

Comments on the Draft of the New Environmental and Social Policy Framework

I. Introduction:

The Latin America context in relation to social-environmental conflicts and the persecution of human rights defenders requires an urgent response. Different struggles, from communities, social movements, and civil society organizations have historically been organized in response to the effects of diverse development policies and projects. These groups continue to defend their territories and fundamental rights. One of the scenarios that is the most exclusionary and difficult to create a dialogue occurs with the multilateral development banks (MDBs) and international financial institutions (IFIs).

These stakeholders are key given their role in the planning of national development policies and programs, financing for projects or programs, development of technical support instruments and mechanisms, and the definition of objectives, policies, and sectoral strategies. These institutions' actions affect most of the population, but the impacts are particularly acute for local communities and ethnic populations far from decision-making spaces.

The 90s were an ideal scenario due to the emergence of international legal instruments, such as ILO Convention 169, which protects ethnic peoples, or the 1992 Rio Convention on environmental protections and its implementation in national regulatory frameworks throughout Latin America. For example, the Political Constitution of Colombia includes these instruments in its "constitutional block." Based on these regulatory advances, civil society organizations decided to demand greater responsibility and commitment from the institutions regarding human rights, through the creation and implementation of social and environmental safeguard policies for the projects and policies that they finance.

These policies, initially created by the World Bank Group between 1970 and 1980, with the objective of preventing and mitigating damages generated by development processes against people and the environment, have been gradually transformed and, currently, we are amid a fundamental stage of the updating and change process. In 2012, the World Bank initiated a review process for its social and environmental safeguards and its Access to Information policy. This has generated uncertainty within civil society as there was a significant possibility that the policies would be weakened. As result of this process, the new Environmental and Social Framework (ESF) was presented in 2018. This process was criticized due to a weakening of the standard, the lack of effective dialogue with civil society and communities, and because it didn't demonstrate a direct relationship with the international legal framework for human rights.

In 2014, the UN Special Rapporteur on extreme poverty and human rights, Philip G. Alston, maintains “that the principal reason for these modification appears to be the Bank's intention to compete with alternative financing initiatives (backed mainly by China, Russia, and India), which do not apply these minimum safeguards.” Instead the modifications are contrary to the mission to eliminate extreme poverty and improve the quality of life of people in developing countries.¹

In addition to market dynamics, it is important to consider the region's political transformation. An example of this is the end of UNASUR due to the Venezuelan crisis and changes in the governments of Argentina and Ecuador, as well as regulatory changes over the last five years, such as the easing of environmental regulations in Colombia, Peru, and Brazil; and regionally, the increase in breaches of access to information and transparency. This context has increased the number of social and environmental conflicts, with Latin America currently in first place internationally. This phenomenon goes hand-in-hand with a shocking increase in the murders and threats against social and environmental leaders.

An important aspect to highlight, in addition to the weakening of social and environmental protection standards, are the manifest setbacks from the Multilateral Bank in direct reference to national regulatory frameworks and by not closing potential gaps that could appear in the region's national regulations on transparency, access to information, environmental procedures, and protections for prior consultation and prior, free, and informed consent, among others.

In 2019, the Inter-American Development Bank, including IDB Invest that supports private sector projects, began updating its safeguard policies. IDB is the main development bank for Latin America and the Caribbean and has been tied to negative impacts in many of its financed projects. Below, we present some critical considerations regarding the approaches, definitions, and procedures in the new draft Environmental and Social Policy Framework (ESPF) that applies to projects with public financing from the IDB.

II. **General comments on the IDB's ESPF:**

In 2018, the IDB's independent Office of Evaluation and Oversight (OVE) indicated² that the bank's safeguards had been developed in a disjointed manner over the last 20 years. Therefore, it lacks a comprehensive and fully coherent framework for safeguard policies.

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<https://www.fundeps.org/en/un-rapporteurs-urge-the-world-bank-to-recognize-human-rights-in-its-policies/>

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<https://publications.iadb.org/publications/english/document/Approach-Paper-Environmental-and-Social-Safeguards-Evaluation.pdf>

The current draft presents a comprehensive framework with a unified global policy on environmental and social sustainability for projects and it establishes ten Performance Standards (PS) and advances in an effort to address, in greater detail, some aspects that were not contemplated in its previous policy.

