



**Review and Update of the World Bank's
Safeguards Policies**

**Comments and recommendations of UN/OHCHR in
relation to the draft Environmental
and Social Framework**

15 March 2016

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Introduction

The Office of the United Nations High Commissioner for Human Rights (OHCHR) welcomes the opportunity to comment upon the World Bank's proposed Environmental and Social Framework (ESF). OHCHR recognizes that the Bank's existing safeguards established an important precedent in environmental and social risk management, and have had very positive impacts globally. The Bank's revised safeguards will likewise be expected to strongly influence social and environmental safeguards and sustainability policies of bilateral and multilateral lenders, export credit agencies¹ and others, as well as legislative and policy frameworks governing social and environmental risk management at country level.

OHCHR has engaged actively with Bank Management in relation to the draft ESF over the last three years, including informal written submissions in relation to the first and second drafts, a two-day retreat in Washington DC in early 2015 co-led by the Principals of the two organisations, working level sessions in Washington DC and Geneva, and through OHCHR's participation in national consultations on the ESF in Berlin (November 2015), Brussels (for European countries) (January 2016), Washington DC (February 2016) and the consultation meeting on ESS 7 in Addis Ababa (February 2016). OHCHR recognizes the very significant effort that the Bank has undertaken to consult with stakeholders from all over the globe, and is grateful for the opportunities that it has had to take part. The comments in this document are offered in the spirit of a continuing commitment to constructive collaboration.

Consistent with its mandate, OHCHR's comments focus on the content of the draft ESF from the perspective of international human rights law and their foreseeable impacts upon individuals and groups in practice, particularly those most marginalized. Human rights considerations arise not only in relation to the substantive content of the ESF but also in relation to the institutional architecture designed to implement this framework. OHCHR's comments are consistent with those that it has submitted in relation to the safeguard policy consultation processes of other multilateral development banks, including most recently the Asian Infrastructure Investment Bank (AIIB).² A Frequently Asked Questions (FAQ) document on Human Rights and Multilateral Development Banks is attached as part of this submission, cross-referenced as needed to particular recommendations (**Annex I**).

OHCHR's inputs are also consistent with member States' commitments last year at the 2030 Summit for Sustainable Development and the 3rd International Conference on

¹ See OECD/DAC, Working Party on Export Credits and Credit Guarantees, Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence ("Common Approaches"), TAD/ECG(2012)5, June 28, 2012, paras. 20, 22 and 25, at <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=tad/ecg%282012%295&doclanguage=en>.

² OHCHR, Consultation on the Asian Infrastructure Investment Bank Draft Environmental and Social Framework, Comments of the Office of the United Nations High Commissioner for Human Rights, Oct. 22, 2015.

Financing for Development, and are intended to support the implementation of those commitments. The 2030 Agenda underscores the centrality of human rights for sustainable development and the need to implement the Agenda consistently with existing international law. The Addis Ababa Action Agenda (para. 75) calls upon “all development banks to establish or maintain social and environmental safeguards systems, including on human rights, gender equality and women’s empowerment, that are transparent, effective, efficient and time-sensitive” (see **Annex III**).

A. Positive Features

OHCHR notes that the ESF is said to embody as a “risk and outcomes based approach,” designed to reduce up-front safeguard requirements which may not be necessary and to allocate safeguard resources more strategically to risk. OHCHR welcomes the fact that, in line with the 2010 report of the Independent Evaluation Group, the ESF seeks to encourage the management of risk throughout the project cycle, which implies a stronger focus on supervision. The proposed framework is intended to simplify due diligence due diligence and risk management requirements, harmonize safeguard standards with those of other lenders, and clarify the division of responsibilities between the Bank and Borrower.

OHCHR very much welcomes the broad range of social risks sought to be addressed by ESF as well as its explicit focus on eliminating discrimination. The Bank’s global leadership role is particularly important in these respects. OHCHR is also pleased to note that the second draft ESF has been strengthened in a number of respects compared with the first draft. OHCHR particularly welcomes the strengthening of the labour standard (Environmental and Social Standard, ESS 2) in certain important respects, the deletion of the “alternative approach” in ESS 7, and the expansion of the scope of the resettlement standard (ESS 5) to include land titling projects in particular circumstances. The proposed framework for stakeholder engagement was also strengthened in a number of important respects. OHCHR also notes that the Bank has taken a number of steps to define clearer up-front procedural requirements in the ESP and ESS 1 and clarify the requirements governing common approaches, sub-projects, financial intermediary lending, and using Borrowers’ Frameworks.

B. Recommended Areas for Further Strengthening

Notwithstanding the positive features such as those outlined above, in OHCHR’s view there appear to be several weaknesses or ambiguities in the draft ESF, particularly in relation to the risk management framework (ESS 1) and the Bank’s due diligence and supervision obligations set out in the ESP. The main areas of concern from OHCHR’s perspective are:

1. Insufficient recognition of the obligations of Borrowers under international human rights, labour and environmental law, and lack of any recognition of the relevance of these sources of law in relation to the Bank's due diligence responsibilities;
2. The need to clarify and strengthen the Bank's due diligence responsibilities which appear to rely disproportionately on information provided by the Borrower;
3. The need to further clarify and strengthen the frameworks for delegating safeguard responsibility to other safeguard systems including Borrower Frameworks, Financial Intermediaries, and co-financers ("common approaches");
4. The need to avoid deferring the appraisal of assessable risks as far as possible: under the ESF, compliance with the ESS's need only be achieved "in a manner and within a timeframe acceptable to the Bank," rather than in accordance with a more objective standard; and
5. The need to clarify and strengthen monitoring and reporting requirements, commensurate with the ESF's focus on adaptive management during project implementation.

1. The role of international human rights law

The draft ESF fails to reference the international treaty obligations of Borrowers and does not recognise the World Bank's procedural duty to ensure, as far as possible, that the projects that it supports are not associated with potential human rights violations. In OHCHR's view the human rights provision in the Vision statement (para 3) is confusing and potentially damaging in that it seems to imply that international human rights law, as applicable to Bank-supported projects, is merely aspirational rather than the subject of binding legal obligations for Borrowers.

OHCHR does not agree with the arguments against the explicit integration of human rights put forward in the 1 July 2015 Consultation Paper to the second draft (paras 20, 73). OHCHR's responses to these and related objections are set out in detail in **Annex I**. In OHCHR's view, the self-standing nature of the ESF is a secondary virtue compared with the importance of aligning and keeping current with applicable international law (see FAQ, **Annex I**, Qu. 6). The suggestion that the Bank may infringe borrowers' sovereignty or find itself acting as an arbiter or enforcer of human rights mis-states the role that international human rights standards should, and in some Bank-supported projects do, play in connection with investment project due diligence and risk management (**Annex I**, Qu's 3-7).

The purpose in integrating human rights is not to set the Bank up as an enforcer or tribunal or require it to make binding determinations on Borrowers' compliance with their treaty obligations. (Even specifically mandated UN human rights bodies tend to operate more on the principle of constructive dialogue than by way of formal adjudication or declarations of non-compliance). Rather, the purpose is to ensure that all information relevant to social and environmental risk assessment is taken into account, and that all potentially useful mitigation options are considered, in order to help minimize adverse impacts and promote sustainable development outcomes (**Annex I**, Qu's 3-7).

The reference to international agreements in paragraph 24 of ESS 1 is relevant but not sufficient for present purposes given the additional specific due diligence responsibilities of the Bank under the ESP, beginning with risk screening and categorisation. **Annex II** sets out, illustratively, a number of key entry points where the timely integration of human rights risk information, as defined in Annex II, could strengthen the Bank's due diligence in practice.

Recommendation 1: OHCHR recommends that the aspirational reference to human rights in para 3 of the Vision statement be replaced with the following: *"The Bank recognizes the importance of human rights for development effectiveness. In this regard the Bank's operations will encourage respect for human rights and will seek to avoid adverse human rights impacts."*

Recommendation 2: In line with OP 4.01 and 4.36,³ OHCHR recommends that the ESP retain an explicit commitment to respect international agreements relevant to the projects it supports. OHCHR suggests: *“The Bank will respect internationally recognized human rights standards and take all necessary measures to avoid supporting projects that may put a borrower in breach of its obligations under international agreements in the social and environmental fields, including international human rights agreements.”* Where national law and international law set different standards, it should be clarified that the Bank will respect the higher standard.

2. The Bank’s due diligence responsibilities

In OHCHR’s view, the Bank’s own due diligence obligations still do not seem to be clearly specified and appear to rely disproportionately on information provided by the Borrower. Paragraph 30(a) of the ESP says that the Bank’s due diligence responsibilities will include “reviewing information provided by the Borrower” and requesting additional information when there are gaps. Paragraph 30 also refers to the duty of the Borrower to provide “all relevant information so that the Bank can fulfill” its due diligence responsibilities. In OHCHR’s view, these provisions do not adequately reflect the Bank’s own responsibilities to seek information from a wide range of sources and verify information provided by the Borrower.

The ESP contains relatively little detail on the Bank’s supervision responsibilities compared with its existing safeguards, notwithstanding the shortcomings in supervision documented and analysed in recent years by the Independent Evaluation Group (IEG), the Inspection Panel, the 2014 Advisory Review of the Bank’s Safeguards Risk Management,⁴ the 2014 Involuntary Resettlement Portfolio Review,⁵ and the importance of strengthened supervision as part of the *quid pro quo* for adaptive risk management. The Inspection Panel, the IEG’s recent learning review “Managing Environmental and Social Risks in Development Policy Financing” (25 July 2015) and the recent Safeguards Operational Review of the Asian Development Bank (ADB) have all underscored the importance of defining due diligence responsibilities as clearly and precisely as possible in safeguard policy text.

The due diligence framework governing sub-projects has been strengthened between the first and second drafts to some degree, however in OHCHR’s view further strengthening would be merited. Paragraph 35 of the ESP requires that high risk projects comply with the ESS’s, but that substantial risk projects need only meet the requirements of national law “and any requirement of the ESS’s that the Bank deems

³ OP 4.01, para 3 and OP 4.36, para. 6.

⁴ World Bank, Internal Audit Vice-Presidency, *Advisory Review of the Bank’s Safeguards Risk Management*, June 16, 2014, available at <http://pubdocs.worldbank.org/pubdocs/publicdoc/2015/3/317401425505124162/iad-draft-report-advisory-review-safeguards-risk-management.pdf>.

⁵ World Bank, *Involuntary Resettlement Portfolio Review Phase I and II* (2015).

relevant to the subproject.” However paragraph 25 of the Environmental and Social Procedure defines “substantial risk” as including impacts that may not always be reversible or able to be mitigated and may “give rise to significant social conflict or harm or significant risks to human security.” OHCHR has reviewed national laws in a wide sampling of countries on discrimination against women and girls, HIV-related human rights issues, child labour, freedom of association, and legal frameworks governing consultation with indigenous peoples, and has noted significant gaps vis-à-vis the ESS’s and international human rights law. For these reasons, OHCHR would recommend that substantial risk sub-projects should meet ESS requirements, in addition to high risk sub-projects.

Recommendation 3: OHCHR recommends that the ESP, paragraph 30, be amended to make it clear that the Bank’s due diligence includes seeking information from all relevant sources and independently verifying information provided by the Borrower.

Recommendation 4: OHCHR recommends that paragraph 35 of the ESP be amended to require that both high risk and substantial risk sub-projects meet the requirements of the ESSs.

Other recommendations pertaining to the Bank’s due diligence and supervision responsibilities are included in Section 5 below on “Disclosure, monitoring and reporting”, together with recommendations pertaining to the Borrowers’ responsibilities under ESS 1.

3. Delegation of safeguard responsibility to potentially weaker safeguard systems

In OHCHR’s view, the most significant risks to the successful implementation of the ESF seem to arise from the continuing broad discretions governing the use of Borrower Frameworks, Financial Intermediaries (FIs), common approaches for co-financing multi-donor or advanced stage projects, and associated facilities (Vision, para 8; ESP paras 9-13, 23-27; ESS 1, paras 8, 11b-12, fn 14). These provisions effectively allow delegation of safeguard responsibility to a third party based only on the requirement that the project would thereby be enabled “to achieve objectives materially consistent with the ESS’s.”⁶ OHCHR notes moreover that greater discretion and flexibility seem to have been introduced from the first draft ESF to the second draft.⁷

OHCHR is not advocating for a strict equivalence test between World Bank and other safeguard frameworks in this regard. In OHCHR’s view, “material consistency” is an

⁶ Paragraph 8 of the Vision refers to outcomes “materially consistent with the objectives of the ESF”, which on an ordinary reading seems even weaker than the formulation in the ESP and ESS 1.

⁷ This is apparent in the ESS1 Objectives, bullet points 2 b (“to acceptable levels”), 2d (“where technically and financially feasible”), and 3 (“whenever appropriate”).

appropriate test. However it is recommended that “material consistency” be determined by a direct comparison between the substantive requirements of the Bank’s and other parties’ safeguard systems, together with an assessment of commitment, implementation capacity and track record. In OHCHR’s view, unless a more direct comparison between different safeguard frameworks’ requirements is undertaken, and unless there are clear definitions of key terms such as “commitment” and “track record,” it is difficult to see how the ESF’s objectives will be achieved in practice.

