and impacts.

Identification of risks and impacts

- **Art. 7: This point should clarify that, in the event of dispute between the ESPF and the national norms of a country, the most rigorous and demanding standard should prevail.** It mentions that the projects should consider both safeguards and the regulatory framework of the country where it is implemented; however, it does not specify what happens in the event of a dispute between the two.
 - The wording “*The type, size and location of the project determine the scope and level of effort devoted to the risk and impact identification process*” suggests an erroneous order of priority, whereby the project is what determines the process of identification. The scope should be determined first by the type of environment, not the project. In addition, it should say something about the criticality of the environment where it will be located. We suggest replacing it with

"the type of environment, along with the type, size and location of the project in that environment ..."

- Add “public disclosure” after “establish,” which will reduce risk if stakeholders participate in the risk and impact identification process.
 - **The language used to refer to existing facilities is weak and ambiguous.** For example, *"When the project includes existing facilities, environmental and/or social audits or risk and threat assessments may be adequate and sufficient to identify risks and impacts."* **It should mention that the Borrower will adopt and implement measures to meet the requirements of ESPS 1.** For example, the World Bank’s ESS 1, Paragraph 17, establishes that *"If the project comprises or includes existing facilities or existing activities that do not meet the requirements of the ESSs at the time of Board approval, the Borrower will adopt and implement measures satisfactory to the Bank so that specific aspects of such facilities and activities meet the requirements of the ESSs"*.
 - We recommend adding that the risk and impact identification process should also be a participatory process with all project stakeholders, in particular affected people. In fact, there are valuable experiences with methodologies with Valued Environmental Impacts, where it is the community that identifies and determines the magnitude and importance of impacts, and not an external consultant who has no ties to the territory.
 - **Local knowledge should be incorporated as a key source of information for the preparation of ESIAs:** Local knowledge should be explicitly incorporated as a key source of information when preparing ESIAs, as well as in the initial design of projects.
 - **Art. 7, text and/or fn. 27 (or separate footnote):** To achieve consistency of application across borrowers and with GIIP, this should include a requirement to identify and apply Decision Support Tools. Spatial analysis tools, such as the Integrated Biodiversity Assessment Toolkit (IBAT) can aid in categorizing projects and identifying critical habitats and priority areas for conservation²⁰. We propose this requirement state simply that *"As part of the process for identifying the environmental and social risks and impacts, Borrowers will identify and apply Decision Support Tools, such as the Integrated Biodiversity Assessment Tool (IBAT)"* in para. 7, and the remaining information on spatial analysis tools be provided in a footnote.
 - We recommend adding indicators on disability that measure the impact of projects.
- **Art. 8. It is necessary to clearly specify (through a standardized screening process) which cases proceed with each procedure,** since it is only mentioned that *"The process may comprise a complete assessment of the environmental and social impact, a limited or focused assessment of environmental or social aspects"*.
 - **Art. 9. We recommend strengthening the language of this provision so that it is effective in preventing and reducing risks and impacts that are inconsistent with third party ESPS objectives affecting project areas.** Better wording would be to add "work with the third party for" and replace "control and influence over third parties" with "due diligence needed to ensure project success." Likewise, the statement "taking into account conflicts of interest" is ambiguous. To clarify, “avoiding”

²⁰ IBAT can support Environmental and Social Impact Assessments (ESIAs) by listing potential species of importance that may be present in a particular area (e.g. those threatened according to the IUCN Red List of Threatened Species), as well as assessing if a project may negatively impact, or overlap with, KBAs or Protected Areas.

conflicts should be added, and mention that “so that some association with third party supports, and does not compromise, the fulfillment of the objectives and results of ESPs”. The onus should remain on the Borrower to demonstrate that harmful impacts, such as on critical habitat, have been avoided and mitigated.

- **Art. 11. Language should be more precise in terms of valuing ecosystem services of local communities and stakeholders, subjectively.**
 - Where it says “*the identification of risks and impacts will take into account the findings and conclusions of related and applicable plans, studies, or assessments prepared by relevant government authorities or other parties that are directly related to the project and its area of influence*”, should be clarified that the reports and studies created by a community should be considered such as participatory Human Rights impact assessments, as well as researchers, experts, civil society organizations, indigenous peoples and Afro-descendants, and other local villages.
 - Where it is noted: “*The risks and impacts identification will take account of the outcome of the engagement process with project-affected people and other relevant stakeholders, as appropriate*”. We suggest replacing “*will take into account*” with “***The comments, suggestions and modifications of affected people and stakeholders of the project, should be incorporated and attended to effectively in the ESIA.***”
- **Art. 12. This process, as it is stated, can generate a conflict of interest that can lead to the exclusion of key stakeholders from the process. In particular, it should be avoided in countries with restricted civil space. It should be clarified that the identification of stakeholders or stakeholder communities is a process that should be done in constant consultation and approval of the IDB or an impartial third party, who ensures the participation of all stakeholders.**

Management Programs

- **Art. 13. Clarify that the Borrower should establish management programs also in line with the ESPs.** The client should establish specific times to implement the measures and actions established in the action plan for environmental and social risks and impacts. It is necessary for the Bank to specify that the borrowers will not carry out actions until they have defined the possible elements of the management and/or mitigation plan for the social impacts of the project.
- **Art. 14. The language of this provision should be strengthened so that it implies mandatory obligation.** As it is it is very flexible since it does not add significant value. To improve its clarity and meaning, “*may consist*” should be changed to “*should*” and thus imply a binding commitment. To better describe the mitigation hierarchy, “mitigation and restoration” should be added, explaining that they are a prior resource to compensation or indemnification measures.
- **Art. 15.** Add “and publish” after “will identify”, to ensure transparency, and “will implement” after “will establish” to ensure compliance.
- **Art. 16.** The phrase “will establish” should be supplemented by “and will implement”.
- **Art. 19. The language should be reinforced to indicate mandatory obligation, when potentially significant adverse impacts have been identified or that involve complex technical issues, the Borrower should turn to external experts and other interested parties.** Likewise, external

universities and/or institutions and stakeholder should be consulted for validation, thus avoiding conflicts of interest. Furthermore, where it says, "Borrowers may be required to", it should define when it is appropriate for other stakeholders to get involved.

Emergency Preparedness and Response

- **Art. 20.** Prevention in emergency situations should include financial or material resources that are secured a priori for the management of contingencies. Add that "information should be published" to ensure transparency.

Monitoring and Review

- **Art. 22.** **The obligation of the borrower to inform the Bank of any change in the design and implementation of the project should be included as a requirement. Any changes made by the borrowers to the project design or management plans should be reported to the Bank, so that the Bank can evaluate social and environmental implications according to the ESPF.**
 - Add "implement and disclose" after "establish" to ensure transparency and compliance.
 - **The commitment to stakeholders and people affected by the project to support and assist in participatory monitoring activities should be explicit.** For example: provide guidance and training as necessary to improve participatory monitoring capacity; ensure that community monitoring reports are effectively incorporated into the overall project monitoring mechanism. Clarify what the IDB's expectations are in terms of community monitoring; it is only mentioned in passing and should be something that the IDB actively promotes among borrowers.
- **Art. 23.** **Audits/evaluations of projects should be both internal and external, also creating an assessment of the impacts generated by the project, its management, and its closure.** Likewise, post-closure monitoring should be guaranteed, particularly in those projects that have closed with unsatisfactory performance in the implementation of ESPS.
- **Art. 24.** **This provision should add a point for transparency and disclosure that as a critical part of an ESMS, that describes the importance of disclosure of all project level documentation and information for the decision-making process, to engage effectively with stakeholders, for accountability purposes, etc. This section should clearly require the disclosure of all project related information.**

Stakeholder Engagement

- **Art. 25.** **The language should be more rigorous and imply mandatory obligation. This point should make clear that all requirements regarding stakeholder involvement and disclosure of information should meet and be aligned with the requirements of ESPS 10.**
 - Disclosure of all project level documentation and information is key and a precondition to ensure effective stakeholder engagement. The Borrower should publicly disclose draft and final versions of all the documents specified in Art. 19 of ESPS10 of this document.
 - All the documents must be in the language of the recipient country. Also, the monitoring and supervision documents, should explicitly stress if the plans and targets of the Environmental and Social Management Plan are being achieved, together with the targets of the execution of the investment.

- We recommend changing “*may involve the following elements*” for “*shall involve the following elements*”.
- We recommend changing “*may vary considerably*” and add “*shall be consistent with*” to ensure that the Borrower's expectations are clear.

Stakeholder Analysis and Engagement Planning

- **Art. 26.** Should add here: “*where project or project mitigation efforts (such as offsets) may themselves generate adverse social or environmental impacts, Borrowers need to ensure that the mitigation design is also not negatively affecting people or their livelihoods or access to resources, unless at least equivalent alternatives and/or compensation are agreed upon and provided.*”
- **Art. 27.** **In order to provide greater transparency and accountability to the process carried out by the Borrower for the preparation and implementation of the Stakeholder Engagement Plan (SEP), it should be clarified that the Borrower will do so in constant consultation with the Bank.** Additionally, it should be clarified that when the IDB requires it, it will require the Borrower to hire impartial third parties to carry out this process and thus avoid conflicts of interest.
 - **The language of the following point should be reinforced to imply obligation:** It should be clear that, “*in contexts where it is required, the Bank will require the borrower*” to include differentiated measures to allow the effective participation of those in situations of vulnerability, making special considerations for specific consultations with women, people from the LGBTQI community, persons with disabilities, and other marginalized groups.
 - It should be clear in the ESPF that as a Bank-financed project, it is expected that any individual or organization that criticizes, speaks up against, or seeks/supports redress for grievances at any stage of the project, will have their views and concerns listened to and responded to by the Borrower, and will not face harm, retaliation, or repercussions by the Borrower or other project proponents directly or indirectly.
- **Art. 28.** “*The draft and final versions will be published*” should be added, since it is pertinent that stakeholders be able express their voice throughout the whole stakeholder participation.

Disclosure of information

- **Art. 29.** To ensure that transparency and disclosure is as a critical part of an ESMS, being essential for the decision-making process, to engage effectively with stakeholders, minimize potential conflicts, and for accountability purposes, it is important to clarify that disclosure of project information is a minimum baseline standard to ensure effective engagement of project affected people and other stakeholders. It is insufficient to just “help” them to understand risks, impacts, and opportunities.
 - **The requirements stated in this provision should be aligned with ESPS 10.**
 - **Adding to the list provided here and the footnote, this section should also add that it is expected and required for Borrowers to disclose all the documents mentioned in Art. 25, ESPA 10 of this document.** Also, specific reference should also be made to the disclosure of project baseline and monitoring information/data.
 - Similar to how this provision requires Borrowers to notify project-affected communities of grievance mechanisms, it should also require Borrowers to inform project-affected people of the MICI.

- We recommend clarifying that the disclosure of information should be done in accessible formats for the different physical, sensory and/or cognitive needs and in open data formats.

Meaningful Consultation

- **Art. 30.** We recommend strengthening the language to ensure that this point complies with what is proposed. In the first sentence add “*meaningful*” before “*opportunities to express their views*”. Also replace “*allows*” for “*ensure,*” and that the consideration and response should be given in a specific and detailed timeframe.
 - ESPS1 and 10 set the expectation that consultation processes are a means to an end, not an end in itself. The voices of both project-affected parties and other stakeholders should not only be heard but should also find expression in the project design and recommendations on whether/how to proceed or, if required, to withdraw from the Project. A transparent mechanism needs to be developed to ensure to those affected by the project, that their objections and concerns have also found appropriate expression in the decision-making process and plan.
 - We recommend clarifying that meaningful consultation should consider accessible formats for different physical, sensory and/or cognitive needs.
- **Footnote 43.** We recommend strengthening the language so that it is more rigorous since it may undermine the Disclosure of Information requirement. In this sense, to be meaningful, eliminate “*for example*”, and change it to, “*in case it exists, it should be required*”.

Informed Consultation and Participation

- **Art. 31.** We recommend deleting this subtitle and integrating this paragraph with the previous one on Meaningful Consultation. The differentiation of Meaningful Consultation and Informed Consultation and Participation is very confusing, and it will be confusing for Borrowers.

Indigenous Peoples

- **Art. 32.** This point should clarify that in the case of projects with negative impacts for indigenous peoples, “The borrower should, as a result of a consultation process, obtain Free Prior and Informed Consent (FPIC).” The limitation of FPIC in this paragraph only for certain circumstances not only diminishes its effectiveness of FPIC but also promotes a practice that is not aligned with the best international standards and practices on the matter. For projects with adverse impacts on Indigenous Peoples, the minimum standard should be FPIC. Likewise, we recommend deleting the reference here to informed and participative consultation since it only confuses things and does not contribute anything.
 - International guidelines on the respect of the rights of indigenous peoples who have not been recognized or whose territories have not been officially recognized should be taken into account. The right to self-identification as indigenous individually or collectively, in accordance with the practices and institutions of each indigenous people, and the self-determination of indigenous peoples should be respected at all times.

External Communications

- **Art. 34.** To be effective, expectations should be clear. In this sense, in the last sentence, delete “*borrowers are encouraged to put*” and change it to “*borrowers should make semi-annual reports on their environmental and social sustainability available to the public*”.

Grievance Mechanisms

- **Art. 35.** This provision should follow the recommendations already developed in point 6 of the Executive Summary and Art. 7.1 & Art 7.3 of the Policy Statement under the title “Grievance Mechanisms and Accountability.”

Ongoing reporting to Project-affected people and other relevant stakeholders

- **Art. 36.** In the first sentence after affected people, add “*in an accessible manner.*” The last sentence reads “*the periodicity [of reports] shall be, at least annually*”. The expression is confusing and can open up room for discretion. Also, we recommend deleting that last sentence. We recommend that the “*periodicity of reporting be semi-annual*” since the frequency of communication reduces the risk of misinterpretations or social conflicts.