In general, **this policy is guided by the World Bank's (WB) Environmental and Social Framework and the International Financial Corporation's Standards.** Its initial considerations, provisions, definition of objectives, scope, etc. are similar to those established by the World Bank and one can read similar sections that were clearly inspired by that policy. This creates an initial challenge when looking to engage in a dialogue about its content, considering that it is based on a policy previously consulted with civil society stakeholders, which did not take into account their comments and recommendations.

We have identified three general issues in the new IDB draft, which are also included in the WB safeguard framework and that foment a weakened application of the standards:

- **Absence of procedural and timeline requirements to evaluate, disclose, and manage social and environmental risks:**

In general, the policy avoids establishing specific timelines and procedures for key questions included in the different safeguards. For example, paragraph 3.5 of the IDB Policy indicates that the implementation and fulfillment of Performance Standard 1 (Assessment and Management of Environmental and Social Risks and Impacts) will be carried out “in a way and under the timeline that are acceptable for the Bank.” There is no further reference to more specific terms or procedures to disclose and present an assessment or to manage social and environmental risks.

- **Use of ambiguous language that can lead to breaches:**

The previous problem is also related to the absence of clear language that establishes timelines and procedures. The IDB draft is permeated with ambiguous language, for example, there is an excessive use of expressions such as: “you may adopt,” “if necessary,” “the IDB could refrain from financing,” “reasonable timeline,” and others. This is problematic because ambiguous language opens the door to different interpretations, including breaches and serious offenses. It also avoids establishing clear demands for borrowers and the responsibilities of the bank itself, especially in reference to policy oversight and implementation responsibilities from the borrower.

- **Delays for Bank responsibilities and the application of corrective measures:**

Third, by not detailing clear procedures and criteria for the application of corrective measures, the policy does not stipulate when and under what conditions the IDB would pull financing for projects with clear human rights or environmental repercussions, or if it will ensure that borrowers do not advance with execution until all of the project's critical points in relation to these aspects have been addressed. In addition, the Bank creates the possibility of using a borrower's framework (instead of the IDB policy framework), without clarifying how it will determine if they offer equivalent or greater protections and how it will guarantee due diligence. This is observed specifically in section V. "USE OF BORROWER'S FRAMEWORK."

Comments related to the IDB commitment to environmental and social sustainability and a respect of human rights:

One of the principal problems in the World Bank's ESF, which is also one of the principal weaknesses in the draft presented by the IDB, is that they constitute a "human rights-free zone."³ In 2014, a letter was sent by the Human Rights Special Rapporteurs to the World Bank President indicating that their safeguard policies lack any significant reference to the relevant standards on international human rights law and human rights (with the exception of vague references in some standards) and that the Bank has limited itself to stating that it "supports" human rights.⁴

The IDB avoids a true commitment to human rights and any significant reference to the related international standards. Specifically on page 1, paragraph *1.3 A. Respecting Human Rights*, the policy states that the Bank "requires its Borrowers to respect⁵ human rights, avoid infringement on the human rights of others, and address risks to and impacts on human rights in the projects it supports" (emphasis added). The use of the terms "observe" (See footnote 5 on the Spanish version) and "avoid" are ambiguous if the aim is to clearly require borrowers to respect and guarantee human rights in their projects, as a client responsibility and obligatory condition for Bank financing.

Although there is an express commitment from the Bank "to respect internationally recognized human rights standards," specifying that these include the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work. However, this should be expanded to other international environmental standards, such as

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<https://www.brettonwoodsproject.org/2016/02/world-bank-lack-of-human-rights-problematic-for-safeguards/>

⁴ <http://www.fundeps.org/wp-content/uploads/2014/12/wbletter.pdf>

⁵Translator's Note: Here we see a small but important difference between the text in Spanish and in English. Whereas the context in English states that it "requires its Borrowers to respect human rights," the text in Spanish states that it, "exige a sus prestatarios que observen el debido respeto de los derechos humanos" or requires its borrowers to observe a due respect of human rights."

the 1992 Rio Convention and the recently approved Escazú Agreement. These standards should be the foundation for each of the safeguards that are formulated later in the document.

