Information Note 2

Use and Strengthening of Borrower’s Environmental and Social Framework

This Information Note is intended to contribute to the discussion about how the Bank can best support the use and strengthening of the Borrower’s own environmental and social legislation and institutions for the development of a project. This Information Note does not form part of the proposed draft Environmental and Social Framework.

Background

1. The profile of Bank Borrowers today is far more diverse than it was when the safeguard policies were first developed. Borrowers range from middle-income countries, with well-developed institutions and capacities, to low-income countries with weaker governance and institutions, to fragile and conflict-affected states. Within this diverse profile, there are countries with advanced legislation designed to protect their people and the natural environment, and those with evolving technical and institutional capacity to manage environmental and social issues.

2. As part of the efforts to increase aid effectiveness and development partner harmonization, the international development community has placed an increased emphasis on aligning and harmonizing approaches to environmental and social sustainability and development partner instruments with the way in which such issues are addressed by Borrowers.\(^1\) This emphasizes the importance of ownership of development priorities by Borrowers, a focus on achieving sustainable impacts, and inclusive development partnerships which recognize the different and complementary roles of all actors in the development process.\(^2\)

3. The Bank responded to these developments through a pilot program\(^3\). The approach taken in this program relies on Borrower countries’ legal frameworks and institutions to address issues covered by the existing safeguard policies in project design and implementation where they are determined by the Bank to be equivalent in their coverage and acceptable in their implementation. The 2010 Independent Evaluation Group (IEG) evaluation entitled ‘Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group’

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\(^1\) The Paris Declaration (2005) and the Accra Agenda for Action (2008), and as reinforced by the High Level Forum on Aid Effectiveness in Busan (2011). See the website on aid effectiveness http://www.oecd.org/dac/aideffectiveness/.

\(^2\) See Busan Partnership for Effective Development Co-operation, 4th High Level Forum on Aid Effectiveness, 2011

\(^3\) See http://go.worldbank.org/RHRJVXDW60
Experience’ makes the case for enhancing the use of country systems (through revising the approach taken by the Bank which the IEG viewed as overly prescriptive and excessively focused at the project level) and an increased emphasis on strengthening country institutions. The IEG evaluation stated that the method taken in this program has not worked satisfactorily, has led to a lack of ownership by borrowers, and needs a major redesign for it to be successfully scaled up. The Bank’s experience and the IEG evaluation, together with the other initiatives to increase aid effectiveness, have informed the Bank’s thinking on how to help Borrowers strengthen their country institutions and systems incrementally to achieve more sustainable development outcomes, and this is reflected in this Information Note.

Introduction

4. The proposed World Bank Environmental and Social Policy promotes the use of the Borrower’s Environmental and Social Framework (ES Framework) in the assessment, development and implementation of projects proposed for Bank support. The intention of this approach is to mainstream and strengthen current Bank and Borrower practice, incorporate the considerations set out in the Environmental and Social Standards (ESSs) and focus on ways in which the Borrower’s ES Framework for the project can be supported and strengthened.

5. Use of the Borrower’s ES Framework will allow the Bank to build on and enhance existing Borrower legislation, institutions and capacity, and support incremental improvement in the national system for addressing environmental and social risks and impacts. It will allow the Bank, with reference to the objectives of the ESSs, to focus on aspects of the project that are not addressed (or fully addressed) in the Borrower’s existing ES Framework. It will build on what the Borrower already has in place, and help the Borrower to enhance the quality of the national environmental and social management framework. Where there are issues that are not addressed in the Borrower’s ES Framework which are important for the project, the Bank will focus on assisting the Borrower to design measures to ensure that the potential risks and impacts of the project are addressed.

6. The definition of the Borrower’s ES Framework is specific to the project. The aspects of the Borrower’s ES Framework that are relevant will vary from project to project, depending on such factors as the scale and location of the project; the type of project or sector; the potential environmental and social risks and impacts; the legal and institutional framework; the role, authority and capacity of the Borrower and the implementing agencies. The focus is on the project, and identifying and assessing the environmental and social framework within which it will be developed and implemented.

