

**PUBLIC**

**FINAL REPORT OF THE EXTERNAL ADVISORY PANEL OF EXPERTS ON THE  
MODERNIZATION OF THE ENVIRONMENTAL AND SOCIAL POLICIES OF THE IDB**

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# **MODERNIZATION OF THE IDB'S ENVIRONMENTAL AND SOCIAL POLICIES**

## **External Advisory Panel of Experts**

**Expert Panel Meeting – held via Zoom on May 11, 2020**

### **PANEL RECOMMENDATIONS**

**Prepared by: Juan Dumas (Panel Rapporteur)**

## **INTRODUCTION**

The Inter-American Development Bank (IDB) is drafting a new Environmental and Social Policy Framework (ESPF) following five core principles: 1) no dilution of IDB responsibilities and the technical requirements of Borrowers under current IDB Policies; 2) “do good” beyond “do no harm” through enhancements in social and environmental sustainability beyond the mitigation of adverse impacts; 3) strong emphasis of outcome orientation and effective results; 4) proportionality of effort to risk; and 5) enhanced transparency through opportunities and mechanisms for stakeholders to receive information and provide feedback.

The IDB established an External Advisory Panel of Experts (“the Panel” or “the Expert Panel”) to provide independent advice on the quality and integrity of the ESPF during its early and final preparation, keeping these core principles in mind and that standards should adhere to IFC’s performance standards with laser-type adjustments made to adapt them to the IDB’s context. The Panel held its first meeting on October 2<sup>nd</sup>, 2019 and provided recommendations on the IDB’s pre-consultation draft ESPF.

The consultation process involved: (a) a round of meetings with representatives of government agencies, civil society organizations and indigenous groups held in IDB regional hubs in Europe, Asia, the United States and Latin America and the Caribbean (due to the COVID-19 pandemic, the meetings in Asia and the United States were held virtually); and (b) an active use of the [IDB’s dedicated website](#) and public communications resources to disseminate ESPF materials and gather comments and suggestions from stakeholders through a virtual process which was open until April 20th, 2020. The IDB has prepared a new version of the draft ESPF addressing suggestions and recommendations received, which will be available to the public on the same website for an additional 30-day period for virtual review by stakeholders, once it is authorized by the Board.

This report summarizes the Panel’s recommendations on the IDB’s post-consultation draft ESPF as a result of their second meeting held on May 11, 2020 through virtual means given the travel restrictions caused by the COVID-19 pandemic. In this meeting, the Panel also assessed the feedback received by the IDB during the public consultation process and how it was incorporated into the post-consultation version of the proposed ESPF.

## **EXPERT PANEL MEMBERS**

The members of the Expert Panel are:

- Ms. Motoko Aizawa, President, The Observatory for Sustainable Infrastructure, and Former Sustainability Advisor, IFC and the World Bank
- Ms. Jill Baker, Senior Environmental and Social Assessment Specialist, Golder
- Dr. Anthony Bebbington, Professor of Environment and Society, Clark University
- Dr. Avecita Chicchon, Program Director Andes-Amazon Initiative, Gordon and Betty Moore Foundation

- Dr. Patricia Mohammed, Professor in Gender and Cultural Studies at the University of the West Indies, Trinidad and Tobago<sup>1</sup>
- Ms. Rosa Emilia Salamanca, Director, Institute for Social and Economic Research and Action
- Mr. José Manuel Salazar Xirinachs, Former Regional Director Latin America and the Caribbean, International Labour Organization
- Mrs. Tarcila Rivera Zea, Vicepresident, CHIRAPAQ, Centro de Culturas Indígenas del Perú

Dr. Thomas Lovejoy (Professor, George Mason University) participates in the panel discussions as a guest of the IDB. Dr. Lovejoy has been a member of previous expert panels for IDB.

## **PANEL DISCUSSIONS**

In preparation for their second meeting, Panel members approved a draft structure for their report and read both the post-consultation draft ESPF, the consultation feedback summary, and shared by the IDB team. They also had access to the over 780 comments received during the consultation process. Most Panel members held one-on-one conversations with Mr. Juan Dumas, who acted as Panel Rapporteur. With their input, the Rapporteur prepared and shared a draft report for discussion in their second meeting.

The meeting was held via Zoom on May 11 from 9:00 AM to 2:00 PM (EST time) with the participation of Motoko Aizawa, Jill Baker, Anthony Bebbington, Avecita Chicchon, Patricia Mohammed, José Manuel Salazar Xirinachs, Tarcila Rivera Zea, and Thomas Lovejoy.

The meeting was facilitated by the Rapporteur who also took notes and prepared a final version of this report for consideration of Panel Members.

## **PANEL'S ASSESSMENT AND RECOMMENDATIONS**

The Panel welcomes this new version as a significant step forward in the process of establishing a more robust ESPF for the IDB's operations. The new version comes with several positive additions and edits that have tied some loose ends, improved interpretation and reduced ambiguity. Overall, language is more forceful and direct, and less discretionary.

After carefully reviewing the outputs of the consultation and the new version of the ESPF, the Panel commends the effort made by the IDB team to listen to stakeholders who engaged in the process. The Panel also extends their appreciation for the meticulous and conscientious job done to incorporate a good amount of the comments received into the new draft version of the ESPF.