As to Borrower Frameworks specifically, OHCHR strongly supports the objective of country ownership and the need to use and strengthen Borrower environmental and social systems as far as possible. However, in OHCHR’s view, greater clarity seems to be needed to ensure that the objectives of country ownership and strengthening Borrower Frameworks do not inadvertently override the ESF’s social and environmental risk management objectives. The second draft takes a number of steps in a positive direction, in OHCHR’s view, starting from the position that the use of Borrower Frameworks will not be the default option.⁸ However, in OHCHR’s view, these improvements do not yet constitute a sufficiently robust equivalence test.⁹ The IEG’s learning review “Managing Environmental and Social Risks in Development Policy Financing” (25 July 2015) suggests that policy ambiguity has led to inconsistent practice and policy compliance, including in relation to country capacity assessment and gap analysis. It therefore seems important to clarify these particular aspects of policy, in OHCHR’s view.

Recommendation 5: OHCHR recommends that the Bank ensure that all World Bank-supported activities including those implemented through Borrower Frameworks, common approaches and sub-projects are *materially consistent with the requirements of the ESSs*.

Recommendation 6: OHCHR recommends that all high risk activities should be excluded from any delegation, either through the use of Borrower Frameworks, common approaches, Financial Intermediaries or associated facilities, for a five year period of initial ESF implementation.

⁸ An assessment of a Borrower Framework will only be initiated after express interest by Borrower and after the Bank validates the merit in devoting time and resources: “The use of Borrower’s ES Framework will be determined at the discretion of the Bank.” (ESP para 24). Certain indications are given of substantive benchmarks against which the Borrower Framework should be assessed. Specifically, ESS1 states that the gaps relating to the Borrower’s ES Framework “will be assessed in reference to what would be required in the relevant ESS” (fn 27). The Environmental and Social Procedure states that “depending on the nature of risks and impacts of the project, the review of the Borrower’s ES Framework may include an assessment of the consistency of specific aspects of the Borrower ES framework against specific requirements of the ESSs” (para 40).

⁹ OHCHR notes that the Environmental and Social Procedure indicates that the Bank *may* recommend not using the Borrower’s Framework in cases where the project is complex, high risk, etc (para 45), but this is not the same as a clear high risk exclusion. The Borrower Framework track record is mentioned five times in the Procedure (paras 23c, 24g, 42d, 47), however it is not clear how this concept will be assessed.

Recommendation 7: OHCHR recommends that the ESF provide more specific requirements for the assessment of the Borrower’s track record including with respect to past project-related community grievances and any findings or recommendations of international human rights bodies relevant for this purpose (see Annex II).

Recommendation 8: OHCHR recommends that the Bank should be required to provide to the Board the information necessary to assess the potential risks and benefits of using Borrower Frameworks or common approach agreements. The Board should provide and disclose an explanation of any decisions to use Borrowers’ Frameworks or common approach agreements.

4. Deferred appraisal and open-ended compliance

The flexibility to assess, determine, disclose relevant information about or ensure compliance “in a manner and within a timeframe acceptable to the Bank” (ESP paras 7, 16, 18; ESS1 para 13, fn 12) remains, in OHCHR’s view, a significant potential weakness in the ESF, and may increase the incentives to defer the assessment of risks beyond the point of maximum Bank leverage. OHCHR appreciates that full appraisal of risks may not always be practicable, such as in the case of a major rural roads project where siting is not clear at the outset. However the ESF presently seems to legislate to the exception rather than the rule.

OHCHR notes, positively, the requirement in the ESF that “the Borrower commit to not carrying out any activities or taking any actions in relation to the project that may cause material or significant adverse environmental or social risks or impacts until the relevant plans, measures or actions have been completed” (ESP para 17).¹⁰ However the phrase “within a manner and timeframe acceptable to the Bank” remains unchanged from the first draft ESF to the second, and the deletion of the adjective “minor” from the second draft (draft ESP para 47, ESS1, para 39; cf: first draft ESS 1, para 37), broadening the scope of proposed project changes subject to adaptive management, seems to increase flexibility further. In OHCHR’s view, ESS 1 should clarify that deferral after appraisal should be the exception to the rule, and that exceptions to this general rule should be defined or at least described. Other MDBs’ safeguards, including those of the ADB and AIIB, appear to have more rigorous provisions in this regard.

Recommendation 9: OHCHR recommends that the ESF clearly specify a general rule that all high and substantial risks be fully appraised and reflected in the project documents before Board approval, and should be excluded from any deferral through an ESCP.

¹⁰ Cf. ESS1 para 15; Annex 2, para 12.

Recommendation 10: OHCHR recommends that any exceptions to the general rule that high and substantial risks be appraised prior to Board approval should meet the following requirements:

- third party monitoring;
- public disclosure of the ESCP, including common approach agreement, before approval;
- public disclosure of ESCP monitoring reports;
- routine audit of deferred appraisal activities and ex-post impact evaluation of a representative sample of activities over the first 5 years of ESF implementation;
- provision of information to the Board that fully explains why certain risks could not be appraised prior to Board approval.

5. Disclosure, monitoring (including independent/third party monitoring), and reporting

The ESF’s stated intention is to move safeguards away from a prescriptive approach to an implementation outcome oriented one. Given this objective, it is vital that potentially affected stakeholders have full information about ongoing monitoring and implementation efforts. As such the lack of specification of Borrower reporting and disclosure to *stakeholders* (ESS1, paras 51-52) is a matter of concern. Timely disclosure is a fundamental accountability safeguard that appears to be weaker in the ESF compared with OP/BP 4.01 and OP/BP 4.12¹¹.

OHCHR notes that disclosure to stakeholders is to be as early as possible¹² and that the Environmental and Social Commitment Plan (ESCP) “will be disclosed” (ESS 1, para 36). However, monitoring and reporting responsibilities are defined only in general terms (ESS1, paras 45-50; ESS 10, paras 23-25).¹³ The ESP continues not to require procedural minimum thresholds for disclosure throughout the project cycle, thus potentially leaving the timing and content of disclosure for affected groups and the Board too vague to be consistent and effective in practice. Moreover there does not appear to be any explicit requirement to disclose monitoring reports to the public (only to the Bank). Under ESS 1, paragraph 51, disclosure to stakeholders should be undertaken “in a manner appropriate to the nature of their interests and the potential environmental and social risks and impacts of the project,” an unclear formulation that potentially overlooks potential entitlements to that information as a matter of right.¹⁴ There also appears to

¹¹ Cf. OP/BP 4.01, paras. 9, 11-15; OP 4.12, paras. 22, 28-29, and BP 4.12, para. 8.

¹² ESP, para. 49, and ESS 10, para. 22(d).

¹³ For example, ESS1 and the E/S Procedure refer to the ESCP implementation report and Annual Monitoring report which should include, among other things, a report on stakeholder engagement during implementation (ESP, paras 46, 54; ESS1, paras 40, 45, 47).

¹⁴ Human Rights Committee, *Article 19: Freedoms of Expression and Opinion*, General Comment No. 34 (Sept. 12, 2011), CCPR/C/GC/34, paras. 18-19.

be a gap concerning the absence of any explicit disclosure procedure for the main compliance mechanism – the ESCP – as part of borrower-prepared monitoring reports.

In OHCHR’s view, the ESF also does not describe sufficiently clearly the circumstances in which the Borrower should retain independent third party specialists. ESP paragraph 55 requires third party or independent monitoring “where appropriate.” ESS1 (para. 33) states: “For projects that are High Risk or contentious, or that involve serious multidimensional environmental or social risks or impacts, the Borrower *may be required* to engage one or more internationally recognized independent experts. Such experts *may, depending on the project*, form part of an advisory panel or be otherwise employed by the Borrower, and will provide independent advice and oversight to the project.” Similarly, ESS1 states: “where appropriate, the Borrower will engage stakeholders and third parties, such as independent experts, local communities or NGOs, to complement or verify its own monitoring activities” (ESS1, para 45). In OHCHR’s view, these provisions would seem to be flexible and non-committal in even the most high risk circumstances. The safeguard policies of the European Bank for Reconstruction and Development, AIIB, ADB and African Development Bank appear to contain clearer and more predictable requirements for third party monitoring and independent advisory panels, as does OP 4.01 (para. 4).

Recommendation 11: OHCHR recommends that minimum disclosure requirements for high risk and substantial risk projects prior to the appraisal mission should include a draft Environmental and Social Impact Assessment (ESIA) and Environmental and Social Management Plan (ESMP), draft stakeholder engagement plan, preliminary environmental and social framework assessment/gap analysis, ESCPs and resettlement plans and indigenous peoples’ plans. Documentation should include broad siting information and generic assessment and risk management parameters for subprojects for which the location is not identified prior to Board approval.

Recommendation 12: Detailed ESCP reporting, as part of annual monitoring reports, should include environmental and social safeguard implementation indicators, particularly on issues related to resettlement, indigenous peoples, critical natural habitat protection, protection of vulnerable and disadvantaged people, non-discrimination in accessing project benefits, and stakeholder engagement. OHCHR recommends that the monitoring reports be made public, subject to redaction of any commercially sensitive information, and that the Bank verify the accuracy and completeness of the information provided and include the results in the track record of the Borrower’s performance.

Recommendation 13: OHCHR recommends that the ESF specify further the circumstances in which expert panels should be required, which should include projects likely to cause large-scale displacement. Furthermore OHCHR

recommends that an independent and/or community monitoring mechanism should be required in the following circumstances:

- where human rights risks or impacts are considered high;
- for any use of Borrower Frameworks during the first five years of ESF implementation;
- for any deferred appraisal of any high or substantial risk activity;
- where Borrower capacity, commitment and/or track record are weak.

6. Recommendations relating to particular ESS's

As indicated at the outset, OHCHR recognizes that a number of the ESS's have been strengthened from the first to the second draft ESF. OHCHR would recommend that consideration be given to further strengthening in the following respects.

ESS 1: Environmental and Social Assessment

OHCHR welcomes the broad definition of “social risks and impacts” in draft ESS 1, paragraph 26, and notes that the open-ended list of grounds on which groups of people may be disadvantaged or vulnerable corresponds to a significant extent with the grounds of discrimination that are prohibited under international human rights law. OHCHR would strongly encourage the Bank to retain this definition in the final version of the ESF, but would also urge the explicit inclusion of “political or other opinion” and “language” as additional categories of discrimination prohibited by international human rights law¹⁵ which, in practice, limit the access of particular population groups to the benefits of investment projects. Discrimination on these grounds will not always be captured by other proxy measures such as ethnicity. An amendment of this kind would help to ensure broad-based participation and equitable access to project benefits, consistent with international human rights law, the 2030 Agenda for Sustainable Development,¹⁶ and the Bank's Articles of Agreement (see **Annex I**, Qu's 1 and 2).

OHCHR notes with concern the significant number of documented cases where individuals opposing MDB-supported projects have suffered serious reprisals or have lost their lives as a result. The killing earlier this month of Berta Cáceres, who had led community opposition to the construction of the Agua Zarca dam in Honduras, is the latest illustration of the risks that many communities face.¹⁷ OHCHR notes that ESS 10 requires that “meaningful consultation” be free of coercion or intimidation, however OHCHR would recommend that the definition of “social risks and impacts” in ESS 1 be

¹⁵ These grounds are included in the Universal Declaration on Human Rights, the Covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights, one or more of which bind all World Bank shareholders (see Annex IV). The relevance of discrimination on these grounds to sustainable development is highlighted in paragraph 19 of the 2030 Sustainable Development Agenda.

¹⁶ *Id.*

¹⁷ Indigenous peoples: UN expert condemns killing of rights defender Berta Cáceres in Honduras, Geneva, Mar. 4, 2016, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17153&LangID=E>.

expanded to include risks of reprisals against individuals or communities in relation to Bank-supported projects, given the alarming extent to which this specific risk occurs in practice.

ESS 1 (para 24) states that the obligations of countries “*directly applicable* to the project under relevant international agreements” should be part of the environmental and social assessment (ESA), while the relevance of national law is defined by a broader standard (i.e. national laws need only be “*applicable*” to environmental and social issues in order to be deemed relevant to the ESA). In OHCHR’s view a common standard of applicability should apply to all sources of law relevant to particular social or environmental issues. A common standard would ensure that all relevant sources of law are given equal consideration, and that any material inconsistencies between the requirements of national and international law may be brought to the surface and reconciled.

Recommendation 14: OHCHR recommends that the definition of social risks and impacts in paragraph 26 of ESS 1, and the list of prohibited grounds of discrimination in footnote 22 of ESS 1, be amended to include discrimination on the grounds of “political or other opinion” and “language.”

Recommendation 15: OHCHR recommends that the definition of “social risks and impacts” be expanded to include risks of reprisals against individuals or communities in relation to Bank-supported projects.

Recommendation 16: OHCHR recommends that national law and international law, as relevant to social and environmental assessment (ESS 1, para. 24), be governed by a common standard of “applicable” law. This would entail two minor edits to ESS 1, para. 24(a): the deletion of the word “directly”, and the addition of the bracketed phrase “(including implementation)” after the phrase “international treaties and agreements.”

ESS 2: Labor and Working Conditions

OHCHR welcomes the incorporation of separate standard covering labour and working conditions, and acknowledges the substantial improvements introduced in relation to the first draft ESS 2, including the broadening of the protection to workers other than direct project workers, including contracted and sub-contracted workers, primary supply workers, workers in community labour, and to a lesser extent, government officials (ESS 2, paras 3-8). The limitation in the scope of occupational health and safety (OHS) measures (paras 24- 30) to a limited category of workers, however, seems unwarranted.

OHCHR also notes the efforts to further align ESS 2 requirements with the ILO 1998 Declaration of Fundamental Principles and Rights at Work and core labour conventions. In OHCHR’s view, however, there is still significant room to further align ESS 2 with those

and other relevant international standards, including the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, in relation to child labour, minimum age, and the freedom of association and collective bargaining. Explicit referencing to the relevant international instruments would help to ensure closer alignment and clarify the content of ESS 5 requirements.

