

Summary of Phase 3 Consultations and Bank Management Responses

1. Overview

At the meeting on July 1, 2015, the Committee on Development Effectiveness (CODE) of the World Bank endorsed the third round of consultations on the second draft Environmental and Social Framework (ESF). An indicative list of 52 issues was developed following the CODE meeting, which sets out specific issues to be included in the forthcoming consultation meetings, especially those to be conducted with governments. The consultations focused on gathering feedback from borrowing countries and other stakeholders on these and other issues as well as on the resources and implementation of the ESF.

The third consultation phase was conducted from August 4, 2015, to March 15, 2016. Consultations included 72 meetings in 31 countries (including 28 Borrower countries) with close to 3,000 stakeholders from 93 countries. The Bank also hosted six expert focus groups on non-discrimination, Indigenous Peoples, labor and working conditions, impact assessment, financial intermediaries, and religious concerns and considerations, and met with representatives from the International Labor Organization (ILO) and the United Nations Office of the High Commissioner for Human Rights (UNOHCHR). Summaries from all consultation meetings as well as written submissions are published on the World Bank's dedicated consultation website¹.

2. Summary of Key Comments and Bank Management Responses

The extensive feedback which Management received from stakeholders was carefully reviewed and analyzed by Bank staff across the World Bank Group. **Below is a list of key issues raised by stakeholders during Phase 3 consultations. This is followed by a matrix with a detailed summary of the feedback from stakeholders and Bank Management responses, categorized by these key issues.** While this summary does not fully capture the richness of the discussions, it reflects the key aspirations, concerns and recommendations of participants. The feedback demonstrated the varied and sometimes conflicting views that the World Bank has taken into consideration. As the World Bank moves into the implementation phase, a number of guidance documents will be prepared and **the comments received from stakeholders will continue to be reviewed to take further suggestions into account.** For ease of reference, the comments in the following matrix have been summarized. The commenters' identities are not attributed in the matrix. The verbatim original comments are found on the World Bank consultation website.

¹ <http://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies>

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I. Issues on the Issues List

➤ **Human Rights**

1. Approach to human rights in the Environmental and Social Framework (ESF)

➤ **Non-Discrimination and Vulnerable Groups**

2. Explicit listing of specific vulnerable groups by type/name (age, gender, ethnicity, religion, physical, mental or other disability, social, civic or health status, sexual orientation, gender identity, economic disadvantages or indigenous status, and/or dependence on unique natural resources)
3. Specific aspects of the non-discrimination principle in complex social and political contexts, including where recognition of certain groups is not in accordance with national law

➤ **Use of Borrower's Environmental and Social Framework**

4. Role of Borrower frameworks in the management and assessment of environmental and social (E&S) risks and impacts where these will allow projects to achieve objectives materially consistent with Environmental and Social Standards (ESSs)
5. Approach for making decision on the use of Borrower frameworks, including the methodology for assessing where frameworks will allow projects to achieve objectives materially consistent with the ESSs, and the exercise of Bank discretion
6. Role of Borrower frameworks in high and substantial risk projects

➤ **Co-financing/Common approach**

7. Arrangements on E&S standards in co-financing situations where the co-financier's standards are different from those of the Bank

➤ **Adaptive Risk Management**

8. Approach to monitoring E&S compliance and changes to the project during implementation

➤ **Risk Classification**

9. Approach to determining and reviewing the risk level of a project

➤ **Assessment and Management of Environmental and Social Risks and Impacts**

10. Assessment and nature of cumulative and indirect impacts to be taken into account
11. Treatment of cumulative and indirect impacts when identified in the assessment of the project
12. Establishing project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects
13. Circumstances under which the Bank will determine whether the Borrower will be required to retain independent third party specialists

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➤ **Environmental and Social Commitment Plan (ESCP)**

14. Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement

➤ **Labor and Working Conditions**

15. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries)
16. Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers
17. Constraints in making grievance mechanisms available to all project workers
18. Referencing national law in the objective of supporting freedom of association and collective bargaining
19. Operationalization of an alternative mechanism relating to freedom of association and collective bargaining where national law does not recognize such rights
20. Issues in operationalizing the Occupational Health and Safety (OHS) provisions/standards

➤ **Climate Change and GHG Emissions**

21. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically United Nations Framework Convention on Climate Change (UNFCCC)
22. Proposed approaches to measuring and monitoring greenhouse gas (GHG) emissions in Bank projects and implications thereof, in line with the proposed standard, including determining scope, threshold, duration, frequency and economic and financial feasibility of such estimation and monitoring
23. Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard

➤ **Land Acquisition and Involuntary Resettlement**

24. Treatment and rights of informal occupants and approach to forced evictions in situations unrelated to land acquisitions
25. Interpretation of the concept of resettlement as a “development opportunity” in different project circumstances

➤ **Biodiversity**

26. Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity
27. Role of national law with regard to protecting and conserving natural and critical habitats
28. Criteria for biodiversity offsets, including consideration of project benefits
29. Definition and application of net gains for biodiversity

➤ **Indigenous Peoples**

30. Implementation of the Indigenous Peoples standard in complex political and cultural contexts

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31. Implementation of ESS7 in countries where the constitution does not acknowledge Indigenous Peoples or only recognizes certain groups as indigenous
 32. Possible approaches to reflect alternative terminologies used in different countries to describe Indigenous Peoples
 33. Circumstances (e.g. criteria and timing) in which a waiver may be considered and the information to be provided to the Board to inform its decision
 34. Criteria for establishing and implementation of Free, Prior and Informed Consent (FPIC)
 35. Comparison of proposed FPIC with existing requirements on consultation
 36. Application of FPIC to impacts on Indigenous Peoples' cultural heritage
- **Cultural Heritage**
37. Treatment of intangible cultural heritage
 38. Application of intangible cultural heritage when the project intends to commercialize such heritage
 39. Application of cultural heritage requirements when cultural heritage has not been legally protected or previously identified or disturbed
- **Financial Intermediaries (FI)**
40. Application of standard to FI subprojects and resource implications depending on risk
 41. Harmonization of approach with IFC and Equator Banks
- **Stakeholder Engagement**
42. Definition and identification of project stakeholders and nature of engagement
 43. Role of borrowing countries or implementing agencies in identifying project stakeholders
- **Environmental, Health and Safety Guidelines (EHSGs) and Good International Industry Practice (GIIP)**
44. Application of the EHSGs and GIIP, especially when different to national law or where the Borrower has technical or financial constraints and/or in view of project specific circumstances
- **Feasibility and Resources For Implementation**
45. Implementation and resource implications for Borrowers, taking into account factors such as the expanded scope of the proposed ESF (e.g., labor standard), different Borrower capacities and adaptive management approach
 46. Mitigation of additional burden and cost and options for improving implementation efficiency while maintaining effectiveness
- **Client Capacity Building and Implementation Support**
47. Funding for client capacity building
 48. Approaches and areas of focus
 49. Approach to implementing the ESF in situations with capacity constraints, e.g., Fragile and Conflict-affected Situations (FCS), small states and emergency situations

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- **Disclosure**
 - 50. Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)
- **Implementation of the ESF**
 - 51. Bank internal capacity building, resourcing, and behavioral change in order to successfully implement the ESF
 - 52. Ways of reaching mutual understanding between Borrower and Bank on issues of difficult interpretation

II. Other Key Issues Raised During Phase 3 Consultations

- **Cross-Cutting Issues**
 - 53. Objectives of each ESS
 - 54. Disability
- **ESS1**
 - 55. Livelihood restoration
 - 56. “Technically and financially feasible”
- **ESS2**
 - 57. No retaliation relating to worker’s organization
 - 58. Light works done by children for their family activities
- **ESS3**
 - 59. Air pollution and mitigation options
- **ESS4**
 - 60. Community health and safety and the vulnerable
- **ESS5**
 - 61. “De facto” land taking
 - 62. Escrow arrangements
- **ESS6**
 - 63. Animal welfare
- **ESS7**

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- 64. Identification of IPs
- 65. Conversion of customary land usage right

➤ **ESS8**

- 66. Transfer of natural features with cultural significance

➤ **ESS9**

- 67. Stakeholder engagement and disclosure of information by FI

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I. Issues on the Issues List

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Human Rights		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>1. Approach to human rights in the ESF</p>	<ul style="list-style-type: none"> • World Bank Articles of Agreement prohibit the Bank to get into political issues. Therefore, the language related to human right issue needs to be in compliance with the Articles of Agreement of WB. • Our country supports a general statement on human rights in Vision statement in the ES Framework. The Bank should not be used as an instrument for human rights dialogue, otherwise it would bring Bank’s work to a political level. The Bank should stick to its non-political stand and not interfere with domestic affairs of borrowing countries. • We recommend revising to Vision Statement to clarify that human rights are not aspirational and that they are a relevant reference point for assessing Bank activities <i>via</i> the ESF. The use of the term “aspirations” in the latest draft can be read as treating human rights as “optional” objectives, which are “marginal” to the Bank’s activities. • We recommend that the Bank adds language into its current definition of “social risks and impacts” in ESS1 that explicitly references “human rights”. • The Bank should require the use of Human Rights Impact Assessments, especially those that are community based, so that basic rights – such as the right to food or the right to adequate housing are not violated. • The draft ESF fails to reference the international treaty obligations of Borrowers and does not recognize the World Bank’s procedural duty to ensure, as far as possible, that the projects that it supports are not associated with potential human rights violations. The human rights provision in the Vision statement (para 3) is confusing and potentially damaging in that it seems to imply that international human rights law, as applicable to Bank-supported projects, is merely aspirational rather than the subject of binding legal obligations for Borrowers. 	<p>Human rights issues were raised mostly by donor governments and CSOs who supported incorporating a strong human rights focus in the ESF. Some Borrowers challenged the proposed scope of human rights in the ESF noting that the ESF should not be used as vehicle to promote values that might contravene national values or even laws. Consistency with the Bank’s Articles of Agreement was also raised as a major concern. Given the divergent views on human rights coverage in the ESF among shareholders and stakeholders, Management suggests that the current approach, addressing human rights in the Vision statement, be maintained. A revised draft of the language in the Vision statement is in para 3 of the Vision.</p>

