

Review and Update of the World Bank’s Environmental and Social Safeguard Policies
Phase 3
Feedback Summary

Date: November 5, 2015

Location (City, Country): New Delhi, India

Audience (Government, Multi-stakeholders, etc.): Multi-stakeholders

Specific Feedback from Stakeholders
1. General Comments
<p><i>Comments and recommendations</i></p> <ul style="list-style-type: none">• There are many people who have not been invited to this consultation. The Bank should make more effort to make consultations more inclusive. It is unfortunate that the Bank has not prepared the Hindi translation of the proposed Environmental and Social Framework (ESF).• This consultation is being held in a hotel in Delhi; the Bank is not reaching out to poor and vulnerable people such as landless and informal sector people in rural areas.• The ESF is filled with “weasel” words, the definitions of which are open to interpretation. Asian Infrastructure Investment Bank (AIIB)’s Framework is following the same approach. The Bank is the benchmark of other Multi-lateral Development Banks (MDBs), so the ESF should be careful to have high standards in its final version.• The ESF makes no mention of Sustainable Development Goals (SDG). The Bank should find ways to internalize them in the ESF.• The ESF is just a piece of paper if it is not implemented on the ground. In 90 percent of water and sanitation projects in India, there is no access to a water supply and disposal system. The aspect of implementation on the ground needs far more attention.• The philosophy behind the ESF is unclear. The ESF could be a more crisp, short and user-friendly document. It should also have more focus on doing good, rather than just doing no harm.• The Tata Mundra project is financed by the International Finance Corporation (IFC), but the transmission lines for it are financed by The Bank. The IFC and the Bank are both contributing to the conditions of the affected communities. The participant speaking noted that they had protested against this project and was jailed for 28 days.• Some of the participants noted that they had protested at the Bank’s phase 1 consultation in India, because they believed that the Bank would not listen to them. The argument that the Bank as a UN organization cannot abide by the UN Declaration on Human Rights and

related UN conventions is unfair. Despite its goals, the Bank does not provide poor people with an opportunity for development. The participants noted that they would be happy if the Bank left India.

- The Bank should take another step forward for **human rights**. It is a funny argument that the Bank supports human rights principles but cannot articulate this in the ESF.
- The Bank should stick to non-negotiable standards, such as human rights.
- The Bank should help the country recognize **water as a commodity and community good**. The rights of riparian communities, small traditional farmers and land holders should be recognized, along with the rights of Indigenous Peoples.
- **Capacity building** for the client is very important, including for local government.
- The **gender** perspective should be introduced in all aspects of the ESF. This is also important for local governance.
- Since the 1990s, the Bank has been effectively **influencing national legislation** to the detriment of people. It still has the capacity to change policy in India.
- The ESF should have **country specific guidelines**.

2. A Vision for Sustainable Development

- The statement on human rights in the second draft has gone backward. The language in the first draft should be used. The qualification “in a manner consistent with the **Articles of Agreement**” should be removed.

3. World Bank Environmental and Social Policy

Comments and recommendations

- The Bank should have a **due diligence mechanism** to verify environmental and social assessments conducted by the Borrower.
- The Bank should conduct a detailed gap analysis for the **use of borrower’s ES framework**. The Bank should examine not only the language of the legislation, but also how the law is implemented.
- Where the borrower’s ES framework is weak, the Bank’s standards should be used as default.
- If the Borrower’s environmental and social framework is used, it should be as protective as the ESF. The Bank should maintain adequate due diligence even when the Borrower’s framework is used.
- It should be clarified how the **Inspection Panel** will undertake its compliance function when the Borrower’s framework is used.
- The Indian Executive Director of the Bank says that India’s country framework should be used. It should be clarified how a case like the Tata Mundra project can be resolved through the use of the Borrower’s framework.
- Fishermen live on the coastal area of the Tata Mundra project only 6 months per year. Because they do not live there permanently, the project did not recognize the impact on their common resources.

- The ESF should be applied to all instruments of the Bank, including **Program for Results (PforR), Development Policy Lending (DPL) and Financial Intermediaries (FIs)**.
- The ESF should be also applied to **technical assistance and Bank executed trust funds** to close any loopholes.
- The Bank should have an **independent due diligence mechanism** to verify the Borrower’s ES assessment and its implementation.
- The Policy, para 58, appears to read that project-affected communities cannot directly go to the **Inspection Panel** without using the Bank’s Grievant Redress Mechanism (**GRS**). If that is not the case, the wording should be revised.

4. Environmental and Social Standard 1 (ESS1): Assessment and Management of Environmental and Social Risks and Impacts

Comments and recommendations

- People with **disability** are affected by all issues raised in the ESF. They are at the bottom of society. The Bank should consider how to protect people with disability.
- **“Political”** is missing among vulnerable groups. This should be added.
- **Downstream impact** is not covered by ESS5. In ESS1, it appears that it is only addressed where technically and financially feasible. This is not sufficient.
- **Downstream impact** must be reviewed by all stakeholders and highlighted.
- The Bank should introduce **human rights impact assessment**, including the right to food and education.

5. Environmental and Social Standard 2 (ESS2): Labor and Working Conditions

N/A

6. Environmental and Social Standard 3 (ESS3): Resource Efficiency and Pollution Prevention

Comments and recommendations

- Participants were very concerned about the push for **hydropower dams**. Dams have become points of stress and conflict. Supporting hydropower dams is violent engagement, rather than peaceful engagement. The Bank should be more concerned about pollution and the impact on downstream livelihood such as fisheries.
- While the Bank argues that the project level effort to address **climate change** is necessarily limited, a large scale project such as the Tata Mundra project supported by IFC has a huge greenhouse gas (GHG) impact. While the threshold of 25,000 tonnes for the estimation of GHG emissions has been removed in the second draft ESF, the Bank should still provide some guidance on this.
- The section on **air pollution** in ESS3 is very thin. It should also address Particulate Matter (PM).

