



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

### Phase 3

### Feedback Summary

**Date: January 26, 2016**

**Location: Brussels, Belgium**

**Audience: CSOs and academics**

Part of the overall consultation with government, civil society, and other stakeholders in Brussels was a session for CSOs and academia, in which both the Bank and CSOs presented case studies. Case studies included: Indonesia Infrastructure Guarantee Fund; Fomi Dam in the Niger Delta; Sengwer and rights of Indigenous Peoples; China Green Watershed, and Kosovo Power. Comments in the table below were made by CSOs and member of academia in reference to these case studies.

| ESF    | Issue        | Items                                  | Feedback  |
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| Vision | Human Rights | 1. Approach to human rights in the ESF | <ul style="list-style-type: none"> <li>• Participants asked the World Bank to reference international agreements on human rights in the proposed ESF.</li> <li>• Human rights risk information should be systematically integrated as part of the Bank's due diligence in relation to specific projects. The case studies presented by the World Bank in the consultation showed how information produced by human rights mechanisms (e.g. the Universal Periodic Review) was particularly relevant for assessing and managing social risks (e.g. the situation of women and refugees in the Lebanon context; Indigenous Peoples' rights in the Chittagong Hill Tracts).</li> </ul> |

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| ESP/<br>ESS1 | Non-discrimination and vulnerable groups             | <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> <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>   |   |
|              | Use of Borrower's Environmental and Social Framework | <p>4. Role of Borrower frameworks in the management and assessment of environmental and social (E&amp;S) risks and impacts where these will allow projects to achieve objectives materially consistent with Environmental and Social Standards (ESSs)</p> <p>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</p> <p>6. Role of Borrower frameworks in high and substantial risk projects</p> | <ul style="list-style-type: none"> <li>• Participants stated that Borrower frameworks should not be used for protecting Indigenous Peoples in a Bank-financed project.</li> <li>• Participants asked for a clear methodology for assessing Borrower frameworks. This methodology should have been part of this consultation.</li> <li>• Participants asked that the Bank's standards should always be applied.</li> </ul> |
|              | Co-financing/<br>common approach                     | <p>7. Arrangements on E&amp;S standards in co-financing situations where the co-financier's standards are different from those of the Bank</p>  |   |
|              | Adaptive risk management                             | <p>8. Approach to monitoring E&amp;S compliance and changes to the project during implementation</p>  | <ul style="list-style-type: none"> <li>• Participants stated that the proposed mitigation hierarchy opens up everything to interpretation.</li> <li>• As for the Borrower's assessment and management of environmental and social risk, participants criticized the</li> </ul>  |

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|      |   |  | phrase “time frame and manner acceptable to the Bank” in relation to compliance and the Borrower’s commitment to implementation of the ESSs. |
|      | Risk classification   | 9. Approach to determining and reviewing the risk level of a project   |  |
| ESS1 | Assessment and management of environmental and social risks and impacts | 10. Assessment and nature of cumulative and indirect impacts to be taken into account<br>11. Treatment of cumulative and indirect impacts when identified in the assessment of the project<br>12. Establishing project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects<br>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  |  |
| ESS2 | Labor and working conditions  | 15. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries)<br>16. Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers<br>17. Constraints in making grievance mechanisms available to all project workers<br>18. Referencing national law in the objective of supporting freedom of association and collective bargaining                              |  |

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|      |   | <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> |   |
| 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 “development opportunity” in different project circumstances</p>   | <ul style="list-style-type: none"> <li>• Participants explained that the current ESS5 only applies to limited types of projects and that those displaced by other projects’ impacts (e.g. downstream of dams) are not given the same level of protection.</li> <li>• Participants explained that those outside the scope of ESS5 will not have their livelihoods restored but be offered the lesser protection of “compensation.”</li> <li>• Participants pointed out that the ADB had closed this loophole and urged the Bank to do the same: <i>“If potential adverse economic, social, or environmental impacts from project activities other than land acquisition (including involuntary restrictions on land use, or on access to legally designated parks and</i></li> </ul> |

