

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

## Phase 3

### Feedback Summary

**Date:** November 5-6, 2015

**Location (City, Country):** New Delhi, India

**Audience (Government, Implementing agencies, Multi-stakeholder, etc.):** Ministries, State Governments and Project Implementing Agencies

**Overview:** The consultation was structured in three sessions: infrastructure, environment and social sectors. In each session, Indian authorities made five to six case study presentations, using existing Bank-funded projects to illustrate potential challenges under the second draft Environmental and Social Framework (ESF).

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	<p><u>[SOCIAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>It needs to be ensured that the provisions /language focussed on non-discrimination do not touch on political rights as is the case in the <b>prevailing national laws of India</b>.</li> </ul>
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)  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><u>[ENVIRONMENTAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>A very elaborate definition of the <b>disadvantaged and vulnerable</b> has been provided in the ESF. This should be <b>restricted to as accepted under the national law</b>.  <b>“Vulnerable groups”</b> needs to be identified in the country context as per national laws.</li> </ul> <p><u>[SOCIAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>We agree with the general compliance to the principle of non-discrimination. However, we do not recognize the need for <b>specific listing</b> of such groups.</li> </ul>

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	Use of Borrower's Environmental and Social Framework	<p>4. Role of Borrower frameworks in the management and assessment of environmental and social (E&amp;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>	<p><u>[INFRASTRUCTURE SECTOR]</u></p> <ul style="list-style-type: none"> <li>• The Borrower's framework, if assessed to be in line with the proposed ESF standard should be the primary framework for use in the Bank's projects. Hence the decision to use available ESF, if deemed appropriate, should be the default option. There should not be any <b>'discretion'</b>.</li> <li>• Borrower's Environmental and Social Protection Framework, if available and utilized for previous World Bank-funded projects, should be recognised and concurred by World Bank for linear projects such as highways.</li> <li>• Regarding the use of Borrower's Environmental and Social Framework, elements of <b>discretion</b> with the Bank while deciding on the Borrower's E&amp;S framework should be eliminated.</li> <li>• <b>The Bank's discretion:</b> The provision of the ESF on review and gap analysis would provide discretionary powers to the Bank to recommend additional compensation for illegal encroachers. This could cause prolonged SIA, delay in the start of the project, increased project cost, and increase in number of illegal encroachers.</li> <li>• ESS requirements will be difficult to implement in cases exempted from environmental assessment (like renewables, transmission etc.) as per national requirements; where World Bank entry is at later stage in the project.</li> <li>• To <b>encourage the country system</b>, the Bank may begin with the host country's E&amp;S parameters.</li> </ul> <p><u>[ENVIRONMENTAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>• <b>India has a very strong and robust Environmental Protection Act</b>, which covers appraisal process, impact assessment, ground reconnaissance, risk assessment, public consultation and disclosure, compliance, monitoring and evaluation and cumulative impact study. It also maintains a national regulation framework covering water, air, biodiversity, emission and effluent norms. We also have the unique <b>Green Tribunal</b>. Our system is better than ESF.</li> </ul>

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			<ul style="list-style-type: none"> <li>In India, <b>adequate checks &amp; balances and safeguards are available</b> in the country's existing laws, polices, guidelines and codes (environmental protection, social safeguards and dam safety etc.). Public sector enterprises are commercial entities (large number of listed companies or to be listed) that have robust governance practices in place (ISO, independent POE's, Risk Manual, Dam Instrumentation and Surveillance, Policies and Guidelines, Oversight Committees etc.). Policies and guidelines of multilateral agencies need to recognize existing laws of the Borrower's country.</li> </ul> <p>[SOCIAL SECTOR]</p> <ul style="list-style-type: none"> <li>Framework presupposes 'negligence in environmental and social concerns' as a default state of all Borrowers, and suggests mechanisms which are <b>centered on Bank's discretion alone</b> and not on collaborative mode.</li> <li>Para 25 of ESS1 states that Borrower's ES Framework will include country's policy and the legal and institutional framework.</li> <li>However, in case of inconsistency with ESS &amp; ESCP, Para 27 gives sole right and discretion to the Bank. In the absence of any express agreement in respect of such inconsistencies between Bank and Borrower, this would become an instrument of intrusive policy and could be against the spirit of partnership between the parties.</li> </ul>
	Co-financing/ common approach	7. Arrangements on E&S standards in co-financing situations where the co-financier's standards are different from those of the Bank	<p>[SOCIAL SECTOR]</p> <ul style="list-style-type: none"> <li>In co-financing situations, the common standards agreed upon should be in accordance with the <b>National laws of the Borrower</b>.</li> </ul>
	Adaptive risk management	8. Approach to monitoring E&S compliance and changes to the project during implementation	<p>[SOCIAL SECTOR]</p> <ul style="list-style-type: none"> <li>Any change in the management approach should be duly communicated to the stakeholders and actions should be taken accordingly. However, this should be done bearing in mind the <b>time-bound completion of the project</b>. The primary goal of the project should not be compromised.</li> </ul>

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			<ul style="list-style-type: none"> <li>• There are issues of concern the <b>high cost</b> for engagement of consultant for oversight; project <b>delays</b> caused by obtaining satisfaction of the Bank; <b>cascading scope</b>- associated facilities, primary suppliers- will make the scope of oversight unbounded; and <b>micromanagement</b> by the Bank is unwarranted.</li> </ul>
	Risk classification	1. Approach to determining and reviewing the risk level of a project	<p>[INFRASTRUCTURE SECTOR]</p> <ul style="list-style-type: none"> <li>• <b>Risk classification and subprojects:</b> Qualification of a specific subproject as high risk must not result in classification of the entire project or other subproject as high risk (ESS1, para 14).</li> <li>• Risk should be contextually determined with transparent and clear criteria. Risk assessment must follow a hierarchy of sensitivity (rigor of ESIA would differ).</li> </ul> <p>[ENVIRONMENTAL SECTOR]</p> <ul style="list-style-type: none"> <li>• The <b>methodology</b> of risk classification should be made clear and be made part of the ESF. The classification / categorization of the projects based on risk should take in to account classification done as per national regulations as well. Currently the units are classified as Red, Orange and Green in terms of applicable national laws.</li> <li>• There are thousands of <b>MSMEs (Micro, Small and Medium Enterprises)</b> assisted directly / indirectly. The proposed classification / risk assessment on individual basis would lead to additional cost / time and be impossible to implement for MSMEs The proposed ES Framework requires the individual MSME units to make Environment Management Plans (EMPs). Considering the profile and scale of units, this will not be implementable. <b>MSMEs should be exempt</b> from the provisions of the proposed E&amp;S Framework.</li> </ul> <p>[SOCIAL SECTOR]</p> <ul style="list-style-type: none"> <li>• There should be a <b>cut-off financial value</b> (cost of the project) to determine if a project would be subject to risk assessment (environment and social). Only projects greater than or equal to the cut- off value should be assessed.</li> </ul>

