



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

Phase 3

Feedback Summary

Date: January 28, 2016

Location (City, Country): Jakarta, Indonesia

Audience: Civil Society Organizations and other Non-Governmental Stakeholders

Overview: The consultation was focused on gathering feedback from CSOs and other non-governmental stakeholders on implementation issues that may arise under the proposed second draft Environmental and Social Framework (ESF). A few questions were proposed to systematically guide the discussions around assumptions, opportunities and challenges to implement the proposed ESF and CSOs' contributions for improved partnerships.

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	<ul style="list-style-type: none"> Some participants conveyed that Human Rights principles have not been well incorporated in the proposed ESF. The basic principles are missing so the current approach is partial ('half cooked'). The application of the 'Remedy' principle to Human Rights violations is key. There is general discrimination towards minority religious groups. Can the proposed ESF support this basic human right of religious belief while working on projects?
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	<ul style="list-style-type: none"> Participants agree that vulnerable groups should be actively considered and consulted in development projects. But a robust system should be put in place to make sure a project's benefits go to local communities. Rebuilding and strengthening the management of local institutions/bodies is a good starting point. How does the WB define vulnerable groups? Does the definition refers only to those people affected by a project? Similarly how do you define indigenous peoples (IP) in Indonesia given its own legal definitions? IP communities, for example are known as customary

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		<p>dependence on unique natural resources)</p> <p>3. Specific aspects of the non-discrimination principle in complex social and political contexts, including where recognition of certain groups is not in accordance with national law</p>	<p>communities. This needs special attention because an IP in one place may be the majority, but may be a minority in another place.</p> <ul style="list-style-type: none"> • What is the guarantee for protecting vulnerable people? • There are also some concerns about LGBTI being explicitly mentioned in the ESF. Although this can be a good opportunity to support this vulnerable group, there is general skepticism about how this can be implemented. LGBTI are not generally well-accepted in Indonesia and this is a challenge. The proposed ESF may help to change the Indonesian mindset and CSOs can support its operationalization. But they are skeptical about how this will work at the project level.
	Use of Borrower's Environmental and Social Framework	<p>4. 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)</p> <p>5. 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</p> <p>6. Role of Borrower frameworks in high and substantial risk projects</p>	<ul style="list-style-type: none"> • Some participants expressed that Indonesian legal frameworks are known to have gaps compared to the WB requirements and other international standards. Can the WB help fill these gaps and make regulations more inclusive, for example, with regards to the disability issues? The ESF makes references to national legal and institutional frameworks. • They also asked if the WB can require the government to adopt the higher standard when there is a clear gap. What about contradictions with the national regulations? How will the proposed ESF be enforced if there is a contradiction? • One participant suggested that, once the ESF is approved, a gap analysis should be done to make sure the national framework 'raises the bar'. • There are also concerns with some terminologies. For example, 'harmonization' – who is going to harmonize? The WB? Both parties, WB with the Government? With CSOs' support? Some clarification is needed. • A participant made a comparison between the approach proposed in the ESF for the use of Borrower's E&S Framework and the one designed by ADB. Both Banks should look for a common approach, in particular in issues related to equivalency, capacity assessment and track record of government capacity. The methodology for assessing equivalency should be better defined. Regarding capacity, it is important to assess this as there may be lack of capacity to execute the plan. He also mentioned that there must be a clear due diligence role for WB staff when the instruments are being prepared and the application of the use of Borrower's E&S framework has to be done in phased manner. He noted that ADB has done a better job in this regard and has a clear budget for implementing the use of Borrower's E&S Framework approach.
	Co-financing/ common approach	7. Arrangements on E&S standards in co-financing situations where the	<ul style="list-style-type: none"> • No feedback