Annexes: ESPS1 should include three annexes, similar to the World Bank’s ESS1, on page 23, which provides details and specifications on these concepts:

Annex 1: Environmental and Social Assessment

Environmental and Social Impact Assessment

Environmental and Social Audit

Hazard and Risk Assessment

Cumulative Impact Assessment

Social and Conflict Analysis

Environmental and Social Management Plan (ESMP)

Environmental and Social Management Framework

Regional Environmental and Social Impact Assessment

Sectoral Environmental and Social Impact Assessment

Strategic Environmental and Social Assessment

Annex 2: The Environmental and Social Commitment Plan (ESCP)

Annex 3: Management of Contractors

ENVIRONMENTAL AND SOCIAL PERFORMANCE STANDARD 2

Labor and working conditions

GENERAL RECOMMENDATIONS AND COMMENTS

1) ESPS2 should increase recognition of particular risks to women, peoples with disabilities, and other populations facing workplace discrimination: ESPS 2 broadly echoes the language in IFC performance standards, which is generally protective of the welfare of direct workers and demonstrates a limited recognition of particular risks to women, workers with disabilities, and other populations facing workplace discrimination.

2) ESPS2 should recognize that fair treatment of workers is a human right, regardless of employment type. While we recognize that the borrower may not have complete control over contractors, temporary workers and suppliers, these workers are still entitled to fundamental safeguards of their labor rights, including protections around retrenchment and due diligence expectations around forced labor and child labor. The current language in ESPS 2 not only puts contractors (including security and construction contractors, which face well-documented vulnerability) at risk of exploitation, it risks violating a growing body of domestic law requiring companies to carry out due diligence on their operations' forced labor and exploitation risks. IDB should include contractors under all the safeguards of ESPS 2.

3) ESPS 2 should offer more clarity on due diligence processes for contractors: Language addressing contractors must directly require due diligence on exploitation risks in contracted workforces, including explicitly requiring the provision of written contracts in the language of the workforce and assessment of forced labor risks. IDB should state that labor recruitment agencies are only to be used by the borrower, its contractors & suppliers for one-to-one hiring to clarify that the best way to manage risks associated with labor recruiters is to eliminate these middlemen. Furthermore, forced labor and child labor are expected to be identified during impact assessment, while contractors and suppliers can be incorporated into an operation's value chain during operations.

4) IDB should directly reference the IFC Good Practice Notes (e.g. on worker accommodations) to track the positive changes IFC and other peer institutions have achieved since the 2012 Performance Standards launched: IDB has the opportunity to incorporate learnings by IFC, EBRD and others over the 8 years since the IFC PS were drafted, particularly in the Good Practice Notes that have accompanied the 2012 PSs.

5) Gender considerations, ESPS 2 should require:

- Trainings on gender non-discrimination and sensitivity for project staff, particularly in hiring personnel.
- Collecting gender-disaggregated employment data to ensure non-discriminatory hiring practices.
- Borrowers extend non-discrimination protections outlined in paragraphs 16-18 to “contract” and “primary supply” workers.

SPECIFIC RECOMMENDATIONS AND COMMENTS

Introduction

- **Art. 1: In terms of Human Rights, the purpose of treating the “workforce as a valuable asset” should be clearly linked to safeguarding their dignity and rights**, and not only to avoid a situation in which “*the commitment of the worker*” is diminished so “*worker commitment and retention can jeopardize a project*” or that “*Borrowers may create tangible benefits*” as stated in Art. 1.

- **Art. 2.** ESPS 2 should not lower human rights provisions in the workplace below to what is prescribed in the ILO Conventions, but should clarify that human rights in the workplace are explicitly included and protected in an integrated corpus iuris made up by ILO and other international instruments that make up the International Charter (or Law) of Human Rights, both in the universal system governed by the United Nations system (UDHR, ICCPR, ICESCR and others) and in the Inter-American system for the protection of human rights (Pact of San José, Protocol of San Salvador and others). These standards should explicitly be considered when defining the framework for the protection of labor human rights, which is intended to be protected in ESPS 2.

Objectives

- **1st bullet:** Replace “To promote” with “To safeguard” the fair treatment, nondiscrimination and equal opportunity of workers.
- **3rd bullet:**
 - Add: “collective bargaining agreements” to the existing objective “To promote compliance with national employment and labor laws [and collective bargaining agreements.]”
 - **The expression "employment and work" is inappropriate. The terminology established in this regard by the ILO should be followed. In particular, the definition included in Article 3 of Convention No 111 of (Convention on Discrimination (Employment and Occupation), according to which “the terms *employment and occupation* include both access to the means of professional training and admission to employment and various occupations as well as working conditions.”**
- **4th bullet:** Workers included in “vulnerable” categories should not be reduced to just “*children, migrant, workers, workers engaged by third parties, and primary supply workers*”, but should include and explicitly mention **women, older adults, persons with disabilities, indigenous and Afro-descendant people and people with different sexual orientation or gender identity**. Access to work for persons with disabilities should be encouraged, taking into account international and national regulations.
- **7th bullet:** We recommend using the words “*Respect and promote*” instead of “*sustain*” when referring to “*the principles of freedom of association and collective bargaining of project workers*”. **Similarly, it should be specified that such conduct should not only be consistent with the corresponding national legislation, but also with the international framework for the protection of workers' rights, whichever is more beneficial for them.**
- **Art.4.** We recommend eliminating the expressions “*core*” and “*for a considerable time*” when referring to **contracted workers**. ESPS 2 applies to contracted workers but limits it to “*workers engaged through third parties to perform work related to core functions of the project*”. This wording opens up space for free interpretation. For discretionary reasons, many contracted workers may be excluded from this protection without any reason, and thereby undermine labor and social protections that the norm seeks, and its effective fulfillment -for example- of the right of all workers to form unions or to join them, and also the right to collective bargain, or in situations of abuse such as social dumping and various types of discrimination.

- **Art. 6.** The protections for contracted workers cannot be reduced to “paragraphs 25 to 27 of this Performance Standard”. We recommend including contracted workers within the protections established in all articles of ESPS 2.
- **Art. 7.** The protections for workers in the main supply chain cannot be reduced to “paragraphs 28 to 30 of this Performance Standard”. The Borrower should ensure that those who manage the supply chain take care of their workers, at least, with respect to paragraphs 9 to 21.
- **Art. 8.** The rules on Non-discrimination and equal opportunities (Art. 16 to 18) should apply to public employees, as well as those that refer to access to grievance mechanisms (Art. 21).

Requirements

- **Art. 10.** Change “*The borrower will provide workers with documented information that is clear and understandable, regarding their rights*” to “*The Borrower will provide workers with their written collective bargaining agreements and documentation of their rights [...]*” Add: “*These shall be provided in the preferred language of the workers*”.

Working conditions and terms of employment

- **Recommendations related to disability:** We recommend requiring the adoption of procedures and policies for workers with disabilities, which may involve communication in alternative formats such as large text fonts, Braille system, audio tapes, etc. Include accessibility measures and other types of adjustments. Similarly, the ESPF should ensure the inclusion of accessibility measures in both infrastructure and communications including information in plain and simple language. Policies for reasonable accommodation should also be included when these are required. Also, it should incorporate universal design in all workspaces.
- **Art. 12.** Delete the word “*substantially*” from the clause “*The Borrower will identify migrant workers and ensure that they are engaged on substantially equivalent terms and conditions to nonmigrant workers carrying out similar work.*”
- **Art. 13.** In this provision, it should be clear that the Borrower will take measures to prevent and address harassment, intimidation or exploitation, especially with respect to women and people with physical, sensory, intellectual and/or psychosocial disabilities. Thus, we recommend adding protections against sexual harassment and other forms of GBV in the following sentence: “*The [accommodation services] will be provided in a manner consistent with the principles of nondiscrimination and equal opportunity, including protections against sexual harassment and other forms of GBV.*”
- **Art. 14.** Delete “Where national law substantially restricts workers’ organizations”
- **Art. 16.** This point should clarify that the Borrower should promote fair treatment, non-discrimination, and equal opportunities for workers, considering the inclusion of accessibility measures from notifications and reasonable adjustments that respond to the specific needs of all people, including those with physical, sensory, intellectual and/or psychosocial disabilities.

- **Art. 15.** Add a paragraph to note “Communications will be managed with a view to providing the workers with: (i) adequate information on changes that might affect them, in particular on anticipated changes associated with the project and (ii) the opportunity to provide comments as part of continuous improvement, including how to raise grievances as detailed in paragraph 21 of this PR [grievance mechanism].”
- **Art. 19.** Add a sentence after “*Prior to implementing any collective dismissals [...]*” to read: “*The selection process will be transparent, based on fair, objective, consistently applied criteria, and subject to an effective grievance mechanism.*”
- **Art. 22.** **This provision should follow the standards of the ILO conventions 138 and 182 on minimum age and worst forms of child labor.** Also, where individuals under 18 are employed, the Bank must establish systems to ensure that underage workers are not compelled to work in any manner that is economically exploitative, or is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development. These measures should also monitor whether underage workers are engaging in the worst forms of child labor, as defined by ILO Convention 182.
 - **This provision should include greater detail on how the worst forms of child labor will be prevented and remediated.** It calls for an “appropriate risk assessment and regular monitoring of health, working conditions, and hours of work” but does not specify what that entails. Additionally, it states that “if child labor or forced labor cases identified, the borrower will take appropriate steps to remedy them” without any guidance on the appropriate remedies are (Art. 23).
- **Art. 21.** The Grievance Mechanism should include all accessibility measures and that it be understandable and transparent in providing timely feedback to stakeholders.
- **Art. 23:** Add at the article’s end: “*The Borrower will not use recruitment agencies except to match workers to individual jobs.*” In line with IFC Good Practice on managing modern slavery risk, seasonal workforces will not be hired through recruitment agencies.
 - In accordance with the principles set forth in the ILO Conventions and Recommendations, the comments of the ILO Committee of Experts and instruments, such as the ILO Declaration on Fundamental Principles and Rights at Work, the Tripartite Declaration of Principles On Multinational Enterprises and Social Policy, **ESPS 2 should specify that Borrowers and their suppliers are not only prohibited from demanding work or service from anyone under threat of any sanction; this includes the recourse or the threat of physical or sexual violence, harassment and intimidation against the worker; but this prohibition should also extend to the worker’s family or people close to the worker, who must be free of any means of coercion.**
 - **It should be specified that Borrowers and their suppliers should not compel workers to work overtime beyond the limits established in national legislation and collective agreements, or resort to the threat of sanction,** for example, the threat of dismissal. Nor should it impose work or service outside the normal working day, exploiting the vulnerability

of the worker under threat of sanction, which includes setting performance objectives that exceed the obligation to work beyond the normal working day due to the worker's need to earn a decent salary.

- **Art. 26:** Replace “*With respect to contracted workers the Borrower will take reasonable efforts to ascertain [...]*” with “With respect to contracted workers the Borrower will conduct due diligence to ascertain [...]”
 - There is no reasonable motive for workers contracted by third parties to provide services in the Borrower’s favor to be excluded from the scope of Art. 19 (alternatives to dismissal), 20 (procedure for dismissal and payment of their social benefits), 28 (access to a grievance mechanism), 29 (eradication of child or forced labor) and 30 (risks in safe conditions). In particular, because they perform tasks whose essential utility is directly or indirectly related to the implementation of the borrower’s project.
- **Art. 27.** There is no justified reason why the Borrower will use only “*reasonable efforts*” to include the policies and procedures for the management and monitoring of the performance of those third-party employers; and, on the contrary, there is no obligation to include in their contracts with these third parties the duty of these to be subject to the requirements of ESPS 2. In particular, because said flexibility can operate as an incentive to avoid this obligation and leave workers contracted by third parties outside the protection sought by ESPS 2.
- **Art. 28.** Include that contracted workers “*have access to a mutually agreed, contextually appropriate, publicized, confidential, anonymous grievance mechanism.*” This language can link to a footnote laying out the expectations for rights-respectful grievance mechanisms in the UN Guiding Principles for business and human rights. This provision should add and apply all the recommendations and comments developed in point 6 of the Executive Summary and in Art. 7.1 and Art 7.3 of the Policy Declaration under “Grievance Mechanisms and Accountability.”
- **Art. 31.** Replace “over time” with “in a time-bound process”

ENVIRONMENTAL AND SOCIAL PERFORMANCE STANDARD 3

Resource Efficiency and Pollution Prevention

GENERAL COMMENTS AND RECOMMENDATIONS

1) ESPS3 must be as clear and strong as possible to increase its precision and suitability to address issues such as climate change and toxic waste:

- While ESPS3 has many good points, and provides some level of protection against waste, pollution, and related harms to people and the environment, **it misses an opportunity to advance standards as needed in the face of growing climate threats, and through ambiguity and loopholes, runs the risk of failing in its objectives.**
- **Language used is optional and vague, and subject to a wide range of interpretation.** This is not good technically because: 1) The sum of these ambiguities, gray areas, etc., generates opportunities to apply legal (or at least non-controversial) practices that are not optimal or of lesser

impact; 2) In the strictly technical field there are many missed opportunities to apply use methodological references that contain quantitative standards.

- **ESPS3 should be aligned with the principle of “doing good” beyond the “do not harm.”** ESPS3 should talk about looking for positive impacts rather than only avoiding negative ones, by promoting projects that seek the regeneration of ecosystems and communities. This occurs when the carrying capacity or regeneration of natural cycles is exceeded due to loss of ecosystem services (e.g., when the concentration of particulate matter cannot be transported away from a city fast enough by the winds).

2) It should be clear that the IDB will refrain from financing a project when environmental and social risks are identified, in a project or component that contravenes the norms of the Environmental and Social Policy Framework or the national laws or obligations of the country under treaties, agreements and relevant international agreements. The current regulation says that the IDB may refrain from financing a project in this circumstance, but the prohibition should be expressed to be effective.

3) ESPS3 should acknowledge the disproportionate impact of pollution and environmental degradation on women and should design and implement safeguard mechanisms to ensure that women are not disproportionately impacted by project-related pollution. In addition, it should incorporate Gender Assessment (GA) findings in design of pollution prevention strategies.

- ESPS 3 does not mention gender once and fails to acknowledge that project pollution can disproportionately harm women, for example, as water source degradation increases their domestic labor, and environmental degradation near homes increases their exposure to pollutants. ESPS 3 also bases pollution prevention strategies on findings of the environmental and social risks and impacts identification process outlined in ESPS 1, which includes no mention of gender or reference to the GA outlined in ESPS 9.

4) ESPS 3 likewise fails to mention marginalized populations, who may be more likely to be impacted by pollution as they lack resources to mitigate impacts, especially indigenous peoples and afro descendants, who tend to rely more directly on their natural environment for livelihoods.

