

ANNEX I
Questions in Preparation for the July 20th CODE Meeting on the World Bank’s Third Draft
Environmental and Social Framework

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Overarching Framework – Limited Coverage of Environmental and Social Standards

Civil society organizations welcome several positive changes in the Environmental and Social Framework including the introduction of a labor standard. However, many of the most pressing overarching issues pointed out not only by civil society, but also by the World Bank’s Inspection Panel and the Independent Evaluation Group have remained unaddressed in the first two drafts. Most prominent is the limited scope of ESF application. The Inspection Panel in its comments on the second draft ESF highlights that the application of the ESF should be harmonized for all World Bank supported activities, including Development Policy Lending and Program for Results (June 17, 2015). Similarly the IEG had argued that it was vital for the Bank to seek consistency among the different lending instruments to ensure coherence in environmental and social sustainability outcomes (2011). In addition, the second draft still proposed widespread material dilutions of existing environmental and social protections provided by the Bank’s current safeguards.

Although both the Independent Evaluation Group and the Inspection Panel recommended that the application of the ESF should be based on robust risk assessment of the potential environmental and social impacts rather than on the financing instrument used, the proposed ESF limits coverage to investment project financing. Growing sectors of the Bank’s portfolio, including Development Policy Lending continue to be excluded. A substantial part of DPLs promotes reforms in sectors with high environmental and social risks, including forests, energy and mining.

The continued exemption of DPLs is particularly troubling given the findings of the 2015 DPL Retrospective, which concluded that there was an inadequate discussion of and information on environmental and social impacts in DPL documents. It also noted that there was a low number of program documents indicating that the Bank's analytic work on poverty, environmental and social impacts was made public or benefitted from stakeholder consultations.

In light of these finding and the recommendations from both the IEG and the Inspection Panel, how will the Bank move forward in addressing environmental and social risks in DPLs and thereby ensure a degree of coherence across all Bank lending instruments?

Overarching Questions

1. Does the draft still contain highly flexible language linked to substantial policy dilutions and open-ended compliance?
2. Is the term “financially feasible” still used throughout the document, for example in ESS1 Objectives or ESS6 natural habitat section as per the 2nd draft? Is “financially feasible” still defined as per Draft 2 as “whether this incremental cost could make the project nonviable for the Borrower “– meaning that if the Borrower finds it “too expensive” to compensate for the loss of livelihoods or to avoid destruction of natural habitat such destruction (livelihoods, habitats) may now occur?
3. Do vague phrases like “as agreed with the Bank” replace current mandatory procedures, disclosure, or timing requirements?
4. Are all projects and subprojects, regardless of risk classification, *required to comply* with the requirements of the ESSs?
5. Has a detailed budget and a detailed implementation plan for the new safeguards been provided with this draft?
6. What repercussions are specified for Borrowers if they fail to comply with the ESSs? Are clear and significant repercussions, including penalties, loss of finance, loan cancellation, named in the Environmental and Social Commitment Plan? Or does it still appear that there is **little downside to ESS non-compliance**.
7. In the **chain of command** to identify exactly who at the Bank provides clearance for risk classification of a project, appraisal and monitoring of high risk projects, etc., are the responsibilities for risk classification, appraisal, monitoring still held at a **high level of Bank management**, for example in OPCS?
8. The introduction in the first two drafts of vague and flexible wording on what safeguards will be applied to each project and when. We are concerned that the latest draft may still contain vague language allowing for greater discretion on the part of the Bank throughout the draft, regarding which information will be disclosed and when. These dilutions raise serious concerns about impacts on vulnerable populations and the future role of the Inspection Panel to identify clear instances of noncompliance in Bank-funded projects. Has the vague and flexible language regarding what safeguards will be applied to each project and when been eliminated?
9. Co-finance: In the case of co-financed projects, **do the strongest standards apply**? Does the new draft **allow the Bank to waive its safeguards and use those of an FI or other funder, such as the AIIB**, instead? How does the Bank determine equivalence with other safeguard systems? Is it required to examine the mandatory implementation measures or simply compare (vague) general objectives? Does it require “upward harmonization” with the strongest co-financer safeguards? Is there public comment on this determination of equivalence.

Weakening of due diligence requirements for the use of borrower systems

In current WB policy, Borrower Systems may be used if it can be clearly shown that they provide the same level of environmental and social protections as WB safeguards. There is a clear methodology for conducting this

analysis, including a detailed matrix (Table 1A) of due diligence requirements for the use of Borrower Systems. The 2d Draft eliminated these clear requirements and replaced them with vague language, and apparent near-complete dependence on Borrower self-reporting on Borrower Systems, leaving no meaningful room for public comment or participation in the determination of whether Borrower Systems provide the same level of protections as those of the Bank.

