

Analysis of the main improvements of the IDB's Environmental and Social Policy Framework (ESPF)

Most of the points identified here as main improvements were recommended by the CSO coalition articulated in the IDB Working Group joint documents submitted to the IDB on the first and second ESPF draft.

POLICY STATEMENT

IDB's commitment to E&S sustainability. The statement strengthened the commitment to support inclusive and sustainable development by acknowledging that sustainable economic development encompasses equal access to services and opportunities for all, including for the poor and most vulnerable, and achieved without compromising the environment (para 1.1).

Borrower's Capacity. The ESPF expresses a clear commitment to work with countries to strengthen their institutional capacity, environmental and social government systems, and procurement practices by enhancing Borrower's environmental and social framework and providing assistance to facilitate the Environmental and Social Performance Standards (ESPSs) (para. 1.2/ 3.1).

IDB's Commitments (para. 1.3).

- The commitment to promote non-discrimination and inclusion of vulnerable groups includes a definition of persons with disabilities aligned with the United Nations Convention on the Rights of Persons with Disabilities (CRPD).
- The commitment to enhance stakeholder engagement consists of an obligation to respect the right of access to information, participation, and justice regarding environmental issues consistent with the Escazú Agreement's principles. It also requires Borrowers to engage with stakeholders in meaningful consultations free of fear of reprisals, using accessible formats for different physical, sensory, and/or cognitive needs, and develop an accessible grievance mechanism.
- The commitment to build disaster and climate change resilience and minimize GHG emissions recognizes that long term carbon neutrality is necessary to confront climate change and steer economic development toward a more sustainable future. The IDB also commits to support countries in designing and implementing decarbonization pathways in LAC, focusing on minimizing or compensating transition costs.
- The commitment to protect LAC's biodiversity requires the Borrowers not to implement any project in critical habitats unless no viable alternative exists. It adds that biodiversity offsets are not an acceptable mitigation measure in critical habitats, in line with ESPS 6.

Do good principle. The IDB commits to maximizing sustainable development benefits in line with the "do good beyond the do no harm principle," requiring the Borrower to consider and report how project design will enhance both the social and environmental good in the environmental and social assessment. If these opportunities are identified, the Bank & Borrower will consider including them in project design or mainstreaming them in the IDB country strategies (para. 1.4).

Mainstreaming. All the mainstreaming components (tools to integrate the E&S safeguards approach into programming, planning, and training) of the current Environment & Safeguard Compliance Policy, Indigenous Peoples Policy, Disaster Risk Management Policy, and Gender Equality in Development remain in effect. That is, the ESPF supersedes the current Operational Policies except for all the mainstreaming aspects (para. 2.4).

Borrower's Roles & Responsibilities. The framework requires the Borrower to engage in meaningful consultations using accessible formats and disclosure. Also, it adds that the form of the consultation should be tailored to the nature of the project, contextual risks, and present circumstances, safeguarding participants health and safety (para. 3.7).

IDB's Roles & Responsibilities. The ESPF includes a new provision (3.13), making much more explicit the IDB's different functions and roles in carrying out its Policy. Besides, there is an explicit commitment to provide guidance and assistance to the Borrower throughout the project cycle by enhancing their capacity to assess and manage E&S risks and impacts and strengthening their national systems through IDB-financed operations (para. 3.14/3.15).

Due Diligence. When carrying out its own environmental and social due diligence, the IDB will consider the Borrower's commitment, track record, capacity, and other entities involved in developing and implementing the operation. It also includes reviewing contextual risks (para. 3.18/3.19).

Monitoring & Supervision.

- In case of non-compliance with the standards in the ESPF, the IDB will work with the Borrower to achieve compliance. IDB's support includes providing additional technical assistance, increased monitoring by the Bank, and/or monitoring by stakeholders and third parties, such as independent experts, local communities, or civil society organizations, to complement or verify project monitoring information (para. 3.21).
- Strengthened language for cases where the Borrower fails to reestablish compliance, committing to exercise remedies per the Bank's policies, procedures, and regulations (para. 3.22).
- Includes a new provision (3.23) establishing that project closure will not be reached until measures and actions set out in the legal agreement (including the ESAP) have been implemented. This addresses a serious gap identified in the [OVE's Environmental and Social Evaluation report](#), which identified that safeguards performance rating was questionable. In a situation of non-compliance, the projects were rated as satisfactory or partly satisfactory based on expectations that this would be corrected in the future.

