

Public Statement

Civil Society Organizations warn of weaknesses in the new IDB Invest Environmental and Social Sustainability Policy

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The undersigned civil society organizations express their concerns on the limitations of the IDB Invest [Environmental and Social Sustainability Policy \(ESSP\)](#) recently approved by the IDB's Board of Directors, which will become effective on December 15, 2020.

In many ways, the new ESSP represents a step backwards with respect to the current Policy^[1] due to: i) the limitation of many of the commitments; ii) the Bank's discretion to demand its effective compliance; and iii) the explicit declaration of not assuming any responsibility for the potential environmental and social impacts of IDB Invest financed projects by transferring liabilities to the client.

IDB Invest missed the opportunity to adopt a robust Environmental and Social Sustainability Policy and move towards the highest feasible standards for development by incorporating lessons learned from MICI complaints and from more than 12 years of the IFC's implementation of the Performance Standards. A robust ESSP proves particularly relevant in the push for a sustainable and transformative post-COVID-19 economic recovery, especially as IDB Invest seeks to increase its role and presence in Latin America and the Caribbean.

Although unable to address all of the ESSP's aspects and implications, civil society identified the following as the primary and most significant limitations of the ESSP:

1. **The main problem with the ESSP review was that the IDB Invest decided to adopt the already outdated IFC's Environmental and Social Performance Standards (2012) with no possibility to suggest changes or adjustments.** By limiting the scope of the review, there was no room to develop a new Policy to effectively respond to the growing and increasingly complex environmental and social challenges faced by the LAC region.
2. **IDB Invest disregards its joint and subsidiary liabilities for the actions of the actors upon which it has influence, outlining *ex ante* any further institutional responsibility for possible adverse impacts of IDB Invest financed activities,** establishing that this responsibility will lay on the client.^[2] The IDB Invest restricts its commitment to the **"Implementation Responsibilities"** of environmental and social appraisal, supervision, monitoring, and evaluating the project during its design and implementation (as described in the ESSP). By this means, IDB Invest joins the worrying trend of other Multilateral Development Banks in adopting a model that transfers significant responsibility to the client. For some time, civil society has been expressing serious concerns about this change of approach and continues to voice serious concerns that shifting responsibilities of implementation to borrowers will lead to a weakening of the social and environmental protections that prevent harm in IDB Invest financed projects.
3. **IDB Invest does not undertake its duty to "enforce."** Although IDB Invest can demand clients comply in full with the ESSP, it retains the discretionary right to decide in which cases it will or will not apply corrective measures. In fact, the ESSP

states that the IDB Invest will only finance operations “*that are expected to meet the Sustainability Policy’s environmental and social requirements within a reasonable time frame*” ^[3] and that persistent delays in meeting these requirements may eventually lead to the exercise of remedies or withdrawal of financial support at its discretion. IDB Invest does not indicate what these “remedies” consist of, nor does it establish transparent and clear procedures or requirements to determine when and under what circumstances it will take these measures, such as denying or withdrawing financing to clients who show unsatisfactory performance or do not comply with the required environmental and social standards. In summary, **IDB Invest relinquishes use of the most powerful mechanism at its disposal, the ability to deny financing to non-compliant clients and projects with adverse social and environmental impacts.** Without this compliance power in the policy, IDB Invest fails to **discourage client’s irresponsible behaviors and practices.**

4. The **flexibility and ambiguity in the language** used in the Policy favors the Bank's discretionary action and increases the risk of non-compliance by clients. This is reflected in formulations such as, “*IDB Invest seeks to ...*”, “*promotes*”, “*looks for*”, “*strives*”, and expressions such as “*unless the IDB Board of Directors provides otherwise*” or “*IDB Invest may refrain*”. Thus, the commitments made by IDB Invest are weak, diffuse and, of course, not binding for the institution itself^[4]. It will be a challenge to enforce flexible commitments considering the excessive space left for IDB Invest & client discretion.
5. **Specific environmental and social commitments show important gaps in addressing the region’s current challenges.** For example, a) in the Climate Change Adaptation and Mitigation section, the commitment to mitigation is weak, since there are no GHG emission limitations or restrictions established, nor reduction or compensation requirements related to projects financed by the Bank; b) In the Biodiversity commitment, there are no absolute restrictions on intervention in fragile or critical habitats and high biodiversity ecosystems; c) with regard to social issues, the ESSP expresses the commitment to promote international good practices in areas such as Human Rights, Reprisals, Gender Risk Management and Equality, Stakeholder Engagement and Disclosure of Information. Civil society welcomes the inclusion of these social issues. However, the level of commitment with these important issues is generic and superficial with several gaps in coverage, as reflected in the following examples:
 - **Human Rights.** Essential rights, such as economic, social and cultural rights, the right to people-centered development, the right to a pollution-free environment, the right of access to information, public participation and justice in environmental matters (the latter subject of the Escazú Agreement) are not considered.

