



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

Phase 3

Feedback Summary by Madagascar (Government)

Date: December 03 – 04, 2015

Location (City, Country): Antananarivo, Madagascar

Audience: Representatives of the Government of Madagascar: State Ministries (presence of 4 Ministers – Minister of Economy and Planning; Minister of Population, Social Protection and Protection of Women; Minister of Public Works; Minister of Water, Hygiene and Sanitation), Officials from state Ministries, National Agencies (BNCR), ONE – National Office for Environment (l’Office National pour l’Environnement), Members of projects implemented in the cooperation between Government and WB (PIC), as well as representatives of the Governments of Comoros and Djibouti (via audio conference).

Overview: The consultations were divided into three subsections: (i) general introduction of the new framework and roadmap of its implementation; (ii) discussion over the new framework in general and each of the ESS one by one; and (iii) case studies on which the difference between the current and new safeguards portfolio application was studied. The consultations were really constructive; a lot of insightful points about the new safeguards portfolio were risen by the Borrower.

Note: Q – Question; C – Comment (in the feedback section)

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	<p>C: All the other standards related to ESS1 – ESS1 is an “umbrella” standard for all the others. Hence, a particular emphasis should be put to ESS1 in general and its understanding within Borrower governments.</p> <p>C: Bank should provide financial and technical support for training, to develop national capacities for implementing ESS1.</p> <p>Q: What is the list of vulnerable groups? How are they compliant with this standard?</p> <p>Q: Can the “vulnerable groups” be specified more in the ESS1? Because for now it is too vague and then technically every person could be vulnerable.</p>

		<p>status, and/or dependence on unique natural resources)</p> <p>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</p>	<p>C: Proposal to indicate two types of vulnerable people: (i) people vulnerable already before the launch of the project; (ii) people who were made economically vulnerable by the project in terms of land acquisition, loss of assets ...</p> <p>e.g: the Mikea community (Southern Madagascar) is not considered by national law as an indigenous group. However, during the Environment Program 3 (supported by the Bank), it was considered as an indigenous group.</p>
	Use of Borrower's Environmental and Social Framework	<p>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)</p> <p>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 ESSs, and the exercise of Bank discretion</p> <p>6. Role of Borrower frameworks in high and substantial risk projects</p>	
	Co-financing/ common approach	7. Arrangements on E&S standards in co-financing	Q: What do we do if the Safeguards are different among different technical and financial partners (TFP) of the project?

		situations where the co-financier's standards are different from those of the Bank	In such case, the most stringent policy will prevail or, all other things being equal, the most advantageous setting for the affected persons will be adopted. Q: Are there attempts to streamline these different rules among different TFP? No, the above mentioned principle just applies
	Adaptive risk management	8. Approach to monitoring E&S compliance and changes to the project during implementation	Q: What are the risks of each specific method used to evaluate the project?
	Risk classification	9. Approach to determining and reviewing the risk level of a project	Q: What is the categorization of the "risks" of the project? Do we have to also classify / assume the risk for each sub-project within the project? Q: What is the position of the WB in regards to the use of harmful substances to environment (for example, fertilizers)? Are there any rules against the WB financing projects using certain harmful substances? Currently, see OP 4.09 (Draft NES3)
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	Q: What is the exact definition of an "associated facility"? Do the WB rules apply to these facilities? What are the links to these associated facilities of the main project financed by the WB?