Recommendation 17: OHCHR recommends that the same protection afforded to project workers under ESS 2 be extended to public sectors workers, and that OHS measures apply to all workers associated with projects irrespective of their employment relationship.

Recommendation 18: OHCHR recommends that the Bank reference the core international labour standards and other relevant international instruments in ESS 2 and further align its provisions with those standards.

ESS 5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

OHCHR recognizes certain important improvements in ESS 5 from the first draft to the second, including the expansion of the scope of ESS 5 to address land titling projects. However in OHCHR's view there is still a need to clarify and strengthen the ESF insofar as the downstream impacts from projects causing physical or economic displacement outside the scope of ESS 5 are concerned, for example, in relation to livelihood losses and economic displacement downstream from dam projects. Given the well-documented limits of compensation in redressing displacement impacts in practice, and consistent with the safeguard policies of the ADB and AIIB.¹⁸ OHCHR would also recommend that remediation of downstream impacts be governed by a "livelihood improvement" objective, with a livelihood restoration standard as a minimum requirement.

Recommendation 19: OHCHR recommends that the scope of ESS 5 be widened to include physical and economic displacement caused by projects other than projects specifically involving land acquisitions and land use restrictions, and that remediation of displacement impacts be governed by a requirement to improve, or at least, restore, the livelihoods of those adversely impacted.

ESS 7: Indigenous Peoples

OHCHR welcomes the removal of the "alternative approach" in the first draft of the ESS 7 (para 9), which would have allowed Governments to opt-out of using the indigenous standard in certain circumstances. At the same time OHCHR acknowledges the concerns expressed by various States regarding the need for flexibility in the definition of the

¹⁸ ADB, Safeguard Policy Statement 2009, Appendix 2, para. 6; AIIB Environmental and Social Framework, p.34 under "Social Coverage."

scope of ESS 7, and takes note of the proposals to broaden this scope to cover other social groups in situation of vulnerability and to include additional terminology to reflect regional and national specificities. However in OHCHR's view, any broadening of this kind should not result in any dilution of the current level of protection afforded to indigenous peoples' rights under international law. Moreover the term "indigenous peoples" should be maintained in the title and text of the standard even if additional terminology is introduced.

The recognition of the principle of Free Prior and Informed Consent (FPIC) is also a welcome development. However, the draft ESS 7 seems to approach consultation and FPIC as separate concepts associated with different procedures. In this connection, and in line with international standards, it should be clarified that securing indigenous peoples' consent or agreement should be the objective of all consultation processes (UNDRIP, arts 19, 32; ILO C169, art 6.1.a). Moreover, given that the ultimate aim of consultation with indigenous peoples should be to effectively inform the Borrowers' decision-making through negotiation and agreement, the Borrower should be required to document all reasonable efforts to accommodate indigenous peoples' expressed concerns in the project definition and, when applicable, in the identification of project alternatives. From this perspective, OHCHR would recommend that the procedural requirements now applying to FPIC (para 18.c) be extended to all consultation processes with indigenous peoples in relation *all* projects potentially affecting them.

In addition, in line with the Bank's existing policy and international standards, OHCHR would recommend that ESS 7 affirm the Bank's explicit commitment not to finance any project involving the physical relocation of indigenous peoples (or else having substantive impacts on lands and natural resources occupied or otherwise used by indigenous peoples) without having obtained "broad support" from the affected communities (OP 4.10, para. 20; *cf.* UNDRIP, art. 10; ILO C169, art. 16.1; ILO C107, art. 12.1). Finally, it is recommended that ESS 7 reflects the possibility that regional standards and national laws could include more stringent requirements regarding indigenous peoples' FPIC (*see e.g.* AIIB, ESP, para. 61; ESS 3, para 3).

Recommendation 20: OHCHR recommends that FPIC should be the objective of all consultations with indigenous peoples under ESS 7. Borrowers should be required to document all efforts aimed at reaching a negotiated agreement with indigenous peoples in relation to all projects potentially affecting them.

Recommendation 21: OHCHR recommends that ESS7 should incorporate a commitment by the Bank not to finance any project involving the physical relocation of indigenous peoples (or else having substantive impacts on lands and natural resources occupied or otherwise used by indigenous peoples) without having obtained indigenous peoples' "broad support." Where regional standards or national laws establish more stringent criteria in relation to FPIC, the Borrower should be required to abide by the higher standards.

Annex I

Frequently Asked Questions on Human Rights and Multilateral Development Banks

This document addresses questions that sometimes arise in response to proposals to integrate human rights considerations within the social and environmental safeguard policies of Multilateral Development Banks (MDBs). As will be seen, none of these concerns prevent MDBs from integrating human rights risk information as needed throughout the project cycle.

1. Are human rights relevant to economic development?

Yes. The 2030 Agenda for Sustainable Development has explicitly recognized the inextricable linkages between human rights and sustainable development.¹⁹ The body of evidence is growing, including evidence produced by the World Bank recently on the importance of women’s rights to development,²⁰ human rights approaches and claiming mechanisms,²¹ the relationship between human rights violations and violent conflict,²² the relationship between civil liberties and project performance,²³ and the economic costs of discrimination.²⁴ IMF research has shown that the sustainability of economic growth is undermined by horizontal inequalities,²⁵ which are often linked to

¹⁹ Transforming Our World: The 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1, paras. 10, 18 & 19.

²⁰ *World Development Report 2012: Gender Equality and Development*, Washington DC, The World Bank (2012).

²¹ See e.g. Varun Gauri & Siri Gloppen, “Human Rights Based Approaches to Development: Concepts, Evidence, Policy,” *World Bank Policy Research Working Paper*, WPS 5938 (Jan. 1, 2012); Varun Gauri & Daniel Brinks, “Human Rights as Demands for Communicative Action,” *World Bank Policy Research Working Paper*, WPS 5951 (Jan. 1, 2012).

²² *World Development Report 2011: Conflict, Security and Development*, Washington DC, The World Bank (2011).

²³ Jonathan Isham, Daniel Kaufmann & Lant Pritchett, “Civil Liberties, Democracy, and the Performance of Government Projects,” *World Bank Economic Review*, Vol. 11 (1997).

²⁴ World Bank. 2013. *Inclusion Matters : The Foundation for Shared Prosperity*. New Frontiers of Social Policy; Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/16195> License: CC BY 3.0 IGO.” See also Nordic Trust Fund, *Human Rights and Economics: Tensions and Positive Relationships*, Washington DC, Nordic Trust Fund, The World Bank (2012).

²⁵ Andrew G. Berg & Jonathan D. Ostry, “Inequality and Unsustainable Growth: Two Sides of the Same Coin?,” *IMF Staff Discussion Note*, SDN 11/08, Apr. 8, 2011.

discrimination, and OECD research has shown that income inequality can negatively affect growth.²⁶

At the operational level, where human rights risks are not mitigated, projects can easily harm the people they intend to benefit, prevent people from accessing development benefits, or flare up into protracted and damaging conflicts. One recent study has shown that lost productivity costs due to temporary shutdowns or delays in the mining sector, following failure to manage social conflict, can result in USD 20 million per week in net present value terms.²⁷ As at June 2014 it was estimated that the world's top three platinum miners had lost USD 2.25 billion in revenue from the Marikana miners' strike in South Africa, over and above the human suffering and loss of life associated with that conflict.²⁸

2. Are human rights “political” in nature and beyond MDBs’ mandates?

No. The Articles of Agreement of the International Bank on Reconstruction and Development (IBRD, written in 1945) prohibit the Bank from interfering in the political affairs of its members and require it only to take “economic” factors into account in its lending decisions.²⁹ Other MDBs have similar provisions. These provisions were intended to prevent lending decisions being made on grounds of a country's political system and/or strategic relationship with major donors. They cannot be construed as preventing MDBs from respecting and supporting the implementation of internationally recognized human rights within the scope of their mandated activities. The IBRD Articles pre-date the modern fields of international human rights and environmental law and should be interpreted in the context of those subsequent bodies of law.

The Executive Board has the power to amend the Articles of Agreement, but in practice most MDBs have relied very little upon this. The IBRD's mandate and functions have evolved dramatically since 1945, although only three formal (technical) amendments to the IBRD Articles have been made to date. The World Bank's own legal doctrine suggests that the Bank's engagement with human rights should be justifiable providing that an economic rationale can be identified and political interference (such as the Bank

²⁶ Federico Cingano, “Trends in Income Inequality and its Impact on Economic Growth,” *OECD Social, Employment and Migration Working Papers*, No. 163 (2014).

²⁷ Rachel Davis & Daniel M. Franks (2011) “The costs of conflict with local communities in extractive industry,” Chapter 6, *SRMining 2011*; Paul Stevens, Jaakko Kooroshy, Glada Lahn & Bernice Lee (2013) *Conflict and Coexistence in the Extractive Industries*, Chatham House – Royal Institute of International Affairs.

²⁸ “South Africa miners return to work after longest platinum strike,” *Reuters*, June 25, 2014, at <http://www.reuters.com/article/us-safrica-mining-idUSKBN0F00DC20140625>.

²⁹ International Bank of Reconstruction and Development (IBRD) Articles of Agreement, 27 December 1945, 13 *UNTS* 2, Art. IV(8)(10).

involving itself in “partisan politics or ideological disputes”, or favouring political factions or endorsing particular forms of government) is avoided.³⁰ The Bank itself has researched and worked extensively on human rights over the last 20 years, showing the importance of human rights for economic development (see Q1). The Bank carries out political analysis for risk assessment purposes without falling foul of the “political prohibition”, and the Bank’s Independent Evaluation Group (IEG) has urged the Bank to do more.³¹

With these factors in mind, there is a potentially broad menu of good faith engagement by MDBs in support of the implementation of borrowing countries’ obligations under international human rights law, beginning with a baseline commitment that the MDBs themselves respect international human rights law relating to the operations that they support.

3. Would integrating human rights within MDBs’ safeguard policies infringe the sovereignty of borrowers?

No. States themselves create the international laws by which they are bound, through treaties, declarations and other ostensibly non-binding instruments (which may nevertheless evolve into binding law over time) and through consistent practice generally accepted as law (customary international law).³² Adhering to human rights treaties is an exercise of State sovereignty, not an abridgement of it. This is also true for environmental, trade and many other international legal regimes, although the international human rights regime is a special case as it embodies (principally) a compact among States as to how they will treat their own populations, and to a lesser extent how they will cooperate with each other on the international plane.³³ All shareholders of the MDBs have ratified one or more, and frequently several, of the ten core UN human rights treaties and eight core ILO labour conventions. Nearly all countries have bills of rights or other kinds of explicit human rights guarantees in their constitutions.

³⁰ Anne-Marie LeRoy, “Legal note on Bank involvement in the criminal justice sector,” 9 February 2012. According to this opinion, one should also take into account possible risk mitigation measures and the particular nature of the Bank’s proposed action(s), when deciding whether an issue is within the Bank’s mandate.

³¹ A recent IEG report on the poverty focus of World Bank country programs found that the Bank’s analytical work on poverty “often does not adequately address the important social and political factors that contribute to poverty and impede efforts to reduce it.” IEG (2015) *The Poverty Focus of Country Programs*, p. xvi https://ieg.worldbankgroup.org/Data/reports/poverty_focus_cp_1.pdf.

³² International human rights law also includes “*jus cogens*” norms, that is to say, peremptory norms from which no derogation is permitted. The prohibitions against torture and forced labour are examples. These may not seem like “development” issues in a traditional sense, or issues relevant to MDB-supported investment projects, but the Chad/Cameroon pipeline project and Uzbekistan Rural Enterprise Services Project II project illustrate otherwise.

³³ This is only a generalisation. Economic, social and cultural rights are required to be realized within the framework of international cooperation, where resource constraints so require. The 1948 Universal Declaration on Human Rights and 1982 UN Declaration on the Right to Development both reflect duties of international cooperation.

As subjects of international law, and in response to societal expectations, MDBs should, at a minimum, respect international human rights standards and principles relevant to their operations. In the business community this is part of the “social licence to operate.”³⁴ In the 2030 Agenda for Sustainable Development, all governments committed themselves to implementing the 2030 Agenda “in a manner that is consistent with the rights and obligations of states under international law.”³⁵ At the 3rd International Conference on Financing for Development, governments specifically encouraged all development banks “to establish or maintain social and environmental safeguards systems, including on human rights, gender equality and women’s empowerment.”³⁶

4. Are human rights a form of political conditionality?

No. As indicated in **Q2**, most MDBs’ Articles of Agreement appropriately and explicitly prohibit the lender from basing lending decisions on the political character of a prospective borrower. These “political prohibitions” serve as a vital hedge against arbitrariness and help to ensure that MDBs remain focused on their core business of development. At the same time, all MDBs impose legitimate requirements of many different kinds – fiduciary, legal, social, economic and environmental – to ensure that development objectives are achieved and that the MDBs themselves fulfil their own responsibilities to all relevant stakeholders.

Human rights law is among the many sources of law applicable to MDB-supported projects. MDBs have human rights responsibilities independently of their members, and international human rights law covers rights of all kinds – economic, social, cultural, civil and political – all of which may be relevant to development and social and environmental risk management in different contexts (see **Q’s 1, 3, 6 & 10**). Recognising and protecting human rights can have dramatic and sometimes life-saving impacts: for example, it is likely that over 1,100 factory workers would still be alive today, and 2,500 more would have avoided injury, had they been free to organize themselves and voice their concerns about safety and working conditions prior to the Rana Plaza building collapse in Bangladesh on 24 April 2013.³⁷

³⁴ John Morrison, *The Social License: How to Keep Your Organization Legitimate* (Palgrave MacMillan 2014).

³⁵ Transforming Our World: The 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1, para.18.

