



Review and Update of the World Bank's Environmental and Social Safeguard Policies

Phase 3

Feedback Summary

Date: March 1, 2016

Location: Brasilia, Brazil

Audience: Government

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	<ul style="list-style-type: none"> Participants welcomed the inclusion of the human rights language in the proposed ESF.
ESP/ ESS1	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	<ul style="list-style-type: none"> Participants were supportive of explicitly including of the language regarding sexual identity and orientation in the language of the proposed ESF concerning vulnerable groups.
	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	<ul style="list-style-type: none"> Participants stated that use of country/Borrower frameworks should be an integral part of the proposed ESF, which should include clear statements about encouragement of the use of Borrower frameworks as well as stress the importance of Borrower capacity building.

		<p>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</p> <p>6. Role of Borrower frameworks in high and substantial risk projects</p>	<ul style="list-style-type: none"> • Participants highlighted the fact that national regulatory systems are, in any case, mandatory in any country. • Participants stressed the need for more flexibility with regard to Borrower frameworks, for example supporting the use of such frameworks for all projects, including high and substantial risk, instead of applying the ESSs.
	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	<ul style="list-style-type: none"> • Participants inquired about the degree of alignment of the ESSs with the Equator Principles and IFC Performance Standards.
	Adaptive risk management	8. Approach to monitoring E&S compliance and changes to the project during implementation	<ul style="list-style-type: none"> • Participants stated that while they are supportive of the concept of adaptive risk management, any changes to ESCP and project legal agreement may make it difficult in practice and, therefore, Bank should provide a way for this to be managed efficiently.
	Risk classification	9. Approach to determining and reviewing the risk level of a project	<ul style="list-style-type: none"> • Participants raised a question on whether it might be more effective to maintain risk classification that is more aligned with what many countries have in place (i.e. 3-point scale).
ESS1	Assessment and management of environmental and social risks and impacts	<p>10. Assessment and nature of cumulative and indirect impacts to be taken into account</p> <p>11. Treatment of cumulative and indirect impacts when identified in the assessment of the project</p> <p>12. Establishing project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects</p>	Not discussed in detail

		13. Circumstances under which the Bank will determine whether the Borrower will be required to retain independent third party specialists	
	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	<ul style="list-style-type: none"> • Participants expressed concern about costs and complexities of preparation and periodical review of the ESCP and, in particular, the impact of reviewing the ESCP if it is included as part of the project legal agreement (i.e. the need to submit at any time the revised ESCP to approval by Brazilian authorities, such as GTEC-COFIEX). • Participants stressed that in Brazil, any change to the legal agreement – including ESCP – may be considered restructuring as it constitutes a set of legally binding commitments. For example, if a critical habitat is found in relation to a project after the legal agreement is signed, and this merits a change in the ESCP, including a new commitment to manage the associated risks and impacts, it will constitute a project restructuring. • Participants also strongly suggested that, as proposed, ESCP should form part of the overall project negotiations before Board approval and be formulated and managed in a way that would help avoid subsequent changes to the legal agreement and therefore sending it back to the WB Board or to country authorities. • Participants requested to provide more clarity in the justification for the proposed ESF on who would benefit from the inclusion of the ESCP as part of the legal agreement as regard to eventual revisions.
ESS2	Labor and working conditions	15. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries)	Not discussed in detail

		<p>16. Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers</p> <p>17. Constraints in making grievance mechanisms available to all project workers</p> <p>18. Referencing national law in the objective of supporting freedom of association and collective bargaining</p> <p>19. Operationalization of an alternative mechanism relating to freedom of association and collective bargaining where national law does not recognize such rights</p> <p>20. Issues in operationalizing the Occupational Health and Safety (OHS) provisions/standards</p>	
ESS3	Climate change and GHG emissions	<p>21. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC</p> <p>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</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"> • Participants emphasized that the aspect of resilience is fundamental and should be addressed in the proposed ESF in more detail as this is critical for the SDGs and sustainable development overall. • Participants requested that the new draft of the ESF better reflect various climate-related agreements, in particular those reached during COP21 in Paris. • Participants mentioned cost as a key issue with measurement of GHG emissions and subsequent application of measures to reduce them in projects. • Participants further suggested an explicit reference to the use of national technologies as opposed to best available technologies on the global scale (e.g. European technologies).
ESS5	Land acquisition and involuntary resettlement	<p>24. Treatment and rights of informal occupants and approach to forced evictions in situations unrelated to land acquisitions</p> <p>25. Interpretation of the concept of resettlement as a</p>	Not discussed in detail

