

DELIBERATIVE WORKING DRAFT

August 4, 2016

INFORMATION NOTE

Assessing the Borrower's Environmental and Social Framework

Section I - Introduction

1. The aim of this Information Note is to provide further information and guidance to Bank staff on making decisions, together with the Borrower, on the potential use of all or parts of a Borrower's Environmental and Social (**ES**) Framework to assess and manage environmental and social risks and impacts of projects supported by the World Bank through Investment Project Financing (**IPF**). This Information Note accompanies the World Bank's Environmental and Social Framework and is to be read in conjunction with the Environmental and Social Policy (**ESP**), the Environmental and Social Procedure (**ESPP**), and the Environmental and Social Standard 1 on Assessment and Management of Environmental and Social Risks and Impacts (**ESS1**).
2. The Bank supports the use of all or part of the Borrower's ES Framework, provided this is likely to address the risks and impacts of the project, and enable the project to achieve objectives materially consistent with the World Bank's Environmental and Social Standards (**ESSs**).
3. The Bank and the Borrower will consider whether to use the Borrower's ES Framework for the assessment, development and implementation of a project. If this is proposed, the Bank will conduct an assessment of the relevant aspects of the Borrower's ES Framework, and the extent of such use will be agreed between the Bank and the Borrower after the assessment has been completed.

Section II – Application: What are Borrower ES Frameworks?

4. The Borrower's ES Framework includes those aspects of the national and sub-national system that the Borrower relies on to assess, manage and regulate the environmental and social risks associated with activities carried out within its sovereign territory. This ES Framework typically comprises three main elements (i) relevant aspects of the country's policy and legal framework at the national and sub-national (for example, district, state, province) level; (ii) relevant authorizing and implementing agencies, bodies and institutions that operationalize policy and law through rules, procedures and practices, and (iii) the implementation capacity of responsible competent officials, civil servants and others involved in the assessment, approval, permitting, monitoring, supervision and enforcement related to the environmental and social risks and impacts of projects. These three main elements are discussed in further detail below.



Section III – What is the benefit of using Borrower ES Frameworks in the Bank’s Investment Projects?

5. Governments rely on their ES Framework as a means for reviewing, permitting and exercising legal and regulatory oversight of projects, and protecting the environment and people. In many countries, a considerable part of the environmental and social assessment of a proposed project is carried out in the context of broader territorial, spatial, or land use planning. For example, Government planning processes may play a significant role in identifying the most appropriate locations for a landfill, urban development, or roads project. In such cases, the Borrower’s ES Framework provides the context for the project, generating data and analysis which informs the project-specific environmental and social assessment. In focusing on the Borrower’s ES Framework, the Bank recognizes that it is important to avoid duplicating such effort as far as possible in the environmental and social assessment for a Bank-financed project.
6. The capacity of ES Frameworks will vary widely across countries. Some Borrowers will have comprehensive frameworks in place that are likely to be able to address many of the risks and impacts of the project and therefore enable the project to achieve objectives materially consistent with the ESSs. Other Borrowers will have frameworks that focus only on specific risks and impacts, but not on the full range covered by the Bank’s Environmental and Social Framework (**ESF**).
7. In all countries, however, Governments, private parties, the Bank and other lenders are engaging in activities which, as a matter of national law, utilize and rely on the Borrower’s ES Framework. Using the Borrower’s ES Framework to support project development will bring benefits in terms of better coherence and improved practices.
8. Using a Borrower’s ES Frameworks also strengthens the Borrower’s approach to managing environmental and social risks and impacts. Where environmental and social risks and impacts are managed by Borrower staff through national processes and requirements, it enhances ownership and capacity, builds institutions over the long term, and provides opportunities for collaboration and training. It also increases efficiency as it avoids duplication of Borrower and Bank requirements, speeding up processes and reducing costs.

Section IV - How can assessment of Borrower ES Frameworks contribute to capacity building within a country?

9. In considering the use of Borrower ES Frameworks, attention must be paid to identifying any areas where elements of the Borrower ES Framework needs to be strengthened in order to enable it to address the risks and impacts of the project, and enable the project to achieve objectives materially consistent with the ESSs. Areas identified for strengthening can be addressed either in relation to specific projects or through broader, more strategic interventions aimed at the country’s institutions. Dialogue with the Borrower will help to target appropriate support.
10. The first focus of the assessment of the Borrower ES Framework will be at the project level, where the Bank is providing support, and where the environmental and social risks of the project will need to be assessed and managed.
11. Where the Bank has agreed to use all, or part, of the Borrower’s ES Framework and where gaps have been identified, the Bank will work with the Borrower to identify and agree on project-specific measures and actions to address those gaps and strengthen the Borrower’s ES Framework. The agreed measures and actions, together with the timeframes for completion of



such measures and actions, will form part of the Environmental and Social Commitment Plan (ESCP¹).

