

# Office of the United Nations High Commissioner for Human Rights

## Recommendations for IDB Invest's Environmental and Social Sustainability Policy

20 September 2019

### Introduction

The Office of the United Nations High Commissioner for Human Rights (OHCHR) welcomes the opportunity to comment on the draft Environmental and Social Sustainability Policy ("draft Policy", or ESSP) of IDB Invest, which we note will incorporate the IFC's Performance Standards (PS) and World Bank/IFC Environmental Health and Safety (EHS) Guidelines. OHCHR notes the integrated nature of human rights and sustainable development in the 2030 Agenda for Sustainable Development and Addis Ababa Agenda for Action,<sup>1</sup> and the inter-connected and inter-dependent nature of the IDB Group's and OHCHR's mandates in practice.

OHCHR's comments and recommendations are drawn from: (a) experience working with project-affected communities, implementing authorities and other relevant constituencies; (b) OHCHR's monitoring and reporting on human rights issues relevant to investment projects in the region; (c) OHCHR's draft Benchmarking Study of Development Finance Institutions' Safeguards and Due Diligence Frameworks against the UN Guiding Principles on Business and Human Rights ("Benchmarking Study," attached); and (d) lessons and observations from OHCHR's sustainability policy dialogues with other MDBs and DFIs.<sup>2</sup>

We recognise the experience that has been gained through the implementation of the IFC PS's in practice and their integration into many other DFIs' sustainability frameworks. We welcome a number of positive features in the draft Policy including its commitment (para 7) to promote good international practice in relation to all social aspects of project including with respect to human rights. We recognise the IDBG's leadership on gender equality policy and welcome the fact that this will carry through to the ESSP in the form of a self-standing Performance Standard on gender equality. The draft Policy's requirements pertaining to

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<sup>1</sup> Transforming Our World: The 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1, paras. 10, 18 and 19; Addis Ababa Action Agenda of the Third Conference on Financing for Development, UN Doc. GA. Res. 69/313 (July 27, 2015), para. 75: "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."

<sup>2</sup> In this memorandum, unless a contrary intention appears, the term "development finance institution" (DFI) should be taken to include multilateral development banks (MDBs).

participation and inclusion of persons with disabilities, vulnerability and discrimination (para 7(v)-(vi), drawn from IFC PS 1, fn 18), are also noteworthy, in OHCHR's view.

At the same time, OHCHR notes the worsening human rights situation in many countries in the Latin American and Caribbean region, relevant to investment project context and social and environmental risk management. We also note a number of important areas where MDB/DFI safeguard and sustainability policies appear to fall short of international human rights standards governing due diligence, and in particular, the UN Guiding Principles on Business and Human Rights (UNGPs, recognised in the IFC's Guidance Note to PS 1; see OHCHR Benchmarking Study).

Relatedly, we note that information and analysis from UN, regional and national human rights bodies (see Annex) does not yet appear to have been widely integrated within contextual analyses and project-level social and environmental risk assessments in the region, and that "human rights due diligence" (IFC PS 1, fn 12) does not appear to have been implemented by DFIs to any significant degree in practice. We acknowledge the IDBG's leadership in integrating human rights considerations with social impact assessment methodology<sup>3</sup> and sustainable infrastructure investment frameworks,<sup>4</sup> and note the opportunity now open to IDB Invest to operationalise human rights due diligence throughout its operations, to minimise harms and enhance development impact.

## Recommendations

Taking into account OHCHR's country-level and project-level observations, regional human rights trends and the OHCHR Benchmarking Study, recommendations are offered to IDB Invest in the following areas: (A) the need for explicit and rigorous human rights due diligence, taking into account international law and good practice principles embodied in the UNGPs; (B) integrating international and regional human rights law in a consistent and coherent way in due diligence and social and environmental risk management, and in assessments of borrower/client frameworks; (C) introducing a self-standing Performance Standard on Stakeholder Engagement, complemented by a self-standing policy and procedures to deal with reprisals against project-affected individuals; (D) assessing and addressing supply chain risks; (E) the right to a remedy; (F) strengthening due diligence for financial intermediary (FI) lending; (G) preserving maximum rigour in up-front compliance requirements, together with "downstream" adaptive risk management; (H) finding a judicious balance between using and strengthening client risk management frameworks; and (I) including human rights experts and

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<sup>3</sup> IDB, Social Impact Assessment: Integrating Social Issues in Development Projects (2018), including at pp. 11, 19, 22-23, 29-30, 46, 53 and 55.