		required to retain independent third party specialists	
	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	Q: What is the jurisdictional status of the Environmental and Social Commitment Plan (ESCP) (in relation to national policies and in general)? Each Project Implementation Unit to follow the national procedures but the Bank requirements should be fulfilled
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>	<p>Q: Which groups of workers are included in this standard? (Question relating to Paragraph 3).</p> <p>In Madagascar, likewise in many developing countries, kids are giving hand to their parents during holidays. This case should not be understood as child employment because there is no remuneration.</p> <p>Q: What is the level of social protection for each type of a worker (full-time, part-time, hired directly by the project, hired by sub-contractors etc.)?</p> <p>Q: Do the same rules apply to the sub-contractors and people directly employed by the project?</p> <p>Yes</p> <p>Q: How is “occasional work” defined? Could the WB team provide a more precise definition of this term?</p> <p>C: Differences between national policies and the ESS’s: There is a difference between paid work of children (which is forbidden) and the help of children for their parents businesses /farms over summer (unpaid, which is then allowed).</p> <p>Q: Is this standard aligned with the norms on labor and working conditions of other Technical and Financial Partners?</p> <p>Q: If the local company hired by the Borrower for the delivery of the project gives priority to the local workforce – isn’t it already discrimination and hence against the rule of “non-discrimination” as mentioned in the ESS2?</p> <p>Q: How to make sure that the norms and rules in this ESS2 will be really implemented, (e.g. that children really do not work instead of going to school etc.).</p>

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 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>Q: What are the methods proposed to monitor / evaluate GHG emissions linked to the project?</p> <p>Q: How to strengthen local capacities to be capable to monitor GHG in the projects? Can WB provide some resources (financial mostly) to strengthen these capacities?</p> <p>C: Clear criteria on air pollution needed to be included in the ESS. Please see EHS Guidelines (note that the document “Pollution abatement handbook” is outdated)</p> <p>C: One way to limit emissions is to limit corruption (for instance, due to corruption – even high polluting cars that should not be given a permit to drive in the city are given these permits, etc.). Hasn’t been discussed during the session but one should note that in each credit agreement, there are articles on corruption</p>
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>Q: Can a project use IDA finance to provide money for resettlement activities? (Question related to Paragraph 39). Monetary compensations should be eligible to a given Bank credit except for land acquisition.</p> <p>Q: Differences between national law and the new WB Safeguards policies. The most stringent will prevail. In general, the all other things being equal, the most advantageous setting for the affected persons will be adopted. Under ESS5, even people residing illegally (squatters) on land should be compensated in case the project lead to their displacement / relocation. However, the national constitution would in such a case give them no compensation. Hence, what to do?</p>

		<p>25. Interpretation of the concept of resettlement as a</p>	<p>Such situation should be understood as an opportunity for affected people to ameliorate their living conditions.</p> <p>Q: Why does WB want to absolutely legitimize acquisition of lands by “squatters” in case of an expropriation? Why does the WB plead more for the squatters than for these people who need the land? C: In general, giving compensation to illegal occupants of lands is really negatively seen especially taking into account the lack of financial resources by the Government of Madagascar in general. There are no resources for development of the country and yet they should compensate illegal occupants.</p> <p>Same response: Such situation should be understood as an opportunity for affected people to ameliorate their living conditions.</p> <p>Q: How to prevent opportunistic behavior of people? (Examples were mentioned of people moving in the areas that were planned to be used for future projects so that they could “relocated” and hence “compensated.”).</p> <p>Cut-off-date</p> <p>Q: How should the government compensate people relocated due to project implementation (e.g. creation of Protected Areas) – by the income generating activities or by cash compensation? Are there any rules clarifying this? (Note: According to the speaker, there should be rules that clarify this).</p> <p>No, it depends on the situation</p> <p>Q: If people prefer to be financially compensated rather than be given different land as compensation – can this be done?</p> <p>As far as possible, in-kind compensations are always recommended by the Bank.</p> <p>Q: Who is responsible for the relocation (what entities)? Who is then responsible for monitoring the different stages of resettlement?</p> <p>Except internal M&E, an independent monitoring body is required. Could be a firm, an NGO ...</p> <p>Q: In general, what should be the treatment of the illegal occupants during the relocation?</p> <p>The same as formal occupants except the fact that the borrower won’t have to pay the land.</p>
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		<p>“development opportunity” in different project circumstances</p>	<p>Q: What exactly is happening after relocation of the people? How can we avoid bad treatment of these people? By means of an independent monitoring Q: More explanation of Paragraph 5 requested (page 88 of the document). Q: National law does not take into account that a female can be a head of household. Hence, in case of relocation, money would go to the man only. Is there a way in the ESS5 how the compensation can reflect more in detail the social conditions of the households (to then better target the compensation)? Gender issues should be taken into account in a given resettlement plan Q: If the acquisition of land of a tenant goes in stages – is the compensation also given to tenants in stages? In general, can the resettlement be handled in stages? Q: When should the compensation process start? (Before the relocation or during it, etc.?) One of the gold rule is that no land acquisition/occupation by a given project should occur prior to compensation process. Q: What does “resettlement” (“reinstallation”) mean exactly? What does “resettlement as a development opportunity” mean? This should be demonstrated in the considered resettlement plan</p>
ESS6	Biodiversity	<p>26. Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity 27. Role of national law with regard to protecting and conserving natural and critical habitats 28. Criteria for biodiversity offsets, including consideration of project benefits</p>	<p>Q: These standards require lot of scientific capacities that the local agents don’t have (in general and especially for ecosystem services). Can the WB provide assistance to develop local capacities? For each Bank supported project, assessment of stakeholders’ capacities is always made. A budget can be allocated for capacity building. Q: How to evaluate the cost of ecosystem services? It is quite complicated, but absolutely necessary to account for these services. Hasn’t been discussed but similar evaluation has already been done several times. Q: If we know that our project will negatively impact environment – what should we do? How to offset harms incurred to biodiversity because of the project? What should be the priorities and sequence of action? Hasn’t been discussed but offsetting has also been done several times in Madagascar (OP 4.04)</p>