³⁶ Addis Ababa Action Agenda of the Third International Conference on Financing for Development, GA Res 69/313, July 27, 2015, para. 75, provides *inter alia*: “We welcome efforts by new development banks to develop safeguard systems in open consultation with stakeholders on the basis of established international standards, and encourage all development banks to establish or maintain social and environmental safeguards systems, including on human rights, gender equality and women’s empowerment, that are transparent, effective, efficient and time-sensitive.”

³⁷ UN Working Group on Business and Human Rights, “The Lessons of Rana Plaza Have Still Not Been Learned,” 15 May 2015, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15965&LangID=E>; Human Rights Watch, “Whoever Raises Their Head Suffers the Most,” Apr. 22, 2015 available at http://features.hrw.org/features/HRW_2015_reports/Bangladesh_Garment_Factories/index.html.

Human rights risk information should be dealt with in the same way as other potentially relevant information sources, strengthening country diagnostics and social and environmental risk assessment and informing monitoring, redress and mitigation measures. Human rights policy dialogues need not be conflictual. There will always be instances where human rights concerns relating to a project (for example, forced evictions, discrimination against certain population groups, child labour, or reprisals against people expressing dissenting views) are sufficiently serious to trigger suspension or other legal remedies under the loan agreement. The same applies to environmental, fiduciary or other important concerns. However these cases will be less frequent and there will be less likelihood of disruption if expectations, procedures and parameters for addressing human rights risks are defined clearly at the outset.

5. Would integrating human rights within MDBs' safeguard policies turn the lender into a human rights tribunal or "enforcer"?

No. Integrating human rights within MDBs' due diligence and social risk management procedures already occurs to some extent. Systematising this practice would not require MDBs to be the arbiter or enforcer of borrowing countries' compliance with their treaty obligations, and would not involve the "sanctioning" of countries with a poor human rights record. MDBs' concern for environmental issues provides a useful analogy. Borrowing countries – not the lender – are responsible for implementing their human rights and environmental law obligations. Courts, tribunals, treaty monitoring bodies and other specialized bodies – not the lender – are responsible for monitoring compliance by countries with their obligations and, as appropriate, determining violations.

Due diligence is principally an obligation of conduct: it is a matter of knowing all relevant risks, and taking care that one's own actions do not unwittingly exacerbate those risks. It is not about adjudication or enforcement. Information and recommendations from international human rights bodies (the UN Human Rights Council, Special Procedures, UN treaty monitoring bodies, and ILO supervisory mechanisms) are relevant to specific investment project risks as well as broader contextual risks, upstream country diagnostics, and strategic social and environmental assessments. MDB staff should weigh human rights information carefully, together with all other relevant information, in the exercise of their professional judgment about social and environmental risks. In so doing lenders may more effectively anticipate and mitigate social risk in relation to the projects that they support, avoid community backlash and costly blowouts, and improve social and environmental outcomes.

6. Why must human rights be mentioned explicitly?

Human rights are intrinsically important. Human rights embody an important set of freedoms, entitlements, and claims by individuals against organs of the State, commensurate with the requirements of a dignified life, protected by international, regional and national legal systems. The universal, solemn and legally binding character of human rights calls for their explicit recognition by all those supporting their implementation. Human rights have an empowering quality that other claims lack, which is why people and communities across the world increasingly express their grievances and aspirations in human rights terms. The denial of a human right has specific consequences for accountability.³⁸ Research within the World Bank and elsewhere demonstrate the practical importance that human rights claims can make (see Q1).

Human rights are frequently violated in the context of MDB-supported investment projects. Negative impacts have often been irremediable. While the borrower is responsible for project implementation, inadequate due diligence by the lender has often been a contributing factor. If human rights risks are not highlighted explicitly in safeguard policies, they will not be taken as seriously: information specific to particular human rights risks will be overlooked in the Bank's due diligence and borrower's social and environmental risk assessment; implementation will be inconsistent; and expectations between lender and borrower will not be clear, making project interruption or cancellation more likely.³⁹ For these reasons the safeguard policies of all MDBs should include an explicit commitment that the Bank will take all necessary measures to avoid supporting projects that may put a borrower in breach of its obligations under international agreements in the social and environmental fields, including international human rights agreements. This would be consistent with the World Bank's existing safeguards (Operational Policies 4.01 and 4.36) and those of the ADB, EBRD, EIB, AfDB and IDB⁴⁰ and, in line with the 2030 Agenda and Addis Ababa Agenda for Action, would constitute a foundation stone towards the goal of social and environmental sustainability.

Human rights have specific, internationally accepted meanings, including in relation to forced evictions and eminent domain, child and forced labour, the anti-discrimination norm and many other MDB safeguard standards. The environmental and social

³⁸ See e.g. Varun Gauri & Daniel Brinks eds., *Courting Social Justice* (Cambridge University Press 2008); Beth Simmons, *Mobilising for Human Rights* (Cambridge University Press 2009).

³⁹ Recent examples include the World Bank's suspension of the Uganda health sector loan in 2014 in response to laws criminalising homosexuality, and the more recent cancellation of the Uganda Transport Sector Development Project following reports of serious human rights violations by contractors.

⁴⁰ This commitment is sometimes reflected in the safeguard policy text, such as in the Bank's OP 4.01/4.36 (although limited to environmental agreements), and sometimes in exclusion lists indicating that the lender will not finance activities "deemed illegal under host country laws and regulations or international conventions and agreements" (e.g. IFC, EBRD, AfDB).

standards in MDB safeguards are aligned with corresponding human rights standards to varying degrees. But, across the board, there are many gaps and contradictions, presenting challenges to the consistent implementation of borrowing countries' treaty obligations at country level. It is vital that MDBs avoid renegotiating and inadvertently undermining international human rights standards corresponding to the subject matter of safeguard policies. Consistent adherence to international standards would also reduce potential confusion and inefficiencies for borrowing countries by encouraging them to implement one single set of standards across sectors and lenders.

Explicit referencing of human rights would also help to ensure that safeguard requirements keep pace with international standards as they change over time, and reflect different country contexts. International human rights standards may evolve quite dramatically within the (10-15 year) lifetime of safeguard policies.⁴¹ Through interpretation and country-specific application by specialized human rights monitoring bodies, international human rights standards reflect country and local specificities in a way that a single set of safeguard policy standards at global level cannot. For example, information from human rights monitoring bodies may shed light on the particular challenges faced by women, children, migrants, persons with disabilities and other groups in the context of a particular investment or type of investment, and may reveal constraints to participation, access to livelihood rights, effective grievance mechanisms and other issues covered by safeguards.

For these reasons MDB safeguard policies should not be seen as a stand-alone, static set of standards, but rather, should be interpreted and applied in a dynamic and contextually specific fashion in the light of international human rights and environmental agreements governing the same subject matter. Explicit referencing of the latter agreements would help make sure that this happens consistently in practice, and that where there is a conflict between a safeguard standard and international law the latter will prevail. The 2009 ADB Safeguard Policy Statement (Annex 3, para. 7) provides a useful model where it states that, in order to help identify whether groups are "indigenous" and therefore entitled to the specific protections of the indigenous safeguard policy, "national legislation, customary law, and any international conventions to which the country is a party will be taken into account."

Finally, the explicit referencing of human rights would also help to trigger mitigation actions, as human rights problems often benefit from human rights responses. This already happens to some degree in practice: for instance, the mitigation plan in relation to the IFC's loan in 2009 to Corporación Dinant in Honduras (an agribusiness investment

⁴¹ For example the UN Convention on the Rights of Persons with Disabilities entered into force in 2008 and has significant implications for how investment projects should deal with access to goods, services and physical facilities and enable effective participation for persons with disabilities, among a wide range of other issues. Over the last ten years there have been rapid advances in international understanding and implementation of the human rights to water and sanitation, social security, the right to take part in cultural life, the freedoms of opinion and expression, procedural rights including the right to a remedy, and many other rights directly relevant to MDB safeguard policies.

characterized by serious allegations of human rights abuses by the client's private security forces) includes human rights training for security forces, investigation of alleged human rights abuses, and adherence to the UN Voluntary Principles on Security and Human Rights. The mitigation plan for the World Bank-supported Uzbekistan Rural Enterprise Support Project (where forced labour was pervasive) includes monitoring by the ILO of the agricultural sector and alignment of the project with ILO core labour standards. Explicit referencing of relevant human rights would help to trigger these kinds of tailored mitigation measures earlier in the project when the lender's leverage is greater and the measures in question may do the most good.

7. Are human rights treaties too numerous or complex to be useful for project due diligence?

No. There are many human rights treaties but not all are relevant to particular projects. Moreover, while MDBs have obligations under general international law (including in relation to human rights), they do not have the same obligations as a State. MDBs should, at a minimum, respect international human rights agreements, however it is the ratifying State which must implement them. A core group of the most widely ratified and relevant treaties may be prioritized by the lender for its own due diligence purposes, as the IFC and EBRD recommend for their private sector clients,⁴² supplemented as needed according to the nature, scope and subject matter of particular projects.

Human rights monitoring bodies strive to ensure internal consistency in their recommendations and jurisprudence although, as with any body of law, contradictions can arise in practice. However from a due diligence and social risk management perspective, as applied to specific investment projects, MDBs do not have to (and are not mandated to) resolve any such contradictions, much less pronounce themselves on violations. Risk assessment is inherently about probabilities, not definitive legal judgements. In this respect, MDBs should simply take into account risk information and relevant recommendations generated by specialised human rights bodies when deciding on the level of social risk relating to particular projects and what should be done to mitigate those risks and compensate for harmful impacts. The technical challenges involved in this regard are no different from those pertaining to due diligence and project supervision processes generally, where the professional judgment of the lender is called upon to sift through information gaps and competing views to determine a credible and evidence-based assessment of the situation.

⁴² The IFC and EBRD recommend prioritising the 1948 Universal Declaration on Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, and the eight core ILO conventions.

8. Would integrating human rights in MDBs' due diligence increase their potential legal liability?

No. If anything, the reverse is true. The MDBs' legal immunities, and those of the United Nations and other international organizations, have typically been interpreted strictly by the organisations concerned and national courts.⁴³ The sources and scope of obligations of MDBs under international human rights law are matters of legitimate ongoing debate, although most commentators agree that MDBs should at least "respect" international human rights law relating to the operations that they support. However there is no evidence that the World Bank, ADB, EBRD, EIB, AfDB, IDB and other lenders whose safeguards contain a commitment to respect relevant international agreements or avoid financing projects on human rights grounds have thereby been exposed to greater legal liability. To the contrary, such a commitment provides evidence that the lender takes its borrowers' obligations seriously, and would be part of the lender's defence in relation to any such claims.

9. Would MDBs' complaint mechanisms generate potentially conflicting bodies of human rights jurisprudence?

No. The concern that the MDBs' independent complaints mechanisms, such as the Bank's Inspection Panel, may in effect turn into human rights tribunals if they took international human rights law into account, misrepresents the very specific mandates of these mechanisms which is to determine compliance by the lender with its own safeguard policies (*not* compliance by borrowing States with their international obligations). The complaint mechanisms' essential inquiries would not change: did Bank consider all relevant information in appraising the project? Was the Resettlement Action Plan (RAP), or Indigenous Peoples Plan or other relevant planning instruments in line with safeguard policy requirements? Were appropriate consultation, monitoring and supervision processes in place?

But there would be some important differences and potential improvements. International human rights standards would inform the complaint mechanisms' interpretations of safeguard policy requirements as they apply to a particular investment in a particular country, triggering more focused questions such as: was minority group "x" included in consultations? Were constraints on freedom of expression factored into appraisal and consultation plans, and do project-affected

⁴³ This is not to endorse the breadth of many such claims. Each claim must be assessed on its own facts in the light of applicable treaties governing international organisations' immunities and other relevant principles of international law.

communities face risk of reprisals? Are the RAP compensation requirements in line with international human rights law, and do they take into account institutional constraints in the country identified by the UN Committee on Economic, Social and Cultural Rights? In pursuing these kinds of inquiries the complaint mechanisms would not be doing anything different to what they already do: they would *not* be determining violations by the Borrower, and their interpretations would *not* have any bearing on how courts or international or regional human rights bodies perform their functions. Their interpretations would relate only to whether the lending institution complied the procedural requirements in its own safeguards.

10. Would the costs of integrating human rights in MDBs' due diligence exceed the likely benefits?

No. The reverse is true. It is sometimes wrongly assumed that integrating human rights in project due diligence and social and environmental risk management will drive up the cost of lending and will not contribute to better outcomes. However, rarely is the evidence shown that backs up the claim empirically, and rarely are social and environmental outcomes monitored to the extent needed for informed debate on this issue. Nevertheless, from a recent analysis of World Bank-supported projects, the Bank's Independent Evaluation Group (IEG) concluded that the economic benefits of effective safeguard application "far outweigh" the costs.⁴⁴

In a great number of cases, the early integration of human rights risk information and mitigation measures may well have helped MDBs avoid costly failures and harm to communities. Recent examples include the Cambodia Railway Project (ADB),⁴⁵ the Uzbekistan Rural Enterprise Project II (World Bank),⁴⁶ the Ethiopia Basic Services Project III (World Bank),⁴⁷ the Cambodia Land Management and Administration Project (World Bank),⁴⁸ the Panama Pando-Monte Lirio Hydroelectric Power Project (IDB),⁴⁹ Honduras –

⁴⁴ Chapter 4 of the 2010 IEG Evaluation is devoted entirely to safeguard cost benefit analysis. See <http://siteresources.worldbank.org/EXTSAFANDSUS/Resources/chap4.pdf>.