Questions include whether the 3rd Draft continue to contain these substantial dilutions of existing policy pertaining to Borrower Systems? For example:

1. The earlier drafts completely eliminated the clear mandatory framework (Table 1A) for assessing the equivalence of Borrower Systems with Bank safeguards. Does draft 3 provide a mandatory the methodology and checklist for assessing borrower frameworks which is as robust as Table 1A? Is there still a requirement for Borrower System equivalence with WB safeguards or does this draft continue to represent a significant dilution in the method to determine the use of Borrower Systems?
2. Or is the language on Borrower Systems characterized by vague terms such as “may” instead of “shall” or “must”?
3. With the elimination of Table 1A, is it mandatory that the Borrower must comply with detailed ESS safeguard requirements or have the equivalence requirements been replaced with an exhortation that the Borrower can merely be found to be “consistent” with the few, broad and vague Objectives of various ESSs?
4. We understand that an Annex was to be developed regarding the use of Borrower Systems. Is this annex mandatory and binding and does it contain the current unambiguous level of equivalence-testing against Bank safeguards?
5. If public comment on a Borrower system indicates that there is a **climate of repression, or routine use of military, para-statal or other armed forces or officials during public meetings or consultations** under a Borrower system, making it difficult or impossible for the Borrower to carry out consultations “free of coercion”, will the Bank prevent the use of such Borrower systems? If a Borrower framework does not provide “coercion-free” consultation, such a system should be unacceptable for Bank use.
6. Is there any mandatory bar to the use of country systems? For example, currently, if a borrower system does not fulfill the equivalency tests of Table 1A, it may not be used. Is there any such clear bar in the current draft?
7. What changes have been made in the proposed language pertaining to the use of “borrower systems” throughout the ESSs?
8. Does the World Bank’s due diligence process go beyond depending largely on self-reported Borrower information, including specifically for the determination and assessment of “gaps” and so-called “gap-filling” measures designed to “make up for” the weaknesses of Borrower systems?
9. Is it mandatory for the development of “gap-filling” measures (draft and final versions) to be subject to public consultation?
10. Is there a requirement for the **full disclosure of all of the results of Bank evaluation of Borrower systems, identification of “gaps” and draft and final “gap-filling” measures?**
11. How would civil society submit comments pertaining to Borrower system track record as part of the Bank’s assessment? Will the Bank’s assessment of Borrower systems include a mandatory and sufficient - i.e. at least 120 day- public comment period on the assessment of borrower systems and the development of “gap-filling” measures?
12. Does the draft clarify if and how the Inspection Panel would be able to act under the use of Borrower systems? How would communities be able to access the Inspection Panel under the use of Borrower systems? What form of notification about the Inspection Panel is mandatory under the use of Borrower Systems?
13. Does the draft describe how compliance with environmental and social safeguards is ensured and enforced by the Bank where a borrower country system is inadequate – or becomes inadequate during project implementation using a Borrower System?

14. Is the use of borrower frameworks to be restricted to the least risky projects and banned for use on substantial and high risk projects?
10. If Borrowers fail to comply with the ESSs, are there clear and significant repercussions, including penalties, loss of finance, loan cancellation, named throughout the ESF?
11. The 2nd draft had as an Objective the default use of “national...institutions, systems, laws, procedures in assessment, development and implementation”, “whenever appropriate”, while also eliminating mandatory CSS equivalency assessment requirements, a massive dilution of protections. Does the new draft contain the same dilutions?
12. Does the Bank assess and continue to monitor the extent, for example, of risk and track record of abuses by public and private security forces or is such assessment based on Borrower self-reporting? Is there a requirement for public input into any assessment of the security force threat to local communities? What is the mandatory method and timing of disclosure and the seeking of public input regarding the use of security forces?
13. Is there a **mandatory** requirement to assess Borrower track record and to do so in meaningful consultation with affected communities? Does this assessment in the new draft specify an assessment of Borrower track record of consultation with affected communities?
14. If Borrower frameworks do not provide a track record of implementation equivalent to that required by Bank safeguards, is the use of such frameworks explicitly excluded from consideration as under current protections?
15. If when using the Borrower's system, it falls out of compliance with Bank safeguards during a Bank project, does the ESF specify that the Bank must require cessation of the Borrower System approach?
16. Does the draft clearly explain how it reviews implementation of Borrower systems? Does the draft provide clarity about budget allocations and methodology required to assess legal, technical, environmental, social, political, economic track record of different borrowers? Is the due diligence methodology as detailed as that required in Table 1A? Does it cover all of the areas covered by Table 1A in as much detail? Are Bank implementation reviews of Borrower system made public in their entirety?
17. Does the Bank decide which evidence of track record to consider, or must the Bank defer to, consult with or otherwise depend up on the Borrower to determine which evidence to utilize in the Bank’s assessment?