In addition to the absence of clear human rights commitments, the bank's approach to its environmental and social sustainability commitment is weak. For example, on page 3, paragraph 1.4, the document mentions 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” (emphasis added). This is problematic as the premise is developed based on the idea that a negative impact will necessarily be generated in a determined territory. They do not propose alternatives for local economic development beyond the impact generated by a given project.

The IDB's commitment cannot be limited to a prevention or damage assessment approach for the projects. In the context of projects financed by IDB, the perspective of generating benefits must be prioritized, beyond assessing the damages, as well as a commitment to project sustainability and a respect for human rights. The prior is also observed in the draft's first paragraph when it mentions that “the IDB believes that the costs of economic development should not fall disproportionately on the poor or vulnerable, the health of the environment should not be compromised by economic development activities and natural resources should be managed sustainably.” In practice, the Policies' application must be strengthened and promote positive sustainable impacts for communities, instead of simply avoiding or reducing possible project impacts.

In relation to participation, the Bank assumes the obligation to maintain an “open, transparent, and inclusive engagement process with all stakeholders, including project-affected people, to improve the environmental and social sustainability of the projects it supports” which is why the IDB demands that its borrowers identify the stakeholders that could be affected by or have an interest in these projects, generating interactions through significant consultations; which is a limited obligation considering that the result of these interaction processes consist of formulating comments, statements of concern, and inquiries; which is necessary to guarantee the right to access to information and transparency, but is insufficient to atone for controversies between the intervening and interested parties during the project cycle.

Finally, this chapter includes the commitment to minimize greenhouse gas emissions and promote resilient development, which we consider to be an advance in this phase of the document, without considering the specific development of this safeguard. However, we believe that it is important to recommend the incorporation of an obligation on transparency, access to information, and Bank monitoring for the active international climate funds, such as the Global Environment Facility, understanding that it is an express obligation to coordinate actions promoted by the IDB-GEF team.

Policy scope and exclusion of specific financing instruments:

Paragraph 2.3 *Scope*, mentions that the Environmental and Social Policy Framework will be applied to investment loans, investment grants, and investment guarantees, including co-financed operations and associated facilities. It also establishes that “[o]nly policy-based loans that are determined by the Bank to require an environmental analysis in accordance with the provisions of paragraph 4.7 below will be subject to the ESPF to the extent and limited to said provision. All other technical cooperation operations will be outside the scope of the ESPF” (emphasis added).

This paragraph creates the possibility for policy reform projects and technical cooperation projects to be excluded from the Environmental and Social Policy Framework’s application. The projects to be covered by the Framework will be decided using Bank criteria, nevertheless, clear criteria is not established to measure and assess the impacts, specifically technical cooperation operations and policy-based loans (PBLs) are not covered by the bank's safeguard policies:

- Paragraph 4.7 on *Policy-based loans (PBLs)*, establishes that “PBLs that do not have significant and direct negative effects on the country's environmental and natural resources, as determined by the Bank during its screening, will fall outside the scope of the ESPF” (emphasis added).
- Paragraph 4.8 *Technical cooperation (TC) and pre-investment operations*, establishes that “when a TC or a pre-investment operation that finances pre-feasibility or feasibility studies of specific investment projects includes environmental and social studies, the terms of reference and outputs of these studies should be consistent with the applicable ESPF requirements.” This criterion is limited as it does not contemplate other operations that do not expressly include environmental and social studies, which can also have impacts on different levels and scales.

As can be observed, the Bank does not clearly define what is understood to be a significant impact nor the criteria to carry out this assessment. The OVE indicated in 2014 that the Bank portfolio had registered an increase in this type of financing and for this increasing proportion of operations it is difficult to apply the current safeguard policies, generating a lack of clarity and coverage gaps.