⁴⁵ Compliance Review Panel, Final Report on Compliance Review Panel Request No. 2012/2 on the Greater Mekong Subregion: Rehabilitation of the Railway Project, Cambodia, Jan. 14, 2014; Inclusive Development International & Equitable Cambodia, "Briefing note: Rehabilitation of the Cambodia Railway Project: Status of Remedial Actions and Ongoing Concerns," Aug. 31, 2015, at <http://www.inclusivedevelopment.net/wp-content/uploads/2015/09/Cambodia-Railway-Project-Status-of-Remedial-Actions-Briefing-Note-FINAL.pdf>.

⁴⁶ World Bank Inspection Panel, Republic of Uzbekistan: Second Rural Enterprise Support Project (P109126) and Additional Financing for the Second Rural Enterprise Support Project (P126962), Report No. 93222-UZ, Final Eligibility Report and Recommendation, Dec. 19, 2014.

⁴⁷ Human Rights Watch, *Waiting Here for Death: Forced Displacement and 'Villagisation' in Ethiopia's Gambella Region*, Jan. 20, 2012, at <https://www.hrw.org/report/2012/01/16/waiting-here-death/forced-displacement-and-villagization-ethiopia-gambella-region>.

⁴⁸ World Bank Inspection Panel, Investigation Report, Cambodia: Land Management and Administration Project (Credit No. 3650-KH), Nov. 30, 2010.

⁴⁹ IDB Compliance Review Panel Report, "The Pando-Monte Lirio Hydroelectric Power Project" (2266/OC-PN), Panama, Aug. 27, 2012.

Corporación Dinant and Banco Ficohsa (IFC),⁵⁰ and the Gazela Bridge Rehabilitation Project, Serbia (EIB/EBRD).⁵¹ All of these cases were characterized by inadequate due diligence and, to varying degrees, inadequate social and political economy analysis and supervision. In all cases, information and recommendations from the international human rights system and other reputable sources, relevant to the project risk factors, were available to be consulted but apparently were not consulted. In a few of these cases (Uzbekistan RESP II, Ethiopia BSP III, IFC-Dinant), human rights risk information and mitigation measures were introduced only after major problems had already reached the surface. The challenge is to integrate that information systematically at the earliest stage of the project, before project harms and reputational damage have occurred.

Failed safeguards in accidents or accumulated damages almost always cost far more than sound regulation and enforcement. According to Vinod Thomas, head of the Evaluation Unit at the Asian Development Bank: “The 1978 Amoco-Cadiz Tanker spill on the Brittany coastline of France led to claims of \$250 million, while the claims and clean-up costs in the 2010 BP-Amoco Gulf of Mexico oil spill in the United States were more than 100 times as much. ... The Sardar Sarovar Dam on the Narmada River in India eventually displaced over 200,000 people, far more than planned, while China’s Three Gorges Dam displaced six times as many... Admittedly, it is hard to pin down the value of safeguards. But the gain from these defenses would be several times higher than their cost, which is usually 3-4 percent of the project.”⁵²

⁵⁰ CAO Audit of IFC Investment in Corporación Dinant S.A. de C.V., Honduras, CAO Ref: C-I-R9-Y12-F161 (20 December 2013); CAO Investigation of IFC Environmental and Social Performance in relation to Investments in Banco Financiera Comercial Hondureña S.A. Report C-I-R9-Y13-F190 (Aug. 6, 2014).

⁵¹ Amnesty International, “How the EBRD’s Funding Contributed to a Forced Eviction in Belgrade, Serbia,” AI Index EUR/70/006/2014, March 2014, at <https://www.amnesty.org/en/documents/EUR70/006/2014/en/>.

⁵² Vinod Thomas, June 1, 2015, “Infrastructure lending must be based on environmental and social safeguards,” Brookings, at <http://www.brookings.edu/blogs/future-development/posts/2015/06/01-infrastructure-environment-banks-Thomas>.

Annex II

The Benefits of Integrating Human Rights Risk Information into the World Bank's Due Diligence

I. Introduction

Human rights risks arise frequently in relation to investment projects supported by multilateral development banks (MDBs), including the World Bank, in all countries. The risks can arise in relation to economic, social, cultural rights as well as civil and political rights. Human rights risks have often been serious and irremediable, undermining investment project objectives, blowing out remediation and administrative costs (including costs of investigation by MDBs' independent compliant mechanisms), and causing reputational harm to both the Borrower and the lender.

OHCHR has undertaken a comparative analysis of several MDB-supported investment projects where human rights risks were, or should have been, apparent at an early stage of the preparation of the investment yet did not appear to have been identified or prioritized, or alternatively were taken into account too late. These and other cases bring to mind the counterfactual question: What would have changed had the lender adopted an explicit human rights commitment and provided staff with the tools to implement it?

The discussion in this Annex seeks to illustrate in practical terms how human rights risk information could be integrated more explicitly and systematically within the investment project cycle. While relevant to MDB-supported investment lending generally, the discussion focuses on entry points specific to the Bank's project cycle and draft Environmental and Social Framework (ESF). While this discussion focuses mainly on the Bank's due diligence responsibilities, it is also relevant to the duties of Borrowers to take human rights risk information into account as part of their social and environmental assessment and risk management responsibilities.⁵³

II. What is human rights risk information?

The term "human rights risk information" may be taken to mean information generated by duly mandated and independent human rights reporting and monitoring bodies, including those within the UN system as well as other reputable sources, relevant to environmental and social risk assessment and management. Information and

⁵³ Environmental and Social Standard – ESS 1: Assessment and Management of Environmental and Social Risks and Impacts (2nd draft, September 2015), para. 24.

recommendations from UN human rights bodies address many issues relevant to the assessment of social and environmental risks and context risks in relation to investment projects.

All World Bank shareholders have ratified at least some (and frequently, several) of the ten “core” UN human rights treaties, and 174 members have ratified five or more⁵⁴ (see **Annex IV**). All are bound by the 1945 UN Charter and 1948 Universal Declaration on Human Rights.⁵⁵ Similarly, most World Bank members have ratified the core conventions of the International Labor Organisation (ILO) and all, by virtue of their ILO membership, are bound by the 1998 Declaration on Fundamental Principles and Rights at Work.

Projects financed by Bank may potentially have an impact on a broad range of human rights, including not only economic, social and cultural, but also civil and political. In fact, many of the social issue areas covered by the Bank’s ESF, and some environmental issues, are regulated by international human rights agreements and mechanisms. Thus the information produced by human rights bodies and mechanisms in relation to specific countries is often of direct relevance to identifying and mitigating social and environmental risk. For example a project to improve health services for women should take into account information and recommendations stemming from the monitoring of the UN Convention on the Elimination of Discrimination against Women (CEDAW, article 12 concerning the elimination of discrimination in relation to the right to health) and International Covenant on Economic, Social and Cultural Rights (ICESCR, articles 2 and 12, on the right to health), and projects involving labour should take into account information from the monitoring of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and of the core ILO conventions [see *Table 1*].

National laws within the ambit of the ESSs are not always consistent with States’ corresponding international human rights obligations. Recommendations from international human rights bodies help to clarify the extent to which national laws relating to the subject matter of the ESSs and investment projects are aligned with the borrowing country’s human rights obligations, and whether national laws which appear to be consistent with a country’s human rights obligations are actually implemented in practice. This is crucial not only for environmental and social risk assessment and gap analysis, but also to inform the lender’s assessment of a Borrower’s implementation capacity, commitment and track record.

The broader human rights context is also relevant for specific operations. The draft ESF limits the scope of international conventions or agreements to those that are “directly applicable” to a project (ESS1, para 24). By contrast, national laws are to be taken into account to the extent that they are “applicable” (ESS1, para 24). It is not clear why

⁵⁴ See <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>, and [Annex I to these submissions](#).

⁵⁵ The Universal Declaration is not a legally binding treaty, however it is generally accepted that much (though not all) of its provisions are binding upon UN member States under customary international law, and the Declaration gives expression to the legally binding human rights commitments in the UN Charter.

international law, alone, must be “directly” applicable. OHCHR’s analysis of recent MDB-supported investment projects shows that human rights are relevant to project risk assessment in many ways, including in helping understand context risks concerning issues such as discrimination, social exclusion, conflicts over natural resources, participation and voice, risk of reprisals, access to grievance redress mechanisms and may other factors critical for the success of the project. The relevance of human rights risk information is especially obvious when cumulative impacts are factored in. The consideration of this information could significantly enrich the Bank’s upstream country diagnostics and strategic social and environmental assessments, as well as project-specific context risks.

Figure 1: Illustrative list of human rights issues, international instruments and monitoring mechanisms relevant to the ESSs⁵⁶

ESSs	Issues	Instruments	Monitoring mechanisms
ESS1	Non-discrimination Vulnerable groups	UDHR ICCPR ICESCR ICERD CEDAW CRC CRPD MWC	CEDAW Committee ICERD Committee CRPD Committee CRC Committee SR on racism SR on minorities SR on indigenous peoples SR on disability SR on older persons WG on discrimination against women SR on violence against women
ESS2	Labour rights	ILO Core Conventions (Nos. 29, 87, 98, 100, 11, 105, 138, 182) ICESCR CRC	ILO supervisory bodies CESCR CRC Committee
ESS3	Water use Toxic waste	ICESCR	SR on water and sanitation SR on toxic waste
ESS4	Community health Accessibility Security personnel	ICESCR CRPD Voluntary Principles on Security and Human Rights	CESCR CRPD Committee SR on health SR on disability WG on mercenaries
ESS5	Land rights Forced evictions	ICESCR	CESCR SR on housing

⁵⁶ *Acronyms:* UDHR: Universal Declaration of Human Rights; ICCPR: International Covenant on Civil and Political Rights; ICESCR: International Covenant on Economic, Social and Cultural Rights; CEDAW: Convention on the Elimination of All Forms of Discrimination against Women; ICERD: International Convention on the Elimination of all Forms of Racial Discrimination; CESCR: Committee on Economic, Social and Cultural Rights; CRC: Convention on the Rights of the Child; CRPD: Convention on the Rights of Persons with Disabilities; MWC: Migrant Workers’ Convention; UNDRIP: United Nations Declaration on the Rights of Indigenous Peoples; SR: Special Rapporteur [Special Procedures of the UN Human Rights Council]; WG: Working Group [Special procedures of the UN Human Rights Council]. The UDHR is relevant to all ESS’s.

ESS6	Natural resource management	ICESCR	CESCR SR on the environment
ESS7	Rights of indigenous peoples	ICERD UNDRIP ILO Conventions 107 & 169	SR on indigenous peoples ILO Committee of Experts CERD Committee
ESS8	Cultural heritage	UNESCO World Heritage and Intangible Heritage Conventions ICESCR	UNESCO supervisory bodies CESCR SR on cultural rights
ESS10	Participation Consultation Accountability	ICCPR CEDAW CRC CRPD UNDRIP	Human Rights Committee SR on freedom of speech SR on peaceful assembly & association SR on human rights defenders WG on arbitrary detention

III. Relevant sources of human rights risk information

Relevant sources of risk information include the following international (UN) human rights mechanisms:

- 1. Universal Periodic Review (UPR):** The UPR is a peer review process voluntarily undertaken by all countries on a 4-5 year cycle in the UN Human Rights Council, a subsidiary inter-governmental body of the UN General Assembly. Official information, UN data and reports, and information from NGOs and other stakeholders are submitted as part of the data base for the review.⁵⁷ Of particular relevance is the so-called UN “compilation report,” submitted for each country’s review, which contains a summary of recommendations issued by all UN human rights bodies for the country concerned.
- 2. Treaty bodies:** Human rights treaty bodies are 18-24 member expert committees which review countries’ implementation of their legal obligations under the international human rights treaties they have ratified. They deal with issues such as the rights of women children, migrant workers, persons with disabilities, racial discrimination (including against indigenous peoples and minorities), civil and political rights (including freedom of association and participation rights), economic and social rights (including labour rights), among others.⁵⁸
- 3. Special Procedures** are independent individuals and/or working groups, appointed by member States in the UN Human Rights Council, mandated to analyse and report on human rights situations in particular countries and/or thematic issues (like the right to food, health, housing, the environment, rights

⁵⁷ All documentation regarding the UPR is publicly available and searchable by country at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>.

⁵⁸ See <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

of indigenous peoples, violence against women, freedom of expression, human rights defenders, toxic waste, arbitrary detention, and many others).⁵⁹

- 4. OHCHR, UN field presences and other UN bodies.** As part of annual reporting to UN bodies, or at the direct request of those bodies, OHCHR and other UN entities with presence in the field routinely produce reports on country situations. Such reports are also increasingly prepared by *ad hoc* independent expert bodies commissioned by the UN, such as commissions of inquiry.

The UPR and Special Procedures can produce information and recommendations relevant to social and environmental risk assessment even where the country concerned is not party to the relevant treaty. For example, the Special Rapporteur on the right to water and sanitation may visit a country and make recommendations relevant to investment project risk assessment even where the country has not ratified the ICESCR. More generally, the UPR reviews of the UN Human Rights Council are based, in part, on the Universal Declaration of Human Rights, which covers all rights: civil, social, cultural, economic and political. Information relevant to social and environmental risk assessment may also come from individual complaint procedures under the various UN human rights mechanisms.

Other relevant sources of risk information include the ILO supervisory bodies, such as the Committee of Experts on the Application of Conventions and Recommendations, responsible for monitoring the ILO core conventions and other international labour standards.⁶⁰ In addition, regional human rights regimes with monitoring and complaint procedures have been established within the framework of regional organizations. The better established regional human rights systems are those in the African,⁶¹ American⁶² and European regions.⁶³

Last but not least, relevant human rights risk information is available from non-governmental sources, which include both national and international NGOs and civil society organisations. As the case studies below show, NGOs frequently perform a vital role in bringing to light potential human rights risks associated with investment projects and often help affected communities to access grievance redress mechanisms (including project level mechanisms, national grievance redress systems, and the Inspection Panel).⁶⁴ National Human Rights Institutions may also make important contributions to monitoring the human rights situations in a given country or region, and could be valuable partners in social and environmental risk assessment and mitigation.