<sup>4</sup> IDB, What is Sustainable Infrastructure? A Framework to Guide Sustainability Across the Project Cycle (March 2018), including at pp.11-12, 16, 19 and 21.

organisations, including but not limited to OHCHR, within the ESSP's partnership arrangements.

The recommendations are cross-referenced to the Benchmarking Study as appropriate, for supporting argument and/or additional detail in the recommendations themselves. The recommendations do not not address budgetary or other capacity requirements for effectively implementing safeguard requirements, although we recognize that these are the most important considerations of all.

### **Explicit and rigorous human rights due diligence**

Project-level conditions in the Latin American region increasingly require strengthened due diligence. Explicit human rights due diligence can not only improve project and development outcomes, but is an important companion in FCV settings and can help to justify and sustain DFI support for projects in complex situations. It can also provide an important defense to DFIs when, despite best efforts, things go wrong (Benchmarking Study, pp.4-6).

The UNGPs, which reflect existing human rights law pertaining to State regulation of corporate activity, are reflected in the IDB's (excellent) Social Impact Assessment Guidelines (2018) and OECD's Responsible Business Conduct Due Diligence Guidance (2018).<sup>5</sup> The UNGPs provide authoritative and practical guidance on such matters as: (a) risk assessment, prioritizing severity and irremediability over likelihood (UNGP 24); (b) clarifying the scope of due diligence by reference to the level of responsibility or involvement in adverse impacts (UNGP 17); (c) unpacking the concept of *leverage* and exploring avenues through which leverage can proactively be exercised (UNGP 19); and (d) effectiveness criteria for grievance mechanisms (UNGP 31).

As noted above, IFC Performance Standard 1 (footnote 12) calls for human rights due diligence, but only in "limited high risk circumstances." This is problematic and may have perverse effects, as it assumes that human rights due diligence comes after risk screening and may be implemented in a stand-alone fashion only in extreme circumstances (rather than be integrated routinely within existing risk management systems).<sup>6</sup> The IIC's Environmental and Social Sustainability Policy (Annex)<sup>7</sup> contains a slightly better formulation, in OHCHR's view, ie. that E&S documentation "will address, where applicable", the "[p]rotection of human

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<sup>5</sup> IDB, Social Impact Assessment: Integrating Social Issues in Development Projects (2018), fn 63, 69, 146 and 149 and accompanying text (focusing on the "cause, contribute, direct linkage" concept in particular), and OECD Due Diligence Guidance for Responsible Business Conduct (May 2018).

<sup>6</sup> For a cautionary note along these lines see Rachel Davis, "Exploring the relationship between human rights due diligence and broader environmental and social due diligence" (2018) at <https://norad.no/en/front/evaluation/news/2018/exploring-the-relationship-between-human-rights-due-diligence-and-broader-environmental-and-social-due-diligence/>.

<sup>7</sup> <https://www.iic.org/environmental-and-social-sustainability-policy.pdf>

rights by acting with due diligence to prevent, mitigate and manage adverse human rights impacts.”

