

## **Human Rights Watch Submission: World Bank's Draft Environmental and Social Framework**

*April 7, 2015*

Thank you for the opportunity to comment on the World Bank's draft Environmental and Social Framework and to participate in the March 19, 2015 discussion on social risk.

Human Rights Watch welcomes the update and review of the World Bank's safeguards, and sees this as an important, overdue opportunity for the World Bank to bring its own standards into line with international human rights law. This submission on the draft framework should be read together with Human Rights Watch's detailed initial submission to the bank's safeguards review, which remains relevant both in its recommendations and rationale for why human rights should be central for the World Bank.<sup>1</sup>

We emphasize that safeguards are not the only place that the World Bank should address human rights in its work. While the safeguards are a key avenue for ensuring that the Bank does not finance activities that would violate human rights, the World Bank also has an important role to play in integrating human rights into its overall program objectives and results frameworks, in highlighting human rights issues in its systematic country diagnostics, and in addressing human rights challenges that present obstacles for development through its high level dialogues. The World Bank has a myriad of opportunities to support countries to advance civil, political, economic, social, and cultural rights.

We appreciate the World Bank's ongoing commitment to the safeguards, as emphasized by President Jim Kim on several occasions. We also welcome Kim's undertaking to enhance rather than dilute the standards through this review and update process.

Human Rights Watch welcomes the creation of a unified framework, which we hope will be a step forward toward improved implementation of the safeguards. We also welcome efforts to elevate

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<sup>1</sup> Human Rights Watch, *Abuse-Free Development: How the World Bank Should Safeguard Against Human Rights Violations*, July, 2013, <http://www.hrw.org/reports/2013/07/22/abuse-free-development-o>.

social impact and risk analysis, discussion of non-discrimination, inclusion of a labor standard, and recognition of indigenous peoples' free, prior, and informed consent rights. We appreciate the review team's efforts to integrate human rights principles into the draft framework, as they undertook to do during the first consultation phase of the review. However, as laid out below, we believe that extensive amendments to the draft are necessary in order to achieve this aim and properly prevent and address discrimination including the effective integration of women's rights, labor rights violations, and violations of indigenous peoples' rights. Further, we believe that human rights principles cannot be separated from human rights themselves, which are indivisible, interdependent, and interrelated. We are disappointed that the draft standards do not require the bank to respect and protect international human rights standards and urge you to remedy this in the next draft. We also urge you to implement the December 12, 2014 recommendations of 28 special procedures mandate-holders of the United Nations Human Rights Council.<sup>2</sup>

The safeguards review, the first wholesale review of the bank's safeguards policies ever, presents a rare opportunity for the World Bank to ensure consistency across its standards. To miss this opportunity now will likely result in inconsistency for many years to come. The Bank should remedy this by applying the policy to all World Bank activities, including direct policy loans (DPLs) and program for results lending (P4R).<sup>3</sup>

We agree with the concerns raised by many civil society organizations, academics, and the UN Special Procedures about the framework's overall approach, but do not restate them in this submission.<sup>4</sup> We appreciate that the safeguards review team has worked to clarify the responsibilities of the Bank as distinct from the responsibilities of the borrower through this draft framework. However, we believe that the responsibilities have been overly devolved to borrower

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<sup>2</sup> Letter to Jim Kim from 28 special procedures mandate-holders of the United Nations Human Rights Council, December 12, 2014, <http://www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf> (accessed April 7, 2015).

<sup>3</sup> As the UN Special Procedures emphasized, "The inapplicability of the ESSs to DPLs is a particular concern, since these loans support policy and institutional reforms in areas that significantly affect the enjoyment of human rights, such as housing, water and sanitation, land governance, education, public administration, agriculture, natural resource management, urban management and infrastructure." Ibid, p. 18.

<sup>4</sup> See, for example, Ibid; American University, Washington College of Law, Program on International and Comparative Environmental Law, "Comments on the Draft Environmental and Social Framework," March 1, 2015, [https://consultations.worldbank.org/Data/hub/files/au\\_submission\\_erika\\_lennon.pdf](https://consultations.worldbank.org/Data/hub/files/au_submission_erika_lennon.pdf) (accessed April 7, 2015); Bank on Human Rights, "Key Human Rights Concerns and Recommendations regarding the World Bank's Proposed Social and Environmental Safeguards Framework," March, 2015, [https://consultations.worldbank.org/Data/hub/files/bhrc\\_submission\\_march\\_30\\_final.pdf](https://consultations.worldbank.org/Data/hub/files/bhrc_submission_march_30_final.pdf) (accessed April 7, 2015); Oxfam, "World Bank Safeguards Review Phase Two," February 2015, [https://consultations.worldbank.org/Data/hub/files/world\\_bank\\_safeguards\\_review\\_oxfam\\_submission\\_phase\\_two\\_final.pdf](https://consultations.worldbank.org/Data/hub/files/world_bank_safeguards_review_oxfam_submission_phase_two_final.pdf) (accessed April 7, 2015).

governments. Grounding the majority of due diligence responsibilities with borrowers, irrespective of their capacity, desire, or track record to implement safeguards and introducing broad discretion for bank staff on the appropriate timeframes and methods of implementation undermine accountability. We urge you to revisit the division of responsibilities and strike the appropriate balance.

