



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

Phase 2

Feedback Summary

Date: November 13, 2014

Location (City, Country): Berlin, Germany

Audience (Government, CSO, etc.): Multi-stakeholder

Overview and Key Issues Discussed:

On November 13, the Federal Ministry for Economic Cooperation and Development hosted a multi-stakeholder consultation on the World Bank's proposed Environmental and Social Framework. This meeting was part of a two-day event that also included a general multi-stakeholder consultation. The multi-stakeholder meetings on November 12 and 13 were moderated by Deutsche Welle anchor Melinda Crane. Stefan Koeberle, Director for Operations Risk Management, Jonathan Lindsay (Lead Counsel), Luis Felipe Duchicela (Indigenous Peoples Advisor), and Qays Hamad (Senior Operations Officer) presented the framework on behalf of the World Bank. The discussion focused on human rights in the context of World Bank projects, human rights assessment, labor and working conditions, and Indigenous Peoples. Available presentations by panellists are attached to this summary. A meeting agenda is posted separately. For purposes of conciseness, the following summary highlights comments and recommendations that were provided by individual representatives; collective comments and recommendations are noted as such.

Specific Feedback from Stakeholders

1. General Comments

Please also refer to the attached presentations.

- Stakeholders expressed a strong interest in human rights being included in the draft Environmental and Social Framework.
- The positive aspects of the framework, especially provisions for non-discrimination and the inclusion of more social issues, were acknowledged.
- Stakeholders pointed out the importance of adequate implementation.
- The social standards of the United Nations Development Program (UNDP) were recommended as basis for articulating objectives do no harm in World Bank-financed projects.
- The World Bank Environmental and Social Framework should set high standards and set an example for other international institutions.

- Stakeholders appealed to the World Bank to engage the Board on human rights issues.
- The World Bank needs to ensure that internal incentives for protecting human rights are in place. Maximizing lending volumes should not necessarily be the overarching goal of the institution.
- Stakeholders asked the World Bank to commit to avoiding activities that might contribute to HR violations.
- The proposed framework should apply to policy lending as well as to the shrinking Investment lending portfolio.
- The current policies were described as a predictable safety net that is understood clearly by Borrowers and stakeholders. The proposed framework was seen as delegating responsibilities, deferring appraisal, and leaving compliance open-ended. Possibilities for Borrowers to “opt-out” of requirements were considered to be a weakening of current safeguard policies, which do not include opt-out clauses.
- Stakeholders also noted that not enough information was available on the framework to provide informed opinions and that more local and regional consultations were necessary.

2. A Vision for Sustainable Development

Please also refer to the attached presentations.

- Stakeholders welcomed the references to human rights in the vision statement, but explained that those were not sufficient to address the issue. It was pointed out that consultation feedback provided in the first consultation phase called for a more extensive treatment of human rights. It was said that the proposal represented the lowest common denominator among World Bank shareholders, which was considered insufficient in effectively addressing human rights issues. The World Bank was challenged to develop a competitive advantage and provide value added by ensuring sustainability and the protection of human rights.
- While stakeholders recognized the constraints of the World Bank’s Articles of Agreement that prohibit the World Bank to get involved in political issues of its member states, stakeholders also argued that political considerations may not be necessary as international human rights standards are enshrined in international laws, to which many members have signed up. The World Bank should follow the example of many United Nations organizations, where human rights are enshrined in a rights-based approach to policy-making. Even a risk-based approach requires that the World Bank takes increasing responsibility for these risks and protects vulnerable groups by aligning the safeguard policies with international human rights laws.
- If human rights cannot be mentioned for political reasons, they should be enshrined in the proposed framework in their substance.
- Human rights should also never take the backseat to business considerations, even if the World Bank is under pressure from other multilateral development financiers.

3. World Bank Environmental and Social Policy

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

Please also refer to the attached presentation on risk assessment and risk management.

- If the World Bank intends to take a risk-based approach and rely more strongly on country systems for risk assessment and management, it will have to address issues of low capacity in borrowing countries. A risk-based approach does require more flexibility, but also more

attention to the risks taken and to the Borrowers/ capacity to manage them. In addition to capacity, the implementation of national laws also needs to be assessed and gaps need to be addressed if a risk-based approach will be taken.