Environmental and Social Policy (ESP)

1. Does the draft require the Bank to carry out independent consultation activities where concerns for reprisal or coercion exist, when there are concerns over the use of military, paramilitary or other armed forces against communities which raise concerns about impacts of projects or when the environment is otherwise not conducive to participation by civil society and all potentially impacted community members, including vulnerable groups? Or does the draft, instead, **promote the use of borrower systems for consultation**, potentially making it difficult, under conditions where national law requires involvement of military, police and government forces in such consultations, for coercion-free consultations to occur.
2. Does the World Bank’s due diligence process go beyond depending largely on **self-reported Borrower information, including for “gap-filling” measures** designed to make up for weak Borrower systems in determination of use of Borrower systems?
3. Is it mandatory to exclude the use of borrower frameworks from consideration by the Bank in regard to **high-risk, substantial risk or otherwise complex projects**? If not, how will an assessment of borrower capacity be different for high-risk and substantial-risk projects versus lower-risk projects?
4. What are the Bank’s **mandatory due diligence requirements for each project prior to appraisal and Board approval**? Are disclosure requirements to be negotiated on a one by one basis in contracts with each Borrower, something which would make it difficult for project-affected peoples to understand their rights, given the lack of clear, mandatory requirements?
5. Does the draft specify that ESIA, resettlement and indigenous peoples plans, consultation plans and other such plans must be disclosed as early as possible before Board appraisal?

6. Is there a commitment in the operative part of the text that the bank will respect human rights in its projects and avoid adverse human rights impacts?

Consultation

1. Does the 3rd draft reinstate the Bank's current clear prior-to-appraisal requirement for disclosure of a **clear range of key documents**, normally resulting in approximately 120 days of public comment on projects with significant impacts prior to Board vote?
2. Does the draft require the Bank to carry out independent consultation activities where there are concerns, including about coercion, the use of security forces, the fact that the environment may not be conducive to allow civil society and all potentially impacted community members, including those from marginalized groups, to freely participate without risk of reprisal?

Compliance

1. Has the 3rd draft reinstated the existing mandatory and well-documented compliance milestones or has it continued to replace these with vague requirements of "consistency" or "in accordance" with the ESS and with the substantial dilution of open-ended compliance?
2. Does the new draft still require an environmental and social commitment plan at project approval, complete with environmental and social assessments and mitigation plans, or does it leave open the possibility for key targets to be developed and met some time later during implementation, after the Board vote?
3. How will the Bank ensure that corrective action regarding compliance will follow out of self-monitoring and reporting? Are there specific legal provisions in all agreements?
4. If a Borrower fails to comply with the safeguards, does the 3rd draft provide a detailed, time-bound and mandatory procedure, or remedies, to be taken by the Bank, which include project cancellation, withdrawal/retrieval of funds, reparations for harm, as part of the legal document with the borrower? Or does the lack of detail in the ESS continue to demonstrate that there are few drawbacks to violating the ESCP?
5. Does the proposed ESCP still lack an explicit disclosure plan?
6. Must all of the ESS requirements be included in legally binding contracts, or only some of the ESS requirements?
7. Are all environmental, social, fiduciary safeguard requirements (not merely their summaries) in a contract made public in draft form for comment and made public when final?

Environmental and Social Assessment

1. Are there mandatory rules for what constitutes an environmental or social assessment? Or are these negotiated on a project by project basis, making it difficult for affected communities to know what must be assessed and disclosed?
2. Are environmental and social indicators that can be tracked and reported against legal conditions for approving, continuing, or cancelling projects?
3. Can Borrowers avoid complying with mandatory levels of pollution control in Bank-financed projects, as per dilutions introduced in the first two drafts?
4. Categorization: Have the confusing differences between the new categories of "High Risk" and "Substantial Risk" been clarified? Are large-scale projects, or projects with impacts on large numbers of people considered "High Risk"? Are the same rigorous due diligence requirements made for Substantial and High Risk projects, or are projects and subprojects with a Substantial Risk of causing harm to communities and the environment subjected to different, weaker requirements than those considered High Risk?
5. Is there clear and mandatory language regarding the requirements for environmental and social assessment, including draft assessments?
6. Does the draft specify that there is a mandatory requirement for **all** environmental and social requirements to be part of any legal agreement with Borrower and between Borrower and sub-project implementer?