Below we outline our core human rights concerns with the draft framework and make recommendations to address these gaps. We would welcome the opportunity to discuss this with you further.

### **1. Require Respect for Human Rights**

Human Rights Watch is disappointed that the primary reference to human rights in the draft framework is in the non-binding vision statement and urges you to remedy this. To suggest that human rights are merely visionary suggests that the World Bank views human rights as non-binding, undermines the international human rights framework, and does not remedy the long-standing problem that the bank does not analyze and address potential adverse human rights impacts of its activities.

The human rights language in the vision statement is also disturbing in itself. Firstly, it is problematic in that it notes that by virtue of its efforts to improve access to services and remove barriers against those who are often excluded from the development process, the bank's operations are supportive of human rights. As Daniel Kaufmann said when he was the Director of Global Programs at the World Bank Institute: “[I]t would be tantamount to a virtual ‘fig leaf’ for any institution to claim that much is being contributed to enhancing human rights in a country simply because development projects—such as on water or rural roads—are being funded.”<sup>5</sup> We will only know if World Bank operations are advancing human rights if the bank ensures that it respects human rights in these operations, including through integrating human rights into its due diligence processes, and contains human rights indicators in its result frameworks.

Secondly, the human rights reference in the vision statement goes on to note that the Bank will encourage respect for human rights “*in a manner consistent with the Bank’s articles of*

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<sup>5</sup> Daniel Kaufmann, “Human Rights, Governance, and Development: An empirical perspective Some Reflections on Human Rights and Development,” in World Bank Institute, *Development Outreach*, October 2006, pp. 15-20, p. 19, <http://siteresources.worldbank.org/EXTSITETOOLS/Resources/KaufmannDevtOutreach.pdf> (accessed June 29, 2013).

*agreement.*”<sup>6</sup> This suggests that respect for human rights may not always be consistent with the Bank’s articles of agreement, a notion which many within and outside of the bank have challenged for several years.<sup>7</sup> Further, this is inconsistent with the World Bank’s many statements on human rights.<sup>8</sup>

Human Rights Watch recommends that the World Bank:

- In A Vision for Sustainable Development:
  - Re-write paragraph 3 to:
    - Recognize the centrality of human rights to sustainable development, poverty alleviation, and the twin goals of the World Bank;
    - Articulate a commitment to respect and protect human rights in all of its activities and to actively support governments in realizing their human rights obligations, including their obligation to progressively achieve the full realization of economic, social, and cultural rights to the maximum of available resources, without discrimination and consistent with the principle of equality.
  - In the list in paragraph 5, include a point: “*Ensure respect for human rights*” with a footnote referring to the United Nations Declaration on Human Rights, the core international human rights treaties, and customary international law. Together, these three documents are often referred to as the international bill of rights.
- In the Environmental and Social Policy:
  - In paragraph 2, include at the end of the second sentence: “and to prevent, avoid, and address human rights violations.”
  - Include as an objective: “The Bank will respect and protect international human rights in all of its projects, programs, and activities and take all necessary measures to ensure that the activities it finances or otherwise supports do not

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<sup>6</sup> For the purpose of this submission, all suggested amendments to the World Bank’s Draft Environmental and Social Framework are formatted in italics.

<sup>7</sup> For discussion, see Human Rights Watch, *Abuse-Free Development: How the World Bank Should Safeguard Against Human Rights Violations*, July, 2013, <http://www.hrw.org/reports/2013/07/22/abuse-free-development-0>, pp 21-29.

<sup>8</sup> See, for example, Letter to the editor from Anne-Marie Leroy, senior vice president and general counsel of the World Bank Group, and Kyle Peters, vice president of operations policy and country services for the World Bank Group, *Washington Post*, November 14, 2014, [http://www.washingtonpost.com/opinions/the-world-bank-and-human-rights/2014/11/14/b89d396a-6aab-11e4-bafd-6598192a448d\\_story.html](http://www.washingtonpost.com/opinions/the-world-bank-and-human-rights/2014/11/14/b89d396a-6aab-11e4-bafd-6598192a448d_story.html) (accessed April 7, 2015): “For decades, the World Bank has expressed that human rights and development are intertwined. Human rights principles essential for sustainable development are consistently applied in our work to end poverty and boost shared prosperity.”

cause, contribute to, perpetuate, or exacerbate human rights violations. The Bank will not fund activities that would violate the human rights obligations of the recipient country under national or international law, including regional treaties and agreements.”

