Review and Update of the World Bank’s Environmental and Social Safeguard Policies
Phase 2
Feedback Summary

Date: December 15, 2014
Location: Brasília, Brazil
Audience: Private Sector
Main Comments Received:

Specific Feedback from Stakeholders
1. General Comments
• The Bank should adopt **different safeguard policies for different countries** as countries at different stages of development have very **different challenges and capabilities**. For example, it would be difficult to apply the same policies to the BRIC countries and to African countries. • The proposal has many advantages. The **harmonization with the IFC performance standards and the use of country systems are steps in the right direction**. The current proposal also represents a more coherent set of policies, as the current safeguards policies emerged separately over twenty years. • **The proposal to be less prescriptive and to adopt an adaptive management approach is one of the positive aspects of the new Environmental and Social Framework**. However, to be less prescriptive in practice, it would be necessary to examine the **connection between the new environmental and social standards and the reform of the Bank's procurement policies**. For example, would the Bank give a higher score to a bid based on the environmental and social track record of the company? Today, this is not taken into account in the bidding policies.
2. *A Vision for Sustainable Development*
N/A

3. *World Bank Environmental and Social Policy*

- It is not clear in the Environmental and Social Framework the **risk rating criteria** and what would be the **difference between a high-risk project and substantial risk project**. In addition, it is unclear whether this risk classification criterion is **aligned with the IFC risk classification**.

4. *Environmental and Social Standard 1 (ESS1): Assessment and Management of Environmental and Social Risks and Impacts*

- The safeguards policies are specific to projects. However, it would be important to **consider the environment as a whole**. For example, a hydroelectric project in the Amazon can generate a small impact, but several hydroelectric projects can have a large **cumulative impact**.
- The application of paragraph 13, footnote 10 of this standard is extremely problematic, since it is **difficult to implement safeguards policies to technical assistance projects**. The obligation should be to ensure consistency with the policies, but not to guarantee the result, since this is impossible in practice. It would be a **mistake to address social and environmental issues in technical assistance projects through the safeguards policies**. Conceptually, these should not be applied to technical assistance because it creates a moral hazard that would be difficult to overcome. In addition, **BRIC countries are increasingly seeking the Bank's technical assistance and that would constitute a disincentive for such funding**. If the Bank decides to apply the proposed standards to technical assistance projects, the Bank should clearly **state the limitations of this application**. For example, the terms of reference should be consistent with the standards, but the Bank should not require the results, since the Bank is not responsible for and is not funding the construction work. For example, the technical assistance project Interáguas, which was a category A project, entailed an extremely difficult negotiation with the Brazilian government. The Albania project that had an Inspection Panel case also illustrates the difficulty of applying safeguard policies in technical assistance projects.
- The proposed Framework provides an **opportunity to seek harmonization with other co-financiers**. However, it is **unclear in the document which policy applies in the case of co-financing and whether the Borrower or the Bank decides which policy applies.**
- Paragraph 21 of ESS 1 should **be clearer about the concept of cumulative impacts**. For example, if the Bank builds a railroad, but does not build the generation of electricity, it is not clear from the Framework whether this would be considered a cumulative impact. In addition, it is not clear in the proposed Framework the role of the government and the private sector and it is extremely important to clarify this point, since the private sector relies heavily on the public sector.

5. *Environmental and Social Standard 2 (ESS2): Labor and Working Conditions*

- Brazil already has the concept of collective bargaining agreement (acordo coletivo) established in the national legislation, therefore there would be **no need for a grievance mechanism**.

- Paragraph 13 of ESS2 mentions that a grievance mechanism will be established to solve problems promptly, however, **the word promptly should be replaced to an adequate or appropriate time according to the nature of the grievance**.

6. *Environmental and Social Standard 3 (ESS3): Resource Efficiency and Pollution Prevention*

- **The Bank should not set the standard of 5,000 m^3/day to measure water consumption.** It should instead take into account the availability of water resources in the countries. The question is not to consume a lot of water, but to **consume it appropriately**, taking into account the project context. The main issue should be **proportionality**. For example, the use of 5,000 m^3 /day of water in São Paulo would be considered a lot, but for a project near the Madeira River that would not be considered that much.

7. *Environmental and Social Standard 4 (ESS4): Community Health and Safety*

- The standard on community health and safety is welcome. However, there is often **a lack of public sector investment on signaling and traffic education and this should not be the responsibility of the private sector**. The document is not clear what would be **the division of responsibilities between the public and the private sectors**.