Conceptual gaps in the environmental and social policy framework glossary

The central problem in the glossary is that it does not define what is understood as a social and environmental impact (in differential way) and what is understood by social and environmental risk. This is a central definition, and its nonexistence generates a conceptual gap in the Environmental and Social Policy Framework. The OVE indicated in its report that the IDB policies framework does not cover some topics, especially on a social level: “Even if the IDB Environment and Safeguards Compliance Policy covers environmental impacts from projects, there is not a global policy that includes possible adverse social impacts from Bank operations. This policy mentions them indirectly as impacts associated with environmental impacts, but is ambiguous regarding the types of adverse social impact that must be identified and addressed.”⁶

The draft includes a definition as a footnote for Performance Standard 1, nevertheless, this definition is limited and insufficient for the Policy's objectives. For example, it is unclear how the Bank will classify a project's risk without a definition and conceptual clarity regarding what is an impact and a risk, its magnitude, scale, etc. Hence, there is a conceptual gap in the draft on:

- **A clear distinction between environmental impacts and risks**
- **A clear distinction between social impacts and risks**
- **A definition of what is understood by Environmental and Social Impact Assessment (EIA) and the importance of performing them.**

On the other hand, one of the primary problems in the glossary is related to the definition of traditional peoples. The draft defines them as “groups or communities that have ownership and land use patterns that recognize customary law, customary land tenure rights in accordance with their worldview and governance structures. These structures are culturally distinct, traditionally owned, and often communally held. Examples of communities of traditional peoples in Latin America include quilombolas, palenques, caboclos, and riberinhos. For the purpose of the Environmental and Social Policy Framework, traditional peoples will be treated as indigenous peoples.”

⁶ file:///D:/Evaluaci%C3%B3n_de_Salvaguardias_Ambientales_y_Sociales.pdf

As will be addressed in more detail below, treatment as such could make invisible traditional and ethnic peoples, for example, black or Afro communities, and could have implications and impacts regarding their rights, in particular for prior consultation and prior, free, and informed consent.

General requests and recommendations on the IDB's new Environmental and Social Policy Framework:

- We request that the Bank be explicit in demanding a commitment from borrowers regarding a compliance of human rights according to national and international standards. To do this, we suggest that the paragraph include a rigorous analysis of (and not only “observe”) the respect of human rights, and it should be a prior condition for finance approval. Incorporate as a directive.
- We request the inclusion of a human rights compliance analysis matrix, which would be carried out based on international standards, implemented throughout the entire project cycle and built together with all stakeholders.
- Include clear commitments and references to international standards such as ILO Convention 169 on Indigenous and Tribal Peoples and the Escazú Agreement.
- Eliminate from paragraph 3.3. of section III. ROLES AND RESPONSIBILITIES the following section, “If less stringent levels or measures than those provided in the EHSB are necessary in view of the Borrower's limited technical or financial constraints or other specific project circumstances, the IDB will require the Borrower to provide full and detailed justification for any proposed alternative through the appropriate instruments (for example, an Environmental and Social Assessment). This justification must demonstrate, to the satisfaction of the IDB, that the choice of any alternative performance level is consistent with the objectives of the ESPF and the applicable EHSBs and is unlikely to result in any significant environmental or social harm” (emphasis added).

We consider this paragraph to represent a risk for a project's environmental and social sustainability, as it opens up the possibility of using less rigorous measures than the IDB directives. It remains unclear what kind of technical or financial limitations could require a less stringent application of social and environmental safeguards. An adequate project design must ensure the financial resources to apply the Environmental and Social Policy Framework, in addition to addressing any technical challenge in this regard. In the given case of these existing technical

circumstances, not executing the project or developing alternatives must be assessed.

- **The role of the Independent Consultation and Investigation Mechanism (ICIM):** Throughout the draft policy this mechanism is only mentioned once, in section VII. GRIEVANCE MECHANISM AND ACCOUNTABILITY. We suggest that the Bank clearly mention its commitment to respond to any grievance by means of the Independent Consultation and Investigation Mechanism (ICIM). We believe that the ICIM should have a more active role, and not only be a secondary grievance mechanism. As was mentioned in the OVE evaluation, the IDB Group's policies do not reference the ICIM as a last instance grievance mechanism, meaning that the Mechanism is essentially disconnected from the Group's safeguards framework.

II. Specific analysis of Performance Standards:

ENVIRONMENTAL AND SOCIAL PERFORMANCE STANDARD 1 Assessment and Management of Environmental and Social Risks and Impacts

The objectives of PS 1 are: a) To identify and evaluate environmental and social risks and impacts of the project; b) To adopt a mitigation hierarchy to anticipate and avoid, or where avoidance is not possible, minimize, and, when residual impacts remain, compensate/offset for risks and impacts to workers, project-affected people, and the environment; c) To promote improved environmental and social performance of Borrowers through the effective use of management systems, d) To ensure that grievances from project affected people and external communications from other stakeholders are responded to and managed appropriately.