- In paragraph 4, amend to read: “include *but are not limited to* the following”.
- In paragraph 4(b) include as a new subsection “*all forms of human rights risks and impacts*”. In (v) include: “*land or water quality, access and availability*”.
- In Environmental and Social Standard 1, add: “The Bank will not finance any activity that contravenes the Borrower’s human rights obligations under national or international law, including regional treaties and agreements. The Borrower will identify any relevant human rights obligations that are implicated by proposed funding to ensure that Bank-financed activities are consistent with these obligations.”
- Throughout the framework, when referring to “environmental and social issues,” expressly state, “including human rights.” To date, there is great ambiguity for World Bank staff as to whether human rights issues fall within social issues, resulting in inconsistent treatment of human rights risks across projects. The framework should be unequivocal in this respect; in the absence of addressing this in a definition section,<sup>9</sup> any mention of environmental and social risks, issues, or impacts should be expressly accompanied by “including human rights risks/issues/impacts.”
- In the overview of the framework, amend paragraph 4(b) to read “assist Borrowers in fulfilling their national and international environmental and *human rights* obligations.” The phrase “international social obligations” doesn’t have any meaning at international law and creates confusion.

## 2. Ensure Meaningful, Effective Consultation

Human Rights Watch welcomes the emphasis in the draft framework on information disclosure, meaningful consultation, and stakeholder engagement. As outlined in Section 4 of this submission, attention should be given to overcoming legacies of discrimination and inequality that may prevent some individuals or groups from enjoying the full benefits of information disclosure, meaningful consultation, and stakeholder engagement. Further, we are concerned that the framework does not address adequately environments where freedom of expression, assembly, and association are not respected or where community members and others face significant risks for being critical of proposed or ongoing projects. States must

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<sup>9</sup> We would welcome including this in the glossary.

refrain from violating the rights of community members who speak out against proposed development projects and those working to protect the rights of community members. States must also act with due diligence to prevent, investigate, and bring to justice the perpetrators of any threat of or realized attack against these community members and human rights defenders.<sup>10</sup> The World Bank Group should similarly act with due diligence to prevent, investigate, and remedy such attacks and ensure that none of its employees or contractors are involved in such attacks. In order to address this, we recommend that the World Bank:

- In the Environmental and Social Policy:
  - Amend paragraph 44 to provide: “For High Risk or complex projects with potentially significant adverse environmental and social impacts, *or where there are concerns about whether the environment is conducive to all potentially impacted community members, including those from marginalized groups, and civil society freely participating without risk of reprisal*, the Bank will ~~have the right to~~ carry out independent consultation activities.” The World Bank should independently consult with potentially affected communities in all high risk or complex projects and in all projects in environments where the government does not have a track record of respecting the rights to freedom of expression, assembly, and association and related rights.
  - Specify in paragraph 3(b) that “As and where required” includes:
    - *All consultations in countries where the bank cannot ensure consultations will be free of external manipulation, interference, coercion, and intimidation or where there are risks of reprisals for speaking critically of a proposed project.* Further, specify that in such challenging contexts, the Bank will assist the Borrower in providing “independent” project-based grievance mechanisms.
    - *Situations in which there are signs that elements of the affected communities or other stakeholders are opposing the project.*
- In Environmental and Social Standard 1, amend paragraph 54 to require prompt reporting of any indication of opposition to the project by affected community members, workers, civil society organizations, or any others.
- In Environmental and Social Standard 10:

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<sup>10</sup> Enshrined in Universal Declaration of Human Rights, article 3 and International Covenant on Civil and Political Rights, articles 6(1) and 9(1), and emphasized in the Declaration on Human Rights Defenders, articles 2, 9, 12.

- Amend the third objective to read: “To promote and provide means for adequate engagement with project-affected communities throughout the project cycle on issues that could potentially affect them, *to ensure Borrowers communicate to communities how their inputs have been taken into account*, and to ensure that meaningful environmental and social information is disclosed to them and to other stakeholders.”
- Amend the final objective to read: “To ensure that project-affected communities have accessible means to raise issues and grievances *without risking their security in any way*, and that Borrowers respond to and manage such issues and grievances appropriately.”
- Amend paragraph 5 to include nongovernmental organizations that are working with project-affected communities to protect their rights in the definition of “stakeholder” (not including them in the definition only “where appropriate”).
- Under Stakeholder Identification and Analysis, require the Borrower to identify any obstacles to participation or security risks that groups or individuals may face, so as these may be addressed in the Stakeholder Engagement Plan (as provided for in paragraph 16). Amend paragraph 16 to require description of “measures that will be used to remove obstacles to participation *and address security risks...*”
- Amend paragraph 18 to require the Borrower to inform stakeholders where they can go to access independent information about project risks, impacts, and mitigation measures, including nongovernmental organizations, academics, and national human rights institutions.
- Amend paragraph 18 to include at the end of the paragraph “*and routinely provide this documented evidence to the Bank.*”
- Amend paragraph 20 to include “along with reasons and considerations on which the decision is based *and information on how the inputs from stakeholders were taken into account in making the decision...*”
- Introduce a new paragraph, following paragraph 20, providing, “The Borrower will not punish, retaliate, or otherwise act against a stakeholder who has made his or her views heard, however critical they may be, and will take all necessary measures to prevent others from similarly acting against a stakeholder. In high risk situations, the Borrower will work with independent intermediaries to consult with stakeholders and will ensure confidentiality of participants.”