The Panel is also pleased to see that many of its recommendations offered on October 2<sup>nd</sup>, 2019 have been addressed in the new version, most notably the treatment of gender issues and vulnerable groups; inclusion of African descendant populations; IDB's commitment to Sustainability; clarification of the Exclusion List; roles and responsibilities of the IDB and the Borrower; climate change mitigation and adaptation; and references to international agreements.

Comments and recommendations provided in this report are meant to help the IDB team to further strengthen the proposed ESPF. Since there will be an additional window of online consultation and, therefore, a new opportunity to introduce changes, the Panel would like to draw the IDB's attention to processes, issues or sections where we believe there is still some room for improvement. We hope our input will contribute to close remaining gaps and ensure consistency throughout the document.

The Panel has organized comments in three categories:

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<sup>1</sup> Dr. Mohammed replaced Professor Heather Ricketts, of the University of West Indies in Jamaica, who was unable to be a part of the Panel due to administrative reasons.

1. Overarching comments and recommendations.
2. Comments on issues that are either cross-cutting or not specific to any particular Performance Standard
3. Comments on specific sections of the document.

Where the Panel does not say anything specific, it should be assumed that the Panel is comfortable with the current wording. The Panel is also aware that some of its recommendations may be better incorporated in the Implementation Plan, Guidance Notes, or Technical Notes. As details laid out in these other documents will define how important provisions contained in the ESPF will be implemented, we recommend that their draft processing is similarly accompanied by an external Panel of experts.

### 1. Overarching comments and recommendations

While most of our recommendations made on October 2<sup>nd</sup>, 2019 have been incorporated in the new version of the proposed EPSF, the Panel encourages the IDB team to make an additional effort to consider the following suggestions:

**Expectations vs Requirements.** The Panel recommends that the IDB further reduces the use of conditional language (such as “the borrower **may**...” or “**where feasible/possible**”). In this report, some wording suggestions are offered along these lines. However, additional adjustments are likely to be necessary to ensure that the forcefulness of the policy statement is carried through all the ESPS.

**“Upstream” focus.** Despite the positive additions made to the new version, the Panel believes there are still potential leverage points being missed to influence major decisions that are usually made by national government agencies before a specific project is brought to IDB for support. References to some upstream instruments, such as Strategic Environmental and Social Assessments (SESA) and Regional Environmental and Social Impact Assessments included in paragraph 3.5 of the Policy Statement are good but the language is passive and should be stronger. For instance, there is no specific indication that the early application of these tools would help inform the design of the project and reduce project-processing time. High-risk projects, cross-border projects, projects proposed in environmentally or socially sensitive areas, and multiple works operations should benefit from one or more upstream instruments as appropriate to complement the ESIA before investment decisions are made. Similarly, the reference to technical cooperation in paragraph 4.8 misses the opportunity to spell out how the IDB can support the Borrower’s upstream planning, using a SESA, regional or cumulative impact assessments or other upstream instruments.

**Take the opportunity to “do good” as opposed to only “do no harm”.** This is one of the guiding principles for the modernization effort. Even though E&S mainstreaming is tackled in separate IDB instruments and Performance Standards are primarily born out of the concern to do no harm, the Panel believes the ESPF should mandate more opportunities to “do good”. The addition in paragraph 1.4 of the Policy Statement about the IDB’s commitment to maximizing sustainable development benefits is positive but the wording in the following two sentences should be stronger. The ESPF should mandate that, when preparing projects, conducting assessments required by the different ESPS, and when reporting on implementation, the Borrower should not only address avoidance of harm but also consider, incorporate and report on enhancement of environmental and social benefits.

The commitment to maximizing sustainable development benefits is not supported throughout the framework. A good start would be to add a specific objective in ESPS 1 to reflect this important principle. On the social aspects, projects should explore opportunities aside from job creation. References to access to benefits seem to be more focused on mitigation and the offsetting of negative impacts. Certainly, paragraph 17 of ESPS 7 regarding land titling of indigenous territories is a good example of doing good. But, other than a brief reference in paragraph 2, there are no concrete

mandates to pursue opportunities to engage indigenous peoples as commercial, development, and/or conservation partners in projects. Similarly, ESPS 9 does not establish a mandate to pursue the empowerment of women's businesses, entrepreneurship, or leadership skills, for example. Also, in ESPS 1, paragraph 31 on meaningful consultation, stakeholders should be encouraged to express their views on opportunities and not just on concerns about risks (also relevant to ESPS 10). Opportunities exist in each ESPS to provide more explicit guidance on how to promote different social "goods".

On the environmental side of projects, IPBES latest reports on biodiversity loss conclude that ~1 million animal and plant species are now threatened with extinction, many within decades, with the average abundance of native species in most major land-based habitats falling by at least 20%, mostly since 1900 and due primarily to: (1) changes in land and sea use; (2) direct exploitation of organisms; (3) climate change; (4) pollution and (5) invasive alien species ([www.ipbes.net](http://www.ipbes.net)). In the face of such data, it is no longer sufficient to aim at simply doing no harm. For certain types of projects (in particular, those related to infrastructure, extractive industries, agriculture/livestock, forestry, aquaculture, fisheries, and energy), ESPS 6 could mandate consideration of and reporting on alternatives that go beyond the aspiration of having a neutral impact and that instead seek to have a positive net impact on biodiversity and/or ecosystems.