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			<ul style="list-style-type: none"> <li>• Classification of a new project, under one of the four risk categories, shall be <b>mutually agreed upon by the Bank and the Borrower</b>. Furthermore, the requirement of Environmental and Social Assessment shall be restricted to <b>High Risk category</b>.</li> <li>• It is suggested that all projects and activities be <b>categorized into two categories</b> - Category A and Category B, as per the country's national policy, if the national laws broadly meet proposed ESF standards.</li> <li>• Under the present practice, the category of the project is assigned on the basis of proposed project activities. Accordingly, ESMF is prepared to assign remedial activities for line agencies to address the possible negative impacts. Line of action is clear and well framed initially for the life time of the project. It is unclear under the proposed risk classification system, <b>what will be reviewed</b>, ESMF or cumulative impact. The process of reviewing the risk during implementation should be further clarified. The techniques to assess the cumulative impact of project with different natures of activities are not available. If we assess the cumulative impact of the projects for reviewing the risk, it is difficult to associate a specific project with such an impact.</li> <li>• It should be clarified what will happen if the project category is changed from Low to High during the course of implementation. Also, if the project is forced to close down because of the <b>change of risk</b>, it should be clarified who will bear the cost of investment already done.</li> </ul>
ESS1	Assessment and management of environmental and social risks and impacts	<ol style="list-style-type: none"> <li>2. Assessment and nature of cumulative and indirect impacts to be taken into account</li> <li>3. Treatment of cumulative and indirect impacts when identified in the assessment of the project</li> <li>4. Establishing project boundaries and the applicability of the ESSs to</li> </ol>	<p>[INFRASTRUCTURE SECTOR]</p> <ul style="list-style-type: none"> <li>• <b>ES assessment:</b> The requirement to carry out ES assessment throughout the project life-cycle (ESS1, para 21) would cause excessive strain on time, money and resources.</li> <li>• <b>Project boundary:</b> The ESF appears to apply all associated and existing facilities, which may not be funded by but significantly related to the project. It may include other activities undertaken and facilities created by the same implementing agency of India but not funded by the Bank. For example, maintenance dredging may be impeded by the ESF, which may restrict normal operations on the river. This could lead to creation of shoals restricting movement of cargo of important shippers and also</li> </ul>

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		<p>Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects</p> <p>5. Circumstances under which the Bank will determine whether the Borrower will be required to retain independent third party specialists</p>	<p>defeat of the project objectives. Therefore, extension of project boundaries should have rational basis and always subject to express agreement between the Bank and the Borrower.</p> <ul style="list-style-type: none"> <li>• <b>Associated Facilities:</b> According to ESS1, ESSs will apply to all Associated Facilities. This will be an expansion of the project boundary beyond the technical and financial control of borrowers. This will lead to higher cost and delays in project preparation and implementation, rendering the project unviable and Bank’s financial assistance irrelevant.</li> <li>• <b>Cumulative and indirect impact:</b> Under ESS1, assessment of cumulative and indirect impact is required. This will result in cost and time overrun. This responsibility will fall only for that project which is funded by the Bank in a cluster of projects. The purpose of this requirement will be difficult to achieve when many entities are involved and impact management is not the responsibility of a single entity.</li> <li>• The scope of “<b>Cumulative Impacts</b>” may be limited, especially for linear infrastructure projects, keeping in view project risks and the financial and technical capacity of the borrowers.</li> <li>• <b>Cumulative impact assessment:</b> Annex 1 of ESS1 introduces different assessment methods such as ESIA, ESA, Hazard or risk assessment, cumulative impact assessment (CIA) and regional and sectoral ESIA. However, the applicability criteria, such as periodicity, rationale (why/when/how) for selection of these methods are not specified. For the CIA, the physical, geographical and time frame limits of CIA are not defined. If a CIA is required for the national waterway project, the mapping exercise would cause unforeseen impacts and cover substantially large area as it deals with the impact on the various tributaries of Ganga. CIA should be limited to direct, impact zone as contextually identified.</li> <li>• <b>Primary Suppliers</b>, in general, are not under contractual control with the Borrower. Thus, addressing risks and impacts associated with “Primary Suppliers” is a tedious task at the level of the Borrower. The ESF should be limited to the extent as defined in the contract document for project implementation.</li> </ul>

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			<ul style="list-style-type: none"> <li>• <b>Trans-boundary and global</b> risks and impacts: Under ESS1, specific assessment of potential project related trans-boundary and global risks and impacts are required. This will bring in additional cost and time for assessments and mitigation. The Borrower may not accept anything beyond the national statutory requirements.</li> <li>• Regarding para 42, ESS1 on <b>performance indicator</b>, some of the environmental and social issues are qualitative in nature wherein quantification is very difficult (such as improved traffic conditions, driving comfort level, improvement in safety standards for dwellers/ habitats in close proximity to the highway etc.). Thus qualitative assessment of performance indicators should also be given due weightage.</li> <li>• <b>Independent third party specialist</b>: In case of Financial Intermediary funded projects refinanced through WB’s financing, this will be very difficult to implement as project developers are bound to follow national statutory requirements only. <b>ESS 1 covers most of the stipulations</b> of other standards for linear subprojects. Thus, documentation as per ESS1 should be enough for highway projects.</li> </ul> <p><u>[ENVIRONMENTAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>• For maintaining the applicable ESSs, the agency executing the <b>Associated Facilities</b> shall only be responsible as per national laws, not the project authorities</li> <li>• In hydro projects, <b>cumulative Impact assessment</b> of river basin where a number of developers are operating is the mandate of State / Ministry of Environment and Forest (MoEF). Project authorities shall only be responsible for management measures within its project area/area mandated by MoEF or concerned Ministry.</li> <li>• In ESS1, Annex 3, Borrowers’ management of <b>contractors</b> is made more onerous. Contractor’s capacity to abide by norms will have to be assessed and monitored at pre-qualification and execution. This will lead to more intricate request for proposals (RFPs), <b>more time, less competition and more cost.</b></li> </ul>

