



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

Phase 3

Feedback Summary

Date: November 30, 2015

Location: Pretoria, South Africa

Audience: Government Departments, Development Bank of South Africa

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	<ul style="list-style-type: none"> The Bank’s role in supporting and promoting the protection of human rights needs to be better explained since in our view, we see the Bank as having strong leverage in encouraging compliance with human rights obligations, especially bearing in mind the particular context of South Africa with its history of discrimination.
ESP/ ESS1	Non-discrimination and vulnerable groups	2. Explicit listing of specific vulnerable groups by type/name (age, gender, ethnicity, religion, physical, mental or other disability, social, civic or health status, sexual orientation, gender identity, economic disadvantages or indigenous status, and/or dependence on unique natural resources)	<ul style="list-style-type: none"> There is a lack of clarity in terms of how the various categories of vulnerable groups that are listed in footnote 22 would be protected under the proposed Environmental and Social Framework although it is clear that some analysis of risks and impacts will be undertaken as part of the social assessment.

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	Use of Borrower's Environmental and Social Framework	<ol style="list-style-type: none"> 3. 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) 4. 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 5. Role of Borrower frameworks in high and substantial risk projects 	<ul style="list-style-type: none"> • The Bank should be clear that in instances where a decision was made to use borrower frameworks and where equivalency and acceptability has been established – as is the case with the Eskom project in South Africa – such borrower frameworks will continue to be used for any follow-on projects proposed for World Bank financing. The use of available borrower frameworks in such instances must be the default option and this should not a matter of Bank ‘discretion.’ It is noteworthy that the Eskom Project which is the largest project the Bank has financed was processed under borrower frameworks and South Africa therefore has a track record of proven consistency with the Bank’s environmental and social requirements. • Regarding the use of borrower frameworks, the idea that this can only happen at the Bank’s discretion should be reviewed. At the minimum, this should be a decision to be taken in consultation and agreement with the borrower. This should be reflected in the draft Environmental and Social Framework. • The priority of the Bank should be build borrower capacities for environmental and social risk management. The use of borrower frameworks is important in this regard and should be encouraged and supported in the Environmental and Social Framework. Therefore the Bank should be ready to always begin from the host country’s environmental and social parameters. • In considering the use of borrower frameworks, attention should be paid to national law as well as specific provisions of the Environmental and Social Framework and whichever is stronger should be applicable.
	Co-financing/ common approach	<ol style="list-style-type: none"> 6. Arrangements on E&S standards in co-financing situations where the co-financier’s standards are different from those of the Bank 	<ul style="list-style-type: none"> • The ‘common approach’ referred to in the Environmental and Social Framework is not just a question of Bank-Borrower collaboration. It is also equally important to take into account and to consider the environmental and social safeguards systems of other organizations and development partners of the borrower. In the case of South Africa, we suggest that particular regard be paid to the African Development Bank and the Development Bank of Southern Africa which are obvious potential co-financiers.

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	Adaptive risk management	7. Approach to monitoring Environmental and Social Safeguards Compliance and changes to the project during implementation	<ul style="list-style-type: none"> We appreciate that there is broader attention to social risks in the proposed Environmental and Social Framework and agree with the risk-based approach. We appreciate that social issues are explicitly treated in the proposed Environmental and Social Framework but would query the resource implications of properly conducting the foreseen degree of social assessments.
	Risk classification	8. Approach to determining and reviewing the risk level of a project	<ul style="list-style-type: none"> We appreciate that the proposed risk-based approach of categorizing potential as High, Substantial, Moderate or Low risk is less rigid than the current system of environmental categorization with its static categories of A, B, C or FI. We find the approach proposed in the Environmental and Social Framework to be a useful change for the Bank.
ESS1	Assessment and management of environmental and social risks and impacts	9. Assessment and nature of cumulative and indirect impacts to be taken into account 10. Treatment of cumulative and indirect impacts when identified in the assessment of the project 11. Establishing project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects 12. Circumstances under which the Bank will determine whether the Borrower will be required to retain independent third party specialists	<ul style="list-style-type: none"> Upstream Strategic Assessments are critical in understanding the broader risk profile of any particular project. These assessments should therefore be a clear and specific requirement under ESS1 wherever relevant. In this way, many of the environmental and social issues could be addressed in an integrated way. Full cost accounting and an in-depth economic analysis of alternative options, including the options in the mitigation hierarchy should be part of the environmental and social assessment process. With regard to project boundaries, it is very important that the proposed Environmental and Social Framework clearly define the boundary criteria including for associated facilities. This is the only way any potential impacts could be adequately managed without them becoming burdensome on the borrowers. The Bank's proposed role in the Environmental and Social Framework with regard to supply chains needs better clarity. How far down the chain such influence can be exerted and where the responsibility for compliance stops is not very clear since the definition is itself somewhat vague.
	Environmental and Social Commitment Plan (ESCP)	13. Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement	<ul style="list-style-type: none"> We understand that the Environmental and Social Commitment Plan would be incorporated in the legal agreement and will therefore be legally binding. For this reason, it is critical that all