The principal challenges in this standard are related to, first, the **lack of conceptual clarity** surrounding some key aspects. The standard is based on the definition of an Environmental and Social Management System (ESMS), which includes a process of assessing and identifying risks and impacts, however, there is not a clear definition of an EIA, its key characteristics, and the importance of performing them. Footnote 20 defines an environmental and social risk as *“a combination of the probability of certain hazard occurrences and the severity of impacts resulting from such an occurrence”* whereas footnote 21 defines environmental and social impacts as *“any change, potential or actual, to (i) the physical, natural, or cultural environment, and (ii) impacts on surrounding community and workers, resulting from the business activity to be supported.”* These definitions reflect indeterminacy, which does not allow for a definition of the environmental and social impacts by means of the policy's implementation.

Specifically in relation to social impacts, the document “Social Impact Assessment: Integrating Social Aspects in Development Projects”⁷ published by the IDB, indicates that there is a need to improve the practice of Social Impact Assessment “since social issues have often been poorly or only partially addressed in development projects [...] Typically, social issues are not addressed comprehensively as a part of the assessment process.”⁸ It is important for IDB to include this type of recommendations.

Second, the standard **doesn't establish clear timelines and procedures for the assessment and management of environmental and social risks and impacts**. Specifically, it does not establish the prior requirements for financing to be approved. For example, the documents that must be presented, under what parameters and timelines. Nor does it establish specific timelines to receive comments, suggestions, or modifications on plans and documents related to the assessment of social and environmental impacts. Finally, it does not establish timelines and specific procedures to design project alternatives and alternatives or improvements on mitigation, management, and monitoring measures. The absence of these timelines and procedures makes it more difficult to monitor and evaluate projects, action plans, participation plans, consultations, and the disclosure of information.

Third, and in relation to the prior, one of the critical social questions regarding the standard is the **weakness of consultations with affected populations and stakeholders**. Paragraph 30, page 30, on the meaningful consultation process indicates that “the borrower will undertake a process of consultation in a manner that provides the project-affected people and other relevant stakeholders with opportunities to express their views, without the fear of reprisals, on project risks, impacts, and mitigation measures, and allows the Borrower to consider and respond to them.”

It is necessary to expand the approach in this section, since the consultation process should not only be a process for affected people and stakeholders to “express” their comments. The space must offer the possibility for those opinions to have a real impact on the action plans, design, or any aspect of the project. That is to say, that the agreements are binding for the project. In this sense, we suggest clearly introducing the following points on consultations:

- Broad calls for participation, prior to project execution. It is necessary to define the timelines and minimum criteria for these calls for participation, as well as how distinct communications channels will be used to disseminate

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https://publications.iadb.org/publications/english/document/Social_Impact_Assessment_Integrating_Social_Issues_in_Development_Projects.pdf

⁸ Ibid.

the calls, invitations for community representatives and leaders, in addition to providing the necessary resources in relation to language, transportation, and logistics for their participation.

- Effective integration of comments, suggestions, and modifications that arise from the consultations. Include specific procedures on how these will be integrated.
- Minimum timelines, which can be established based on the experiences with the national regulatory frameworks, if this timeline is shorter than the standard in a given country, the existing and broader timeline must be respected.
- Prompt disclosure of the consultation results and agreements that arose from these spaces.
- Recognize the validity of consultation spaces generated by the communities themselves, self-managed spaces or any mechanism generated by the local communities.

Specific suggestions:

- The PS objectives include “*ensuring that the grievances of project-affected people and external communications from other stakeholders are responded to and managed appropriately*” we suggest explicitly including a strengthening of the ICIM to resolve presented grievances.
- We request that clear timelines and procedures be included on: i) the environmental and social impact assessment, ii) the presentation of plans (mitigation, participation, consultation, or any other required for the project), iii) results from consultations and participation processes. Also, it is necessary that adequate procedures be established to receive comments, suggestions, and modifications for all instruments. We reiterate the need to establish minimum timelines, which will be a foundation to close legal gaps in Latin America and the Caribbean.
- Paragraph 1. Introduction. We suggest **including a definition of the EIA** as an independent and responsible instrument, to identify the natural, environmental, and social risks and impacts. EIA processes must also take into account the active participation of local communities and people who could be affected by the project.
- We suggest including the possibility of carrying out **Strategic Environmental Assessments**, seeking an analysis that goes beyond the project's influence area, making it possible to recognize the cumulative impacts of development projects and activate the internationally recognized prevention and precaution principles.