#### Recommendations:

- The ESSP should include a clear and explicit commitments to respect human rights, to carry out human rights due diligence, and require its clients to respect human rights and carry out human rights due diligence, informed by the UNGPs (Benchmarking Study, pp.4-6 and 30-31).
- Human rights due diligence should be integrated as a central, routine component of IDB Invest’s and clients’ risk management systems, and should not be restricted to “limited, high risk circumstances” (Benchmarking Study, pp.9-10).
- Routine human rights due diligence should take into account, among other relevant information sources, recommendations and analysis from the UN, regional and national human rights mechanisms (Benchmarking Study, p.31).
- The ESSP explicitly should take into account guidance from the UNGPs, and OECD Responsible Business Conduct guidance, on risk prioritisation (prioritising severity and irremediability over likelihood; Benchmarking Study, pp.31-33), involvement in human rights impacts (Benchmarking Study, pp.33-34), proactively exercising leverage (Benchmarking Study, pp.34-37), and remedy (Benchmarking Study, pp.41-44 and the specific recommendations there).

#### **Respect and use international human rights law**

MDB safeguard policies, including those of the IDB and IIC, invoke international law in various contexts (Benchmarking Study, pp.12-13). However the practical implications and relationship between international and (inconsistent) national law is not always clear. Moreover, OHCHR notes IDB Invest’s commitment (ESSP, para. 7) “to promote good international practice .. including human rights”, which may be mistaken to imply that human rights are not the subject of binding legal obligations.

International and regional human rights standards will often (but not always) be higher than corresponding national laws and regulations, and information from UN, regional and national human rights bodies can illuminate how national laws are being implemented in practice. These bodies of law can operate in parallel: in some countries (including Mexico, Honduras and Colombia) international treaties have direct effect in domestic law whereas in other constitutional systems implementing legislation is required.

It shouldn’t be for an MDB to attempt to resolve difficult questions of violations and conflicts, in OHCHR’s view. However information and recommendations from human rights mechanisms are relevant and should be factored into contextual risk assessments, project-level social and environmental assessments, due diligence (including appraisal, risk

categorisation and supervision), and assessments of borrower frameworks and country systems, like any other relevant body of information.

#### Recommendations:

- Drawing from comparative MDB/DFI experience, the ESSP should contain a specific commitment to respect international human rights law along the following lines: “IDB Invest will undertake all necessary measures to ensure that its investments and the projects it supports do not cause or contribute to violations of host countries’ obligations under international human rights agreements.” A comparable commitment should also be reflected in IDB Invest’s Exclusion List (including but not limited to child and forced labor) (Benchmarking Study, pp.7-9).
- Information and recommendations from UN, Inter-American and national human rights bodies should be integrated within IDB Invest’s contextual risk assessments, project-level social and environmental assessments, due diligence (including appraisal, risk categorisation and supervision), and assessments of borrower frameworks and country systems.
- Specific PS’s governing labour, resettlement, indigenous peoples, gender and (as recommended) stakeholder engagement should be interpreted in light of applicable international human rights standards.
- Where there may be conflict between sources of applicable law, the highest standard should apply, for effective risk assessment and management. This is especially important when it comes to assessing issues like discrimination, labour rights, civil society space and stakeholder participation, where the gap between the protections afforded by national and international law in many countries is wide, or may be widening.
- Project context analysis should seek to identify interlinkages between conflict scenarios and human rights risks and violations so that these can be prevented and mitigated early in project design. A human rights-sensitive context analysis would consider pathways of escalation of conflict, as well as pathways to de-escalation including, importantly, pathways to remedy, by including an assessment of the remedy ecosystem (See further below on remedy).

#### **Stakeholder engagement and reprisals**

The risks faced by communities in the context of investment projects in Latin America are increasing. While data is still not systematically collected, threats and reprisals appear to be increasing against individuals who bring their concerns to MDBs (Benchmarking Study, pp.14-15). Relatedly, stakeholder engagement continues to be an area where DFI project implementation regularly falls short (Benchmarking Study, pp.37-39). One half of all

Compliance Advisor Ombudsman cases in 2018 reportedly involved complaints about stakeholder engagement.<sup>8</sup>

