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

### Phase 3

### Feedback Summary

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**Date:** December 1, 2015

**Location:** Pretoria, South Africa

**Audience:** Multi-Stakeholder, Civil Society Groups

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	<ul style="list-style-type: none"> <li>As a specialized agency of the United Nations the Bank has a responsibility to promote the realization of human rights in its member countries.</li> <li>The Bank has an important role to play and it would be helpful to spell out in more concrete terms exactly how the Bank's work contributes towards or promotes human rights.</li> </ul>
ESP/ ESS1	Use of Borrower's Environmental and Social Framework	2. Role of Borrower frameworks in the management and assessment of environmental and social (E&S) risks and impacts where these will allow projects to achieve objectives materially consistent with Environmental and Social Standards (ESSs) 3. Approach for making decision on the use of Borrower frameworks, including the methodology for assessing where frameworks will allow projects to achieve objectives materially consistent with the ESSs, and the exercise of Bank discretion	<ul style="list-style-type: none"> <li>Borrower frameworks are often inadequate or not comprehensive enough or not well enforced. In these situations, the Bank's role ought to be to bring its resources and knowledge to bear and to work with the client closely until the systems are improved and strengthened. This should be reflected in the Environmental and Social Framework not merely as an aspiration but as an objective. The Bank should take responsibility for this since it is always best placed in assessing and managing the short, medium and long term risks of the operations that it finances.</li> <li>The Bank must conduct adequate due diligence on the use of borrower frameworks and build on this experience going forward. There needs to be complete clarity as to how far back to go in looking at implementation track records.</li> </ul>

		4. Role of Borrower frameworks in high and substantial risk projects	
ESS1	Assessment and management of environmental and social risks and impacts	<p>5. Assessment and nature of cumulative and indirect impacts to be taken into account</p> <p>6. Treatment of cumulative and indirect impacts when identified in the assessment of the project</p> <p>7. Establishing project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects</p> <p>8. Circumstances under which the Bank will determine whether the Borrower will be required to retain independent third party specialists</p>	<ul style="list-style-type: none"> <li>• The Framework needs clarity regarding the circumstances under which independent specialists will be involved in project preparation and supervision and confirm if there will be further guidance on the involvement of independent specialists. It also needs clarity with regard to whether the Bank will play a more active role in project supervision under the new Framework.</li> <li>• Clarify whether the Bank would address long-term pollution from beyond the project area such as acid mine drainage, solid waste and radioactive materials.</li> <li>• Clarify if intelligence services are covered in the scope of “security personnel” to whom ESS-4 applies. Indicate what clarifications were issues in this regard. If they are not foreseen as part of the definition of “security personnel” under the Environmental and Social Framework, they ought to be included since they play a critical role in supporting security operations and are often used to repress the views of potentially affected peoples in project areas.</li> </ul>
ESS2	Labor and working conditions	<p>9. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries)</p> <p>10. Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers</p> <p>11. Constraints in making grievance mechanisms available to all project workers</p> <p>12. Referencing national law in the objective of supporting freedom of association and collective bargaining.</p>	<ul style="list-style-type: none"> <li>• Clarify the compliance mechanism that the Bank has in place for adverse impacts that may occur at all stages of project design and during project implementation. The Environmental and Social Framework should clarify the consequences for any affirmative findings of adverse impacts on communities because of project activities. Other MDBs such as the European Investment Bank have compliance mechanisms and it would good to understand the equivalent mechanism in the Bank and whether it is provided for in the Framework</li> <li>• Clarify whether the Environmental and Social Framework has been benchmarked against ILO core labor standard and the extent to which brokers and agents who may be procuring workers illegally would be covered under the Framework. There ought to be references to the international standards that the ILO has developed and especially since many of these standards are already reflected within national law and therefore binding on the South Africa.</li> </ul>

