



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

Phase 3

Feedback Summary

Date: December 9, 2015

Location: Mexico City

Audience: Government Representatives

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	
ESP/ ESS1	Non-discrimination and vulnerable groups	2. Explicit listing of specific vulnerable groups by type/name (age, gender, ethnicity, religion, physical, mental or other disability, social, civic or health status, sexual orientation, gender identity, economic disadvantages or indigenous status, and/or dependence on unique natural resources) 3. Specific aspects of the non-discrimination principle in complex social and political contexts, including where recognition of certain groups is not in accordance with national law	<ul style="list-style-type: none"> Participants asked how the World Bank planned to incorporate issue pertaining to gender into project design.
	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 will allow projects to achieve objectives materially consistent with the	<ul style="list-style-type: none"> Participants stated that the World Bank should be more flexible in the use of borrower systems. They stated that, up to now, the World Bank has looked for equivalency when trying to use Borrower's systems. Participants expressed that a true use of Borrower's system is the assessment of that system and the use of said system as it is, if found satisfactory overall, even if it does not meet all the standards set out in World Bank policies.

		<p>ESSs, and the exercise of Bank discretion</p> <p>6. Role of Borrower frameworks in high and substantial risk projects</p>	<ul style="list-style-type: none"> • Participants highlighted that Mexico’s regulatory framework is very good, but that problems often arise due to a lack of compliance or capacity to implement. • Participants asked the World Bank to provide clear criteria for the use of borrower systems. • Participants inquired what methodology would be used to decide if a borrower framework can be used.
	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	
	Adaptive risk management	8. Approach to monitoring E&S compliance and changes to the project during implementation	
	Risk classification	9. Approach to determining and reviewing the risk level of a project	
ESS1	Assessment and management of environmental and social risks and impacts	<p>10. Assessment and nature of cumulative and indirect impacts to be taken into account</p> <p>11. Treatment of cumulative and indirect impacts when identified in the assessment of the project</p> <p>12. Establishing project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects</p> <p>13. Circumstances under which the Bank will determine whether the Borrower will be required to retain independent third party specialists</p>	<ul style="list-style-type: none"> • Participants welcomed the inclusion of an Environmental and Social Assessment (ESA) in the proposed Framework and asked if the World Bank knew whether or not the new social aspects included in the proposed Framework coincided with those of Mexico’s regulatory framework.
	Environmental and Social Commitment Plan (ESCP)	14. Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement	<ul style="list-style-type: none"> • Participants expressed concern regarding possible discrepancies between national laws and relevant sections of the ESCP. In that regard, they mentioned that the World Bank has to ensure that there conflicts do not arise among, for example, contractors who have to comply with national laws

			<p>and the ESCP.</p> <ul style="list-style-type: none"> Participants expressed concern that the ESCP would be part of the Loan Agreement. In that regard, they stated that changes to the ESCP would require amendments to the Loan Agreement. They mentioned that that would surely lead to extensive processing within the government and would make changes costly and difficult to achieve.
ESS2	Labor and working conditions	<p>15. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries)</p> <p>16. Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers</p> <p>17. Constraints in making grievance mechanisms available to all project workers</p> <p>18. Referencing national law in the objective of supporting freedom of association and collective bargaining</p> <p>19. Operationalization of an alternative mechanism relating to freedom of association and collective bargaining where national law does not recognize such rights</p> <p>20. Issues in operationalizing the Occupational Health and Safety (OHS) provisions/standards</p>	<ul style="list-style-type: none"> Participants expressed concerns regarding possible discrepancies between national labor laws and ESS2. In that regard, they mentioned that contractors may find it difficult to have to comply with both. Participants asked if, and how, compliance with ESS 2 may affect Mexico’s commitments with the ILO conventions that it has ratified. The same participants inquired why no references to the different ILO conventions had been made in the proposed Framework. Participants mentioned that the application of ESS 2 would need to be carefully analyzed for projects that involve working with indigenous communities, and in cases where children work with their parents as part of their socialization.
ESS3	Climate change and GHG emissions	<p>21. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC</p> <p>22. Proposed approaches to measuring and monitoring greenhouse gas (GHG) emissions in Bank projects and implications thereof, in line with the proposed standard, including determining scope, threshold, duration, frequency and economic and financial</p>	<ul style="list-style-type: none"> Participants strongly objected the proposed requirement to measure emissions in projects that have no direct impact on emissions and/or climate change. As an example, they mentioned that an education project where schools are built should not require the measurement of emissions. Participants stated that the World Bank should look at a country’s overall strategy to reduce

		<p>feasibility of such estimation and monitoring</p> <p>23. Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard</p>	<p>emission, not to the impact of each project, which lacks the macro vision and adds an additional burden on the borrower (to estimate the emissions).</p> <ul style="list-style-type: none"> • Participants inquired if emission commitments and measuring methodologies in the proposed Framework were the same as those that have been previously made by Mexico under international treaties. They stated that there should be an acknowledgement of Mexico’s national and international commitments regarding emissions reduction. • Participants questioned if climate change impact assessments at the project-level were more beneficial than those undertaken at the national-level. • Participants stated that the Bank should not take on an international emissions supervisor. • Participants indicated that preventing climate change involves adaptation and vulnerability reduction, in addition to mitigation measures. • Participants considered that proposed requirement on emissions reporting would result in an additional cost for the borrower.
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>	
ESS6	Biodiversity	26. Operationalization of the provisions on primary	

		<p>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>	
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> <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>	
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>	
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>	<ul style="list-style-type: none"> • Participants asked how the World Bank would monitor Financial Intermediaries' compliance with national laws. • Participants mentioned that compliance with the

			<p>proposed ESS 9 would be particularly difficult in projects that involve administering thousands of loans to small and medium enterprises. They stated that the institutions responsible for monitoring those loans simply did not have the capacity to do so.</p> <ul style="list-style-type: none"> • Participants stated that the proposed Framework needs to include clear instructions of how the World Bank will supervise the compliance of development banking and FI environmental management systems. Participants suggested the use of trusted third parties, for example, auditors. • Participants indicated that private banks have their own Frameworks and that supervising them would mean additional costs for the borrower. They also stated that some banks (for example, national development banks, do not have internal capacity to monitor compliance with environmental and social issues).
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>	
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	
	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	<ul style="list-style-type: none"> • Participants stated that the additional requirements included in the proposed Framework would lead to additional costs for the borrower. They used the requirement to estimate GHG emissions as an example of how a new requirement would be

	46. Mitigation of additional burden and cost and options for improving implementation efficiency while maintaining effectiveness	<p>burdensome. Participants mentioned that the World Bank could lose competitiveness vis-à-vis other regional finance institutions if the proposed Framework is perceived as being more costly.</p> <ul style="list-style-type: none"> Some participants stated that implementing the proposed Framework would not be more costly or burdensome for some implementing agencies such as CONAFOR (<i>National Forestry Commission</i>), because many of the new requirements are already mandated by the institution.
Client capacity building and implementation support	47. Funding for client capacity building 48. Approaches and areas of focus 49. Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations	<ul style="list-style-type: none"> Participants considered that the ESF will require capacity building for consultants. They stated that there should be a transition period for adjusting and establishing mechanisms and procedures that would allow implementing agencies to be ready to undertake the new requirements of the proposed Framework.
Disclosure	50. Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)	
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	

Other issues:

- Participants asked if the ESF would be applied retroactively.
- Participants inquired how the transition from O.P.s to ESSs would take place.