A recent review by MICI revealed that “inadequate timelines for conducting consultations, limited information on the local cultural context, and restricted access to information for interested stakeholders during the consultation phase point out to the need for a more consistent application of meaningful stakeholder participation throughout the project cycle and the presence of quality and reliable local grievance mechanisms.”<sup>9</sup> A recent detailed review of DFI-funded projects in the Amazon region found that a lack of or ineffective stakeholder engagement was one of the three main reasons for project failure.<sup>10</sup>

Recent MDB safeguard policy review processes have resulted in specific performance standards for safe and effective stakeholder engagement, and numerous DFIs and IAMs have developed specific policies and procedures to address reprisals. OHCHR warmly welcomes IDB Invest’s statement on the 70<sup>th</sup> anniversary of the Universal Declaration of Human Rights, to the effect that the Bank “does not tolerate relation, such as threats, intimidation, harassment, or violence against those who voice their opinion or opposition to IDB Invest projects.”<sup>11</sup> OHCHR recommends that IDB Invest seek to harmonise its safeguard policies with best practice in this area.

#### Recommendations:

- The ESSP should include a self-standing performance standard on Stakeholder Engagement, such as that adopted by the World Bank and EBRD (ESS 10), including a requirement that participation be free of intimidation or coercion.
- Due diligence, contextual risk assessments and social and environmental assessments should include an assessment of the enabling environment for stakeholder participation, considering the space for dialogue and power dynamics at the project level as well at the national level.
- In line with practice of the IFC and elsewhere, a “zero tolerance” policy should be adopted against intimidation and reprisals, with procedures to guide IDB Invest’s preventive

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<sup>8</sup> CAO, “[2018 Year in Review](#),” (2018), p. 22.

<sup>9</sup> IDB, “IDB, “[Modernization of the Environmental and Social Policies of the IDB – Policy Profile](#)” (2019), para. 2.10. A more detailed review of cases from IAMs could reveal more detailed and interesting information on trends on participation.

<sup>10</sup>Ray, R., Gallagher, K., Sanborn, C., “[Standardizing Sustainable Development? Development Banks in the Andean Amazon](#),” Boston University and University del Pacifico, (2018), p. 4. “Incorporating stakeholder engagement early in the project development process can help protect against environmental degradation. For example, projects that took place within regulatory frameworks that guaranteed access to prior consultation for affected indigenous communities were associated with significantly less deforestation than those projects that did not. However, projects that neglected to heed communities’ needs were associated with greater environmental damage, serious social conflict, and the loss of millions of dollars of potential business for DFIs due to relationship and reputation damage.”

<sup>11</sup> <https://www.idbinvest.org/en/download/6635>.

measures, responses to incidents, and public reporting, taking into account the IAM Network's Toolkit on Reprisals (2019) (Benchmarking Study, pp.15-16).

### Supply chain risks

It does not seem clear on the face of the draft ESSP what the expectations are regarding due diligence in relation to supply chain risks. Even in countries with reasonably well developed legal frameworks, many human rights risks may be embedded within potentially lengthy supply chains.<sup>12</sup> Assessing human rights risks in business relationships in supply chains is not a novel proposition: several Performance Standards already include some dimension of looking down supply chains to understand the fuller picture of a project's impacts and there is a well-established practice of working with supply chains to improve human rights performance. The newer element, however, is to make this a routine part of due diligence.

A recent review of supply chain risks by the CAO found that IFC staff were interpreting the IFC Performance Standards (PS) to mean that if "a client ... does not have control over its supply chain it would not need to analyse and manage its supply chains."<sup>13</sup> Instead the CAO specifically drew on the UNGPs to highlight that "[o]n the basis of PS1, the client can, and should, be required to reorganize its supply chains toward more control, and less risk, over time. This potential need for clients to develop less risky supply chains is well-articulated in PS2 and PS6, ... and is similarly recognized by other frameworks, such as the UN Guiding Principles.... It is clear that having no control or leverage today does not exempt clients from the obligation to control their supply chains in the near future.... IFC should therefore work with its clients to build the capacity needed to create better supply chains. There is also the potential for IFC to work effectively as a broker, linking low-capacity clients to organizations, platforms, and initiatives with relevant knowledge and influence...."<sup>14</sup>