Introduction of increased barriers for affected communities accessing the Inspection Panel to seek remedy

1. What specific language changes have been made in the latest draft to ensure that the Bank's responsibilities are clear so that questions of accountability – including for FI projects, subprojects, projects and subprojects under borrower systems -- can be addressed by the Inspection Panel?
2. Does the Bank require Borrowers, including for FIs and FI-subprojects to publicly disclose access to/use of Inspection Panel? The language of the second draft represented a dilution by making it more difficult for project-affected communities to access the Inspection Panel. Vague Borrower-dependent “accountability mechanisms” were put in place without mention of the Inspection Panel. The panel, itself, may only provide remedy for violations of Bank safeguards and the draft language of the safeguards is so vaguely worded that it makes it difficult to prove non-compliance, including for projects utilizing “borrower systems” in lieu of World Bank safeguards.
3. What are the mandatory requirements for ensuring community access to the Panel, including for FI projects, subprojects, borrower-system projects and projects subject to the newly vague requirements found in the second draft?
4. Have any barriers been introduced in the new draft that would impede communities' ability to access the Inspection Panel?
5. Does the current draft, as draft 2 did, maintain the convoluted description of avenues for grievance redress in the ESP that errantly implies sequencing? Has it been clarified so that it is clear that communities can go directly to the Inspection Panel without first using a local grievance mechanism, Project Level Grievance Mechanism (PLGM), or the Grievance Redress Service (GRS)?
6. Have the current mandatory consultation and information disclosure protections been entirely maintained?

Gender

1. Has the already inadequate language regarding gender (in draft 2, only weakly mentioned in five ESSs) been strengthened?
2. Have any references to gender been removed in the new draft compared to the last draft?
3. Has the Bank embraced civil society demands for a freestanding gender safeguard?
4. Additional information on gender concerns for the ESSs can be found in **Gender Analysis, Conclusions & Recommendations on the World Bank Environmental and Social Framework Second Draft**

ESS1 – Environmental and Social Risk and Impact Assessment

1. Objectives: In the 2nd draft, one of the key objectives (i.e. ESS1) was to “adopt a mitigation hierarchy”, not to “avoid impacts”; it appears that this objective can be fulfilled simply by having adopted a “mitigation hierarchy” to plan to avoid impacts, a far lower standard than “avoid impacts”; Has this weak language been removed and replaced with a requirement to, first, ensure the avoidance of harm, and does this apply to all of the ESSs? This is of the utmost importance given the push to measure a Borrower system solely against the vague “Objectives” in each ESS.
2. The proposed “adaptive management” contradicts the requirement of OP 4.01 which calls for the close integration of EAs with the economic, financial, institutional, social and technical analyses of a proposed

project (OP 4.01, para. 3). Has the reference to “adaptive management”, a substantial dilution, been removed?

3. The “deferred” appraisal approach means that impacts will not be fully known. As a result the Board will be asked to approve financing without the knowledge of the project’s real costs. Has the “deferred” approach been eliminated from this draft?
4. Objectives: The first draft objectives required compensation for harm “as appropriate”; the second draft objectives further diluted this requirement by merely requiring compensation for or offsetting of impacts “where technically and financially feasible” instead of “as appropriate”, with the definition of “financially feasible” as “whether this incremental cost could make the project nonviable for the Borrower”. This appears to mean that, under the new safeguards, if the Borrower damages livelihoods, communities or the environment and doesn’t wish to compensate for the harm done, there is no requirement to do so. Does this astonishing loophole or other vague language still remain in the section on residual impacts?
5. Does ESS1 require the social assessment to differentiate between groups it considers disadvantaged and vulnerable when examining potential negative impacts of projects and to ensure their full inclusion in consultation and project design?
6. In the 2nd draft, the term “inclusion” was of central importance to instructions regarding approaches to vulnerable and disadvantaged communities and included “action to remove barriers against those who are often excluded” and ensuring “that the voice of all citizens may be heard”. Does the current draft provide greater detail in the definition of inclusion?
7. Is the Bank responsible for determining equivalency between Bank safeguards and borrower systems according to the existing robust CSS equivalency safeguard requirements based on an independent assessment or is the determination based on self-reporting/self-assessment by the Borrower?

ESS2 - Labor

1. Are workers’ rights to freedom of association and collective bargaining protected in the revised ESF, regardless of national law?
2. Is mandatory implementation of the ILO core labor standards included in the body of the policy, or in one of its footnotes?
3. Does ESS 2 set a minimum age for child labor that is in line with ILO Convention 138?

ESS3 - Climate

1. Is there a mandatory threshold for Greenhouse Gas emissions accounting as there was in the first draft?
2. Has the new draft included the assessment of community and ecosystems resilience when it comes to climate change impacts?
3. Is there a clear requirement for compliance with the highest industry standards, and prohibition to use any funding for the release and use of materials that are hazardous to human and environmental health?