- **Stakeholder Engagement.** There are no minimum requirements to ensure timely, meaningful, and culturally appropriate stakeholder engagement processes, including stakeholder’s inclusive and safe access to consultation and participation - free of intimidation and coercion, particularly in a context of restricted civic space.
 - **Grievance Mechanisms.** Although the ESSP requires the implementation of a kind of “inbox” to file complaints at the project level, a transparent and traceable procedure for grievance management & resolution is not guaranteed. Also, IDB Invest does not require clients to inform project-affected stakeholders about the existence of the IDB’s Independent Consultation and Investigation Mechanism (MICI), the independent mechanism for dispute resolution and investigation at the IDB Group available for project-affected people. Clients have logistical advantages in reaching out to local communities, efficiently and effectively, to pass on information related to the project, including the MICI. Engaging clients in the dissemination of MICI information is key to raise awareness of its existence among those affected by the project.
 - **Reprisals.** Although the ESSP includes a system for receiving and monitoring complaints of retaliation, it lacks a procedure for resolution. IDB Invest is not mandated to manage risks of reprisals proactively and preemptively. Also, the protection of environmental & social activists and defenders, as recommended by the [MICI in the specialized guide prepared](#) to address this sensitive matter, is not ensured.
 - **Gender Risk Management and Equality.** On the one hand, the ESSP includes promotion of good practices on gender issues, but on the other hand, it excludes the IDB’s [Operational Policy on Gender Equality in Development](#) (2010) from the IDB Invest’s Sustainability Framework ^[5], which represents a substantial setback.
 - **Indigenous Peoples and other Vulnerable Groups.** The commitment to “*fostering full respect for the human rights, dignity, aspirations, culture and livelihoods*” is weak since “fostering respect” is different from demanding respect, which leads to infer that this commitment is not categorical.
 - **Persons with Disabilities.** Although the ESSP includes this marginalized group among social aspects, which represents progress, its crosscutting inclusion in “IDB Invest Commitments” and “Client Responsibilities” sections is still pending.
6. **IDB Invest ESSP’s Client Responsibilities are limited to ensure effective implementation of IFC’s eight Performance Standards.** Although the Policy states

that IDB Invest “requires its clients to comply”^[6], this requirement appears not to be binding in all cases, since non-compliance does not necessarily lead to corrective or sanctioning measures.

7. **Procedures for environmental and social appraisal, supervision and monitoring are limited and insufficient**^[7]. Requirements for Environmental and Social Due Diligence (ESDD) are weak and do not ensure that IDB Invest can effectively identify projects of high environmental and social risk, request their rectification or deny financing. Criteria for environmental and social risk and impact categorization, both for direct and financial intermediary investments, remain imprecise due to lack of a clear differentiation between risks and impacts. Likewise, ESDD omits the appraisal of compliance with environmental law and human rights; no environmental and social traceability mechanisms for financial intermediary project portfolios are established.
8. **The ESSP does not provide exclusion criteria for financing projects and activities in the extractive sector.** Civil society considers it unacceptable that IDB Invest, as a financial institution that promotes sustainable development, finances projects with high environmental and social risks. These projects often lack the consent of communities, despite negatively impacting their rights and destroying their environment. For the extractive industry, IDB Invest claims that it will promote transparency of revenue payments from clients to host governments, and that it will require that clients publicly disclose their “material payments”^[8]. Although these last criteria represent a step in the right direction, it will have little effect unless requirements are binding and precise parameters for compliance are established, which are still pending.

Civil society hopes that the weaknesses of the new IDB’s Invest ESSP can be balanced partly through robust Implementation guidelines and tools. Likewise, we expect meaningful participation in reviewing the *Environmental & Social Guidance Manual* and the *Guidance Notes to IFC Performance Standards*, currently being prepared by the IDB Invest.

We note that civil society participated in the consultation implemented by IDB Invest during the update of the ESSP, a process that did not meet standards for meaningful, inclusive, and transparent participation^[9]. As a result of this engagement, a detailed [document was submitted to the IDB Invest with general and specific recommendations on how to strengthen the ESSP](#).

We appreciate that IDB Invest included some of civil society’s specific [recommendations](#) in the ESSP. Notwithstanding the observations already made, we again highlight the need for a clearer structure and the inclusion of commitments regarding emerging environmental and social management issues. Considering the factors above, we lament that the ESSP review process was a missed opportunity to strengthen the IDB Invest’s mission to promote sustainable growth and reduce poverty and inequality in the region.

In the current COVID-19 context and in the face of post-pandemic future, we call on the IDB Invest to be particularly careful in verifying compliance with high environmental, social and transparency standards of the projects it finances, as well as ensuring that investments are directed to the communities that need them most. The urgency cannot justify, under any circumstances, flexibility in the application of the social and environmental appraisal procedures and due diligence for approval of financing operations. The IDB Invest will only be able to ensure that it supports and promotes sustainable development in a post-pandemic context through continuing to uphold transparent and accountable compliance standards.

[1] [IIC Environmental and Social Sustainability Policy \(2013\)](#)

[2] In Chapter III. Client Responsibilities (26.), the new IDB Invest Environmental and Social Policy establishes that "the potential impacts of activities financed by IDB Invest are the responsibility of the client". This statement is reaffirmed in the Policy's Annex A, which displays a diagram of the Bank's Sustainability Framework, distinguishing between compliance responsibilities, which falls solely on the client, while the Bank takes only the implementation responsibilities.

[3] See Chapter IV. IDB Invest's Roles and Responsibilities during Environmental and Social Appraisal and Supervision (28.). The Bank applies the same logic of disregard to possible breaches caused by third parties related to its clients, such as contractors, primary suppliers, or operators of related facilities, disclaiming all liability in such cases (No. 29).

[4] See Chapter II. IDB Invest Commitments, for example Articles 6, 7, 9, 15 and 16.

[5] See Annex A IDB Invest's Sustainability Framework - IDB Invest Environmental and Social Sustainability Policy

[6] See Chapter III. Client Responsibilities (27.)

[7] See Chapter IV. IDB Invest's Roles and Responsibilities during Environmental and Social Appraisal and Supervision

[8] See Chapter VI. Governance

[9] For more information on the limitations of the consultation process carried out in the context of the IDB Invest Sustainability Policies review process, please read the following [article](#).