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Non-Discrimination and Vulnerable Groups		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>2. Explicit listing of specific vulnerable groups by type/name (age, gender, ethnicity, religion, physical, mental or other disability, social, civic or health status, sexual orientation, gender identity, economic disadvantages or indigenous status, and/or dependence on unique natural resources)</p>	<ul style="list-style-type: none"> • A very elaborate definition of the disadvantaged and vulnerable has been provided in the ESF. This should be restricted to as accepted under the national law. We agree with the general compliance to the principle of non-discrimination. However, we do not recognize the need for specific listing of such groups. • We believe it is of great importance that the definition in its entirety be retained (and consistently referenced throughout the Safeguards). The nature of the societal discrimination and vulnerabilities experienced by persons with disabilities (and other groups captured by the current definition), necessarily means that they are at risk of being forgotten, ignored, or otherwise marginalized in various phases of the project life cycle. The definition serves a critical purpose of highlighting these groups, and thus facilitating their engagement in the process so that they can benefit from projects on an equal basis with others, and avoid unnecessary and disproportionate burdens that may otherwise occur. • On the listing of vulnerable groups, participants requested that it should be clear that the list is open and not restrictive and that the Bank should add “other social groups” to the list. Also, participants asked that the Bank add other characteristics such as culture, language, belief, descent, politics, migration, and different opinions. • We specifically recommend that caste-affected groups are included in the definition of disadvantaged or vulnerable groups (on page 10) under the World Bank Environmental and Social Policy. This, so that risks that project impacts fall disproportionately on caste-affected groups are taken into account. • The definition of vulnerable groups should be in the main text rather than a footnote. 	<p>The majority of stakeholders continue to broadly support the general principles of non-discrimination. However, many borrowing countries in which consultations were held expressed significant concerns with the explicit listing of examples of disadvantaged or vulnerable groups in the ESF. Management therefore proposes to include in the ESF an affirmative reference to the principles of non-discrimination and inclusion. A general, non-exclusive list of examples of disadvantaged or vulnerable groups will be included in a Directive for Bank staff, to be issued by the President of the World Bank. Bank Directives represent mandatory instructions to Bank staff and their implementation is subject to review by the Inspection Panel. Staff Guidance will also be provided on how to identify and address disadvantaged or vulnerable groups.</p>

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Non-Discrimination and Vulnerable Groups		
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<p>3. Specific aspects of the non-discrimination principle in complex social and political contexts, including where recognition of certain groups is not in accordance with national law</p>	<ul style="list-style-type: none"> • Our government has no problem with the principle of non-discrimination and much is enshrined in our laws and practice but the approach to the LGBTI issue is against our profound religious and cultural values. People find it offensive and this would never be tolerated in our country. • There are groups mentioned in the ESF that many find controversial, which the laws of many Borrower countries do not recognize as legal, such as SOGIE or religious groups (cult). Also, since information on mental and physical disability or health status should be treated as private and confidential, it is unclear how the Borrower and Bank staff could implement the requirement of non-discrimination in this regard. • With respect to the definition of “disadvantaged or vulnerable” groups, we are strong proponents of retaining the definition, including the different categories listed in the footnotes of ESP and ESS1. We support retention of the references to “gender identity” and “sexual orientation.” • Without a mandatory safeguard for gender and SOGIE, it is unclear how the Bank will protect these communities from harm, or indeed allow them to share in the benefits of a development intervention. The requirement for a mandatory social assessment by the borrower, which considers gender and SOGIE differentiated impacts of a project, has not been included in the revised draft. This means the Bank will be unable to determine the specific and unique risks posed by a project to women, girls and SOGIE communities. This also fails to acknowledge the unique situation of transgender individuals and intersex persons and the impacts development projects can have on them. The Bank must include explicit reference to gender identity and expression, as well as sexual orientation, in all relevant sections of the ESF. 	

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Use of Borrower’s Environmental and Social Framework		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>4. Role of Borrower frameworks in the management and assessment of environmental and social (E&S) risks and impacts where these will allow projects to achieve objectives materially consistent with Environmental and Social Standards (ESSs)</p>	<ul style="list-style-type: none"> We are pleased to see the ESF attempting to mainstream the use of the borrower’s ES Framework. This would reduce the project cost. 	<p>The World Bank and most of its shareholders endorsed the Paris Declaration, Accra Agenda for Action, and Busan Partnership for Effective Development Cooperation—agreements emphasizing that using and strengthening national systems in borrowing countries is a central development goal. The Bank supports the use of all or part of the Borrower’s E&S Framework, as long as the framework is likely to address the risks and impacts of the project, and enable the project to achieve objectives that are materially consistent with the World Bank’s Environmental and Social Standards (ESSs).</p>
	<ul style="list-style-type: none"> The Bank should always consider the use of Borrower’s systems as a means to improve and strengthen national frameworks. This would enable a more sustainable approach to environmental and social safeguards, leading to increased capacities and more effective domestic frameworks. 	
	<ul style="list-style-type: none"> We understand that the use of alternative systems are not subject to an “all or nothing”, but their assessment must be measured against the substantive requirements of the ESSs, not just the objectives. And those substantive requirements should be clear and mandatory. 	
<p>5. Approach for making decision on the use of Borrower frameworks, including the methodology for assessing where frameworks will allow projects to</p>	<ul style="list-style-type: none"> The Borrower’s framework, if assessed to be in line with the proposed ESF standard should be the primary framework for use in the Bank’s projects. Hence the decision to use available ESF, if deemed appropriate, should be the default option. There should not be any ‘discretion’. 	<p>The use of Borrower frameworks will be agreed between the Bank and the Borrower (ESP, para 23). In the second draft, the use of Borrower’s ES Framework was determined at the discretion of the Bank.</p> <p>A clarification has been added that the decision to use the Borrower’s framework will not relieve the Bank of</p>
	<ul style="list-style-type: none"> Participants stated that the World Bank should be more flexible in the use of borrower systems. They stated that, up to now, the World Bank has looked for equivalency when trying to use Borrower’s systems. 	

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Use of Borrower's Environmental and Social Framework		
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<p>achieve objectives materially consistent with the ESSs, and the exercise of Bank discretion</p>	<ul style="list-style-type: none"> • Rigorous and objective assessment of a borrower's framework is important. It is important that staff have clear guidance on how such assessments will be conducted and that World Bank shareholders as well as external stakeholders have a shared understanding of when a borrower framework is adequate. We are not there yet and this is why we continue to request more detail on the methodology – prior to the Board's consideration of the final ESF. 	<p>any of its due diligence obligations (ESP, footnote 22) and that key information for the use of Borrower's environmental and social framework will be disclosed for stakeholder engagement as early as possible (ESP, paragraph 26).</p> <p>The proposed Information Note on Assessing the Borrower's Environmental and Social Framework sets out an approach and process to assessing Borrower frameworks.</p>
	<ul style="list-style-type: none"> • Ensure there will be public consultation and Board review of the use of alternative systems. In each case, the decision to use alternative systems must be subject to meaningful public consultation prior to approval, including full disclosure of assessments and their methodology. The Bank must also play an active supervisory role in any use of alternative systems, regularly monitoring for material changes in alternative systems or implementation practices, and track record, commitment and capacity that could affect implementation. Projects relying on country systems should be required to have community or third-party monitoring, as well as an effective grievance mechanism that communities can access early on in the project if needed. 	
<p>6. Role of Borrower frameworks in high and substantial risk projects</p>	<ul style="list-style-type: none"> • In our national law, a simplified environmental assessment is applied for low risk projects, including in the agriculture sector. It is recommended that the Bank use the borrower's framework for low risk projects. 	<p>Management proposes not to limit the potential use of all or parts of a Borrower's ES Framework to projects with a specific risk rating because risk ratings may change over time and because some Borrower frameworks, or aspects of such frameworks, may be deemed adequate (from both a legal and institutional standpoint) for all risk categories.</p>
	<ul style="list-style-type: none"> • We recommend that all high risk activities should be excluded from any delegation, either through the use of Borrower Frameworks, common approaches, Financial Intermediaries or associated facilities, for a five year period of initial ESF implementation. 	

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Co-financing/Common approach		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>7. Arrangements on E&S standards in co-financing situations where the co-financier’s standards are different from those of the Bank</p>	<ul style="list-style-type: none"> • Many donors, including the Bank and ADB, are involved in our country, for example in the water sector. Recognizing that implementation capacity of the country is weak, the policies and guidelines of such donors should be harmonized. • We are very comfortable with the logic behind the so-called “common approach” described in the ESF when the World Bank is co-financing a single activity with other institutions. Harmonizing requirements and reducing unnecessary burdens on borrowing countries is an objective with which it is agreed as long as the Bank is not allowing the application of another institution’s weaker standards to govern its lending. • As with Borrower frameworks, the proposed standard and the approach for determining whether the standard is met is unclear. In cases where the Bank is co-financing with other institutions, the “common approach” should achieve compliance with the Bank’s standards. • The harmonization of ESF with other donors at policy level needs to be complemented by coordination of donors on operational level in the borrower country. This will require resources and the establishment of effective platforms for getting all stakeholders on the same page. The Bank is expected to assume a leading role in organizing and coordinating such efforts. • “Common Approach” in co-finance with MDBs which, in the future, are likely to include the AIIB, and bilaterals, some of which are likely to have low safeguard standards) implies that this could well spark a race to the bottom and downward harmonization since even the new, weakened Bank safeguard framework would not apply. 	<p>The common approach was introduced in the ESF with the objective of harmonizing donor requirements for environmental and social risk management so that projects can be prepared and implemented faster and more efficiently, while maintaining a strong approach to risk management. A more detailed guidance on the common approach will be provided in guidance notes.</p>

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Adaptive Risk Management		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>8. Approach to monitoring E&S compliance and changes to the project during implementation</p>	<ul style="list-style-type: none"> • The shift of focus from project preparation to life-time risk management will have higher cost implications for Project Management Offices (PMOs). Adaptive risk management should not introduce such complex processes for local implementers. • The ESF should clarify that World Bank’s monitoring and supervision role (implementation-phase due diligence) extends to changes in the ESCP that respond to “risk-increasing” changes in project design or project changes through the process of adaptive management. • The Environmental and Social Policy states that the ESCP will include an adaptive management “process” agreed between the borrower and the Bank, an approach that we support. However, this requirement does not appear in ESS1. • The ESCP should be disclosed for consultation and should accompany project materials to the Board. 	<p>The proposed outcomes-based approach in the ESF shifts the emphasis of environmental and social risk management from processes to focus on how the Bank and the Borrower can achieve better development outcomes. It allows for adaptive management of project risks and impacts. This will help improve the Borrower’s ability to address unexpected changes and will potentially reduce the need for legal restructuring of projects.</p> <p>A clarification has been made that the ESCP will include an adaptive management process (ESS1, para 39) and that the ESCP will be disclosed as early as possible before project appraisal and any revised ESCP will be also disclosed (ESP, para 47 and ESS1, paras 36 and 44).</p>
	<ul style="list-style-type: none"> • The adaptive risk approach depends heavily on close follow up, supervision and monitoring. The Bank’s own Independent Evaluation Group’s 2010 Safeguards study identified inadequate supervision as a key shortcoming of the current safeguards regime. We appreciate that the Bank is in part responding to the IEG’s recommendations to balance upfront risk assessment with implementation support through this approach, however we do not think that the approach achieves the right balance, nor has the Bank outlined how this approach will become operationalized successfully. 	