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			<ul style="list-style-type: none"> <li>• Under ESS1, assessment of <b>cumulative future impact</b> has no guidelines and is an impossible requirement.</li> <li>• The ESF is ambiguous about assessment of <b>cumulative impact</b>. India is much ahead of it. The country has a much stronger framework for cumulative impact on soil, air and water.</li> </ul> <p>[SOCIAL SECTOR]</p> <ul style="list-style-type: none"> <li>• Objectives set out in the Framework are by and large desirable, but the <b>scope of its application is unreasonably exhaustive</b> and some of its requirements will be difficult to meet in terms of costs and timelines to be entailed.</li> <li>• Assessment and management of <b>cumulative and indirect impacts</b> may be agreed only if (i) classification is mutually agreed and (ii) ESA is done only for High risk category.</li> <li>• The word <b>cumulative impact</b> should be deleted since this is open to interpretation.</li> <li>• The compliance of ES framework must only be project specific. The <b>primary suppliers</b> and <b>associate facilities</b> should not be included in the project boundary, as relevant national environmental protection/conservation norms are in any case applicable to them.</li> <li>• <b>Primary suppliers</b> such as stone crushers, brick kilns, cement manufacturer, steel manufacturer etc. may not supply to the World Bank financed projects, if World Bank's ES norms are forced on them.</li> <li>• <b>Analysis of alternatives</b> should be deleted from the outline of ESA or else. It shall be reworded to narrow down the scope.</li> <li>• The New Land Acquisition Act, 2013 adequately addresses the stakeholder identification and monitoring of rehabilitation and resettlement of displaced persons. As such, no requirement of <b>third party monitoring</b> is necessary.</li> <li>• Provisions related to <b>independent international expert</b> for project oversight shall not be agreed. However, in High Risk projects, it may be agreeable to commission an External Completion Audit to assess impact of project activities and propose corrective measures as needed.</li> </ul>

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			<ul style="list-style-type: none"> <li>Provisions related to ‘<b>Associated Facilities</b>’ will lead to open boundaries of project.</li> <li>There is a Bank-funded project in which 27 million poor households are involved through <b>social mobilization subprojects</b>. In such a project, it is impossible to develop capacity of community institutions to undertake the ESF, including ES assessment, ESCP, management contractors, and monitoring and reporting. Applying the ESF to such subprojects would cause serious project delay and cost increase, which would make the project unviable subject to agreement between Bank &amp; Borrower. The ESF may set a threshold for its application to subprojects.</li> </ul>
	Environmental and Social Commitment Plan (ESCP)	6. Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement	<p>[SOCIAL SECTOR]</p> <ul style="list-style-type: none"> <li><b>ESCP</b> shall be mutually agreed upon and may include necessary inputs from EMP. However, standalone <b>EMP</b> may not be needed in any case.</li> <li>ESCP shall not make provision for <b>unforeseen circumstances</b>, as it may constrain the actions best suited for such circumstances.</li> <li>Regarding the requirement on <b>ESCP</b> for “compliance over a specified time frame in a manner satisfactory to the Bank”, “<b>satisfactory to the Bank</b>” needs clarification.</li> </ul>
ESS2	Labor and working conditions	<p>7. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries)</p> <p>8. Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers</p> <p>9. Constraints in making grievance mechanisms</p>	<p>[INFRASTRUCTURE SECTOR]</p> <ul style="list-style-type: none"> <li>The scope of ESS 2 applies to the labor employed by <b>primary suppliers</b> which are not directly controlled by the borrower. Hence, its compliance is very difficult at the Borrower-level. Primary supplier workers should not be covered under purview of ESS for the project work.</li> <li><b>Some primary suppliers are outside the country</b>. It is impossible for the Borrower to assess the risks and impacts of such primary suppliers.</li> <li>The provisions in ESS2, para 31, stipulates: “the Borrower to ascertain that <b>third parties</b> who engage contracted workers are reputable and legitimate entities; and the Borrower to ascertain that third parties follow ESS”. The requirements are vague and the responsibility of the Borrower is too extensive and should be deleted.</li> </ul>

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		<p>available to all project workers</p> <p>10. Referencing national law in the objective of supporting freedom of association and collective bargaining</p> <p>11. Operationalization of an alternative mechanism relating to freedom of association and collective bargaining where national law does not recognize such rights</p> <p>12. Issues in operationalizing the Occupational Health and Safety (OHS) provisions/standards</p>	<ul style="list-style-type: none"> <li>• Regarding <b>Occupational Health and Safety (OHS)</b> provisions under ESS 2, these concerns are already covered to a great extent under various Indian labor laws.</li> <li>• <b>Community Labor</b> is not defined in the policy. It is understood that they are those laborers who work voluntarily for the project. The provisions of this ESS should not be applicable to them.</li> </ul> <p><u>[ENVIRONMENTAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>• The <b>country has comprehensive labor laws and stipulations</b> regarding working conditions, the right to form associations, the right to strike, guidelines for compensation, etc. which are adequate.</li> <li>• National/local laws are applied to only <b>workers employed on the project sites</b> directly or through contractors. Application of the proposed ESS2-even if considered more stringent- may cause difficulties in court which may not find these as admissible.</li> <li>• The requirement of ESF stipulation on <b>contract / third party labor</b> is not feasible for MSMEs, as they (given their size, reach and resources) have no control over them. Thus, extant laws applicable to labor, working conditions and other operational issues should not be extended to MSMEs.</li> </ul> <p><u>[SOCIAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>• Managing labour of <b>third party</b> cannot be the responsibility of project authority. India has strong labor laws. So each party will undertake its responsibility for its workers.</li> <li>• Indian labour laws are adequate to address the issues. In case the proposed ESS 2 is made compulsory, the <b>contractors</b> will find it extremely difficult to arrange labor through third party, leading to cost and time over runs.</li> <li>• In a large nation-wide nutrition project, there are 70,000 government employees. In addition, <b>2.7 million volunteer workers</b> are working on such projects like ICDS, NRHM, etc. These workers cannot be considered as government workers under ESS2, based on Supreme</li> </ul>