12. The Borrower will implement the measures and actions that have been agreed to address the gaps. In many cases, the project will include a specific component to provide advice and support to enhance capacity. Bank staff will provide implementation support to the Borrower and the implementing agencies in relation to the project itself. Over time, experience will deepen and capacity will be enhanced. Where this experience and enhanced capacity is adopted by the Borrower's own staff and institutions, this will lead to broader improvements in the Borrower's ES Framework.
13. Assessments of the Borrower's policy, legal and institutional framework for addressing environmental and social risks and impacts, and related implementation capacity, can also be conducted at the national level to provide an overview of the existing framework. This overview assessment would be done at the Borrower's request if the Bank agrees that it would be feasible. The objective would be to identify opportunities to strengthen specific aspects of the Borrower's ES Framework. This assessment is not necessary in order to use the Borrower's ES Framework for a specific project, but if it is done, it would inform the Bank's assessment of the Borrower's ES Framework for that project.

Section V – Can Borrower ES Frameworks be used in part?

14. The Bank and the Borrower may consider the use of all, or part, of the Borrower's existing ES Framework. Where such use has been proposed, the Bank will review the Borrower's ES Framework to assess which, if any, elements of the ESF would allow the environmental and social risks and impacts of the project to be managed so that the project can achieve objectives materially consistent with the ESSs. The scope and manner of the assessment will be different depending on the type of project and the potential risks and impacts. The aspects of the Borrower's existing ES Framework that will be relevant will depend on such factors as the scale, location, potential environmental and social risks and impacts of the project and the role and authority of different institutions. For example, some countries will have adequate requirements on land acquisition, but may not have a system that operates adequately in relation to the treatment of hazardous waste. Other countries may have robust legislation at a national level, but challenges in implementation and enforcement at a regional level. The assessment of the Borrower's ESF will need to take such considerations into account.

Section VI – Is the assessment of the Borrower ES Framework always at the project level?

15. It is expected that initially the assessment will be at the project level, particularly in the early years of implementation of the World Bank's ESF. The information gained from assessing the Borrower's ES Framework for several projects across sectors and regions will be integrated, over time, into a better overall understanding of the Borrower's ES Framework. This understanding will inform future decisions on using all or parts of the Borrower's ES Framework for projects.
16. Ultimately, over time and through project experience, a more comprehensive picture of a country's ES Framework will be developed. In some cases, in particular in small countries with

¹ See ESP, Section E.



centralized agencies with high environmental and social risk management capacity, a one-time, upfront assessment of the option of using the Borrower's ES Framework may be possible.

17. As stated in paragraph 9, upon a Borrower's request and where the Bank agrees, an overview assessment can be conducted with the objective of identifying aspects of the existing framework that can be strengthened and the capacity-building needed to support this. The overview assessment will not be a prerequisite for the use of all, or part of, the Borrower's ES Framework.

Section VII– How do Bank and Borrower decide on the use of Borrower ES Frameworks?

18. As a first step, the Bank and Borrower will agree to propose an assessment of the extent to which the Borrower might be able to use parts or all of their ES Framework for a Bank-financed project. There may be a number of reasons why a Borrower might not want to have its ES Framework assessed. The Borrower may not have the financial or technical resources to strengthen its ES Framework to the extent required. Amending legislation related to the preparation of an environmental and social assessment could be more onerous and complex than ensuring that the assessment conducted for the project covers what is required by the Bank's ESF.
19. After preliminary discussions with the Borrower, a Task Team or CMU may propose consideration of the use of all or part of the Borrower's ES Framework for a particular project or sector based on their experience and knowledge of the Borrower's ES Framework (the consideration to use all or part of the Borrower's ES Framework may apply to a project, sector, region, or at the national level). The Chief Environmental and Social Standards Officer (CESSO) will decide on whether to proceed with the assessment. The assessment will involve staff from LEG, OPCS and the GPs concerned. The assessment will be carried out quickly and efficiently, making use of relevant available information and prior project experience.
20. The Borrower will provide the necessary information on its ES Framework to the Bank to enable the assessment to be carried out. In conducting the assessment, the Bank will draw upon information derived from past projects, any country, sector or subject matter reports prepared for or held by, inter alia, the EU, UN agencies, Convention secretariats and other relevant sources of information such as that arising from public consultation (see below).
21. Following completion of the assessment, the decision on use of all or part of the Borrower's ES Framework will be made by the CESSO. The decision will be documented in the Project Appraisal Document (**PAD**), which will:
 - summarize the conclusions of the assessment conducted by the Bank;
 - document the stakeholder engagement and input resulting from stakeholder consultation on the summary of the assessment;
 - specify the aspects of the Borrower's ES Framework that will be used in the assessment, development and implementation of the project (or above and beyond the project level if appropriate); and
 - summarize, in as much detail as feasible, the measures and actions agreed by the Borrower to address identified gaps.
22. The Bank may decide not to use the Borrower's ES Framework if it comes to the conclusion that the Borrower's ES Framework is unlikely to be able to address the risks and impacts of the project,



