

Oslo, March 11th 2016

Input to Phase 3 Consultation: World Bank Environmental and Social Safeguard Framework

As a follow up to our inputs during the Brussels consultation in late January, we hereby submit our suggestions for further amendments to the suggested new Environmental and Social Safeguard Framework for the World Bank's investment lending. At the same time, we want to emphasize again the need for a consistent approach across all lending instruments, and expect the Bank to make *sure that also other lending (for example development policy lending) is subject to principles consistent with the safeguards* once approved.

We are particularly worried about the weakened language in the safeguards objectives (ESS 1), how the safeguards will be implemented using country systems, the lack of protection for important forested areas, how the rights of indigenous and other forest dependent peoples will be secured, and the new standard for stakeholder engagement and information disclosure (ESS 10)

Weaker assessment and management of environmental and social risks and impacts

In the second bullet point of the objective in ESS 1, the language has been significantly weakened from the first to second draft. The Borrower's plight has been reduced to "mitigate *OR reduce impacts to acceptable levels*" and compensation is limited to only "*where technically and financially feasible*". These suggested changes cannot be accepted as they seriously weaken the safeguards, and leaves it unclear who determines what an "acceptable level" is, or when something is "feasible".

The language describing use of country systems is still very unclear and there is no way of knowing how the Bank will assess and when the Bank will deem a country system satisfactory or not. The vague phrase on whether country systems can "enable the project to achieve objectives materially consistent with the ESSs" must be replaced by clearer language on what criteria must be in place.

Lack of protection for important forested areas

In the new set of suggested safeguards, the ESS 6 on Biodiversity Conservation and Sustainable Management and Living Natural Resource seeks to replace both the current Natural Habitat and Forest policies (OP 4.04 and OP 4.36). While the introductory section of the second draft of ESS 6 is improved compared to the first draft, and now includes considerations for broader ecosystem services and the livelihoods of affected communities and indigenous peoples, these issues need to be much more explicitly included in the scope and other operational sections of ESS6.

For example;

-The objective:

The first objective is a vague formulation, we therefore suggest to rephrase to a more robust objective as follows: “To prevent the conversion and degradation of natural and critical habitat, (including areas critical to indigenous peoples or other vulnerable forest communities with regard to their livelihood, cultures and spiritual values, see suggestion for para 23 below) and fully mitigate any negative impacts to natural habitats and their custodians”.

We would suggest to consider using the same objective as in ADB’s safeguard policy, regarding incorporating environmental concerns into the project design and decision making (which is absent in ESS6): “To ensure the environmental soundness and sustainability of projects and to support the integration of environmental considerations into the project decision-making process.”

- The scope: Considerations for forest-dependent peoples, central in existing OP 4.04 and OP 4.36, are not adequately addressed, as the draft standard does not include local communities or forest dependent peoples in its scope, (only mentioned in the introduction, para 4, and in para 14). This must be amended, for example by editing para 8 to read: “Based on the environmental and social assessment, the requirements of this ESS are applied to all projects that, either positively or negatively, potentially affect biodiversity, habitat supporting biodiversity, *or areas of customary use by resource dependent communities*”.

- The suggested categorization of habitats: The definition of critical natural habitats is narrowed to consider only biodiversity (compared to existing OPs). This is a problem, as areas important to traditional communities will then no longer be considered “critical”, requiring the strongest protection under the policy. The definition of “critical habitat” in para 23 should be amended to include also areas critical to indigenous peoples or other vulnerable forest communities with regard to their livelihood, cultures and spiritual values. Likewise, considerations for people must also be included in the list in paragraph 24.

We are also concerned about the new “modified habitat” category, as many habitats important to local communities may be considered “modified” by the Bank or Borrower (due to local community use). We see a risk of preferentially siting projects in such habitats with high ecological and cultural value despite the “modification”. In the current draft, there are no requirements for projects in modified habitats; only weak language suggesting to “implement mitigation measures as appropriate.” (paragraph 20).

- Protected areas are no longer defined as “no-go” zones for projects financed by the World Bank. Projects in protected areas should not be allowed under the new safeguards.

- Biodiversity offsetting: The draft standard opens up for “biodiversity offsetting”, first described in para 18. Biodiversity offsetting should not be used to facilitate project development within protected areas or areas important to indigenous peoples or traditional forest communities, or in critical habitats – such as primary tropical rainforests. No biodiversity offsets should be accepted in countries that do not have national biodiversity plans and clear, implemented policies to fulfill their commitments with regard to biodiversity conservation (such as the CBD Aichi targets).

Note: Offsetting as a mitigation tool is described in objective in ESS1, and language should be revised also here.

- Vague language in paras 32-38 describing “Sustainable management of living natural resources” can open up for World Bank support to land clearing and salvage logging. It is our opinion that these paragraphs must be substantially changed to explicitly state that the Bank will not finance projects causing deforestation or conversion of natural forests. (This would be in line with the SDGs, New York forest declaration and Cancun safeguards to which the Bank is already committed through REDD). Language clarifying that no investment lending operations shall undermine ecosystem values, forests and natural habitats’ role in climate mitigation or the rights of traditional, forest-dependent communities and indigenous peoples should be introduced.