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			<p>Court’s order on organized workers. They are voluntary workers. Extension of provisions of laws applicable on organized labour to such voluntary labour is not possible.</p> <ul style="list-style-type: none"> <li>• In community-driven development <b>subprojects</b> where as many as 27 million households are involved as <b>community labour</b>, it is impossible to apply labour requirements under ESS2. In such circumstances, it is impossible to assess the project risks. ESS2, para 13, provides that “<b>where national law is inconsistent...</b>, the project will seek to carry <b>out its activities in</b> a manner that is consistent with the requirements of this paragraph to the extent possible.” In such circumstances, the project should just <b>follow the national law</b>.</li> <li>• Under ESS2, para 33, “contracted workers will have access to a <b>grievance mechanism</b>.” This should be qualified with “<b>within a stipulated period</b>,” and as provided in law.</li> <li>• The word “<b>alternative mechanisms</b>” should be removed.</li> <li>• The provisions on <b>occupational health and safety</b> must be in line with the prevailing national laws of India. Any additional condition should not be insisted upon by the World Bank.</li> <li>• It should be clarified how the requirement on “<b>equal opportunity</b>” can be met.</li> <li>• The term “<b>termination</b>” used in ESS2 sounds too harsh. It should be replaced with ‘completion’ or the like.</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</p>	<p>[<b>INFRASTRUCTURE SECTOR</b>]</p> <ul style="list-style-type: none"> <li>• <b>Climate change and GHG emissions:</b> National statutory requirements do not demand for GHG emission estimation over the entire lifecycle of all the projects. The estimation of emissions should be required for project only when there are significant emissions above a realistic threshold and that such estimations should be carried out only during project implementation and not beyond it. The Ministry of Environment and Forest and Central Pollution Control Board (CPCB) have prescribed various limits &amp; standards for different emissions associated with various industrial activities. Any monitoring of the emissions as</li> </ul>

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		<p>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>	<p>provided in ESS3 should be in accordance with the agreements at UNFCCC.</p> <p><u>[ENVIRONMENTAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>• While COP in Paris is around the corner, India has <b>not agreed on any sectoral GHG emissions target</b>. This is the national policy. Any GHG emission target at the project level should be voluntary, and not mandatory.</li> <li>• <b>The threshold value of the GHG emissions</b> established by the Bank and Management measures may be dealt as per the country's policy which is based on its agreement at International level/UNFCCC. The Bank may assist facilitating technology transfer for reducing such emissions.</li> <li>• <b>GHG estimation:</b> As per ESS3, estimation of GHG emission will be mandatory. Such calculation at every sub-project level is difficult and leads to time and cost overrun. There is lack of specialized consultants accredited for registering carbon credits. This requirement may be considered only for high risk projects like thermal &amp; hydropower plants, and mega infra projects. Templates for calculation and process must be provided.</li> <li>• <b>Water use:</b> For preventing pollution in rivers, there are already national standards for treated water quality. Thus, ESS3 should consider these standards.</li> <li>• Regarding <b>historical pollution</b> in ESS3, evaluation of baseline pollution data of project area is undertaken at EIA / EMP stage of project. Identification of responsible parties for historical pollution cannot be undertaken by the project developer. Remediation on such sites should be undertaken in accordance with the norms of the country.</li> <li>• <b>ESF is superfluous in case of energy efficiency project.</b> The objective of such a project is to improve the energy efficiency leading to reduction in CO2. Still, the compliance of E&amp;S aspects has been insisted upon which required a lot more efforts &amp; resources. The project is to make the units energy efficient / adopt cleaner manufacturing practices. The</li> </ul>

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			<p>application of ESS to the borrowers adopting these measures, is not relevant.</p> <ul style="list-style-type: none"> <li>• ESS3 requirements on <b>resource efficiency and pollution prevention</b> and management will affect future projects' costs. Request for Proposals (RFPs) will be more intricate and <b>deter bidders</b>.</li> <li>• Verification measures under ESS3 should be project specific. It is an impracticable proposition for project implementing agencies to verify sand/ water supply/ manufacturing practices as adopted by <b>primary suppliers</b>.</li> </ul> <p>[SOCIAL SECTOR]</p> <ul style="list-style-type: none"> <li>• Any monitoring of the <b>GHG emissions</b> as provided in Para 16 of ESS3 should be in accordance with the agreements at <b>UNFCCC</b> and Policy guideline of India</li> <li>• The <b>estimation of GHG</b> should be done only in projects where there is such potentials substantial emissions are likely.</li> <li>• Additional financing must be ensured for <b>GHG estimation</b> of WB projects. The costs of emission monitoring and estimation should not be borne by the borrowers.</li> <li>• Para 16 of ESS3 is proposed to be applied for projects that are <b>expected</b> to produce GHG emissions in excess of threshold established by the Bank. This <b>brings ambiguity</b> in terms of <b>expected</b> level of GHG from a project.</li> <li>• Provisions for identification of third party responsible <b>for pollution history</b> may be dropped.</li> <li>• Regarding the Borrower requirement to <b>generate baseline ambient data</b> on air, surface ground water and soils for all the projects, a clear-cut policy should be defined with respect to smaller short-term subprojects. The baseline data generation and monitoring during execution should be limited to projects exceeding certain cost limit and duration.</li> <li>• The requirements on <b>water use</b> are broad, including; water balance has to be developed, maintained, monitored, and reported periodically;</li> </ul>

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			<p>opportunities for continuous improvement in terms of water use efficiency must be identified; specific water use (water used per unit production) will be assessed; it must be benchmarked to the level of industrial standards. It should be clarified whether and how these requirements can be met.</p>
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>	<p><u>[INFRASTRUCTURE SECTOR]</u></p> <ul style="list-style-type: none"> <li>• Land Resettlement issues as resolved by the national policy should be acceptable.</li> <li>• The concept of payment of <b>compensation at replacement cost</b> may not be applicable in all cases, especially when the national policies have already outlined very detailed procedures in deciding compensation rates and their eligibility. When the amount of compensation is already negotiated with the owner of the affected assets, the other provisions of ESS5 shall not be applicable. This shall be clarified in the relevant section in ESS5.</li> <li>• <b>Informal occupant:</b> The proposed ESS5 covers repossession of public land that is used or occupied by individuals or households. We are concerned of high risk of increase in illegal encroachment. This would cause prolonged project timelines and drawn-out negotiation with illegal encroachers. Further, the national law already provides comprehensive definition of “affected family”. Para 10 (c) of ESS5 on informal occupants is subjective and open-ended. As per national laws, only persons of such category who are residing for more than three years or whose primary source of livelihood for three years prior to the acquisition of land are eligible for compensation and R&amp;R benefits. Hence, the provision 10 (c) should be removed from the definition of affected persons in ESS5.</li> <li>• Regarding para 4 (d), the application of ESS5 will pose additional financial burden upon the state for relocation of people without formal, traditional or recognizable usage rights (<b>encroachers / squatters</b>, etc.).</li> <li>• <b>Forced eviction:</b> There are cases where forced eviction might be necessary and permissible under the national/state laws. For example: - Houses constructed on illegally occupied land - Compensation for houses/structures already paid to occupiers</li> </ul>