ESS4 - re Use of Security Forces

1. Does the new draft still propose allowing the “preventative” use of force by Borrower security personnel and government armed forces in Bank-supported projects?
2. The first draft cited the United Nation’s (UN) Code of Conduct for Law Enforcement Officials, and UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Does the 3rd draft continue to cite these international standards? Does it require use of the steps listed in the Voluntary Principles on Security and Human Rights?¹

¹ For example, the Voluntary Principles require assessment and identification of security risks; the risk of the potential for violence; the human rights records of public and private security forces; Risk assessments should consider the available human rights records of public security forces; an assessment of the rule of law (including a risk assessment of the local prosecuting authority and judiciary’s capacity to hold accountable those responsible for human rights abuses in a manner that respects the rights of the accused); conflict analysis and an assessment of the risk of equipment transfers – i.e. if a Bank-supported company provides equipment to public or private security forces. The fact that the principles are voluntary is a weakness and there have been substantial weaknesses in their implementation, detailed by

3. The 2nd draft only requires borrowers to report allegations of unlawful or abusive acts of security personnel, “where necessary” to relevant authorities, but does not specify that such abuses should be reported to the Bank. Does the 3rd draft remove the “where necessary” loophole for reporting of unlawful/abusive acts to authorities and require reporting to the Bank?
4. Does the 3rd draft require any remedy for attacks by public and private security forces on affected communities, including the establishment of protections for victims and witnesses to ensure confidentiality and appropriate treatment, compensation for harm; suspension, cancellation of project/loan, etc?

ESS5 - Resettlement

1. Is the Borrower, with the Bank’s assistance, required to prepare draft resettlement plans and budgets prior to project approval?
2. Is the Bank required to make these documents available in a manner accessible to affected persons, allowing them the opportunity to provide comments to the Board, as required under the current policy?
3. Does ESS5 or ESS1 guarantee livelihood restoration of all people who have been economically displaced, including those who have lost access to productive resources such as fisher-folk/farmers downstream of a dam, as the ADB and AIIB safeguards do?
4. Does ESS5 apply to all sub-projects causing physical or economic displacement, regardless of risk classification?
5. In line with international human rights standards, does ESS5 require that displacement impacts are reasonable and proportionate to the public good that will be achieved through the project?
6. Is the Borrower required to offer people who will be resettled a choice of economically viable resettlement site options and to ensure that livelihood programs are tailored to the economic activity in the area and the skill-base of those who are resettled?

ESS6 - Biodiversity

The first two drafts of the proposed Environmental and Social Standard (ESS) 6 on Biodiversity represents an unprecedented dilution of existing safeguard policies on Forests (OP 4.36) and Natural Habitats (OP 4.04), standing in stark opposition to President Kim’s promise of “no dilution” of the World Bank’s safeguard policies. In addition, rather than fostering upward harmonization, the language in the earlier drafts of ESS6 rendered the World Bank’s protection for natural habitats weaker than policies of other international financial institutions, including the Asian Development Bank. As noted by one Operational Vice President (OVP) in comments on the first draft, “language in ESS 6 would severely weaken the protections that currently exist for biodiversity and natural habitats under both IFC’s PS6 and the Bank’s OP 4.04.”

The primary dilutions in the first two drafts of ESS6 constitute an unacceptable weakening of protections for forest-dependent people and the environment and include, among other things:

- Reduction in scope of protection for forests;
- The removal of considerations for forest-dependent communities from ESS6. Language found elsewhere in the Safeguards Framework does not overcome this dilution;
- Dilution of the definition of “critical habitat”; elimination from the definition: habitat of critical importance to local communities;

EarthRights and others. However, the language in these principles is far stronger than that found in the Bank’s first draft, which appears to leave the door wide open for violent abuses by security forces associated with Bank-funded projects.

- Contradictory language allowing **conversion, degradation and destruction of all natural habitats, including critical habitats and protected areas**;
- Projects within protected areas are, for the first time, explicitly permitted;
- **Offsets are permitted for projects in all habitats— there are no longer any “no-go zones”**;
- Introduction of “salvage logging” – including moist tropical forests;

The diluted protections for forests and natural habitats in ESS6 are of even greater concern given that the proposed Environmental and Social Framework, as a whole, represents an overall weakening of existing mandatory safeguards.