The IDB team should look through all the ESPS again with this lens to search for more opportunities to enhance sustainable development outcomes.

**Consequences and sanctions in cases of non-compliance.** The Panel welcomes clarifications introduced regarding roles and responsibilities of the Bank and the Borrower and, in particular, the additions in paragraphs 3.21 and 3.23 on monitoring and supervision. Either in the ESPF or the Implementation Plan, the IDB should be more specific about how it will act when it is not satisfied with the Borrowers' environmental and social performance. A guidance note or a procedure should further establish the specific steps the IDB would follow to apply corrective measures to support the Borrower to achieve compliance with the ESPS, evaluate performance, and proceed with sanctions (as outlined in footnote 25, page 11) where other means have been exhausted.

## **2. Comments on issues that are either cross-cutting or not specific to any particular Performance Standard**

**Human Rights.** The inclusion of language regarding human rights early in the Policy Statement represents a significant step-forward for the IDB and spells out the key elements of a Human Rights Due Diligence (HRDD). This is later mentioned in footnote 12 in ESPS 1. The Panel recommends placing respect for, and protection and fulfillment of human rights as one of two overarching principles from which all other commitments derive (the other being enhancement of environmental well-being: see below). The Panel also suggests editing the language in paragraph 1.3 to include "internationally *and regionally* recognized" human rights standards.

Language in ESPS 1 should be more prescriptive to match the strength of the policy statement. As a general principle, the Panel recommends including a mandate for the social component of the ESIA to be carried out incorporating a human rights lens and determining the specific circumstances under which a Human Rights Due Diligence should be required. These circumstances should be broader and much more specific than IFC's commitment<sup>2</sup> in this regard and should cover projects involving significant involuntary resettlement, influence on Indigenous, African Descendent and Traditional Peoples' lands, investment in security provision, pre-project conflicts and displacement, and investment in contexts of post or on-going conflict, among others. In line with this, the Panel recommends doing away with the words "(W)here appropriate" in paragraph 5 of ESPF 1 (see comments on ESPS 1 further below in this document). Finally, such a mandate should be placed in

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<sup>2</sup> Footnote 12 of IFC's Performance Standard 1.

the main text instead of a footnote, and a guidance note should outline how these assessments will be carried out.

**Gender.** Clearly a step forward, the new version of the proposed ESPF has explicitly included language to cover all genders and address gender identity aside from sexual orientation. It may be helpful to also provide definitions of sex and gender and gender identity for those who may not be aware of how these terms are being applied in this policy framework.

It is also important to include a definition of gender-based violence (GBV) that is expanded to include sexual and gender-based violence (SGBV), one that is comprehensive of the wide range of vulnerabilities due to gender, sex and sexual exploitation, especially as this clarifies the inclusion of sexual harassment, abuse, exploitation, human trafficking, and exposure to sexually transmitted diseases (as indicated in paragraph 12) and other forms of exploitation that may occur as a result of a person's self-defined sexual orientation. The addition of sexually transmitted diseases as a component of sexual and gender based violence is supported by the findings of the International conference on population and development ICPD POA, Cairo, 1994: the social and economic disadvantages faced by women make them more vulnerable to sexually transmitted infections, including HIV, for example, by their exposure to the high-risk sexual behavior of their partners. The symptoms of infections from sexually transmitted diseases are often hidden, making them more difficult to diagnose than in men, and the health consequences are often greater.

The panel recommends the following definitions to be appropriately included to support ESPS 9 and to inform the interpretation of sex, gender and gender identity as it is applied throughout the policy framework. **Sex** refers to the biological differences between males and females, such as the genitalia, physical and genetic differences. **Gender** refers to the ascribed and expected roles of a male or female in society, known as **gender** roles, or an individual's concept of themselves, or their **gender** identity. **Gender identity** refers to a person's perception of having a particular gender, which may or may not correspond with their sex at birth.

Sexual and gender-based violence (SGBV) refers to any act that is perpetrated against a person's will and is based on gender norms and unequal power relationships. It encompasses threats of violence and coercion. It can be physical, emotional, psychological, or sexual in nature, and can take the form of a denial of resources or access to them. It inflicts harm on women, girls, men and boys<sup>3</sup>.

The Panel believes some of the edits to paragraph 1.3 (Fostering gender equality) are confusing and suggests the following wording: "... including gender-based exclusion; gender-based violence - including sexual exploitation and human trafficking; and sexually transmitted diseases." Also, the definition of gender empowerment in footnote 7 should say "Gender empowerment **means...**" (instead of *is understood to mean*) and should replace the word **"while"** with **"also"** in its second sentence. Additional observations to ESPS 9 are provided below in this report.

Also, internal capacity development and guidance notes will be necessary for IDB teams to deal with challenges of implementation of certain provisions in adverse contexts. For example, this kind of challenge will emerge when the IDB must "ensure the inclusion of all genders in the consultation process" (Policy Statement – paragraph 1.3 – Fostering gender equality) if the community where the development is taking place is not open and accepting of gender diversity or it is criminalized by law. Similarly, in those same situations, IDB teams must have, or be provided with, the right skills to require Borrowers "to identify diverse peoples or groups potentially affected by IDB-supported projects" (Policy Statement – paragraph 1.3 – Promoting non-discrimination and inclusion of vulnerable groups).