		29. Definition and application of net gains for biodiversity	<p>C: The main problem is that even if we do offset the negative impacts of the project – it will never rebalance the harm caused to the original habitat.</p> <p>Q: What standards should apply to the problem of big industrial plantations that can destroy adjacent fields (for instance case of big pine trees plantations that are acid and hence can contaminate adjacent rice fields)?</p> <p>Hasn't been discussed</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>	<p>C: In general – this does not really apply to Madagascar, because Madagascar does not have indigenous people (even the national law does not specify about indigenous people).</p> <p>See above (Mikea people)</p> <p>C: ESS7 – Paragraph 5 clearly says that there is no universal definition of indigenous peoples. Isn't that misleading as then it can mean any group of people is indigenous?</p> <p>C: In general, more explanation of the term “Indigenous Peoples” is needed.</p> <p>C: Proposal to use different terminology to describe Indigenous People than in the ESS7 for now (examples of Mikea people in Madagascar).</p> <p>C: How can we protect other vulnerable people that are not designated as Indigenous Peoples?</p> <p>Q: Can the WB give a clearer explanation of “Free, Prior and Informed Consent” (FPIC)? What are the criteria and conditions for FPIC and what does this consent really consist of?</p> <p>Q: How to make sure that the consent is really FPIC?</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>	<p>Q: Does ESS8 cover the displacement of cultural artifacts (trees, tombs etc.)?</p> <p>Q: Original Safeguards policies of the WB mentioned physical cultural heritage. Now, there is only “Cultural Heritage”. What does this difference mean?</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>	<p>C: Harmonization of the procedures with other TFP is absolutely necessary. Hasn’t been discussed in depth but, to my opinion, this is irrelevant</p>
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>	<p>C: ESS10 (Especially the requirement of obligatory consultations) are a big difference to current practice under the Bank’s Operational Policies and demand a lot of extra activities that are really onerous (technically, financially, etc); hence, concern if the Borrower can really meet the standard’s requirements (i.e. to organize the obligatory consultations etc.).</p> <p>Hasn’t been discussed in depth but Stakeholders engagement has already been experienced in some projects in Madagascar and public consultations are also part of the national legislation</p> <p>C: There should be money available by IDA for the Borrower to undertake certain activities (especially to organize the consultations and grievance redress).</p> <p>People who are familiar with Bank supported projects should know about this</p> <p>Q: Could you explain more the “engagement” of stakeholders? (responsibilities of each party etc.)</p> <p>Q: If the project has counterparts that have different standards than WB? – is that possible? In general, what does the project do when the safeguards policies of other TFP are different than the ones of WB?</p> <p>See above</p>