and would not enable the project to achieve objectives materially consistent with the ESSs. This decision may be taken by the CESSO either before the assessment is undertaken or following the result of the assessment. This may be appropriate in such cases where, inter alia, the project is complex and High Risk; capacity and institutional aspects are limited; the implementing agency has an inconsistent track record of managing environmental and social risk; the context is one of fragility and/or conflict; or (where the assessment has been conducted) gaps have been identified for which no appropriate project-specific actions and measures are feasible or the identified measures and actions are not supported by the Borrower.

Section VIII – Will the intention to use a Borrower ES Framework be consulted upon?

23. To promote transparency and facilitate accountability, the Bank will make public, following the Concept Review Meeting, its intention to consider the use of all or part of a Borrowers ES Framework. This will be set out in the Concept stage Environmental and Social Review Summary (**ESRS**) or similar document, in which the Bank will disclose details of which aspects of the Borrower’s ES Framework are being considered for use in the project, together with any preliminary information available and a summary of the assessment that will be conducted by the Bank. If there is a decision to consider the use of Borrower Frameworks at the sector, region, or national level, this will be disclosed in the appropriate documentation.
24. Following disclosure of the Concept stage ESRS (or similar document), the Bank will conduct consultations with project affected people and other stakeholders to inform the Bank’s assessment of the Borrower’s ES Framework.
25. The Bank will disclose a summary of the key findings from its assessment, including the comments received as a result of disclosure or arising during consultation.

Section IX – What is the general approach to carrying out the assessment?

26. There is no single uniform approach to assessing Borrowers’ ES Frameworks. Rather, there are varying approaches which are appropriate in different country and project contexts. For example, the approach in small countries with uniform national frameworks would be different than in large countries that have subsidiarity at the state or province level. In the latter, more granularity in the assessment is required at the sub-national level since local requirements, implementation, enforcement and institutional capacity may differ markedly from one level of government to another. Regardless of the approach taken, all assessments must focus on the nature of project outcomes which could be reasonably anticipated if the identified aspects of a Borrower ES Framework are used in conjunction with the application of the ESSs.
27. Where the Bank has existing experience with a Borrower’s ES Framework or where there is extensive secondary data available from development partners (other MDBs, bilateral donor agencies, NGOs), particularly in relation to a specific type of project or sector, the Bank may decide, in consultation with the Borrower, to take this information into account during the assessment process. These studies must be relevant to the project in question and, for assessments relating to *High Risk* and *Substantial Risk* projects, must be undertaken by an internationally recognized institution, expert, or consultancy with experience relevant to



environmental and social risk management. In such circumstances, the Borrower will not be required to duplicate or carry out similar studies.

28. The assessment will focus not only on what is written (for example, in legislation and in connection with prior projects), but will also take into account how the framework operates in practice. It will include discussions with government officials and development partners, engagement with civil society and project affected persons to identify gaps and measures to address these gaps. Various tools such as checklists will be available to assist Task Teams in carrying out the assessments.
29. Several key questions need to be considered when assessing the potential use of a Borrower's ES Framework for a project:
 - To what extent does the Borrower's ES Framework address the environmental and social risks and impacts of the project?
 - Will use of the Borrower's ES Framework enable the project to achieve objectives materially consistent with the ESSs?
 - Could use of the Borrower ES Framework contribute to efficiency gains with regard to savings in staff/Borrower time and cost for the preparation of environmental and social assessments and management instruments?
 - Does the assessment identify opportunities to strengthen the Borrower's ES Framework?
30. The Bank will consider whether use of the Borrower's ES Framework will result in an environmental and social assessment of the project that properly identifies the material risks and impacts of the project and supports the design and implementation of mitigation measures consistent with the mitigation hierarchy set out in ESS1 and, as relevant, in the ESSs. Mitigation measures should also be consistent with relevant GIIP.
31. Depending on the significance of specific risks and impacts of the project, the assessment of the Borrower's ES Framework will consider specific requirements of the ESSs. For example, if a project is likely to involve significant movement of construction equipment in a country that does not have detailed requirements on road traffic safety, the assessment may consider the requirements set out in ESS4.

