



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

Phase 3

Feedback Summary

Date: March 2, 2016

Location: Brasilia, Brazil

Audience: Multi-stakeholder

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	Not discussed in detail.
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	Not discussed in detail, except in the context of Indigenous Peoples.
	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 allow projects to achieve objectives materially consistent with Environmental and Social Standards (ESSs) 5. Approach for making decision on the use of Borrower frameworks, including the methodology for assessing where frameworks	<ul style="list-style-type: none"> Participants stated that the main constraint with the use of Borrower frameworks would be poor implementation capacity and complex institutional arrangements even where there is strong legislation.

		will allow projects to achieve objectives materially consistent with the ESSs, and the exercise of Bank discretion 6. Role of Borrower frameworks in high and substantial risk projects	
	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	Not discussed in detail.
	Adaptive risk management	8. Approach to monitoring E&S compliance and changes to the project during implementation	Not discussed in detail.
	Risk classification	9. Approach to determining and reviewing the risk level of a project	Not discussed in detail.
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 applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects 13. Circumstances under which the Bank will determine whether the Borrower will be required to retain independent third party specialists	<ul style="list-style-type: none"> Participants stated that enhanced focus is needed on the role of baseline data as well as stakeholder identification and analysis in the process of identification and assessment of environmental and social risks and impacts. Participants emphasized the need for greater attention to assessment of downstream impacts – including from deforestation and land use conversion – and the need to establish a hierarchy of direct and indirect impacts. Participants further pointed out that it should be recognized that in some projects indirect impacts can be greater than direct impacts. Participants stated that the approach to ecosystem services, as included in ESS1, 4, 6, needs further clarification. Participants agreed that 2nd draft of the proposed ESF is more inclusive of the ecosystem services concept, however it still lacks clarity on whether ESIA and corresponding mitigation measures will take into account all risks related to ecosystem services, including but not limited to community health and safety. This appears to be different from IFC's model where the concept of ecosystem services was used to improve the approach to ESIA.

			<ul style="list-style-type: none"> Participants additionally highlighted the issue that conservation efforts can sometimes displace people who derive livelihoods from the land to be conserved and the need to take this into account, especially when planning biodiversity offsets.
	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	Not discussed in detail.
ESS2	Labor and working conditions	15. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries) 16. Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers 17. Constraints in making grievance mechanisms available to all project workers 18. Referencing national law in the objective of supporting freedom of association and collective bargaining 19. Operationalization of an alternative mechanism relating to freedom of association and collective bargaining where national law does not recognize such rights 20. Issues in operationalizing the Occupational Health and Safety (OHS) provisions/standards	<ul style="list-style-type: none"> Participants stated that more attention is needed to the issue of migrant labor and rights of migrant workers. At the same time, participants emphasized the need to manage associated negative impacts such as overloading municipal healthcare systems, gender-related issues.
ESS3	Climate change and GHG emissions	21. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC 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	<ul style="list-style-type: none"> Participants pointed our lack of clarity on the acceptable threshold for GHG emissions.

		23. Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard	
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 summary, participants put a strong emphasis on the need for enhanced focus on managing resettlement in the context of vulnerable groups, including traditional communities, informal settlers, forest dwellers, as well as on livelihood restoration in cases of downstream impacts. More detailed feedback is described in the points below. • Participants emphasized the need to address the issue of traditional communities and informal settlers, stating that these people are often invisible and therefore not taken into account in project studies, their economic rights not respected, especially given the slow pace of land regularization in Brazil; these are vulnerable communities from the perspective of resettlement. • Participants further suggested that other populations (besides Indigenous Peoples and traditional communities) are also vulnerable and specific criteria for such vulnerability vis-à-vis resettlement should be set, because vulnerability rather than number of affected families is the most important aspect to address in involuntary resettlement processes; additionally, it was suggested that compensation should not be only quantitative but take into account vulnerability of communities, for example compensation of informal settlers may consider compensation for non-land assets (livelihoods). • Participants stressed the need to ensure that compensation and land titling does not scale up gender imbalances with regard to land tenure rights.