⁵⁹ See <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

⁶⁰ See <http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang-en/index.htm>.

⁶¹ See <http://www.au.int/en/organs/cj>.

⁶² See http://www.oas.org/en/topics/human_rights.asp.

⁶³ See <http://www.echr.coe.int/Pages/home.aspx?p=home&c=>.

⁶⁴ An extensive list of international NGOs working in the field of human rights is *available at* <https://www1.umn.edu/humanrts/links/ngolinks.html>.

IV. Opportunities for integrating human rights risk information in the World Bank's project cycle

OHCHR has analysed a range of MDB-supported investment projects where human rights risks were, or should have been, apparent at an early stage of the preparation of the investment yet did not appear to have been identified or prioritized, or alternatively were taken into account too late. In each case, context analysis (and social, political economy and human rights analysis) was weak, an unduly low risk rating was given, and remediation measures and supervision were ill-suited to the (unidentified) human rights risks pertaining to the project. In most of these cases, adverse impacts led to investigation and findings of non-compliance by the MDB's independent complaints, adding administrative and reputational costs to the project-related harms to individuals and communities.⁶⁵

There are several clear entry points for integrating human rights risk information within the Bank's project cycle, with specific implications for the Bank's due diligence. These are the following: (1) Systematic Country Diagnostic (upstream project selection criteria); (2) risk screening and categorization; (3) assessing the Borrower's E/S framework; (4) informing the selection of the most appropriate risk assessment tools; (5) Bank appraisal and due diligence; and (6) supervision and reporting.

1. Systematic Country Diagnostic – upstream project selection criteria

At the earliest planning stage before a specific project has been identified, diagnostics of environmental and social risks should take human rights risk information into account. The Bank now consults a range of institutional capacity metrics for determining how to assess country or sector level risks and to better align a country's strategic priorities and capacities, captured within the Systematic Country Diagnostic, which informs the Country Partnership Framework (CPF) as well as the Systematic Operations Risk-Rating Tool (SORT).⁶⁶

Key governance and development indicators related to human rights could be identified and utilised at the planning stage, including, for example indicators concerning disadvantages experienced by specific population groups, constraints on public participation and free expression, constraints in accessing health services, abuses by security forces and private security contractors, labour rights violations, and indicators shedding light of problems in specific sectors that have proven risky in the past (e.g. natural resource extraction, land titling or tenure reforms, displacement in the context of rural road projects or hydroelectric dams, privatization of water services without adequate safeguards for the poorest, and so forth). The information gathered through

⁶⁵ Draft case studies on file with OHCHR (internal working document, March 2016).

⁶⁶ World Bank Interim Guidance Note Systematic Operations Risk-Rating Tool (SORT) (25 June 2014), paras. 2, 8 at http://www.worldbank.org/content/dam/Worldbank/document/SORT_Guidance_Note_11_7_14.pdf.

indicators of this kind could help to signal the need for upstream Strategic Environmental and Social Assessments (SESAs), poverty and social impact assessments (PSIAs), or similar assessment instruments for operations in sectors where the CPF diagnostics have anticipated substantial or high social risks.⁶⁷ Upstream human rights risk analysis could also help to identify situations where lending activities should be complemented by enhanced technical assistance (TA) and Economic and Sector Work (ESW), in areas that country diagnostics identified as environmentally or socially sensitive.

2. Risk screening and categorization

Risk categorization is a key decision point in the process of determining possible social and environmental impact and determines the degree of attention a proposed operation receives in the risk management process. Under the proposed ESF, the Bank would be required to undertake an initial “screening” of the social and environmental impacts of a proposed project and define criteria for classifying the project in four risk categories. If a project concept fails to demonstrate that relevant social and environmental risks have been considered, the Environmental and Social Safeguards Advisor (previously Regional Safeguards Advisor) may stop project preparation and carry out a further review. The screening for potentially significant social risks could help to ensure an accurate risk classification, and in turn, the allocation of appropriate assessment tools and resources. Even with the dynamic risk rating system proposed in the ESF, the underestimation of project risk due to missed or ignored human rights context analysis could set in motion a series of design decisions that are much more costly to reverse or re-engineer later.

3. Assessment of the Borrower’s E/S Framework

Another critical decision emphasized in the ESF as part of concept review is the consideration of whether a Borrower’s Environmental and Social Framework (BF) is suitable for use, in whole or in part. As part of the preliminary analysis of the Borrower’s track record and institutional commitment to manage social risks, human rights risk information could help in assessing whether a full assessment of the framework is merited. In this regard, under the proposed ESF, the Bank may consider “recent studies and assessments...to the extent these are relevant to the proposed project, and the potential environmental and social risks and impacts,” including those produced by the “relevant stakeholders” (ESP, para. 24 fn 21). Those studies and assessments should explicitly include relevant information produced by the UN human rights system and other relevant sources, in order to ascertain potential human rights risks and gaps and

⁶⁷ UNDP (2014) Social and Environmental Standards and Screening Procedure; Bank on Human Rights Coalition – Human Rights Due Diligence, Methodology for Incorporating Human Rights into Social Impact Assessment and Management at Development Finance Institutions Working Draft (22 March 2015)) at <http://www.bankinformationcenter.org/issues/safeguards/environmental-and-social-assessment/>.

the extent to which a BF is consistent with the international human rights obligations of the Borrower.

In addition, in circumstances where the use of all or part of a BF has been requested and is considered appropriate, human rights risks identified by a SESA or PSIA should trigger the development and implementation of risk-specific and sector-specific mitigation measures, including prior, complementary TA or ESW, as noted previously. These measures would need to be planned and negotiated during project design and prescribed as mandatory requirements prior to project approval.

4. Choosing the appropriate risk assessment tool

Human rights risk information would also inform when and how to apply certain environmental and social assessment (ESA) methods that are mentioned in ESS1 (i.e. conflict assessment, differentiated measures to assess discrimination, including PSIA, etc). Beyond triggering the most appropriate assessment tool, the careful consideration of credible human rights risk information for country, sector or project area of influence will be essential to apply the ESS1 non-discrimination requirement. The right ESA approach, if adequately informed, would affect the design of stakeholder consultation and other Stakeholder Engagement Plan requirements, the need for a high level advisory panel for independent advice on key assessment topics and process decisions, and a more targeted focus on gaps in baseline analysis and institutional capacity. The measures identified through the ESA process, informed by human rights risk information, would provide the foundation for further measures that become part of a mitigation, remediation, benefits-sharing or commitment plan.

5. Bank appraisal and due diligence

The integration of human rights risk information from an early stage in the project cycle would help the Bank to ensure that the projects it supports do not inadvertently contribute to human rights violations. This does not involve “policing” on the Bank’s part or making findings on compliance. Borrowers are responsible for implementing their legal obligations under human rights treaties, and courts and other bodies determine compliance (see **Annex I** to these submissions). Rather, for the Bank, due diligence is principally a standard of expected conduct. The explicit integration of human rights risk information would help to ensure that all information pertinent to risk assessment is considered by the Bank in a timely way, all potentially useful mitigation options are identified, and that consultation and stakeholder engagement are structured, scaled and timed in a manner that respects human rights and promotes positive social and environmental outcomes.

For any project involving high or substantial human rights risks, the Bank’s due diligence should verify the information provided by the borrower concerning the nature of those risks and how they will be avoided or mitigated. Where an analysis of human rights risk

information reveals potential constraints concerning freedom of information, expression and/or association, or if there is evidence of reprisals against individuals or communities voicing their concerns publicly, this should trigger a requirement under the ESP for the World Bank to carry out independent consultations.

6. Supervision and reporting

With the shift to adaptive risk management, as the draft ESF proposes, there will be an even greater need for strong supervision and timely, reliable feedback loops. When reporting on environmental and social risk management during implementation, the Bank should ensure that relevant human rights risk information and significant changes in the context are reflected. This could be done by ensuring that relevant human rights indicators become part of the results framework, and that independent third party monitors are put in place where human rights risks are high at the outset or borrower commitment, track record and/or implementation capacity are low.

7. Independent human rights expertise

Consultation with independent human rights experts may be needed in certain circumstances, individually or as part of high level advisory panels, in addition to the timely incorporation of human rights risk information. These two resources should be viewed as complementary, rather than alternatives. Rosters of national actors could be established to provide ongoing feedback on how well social and environmental risks are being managed. These individuals could be invited to join supervision missions or project audits, as needed. Human rights expertise could be built into the criteria for membership of these rosters.

IV. Conclusions

Case studies of MDB-supported investment projects carried out by OHCHR illustrate the seriousness and potentially irremediable nature of human rights risks that may arise in relation to MDB-supported projects in practice, as well as the serious reputational costs and remediation costs that may be borne by both the Borrower and the lender.⁶⁸ The more timely and systematic integration of human rights risk information within the Bank's due diligence responsibilities may help to minimise adverse impacts and contribute to the success and sustainability of investment projects.

⁶⁸ Draft case studies on file with OHCHR (internal working document, March 2016).

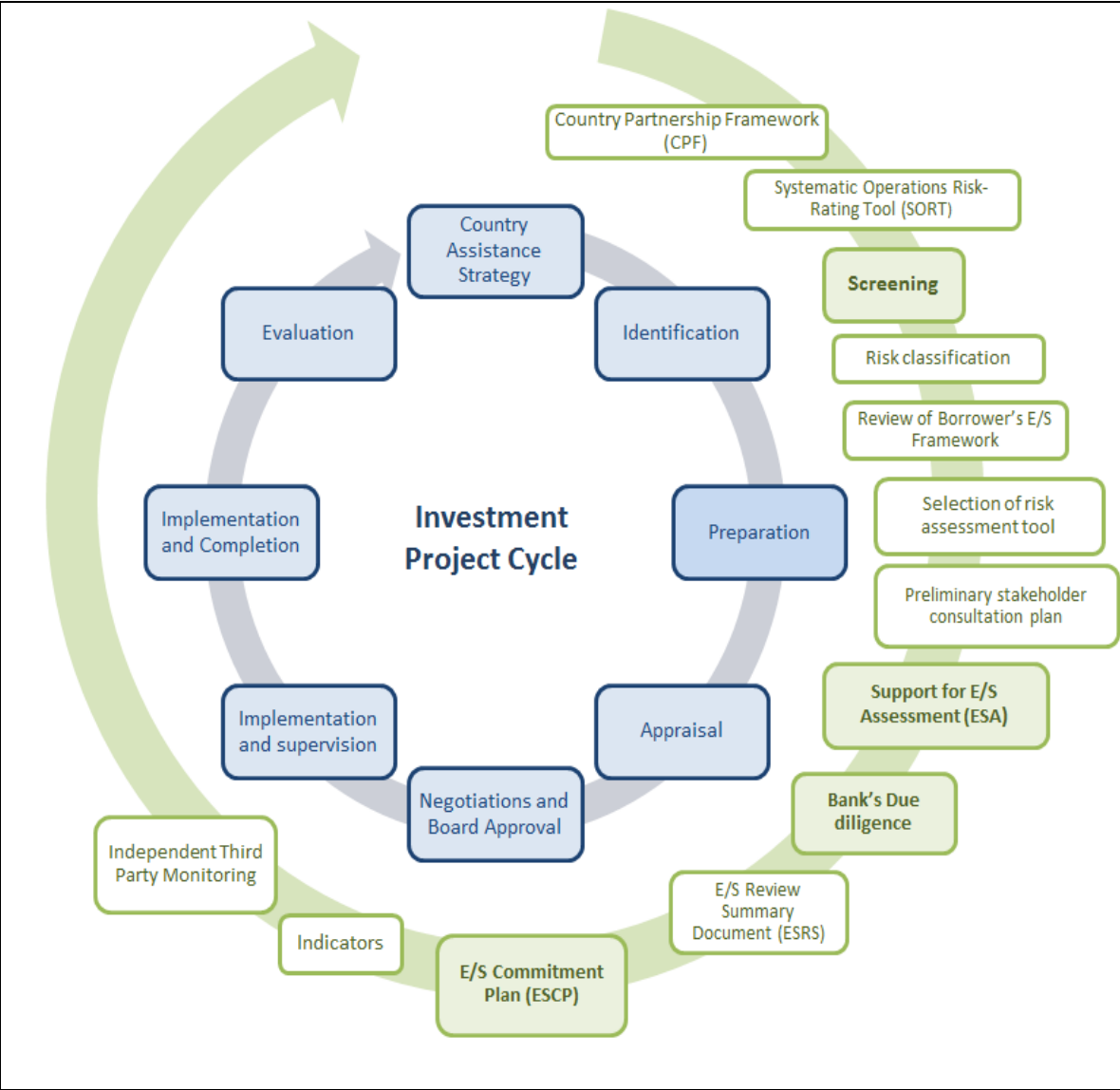


Figure 2: Entry points for integrating human rights risk information/expertise into the World Bank's project cycle

Annex III

Recent International Commitments Relating to Human Rights and Sustainable Development

A. Excerpts from the 2030 Agenda for Sustainable Development⁶⁹

10. The new Agenda is guided by the purposes, and principles of the Charter of the United Nations, **including full respect for international law**. It is **grounded in the Universal Declaration of Human Rights, international human rights treaties**, the Millennium Declaration and the 2005 World Summit Outcome Document. It is informed by other instruments such as the Declaration on the Right to Development.

