

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

Phase 3

Feedback Summary

Date: January 20, 2016

Location (City, Country): Hanoi, Vietnam

Audience: Government and implementing agencies

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	<ul style="list-style-type: none"> N/A
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"> There must be clearer criteria on the support required for “vulnerable groups” under the ESF. It was noted that in Vietnam there are vulnerable groups who are not ethnic minority groups but need support. In Vietnam, there are a number of war martyrs and heroes from the war time and the revolution. Such persons and households may need to be included in the target group.
	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	<ul style="list-style-type: none"> It is difficult to enhance the national framework to meet international standard. Such changes to the national frameworks take place over a long period time. For example, under the national framework, community consultation requirements means sending letter as opposed to gather people and request that they openly express their views, as

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		<p>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>	<p>required by the World Bank. The Bank should be aware of this, and find a way to bridge such a gap between the ESF and the national framework.</p>
	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"> • N/A
	Adaptive risk management	8. Approach to monitoring E&S compliance and changes to the project during implementation	<ul style="list-style-type: none"> • There must be flexibility in the implementation of E&S so changes during project implementation can be accommodated. • E&S monitoring in Vietnam is complex since contractors are not aware that they need to comply with environment, health and safety requirements. It is, therefore, very important to ensure that the bidding documents are reviewed by environment and social safeguards staff so that bidding documents clearly spell out environmental, health and safety obligations. • Contracts should be clear on environmental and social obligations and there is a need to include penalty and reward system in the contractor bidding documents to ensure compliance with E&S requirements. The Bank should consider some form of partial suspension of payment to

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			<p>contractors in case of non-compliance with E&S requirements. This would improve the awareness of contractors on the importance of E&S issues.</p> <ul style="list-style-type: none"> • As a penalty to non-compliance with E&S requirements by the contractor, the Bank should consider providing up to 5 % of the payment for the contractor to third parties for corrective action. • Penalty in payment should not be the only way. Raising awareness of investors, contractors and project managers through a good reminder system on E&S issues would help promote good practice at work site. • There is no regulation on monthly or weekly monitoring and reporting requirements. Even if there are some reports, they are often nothing but copy and paste of previous reports. As part of the ESF, there must be guidance on frequency of monitoring and reporting as well as a form to report on compliance to ensure E&S compliance. • One major problem is the fact that the procurement rules allow for the lowest bidder to win the contract and in order to win the bid they bid low and sacrifice environment and social supervision and monitoring. For example, the Bank should require a compliance report on E&S from the contractor and give merit point to good performers to take it into consideration for future bidding. The safeguards reform should coordinate more with the procurement reform.
	Risk classification	9. Approach to determining and reviewing the risk level of a project	<ul style="list-style-type: none"> • Request for the Bank to provide detailed guidance on risk classification.
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 11. Treatment of cumulative and indirect impacts when identified in the assessment of the project 12. Establishing project boundaries and the	<ul style="list-style-type: none"> • N/A

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		<p>applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects</p> <p>13. Circumstances under which the Bank will determine whether the Borrower will be required to retain independent third party specialists</p>	
	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"> • N/A
ESS2	Labor and working conditions	<p>15. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries)</p> <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>	<ul style="list-style-type: none"> • In the country, labor health and safety is required by the law, but it is only a piece of paper. 50 % of such requirements are not enforced on the ground. Considering this, the Bank needs some enforcement mechanism, including monitoring. • While the country does not have a legal framework for freedom of association and collective bargaining, it is widely practiced in the country.

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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>	<ul style="list-style-type: none"> • The Bank should clarify whether the requirement on measuring and monitoring of GHG emissions covers the construction phase as well as operational phase. The current wording in ESS3 is unclear on this.

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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"> • In Vietnam, the treatment of informal settlers/occupants is one of the most difficult issues in the project implementation. While quite a number of policies and regulations of different agencies refer to squatters, the Bank should help such agencies exchange experience and skills to deal with this issue. • A critical issue in Vietnam is the treatment of informal settlers/occupants. Things have evolved over the years and the new Vietnamese 2013 land law has improved in how this issue is addressed. However, there still exists inconsistency between the Bank policy and the national legislation on land valuation. Many factors related to land valuation cause project delays. In addition, the enforcement of the legislation on compensation to affected communities is also a key issue. • The next key challenge for the country is how to address livelihood restoration of the affected communities. Guidance was sought as to how to ensure livelihood restoration of displaced households. • The gap between the Bank policy on cut-off date and the national legislation on publicizing the official approval of the project is being abused by some opportunistic informal settlers to gain compensation. The Bank should consider how to address such abuses. • One of the biggest challenges in Vietnam is lack of formal documentation ensuring a complete transfer of land rights. The way this problem arises is when the owner sells the land and agreement is reached in a piece of paper signed by both parties that does not meet Vietnamese legal requirements and that transfer is not recorded in the registry. This becomes a challenge and cause project delays when it comes to determining entitlements and the category of displaced persons in the context of a Bank project. • Property markets and valuation in urban areas is a huge challenge. Third party valuation helps a lot but it still does not address the problem fully. • Clarification was sought on how the proposed ESF would address instances where the same household has been physically displaced more than once because of different investments over a recent period