Risk Classification		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>9. Approach to determining and</p>	<ul style="list-style-type: none"> • Classification of a new project, under one of the four risk categories, shall be mutually agreed upon by the Bank and the Borrower. 	<p>The risk classification system will be used by Bank staff as a tool to review</p>

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Risk Classification		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>reviewing the risk level of a project</p>	<ul style="list-style-type: none"> • It is suggested that all projects and activities be categorized into two categories - Category A and Category B, as per the country’s national policy, if the national laws broadly meet proposed ESF standards. • The risk classification needs to be explicit in publicly disclosed information and information provided to the Board about both overall risk classification and if there are potential significant impacts of projects and, where relevant, subprojects. New risk classification should not replace evaluation of severity of risks, but enhance it. • Because classification and categorization of risk is inherently judgement based, but needs to be done consistently by large numbers of people, we suggest that the World Bank develop guidance and examples, potentially sector-specific, to assist Bank staff and other institutions -- who will categorize subprojects -- in operationalizing its approach. • The rationale and criteria for determining each risk classification is still unclear in the ES Procedure and should be refined. 	<p>and monitor the ES performance of a project throughout the project life-cycle. The Bank will allocate its resources, and provides corporate oversight and operational support to a project, in accordance with the risk classification of the project. The decision on the risk classification will be made by the Bank, as is the case with the current safeguard policies. Because the Bank’s classification system will indicate the resources and oversight required for the project, this system will be independent of the national system on risk categorization.</p> <p>A clarification has been added that the Bank will disclose the project’s classification, including any change to the classification, and the basis for such classification on the Bank’s website and in project documents (ESP, paras 20 and 21).</p> <p>The text on risk classification in the ES Procedure has been revised to provide more clarity on the criteria for each risk level (ES Procedure, Section VI). More details and examples on risk classification will be provided in guidance notes.</p>

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Assessment and Management of Environmental and Social Risks and Impacts		
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10. Assessment and nature of cumulative and indirect impacts to be taken into account	<ul style="list-style-type: none"> • Cumulative and indirect impact: Under ESS1, assessment of cumulative and indirect impact is required. This will result in cost and time overrun. This responsibility will fall only for that project which is funded by the Bank in a cluster of projects. The purpose of this requirement will be difficult to achieve when many entities are involved and impact management is not the responsibility of a single entity. 	<p>Assessing and mitigating cumulative and indirect impacts has been an accepted practice for years and relevant requirements are included in the Bank’s safeguard policies as well as in the legislation of many borrowing countries.</p> <p>The Bank has clarified, in a footnote, that the environmental and social assessment will consider cumulative impacts that are recognized as important on the basis of scientific concerns and/or that reflect the concerns of project-affected parties. The potential cumulative impacts will be determined as early as possible, ideally as part of project scoping (ESS1, footnote 22).</p> <p>For indirect impacts, a new footnote clarifies that these will not include induced impacts (ESS1, footnote 21).</p> <p>The requirement to compensate for or to offset residual impacts has been limited to significant residual impacts (ESS1, para 27), given that all adverse direct, indirect and cumulative impacts are to be addressed through the application of</p>
	<ul style="list-style-type: none"> • Cumulative impacts are important and needs to be properly documented. How does the Bank think this should be done? Such impacts are not being properly monitored. 	
11. Treatment of cumulative and indirect impacts when identified in the assessment of the project	<ul style="list-style-type: none"> • ESS1 should include a requirement that people whose livelihoods and living standards are adversely affected by project impacts, other than land takings or restrictions on access, have mitigation measures such that their livelihoods and living standards are improved. 	
	<ul style="list-style-type: none"> • Participants emphasized the need for greater attention to assessment of downstream impacts – including from deforestation and land use conversion – and the need to establish a hierarchy of direct and indirect impacts. Participants further pointed out that it should be recognized that in some projects indirect impacts can be greater than direct impacts. 	

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		the mitigation hierarchy. Guidance for Bank staff and for Borrowers will be issued after the ESF is approved by the Board.
12. Establishing project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects	<ul style="list-style-type: none"> • Project boundary: The ESF appears to apply all associated and existing facilities, which may not be funded by but significantly related to the project. It may include other activities undertaken and facilities created by the same implementing agency of our country but not funded by the Bank. For example, maintenance dredging may be impeded by the ESF, which may restrict normal operations on the river. This could lead to creation of shoals restricting movement of cargo of important shippers and also defeat of the project objectives. Therefore, extension of project boundaries should have rational basis and always subject to express agreement between the Bank and the Borrower. 	<p>The Bank’s proposed approach to project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects is consistent with the approach of other MDBs.</p> <p>A footnote was added to clarify that Associated Facilities are only considered as such if they are not funded as part of the project and meet all three of the following: (a) directly and significantly related to the project; (b) carried out, or planned to be carried out, contemporaneously with the project; and (c) necessary for the project to be viable and would not have been constructed or expanded if the project did not exist (ESS1, footnote 12).</p> <p>Regarding contractors, relevant provisions have been amended to address the concerns of implementability raised during</p>
	<ul style="list-style-type: none"> • Associated facilities: It is needed for clearer definition of Associated Facilities under the ESF. All three criteria given for associated facilities should be met. Otherwise the project boundary would expand too much. 	
	<ul style="list-style-type: none"> • In ESS1, Annex 3, Borrowers’ management of contractors is made more onerous. Contractor’s capacity to abide by norms will have to be assessed and monitored at pre-qualification and execution. This will lead to more intricate request for proposals (RFPs), more time, less competition and more cost. 	
	<ul style="list-style-type: none"> • Primary supplier and contractor: Questioning the application of the policy expanded to primary suppliers and contractors. The project boundary should be more clearly defined. 	
	<ul style="list-style-type: none"> • There is a Bank-funded project in which 27 million poor households are involved through social mobilization subprojects. In such a project, it is impossible to develop capacity of community institutions to undertake the ESF, including ES assessment, ESCP, management 	

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Assessment and Management of Environmental and Social Risks and Impacts		
Issues	Key Comments from Stakeholders	Bank Management Responses
	<p>contractors, and monitoring and reporting. Applying the ESF to such subprojects would cause serious project delay and cost increase, which would make the project unviable subject to agreement between Bank & Borrower. The ESF may set a threshold for its application to subprojects.</p> <ul style="list-style-type: none"> For FI projects, there should be a cut-off value (cost of the project) to determine if a project would be subjected to risk assessment (environment and social). Only projects greater than or equal to the cut off value should be assessed and put in different categories. 	<p>consultations (ESS1, Annex 3; and ESS2, para 31).</p> <p>Requirements regarding primary suppliers are limited to ESS2 and ESS6 (ESS1, para 34). These requirements have been amended to address the concerns on implementability raised during consultations. It has also been clarified that Borrowers will address the risks and impacts associated with primary suppliers in a manner proportionate to the Borrower's control or influence over those suppliers (ESS1, para 34).</p> <p>With regard to FI subprojects, only the relevant aspects the ESSs apply. The FI's responsibility vis-à-vis FI subprojects are set out in ESS9.</p> <p>With regard to directly funded subprojects, consultations revealed considerable debate and a range of views among shareholders and stakeholders on the need to apply all requirements of all ESSs at all times. Considering both the need for the diligent application of the standards and Borrowers' ability to implement the requirements, a key consideration</p>

Summary of Phase 3 Consultations and Bank Management Responses

Assessment and Management of Environmental and Social Risks and Impacts		
Issues	Key Comments from Stakeholders	Bank Management Responses
		would be the nature of the impacts and risks and the multiplicity of the subprojects. A new footnote has been added to clarify that where subprojects are likely to have minimal or no adverse environmental and social risks and impacts, such subprojects do not require further environmental and social assessment following the initial screening (ESP, footnote 30).
13. Circumstances under which the Bank will determine whether the Borrower will be required to retain independent third party specialists	<ul style="list-style-type: none"> • Local expert: ES assessment is very important to ensure that impacts are assessed before the implementation of the project. The Bank should involve local experts to hear the voice of local people, since these are the people the Bank is ultimately seeking to assist. While it is useful to hear from external experts, sometimes they lack local knowledge. The Bank should keep a balance between local and outside experts. 	In some circumstances the Borrower or the Bank may need to draw on the expertise and advice of specialized experts, particularly, although not necessarily exclusively, where there is no in-house capacity available. During consultations, some countries pointed out that requiring international experts may not be necessary if sufficient expertise is available in country. This was reflected in the Annex to ESS4 on the dam safety panel (ESS4, Annex 1 footnote 4). A footnote 33 in ESS1 and a paragraph 8 has been added to Annex 1 of ESS1, specifying the meaning of independence of experts. ESS1 (para 45) clarifies that third party monitoring will be agreed between the Bank and the Borrower and set out in the ESCP.
	<ul style="list-style-type: none"> • Provisions related to independent international expert for project oversight shall not be agreed. However, in High Risk projects, it may be agreeable to commission an External Completion Audit to assess impact of project activities and propose corrective measures as needed. 	
	<ul style="list-style-type: none"> • Third party monitoring: Third party monitoring may be good to ensure effectiveness of project. But the cost of such monitoring should be borne by both the borrower and the Bank. 	
	<ul style="list-style-type: none"> • Please consider requiring the Borrower to designate a 3rd party monitor within the ESMP to ensure compliance with the ESIA and other assessments and plans made in connection with the ESIA. 	

Summary of Phase 3 Consultations and Bank Management Responses

Environmental and Social Commitment Plan (ESCP)		
Issues	Key Comments from Stakeholders	Bank Management Responses
14. Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement	<ul style="list-style-type: none"> Participants expressed concern that the ESCP would be part of the Loan Agreement. In that regard, they stated that changes to the ESCP would require amendments to the Loan Agreement. They mentioned that that would surely lead to extensive processing within the government and would make changes costly and difficult to achieve. 	This issue was actively discussed during consultations. The ESCP is part of the legal agreement between the Bank and the Borrower. The ESCP will contain a “management of change” clause, which would allow changes to be addressed. This adaptive risk management approach should reduce the frequency with which legal restructuring of projects is required. A footnote has been added to clarify that the Bank will provide adequate assistance to the Borrower to develop the ESCP (ESS1, footnote 36).
	<ul style="list-style-type: none"> In our country, environmental assessment and social assessment are conducted by different agencies. No agency has the authority to combine two into a single document like the proposed ESCP. It is difficult for our provincial governments and PMOs to prepare the ESCP. It is suggested that consultants of the Bank prepare it. Another suggestion is that the disclosure of the ESCP be done by the Bank only, not the Borrower. 	
	<ul style="list-style-type: none"> The ESCP, however legally-binding, it should be flexible for any required modification, which implementation could entail. 	

Labor and working conditions		
Issues	Key Comments from Stakeholders	Bank Management Responses
15. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries)	<ul style="list-style-type: none"> The provision in ESS2 stipulates: “the Borrower to ascertain that third parties who engage contracted workers are reputable and legitimate entities; and the Borrower to ascertain that third parties follow ESS”. The requirements are vague and the responsibility of the Borrower is too extensive and should be deleted. 	Many borrowing countries highlighted the likely challenges in addressing labor issues associated with brokers, agents, and other intermediaries. It was clarified that the labor management procedures should set out how the Borrower would interact with such parties who will be expected to comply with applicable national law and relevant requirements of ESS2. The Borrower’s role is to require such compliance through the Borrower’s
	<ul style="list-style-type: none"> There needs to be close oversight on contractors, to ensure they are complying with the necessary rules, and maintaining rights of the workers. In the meantime, punitive mechanisms should be applied in case of noncompliance. 	
	<ul style="list-style-type: none"> Brokers, agents and intermediaries need to be deleted from the definition of third parties. 	