- Paragraph 7. *Risk and impact identification*. We recommend including that the risk and impact identification process must also be participatory, involving all project stakeholders, in particular affected people. Although the policy defines the participation and consultation processes, it is necessary to understand that affected parties must have a central role in this process from the start and not in a secondary phase.
- Paragraph 11. In this paragraph the IDB indicates that “*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.*” In accordance with the previous point, we suggest replacing “will take account” with apply the binding nature of comments, suggestions, and modifications from project-affected people and stakeholders, in the environmental and social impact assessment.
- Paragraph 13. Management Programs: the client will establish specific timelines to implement the measures and actions established in the plan to respond to environmental and social risks and impacts. It is necessary that the Bank establish Borrower action limits for the definition of possible elements in the management and/or mitigation plan for the project's social impacts.
- Paragraph 22. Monitoring and Review: **It is key to include that the client must inform the bank of any change in the project design and operation after a Bank assessment.** It is necessary that any modification made by the Borrowers regarding project design or management plans be reported to the Bank, so that it can assess the social and environmental implications according to the Environmental and Social Policy Framework.
- Paragraph 25. This paragraph includes elements that must include stakeholder participation, we recommend eliminating the words “may include” to replace them with “must include,” considering that these are basic elements to effectively exercise the right to citizen participation and that these are not contemplated by the different national legal standards in the region.
- Paragraph 35. Grievance Mechanism. The Borrower's creation of a grievance mechanism is an advance in relation to participation, we suggest the inclusion of a file with documents on the resolution of concerns, we also consider that it is important to establish a reasonable timeline to resolve these consultations.
- We suggest the inclusion of a paragraph that specifies how the bank will follow up on the Environmental and Social Management System (ESMS), the timelines to assess action plans, and the procedures to make corrections, if necessary. It is also necessary to define the specific area within the Bank responsible for ESMS follow up.

SOCIAL AND ENVIRONMENTAL PERFORMANCE STANDARD 7 INDIGENOUS PEOPLES

Conceptual problems were identified in PS 7 on indigenous peoples, with important omissions regarding Prior, Free, and Informed Consent and clear references to international standards, as well as limitations in its applicability, which represent a risk for ethnic populations.

First, the standard in paragraph 4 on the scope of application, says that “[t]here is no universally accepted definition of “indigenous peoples.” [They] may be referred to in different countries by such terms as “original peoples”, “autochthonous peoples,” residents of indigenous counties or reserves; or any other formally recognized indigenous peoples in Latin America and the Caribbean,” and it then defines some keys characteristic for the populations covered by this standard.

This is a critical aspect as **it doesn't recognize other ethnic populations that also have specific rights** such as romani communities, black, Afro, quilombolas, palenques, caboclos, and ribeirinhos communities, that also have the right to Prior, Free, and Informed Consultation. For example, the World Bank's ESS 7 titled “Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities” states that the standard will be applied to other terms, such as “Sub-Saharan African Historically Underserved Traditional Local Communities,” “indigenous ethnic minorities,” “aboriginals,” “hill tribes,” “vulnerable and marginalized groups,” “minority nationalities,” “scheduled tribes,” “first nations,” or “tribal groups” and adds that “[a]s the applicability of the term “Indigenous Peoples” varies widely from country to country, the Borrower may request that the Bank use alternative terminology for the Indigenous Peoples, as appropriate to the national context of the Borrower.”⁹

Hence, even if the World Bank standard has its limitations, it more broadly defines the standard's scope of application and express a need to evaluate language based on the national context where the PS will be applied. Additionally, ILO Convention 169 includes a definition of tribal peoples those “whose social, cultural, and economic conditions distinguish them from other sectors of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.” Hence, the standard's title and scope of applicability are limited and excludes ethnic populations whose fundamental rights could be violated and who could be omitted from consultation processes.