ESF	Issue	Items	Feedback
			<p>-Compensation for land paid to Municipal Corporation but land is still not being vacated by occupiers.</p> <ul style="list-style-type: none"> <li>• Regarding <b>land for land compensation</b> (para 14, ESS5), Borrowers, in general, do not have “Land Bank”. So “land for land” option is not exercisable by the Borrower in reality.</li> <li>• <b>Demonstration of equivalent replacement land:</b> The proposed ESS5, para 14, states that the Borrower will offer the displaced persons an option for replacement in kind, unless it can be demonstrated to the Bank’s satisfaction that equivalent replacement land is unavailable. For linear project like railways, where PAPs are not concentrated at one location, the provision is impracticable to implement. Adequate cash compensation is being provided by the implementing agency. The term “Bank’s satisfaction” is highly subjective. The following should be added to the para: “However, in case of linear projects like railways/highways, the Borrower will provide monetary compensation in accordance with national laws.”</li> <li>• <b>Possession of acquired land:</b> In certain urgent condition, possession of land can be taken before payment of compensation as per direction of competent authority, especially if PAP is not accepting the compensation and goes to arbitration/court. This provision (ESS5, para 15) would delay the execution/commissioning of project.</li> <li>• ESS5, footnote 15, provides that it may be necessary to acquire entire land parcels if <b>partial acquisition</b> would render the remainder economically unviable. This requirement will put additional financial burden upon the Borrower. A rational and judicious approach in such matters is required. A rational and holistic view is necessary at the level of the Borrower in such cases.</li> <li>• ESS5, Para 18, makes inclusion of <b>women’s perspectives</b> mandatory in consultation process to firm up resettlement planning and implementation. The provision is likely to delay preparation of ESMF and ESCP. Consultation includes both genders. Thus, it should not be emphasis based.</li> </ul>

ESF	Issue	Items	Feedback
			<ul style="list-style-type: none"> <li>• ESS5, footnote 18, requires compensation payment in the names of <b>both spouses</b>. The provision appears to be gender biased. The issue should be dealt as per national laws in vogue.</li> <li>• ESS5, paras 23 and 24, requires <b>engagement of resettlement professionals</b> for external monitoring and completion audit. This would be extra burden upon the Borrower, especially for linear projects not attracting high risks. Such a requirement needs to be restricted only to projects involving high risks.</li> <li>• <b>Escrow account:</b> The compensation amount for land and R&amp;R declared by the competent authority are already being deposited in a separate joint account of competent authority and Dedicated Freight Corridor Corporation of India Ltd (DFCCIL). This joint account already serves the intended purpose of this provision. Therefore, opening of separate escrow account for such type of cases would be just a repetition and affect timelines. This Para should be modified as: “The Borrower may deposit compensation fund as required by the plan into an account in accordance with national law and proceed with relevant project activities.”</li> <li>• <b>Physical displacement of PAPs:</b> Providing different relocation assistance suited to the needs of each group is not desirable as it would lead to discontent among different groups. Further, it is not provided under national laws. Therefore, para 27 (b) of ESS5 may be deleted. For linear project like railways, where person gets affected is not concentrated at one location, the compensation in terms of replacement land or housing is impractical to implement. Further, it would affect timeline of the project. Therefore, giving adequate compensation in monetary terms is much better option.</li> <li>• <b>Adequate housing:</b> The proposed ESS5 requires the Borrower to provide arrangements to allow physically displaced informal occupants to obtain adequate housing with security of tenure. There is no provision under the national law to provide such arrangements. Adequate compensation is being given in terms of cash only. The compensation in terms of replacement land or housing is impractical to implement. This clause will delay completion time of project. This para should be deleted.</li> </ul>

ESF	Issue	Items	Feedback
			<ul style="list-style-type: none"> <li data-bbox="989 207 1978 418">• The objective of ESS5 on provision of <b>adequate housing, access to services and facilities and security of tenure</b>: this mandate puts in very wide responsibility upon the Borrower; especially under the circumstances when the same is not covered under national laws. Thus it is difficult to mitigate and implement in real terms. The ESS5 should be limited to the extent as defined in corresponding national laws.</li> <li data-bbox="989 427 1978 638">• <b>In situ development</b>: The proposed ESS5 allows in situ land development arrangements as part of land compensation. There is no such provision under the national law. For linear project like railways, where land acquisition is passing through various states, such type of negotiation is not possible. Such condition is very subjective and may lead to non-transparency in actions.</li> <li data-bbox="989 646 1978 930">• <b>Economically displaced persons</b>: The proposed ESS5 requires compensation for the cost of identifying a viable alternative location and alternative employment opportunities for economically displaced business owners and affected employees (ESS5, para 34). It is very difficult to implement such a requirement. The requirement is also highly subjective. Sufficient provisions exist for adequate cash compensations under national laws. This Para need to be deleted. ESS5, paras 26 and 27, covers the compensation adequately.</li> <li data-bbox="989 938 1978 1222">• <b>Replacement land for economically displaced persons</b>: There is no such provision under the national laws to provide replacement land for persons losing assets (ESS5, Para 35 (a)). Giving cash compensation for loss of land or assets is much more viable options for Borrower as compared to offering replacement land, which is further correlated to other complex issues such as individual's preference for choices of location, availability of land, etc. Therefore, this requirement should be deleted.</li> <li data-bbox="989 1230 1978 1409">• <b>Credit facilities</b>: The proposed ESS5 requires provision of options to economically displaced persons for alternative income earning opportunities including credit facilities (ESS5, para 35 (c)). There is no such provision under the national laws. However, there is sufficient provision of skill training to affected PAPs and their families in National</li> </ul>