			<p>Q: If during the obligatory public consultations part the local population is against the project implementation in their region (ex. mining project) – will the project be implemented anyway, or will it be stopped / modified according to the comments by the stakeholders?</p> <p>This has been the case for a few projects. Additional studies have been done (cost benefits analysis ...)</p> <p>C: In general – the standards on the agreement with and social acceptability of a project are really vague. It might be useful if some more general, comprehensive standard was developed so that it would be easier for the Borrower to implement.</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	<p>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</p> <p>46. Mitigation of additional burden and cost and options for improving implementation efficiency while maintaining effectiveness</p>	<p>C: World Bank was asked many times to provide: (i) financial support; (ii) training; and (iii) general help and assistance to strengthen capacities of local stakeholder and to help them understand and implement the new safeguards framework.</p>

	Client capacity building and implementation support	<p>47. Funding for client capacity building</p> <p>48. Approaches and areas of focus</p> <p>49. Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations</p>	C: World Bank was asked many times to provide: (i) financial support; (ii) training; and (iii) general help and assistance to strengthen capacities of local stakeholder agents and to help them understand and implement the new safeguards framework.
	Disclosure	50. Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)	Q: The participants asked many times about the validation process of the new safeguards standards, including more details on the standards, how the new policies will be validated, what the process of validation would be, and what the timeline is for these policies to be implemented.
	Implementation of the ESF	<p>51. Bank internal capacity building, resourcing, and behavioral change in order to successfully implement the ESF</p> <p>52. Ways of reaching mutual understanding between Borrower and Bank on issues of difficult interpretation</p>	
Other issues			<p>C: Participants thought the ESF to be generally good and an improvement of previous measures.</p> <p>Q: The validation process of these new safeguards policies was not clear to the participants. On number of occasions they were asking for more details on the standards, an explanation of how the new policies will be validated, what the process of validation would be, and what the timeline is for these policies to be implemented.</p> <p>Q: If a project is prepared or approved before the new standards become valid, should the safeguards measures be redone according to the ESF (basically if the new safeguards policies will be retroactive)? No</p> <p>C: World Bank was asked many times to provide: (i) financial support; (ii) training; and (iii) general help and assistance to strengthen capacities of local</p>

stakeholders and to help them better understand and implement the new safeguards framework.

C: Can projects receive IDA funds to prepare the Environmental and Social Impact Assessment before the launch of the project?

PPAF

C: Discussion about whether ONE (National Environmental Office) can be given IDA money to undertake environmental and social impact assessments and monitoring of projects.

C: There is in general a deeper emphasis on environmental safeguards in Madagascar. Now we see that there is also a need for more emphasis on social ones.

Proposal: (i) in general more emphasis on the social safeguards; (ii) to achieve that – maybe WB should do two separate policies.

Q: If the decision of local population during the obligatory local consultations is contrary to the WB safeguards policies – how is the project implemented?

C: Discussion on ESS5 – the perception of population that illegally occupies land is in Madagascar in a deep contrast to the WB safeguards framework (WB safeguards framework requires the country to compensate this group, while Malagasy law does not require any such obligation); hence, a big concern of the audience.

C: In general – big problem that can stay in the way of any progress – weak governance and increased corruption in the country. In order to be capable to fully implement the projects / fully comply with the new framework – governance has to be improved and corruption eradicated.

Policies that had the most discussion:

ESS1
 ESS3
 ESS5
 ESS7