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<sup>12</sup> See for example the recent "[Modern Slavery Acts](#)" that require companies to report on modern slavery risks in their supply chains, including in developed countries and see the EU Fundamental Rights Agency Reports on [severe labour exploitation in the EU](#). However, most of the focus on human rights risks in supply chains has been on suppliers based in developing countries. See for example the various examples of guidance from OECD to address risks in supply chains:

<sup>13</sup> IFC PS 1: para 9 states, "In the event of risks and impacts in the project's area of influence resulting from a third party's actions, the client will address those risks and impacts in a manner commensurate with the client's control and influence over the third parties and with due regard to conflict of interest." Para 10 states, "where the client can reasonably exercise control, the risks and impacts identification process will also consider those risks and impacts associated with primary supply chains as defined in PS 2 and PS 6."

<sup>14</sup> CAO, "[Advisory Memos on Supply Chain Business Opportunities and Risks](#)," (2018), p. 11. EBRD PR 2 on Labour and Working Conditions similarly provides, "26. Additionally, where there is a risk of harm to workers of a primary supplier, the client will require the relevant primary supplier to introduce procedures and other control measures to prevent or reduce the risk of harm to worker health and safety. Such procedures and control measures will be reviewed by the client periodically to ascertain their effectiveness. 27. The ability of the client to fully address these risks will depend upon the client's level of management control or influence over its primary suppliers. Where remedy is not possible, the client will reorient the affected primary suppliers over a reasonable timeframe agreed with the EBRD to suppliers that can demonstrate that they are complying with this PR."

The risk-based approach on which the UNGPs and related RBC standards are based means that clients are not expected to address *all* issues in all business relationships; this would clearly be impossible for many businesses with large numbers of business relationships. Instead, the UNGPs encourage DFIs and their clients to assess where severe risks lie within those relationships and prioritise action in relation to those before addressing less severe risks.<sup>15</sup> (Benchmarking Study, pp.20-23).

#### Recommendation:

- IDB Invest should assess upstream impacts in supply chains through multiple levels of the chain as necessary, and use its leverage to address severe human rights impacts that are directly linked to their products, services or operations.<sup>16</sup> Downstream impacts from product or project use should also be included (Benchmarking Study, p.21).

#### **The right to a remedy**

Safeguards typically include a range of selected provisions on remedy for specific, negative impacts (harms), (for example labour, involuntary resettlement and security providers, and for certain environmental impacts), but not an overarching recognition that there should be effective remedies for all adverse human rights impacts associated with a project. (Benchmarking Study, pp.41-44).

Remedies are frequently provided in practice in DFI-supported projects when things go badly wrong, but this tends to happen in a reactive, unplanned and inconsistent way. IDB's recent study of 40 years of infrastructure projects in Latin America<sup>17</sup> concluded that despite a whole range of warning signs, and despite decades of experience, neither clients nor DFIs have been putting sufficient emphasis into addressing issues seriously when concerns are manifested – even though these scenarios repeatedly have serious consequences for communities, clients and DFIs. Communities and workers may perceive risks around a project to be even higher than they might otherwise be if they feel they have no control

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<sup>15</sup> UNGPs, Principles 17 and 24.

<sup>16</sup> This is the UNGPs and OECD concept of “direct linkage.” Despite the use of the word “direct”, the concept refers to a wider set of business relationships, including, but also beyond business relationships with which a company has a direct, contractual relationship. Where there are adverse human rights impacts at business relationships that are providing products or services for a company's own operations, products or services, there is a “direct linkage” to use the UNGPs terminology. And where there is direct linkage, a company should exercise its leverage to influence its business relationships (or the chain of business relationships) to cease those adverse impacts, prevent future impacts and remedy those that have occurred.

