

**India's written response on World Bank's consultation on
"Update and Review of the World Bank's Safeguard Policies & Proposed
Environmental and Social Framework"**

1. On the overall Framework

The use and strengthening of borrower's environment and social (ES) framework in the assessment, development and implementation of projects supported by the Bank is a very positive development. But the framework needs to have more detailed provisions regarding process of assessment of the borrower's ESS framework, and the manner in which disagreements over the assessment between the Bank and the borrower will be handled. It is noted that not all ESS are front-loaded and focus of the ES policy is on implementation and outcomes. While this approach is a welcome step, there is an apprehension of an intrusive approach by the Bank in monitoring and assessments. These should be left to a systems approach- of country systems doing the monitoring and assessments rather than the Bank.

Following broad principles need to be always kept in mind while formulating Environmental and Social Safeguards Framework:-

- a) The first and the foremost is that no outside agency can claim to be having a greater stake in the social and environmental well-being of a country than the Government and institutions of the country itself.
- b) The policies of the Bank must not only advocate adoption of country systems, but also demonstrate that country systems are indeed being adopted in reality. The engagement of the World Bank should be in the spirit of partnership, and should be non-intrusive.
- c) The Policy framework should not violate the principles of keeping the World Bank completely apolitical. The scope should not be expanded to cover instruments that are presently not covered by these policies.
- d) The asymmetry of MDB's role in influencing domestic policies should be recognised, especially on issues like climate change and environmental sustainability, as by the very nature of the lending process, this gets applied to only the borrowing countries, whereas on a larger canvas, the issues of climate change and environmental sustainability are as much an issue in other countries

as well. This inherent asymmetry casts a larger responsibility on the MDB's to be sensitive to the stage of development and country processes and systems.

- e) We should always keep in mind the **Primacy of the WBG Goals viz. (a) To remove extreme poverty and (b) To promote shared prosperity**. Our strategy and our policies need to be subordinate to these goals and be flexible to be fit for purpose based on country circumstances and amenable to country systems. The WBG Strategy has promised to "introduce a simplified tool focused on key risks to developmental objectives that are mapped to a consistent set of risk categories." We would therefore like to understand/test the new framework against the touchstone of simplicity before it is put in place for implementation.
- f) Some of the safeguards mentioned in the document are at variance with the domestic Laws. This would create a piquant situation as non application of domestic laws can result in litigation as some of the rights are provided by legislation and are justiciable. Some examples of this kind are given in paras that follow.
- g) The proposed clauses like free, prior and informed consent (replacing consultation process) can lead to legal complications, delays, increase in costs and delay in project execution. Management has not been able to explain how the new framework is simple, less onerous and burdensome on the borrowers, compared to the present safeguards policy.

2. Specific Comments

Application of ESS Framework to Bank Projects

It is our understanding that the proposed World Bank Environmental & Social Policy shall promote the use of Borrowers Environmental and Social Framework in the assessment, development and implementation of projects proposed for bank support. Wherever there is a difference between the country's approach and the bank's approach and if the said issues are important for the project, the bank will focus on assisting the borrower to address the said risks. However, where the bank framework and the country's system address the risks differently, the bank shall accept the country's system.

Definition of Vulnerable Groups

We endorse the non-discrimination principle. However, the definition of vulnerable group does not have to be defined the way it has been done in the document. It is likely that the new E &S standards will be pitched against some of the laws of member countries. It is, therefore, better to emphasize the non-discrimination principle and focus on implementation.

Resource Efficiency and Pollution Prevention

The host country is in the best and most appropriate position with regard to pollution prevention, setting up norms and standards for effective curbing of air, water and noise Pollution. India has its own mandated laws in this regard and a well-functioning implementation and monitoring machinery. For example, for projects above a certain size, they have to go through Environmental Impact Assessment which includes studies of base line data and the damage to environment including land, water, air, habitation, livelihoods as a result of project implementation; steps to mitigate the same are also delineated in the assessment. The same are then later implemented and monitored. It would be useful for the Bank to study such country systems in respect of all areas and adopt them in case they are generally in line with the Bank standards.

It is mentioned that all projects with GHG emission implication of 25,000 tons and above will be monitored for the GHG emissions. We would like to know if this threshold has been arrived at based on some scientific inputs. Given the nature of the projects currently supported by Investment Project Funding, it is not clear as to what proportion of projects are likely to need GHG emission monitoring. It is also not clear as to the period for which such project will be monitored. Many of the projects will involve carbon emission for a long period of time (for example road projects). Will the Bank continue to monitor carbon emission of the Bank financed projects throughout the life cycle of the asset? That would be decades! What kind of mechanism would be put in place for such monitoring and what are the cost implications? Moreover, the thresholds and other provisions should be consistent with the UNFCCC framework. Similarly in the case of water it is mentioned in the Bank's document that for projects requiring water more than 5000 cubic meter per day would be subject to certain requirements. It is not clear as to how this figure of 5000 has been arrived at.