Section X – What are the elements of the Borrower's ES Framework being assessed?

32. The Bank's assessment of the Borrower's ES Framework will include a review of:
 - a. the country's general policy, legal and institutional framework, as these are relevant to the specific ES risks and impacts of the project;
 - b. laws, regulations, rules and procedures (including permits and approval requirements) applicable to the project, including regional and local requirements that are relevant to the ES risks and impacts of the project;
 - c. clarity and consistency regarding relevant authorities or jurisdiction, including relationships between national and regional/local authorities or jurisdictions;
 - d. technical and institutional capacity of the Borrower and relevant national, subnational or sectoral implementing institutions or agencies related to the project,



as these are relevant to the ES risks and impacts of the project, including an assessment of staffing, allocated budget, training and prior experience relevant to the proposed project;

- e. previous experience with the Bank or other IFIs and the track record of the Borrower and the national, subnational, sectoral and local institutions involved in the preparation and/or implementation of the project; and
- f. technical and institutional capacity of the Borrower and relevant national, subnational or sectoral implementing institutions or agencies related to the project, as these are relevant to the ES risks and impacts of the project.

33. In reviewing the Borrower's ES Framework, the Bank:

- a. assesses whether use of all or part (as applicable) of the Borrower's ES Framework will enable the project to achieve objectives materially consistent with the ESSs;
- b. assesses whether use of all or part (as applicable) of the Borrower's ES Framework will result in an environmental and social assessment of the project which properly identifies the material risks and impacts of the project and supports the design and implementation of mitigation measures consistent with the mitigation hierarchy set out in ESS1 and, as relevant, in other ESSs;
- c. identifies gaps in the Borrower's ES Framework that would prevent the project from achieving objectives materially consistent with the ESSs or (where relevant) the requirements of the ESSs;
- d. identifies project-specific actions and measures to fill the identified gaps; and
- e. identifies gaps in the Borrower's ES Framework for which there are no feasible project-specific actions and measures.

Section XI – How should the assessment take place?

34. The World Bank's ESF requires the consideration of processes and outcomes, but not a test of legal equivalence with the Bank's ESSs, as was required in OP/BP 4.00, *Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects*.

35. The assessment of the Borrower's ES Framework will consider whether the use of all or part of the Borrower's ES Framework can reasonably be expected to allow the project to achieve environmental and social outcomes that are materially consistent with the ESSs. This requires an approach that goes beyond looking at individual legislation, to understanding the overall systems and the outcomes they produce. The assessment of the Borrower's ES Framework will analyze how the aspects of the Borrower's ES Framework address a specific project risk or specific project impacts and how they produce the project outcomes expected on the ground. An 'efficient/effective' Borrower ES Framework translates the intent from the policy level through legislation and implementation to the outcome at the project level.

36. In carrying out the assessment, it is important to note how the Borrower's ES Framework, including the legislative and regulatory environment (both the requirements and the enforcement), will contribute to each ESS' objective (or addresses specific requirements of the ESSs where the Bank deems this is necessary in relation to specific risks or impacts). The desired



outcomes for the project are described in the objectives of each ESS. The ESS then sets out specific requirements designed to help the Borrower achieve the objectives of the ESS through means that are appropriate to the nature and scale of the project and proportionate to the level of environmental and social risks and impacts. In some cases, application of the Borrower's ES Framework will support delivery of the objectives of the ESS as relevant to the specific project. In other cases, the assessment conducted by the Bank may indicate that application of specific aspects of the ES Framework would not allow the project to achieve the objectives.