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			<p>(especially in urban setting). The Bank should provide guidance to deal with such cases.</p> <ul style="list-style-type: none"> • Timing of reception of compensation package can be issue – those that receive such packages early can be disadvantaged in relation to those that received later due to inflation issues. This may generate grievances. The Bank should provide guidance on this. • Challenge in providing land for land compensation in urban setting because land prices are high and land is scarce. • Vietnamese legislation has different compensation standards vis-à-vis the proposed ESF. For example, compensation amount for investments based on defense/national security interest are lower than market rates. The Bank should respect the national legislation.
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"> • N/A
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</p>	<ul style="list-style-type: none"> • It was suggested that guidance be provided on how to ensure the effectiveness of FPIC. • The Bank should clarify the timing of obtaining FPIC. In particular, the Bank should clarify whether the IP community can change their mind and revoke their consent they have given to the project.

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		<p>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"> • Ethnic Minority communities often follow their elders/leaders opinion and decision. It should be clarified if such decision-making is interpreted as FPIC required under ESS7. • The Bank should clarify if it will set any percentage/threshold for “consent”? It is impossible to achieve 100% consensus.
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>	<ul style="list-style-type: none"> • N/A

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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	<ul style="list-style-type: none"> N/A
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	<ul style="list-style-type: none"> Will a formal stakeholder engagement plan be needed under the new ESF or a commitment to consult is sufficient? Developing and implementing another plan will pose extra burden to the Borrower.
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	<ul style="list-style-type: none"> N/A
	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	<ul style="list-style-type: none"> The Bank should first screen the sector before the project preparation and define the scope of application of the ESF. Otherwise there are too many requirements for the Borrower and it will be very time consuming. For example, for the urban sector, applying the standard for biodiversity conservation would not need to be applied. The principle of proportionality under the ESF should be more clearly provided. The Bank should not impose too much burden on small projects such as subprojects with limited environmental and social impact. We are a bit skeptical about applying general framework to Vietnam, it should be tailored to the country requirement.

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		for improving implementation efficiency while maintaining effectiveness	<ul style="list-style-type: none"> • Main concern is the increased burden during implementation both in terms of time and cost. While Vietnam is in transition from IDA to more costly IBRD, we cannot afford to make the implementation more expensive than what it is already. • Addressing emerging issues such as climate change or gender equality is important, but not all projects are relevant to such issues. Therefore, the requirements under the ESF should not be applied to all projects across the board.
	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"> • The ESF appears to pose more requirements, and the PMUs need help to build capacity to implement the new standard along with detailed guidelines for each standard. • The capacity of local government agencies needs to be strengthened. There are many cases in which they are not familiar with Bank policies. • The participants also felt that just training the PMU staff is not sufficient. To be successful the leadership level of relevant agencies and the heads of the PMUs also need to participate in these E&S trainings and raise awareness on E&S issues, otherwise there is no buy in at the decision-making level. • The Bank should consider providing project officers with more opportunities to exchange practical experience on previous projects with other countries in the region. Currently, the training is mostly focused on policy and theory side. • The Bank should reach out to local officers who are working on project implementation such as resettlement on the ground. PMU is playing a coordinator or intermediary role and not directly working on the ground work. • One suggestion was the Bank could help create an online forum amongst practitioners so that they could share their experience. This would enable us to organize capacity building events in a less costly manner. Other relevant stakeholders, such as procurement officers, could also join such events. • The Bank has so many policies and standards and leaflets and brochures for them. We are concerned that we are not regularly updated and this

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			<p>becomes a problem in post project review. The Bank should be aware of this.</p> <ul style="list-style-type: none"> The Bank should clarify how to make additional cost available for implementing the ESF.
	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"> N/A
	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	<ul style="list-style-type: none"> N/A
Other issues			<ul style="list-style-type: none"> The proposed ESF and changes to the existing safeguards are very good and in line with international best practice on E&S, such as for example climate change issues. This would help the country fulfill its international commitment. When should environmental audit used and carried out (after or during construction). The Bank should give some bonus to contractor with good performance in the environmental audit. Detailed guidance on how to prepare environmental audits. In particular, social issues are more difficult to quantify. The proposed ESF can be a good template to improve Government financed projects. While the proposed ESF will require us to do more, it will have a positive impact on other projects financed by the government and other financiers. In some cases, a Bank project and other projects are being implemented in the same area. The Bank should

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			influence the local government for more harmonization and coordination with other projects.