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			<p>commitments or actions specified in the ESCP be fully funded within the scope of the project.</p> <ul style="list-style-type: none"> • There needs to be clarity as to how will the Bank ensure compliance with the ESCP including with regard to supervision.
ESS2	Labor and working conditions	<p>14. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries)</p> <p>15. Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers</p> <p>16. Constraints in making grievance mechanisms available to all project workers</p> <p>17. Referencing national law in the objective of supporting freedom of association and collective bargaining</p> <p>18. Operationalization of an alternative mechanism relating to freedom of association and collective bargaining where national law does not recognize such rights.</p>	<ul style="list-style-type: none"> • Overall we find ESS-2 to be well drafted and comprehensive. We appreciate that the proposed Environmental and Social Framework provides for the non-discrimination principle as a core requirement. This is extremely important. However, the Environmental and Social Framework needs to recognize that there are instances where “fair” discrimination may be the policy of the Government in order to remedy past injustices and discrimination. These should be explicitly recognized in the Environmental and Social Framework. • The Government of South Africa has put in place Black Economic Empowerment policies and these policies should not be used as a basis to avoid financing certain projects based on perceived discrimination of minority populations in South Africa. • We would also like to emphasize that South Africa’s laws on labour and working conditions are robust and well enforced. They are therefore well aligned with ESS-2 and would be adequate to address the different labor issues covered under the Environmental and Social Framework.
ESS3	Climate change and GHG emissions	<p>19. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC</p> <p>20. 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>	<ul style="list-style-type: none"> • We are in general agreement that climate change and the need to curb emissions are issues of critical importance. However, we have concerns about the level of financing that would be required in this regard as well as the degree of additional effort required for a project to track emissions especially where the project may only be contributing minimally. The Environmental and Social Framework needs further clarity on the need for reporting and mitigation. • There is a need for clarity on the level of monitoring effort. The estimation of GHG should be done only in projects where there is such potential. The Environmental and Social Framework should

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		21. Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard	<p>also be clear as to whether the proposed Green House Gas emissions reports will be publicly disclosed.</p> <ul style="list-style-type: none"> • We will need to consult further with our colleagues in the Department of Environmental Affairs and to align our position with our country’s position in the context of the ongoing UNFCCC process. We would also need to make sure that any monitoring of the Green House Gas emissions is in accordance with the agreements at UNFCCC. • <i>Countries have proposed NAMAs as part of the UNFCCC process. They should be allowed to pursue those even if they appear inconsistent with ESS-3. National sovereignty.</i>
ESS5	Land acquisition and involuntary resettlement	<p>22. Treatment and rights of informal occupants and approach to forced evictions in situations unrelated to land acquisitions</p> <p>23. Interpretation of the concept of resettlement as a “development opportunity” in different project circumstances</p>	<ul style="list-style-type: none"> • There are significant concerns regarding illegal activity, and in particular, illegal encroachers both in urban and more recently in rural areas. To the extent that ESS-5 provides for certain measures of resettlement related support even for illegal encroachers, this may encourage illegal activity and act as a perverse motivation for wrong-doing. We recommend that the Bank reflect on this and consider the position of the borrower countries in these situations as well. Requiring support for this would certainly lead to prolonged project timelines and drawn-out negotiation with illegal encroachers. • The notion of viewing ‘resettlement as a development opportunity’ is broadly supported although it needs to be explained further. In addition, it may clearly lead to additional costs over and above the ordinary resettlement costs that would be payable under the proposed Environmental and Social Framework. This should be acknowledged in the document and the additional costs should be covered in the context of a project and further clarity provided. • The different between “forced evictions” which not allowed under the Environmental and Social Framework, and “eminent domain” which is not allowed is lost or too technical. It would be useful if this was clarified and explained more directly.
ESS6	Biodiversity	24. Operationalization of the provisions on primary suppliers and ecosystem	<ul style="list-style-type: none"> • Given the many references to ecosystem services throughout the document, there is a need to explain how the “full valuation” of