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<sup>3</sup> Ref <https://www.unhcr.org/sexual-and-gender-based-violence.html>

The Panel welcomes the definition of intersectionality, newly included in the Glossary to better understand the meaning of pre-existing language on this issue in Policy Statement, paragraph 1.3 and ESPS 9 paragraph 5. The Panel requests that it includes the word “ethnicity” to read “...(e.g. race, *ethnicity*, disability)”. While the word “race” has a negative connotation in certain Spanish-speaking countries and sub-regions in LAC, “ethnicity” also includes social and cultural dimensions.

As a general comment, while the inclusivity of different gender groupings and acknowledgement of the cross cutting impact of gender across the various standards are indeed welcome, the Panel signals that its frequent repetition may lead either to an unwanted creation of a victimhood status or may have an adverse effect in countries where laws criminalize the LGBTI community. Without denying the vulnerability of various gender groups, it might be convenient to avoid excessive emphasis and to note that good definitions and clear overarching principles stated upfront in the policy document should be helpful to address this concern.

**African descendants and traditional peoples.** The various additions in the text to include these populations cover an important gap identified in the first draft. The definition of African descendants included in the Glossary is welcome and it would be helpful to also place it in the Policy Statement and in the preamble of ESPS 5. Also, given the multiple realities in different countries and sub-regions, a guidance note may be helpful to outline how protections for African Descendants and Traditional Local Peoples should be applied, according to each context. The Panel also welcomes the definition on other traditional peoples. Traditional peoples in the content of some societies may refer to social groups who are in the political minority and have a shared ethnic or collective identity. The Panel also notes that a definition of indigenous peoples is missing from the Glossary and recommends that the definition included in ESPS 7 is either replicated or referred to in the Glossary.

**International agreements.** The new version includes references to a series of international treaties, conventions and declarations. The IDB should consider referencing Agenda 2030, the Montevideo Consensus, approved in the 2014 UN Conference on Population and Development, and the Convention on Violence against Women of Belem do Pará. It should also review again what regional agreements are relevant for the purpose of the ESPS and merit explicit mention in the ESPS.

**Health risks.** The panel welcomes the inclusion in ESPS 1 of risks “associated to pandemics, epidemics and any transmission of communicable diseases that may be caused or, exacerbated by, project activities;...” Aside from being relevant to the COVID-19 pandemic we are suffering, it also encompasses both emerging and re-emerging diseases (such as dengue, Zika, cholera) which are putting some indigenous peoples and other vulnerable populations at risk.

The Panel recommends explicitly stating in the text that the need for economic recovery after a pandemic (such as COVID-19), an epidemic, or any sort of social or economic crisis, should not happen at the expense of the environment or local communities and should not justify wavering of all or parts of the ESPF. This is especially important as economic recovery in these cases is likely to be driven by infrastructure projects associated with interests that will lobby for relaxation of social and environmental safeguards, and access to Indigenous Peoples’ lands.

Health impact assessment (HIA) is becoming more prevalent and important in impact assessments around the globe. They tend to be included in the Social Impact Assessment (SIA), however there may be an important opportunity in the revised ESPF to specifically identify HIA as an important factor in ESIs and where appropriate should be included in assessments. The inclusion of health and HIA in the ESPF and ESPS1 would bring the IDB’s framework in line with the best practices and highlight even more that sustainability is beyond just environmental, social and economic considerations, going further to include health (and cultural) factors. For many communities, “health” is not just the absence or presence of disease, but can extend to other non-medical factors such as spiritual health which may be tied with cultural and/or historical dimensions. The Panel is also of the view that the inclusion of

health in the ESPF is not just important for human health, but the health of communities - sometimes referred to as the wellbeing of a community. The panel encourages the IDB to further explore and consider this important latter consideration in the ESPF and ESPS1.

**Climate Change.** The proposed ESPF adequately tackles climate change as a cross-cutting issue and covers both mitigation and adaptation measures and explicitly includes a reference to the Paris Agreement. In relation to this Agreement, it would be appropriate to explicitly mention the commitment to “(h)olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”. Additional emphasis could be made across the Standards to match the reference to climate resilience made in paragraph 1.3 of the Policy Statement. Also, it should mandate that all new infrastructure projects be assessed under a climate resilience lens and in terms of associated direct and indirect GHG emissions (see comment on paragraph 8 of ESPS 3).

**Project-induced immigration.** Aside from very brief references in paragraph 12 of ESPS 4 and paragraph 19 of ESPS 2, there is no mention of project-induced immigration in the policy statement or any of the ESPSs. In-migration can be a very important and significant impact of a project or development in general. The IFC has a guide on how to address and manage it. The Panel recommends this potential issue is acknowledged in both the policy statement and ESPS 1 and 2.

**Non-living resources<sup>4</sup>.** While conservation and sustainable use of living organisms is captured across the ESPF, treatment of non-living resources is left to ESPS 1. Considering how important these resources have become in the construction, infrastructure and technology supply chains, it seems appropriate to include specific wording to promote their responsible use. For instance, ESPS 3 could require that sand and other material inputs for infrastructure investments are sourced in ways that are sustainable and do not cause environmental and social harms.

