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Recalibrating ESG Conditionalities in Development Finance: A Doctrinal and Policy Analysis of the World Bank Environmental and Social Framework and Its Implications for Equitable Development in Sub-Saharan Africa

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ABSTRACT

This paper critically examines the Environmental and Social Framework (ESF) of the World Bank as the central instrument of Environmental, Social, and Governance (ESG) regulation in contemporary multilateral development finance. Deployed across more than 100 borrowing states, the ESF purports to entrench sustainable and inclusive development. Yet its operationalisation produces profound tensions with the imperatives of equity, developmental sovereignty, and proportionate governance in the Global South. Drawing on a doctrinal and policy-oriented methodology – combining institutional legal analysis, comparative public law, and development economics – this paper interrogates the legal architecture and practical implications of the ESF's Environmental and Social Standards (ESS1–ESS10). It argues that the Framework functions as a quasi-binding conditionality regime whose universal application conceals structural asymmetries disadvantageous to low- and middle-income countries. The paper introduces and theorises the concept of 'ESG asymmetry', defined as the systemic imbalance whereby developing economies are subjected to the most stringent sustainability compliance obligations despite having contributed least to global environmental degradation. Sub-Saharan Africa, and Uganda in particular, furnishes the empirical terrain for doctrinal analysis, illuminating the collision between ESG standards and plural legal systems, informal labour markets, and deficient institutional capacity. The paper concludes by advancing a four-principle recalibrated ESG framework – incorporating context-sensitive application, capacity-based compliance, an ESG Equity Index, and development-first sequencing – as a legally and empirically grounded pathway towards a more just international development finance architecture.

Keywords: *Environmental and Social Framework; World Bank; ESG asymmetry; development finance conditionality; Sub-Saharan Africa; Uganda; climate justice; global administrative law; distributive equity; developmental sovereignty.*

JEL Classification: K32, Q56, F34, O19, K33

1. Introduction

Environmental, Social, and Governance (ESG) principles have, within the span of two decades, migrated from the periphery of voluntary corporate conduct into the normative core of multilateral development finance. No institution has been more instrumental in this migration than the World Bank. Through its Environmental and Social Framework (ESF), introduced in 2018 after a protracted consultative process spanning nearly four years, the Bank has assembled a comprehensive regulatory architecture governing the environmental and social dimensions of all investment project financing extended to its 189 member states.¹

The intellectual and normative appeal of the ESF is considerable. It reflects a decisive institutional commitment to the principle that development finance must not merely transfer capital but must actively embed safeguards against environmental harm, labour exploitation, social exclusion, and the marginalisation of vulnerable communities. In this sense, the ESF represents the institutionalisation of the convergence between development economics, human rights law, and environmental governance – a convergence animated by the global commitments articulated in the 2030 Agenda for Sustainable Development and the Paris Agreement on Climate Change.²

Yet beneath its normative appeal lies a set of structural tensions that deserve

more rigorous legal and policy scrutiny than they have so far received. The ESF applies a largely uniform regulatory template across profoundly heterogeneous national contexts. It imposes compliance obligations of considerable technical and institutional complexity on states whose institutional infrastructure, legal traditions, and economic circumstances vary enormously from those of the developed-country shareholders who principally shaped the Framework's architecture. And it does so through a financing conditionality mechanism that renders compliance, in practice, a prerequisite for access to the Bank's concessional lending windows – notwithstanding the formal preservation of borrower sovereignty.³

This paper argues that these tensions are not incidental but structural. They inhere in what this paper conceptualises as *ESG asymmetry*: the systemic imbalance between the severity of compliance obligations imposed upon developing economies and those economies' historical responsibility for the environmental and social conditions that ESG frameworks are designed to remedy. Sub-Saharan Africa illustrates this asymmetry with particular clarity: the region collectively accounts for approximately 3.8 per cent of global cumulative greenhouse gas emissions, yet its governments, enterprises, and communities bear compliance costs and conditionality burdens shaped primarily by the sustainability priorities of high-income creditor states.⁴

The paper proceeds as follows. Section 2 develops the conceptual framework, situating ESG within global administrative law and climate justice theory. Section 3 undertakes a doctrinal analysis of the ESF's core standards. Section 4 elaborates and theorises the concept of ESG asymmetry. Section 5 grounds the analysis in a case study of Uganda and Sub-Saharan Africa. Section 6 proposes a recalibrated ESG framework. Section 7 concludes.