SPECIFIC COMMENTS AND RECOMMENDATIONS

- **Art. 1: In footnote 59: Add “or air (when not used for heat or energy), particulate matter” after “water” since thermal discharges to air can contribute to global warming and particulate matter poses a direct threat to human and animal health.**
 - Add a footnote here after “(GHG)” and/or a definition in Annex I –ESPF Glossary, p. 25 [before Habitat], “Greenhouse Gases or GHG refers to and is defined as the six greenhouse gases covered by the United Nations Framework Convention on Climate Change (UNFCCC), namely 1) Carbon dioxide (CO₂), 2) Methane (CH₄), 3) Nitrous oxide (N₂O), 4) Hydrofluorocarbons (HFCs), 5) Perfluorocarbons (PFCs), and 6) Sulphur hexafluoride (SF₆).”
- **Footnote. 60:** At the end, delete “*or productivity, which are generally well known to most industrial, agricultural, and service sector companies*” since this doesn’t track and seems to have been left in by mistake and add “and requirements” before “are satisfied.”

Objectives

- **1st bullet:** add “and disclosing” after “minimizing” since awareness of pollution is helpful in preventing health and other impacts. At the end, add “or outputs,” since it is not only the pollution from the project *activities* themselves, but from outputs such as infrastructure, buildings, and vehicles that need to be minimized if this standard is to achieve its objective to limit pollution.
- **In the 3rd bullet:** Add “avoid, minimize or at minimum” before “reduce” to clarify that the objective is to avoid GHG emissions altogether or reduce to the full extent feasible.
- **In the 4th bullet:** Add “avoid or” before “minimize” since avoidance of such risk is the most effective safeguard.

Scope of Application

- **Art. 3:** Avoid the separation between the process of identifying risks and environmental impacts from the process of identifying social impacts.

Requirements

- **Art. 4:** At the beginning and in the 2nd sentence, replace “During” with “Throughout” since attention to impacts should be continual over the project lifecycle.
- **Art. 5:** **This point should provide more clarity on how to make a comparison to determine the relative level of efficiency.** Establish when projects can be compared against clear standards to determine when they are analogous.

Resource Efficiency

- **Art. 6. Footnote 63:** **Determine an appropriate way to calculate cost effectiveness, which is determined based on capital and operating costs, financial benefits, and environmental and social externalities of the measure, considered during the lifecycle of the operation.** It would be necessary to determine what weight each factor has and what inputs are used to calculate them. Add at the end “*including costs and benefits to ecosystem services and natural capital generated by the project and incorporating social costs of greenhouse gas emissions*” since these are critical elements for determining resource efficiency and pollution prevention.

Greenhouse Gases

- **Art. 7:** **The text here should be made clearer and more effective to align with IDB and Borrower commitments to support/implement NDCs and the Paris Agreement.** Thus, in the 1st sentence, change “reduce” to “avoid or minimize” and before “design” add “entire project lifecycle” and change “and operation” to “construction, operation, and de-commissioning or removal.”] Add to the end of the sentence “taking into account that the full [social] cost of GHG emissions may not be reflected in the market price.
- **Art. 8:** **The threshold established should address GHG intensity in an effective way. The threshold of 25,000 mtCO₂e are equivalent to emissions from the annual energy use of approximately 2,300 U.S. homes or 4,600 passenger vehicles or over 58,000 barrels of oil consumed or 131 railcars’ worth of coal (per [US EPA](#)).** Thus, this is far above a *de minimis* level. It also fails to address GHG

intensity. In light of the need for [urgent climate action](#), this falls short of ESPS 3's objectives. Thus, we propose that this should:

- Be a steadily declining threshold, namely, [to add after “equivalent”] “20,000 mtCO₂e beginning in 2025 and 10,000 mtCO₂e beginning in 2030;”
 - Apply to the intensity level, i.e. add in the 1st sentence after “annually” “or more than the industry or locality (for construction projects) average GHG emissions intensity;”
 - Require reporting and mitigation, i.e. after “quantify” add “publicly disclose, and provide an action plan for reducing” in the 1st sentence. After “Quantification” in the 2nd sentence, add “reporting, and mitigation” and after “emissions,” add “and emissions intensity.” The quantification requirement in particular seems meaningless if not paired with reporting.
 - If GHG emissions are to be quantified above 25,000 tons of CO₂- equivalent annually, it would seem to follow that parallel thresholds be applied in terms of GHG emissions and intensity and following on para. 7, require alternatives that reduce the project's GHG emissions/intensity.
 - Apply to off-site production of mined or manufactured inputs. Thus, we propose to add, after “energy,” “and mined or manufactured inputs.”
- **Footnote 65. Clarify the criteria for deciding when emissions are “significant” and therefore included in the impact analysis**, when it is stated: “[...] *project-induced decay of organic matter may contribute to direct emissions sources and shall be included in this emission quantification where such emissions are expected to be significant.*”
 - **Footnote 66. The appropriation of materials should be considered as a source of energy consumption (and externality) of the project.** In the ESPF they are not considered, and this is especially serious for infrastructure projects that, essentially, demand materials (rather than energy).

Water Consumption

- **Art. 9.** While this paragraph is helpful, **the text leaves gaps in definition, scope, and timeframe that should be filled to ensure it is effective:**
 - **Add a footnote and/or definition at the end of Annex I –ESPF Glossary, p. 28, “Water consumption is defined as the freshwater taken from ground or surface water sources, either permanently or temporarily, and conveyed to the place of use.”** Add a footnote after the 1st use of “significant:” “‘Significant’ here is defined by the local context, in particular, whether it impacts local or downstream availability of clean, affordable, and safely managed water for drinking and sanitation, or ecosystem services on which local or downstream communities rely for their well-being or livelihoods (e.g. drinking water or fisheries).”
 - Add “or user” after “consumer” in the 1st sentence, since not all use is in the form of consumption per se. At the end of the 1st sentence, add “including ecosystem services from which they benefit,” to ensure these are not ignored, even if impacts are indirect.
 - **Projects should undertake projections to determine potential needs of the local population, based on population and economic growth projections during the life of the project**, in determining whether sufficient water is available and that the use will not have adverse impacts on local populations.
 - More precise wording should be used, taking into account, for example, nationally available water stress indices by region and other hydrological/hydro-geological criteria in

the absence of an adequate proxy. It should be clear that a project should not put demands higher than the sustainable supply capacity. This would rule out projects that require basin transfers to function.

- There should be a guidance note by sector and scale to avoid ambiguity.

Pollution Prevention

- **Art. 10.** Add “including greenhouse gases,” after “pollution” in the 1st sentence, to ensure these are understood to be covered. In the 2nd sentence, add “or global” after “transboundary,” to clarify that all scales are covered. In the 3rd sentence, after “determine,” add “on the advice of independent experts, approved by the Bank,” since it seems unlikely that most Borrowers will be motivated to provide an objective assessment.
 - **We propose deleting “the borrower,” and adding “an independent entity” in the following sentence:** “*Where historical contamination of the land or groundwater exists, the borrower will seek to determine whether it is responsible for taking mitigation measures.*” It will avoid any conflict of interest to hire an independent entity to determine when the borrower is responsible to mitigate.
 - **Dumping waste into unauthorized landfills or operating without acceptable standards should be prohibited.** For example, in the case of mining, the design of a tailings dump or deposit should be an essential part of the EIAs.
 - Add to the end: “*Where the project has the potential to be a significant source of pollution in an already degraded area, the borrower should avoid worsening impacts on people and ecosystems health.*”
- **Art. 11.** Where the project has the potential to be a significant source of emissions in an already degraded area, the borrower should avoid worsening impacts on people and ecosystems health.
 - After “(iv) the project’s proximity to areas of importance to biodiversity” add “*and Indigenous Reserves or settlements.*”
 - After “assimilation”, “attenuation” must be added, which implies the capacity of the ecosystem to transform the pollutants discharged into non-harmful substances or the capacity to dilute them to the point where they are not of environmental interest.
 - When mentioning “*cumulative impacts with uncertain or irreversible consequences*”, those that are synergistic and in perpetuity should be specified. This would imply that they should consider treatments in perpetuity.

Wastes

- **Art.12.** We recommend adding the proposal in brackets: “*If the generated waste is considered hazardous, The Borrower will adopt GIIP alternatives for its environmentally sound disposal [and taking into account surrounding communities]*”.
 - The end of this para. states: “*The Borrower must verify that the authorized landfills are operating to acceptable standards and, if so, will use them. If not, the Borrower will need to reduce the waste sent to these landfills and consider other disposal options, including the possibility of creating their own recovery or disposal facilities at the project site.*” This would imply a separate EIA, as it is another activity. For example, in the case of mining, the design

of a tailings dump or tailings deposit are essential parts of EIAs and can be very expensive. We propose adding: *“In addition to reducing the waste being discharged, the Borrower must refrain from dumping waste into unauthorized landfills or landfills operating without acceptable standards.”*

Pesticide Use and Management

Art. 14. The expression *“economically significant”* should be modified to *“avoid damage to human and environmental health.”* The second paragraph establishes that *“Available pest control methods, including cultural practices, biological, genetic, and, as a last resource chemical means to prevent economically significant pest damage”*. It should be clear that not only “economically significant” damage should be avoided, but also primarily important damage to human and environmental health should be avoided and prioritized, since chemical pesticides affect both.

- **The IDB, in following the principle of ‘do good’ beyond ‘do not harm’, should add in these articles the promotion of the use of organic pesticides, encouraging natural practices for pest control and also for productive activity such as agroecology, in pursuit of social and environmental care,** and in accordance with the objectives and commitments assumed by the ESPF, and what is expected from its implementation by Borrowers (Art. 15, 16 and 17).

ENVIRONMENTAL AND SOCIAL PERFORMANCE STANDARD 4

Community, Health, Safety, and Security

GENERAL COMMENTS AND RECOMMENDATIONS

1) A major concern here that is not directly addressed is Safety of Dams. This can be done through an annex incorporating or re-stating World Commission on Dams’ (WCD) Guidelines for Good Practice and/or (at a minimum) reference in para. 6, noted below. Additionally, IDB could incorporate directly some provisions or by reference World Bank Operational Policy 4.37, Safety of Dams, while noting that it is not a complete treatment of the subject.]

2) The responsiveness to changing standards and realities should match with regard to security: Since the IFC drafted its performance standards, major changes have been made to best practice on security and human rights, partly in response to evolving risks to society. ESPS 4 as currently written is outdated. New language should reference: (1) the International Code of Conduct for private security providers of borrowers, (2) the Voluntary Principles for Security and Human Rights as applicable to borrowers, and (3) the Montreaux Document which has clarified use-of-force best practice. By missing these developments, the standard is currently weak on assessment leaving major gaps for gender security and gender-based violence (GBV) as well as protections for human rights defenders and other violence and intimidation against local populations. The line-edits below (for Articles 9 and 14, and for the re-designation of the section titled “Community Exposure to Disease”) incorporate language from these documents as well as language from EBRD to make ESPS 4 fit-for-purpose in the present day.

3) Child rights considerations: ESPS 4 should include mentions of protecting child rights (as defined by the UNCRC) and should include information on how to promote child safety/protection and the mitigation of child SEA. Additionally, it does not mention GBV prevention.

4) ESPS 4 should acknowledge women’s disproportionate vulnerability to health impacts caused by pollution, and that women’s and sexual minorities’ disproportionate vulnerability to violence in instances of communal conflict and influxes of outside workers. Also, it should design and implement safeguard mechanisms to prevent women’s and LGBTQI people’s exposure to violence and pollution. The current language: a) includes no mention of gender; b) does not acknowledge women’s vulnerability to health impacts caused by pollution or women and LGBTQI people’s vulnerability to violence in cases of communal conflict; c) requires the Borrower to prevent potential violence caused by influxes of outside workers but does not acknowledge how such violence disproportionately impacts women and LGBTQI people.

5) We recommend that the ESPF adopts a commitment to "zero tolerance"²¹ in relation to retaliation, and ensure an environment conducive to public participation, as well as use its influence to prevent and respond to any situation of retaliation. The recommendations developed in point 5 of the Executive Summary of this document should be followed.

6) We recommend expressly prohibiting the “preventive” use of force and other abuses by security personnel and to mitigate and prevent risks related to use of security forces: The ESPF allows the use of force *“for prevention purposes”*, which is in contradiction with international norms, and is extremely worrying given the rates of violence and improper use of force in the region and in association with development activities. The use of force should be limited to strict necessity and proportional to the threat, or that is *“in self-defense or defense of others against the imminent threat of death or serious injury, or to avoid the perpetration of a particularly serious crime involving a serious threat to life.”*²² **We recommend in situations of high risk of retaliation and abuse perpetrated by security personnel, especially in projects with latent social conflict, the IDB establish a robust mechanism to monitor the Borrower, such mechanism should be carried out by independent third parties (convened by the IDB).** Monitoring should include, among other things, evaluating that security personnel are acting and have the knowledge and capabilities to proceed in line with international best practices on the subject.

7) We recommend preventing the hiring as well as the direct or indirect involvement of illicit actors involved in Human Rights abuses.

SPECIFIC RECOMMENDATIONS AND COMMENTS

Requirements

Community Health and Safety

- **Art.5. This point should guarantee job security in all its aspects.** To this end, we recommend explicitly mentioning the inclusion of universal designs, accessibility measures, as well as other necessary adjustments that are related to the health and social security service in all types of projects. Also, the Borrower should be required to promote and implement actions aimed to support persons with disabilities in a transversal manner in general programs.

²¹ This commitment should prohibit threats or attacks against defenders, whistleblowers and those who express their opinion about the project or the client, and should outline the measures for the evaluation, prevention, mitigation and remediation of any retaliation.

²² [OHCHR Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.](#)

Infrastructure and Equipment Design and Safety

- **Art. 6.** Add in the 1st sentence after “GIIP,” “and in the case of dams, the World Commission on Dams’ (WCD) Guidelines for Good Practice [pp. 278-307 of the WCD Report],” since these address risks specific to dams that are not necessarily addressed by GIIP.
 - Incorporate universal design in all health services. Include accessibility measures and reasonable adjustments that respond to all needs of people with physical, sensory, intellectual and/or psychosocial disabilities.