Grievance Mechanisms and Accountability. Includes a new provision (7.2) committing the IDB not to tolerate retaliation such as threats, intimidation, harassment, or violence against those who voice their opinion or opposition to an IDB-financed project or the Borrower. When implementing a project-level Grievance Mechanism, it is required that the Borrower consider the use of accessible formats for the different physical, sensory, and/or cognitive needs.

Environmental and Social Exclusion List. The ESPF includes an exclusion list of activities inconsistent with IDB's commitments to address climate change such as coal-fired power and upstream oil and gas exploration and development.¹ An exclusion list reduces risks to the IDB and makes future decision-making clear and transparent. It also puts the IDB on par with peer institutions (Annex I).

Glossary. Includes several new definitions such as accessibility, Afrodescendants, critical habitats, cumulative, direct, and indirect impact, environmental and social risk, greenhouse gases, intersectionality, meaningful consultation, reprisal, sexual and gender based violence (SGBV), transboundary impacts, among others.

ESPS 1: ASSESSMENT AND MANAGEMENT OF ENVIRONMENTAL AND SOCIAL RISKS AND IMPACTS

Precautionary Approach, Mitigation Hierarchy. Includes applying a "precautionary approach" and fuller description and emphasis on the mitigation hierarchy (objectives).

Scope of Application. ESPS1 now applies to *all* investment finance projects.

Environmental and Social Assessment and Management System. The Borrower must consider risks and impacts related to human rights, gender, natural hazards, and climate change throughout the

1. Under exceptional circumstances and on a case-by-case basis, consideration will be given to financing upstream gas infrastructure where there is a clear benefit in terms of energy access.

assessment process. Also, the Borrower might complement its E&S assessment with further studies focusing on those risks and impacts (para. 6).

Identification of risks and impacts. In this process, the Borrower is required to consider all relevant direct, indirect, and cumulative E&S impacts of the project. It also provides a specific and detailed list of what the identification process should include (para. 9). Also, the ESPF established that the area of influence of a project encompasses cumulative impacts (para. 10). In addition, in the process of identifying individuals, groups, and communities that may be directly and disproportionately affected by the project, the Borrower is required to consider diverse cross-sectional groups historically disadvantaged in Latin America and the Caribbean, such as women, people of diverse sexual orientations and gender identities, persons with disabilities, Afrodescendants, and Indigenous and Traditional Peoples. When those are identified as disadvantaged, the Borrower must propose and implement differentiated measures to avoid adverse impacts falling disproportionately on them (para. 14).

Disclosure of information. In the list of relevant information to share with project-affected people, the Borrower also is required to provide information on the potential opportunities and development benefits of the project, in line with the “do good principle” (para. 31).

Meaningful Consultation. In the consultation process with project-affected people, the IDB is also required to ensure that stakeholders express their views on access to potential opportunities and project benefits, in line with the “do good principle” (para. 32). The Borrower has to carry out meaningful consultation on an ongoing basis as issues, impacts, and potential opportunities and development benefits evolve (para. 33).

Afrodescendants. Adds special consideration for Afrodescendants (para. 36).

Grievance Mechanism. It establishes that the grievance mechanism should consider the use of accessible formats for different physical, sensory, and/or cognitive needs, and the Borrower is required to inform project-affected people about the project’s grievance mechanism and the IDB’s MICI (para. 39).

ESPS 2: LABOR AND WORKING CONDITIONS

Human Rights and workers in vulnerable situations. Adds an objective to respect and protect the fundamental principles and rights of workers, and another one to protect workers, including those in vulnerable situations such as women, people of diverse sexual orientations and gender identities, persons with disabilities, children (of working age, per this ESPS) and migrant workers, workers engaged by third parties, and primary supply workers. Also, it aims to ensure that there are effective and accessible means to raise and address workplace concerns for workers (objectives).