			<ul style="list-style-type: none">• Participants stressed the need to consider the inherent relationship between traditional livelihoods and natural resources when assessing compensation, especially when it implies physical relocation of people depending on natural and forest resources.• Participants cited advantages of a broad consultation process at the early stage of project design of infrastructure works.• Participants highlighted the need to address potential involuntary resettlement issues in projects that are not considered to be of substantial/high risk.• Participants emphasized that in addition to cash compensation, restoration of livelihoods should be considered. Participants further noted their concern that under the current version of the proposed ESF livelihood restoration would be done only when financial and technically feasible.• Participants emphasized the importance of considering indirect impacts not caused directly by the change in land use - such as downstream areas in hydropower dams - and proposed that livelihood restoration needs to be taken into account in these cases.• Participants suggested that the current requirement of preparing Resettlement Action Plans and sharing them with communities before project approval should not be lost.• Participants highlighted that forced evictions should be forbidden/ banned as opposed to “avoided”, citing the AIIB language on this issue.• Participants emphasized the importance of gender justice / equity with regard to compensation in cases of involuntary resettlement.
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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"> • Participants highlighted an implementation issue concerning availability of biodiversity data at the country level. Studies to generate such data are often limited by available resources and not always technically sound, which makes it difficult to produce high quality knowledge at the project level, especially in cases where offsets are envisioned.

			<ul style="list-style-type: none"> • Participants further mentioned that Brazilian legislation does not permit conservation organizations to do E&S impact assessment studies and stated that this fact, coupled with lack of independence of consultants carrying out environmental assessment, can be another limiting factor in the biodiversity context. • Participants suggested that traditional knowledge and practices related with natural resources management and biodiversity conservation should be taken into account. • Participants further suggested that specific characteristics of the ecosystem should be taken into consideration when deciding upon compensation and offsets. • Participant proposed to make clear that animal husbandry should include animal welfare, citing EBRD and EIB policies.
ESS7	Indigenous Peoples	<p>30. Implementation of the Indigenous Peoples standard in complex political and cultural contexts</p> <p>31. Implementation of ESS7 in countries where the constitution does not acknowledge Indigenous Peoples or only recognizes certain groups as indigenous</p> <p>32. Possible approaches to reflect alternative terminologies used in different countries to describe Indigenous Peoples</p> <p>33. Circumstances (e.g. criteria and timing) in which a waiver may be considered and the information to be provided to the Board to inform its decision</p> <p>34. Criteria for establishing and implementation of Free, Prior and Informed Consent (FPIC)</p>	<ul style="list-style-type: none"> • Participants stated that the scope of coverage of Indigenous Peoples issues and the definition of IPs should be broadened, analyzed in both rural and urban contexts. • Participants further identified the need to pay greater attention to Indigenous Peoples and traditional communities living in urban areas, many due to the land pressures and the need to migrate. In the Brazilian context, there are many groups that would fall under the currently proposed WB definition of Indigenous Peoples, yet other similar groups would not (e.g. artisan fishermen). • Participants brought up an issue of language in the definition of Indigenous Peoples and asked to ascertain that application of this criteria does not