Summary of Phase 3 Consultations and Bank Management Responses

Labor and working conditions		
Issues	Key Comments from Stakeholders	Bank Management Responses
	<ul style="list-style-type: none"> On occupational health and safety (OHS), some participants argued that ensuring compliance among contractors is critical since small subcontractors are more likely not to conform to the standard. The OHS record of the Borrower contracting companies should be verified in advance as part of the Bank’s due diligence. 	<p>legal arrangements with its contractors and other third parties. The third draft ESF maintains the provisions of the second draft with regard to third parties, but clarifies that Borrowers are not expected to ascertain the reputation of third party entities, but rather their legitimacy and reliability (see ESS2, para 31).</p>
<p>16. Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers</p>	<ul style="list-style-type: none"> Community Labor is not defined in the policy. It is understood that they are those laborers who work voluntarily for the project. The provisions of this ESS should not be applicable to them. In community-driven development subprojects where as many as 2.7 million households are involved as community labour, it is impossible to apply labour requirements under ESS2. In such circumstances, it is impossible to assess the project risks. 	<p>Several Borrower countries noted the likely difficulties of applying ESS2 in projects where community labor is employed. The third draft ESS2 has been amended to address this concern by emphasizing that the relevant requirements of ESS2 should be applied in a proportionate manner (ESS2, para 35).</p> <p>For primary suppliers, it has been clarified that the Borrower will require the primary supplier to take precautionary measures regarding child labor or forced labor and serious safety issues. It has also been recognized that the Borrower’s ability to address these risks depends upon the Borrower’s level of control or influence over its primary suppliers; thus where remedy is not possible, the Borrower will, within a</p>
	<ul style="list-style-type: none"> Some participants expressed concern about the use of the term “workfare” to describe some types of Bank community labor projects. This term should not be confused with voluntary community work schemes. Participants questioned the rationale behind making application of the standard for community labor dependent on the type of project as this gives room for interpretation and potentially weakens it. 	
	<ul style="list-style-type: none"> The scope of ESS 2 applies to the labor employed by primary suppliers which are not directly controlled by the borrower. Hence, its compliance is very difficult at the Borrower-level. Primary supplier workers should not be covered under purview of ESS for the project work. 	
	<ul style="list-style-type: none"> Primary supplier: In many projects, primary suppliers are from outside the country. It is not easy to monitor whether such foreign primary suppliers meet the requirements of the ESF. It is suggested that 	

Summary of Phase 3 Consultations and Bank Management Responses

Labor and working conditions		
Issues	Key Comments from Stakeholders	Bank Management Responses
	<p>the Bank monitor primary suppliers when they are located outside the Borrower country.</p> <ul style="list-style-type: none"> WB should get independent verification of any information the Borrower provides regarding whether primary suppliers meet standard international requirements. The Bank should use a stricter clause here to state that it will not go on with a project where a primary borrower is in non-compliance 	<p>reasonable period, shift the project's primary suppliers to suppliers that can demonstrate that they are meeting the relevant requirements (ESS2, paras 39-42).</p>
<p>17. Constraints in making grievance mechanisms available to all project workers</p>	<ul style="list-style-type: none"> Approaches to dispute resolution, grievance handling should be designed depending on the nature, scale, and environmental/social complexity of the projects. 	<p>ESS2 states that grievance mechanisms should be provided for all direct and contracted workers (ESS2, para 21). The third draft ESS2 also clarifies that the grievance mechanism will be proportionate to the nature and scale and the potential risks and impacts of the project (ESS2, para 22). Community workers will also be provided with a way to raise grievances, and this will be identified in the labor management procedures (ESS2, para 36).</p>
	<ul style="list-style-type: none"> Establishment of a grievance redress mechanism for contracted workers is important, yet very challenging, since different workers can be recruited on a daily (cash for work / day labor) basis, without insurance. 	
	<ul style="list-style-type: none"> Specifically, in countries with a history of violation of fundamental workers' rights, the possibility of excluding workers engaged in community labor from access to ESS 2's grievance mechanism is worrisome. Participants pointed out that the Bank is financing community-driven development projects in some countries that have a long history of use of forced labor in public works projects; it is therefore critical that ESS 2 clearly prohibits this for all projects and provides community members with a confidential grievance mechanism. 	
<p>18. Referencing national law in the objective of supporting freedom of association and</p>	<ul style="list-style-type: none"> The requirement on freedom of association should be consistent with national law. 	<p>The relevant objective has been rephrased to read "to support the principles of freedom of association and collective bargaining of workers in a manner consistent with national law" (ESS2, 5th bullet).</p>
	<ul style="list-style-type: none"> The provision on workers' organizations is improved and we appreciate the Bank's attempts to include provisions to allow for formation of workers' organizations or an alternative version when the country's national laws restrict such organizations. The reference to national law in regards to supporting freedom of association and collective 	

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Labor and working conditions		
Issues	Key Comments from Stakeholders	Bank Management Responses
collective bargaining	<p>bargaining needs to not be used by the Borrower to restrict these freedoms.</p> <ul style="list-style-type: none"> ESS2 only guarantees workers’ rights to freedom of association and collective bargaining if these rights are already fully protected under national law. Other international financial institutions make these rights a mandatory requirement notwithstanding national laws. 	
19. Operationalization of an alternative mechanism relating to freedom of association and collective bargaining where national law does not recognize such rights	<ul style="list-style-type: none"> It should be clarified that an alternative mechanism in para 16 under the second draft ESS2 will be considered only where the national law allows such mechanism. IFC has special wording for this. A council can be formed. It should be clarified whether the ESF will use IFC’s approach or another flexible mechanism, and how the ESF will define such a mechanism to put it into operation. The word “alternative mechanisms” should be removed. It is critical that allowing for alternative mechanisms for the exercise of these rights be retained. Further, paragraph 16 of the second draft ESS2 needs to explicitly say that regardless of the Borrower’s national framework, for purposes of the project, the Borrower must not discriminate or retaliate against workers who seek to collectively organize and bargain. 	The reference to alternative mechanism reflects the Bank’s Standard Bidding Document (procurement for work). Further guidance will be provided in guidance notes.
20. Issues in operationalizing the Occupational Health and Safety (OHS) provisions/standards	<ul style="list-style-type: none"> The implementability of requirements on primary supply workers and workers in community labor is questionable. ESS2 should include guidance on monitoring OHS issues. We need technical assistance to ensure there is zero tolerance for safety problems. Participants argued that ensuring compliance among contractors is critical since small subcontractors are more likely not to conform to the standard. The OHS record of the Borrower contracting companies should be verified in advance as part of the Bank’s due diligence. 	The revised ESS2 applies the OHS provisions in relation to community labor in a manner that reflects and is proportionate to the nature and scope of the project, the specific project activities in which the community workers are engaged, and the nature of the potential risks and impacts to the community workers (ESS2, para 35). With regard to primary suppliers, it has been clarified

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Labor and working conditions		
Issues	Key Comments from Stakeholders	Bank Management Responses
		that the Borrower's responsibility is to require primary suppliers to introduce procedures and measures to address safety issues (ESS2, para 41).

Climate change and GHG emissions		
Issues	Key Comments from Stakeholders	Bank Management Responses
21. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC	<ul style="list-style-type: none"> Any monitoring of the emissions as provided in para 16 of the second draft ESS3 should be in accordance with the agreements at UNFCCC. 	Upon release of the second draft ESF, some Borrowers were concerned that the ESF could preempt the outcome of UNFCCC COP 21. This agreement was signed in April 2016. The proposed requirement to estimate GHG emissions is made with the intention of improving energy efficiency, where technically and financially feasible, and will assist Borrowers in addressing climate goals in a manner that is consistent with the Paris Agreement.
	<ul style="list-style-type: none"> The World Bank should not duplicate possible approaches to measuring and monitoring greenhouse gas (GHG) emissions in Bank Projects as separate from the agreements of UNFCCC. 	
	<ul style="list-style-type: none"> ESS3 should explicitly reference the UN Framework Convention on Climate Change (UNFCCC) and its related agreements, including the Paris Agreement. 	
22. Proposed approaches to measuring and monitoring greenhouse gas (GHG) emissions in Bank projects and implications thereof, in line with the proposed standard,	<ul style="list-style-type: none"> The estimation of GHG should be done only in projects where there is such potentials substantial emissions are likely. 	Many Borrower countries raised concerns over the cost and technical challenges of estimating GHG emissions. It has been clarified that estimation for the purposes of the ESF does not require as extensive processes of quantification or accounting as do those required under carbon/climate finance initiatives (such as the many projects most Bank borrowers have had under the Kyoto Protocol Clean Development Mechanism). The estimation
	<ul style="list-style-type: none"> Participants mentioned that the threshold amount of the emissions shouldn't be expressed in absolute numbers, e.g., 12k tons per year. 	
	<ul style="list-style-type: none"> Considering the threshold for estimation of GHG emissions at the project level, the initial proposal presented in the first Draft of the consultations was adequate (25,000 tonnes of CO₂-equivalent annually), and we suggest that this parameter be defined in the ESS. The use of the proposed threshold would allow for broad coverage of emissions and would prevent the imposition of undue burden in the case of projects without relevant GHG emissions. In addition, it should 	

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Climate change and GHG emissions		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>including determining scope, threshold, duration, frequency and economic and financial feasibility of such estimation and monitoring</p>	<p>be stated clearly that Borrowers will not be burdened with the high costs of services for validation and verification of GHG emissions.</p> <ul style="list-style-type: none"> To ensure the quality of GHG emissions estimations, the final sentence of paragraph 16 should be amended to say that “Estimation of GHG emissions will be conducted by the Borrower annually in accordance with internationally recognized methodologies and best practice, and verified by an independent expert.” 	<p>requires the use of simple tools provided by the Bank that are widely available in the public domain. The Bank’s cross-cutting solutions area on Climate Change and IFC affirm from their experience that the cost of estimating GHG emissions is low. The Bank will provide assistance to Borrowers that do not have the capacity to estimate GHG emissions, for example relating to IDA or projects in situations of fragility, conflict, and violence. The Bank may carry out GHG estimation on behalf of the Borrower, at the Bank’s cost, or it may provide technical assistance for using estimation methodologies (ESS3, footnote 14).</p>
<p>23. Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard</p>	<ul style="list-style-type: none"> Is the World Bank aware that the requirement for the proposed standards for estimating and reducing GHG emissions for all the Bank project puts additional cost burden on the cost of World Bank projects and borrowing by poor countries? Additional financing must be ensured for GHG estimation of WB projects. The costs of emission monitoring and estimation should not be borne by the borrowers. 	<p>The purpose of estimating GHG emissions is to inform decisions as to whether GHG emissions, and thus, energy use, can be reduced where technically and financially feasible.</p>