18. ... We will implement the Agenda for the full benefit of all, for today's generation and for future generations. In doing so, **we reaffirm our commitment to international law and emphasize that the Agenda is to be implemented in a manner that is consistent with the rights and obligations of states under international law**.

19. **We reaffirm the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law. We emphasize the responsibilities of all States, in conformity with the Charter of the United Nations, to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.**

B. Excerpts from the Addis Ababa Action Agenda (AAAA)⁷⁰

75. Development banks can play a particularly important role in alleviating constraints on financing development, including quality infrastructure investment, including for sub-sovereign loans. We welcome efforts by new development banks to develop safeguard systems in open consultation with stakeholders on the basis of established international standards, and **encourage all development banks to establish or maintain social and environmental safeguards systems, including on human rights, gender equality and women's empowerment**, that are transparent, effective, efficient and time-sensitive...

⁶⁹ Transforming our world: the 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1 (21 October 2015).

⁷⁰ Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda), UN Doc. A/RES/69/313(17 August 2015).

Annex IV

Ratification of Human Rights and Labour Instruments by World Bank/IBRD Members

A. Status of ratifications of UN core human rights instruments by IBRD⁷¹

IBRD Member	CERD	CCPR	CESCR	CAT	CEDAW	CRC	CMW	CRPD	CPPED	Total
Afghanistan	1	1	1	1	1	1	0	1	0	7
Albania	1	1	1	1	1	1	1	1	1	9
Algeria	1	1	1	1	1	1	1	1	0	8
Angola	0	1	1	0	1	1	0	1	0	5
Antigua & Barbuda	1	0	0	1	1	1	0	0	0	4
Argentina	1	1	1	1	1	1	1	1	1	9
Armenia	1	1	1	1	1	1	0	1	1	8
Australia	1	1	1	1	1	1	0	1	0	7
Austria	1	1	1	1	1	1	0	1	1	8
Azerbaijan	1	1	1	1	1	1	1	1	0	8
Bahamas	1	1	1	0	1	1	0	0	0	5
Bahrain	1	1	1	1	1	1	0	1	0	7
Bangladesh	1	1	1	1	1	1	1	1	0	8
Barbados	1	1	1	0	1	1	0	1	0	6
Belarus	1	1	1	1	1	1	0	0	0	6
Belgium	1	1	1	1	1	1	0	1	1	8
Belize	1	1	0	1	1	1	1	1	0	7
Benin	1	1	1	1	1	1	0	1	0	7
Bhutan	0	0	0	0	1	1	0	0	0	2
Bolivia (Multicultural State of)	1	1	1	1	1	1	1	1	1	9
Bosnia & Herzegovina	1	1	1	1	1	1	1	1	1	9
Botswana	1	1	0	1	1	1	0	0	0	5
Brazil	1	1	1	1	1	1	0	1	1	8
Brunei Darussalam	0	0	0	0	1	1	0	0	0	2

⁷¹ As of 15 March 2015. CERD: Convention on the Elimination of All Forms of Racial Discrimination (1965); CCPR: International Covenant on Civil and Political Rights (1966); CESCR: International Covenant on Economic, Social and Cultural Rights (1966); CEDAW: Convention on the Elimination of All Forms of Discrimination against Women (1979); CAT: Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (1984); CRC: Convention on the Rights of the Child (1989); International Convention Protection of All Migrant Workers and members of their Families (1990); Convention on the Rights of Persons with Disabilities (2006); International Convention on the Protection of All Persons from Enforced Disappearance (2006).

IBRD Member	CERD	CCPR	CESCR	CAT	CEDAW	CRC	CMW	CRPD	CPPED	Total
Bulgaria	1	1	1	1	1	1	0	1	0	7
Burkina Faso	1	1	1	1	1	1	1	1	1	9
Burundi	1	1	1	1	1	1	0	1	0	7
Cambodia	1	1	1	1	1	1	0	1	1	8
Cameroon	1	1	1	1	1	1	0	0	0	6
Canada	1	1	1	1	1	1	0	1	0	7
Cape Verde	1	1	1	1	1	1	1	1	0	8
Central African Rep.	1	1	1	0	1	1	0	0	0	5
Chad	1	1	1	1	1	1	0	0	0	6
China	1	0	1	1	1	1	0	1	0	6
Colombia	1	1	1	1	1	1	1	1	1	9
Comoros	1	0	0	0	1	1	0	0	0	3
Congo (Dem. Rep. of)	1	1	1	1	1	1	0	0	0	6
Congo (Rep. Of)	1	1	1	1	1	1	0	1	0	7
Costa Rica	1	1	1	1	1	1	0	1	1	8
Côte d'Ivoire	1	1	1	1	1	1	0	1	0	7
Croatia	1	1	1	1	1	1	0	1	0	7
Cyprus	1	1	1	1	1	1	0	1	0	7
Czech Republic	1	1	1	1	1	1	0	1	0	7
Denmark	1	1	1	1	1	1	0	1	0	7
Djibouti	1	1	1	1	1	1	0	1	0	7
Dominica	0	1	1	0	1	1	0	1	0	5
Dominican Republic	1	1	1	1	1	1	0	1	0	7
Ecuador	1	1	1	1	1	1	1	1	1	9
Egypt	1	1	1	1	1	1	1	1	0	8
El Salvador	1	1	1	1	1	1	1	1	0	8
Equatorial Guinea	1	1	1	1	1	1	0	0	0	6
Eritrea	1	1	1	1	1	1	0	0	0	6
Estonia	1	1	1	1	1	1	0	1	0	7
Ethiopia	1	1	1	1	1	1	0	1	0	7
Fiji	1	0	0	0	1	1	0	0	0	3
Finland	1	1	1	1	1	1	0	0	0	6
France	1	1	1	1	1	1	0	1	1	8
Gabon	1	1	1	1	1	1	0	1	1	8
Gambia	1	1	1	0	1	1	0	0	0	5
Georgia	1	1	1	1	1	1	0	1	0	7
Germany	1	1	1	1	1	1	0	1	1	8
Ghana	1	1	1	1	1	1	1	1	0	8
Greece	1	1	1	1	1	1	0	1	0	7
Grenada	1	1	1	0	1	1	0	1	0	6

IBRD Member	CERD	CCPR	CESCR	CAT	CEDAW	CRC	CMW	CRPD	CPPED	Total
Guatemala	1	1	1	1	1	1	1	1	0	8
Guinea	1	1	1	1	1	1	1	1	0	8
Guinea-Bissau	1	1	1	1	1	1	0	1	0	7
Guyana	1	1	1	1	1	1	1	1	0	8
Haiti	1	1	1	0	1	1	0	1	0	6
Honduras	1	1	1	1	1	1	1	1	1	9
Hungary	1	1	1	1	1	1	0	1	0	7
Iceland	1	1	1	1	1	1	0	0	0	6
India	1	1	1	0	1	1	0	1	0	6
Indonesia	1	1	1	1	1	1	1	1	0	8
Iran	1	1	1	0	0	1	0	1	0	5
Iraq	1	1	1	1	1	1	0	1	1	8
Israel	1	1	1	1	1	1	0	1	0	7
Italy	1	1	1	1	1	1	0	1	0	7
Jamaica	1	1	1	0	1	1	1	1	0	7
Japan	1	1	1	1	1	1	0	1	1	8
Jordan	1	1	1	1	1	1	0	1	0	7
Kazakhstan	1	1	1	1	1	1	0	0	1	7
Kenya	1	1	1	1	1	1	0	1	0	7
Kiribati	0	0	0	0	1	1	0	1	0	3
Korea (Rep. of)	1	1	1	1	1	1	0	1	0	7
Kosovo ⁷²										
Kuwait	1	1	1	1	1	1	0	1	0	7
Kyrgyzstan	1	1	1	1	1	1	1	0	0	7
Lao People's DR.	1	1	1	1	1	1	0	1	0	7
Latvia	1	1	1	1	1	1	0	1	0	7
Lebanon	1	1	1	1	1	1	0	0	0	6
Lesotho	1	1	1	1	1	1	1	1	1	9
Liberia	1	1	1	1	1	1	0	1	0	7
Libya	1	1	1	1	1	1	1	0	0	7
Lithuania	1	1	1	1	1	1	0	1	1	8
Luxembourg	1	1	1	1	1	1	0	1	0	7
Macedonia (Former Yugoslav Rep. of)	1	1	1	1	1	1	0	1	0	7
Madagascar	1	1	1	1	1	1	0	0	0	6
Malawi	1	1	1	1	1	1	0	1	0	7
Malaysia	0	0	0	0	1	1	0	1	0	3
Maldives	1	1	1	1	1	1	0	1	0	7

⁷² The reference to Kosovo in the current document should be understood in full compliance with United Nations Security Council resolution 1244 and without prejudice to the status of Kosovo.

IBRD Member	CERD	CCPR	CESCR	CAT	CEDAW	CRC	CMW	CRPD	CPPED	Total
Mali	1	1	1	1	1	1	1	1	1	9
Malta	1	1	1	1	1	1	0	1	0	7
Marshall Islands	0	0	0	0	1	1	0	0	0	2
Mauritania	1	1	1	1	1	1	1	1	1	9
Mauritius	1	1	1	1	1	1	0	1	0	7
Mexico	1	1	1	1	1	1	1	1	1	9
Micronesia	0	0	0	0	1	1	0	0	0	2
Moldova (Rep. of)	1	1	1	1	1	1	0	1	0	7
Mongolia	1	1	1	1	1	1	0	1	0	7
Montenegro	1	1	1	1	1	1	0	1	1	8
Morocco	1	1	1	1	1	1	1	1	1	9
Mozambique	1	1	0	1	1	1	1	1	0	7
Myanmar	0	0	0	0	1	1	0	1	0	3
Namibia	1	1	1	1	1	1	0	1	0	7
Nepal	1	1	1	1	1	1	0	1	0	7
Netherlands	1	1	1	1	1	1	0	0	1	7
New Zealand	1	1	1	1	1	1	0	1	0	7
Nicaragua	1	1	1	1	1	1	1	1	0	8
Niger	1	1	1	1	1	1	1	1	0	8
Norway	1	1	1	1	1	1	0	1	0	7
Oman	1	0	0	0	1	1	0	1	0	4
Pakistan	1	1	1	1	1	1	0	1	0	7
Palau	0	0	0	0	0	1	0	1	0	2
Panama	1	1	1	1	1	1	0	1	1	8
Papua New Guinea	1	1	1	0	1	1	0	1	0	6
Paraguay	1	1	1	1	1	1	1	1	1	9
Peru	1	1	1	1	1	1	1	1	1	9
Philippines	1	1	1	1	1	1	1	1	0	8
Poland	1	1	1	1	1	1	0	1	0	7
Portugal	1	1	1	1	1	1	0	1	1	8
Qatar	1	0	0	1	1	1	0	1	0	5
Romania	1	1	1	1	1	1	0	1	0	7
Russian Fed.	1	1	1	1	1	1	0	1	0	7
Rwanda	1	1	1	1	1	1	1	1	0	8
St Kitts & Nevis	1	0	0	0	1	1	0	0	0	3
Saint Lucia	1	0	0	0	1	1	0	0	0	3
St Vincent & Grenadines	1	1	1	1	1	1	1	1	0	8
Samoa	0	1	0	0	1	1	0	0	1	4
San Marino	1	1	1	1	1	1	0	1	0	7

IBRD Member	CERD	CCPR	CESCR	CAT	CEDAW	CRC	CMW	CRPD	CPPED	Total
Sao Tome & Principe	0	0	0	0	1	1	0	0	0	2
Saudi Arabia	1	0	0	1	1	1	0	1	0	5
Senegal	1	1	1	1	1	1	1	1	1	9
Serbia	1	1	1	1	1	1	0	1	1	8
Seychelles	1	1	1	1	1	1	1	1	0	8
Sierra Leone	1	1	1	1	1	1	0	1	0	7
Singapore	0	0	0	0	1	1	0	1	0	3
Slovakia	1	1	1	1	1	1	0	1	1	8
Slovenia	1	1	1	1	1	1	0	1	0	7
Solomon Islands	1	0	1	0	1	1	0	0	0	4
Somalia	1	1	1	1	0	0	0	0	0	4
South Africa	1	1	0	1	1	1	0	1	0	6
Spain	1	1	1	1	1	1	0	1	1	8
Sri Lanka	1	1	1	1	1	1	1	0	0	7
Sudan	1	1	1	0	0	1	0	1	0	5
Suriname	1	1	1	0	1	1	0	0	0	5
Swaziland	1	1	1	1	1	1	0	1	0	7
Sweden	1	1	1	1	1	1	0	1	0	7
Switzerland	1	1	1	1	1	1	0	1	0	7
Syrian Arab Rep.	1	1	1	1	1	1	1	1	0	8
Tajikistan	1	1	1	1	1	1	1	0	0	7
Tanzania (U. Rep. of)	1	1	1	0	1	1	0	1	0	6
Thailand	1	1	1	1	1	1	0	1	0	7
Timor-Leste	1	1	1	1	1	1	1	0	0	7
Togo	1	1	1	1	1	1	0	1	1	8
Tonga	1	0	0	0	0	1	0	0	0	2
Trinidad & Tobago	1	1	1	0	1	1	0	0	0	5
Tunisia	1	1	1	1	1	1	0	1	1	8
Turkey	1	1	1	1	1	1	1	1	0	8
Turkmenistan	1	1	1	1	1	1	0	1	0	7
Tuvalu	0	0	0	0	1	1	0	1	0	3
Uganda	1	1	1	1	1	1	1	1	0	8
Ukraine	1	1	1	1	1	1	0	1	0	7
UAE	1	0	0	1	1	1	0	1	0	5
UK	1	1	1	1	1	1	0	1	0	7
USA	1	1	0	1	0	0	0	0	0	3
Uruguay	1	1	1	1	1	1	1	1	1	9
Uzbekistan	1	1	1	1	1	1	0	0	0	6
Vanuatu	0	1	0	1	1	1	0	1	0	5

