



**Review and Update of the World Bank's Environmental and Social Safeguard Policies**  
**Phase 2**  
**Feedback Summary**

**Date:** January 20, 2015

**Location (City, Country):** London, UK

**Audience (Government, CSO, etc.):** CSOs

**Overview and Key Issues Discussed:** Key issues discussed include labour and working conditions (ESS2); land acquisitions and resettlement (ESS5); indigenous peoples (ESS7); disability; non-discrimination; LGBT rights; gender; human rights

<b>Specific Feedback from Stakeholders</b>
<b>1. General Comments</b>
<p><i>Clarifications</i></p> <ul style="list-style-type: none"> <li>• Where the World Bank is jointly financing a project with other multilateral or bilateral agencies, will the Bank safeguards apply?</li> </ul> <p><i>Comments and recommendations</i></p> <ul style="list-style-type: none"> <li>• To be implemented effectively, the safeguards must be underpinned by a cultural change within the World Bank.</li> </ul>
<b>2. A Vision for Sustainable Development</b>
<p><i>Comments and recommendations</i></p> <ul style="list-style-type: none"> <li>• Would like to see strengthened reference to human rights in vision statement and in other parts of the framework. One suggested rewording from 'supportive of human rights' to 'the World Bank respects and upholds human rights in line with other UN agencies'.</li> <li>• Would like to see a reference to fragility and fragile contexts in the vision statement.</li> </ul>

### 3. World Bank Environmental and Social Policy

#### *Comments and recommendations*

- When considering the capacity of the Borrower, how does the Bank differentiate between lack of capacity and lack of political will? On LGBT rights for instance, how does the Bank deal with this if the borrower doesn't agree there is an issue?
- **Environmental and social due diligence**
  - The framework should clearly allow for and at times require an independent review of the information provided by the borrower.
  - The World Bank should ensure all relevant third party information is incorporated into the due diligence assessment. This should be more clearly spelt out in the framework.
  - The Bank owns the due diligence procedure and the framework should contain a commitment to take all reasonable steps to ensure that human rights and environmental risks are adequately identified, prevented and mitigated.
  - The draft currently refers only to the borrower being required to take its own treaties into account, but it should be clear that the Bank's own due diligence process takes into account consistency with international human rights and environmental agreements.
  - Reference should be made to Article 18 of the Guiding Principles on Business and Human Rights, which relate to human rights due diligence.
  - Would like to see conflict-sensitive analysis in the diagnostic tools.
- **Impact Assessment**
  - Doing this only at the start of the project cycle may be inadequate. In some cases, there should be updated impact assessments at regular points during the project cycle.
  - There should be a link here to the systematic country diagnostics (SCD).
  - Impact assessments should be participatory, involving beneficiaries/affected communities. This is particularly important for indigenous communities where WB should look at some other multilateral's practices where indigenous communities set up panels to conduct part of these assessments themselves.
- **Risk Assessment**
  - The risk specifications should be sharper and more clearly defined. This is particularly important as there are instances where standards only apply to high-risk projects.
  - Risk assessments should read across to a borrower's compliance with international human rights and environmental standards which may speak to the overall risk environment of a project.
  - There should be reference to how you handle risks in trans boundary projects or projects with potential trans boundary impacts (for instance water catchments).

- **Consultation and Participation**

- Inclusive and meaningful consultation with effected communities is essential.
- The safeguards framework should recognize the unique vulnerabilities of children and their barriers to consultation.
- Local capacity should be used wherever possible.

- **Fragile contexts**

- Welcome increased WB commitment to FCS and recognition that these contexts require special consideration. Its commitment to work alongside these borrowers is essential.
- Given the complexity and challenges of working in FCS, would like to see more specific guidance for WB staff for applying safeguards standards to these contexts.
- Paragraph 19 in particular - The World Bank should ensure it also considers the lack of political will that sometimes exists in some FCS, not just a lack of borrower capacity. How to differentiate between the two and deal with these differently needs to be thought through.