Para 20 of the World Bank Environmental & Social Policy states that project will be classified in four categories i.e. High Risk, Substantial Risk, Moderate Risk or Low Risk. The same shall be done taking into account factors such as type, location, sensitivity and scale of the project; the nature and magnitude of the Potential Environment and Social Risk and Impacts etc. It is not clear as to how exactly the bank would determine the classification; whether the borrower would also be taken into confidence for the same. However, if there is disagreement between borrower and the bank with regard to classification, how the same is proposed to be resolved.

Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

Recently the Country has enacted a new Law called Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It contains provisions relating to acquisition, purposes for which acquisition is permitted, land compensation, rehabilitation & resettlement etc. It is compulsory for any acquisitions to comply with these provisions or else the adjudication process can nullify such acquisitions. The Bank paper has suggested its own provisions that are at variance and can result in implementation issues in projects. For example it is mentioned in the paper that compensation may be paid in instalments where lump sum cash payments would likely undermine social or resettlement objectives. However, the Indian law clearly lays down the compensation, manner of its calculation and periodic payments and cannot be deviated.

Similarly, it has been stated elsewhere that where payments cannot be made for reasons such as litigation etc., an escrow account should be opened and amount deposited therein. However, this procedure is at variance with the laid down procedure in the Act/Rules. Though the procedure laid down in the domestic law also ensures protection of the landowner whose land has been acquired but the process mentioned for the same is different. It is our understanding that in these cases as also similarly placed cases the Bank would study the Country systems and rely upon them if they are generally complying with the spirit of the provisions of guidelines. The effort should be to synchronise the World Bank Framework with the country systems with regard to compensation and Resettlement and all such similar issues.

Biodiversity Conservation and Sustainable Management of Living Natural Resources and Primary Suppliers

Extension of ESS to Primary Suppliers beyond the project boundaries is not desirable. Under ESS 7, application of the ESS has been proposed to be extended beyond the project boundaries to outside regions, from where food, fibre and other primary products are sourced by the borrowers. Even borrower's primary suppliers are needed to be evaluated for ES risks and impact of significant conversion of natural and/ or critical habitats, systems and verification practices. If it is found that the primary products are produced through diversion of natural or critical habitat, then the products will have to be procured from other sources. **Under the procurement review we have expressed our views on sustainable procurement. We do not support application of ESS beyond project boundaries and the use of factors other than efficiency, economy, effectiveness, transparency and fairness.** Procurement policies should be simple and straightforward and not be complicated with issues of sustainable development. Also, efforts should be to broaden procurement destinations and not to restrict the same.

Indigenous Peoples

Free Prior and Informed Consent: ESS7 deals with standards relating to indigenous people. The standard applies when Indigenous Peoples are present in or have a collective attachment to the project area, regardless of potential risks or impacts. It sets out criteria for identifying Indigenous Peoples, and clarifies that pastoralists can be recognized as Indigenous Peoples. It requires Borrowers to take appropriate measures to protect Indigenous Peoples in voluntary isolation.

ESS7 prohibits forced evictions of Indigenous Peoples. This standard mandates that in three specific circumstances **free, informed and prior consent** is needed before proceeding with a project affecting indigenous people.

We are not comfortable with this provision. Domestic laws of acquisition and protection of such communities already provide for adequate safeguards including consent before acquisition can take place in certain cases. The Bank thus needs to rely on such domestic laws/guidelines where the domestic laws rules etc. take care of such issues.

Application to financial intermediaries:

On this issue, we should learn from experiences such as loans to IIFCL in India, which never took off due to the reason that the Bank's ESS and procurement policies just could not be applied. It should be realised that such loans through financial intermediaries enter much later in the project development and implementation cycle. Also, Bank in several cases is only a small co-financier. These realities make application of the ESS framework to financial intermediaries a non-starter in the context of Bank financing. We need to explore a completely different framework for cases involving financial intermediaries.

Grievance Redressal Service

Before approaching the World Bank directly, any aggrieved person should first approach the Project Authority through "grievance mechanism" set up at Project level. If not satisfied with the remedy provided at the Project and the District Govt. level as provided in the EMP of the Project (which is duly discussed/ vetted by the State Pollution Control Board while conducting the public hearings); then he can approach the "World Bank's Corporate Grievance Redress System".

However, it needs to be ensured that bank (audit) restricts itself to non-compliance of its policies and procedures by the Banks staff - that it is not an enquiry or audit in the conduct of Country's System, officials or any matters of the implementing agency. If someone has any complaint against the Country's System/officials/implementing agency, he needs to follow the domestic laws/guidelines of grievances redressal mechanism.
