



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

Date: 15 December 2014

Location: Jakarta, Indonesia

Audience: Multi-stakeholder

Overview and Key Issues Discussed:

Specific Feedback from Stakeholders

1. General Comments

Comments

- A participant asked if the Bank could encourage the Indonesian government to carry out the laws and regulations that are already ratified by the international community.
- A participant asked how the Bank would ensure oversight of the implementation of safeguard policies by the government. Implementation is key. It is necessary to discuss the code of conduct for supervising implementation of the environmental and social framework, when discussing the possibilities of funding to the Indonesian government.
- A participant pointed out that there is a strong culture of sectoralism, and lack of harmonization between the center and the regions, and asked if the World Bank could provide borrowers the guidelines and policies to harmonize between them.
- A participant asked about how it would be possible to open up work opportunities for children who are blind, color-blind, or illiterate and to ensure they are protected.
- The private sector has had difficulties getting financing from the World Bank Group, because the requirements are not the same as those issued by the government and because cannot meet the requirements. A participant wondered how the Bank will deal with this issue.
- A participant urged the Bank to influence banking policy, so that the private sector can develop. The private sector requires large investments that are for the long term, while the government provides opportunities only to small firms to operate in Indonesia, so that those small enterprises do not have good mining practices.
- The Bank must be able to differentiate between types and levels of investors, so that it can provide lending to companies, as appropriate to their levels of investment.
- If possible, the Bank can suggest to the government that licensed small-size miners can link up, so that they can operate for a longer duration.
- A participant recommended the Bank to develop a Safeguard Action Plan that can be easily implemented.
- A participant raised the issue of land procurement, such as for building a house, and pointed out that there must be a party that needs the piece of land and a party to provide it, there must be a discussion process, administration documents (selling, lease, etc.). The provincial government has to determine the location, the land owner and the party to use the land must be stated with a certificate, and usage of land is the right of all people. Land use must be made by local National Land Agency (BPN). There must be a standard in land procurement

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<p>between the World Bank with the government, and it should be consistent. The participant further mentioned the Regional Spatial Layout Plan (RTWT) which must observe environmental and cultural protection areas. If land use is not in line with the spatial layout plans, it will need a permit from the mayor in the form of a license to change land usage (IPPT), or from the local National Land Agency (BPN) which can provide technical considerations on land to obtain the IPPT during a certain period of time.</p>
2. A Vision for Sustainable Development
3. World Bank Environmental and Social Policy
4. Environmental and Social Standard 1 (ESS1): Assessment and Management of Environmental and Social Risks and Impacts
<p><i>Recommendations</i></p> <ul style="list-style-type: none"> • The Bank must guarantee the education and nutrition of children living on the project sites as well of children forced to remove from the project sites. There should be a check-list of items specifically adapted for children, including education, nutrition, and children’s rights. The youth should be provided training, and those who are employed should not be given ‘hazardous’ work • Every big Bank project should provide a vocational school for children. The World Bank should include a holistic approach towards children’s rights, not only schools, but books, qualified teachers, adequate school buildings and infrastructure, counseling whenever the children suffered trauma’s, vocational schools and training systems, which would prepare the children to proper vocational employment needed at the projects. • The Bank should acknowledge children as a vulnerable group. • Children should be involved in the Engagement Plans. Child participation has not been mentioned yet. Children’s rights is a cross cutting issue, and therefore child participation should be emphasized in all stages. • It is necessary to conduct research in the community. After this consultation, there should be research and analysis on how CSOs can help the government in combating corruption and protecting children’s rights. • Knowledge management skills are needed, as are software development, capacity building and human resources. • A participant raised issues of harmonization, and monitoring before loan agreement is reached between the Bank and the Borrower. Many times, the government quickly issues a regulation without taking into consideration how it impacts other existing regulations. The main environmental issues in Indonesia include forest degradation, urbanization, flooding, and impacts on communities from these. Harmonization of regulations with existing conditions is key. There is a law for forests and all kinds of reporting, but it is not carried out properly during implementation. When a penalty is applied there are factors that need to be considered and preventive measures to be done.
5. Environmental and Social Standard 2 (ESS2): Labor and Working Conditions
<p><i>Comments</i></p> <ul style="list-style-type: none"> • Indonesia has approximately 85 million children. The participant asked if the Bank can help abolish child labor through its environmental and social policies.