1. Have all of the above dilutions found in the second draft been remedied in the third draft?
2. Projects within protected areas were, for the first time, explicitly permitted in the second draft. The current ban on the destruction of critical habitat, protected areas and nature reserves was eliminated; Has the **current ban on destruction (including logging) of critical habitat, protected areas**, nature reserves been reinstated in the latest draft? Or does it remain a massive dilution of protections for critical habitat?
3. The 2nd draft introduced a range of loopholes to allow destruction of critical habitat if the Borrower claimed that there were “no other viable alternatives within the region”. Have these staggering loopholes been eliminated?
4. The 2nd draft permitted controversial and scientifically untested “offsets” in all habitats, including critical habitats and protected areas. There are no longer any “no-go zones.” Offsets have been referred to as a “license to destroy” in the hope that, somewhere else, something else will be preserved. How would an “offset” for a destroyed ancestral forest help a community dependent upon that ancestral or traditionally managed forest and forest goods? Given the problems with ensuring the long-term function of offsets, has the language allowing offsets in critical habitats and protected areas been removed? Or does this substantial dilution remain?
5. **Considerations for forest-dependent peoples and communities** have been removed in 2nd draft ESS and language found elsewhere in the Safeguards Framework does not overcome this dilution.² The 2nd draft introduced the concept that the assessment would “take into account the differing values attached to biodiversity by affected communities and other interested parties”. This new language weakens the emphasis on affected communities and does not privilege the interests of forest communities over “other parties” which are likely to include politically more powerful actors, such as private sector investors with close ties to governments. Has this been corrected? Are **forest-dependent communities** referenced in the 3rd draft and recognized as a core part of forest and biodiversity-related safeguards in ESS6 and as **the core constituency for consultation and impact assessment**?
6. The 2nd draft used the term “ecosystem services” to describe the benefits of ecosystems to resource-dependent and forest communities including food, water, medicinal plants, sacred sites, etc. **Has the ESS6 Objective in draft 2 of maintaining habitat of critical importance to resource-dependent**

² Currently, Forest Policy OP 4.36 applies to projects that **affect the rights and welfare of people and their level of dependence upon or interaction with forests**. The first and second drafts eliminated this language. OP 4.04 expects the borrower **to take into account the views of local communities and NGOs affected by Bank-financed projects involving natural habitats** and for involving such people in the planning, designing, implementing, monitoring and evaluating of such projects. OP 4.36 calls for **the recognition of and respect for any legally documented or customary land tenure and use rights as well as the rights of indigenous peoples and workers** (10b). The 1st draft ESS 6 diluted these requirements and merely stated: “Where applicable, the assessment will consider the use of and dependence on natural resources by Indigenous Peoples and affected communities who live in or around the project areas and whose use of biodiversity resources may be affected by the project, as well as their potential role in the conservation and sustainable use of such biodiversity resources (#13).

communities been further strengthened in the Objectives of ESS6? Does the text of ESS6 provide further clear and mandatory detail regarding the achievement of this key Objective? The text in the earlier drafts was weak and a dilution of existing policy.

7. Do the scope and objectives of the revised ESS6 specifically address all projects that impact local and indigenous communities, and the natural resources upon which they depend?
8. Does the new draft achieve upward harmonization with the ADB's definition of critical habitat, which includes: "areas having biodiversity of significant social, economic, or cultural importance to local communities"? Did the WB's comparative assessment of ADB, IFC, AfDB, etc. safeguards include the ADB's critical habitat definition?
9. Is "Financially feasible to the Borrower" still a deciding point in ESS1 (E&S Risk Assessment), ESS6 (Biodiversity) for whether a Borrower will avoid harm to natural habitat; or whether a Borrower will compensate for any sort of environmental and social harm? This phrase was introduced in Draft 2 and appears to mean that if a Borrower feels that it is "too expensive" to avoid harming communities or the environment then there is no need to avoid such harm or to compensate for it.
10. Are independent field studies required for the assessment of biodiversity?
11. Draft two referred to the importance of using a "**precautionary approach**". Is "precautionary approach" defined in the ESF?
12. Contradictory language: Normal definitions of "precautionary approach" require that if an action has a suspected risk of causing harm to the public or the environment, if there is a **lack of clear scientific consensus that the action is not harmful**, then the action should not be taken. If the ESS requires use of the precautionary approach, for example, utilizing offsets in critical habitat, including habitat of importance to local communities, or protected areas should not be allowed. There is no scientific consensus on the validity of so-called "like for like" offsets, yet these were proposed in the 2nd draft. Given the precautionary principle, have these (and other proposals violating the precautionary approach) been eliminated (i.e. logging in protected forests, etc.)
13. Earlier drafts have featured subtle but vitally important changes in language – for example from "must" to "may", the introduction of "where possible", etc. Have there been any such further modifications, leading towards weakened language in ESS6 and the other ESSs?
14. The 2nd draft proposed to avoid offsets if "the affected area is unique and irreplaceable from a biodiversity standpoint". Has this been expanded to cover "from a community standpoint"?
15. After eliminating the ban on logging in protected forests and critical habitat, does the draft propose to allow Bank support for industrial logging?
16. The 2nd draft provided language to oversee suppliers of natural resource commodities including identification of source of supply; provision for ongoing review; limiting procurement to suppliers demonstrating that they are not contributing to conversion / degradation of natural or critical habitat and requiring borrower actions to ensure that their suppliers do not adversely impact biodiversity. **Have these rather vague requirements been strengthened?**