2. Conceptual Framework: ESG as Conditional Development Governance

2.1 The Evolution of ESG in Multilateral Finance

ESG's intellectual genealogy is conventionally traced to the 2004 United Nations Global Compact report, *Who Cares Wins*, which first popularised the acronym in the context of investor decision-making.⁵ Yet the substantive integration of environmental and social standards into development lending significantly predates this coinage. The World Bank's first environmental policies emerged in the 1970s, and its Involuntary Resettlement Operational Policy (OP 4.12) dates to 2001, succeeding earlier iterations from 1980. The ESF thus represents not a departure but a consolidation and elaboration of a long-standing institutional trajectory – one in which the Bank has progressively expanded the non-financial conditions governing project financing.⁶

Within the contemporary landscape of multilateral development finance, ESG conditionality has evolved into a distinctive hybrid instrument: neither strictly binding under classical international law nor purely aspirational in its normative force. The ESF exemplifies this hybridity. Its Environmental and Social Standards are incorporated by reference into loan agreements, thereby acquiring a contractual dimension that compels compliance as a condition of disbursement.⁷ Borrowing states thus face what might be termed a *compliance dilemma*: they may formally preserve legislative sovereignty, but the exercise of that sovereignty in ways inconsistent with the ESF's requirements risks loan suspension, disbursement delays, and reputational consequences within the international financial system.⁸

2.2 Global Administrative Law and the ESF as Governance Architecture

The theoretical lens of global administrative law (GAL), developed principally by Kingsbury, Krisch, and Stewart, offers an illuminating framework for understanding the ESF's regulatory character.⁹ GAL analyses the exercise of governance authority beyond the state through the prism of administrative law principles – accountability, transparency, reasoned decision-making, and participation – as applied to international institutions. The ESF, with its requirements for environmental and social risk assessments, stakeholder engagement plans, and grievance redress mechanisms, maps almost precisely onto these administrative law coordinates.

What GAL analysis reveals is the paradox at the ESF's core: an institution formally structured as a cooperative lending mechanism exercises *de facto* administrative governance over domestic regulatory choices in borrowing states. When the ESF requires a borrowing government to adopt environmental impact assessment procedures conforming to specific international benchmarks, or to establish labour management systems meeting standards that may exceed those prescribed by domestic legislation, it is exercising regulatory authority of a quality and kind that democratic theory traditionally reserves to the sovereign state.¹⁰

This dynamic acquires particular salience when the governance content of the ESF's standards is assessed. ESS1's requirement for environmental and social assessment is not merely procedural: it mandates the application of a risk classification taxonomy and an assessment methodology – Environmental and Social Impact Assessment, Environmental and Social Audit, Hazard or Risk Assessment – that embeds substantive Western regulatory concepts. The apparent procedural neutrality of these requirements masks their substantive governance effects.¹¹

2.3 Climate Justice and the Distributional Question

The third conceptual pillar of this paper's framework is climate justice theory. Climate justice scholarship – associated with scholars including Okereke, Roberts, Parks, and Shue – interrogates the distributional dimensions of global climate governance: who bears the burdens of mitigation and adaptation, and according to what principles of fairness and historical responsibility.¹²

The core claim of climate justice, often articulated as the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) enshrined in the United Nations Framework Convention on Climate Change (UNFCCC), is that obligations to address environmental harm must be calibrated according to historical contribution and economic capacity.¹³ Yet ESG frameworks as currently structured do not embed CBDR-RC as an operational principle. The ESF's standards apply uniformly regardless of a borrowing country's cumulative emissions, its per capita income, or the degree to which the environmental conditions it confronts are attributable to the industrial activities of high-income states.

This conceptual gap between climate justice theory and ESG practice constitutes, for purposes of this paper, the theoretical foundation of ESG asymmetry. The concept bridges GAL's analytical attention to institutional governance authority and climate justice theory's normative insistence on distributional equity.