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<http://documents1.worldbank.org/curated/en/383011492423734099/pdf/The-World-Bank-Environmental-and-Social-Framework.pdf>

Development impacts on ethnic populations

Paragraph 1 establishes that *“in many cases, [the communities] economic, social, and legal status limits their capacity to defend their rights to, and interests in land and natural and cultural resources, and may restrict their ability to participate in and benefit from development that is in accordance with their worldview.”* This approach does not acknowledge that development processes have generated and can generate new conflicts and the exclusion of ethnic populations. According to the prior, it is necessary to recognize the right of these communities to reject development processes, for example, in the cases of isolated or uncontacted peoples, and additionally their right to free, prior, and informed consent.

Additionally, starting from the introduction it is necessary to explicitly include the need to protect ethnic populations' life and culture, recognizing the particular impacts they face from development processes. As well as in objective 1, a respect for community rights in development processes must be included. Hence, we suggest including respect for the free development and self-determination of ethnic peoples in the standard's objectives.

Prior, Free, and Informed Consent and references to international standards

The 2018 OVE report indicates that the policies on indigenous peoples lack precision and leave a large discretionary margin regarding respect for the prior and informed consent of indigenous peoples affected by projects. This continues to be a problem in the draft of this standard. The document's only reference to ILO Convention 169 is in point D. “Respecting Indigenous, Afro-descendant, and other Traditional Peoples Rights” in the section **IDB'S COMMITMENT TO ENVIRONMENTAL AND SOCIAL SUSTAINABILITY**. As occurs with human rights, it is a vague and insufficient reference to the bank's commitment to the Convention and does not require a borrower to clearly respect the convention.

In the draft of the standard, paragraph 14 **CIRCUMSTANCES REQUIRING FREE, PRIOR, AND INFORMED CONSENT** limits the application to exercise prior, free, and informed consent to specific circumstances, even though it is a cross-cutting principle for any intervention in a collective territory. For example, there could be circumstances in which project development puts a community's existence at risk (when they are at risk of extinction), for activities such as the disposal of toxic waste and others.

Nevertheless, it is necessary that respect for the right to Prior, Free, and Informed Consent be included in accordance with the relevant international and national standards. This is a critical aspect of the standard, given that it does not differentiate between Consultation and

Consent, generating confusion regarding the difference or relationship between both processes. The Bank needs to include precise definitions on Prior, Free, and Informed Consent and Consultation, and explicitly state that it requires Borrowers to fulfill Prior, Free, and Informed Consultation.

Specifically paragraph 11. Participation and Consent mentions that the participation process “include stakeholder analysis and engagement planning, disclosure of information, consultations, and participation, in a culturally appropriate manner” (emphasis added). Even though the Policy mentions culturally appropriate consultations, we suggest that:

- It recognize Prior, Free, and Informed Consultation as a fundamental right to exercise effective participation in the context of development projects, in accordance with international standards such as ILO Convention 169. This recognition must be included in the objectives and developed in follow-up processes for procedures that guarantee their enjoyment.
- This means ensuring the minimum conditions for the consultation: appropriate language; accessible spaces; a budget to organize the consultations; transportation and logistics for representatives and the population, if necessary; providing timely information adapted to the population's cultural needs.

Risks for uncontacted or initially contacted peoples:

Paragraph 10 Indigenous People in Voluntary Isolation states that projects “will respect the rights of Indigenous Peoples in voluntary isolation to remain in isolation and to live freely according to their culture (...). To this end, Borrowers will collaborate with responsible government agencies to regulate the territories of the uncontacted peoples and establish buffer zones, limit access to such territories, and develop the necessary monitoring and emergency response measures, making avoidance of contact a priority, and mitigating any other risks and impacts on Indigenous Peoples in voluntary isolation.”