### **3. Ensure that Due Diligence Extends Beyond the Project to Consider Risks Posed by the Broader Operating Environment**

It is important that the World Bank recognizes that a project which may not on its face be high risk may be so because of its operating environment. In addition, in certain operating environments, the government may itself be implicated in problematic practices and therefore it would be essential that the Bank undertake more extensive due diligence rather than leaving it in the hands of the Borrower. The Inspection Panel and other independent monitors have found that the World Bank has not adequately addressed the risks that the operating environment will have on a proposed project.<sup>11</sup> The World Bank should draw from recent IFC lessons learned in this respect too.<sup>12</sup> Therefore, Human rights Watch recommends that the World Bank:

- In the Environmental and Social Policy:
  - Amend paragraph 3(a) to include at the end of the point “or related to the operating environment.”
  - Amend paragraph 28 to require consideration of the operating environment in determining the appropriate environmental and social due diligence for the Bank.
- In Environmental and Social Standard 1, amend paragraph 21 to explicitly include consideration of risks that the broader operating environment may present.

### **4. Prohibit All Forms of Discrimination, Consistent with International Law**

Human Rights Watch welcomes the efforts of the drafting team to tackle discrimination. However, while we have often heard from Bank officials that the draft framework prohibits discrimination, this prohibition is not clearly articulated. We urge the Bank to remedy this.

At the same time, the definition of “disadvantaged or vulnerable groups” does not include all forms of discrimination articulated at international law. In particular, persons marginalized or discriminated against on the basis of language or political or other opinion, which are currently missing, should be included. We also encourage you to explicitly include discrimination on the basis of descent, including caste. The prohibition of discrimination on the basis of political

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<sup>11</sup> See, for example, Independent Evaluation Group (IEG), “Project Performance Assessment Report. Ethiopia. Protection of Basic Services Project (IDA H2240-ET, IDA H3470-ET)” Report No: 82528, 2013; Inspection Panel, “Ethiopia: Promoting Basic Services Phase III Project, Investigation Report,” November 24, 2014.

<sup>12</sup> IFC, “IFC’s Environmental & Social Lessons Learned: Technical Briefing for the Board,” April 4, 2014, [http://www.ifc.org/wps/wcm/connect/557c4180438e1ed48f72bf869243d457/IFC\\_EnvironmentalSocialLessonsLearned-042014.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/557c4180438e1ed48f72bf869243d457/IFC_EnvironmentalSocialLessonsLearned-042014.pdf?MOD=AJPERES) (accessed April 7, 2015).



opinion is essential for the World Bank to live up to its status as an apolitical institution. Otherwise, it remains possible that governments will be able to discriminate against people who did not vote for or are perceived not to support the ruling party or a local government official in the context of a World Bank-financed project while still complying with the Bank's own policies. Human Rights Watch has documented, for example, how people perceived as opposition supporters have been routinely barred from access to government services, including agricultural inputs like seeds and fertilizers, micro-credit loans, and job opportunities such as teacher training<sup>13</sup> and how people have been granted land titles only if they are known supporters of a ruling party or paid a bribe.<sup>14</sup> Discrimination on the grounds of political opinion may also involve a government official requiring someone to sign up for their political party prior to being deemed eligible for a particular service, compensation for resettlement, or a land title.

It is also important that the World Bank does not set up discrimination standards that run counter to or fall short of international human rights law.

We are also concerned that, in certain circumstances, it will not be appropriate or effective for the bulk of due diligence obligations to sit with the Borrower since the Borrower is often the actor carrying out discriminatory acts or criminalizing certain populations. Therefore, we urge the Bank to clearly articulate how it will prevent and respond to discrimination.

Human Rights Watch recommends that the World Bank:

- In A Vision for Sustainable Development, amend paragraph 5, bullet point 4 to list: "... Indigenous Peoples, women and girls, persons with disabilities, children, and all persons marginalized or discriminated against on basis of race, color, ethnicity, gender, sexual orientation or gender identity, language, religion, political or other opinion, national or social origin, property, birth, age or other status." In addition, we encourage you to go beyond giving "Due consideration" to these people, instead undertaking to "Ensure inclusion and advance substantive equality...."
- Throughout the framework,

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<sup>13</sup> Human Rights Watch, *Development without Freedom: How Aid Underwrites Repression in Ethiopia*, October 19, 2010, <http://www.hrw.org/reports/2010/10/19/development-without-freedom-o>.