ESF	Issue	Items	Feedback
			<p>Laws which is more effective tool for empowering PAPs to avail livelihood opportunities on sustainable basis.</p> <ul style="list-style-type: none"> <li>• <b>Collaboration with other agencies:</b> The proposed ESS5 requires collaboration with other agencies that are responsible for any aspects of land acquisition (ESS5, para 37). There is no such provision under the national laws. It is very impractical to implement this requirement. It should be deleted.</li> <li>• <b>Relocation sites:</b> The proposed ESS5 requires consideration of alternative relocation sites (ESS5, para 19). There is no such provision under the national laws. The project is giving adequate cash compensation for resettlement. It is very impractical to implement this requirement. It should be deleted.</li> <li>• Resettlement of un-entitled encroachers would be highly costly and may render the project unviable and bank's assistance irrelevant.</li> <li>• ESS has been extended to transfer of land from one Government authority to another. This should not be included.</li> </ul> <p><u>[ENVIRONMENTAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>• <b>The Right to fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act 2013</b> provides detailed standards for deciding the compensation towards loss of assets. Further, R&amp;R package is also in-built in the said Act. The land acquisition and R&amp;R policy shall be country specific.</li> <li>• <b>MSMEs</b> (including start-ups) are generally located in designated industrial zones or areas where commercial enterprises operate, and are governed by local laws. MSME activity does not involve major land acquisition. Hence, resettlement may not be applicable. WB's policy on involuntary resettlement may not be applicable for MSMEs.</li> </ul> <p><u>[SOCIAL SECTOR]</u></p>

ESF	Issue	Items	Feedback
			<ul style="list-style-type: none"> <li>• ESS 5 must not apply to the projects where the land acquisition is <b>not financed by the World Bank</b>.</li> <li>• If the land belongs to forest department, then at times there is no option but to <b>forcefully evict the encroachers</b>.</li> <li>• Para 4(d) and Para 4(g) of ESS5 (page 75 &amp; 76) can become open ended in terms of reopening of very <b>old relocation/ land acquisition cases</b>. Hence, it should either be dropped or reworded to confine the applicability.</li> <li>• The existing <b>national laws</b> have been evolved through a process of consultation, legislative examination and judicial reviews. Any new attempt will be an impediment to implementation and increase the project costs. Unless and until incorporated as legal provisions, they cannot become the new methods.</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>	<p>[<u>INFRASTRUCTURE SECTOR</u>]</p> <ul style="list-style-type: none"> <li>• “<b>No net loss</b>” required under the ESF for biodiversity offset is both stringent and difficult to achieve. As faunal habitats cannot be shifted easily, bio-diversity offsets must be an option only if feasible. Under the current project, biodiversity loss will be avoided/minimized and steps will be taken to achieve a “no net loss” situation over a period of time as well as compliance with national laws and Global Best Practices. Faunal offsets are being considered in case of biodiversity displacement, wherever feasible in the project.</li> <li>• <b>Primary suppliers and ecosystem services:</b> As per national requirements, Borrowers do not have control or influence over the primary suppliers. This ESS requirement appears to be difficult to ensure on the part of the Borrower.</li> <li>• <b>Criteria for biodiversity offsets:</b> Indian regulations have very robust mechanisms related to long term conservation measures for biodiversity offsetting. The ESS requirements related to projects involving biodiversity offsetting should not be limiting.</li> </ul> <p>[<u>ENVIRONMENTAL SECTOR</u>]</p>

ESF	Issue	Items	Feedback
			<ul style="list-style-type: none"> <li>• In ESS6, Para 10, “<b>indirect impacts</b>” proposes inclusion of differing values attached to biodiversity by affected communities and other interested parties, which is difficult to assess for the Borrower. Provision should be modified accordingly.</li> <li>• Regarding <b>primary suppliers</b>, it is difficult for project authorities to implement evaluation of systems and verification practices of such suppliers.</li> <li>• <b>Ecosystem services</b>: The proposed ESF includes ecosystem services. This is mentioned in ESS1, ESS4 and ESS6. Even if ESS6 is not applicable, it is getting triggered anyway in ESS1 &amp; 4. In Ganga Rejuvenation project, ESS1 &amp; 4 would be applicable for every sub-projects. Assessment of ecosystem services is complex and difficult even for high risk ones. Environmental improvement projects targets improvement of ecosystem and in general projects in critical ecosystem area are avoided. If this really needs to be done, then this should be done as a separate study for the overall program, and not at individual sub-project level.</li> </ul> <p>[SOCIAL SECTOR]</p> <ul style="list-style-type: none"> <li>• <b>Primary Supplier</b>: Borrower responsibility should be limited to check legal bindings and obtain certificates from its <b>immediate suppliers</b>. The provisions related to primary suppliers (Para40-42 of ESS6) should be dropped from ESF.</li> <li>• National laws should have the primacy.</li> <li>• <b>Biodiversity offsets</b> should be equally permissible and preferable as per the development context of India.</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</p>	<p>[INFRASTRUCTURE SECTOR]</p> <ul style="list-style-type: none"> <li>• <b>Borrower countries framework</b>/national laws should have pre-eminence. ESF should not propose anything that goes against established constitutional provisions of a borrowing country.</li> </ul> <p>[ENVIRONMENTAL SECTOR]</p>