3. Doctrinal Analysis of the Environmental and Social Framework

3.1 Architecture and Legal Status

The ESF entered into force on 1 October 2018 following its adoption by the World Bank Board of Executive Directors in August 2016.¹⁴ It replaced the preceding Safeguard Policies – a suite of ten Operational Policies developed incrementally from the 1980s – with an integrated framework comprising an overarching Vision and Policy Statement and ten Environmental and Social Standards (ESS1–ESS10). The transition reflects a paradigm shift from rule-based to risk-based regulation: whereas the Safeguard Policies prescribed specific mandatory requirements triggered by defined project characteristics, the ESF employs a proportionality principle calibrating compliance requirements to the severity and likelihood of identified risks.¹⁵

In terms of legal status, the ESF occupies an intermediate position between binding international law and purely hortatory guidance. Its operative legal force derives from its incorporation by reference into the legal agreements – the Loan Agreements, Financing Agreements, and Project Agreements – concluded between the World Bank and borrowing states pursuant to the World Bank's Articles of Agreement. From the perspective of international treaty law, these financing agreements constitute binding bilateral instruments governed by public international law and, where applicable, the domestic law of the borrowing state.

The consequence is that while a borrowing state is not formally bound by the ESF as an instrument of general international law, it is contractually obliged to comply with it as a condition of its financing arrangement. This renders the ESF's provisions, in the language employed by Chinkin's seminal taxonomy of international norms, *soft law with hard edges*: normatively persuasive across the international development finance system, and legally enforceable within the bilateral financing relationship.¹⁶

3.2 ESS1: Environmental and Social Assessment

ESS1 constitutes the cornerstone of the ESF. It requires all borrowers to assess the environmental and social risks and impacts of proposed projects, adopt differentiated risk management measures proportionate to identified risks and impacts, and maintain institutional capacity to implement those measures throughout the project lifecycle.¹⁷

The doctrinal implications of ESS1 are substantial. The assessment process mandated by ESS1 is not merely a procedural gateway but a substantive regulatory instrument: it requires borrowers to operationalise concepts – environmental baseline assessment, cumulative impact analysis, social impact assessment – that presuppose established methodological traditions, qualified professional cadres, and functioning regulatory institutions. In many Sub-Saharan African states, including Uganda, these preconditions are only partially met, and where they are met, their adequacy relative to ESS1's expectations is frequently contested by Bank supervision teams.

The requirement that risk classification adopt the Bank's four-tier taxonomy (High, Substantial, Moderate, Low) and that High risk projects be subject to full Environmental and Social Impact Assessment (ESIA) creates compliance challenges that are simultaneously technical, institutional, and financial. ESIA's meeting ESF specifications routinely cost between US\$150,000 and US\$500,000 for major infrastructure projects – a significant proportion of total project development costs in low-income country contexts.¹⁸

3.3 ESS2: Labour and Working Conditions

ESS2 establishes a comprehensive labour governance regime applicable to project workers, including direct workers, contracted workers, primary supply chain workers, and community workers. Its substantive requirements encompass non-discrimination and equal opportunity, prohibition of child and forced labour, occupational health and safety (OHS) compliance aligned with the International Labour Organization's (ILO) core conventions, and the provision of grievance mechanisms accessible to all project workers.¹⁹

ESS2's alignment with ILO core labour standards represents a normatively desirable convergence of development finance and international labour law. The ILO's Fundamental Principles and Rights at Work – encompassing freedom of association, collective bargaining, elimination of forced labour, abolition of child labour, and non-discrimination – constitute widely ratified international obligations, and their integration into project financing requirements extends their reach beyond state ratification into the domain of private project execution.

However, ESS2's practical implications in Sub-Saharan African labour markets require more nuanced analysis than the Framework provides. The informal economy accounts for approximately 85.8 per cent of employment in Sub-Saharan Africa, with the region recording the world's highest rate of informal employment.²⁰ ESS2's requirements for written employment contracts, formal OHS management systems, and institutionalised grievance mechanisms presuppose a formalised employment relationship that does not correspond to the empirical reality of labour market structure across much of the region. This creates a compliance architecture that is simultaneously over-inclusive – imposing formal employment standards on informally employed workers – and under-inclusive – failing to develop governance responses appropriate to informal labour realities.

3.4 ESS5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

ESS5 governs the physical and economic displacement of persons resulting from project-related land acquisition and use restrictions. It requires that involuntary resettlement be avoided where feasible, minimised where unavoidable, and mitigated through the preparation of Resettlement Action Plans (RAPs) that restore or improve the livelihoods and living standards of displaced persons.²¹

The legal and institutional complexity of ESS5 compliance in Sub-Saharan Africa is exceptional. Land tenure systems across the region are characterised by pluralism: statutory freehold and leasehold systems coexist with customary land tenure regimes that, in countries including Uganda, Rwanda, Tanzania, and Ethiopia, govern the majority of land occupancies. Customary land rights are frequently unregistered, communally held, and governed by local normative systems that may be unrecognised or incompletely recognised by state law.