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

##### *Comments and recommendations*

- The term ‘vulnerable groups’ as defined under ESS1 (page 27, footnote 23) can be disempowering. Would like to the World Bank move towards using other language such as discriminated against or marginalized.
- The reference in footnote 22 appears to allow for an opt-out of adequate compensation based on financial feasibility. This should not be the case.
- On the environmental and social assessment of subprojects (para 29), by only referencing the requirements of *high risk-rated* subprojects, it does not apply the safeguards to the other three risk rating categories, which shouldn’t be the case.
- The list of issues that the borrower will ensure are taken into account in a project’s environmental and social assessment (paragraph 24) does not include the borrower’s international human rights commitments (as made through relevant conventions and agreements). This does not support a commitment to act consistently on human rights.
- The statement regarding applying the alternative approach to ESS7 (para 28) may create an adverse motivation to accept an alternative approach proposal, as the final decision point is late in the project proposal cycle by which point significant resources will have already been invested in designing a project on that basis.

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

### *Comments and recommendations*

- Language around non-discrimination should be strengthened including by referencing ILO Convention C111 and the UN Global Compact.
- Across the safeguards but for ESS2 in particular, standards should apply to supply chains and migrant workers, engaged 3<sup>rd</sup> parties and other such groups. Scope of application (paras 2-4) doesn't appear to cover sub-contractors or other parts of the supply chain. Language should be updated to extend this. Also, some participants suggested public sector workers should not be excluded as suggested by para 4.
- Standards of key ILO conventions should be referenced under paragraph 11 regarding workers' organizations.
- **Child Labour:**
  - Welcome the specific section on child labour in draft framework. Reference to prohibiting child labour is important, but child labour in supply chains is also key (see comments on supply chains) and an important opportunity to tackle issue beyond the client government.
  - Child labour text could be strengthened to mandate the identification of child labour risks and to include reference to the minimum labour age consistent with ILO Conventions 138 and 182.
  - There are existing frameworks for child rights in relation to business (from ILO, UNICEF and others) which could be usefully referenced here.

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

### *Comments and recommendations*

- Section on greenhouse gases (paras 5 and 6) needs to reference UNFCCC and IPCC WG3 in emphasizing the need to mitigate greenhouse gas emissions, not just quantify them. It should also specify quantification and carbon audit mechanism explicitly.
- Sets a threshold of 25,000 tons of CO<sub>2</sub>-equivalent annually for those projects which have to quantify their GHG emissions (para 6). This threshold is too high and needs to be lowered. Additionally, how these GHG emissions are quantified and the related methodology needs to be more clearly spelt out.
- There should be a presumption towards renewables in the framework.

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

### *Comments and recommendations*

- Reference to security personnel, use of force, personnel training and conduct and grievance mechanisms (paras 27-28) are crucial and need to be as robust and thorough as possible. No loopholes should exist.

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

### *Comments and recommendations*

- Should ensure ESS5 is in line with UN Guiding Principles on Internal Displacement. Doesn't seem to currently be the case.
- Safeguards should align to existing international standards on human rights, including on forced evictions. This has the added benefit of making it clearer and easier to comply for the borrower, saving resources, and protecting people's rights. Otherwise, the Bank and other lenders are applying parallel set of standards to other internationally-agreed benchmarks.
- References to gender need to be strengthened in ESS5 to ensure issues around gender in the workplace are recognized and dealt with appropriately (e.g. discrimination in hiring, promotion and pay, sexual harassment).
- **Grievance procedures**
  - Grievance procedures and possible implications for wrongdoing/non-compliance needs to be clarified. Current tone gives impression these processes won't allow identification of 'fault of process', which is required.
  - Pg. 56, footnote 5 on forced evictions – reference to 'meaningful opportunities to lodge grievances and appeals', which is too ambiguous. What these opportunities are should be clearly spelt out.
- **Forced evictions:**
  - There should be clear reference to how a forced eviction can be halted, rather than solely redress after the fact.
- Paragraph 16 and requiring borrowers to apply a census – there needs to be involvement of a trusted third party in determining land held under common property land tenure to avoid conflict of interest.
- In determining appropriate compensation there should be no compromise on costs on the basis of what is technically or financially feasible.
- Para 5 – these qualifications cover instances where forced evictions can and often do take place, particularly claims that people are internally displaced by conflict, crime and violence. There is an exclusion of titling/land regularisation activities which the Bank says is intended to exclude things such as situations where land registries are digitised. But the standards should be based on consequences, rather than classification – there may be situations in which a titling process is being used to evict informal settlers.
- Footnote 5 says that the Bank will avoid forced evictions, except in cases of eminent domain and compulsory acquisition – which is the case where most evictions are carried out. Although it refers to due process, it does not include the obligation to find alternatives to

evictions. In fact, previous language requiring the project to assess alternatives that would avoid or minimize evictions or displacement has been removed.