8. *Environmental and Social Standard 5 (ESS5):Land Acquisition, Restrictions on Land Use and Involuntary Resettlement*

N/A

9. *Environmental and Social Standard 6 (ESS6): Biodiversity Conservation and Sustainable Management of Living Natural Resources*

- The requirement to ensure that the **primary supply chain production is not taking place in regions where there is a risk of significant conversion of natural habitats will create a difficulty for the Borrower, as this will require a responsibility to closely follow-up on the sub-contractors.** This new requirement of the Bank in the proposed Framework is much stricter than those requirements set out in the IFC Performance Standards.
- How will the Bank set the example in the issue of **sustainable procurement**?
- The definition of **protected areas should not be limited to areas legally recognized according to the IUCN classification**. **The existence of endangered species should be the determinant of what should be a protected area**. In Brazil, the conservation units have been created and are now ceasing to be created through a legal process. The Bank should also think about how to treat the areas that are no longer legally protected.

10. *Environmental and Social Standard 7 (ESS7): Indigenous Peoples*

- A major change in the new proposal is the question of how to work with Indigenous Peoples. The **free, prior and informed consent (FPIC) is still not regulated by the Brazilian law**, since the Indian Statute has not yet been updated.

- ESS7 should establish a **geographical area of influence for measuring if a project has impacts on Indigenous Peoples territories**. The Brazilian law establishes a radius of 10 km around the Indigenous territories to measure if a project has an impact on Indigenous lands.
- ESS7 is **inconsistent** because in paragraph 19, the document states that FPIC is required when there is an impact on the lands and natural resource under traditional use or occupation, the project causes the displacement of Indigenous Peoples and there is significant impact on Indigenous People's cultural heritage. In this sense**, for impacts on land and natural resources, the impact does not have to be significant, but for cultural heritage it seems that FPIC only applies in cases of significant impact**.
- It is not clear in the document **in what stage of the project cycle would FPIC be required**, whether it would be in the identification or engineering/design stage. This is important, given that the more you invest in the project, the harder it gets to withdraw.
- The inclusion of the adaptive management approach is positive; however it is not clear how this would relate to FPIC, given that sometimes Indigenous Peoples give their consent to the project, but during the implementation phase they change their minds. This could lead to problems of legal uncertainty.

11. ***Environmental and Social Standard 8 (ESS8): Cultural Heritage***

- Paragraph 84 of ESS 8 includes the requirement to promote the equitable sharing of benefits from the use of cultural heritage; however this should not be the responsibility of the Borrower but instead the responsibility of the community itself.

12. ***Environmental and Social Standards 9 (ESS9): Financial Intermediaries***

- The standards proposed in the Framework seem to be more stringent than the IFC Performance Standards. However, **it is not clear whether those financial intermediaries who follow the Equator Principles will have to follow the World Bank or the IFC standards**.
- It is not clear in the document what would be the role of the financial intermediary in the process of the environmental assessment.
- Paragraph 16 of ESS9 requires the financial intermediaries to apply ESS10. However, it is not clear how and in what context would this requirement apply.
- **The requirement to disclose the environmental assessment of the sub-projects supported by the financial intermediaries could not be applied in Brazil due to the Law of the Banking Secrecy** (Lei do Sigilo Bancário). In order to disclose this type of information, it is necessary to have an authorization from the client.
- **It would be extremely difficult for the private banks to apply the requirement** outlined in paragraph 18 of ESS9 to **report the total risk of the portfolio of sub-projects of the financial intermediary**.
- **It is not clear in the proposal what exactly the financial intermediary is required to report to the World Bank**.

- Most of the private banks in Brazil already have their own monitoring and evaluation procedures and practices. **The requirement that the World Bank needs to conduct a due diligence of the private banks every time the World Bank is financing a project is extremely complex for some private banks in Brazil and would entail high costs**. In addition, it is not clear how the due diligence will be undertaken and when and how the private bank's management of social and environmental issues would be considered satisfactory.
- In Brazil, there is a discussion about the possibility of **holding the banks liable for the social and environmental damage** caused by their clients. The World Bank should not include in the ESF issues that could aggravate this problem and make the loans not viable, such as **the requirement to disclose the environmental assessment of the sub-projects supported by the financial intermediary**. The disclosure should be voluntary and should be subject to an understanding that the financial intermediary has no responsibility related to such disclosure.

13. *Environmental and Social Standard 10 (ESS10): Information Disclosure and Stakeholder Engagement*

N/A