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|      |              |   | <p><i>protected areas) are... found to be significantly adverse at any stage of the project, the borrower/client will be required to develop and implement a management plan to restore the livelihood of affected persons to at least pre-project level or better.”</i></p> <ul style="list-style-type: none"> <li>• “Technically and financially feasible” in ESS1 was seen as insufficient phrasing for compensation. Moreover, participants saw the phrase as opening the possibility for Borrowers to not compensate at all.</li> <li>• Participants raised the Independent Evaluation Group report saying that Resettlement Policy Frameworks were used too often.</li> <li>• It was suggested that the ESF: <ul style="list-style-type: none"> <li>- Ensure all those physically or economically displaced by Bank-funded projects have the right to have their livelihoods restored or improved.</li> <li>- Keep protection for those with informal land rights.</li> <li>- Expand the scope of ESS5 to cover all communities affected or otherwise amend ESS1 to cover livelihood restoration instead of just compensation.</li> <li>- Ensure that Resettlement Policy Frameworks (RPF) should be required only in rare circumstances, which should be reflected in ESS5.</li> <li>- Ensure that RPFs, when they are used, contain a requirement to carry out Resettlement Action Plans.</li> </ul> </li> </ul> |
| 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"> <li>• Participants asked the Bank to ensure compliance with environmental downstream flows.</li> </ul>  |

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| 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> <p>36. Application of FPIC to impacts on Indigenous Peoples' cultural heritage</p> | <ul style="list-style-type: none"> <li>• Participants asked to ensure that considerations regarding Indigenous Peoples' rights are not removed when a project is being restructured. Restructuring should only happen with extensive consultations involving Indigenous Peoples.</li> <li>• It was recommended that Indigenous Peoples should be involved in the management of forest resources.</li> <li>• It was proposed that reaching FPIC should be a requirement of any activity impacting Indigenous Peoples.</li> <li>• Participants suggested that Indigenous Peoples should be involved in and validate any impact assessment.</li> <li>• It was proposed that the substantive elements of ESS7 should be preserved even if terminology alternative to "Indigenous Peoples" is used.</li> </ul> |
| ESS8 | Cultural Heritage        | <p>37. Treatment of intangible cultural heritage</p> <p>38. Application of intangible cultural heritage when the project intends to commercialize such heritage</p> <p>39. Application of cultural heritage requirements when cultural heritage has not been legally protected or previously identified or disturbed</p>  |   |
| ESS9 | Financial Intermediaries | <p>40. Application of standard to FI subprojects and resource implications depending on risk</p> <p>41. Harmonization of approach with IFC and Equator Banks</p>  | <ul style="list-style-type: none"> <li>• Participants emphasized the importance of assessing Borrower and Financial Intermediaries (FI) capacity.</li> <li>• Questions were raised about how the new ESF will help get better outcomes in FI projects.</li> <li>• Participants argued that if FIs decide the risk level of sub-projects, they would have an incentive to classify as low risk, which would influence the level of required</li> </ul>   |

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|         |   |   | stakeholder engagement. How would the Bank react if it finds that an FI is not acting in good faith with regard to risk classification?  |
| ESS10   | Stakeholder engagement                              | 42. Definition and identification of project stakeholders and nature of engagement<br>43. Role of borrowing countries or implementing agencies in identifying project stakeholders  |  |
| 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   |  |
|         | 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<br>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<br>48. Approaches and areas of focus<br>49. Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations   |  |
|         | Disclosure  | 50. Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)   | <ul style="list-style-type: none"> <li>• Participants emphasized the need for clear instructions about monitoring and disclosure, as well as clear timelines for disclosure of risk assessment and mitigation documents.</li> <li>• It was recommended to disclose Indigenous Peoples Plans before Board approval of a project.</li> </ul> |

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|              | Implementation of the ESF | <p>51. Bank internal capacity building, resourcing, and behavioral change in order to successfully implement the ESF</p> <p>52. Ways of reaching mutual understanding between Borrower and Bank on issues of difficult interpretation</p> | <ul style="list-style-type: none"> <li>• There were questions on how the new framework would affect the project cycle, particularly since the Borrower claims it will increase preparation time.</li> </ul>   |
| Other issues |                           |   | <ul style="list-style-type: none"> <li>• A participant inquired whether, if a project endangers the safety of communities (see ESS4), would the Bank stop the project?</li> <li>• It was recommended to apply Bank safeguards across all Bank instruments.</li> <li>• Participants recommended that no waivers should be granted to Borrowers in the application of Bank safeguards.</li> </ul> |