



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

Phase 2

Feedback Summary

Date: January 7, 2015

Location (City, Country): Ottawa, Canada

Audience (Government, CSO, etc.): Civil Society

Overview and Key Issues Discussed:

On January 7, 2015, the Canadian Council for International Cooperation (CCIC) hosted a consultation meeting for the World Bank with representatives of civil society organizations. Qays Hamad, Senior Operations Officer and Nina Chee, Senior Environmental Specialist, presented the proposed Environmental and Social Framework (ESF) to stakeholders. The discussion focused on Indigenous Peoples, risk assessment and risk management, labor, land acquisition and resettlement, and biodiversity. For purposes of conciseness, the following summary highlights comments and recommendations that were provided by individual representatives; collective comments and recommendations are noted as such.

Specific Feedback from Stakeholders	
1. General Comments	
	<ul style="list-style-type: none"> Stakeholders inquired about the consultation process and recommended that a summary report of the consultation meeting be produced. A participant emphasized that the government should not be asked to edit the consultation meeting summary. There was concern whether input from civil society would indeed be taken into account in the next draft of the proposed ESF. It was emphasized that the World Bank's shareholders should be informed about the key demands of civil society organizations. One invited stakeholder canceled participation and asked that a statement would be read, expressing concerns about the lack of responsiveness with regard to requests for a consultation in Montreal and concerns about the consultation process and the influence of stakeholders on human rights issues in the proposed ESF. The statement included the demand that human rights obligations of international treaties should be upheld by the ESF. Stakeholders pointed out that the World Bank has great responsibility as global norm-setter. The safeguards review should not be about minimum standards, but about moving the agenda forward.

- The argument that Board agreement could not be secured for certain provisions was not accepted, as other multilateral development banks have, for instance, human rights provisions in their safeguards. Safeguards should lead to positive development effects. Board approval should not be the objective of the safeguards reform. The World Bank should strive to set standards that assure that all projects have a positive development effect on the poor and their livelihoods.
- Stakeholders expressed the concern that the proposed framework would erode the World Bank's responsibility for ensuring projects do not harm people or the environment and might lower the floor as other multilateral and national organizations adopt the World Bank's procedures.
- Concern was expressed that the proposed framework downgrades environmental and social concerns to being only an add-on to the process rather than ensuring these concerns are truly embedded as a reflection of the World Bank's values.
- The proposed framework should apply to all lending activities of the World Bank.
- The framework should not cause, contribute to, and exacerbate human rights violations. It should ensure that projects supported by the Bank are for the public good, address general welfare, protect the environment and bring benefits to marginalized groups, and that the World Bank does not prioritize business over the safeguards. A "no-go" option should exist if a project does not meet the safeguards as well as public good, general welfare, environmental protection, and benefits to marginalized groups.
- The framework should meaningfully address climate change.
- The framework should be enforced by the World Bank. Member countries and implementing partners should to be held accountable for any violations of the safeguards.

2. A Vision for Sustainable Development

- Participants pointed to an analysis of the UN Special Rapporteur for Human Rights, who identified shortcomings with the World Bank's approach to Human Rights.
- World Bank policies should be harmonized with existing international human rights treaties and include explicit referenced to them, e.g., the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

3. World Bank Environmental and Social Policy

- Stakeholders emphasized that it was important to understand how many projects and which share of World Bank financing was actually covered by the proposed ESF.
- While the World Bank does not need to act as an enforcement institution, it should develop and enforce Codes of Conducts.

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

- The proposed ESF was seen as a watering down of the World Bank's due-diligence mechanism and monitoring function. There was concern that the World Bank would rely too much on Borrowers' systems and that an independent review body was missing, causing a gap in accountability and transparency. The proposal was perceived as a shift of responsibilities to the borrower without proper clarity on the World Bank's role regarding due diligence, monitoring, or supervision. It was warned that the proposal could weaken the World Bank's role by deferring to countries' own environmental and social frameworks.
- The proposed non-discrimination principle was seen as insufficient to address disability. Different aspects should be considered, including women with disabilities, Indigenous People with disabilities, etc. Disability, accessibility, and inclusion should be clearly defined. It should be clarified that consultations on projects must include persons with disability.
- Participants asked for clarification on risk management to understand what is defined as risk and why. What is the motivation of the World Bank to manage risk?
- Concern was expressed that the proposed framework does not require a strong upfront environmental assessment, without which adaptive risk management could weaken the process. This perceived front end devolution could result in a weaker process.