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		<p>services, especially in situation with low capacity</p> <p>25. Role of national law with regard to protecting and conserving natural and critical habitats</p> <p>26. Criteria for biodiversity offsets, including consideration of project benefits</p> <p>27. Definition and application of net gains for biodiversity</p>	<p>ecosystem services will be done, whether for provisioning, regulatory, cultural or supporting services. It should also explain the “value add” for such ecosystem services.</p> <ul style="list-style-type: none"> • Offsets are broadly supported but offsetting should not be simply about an “offset” but rather focus on ensuring enhancements to the ecosystem. It has be “like for like or better”. • There should be an economic evaluation of the options under the mitigation hierarchy.
ESS7	Indigenous Peoples	<p>28. Implementation of the Indigenous Peoples standard in complex political and cultural contexts</p> <p>29. Implementation of ESS7 in countries where the constitution does not acknowledge Indigenous Peoples or only recognizes certain groups as indigenous</p> <p>30. Possible approaches to reflect alternative terminologies used in different countries to describe Indigenous Peoples</p> <p>31. Criteria for establishing and implementation of Free, Prior and Informed Consent (FPIC)</p> <p>32. Application of FPIC to impacts on Indigenous Peoples’ cultural heritage</p>	<ul style="list-style-type: none"> • The current focus of ESS-7 only on Indigenous Peoples is rather narrow and may not square easily with broader national priorities of an inclusive approach to development. We would therefore recommend that the scope of ESS-7 be expanded to include not just the San and Khoi Khoi in the case of South Africa but also other vulnerable groups including traditional authorities even if such other groups do not meet the criteria specified in the Standard itself. Such an approach would lead to better development outcomes. • [Many traditional ethnic groups in South Africa have valuable knowledge systems – even if they may not qualify strictly as being indigenous themselves. These knowledge systems are critical especially for medicinal purposes and protections similar to FPIC should be provided for in this case.] <i>This is an example.</i> • The approach to identifying Indigenous Peoples in the proposed Standard should be clear that consultations with the Borrower should be part of the process. • They accept the point that ESS-1 is more appropriate as well as ESS10.

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ESS8	Cultural Heritage	<p>33. Treatment of intangible cultural heritage</p> <p>34. Application of intangible cultural heritage when the project intends to commercialize such heritage</p> <p>35. Application of cultural heritage requirements when cultural heritage has not been legally protected or previously identified or disturbed.</p>	<ul style="list-style-type: none"> • The traditional medicine is part of the intangible cultural heritage of traditional communities in South Africa. It is not clear whether such knowledge should be protected and mechanisms for benefit sharing provided for under ESS7 or ESS8. • Many traditional ethnic groups in South Africa have valuable knowledge systems – even if they may not qualify strictly as being indigenous themselves. These knowledge systems are critical especially for medicinal purposes and protections similar to FPIC should be provided for in this case.
ESS9	Financial Intermediaries	<p>36. Application of standard to FI subprojects and resource implications depending on risk</p> <p>37. Harmonization of approach with IFC and Equator Banks</p>	<ul style="list-style-type: none"> • While the additional details in the Environmental and Social Framework regarding Financial Intermediaries is useful, it remains unclear as to how FIs would finance the additional requirements and obligations that they would be expected to abide by.
ESS10	Stakeholder engagement	<p>38. Definition and identification of project stakeholders and nature of engagement</p> <p>39. Role of borrowing countries or implementing agencies in identifying project stakeholders.</p>	<ul style="list-style-type: none"> • Role of national law in the consultation process. • UCS should prevail where there is material consistency.
General	Client capacity building and implementation support	<p>40. Funding for client capacity building</p> <p>41. Approaches and areas of focus</p> <p>42. Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations</p>	<ul style="list-style-type: none"> • The Environmental and Social Framework should have at its core, strong measures for capacity building for the Borrowers on the Framework as a whole, as well as on implementation and adaptive management. • The Bank should commit to set aside significant resources for client capacity building throughout the project cycle. • Based on field experiences during project implementation, it is recommended that more focus should be given on capacity building and prior sensitization of stakeholders for implementation of the Environmental and Social Framework.
	Disclosure	<p>43. Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)</p>	<ul style="list-style-type: none"> • Timing of disclosure of documents should be decided through mutual consultation.

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	Implementation of the ESF	44. Bank internal capacity building, resourcing, and behavioral change in order to successfully implement the ESF 45. Ways of reaching mutual understanding between Borrower and Bank on issues of difficult interpretation	<ul style="list-style-type: none"> • The Bank should also assess the implications of the proposed Environmental and Social Framework on its own internal capacity if it is to be able to provide the required support for clients.
General issues			<ul style="list-style-type: none"> • With all the added complex requirements there is a risk of the Bank becoming uncompetitive in the MFIs circuit compared to the Asian Infrastructure and Investment Bank as well as the New Development Bank. This should be considered. • We hope the Bank will not stop financing coal after the Environmental and Social Framework is finalized and adopted. Coal is of critical important to the growth path that South Africa has set for itself and the proposed Framework should not be an impediment to that process. • We urge the Bank to consider what response it would provide were Eskom to approach the Bank for additional financing for Flu Gas Desulphurization under the proposed Environmental and Social Framework. • How we communicate the content of the safeguards and what are the key differences with key borrower frameworks and other development partners.