Hazardous Materials Management and Safety

- **Art. 7.** The last paragraph states: “[*The Borrower*] will implement measures to avoid of control community exposure to pesticides, in accordance with the requirements of ESPS3”; whereas, ESPS 3 allows the use of chemical pesticides, the most dangerous type of pesticide to which communities may be exposed. This reflects an inconsistency in IDB policy. **The ESPF, to be aligned with its objectives, should prevent the use of chemical pesticides, promote the use of organic pesticides, at least in a percentage of the total necessary product to be applied by the project.**

Ecosystem Services

- **Art. 8.** Delete the 2nd sentence “*With respect to this ESPS, ecosystem services are limited to provisioning and regulating services as defined in paragraph 2 of ESPS 6*” since loss of supporting and cultural services can also harm human health and security, at least in the medium term. Examples include loss of soil formation that would impact farmers and loss of recreational and spiritual locations that are integral to community health and wellness. In the penultimate sentence, change “*mitigation measures*” to “*the mitigation hierarchy*” to ensure that mitigation itself is not the only risk management technique deployed.

Community Exposure to Disease

This section should be renamed Community Exposure to Health Risks. This would allow IDB to incorporate current IFC requirements of consideration of GBV and other health risks to communities. Proposed new language under Art. 9, below.

- **Art. 9.** Change “*The Borrower will avoid or minimize*” to “*The Borrower will identify and assess.*” Add a sentence following that sentence to read: “*The borrower will develop protection, prevention and mitigation measures proportionate to the identified risks and impacts. The borrower will communicate with project-affected communities and other relevant stakeholders on mitigation measures and plans.*” Also add: “*The Borrower will assess project-related gender-based violence risks of sexual harassment, sexual exploitation and abuse to project affected persons and communities. Where appropriate, the client will adopt specific measures to prevent and address these risks, including the provision of confidential channels for reporting incidents and providing support.*”

Emergency Preparedness and Response

- **Art. 11.** It should be mentioned that this also implies having emergency protocols for persons with disabilities.

Security Personnel

- **Art. 14.** Add: “Particular risks assessed should include risks of torture, sexual exploitation, gender-based violence, human trafficking, forced labor, child labor, and discrimination (paragraphs 35-42 of the ICOC). The borrower will document this process, with special attention to the community members (including human rights defenders) at greatest risk. The borrower will use heightened due diligence to identify and select private security contractors (PSCs) to be used, conduct dialog-based stakeholder engagement to mitigate risks to communities, and align policies of its private security contractor with the International Code of Conduct on Security and Human Rights - particularly with regard to the selection, vetting, training, use-of-force, weapons handling, incident reporting and grievance procedures of its security contractor. Subcontracting by the security provider will be held to the same standards.”
 - **In line with the highest international norms, replace** “The Borrower will not sanction any use of force except when used for preventive and defensive purposes in proportion to the nature and extent of the threat.” with “The Borrower will not sanction any use of force except in self-defense or defense of others against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious crime involving grave threat to life.”
 - **Add as a new paragraph:** “The Borrower will establish and maintain an effective grievance mechanism to allow the affected community and workers to express concerns about the security arrangements and actions of security personnel, and will inform communities and workers of the availability and use of the grievance mechanisms, in accordance with this ESPS 1 and ESPS 10.”
- **Art. 16:** This point specifies that “The Borrower will consider and, *where appropriate*, investigate all allegations of unlawful or abusive acts of security personnel” **The Borrower should consider and investigate all reports of illegal or abusive acts with respect to security personnel whenever a report is made and not when appropriate. That leaves too much room for discretionary behavior on the part of the Borrower.**

ENVIRONMENTAL AND SOCIAL PERFORMANCE STANDARD 5

Land Acquisition and Involuntary Resettlement

GENERAL RECOMMENDATIONS AND COMMENTS

1) ESPS 5 should address and acknowledge the recognition of territorial rights especially when collective rights of indigenous peoples and Afro descendants are affected. ESPS 5 does not satisfactorily address the duty of States to protect land rights²³, that, in the most problematic cases, are still in the process of recognition and/or certification.

The lack of protection of land rights is evidenced in the ESPF glossary, and in the content of ESPS 5, where it is described that: “Resettlement is considered involuntary when the project-affected people **do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic**

²³ Article 14 of ILO Convention 169: (1) The right of ownership and possession of the lands they traditionally occupy must be recognized to the peoples concerned. Furthermore, in appropriate cases, measures should be taken to safeguard the right of the peoples concerned to use lands that are not exclusively occupied by them, but to which they have traditionally had access for their traditional and subsistence activities. In this regard, particular attention should be paid to the situation of nomadic peoples and itinerant farmers. (2) Governments shall take the necessary measures to determine the lands that the peoples concerned traditionally occupy and guarantee the effective protection of their property and possession rights.

displacement” (Art.1). Such description restricts and violates the rights widely disseminated and guaranteed by UNDRIP and ILO Convention 169 that prescribe consent as a fundamental requirement²⁴ for the exceptional cases in which displacement and relocation of indigenous peoples is needed, as in the present case, for project implementation.

- **ESPS 5 restricts the right to consent when it considers that people affected by the project do not have the right to refuse the acquisition of land or the restrictions on the use of land that cause physical or economic displacement.** ESPS 5 proposes scenarios in which the Borrower can exhaust legal means *“to acquire land without the seller’s consent”* (Art. 3), a situation that places marginalized populations, indigenous peoples, or Afro descendants in a critical position. This point should be reviewed to prevent the Borrower from acquiring land without the consent of the seller.

2) ESPS 5 should ensure that documentation of property, provision of compensation, and other livelihood measures should take into account in particular women and other marginalized groups.

- ESS 5 of the World Bank, par. 27, Annex 1 introduces language in this regard that should be taken into account in this ESPS 5 *“Support for alternative livelihoods. For all other categories of economically displaced persons, the resettlement plan describes feasible arrangements for obtaining employment or for establishing a business, including provision of relevant supplemental assistance including skills training, credit, licenses or permits, or specialized equipment. As warranted, livelihood planning provides special assistance to women, minorities or vulnerable groups who may be disadvantaged in securing alternative livelihoods.”*

3) Child rights considerations: ESPS 5 should include clauses regarding special considerations for child-headed households in resettlement and be more inclusive of values beyond land ownership.

4) Gender considerations: The ESPF should strengthen ESPS 5’s section on involuntary resettlement by requiring gender-disaggregated livelihood, land tenure, and compensation assessments for all projects entailing involuntary resettlement. Also, ESPS 5 should require intra-household analysis of the impact of resettlement on livelihoods in all projects containing involuntary resettlement, (instead of saying that the intra-household analysis ‘may be required’ in cases when men’s and women’s livelihoods are affected differently).

5) Acknowledge that resettlement can heighten the risk of GBV for LGBTQI people and create mechanisms to ensure LGBTQI people are not at risk of violence during resettlement and other project activities.

SPECIFIC RECOMMENDATIONS AND COMMENTS

- **Art. 2. This provision should clarify that when the possibility of involuntary displacement is in consideration, an analysis of whether the risks on communities outweigh the gains of the project should be performed.** The analysis should measure and assess benefits and risks, including, but not limited to, economic measurements of public benefits as compared to costs of displacement to

²⁴ Article 10 of the UNDRIP: “Indigenous peoples shall not be forcibly displaced from their lands or territories. No transfer will proceed without the free, prior and informed consent of the indigenous peoples concerned, or without a prior agreement on fair and equitable compensation and, whenever possible, the option of return.”

households and communities (e.g. aggregate economic losses) and costs of mitigating the risks and impacts. This analysis should be the basis on continuity of the project, if the displacement risks outweigh the expected benefits, the project design is not justifiable and should not proceed.

- This item should include measures to ensure that the Borrower assesses whether the impacts and risks of involuntary resettlement measures are reasonable and proportional to the public good to be achieved with the project, in accordance with the Basic Principles and Guidelines of the United Nations on Development in terms of evictions and displacement.

Objectives

- **3rd bullet: Resettlement cost should only be used as the basis for compensation of lost housing when it meets or exceeds the minimum amount necessary to purchase or construct an adequate house.** It is most often poor people who are forced to move in the name of development. For poor households living in sub-standard housing prior to resettlement, replacement value compensation for their dwelling will, at best, return them to the same sub-standard conditions, or if families decide to upgrade, force them into debt. In this sense, **the Borrower should provide enough compensation to ensure that poor and marginalized affected households can improve their living conditions and relocate to adequate housing of at least a basic acceptable standard according to [UN Basic Principles and Guidelines on Development-Based Evictions and Displacement](#).**²⁵
- **4th bullet: This objective should also ensure that these types of operations do not weaken but instead protect and secure a variety of tenure forms and arrangements,** prioritizing the tenure of the most marginalized groups, including women.
- **5th bullet: To improve living conditions, a resettlement process, in addition to improving affected people's housing, access to basic services, income, employment and entrepreneurial opportunities, it should also consider the implementation of project benefit-sharing schemes.** For instance, schemes could be built into project design to ensure that affected households and other local communities receive electricity from a power generation or transmission project through household connections at subsidized rates, or an ongoing revenue stream to resettled households and communities from a project expected to derive revenues for the project owner.
- **Add a 6th objective: ESPS 5 should not create or exacerbate conflict over land and natural resources with and should not exacerbate inequality in access to and control over land, housing, and natural resources.**

Scope of Application

- **Art. 4.** This provision should also consider that a resettlement for project purposes under ESPS 5 may begin before a project is approved for Bank financing and the loan agreement is finalized. **If the resettlement takes place before approval of a loan but after project identification, ESPS 5 should apply retroactively to the resettlement.** The provision should clarify that borrowers should approach resettlement as a standalone project by itself and as an opportunity for promoting sustainable

²⁵ For example, a family whose home prior to resettlement consists of a makeshift shelter that does not provide protection from the elements, privacy, or security should be provided with resources to ensure access to adequate housing of at least minimum standards post-resettlement. Also, in cases in which compensation, rather than replacement housing, is being provided by the Borrower, sufficient funds must be provided for the purchase or construction of adequate housing (adjusted for household size) established on the basis of independent expert advice.

development through improvements to the economic and social well-being of affected people. Resettlement processes should achieve the objective of conceiving and executing resettlement activities as sustainable development programs and providing sufficient investment resources to enable displaced persons to benefit directly from the project in accordance to the [UN Basic Principles and Guidelines on Development-Based Evictions and Displacement and The Right to Housing](#).

- **This point should clarify that the ESPS 5 may also apply even to displacement that took place prior to project identification, if the land acquisition or restriction on land use was directly linked to the eventual project and was done in anticipation of or in preparation for the project.** This does not mean that all prior displacement that may have occurred at the site of a Bank-supported project is covered; the intention is to cover prior displacement that took place reasonably close in time to development of the Bank-financed project²⁶. Determining whether ESPS 5 applies to a specific situation thus calls for case-by-case analysis and discussions between the Borrower and the Bank.
- **Art. 5.**
 - **2nd bullet: In the case of negotiated settlements, Borrowers need to ensure and demonstrate that all members of the households, including women, were fully aware of the entitlements and protections that they were entitled to under ESPS5** prior to entering into the settlement agreement. Informed consent should be sought from women members of the household where the household head is male.
 - **3rd bullet: Prevention or avoidance of adverse social and economic impacts resulting from the following types of land-related transactions and non-land related economic displacement, may also include situations where:**
 - a) legally designated protected areas, forests, biodiversity areas or buffer zones are established in connection with the project;
 - b) relocation of people without formal, traditional, or recognizable usage rights, who are occupying or utilizing land prior to a project-specific cut-off date;
 - c) displacement of people as a result of project impacts that render their land unusable or inaccessible;
 - d) land rights or claims to land or resources relinquished by individuals or communities without full payment of compensation; and
 - e) land acquisition or land use restrictions occurring prior to the project, but which were undertaken or initiated in anticipation of, or in preparation for, the project.
- **Art. 7:** Add “*or ecosystem services*” after “*assets*” in the 1st sentence, since ecosystem services are often spatially limited to a specific plot of land and have value to their users that may be more than the land itself.

²⁶ **Retroactive application of ESPS 5 would likely not be practical or appropriate for activities that preceded Bank engagement by a significant period of time.** For example, a Borrower may have had long-standing but unrealized plans to develop an area, well before discussions with the Bank about the project, and may have engaged in land acquisition sporadically over the span of many years to assemble the needed land. In such cases, it may no longer be possible to identify all affected people, or the extent and value of their rights to the acquired land; land values and livelihoods may have changed significantly; and national legal processes may have long been completed.

Requirements

- **Art. 8:** The phrase “*while balancing environmental, social, and financial costs and benefits,*” affords the Borrower broad discretion depending on Borrower priorities, which may not be consistent with the ESPS. Accordingly it would be better to replace this with “*consistent with fulfillment of other ESPS requirements,*” or if the original phrase is retained, add after “benefits,” “of all those impacted by the project, consistent with fulfillment of other ESPS requirements,” to ensure that the Borrower considers impacts beyond those on itself and does not use the flexibility to ignore other ESPS requirements.

Grievance Mechanism

- **Art. 11.** It should be mentioned that anyone affected by the project and/or interested parties can access MICI at any time, regardless of the project-level complaint mechanism required by the ESPF. In addition, the recommendations established in point 6 of the Executive Summary and in Articles 7.1 and 7.3 of the Policy Statement of this document regarding the MICI and the Grievance Mechanisms should be incorporated.

Resettlement and Livelihood Restoration Planning and Implementation

- **Art. 14.** ESPS 5 should include time-bound monitoring requirements for Resettlement Action or Livelihood Restoration Plans. Experience has shown that, under the current policy with its lack of time-bound monitoring requirements, monitoring activities are sometimes not conducted until years after resettlement has occurred. At a minimum, the policy should state that “Monitoring and evaluating the implementation of a Resettlement Action Plan or Livelihood Restoration Plan must be conducted in a timely manner and with appropriate regularity so as to provide the best opportunity to identify noncompliance while it can still be rectified.”
- **Art. 15.** The language should be strengthened, and it should be made clear when external audits of completion of resettlement plans are required. For example, WB ESS 5, para. 24 establish that for all projects with “*significant involuntary resettlement impacts, the Borrower will commission an external completion audit of the plan when all mitigation measures have been substantially completed. The completion audit will be undertaken by competent resettlement professionals, will assess whether livelihoods and living standards have been improved or at least restored and, as necessary, will propose corrective actions to meet objectives not yet achieved.*”

Displacement

- **Art. 17.** This provision, apart from defining how displaced persons are classified, should guaranteed that the eligibility classification of affected persons gives women and marginalized groups a priority status for eligibility. Marginalized groups including women are most likely to lack formal legal rights to land or any asset and therefore not considered when the project is identifying beneficiaries for compensation or restoration. In addition, it is through the eligibility process and census that the identification of beneficiaries and people in need of assistance happens. So, it is very important that the Borrower puts emphasis on marginalized and disadvantaged groups including women as default when identifying affected persons.
- **Art. 18.** Add “or access” after “use” in the 1st sentence since access rights are sometimes separate from use rights.