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<ul style="list-style-type: none"> • A participant expressed concern regarding employment of women, children and the disabled in Indonesia. Regulations normally exist but are not enforced. The participant asked how the Bank could help the Government of Indonesia to enforce regulations such as the ILO convention. • The World Bank should put more pressure on the national and regional governments in having this Safeguard policy met and implemented.
6. Environmental and Social Standard 3 (ESS3): Resource Efficiency and Pollution Prevention
7. Environmental and Social Standard 4 (ESS4): Community Health and Safety
8. Environmental and Social Standard 5 (ESS5): Land Acquisition, Restriction on Land Use and Involuntary Resettlement
<p><i>Comments</i></p> <ul style="list-style-type: none"> • A participant stated that the land acquisition processes have halted a lot of dam projects. • A participant referred to the rule of law and mentioned that if cultural land is used it will need a “Serat Kekancingan” (in DIY). The participant explained, for example, the status of the land owned by the Yogyakarta Palace, based on Law No. 3 Year 2950 which has been changed by Law No. 19 Year 1950 and Law No. 9 Year 1955 on the Creation of the Special Region of Yogyakarta, has experienced changes to become a special region within Indonesia. The special status that is most prominent is the law on land which is similar to UUPA. The reason is that in Yogyakarta, there is already a strong foundation for the law, which uses cultural law. As a region known for its royalty status, Yogyakarta until now still has land which was formerly swapraja spread across the Yogyakarta region. These lands are divided under two authorities: the Kasultanan Yogyakarta and Puro Pakualaman. Famous for its special system on land management, according to Law No. 5 Year 1990 (UUPA) seems to be unable to penetrate the independent management system of the Yogyakarta palace. The palace land which are spread across Yogyakarta is estimated to be 60% of palace land. The local communities who inhabit the land do not own any certificate. They only have the “Serat Kekancingan” or a letter of residence provided by Pantikismo. Pantikismo is the palace’s land agency with the authority to manage palace land use for various purposes and for the benefit of communities. For other regions, there is the possibility that conditions such as in Yogyakarta can be adopted based on the local cultural law. <p><i>Clarifications</i></p> <ul style="list-style-type: none"> • A participant expressed that land acquisitions always become the most cumbersome issue in World Bank projects. This may be due to a few basic problems, namely: (i) the lack of clear information on the rights and responsibilities of who owns and needs the land. For example, regarding state land: what is the definition of state land? What does it cover? What rights and responsibilities are borne by the people who have lived on state land for years? (ii) the lack of clear information regarding the legal steps or the SOP to acquire land certificates. Even if information exists, not many people are aware of the steps, leaving ample space for intermediaries to take advantage of the situation. (iii) many remain unfamiliar with the existing land regulations, namely the new law of UU No. 2/2012 about Land Acquisition. What remains an issue is that none of the previous regulations or the UU NO. 2/2012 are applied comprehensively.

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<ul style="list-style-type: none"> • A participant mentioned that there are many land disputes in the post-New Order era, because previously people were afraid to challenge land disputes, as in the past it involved people with strong connection to the military who acted as intermediaries. • A participant stressed that the main users of water supply needs to be clearly spelled out. Any water source belongs to the state, even when the land where the water is found is owned by private firms. <p><i>Recommendations</i></p> <ul style="list-style-type: none"> • A participant stressed that the Resettlement Action Plan (RAP), has to be prepared when the piece of land is identified, so that when the project is rolling, it is implemented effectively. • The Bank needs to take into consideration the issue of the different cash settlements as stated by the Government of Indonesia's (Gol) plan, the Bank and the private sector and how to harmonize between them. • A resettlement action plan has to be harmonized with the Gol's plan as the Gol's plan pays less than the Bank's plan. Furthermore, the Gol's plan does not pay attention to the social and economic loss from resettlement. • The Bank safeguard policies need to be flexible. Also in the Indonesia context, the RAP has to be adjusted with regard to the special autonomy status of the provinces. It is very difficult to apply the RAP in the field. On paper, the regulation or the plan sounds good, but in reality just measuring the right space of somebody's well or house has to be done carefully. • A participant mentioned that the RAP should be ideally undertaken upfront, so that there are fewer problems once the project is implemented. • A participant recommended the Bank to address further the issue of land provision, citing the various problems faced during implementation. This issue may lead to problems amongst the communities during implementation, since they (especially land-owners impacted by the project) experience injustice in claiming their land. This becomes an obstacle in the project implementation, because of the difficulties in agreement between land owners and the agencies needing the land. The regulations issued by the government cannot yet bridge the interests of land-owners with the interests of those who need the land. This is where the main concern lies.
9. Environmental and Social Standard 6 (ESS6): Biodiversity Conservation and Sustainable Management of Living Natural Resources
10. Environmental and Social Standard 7 (ESS7): Indigenous Peoples
<p><i>Comments</i></p> <ul style="list-style-type: none"> • A participant pointed out that Indonesia has gone through many changes in its legislation. including on its IP and resettlement policies, and with regard to joint regulation between the Ministry of Foreign Affairs, Forestry, and Ministry of Home Affairs on the recognition of IPs. It is important to understand how to manage and protect the rights of IPs, given the diversities, values and social systems of different countries. The Bank has to take into account that the E&S Framework will become a reference point for Indonesia and many other countries. • A participant mentioned that the definition of Indigenous Peoples remains a topic of debate, therefore the government has adopted the term 'Masyarakat Adat ' instead of Indigenous Peoples. The government has even reactivated the 'adat' laws on IPs.

<p>Specific Feedback from Stakeholders</p> <ul style="list-style-type: none"> • Some Participants encouraged the Bank to use the term "Masyarakat Adat" and/or "Local Community" for all Indonesia Community Development support projects instead of "Indigenous people". • UNDRIP includes self-determination, but not all countries have signed, so its legal standing is not very solid. • Indonesia more willingly accepts Free, Prior and Informed Consent (FPIC). • A participant referred to Voluntary Solutions versus National Solutions – for example, the Baduy local community. • Government instruments are currently quite comprehensive, and require implementation by World Bank projects, which deal with the issues case-by-case, particularly if the projects concern local communities. There should not be standardization. <p><i>Recommendations</i></p> <ul style="list-style-type: none"> • A participant encouraged the Bank to hold further discussions with representatives from local communities and organized by AMAN, the Indigenous Peoples Alliance of the Archipelago. • A participant asked that the Bank clarify the system in place should a country refuse the alternative approach.
<p>11. Environmental and Social Standard 8 (ESS8): Cultural Heritage</p>
<p>12. Environmental and Social Standard 9 (ESS9): Financial Intermediaries</p>
<p>13. Environmental and Social Standard 10 (ESS10): Information Disclosure and Stakeholder Engagement</p> <p><i>Comments</i></p> <ul style="list-style-type: none"> • A participant pointed out that there is a lack of transparency in terms of information dissemination. It is often unclear which ministry works with the Bank and on which project. The CSOs should be involved in the decision making. CSOs have neither knowledge of the amount of the donation and the variety of conditions, nor any insight about the specific posts of allocation and the terms of spending.