

February 27, 2015

Dr. Jim Yong Kim  
President  
The World Bank  
1818 H Street, NW  
Washington, DC 20433  
Sent via email to: [JYK@worldbank.org](mailto:JYK@worldbank.org) and [safeguardconsult@worldbank.org](mailto:safeguardconsult@worldbank.org)

Subject: World Bank draft Environmental and Social Safeguards Framework and Indigenous Peoples

Dear Dr. Kim:

We, the undersigned investors, representing over US\$125 billion in assets under management, are writing in response to the World Bank's request for comments on proposed amendments to the draft Environmental and Social Safeguards Framework (ESSF). We appreciate the World Bank's continuing efforts to enhance the ESSF and submit the following comments with the aim of ensuring the ESSF continues to be a leading standard for responsible finance.

At a high level, we urge the World Bank to revise its draft Environmental and Social Safeguards Framework in order to make them more consistent with international human rights law and, in particular, the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) and the Guiding Principles on Business and Human Rights. We are concerned that the proposed draft does not explicitly reference the respect and protection of human rights as a core expectation.

We do not believe that loosening the proposed standards in regards to Indigenous Peoples' rights, as issued in draft form in July 2014, are sufficient for businesses or their investors. First Peoples Worldwide's [Indigenous Rights Risk Report](#) identified a direct correlation between investment risk and the strength of a country's legal protections for Indigenous Peoples. By offering weaker lending criteria for countries that violate the Declaration, the Bank is effectively incentivizing unstable business environments that jeopardize the viability of its investments in those countries.

We are concerned that the ESSF falls short of the highest international standards and in many cases, such as ESS 2 on labor, even falls short of the policies in place at a number of the regional development banks. Specifically, we have grave concerns about the policy on Indigenous Peoples, ESS 7. This includes, but is by no means limited to, the fact that the proposed standard allows countries to "opt out" of the Indigenous Peoples policy under certain circumstances. The World Bank should strengthen rather than weaken requirements that Indigenous communities support new projects on or near their territories. Increasing the uncertainty in regard to support for projects by Indigenous Peoples is not a positive outcome for investors. We are also concerned about other elements of the proposed standards which fall short of international human rights law, as voiced by the UN Commission on Human Rights and United States Senators (see attached letters), and would appreciate understanding the World Bank's response to these concerns.

The revised standards also transfer too much responsibility for compliance to the borrowers, many of which lack the capacity to effectively implement the policies.

Responsibility, and with it accountability, for ensuring that the new ESSF are fully complied with for each project must remain with the World Bank. Accordingly, the World Bank should ensure it allocates sufficient operational budget towards implementation of the new ESSF. Additionally, given that a significant portion of the Bank's lending now happens outside of its investment lending portfolio, if the ESSF remains limited to the Bank's project-based physical investments, too much of the Bank's operations remain uncovered by the policies.

The nearly universal adoption of the Declaration in 2007 by the United Nations General Assembly and the subsequent adoption by the remaining countries represents a historic milestone in the recognition of the rights of Indigenous Peoples. We fully expect these rights to be increasingly articulated and adopted in both national and international legal instruments. Further, the World Bank's ESSF is widely emulated or used by other financial institutions for their own standards. Weakening the ESSF, in particular the provisions related to Indigenous Peoples, may lower overall standards for projects that impact Indigenous communities, leading to increased opposition to projects and heightened uncertainty for companies and their investors.

#### Investor Perspectives on Indigenous Peoples and the World Bank

Investors have long been engaged with the Bank.

- Calvert Investments has engaged in a productive dialogue with the World Bank that has included Indigenous Peoples' rights for many years. In October 2007, Calvert lifted its longstanding ban on investment in International Bank for Reconstruction and Development (IBRD) Bonds in its sustainable and responsible funds. This decision was made in part because it learned that the Bank established stronger policies on Indigenous Peoples' Rights by strengthening specific practices through its revised Operational Policy and Bank Procedure on Indigenous Peoples/OP/BP 4.10 (May 2005).

Since then, Calvert and others have continued to engage with the bank. In 2012, Calvert wrote to, and met with, Joachim von Amsberg, World Bank Vice President and Head of Network Operations Policy and Country Services to indicate the firm's support for stronger protections for Indigenous Peoples in World Bank policies and procedures in the context of the current safeguard policy update process. Assurances were provided at a meeting and subsequently in a further letter from von Amsberg that the interests of Indigenous Peoples would be protected as the safeguard review process moves forward. In light of the strong work and progress the Bank has made on such issues, we would hope it would continue to further strengthen its stance on the rights of Indigenous Peoples rather than move to weaken its policies.