- A part of the discussion focused on project monitoring and supervision. Concern was expressed about the World Bank’s capacity to monitor projects effectively. The World Bank needs to be adequately staffed to effectively monitor projects and should have adequate capacity with regard to, e.g., human rights.
- The World Bank should help Borrowers build their capacity to manage high-risk projects and build government institutions.
- Risks should be identified up front and managed throughout the project cycle. Risk identification should not be delegated into project implementation in order not to weaken risk management. The ESF needs to be much clearer with regard to strengthening, and not weakening, risk management.
- If project implementers do not adequately manage risk, the World Bank should impose sanctions. These sanctions should be defined in the ESF.
- Projects should be divided into phases and Borrower commitments and requirements should be identified for each phase. A project should not be allowed to advance to the next stage if the requirements are not met.
- The goal of the Environmental and Social Impact Assessment (ESIA) should not only be to mitigate, but to avoid environmental and social damage.
- If the World Bank defers responsibility to Borrower’s environmental and social frameworks, it should be clear how this would be monitored.
- The Environmental and Social Impacts Assessment should always be disclosed before project approval.

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

- Some participants expressed disappointment about the provisions of ESS2, which was perceived as a step backwards for labor organizations. The lack of reference to the core labor standards of the International Labor Organization (ILO) was criticized. ILO core standards were perceived as indivisible, while ESS2 mentions only 3 out of the 5 core standards. If the World Bank intends to advance workers’ rights, freedom of association and the right to collective bargaining should be protected and their protection should not be left to national legislation.
- It was pointed out that most World Bank member states are members of the International Labor Organization (ILO), which means they must comply with the ILO core labor standards. The World Bank should therefore reference these standards and require compliance.
- It was mentioned that migrant workers and workers further down the supply chain tend to be most vulnerable and at the greatest risk of exploitation and therefore need stronger protections.
- The scope of ESS2 was identified as a problem: public servants, contractors, and sub-contractors are excluded and there is no provision for written information about conditions of employment. It was unclear to stakeholders who would be covered by ESS2 and what the ultimate impact could be given the limited scope of the proposed standard.
- Grievance mechanisms need a bargaining agent in order to be effective. Grievance mechanisms should be a quasi-legal process rooted in consultation and negotiation.
- Traditional occupations of Indigenous Peoples should also be considered as labor, as should project impacts on the occupation of other affected people (e.g., if a hydro projects affects Indigenous Peoples’ ability to fish, that should be considered as a labor issue).

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

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

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

- Resettlement plans should be required at the outset of a project. The World Bank's responsibility with regard to land and resettlement should not be diluted. Some stakeholders felt that critical requirements relating to resettlement planning instruments were removed in the proposed ESS5, including the requirement to find alternatives to resettlement or to avoid resettlement and the requirement for information disclosure.
- Adequate remedy mechanisms need to be in place for cases when Borrowers do not follow ESS5.
- Borrowers should be required to comply with international treaties rather than national law.
- Restrictions on forced displacement should apply to project-related effects as well as to directly affected communities.
- Land titling projects should have to comply with safeguards.
- Much of the success or failure of involuntary resettlement depends on consultation and engagement, therefore ESS5 and ESS10 should be closely connected. In the proposed ESS5, the scope of stakeholder participation in decision-making on resettlement seems limited. The World Bank should be stronger on participation and extend the scope of participation. The robustness of engagement and consultation should not be left to the Borrower. The World Bank should provide procedures and guidance for Borrowers to avoid any weakening of participation.
- Historical displacement, ethnic tensions etc. have led to the illegitimate acquisition of land in some cases. This is a challenge to ESS5 if land is illegitimately taken from Indigenous Peoples. ESS5 should address this problem and should certainly not exacerbate it. ESS5 as proposed does not safeguard against the use of stolen land.
- Compensation often grossly undervalues the loss of value for Indigenous Peoples if they are resettled.

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

- There was concern that the proposed ESS6 could erode protection for ecological integrity as well as critical habitats and biodiversity especially in ecologically critical, sensitive, representative and significant areas as well as previous "no-go" areas. Special concerns were expressed around expanding off-sites as well as activities which cause conversion and destruction.
- The framework needs to ensure that there are natural areas that are "off the table" for development and that logging and mining and other destructive activities in the most ecologically sensitive areas are not allowed.
- ESS6 should clarify what is counted and what is not counted in Greenhouse Gas (GHG) emission accounting at project level; accounting only for direct impacts is insufficient.
- Clean energy projects should not be fast-tracked at the expense of Indigenous Peoples or other vulnerable groups. The proposed standards should always apply to clean energy projects.
- Concern was expressed that the proposed ESF could erode the World Bank's responsibility for protecting the environment because it is not clear how the World Bank would do due diligence. Responsibility appears to be pushed to governments.
- Stakeholders expressed concern that ESS6 allows offsets, the degradation of critical habitats, and would lead to eroded protections for forests.
- The World Bank should have a leading role talking about climate change and addressing it on the project level. The Bank should also aim to strengthen the resilience of local communities and take steps to reduce emissions. As infrastructure has significant impacts on climate change, it should be addressed directly in ESS6.
- The World Bank should set a framework for decisions and should not let decisions be influenced by economic considerations. The cost to the ecosystem should be at the forefront of any decisions.
- The proposed ESS6 should require assessments of greenhouse gas emissions for projects, followed by the requirement for identification of mitigation measures to reduce emissions.