The reference to so called “GIIP- good international industry practice” only contributes to confusion, and accepting any national standard for sustainable management of natural resources will allow much more habitat degradation than with today’s OPs. Furthermore, paragraph 38 is highly problematic as it opens up for Bank support to even when the operation is unable to follow “recognized standards”. We suggest deleting this paragraph.

- Plantations: The current language in ESS6 prescribes that borrowing countries should locate plantations in areas “already converted or highly degraded” (para 36), without clearly defining a cut off date for conversion or definition of degree of degradation. We see a very high risk that the Bank with this suggested ESS6 will support projects converting valuable habitats to monocultures with almost no biodiversity. Several companies have formulated policies defining both cut off dates and a classification system for degraded forests¹. The World Bank should aim to upward harmonize to these “best practices”.

Value chain perspectives (paragraphs 40-42)

It’s laudable that the policy includes measures for borrowing countries to avoiding procurement of primary products suspected of having degraded natural or critical habitats. Demands for traceability and suppliers’ documentation of not contributing to degradation are very valuable, but their impacts are potentially reduced to zero by paragraph 41 d, saying actions are only required “where possible”. Paragraph 42 can also be deleted as it has no real content.

Securing the rights of rights of indigenous and other forest dependent peoples

While we appreciate the reference to “the human rights of indigenous peoples” and the specific reference to FPIC, we miss an explicit reference to indigenous peoples’ rights as stated in both the UN Declaration on Indigenous Peoples (UNDRIP), and ILO 169. The vague formulation “Give due consideration to Indigenous Peoples..” used in the policy framework (e.g. the vision statement) should be replaced by language explicitly recognizing and respecting the rights of indigenous peoples, with

¹ See for example the high carbon stock working group <http://highcarbonstock.org/>

reference to international policy such as the UNDRIP. While the standard says the Bank is to ascertain whether FPIC has been obtained, it does not describe how this assessment will be done. This is crucial and language should be developed on this before the final draft is submitted to the Board.

We are content to see that the opt out clause/alternative approach was removed from ESS 7 in the second draft. Still, there is description of a “waiver” process, where the Board of E.D.s can decide that the ESS7 should not be applied. The debate around under what circumstances a waiver process can be triggered must be watched carefully, as well as any new language developed on this so that one doesn’t open up again for waiving away peoples’ rights.

When it comes to forest dependent peoples that are not indigenous, their rights must be protected through the other ESSs (other than ESS 7). We are specifically concerned about the potential lack of protection in both ESS 6 (outlined above) and ESS 5.

While the second draft of the ESS 5 has been significantly improved from the first draft (for example the inclusion of land tenure in scope, insert of annex largely based on current OP), there are particularly two issues important to improve:

- 1) The scope of ESS 5 must be broadened to include project activities that affect people’s livelihood and food resources or access to these resources.

We are concerned that displacement impacts from land use regulation and natural resource management programs are not covered in ESS 5. While many of these project impacts might be captured in ESS 7 on Indigenous Peoples as these projects will often be in forested areas and involve Indigenous communities, this may not be the case all the time, and so in order to ensure that all communities at risk for being adversely affected by such projects are covered, ESS 5 should include natural resource management programs in its scope.

- 2) There must be a clear requirement for draft resettlement plans and budgets to be prepared prior to project appraisal and made available in a manner accessible to affected persons, allowing them the opportunity to provide comments.

This is essential as this is when one can ensure that projects are not financed at the expense of poor communities and that Borrowers have clear, feasible plans for how they intend to resettle communities, and that the Bank and Borrowers know the full costs of a project. Most importantly, communities affected by displacement have the right to know and be consulted as early as possible on the resettlement plans. Current Bank policy and procedure require, as a condition of appraisal, the Borrower to submit to the Bank a draft resettlement plan, which is made publicly available, and for Bank staff to assess is compliance with the policy and feasibility of measures and the borrower’s commitment to and capacity for implementing it. Bank management must present a full resettlement plan and budget to the Board prior to approval.

Also essential to several forest dependent peoples is that the resettlement standard also covers *those*

without formal rights to the land they depend on. Formal land tenure rights are often not granted, even though the peoples have customary rights. The second draft of ESS5 (paragraphs 10 c and 29) holds provisions to include people without formal land rights in the resettlement plans and compensation measures, and we strongly advise against removing those provisions.

Unclear standard for stakeholder engagement and information disclosure

The ESS 10 is still plagued with very vague language making it difficult to understand what type of information will have to be disclosed to whom, when and how. *We believe this ESS must be revised to erase any uncertainty, and clearly state a minimum disclosure requirement of 120 days prior to Board approval.* 120 days makes a key difference in the country and community level for translation and local understanding of the issues.

Furthermore, it needs to explicitly require the sharing of ESIA's, and clarify what should be the basis for the discussion/information about risk to the affected people (as described in para 19 c).

The paragraphs describing the stakeholder engagement plan (para 13-18) need to specify also who should verify the plan, as such plans might be of very varying quality.

xWe hope our comments receive due consideration.

Best regards,

Ane Schjolden
Senior advisor, policy and campaign division
Rainforest Foundation Norway