Physical Displacement

- **Art. 20 y 22.** The term “*adequate replacement housing*” should be defined in accordance with the **UN Convention on Economic, Social, and Cultural Rights**. Adequate housing is characterized by: legal security of tenure; affordability; habitability; availability of services, materials, facilities, and infrastructure; accessibility; location; and cultural adequacy.
 - **Affordability of any replacement housing is a particularly important consideration.** Consistent with The Right to Housing and other international human rights standards, replacement housing should, at a minimum, be of sufficient quality to protect inhabitants from weather conditions, pollution, and environmental hazards and provide for their physical safety; and housing structures should provide adequate space and privacy, taking into account the household size and the number of women and children.
 - **ESPS 5 should also make reference to ensuring that documentation of ownership, provision of compensation and other livelihood measures should take into account women and marginalized groups.** For example, the World Bank’s ESS 5, (para. 27, annex 1) states that “*as warranted, livelihood planning provides special assistance to women, minorities or vulnerable groups who may be disadvantaged in securing alternative livelihoods.*”
 - **Designs should incorporate the special needs and be accessible for persons with disabilities and the elderly to make housing and other facilities physically accessible.**
 - **Adequate housing options are those that allow access to employment options, markets, and other means of livelihood such as agricultural fields, as well as basic infrastructure and services** (such as, affordable potable water, electricity and energy for household needs and sanitation, health-care, and education, and other livelihood opportunities depending on the local context.)
 - **Resettlement sites and housing should be culturally appropriate to affected persons, and there should be access to appropriate places of worship.**
 - **One of the most important choices made in resettlement decision-making is the site of resettlement.** Most importantly, if the site is far from economic opportunities that match the experience and skill sets of affected people, no level of support and intervention is likely to be effective at restoring their livelihoods. Adequate alternative sites should be identified to allow people to make a choice. The resettlement process and outcomes will be much more successful when in cases in which affected communities are encouraged and supported to identify a resettlement site for themselves, the Borrower facilitates the acquiring of the land in question.
 - **Adequate sites are safe and not subject to periodic flooding or other hazards.** Hazards on or near the site should be identified and mitigated; for example, busy roads or railways may require a fence, a gate, and traffic signals to protect children; a deep pond nearby in which children could drown would require the construction of a fence or other barrier. Human rights documentation covers many of these important requirements including the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement.
 - **The resettlement plan provides for transitional relocation assistance to people who are physically displaced.** Such assistance may include transportation, food, shelter, and social services that are provided to affected people during the relocation to their new site. Additional measures may be necessary for marginalized groups during physical relocation, particularly pregnant women, children, the elderly, and the disabled. Assistance may also include cash

allowances that compensate affected people for the inconvenience associated with resettlement and defray the expenses of relocating to a new location, such as moving and lost workdays.

- **Art. 24. There’s an important distinction between a “forced eviction” and an “eviction”. “Forced evictions” should never be carried out, and the language is confusing on this point.** For clarity and consistency, we recommend using the World Bank ESS5 wording, paragraph 31: *“The Borrower will not resort to forced evictions of affected persons [...] The exercise of eminent domain, compulsory acquisition or similar powers by a Borrower will not be considered to be forced eviction providing it complies with the requirements of national law and the provisions of this ESS, and is conducted in a manner consistent with basic principles of due process (including provision of adequate advance notice, meaningful opportunities to lodge grievances and appeals, and avoidance of the use of unnecessary, disproportionate or excessive force).”* Also, the definition of forced eviction in the footnote should add at the end *“including all applicable procedures and principles in this ESPS.”*

Economic Displacement

- **Art. 25.** With respect to economic displacement, Borrowers should develop a baseline assessment that helps improve, or at least restore, the adversely affected income and living conditions. In addition, for economic displacement impacts, mitigation measures should aim to improve and, at minimum, restore people’s livelihoods and living standards to pre-displacement levels since compensation alone does not prevent impoverishment in such cases.

ENVIRONMENTAL AND SOCIAL PERFORMANCE STANDARD 6

Conservation of biodiversity and sustainable management of living natural resources

GENERAL RECOMMENDATIONS AND COMMENTS

Generally speaking, this ESPS follows closely the World Bank’s ESS 6, and incorporates in its objectives the maintenance of ecosystem services as well as biodiversity itself. However, it has been cut in ways that reduce some valuable protections that are especially important in the LAC context, given the region’s role as a “biodiversity superpower.”

- 1) The ecosystem approach should be properly integrated in ESPS 6. We recommend adding reference to “ecosystem services” along with “biodiversity” in several places** since there are significant ecosystem services provided by many ecosystems in places that may have limited biodiversity value per se, and these services should be protected even where biodiversity values by themselves may not merit the same level of protection.
- 2) A mention of the types of environments (biomes), sensitivities to development impacts, and implications for impact avoidance and mitigation, is needed, either in the ESPS itself or as an annex and/or, for fuller treatment, in a Guidance Note.**
- 3) The concept of Natural Resources should be used comprehensively (inorganic/abiotic, not just living). Abiotic factors are essential for the conservation of ecosystems and their services.**

4) ESPS 6 should also state clearly that the timeframe for avoiding impacts should begin from the start of project identification, even before the ESIA (and Environmental and Social Management System) is undertaken and implemented.

5) ESPS 6 should acknowledge the disproportionate impact of pollution and environmental degradation caused by projects on women, increasing their workload as they tend to be responsible for activities such as collecting water and providing food. Also, it should ensure that women's opinions are included in requirement that project-affected persons determine which ecosystem services be prioritized in conservation activities.

6) The application of the mitigation hierarchy should especially consider the impact generated on marginalized communities.

7) We note that no mention is made in this ESPS of gender or human rights and other forms of social differences shaping people's marginalization, even though this merit special consideration given different relation to and reliance on biodiversity and living natural resources. We suggest below an addition to the 2nd bullet, and this ESPS should be further reviewed to ensure full integration of this objective.

SPECIFIC RECOMMENDATIONS AND COMMENTS

- **Introduction:** This should better articulate the connection between the Policy Statement and ESPS 6. To ensure vertical (across scales) and horizontal (across sectors) integration with national planning processes, add at the end: *“The requirements and their implementation are also intended to be consistent with, and contribute toward fulfillment of, each country’s National Biodiversity Strategy and Action Plan (NBSAP), which represent the country’s commitment to achieve goals under the Convention on Biological Diversity.”*
- **Art. 2. The concept of ecosystem services should be broadened include benefits to communities and society at-large**, since people are organized and receive benefits through multiple channels other than as individuals or businesses. In fact, many ecosystem services are primarily community benefits. The definition *“the benefits that people, including businesses, derive from ecosystems...”* is very limited.

Objectives

- **1st bullet:** Add “terrestrial, freshwater, coastal and marine” before ‘biodiversity’ at the end of the 1st objective.
- **2nd bullet:** The expression *“To maintain the benefits from ecosystem services”* should be changed to *“to maintain the ecosystem functions to ensure the benefits derived from ecosystem services”*. The ESPF should focus on ensuring the durability of the origin of the ecosystem services and not only on maintaining the latter. The source of these ecosystem services is the basis of biodiversity and the ESPF should not focus on the benefits that can be obtained from them, but on their care and conservation. Also, recognizing special and differential needs that may exist, add at the end, *“and maintain or increase access to ecosystem services, so that projects do not negatively impact people on account of gender or marginalized status.”*

- **3rd bullet:** Add “*in a sustainable manner*” to the end of the 3rd objective to underscore that the integration of development priorities must be done sustainably.
- **Add a 4th bullet:** To state “*ESPS 6 recognizes the need to consider the livelihoods of project-affected parties, including Indigenous Peoples, afro descendants, and local communities whose access to, or use of, biodiversity or living natural resources may be affected by a project. The potential, positive role of project-affected parties, including Indigenous Peoples, afro descendants, and other local communities in biodiversity conservation and sustainable management of living natural resources must also be considered throughout the project cycle.*”

Scope of application

- **Art. 4/or 15. It is important that IDB maintain and disclose all approved offsets.** Given the potentially important role of offsets when needed in achieving mitigation goals, and the expectation that they will be used rarely (i.e. only as a last resort after avoidance, minimization, mitigation, and restoration or rehabilitation), the Bank should disclose all approved offset. This includes their location, financing, management, legal status, and the values for which they are being conserved. Accordingly, add at the end, “*Additionally, if biodiversity offsets are applied, their location, financing, management, legal status, and the values for which they are being conserved will be documented and disclosed, including specifically to project-affected parties during their design and throughout their implementation on a regular basis, in no case less than annually.*”

Requirements

- **Art. 6.** In the 1st sentence, change “*and indirect*” to “*cumulative.*” **We also recommend removing the mention of “*identify any significant residual impact*” or define what is significant or identify all impacts** to avoid a subjective assessment by the Borrower. Add to last sentence: “*including cumulative impacts with other projects*”.
- **Art. 7.** In the 1st sentence, add “*habitats*” after “*biodiversity,*” since many impacts on biodiversity are incurred indirectly through habitat modification that may not be perceived by project proponents as affecting biodiversity. Similarly, it is indicated in principle that “*when avoidance of impacts is not possible, measures to minimize impacts and restore biodiversity and ecosystem services should be implemented*”. But then, it is indicated that the Borrowers should adopt an adaptive management practice to implement mitigation measures and management, leaving aside the concept of restoration. It should be worded as follows: “*adopt an adaptive management practice in the implementation of mitigation and restoration measures.*”
- **Art. 10.** Add after “*biodiversity*” “*and the maintenance of ecosystem services*” in the 1st sentence. In the last sentence, add “*project affected people and stakeholder*” after “*external experts,*” since offset measures should be designed in an inclusive and participatory manner.

Modified Habitat

- **Art. 11. The definition of modified habitats should be re-worded to include the integrity and functionality of ecosystems.** We recommend the following wording: “*are areas where human activity has altered its ecosystem functions or integrity, with change to the communities of living beings that lived before the impact occurred serving as an indicator of this.*”

- **Art. 12.** The mitigation hierarchy should be clearly defined to avoid contradictions of the type found at this point: *“The Borrower should minimize impacts on such biodiversity and implement mitigation measures as appropriate”*. This point should clarify that the Borrower should apply the mitigation hierarchy so it should initially avoid, and if it is not possible, minimize the impacts. Also, add after “biodiversity” “and ecosystem service” in the 1st sentence.

Natural Habitat

- **Art.13.** The definition of natural habitats should be adjusted as follows: *“Natural habitats are areas composed of viable assemblages of plant and/or animal species of largely native origin”* for *“are areas that have not been altered by anthropic action, housing biological communities, mostly native”*
- **Art. 14.** This provision should state that the views of stakeholders, including the project-affected people, are required to be incorporated in determination both of viability of alternatives and mitigation measures, with particular attention to impacts on account of gender or marginalized status, and views expressed by members of marginalized groups. As it is written, the provision lacks value, as the decision of whether or not natural habitat should be degraded or cleared is purely a project sponsor’s after consultation and (self-prescribed) mitigation.
 - **2nd bullet:** We suggest re-wording: *“Consultation has established the views of stakeholders, including any marginalized groups or individuals among the project-affected people, that the project benefits outweigh the costs, and that the extent of natural habitat conversion and degradation has been sufficiently avoided, minimized, and mitigated so as to be acceptable.”* IFC PS6 Guidance Note 6, para. 12, which states *inter alia* “Stakeholder engagement and consultation is key to understanding biodiversity-related impacts and identifying appropriate mitigation responses.”
 - **3rd bullet:** Add “avoided, minimized, and” before “mitigated,” so the steps required to be applied from the mitigation hierarchy are clear.
- **Art.15.** This provision should be strengthened. In light of the importance of biodiversity in the LAC region, and its role in sustainable development (e.g. livelihoods for Indigenous Peoples, marginalized groups and local communities, ecotourism, pharmaceutical products, regulating and supporting services), **the message should be that mitigation measures will always be designed to achieve no net loss of biodiversity.** Where no net loss cannot be delivered, justification will be provided and mitigation measures will be designed to come as close as possible to meet the NNL standard, with offsets and compensation to make up the residual difference. Project sponsors must commit to NNL in the project design and implementation if the project is to be financed.

Critical Habitats

- **Art. 16.** When mentioning critical habitats, we recommend adding: *“strategic areas for the production of scientific knowledge”* and *“of cultural importance for the population.”*
- **Art. 17.** This paragraph should clarify that conversion of critical natural habitat is not allowed. Given the unique values in such habitats, such conversion can rarely be offset to truly achieve no net loss, much less net gain. Therefore, avoidance of such habitat should be always prioritized.

- **Add a bullet:** “*All due process required under international conventions or obligations or national law that is a prerequisite to a country granting approval for project activities in or adjacent to a critical habitat has been complied with.*”
- **2nd bullet:** change “and” to “nor.”
- **Footnote 116:** The current wording on timeframe gives carte blanche to the project developer to determine the duration of conservation efforts for critically endangered and endangered species. This invite abuse to the point of assuring species’ extinction. **Thus this should not be approved unless re-worded to function as an effective safeguard, such as by adding at the end,** “*but shall start with the presumption that no net reduction shall be sustained for the life and decommissioning period of the works or activities supported by the project, and in no case shall be less than the length of the project itself and of directly-funded project impacts.*”

Legally Protected and Internationally Recognized Areas

- **Art.19, footnote 118.** Add to the concept of “*legally protected area*” the concept of “*other effective conservation measures based on areas*” as provided by IUCN. Recognizing and reporting other effective area-based conservation measures [World Commission on Protected Areas Task Force on OECMs](#).