ESS7 - Indigenous Peoples

1. Are there any requirements in place for indigenous peoples to participate in, or validate the outcomes of, the impact assessment? This is particularly important as FPIC requirements are triggered on the basis of this impact assessment, and it requires assessment of impacts on lands, resources and cultural heritage, areas for which impacts may not be apparent to external consultants or the Borrower.

2. Protection of current planning requirements for Indigenous Peoples Plans (OP4.10 paragraphs 12-14) are critically important. The framework under the ESF has previously proposed to replace these, in some cases, with broader “community development plans” for which the requirements are far less defined, significantly weakening participation by indigenous peoples in the planning of actions to mitigate or avoid negative impacts. Has this been strengthened in the current text?
3. The possibility of converting communal customary tenure into individual plots without the full consent of the peoples exercising these tenure regimes, with potentially devastating impacts, was included in the previous draft. Has this been clarified to state that this is only possible with the full consent of the peoples concerned, with the alternative of continuing collective tenure available to them?

ESS8 - Cultural Heritage

1. Are Borrowers clearly prohibited from carrying out projects that are “located in, or in the vicinity of, a recognized cultural heritage site” or a protected area?

ESS9 - Financial Intermediaries

1. Has the new draft removed the dilutions pertaining to Financial Intermediaries that were introduced in the earlier drafts? For example, the current Natural Habitat policy “applies to subprojects under sectoral loans or loans to financial intermediaries.” This requirement was eliminated in the second draft. Has the Natural Habitat requirement for FIs been reinstated in the latest draft or does this substantial dilution still stand?
2. Current safeguards require all subprojects to carry out appropriate EA, following OP 4.01 and the FI is required to verify that subprojects meet OP 4.01 requirements as well as those of other applicable environmental policies. The first drafts eliminated these requirements and only required “high risk” subprojects and not those of “substantial risk” or less, to comply with ESSs, a remarkable dilution. Have these dilutions been removed in their entirety – i.e. do ESSs still apply to all subprojects? Are any FI subprojects exempt from Bank ESSs?
3. Does ESS10 apply to all FI subprojects?
4. Is FI risk assessed at the subproject level or at the aggregated portfolio level (far weaker, can dangerously overlook involvement in high risk projects).
5. Are Financial Intermediaries required to “screen, appraise and monitor all subprojects in accordance with the environmental and social risk profile of the individual subprojects” as per the first draft?
6. Are environmental and social assessments for all FI projects and subprojects made public?
7. Are detailed steps and remedies provided in case of non-compliance at the sub-project or project level for FIs?
8. Is there a World Bank **Exclusion List that applies to FIs? Currently WB excludes investments in nuclear power.** Will this and other exclusions apply to FIs and FI subprojects?
9. **Who assesses the FI subproject environmental & social impacts?** Who oversees the FI subproject risk assessment process? WB? FI?
10. Must FI subprojects with substantial and high risk be **approved by the Bank?** (as is the case at AsDB);
11. Will it be **mandatory to notify communities, ensure full consultation with communities** affected by WB-funded FIs and FI subprojects about the fact that these sub-projects are WB-supported, about community right to access Inspection Panel, mandatory ESS requirements?
12. Is any of the already weak language on FIs in Draft 2, further weakened in Draft 3? i.e. shall=> may, “where appropriate” etc.
13. Does the new draft require use of the Bank’s own safeguards and assessment measures or is this approach diluted by allowing reliance on FI systems or systems of other institutions?
14. Is there a set of required risk categorization measures and categories?
15. The second draft required FIs to conduct stakeholder engagement; Is this still the case and how does the Bank oversee the engagement process to ensure no coercion, proper disclosure, etc.?
16. Is there a requirement that communities affected by FI subprojects be notified about WB ESS requirements, consultation requirements and access to Inspection Panel?

17. How will an affected community be able to bring a complaint to the Inspection Panel for failure to consult, lack of disclosure, or environmental or social harm as result of FI subproject?
18. Where is this information described in detail? What are the mandatory measures that ensure that Inspection Panel access can occur?
19. Does ESS9 contain clear list of penalties for FIs and FI subprojects that do not comply with ESSs? What are the penalties?
20. Are there mandatory disclosure requirements for substantial risk and high risk projects?