**Oceans.** While water management is covered, the sustainability of oceans seems to be missing. The ocean plays a critical role in our climate system as it sequesters carbon, but it is significantly impacted by climate change, ocean acidification and ill-conceived off shore infrastructure projects, among other threats. Some critical alterations with deep consequences include sea-level rise, increased intensity of storms, changes in ocean productivity and resource availability, disruption of seasonal weather patterns, loss of sea ice, altered freshwater supply and quality. Coastal areas are vulnerable to sea level rise and disruption of local communities and industries. Mangroves are very important for carbon storage, protection against storm surge, and serve as nurseries for fisheries, which are being depleted by uncontrolled large scale commercial fishing. These changes are happening at an unprecedented rate. Mitigation and adaptation is needed to address threats to the ocean and the human and non-human lives that depend on it.

Though this would be sector specific, it is an issue of concern that should be specifically included in assessments in ESPS1 (in terms of the needs to assess impacts on oceans generally) and in ESPS 6 (in terms of impacts on living natural resources).

**Capacity of sub-national governments.** The Panel would like to highlight the importance of strengthening the capacity of regional and local governments, which are often ill-equipped to properly monitor and supervise the application of environmental and social protections, and recommends this is included in the Implementation Plan.

**Environmental and human rights defenders.** The Panel notes that, while this new ESPF marks clear advances in comparison with prior standards, it is being prepared at a time when environmental and human rights defenders in Latin America who demand the same requirements as those laid out in

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<sup>4</sup> The Panel is mindful that the term “non-living” resources is rooted in the western culture and does not necessarily reflect the worldviews of other cultures.



the ESPF are often subjected to intimidation, criminalization, violence and murder. As such, the Panel believes that both the Policy Statement and several ESPs should lay out requirements of the IDB and the Borrower, respectively, in the context of IDB financed projects, to ensure adequate measures against retaliations and for the protection of the rights and freedoms of these defenders, including protecting them from violence by third parties. The Panel recommends that the IDB identify a specialist to look into the issue and come up with recommended wording for inclusion in the Policy Statement and in the ESPs, especially ESP 1.

### 3. Comments on specific sections of the document

#### 3.1 Policy Statement

##### IDB's commitment to environmental and social sustainability

Paragraph 1.3 - Building climate change resilience and minimizing greenhouse gas (GHG) emissions. In the sentence “(t)he IDB will not finance projects that, according to its analysis, would increase the threat of loss of human life, significant human injuries, severe economic disruption, or significant property damage related to natural hazards and climate change.”, the Panel recommends including a reference to risks to biodiversity and ecosystem services.

Paragraph 1.3 – Promoting non-discrimination and inclusion of vulnerable groups. “immigration status” should be listed among the characteristics mentioned in the first sentence.

Paragraph 1.5 – The Panel recommends the following edit: “The IDB will only support projects that meet the ESPF’s standards ~~in an acceptable manner and timeframe.~~” The reference to “in an acceptable manner and timeframe” brings unnecessary ambiguity to an otherwise very clear statement.

##### Objectives and Scope

**Policy-based loans (PBLs).** PBLs can have wide social and environmental impacts and there is no clear reason not to assess and mitigate them. Limiting the analysis of social aspects of a PBL to those “derived from geophysical and biotic changes associated with a particular operation” (paragraph 4.7) is a significant weakness of the ESPF. As a matter of principle, the Panel recommends including an explicit statement about the need to ascertain social and environmental impacts of PBLs; at a minimum, Paragraph 4.7 should outline a series of critical questions that should be asked before PBLs are approved and/or incorporate paragraph 3.22 of the PBL guidelines (as noted in the summary of consultations matrix document on the point of PBL).

##### Roles and responsibilities:

Paragraph 3.3 - There are possible situations in which “less stringent levels or measures than those provided in the World Bank’s EHSG are necessary” and a process for this is determined in paragraph 5 of PS3. More detailed guidelines will be needed to reflect the realities of countries in which the IDB works.

Paragraph 3.8 - Monitoring and Supervision: “The extent of monitoring should be proportionate to the project’s environmental and social risks and impacts.” Guidance notes should specify procedures to ensure uniformity in the application of this notion of “proportionate monitoring” across all loans.

Paragraph 3.16 (d) - Categorization: The IDB should consider subcategorization for FI and detail procedures in guidance notes or another document that specifies how the IDB processes FI projects.

Paragraph 3.19 - The Panel applauds the clarity of the statement in the final sentence regarding FPIC for indigenous peoples and suggests replacing the verb “ascertain” with “verify”. The Panel recommends that the IDB clarifies whether the refusal of peoples to participate in FPIC processes will be considered an act of non-consent to the project.

Paragraph 3.23 - “A project will not be considered complete until the measures and actions set out in the legal agreement (including the ESAP) have been implemented.” This sentence should be revised for clarity. As it stands, it could be read that obligations last beyond the life of the loan even after the IDB is fully paid back. Is this what the IDB means?

Paragraph 3.24 - Information disclosure. The IDB should clarify whether these disclosure provisions apply to their FI operations and, if so, how.