Invasive Alien Species

- **Art. 21.** Given the increasing risk to natural habitats that invasive alien species pose, this provision should clarify that the observed regulatory framework should be based on the most protective/stringent framework, whether that be national regulations or international regulations under which a party has made a commitment. Also add to the end of paragraph 21 “where the borrower unintentionally introduces an alien species, they will be responsible for the control and eradication of that species”.

Ecosystem services management

- **Art. 23.** This provision should clarify that the “priority ecosystem services” are those that are a priority for the populations that use them and the identification of these must be done through a participatory process with the project-affected people and other stakeholders. Mitigation should also be planned in a participatory manner, so that communities weigh costs, impacts and alternatives, in conjunction with designers and decision makers.
 - It should be added that the determination of priority ecosystem services should not be restricted only to people affected by the impacts of the project, but also participation should be extended to other stakeholders in general.

Sustainable Management of Living Natural Resources

- **Art. 25.** Remove ‘where feasible’ from the beginning of the 2nd sentence. This introduces unnecessary ambiguity. Suggest also removing “unforested,” replace with “...on heavily degraded land or land already converted” because there is threat of conversion of grasslands in several LAC countries along with deforestation in the Amazon region. Add “as well as to existing international codes of conducts to the specific activity”, after ... “through the application of Industry-specific good management practices and available technologies. Also, the reference to paragraphs should be from para. 26 through 28.

- **Art. 26.** This provision should clarify that production forestry in primary/intact/old-growth forests should be strictly avoided. Also, it should add as a separate paragraph: “When the Borrower invests in production forestry in natural forests, these forests will be managed sustainably, consistent with this ESS, and shall include:
 - Conservation of ecological functions, including biodiversity
 - Recognition of and respect for any customary or statutory land tenure, access use and management rights, as well as worker rights and rights of Indigenous Peoples
 - Effective forest management planning based on the principles and practices of sustainable forest management
 - Minimization of adverse impacts from forest use
 - Active monitoring and assessment of relevant forest management areas (using both remote sensing and on-the-ground monitoring); and
 - The retention and maintenance of critical forest areas, critical ecosystem services, and other critical natural habitats affected by the operation and ensuring wider ecological integrity, functionality and connectivity.”

- **Art. 27.** At the end, replace “*over an appropriate period of time*” with “*as early as possible, but in no case later than the final disbursement,*” since “appropriate period of time” is too open-ended to be enforceable, and for the standard to be meaningful, the requirement for certification should have some enforcement mechanism related to disbursement. To further strengthen this provision, additional text could be added at the end: “*If such actions cease following disbursement, the Bank may undertake enforcement, including but not limited to acceleration of the loan.*”

- **Art. 28.** Add as a 3rd bullet, “Document, report, and consult with affected stakeholders regularly (at least annually) on its fulfillment of these requirements.”

Primary Suppliers

- **Art. 29. We recommend strengthening language by taking into account the following recommendations**
 - In the 2nd sentence, in point (iii), add “credibly, independently” before “certified” to ensure that the certification is meaningful.
 - In point (iv), replace “over time” with “as early as possible, but in no case later than the final disbursement,” since “over time” is too open-ended to be enforceable or even meaningful.
 - At the end of this sentence (before the last sentence), add “Where not possible, the Borrower will work with suppliers according to the mitigation hierarchy to ensure that such adverse impacts are minimized, mitigated, and where residual impacts remain, compensated for or offset.” This is needed to ensure that Borrowers do what they can to reduce adverse impacts, even when suppliers claim that they can’t avoid adverse impacts.

ENVIRONMENTAL AND SOCIAL PERFORMANCE STANDARD 7

Indigenous Peoples

GENERAL RECOMMENDATIONS AND COMMENTS

1) Indigenous collective land and land rights: ESPS 7 should guarantee the right of indigenous peoples based on the formal recognition of their territorial rights through adequate domain mechanisms for the areas under their customary use and exploitation. This process of formal recognition of indigenous peoples' territories is a process still pending in many Latin American countries that, due to the overlap with other types of rights granted to third parties by the State, such as concessions on resources, tenders for infrastructure projects and extractive activities, individual domain rights, among others, continues to be a great outstanding debt in the region. In this sense, the private right to land should not take precedence over the collective territorial rights of indigenous peoples.

2) Indigenous identity: The definition of indigenous identity in ESPS 7 should refer to the concepts and norms of international law and international sources of human rights, which have broad consensus on this issue. As it is, ESPS 7 affirms that “*there is no universally accepted definition of ‘Indigenous Peoples’*” and, at the same time, reduces the conceptual scope by confusing it with other concepts such as “*residents of indigenous counties (comarcas) or reserves (resguardos)*” (Art.4).

- In defining indigenous identity, ESPS 7 identifies characteristics that are not aligned with international standards. For example, it establishes that to be considered as “indigenous peoples”, they must possess some of the following characteristics to various degrees: “*a) Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; b) collective attachment to geographically demarcated habitats or ancestral territories*”. The first point establishes that the identification of indigenous peoples can be conditioned to the recognition of their identity by others; this contradicts what is established in ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples -which defines indigenous identity based on subjective elements (self-identification) and objectives (own cultural elements) -. The second point conditions the identity of indigenous peoples to “attachment to geographically demarcated habitats”, ignoring a reality in Latin America regarding the lack of titling of indigenous territories. If indigenous territories are not formally recognized, they cannot be demarcated.
- Given the special care that States should have for the protection of indigenous identity, ESPS 7 contributes very little and, rather, proposes a patrimonial approach to this identity. ESPS 7 considers that in the event that it is necessary to use natural resources that support the identity and culture of the Indigenous People, the Borrower should ensure that “*a fair and equitable sharing of benefits associated with project usage of the resources*” (Art.14), putting at risk the protection and preservation of these assets, even though they are an integral part of the collective identity of indigenous peoples.
- The ESPF does not recognize the existence of indigenous rights systems the way that the current Operational Policy for Indigenous Peoples (2006) does. The ESPS 7 does not expressly acknowledge the internal rules of indigenous peoples, thus conditioning and limiting the exercise of fundamental rights related to self-determination and application of their own rules according to their cultural characteristics.

3) Nomadic Indigenous Peoples, living in voluntary isolation and/or Initial Contact: ESPS 7 should address and incorporate provisions related to seasonal migratory indigenous peoples between various areas, transboundary indigenous peoples, and indigenous peoples living in voluntary isolation or in initial contact situation. These three categories identify the different activities and cultural manifestations of indigenous peoples in Latin America and are not taken into account in ESPS 7.

4) Free, prior, and informed consent (FPIC): The ESPF does not expressly incorporate the right of consultation aimed at obtaining free, prior, and informed consent, as it is in international standards of rights related to indigenous peoples. Therefore, we recommend deleting Article 13 (which establishes that consent may be understood as one that is not unanimously granted and can be achieved even if there are people or groups within the community that explicitly disagree) since it is not respectful to the different ways of organizing and decision-making of indigenous peoples²⁷. **We propose incorporating the following definition of FPIC into ESPS 7:** *“The Borrower should, as a result of a consultation process, obtain FPIC from indigenous peoples when a) the project impacts land, territories, and property resources traditional or under the customary use of indigenous peoples or involves the use of natural resources located on such lands; b) when the displacement or resettlement of indigenous peoples out of their lands and the use of natural resources subject to their traditional property regime or under customary use is inevitable; c) when the project can have a significant impact on a critical cultural heritage of indigenous peoples. The Bank should not support projects under these three circumstances that do not have the FPIC of the corresponding indigenous peoples. The refusal and/or silence of indigenous peoples to participate in a consultation process aimed at obtaining FPIC should not be understood as support for the consulted project. In this effort, we propose that the bank consider the application of the Consultation Protocols, as an initiative of indigenous peoples to exercise the right of Prior Consultation and Consent according to their own customs, principles and cultural characteristics. All this, in exercise of their rights of self-determination and self-government.”*²⁸

5) Gender and Child Rights considerations: ESPS 7 should ensure that Indigenous women’s and LGBTQI people participate in project consultations and can safely consent to projects free from coercion by providing women and LGBTQI -only spaces to obtain consent. ESPS 7 should mention accommodations for indigenous children (for example, access to mother-tongue instruction in education projects).

SPECIFIC COMMENTS AND RECOMMENDATIONS

- **Art. 1:** Establishes that *“In many cases, their economic, social, and legal status limits their capacity to defend their rights to, and interests in, lands and natural and cultural resources, and may restrict their ability to participate in and benefit”*. This approach does not recognize that development projects have generated and can generate and/or exacerbate new conflicts and exclusion of ethnic populations. In this regard, **it is necessary to recognize the right of communities to reject development projects, for example, in the cases of voluntary isolated or uncontacted peoples, and in the exercise of the right to FPIC.**

²⁷ To the contrary, it can be an incentive to promote the division and weakening of the indigenous peoples’ institutionality.

²⁸ This document adheres, supports, and recommends the definition of FPIC developed and presented by Asociación Interétnica de Desarrollo de la Selva Peruana (AIDSESP) and the Indian Law Resource Center (ILRC) in the Lima consultation, March, 2020. It is expressly recommended that this definition be adopted by the ESPF.

- It should be explicitly included that ESPS 7 protects the life and culture of ethnic populations, recognizing the particular impacts that development processes may have on them.
- **Objectives:** This should include respect for the free development, self-determination, and self-government of ethnic peoples, which is not clearly stated in any of the points of the objective of ESPS 7.
- **Art. 4:** Apply general recommendation N2 of this document regarding indigenous identity.

Scope of Application

We suggest adding the following point within the scope of the policy to make it clear that both the Bank and the Borrower should respect and guarantee international standards and guidelines on the rights of indigenous peoples based primarily, but not exclusively on the United Nations Declaration on the Rights of Indigenous Peoples, ILO Convention 169 and international jurisprudence on the human rights of indigenous peoples.

- **Art. 5. bullet 2.** Add also “*collective attachment to areas of seasonal use or occupation.*” It is important to clarify that “collective attachment” means that for generations there has been a physical and cultural presence in and economic ties to land and territories traditionally owned, or customarily used or occupied, by the group concerned, including areas that hold special significance for it, such as sacred sites. When determining collective attachment, consideration is given to the fact that such groups live under many different circumstances with varying levels of attachment to the areas in which they live. “Collective attachment” signifies that the groups generally consider their lands and resources to be collective assets, and that they see their culture and identity as a function of the group rather than as individuals. It also signifies that these groups’ economies, modes of production, social organization and cultural and spiritual circumstances are generally linked to particular territories and natural resources. The concept of collective attachment refers to geographically distinct habitats or ancestral territories, or areas of seasonal use or occupation and the natural resources therein, and therefore, groups with collective attachment may include: a) Groups resident upon the lands affected by the project. This could also include those who are nomadic or who seasonally migrate, and whose attachment to the area affected by the project may be periodic or seasonal in nature; b) Groups that do not live on the lands affected by the project, but who retain ties to those lands through traditional ownership and/or customary usage, including seasonal or cyclical use; c) Groups that have lost collective attachment to lands and territories affected by the project, occurring within the concerned group members’ lifetime, because of forced severance, conflict, involuntary resettlement programs by governments, dispossession from their lands, natural calamities or incorporation into an urban area; d) Groups that reside in mixed settlements in the area affected by the project, such that they only form one part of the broader community; or e) Groups with collective attachment to project-affected ancestral lands located in urban areas. **There is no hierarchy to the four characteristics and that all of them need to be present in varying degrees.**

Indigenous Peoples in Voluntary Isolation

- **Art. 10.** This point should include indigenous peoples in initial contact who may also be vulnerable to the impacts generated by IDB-financed projects. In this case, it is necessary to include in the ESPF a specific plan to proceed with cases that identify that a project may generate

harms and impacts to indigenous populations in initial contact. This point mentions that for indigenous peoples in voluntary isolation, it is established that the projects will respect the rights of peoples living in voluntary isolation, for which the borrower will collaborate with the government agencies responsible for regulating the territories of these indigenous peoples in voluntary isolation. This is positive, but peoples in initial contact should also be considered.

- It is established that in situations of indigenous peoples in voluntary isolation, it is necessary to “(i) *safeguard the collective and individual physical, territorial, and cultural integrity of these peoples;* (ii) *recognize, respect and protect their lands and territories, environment, health and culture;* and (iii) **avoid contact with them as a direct or indirect consequence of the project.**” We recommend aligning this point with international norms determining the obligations of States to guarantee the integrity and intangibility of territories inhabited by Indigenous Peoples living in Voluntary Isolation or Initial Contact. The expression "avoid contact" is problematic in this regard.

Participation and Consent

- **Art. 13.** We recommend deleting the entire paragraph, since the goal of the ESPS is not to establish universally accepted standards, but ones that apply to IDB and its Borrowers. **The definition we recommend adopting in the ESPF regarding when and how to apply FPIC was specified in general point 4 of this document.**²⁹ An application of FPIC that is in line with international law and the highest standards for the protection of rights.

Circumstances requiring Free, Prior and Informed Consent

- **Art. 14.** Add to the end, “*and every effort should be made to do so. Where these ties exist, the rights and access of these Indigenous Peoples must be respected.*”
- **Art. 15.** This point should be clarified that the series of measures listed are preliminary steps and can be preparatory to consultation to obtain FPIC, but that, under no circumstances, comply with those requirements needed to obtain FPIC from indigenous peoples. This point describes a series of measures that seem to give evidence that a FPIC process has been followed.
- **Art. 16.** We recommend adjusting the second part of this point in order to strengthen the language of this provision, taking into account the following recommendation: “*If resettlement is unavoidable, the Bank will not proceed with the project unless: consultation, and free, prior, and informed consent has been obtained as described above, and the borrower will not resort to forced eviction. If FPIC has been obtained as described above and there is resettlement of indigenous populations, the requirements of ESPS 5 will be applied through consultation and meaningful participation with affected indigenous communities.*”
- **Art. 17.** In the 2nd sentence, before “*obtain,*” add “*will cancel the project unless it can*” since the project should not proceed if FPIC is not obtained.