<sup>14</sup> A Cambodian farmer told Human Rights Watch that he went to have his land measured, but was refused because he was deemed to be a supporter of the political opposition and because he refused to pay a bribe. "If you are a Cambodian People's Party person or pay money, then the local authorities make sure your land gets measured quickly and properly," he told Human Rights Watch. "Otherwise, you will have problems." Human Rights Watch, *Cambodia: Land Titling Campaign Open to Abuse*, June 12, 2013, <http://www.hrw.org/news/2013/06/12/cambodia-land-titling-campaign-open-abuse>.

- Amend the definition of “disadvantaged or vulnerable groups” to include all forms of discrimination articulated at international law. In particular, persons marginalized or discriminated against on basis of language or political or other opinion, which are currently missing, should be included. We also encourage you to explicitly include descent, including caste.
- Replace references to “equity” with “equality” or “substantive equality,” as equality has a meaning under international law that World Bank staff can draw from.<sup>15</sup>
- In the Environmental and Social Policy:
  - Include as an objective: “All forms of discrimination, including both direct and indirect discrimination, are prohibited in all Bank-financed activities consistent with international law. Prohibited grounds of discrimination include race, color, gender, language, religion, political or other opinion, disability, sexual orientation or gender identity, national or social origin, property, birth, marital, health or other status. The Bank will take all necessary measures to ensure that the activities it finances or otherwise supports do not cause, contribute to, perpetuate, or exacerbate discrimination.”
  - Include in subsection C. Environmental and Social Due Diligence a new paragraph outlining the Bank’s due diligence obligations to identify risks of different forms of discrimination, the actors involved, and measures to prevent, address, and avoid discrimination in the context of the project.
- In Environmental and Social Standard 1
  - Insert a clause confirming: “The Bank will not finance any activities that cause, contribute to, perpetuate, or exacerbate discrimination on any prohibited grounds. Prohibited grounds of discrimination include race, color, gender, language, religion, political or other opinion, disability, sexual orientation or gender identity, national or social origin, property, birth, marital, health, or other status.”

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<sup>15</sup> Committee on Economic, Social and Cultural Rights, “General Comment N. 16, Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights,” May 13, 2005, <http://www2.ohchr.org/english/bodies/cescr/docs/CESCR-GC16-2005.pdf> (accessed April 7, 2015); Committee on Economic, Social and Cultural Rights, “General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights),” July 2, 2009, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f20&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f20&Lang=en) (accessed April 7, 2015).

- Explicitly require inclusion and efforts to advance equality more broadly through the project.
  - Explicitly recognize gender as a factor which may increase vulnerability to adverse effects of the Bank’s operations and which may be an obstacle in ensuring equal benefits of Bank-financed projects. OP 4.20 should be the drafting team’s starting point, but they should also seek to learn from and operationalize the 2012 World Development Report on Gender Equality and Development and the Inter-American Development Bank’s Operational Policy on Gender Equality in Development.<sup>16</sup>
  - Require social impact assessments to identify and assess impacts of proposed projects in terms of lack of and barriers to access services, evaluate alternatives, and design appropriate mitigation and monitoring measures.
  - Use disaggregated baseline indicators to assist in determining whether a project has differing impacts on persons based on prohibited grounds of discrimination and those who may be vulnerable to abuses and exclusion due to prejudices related to more than one of these factors; and
  - Create a plan to ensure access to services and benefits for all marginalized groups on an equal basis as the majority population in projects where there is a risk of discrimination.
- In the guidance documents, recognize the uniqueness and diverse needs of each of the marginalized groups and outline how their rights and interests will be protected during project design, monitoring, and implementation.
  - In the overview of the framework, amend paragraph 4(c) to read “enhance non-discrimination, *substantive equality*, transparency, participation, accountability and governance....” It is important to emphasize the need not only for non-discrimination, but for substantive equality, as discussed above.

## 5. Require Prevention, Investigation, and Remedy for Security Incidents

Human Rights Watch welcomes the drafting team’s efforts to mitigate risks related to the use of security personnel through Environmental and Social Standard 4. However, it appears that these provisions were taken from standards drafted for private sector clients where the considerations are quite different.

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<sup>16</sup> Inter-American Development Bank, “Operational Policy on Gender Equality and Development,” November 3, 2010, <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35428399> (accessed April 7, 2015).