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

##### *Comments and recommendations*

- Concern that the proposed ESS6 is weaker than the existing Natural Habitats Safeguard Policy, for example in relation to critical habitats (para 17).
- Biodiversity offsetting is very difficult, particularly restoring resilience, with evidence of success variable (see recent Royal Society report on the subject). This also needs to be in line with climate change agenda.
- There should be reference to agricultural biodiversity, which is also key to tackling climate change. Where possible, the framework should highlight this issue and try to mitigate against it.
- Footnote 1 and 2 which define critical habitats omit some essential elements, such as non-biological features.
- Certain protected areas should be off limits (such as natural UNESCO World Heritage Sites). However, there are no clear ‘no go’ zones in the current framework.
- Paragraph 16a - technically and financially feasible alternatives should be more clearly defined.
- Paragraph 23 – regarding invasive species. A biodiversity security plan should be required within the Environment and Social Commitment Plan (ESCP).

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

##### *Comments and recommendations*

- **Alternative Approach**
  - Do not support the inclusion of the proposed “alternative approach” option in the framework.
  - There is limited evidence to suggest that the process of identifying groups for purposes of applying this ESS could create a serious risk of exacerbating ethnic tension or civil strife, a suggested as justification in para 9.
  - Linking IPs to exacerbating ethnic tension or civil strife is also stigmatizing and doesn’t recognize role of non-IP communities where conflict exists.
  - Ensure that the provisions in ESS7 are aligned with the UDHR and UN Declaration on the Rights of Indigenous Peoples, particularly on the recognition of the rights of indigenous peoples to their land, territories and resources, development, Free Prior and

Informed Consent (FPIC) and cultural heritage. The possibility of using an “alternative approach” does not appear to be consistent with this so should be removed.

- **FPIC**

- The WB needs to ensure Indigenous Peoples are involved at points throughout the project cycle. FPIC is an ongoing process.
- Paragraph 20c – should include requirement for documenting process of seeking FPIC (not just final agreement on FPIC process and its outcome). FPIC is an ongoing process.
- WB Operational Policy 4.10 on Indigenous Peoples – paragraph 8 which relates to WB screening to determine whether indigenous people are present in, or have collective attachment to, the project area does not feature in revised safeguards and should be carried over.
- When looking at benefits sharing (para 14-15), the associated costs of benefits sharing agreements should be included in project costs.
- Footnote 14 regarding when ESS5 applies rather than the requirements under paragraph 25 of ESS 7 in the case of relocation if Indigenous Peoples – given its importance and possible room for maneuver as currently worded, this text needs to be more limited with clearer and tighter principles.
- Situation with regards to best practice and FPIC is fast evolving. Given likely delays in revising any agreed safeguards text, it may be better to putting key principles in the safeguards text with more detailed guidance separately which can be more easily updated.

*Specific text changes*

- The UN Declaration on the Rights of Indigenous Peoples has internationally agreed wording on free, prior and informed consent (FPIC) which should be reflected in ESS7, in ESS7 para 18a on meaningful consultation and IPs representative organizations and para 20d on unanimity.
- Paragraph 25, footnote 14 on communal property rights and traditional claims to land and natural resources – deference to individual legal title could be used as an opt-out as legal title is sometimes imposed by national governments as a means of breaking up indigenous land rights. Need to tighten language to ensure it’s clear that FPIC is required regardless of legal titling of land status.
- Should mention that not only relevant national law but also *international law* recognizes customary land rights.
- Paragraph 18c - Respect for decision-making processes of indigenous peoples should be mandatory, not 'where applicable'.
- Paragraph 20d - This can be rephrased to keep the same spirit, but to stress the decision making processes of indigenous peoples.

