



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. Jonathan Lindsay (Lead Counsel) presented the framework on behalf of the World Bank. The discussion focused on land in the context of World Bank projects, resettlement, land tenure assessment, monitoring, and compliance, and compensation. As the discussion focused on land, most comments are summarized below under 8) Environmental and Social Standard 5 (ESS5): Land Acquisition, Restriction on Land Use and Involuntary Resettlement. 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
<ul style="list-style-type: none"> • Stakeholders welcomed the stand-alone policy ESS5 on Land Acquisition, Restriction on Land Use and Involuntary Resettlement. The issue deserves a stand-alone policy and should not be integrated into any other standards. • Several consultation participants referred to the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. The spirit of these guidelines should be reflected in the land standard. The provisions of the proposed framework were perceived as too broad and vague. The World Bank should adopt practices from the Voluntary Guidelines, such as the practice of inter-governmental negotiations with civil society and the business sector before any land transactions. The Guidelines also recognize the binding obligations under international law, which the World Bank should also adhere to.

- The proposed framework references the Voluntary Guidelines, but unlike in the Guidelines, land issues are not recognized in the framework as human rights-related issues.
- Stakeholders emphasized that the proposed framework should address land titling. Stakeholders were critical about the lack of sequencing in ESS5, land tenure assessments must be made prior to moving forward with a project. Adaptive management and deferred appraisal are highly problematic if land titling is not subject to prior consideration.
- A participant appealed to the World Bank to keep safeguard standards high and to not water them down, especially as the World Bank is setting standards for other development partners. The proposed standards, including ESS5, should apply to policy lending in addition to investment project finance.
- Even experts have difficulty in finding all the bits and pieces relevant for land tenure in the proposed Framework.
- A gender perspective is missing.
- The Bank must assess whether Borrowers have provisions for and capacity to undertake community engagement.

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

- Stakeholders recommended that any land acquisition should be preceded by a thorough assessment of the impacts on affected people.
- The risk mitigation hierarchy of the proposed framework allows borrowing governments to mitigate, rather than prevent unavoidable adverse impacts of land transactions. Clear procedures are needed for testing when negative impact really is unavoidable. Emphasis needs to be placed on avoiding resettlement.
- Rotating land use and a wide range of impacts, including up- and downstream water uses, need to be taken into consideration.

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

-

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

General remarks on land issues

- Land issues have become a delicate issue because of increasing land grabs. Land acquisition is a lucrative business.
- Stakeholders criticized that the proposed land standard addresses land transfers, but not land registration. The standard needs a more holistic approach.
- It was recommended that land acquisition should only be limited to situations where land acquired for reasons of public interest. All stakeholders affected by land acquisition should be part of the decision-making process.
- All land transactions require a special focus on vulnerable and marginalized groups. Especially Involuntary Resettlement can lead to impoverishment of vulnerable groups, which is why nuanced pre-appraisal requirements and requirements for comprehensive resettlement plans are necessary.
- Legitimate tenure holders should be considered and treated as main rights holders.
- The World Bank should consider that in some poor countries, institutions for land registration, spatial planning, and water resource management are either weak or non-existent. Any World Bank standard on land will need to consider these capacity gaps and help countries build and strengthen their institutions. This is particularly important, as all land transfers need to start with land registration, but that requires strong institutions.
- Smallholders are a large majority among stakeholders affected by land issues in developing countries. This groups needs particular consideration.
- The proposed framework should address complaints handling and remedies in more details, following the example of the Voluntary Guidelines. The Voluntary Guidelines were also considered more outspoken than the proposed land standard on all types of land uses, have stronger language on forced evictions, and involuntary resettlement. The Guidelines also suggest strong protections of marginalized groups in rural areas, e.g., smallholders.
- Stakeholders called on the World Bank to take a very proactive role and provide explicit protections to ensure that vulnerable groups are not overlooked, incl. people with traditional and informal rights.
- There was a complaint that the World Bank does not provide good statistics on how many people are physically and economically displaced and what the implications of this displacement are for food security. Sustainable resettlement should be a principle for the proposed standard, recognizing that compensation is not enough to restore livelihoods.
- The proposed ESS 5 does not address land conflicts and possible solutions.
- Monitoring cannot be left to the Borrower. The question was raised of how the Bank would monitor.