		<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>	<p>exclude groups and populations that were forced to give up their language in the past.</p> <ul style="list-style-type: none"> • Participants further noted that Brazilian legislation has a comparatively wider definition of Indigenous Peoples (it recognizes over 20 types of IPs, including those who identify with a specific biome or ecosystem, by how they access land, with a specific activity etc.) and therefore criteria that defines Indigenous Peoples should include traditional communities recognized by law. Participants also called for detailed guidance on this subject. • Participants suggested to incorporate the concept of historically vulnerable and/ or excluded communities into the proposed ESF in relation to Indigenous Peoples. However, they were not supportive of the idea to remove the term “Indigenous Peoples” from the proposed ESF. • Participants highlighted the need to assess and mitigate social impacts taking into consideration indigenous knowledge, as well as the provisions of the UN Declaration and ILO Convention 169. Participants further noted that before establishing a standard, the World Bank should have a clear process for consultation of Indigenous Peoples on that standard and that ILO 169 is based on the existing consultation protocols with Indigenous Peoples. • Participants were supportive of the concept of FPIC in the proposed ESF, however emphasized that it may be difficult to implement in complex environments with many diverse indigenous populations that all have cultural specificities. • Participants pointed out that as far as the concept of FPIC is concerned, consent is not the same as consensus in reality and therefore concerns of minority groups among Indigenous Peoples should
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			<p>also be taken into account; for example, there are differences within Indigenous Peoples communities about culturally adequate grievance mechanism.</p> <ul style="list-style-type: none"> • Participants also perceived the language of para. 3 of ESS7 to mean that Indigenous Peoples may be encouraged to integrate into mainstream society (i.e. “...an aspiration to play an active and meaningful role as citizens and partners in development...”) and suggested this language be revised to avoid such a misinterpretation. • In relation to the above, participants mentioned that para. 21 of ESS7 that deals with legal recognition of Indigenous Peoples’ right to land may also be misinterpreted as mainstreaming of Indigenous Peoples into society instead of preserving their traditions and institutions, including collective rights. • Participant suggested to include language in the proposed ESF to ascertain that all and any contact is avoided with Indigenous Peoples in voluntary isolation and proposed projects that envision impacts necessitating such contact should not go ahead as it would not be possible to obtain their FPIC. • Participants expressed concerns with regard to commercialization of cultural heritage and the concept of benefit sharing in relation to Indigenous Peoples and stated that this should require their FPIC. • Participants also requested inclusion of language in the proposed ESF that Civil Society Organizations must be consulted when screening for the presence of Indigenous Peoples in relation to projects. • Participants highlighted that implementation of Brazilian regulations covering Indigenous Peoples remains a challenge despite the advanced state of these regulations; there are still examples where
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			consent is not ascertained and associated studies are incomplete or weak.
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"> • Participants emphasized the need to address/include traditional knowledge/practices related to ecosystems and biodiversity as part of the intangible cultural heritage. • Participants suggested that alternatives analysis of projects with irreplaceable cultural heritage should be required. • Participants inquired about the way to approach project situations where cultural heritage was already lost.
ESS9	Financial Intermediaries	<p>40. Application of standard to FI subprojects and resource implications depending on risk</p> <p>41. Harmonization of approach with IFC and Equator Banks</p>	Not discussed in detail.
ESS10	Stakeholder engagement	<p>42. Definition and identification of project stakeholders and nature of engagement</p> <p>43. Role of borrowing countries or implementing agencies in identifying project stakeholders</p>	<ul style="list-style-type: none"> • Participants emphasized strong links between ESS1 and ESS10 in terms of stakeholder participation in project risk assessment. • Participants stressed that communities should not just be consulted but also have participatory stake in project studies done and decision-making on projects. • Participants further suggested to include clear language that consultation with affected people should start prior to finalizing project design. • Participants proposed that stakeholder analysis should not only focus on those negatively impacted but also on those who may benefit from the project. • Participants asked whether ESS10 be applied together of after the Social and Environmental Assessment required by ESS1.

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	Not discussed in detail.
	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 for improving implementation efficiency while maintaining effectiveness	Not discussed in detail.
	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	Not discussed in detail.
	Disclosure	50. Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)	Not discussed in detail.
	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	Not discussed in detail.

Other issues

- Participants recognized critical role of the World Bank to open and facilitate a dialogue about the energy sector between Government and Civil Society Organizations.
- Participants stated that there is a lack of proper environmental and social analysis for DPLs.

- Participants emphasized that in the hydropower sector the authority to make decision should not with project managers, but with the state or national government that needs to decide how to manage natural resources using strategic planning approach.