IBRD Member	CERD	CCPR	CESCR	CAT	CEDAW	CRC	CMW	CRPD	CPPED	Total
Venezuela (Bolivarian Rep. of)	1	1	1	1	1	1	0	1	0	7
Viet Nam	1	1	1	0	1	1	0	0	0	5
Yemen	1	1	1	1	1	1	0	1	0	7
Zambia	1	1	1	1	1	1	0	1	1	8
Zimbabwe	1	1	1	0	1	1	0	1	0	6
	177	168	162	156	188	194	47	150	44	

Legend	
Yes	1
No	0

Status of Ratifications of Core UN Human Rights Treaties

8-9		3-4	
5-7		1-2	

B. Status of ratification of ILO Core Labour Conventions⁷³

IBRD member	C87	C98	C29	C105	C100	C111	C138	C182	Total
Afghanistan	0	0	0	1	1	1	1	1	5
Albania	1	1	1	1	1	1	1	1	8
Algeria	1	1	1	1	1	1	1	1	8
Angola	1	1	1	1	1	1	1	1	8
Antigua and Barbuda	1	1	1	1	1	1	1	1	8
Argentina	1	1	1	1	1	1	1	1	8
Armenia	1	1	1	1	1	1	1	1	8
Australia	1	1	1	1	1	1	0	1	7
Austria	1	1	1	1	1	1	1	1	8
Azerbaijan	1	1	1	1	1	1	1	1	8
Bahamas	1	1	1	1	1	1	1	1	8
Bahrain	0	0	1	1	0	1	1	1	5
Bangladesh	1	1	1	1	1	1	0	1	7
Barbados	1	1	1	1	1	1	1	1	8
Belarus	1	1	1	1	1	1	1	1	8
Belgium	1	1	1	1	1	1	1	1	8
Belize	1	1	1	1	1	1	1	1	8

⁷³ As of 15 March 2016. C87: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); C98: Right to Organise and Collective Bargaining Convention, 1949 (No. 98); C29: Forced Labour Convention, 1930 (No. 29); C105: Abolition of Forced Labour Convention, 1957 (No. 105); C100: Equal Remuneration Convention, 1951 (No. 100); C111: Discrimination (Employment and Occupation) Convention, 1958 (No. 111); C138: Minimum Age Convention, 1973 (No. 138); C182: Worst Forms of Child Labour Convention, 1999 (No. 182).

IBRD member	C87	C98	C29	C105	C100	C111	C138	C182	Total
Benin	1	1	1	1	1	1	1	1	8
Bhutan ⁷⁴	0	0	0	0	0	0	0	0	0
Bolivia	1	1	1	1	1	1	1	1	8
Bosnia & Herzegovina	1	1	1	1	1	1	1	1	8
Botswana	1	1	1	1	1	1	1	1	8
Brazil	0	1	1	1	1	1	1	1	7
Brunei Darussalam	0	0	0	0	0	0	1	1	2
Bulgaria	1	1	1	1	1	1	1	1	8
Burkina Faso	1	1	1	1	1	1	1	1	8
Burundi	1	1	1	1	1	1	1	1	8
Cabo Verde	1	1	1	1	1	1	1	1	8
Cambodia	1	1	1	1	1	1	1	1	8
Cameroon	1	1	1	1	1	1	1	1	8
Canada	1	0	1	1	1	1	0	1	6
Central African Rep.	1	1	1	1	1	1	1	1	8
Chad	1	1	1	1	1	1	1	1	8
Chile	1	1	1	1	1	1	1	1	8
China	0	0	0	0	1	1	1	1	4
Colombia	1	1	1	1	1	1	1	1	8
Comoros	1	1	1	1	1	1	1	1	8
Congo (Dem. Rep. of)	1	1	1	1	1	1	1	1	8
Congo (Re. of)	1	1	1	1	1	1	1	1	8
Costa Rica	1	1	1	1	1	1	1	1	8
Cote d'Ivoire	1	1	1	1	1	1	1	1	8
Croatia	1	1	1	1	1	1	1	1	8
Cyprus	1	1	1	1	1	1	1	1	8
Czech Republic	1	1	1	1	1	1	1	1	8
Denmark	1	1	1	1	1	1	1	1	8
Djibouti	1	1	1	1	1	1	1	1	8
Dominica	1	1	1	1	1	1	1	1	8
Dominican Republic	1	1	1	1	1	1	1	1	8
Ecuador	1	1	1	1	1	1	1	1	8
Egypt	1	1	1	1	1	1	1	1	8
El Salvador	1	1	1	1	1	1	1	1	8
Equatorial Guinea	1	1	1	1	1	1	1	1	8
Eritrea	1	1	1	1	1	1	1	0	7
Estonia	1	1	1	1	1	1	1	1	8
Ethiopia	1	1	1	1	1	1	1	1	8

⁷⁴ Not a member of the ILO.

IBRD member	C87	C98	C29	C105	C100	C111	C138	C182	Total
Fiji	1	1	1	1	1	1	1	1	8
Finland	1	1	1	1	1	1	1	1	8
France	1	1	1	1	1	1	1	1	8
Gabon	1	1	1	1	1	1	1	1	8
Gambia	1	1	1	1	1	1	1	1	8
Georgia	1	1	1	1	1	1	1	1	8
Germany	1	1	1	1	1	1	1	1	8
Ghana	1	1	1	1	1	1	1	1	8
Greece	1	1	1	1	1	1	1	1	8
Grenada	1	1	1	1	1	1	1	1	8
Guatemala	1	1	1	1	1	1	1	1	8
Guinea	1	1	1	1	1	1	1	1	8
Guinea-Bissau	0	1	1	1	1	1	1	1	7
Guyana	1	1	1	1	1	1	1	1	8
Haiti	1	1	1	1	1	1	1	1	8
Honduras	1	1	1	1	1	1	1	1	8
Hungary	1	1	1	1	1	1	1	1	8
Iceland	1	1	1	1	1	1	1	1	8
India	0	0	1	1	1	1	0	0	4
Indonesia	1	1	1	1	1	1	1	1	8
Iran (Islamic Rep. of)	0	0	1	1	1	1	0	1	5
Iraq	0	1	1	1	1	1	1	1	7
Ireland	1	1	1	1	1	1	1	1	8
Israel	1	1	1	1	1	1	1	1	8
Italy	1	1	1	1	1	1	1	1	8
Jamaica	1	1	1	1	1	1	1	1	8
Japan	1	1	1	0	1	0	1	1	6
Jordan	0	1	1	1	1	1	1	1	7
Kazakhstan	1	1	1	1	1	1	1	1	8
Kenya	0	1	1	1	1	1	1	1	7
Kiribati	1	1	1	1	1	1	1	1	8
Korea (Republic of)	0	0	0	0	1	1	1	1	4
Kosovo ⁷⁵	0	0	0	0	0	0	0	0	0
Kuwait	1	1	1	1	0	1	1	1	7
Kyrgyz Republic	1	1	1	1	1	1	1	1	8
Lao People's Dem. Rep.	0	0	1	0	1	1	1	1	5
Latvia	1	1	1	1	1	1	1	1	8
Lebanon	0	1	1	1	1	1	1	1	7
Lesotho	1	1	1	1	1	1	1	1	8

⁷⁵ The reference to Kosovo in the current document should be understood in full compliance with United Nations Security Council resolution 1244 and without prejudice to the status of Kosovo.

IBRD member	C87	C98	C29	C105	C100	C111	C138	C182	Total
Liberia	1	1	1	1	0	1	0	1	6
Libya	1	1	1	1	1	1	1	1	8
Lithuania	1	1	1	1	1	1	1	1	8
Luxembourg	1	1	1	1	1	1	1	1	8
Macedonia (Former Yugoslav Republic of)	1	1	1	1	1	1	1	1	8
Madagascar	1	1	1	1	1	1	1	1	8
Malawi	1	1	1	1	1	1	1	1	8
Malaysia	0	1	1	0	1	0	1	1	5
Maldives	1	1	1	1	1	1	1	1	8
Mali	1	1	1	1	1	1	1	1	8
Malta	1	1	1	1	1	1	1	1	8
Marshall Islands	0	0	0	0	0	0	0	0	0
Mauritania	1	1	1	1	1	1	1	1	8
Mauritius	1	1	1	1	1	1	1	1	8
Mexico	1	0	1	1	1	1	0	1	6
Micronesia ⁷⁶	0	0	0	0	0	0	0	0	0
Moldova (Republic of)	1	1	1	1	1	1	1	1	8
Mongolia	1	1	1	1	1	1	1	1	8
Montenegro	1	1	1	1	1	1	1	1	8
Morocco	0	1	1	1	1	1	1	1	7
Mozambique	1	1	1	1	1	1	1	1	8
Myanmar	1	0	1	0	0	0	0	1	3
Namibia	1	1	1	1	1	1	1	1	8
Nepal	0	1	1	1	1	1	1	1	7
Netherlands	1	1	1	1	1	1	1	1	8
Nicaragua	1	1	1	1	1	1	1	1	8
New Zealand	0	1	1	1	1	1	0	1	6
Niger	1	1	1	1	1	1	1	1	8
Nigeria	1	1	1	1	1	1	1	1	8
Norway	1	1	1	1	1	1	1	1	8
Oman	0	0	1	1	0	0	1	1	4
Pakistan	1	1	1	1	1	1	1	1	8
Palau	0	0	0	0	0	0	0	0	0
Panama	1	1	1	1	1	1	1	1	8
Papua New Guinea	1	1	1	1	1	1	1	1	8
Paraguay	1	1	1	1	1	1	1	1	8
Peru	1	1	1	1	1	1	1	1	8
Philippines	1	1	1	1	1	1	1	1	8
Poland	1	1	1	1	1	1	1	1	8

⁷⁶ Not a member of the ILO.

IBRD member	C87	C98	C29	C105	C100	C111	C138	C182	Total
Portugal	1	1	1	1	1	1	1	1	8
Qatar	0	0	1	1	0	1	1	1	5
Romania	1	1	1	1	1	1	1	1	8
Russian Federation	1	1	1	1	1	1	1	1	8
Rwanda	1	1	1	1	1	1	1	1	8
Samoa	1	1	1	1	1	1	1	1	8
San Marino	1	1	1	1	1	1	1	1	8
Sao Tome & Principe	1	1	1	1	1	1	1	1	8
Saudi Arabia	0	0	1	1	1	1	1	1	6
Senegal	1	1	1	1	1	1	1	1	8
Serbia	1	1	1	1	1	1	1	1	8
Seychelles	1	1	1	1	1	1	1	1	8
Sierra Leone	1	1	1	1	1	1	1	1	8
Singapore	0	1	1	0	1	0	1	1	5
Slovakia	1	1	1	1	1	1	1	1	8
Slovenia	1	1	1	1	1	1	1	1	8
Solomon Islands	1	1	1	1	1	1	1	1	8
Somalia	1	1	1	1	0	1	0	1	6
South Africa	1	1	1	1	1	1	1	1	8
South Sudan	0	1	1	1	1	1	1	1	7
Spain	1	1	1	1	1	1	1	1	8
Sri Lanka	1	1	1	1	1	1	1	1	8
St. Kitts & Nevis	1	1	1	1	1	1	1	1	8
St. Lucia	1	1	1	1	1	1	0	1	7
St. Vincent & the Grenadines	1	1	1	1	1	1	1	1	8
Sudan	0	1	1	1	1	1	1	1	7
Suriname	1	1	1	1	0	0	0	1	5
Swaziland	1	1	1	1	1	1	1	1	8
Sweden	1	1	1	1	1	1	1	1	8
Switzerland	1	1	1	1	1	1	1	1	8
Syrian Arab Republic	1	1	1	1	1	1	1	1	8
Tajikistan	1	1	1	1	1	1	1	1	8
Tanzania (U. Rep. of)	1	1	1	1	1	1	1	1	8
Thailand	0	0	1	1	1	0	1	1	5
Timor-Leste	1	1	1	0	0	0	0	1	4
Togo	1	1	1	1	1	1	1	1	8
Tonga	0	0	0	0	0	0	0	0	0
Trinidad & Tobago	1	1	1	1	1	1	1	1	8
Tunisia	1	1	1	1	1	1	1	1	8
Turkey	1	1	1	1	1	1	1	1	8
Turkmenistan	1	1	1	1	1	1	1	1	8

IBRD member	C87	C98	C29	C105	C100	C111	C138	C182	Total
Tuvalu	0	0	0	0	0	0	0	0	0
Uganda	1	1	1	1	1	1	1	1	8
Ukraine	1	1	1	1	1	1	1	1	8
UAE	0	0	1	1	1	1	1	1	6
UK	1	1	1	1	1	1	1	1	8
USA	0	0	0	1	0	0	0	1	2
Uruguay	1	1	1	1	1	1	1	1	8
Uzbekistan	0	1	1	1	1	1	1	1	7
Vanuatu	1	1	1	1	1	1	0	1	7
Venezuela (Bolivarian Rep. of)	1	1	1	1	1	1	1	1	8
Vietnam	0	0	1	0	1	1	1	1	5
Yemen	1	1	1	1	1	1	1	1	8
Zambia	1	1	1	1	1	1	1	1	8
Zimbabwe	1	1	1	1	1	1	1	1	8
	153	164	177	174	171	172	167	179	

Legend	
Yes	1
No	0

Status of Ratifications of Core ILO Conventions

7-8		3-4	
5-6		1-2	