Resettlement Plans

- An expert on resettlement opened the discussion on resettlement plans by explaining that all resettlement plan need to start with identifying all affected stakeholders and taking into consideration existing power imbalances between different groups. The role of the state and existing regulations for private actors need to be analyzed.
- It was welcomed that ESS5 considers and adequate range of tenure rights and that people without formal usage rights are included in the protections of the standards. The inclusion of physical and economic displacement was appreciated.

- The proposed ESS5 should reflect the six core aspects of land use in the Voluntary Guidelines. The standard is currently missing a clear differentiation between customary and informal land tenure rights.
- ESS5 should address gender issues (e.g., inheritance rights and the ability of women to own land).
- All affected stakeholders should be able to participate at all stages of the land transaction process.
- It was suggested to broaden the definition of livelihood beyond income generating activities; the definition used by the Department for International Development (DFID) could be an example.
- It was furthermore recommended to revise the proposed scope and eligibility criteria, refer to existing international instruments and harmonize language with such instruments, provide more guidance on how to avoid resettlement, and focus more on land tenure assessments prior to the investment decision.
- ESS5 should address resettlement of Indigenous Peoples living in protected areas. This issue is included in the current World Bank Indigenous Peoples policy and should be transferred to the new standard. While Indigenous Peoples are referenced, specific attention is required to the majority of Indigenous Peoples living in protected areas.
- One organization pointed to a policy proposal they submitted in the first phase of the safeguards review consultations and to their suggested land dispute resolution mechanism.
- Specific paragraphs of the proposed ESS5 were criticized, in particular paragraph 12, which was seen as difficult to implement, and paragraph 21, which allows an expansion of a resettlement plan once a project is defined, if the exact nature or magnitude of the land acquisition or restrictions on land use is unknown during project preparation. Any possibilities for deference of resettlement plans need to be carefully defined. Sequencing issues were also discussed with regard to the availability of grievance mechanisms (should be available in advance of a project approval).
- ESS5 needs to guarantee that recording of resettlement data is taking place.
- With regard to the payment of compensation in installments, ESS5 should include a reference to inflation rates to ensure resettled people always get the appropriate value.
- It was suggested to include a reference to the United Nations' specific language on forced evictions.
- Opportunities to return land to original owners should be considered if the land is not used for the original purpose necessitating resettlement.

Land Tenure Assessment, Monitoring and Compliance

- Stakeholders recommended that the World Bank take into account the land tenure assessment tools of the Voluntary Guidelines and use language in ESS5 that is at least as strong as the language in the guidelines. Land tenure assessment should be done before resettlement needs to take place with the goal of avoiding resettlement altogether.
- It was recommended to significantly extend the provisions on land tenure assessment to ensure that Borrowers are fully informed of their obligations and how to meet them.
- A number of indicators for land tenure monitoring were suggested, including: perception of security and threats, prevalence of land disputes in the project area, prevalence of evictions in the project area, access to water, access to other natural resources, and degree of landlessness.

- Resettlement and land acquisition have social cost in addition to economic cost. It should be considered that land rights are also about benefits, which should go to the poor and to society.
- In order to realize ESS5's provision on community engagement, countries will need help with building engagement capacity and also with building awareness among affected groups about the protections afforded to the by the standard.

Compensation

- The discussion on compensation started with an expert report on the realities on compensation on the ground. The presentation is attached to this summary.
- Audits and project monitoring of resettlement should extend beyond project completion to ensure that restored livelihoods really are sustainable. The impact of compensation can change over time, depending on many external factors, including climate change. Funding should be provided to compensate for long-term negative impacts that have not been foreseen at assessment stage. Unexpected long-term impacts need to be taken seriously.
- Persons affected by resettlement should get the same compensation regardless of the risk rating of a project.
- Affected persons should be compensated to the same extend as commercial enterprises and the respective provisions should be equally specific and concrete. The World Bank should consider the interest of businesses and those of affected persons to the same degree. Customary rights need to be considered as well.
- Affected people should also be compensated for the value of crops and trees, which are of utmost importance to farmers.
- When thinking about compensation, the World Bank should also think about corruption. Transparency in compensation needs to be improved.

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

-

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

-

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

-

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

-