Human Rights Watch recommends the following amendments to Environmental and Social Standard 4 to address this:

- In paragraph 26, delete “When the Borrower retains direct or contracted workers to provide security to safeguard its personnel and property.” States typically utilize their existing security forces to provide security at development project sites. Therefore, the first sentence of the standard should require: “The Borrower will assess risks posed by its security arrangements to those within and outside the project site and disclose the security arrangements for the site to the public.” Paragraph 29 can then be deleted.
- Amend paragraph 27 to read, “The Borrower will make reasonable inquiries to ensure that those providing security are not implicated in past abuses; will train them adequately (or determine that they are properly trained) in the use of force (and where applicable, firearms), and appropriate conduct toward workers and affected communities, *including zero tolerance for sexual abuse and exploitation*; and require them to act within the applicable law.”
- In paragraph 28, emphasize the need to publicize the availability of the grievance mechanism.
- In paragraph 30, delete “where appropriate” since the Borrower will be a public sector client and states have an obligation to investigate all allegations of unlawful or abusive acts. Similarly, since the state has the power and responsibility to take action, delete “(or urge appropriate parties to take action.)” Therefore, paragraph 30 should read, “The Borrower will consider and investigate all allegations of unlawful or abusive acts of security personnel, take action to prevent recurrence, and report unlawful and abusive acts to the relevant authorities.”

## **6. Protect Labor Rights Consistent with International Law**

Human Rights Watch welcomes the introduction of a labor standard. However, protecting select core labor standards, and only for certain employees, undermines the existing international labor rights system. We endorse input received from the International Trade Union Confederation/Global Unions<sup>17</sup> and, in summary, urge the World Bank to:

- Fully embrace the International Labor Organization’s core labor standards and explicitly reference the ILO’s eight fundamental conventions, which affirm: the freedom of

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<sup>17</sup> ITUC/Global Unions, “Major weaknesses in World Bank’s draft labour standards safeguard,” September 3, 2014, [http://www.ituc-csi.org/IMG/pdf/ess2-wb\\_ituc-critique\\_0914.pdf](http://www.ituc-csi.org/IMG/pdf/ess2-wb_ituc-critique_0914.pdf) (accessed April 7, 2015).

association and the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; the elimination of discrimination in respect of employment and occupation; and

- Protect all workers, including government employees and contractors.

## 7. Protect all Human Rights Linked to Land Rights and Resettlement

Others have raised significant concerns with the draft standard on Land Acquisition, Restrictions on Land Use, and Involuntary Resettlement.<sup>18</sup> We share many of these concerns, but will not restate them here.

In addition to recommendations from other groups focusing on land rights, Human Rights Watch recommends that the World Bank, in Environmental and Social Standard 5:

- Amend the definition of “forced eviction” to require compliance with international law by adding, following the examples of basic principles of due process, “and international law”.
- Amend paragraph 14 to delete “where applicable” as decision-making processes related to resettlement and livelihood restoration should always include options and alternatives from which affected persons may choose.
- Delete from paragraph 5 the exclusion of (d) Land titling/regularization activities; and (e) Regulation or planning of natural resources or land use on a regional or national level to promote sustainability, which are high risk projects that require clear standards. We recognize that Environmental and Social Standard 1 assessment would be required, but ESS1 lacks clarity on the actual standards that apply.
- In *B. Displacement*, specify that access to, affordability of, and quality of all basic services including water, both for domestic and household productive uses, sanitation, education, and health care will not be diminished in relocated communities, and will be fully functioning in advance of relocations.
- Introduce specific language requiring monitoring to identify any reductions in standards of living or livelihoods and require prompt remediation.

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<sup>18</sup> International Land Coalition, “First Draft of the revised World Bank Environmental and Social Safeguards Framework: Synthesis of submissions by members in the ILC network to the World Bank e-consultation,” February 2015, [https://consultations.worldbank.org/Data/hub/files/submission\\_from\\_members\\_and\\_secretariat\\_of\\_the\\_international\\_land\\_coalition\\_ilc.pdf](https://consultations.worldbank.org/Data/hub/files/submission_from_members_and_secretariat_of_the_international_land_coalition_ilc.pdf) (accessed April 7, 2015); Oxfam, “World Bank Safeguards Review Phase Two,” February 2015, [https://consultations.worldbank.org/Data/hub/files/world\\_bank\\_safeguards\\_review\\_oxfam\\_submission\\_phase\\_two\\_final.pdf](https://consultations.worldbank.org/Data/hub/files/world_bank_safeguards_review_oxfam_submission_phase_two_final.pdf) (accessed April 7, 2015).

- Revise the standard to ensure complete compliance with the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forest and Fisheries.<sup>19</sup>

## 8. Protect Indigenous Peoples' Rights

Human Rights Watch welcomes the incorporation of a requirement to obtain the free, prior, and informed consent (FPIC) of affected indigenous peoples but is concerned about the limited interpretation of FPIC rights, the limited application of them as drafted, and—of greatest concern—the introduction of an option for governments not to recognize Indigenous Peoples' rights under the standard in certain circumstances.