²⁹ This definition was proposed by Asociación Interétnica de Desarrollo de la Selva Peruana (AIDSESP) and the Indian Law Resource Center (ILRC) in the Lima consultation, March 2020. This document supports, endorses, and shares the same definition and recommends that it be incorporated into ESPS 7 of this ESPF.

- **Art. 18.** In the 1st sentence, after “commercial,” add “or public,” since the same requirements should apply to governmental use of such heritage. At the end of point (ii), add “and proposed uses of their knowledge,” since this may affect the decision process and terms of consent of the affected communities.

Migration and Development Benefits

- **Art. 19.** Add at the beginning, “Where [potentially affected communities agree in principle that a proposed project affecting them or their territories or resources may proceed,” since it should not be assumed that projects generating adverse impacts on Indigenous Peoples will proceed.
- **Art. 20.** Add after “account of” in the 1st sentence, “and be aligned with” since mere consideration or accounting is insufficient to ensure avoidance of potential harms.
- **Art. 21.** In the 1st sentence, add “expressed needs and values, and” before vulnerability since those should also be key factors in determining community benefits. In the 2nd sentence, add “and support” after “address,” since the goal is to positively impact, not merely “address” goals and preferences. Also add “and sustainable” after “appropriate” to assure that such support is not merely a short-term fix but extends beyond the life of the project.

Government Coordination of Indigenous Peoples issues

- **Art. 22:** Add “and indigenous community representatives” after “agencies” since they should be part of such collaboration.
- **Art. 23:** In the 1st sentence, add “Indigenous communities and their representatives” before “responsible” since IPs’ documents and plans should also be considered in the same context.

ENVIROMENTAL AND SOCIAL PERFORMANCE STANDARD 9

Gender Equality

GENERAL COMMENTS AND RECOMMENDATIONS

- 1) Standard 9 tries to define gender equity and gender equality but the ESPS uses them interchangeably.**
- 2) Projects need differentiated measures for preventing and responding to cases of child SEA vs GBV of adults.** ESPS 9 has no mention of child sexual exploitation and abuse.
- 3) Projects should be required to actively prevent gendered harm and promote and work towards greater gender equity throughout all projects.** ESPS 9 mentions a gender-equal rights perspective but does not follow-through. ESPS 9 acknowledges that “*gender equality has intrinsic value and is not only a matter of justice and human rights, but also a driver of sustainable development*”, and focuses objectives on preventing harm to women and LGBTQI people, but only promotes gender-equal benefits in the context of Gender Assessments (GAs – see below).

4) The GA should be a requirement for all IDB projects and loans without exception. Also, it should expand the GA priorities to include the identification of mechanisms to promote gender equity, such as quotas for hiring of women and sexual minorities for project activities and other leadership opportunities.

- In the ESPF priorities outside projects having gender assessment (GAs) are focused on prevention of harm without also actively promoting benefits for all genders, for example by prioritizing gender equality across projects through preventing and addressing GBV and women's ability to fully participate in project consultations and resettlement decisions.

5) All IDB projects and loans without exceptions should mandate GAs. ESPS 9's mandate only applies to some types of projects. For example, mandates inclusion of GA in cases of resettlement and GBV and ensure gender-inclusive consultations, and "*for operations with potential gender-based risks and impacts that may disproportionately affect people by their gender,*" without specifying how projects should determine whether they have potential gender-based risks.

6) Should establish mechanisms to address all gender issues and engender all operations. ESPS 9 establishes mechanisms to address some but not all gender issues and engender some but not all operations. For example, it only includes mandatory requirements for gender-sensitivity regarding resettlement, GBV, and consultations.

7) Mandate gender-equity training for all project staff, create and mandate hiring quotas for women and LGBTQI workers, and require reporting on gender composition of staffing. ESPS 9 only provides voluntary training/workshops or none at all and includes no mention of gender quotas or mandatory gender trainings for project staff.

8) Require funding for project mechanisms intended to promote gender equity. ESPS 9 fails to specify how any gender-equity related activities will be funded.

9) Mandate the collection of baseline and follow-up gender-disaggregated data for all project indicators and ensure that information is collected on the wellbeing of LGBTQI people throughout the project cycle. ESPS 9 requires collecting minimal requirements for M&E baseline and subsequent sex-disaggregated data. It also includes extensive identification and analysis of "existing gender inequalities" in GA. However, this is only required for some projects.

10) The ESPF should require more detailed collection of baseline and follow-up data on the wellbeing of LGBTQI people and strengthen requirements to include LGBTQI people in consultations as this group, like women, is often disregarded and excluded in consultation processes. LGBTQI people are provided protections from potential project harm and receive project benefits. For example, a) it mentions LGBTQI people frequently and uses gender-inclusive language throughout the ESPF, b) calls for representative participation of LGBTQI people in consultation processes and requires projects to prevent discrimination against sexual minorities in hiring practices and workplaces, and c) mandates that projects examine how project activities could harm sexual minorities in the GA, which is only required for some projects.

11) Require project funding for GBV prevention activities and grievance mechanisms. ESPS 9 considers GBV risk in project design and supports prevention and response mechanisms. Some examples are: a) Includes a section on anti-GBV project mechanisms which, unlike the GA, is mandatory for all projects; b) Requires all projects to “*identify and assess the risk of the project contributing to exacerbating GBV in the community,*” “*respond to any indication of an incident as well as a verified GBV incident,*” and “*ensure the availability of effective grievance mechanisms that minimize the reporting burden on victims.*” However, does not explicitly note whether GBV prevention and response mechanisms apply only to cisgender women, and fails to include the particular GBV risks and barriers to reporting that LGBTQI people face.

13) ESPS 9 should attempt to overcome the gender burden of unpaid care work by investing in paying for unpaid care economy activities and preventing the privatization of basic services. ESPS 9 addresses the uneven gender distribution of unpaid domestic labor in many forms and ways³⁰. However, it does not attempt to overcome this gender inequity by investing in paying for unpaid care economy activities and does not acknowledge how privatization of basic services can increase women’s unpaid domestic burden nor propose measures to prevent such privatization.

SPECIFIC COMMENTS AND RECOMMENDATIONS

Introduction

- **Art. 7:** This provision should be strengthened to also include **Child Sexual Exploitation and Abuse (CSEA)**. CSEA differs from GBV significantly, in its risk factors, prevention, reporting, response, and remediation. Any project with a risk of GBV must also assess the specific risk of CSEA and institute measures to prevent and respond accordingly by instituting differentiated measures for CSEA and adult GBV. Also, this point should be edited to include harassment in “*including sexual exploitation, abuse and harassment.*”
- **Objectives:** Add another bullet in order to provide absolute clarity that one objective of ESPS 9 is to promote gender equality as end in itself in relation to the project and to ensure the successful effectiveness and environmental and social sustainability of the project.

Scope of Application

- **Art. 8:** This provision should clearly state that **The Borrower, when considering the requirements of ESPS1 to ESPS10 must mainstream a gender-based approach** in the identification of risks and impacts as well as during the development of mitigation action plans and incorporate all relevant requirements of this ESPS.
- **Art. 9.** The requirement when national law is inconsistent with ESPS should be stronger. For example, the WB ESF, ESS 2, para. 13, states that where national law is inconsistent with the ESF, “*the project will seek to carry out project activities in a manner that is consistent with the requirements of*

³⁰ For example by: a) acknowledging the unequal gender division of unpaid care work and labor more generally; b) noting that consultations should provide childcare and occur at times that accommodate domestic labor, and c) requiring an analysis of intra-household labor distribution in cases of resettlement to prevent increasing women’s share of domestic work.

this paragraph to the extent possible.” Also, we suggest editing the last sentence so that it reads as it follows: “consistent with the intent of this ESPS to promote gender equality without contravening.”

Requirements

Identification and assessment of gender-based risks and impacts

- **This section should include disability across the board**
 - Accessibility measures should be considered in programs and/or actions aimed at gender equality.
 - Consideration should be given to the vulnerability of women with disabilities to gender-based violence.

- **This section should include Child Rights considerations: During the design phase, the unique risk of child SEA will be assessed in tandem with the assessment of GBV risk.** This would include an assessment of specific risks to young children, boys and girls. Risk factors that should be examined include but are not limited to; worker influx, shifts in existing power dynamics, high prevalence of GBV in the project area, socio-economic conditions, presence of child focused NGOs, legal framework around child marriage and child SEA, and the prevalence/cultural acceptability of child marriage and SEA.

- **Art.10. A GA should be required to be conducted for all projects.**
 - It is not clear in this provision how will IDB determine whether a project will have gender risks/disproportionate impacts, unless IDB does a GA of a project. This is also particularly important in light of OVE’s findings on gender: *“Fewer than 10% of reviewed operations (including legacy and more recently approved projects) properly analyzed gender risks and impacts [...] Fewer than half of all projects that triggered the gender policy undertook any gender analysis, and only about one-third of such operations contained gender-specific actions.”*
 - Also, we recommend editing the first sentence so that it reads as follows: *"may disproportionately affect people by their gender, as well as affect gender roles and relationships, the Borrower will [...]" It is important to account for changes in gender roles and relations, which will affect household and community dynamics, socially, economically and in the public sphere.*
 - Also, before “disproportionate”, add “differential” (it appears two times).

- **Art. 11. Gender gaps in employment and employment opportunity should explicitly address wages and occupational sex segregation.** This paragraph should also add gender inequalities in access to and use of transportation systems. Also, in the last sentence, we suggest the following edit: *"and the interests and priorities of all genders,"* rather than *women's and men's.*

- **Art.12: In the definition of GA, we recommend adding** *“A GA also analyzes the potential impacts of the project on gender roles and relationships from a social, economic and public engagement perspective at the household and community levels in project affected areas.”*

- **2nd Bullet point:** Should include an explicit commitment to promote women’s access to land titles in resettlement. Also, at the end it should add “*and recognize women's rights to compensation for any loss of assets and livelihoods.*”
 - **5th Bullet point:** Should incorporate the adoption of workplace anti-harassment policies.
 - The last bullet point on resettlement should be more specific, and reference security inside resettlement sites (adequate lighting), as well as inside any multi-family buildings that are being constructed inside resettlement sites.
 - There should also be a bullet point here that assesses potential barriers to equal access to project benefits, beyond economic opportunities—such as improved roads and transportation systems; improved health and education systems; etc.
- **Art. 13.** This provision should strengthen the language to ensure what is required in a GA. We recommend using "should describe" instead of “considers”. "Considers" gives the impression that the intersectional analysis is not required.

Avoidance, mitigation and/or remediation of impacts and risks

- **This section should include Child Rights considerations as follows:** The Borrower should adequately train project staff and conduct consultations with local child rights CSOs and relevant community leaders, in addition to community sensitization around project specific CSEA risk. Clauses on child protection policies should be mandated as part of any procurement arrangement, contract, or code of conduct. High risk projects should be monitored by a third-party GBV services provider with experience in responding to CSEA. Ideally, the service provider is an organization with strong ties to the local community in order to build on existing social relationships. Also, the Borrower shall institute child-sensitive project-level Grievance Mechanisms that allow children to come forward without fear of retaliation. To make children comfortable with coming forward, both male and female GM liaisons should be available so that children can disclose to a person of the sex they feel most comfortable with. These liaisons should be located in spaces accessible to children and should be accessible to all children. Children should be believed, as false reporting of CSEA is practically nonexistent, and their confidentiality protected. Throughout the process, the first and foremost consideration should be the best interest of the child, as defined by the [UN Convention on the Rights of the Child article 3, paragraph 1](#).
- **Art. 15.** This paragraph should reference specific measures to be taken, including the adoption of workplace non-discrimination and anti-harassment policies.
- **Art.16.** This section should be more specific. For example, WB ESS 5 recognizes that “*Documentation of ownership or occupancy and compensation payments should be issued in the names of both spouses or single heads of households as relevant, and other resettlement assistance, such as skills training, access to credit, and job opportunities, should be equally available to women and adapted to their needs. Where national law and tenure systems do not recognize the rights of women to hold or contract in property, measures should be considered to provide women as much protection as possible with the objective to achieve equity with men.*” It is important that the Borrower pays special attention to ensure that these type of operations: a) do not weaken but instead protect and secure a variety of tenure forms and arrangements, prioritizing the tenure of the most marginalized groups,

including women; b) do not create or exacerbate conflict over land and natural resources with; and c) do not exacerbate inequality in access to and control over land, housing and natural resources for women.

- In point (iii) edit “*to conduct work*” for “*women's ability to conduct paid work and on the ability of women and girls to conduct unpaid care work.*” Recall that in rural settings, both women and girls are likely to be the ones collecting firewood, securing water for the household, etc.
 - Bullet 4: add “*equitability*” after “*equality.*”
- **Art.17. Specific reference should be made in this section to SH and GBV in project-affected community, as well as to SH and GBV employed to work on project activities.**
 - Bullet 2 should also reference workplace anti-harassment policies.
 - Bullet 4: add “widely accessible” after “effective.”
 - **Art.18.** Consultations should also be conducted with national and local-level NGOs with expertise in gender and SOGI issues.

ENVIRONMENTAL AND SOCIAL PERFORMANCE STANDARD 10

Stakeholder Engagement and Information Disclosure

GENERAL RECOMMENDATIONS AND COMMENTS

1) ESPS 10 should apply to all Bank-financed projects, regardless of the identified environmental and social risks and impacts, as set out in ESS 10 of the World Bank’s ESF. The content and provisions of the ESPS 10 of the ESPF are virtually identical to the ESS 10 of the World Bank’s ESF, but unlike that one, the ESPF does not require the ESPS 10 to be applied to all projects.

2) In various sections of the ESPS the principle of proportionality is applied, reflected in expressions such as “the extent and degree of engagement required by the consultation process should be commensurate with the project’s risks and impacts”. However, **it should be clarified how and in what way the process to commensurate the risks and impacts of the project and the degree and scope of required participation will be determined.** Even more so, considering that the ESPF will establish a flexible risk measurement that can vary and be adjusted throughout the project.

3) There should be a clear and explicit link and alignment between ESPS 10 and the Access to Information Policy: The ESPF does not mention the Access to Information Policy. There should be an explicit link between the two policies, and this should be made explicit in the ESPF.

4) Specific reference to the MICI should be made in the Grievance Mechanism section. In a similar manner of how the ESPF requires Borrowers to notify project-affected communities of grievance mechanisms, the ESPF should also require Borrowers to inform project-affected people of the MICI. All the recommendations made in point 6 of the executive summary and in points 7.1 and 7.3 of this document should be taken into account.