#### Grievance Mechanism

Paragraph 7.2 - The Panel recommends adding in the final sentence “...taking into account the safety and security of the complainants as a matter of priority.”

#### Project-related documentation and arrangements

Paragraph 8.1 - The Panel recommends adding a final sentence to say: “The IDB will be guided by public policy considerations, in addition to commercial considerations, in its pursuit of legal remedies.”

#### Policy Review

Paragraph 9.1 - The Panel recommends specifying the time-period (in years) for the policy review cycle (by adding “normally within X years”) and establishing how frequently (every 6 to 12 months) the Board will receive a progress report to make the necessary adjustments.

### **3.2 Annex 1: Exclusion list**

**Coal.** The Panel is pleased to see Thermal coal mining or coal-fired power generation in the Exclusion List and suggests adding associated facilities that are essential to the viability of the coal project (eg. the construction and/or operation of a dedicated transmission line to connect a coal-fired plant to the grid).

**Indigenous peoples living in isolation and initial contact.** The Panel reiterates the suggestion to add an exclusion to projects that are likely to impact areas recognized as inhabited and used by indigenous peoples living in isolation and initial contact. ESPS 7 paragraph 13 should be adjusted accordingly.

**Critical Habitats.** Given recent reports of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) on biodiversity loss mentioned above and forecasts of future trends, the Panel recommends adding an exclusion to projects that may remove or alter a critical habitat recognized by a national or international body as important for the survival of critically endangered species or critical for identified ecosystems. ESPS 6, paragraph 3.17 and 3.18 should be adjusted accordingly.

**World Heritage Sites (WHS).** The Panel recommends adding an exclusion of projects in World Heritage Sites, unless there is consensus between UNESCO and the host-country government that the proposed activity / project will not adversely affect the natural, cultural and spiritual value of the site and FPIC has been obtained (as described in ESPS 7, paragraphs 20 and 21) if the WHS is recognized as of cultural and spiritual importance to indigenous peoples. ESPS 8, paragraph 13 should be adjusted accordingly.

**Drift net fishing.** Considering the importance of sustainable management of oceans, the Panel would like to understand the rationale for retaining the outdated reference to 2.5-km length of drift nets, based on the 1991 UN ban<sup>5</sup>, and suggests that this is revised downwards based on the most recent scientific knowledge available.

### 3.3 Environmental and Social Performance Standards

#### ESPS 1

The Panel would like to reiterate here its recommendations to add an objective to identify opportunities to maximize potential benefits and mandate that the Borrower considers and reports on possible sustainability opportunities, those which seek to do good, beyond doing no harm.

Paragraph 5:

- The Panel recommends inclusion of the following sentence into paragraph 5: “The Borrower’s ESMS should start with an Environmental and Social Policy, which is a brief description of an organization’s commitment to sustainable development and management of E&S issues. This is often publicly disclosed and always communicated internally. The E&S Policy will often be complemented with procedures that will outline how the organization addresses E&S and sustainability issues as part of its operations.” This could be a separate sentence (included as the second sentence), or it could be included with the list of ESMS components.
- “Where appropriate, the Borrower will complement its environmental and social assessment with further studies focusing on specific risks and impacts, such as human rights, gender, and natural hazards and climate change.” The Panel would like to stress that these issues are headlined on pages 1 to 4 of the policy statement. Consistent with our recommendation on Human Rights above, the Panel recommends rewording this paragraph so that these and other issues also headlined in paragraph 1.3 of the Policy Statement are generally assessed across ESIAs and the ESPF determines the specific circumstances in which additional studies will be requested.

Paragraph 6: Replace “policy” with “this ESPF” in “will ensure conformance with the **policy**.”

Paragraph 12: “These include master economic development plans, country or regional plans, feasibility studies, disaster and climate change risks studies, alternatives analyses, and cumulative, regional, sectoral, or strategic environmental assessments where relevant.” In line with our recommendation above to seize opportunities to do good beyond doing no harm, ESPS 1 should specify how they would inform project design and speed up project-processing times; in addition, ESPS 1 could mandate the use of one or more instruments under circumstances specified above.

Paragraph 15: In the sentence “The programs **may** apply broadly across...”, the Panel recommends replacing “may” to “shall” or “will”, as contractors often fail to properly implement EMPs. A commitment for all who work on the project to comply with the conditions of the project approval needs to be in place and a compliance mechanism established.

Paragraph 20: In relation to involvement of external experts, current wording of the ESPF suggests that expertise will only be required in the assessment phase. The Panel recommends also including participation of experts during monitoring of the operations phase, where risks are uncertain and may not be well-known.

Paragraph 33: In line with the observation made in Section on cross-cutting issues in this report, the inclusion of the word “gender” in points (i) and (ii) regarding informed consultation and participation

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<sup>5</sup> <http://www.fao.org/fishery/geartype/220/en>

does not seem to add much. Would the meaning of the two points be all that different if "gender" was not included?

Paragraph 36. – Borrowers should be **required** (not encouraged) to make publicly available reports on their environmental and social sustainability. This would ensure alignment with paragraph 38 below.