Migrant workers. It has broadened the scope of application of this ESPS on project workers to include part-time, temporary, seasonal, and migrant workers, adding a special consideration for migrant workers (para. 4).

Measures to address violence, harassment, intimidation, and exploitation. This provision applies these measures regarding women and people with diverse sexual orientations and gender identity, persons with disabilities, children (of working age per this ESPF), and migrant workers (para. 16).

Special measures of protection and assistance. Adds a new provision requiring the Borrower to provide special mention and assistance measures to address project workers’ vulnerabilities, such as women, people of diverse sexual orientations and gender identities, persons with disabilities, children (of working age, under this ESPS), and migrant workers (para. 19).

Grievance Mechanism and sexual and gender based violence (SGBV). The Borrower is required to provide a grievance mechanism for workers (and their organizations, where they exist) to raise workplace concerns and with provisions for special protection for reports of sexual and gender-based violence (para. 22).

Child Labor. This provision is more precise and establishes that Borrower will not employ children under the age of 15, and no children under the age of 18 will be employed in hazardous work (consistent with the ILO recommendations 138/182). Also, it clarifies that if child labor cases are identified, the Borrower will take appropriate steps to remedy them (para. 23).

Occupational Health and Safety. Adds special consideration in cases of pandemics or epidemics, requiring the Borrower to develop and implement occupational health and safety measures and protocols to protect project workers from the risk of exposure, following national guidelines and best international practices. It also adds new provisions to: a) ensure that all parties who employ or engage project workers develop and implement procedures to establish and maintain safe working environment; b) Employers put in place workplace processes for project workers to report work situations that they believe are not safe or healthy; c) provide workers with safe and healthy facilities appropriate to the circumstances of their work to protect and promote the health, safety, and well-being of the project workers and to provide access to or provision of services that accommodate their physical, social, and cultural needs; d) Employers need to put in place a system for regular review of occupational safety and health performance and the work environment; e) When specific risks that could result in adverse effects on the health, safety, and well-being of workers with sensitivities such as age, gender, disability, or short- or long-term health conditions, the Borrower will carry out a more detailed risk assessment and make adjustments to prevent discrimination, injury and ill health (para. 27, 28, 29, 31, 32).

Workers engaged by third parties. In the case of subcontracting, the Borrower must require third parties to include equivalent requirements and noncompliance remedies in line with the requirements of the ESPF in the contractual agreements.

ESPS 3: RESOURCE EFFICIENCY AND POLLUTION PREVENTION

Mitigation hierarchy, polluter pays, and circular economy. The ESPS includes a fuller description and emphasis to build on the mitigation hierarchy and the “polluter pays” principle. It also recognizes the concept and practice of circular economy (para. 2).

ESPS 4: COMMUNITY HEALTH, SAFETY, AND SECURITY

Community Health and safety. Adds a new provision requiring the Borrower to carry out a more detailed risk assessment and to make adjustments to prevent injury and ill health when there are specific risks that could result in adverse effects on the health, safety, and well-being of people with sensitivities as age, gender, and disability (para. 6).

Regular monitoring and recurring risk assessments for high-risk projects. The Borrower is required to use regular performance monitoring and frequent risk assessments for high-risk projects to inform ongoing risk mitigation (para. 7).

ESPS 5: LAND ACQUISITION AND INVOLUNTARY RESETTLEMENT

Involuntary Resettlement. There is an inconsistency between the definition of involuntary resettlement in the glossary, which defines it as “involuntary when project-affected people do not have or are not able to exercise the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement” and the definition in ESPF 5 which defines involuntary resettlement as “involuntary when the project-affected people do not have the right to refuse land acquisition or restrictions on land use that results in a physical or economic displacement.” The first definition takes into account the recommendation made by CSOs to the second ESPF draft (para. 1).