5) The ESPF should give details, as well as clarify and establish measurable deadlines and expectations in the provisions of ESPS 10 that are ambiguous and imprecise and that may give rise to discretion and non-compliance. Many provisions of ESPS 10 are stated in an ambiguous and imprecise

manner, which can generate problems to ensure their correct interpretation and implementation. Some examples are the following:

- *Art. 6: “commencing such engagement as early as possible in the project process and in a timeframe that enables meaningful consultations with stakeholders, whenever possible.”*
- *Art. 12: “Depending on the potential significance of environmental and social risks and impacts, the Borrower may be required to retain third party specialists”*
- *Art. 13: “a draft will be disclosed as early as possible. If significant changes are made to the SEP, the Borrower will disclose the updated SEP in a timely manner”*
- *Art. 16: “Where applicable, the SEP will include differentiated measures to allow the effective participation of those identified as disadvantaged or vulnerable. Dedicated approaches and an increased level of resources may be needed.”*
- *Art. 17: “the Borrower will make reasonable efforts to verify that such persons do, in fact, represent the views of such individuals and communities.”*
- *Art.19: “The Borrower will provide stakeholders with access to information, as early as possible in the project process, and in a timeframe that enables meaningful consultations”*

6) Explicit references should be included to clarify the role of supervision and follow-up that the IDB should perform to ensure effective compliance by the Borrower of the specific provisions established in ESPS 10, in particular, because supervision and follow-up, are both weaknesses of the IDB as well as of Borrower countries. For example, when comparing with ESS 10 of the World Bank's ESF, it specifies several times when the Bank has a role of accompaniment and constant follow-up with the Borrower in the process of identifying stakeholders and establishing the Stakeholder Engagement Plan (SEP). For example, where it says, “*The Borrower will develop and implement a Stakeholder Engagement Plan*” it should add “*in consultation with the Bank*” (following the WB ESF).

7) ESPS 10 mentions including minors in stakeholder engagement but gives no clear details on what that would look like. Inclusion of children and child rights CSOs should be a part of any project that either involves children (education) or may have an adverse impact on them (infrastructure).

8) ESPS 10 should expand protections outlined that ensure women’s participation in consultations and access to project information to include LGBTQI people as this population faces similar barriers (i.e. lack of education, fear/inability to participate in group discussions due to lack of respect and safety concerns).

SPECIFIC RECOMMENDATIONS AND COMMENTS

Introduction

- **Art. 1:** We recommend strengthening the language to establish that stakeholder participation from project design and information disclosure are the minimum basis upon which to guarantee the environmental and social sustainability of the project, and ensure that projects are aligned with the development priorities of communities, allowing local knowledge and experience to inform project design, ESIA's, mitigation plans, among others.
 - The Bank's responsibility to promote this commitment should be explicitly stated, not simply to recognize its importance.

- It should be stated that simply mentioning the recognition of “*the importance of open and transparent interaction*” does not imply any commitment. The concept of interaction is vague. Even the reference to “disclosure of information” is not aligned with the best international standards in this area. It should start from an explicit reference to the right of access to information and participation.
- **Art. 2:** We recommend modifying "*at the beginning of the process*" for "*from the project design*". In the phrase "*stakeholder engagement is most effective when starting early in the project development process,*" the phrase "*early in the process*" should be clearly defined as "*from project design.*" In addition, project design should be based on community priorities, facilitated through a strong stakeholder engagement process.
- **Art. 3:** This provision should add the following: “*ESPS10 sets the expectations for how Borrowers should interact, and respect affected parties and other interested parties be they individuals or organizations throughout the various stages of the project that may have views on the project or project components, be they positive or negative. As a Bank-financed project, it is expected that any individual or organization that criticizes, speaks up against, or seeks/supports redress for grievances against the project or project components at any stage of the project, will have their views and concerns listened to and responded to by the Borrower, and will not face harm, retaliation, or repercussions by the Borrower or other project proponents directly or indirectly.*”

Objectives

- **Bullet 1:** Clarify the meaning of and what is involved in “*Establishing [...] a constructive relationship [with stakeholders].*” It is important that expectations are clear for the correct implementation of the participation processes.
- **Bullet 4:** The point that refers to the disclosure of information should directly refer to the Access to Information Policy, the deadlines for the availability and disclosure of information should be specified and clearly established in ESPS 10.
- **Bullet 5:** **ESPS 10 should add specific references to the accessibility measures/formats that the Borrower should use based on various needs.** To effectively meet this objective, the disclosure of information, consultation, attention to and response to complaints and the presentation of information to stakeholders **should be designed and developed in formats accessible to all types of disability, whether physical (infrastructure), sensory (visual, auditory -available formats), intellectual (simple language) and psychosocial. That should be clear and well specified in ESPS 10.**

Requirements

- **Art. 6:** Text such as "as soon as possible" should be clarified or eliminated. Meaningful consultations should always be required, not just "whenever possible."
- **Art. 7:** The recognition that consultations will be guaranteed to be free from manipulation, interference, coercion, discrimination and intimidation is welcome. However, it is not clear how the Bank will ensure that this is indeed the case.

- **Art. 9:** A clear schedule of when the records documenting stakeholder participation will be released and made public should be established.

Stakeholder Identification and Analysis

- **The deadlines for disclosure of documents, such as the SEP, should not be discretionary.** Use of language such as "*as soon as possible*" or "*in a timely manner*" should be eliminated. We recommend that the SEP be available and open to the public at least 120 days prior to project approval, and any comments received should be effectively incorporated.
- **Art. 10:** It should be clarified at what stage of the project cycle "*The Borrower will identify and document the different stakeholders, both the people affected by the project and other parties*", given that the stakeholders are dynamic and are changing over time.
- **Art. 12:** This provision is key to avoid potential conflict of interest, particularly in contexts of restricted civic space. In this sense, it should be clear when a third-party specialist can be required to assist stakeholder identification and the design and implementation of the engagement process. Also, it should say that "*the Bank will require the Borrower*" and delete "*the Borrower may be required to.*" The expression "*depending on the potential significance of environmental and social risks and impacts*" is too vague to ensure timely involvement of third-party specialists. This applies particularly, but not limited, to contexts where identification, diversity, or independence of stakeholders may be compromised, for example in areas affected by conflict, ethnic tensions, or known barriers to civic participation.

Stakeholder Engagement Plan (SEP)

- **Art. 13.** We recommend that the IDB follow the provisions of the ESS 10 of the WB's ESF, where it says "*In consultation with the Bank, the Borrower will prepare and implement a plan for the participation of stakeholders,*" explaining and giving the Bank a more active role in accompaniment, supervision, and monitoring of the SEP process.
 - The principle of proportionality should be applied: We recommended modifying "*it will be in accordance with the nature and scale of the project*" to "*it will be proportional to the nature and scale of the project.*"
 - The provision that the SEP should be "*commensurate with the project-level circumstances for stakeholder engagement*" should be eliminated. This undermines the principle of proportionality and with its ambiguity can lead to non-compliance.
- **Art. 15.** This provision should specify what are the minimum requirements that should be included in a Stakeholder Engagement Plan (SEP). We recommend that, as appropriate for the nature and scale of the project and its potential risks, the SEP should include:
 - A description of the project.
 - A list of the stakeholder groups identified, including disadvantaged and marginalized individuals or groups.
 - The proposed SEP (including topics stakeholders will be engaged on, how and when each stakeholder or stakeholder group will be notified, the methods of engagement, list of

- information/documents that will be in the public domain, languages they will be available in, length of consultation period, and opportunities to comment and negotiate).
 - Indication of resources required for implementing stakeholder engagement activities.
 - Full description of the grievance mechanisms including the Bank’s MICI and how to access to them.
 - Contact information and process for seeking further information.
- **Art.16.** This provision should provide more details of the measures or minimums that should be considered to remove barriers to participation. For example,
 - **In certain contexts, such measures could include conducting separate, additional consultations with women in order to ensure their inputs and to secure their equal participation in stakeholder engagement processes, free of manipulation, interference, coercion, discrimination and intimidation.** Such consultations should be convened at times and in locations that take into account women’s safety and ability to participate and should not take the place of women’s participation in regular consultations but should be considered as equally important. The format of these consultations should be informed by women, culturally appropriate, and designed to address barriers to participation, such as level of education.
 - **In all situations, physical accessibility of places where public consultations take place should be guaranteed by the borrower in a manner that is consistent with article 12 of the Convention on the Rights of Persons with Disabilities** which recognizes legal capacity of persons with disabilities and promotes supported decision-making rather than substituted decision-making. This means that support should be provided when required to ensure that persons with disabilities can express their views on an equal basis with others, and the decisions of others such as family members or relatives should not be accepted as a substitute.
 - **Similarly, such measures might include additional and separate consultations may also be necessary when engaging with other disadvantaged or marginalized individuals or groups such LGBTI** or could include working to overcome obstacles such as illiteracy and restricted freedom of movement.

Information Disclosure

This entire section should make explicit reference to and be aligned with the IDB's Access to Information Policy.

- **Art. 19.** The purpose for Borrowers to disclose information should not be simply “*to allow stakeholders to understand the risks and impacts of the project, and potential opportunities*”. It should be clear that the purpose of disclosing information is to allow the meaningful participation of affected people and stakeholders in the design of the project, from its inception and throughout the project cycle, to ensure that it is aligned with and fosters community development priorities, and mitigates, reduces, and minimizes adverse social and environmental impacts.
 - **Clear and concrete deadlines for disclosure should be established:** Project information should be disclosed from the design of a project. The list of information presented is a good minimum, and should be disclosed for all projects, regardless of risk category. We recommend clarifying that, depending on the characteristics of the project, these materials should include:

- Management programs, the organizational capacity and competency for the project, the emergency preparedness and response plans, all monitoring and supervision reports, including community-led monitoring reports if applicable, mid-term evaluation reports, legal agreements, terms of references, Environmental and Social Assessments and Action Plans, resettlement action plans, biodiversity action plans, hazardous materials management plans, community health and safety plans, ecosystems restorations plans, socio cultural and indigenous peoples plan (full drafts and final versions). But also, easy-to-understand summaries of key issues, actions, and commitments.
 - Contact information of the borrower and team leader at the Bank.
 - Information on how to submit a FOIA request at the Bank and the link to do it.
 - Information on the Bank's Independent Investigation and Consultation Mechanism.
 - **It should be emphasized in the ESPF that effective disclosure of information is highly relevant in all stages of the project life cycle: Much emphasis is placed on the participation and disclosure of information in the early stages of the project life cycle, but little is explained in relation to the implementation stage and, above all, the monitoring / follow-up of the project.**
 - **The Bank should require the borrower to use all the secure means and channels for convening public consultations and to receive and address complaints.**
 - **The Borrower should be required to always generate information in accessible formats for all types of needs: physical, intellectual and/or psychosocial and sensory - visual and auditory.**
 - **IDB must hold itself accountable for the accessibility of all the documents in the projects and in its website.** For example, the IDB is still a Bank that does not use Portuguese in most of its documents and pages, denying access of its content to Brazilians. Brazil was the top receiver of investments in 2019 and the different stakeholders don't have the means to monitor these investments for the simple reason that they are not in their native language. Only a few documents are in Portuguese and the access to them is on an English or Spanish website, a barrier to most Brazilians.
- **Art. 20.** **It should be clear that the information to be disclosed includes drafts and final versions. Also, it should be stated that the Borrower should set up a system to disclose project information on a regular basis but also by request of project-affected and other stakeholders.** Such system should be responsive to requests for information from project-affected and other stakeholders throughout the entire project cycle. Such systems should be accessible to project affected and other stakeholders and also be predictable in terms of time frames for acknowledging the request for information, responding to and disclosing the requested information, giving reasonable and coherent justifications in case of denying request for information, and providing the appropriate mechanism for requesters to appeal.

Meaningful Consultation

- **Art.21./Art.22./Art.23.** **This provision should add that a transparent process needs to be devised to assure that the objections and concerns of those considered project-affected people, and those that think that might be affected, but were not considered by the proponents, find**

appropriate expression in the decision-making process and plan. The Bank needs to ensure that the voices of both project-affected and other stakeholders are not only heard but will also find expression in the project design and recommendations on whether/how to proceed or, for that matter, to withdraw from the project.

- **Art. 22. It should be clear that the goal of the engagement is not always to achieve consensus.** The aim of consultations is to engage in a meaningful dialogue with stakeholders, receive input on analysis and proposed plans, discuss ideas and concerns, negotiate benefits and mitigation measures, inform the decision-making process and agree upon next steps for the project to continue. Not all stakeholder groups can agree on impacts and mitigation, so the goal of the engagement is not always to achieve consensus, however, all possible efforts should be made to build consensus and to hear from stakeholder groups and to take their comments and concerns into account in making the most appropriate project decisions.
 - **Meaningful consultations should explicitly provide for the incorporation of stakeholder feedback into project designs and plans, not just encourage feedback.**
 - **The consultation process should include accessible formats for marginalized populations at all stages (disability, indigenous peoples, literacy level, gender, language differences, among others).**
 - **From the beginning of the design process, planning, Terms of Reference (ToRs), implementation, evaluations include accessibility measures for persons with disabilities. Likewise, the physical space, information disclosed, and communications, approaches, grievance mechanisms, etc. should be in accessible formats.**
- **Art. 23. This sentence should be deleted as mentioned before since brings only confusion about the difference between what they call Meaningful consultation and Informed Consultation and Participation (ICP).**

Engagement During Project Implementation and External Reporting

- **Art. 26. The information about changes in the project should be disclosed in relevant local languages and in a manner that is accessible and culturally appropriate, taking into account any specific needs of groups that may be differentially 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). No changes should be made without proper consultation with affected communities.**

Grievance Mechanism

- **Art. 27 y 28. This provision should make sure that the project-level grievance mechanism is not a substitute for the Bank's MICI. The Borrower should inform and ensure that all project affected, and other stakeholders are aware of the existence of the Bank's MICI and how to contact them. This provision should also follow and apply all the recommendations in point 6 of the Executive Summary and in Art. 7.1 & Art. 7.3 of the Policy Statement under the title "Grievance Mechanisms and Accountability."**