## ESPS 2

The Panel believes that the inclusion of the ILO Declaration on Fundamental Principles and Rights at Work is helpful; objectives (particularly the first and last ones) have improved; the requirement of a dedicated grievance redress mechanism for workers is positive; and the addition to paragraph 4 leaves no doubt about coverage of the ESPF.

### *Child labor:*

Paragraph 23 – The Panel would like to propose an alternative wording for this paragraph. “The Borrower will not employ children below the minimum age of employment or engagement, which will be the age of 15 unless national law specifies a higher age. Children over the minimum age will not be employed or engaged in any manner that is economically exploitative, or is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development. Children under the age of 18 will not be employed in hazardous work.<sup>6</sup> The Borrower will identify the presence of all persons under the age of 18. All work of persons under the age of 18 will be subject to an appropriate risk assessment and regular monitoring of health, working conditions, and hours of work.”

Also, similar to provisions regarding forced labor, the Panel Recommends adding a line to say: “If child labor cases are identified, the Borrower will take appropriate steps to remedy them.”

### *Occupational health and safety:*

Paragraph 25. The Panel suggests including a reference to the need to protect workers who manipulate toxic waste and adding “radiological substances” in point (ii).

## ESPS 3

There is a case to be made for putting emissions in title of Standard, given that it is a policy commitment upfront in Paragraph 1.3 of the Policy Statement. Thus: “**Resource Efficiency, Emissions Reduction and Pollution Prevention.**”

Paragraph 2. The Panel recommends:

- Adding a footnote to define the “polluter pays” principle.
- Rephrasing the sentence to avoid giving the impression that women should always be classified as a vulnerable group. Proposed wording “It recognizes the disproportionate impact of pollution on women, children, older persons, and the poor and vulnerable.”
- Local assessment of emissions is valid for certain emissions but incorrect for others which should be assessed nationally or regionally.

Paragraph 8 - GHG: The paragraph should also include emissions from indirect project effects. For example, assessment of infrastructure and investment projects in tropical forest areas should recognize

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<sup>6</sup> Examples of hazardous work activities include work (i) with exposure to physical, psychological, or sexual abuse; (ii) underground, underwater, working at heights, or in confined spaces; (iii) with dangerous machinery, equipment, or tools, or involving handling of heavy loads; (iv) in unhealthy environments exposing the worker to hazardous substances, agents, processes, temperatures, noise, or vibration damaging to health; or (v) under difficult conditions such as long hours, night work, or confinement by employer.

emissions due to deforestation, forest degradation and land use change due to economic activities catalyzed by these projects. While recognizing guidance laid out by emissions reporting protocols, these indirect impacts on emissions are sufficiently significant to warrant recognition. This recommendation is consistent with paragraph 9 of ESPS 1 about indirect, associated and cumulative developments in the area of influence of the project.

Paragraph 9 - water consumption. The Panel recommends mandating consideration of negative impacts of water consumption on ecosystems as well. In the sentence “When the project is a potentially significant consumer of water, in addition to applying the resource efficiency requirements of this ESPS, the Borrower shall adopt measures that avoid or reduce water usage so that the project’s water consumption does not have significant adverse impacts on *others*.”, the Panel recommends replacing the word “others” with “people and biodiversity”.

Paragraph 13 - Hazardous materials. Language should be strengthened from “should be assessed” to “must be assessed”.

## **ESPS 4**

The Panel recommends including in the Preamble of ESPS 4 a reference to “community health” as discussed above in this report.

Risks to projects (paragraph 1, third objective & paragraph 4). These belong in ESPS 1.

Paragraph 1. The Panel suggests adding in the word "adverse" before impacts

Paragraph 12. The Panel wonders whether an influx of project labor, especially permanent labor, can be considered as an emergency. A massive influx of casual laborers seeking work may qualify.

The section on Resilience to Natural Hazards and Climate Change fits better in ESPS 1, unless a closer connection is made to community safety from natural hazards caused by the project. And in connection with this, the Panel would encourage the IDB to highlight that, often, events termed natural disasters are actually human caused or worsened and ask borrowers to mitigate these risks.

Panel Recommendations on Security Personnel:

- It would be appropriate to follow IFC’s example in their paragraph 13 and retain the differentiation between public and private security forces, if legislation in some countries in which the IDB invests does not allow for private security companies to be contracted.
- This section should say more about ensuring that security personnel do not create risk and vulnerability for local communities in their out of work hours, with particular emphasis on gender-based violence.
- Paragraph 15, the final sentence on grievance mechanisms should explicitly require anonymity and personal safety for complainants.
- Training in human rights for security personnel should be mandated.
- Observation of Voluntary Principles on Security and Human Rights should be mandated when a private company is hired to offer security services.

## **ESPS 5**

This standard originated with a rural condition in mind whereas the modern resettlement occurs in varied set ups, and increasingly peri-urban or urban. The coordination with local government in the case of urban resettlement is key and can present a major opportunity to contribute to improved standards of living for the resettled people and also the city to improve its services and infrastructure.

MDBs' resettlement policy needs to evolve in this direction. Guidance notes could expand on the difference between rural and urban resettlement procedures.

Community engagement - Paragraph 10. The footnote on obtaining women's perspectives is substantive enough to be moved up into the text.