ESF	Issue	Items	Feedback
		<p>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. Circumstances (e.g. criteria and timing) in which a waiver may be considered and the information to be provided to the Board to inform its decision</p> <p>26. Criteria for establishing and implementation of Free, Prior and Informed Consent (FPIC)</p> <p>27. Comparison of proposed FPIC with existing requirements on consultation</p> <p>28. Application of FPIC to impacts on Indigenous Peoples' cultural heritage</p>	<ul style="list-style-type: none"> <li>Indigenous people should be <b>identified only as per the national constitution or law</b> and should be country specific.</li> <li><b>Definition on IPs</b> under ESS7 is very wide. <b>Identification</b> of IPs should be done in consultation with the Borrower.</li> <li><b>Consent or consultations</b> should be as per country's legal framework. Consent is not mandatory. The <b>FPIC</b>, having no universally accepted definition, will not be suitable for all countries. Regarding involvement of IP in the <b>design phase</b>, only consultations should be made, and only genuine concerns should be considered.</li> <li>Projects funded to <b>MSMEs (Micro, Small and Medium Enterprises)</b> (both services and manufacturing sectors) typically operate from designated industrial estates / zones or commercial areas across the country. There are specific laws regarding purchase / sale of <b>tribal lands</b>. Hence ESS7 should not be applicable to MSME sectors which do not have any interference with the indigenous people.</li> </ul> <p><u>[SOCIAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>Regarding Indigenous Peoples, the <b>national law</b> of the borrowing country should be the determining factor.</li> <li>The phrase "<b>informed consultation</b>" should be used in place of <b>FPIC</b>.</li> <li>The concept of <b>FPIC</b> will create insurmountable hurdles to development. The western sociological concepts are not applicable in Indian contexts where a consultation is enough to get the concurrence of the beneficiary group.</li> <li>Para 7 of ESS7 (Indigenous Peoples who lost collective attachment because of <b>forced severance</b> etc.) is open ended and may lead to unanswerable questions for many dam projects.</li> </ul>
ESS8	Cultural Heritage	<p>29. Treatment of intangible cultural heritage</p> <p>30. Application of intangible cultural heritage when the</p>	<p><u>[INFRASTRUCTURE SECTOR]</u></p> <ul style="list-style-type: none"> <li><b>The definition of cultural heritage</b> under the ESF is vast and highly debatable. For example there are several minor structures, such as ghats and natural features, along Ganga River. Hence, it is difficult to identify and assign value to these structures through consultation. Differentiation</li> </ul>

ESF	Issue	Items	Feedback
		<p>project intends to commercialize such heritage</p> <p>31. Application of cultural heritage requirements when cultural heritage has not been legally protected or previously identified or disturbed</p>	<p>between notionally significant and actually significant would be important. Contrasting opinion and subjective interpretations on sect, religious group, vested interests etc. may arise during identification of “culturally significant”. Listing and transferring all cultural objects/structures would lead to considerable time delays and increased project costs. It is advisable for experts to identify such structures and the mode of intervention to avoid discretion in differentiating between notionally and actually significant cultural heritage.</p> <ul style="list-style-type: none"> <li>• Protection of cultural heritage should focus on tangible cultural heritage. There will be practical difficulties in including <b>intangible</b> heritage.</li> </ul> <p><u>[ENVIRONMENTAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>• In one of the Bank-funded project in India has 17 cultural heritage structures and in 3 years only 9 could be resolved fully, 4 tentative. It is very time consuming. The <b>definition of “intangible cultural heritage”</b> is very wide and can also lead to project delays.</li> <li>• <b>Defining “intangible cultural heritage”</b> is important. For the Ganga Rejuvenation project, there are numerous intangible heritages e.g. melas traditional community practices, ashrams, temples, sadhus etc. Physical structures such as temples, religious and cultural structures, or ashrams are not disturbed as per present practice. There are also so many stories and beliefs associated. In order to protect this type of cultural heritage, it is important to define these clearly, and to make them part of the ESCP and bid documents. In many situations intangible cultural heritage would be impossible to discover and manage.</li> <li>• Regarding <b>natural features with cultural significance</b>, the identification and need for transfer of such sites to the other sites should be determined by the concerned authority of the Borrower’s country.</li> <li>• Projects funded to <b>MSMEs (Micro, Small and Medium Enterprises)</b> (both services and manufacturing sectors) typically operate from designated industrial estates / zones or commercial areas across the country. There are specific laws regarding protection of heritage areas. Hence ESS8 should not be applicable to MSME sectors that do not have any interference with cultural heritage.</li> </ul>

ESF	Issue	Items	Feedback
			<p>[SOCIAL SECTOR]</p> <ul style="list-style-type: none"> <li>Reference to <b>intangible cultural heritage</b> should be removed.</li> </ul>
ESS9	Financial Intermediaries	<p>32. Application of standard to FI subprojects and resource implications depending on risk</p> <p>33. Harmonization of approach with IFC and Equator Banks</p>	<p>[INFRASTRUCTURE SECTOR]</p> <ul style="list-style-type: none"> <li>FIs enter the project at a much later stage when E&amp;S related issues have already been dealt with. The gap analysis and its compliance including additional studies will not be possible, since this will be in addition to the <b>national requirements</b> and will require approval from various authorities.</li> <li>The <b>third party assessment</b> will have significant implications on cost and timelines of the project.</li> <li>On important material issues, a <b>collaborative approach</b> should be adopted between national and WB requirement.</li> <li>The requirement of ESF should be limited to specific projects where FIs receive Bank funding and should <b>not be applied to their entire portfolio</b>.</li> <li><b>Disclosure of ES due diligence report:</b> There must be consensus on the availability of documents in the public domain for the purpose of due diligence. The availability of documents in the public domain should be considered as adequate. Absence of any adverse issues in the public domain should be treated as satisfactory in compliance with the national laws.</li> <li>The Bank should note that FIs have a limited role in <b>grievance redressal</b>.</li> <li>Generic assessment of the <b>host country safeguards on FIs</b> should be conducted.</li> <li><b>Stakeholder engagement for FI project:</b> As per GOI procedures, project proponents conduct a public hearing before finalizing an EIA. Under ESS10, the Borrower may be required to retain <b>independent third party specialists</b> to assist in stakeholder identification and analysis to support a comprehensive analysis and design of an inclusive process. This requirement is beyond national statutory requirements and</li> </ul>

ESF	Issue	Items	Feedback
			<p>will be difficult to implement in FI funded projects where the WB will be a late entrant in project implementation.</p> <p><u>[ENVIRONMENTAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>ESS9, Para 15, provides that where an FI project is likely to have <b>minimal or no adverse environmental or social risks or impacts</b>, the FI will <b>not</b> be required to adopt and implement environmental and social procedures <b>beyond what is required under national law</b>. The words “minimal or no adverse” are subjective and discretionary. Instead, the exemption should depend on the size on the sub-projects. Further, other banks / FIs are not insisting on such elaborate E&amp;S requirements in respect of MSMEs. Hence, there is a risk of <b>losing out on business</b>. MSMEs should be exempted from E&amp;S Framework because of the small size and other limitations.</li> </ul> <p><u>[SOCIAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>For <b>FI</b> projects, there should be a cut-off value (cost of the project) to determine if a project would be subjected to risk assessment (environment and social). Only projects greater than or equal to the cut off value should be assessed and put in different categories.</li> </ul>
ESS10	Stakeholder engagement	<p>34. Definition and identification of project stakeholders and nature of engagement</p> <p>35. Role of borrowing countries or implementing agencies in identifying project stakeholders</p>	<p><u>[ENVIRONMENTAL SECTOR]</u></p> <ul style="list-style-type: none"> <li><b>Stakeholder engagement</b> in a Bank-funded project in India led to a 15 month delay.</li> <li><b>Grievance redress</b> scheme now also formalizes PAP’s approach (even anonymous) to Independent Inspection panel.</li> <li><b>Grievance mechanism:</b> The proposed mechanism allows for <b>anonymous complaints</b> to be raised and addressed. Only verifiable complaints should be addressed. The Indian system maintains a procedure for dealing with anonymous / pseudonymous complaints.</li> <li><b>The system of monitoring</b> becomes difficult when many monitoring mechanisms, such as third party monitoring, independent experts, feedback of stakeholders, review panels, Borrower’s views/feedback,</li> </ul>