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

- Participants welcomed the introduction of Free, Prior, and Informed Consent (FPIC), the recognition of special vulnerabilities of Indigenous Peoples, and the acknowledgement of traditional and customary and long-standing use.
- Concern was expressed about the parts of the proposed ESF that depart from the language of international treaties. Stakeholders asked for a reference to the UN Declaration on the Rights of Indigenous Peoples. Even though some World Bank clients address Indigenous Peoples' issues as a notion of local communities and may be unwilling to recognize Indigenous Peoples specifically, any deviation from the UN Declaration would be regress rather than progress. International agreements should also be used for the identification of Indigenous Peoples.
- ESS7 should always aim to secure distinct benefits for Indigenous Peoples and should be more than a heightened safeguard.
- Projects should not be approved if they further the marginalization or extinction of ethnic groups. This danger can arise from unwillingness to recognize Indigenous Peoples. Even if a government does not want to recognize Indigenous Peoples, they need to be recognized as distinct groups and their rights cannot be degraded.
- There is little reference to gender analysis outside ESS7. The explicit inclusion of gender in ESS7 implies adherence to stereotypes about indigenous societies. As the proposed ESF sends a signal to Borrowers about their due diligence, gender references should be more explicit throughout the framework.
- The World Bank should address situations where the rights of Indigenous Peoples have been violated in the past, e.g., where their land has been taken away in the past and a World Bank project is now planned on that land. While the Borrower may claim this land rightfully theirs, it had originally been taken from Indigenous Peoples.
- The World Bank should not suggest alternatives to agreements that have been negotiated between Indigenous Peoples and governments over the past 20 years. Issues addressed with the proposed alternative approach have been debated and solved; the World Bank should adhere to these solutions despite any current political pressure. The proposed alternative approach was rejected.
- Paragraph 9 of ESS7 was rejected, as it was understood to take away the requirement for heightened awareness of the needs of Indigenous Peoples. This paragraph should be linked to the UN Declaration, which was agreed to by all World Bank member states.
- The assumption that the recognition of the rights of Indigenous Peoples could be harmful to other groups was seen as discriminatory and as reinforcing justifications for violations of the rights of Indigenous Peoples. The UN Declaration has extensive balancing provisions, which can be relied upon to allow for a nuanced approach to protecting Indigenous Peoples. No alternative to the UN Declaration is needed.
- The definition of collective attachment in Footnote 3 appears to require the continuous occupation of land: this is not required in the UN Declaration and should be rejected because of historic violations and limited redress mechanisms for historic violations.
- The recognition of individual title in Footnote 14 is mute. In many cases there will be a collective title alongside individual titles within a collectivity. Family rights do not negate collective rights. The footnote could create a loophole of states for proceeding with the privatization of Indigenous Peoples' lands.
- The definition of FPIC in paragraph 20d does not require unanimity. This could leave the decision of whether FPIC is achieved to the Borrower or the World Bank, while it should be with the affected Indigenous Peoples. This paragraph is also at odds with paragraph 24d, which talks about the need to specifically consider the role of women. Not requiring unanimity could lead to a situation where the most affected do not agree, but more remotely connected groups might agree and determine the outcome.
- The ESF should clarify that projects cannot proceed if engagement with Indigenous Peoples reveals serious concerns. Engagement with Indigenous Peoples should occur very early in the project cycle, before project approval.
- The World Bank is suggesting an outcome-based approach in the ESF, however, for Indigenous Peoples a process-focused approach is usually more appropriate. Consensus needs to be among several Peoples often rather than just within one.

- Paragraph 24 includes criteria that do not require direct dialogue with Indigenous Peoples, which should always be part of project preparation.
- FPIC should include specific protections aimed at “free” consent: consent must not be coercive and must be free of retaliation.
- The World Bank should always determine who is an Indigenous People and who is not.
- Marginalization within Indigenous Peoples due to gender and disability should be considered more extensively.
- The proposed treatment of Indigenous Peoples’ land rights as private land rights was perceived as discriminatory. A one-time payment of compensation was seen as inadequate for compensating for the benefits of land for Indigenous Peoples. Compensation for Indigenous People’s land should be calculated differently from compensation for privately owned land.
- The proposed standard was perceived to have the potential for doing more harm than good and creating more problems for Indigenous Peoples rather than fewer.
- Indigenous Peoples should be involved in project planning and all subsequent stages whether a project is meant to benefit them or not.
- Some projects that affect Indigenous Peoples should always be considered high-risk, e.g., extractive industry projects.

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

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

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

- The ESF should be clear about the World Bank’s vis-à-vis Borrowers’ roles and responsibilities regarding grievance mechanisms.
- Participants expressed concern about the ability of Borrowers to be transparent and the World Bank’s ability to enforce transparency.
- The proposed framework needs to ensure assessment transparency, access to information, participation, and consultation.