ESS5's requirements for compensation at replacement cost, grievance mechanisms, and livelihood restoration presuppose a legibility of land rights – a capacity to identify rights holders, quantify losses, and deliver compensation – that plural tenure systems do not straightforwardly provide. In Uganda, the coexistence of Mailo land, freehold, leasehold, and customary land tenure under the Land Act 1998 and the Constitution of Uganda 1995 generates precisely the kind of contested jurisdictional terrain in which ESS5 compliance generates sustained implementation disputes.²²

3.5 ESS10: Stakeholder Engagement and Information Disclosure

ESS10 mandates that borrowers identify project stakeholders, engage them meaningfully through accessible participatory processes throughout the project cycle, and disclose relevant project information in a timely manner, using language and formats accessible to affected communities.²³

Meaningful stakeholder engagement as envisioned by ESS10 requires: (a) identification of all affected parties including vulnerable and historically marginalised groups; (b) culturally and linguistically appropriate communication; (c) institutional structures capable of recording, analysing, and responding to stakeholder inputs; and (d) grievance redress mechanisms that are accessible, impartial, and effective. Each of these prerequisites demands institutional capacity – analytical, communicative, and administrative – that is unevenly distributed across borrowing states.

In contexts of linguistic diversity – Uganda alone has more than 50 distinct indigenous languages, and the broader Sub-Saharan African region encompasses more than 2,000 – the requirement for linguistically accessible information disclosure imposes costs that are neither acknowledged nor reimbursed within the ESF's institutional architecture.²⁴

3.6 ESS7 and ESS9: Indigenous Peoples and Financial Intermediaries

ESS7, which governs projects affecting Indigenous Peoples or Sub-Saharan African Historically Underserved Traditional Local Communities, introduces the requirement of Free, Prior and Informed Consent (FPIC) in specified circumstances – including projects with significant adverse impacts on lands and resources subject to traditional ownership, customary use, or occupation. The incorporation of FPIC into the ESF's conditionality regime represents one of the Framework's most significant normative advances and reflects the influence of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). However, its operationalisation in African contexts – where the legal status of indigenous identity is contested in multiple jurisdictions – raises questions of definitional indeterminacy that the ESF does not adequately resolve.

ESS9, which addresses financial intermediaries (FIs) on-lending Bank funds to sub-borrowers, extends the ESF's reach into private sector financing chains. Its requirements impose Environmental and Social Management System (ESMS) obligations on FIs that, in many African jurisdictions, lack the technical capacity to comply without substantial institutional investment – investment that the Framework does not systematically provide for.²⁵

4. ESG Asymmetry and the Problem of Conditionality

4.1 Theorising ESG Asymmetry

The concept of ESG asymmetry, as introduced in this paper, describes a structural feature of the global ESG governance system rather than a contingent outcome of any particular policy decision. It operates simultaneously along three axes: the historical axis, the capacity axis, and the conditionality axis.

- (i) **The Historical Axis:** Developing economies are disproportionately subject to ESG compliance obligations despite having contributed minimally to the historical accumulation of greenhouse gases and the social and environmental degradation that ESG frameworks are designed to address.

Sub-Saharan Africa's cumulative contribution to global CO₂ emissions from fossil fuels and industry since 1751 is estimated at approximately 0.6 per cent, compared to the European Union's 22 per cent and the United States' 25 per cent.

(ii) The Capacity Axis: ESG standards impose compliance requirements – environmental assessment, formal labour governance, stakeholder engagement, grievance mechanisms – that presuppose institutional, technical, and financial capacities that are unevenly distributed globally and systematically less present in developing economies.

(iii) The Conditionality Axis: ESG standards are embedded in financing conditionalities that effectively make access to development capital contingent upon compliance with standards whose design reflects the regulatory traditions and political priorities of high-income creditor states rather than the developmental realities and normative frameworks of borrowing states.