Intangible assets. Adds special consideration to intangible assets of those affected by the adverse social and environmental impacts of land acquisition (Objectives).

Implementation of a Resettlement Action Plan or Livelihood Restoration Plan. Strengthened language and requires the Borrower to verify that the completion of the Resettlement Action Plan or Livelihood Restoration Plan through the submission and approval of a completion audit. It clarifies that depending on the complexity and nature of the economic displacement associated with the project, it might be necessary for the Borrower to commission an external, rather than internal completion audit (para. 15).

Community assets. Adds recognition to community assets (schools, community halls, places of worship) as assets of the displaced persons that should be respected if required to move to another location (para. 20).

ESPS 6: BIODIVERSITY CONSERVATION AND SUSTAINABLE MANAGEMENT OF LIVING NATURAL RESOURCES

Biodiversity and Ecosystem Services. Recognizes that biodiversity often underpins ecosystem services valued by humans (Introduction).

Specificity in the Objectives. It has more specificity in the objectives. For example, it mentions that the aim is to protect and conserve terrestrial, freshwater, coastal, and marine biodiversity and maintain ecosystem functions to ensure ecosystem services' benefits (objectives).

Cumulative impacts. Adds that the risks and impacts identification process set out in ESPS 1 should consider cumulative project-related impacts on biodiversity and ecosystem services (not only direct or indirect) and identify any significant residual impacts (para. 6).

Critical Habitat. The definition of critical habitat is more robust and complete as it adds legally protected areas or internationally recognized areas of high biodiversity value into the definition (para. 16).

Requirements in areas of critical habitat. Includes another provision that should be met by the Borrower when implementing any project activities in areas of critical habitats: The project should comply with all due process under national or international law for obtaining approval in or adjacent to areas of critical habitat (para. 17).

Invasive Alien Species. Adds a requirement for the Borrower to avoid creating conditions that would facilitate the transmission of zoonotic diseases to workers, communities, and populated areas (para. 20).

Adverse impacts on ecosystem services. Adds a requirement to ensure that when project-affected people are likely to be impacted, they should determine priority ecosystem services through the stakeholder engagement process as defined in ESPSs 1 and 10. The Borrower must ensure that the voices of women, people of diverse sexual orientations and gender, Afrodescendants, Indigenous Peoples, and other traditional communities are included in the process.

ESPS 7: INDIGENOUS PEOPLES

Alignment with international standards. The requirements in the ESPS are guided by the ILO Convention 169, the UN Declaration on Rights of Indigenous Peoples, the OAS Declaration on Rights of Indigenous Peoples, and the Escazú Agreement (para. 3).

Indigenous rights. Adds a new provision requiring the Borrower to respect and take into account Indigenous People's rights as contained in national legislation, relevant international law, or in indigenous legal systems, recognized under national laws. In the absence of such laws, indigenous systems will be recognized if they are not inconsistent with applicable national legislation and international regulations (para. 8).

Transborder Indigenous Peoples. Includes a requirement for the Borrower to adopt measures to address the adverse impacts of the project that might affect transborder Indigenous Peoples, such as consultations and good faith negotiation, legal security and territorial control programs, culturally appropriate programs related to rights and priorities in health, freedom of movement, and dual nationality (para. 11).

Indigenous Peoples in initial contact. Includes a requirement for the Borrower to respect not only the rights of Indigenous Peoples in isolation but also in initial contact to remain in isolation and to live freely according to their culture. It also includes that the project should develop measures to ensure there is no contact with them as a direct or indirect consequence (para. 12).

Participation and Consent. Includes the requirement to use indigenous consultation protocols when they exist in consultation and participation processes with Indigenous Peoples, ensuring representation of Indigenous women and people of diverse sexual orientation and gender identities (para. 13).

Consent and FPIC. Adds a provision specifying the concept of consent, which refers to the collective support of affected Indigenous Peoples communities for the project activities that affect them, reached

through a culturally appropriate process, respectful of Indigenous Peoples customary decision making, through representatives chosen by themselves or any other form of decision-making process of their governance structure. FPIC builds on and expands the process of Informed Consultation and Participation (ICP) described in ESPS 1 and will be established through good-faith negotiation between the Borrower and the project-affected communities of Indigenous Peoples (para. 15).