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Land acquisition and involuntary resettlement		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>24. Treatment and rights of informal occupants and approach to forced evictions in situations unrelated to land acquisitions</p>	<ul style="list-style-type: none"> • Support to informal occupants is not only inconsistent with national law, but could be misused by opportunistic informal settlers. It will also increase project cost. • Compensating squatters is very difficult, especially with limited resources in our countries. • There are cases where forced eviction might be necessary and permissible under the national/state laws. For example: Houses constructed on illegally occupied land; Compensation for houses/structures already paid to occupiers; Compensation for land paid to Municipal Corporation but land is still not being vacated by occupiers. • Despite pushback by some borrower governments on this longstanding principle, ESS5 must provide an adequate level of protection to those people without formal rights who are economically or physically displaced as a result of a Bank-financed project. 	<p>This issue was widely-discussed in both borrowing and donor countries. The concern in borrowing countries was about the cost of implementing Bank requirements related to informal occupants, as well as inconsistency with national law. In donor countries, shareholders and stakeholders discussed the need to provide robust protections for informal occupants and to prohibit forced evictions. The proposed provisions in ESS5 have been carried forward from OP4.12, Involuntary Resettlement, and such requirements are also reflected in the policies and requirements of other MDBs. During consultations, the difference between forced evictions (not permitted) and the exercise of eminent domain following due legal process (permitted) was clarified (ESS5, para 31).</p>
<p>25. Interpretation of the concept of resettlement as a “development opportunity” in different project circumstances</p>	<ul style="list-style-type: none"> • Participants underscored that the World Bank would benefit from approaching resettlement efforts as an opportunity for development. They stated that in the case of their country, several projects that involve resettlement increase the resilience of households. They stated that this happened, for example, in cases where building walls around structures increases their resilience to natural, catastrophic events. • We suggest that the Bank retain the language and spirit from OP4.12, that involuntary resettlement should be conceived and executed as “sustainable development programs” with associated budget and World Bank oversight. 	<p>During consultations, the Bank clarified that the intention behind “resettlement as development opportunity” is to encourage an approach that would lead to an improvement in the livelihoods of resettled persons rather than only compensating them at the level of their current livelihood. The relevant objective in the proposed ESS5 has been amended to read: “To conceive and</p>

Summary of Phase 3 Consultations and Bank Management Responses

Land acquisition and involuntary resettlement		
Issues	Key Comments from Stakeholders	Bank Management Responses
	We think this better ensures protections than the ESS5 reference to a “development opportunity.”	execute resettlement activities as sustainable development programs, providing sufficient investment resources to enable displaced persons to benefit directly from the project, as the nature of the project may warrant” (ESS5, 5 th bullet). The provision draws closely from existing language in OP 4.12.

Biodiversity		
Issues	Key Comments from Stakeholders	Bank Management Responses
26. Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity	<ul style="list-style-type: none"> • Primary suppliers: As per national requirements, Borrowers do not have control or influence over the primary suppliers. This ESS requirement appears to be difficult to ensure on the part of the Borrower. 	The Bank considered concerns regarding operationalization of provisions on supply chains, expressed by a number of borrowing governments during consultations. Supply chain issues in the ESF have always been limited to primary suppliers. Current wording limits the requirement to suppliers who, on an ongoing basis (i.e., not for one-off construction-related purposes), provide directly to the project goods or materials essential for the core function of the project (ESS6, footnote 20). The requirements on shifting primary suppliers have also been adjusted to address the concerns of implementability (ESS6, para 39).
	<ul style="list-style-type: none"> • Ecosystem services: This was introduced in the second draft ESF. Defining “ecosystem services” as a concept is fine, but introducing requirements is different. It is impossible for Borrowers to assess and implement measures for such a new concept that encompasses provisioning services, regulating services, cultural services and supporting services. The local implementers are very concerned about this. There is no estimation of project cost and time that will be incurred in implementing this concept. 	
	<ul style="list-style-type: none"> • We recommended highlighting the relationship among habitat condition, biodiversity and ecosystem services in the document. The revised ESS 6 is still missing language on essential ecosystem services. 	

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Biodiversity		
Issues	Key Comments from Stakeholders	Bank Management Responses
		Requirements on ecosystem services are set out in ESS1 (ESS1, para 28 (a) (v)) and ESS4 (ESS4, para 14).
27. Role of national law with regard to protecting and conserving natural and critical habitats	<ul style="list-style-type: none"> • This standard should be built on the existing national law for the protection and conservation of natural and critical habitats; and the bio-diversity offsets in design of projects that benefit people located in otherwise bio-diversity sensitive areas. 	Donor governments were interested in biodiversity issues and the role of national law in particular was widely discussed during consultations. The Bank acknowledges that many borrowing countries afford a high level of protection to biodiversity and natural habitats. Consistent with the ESF's approach to borrower frameworks, national regulations can be used if the Bank and the Borrower agree and if the Borrower's framework can manage environmental and social risks of the project in such a way that the outcomes will be materially consistent with the objectives of the ESSs. It should be noted, however, that not all critical or natural habitats or important aspects of biodiversity are recognized or protected under national law, but they are captured under ESS6 (ESS6, para 10).
	<ul style="list-style-type: none"> • ESS6 must clarify that abiding by the IUCN Red List is the baseline, and that national law should be used when it includes other areas and imposes more stringent standards on those species and their habitats. 	
28. Criteria for biodiversity offsets, including consideration of project benefits	<ul style="list-style-type: none"> • Biodiversity offsets should be equally permissible and preferable as per the development context of the country. 	The knowledge base and experience regarding biodiversity offsets is limited. Therefore, under the ESF as under the safeguard policies, the Bank is taking a precautionary approach and will allow offsets only as a last resort. The Bank clarified under which circumstances
	<ul style="list-style-type: none"> • As biodiversity offsets are not easy to achieve, a cautious approach should be taken. 	
	<ul style="list-style-type: none"> • Biodiversity offsets should only address significant residual adverse impacts. 	

Summary of Phase 3 Consultations and Bank Management Responses

Biodiversity		
Issues	Key Comments from Stakeholders	Bank Management Responses
		<p>offsetting could be considered and recognizes that for some habitats and species, offsetting is not an acceptable option: “Biodiversity offsets are measurable conservation outcomes resulting from actions designed to compensate for significant residual adverse biodiversity impacts arising from project development and persisting after appropriate avoidance, minimization and restoration measures have been taken. Therefore, potential offsets should not be considered in the initial determination of the inherent risks of the project” (ESS6, footnote 6). Third draft ESS6 also clarifies that the use of biodiversity offsets are limited to addressing significant residual impacts (ESS6, footnote 6). Further clarifications will be provided in the Guidance Note to be developed after Board approval of the ESF.</p>
<p>29. Definition and application of net gains for biodiversity</p>	<ul style="list-style-type: none"> • Net gain: We recommend that any proposed use of offsets for critical habitats be removed from the document. Impacts (direct, indirect, cumulative and associated facility) on critical habitats should be avoided or mitigated. Where mitigation is unlikely to protect critical habitat values, the project should be reconsidered or abandoned. Compensation for significant unmitigable impacts in critical habitat, including offsets, is inappropriate. 	<p>During consultations, some stakeholders expressed concerns about the concept of net gains. In response, the revised ESS6 provides further clarity on the definition of net gains: “‘Net gains’ are additional conservation outcomes that can be achieved for the biodiversity values for which the natural or critical habitat was designated. Net gains may be achieved</p>
	<ul style="list-style-type: none"> • How ‘net gains’ are to be determined and delivered needs to be further explained (e.g. in Guidance Notes). The delivery of net gain should also be 	

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Biodiversity		
Issues	Key Comments from Stakeholders	Bank Management Responses
	time-bound rather than open ended, given the risks involved in affecting critical habitat.	through full application of the mitigation hierarchy that may include the development of a biodiversity offset and/or, in instances where the Borrower could meet the requirements of paragraph 24 of this ESS without a biodiversity offset, through the implementation of additional programs in situ to enhance habitat, and protect and conserve biodiversity” (ESS6, footnote 9).

Indigenous Peoples		
Issues	Key Comments from Stakeholders	Bank Management Responses
30. Implementation of the Indigenous Peoples standard in complex political and cultural contexts	<ul style="list-style-type: none"> There is legislation to deal with compensation and evictions and how to carry out the process of resettlement. But there are challenges. In our country the rights of Indigenous Peoples must be seen alongside very complex issues vis-à-vis other communities. The overemphasis on Indigenous Peoples can end up causing conflicts and placing IPs at an advantage over the larger communities. There is a need to find a proper balance between the IPs and other communities which may also be poor and vulnerable. 	A number of concerns were expressed by African shareholders over the concept of indigeneity in African countries. The revised ESS7 includes a new paragraph in the introduction, stating that “This ESS recognizes that the situation of Indigenous Peoples varies from region to region and from country to country. The particular national and regional contexts and the different historical and cultural backgrounds will form part of the environmental and social assessment of the project. In this way, the assessment is intended to support identification of measures to address concerns that project activities may exacerbate tensions
	<ul style="list-style-type: none"> The application of the concept of IP as presently contained in the safeguard is likely to open a new vista of tribal and intra-tribal conflicts; it could be an invitation to bring our country back to a confused era; an attempt to reignite already quenched ember; it may stir up hard earned long-term tranquility, bring about disunity and frustrate existing nationalism and progress of unity in diversity that is presently enjoyed in the country. 	
	<ul style="list-style-type: none"> This standard cannot work in our country, given its history. The real issue is poverty. We would prefer to see equity in the level of interventions that address poverty rather than attempts to distinguish between communities. 	

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Indigenous Peoples		
Issues	Key Comments from Stakeholders	Bank Management Responses
31. Implementation of ESS7 in countries where the constitution does not acknowledge Indigenous Peoples or only recognizes certain groups as indigenous	<ul style="list-style-type: none"> The proposed provisions for indigenous people is adequate, however care should be exercised to avoid use of classifications of certain groups of people in a way that may further marginalize them. Our Constitution recognizes special groups and the state commits not to discriminate against any person in Article 27(4). The borrower’s classification for special groups needs to be recognized by the Bank for consistency. 	between different ethnic or cultural groups.” (ESS7, para 5).
	<ul style="list-style-type: none"> Borrower countries framework/national laws should have pre-eminence. ESF should not propose anything that goes against established constitutional provisions of a borrowing country. 	
	<ul style="list-style-type: none"> In our country, the concept of ethnic minority is not so simple. The Bank should assess the country specific context. 	
32. Possible approaches to reflect alternative terminologies used in different countries to describe Indigenous Peoples	<ul style="list-style-type: none"> In Africa, the text is considered discriminatory, sensitive, offensive, and unacceptable. The Constitution of our country advocates for harmony amongst communities and ethnic groups. This needs to be addressed by rewording and offering alternative terminology. The word IP can be very divisive in our country. 	In response to the concerns of African shareholders and following a discussion with representatives of some African countries as well as Indigenous Peoples representatives in Addis Ababa in February 2016, Management proposes to change the title and terminology of the third draft ESS7 to “Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.” This change reflects and builds on the flexibility in terminology that is already afforded by OP4.10, Indigenous Peoples.
	<ul style="list-style-type: none"> While the term Indigenous Peoples is a widely accepted concept in international law, it presents implementation challenges in Africa. The title of ESS 7 does not accurately reflect the realities in Africa, and therefore that additional terminology should be included in the title of the Standard. Possible draft alternative title: Indigenous Peoples and Historically Underserved Traditional Local Communities. 	
	<ul style="list-style-type: none"> While we are open to additional terminology, we are strongly opposed anything that risks putting Indigenous Peoples on the same, lower level as other vulnerable groups, which currently receive fewer protections. 	
33. Circumstances (e.g. criteria and timing) in which a waiver may be considered and the	<ul style="list-style-type: none"> Participants strongly recommended that the World Bank consider waivers for the application of ESS7. 	The flexibilities proposed through the revised title of ESS7 are designed to respond to the concerns of Borrowers with respect to the application of ESS7.
	<ul style="list-style-type: none"> We would not support up front articulation of waivers or exemptions of ESS7. We do not see how that could be anything other than a weakening of the protections afforded Indigenous Peoples by the current policies. 	