ESG asymmetry is thus a multi-dimensional structural phenomenon with distributional, institutional, and governance dimensions. It is not equivalent to the claim that ESG standards are intrinsically unjust: the normative goals of environmental protection, labour rights, and social inclusion are valid and important. The asymmetry lies not in the goals but in the distribution of compliance burdens and in the absence of structural compensatory mechanisms.²⁶

4.2 Conditionality and Developmental Sovereignty

The concept of developmental sovereignty – the right of states to determine their own development paths, including the sequencing and prioritisation of economic and environmental objectives – has been advanced in the international law literature as a counterweight to the proliferating conditionality regimes of multilateral development institutions.²⁷

The tension between ESG conditionality and developmental sovereignty is acute. When the ESF requires a borrowing state to adopt environmental assessment procedures that may substantially extend project preparation timelines; when it mandates labour standards that exceed those provided under domestic legislation; or when it imposes stakeholder engagement obligations that generate political sensitivities in fragile governance contexts – it constrains the policy space within which that state may exercise its constitutional and democratic prerogatives.

This constraint is not merely theoretical. The World Bank's own Implementation Status Reports for major infrastructure projects in Sub-Saharan Africa – including the Uganda Transport Sector Development Project and the Ethiopia-Sudan Transmission System Interconnection Project – document sustained implementation challenges attributable to ESF compliance requirements, including delayed disbursements, project restructuring, and the reallocation of scarce project management resources from infrastructure delivery to compliance documentation.²⁸

4.3 The Paradox of Sustainability Conditionality

There is a profound paradox at the heart of ESG conditionality as currently structured: the same states that most urgently require development finance to address infrastructure deficits, poverty, and the consequences of climate change impacts they did not cause are subject to the compliance burdens most likely to delay or diminish

that finance's effectiveness. ESG conditionality thus risks operating as a form of structural adjustment in reverse: rather than conditioning finance on macroeconomic policy reforms (as in the era of Structural Adjustment Programmes), it conditions finance on regulatory governance reforms whose implementation costs are borne by the very economies the finance is designed to benefit.

This is not an argument against ESG standards. It is, rather, an argument for ensuring that the mechanisms through which ESG standards are implemented – conditionality structures, compliance timelines, capacity-building provisions, and cost-sharing arrangements – are designed with adequate sensitivity to the distributional implications of imposing Northern regulatory governance models on Southern development contexts.²⁹

5. Case Study: Uganda and Sub-Saharan Africa

5.1 Uganda's Development Context and ESF Engagement

Uganda presents a particularly instructive case study for ESG asymmetry analysis. A lower-middle income country with a GDP per capita of approximately US\$912 (2023), Uganda is one of the World Bank's most active borrowers in Sub-Saharan Africa, with an active portfolio exceeding US\$5.5 billion across more than 30 projects spanning infrastructure, health, education, agriculture, and energy sectors.³⁰

Uganda's legal system exemplifies the plural institutional landscape within which ESG standards must operate. The Constitution of Uganda 1995 establishes a rights-based constitutional order with environmental rights provisions in Article 39 and property rights guarantees in Article 26. The National Environment Act 2019 provides the primary statutory framework for environmental governance, incorporating requirements for Environmental Impact Assessment (EIA) that partially overlap with, but do not fully replicate, ESS1's assessment requirements. The Uganda Wildlife Act, the Water Act, and the Petroleum (Exploration, Development and Production) Act add further regulatory layers, creating a complex and sometimes internally inconsistent statutory landscape.

Against this backdrop, ESF compliance requirements create what might be termed *regulatory layering*: project implementers must simultaneously satisfy domestic regulatory requirements and ESF requirements that may differ in their scope, methodology, documentation standards, and approval processes. This layering is not merely additive but multiplicative in its transaction costs: the preparation, submission, and Bank review of ESF documentation occurs on timelines and according to procedural requirements that are not co-ordinated with domestic approval processes, creating parallel bureaucratic pathways that strain the administrative capacity of implementing agencies.³¹

5.2 Infrastructure Financing and ESG Compliance

Uganda's infrastructure financing provides a concrete illustration of ESG asymmetry in practice. The Uganda EAST AFRICAN CRUDE OIL PIPELINE (EACOP) project – though financed by a commercial consortium rather than the World Bank – has attracted extensive application of ESG principles and provides useful comparative reference for understanding the compliance challenges characteristic of major infrastructure development in the country.