7. When a project is proposed for Bank support, the Bank will review the Borrower’s existing environmental and social framework as relevant for the development and implementation of the project. The review will focus specifically on the project, the potential risks and impacts and the way in which the Borrower’s existing environmental and social framework would address these. The Bank will assess whether the Borrower’s ES Framework (i) is likely to be able to address the potential risks and impacts of the project and (ii) will enable the project to achieve objectives materially consistent with the ESSs. Where this is not the case - where issues are identified - the Borrower will adopt measures and actions to address these. The Bank will work with the Borrower to identify and agree on such measures and actions, and these will be
recorded in the Environment and Social Commitment Plan (ESC), with timeframes for completion.

8. The proposed approach, which focuses at the outset on the Borrower’s existing national environmental and social framework, recognizes the importance of project ownership in achieving sustainable environmental and social outcomes. It also recognizes the very real developments that have taken place in national systems for addressing environmental and social risks and impacts over the past decades, including increased transparency and dialogue with stakeholders. The approach is intended to support Borrowers proactively and efficiently, building on the national process of addressing environmental and social risks and impacts and assisting Borrowers to further develop their broader environmental and social system. Borrowers will do this incrementally, through specific project experience and targeted initiatives which may be supported by the Bank and other development partners.

Review by the Bank

9. The Borrower’s ES Framework to be reviewed by the Bank will be specific to the project and its potential risks and impacts. This will include, as appropriate:
   a. the country’s policy, legal and institutional framework, including its national, subnational, or sectoral implementing institutions and applicable laws, regulations, rules and procedures, and
   b. implementation capacity, which are relevant to the environmental and social risks and impacts of the project.

10. The purpose of the Bank’s review of the Borrower’s ES Framework will be to:
    a. assess whether the Borrower’s ES Framework is likely to be able to address the risks and impacts of the project (including those identified in the ESSs);
    b. assess to what extent use of the Borrower’s ES Framework will enable the project to achieve objectives materially consistent with the ESSs; and
    c. identify issues that need to be addressed in the context of the project to achieve such objectives.

11. The assessment by the Bank of the potential use of the Borrower’ ES Framework for a specific project will also take into account:
    a. The type, scale and complexity of the project;
    b. The location and the area potentially affected by the project;
    c. The potential environmental and social risks and impacts of the project (including but not limited to those identified in the ESSs);
    d. The jurisdiction, authority and implementation effectiveness of the different institutions having control over the project, including the interfaces between them in terms of legislative authority.

12. The review of the Borrower’s ES Framework will include an assessment by the Bank of:
    a. The country’s general policy, legal and institutional framework, as these are relevant to the specific environmental and social risks and impacts of the project;
b. Laws, regulations, rules and procedures (including permits and approval requirements) applicable to the project’s sector including regional and local requirements that are relevant to the environmental and social risks and impacts of the project;

c. Inconsistencies, lack of clarity or conflict as to relevant authorities or jurisdiction, including differences between national and regional/local authorities or jurisdiction;

d. Previous experience with the Bank or other IFIs and the track record of Borrower and the national, subnational, sectoral and local institutions involved in the preparation and/or implementation of the project;

e. Technical and institutional capacity of the Borrower and relevant national, subnational or sectoral implementing institution or agency related to the project.

13. The Borrower will provide information to the Bank on the proposed project relevant to the Bank’s review of the Borrower’s ES Framework. This may include recent studies and assessment conducted by the Borrower or third parties, in particular on other similar projects developed in similar contexts that are relevant to the proposed project.

14. When undertaking the review, the Bank may also rely on and incorporate the finding of recent studies and prior assessments conducted by the Bank or third party experts in so far as these are relevant to the proposed project and its potential environmental and social risks and impacts.

15. The Bank’s review will take into account any environmental and social assessment that are in process or approved by national authorities, any required permits or approvals and any other national instruments relevant to the assessment or management of environmental and social risks.

Objectives Materially Consistent with the ESSs

16. In addition to confirming that use of the Borrower’s ES Framework is likely to be able to address the potential risks and impacts of the project, the Bank will assess to what extent the application of the Borrower’s ES Framework will enable the project to achieve objectives materially consistent with the ESS. The objectives are set out in each of the ESSs, as identified below.

17. Assessment and Management of Environmental and Social Risks and Impacts (ESS1)
   • To identify, evaluate and manage the environment and social risks and impacts of the project in a manner consistent with the ESSs.
   • To adopt a mitigation hierarchy approach to:
     a) Anticipate and avoid risks and impacts;
     b) Where avoidance is not possible, minimize risks and impacts;
     c) Once risks and impacts have been minimized, mitigate; and
     d) Where residual risks or impacts remain, compensate for or offset, as appropriate.
   • To utilize national environmental and social institutions, systems, laws, regulations and procedures in the assessment, development and implementation of projects.
   • To promote improved environmental and social performance, in ways which recognize and enhance Borrower capacity.