Although the inclusion of measures to safeguard the rights of indigenous peoples in voluntary isolation is positive, it does not include uncontacted or initially contacted indigenous peoples, who are also populations that could be put at risk by bank financed projects. Hence, it is necessary to develop a specific plan for these cases and explicitly include in the policy **the possibility of not financing projects in circumstances that put at risk isolation and non-contact with these populations. It is also necessary to explicitly include not financing and not implementing projects if the impacts and risks put at risk the survival of these communities.**

ENVIRONMENTAL AND SOCIAL PERFORMANCE STANDARD 10 STAKEHOLDER ENGAGEMENT AND INFORMATION DISCLOSURE

Regarding PS 10 in the draft, one gap is related to the fundamental principals of disclosure and access to information. In section 1, Introduction, it is essential that the section on engagement and information disclosure establish principals in accordance with the rights to access to information, which are absent from the standard, for example:

- **Maximum Disclosure:** It is suggested that the bank include a provision in favor of the disclosure of information produced and received that is not included in the exemptions established in this Policy. This way, the IDB commits to proactively disclosing the greatest amount of public information.
- **Simple and Broad Access to Information:** Employ all practical measures to facilitate access to information, including the website, and establish an information management and classification system that contributes to homogeneous, efficient, and timely disclosure.
- **Fulfillment of national legislation and international standards on the rights to access to information.**

In addition to these principals, in Paragraph 3: We suggest explicitly including that project documents provided to the Bank by the Borrower will be subject to the IDB Access to Information Policy. The draft does not mention or refer to this policy, which constitutes a central safeguard in relation to access to information and is currently under review. For that reason, we suggest that the IDB clearly establish its responsibilities to assess, monitor, manage, and disclose project information, in accordance with that established in the Access to Information Policy and the draft of the Environmental and Social Policy Framework.

Gaps related to access to information:

The section "Information Disclosure" has major gaps in relation to access to information. For example, the section mentions that "[t]he Borrower will provide stakeholders with access to the following information, as early as possible in the project development process, and in a timeframe that enables meaningful consultation with stakeholders on project design." Once again, it does not establish clear timelines for the disclosure of information and key documents on social and environmental issues (for example, 120 days before financing is approved). We suggest that concrete timelines and procedures be established,

where the Borrower discloses information to the affected parties and stakeholders, ensuring sufficient time to provide feedback on the information provided.

Stakeholder consultation and participation

Considering the support provided by the Inter-American Development Bank to implement the Escazú Agreement in Latin America and the Caribbean, we suggest a direct mention of the respect for and fulfillment of the ESPF in the context of regulatory advances regarding access to information, environmental justice, participation, and transparency in the Escazú Agreement.

In Paragraph 19 on Information Disclosure, the draft establishes that the Borrower must provide "[t]he time and venue of any proposed public consultation meetings, and the process by which meetings will be notified, summarized, and reported; [t]he process and means by which grievances can be raised and will be addressed." Given that information disclosure for the convening of consultations is essential to guarantee the full participation of affected parties and stakeholders, we suggest that the Bank require the Borrower to use all outlets, channels, and options to convene public consultations and to receive and address grievances. As it is laid out in the policy, the possibility remains that not all possible outlets are used to ensure a correct convening for participation spaces.

Second, specifically in relation to consultation and that established in Paragraph 21: The Bank establishes that "the borrower will undertake a meaningful consultation in a manner that provides the project-affected people and other relevant stakeholders with opportunities, without the risk of reprisals, to express their views on project risks, impacts, and mitigation measures, and allows the Borrower to consider and respond to them." Once again, this is a limited approach given that participation spaces should not be seen solely as a space to "express their views." On the contrary it is essential to highlight the importance of receiving feedback and input for project design, as is mentioned in Paragraph 22 of the policy, which defines the consultation as a "two-way process."

Specific suggestions for PS10

- Given that a significant part of the responsibility to disclose information falls on the Borrower, we suggest that the Bank demand that its clients implement a Participation Plan, a mechanism (at the project level) to receive, process, and register the communications and information requests from the public. This has the

aim of guaranteeing that communities and the public can access information in a timely way. We suggest detailing, for example:

- If the request is made in writing and in person, what office or contact will receive these information requests?
 - If the request is made by telephone, what is the contact number and procedure to receive these petitions?
 - Have other methods to request information, such as by fax or mail, been contemplated?
 - Also, indicate the procedures to respond to information requests, languages, timelines, and other considerations.
- Regarding Engagement During Project Implementation and External Reporting, Paragraph 24: The IDB states that "the Borrower will continue to engage with, and provide information to, project-affected people and other stakeholders throughout the life cycle of the project, in a manner appropriate to the nature of their interests and the potential environmental and social risks and impacts of the project." We positively acknowledge this point and request that the Participation Plan explicitly include what participation spaces or mechanisms will look like during project implementation.