- The reference to non-discrimination in ESS1 was seen as an improvement over the current safeguards policies. However, requirements for non-discrimination were perceived to be unclear. This could mean that compliance would be “open-ended” for Borrowers and they would not need to immediately fulfill mandatory safeguards.
- Stakeholders criticized the use of conditional clauses and vague language for staff and Borrower requirements.
- It was suggested that the provisions of ESS1 should include human rights due diligence.
- The proposal of adaptive risk management was seen as unclear with regard to who will assess risk and who will manage them. The proposed Environmental and Social Commitment Plan (ESCP) was perceived as a tool that can be revised over time and does not need to exist before approval of a project. The legal applicability of such a plan was debated. Stakeholders warned that the Board could be asked to approve projects without knowing the full range of risks and potential mitigation measures. It was also argued that the proposed framework did not include any limitations for adaptive risk management in high-risk activities, where all risk should be assessed at the outset.
- The proposed framework was perceived as providing too much discretion for World Bank staff in an institution where incentives are oriented toward increased lending. Concern was expressed that there could only be little accountability for discretion.
- The capacity of the World Bank to supervise and monitor the implementation of the proposed framework was mentioned several times. The ongoing reorganization was feared to weaken the World Bank’s supervision capacity. Analyses of the Bank’s capacity to implement the current safeguard policies already showed capacity gaps, these problems may become more pronounced under the proposed framework.
- Upstream requirements for assessments were recommended. ESS1 should also include explicit climate change assessment, a broad definition of associated facilities, and directives on the assessment of risk to vulnerable people.

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

Please also refer to the attached presentation on Labor and Working Conditions.

- Consultation participants welcomed the proposed labor standard, but argued that it represents a selective approach to international core labor standards that are agreed by a large number of countries. Following the core labor standards, the proposed standard should include freedom of association and the right to collective bargaining. Freedom of association and collective bargaining were emphasized as some of the most important avenues to ensure better working conditions.
- The proposed standard should not exempt contractors, sub-contractors, and public servants. The current exemption of the contractors and sub-contractors was seen as particularly problematic with regard to child labor. International best practice shows that labor standards applying to contractors and sub-contractors have been among the most useful protections.
- In order for the World Bank to uphold labor standards at least as strong as those of other MDBs, ESS2 should include a requirement for written notification of conditions of employment. ESS2 should also address labor issues in supply chains.
- ESS2 should reference the core labor standards of the International Labor Organization (ILO), which include collective bargaining and freedom of information. In addition to adopting those core labor standards, the World Bank should also specify how these requirements could be met in countries where the implementation of the core labor standards is challenging.

- An organization pointed out that labor standards need particular consideration with regard to smallholders, who often employ other smallholders with very low wages and without social security. Smallholders would not be able to comply with high labor standards, especially when informal labor is involved.
- It was furthermore suggested that ESS2 include specific references to women’s needs and equal pay for women. Women should also be addressed specifically in the provisions for equal opportunity and fair treatment. Referencing the core labor standards would address specific women’s rights issues with regard to labor.
- It was suggested that ESS2 should also include social protections, especially social health protections for workers that are injured working for a World Bank-financed project, but where the employer does not provide health insurance.
- A participant referred to a statement issued by the Global Unions to the 2014 Annual Meetings of the IMF and World Bank Group, which demands that the World Bank labor standard should be at least as strong as the standards of other Multilateral Development Banks (MDB). The statement can be accessed [here](#).

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

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

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

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

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

Please also refer to the attached presentations on Indigenous Peoples.

- Stakeholders appreciated the introduction of Free, Prior and Informed Consent (FPIC).
- Consultation participants expressed concern about the alternative approach, which might lead to governments not upholding the rights of Indigenous Peoples.
- The resettlement of Indigenous Peoples should always be prevented if Indigenous Peoples do not consent to their resettlement.
- Stakeholders pointed out that the current safeguard policy for Indigenous Peoples has a good legacy in Africa. While Indigenous Peoples do indeed exist in Africa, they do not exist in all African countries. Where they exist, they often consist of communities of hunter/gatherers and pastoralists. These are often treated as second-class communities. Concern was expressed that the proposed alternative approach would put these communities at increased risk.

- When countries are uncomfortable with using the concept of Indigenous Peoples, they often use other terms, while still providing protections of the human rights of these groups. The alternative approach was seen as allowing countries to give up on these communities.
- It was suggested that ESS7 refer to the ILO Convention on indigenous and tribal peoples.
- ESS7 and the definition of Indigenous Peoples in ESS7 should be clear and narrow enough to identify exactly those groups that have suffered from historical wrongdoings against Indigenous Peoples. Paragraph 21 of the proposed standard should be part of the definition of Indigenous Peoples.
- The World Bank was asked to provide a definition of Consent (in FPIC), as the term “consent” can have different meanings in different languages. FPIC should be connected to land. FPIC should be required before project approval and before any action can be taken by the Borrower. IN this regard, FPIC should be different and stronger from the concept of meaningful consultation with other groups.
- Protections for Indigenous Peoples should also be included in World Bank lending instruments other than Investment Project Finance, to which the proposed framework would apply.
- It was pointed out that the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security include two provisions for participation of Indigenous Peoples that are different from ESS7, but that should be similar.
- Indigenous Peoples should be allowed to define for themselves what kind of development they want and what kind they do not want. For instance, development projects that include the expropriation of land would always be unacceptable for Indigenous Peoples.

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

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

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

- It was pointed out that the current safeguards consultation process shows that even the World Bank has problems consulting with vulnerable communities. How will client countries with lower capacity be able to implement the requirements of ESS10?