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Indigenous Peoples		
Issues	Key Comments from Stakeholders	Bank Management Responses
information to be provided to the Board to inform its decision	<ul style="list-style-type: none"> Participants found it highly worrying that there will be a discussion about under which circumstances a waiver would be considered, and they called for the question of a waiver to be taken off the table. 	
34. Criteria for establishing and implementation of Free, Prior and Informed Consent (FPIC)	<ul style="list-style-type: none"> Participants vehemently opposed the inclusion of FPIC in the proposed ESF and stated that it contradicted national law. In the case of projects, administrative and legislative measures that affect indigenous peoples, the general requirement of ILO-169 (Art. 6), UNDRIP (Art. 19, 32) and the WCIP-OD (§§ 3, 20) is that governments carry out consultations "in order to obtain" their free, prior and informed consent. Such consultations have to be carried out "in good faith", but the achievement of FPIC is only an absolute condition in exceptional cases involving relocation of indigenous peoples (ILO 69 Art. 16; UNDRIP Art. 10) or storage or disposal of hazardous materials in their lands or territories (UNDRIP Art. 29). The proposed ESS should be amended to reflect the true nature of the FPIC process, as defined in the relevant international standards. FPIC under IP policy there is need to emphasis participatory consultation rather than consent as this approach may contribute to lack of development especially in cases where there needs to be forced evictions of IP in who dwell in forests. Free, Prior, and Informed Consent (FPIC) should not be interpreted as a veto, and may be achieved using nationally accepted processes for engagement. The conduct of the FPIC process should be in line with the recognition and respect of the collective rights of Indigenous Peoples to self-determination and to their lands, territories and resources. The current formulation proposed in paragraphs 18-21 (of the second draft ESS7), which focuses on vulnerability rather than rights, fails to achieve this. I welcomes the strengthened wording on Free, Prior and Informed Consent. However, rather than the restricted list of situations in which FPIC is required given in this paragraph, the ESS should state that FPIC is 	<p>Responding to concerns from many stakeholders regarding the implementation of FPIC, a new para has been added to clarify what the term "consent" means when used in ESS7 (ESS7, para 26).</p>

Summary of Phase 3 Consultations and Bank Management Responses

Indigenous Peoples		
Issues	Key Comments from Stakeholders	Bank Management Responses
	<p>required when any activity is proposed which may impact significantly on the human rights of an Indigenous People. This may include legislation or policy measures.</p>	
35. Comparison of proposed FPIC with existing requirements on consultation	<ul style="list-style-type: none"> The outcome of the FPIC process needed to be operationally defined consistent with the current approach under OP 4.10 where the outcome is broad community support. 	
	<ul style="list-style-type: none"> Broad acceptance that FPIC refers to (i) a collective expression by the affected Indigenous Peoples communities, through [individuals and/or] their recognized representatives, of broad community support for the project activities, and (ii) that such broad community support may exist even if some individuals or groups object to project activities. 	
36. Application of FPIC to impacts on Indigenous Peoples' cultural heritage	<ul style="list-style-type: none"> The scope of application of FPIC to Indigenous People's cultural heritage in the second draft ESS7 is much broader than that in IFC's PS7. The Bank should revisit this. 	The revised third draft ESS7 clarifies that the proposed scope of application of FPIC relates to a project that has significant impacts on Indigenous Peoples' cultural heritage that is material to the identity and/or cultural, ceremonial, or spiritual aspects of the affected IPs' lives (ESS7, para 24 (c)). Sacred sites are discussed in the revised draft ESS7, footnote 22.
	<ul style="list-style-type: none"> Existing policy treats sacred sites as a critical habitat in OP 4.04. It affords protections both to critical habitat specifically and natural habitat generally. These should not be weakened, even if the issue is recognized as a cultural issue. The provisions on sacred sites should be considered in conjunction with impacts on habitat and livelihoods and, where relevant, Indigenous Peoples. 	
	<ul style="list-style-type: none"> We recommend the removal of the word 'significant', with regard to the application of FPIC to cultural heritage in ESS7. 	

Cultural Heritage		
Issues	Key Comments from Stakeholders	Bank Management Responses
37. Treatment of intangible cultural heritage	<ul style="list-style-type: none"> The ESF has added "intangible cultural heritage". The proposed definition is problematic. While the need for protection of such heritage is understandable, it is impossible to operationalize the definition such as 	Borrowers expressed concerns about the practicality of the proposed requirements regarding intangible cultural heritage.

Summary of Phase 3 Consultations and Bank Management Responses

Cultural Heritage		
Issues	Key Comments from Stakeholders	Bank Management Responses
	<p>“expressions” or “ideas.” It will result in much misunderstanding. It is recommended to use the definition established in UNESCO.</p> <ul style="list-style-type: none"> • Protection of cultural heritage should focus on tangible cultural heritage. There will be practical difficulties in including intangible heritage. • The conceptualization of cultural heritage as encompassing both tangible and intangible aspects has been almost universally accepted and reflected in national legislation and international instruments. 	<p>The revised ESS8 reflects the 2003 UNESCO convention’s definition of intangible cultural heritage, which has been ratified by about 170 countries (ESS8, para 4).</p>
<p>38. Application of intangible cultural heritage when the project intends to commercialize such heritage</p>	<ul style="list-style-type: none"> • Treatment of intangible cultural heritage and inclusion of intangibles in this standard should only be if the project intends to commercialize such heritage. • Limiting ESS8’s applicability to” only in so far as it relates to a physical component of a project” could be interpreted as voiding protection of intangible cultural heritage, as these could clearly be impacted by non-physical components of a project, such as support for government institutions or staff that ignore or oppose these elements. We strongly recommend deleting this para/text. 	<p>The revised ESS8 clarifies that requirements apply to intangible cultural heritage only if a physical component of the project will have a material impact on intangible cultural heritage or if a project intends to use such cultural heritage for commercial purposes (ESS8, para 7).</p>
<p>39. Application of cultural heritage requirements when cultural heritage has not been legally protected or previously identified or disturbed</p>	<ul style="list-style-type: none"> • The retention of the following language or concepts in the Environmental and Social Framework is recommended: The requirements of ESS8 apply to cultural heritage regardless of whether or not it has been legally protected or previously identified or disturbed. Agricultural, extractive, and infrastructure projects pose the greatest threats to cultural heritage, especially to previously unknown archaeological sites underground and underwater that have not been properly surveyed, recorded, and excavated prior to project implementation. 	<p>This issue was not frequently discussed in consultations meetings. ESS8 is independent of borrowers’ designation or protection of cultural heritage. Therefore, the standard applies regardless of national protections or identification (ESS8, para 6).</p>

Summary of Phase 3 Consultations and Bank Management Responses

Financial Intermediaries		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>40. Application of standard to FI subprojects and resource implications depending on risk</p>	<ul style="list-style-type: none"> • For FI projects, there should be a cut-off value (cost of the project) to determine if a project would be subjected to risk assessment (environment and social). Only projects greater than or equal to the cut off value should be assessed and put in different categories. • Participants highlighted that due diligence for smaller operations is a big challenge due to lack of internal capacity; this is being addressed by establishing E&S risk management function within the banks as an internal training and awareness raising function for credit and lending staff. 	<p>Third draft ESS9 requires that “FIs will put in place and maintain an Environmental and Social Management System (ESMS) to identify, assess, manage, and monitor the environmental and social risks and impacts of FI subprojects on an ongoing basis. The ESMS will be commensurate with the nature and magnitude of environmental and social risks and impacts of FI subprojects, the types of financing, and the overall risk aggregated at the portfolio level” (ESS9, para 7).</p> <p>It clarifies that only the relevant aspects the ESSs apply to FI subprojects in a manner proportionate to the risks and impacts of such subproject (ESS9, para 14). Third draft ESS9 also clarifies that “where FI subprojects are likely to have minimal or no adverse environmental or social risks or impacts, the FI will apply national law” (such as consumer loans or credit cards) (ESS9, para 9 and footnote 6).</p>
<p>41. Harmonization of approach with IFC and Equator Banks</p>	<ul style="list-style-type: none"> • Concerns about differences between the proposed ESF and IFC Performance Standards (beyond ESS9); these will have an impact on the application of Equator Principles, which cover most of the project finance globally today, and may generate conflicts in negotiation of environmental requirements. 	<p>The purpose of the review and update of the World Bank’s safeguards is, among other things, to increase harmonization with other MDBs. The proposed ESS9 is informed by IFC’s Performance</p>

Summary of Phase 3 Consultations and Bank Management Responses

Financial Intermediaries		
Issues	Key Comments from Stakeholders	Bank Management Responses
	<ul style="list-style-type: none"> Many banks would be interested to maintain the same type as IFC’s categorization they are used to (A, B, C), which is also the risk categorization system used under the Equator Principles. 	<p>Standards but has also been adjusted to reflect the nature of public sector lending. Also, the revised draft ESS9 clarifies that “where the Bank is providing support to a project involving Financial Intermediaries (FIs), and other multilateral or bilateral funding agencies, including IFC and MIGA, will or have already provided financing to the same FIs, the Bank may agree to rely on the requirements of such other agencies for the assessment and management of environmental and social risks and impacts of the project, provided that such requirements will enable the project to achieve objectives materially consistent with this ESS and other ESSs, as applicable” (ESS9, footnote 5).</p>

Stakeholder Engagement		
Issues	Key Comments from Stakeholders	Bank Management Responses
42. Definition and identification of project stakeholders and nature of engagement	<ul style="list-style-type: none"> “Stakeholder” should be explicitly defined as people/institutions being directly affected by the project. Specific guidelines for identification process of stakeholders should also be outlined in the ESS to avoid misinterpretation. 	<p>The proposed definition of stakeholders as project-affected parties and other interested parties reflects common practice in stakeholder engagement. This definition supports the principle of meaningful consultation. Approaches to identifying stakeholders will be provided in Guidance to be developed after Board approval of the ESF. The nature of the</p>
	<ul style="list-style-type: none"> Children must be explicitly referenced in articulated definitions of the term “stakeholder” and Borrowers must be required to include children in stakeholder engagement efforts around all projects—not only those 	

Summary of Phase 3 Consultations and Bank Management Responses

Stakeholder Engagement		
Issues	Key Comments from Stakeholders	Bank Management Responses
	traditionally associated with “children’s issues” such as education and health.	engagement is described in the proposed Standard and will be further described in Guidance.
43. Role of borrowing countries or implementing agencies in identifying project stakeholders	<ul style="list-style-type: none"> There is a Bank-funded project in which 27 million poor households are involved through social mobilization subprojects. In such a project, it is impossible to develop capacity of community institutions to undertake the ESF, including stakeholder engagement. Applying the ESF to such subprojects would cause serious project delay and cost increase, which would make the project unviable subject to agreement between Bank & Borrower. The ESF may set a threshold for its application to subprojects. 	<p>A key imperative of the Bank is to ensure that the feedback received from stakeholders in project consultations is representative of the full range of stakeholders affected by or interested in a project. This is codified in the current safeguard policies, and made more systematic in the proposed ESS10.</p> <p>For multiple small subprojects and FI subprojects, the stakeholder engagement will be conducted proportionate to the nature of the risks and impacts of such subprojects (ESS1 and ESS9).</p>
	<ul style="list-style-type: none"> If new risks are identified during project implementation, the SEP should be revised to reflect the new risks, and the stakeholder identification process should be revisited to ensure that any additional stakeholders or project affected persons are incorporated into the revised SEP. This revised SEP should be disclosed in addition to the updated ESCP. 	