- Use of **cleaner energy alternatives** should be promoted. Environmental protection and industrialization should go hand in hand.
- It is welcome that ESS3, para 4, requires the Borrower to consider ambient conditions and apply technically and financially feasible **resource efficiency and pollution prevention measures**. A stronger requirement would be better, for example, to consider all possible options for such measures. This should be also embedded in project design and operations including maintenance. This will not cost much but have a good impact.

7. Environmental and Social Standard 4 (ESS4): Community Health and Safety

Comments and recommendations

- The proposed ESS4, para 5, states that the Borrower will evaluate the risks and impacts of the project **during the project life-cycle**. This is a very important statement. Currently, project risks and impacts are evaluated at the preparation stage only, and there is no credible monitoring. The Bank must establish a monitoring mechanism to ensure risk management throughout the project life-cycle.

8. Environmental and Social Standard 5 (ESS5): Land Acquisition, Restriction on Land Use and Involuntary Resettlement

Comments and recommendations

- The proposed ESS5 allows for the option of **cash compensation**. This leaves the door open to large scale corruption. All cash compensation should be removed. Indian laws do not support it.
- In many urban projects, **informal settlers** are pushed out without any compensation. Like land for land, the principle of livelihood for livelihood compensation is important. Gender is also important in deciding the method of compensation.
- Informal occupants should continue to be protected under the ESF.
- A **natural resource management program** should be covered under ESS5.
- **Resettlement action plans (RAP)** should be prepared before Board approval.
- **Forced eviction** should be prohibited with much stronger wording.

9. Environmental and Social Standard 6 (ESS6): Biodiversity Conservation and Sustainable Management of Living Natural Resources

Comments and recommendations

- We appreciate that the second draft ESF has improved, clarifying that **biodiversity offsets** are to be considered as a last resort. However, even scientists do not really know about biodiversity content. The biodiversity offset remains a very dangerous approach.
- We appreciate that the second draft ESS6 has incorporated "**critical habitats**." However, the Bank should examine its criteria further. The ESF lacks clarification of definitions such as "significant impact," "due process," "viable alternative," and "measurable impact." It should also clarify the process when such criteria for critical habitat are not met during implementation.

10. Environmental and Social Standard 7 (ESS7): Indigenous Peoples

Comments and recommendations

- We appreciate that many of the comments we made in phase 2 consultations have been incorporated in the second draft of ESS7.
- When the government argues that the ESF will delay the project, **capacity building** should be provided to government staff, in particular on ESS7.
- In addition to lands and trees, Indigenous Peoples can lose much of their **cultural network**. Civil engineers and government official often do not understand this. It is very important to develop an action plan for each project to contextualize the circumstances.
- Regarding **identification of Indigenous Peoples** under ESS7, para 8, Indigenous Peoples should also be involved in the decision.
- As mentioned in ESS7, para 9, Indigenous Peoples should participate in the determination of project design, not just implementation.
- While the so-called **alternative approach** has been removed, the revised para 19 of ESS7 on Free, Prior and Informed Consent (FPIC) appears to have the same function as the alternative approach. The Bank and the government should stick to the principle of FPIC, which has been recognized in UN Declaration on the Rights of Indigenous Peoples (UNDRIP).
- The **grievance mechanism** under ESS7, para 29, should clarify that resolution of any grievance made by IPs is the condition of proceeding with the project.
- We are concerned that **phase 3 consultations** do not sufficiently involve Indigenous Peoples. In particular, the Bank should conduct a dedicated consultation with Asian IPs.
- **FPIC** should be applied to other vulnerable groups, such as **Dalit**. It should also be applied to all project-affected communities.
- The Bank should recognize the totality of **human rights** for Indigenous Peoples. This will give them a more level-playing field with government and business. This would not lead to project delay, rather better project implementation.

11. Environmental and Social Standard 8 (ESS8): Cultural Heritage

N/A

12. Environmental and Social Standard 9 (ESS9): Financial Intermediaries

Comments and recommendations

- ESS9 is not sufficient for **monitoring Financial Intermediaries (FIs)**. As shown in the Tata Mundra project, if FIs determines who are the stakeholders, they may not reach all vulnerable people, for example, in this case, local fishermen. The Bank should not transfer its monitoring responsibility to FIs.

13. Environmental and Social Standard 10 (ESS10): Information Disclosure and Stakeholder Engagement

Clarifications

- Clarification was sought on the definition of **meaningful consultation**. Gender should be included in the definition.

Comments and recommendations

- The Bank should give more attention to **local government** for listening to local voices at the grass-root level.
- The Bank should distinguish between **project-affected communities** and other stakeholders. The Bank should focus more on consultation with project-affected communities.
- For meaningful consultation for high risk projects, the Bank should require the use of **independent experts**, so that participation free of interference and intimidation is ensured, including for vulnerable groups.
- The Bank should make sure that stakeholders are not intimidated by **punishment or retaliation**. The Bank should have a mechanism to investigate and remedy such retaliation.
- ESS10 should require the Borrower to inform project-affected parties that the **Inspection Panel** is available to them.
- The grievance mechanism under ESS10 should have concrete procedures and mechanisms to **prevent any reprisal**.
- The grievance mechanism under ESS10 does not appear to have any participation of local people or affected communities. As shown in the Tata Mundra project, there is a risk of **disconnection between local communities and those implementing and monitoring the project**. Local communities, including vulnerable groups, must be involved.