18. Labor and Working Conditions (ESS2)
   • To promote safe and healthy working conditions.
• To promote the fair treatment, non-discrimination and equal opportunity of project workers.
• To protect project workers, including vulnerable categories of workers such as women, children and migrant workers.
• To avoid the use of forced and child labor.

19. **Resource Efficiency and Pollution Prevention (ESS3)**
• To avoid or minimize adverse impacts on human health and the environment by avoiding or minimizing pollution from project activities.
• To promote more sustainable use of resources, including energy and water.
• To reduce project-related GHG emissions.

20. **Community Health and Safety (ESS4)**
• To anticipate and avoid adverse impacts on the health and safety of the affected communities during the project life-cycle from both routine and non-routine circumstances.
• To ensure that the safeguarding of personnel and property is carried out in a manner that avoids or minimizes risks to the affected communities.

21. **Land Acquisition, Restrictions on Land Use and Involuntary Resettlement (ESS5)**
• To avoid involuntary resettlement or, when unavoidable, minimize involuntary resettlement by exploring project design alternatives.
• To avoid forced eviction.
• To mitigate unavoidable adverse social and economic impacts from land acquisition or restrictions on land use by: (a) providing timely compensation for loss of assets at replacement cost and (b) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.
• To assist displaced persons in their efforts to improve, or at least restore, their livelihoods and living standards.
• To improve living conditions of poor or vulnerable persons who are physically displaced, through provision of adequate housing, access to services and facilities, and security of tenure.

22. **Biodiversity Conservation and Sustainable Management of Living Natural Resources (ESS6)**
• To protect and conserve biodiversity using a precautionary approach.
• To promote the sustainable management of living natural resources through the adoption of practices that integrate conservation needs and development priorities.

23. **Indigenous Peoples (ESS7)**
• To ensure that the development process fosters full respect for the human rights, dignity, aspirations, identity, culture, and natural resource-based livelihoods of Indigenous Peoples.
• To avoid adverse impacts of projects on Indigenous Peoples, or when avoidance is not possible, to minimize, mitigate and/or compensate for such impacts.
• To promote sustainable development benefits and opportunities for Indigenous Peoples in a manner that is accessible, culturally appropriate and inclusive.
• To improve project design and promote local support by establishing and maintaining an ongoing relationship based on meaningful consultation with the Indigenous Peoples affected by a project throughout the project’s life-cycle.
• To ensure the Free, Prior, and Informed Consent (FPIC) of affected Indigenous Peoples in the three circumstances described in ESS7.
• To recognize, respect and preserve the culture, knowledge, and practices of Indigenous Peoples, and to provide them with an opportunity to adapt to changing conditions in a manner and in a timeframe acceptable to them.

24. Cultural Heritage (ESS8)
• To protect cultural heritage from the adverse impacts of project activities and support its preservation.
• To address cultural heritage as an integral aspect of sustainable development.
• To promote the equitable sharing of benefits from the use of cultural heritage.

25. Financial Intermediaries (ESS9)
• Specify how the FIs will assess and manage environmental and social risks associated with project related investments or subprojects, and promote good environmental and social business practices in the subprojects they finance.
• To promote good environmental and sound human resources management within the FIs.

26. Information Disclosure and Stakeholder Engagement (ESS10)
• To outline a systematic approach to stakeholder engagement that will help Borrowers build and maintain a constructive relationship with their stakeholders, in particular project-affected communities.
• To promote improved environmental and social performance of Borrowers through effective engagement with their stakeholders.
• To promote and provide means for adequate engagement with project-affected communities throughout the project cycle on issues that could potentially affect them and to ensure that meaningful environmental and social information is disclosed to them and to other stakeholders.
• To ensure that all stakeholders have ways to access project information and raise issues;
• To ensure that project-affected communities have accessible means to raise issues and grievances, and that Borrowers respond to and manage such issues and grievances appropriately.