Summary of Phase 3 Consultations and Bank Management Responses

EHSG and GIIP		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>44. Application of the Environmental, Health and Safety Guidelines (EHSGs) and Good International Industry Practice (GIIP), especially when different to national law or where the Borrower has technical or financial constraints and/or in view of project specific circumstances</p>	<ul style="list-style-type: none"> As currently phrased, ESS3 suggests that EHSGs may be viewed as one option among others. Proposed solution: Where the EHSGs are available, they should operate as the default standard. 	<p>The proposed ESF includes a requirement to apply the relevant requirements of the EHSGs. It clarifies that, when host country requirements differ from the levels and measures presented in the EHSGs, the Bank will require the Borrower to achieve or implement whichever is more stringent. If less stringent levels or measures than those provided in the EHSGs are appropriate in view of the Borrower's limited technical or financial constraints or other specific project circumstances, the Bank will require the Borrower to provide full and detailed justification for any proposed alternatives through the environmental and social assessment. This justification must demonstrate, to the satisfaction of the Bank that the choice of any alternative performance level is consistent with the objectives of the ESSs and the applicable EHSGs, and is unlikely to result in any significant environmental or social harm. (ESS1, para 18)</p>

Feasibility and Resources for Implementation		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>45. Implementation and resource implications for</p>	<ul style="list-style-type: none"> While the Bank's safeguard policies are forward-looking, they are very difficult to implement. The capacity of local people is poor, and a lot of developing countries are frustrated by the work involved in fulfilling such 	<p>Implementation and resource implications for Borrowers were at the core of the consultation discussions. To</p>

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Feasibility and Resources for Implementation		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>Borrowers, taking into account factors such as the expanded scope of the proposed ESF (e.g., labor standard), different Borrower capacities and adaptive management approach</p>	<p>requirements. The Bank should be more flexible and take a step-by-step approach.</p> <ul style="list-style-type: none"> • There is a trade-off between the burden of the local implementers and the quality of the project. If very high standards are in place, it is difficult for people to implement them, and high standards are meaningless if they are not implemented. So it is important to allow flexibility in implementation. Such flexibility could be allowed based on the project nature or its location. • The proposed second draft of ESF is also quite exhaustive, especially for linear infrastructure projects (such as highway development). This will likely result in additional cost and time implications, apart from enormous documentation. • The ESF will delay formulation of a new project, as well as its implementation. • In addition to huge cost burden, it hinders the capacity of the Borrower and Bank TTL to focus on the core objectives of the project, and reach the negotiation stage. <ul style="list-style-type: none"> • Participants wished to know if the Bank had statistics on safeguard implementation as a percentage of total project costs. The Bank should also estimate the resource implications of introducing the ESF. 	<p>better understand the incremental effort required of the Bank and Borrowers, Bank staff discussed 42 case studies with Borrowers during consultations, comparing the effort needed to implement the requirements of the second draft ESF with the effort needed to implement the current safeguard policies appropriately. Results suggest that the overall additional effort for the average project would not entail overly burdensome requirements and that there are opportunities to achieve operational efficiencies. Incremental effort would be higher for implementing ESS1, ESS2, and ESS10. The road-testing highlights the fact that current practice already accounts for many of the proposed requirements: projects with good environmental and social planning already take into account, for example, inclusion, stakeholder engagement, or labor risk, among other things. Thus, the proposed ESF, first and foremost, aims to standardize environmental and social risk management performance, make it more consistent across projects, and achieve a common level of high quality in implementation.</p>

Summary of Phase 3 Consultations and Bank Management Responses

Feasibility and Resources for Implementation		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>46. Mitigation of additional burden and cost and options for improving implementation efficiency while maintaining effectiveness</p>	<ul style="list-style-type: none"> • Outstanding issues in the proposed ESF can be categorized into three groups: <ul style="list-style-type: none"> (i) Standards that are simply not doable or desirable or create more problems than solving them. These will include Indigenous Peoples issues in Africa, and informal and voluntary/community labor issues in South Asia; these should be deleted or appropriately modified. (ii) Standards that will impose disproportionate costs and time delay, such as assessment of historical pollution, intangible cultural heritage or cumulative impacts. These should be examined or made reasonable. (iii) Issues for which we can find a more reasonable way to achieve the same objective, if better structured. One way for this would be clarification or explanation through guidance materials. • In phase 3 consultations, the Bank team should listen to the borrowers against these criteria, and revise the proposed ESF accordingly. 	<p>Insight from the phase 3 consultations including road-testing on implementation challenges was used to develop the third draft ESF. Where the feedback from stakeholders and road-testing showed lack of clarity in proposed requirements, the draft was revised to be clearer. Where the second draft ESF introduced requirements that were considered not feasible when reviewing the case studies, Management made adjustments.</p> <p>The implications of additional costs for the Borrower will be discussed with shareholders after Board approval of the proposed ESF. The proposed Standards identify specific areas in which the Bank will assist Borrowers in fulfilling their requirements—for instance, with regard to the ESCP (ESS1), GHG emission estimation (ESS3), and the SEP (ESS10). The Bank will work closely with Borrowers to ensure the efficient and effective implementation of the proposed ESF requirements.</p>

Summary of Phase 3 Consultations and Bank Management Responses

Client Capacity Building and Implementation Support		
Issues	Key Comments from Stakeholders	Bank Management Responses
47. Funding for client capacity building	<p>Summary of feedback on client capacity building and implementation support:</p> <ul style="list-style-type: none"> • Funding: The Bank should set aside substantial fund/grant for borrower capacity building. • Materials and tools to be prepared: clear procedures, guidance notes, country case studies, comparison table between ESF/national system and ESF/OPs, translation into national language • Audience: For all levels, including policy makers, national and local officials, consultants, PIUs, local implementers and community people • Suggested ideas to support capacity building of the borrowers <ol style="list-style-type: none"> a) The Bank and borrower must agree on a capacity building program; b) The Bank should collaborate with country institutions for capacity building; c) Prior sensitization, general awareness raising and training in specific areas of the ESF; d) Assessment of Borrower’s ES Framework and gap analysis; e) Strengthening of Borrower’s monitoring capacity; f) Mapping of national institutions regarding ES assessment and management competencies; building functioning national systems; and helping Borrowers update their ES laws and regulations; g) Establishing baseline data; and h) Online forum for practitioners where other relevant specialists like procurement can join. • The Bank should have a particular focus on countries with capacity constraints, such as FCS, small states and emergency situations. 	<p>Consultation participants widely agreed on the importance of client capacity building as a central element in the Bank’s effort to modernize its approach to environmental and social risk management. The extension of the scope of risk assessment and management and its proposed shift to an outcome-based, adaptive risk management approach will need to be accompanied by increased efforts to strengthen institutions in borrowing countries, especially in the agencies that implement Bank-funded projects and among the professions that assess environmental and social risk. The ESF is designed to strengthen the partnerships between the Bank and its Borrowers, with the specific aim of building capacity in borrowing countries and in other relevant groups. Activities to strengthen borrower capacity will be identified in countries based on evident capacity gaps, the track record of existing programs, current and projected lending volumes, and the need for additional resources. This work would be funded from a variety of sources: borrowing, reimbursable advisory services, donor funding, the Bank’s budget and, in some cases, the country’s own resources. In addition, Management will seek to</p>
48. Approaches and areas of focus		
49. Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations		

Summary of Phase 3 Consultations and Bank Management Responses

Client Capacity Building and Implementation Support		
Issues	Key Comments from Stakeholders	Bank Management Responses
		<p>establish a multidonor trust fund (MDTF) for situations of FCV and for Borrowers with low capacity. In some cases where the Bank and Borrowers have agreed to use the Borrower’s frameworks, capacity building approaches for countries and agencies will be developed on the basis of an assessment of Borrowers’ environmental and social frameworks. The assessment will determine the acceptability of part or all of a borrower’s frameworks for individual projects and will be used to identify measures to strengthen the relevant frameworks. The approach to capacity building would be based on a needs assessment conducted in collaboration with the Borrower. Capacity building measures would include short-term awareness raising and training on particular aspects of the ESF, especially with regard to the ESSs that Borrowers are required to implement. This training would be delivered in selected countries over a period of 6 months after Board approval of the proposed ESF. Beyond this short-term effort, the Bank would engage in long-term, systematic institution building. This effort would be based on dialogue with governments, linked to the Borrower Framework Assessment process and</p>

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Client Capacity Building and Implementation Support		
Issues	Key Comments from Stakeholders	Bank Management Responses
		reflected in the Country Partnership Framework (CPF), as appropriate.