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		co-financier's standards are different from those of the Bank	
	Adaptive risk management	8. Approach to monitoring E&S compliance and changes to the project during implementation	<ul style="list-style-type: none"> Enforcement is weak in Indonesia. WB should be more active to make sure the safeguards and new ESSs are enforced. This will help the implementers to perform better and to make a more inclusive policy in general for the government of Indonesia. Disclose monitoring data and have watch dogs to check enforcement in order to ensure E&S compliance.
	Risk classification	9. Approach to determining and reviewing the risk level of a project	<ul style="list-style-type: none"> Screening (and monitoring) of projects should be better defined.
ESS1	Assessment and management of environmental and social risks and impacts	<p>10. Assessment and nature of cumulative and indirect impacts to be taken into account</p> <p>11. Treatment of cumulative and indirect impacts when identified in the assessment of the project</p> <p>12. Establishing project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects</p> <p>13. 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"> Third party monitoring for E&S issues should be required during project design and implementation. A challenge is to properly integrate environmental and social aspects during the project life cycle (i.e. assessment, management during implementation, monitoring and evaluation, etc.). The proposed ESF could be clearer about the role of the ESSs in each phase of a project.
	Environmental and Social Commitment Plan (ESCP)	14. Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement	<ul style="list-style-type: none"> No feedback
ESS2	Labor and working conditions	<p>15. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries)</p> <p>16. Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers</p>	<ul style="list-style-type: none"> A participant asked if ESS2 would provide any kind of supervisory means to monitor and enforce labor standards. There is a lot of exploitation in the current system, including the restriction of free labor association. ESS2 brings an opportunity but a robust system should be put in place to make the requirements of this standard operational. Some participants noted that the issue of child labor is currently under the Ministry of Welfare's domain but it should apply to all sectors. ESS2 should help prevent child labor through a continuous dialogue process.

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		<p>17. Constraints in making grievance mechanisms available to all project workers</p> <p>18. Referencing national law in the objective of supporting freedom of association and collective bargaining</p> <p>19. Operationalization of an alternative mechanism relating to freedom of association and collective bargaining where national law does not recognize such rights</p> <p>20. Issues in operationalizing the Occupational Health and Safety (OHS) provisions/standards</p>	<ul style="list-style-type: none"> • Protection of child labor is a basic human right. This is a major issue in Indonesia and the challenges are extraordinary. • Making the new standard operational will be a challenge as this will involve the need for behavioral change.
ESS3	Climate change and GHG emissions	<p>21. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC</p> <p>22. 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>23. 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"> • A participant asked for clarity on GHG emissions reduction targets, especially since the threshold has been removed from the current version of the ESF. If the estimations of GHG emissions can't be done at a project level, at least it should be done at sector or portfolio level. • Apart from thresholds, guidance on the requirements for generating GHG calculations was also asked. For example, what methodology will be prescribed? How will it be modelled?

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ESS5	Land acquisition and involuntary resettlement	<p>24. Treatment and rights of informal occupants and approach to forced evictions in situations unrelated to land acquisitions</p> <p>25. Interpretation of the concept of resettlement as a “development opportunity” in different project circumstances</p>	<ul style="list-style-type: none"> A participant wanted to know the details about the land acquisition process proposed in ESS5. She explained the issues related to land in dam projects. For example, when the land is lost and livelihood is threatened, how will affected people be consulted and compensated? Is this considered in the ESF, including the guarantee of protection to displaced people? In Indonesia, there is always a gap between planning and implementation. Holistic approach to development is important.
ESS6	Biodiversity	<p>26. Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity</p> <p>27. Role of national law with regard to protecting and conserving natural and critical habitats</p> <p>28. Criteria for biodiversity offsets, including consideration of project benefits</p> <p>29. Definition and application of net gains for biodiversity</p>	<ul style="list-style-type: none"> No feedback
ESS7	Indigenous Peoples	<p>30. Implementation of the Indigenous Peoples standard in complex political and cultural contexts</p> <p>31. Implementation of ESS7 in countries where the constitution does not acknowledge Indigenous Peoples or only recognizes certain groups as indigenous</p> <p>32. Possible approaches to reflect alternative terminologies used in different countries to describe Indigenous Peoples</p> <p>33. Circumstances (e.g. criteria and timing) in which a waiver may be considered and the information to</p>	<ul style="list-style-type: none"> Several participants expressed that the definition of Indigenous People (IP) is an issue in Indonesia as the terminology used in the country is local people. How can IP be translated within the context of Indonesia? The definition needs to be clarified. For example, are customary communities also considered IPs? There are a lot of stigmas around these terminologies, including FPIC, that need to be taken into account. There is also stigma in relation to IP’s natural resource management and rights to forest management.