Identification of Issues

27. The Bank will assess to what extent the Borrower’s ES Framework addresses the potential risks and impacts of the project. The review will look at all risks and impacts of the project, including those specifically identified in the ESSs. The review will look at how specific aspects of the Borrower’s ES Framework address:
   a. identification and assessment of the specific potential risks and impacts of the project;
   b. the design of mitigation measures in accordance with the hierarchy set out in ESS1; and
   c. application and enforcement of required mitigation measures.
28. The Bank will also assess whether, and to what extent, the use of the Borrower’s ES Framework will enable the project to achieve objectives consistent with the ESSs.

29. The review may recommend using all or part of the Borrower’s ES Framework for the preparation and implementation of the project. The recommendation will relate to the use of the ES Framework for the specific project. However the results of the project-specific review may be considered in assessing subsequent projects to be prepared and implemented by the relevant agency and, in appropriate circumstances, a recommendation may cover all projects proposed by the agency within a specific timeframe. The review may also recommend not using the Borrower’ ES Framework. This may be appropriate in cases where: the project is complex and high risk; capacity and institutional aspects are limited; or in contexts of fragility and conflict. In such cases the Bank will nevertheless provide support, when appropriate and feasible, and together with other development partners, to the development of the Borrower’s ES Framework for future consideration.

Identification of Measures and Actions

30. The review conducted by the Bank may identify issues where the application of the Borrowers’ ES Framework to the project would be inconsistent with the ESSs, or areas in which the Borrower’s ES Framework does not address a specific potential material risk or impact of the project. These may relate to any aspect of the Borrower’s ES Framework or a specific project risk or impact, and could include, for example: limited requirements on social protection, including resettlement; inconsistencies in the legal and regulatory requirements between national and local authorities; weak sector legislation or cooperation between different Ministries or local authorities; poor implementation or enforcement record; limited institutional and technical capacity.

31. The Borrower in consultation with the Bank will identify and agree measures and actions to address such issues to the extent that such measures and actions are needed to ensure that the environment and social risks and impacts of the project are properly identified, addressed and implemented, and that the project achieves objectives materially consistent with the ESSs. Any issues that cannot be addressed will be brought to the attention of the Board for further consideration.

32. Such measures and actions may be implemented during project preparation or implementation and will include, where necessary, measures and actions to address the capacity and needs of the Borrower and other third party institutions or agencies to assist them in preparing and implementing the project.

33. The Bank will discuss and agree with the Borrower appropriate measures and actions to address the issues that have been identified through the review. These will be set out in the ESCP, with timeframes for completion.

34. For some projects, the ESCP will capture all relevant measures and actions of the Borrower required to enhance or supplement the Borrower’s ES Framework, and there will be no requirement for any further plans or actions. In other cases, as contemplated in Annex 2 to ESS1 on the Environmental and Social Commitment Plan, there may be a need for additional plans or further details.
Changes in Borrower’s ES Framework

35. The Borrower will be required to notify the Bank of a material change in the Borrower’s ES Framework that may adversely affect the project. Such a change will relate to the review of the Borrower’s ES Framework conducted by the Bank.

36. Where the Bank has been notified by the Borrower of a material change in the Borrower’s ES Framework that may adversely affect the project, the Bank will assess the extent to which the change is inconsistent with the ESSs and the ESCP. The Bank will discuss with the Borrower ways to address the change, and may agree additional measures and actions.

Procedure

37. The review of the Borrower’s ES Framework will be carried out by the Bank project team’s environment and social development specialist. The initial review of the Borrower’s ES Framework will be prepared by the Bank team as part of identification and preparation of the project, and relevant information will be included in the Project Concept Note (PCN) documents, including the Integrated Safeguards Data Sheet (ISDS). If the Bank team recommends the use of all or part of the Borrower’s ES Framework, the initial review will be further developed, and will inform the content of the ESCP.

38. The ESCP will incorporate the material measures and actions that have been agreed with the Borrower to address issues or enhance the Borrower’s ES Framework, as well as timeframes and other relevant information to ensure the implementation of the measures and actions.

39. The Bank will monitor the implementation of all or the part of the Borrower’s ES Framework agreed upon, the Borrower’s implementation and enforcement practices, track record and capacity in accordance with the Bank’s review and measures and actions identified in the ESCP for the duration of the project.

40. The Bank will require revisions to the ESCP to meet the ESSs requirements and/or take other measures it deems appropriate if the implementation is unsatisfactory or there are changes may adversely affect the project and are inconsistent with the ESSs and the ESCP.