ESS10 - Meaningful Consultation and Participation of Communities

1. Does the latest draft ESF maintain the existing standards of **transparency and consultation** consistent with longstanding Bank practice, including the development and public release of key documents including environmental and social impact assessments, resettlement action plans, and indigenous peoples' plans?
 - a) Are the minimum requirements for what and when project information should be disclosed to affected communities as strong and clear as under existing safeguards? (i.e. as early as possible and prior to appraisal).
 - b) Is the Borrower required to provide all information, equally, to all stakeholders? Or are there different types of stakeholders with different types of access to information, consultation or other privileges?
 - c) Draft 2 placed an emphasis on engagements with various "stakeholders" and "parties" [not communities] "in a manner appropriate to the nature of their interests". Has this weak language been removed?
 - d) Is there a clear definition of the sufficient due diligence to ensure independent, inclusive and accurate identification of project affected peoples, and adequate consultations in Bank projects, especially in high and substantial risk projects?
 - e) Does the Bank plan to produce further mandatory procedures regarding on how to consult with women and vulnerable groups such as children, persons with disabilities, or sexual minorities to operationalize the commitments in ESS10?
2. Where stakeholder engagement is conducted under "borrower systems" or using national institutions, are the existing robust CSS safeguards for ensuring equivalency of systems mandatory?
3. The 2nd draft included "national authorities" as "stakeholders" to be consulted with in project design. If the project is already a government project (i.e. surely national authorities consulted themselves) and the idea of consultation and disclosure is to consult **with communities impacted by the project**, shouldn't consultation be aimed primarily at the communities who bear the potentially enormous risks of the project?
 - a) Does the 3rd draft focus on **consultation with affected communities and associated civil society**? Have the dilutions introduced in the earlier drafts of a focus on consulting with the implementing parties been eliminated in the third draft, making it clear that the primary point of consultation is to ascertain the opinions of those most likely to be impacted by a project, and their allies?
 - b) Are references made to project-affected communities throughout ESS10 and other ESS's, remembering that it is local communities which bear the brunt of project impacts and that they are often in a weak position relative to others – including officials, project proponents, and others.
4. The 2nd draft introduced the potential of engaging solely or primarily with "community representatives" including "local government representatives", "politicians" "teachers" instead of achieving broad community consultation. This opens up a high risk loophole where, in the case of a large scale project, a few well-placed bribes to a few "leaders" can secure desired results. The Borrower is only tasked with making undefined and unclear "reasonable efforts to verify" that such persons represent community views. Has this dangerous loophole been closed?
5. The first drafts of the ESF introduced the concept of "**deferred assessment**" and "**deferred compliance**", vastly diluting the process of public consultation and ability of the Board to carry out deliberations based on full information. Does the third draft still allow for such deferred assessment? Has this dilution been

corrected or are Borrowers allowed to postpone release of documents *after the Board votes? If so, which documents?*

6. Are Borrowers, including for FIs and FI subprojects required, required as part of stakeholder engagement to disclose the existence of the Inspection Panel and its procedures, as well as other grievance redress options?
7. Is there clear language preventing the use of national institutions or borrower systems when these mandate the presence of security forces in consultations (negating the “no coercion” requirement)?
8. In substantial risk and high risk situations, is the Borrower required to work with independent internationally recognized experts to consult with stakeholders and ensure confidentiality of participants?
9. Does the new draft prohibit the Borrower from punishing, retaliating, or otherwise acting against a stakeholder who has used peaceful and legitimate means to make his or her views heard, however critical they may be, and require the Borrower to take all necessary measures to prevent others from similarly acting against a stakeholder?

Accountability Systems: Project-Level Grievance Mechanisms, the GRS, and the Inspection Panel

10. Earlier drafts introduced information on “project-level grievance mechanisms” but there was a lack of information about these mechanisms, their relationship to the Inspection Panel and whether or and what the minimum requirements were for the design of such grievance mechanisms to ensure accessibility, transparency, independence, and provide access to remedy. Have these weaknesses been corrected?
11. Are there requirements for grievance mechanisms to provide meaningful opportunities for affected communities to inform the design of a project-level grievance mechanism as part of a robust participatory consultative process?
12. Does ESS10 require the Borrower to disclose the existence of the Inspection Panel as well as other grievance redress options to project-affected communities?
13. Does ESS10 require the borrower to inform affected communities about their right to directly access the Inspection Panel when it informs them about local grievance mechanisms?
14. Draft 2 did not include information about providing access to Inspection Panel to affected communities. Has this been provided in Draft 3?

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