<b>11. Environmental and Social Standard 8 (ESS8): Cultural Heritage</b>
N/A
<b>12. Environmental and Social Standard 9 (ESS9): Financial Intermediaries</b>
<p><i>Clarifications</i></p> <ul style="list-style-type: none"> <li>• How does the World Bank assess the capacity of partners for financial intermediary projects?</li> </ul> <p><i>Comments and recommendations</i></p> <ul style="list-style-type: none"> <li>• That only high risk projects under financial intermediaries should apply the ESS requirements is problematic as this weakens their standards.</li> <li>• Concern was expressed that in most risk-rated project categories the financial intermediaries need only meet the objectives of the safeguards rather than the standards themselves.</li> </ul>
<b>13. Environmental and Social Standard 10 (ESS10): Information Disclosure and Stakeholder Engagement</b>
<p><i>Comments and recommendations</i></p> <ul style="list-style-type: none"> <li>• For consultations to be meaningful, the Bank needs to have a system in place to consult disadvantaged groups. While the borrower has responsibility for consultations, the Bank must be responsible for ensuring they are inclusive. What mechanisms are available to enforce this with borrowers should be clearer.</li> <li>• While better defining the roles between the World Bank and borrower is a step in the right direction, this needs to be more clearly defined particularly in FCS where borrower capacity is more limited.</li> <li>• In doing its own due diligence, the Bank should engage with all communities likely to be affected by projects and let them know what their rights are.</li> <li>• Paragraph 2 regarding defining the stakeholder engagement process – it should make reference to identifying and meeting the accessibility needs of stakeholders during the consultation process (particularly part d).</li> <li>• Paragraph 6 – important that it is understood that these need to be inclusive consultations, where the reference to ‘accessible’ can also mean information in various formats and venues accessible to people with disabilities.</li> <li>• Language around consultations as culturally appropriate should also reference need for them to be ethical and age-appropriate (link to consultations with children).</li> </ul>

*Specific text changes*

- Para 19 (f) - remove the “where applicable”.

**14. Disability**

*Clarifications*

- How will the World Bank ensure that it has the necessary resources and expertise to handle the disability focus/related requirements introduced in the new framework?

*Comments and recommendations*

- Welcome increased recognition of disability in draft framework.
- Definition of persons with disabilities should be clarified and strengthened. The UNCRPD is important here and should be used.
- Disability issues should be mainstreamed across the safeguards. Monitoring of how projects effect disabled people needs to apply to all work, not just disability-focused projects.
- Disaggregated data on disability needs to be collected in advance of project development to understand how projects are effecting people with disabilities.
- Accessibility and universal design should be built into all projects.
- A clearer reference to disability under ESS1 and ESS10 would be desirable.
- The framework should be clearer on how borrower nations will be held to account on disability commitments and how this will be evidenced.

**15. Non-discrimination (SOGI, gender)**

*Clarifications*

- How will the World Bank consult LGBT groups/potential beneficiaries in countries where there are anti-LGBT laws in place?

*Comments and recommendations*

- Welcome increased recognition of sexual orientation and gender identity (SOGI) in draft framework.
- It’s important that the World Bank understands intersectionality of discrimination and its implications (e.g. LGBT and disability). The safeguards as a whole could usefully make better reference to this issue, building on the places it does exist (on gender and indigenous people for instance).
- Would like to see standalone safeguard on SOGI or at least a stronger statement on SOGI within framework.

- Gender issues should be mainstreamed across the safeguards, however some participants raised the potential danger of relying only on this approach, suggesting that gender should also be brought out more explicitly, possibly through a standalone safeguard.
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) should be referenced.
- Consultations with effected communities need to take into account the variable and special circumstances of women, for instance restrictions due to child care burdens. This should clearly link to ESS1 and ESS10.
- Discrimination and human rights - other groups that are referred to in internationally agreed standards – for example, those facing discrimination on the basis of descent or social origin, have not been included in the current framework. This potentially reflects their inability to engage with the World Bank safeguards review. The language should be open-ended to include other disadvantaged groups, rather than explicitly focusing on some categories of people, using the term ‘including’ before listing them.

## **16. Human Rights**

### *Comments and recommendations*

- Would like to see direct referencing of international human rights conventions and standards on relevant topics throughout the safeguards (including labour, child rights, rights of persons with disabilities, etc.).
- While there are a large number of international human rights standards there is a defined list of nine core human rights instruments which could be usefully referenced as they reflect the issues the Bank is already raising in the framework and are existing, internationally agreed reference points.
- Would like to see a standalone standard on human rights.
- The risk assessment should be brought forward and be in line with the human rights obligations of member states.
- To better address human rights issues as part of its due diligence, the Bank needs both a robust preliminary risk assessment and regular updates to the assessment through the life of the project. This requires increased resources to be properly delivered.
- The framework uses a risk-based analysis approach rather than a human rights approach, which is problematic when talking about mitigation of adverse social and environmental impacts and fundamental human rights obligations.