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		<p>be provided to the Board to inform its decision</p> <p>34. Criteria for establishing and implementation of Free, Prior and Informed Consent (FPIC)</p> <p>35. Comparison of proposed FPIC with existing requirements on consultation</p> <p>36. Application of FPIC to impacts on Indigenous Peoples' cultural heritage</p>	
ESS8	Cultural Heritage	<p>37. Treatment of intangible cultural heritage</p> <p>38. Application of intangible cultural heritage when the project intends to commercialize such heritage</p> <p>39. 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"> No feedback
ESS9	Financial Intermediaries	<p>40. Application of standard to FI subprojects and resource implications depending on risk</p> <p>41. Harmonization of approach with IFC and Equator Banks</p>	<ul style="list-style-type: none"> The success of the use of FI and application of ESS9 depend on establishing a system to identify appropriate FI (one participant expressed that many FI in Indonesia have dubious history in relation to environmental issues). Information sharing is also key for success. What kind of system will be in place to ensure information disclosure? Who will do it and how much will be disclosed?
ESS10	Stakeholder engagement	<p>42. Definition and identification of project stakeholders and nature of engagement</p> <p>43. Role of borrowing countries or implementing agencies in identifying project stakeholders</p>	<ul style="list-style-type: none"> One participant stressed the importance of consulting local communities for all development projects, paying particular attention to use of the right forums to consult with minority groups. Grievance redress mechanism (GRM): <ul style="list-style-type: none"> a. The details of the process are needed. For example, where does the grievance mechanism begin within the project cycle? Where do we go to complain? How long does it take to respond? What is the third party mechanism to manage complaints? b. Routine social dialogues between the WB and CSOs are needed to collect the concerns and resolve them, especially labor issues.

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			<p>c. Are there any safeguards for conflict of interest? The process should be transparent without any conflict of interest.</p> <p>d. Is there any provision in the ESS for violence prevention?</p> <ul style="list-style-type: none"> • CSOs engagement is key for the successful implementation of the ESS. This involves an open and ongoing dialogue between the WB and CSOs.
General	EHSG and GIIP	44. Application of the Environmental, Health and Safety Guidelines (EHSGs) and Good International Industry Practice (GIIP), especially when different to national law or where the Borrower has technical or financial constraints and/or in view of project specific circumstances	<ul style="list-style-type: none"> • No feedback
	Feasibility and resources for implementation	45. Implementation and resource implications for Borrowers, taking into account factors such as the expanded scope of the proposed ESF (e.g., labor standard), different Borrower capacities and adaptive management approach 46. Mitigation of additional burden and cost and options for improving implementation efficiency while maintaining effectiveness	<ul style="list-style-type: none"> • WB support is needed to increase the national capacity, especially for implementing labor laws. • Also, support is needed to help government be more transparent through an open data source so that watchdogs can monitor. • Capacity building is important, especially for the government (e.g. coordination among ministries about child labor). Train the trainers is key for the ESF roll-out. • CSOs should also be trained to support the WB on capacity building activities, for example regarding FPIC, Monitoring and Evaluation, etc. • In general, awareness building is needed for government, private sector, NGOs, and beneficiaries. Also for people who undertake auditing. • Human and economic resources are needed in-country to make sure this ESF is implemented.
	Client capacity building and implementation support	47. Funding for client capacity building 48. Approaches and areas of focus 49. Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations	
	Disclosure	50. 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"> • The challenge of information disclosure is during the implementation phase. What type of information is need to be disclosed? How much information?

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	Implementation of the ESF	51. Bank internal capacity building, resourcing, and behavioral change in order to successfully implement the ESF 52. Ways of reaching mutual understanding between Borrower and Bank on issues of difficult interpretation	<ul style="list-style-type: none"> • It is important to have shared knowledge among government, private sector and NGOs in relation to environmental and social standards.
General issues			<ul style="list-style-type: none"> • Several participants conveyed that a few terminologies needed to be better defined in the proposed ESF. This includes informal occupants, IP, FPIC, etc. They also asked for clarification on technical aspects of the ESF; i.e. methodologies to make the ESS operational. • Some CSOs contributions to ESF roll-out and implementation: communication awareness; providing guidance to local communities and other types of capacity building activities; monitoring activities; link between community and government. • A participant asked if this version of the ESF is still a draft and if the final version of the framework will be shared with them. They also stressed the importance of translating the new ESF to different local languages.