37. Three examples illustrate the process of assessment:

- *The Mitigation Hierarchy.* Is the mitigation hierarchy explicitly reflected in the Borrower's ES Framework fully, partially or not at all? If not explicitly mentioned, can one infer from the rules and regulation that the Borrower uses, and from the way in which they are implemented and enforced, that elements of the mitigation hierarchy are present? Do those responsible for conducting, reviewing or approving environmental and social assessments or issuing permits, licenses and approvals take the mitigation hierarchy into account, such as determining whether all feasible options to avoid adverse impacts have been taken into account in project siting and design?
- *Environmental and Social Assessments.* Do government officials understand and enforce what is required in relation to the environmental and social assessment or the permits, licenses and approvals? What are the 'gaps' in legislative and regulatory requirements or process flow and how can they be addressed?
- *Cumulative Impacts.* Is the requirement to consider cumulative impacts in the environmental and social assessment explicitly stated? Does the requirement 'flow' through practice and processes to yield the expected outcome, which is that cumulative impacts are addressed? If the Borrower's ES Framework does not contain explicit requirements, is the need to consider cumulative impacts inferred or is it carried out as a matter of good practice by a limited number of professionals in specific scenarios? What gaps need to be filled to ensure that cumulative impacts will be considered appropriately?

Section XII – What is the difference between the Borrower Frameworks and Country Systems approach?

38. There are three differences between the use of Borrower frameworks and the approach of Country Systems as set out in OP/BP 4.00: (a) scope of application; (b) the level of granularity at which the assessment takes place and (c) the range of issues addressed in the ESF as compared to Annex 1 of OP/BP 4.00.
39. The ESF approach clarifies that parts or all of the Borrower's ES Framework can be used for some projects or (depending on experience) for some sectors, but not all projects or sectors in the country. In contrast, OP/BP 4.00 purported to aim to assess and "clear" Borrower systems at the country level.
40. The country systems approach in OP/BP 4.00 focused on 'building Borrower capacity beyond individual project settings.' This has proven to be overly ambitious, and beyond what is required for effective preparation and implementation of a specific project. By contrast, the approach being proposed in the ESF on use of the Borrower ES Frameworks focuses on the project, on



building capacity in connection with the delivery of the project, and seeking incremental change over time. The intention is to foster a dialogue with the Borrower on capacity building and institution strengthening at a broader regional or national scale, while at the same time delivering outcomes at the project level.

41. The use of OP/BP 4.00 yielded studies on legal equivalence that were highly granular, costly and time-consuming, and were difficult to apply at the project level. In contrast, the ESF requires a more systematic analysis of the expected project-level outcomes when using parts or all of the Borrower's ES Framework to achieve the objectives of the ESSs.
42. It is important to consider the different ways in which these two sets of requirements are meant to be implemented. OP/BP 4.00 considers a Borrower's environmental and social safeguard system to be equivalent to the Bank's if the Borrower's system is designed to achieve the objectives and adhere to the applicable operational principles set out in Table A1 in OP 4.00, which are very detailed and set a high threshold for equivalence. In contrast, the ESF's approach to Borrower frameworks aims to *enable the project to achieve objectives materially consistent with the ESSs*. The term 'materially consistent' is subject to qualitative interpretation, but in essence it means 'substantially' or 'considerably' similar to or 'agreeing/according' in substance with the ESS objectives.
43. The third difference between the OP and ESF approaches is that the ESF includes requirements that cover a broader range of issues than those listed in Table A1 in OP 4.00.

Section XIII – Does the Bank still review instruments prepared through the use of Borrower ES Frameworks?

44. Using a Borrower's ES Framework will not relieve the Bank of its obligations to conduct due diligence, monitor, and provide implementation support. The Bank will review the adequacy and results of the environmental and social assessment to determine whether the risks and impacts of the project have been adequately addressed and whether the project is likely to achieve outcomes materially consistent with the ESSs. The Bank will also monitor application of any measures necessary to fill the gaps between the ESF and the Borrower's ES Framework.

Section XIV – What if the Borrower ES Framework changes during project implementation?

45. Bank staff will monitor the application of the Borrower's ES Framework, the Borrower's implementation and enforcement practices, track record, and capacity in accordance with the Bank's review process and the project-specific measures and actions identified in the ESCP, for the duration of the project.
46. Where the Bank becomes aware of a change in the Borrower's ES Framework that may materially and adversely affect the project, the Bank will discuss this with the Borrower. The Bank will assess the significance of the change, and discuss with the Borrower ways to address the change, including agreeing on any additional actions and measures that may be required. The Borrower will also be required to monitor the way in which the agreed aspects of its ES Framework apply to the project, and to report to the Bank if there are any changes.