World Bank staff have emphasized the opposition of African Finance Ministers to the recognition of Indigenous Peoples. This runs contrary to the leadership that African institutions and certain African states have shown in advancing respect for the free, prior, and informed consent rights of Indigenous Peoples. In May 2012, the African Commission on Human and Peoples' Rights (ACHPR) issued a resolution calling on states to “confirm that all necessary measures must be taken by the State to ensure participation, including the free, prior and informed consent of communities, in decision making related to natural resources governance.”<sup>20</sup> The commission has also emphasized the importance of consultation and consent in various cases brought before it. In a 2009 case, it found that the Kenyan government had forcibly removed the Endorois people from their ancestral lands, violating several rights. After noting that the Endorois are an indigenous people, the commission said that in relation to “any development or investment projects that would have a major impact within the Endorois territory, the state has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions.”<sup>21</sup> In addition, the Economic Community of West African States (ECOWAS),

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<sup>19</sup> Food and Agriculture Organization of the United Nations, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forest and Fisheries*, 2012, <http://www.fao.org/docrep/016/i2801e/i2801e.pdf> (accessed April 7, 2015).

<sup>20</sup> African Commission on Human and Peoples' Rights (ACHPR), “224: Resolution on a Human Rights-Based Approach to Natural Resources Governance,” May 2012, <http://www.achpr.org/sessions/51st/resolutions/224/> (accessed December 31, 2013). It also calls on states to ensure: “[R]espect for human rights in all matters of natural resources exploration, extraction, ... development ... and in particular ... ensure independent social and human rights impact assessments that guarantee free prior informed consent; effective remedies; fair compensation; women, indigenous and customary people's rights; environmental impact assessments; impact on community existence including livelihoods, local governance structures and culture, and ensuring public participation; protection of the individuals in the informal sector; and economic, cultural and social rights.”

<sup>21</sup> ACHPR, “276/03 Center for Minority Rights Development (Kenya and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya,” May 2009, [http://www.achpr.org/files/sessions/46th/communications/276.03/achpr46\\_276\\_03\\_eng.pdf](http://www.achpr.org/files/sessions/46th/communications/276.03/achpr46_276_03_eng.pdf) (accessed December 31, 2013), paras. 162 and 291. See also African Court on Human and Peoples' Rights, *African Commission on Human and*

for example, has issued a directive on Harmonization of Guiding Principles and Policies in the Mining Sector, which is a useful guide to an emerging standard of free, prior, and informed consent in an African sub-region.<sup>22</sup>

We also include below several misconceptions regarding indigenous peoples in Africa that the African Commission's Working Group on Indigenous Populations / Communities has debunked.

Human Rights Watch recommends that the World Bank:

- Delete the alternative approach entirely;
- Clarify that it is not necessary to meet all of the criteria in paragraph 6 to be an Indigenous People. The African Commission's Working Group on Indigenous Populations/Communities has emphasized the importance of flexibility in determining whether a group is an indigenous people, stating that the "focus should be on ... self-definition as indigenous and distinctly different from other groups within a state; on a special attachment to and use of their traditional land whereby their ancestral land and territory has a fundamental importance for their collective physical and cultural survival as peoples; on an experience of subjugation, marginalization, dispossession, exclusion or discrimination because these people have different cultures, ways of life or modes of production than the national hegemonic and dominant model."<sup>23</sup>
- Amend paragraph 18 to require all consultation processes are inclusive of women, persons with disabilities, youth, and any other marginalized members of the community and take affirmative steps to ensure that such groups are available, fully informed, and able to participate freely in decision-making processes. There is a real risk that women and other marginalized groups may not be included in a community's decision-making process, including by holding processes at times or locations not accessible to marginalized people or groups.

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*Peoples' Rights v The Republic of Kenya*, Order of Provisional Measures, Application No. 006/2012, March 15, 2013, [http://www.african-court.org/en/images/documents/Orders-Files/ORDER\\_of\\_Provisional\\_Measures\\_African\\_Union\\_v\\_Kenya.pdf](http://www.african-court.org/en/images/documents/Orders-Files/ORDER_of_Provisional_Measures_African_Union_v_Kenya.pdf).

<sup>22</sup> ECOWAS, "Directive C/DIR. 3/05/09 on the Harmonization of Guiding Principles and Policies in the Mining Sector," Abuja, May 26-27, 2009, [http://www.comm.ecowas.int/sec/en/directives/ECOWAS\\_Mining\\_Directives.pdf](http://www.comm.ecowas.int/sec/en/directives/ECOWAS_Mining_Directives.pdf) (accessed December 31, 2013). The directive calls for member states to adopt compliance measures by July 2014 and to date four countries have signed the directive and two have gazetted it.

<sup>23</sup> Report of the African Commission's Working Group on Indigenous Populations/Communities, Adopted by the African Commission on Human and Peoples' Rights at its 34<sup>th</sup> Ordinary Session (Nov. 6-20, 2003). See also ACHPR, "276/03 Center for Minority Rights Development (Kenya and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya," May 2009, paras. 147-162.