Paragraph 20. "Existing social and cultural institutions of the displaced persons and any host communities will be respected". The Panel would like to ask if this sentence only refers to the need to respect forms of governance and cultural organization or if it also means that the Borrower will be required to replace community buildings or assets (such as schools, community halls, or places of worship).

## **ESPS 6**

Some indirect impacts of projects include deforestation, degradation of natural habitats, over-hunting and wildlife trade. Opening new roads and the transit of new people into natural areas may encourage the dissemination of invasive fauna and flora species that alter natural habitats significantly. In addition, wildlife trafficking may trigger the development of zoonotic diseases while deforestation and stagnant bodies of water can host a myriad of diseases (eg. dengue, malaria, etc.). The Borrower should take measures to avoid creating conditions that may allow the transit and establishment of invasive alien species including viruses and harmful bacteria into populated areas.

In line with our recommendation on ESPS 5, paragraph 9, the Panel believes it is important to include a minimum flow requirement for hydro projects.

## **ESPS 7**

The panel recommends reiterating the definition of African descendants included in the Glossary in the preamble of ESPS 7.

The definition of "consent" and the clarity of the scope of application of the FPIC requirement, along with wording in paragraph 3.19 of the Policy statements are important improvements. A guidance note may be necessary to further spell out the details of how this will be assessed.

Panel's recommendations to paragraph 2:

- "Indigenous Peoples may play a role in sustainable development by promoting, owning, and managing activities and enterprises as partners in development." This is an important positive statement and this ESPS should expand on it. It should also be included as an objective of the ESPS.
- Eliminate "**may**" or add "often" before "by promoting"...
- Footnote 119 on African descendants is better placed in paragraph 5.

Paragraph 8. "The Borrower will respect the rights of indigenous peoples and individuals as established in the applicable legal norms according to their relevance to Bank operations." The Panel does not understand the meaning of this paragraph and believes it should be eliminated or rewritten.

Paragraph 11 makes a positive inclusion of trans-border indigenous migration but footnote 123 seems to be misplaced.

## **ESPS 8**

Equitable sharing of benefits from the use of cultural sites is an objective of the ESPS but it is only addressed in paragraph 15. It mandates good-faith negotiations but refers to an Information and Consultation Process (ICP) as outlined in ESPS 1. Negotiation and Consultation are different decision-making processes in nature. The paragraph should spell out more clearly what “good-faith negotiations” means and what happens if there is no agreement at the end of it.

Also, the Panel recommends covering the spiritual aspects of natural resources in this ESPS and that the implementation Plan include training in intercultural knowledge and skills for the IDB project teams and for the Borrower.

A guidance note should detail how to proceed when chance archaeological finds occur.

## **ESPS 9**

In addition to the specific suggestions and edits noted above in this report and those outlined below under ESPS 9, the Panel recommends -due to the cross cutting nature of gender as a variable across all social and economic sectors and based on the incremental changes that have been consistently added throughout the consultative process- that this ESPS require alteration and streamlining where necessary with the other standards in this policy document.

Paragraph 2 makes an important distinction between equality and equity, terms that are often confused or misused as synonyms.

Fourth objective: The Panel recommends changing “To prevent exacerbation of gender-based violence” to “prevent gender-based violence”.

Paragraph 1. Repeat Gender equality instead of “It is”.

Paragraph 5 and 13 are the same. The Panel recommends deleting paragraph 13.

Paragraph 7. The Panel recommends replacing “likely exist” with “are likely to exist.”

Paragraph 9. The Panel finds the wording of the second sentence confusing and weak and suggests rewriting.

Paragraph 11 – Among the aspects to consider in the Gender analysis, the Panel recommends including a specific reference to project design and implementation (e.g.. public transportation projects that should take women’s needs into account)

Paragraph 12: Where SGBV risks are identified, a reference to “restitution” should also be included.

The Panel recommends giving further consideration to this input from the consultation process: “The IDB should require: training on non-discrimination and gender sensitivity to all project staff, that gender disaggregated employment data be collected to ensure non-discriminatory hiring practices, and that Borrowers extend non-discrimination protections to contract workers and primary supply workers.”

## **ESPS10**

The Panel believes the text should determine more specifically what “meaningful” consultation means and that a guidance note outlines who will decide if a consultation has been meaningful and how that assessment is made. The Panel recognizes that this may be difficult, and may differ from one project to the next. However, some guidance would still be helpful. The IDB may have a definition that they wish to include, but here are two for their consideration:

- Meaningful public participation is a process that “establishes the needs, values, and concerns of the public, provides a genuine opportunity to influence decision, and uses multiple and customized methods of engagement that promote and sustain fair and open two-way dialogue.” (John Sinclair, University of Winnipeg)
- “A meaningful participation process needs to have the inherent potential to influence decisions made throughout the assessment, provide inclusive and accessible opportunities for early and ongoing engagement from the public and Indigenous Groups, and provide the capacity required for active participation in the engagement.” (Expert Panel Report. Building Common Ground: A New Vision for Impact Assessment in Canada. 2017).

Consistent with our recommendation to search for more opportunities to do good, stakeholders should be encouraged to express their views on opportunities for social and environmental improvements, and not just on concerns about risks.

Paragraph 8. Grievance mechanisms should also allow for stakeholders to present their suggestions and feedback, which should also be responded to.