- NEI Investments submitted comments to the 2011 review and update process of the International Finance Corporation Policy and Performance Standards on Social and Environmental Sustainability (IFC Standards)<sup>1</sup>. In that submission, NEI strongly supported the inclusion of free, prior and informed consent (FPIC) as an expectation in certain circumstances under Performance Standard 7. At the time, NEI noted that

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[http://www.neiinvestments.com/documents/PublicPolicyAndStandards/2011/IFC\\_Performance\\_Standards.pdf](http://www.neiinvestments.com/documents/PublicPolicyAndStandards/2011/IFC_Performance_Standards.pdf)

it was firm in the belief that companies adopting FPIC will benefit from greater project certainty, reduced delays, superior community relations, and that, ultimately, this will increase returns for investors. The rationale for maintaining the inclusion of FPIC has only strengthened since that time.

NEI also recommended that the IFC Standards should align with, and support the “Protect, Respect and Remedy” Framework of the UN Special Representative of the United Nations Secretary-General for Business and Human Rights. Since this time, the Guiding Principles on Business and Human Rights have been finalized and are quickly growing to be the recognized industry best practice expectation. We believe that aligning the ESSF with the Guiding Principles would further ensure the protection of Indigenous Peoples’ rights.

As investors, we have asked companies that we invest in to lead with proactive policies addressing Indigenous Peoples’ rights, and rigorous reporting on these policies and practices. We encourage corporations to apply the principles of the Declaration in order to uphold human rights and to mitigate project and reputational risks.

As investors, we believe that environmental, social and governance issues have a significant impact on long-term financial returns. We expect that companies that respect Indigenous Peoples rights and build good relations with Indigenous Nations will prosper in the long run. The World Bank’s ESSF can support long-term prosperity for all if drafted with a proper level of respect for human rights and particularly the rights of Indigenous peoples.

We look forward to sharing directly our concerns with you and are also available for further consultation. Please contact Steven Heim of Boston Common Asset Management at [sheim@bostoncommonasset.com](mailto:sheim@bostoncommonasset.com) and Reed Montague of Calvert Investments at [reed.montague@calvert.com](mailto:reed.montague@calvert.com).

Sincerely,

Steven Heim  
Managing Director  
Boston Common Asset Management, LLC

Bennett Freeman  
Senior Vice President, Sustainability Research and Policy  
Calvert Investments, Inc.

Bob Walker  
Vice President Ethical Funds & ESG Services  
NEI Investments

Filippa Bergin  
Head of Sustainability, Storebrand Group  
Storebrand

Steve Mason  
Director of SRI Activities  
Brethren Foundation Funds Inc.

Ken Wilson  
Executive Director  
Christensen Fund

Steve Mason  
Director of SRI Activities  
Church of the Brethren Benefit Trust

Patricia Zerega  
Senior Director of Shareholder Advocacy  
Daughters of Charity, St. Louise Province

Adam Kanzer  
Managing Director  
Domini Social Investments LLC

Valerie Heinonen, o.s.u.  
Director Shareholder Advocacy  
Dominican Sisters of Hope

Jeffery W. Perkins  
Executive Director  
Friends Fiduciary Corporation

Valerie Heinonen, o.s.u.  
Director, Shareholder Advocacy  
Mercy Investment Services, Inc.

Luan Steinhilber  
Director of Shareholder Advocacy  
Miller/Howard Investments, Inc.

Catherine Cartier  
President  
Progressive Asset Management

Ethel Howley, SSND  
Social Responsibility Resource Person  
School Sisters of Notre Dame Cooperative Investment Fund

Nora M. Nash, OSF  
Director Corporate Social Responsibility  
Sisters of St. Francis of Philadelphia

Denise Granger, SSJ  
Coordinator, Office of Justice and Peace  
Sisters of St. Joseph of Springfield

Danielle Ginach  
Impact Manager  
Sonnet Capital

Tom Sargent  
Trustee  
Tamalpais Trust

Jonas D. Kron  
Senior Vice President  
Trillium Asset Management, LLC

Valerie Heinonen, o.s.u.  
Director Shareholder Advocacy  
Ursuline Sisters of Tildonk, U.S. Province

Hans-Martin Buhlmann  
CEO  
VIP (Vereinigung Institutionelle Privatanleger) eV  
association of institutional shareholders