Within the World Bank portfolio, the Uganda Transport Sector Development Project

and the Uganda Electricity Transmission Expansion and Rehabilitation Project document implementation challenges that reflect ESF compliance pressures. These include: protracted preparation of Resettlement Action Plans due to land tenure complexity; delays in Environmental and Social Management Plans attributable to capacity constraints within implementing agencies; and difficulties in meeting ESS10 stakeholder engagement requirements in communities characterised by linguistic diversity, limited literacy, and governance fragility.³²

5.3 Institutional Capacity: The Missing Variable

Perhaps the most significant structural challenge to ESF compliance in Uganda – and across Sub-Saharan Africa more broadly – is institutional capacity. Environmental and social governance in the World Bank's sense presupposes: environmental assessment practitioners with post-graduate technical training; social development specialists capable of conducting social impact assessments meeting international standards; legal officers versed in the intersection of domestic property law, international human rights standards, and Bank policy requirements; and monitoring and evaluation professionals capable of tracking and reporting on a suite of environmental and social indicators throughout project implementation.

The deficit in this professional cadre across Sub-Saharan African implementing agencies is well documented. The World Bank's own Institutional Capacity Assessments for the Uganda portfolio have consistently identified Environmental and Social Unit staffing, training, and systems as high-risk areas requiring sustained Bank support. Yet the ESF's capacity-building provisions – contained in ESS1's requirements for Borrower capacity assessment and Environmental and Social Commitment Plan (ESCP) provisions – are project-specific and time-bound, rather than systemic and sustained.³³

5.4 Sub-Saharan Africa: Regional Dimensions

The ESG asymmetry experienced by Uganda is replicated, with country-specific variations, across Sub-Saharan Africa. The region presents a remarkably diverse ESF compliance landscape: middle-income economies such as South Africa and Nigeria possess considerably more institutional capacity than low-income fragile states such as South Sudan, the Central African Republic, or Mali. The ESF's broadly uniform application across this spectrum – with proportionality adjustments calibrated to project risk rather than national capacity – means that the gap between compliance obligations and compliance capacity is most acute in precisely the economies that most urgently need development finance.

This observation points to a fundamental design limitation of the ESF: its risk-based proportionality principle operates at the project level but not the country level. A Low-risk project in a fragile state may attract reduced ESF compliance requirements relative to a High-risk project in the same state, but the absolute level of compliance requirements may still exceed what the state's institutions can deliver without substantial external support.³⁴

6. Towards a Recalibrated ESG Framework

The doctrinal analysis and case study evidence presented in this paper converge upon a compelling conclusion: the ESF, in its current architecture, embodies ESG asymmetry in ways that undermine both its normative goals and its operational

effectiveness. A recalibrated framework is required – one that preserves the ESF's progressive normative commitments while restructuring the mechanisms through which those commitments are operationalised. This paper proposes a four-principle recalibration grounded in legal theory, development economics, and the distributional imperatives of climate justice.

6.1 Principle 1: Context-Sensitive Application

The first principle of recalibration is context-sensitivity: the recognition that ESG standards must be operationalised through mechanisms that reflect national development levels, institutional realities, and legal system characteristics rather than through uniform templates derived from high-income regulatory traditions.

Context-sensitivity does not mean the abandonment of substantive standards. The normative goals of environmental protection, labour rights, and social inclusion admit of no compromise. What context-sensitivity requires is that the methodologies, documentation requirements, timelines, and institutional arrangements through which those goals are pursued be adapted to the contexts in which they must be implemented. This is consistent with the ESF's existing proportionality principle – which the paper argues should be extended from project-level risk calibration to country-level capacity and legal system calibration.

Concretely, context-sensitive application would require the Bank to develop *Country Environmental and Social Frameworks (CESFs)*: country-specific translations of ESF requirements into forms consistent with national legal systems, regulatory traditions, and institutional capacities. CESFs would be developed in genuine partnership with borrowing governments, would be subject to periodic review, and would establish clear pathways for progressive strengthening of environmental and social governance over time.³⁵

6.2 Principle 2: Capacity-Based Compliance and Systemic Investment

The second principle is capacity-based compliance: the alignment of compliance obligations with demonstrated institutional capabilities, combined with systemic investment in building the capabilities required for higher-level compliance over time. The ESF's current approach to capacity-building is project-specific and project-financed, meaning that capacity investments are made at the project level, on project timelines, and out of project budgets – without generating the systemic, transferable, and sustained institutional capacity that effective ESG governance requires.