- Amend paragraph 18(a) to explicitly reference informal representative groups created by groups that may be marginalized within traditional decision making structures. For example, in Karamoja, Uganda, Indigenous peoples have organized informal women and youth caucuses. While the views of these caucuses should be filtered into the community's decisions through the council of elders, inclusive consultations directly with the caucuses is also essential.
- Amend paragraph 20 to ensure respect for the land and resource rights of indigenous peoples. This includes:
  - Clarify that the community must be given the opportunity to approve (or reject) the proposed project prior to the commencement of any operations, having considered all relevant information;
  - In paragraph 20(d), delete “or groups.”
  - Ensure that the community is given all of the information it needs in order to reach its decision, including independent information and advice. The Borrower should provide information about what activities they plan to undertake; the potential impacts on the environment and community members' human rights, particularly their livelihood, their security, and any cultural or spiritual impacts; and the degree to which adverse impacts can, and will be, avoided or mitigated. This should include information about security arrangements, employment opportunities, labor conditions, grievance mechanisms, and how and when the community may expect to benefit.
  - Ensure that the community is given the opportunity to participate in setting the terms and conditions that address the economic, social, and environmental impacts. Once the community is properly informed, it has the right to be actively involved in setting the various terms and conditions which they require to grant their consent.
  - Ensure that the community reaches its decision free from force, manipulation, coercion, or undue pressure. In environments where governments allege that opposition to development projects is “economic sabotage” or otherwise bad, the Bank will need to implement additional measures to ensure that communities have the freedom to reach a decision regarding whether or not to consent to a project on their land.
  - Continue to consult and provide information throughout all phases of operations. The duty to consult and cooperate with Indigenous peoples in order to obtain free,



prior, and informed consent exists throughout the project cycle to full remediation for any adverse impacts, requiring Borrower to keep the community adequately informed throughout.

- The Bank should ensure that the community's decision is respected.

**The African Commission's Working Group on Indigenous Populations / Communities has debunked several misconceptions regarding indigenous peoples in Africa:**

**Misconception 1:** To protect the rights of indigenous peoples gives special rights to some ethnic groups over and above the rights of all other groups.

Certain groups face discrimination because of their particular culture, mode of production, and marginalized position within the state. The protection of their rights is a legitimate call to alleviate this particular form of discrimination. It is not about special rights.

**Misconception 2:** Indigenous is not applicable in Africa as “all Africans are indigenous.”

There is no question that Africans are indigenous to Africa in the sense that they were there before the European colonialists arrived and that they were subject to subordination during colonialism. When some particular marginalized groups use the term “indigenous” to describe themselves, they use the modern analytical form (which does not merely focus on aboriginality) in an attempt to draw attention to and alleviate the particular form of discrimination they suffer from. They do not use the term in order to deny other Africans their legitimate claim to belong to Africa and identify as such.

**Misconception 3:** Talking about indigenous rights will lead to tribalism and ethnic conflicts.

Giving recognition to all groups, respecting their differences and allowing them all to flourish does not lead to conflict, it prevents conflict. What creates conflict is when certain dominant groups force a contrived “unity” that only reflects perspectives and interests of powerful groups within a given state, and which seeks to prevent weaker marginal groups from voicing their unique concerns and perspectives. Conflicts do not arise because people demand their rights but because their rights are violated. Protecting the human rights of particularly discriminated groups should not be seen as tribalism and disruption of national unity. On the contrary, it should be welcomed as an interesting and much needed opportunity in the African human rights arena to discuss ways of developing African multicultural democracies based on the respect and contribution of all ethnic groups.

*Source: Paraphrased from Report of the African Commission's Working Group on Indigenous Populations/Communities, Adopted by the ACHPR at its 34th Ordinary Session, November 6-20, 2003.*

## 9. Ensure Effective Grievance Redress Without Risk of Reprisals

Human Rights Watch welcomes the emphasis on grievance redress. In order to better prevent reprisals for accessing grievance redress mechanisms and ensuring effective grievance redress mechanisms even in the most complex operating environments, Human Rights Watch recommends:

- In the Environmental and Social Policy, add at the end of paragraph 50: *The grievance mechanism will be scaled to the risks and impacts of the project and will be designed in a way that allows all potentially impacted community members, including those from marginalized groups, and civil society to complain freely without risk of reprisal. This may require the creation of independent grievance mechanisms.*
- In Environmental and Social Standard 10:
  - Paragraph 23(a) add at the end of the last sentence, *“and share this record with the Bank.”*
  - Paragraph 23(b) delete *“Where there is threat of reprisal.”* The mechanism should always allow for anonymous complaints to be raised and addressed. It is not appropriate to leave this at the discretion of the Borrower considering that the threat of reprisal may well come from the Borrower.