ESS3	Climate change and GHG emissions	<p>13. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC</p> <p>14. Proposed approaches to measuring and monitoring greenhouse gas (GHG) emissions in Bank projects and implications thereof, in line with the proposed standard, including determining scope, threshold, duration, frequency and economic and financial feasibility of such estimation and monitoring</p> <p>15. Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard</p>	<ul style="list-style-type: none"> <li>• In ESS-3, it is unclear how is the statement “where technically and financially feasible” is consistent with the approaches to and notions of “Best Available Technology” and the “Best Practicable Environmental Option” in environmental and social impact analysis. It would have been easier to understand if either one of these standards was reflected in the Environmental and Social Standards Framework instead of the current formulation which is rather vague. South Africa has already moved to the “Best Practicable Environmental Option.”</li> <li>• ESS-3 refers to “long-lived and short-lived climate pollutants” and it would appear that the use of the term “climate” in this context narrows the scope of obligations. It would be better to rephrase and use the term “environmental” pollutants since it is broader and in line with the comprehensive approach to risk assessment reflected in the Environmental and Social Framework.</li> <li>• It is not clear if the Bank would continue to finance a project if it became clear that by going ahead with such financing, this would lead to high Green House Gas emissions. What the Bank would do needs to be documented in the Framework considering that climate change is a major global threat.</li> <li>• We recommend that the cap on daily water consumption by projects for water stressed countries be reinstated in the Environmental and Social Framework. South Africa is an extremely water stressed country and caps by sector or by industry would be a useful tool for sustainably managing water use by stakeholders, including big users such as Eskom.</li> <li>• Clarify whether compliance with the Environmental and Social Framework would include an assessment of the financially stressed situation of Eskom at the moment. In our view, this is important since it would show whether Eskom can improve energy access and promote greener and renewable energy.</li> <li>• Clarify compliance with air quality emission requirements as per South African standards for Eskom in view of its postponement application for Flu Gas Desulphurization commissioning at Medupi and water stressed environment.</li> <li>• Clarify how the Environmental and Social Framework will address the issue of acid mine drainage in the Waterbug District where Eskom reportedly has a mine.</li> </ul>
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ESS5	Land acquisition and involuntary resettlement	<p>16. Treatment and rights of informal occupants and approach to forced evictions in situations unrelated to land acquisitions</p> <p>17. Interpretation of the concept of resettlement as a “development opportunity” in different project circumstances</p>	<ul style="list-style-type: none"> <li>• In the context of ESS-5, it is worth considering that traditional leaders are gatekeepers and they may not always reflect or represent the views of the communities concerned. This raises the issue of the representation and elite capture and the degree to which such leaders represent the interests of the communities. Working through traditional leaders in consultations on land-related issues would make a lot of sense if it were clear that they are truly representative of community views. We recommend that ESS-5 make clear that consultation processes should reach the stakeholders directly.</li> <li>• With regard to gender, the Bank needs to clarify what has been reflected in ESS-5 to make it more gender responsive and how it fits within the broader agenda of taking gender issues into account in the development process.</li> </ul>
ESS6	Biodiversity	<p>18. Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity</p> <p>19. Role of national law with regard to protecting and conserving natural and critical habitats</p> <p>20. Criteria for biodiversity offsets, including consideration of project benefits</p> <p>21. Definition and application of net gains for biodiversity</p>	<ul style="list-style-type: none"> <li>• In the mitigation hierarchy, we understand that offset is a last resort. Looking at most African countries there may be no national policy or law on offsetting. In this case the Bank standards would be more stringent and ought to be applicable in order to realize a good quality offset outcome.</li> <li>• It is important for the Bank to take into account livelihoods issues and impacts on such livelihoods including attention to medium and long-term impacts. We therefore welcome the greater emphasis on broader social risk analysis including in the context of biodiversity</li> </ul>
ESS7	Indigenous Peoples	<p>22. Implementation of the Indigenous Peoples standard in complex political and cultural contexts</p> <p>23. Implementation of ESS7 in countries where the constitution does not acknowledge Indigenous Peoples or only recognizes certain groups as indigenous</p> <p>24. Possible approaches to reflect alternative terminologies used in different countries to describe Indigenous Peoples</p> <p>25. Criteria for establishing and implementation of Free, Prior and Informed Consent (FPIC)</p> <p>26. Application of FPIC to impacts on Indigenous Peoples’ cultural heritage</p>	<ul style="list-style-type: none"> <li>• Explain whether there will be further guidance on the operationalization of FPIC in a project context and whether such guidance will be tailored to relevant regional circumstances. Please clarify whether such guidance will be mandatory.</li> <li>• Clarify whether the Bank’s Environmental and Social Framework would supplant or override national law and what this means for those countries that do not require FPIC particularly for projects in the mining or extractives sector.</li> <li>• Collaboration and exchange with the African Commission on Human and Peoples’ Rights would be important and there are good lessons to draw which may ultimately prove useful in implementing the proposed Environmental and Social Framework.</li> </ul>

ESS8	Cultural Heritage	27. Treatment of intangible cultural heritage 28. Application of intangible cultural heritage when the project intends to commercialize such heritage.	<ul style="list-style-type: none"> <li>• Explain what the Bank would do to handle the still outstanding issue of sacred graves in the Medupi site identified during the implementation of the Eskom project.</li> </ul>
ESS10	Stakeholder engagement	29. Definition and identification of project stakeholders and nature of engagement 30. Role of borrowing countries or implementing agencies in identifying project stakeholders	<ul style="list-style-type: none"> <li>• Affected stakeholders need to be included in conversations such as this. There are imbalances in terms of access to information for rural communities and people on the ground level may not access to such information. Additional channels of communication are vitally important in such situations and ought to be reflected in the Environmental and Social Framework.</li> <li>• Impacted communities should be directly consulted through the stakeholder engagement process spelt out in the Environmental and Social Framework because these stakeholders are the only ones that understand project impacts first-hand. For example, the communities affected by the Lesotho Highlands Water Project are not represented at this consultations and they ought to be. It is an injustice not to have brought in affected communities.</li> </ul>
General	Disclosure	31. Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)	<ul style="list-style-type: none"> <li>• South Africa has comprehensive laws but it is often not possible to obtain basic information about the Eskom project or any information in general. Sometimes project-specific reports may not be available and even when requested, they are not made available. On-site information sources are critical.</li> </ul>
Other issues			<ul style="list-style-type: none"> <li>• The World Bank is one of the biggest financiers of development projects. It is however not clear what the overriding objective behind the standards is—is it about global standard setting or is it aimed at Bank financed projects and compliance thereof.</li> <li>• It would important to understand and to clarify how the bank defines ‘sustainable development’ including whether the Bank would reject the financing of projects if they contribute to increasing poverty and unsustainable development.</li> <li>• Attention should be paid to irreversible impacts by mining projects and it would be useful to get clarity as to whether the Bank would be able to make the decision not to finance a project that is not economically viable because of the triple bottomline.</li> <li>• The Bank should conduct economic analysis in particular on low income households who were not sufficiently consulted in the context of the Bujagali Project. It would useful to know what the Bank doing to address cases such as this. Explain what is in the</li> </ul>

	<p>Environmental and Social Framework regarding the requirement to conduct economic impact analysis at the household level.</p> <ul style="list-style-type: none"><li>• Please clarify the criteria that you used in selecting the countries in which you are undertaking consultations in Africa.</li><li>• Please explain how the Bank has been working with the Special Rapporteur for Human Rights and whether his most recent report on human rights and the work of the World Bank is being factored into the review process.</li></ul>
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