Disclosure		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>50. Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)</p>	<ul style="list-style-type: none"> The timely disclosure of assessment and mitigation documents, coupled with rigorous monitoring of projects – is one that puzzles me. The draft ESF looks to be a step backwards on timing and disclosure of key risk assessment and mitigation documents. The ESF should say clearly and unambiguously that the ESIA, resettlement plans, and Indigenous Peoples plans, should be publicly available well before the project goes to Board. The same standard of disclosure should also apply to the environmental and social commitment plan. Failure by the World Bank to be clear on this basic issue raises the possibility that timely disclosure will not occur. We hope for more clarity in the final ESF so that public disclosure is not a “tick the box” exercise, but rather allows the public and project-affected people to provide meaningful input to these key documents. 	<p>Disclosure was discussed by government representatives and CSOs in Part I countries. Responding to this feedback, the Bank clarified disclosure provisions in the proposed Procedure, Policy, ESS1, and ESS10. It was specified that Borrowers would be required to disclose sufficient information about the project’s potential risks and impacts to its stakeholders in a timely manner and that the Bank will disclose draft documentation relating to projects of High and Substantial Risk before appraisal. The proposed ESF describes the nature of the documents to be disclosed before Board approval (ESP, para 51; and ESS1, para 52). These paragraphs will need to be read in conjunction with the Environmental and Social Procedure section on disclosure. In addition, ESS10 (para 6) also clarifies that Borrowers will engage with stakeholders in a timeframe that enables meaningful consultations with stakeholders on project design.</p>

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Implementation of the ESF		
Issues	Key Comments from Stakeholders	Bank Management Responses
51. Bank internal capacity building, resourcing, and behavioral change in order to successfully implement the ESF	<ul style="list-style-type: none"> The Bank internal capacity building and resourcing plan needs to be developed and discussed with the shareholders in order to successfully implement the ESF. 	The Bank's capacity to implement the ESF was an important topic for donor shareholders during consultations. The Bank will prepare an implementation approach that will outline the planned approach to internal capacity building, resourcing, and behavior change.
	<ul style="list-style-type: none"> The Bank should also assess the implication caused by the ESF on the reaction time of the Bank staff to the Borrower. 	
52. Ways of reaching mutual understanding between Borrower and Bank on issues of difficult interpretation	<ul style="list-style-type: none"> In case of different interpretation of the ESF, the Bank and the Borrower should engage in dialogue to reach a mutual understanding. 	The Bank is committed to working closely with Borrowers on addressing implementation issues and enhance Borrower's capacity in implementing the ESF for projects.

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II. Other Key Issues Raised During Phase 3 Consultations

Summary of Phase 3 Consultations and Bank Management Responses

Cross-Cutting Issues		
Issues	Key Comments from Stakeholders	Bank Management Responses
53. Objectives of each ESS	<ul style="list-style-type: none"> • The objectives in each ESS are very weak and inconsistent with its requirements. They need to be redrafted. 	<ul style="list-style-type: none"> • The section of “objectives” of each ESS have been revised to better reflect the content of the standards.
54. Disability	<ul style="list-style-type: none"> • ESS10 mentions the issue of accessibility but there is no definition. It was recommended that a glossary be provided with the definition of accessibility. • There is a perception that hiring persons with disabilities is costly. Some initial investment may be necessary to hire a person with disabilities. But the same investment can work for hiring more persons with disabilities, and such investment will be marginal. • “Universal design” refers to the usability of buildings and structures by all people, the greatest extent possible, without the need for adaptation or specialized design. “Accessibility” refers to the identification and elimination of obstacles and barriers to ensure access to the physical environment, to transportation, to information and communications, and to other facilities and services. 	<ul style="list-style-type: none"> • “Accessibility” has been added to the glossary. • A new footnote has been added in ESS2 to clarify that reasonable measures will be considered to adapt the workplace in relation to project workers with disabilities (ESS2, footnote 11). • The third draft ESS4 has been revised to clarify that the Borrower will also apply the concept of universal access in provision of services, where technically and financially feasible (ESS4, para. 9).

ESS1		
Issues	Key Comments from Stakeholders	Bank Management Responses
55. Livelihood restoration	<ul style="list-style-type: none"> • The ESF should be revised to state that people who suffer project-related livelihood impacts that are not directly related to land acquisition are required to get compensation and/or livelihood restoration assistance. 	<ul style="list-style-type: none"> • A new footnote has been added to clarify that the requirement to mitigate impacts may include measures to assist affected parties to improve or at least restore their livelihoods as relevant in a particular setting (ESS1, footnote 25).

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ESS1

Issues	Key Comments from Stakeholders	Bank Management Responses
56. “Technically and financially feasible”	<ul style="list-style-type: none"> • More clarification must be provided to the meaning of “technically and financially feasible.” 	<ul style="list-style-type: none"> • The term “technically and financially feasible” is defined in the ESF (ESS1, footnotes 2 and 3). Further guidance on what considerations need to be taken into account will be provided in guidance notes.

ESS2

Issues	Key Comments from Stakeholders	Bank Management Responses
57. No retaliation relating to worker’s organization	<ul style="list-style-type: none"> • The Bank needs to prohibit acts of discrimination and retaliation against workers who seek to freely associate and bargain collectively in Bank financed projects. 	<ul style="list-style-type: none"> • A new sentence has been added, requiring that the Borrower will not discriminate or retaliate against project workers who participate, or seek to participate, in workers’ organizations and collective bargaining (ESS2, para. 16).
58. Light works done by children for their family activities	<ul style="list-style-type: none"> • Children should not be exploited, but they should be able to work on family farms. 	<ul style="list-style-type: none"> • A number of borrowers are concerned that ESS2 should not prevent light work done by children for family activities. A guidance note will address this concern to clarify the circumstances where a child may be involved in such light work.

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ESS3

Issues	Key Comments from Stakeholders	Bank Management Responses
59. Air pollution and mitigation options	<ul style="list-style-type: none"> The Bank should define “air pollution,” which appears to be undefined. 	<ul style="list-style-type: none"> A new footnote has been added, to define “air pollution refers to the release of air pollutants (often associated with the combustion of fossil fuels), such as nitrogen oxides (NOx), sulfur dioxide (SO2), carbon monoxide(CO), particulate matter (PM), as well as other contaminants including GHGs (ESS3, footnote 10). The footnote on the mitigation options for air pollution has been expanded to provide mitigation options for air pollution other than GHG emissions (ESS3, footnote 12).
	<ul style="list-style-type: none"> The mitigation options for air pollution other than GHG emissions should be provided. 	

ESS4

Issues	Key Comments from Stakeholders	Bank Management Responses
60. Community health and safety and the vulnerable	<ul style="list-style-type: none"> ESS4 needs to be modified to explicitly acknowledge that there are gender-distinct situations relating to health and safety. 	<ul style="list-style-type: none"> A clarification has been added, requiring that the Borrower will evaluate risks and impacts of the project on the health and safety of the affected communities, including those who, because of their particular circumstances, may be vulnerable (ESS4, para. 5).

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ESS5

Issues	Key Comments from Stakeholders	Bank Management Responses
61. “De facto” land taking	<ul style="list-style-type: none"> Some impacts – such as rendering riverbank gardens unusable through river level fluctuations -- constitute de facto land takes, essentially rendering land unusable by the affected population. Other impacts, such as reducing water availability or physical barriers, directly impact access to natural resources (e.g., reduce aquatic species). These circumstances should clearly be covered by ESS5. 	<ul style="list-style-type: none"> The definition of “land acquisition” has been expanded to cover situations in which project impacts result in land being rendered physically unusable or inaccessible, even where the legal acquisition of land is not involved (ESS5, para. 4 (e) and footnote 1).
62. Escrow arrangements	<ul style="list-style-type: none"> The paragraph on the use of escrow account to allow the Borrower to proceed with the project activities needs to be tightened to avoid potential misuse. 	<ul style="list-style-type: none"> The criteria governing the use of escrows applies on an exceptional basis. The requirement has been clarified (ESS5, para 16).

ESS6

Issues	Key Comments from Stakeholders	Bank Management Responses
63. Animal welfare	<ul style="list-style-type: none"> ESS6 should address animal welfare more explicitly, requiring that Borrowers involved in large-scale commercial farming, including breeding, rearing, housing, transport, and slaughter of animals for meat or other animal products (such as milk, eggs, wool) will employ the Good Practice Note on Improving Animal Welfare in Livestock Operations and other GIIP, whichever is most stringent, in animal husbandry techniques, with due consideration for religious and cultural principles. 	<ul style="list-style-type: none"> A reference to IFC’s Good Practice Note on “Improving Animal Welfare in Livestock Operations” and clarifications on animal welfare have been added (ESS6, para 37 and footnote 19).

ESS7

Issues	Key Comments from Stakeholders	Bank Management Responses
64. Identification of IPs	<ul style="list-style-type: none"> The definition of Indigenous Peoples is too generic and unclear. The definition of IP should be consistent with the country framework. 	<ul style="list-style-type: none"> A clarification has been added that the Bank may follow national processes during project screening for the

Summary of Phase 3 Consultations and Bank Management Responses

ESS7

Issues	Key Comments from Stakeholders	Bank Management Responses
	<ul style="list-style-type: none"> Definition on IPs under ESS7 is very wide. Identification of IPs should be done in consultation with the Borrower. Regarding identification of Indigenous Peoples under ESS7, Indigenous Peoples should also be involved in the decision. 	<p>identification of Indigenous Peoples, where these processes meet the requirements of ESS7, including the criteria for identification (ESS7, para 10). This is consistent with the current safeguard policy OP4.10.</p> <ul style="list-style-type: none"> A footnote has been added to clarify that the Bank will also consult the IPs concerned and the Borrower in the identification of the IPs (ESS7, footnote 8).
65. Conversion of customary land usage right	<ul style="list-style-type: none"> Providing for the conversion of land to individual ownership rights is contrary to the collective nature through which Indigenous Peoples may assert their land rights and should thus be removed. 	<ul style="list-style-type: none"> A clarification has been added that conversion of IPs' customary usage rights to communal and/or individual ownership rights will only be an objective following consultation with the IPs concerned (ESS7, footnote 17).

ESS8

Issues	Key Comments from Stakeholders	Bank Management Responses
66. Transfer of natural features with cultural significance	<ul style="list-style-type: none"> The adoption of language that allows for permanent removal or transfer of cultural heritage is strongly opposed. It is in the best interests of the Bank to avoid any development projects that allow for the deliberate and permanent removal or transfer of cultural heritage since such activities are not only inherently negative, but are also looked unfavorably upon by local, national, and international communities, and are in violation of the laws of many countries. 	<ul style="list-style-type: none"> A clarification has been added that the transfer of "natural features with cultural significance" needs to be cautiously conducted in consultation with stakeholders and in accordance with Good International Industrial Practice (GIIP). (ESS8, para 26)

Summary of Phase 3 Consultations and Bank Management Responses

ESS9		
Issues	Key Comments from Stakeholders	Bank Management Responses
<p>67. Stakeholder engagement and information disclosure by FI</p>	<ul style="list-style-type: none"> • Participants expressed concerns regarding ESS9 requirements for stakeholder engagement conducted by financial intermediaries and inquired if these requirements could be revisited. • Participants highlighted that while banks in the country increasingly look into supporting greater transparency in their operations, there are confidentiality laws in the country that limit banks' ability for disclosure. Bank can only speak publicly about projects they finance if explicitly permitted to do so by their clients. 	<ul style="list-style-type: none"> • The draft has been amended, so that FIs will require that their subprojects conduct stakeholder engagement as set out in ESS10, in a manner proportionate to the risks and impacts of the subprojects. In certain circumstances, however, depending on the risks and impacts of the project and the type of FI subprojects it will finance, the Bank may require the FI to be engaged in stakeholder engagement (ESS9, para 24). This is in contrast to the second draft that placed the requirement on the FI. • The requirements for disclosure by FIs have been adjusted to address concerns about compliance with confidentiality under national laws. FIs will be required to disclose a summary of the elements of the FI's Environmental and Social Management System (ESS9, para 26). Sub-borrowers are required to disclose any project-related documents and environmental and social monitoring reports required by the ESSs and for any FI subprojects categorized as high risk in accordance with the FI's own categorization system (ESS9, para 27).