<sup>17</sup> Watkins, Graham, et al (2017) Lessons from four decades of infrastructure project related conflicts in Latin America and the Caribbean.



over how their labour or resources will be used and have no credible access to recourse.<sup>18</sup> From this perspective, the mere fact of signalling a serious approach to recourse can reduce risks for a project. Yet the evidence in DFI practice generally suggests that this does not happen often enough.

Moreover, while most DFIs have requirements for clients to put in place operational level grievance mechanisms,<sup>19</sup> these are not necessarily designed or required to address and remedy human rights harms. Few DFI safeguard policies (even among the most recent policies) specifically reflect the UNGPs' "effectiveness criteria"<sup>20</sup> for grievance mechanisms in their safeguard requirements, including the important criterion of involving stakeholders in the design and operation of the mechanism that is a fundamental step in building trust in the mechanism.<sup>21</sup> Remedying harms associated with a DFI-funded project may require a range of different mechanisms and avenues – within the project and within the country (via judicial and non-judicial mechanisms) – but the remedy ecosystem seems to remain underexplored in DFI guidance to clients.

#### Recommendations:

- OHCHR recommends that the ESSP explicitly recognise that there should be effective remedies for all adverse human rights impacts associated with a project, irrespective of the extent of IDB Invest's involvement in those impacts. "Contribution" to harms should trigger contribution to remedy, and "direct linkage" to harms should trigger the proactive exercise of all available leverage to enable remedy.
- Assessing the strength of a given country's "remedy ecosystem" – i.e. whether there are effective avenues for redress locally or nationally for project impacts – should become a

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<sup>18</sup> Kemp, D, Warden, S., Owen, J., "Differentiated social risk: Rebound dynamics and sustainability performance in mining," Resources Policy 50 (2016) 19-26.

<sup>19</sup> For workers, in case of resettlement, and more generally. For example, IFC developed an early guidance note in 2009 on grievance mechanisms ("[Good Practice Note: Addressing Grievances from Project-Affected Communities. Guidance For Projects And Companies On Designing Grievance Mechanisms](#)") and the IFC CAO developed a toolkit ([Grievance Mechanism Toolkit](#)).

<sup>20</sup> The "effectiveness criteria" set out in UNGP 31 identify characteristics of such a mechanism that help make it effective; each is accompanied by a longer description: (i) legitimate; (ii) accessible; (iii) predictable; (iv) equitable; (v) transparent; (vi) rights-compatible; (vii) a source of continuous learning; and (viii) based on engagement and dialogue. To these could also be added a specific criterion on ensuring no retaliation. For example, EBRD, "[Environmental and Social Policy](#)," PR 10 (April 2019) makes no explicit or implicit reference to the UNGPs and has quite standard provisions on grievance mechanisms.

<sup>21</sup> UN Working Group on the issue of human rights and transnational corporations and other business enterprises "[Human rights and transnational corporations and other business enterprises - Note by the Secretary-General](#)," A/72/162, 18 July 2017.

routine part of the contextual due diligence, with a specific examination of the roles of the client and IDB Invest in participating or contributing to them.<sup>22</sup>

- Using the UNGPs “effectiveness criteria” (UNGP 31) to test client grievance mechanisms would encourage an examination not only of whether a given client has a grievance mechanism in place, but critically, whether it is effective in practice.

### **Strengthening due diligence for FI lending**

OHCHR notes the limited requirements in the draft ESSP governing due diligence and supervision over FI lending (paras. 5, 15-19 and 22), compared with those of the IFC (SP paras. 32-27 and 40-45), World Bank ESS 9 and other MDBs. OHCHR also notes the significant risks embedded in FI lending and the significant challenges that other DFIs have faced in successfully managing their FI portfolio risk exposures, even with the benefit of stronger performance requirements.<sup>23</sup>

#### **Recommendation:**

- OHCHR recommends that the ESSP’s requirements for FI lending be further elaborated and strengthened, in line with those of the IFC and World Bank.