A capacity-based compliance approach would require the World Bank to invest in systemic country-level ESG governance capacity as a prerequisite for, rather than an accompaniment to, demanding ESF compliance. This would involve dedicated capacity development financing – distinct from project lending – directed at building environmental impact assessment systems, labour inspection infrastructure, land administration institutions, and stakeholder engagement frameworks at the national level. The World Bank's existing Reimbursable Advisory Services and technical assistance facilities provide partial precedent for such an approach, but their scale and systematic deployment fall short of what ESG asymmetry demands.

6.3 Principle 3: An ESG Equity Index

The third principle is the development of an ESG Equity Index (EEI): a composite metric incorporating measures of (a) historical greenhouse gas emissions per capita and cumulatively; (b) current economic development level relative to global averages;

(c) existing institutional capacity for environmental and social governance; and (d) vulnerability to climate change impacts. The EEI would provide the quantitative foundation for calibrating ESG compliance obligations and capacity-building investments across borrowing states.

The EEI concept draws methodological inspiration from the Human Development Index, the Climate Vulnerability Monitor, and the World Bank's own Country Policy and Institutional Assessment (CPIA). Its purpose is not to exempt low-scoring states from ESG obligations but to provide an objective, transparent, and analytically grounded basis for differentiated conditionality – ensuring that the most burdensome compliance requirements are matched with the most substantial capacity-building investments, and that historical responsibility for environmental degradation is appropriately reflected in the distribution of transition burdens.

6.4 Principle 4: Development-First Sequencing

The fourth principle is development-first sequencing: the recognition that the timing and phasing of ESG compliance obligations must be structured to avoid constraining essential economic growth and basic infrastructure development, particularly in low-income and fragile states. This principle does not imply that ESG standards should be deferred indefinitely: it implies that their application should be sequenced so that the most demanding requirements are introduced progressively as institutional capacity and economic conditions allow.

Development-first sequencing finds normative support in the principle of common but differentiated responsibilities – a principle that is well established in international environmental law but has not been systematically integrated into the design of multilateral development finance conditionality. It also finds empirical support in the historical record of high-income countries' own development trajectories: the United States enacted its National Environmental Policy Act in 1970, at a stage of economic development far beyond that of most current World Bank borrowers; the European Union's comprehensive environmental governance architecture was constructed over several decades of sustained economic growth.³⁶

To require developing countries to simultaneously pursue economic development and full ESF compliance – without the institutional inheritance of decades of environmental governance investment – is to impose a standard that no high-income country met at a comparable stage of development. Equity demands acknowledgement of this historical asymmetry in the design of contemporary ESG conditionality.

6.5 Institutional Implications of Recalibration

The recalibrated ESG framework proposed in this paper has significant institutional implications for the World Bank. It would require: revisions to the ESF's legal architecture to embed country-level differentiation as an operational principle alongside project-level proportionality; development of new financial instruments for systemic capacity investment; creation of Country Environmental and Social Frameworks through structured co-production with borrowing governments; adoption of the ESG Equity Index as a decision-support tool for conditionality design; and restructuring of Bank supervision arrangements to prioritise country capacity development over project compliance monitoring.

These reforms are ambitious but not unprecedented. The World Bank has

demonstrated institutional capacity for fundamental governance transformation – the ESF's own development from the Safeguard Policies, and the IDA18 and IDA19 replenishment processes' integration of climate and fragility considerations into resource allocation frameworks, demonstrate that the institution can evolve in directions demanded by equity and effectiveness. What is required is the political will among the Bank's shareholders – particularly its high-income shareholders – to accept that genuine equity in global development finance demands structural asymmetry in their own favour be dismantled.³⁷

7. Conclusion

The Environmental and Social Framework of the World Bank represents a genuine and significant advance in the integration of environmental and social governance into multilateral development finance. Its adoption of a risk-based approach, its incorporation of progressive norms on Indigenous Peoples' rights, labour standards, and stakeholder engagement, and its articulation of an explicit commitment to the inclusion of vulnerable and marginalised communities reflect real normative progress.

Yet the analysis presented in this paper demonstrates that the ESF, in its current architecture, embodies structural ESG asymmetry: it distributes compliance burdens in a manner that is disproportionate to historical responsibility, insensitive to capacity differentials, and inadequately attentive to the developmental sovereignty of borrowing states. This asymmetry undermines both the Framework's normative legitimacy and its operational effectiveness, particularly in Sub-Saharan Africa.