Circumstances requiring FPIC. Adds a new provision under “Impacts on Lands and Natural Resources Subject to Traditional Ownership or Under Customary Use” which prohibits the Borrower from pursuing projects that entail individual titling in Indigenous territories. When a project involves legally recognizing collective land titling, the Borrower is required to prepare a plan for the legal recognition of such ownership. The objective of those plans is to recognize customary land tenure systems (para. 17).

ESPS 9: GENDER EQUALITY

Sexual and gender-based violence (SGBV). This ESPS includes the concept of SGBV (instead of GBV), which refers to any act perpetrated against a person’s will and is based on gender norms and unequal power relationships. It encompasses threats of violence, coercion, and harassment. It can be physical, emotional, psychological, or sexual, and can take the form of a denial of resources or access. It inflicts harm on people of all genders (para. 7).

Unpaid care work. The ESPF adds a new provision to recognize that most unpaid work falls on women, which represents a significant barrier to gender equality and women’s economic empowerment, including women’s meaningful participation in opportunities available to other members of society (para. 8).

Identification and Assessment of Sexual and Gender-Based Risks and Impacts. The Borrower is required to screen the project for potential gender-based risks and impacts that may disproportionately affect women, girls, and sexual and gender minorities. If potential gender-based risks and impacts are identified, the Borrower will conduct a gender analysis (GA) as part of environmental and social due diligence (para. 11).

Gender Assessment. When a GA is done to examine the risks of disproportionate impacts on women and girls, one of the areas of risk to assess is the existence of social norms that perpetuate the uneven distribution of unpaid work (para. 13).

Managing Disproportionate Impacts in Situations of Involuntary Physical Resettlement or Economic Displacement. The ESPS requires the Borrower to explore and document all gender-disaggregated preferences concerning compensation mechanisms, and is required to make available to all individuals equally, regardless of gender, assistance to livelihood improvement or restoration, such as improvement of existing agriculture activities, skills training, access to credit, entrepreneurship, and job opportunities (para. 17).

Child Sexual Exploitation and Abuse (CSEA). The ESPF incorporates the concept of CSEA, which represents a significant improvement compared to the first and second draft, requiring the Borrower to assess the risk of CSEA. If the assessment identifies risks of CSEA, the Borrower will define and implement differentiated measures to prevent and address it (para. 19).

Equitable participation in Consultations. To ensure the effective participation of people of all genders, the Borrower is required to identify and address obstacles faced by women and people of diverse sexual orientations and gender identities (para. 20).

ESPS 10: STAKEHOLDER ENGAGEMENT AND INFORMATION DISCLOSURE

Escazú Agreement. ESPS 10 is now consistent with implementing the rights of access to environmental information, public participation in the environmental decision-making process, and access to justice in environmental matters of the Escazú Agreement (para. 1).

Scope of application. This ESPS strengthened the scope of application, and now it applies to all investment financing projects, like ESPS 1 (para. 4).

Information Disclosure. Improves the list of information that should be disclosed by the Borrower and provided to stakeholders by adding the following additional items: a) description of the area of influence and physical and technical characteristics of the proposed project or activity; b) Potential opportunities and development benefits from the project for local communities; c) A summary of the description of the area of influence, duration of project activities, potential risks and impacts on local communities and the environment, and potential opportunities for project benefits of the present paragraph in a comprehensible non-technical language; d) The process and means by which grievances can be raised and will be addressed, this includes the project's grievance mechanism and the IDB's MICI (para. 19).

Grievance Mechanism. Includes a provision for the Borrowers to inform project-affected people about the grievance mechanisms and processes, including access to MICI. Includes a requirement for the Borrowers to address allegations of retaliation, abuse, and discrimination and take remedial measures. Also, it emphasizes that the mechanism should consider the use of accessible formats for different physical, sensory, and/or cognitive needs (para. 28).