		“development opportunity” in different project circumstances	
ESS6	Biodiversity	<p>26. Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity</p> <p>27. Role of national law with regard to protecting and conserving natural and critical habitats</p> <p>28. Criteria for biodiversity offsets, including consideration of project benefits</p> <p>29. Definition and application of net gains for biodiversity</p>	<ul style="list-style-type: none"> • Participants requested that all basic biodiversity concepts and terminology behind ESS6 be carefully reviewed when developing the next draft and the translated versions. For example, para. 19 vs para. 21 –definitions of modified and natural habitat respectively – are inconsistent in that para. 19 refers to <i>substantially</i> modifying primary ecological functions while para. 21 refers to (not) <i>essentially</i> modifying primary ecological functions. • Participants suggested that concepts of biodiversity offsets and net gain must take into account not only quantitative but also qualitative parameters. • Participants emphasized that the concepts of biodiversity offsets and net gain are new concepts, they are not sufficiently tested, and the process of achieving these requirements may be difficult.
ESS7	Indigenous Peoples	<p>30. Implementation of the Indigenous Peoples standard in complex political and cultural contexts</p> <p>31. Implementation of ESS7 in countries where the constitution does not acknowledge Indigenous Peoples or only recognizes certain groups as indigenous</p> <p>32. Possible approaches to reflect alternative terminologies used in different countries to describe Indigenous Peoples</p> <p>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</p> <p>34. Criteria for establishing and implementation of Free, Prior and Informed Consent (FPIC)</p> <p>35. Comparison of proposed FPIC with existing requirements on consultation</p>	<ul style="list-style-type: none"> • Participants expressed the view that defining the nature of engagement with Indigenous Peoples – particularly ascertaining Free, Prior, Informed Consent – remains a challenge, especially in relation to the countries’ commitments to internationally agreed standards such as ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). • Participants expressed concerns about the concept of “consent” and a view that “FPIC” is in essence a consultation process, and therefore consultations should be broad and cover all affected stakeholders who should be informed

		<p>36. Application of FPIC to impacts on Indigenous Peoples' cultural heritage</p>	<p>about projects in a consistent manner.</p> <ul style="list-style-type: none"> • Participants highlighted that “consent” might mean that a specific group of people would have a veto right over the project(s), which is not warranted under ILO Convention 169 or UNDRIP. Participants further stated that this requirement may undermine project feasibility. • Participants stressed that the UN has well-established standards for protection of human rights of Indigenous Peoples, i.e. ILO 169 (1989) and the UN Declaration on the Rights of Indigenous Peoples. Participants mentioned that Brazil has advanced Indigenous Peoples policies supported by the Constitution and ratified ILO 169, however recognized that few countries ratified this Convention as it is ambitious. Participants underlined that these instruments do not have an automatic requirement for consent as compared to transparent participation of Indigenous Peoples. Participants further underlined their view that these instruments represent a global consensus on what is consent and what is consultation with regard to Indigenous Peoples. • Participants further stressed that the three instruments – ILO 169, UN Declaration, and the Outcome Document of the World Conference on Indigenous Peoples in 2014 – should be the parameters for the World Bank standards related to Indigenous Peoples and that the World Bank has no mandate for elaborating international standards in this area. • Participants raised a concern regarding explicitly addressing the issue of Indigenous Peoples under voluntary isolation, taking into account the need to preserve, respect and protect lands, territories,
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			environment, health and culture, avoiding forced contact with those communities.
ESS8	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	<ul style="list-style-type: none"> Participants suggested that decisions relating to removal of cultural heritage should be made at the country, and not project level. More specifically, it was suggested that para. 25 of ESS8 is revised to clarify that relevant cultural heritage authorities in a country will make decisions together with the project borrower (when subnational). Participants suggested that intangible cultural heritage should be given more attention in the proposed ESF.
ESS9	Financial Intermediaries	40. Application of standard to FI subprojects and resource implications depending on risk 41. Harmonization of approach with IFC and Equator Banks	Not discussed in detail
ESS10	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	Not discussed in detail
General	EHSG and GIIP	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	Not discussed in detail
	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	<ul style="list-style-type: none"> Participants highlighted that the ESF should be more practical, guarantee effectiveness, promote economic development and sustainability. Participants welcomed the ESF as an important opportunity for Borrowers to develop and to improve their processes, however expressed concern that the requirements are defined in such a

			way that the costs of meeting them would be high, and would be time-consuming to prepare projects.
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., FCS, small states and emergency situations		<ul style="list-style-type: none"> Participants highlighted the need for financing and technical assistance to strengthen both Borrower capacity and Borrower frameworks/ legislation; this aspect was discussed as one of utmost importance because if the Bank works in most difficult regions in a country that are in need of development, capacity to implement E&S risk mitigation measures will most often be low. Participants further explained that states in Brazil have varying capacity for implementation, as do different industry sectors, and that building capacity would take not only financial resources but also time. Participants, therefore, suggested that the Bank should within its vision state a clear commitment to capacity building as a way to alleviate poverty and to reach poor / poorer regions in countries as an objective.
Disclosure	50. Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)		Not discussed in detail
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		Not discussed in detail
Other issues:			
<ul style="list-style-type: none"> Participants mentioned that the ESF is a more proactive way of managing E&S issues as compared to the “old” safeguards, and that the proposed ESF creates a more strategic focus and approach to project design. 			

- Participants stressed that case studies should be chosen in a way that better highlights major differences between Safeguard polices and the proposed ESF and possibly use projects with national or at least regional impact.
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- Participants asked to clarify what is meant by project life-cycle, in order to ascertain the timeframe for applicability of the new E&S Standards.