### **Balancing up-front compliance with adaptive risk management**

OHCHR notes that, consistent with the IFC Sustainability Framework, compliance with PS’s is expected “within a reasonable time frame.” OHCHR recognizes the need for strengthened, adaptable risk management throughout the project cycle, and that due diligence is not a one-time event. At the same time, OHCHR also notes the positive evidence in other MDBs of rigorous up-front risk and compliance assessments, particularly for high-risk projects.<sup>24</sup> Projects monitored by OHCHR in the Latin American region illustrate the challenges of open-ended compliance, or the flexibility of lenders to assess, determine, and disclose relevant information about or enforce safeguard compliance over time.

The OVE safeguards evaluation report (2018) indicates that an increasingly large share of IDBG lending is through framework instruments, where the specific location or design of the

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<sup>22</sup> See for example, Dutch Banking Sector Agreements, “[Discussion Paper, Working Group Enabling Remediation](#),” May 2019.

<sup>23</sup> See e.g. CAO, [Third Monitoring Report of IFC’s Response to: CAO Audit of a Sample of IFC Investments in Third-Party Financial Intermediaries](#) (Mar. 6, 2017).

<sup>24</sup> World Bank, Independent Evaluation Group, *Safeguards and Sustainability Policies in a Changing World* (2011), Chapter 4, pp.65-82, available at <http://documents.worldbank.org/curated/en/742801468177840668/pdf/638960PUB0Safe00Box0361531BOPUBLIC0.pdf>.

supported investments are not known at the time of approval.<sup>25</sup> OVE recommended that IDB safeguards should provide greater flexibility to balance certain pre-approval safeguard compliance requirements with measures for achieving compliance through adaptive risk management during project implementation.

However, with the introduction of more flexible compliance requirements, OHCHR is concerned that the burden of proof of *ex ante* compliance may shift disproportionately towards (aspirational) environmental and social action plans. The shift to a more flexible downstream “adaptive risk management” approach places a large premium on supervision and reporting, which can be difficult to achieve in practice. There are also difficult questions about how a Bank’s leverage and incentives to encourage safeguard policy compliance change throughout project implementation.

**Recommendation:**

- While acknowledging the evolving context and changing composition of IDB investments, an increased focus and investments in adaptive risk management should be balanced with clear and rigorous up-front compliance requirements, particularly for higher risk projects.

**Using v. strengthening client risk management frameworks:**

Under many MDB safeguard policies, the concerned Bank has a discretion to delegate safeguard responsibility to the client, subject to a determination of consistency of the client’s safeguard system with that of the Bank. OHCHR strongly supports the objective of strengthening client risk management frameworks, subject to overriding sustainability goals.

**Recommendations:**

- Clear and rigorous requirements should be put in place for defining the circumstances in which the use of borrower/client frameworks may be appropriate from a social and environmental risk management standpoint, taking into account applicable standards under international and regional human rights and environmental law.

**Partnership arrangements:**

OHCHR notes that a range of financial institutions, banks, governmental and non-governmental institutions are listed for various purposes under Part V (“Collaboration and Liaison with Public and Private Sector Partners”).

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<sup>25</sup> IDB OVE Environmental and Social Safeguards Evaluation (2018) Report RE-521-1, CII/RE-36-1, pgs. 7 & 16-17, which shows that since 2008, about 40% of all IDB lending has been through FIs, policy loans or framework loans and over one-half of all category A and B investment lending operations approved over the last seven years and reviewed by OVE have used a framework approach, all of which present challenges in terms of safeguards policy application.

Recommendation:

- Given the centrality of human rights to effective due diligence and social risk assessment and management, partnership arrangements should include specialised human rights bodies at UN, regional and national level.

**Concluding remarks**

OHCHR is grateful for the opportunity to contribute to IDB Invest’s consultation on the draft Policy. We hope that our comments are useful, and that the final version of the policy will reflect best practice in other MDBs and the recommendations offered here. We look forward to our continuing dialogue and collaboration and stand ready to provide further comments or clarifications on request.

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