The concept of ESG asymmetry, introduced and theorised in this paper, provides a generative analytical framework for understanding this structural imbalance. It bridges the insights of global administrative law theory – which illuminates the governance dimensions of ESG conditionality – and climate justice theory – which demands distributional equity in the assignment of environmental transition burdens. Together, these frameworks support the conclusion that ESG governance in development finance requires fundamental recalibration.

The four-principle recalibration proposed in this paper – context-sensitive application, capacity-based compliance, an ESG Equity Index, and development-first sequencing – offers a pathway towards a more just and effective ESG architecture. It is grounded in legal theory, development economics, and the empirical realities of Sub-Saharan African development contexts. It preserves the normative goals of sustainability and inclusion while restructuring the mechanisms through which those goals are pursued to ensure that the architecture of ESG governance does not itself become an instrument of structural inequality.

For the World Bank, the adoption of these principles would require institutional courage: the courage to acknowledge that the current framework imposes asymmetric burdens, the courage to engage borrowing governments as genuine co-producers of country-level ESG governance frameworks, and the courage to mobilise shareholder support for the systemic capacity investments that equitable ESG governance demands. The stakes are considerable: a development finance architecture that is perceived as inequitable by its primary beneficiaries is not merely normatively deficient but strategically self-defeating. The World Bank's legitimacy as the central institution of global development finance depends, ultimately, on its capacity to demonstrate that its governance frameworks serve the interests of the world's most vulnerable populations rather than the regulatory preferences of its wealthiest shareholders.

The global development finance architecture stands at a crossroads. The convergence of climate urgency, institutional reform debates, and renewed calls for a New Bretton Woods moment – articulated across the G20, the African Union, and the United Nations – creates a unique window for the kind of fundamental recalibration this paper advocates. ESG governance, properly recalibrated, can be a powerful instrument of just and sustainable development. The work of recalibration begins with the honest acknowledgement that the current architecture is not yet just enough.

FOOTNOTES

- 1 World Bank, Environmental and Social Framework (World Bank 2018). The ESF entered into force on 1 October 2018, replacing the World Bank's suite of Safeguard Policies that had been developed since the 1980s.
- 2 United Nations, Transforming Our World: The 2030 Agenda for Sustainable Development, UN Doc A/RES/70/1 (25 September 2015); Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS 3156.
- 3 World Bank, Environmental and Social Framework: Setting Environmental and Social Standards for Investment Project Financing (World Bank 2018) 1–4; see also Natalie Bridgeman and David Hunter, 'Narrowing the Accountability Gap: Toward a New Foreign Investor Accountability Mechanism' (2008) 20 *Georgetown International Environmental Law Review* 187.
- 4 African Development Bank, African Economic Outlook 2023: Mobilizing Private Finance for Africa's Development (AfDB 2023) 22; World Resources Institute, 'Historical Emissions by Region' (Global Carbon Project 2023) <<https://www.globalcarbonproject.org>>.
- 5 United Nations Global Compact, Who Cares Wins: Connecting Financial Markets to a Changing World (UN Global Compact 2004).
- 6 Maria Banda, 'Sustainable Finance and the World Bank Group: ESG Considerations in Development Financing' (2020) 32 *Georgetown Environmental Law Review* 401, 407–410.
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Appendix: Summary of ESS Standards and Sub-Saharan African Compliance Challenges

ESS Standard	Core Obligation	Key Sub-Saharan African Challenge
ESS1	Environmental and social risk assessment	Technical capacity, cost of ESIA, regulatory layering
ESS2	Labour and working conditions	Informal labour markets, absence of formal employment structures
ESS3	Resource efficiency and pollution prevention	Baseline data deficits, monitoring infrastructure
ESS4	Community health and safety	Healthcare infrastructure constraints, emergency response systems
ESS5	Land acquisition and involuntary resettlement	Plural land tenure, customary rights legibility
ESS6	Biodiversity conservation and living natural resources	Ecosystem data scarcity, enforcement capacity
ESS7	Indigenous Peoples and traditional communities	FPIC operationalisation, definitional indeterminacy
ESS8	Cultural heritage	Documentation of intangible heritage, institutional frameworks
ESS9	Financial intermediaries	ESMS capacity in domestic financial institutions
ESS10	Stakeholder engagement and information disclosure	Linguistic diversity, literacy, community accessibility

Source: Authors' compilation based on World Bank ESF (2018) and case study analysis.