ESF	Issue	Items	Feedback
			<p>and the Bank’s feedback etc. exist. Feedback and monitoring system should to be simplified.</p> <p><u>[SOCIAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>• “<b>Stakeholder</b>” should be explicitly defined as people/institutions being directly affected by the project.</li> <li>• <b>Specific guidelines for identification process of stakeholders</b> should also be outlined in the ESS to avoid misinterpretation.</li> <li>• Stakeholder interaction is common requirement in each of the standards (ESS1 to ESS9) with specific extra detailing wherever relevant. <b>ESS10 is unnecessary</b> because its provisions can be handled from ESS1 to 9.</li> <li>• When ESS1 to ESS9 define all the stakeholders, why should there be general standard on stakeholder engagements the standard should be deleted.</li> </ul>
General	EHSG and GIIP	36. 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	<p><u>[SOCIAL SECTOR]</u></p> <ul style="list-style-type: none"> <li>• The Borrower’s framework, if assessed to be in line with the proposed ESF should be the primary framework for use in the Bank’s projects. Hence the decision to use available ESF, if deemed appropriate, should be the default option. There <b>should not be any ‘discretion.</b></li> </ul>
	Feasibility and resources for implementation	37. 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	<p><u>[INFRASTRUCTURE SECTOR]</u></p> <ul style="list-style-type: none"> <li>• <b>Linear infrastructure projects</b> such as highways development, generally, do not pose high or substantial risks. Thus, they should be handled accordingly.</li> <li>• The proposed second draft of ESF is also quite exhaustive, especially for linear infrastructure projects (such as highway development). This will</li> </ul>

ESF	Issue	Items	Feedback
		38. Mitigation of additional burden and cost and options for improving implementation efficiency while maintaining effectiveness	<p>likely result in <b>additional cost and time implications, apart from enormous documentation.</b></p> <p>[SOCIAL SECTOR]</p> <ul style="list-style-type: none"> <li>• The ESF will <b>delay formulation</b> of a new project, as well as its <b>implementation.</b></li> <li>• In addition to huge cost burden, it hinders the capacity of the Borrower and Bank TTL to focus on the <b>core objectives of the project</b>, and reach the negotiation stage. Moreover, the clauses relating to overseeing will impact the project implementation.</li> <li>• The implementation of ESF should also take into account, amongst other things, the nature of the project. For e.g.: <b>emergency projects or disaster related projects</b> where delays, if any due to ESS compliance, may defeat the whole purpose of the project.</li> <li>• All framework clauses leading to <b>micromanagement</b> of project by the Bank at implementation stage shall be dropped.</li> </ul>
	Client capacity building and implementation support	39. Funding for client capacity building 40. Approaches and areas of focus 41. Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations	<p>[SOCIAL SECTOR]</p> <ul style="list-style-type: none"> <li>• At the core of ESF implementation should be the idea of <b>capacity building</b> of the Borrower. The Bank in consultation with the Borrower should prepare a <b>concrete capacity building plan</b> and fund it.</li> <li>• Based on field experiences during project implementation, it is recommended that more focus should be given on <b>capacity building</b> and <b>prior sensitization</b> of stakeholders for implementation of ESF. <b>Additional financing</b> must be earmarked for implementation of ESF as well.</li> </ul>
	Disclosure	42. Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)	<p>[INFRASTRUCTURE SECTOR]</p> <ul style="list-style-type: none"> <li>• In World Bank's directly funded projects, disclosure of safeguards assessment documents is possible. However, national guidelines must be followed by project developers for projects in which the Bank <b>enters at a later stage. Retrofitting</b> for ESS requirements will be difficult so certain deviations should be acceptable to the Bank when project is not developed in anticipation of Bank's involvement.</li> </ul>

ESF	Issue	Items	Feedback
			<p>[SOCIAL SECTOR]</p> <ul style="list-style-type: none"> <li>• Timing of disclosure of documents should be decided <b>through mutual consultation.</b></li> </ul>
	Implementation of the ESF	<p>43. Bank internal capacity building, resourcing, and behavioral change in order to successfully implement the ESF</p> <p>44. Ways of reaching mutual understanding between Borrower and Bank on issues of difficult interpretation</p>	<p>[INFRASTRUCTURE SECTOR]</p> <ul style="list-style-type: none"> <li>• The Bank should also assess the implication caused by the ESF on the <b>reaction time of the Bank staff to the Borrower.</b></li> </ul>
General issues			<p>[OVERALL COMMENTS]</p> <ul style="list-style-type: none"> <li>• While safeguard policies are required for sustainable development, many Bank-financed projects face constrains in many ways. Borrower countries have concerns on the second draft ESF. There is <b>no evidence that the Bank listened to borrowers</b> in the previous consultations. In phase 3 consultations, we expect the Bank team to <b>listen to borrowers, in particular those who implement projects on the ground more genuinely and carefully.</b> The issues list identified by the Board should guide the discussions.</li> <li>• Outstanding issues in the proposed ESF can be categorized into <b>three groups:</b> <ol style="list-style-type: none"> <li>1. Standards that are simply <b>not doable</b> or desirable or create more problems than solving them. These will include Indigenous Peoples issues in Africa, and informal and voluntary/community labor issues in South Asia; these should be deleted or appropriately modified.</li> <li>2. Standards that will impose disproportionate costs <b>and time delay</b>, such as assessment of historical pollution, intangible cultural heritage or cumulative impacts. These should be examined or made reasonable.</li> </ol> </li> </ul>

ESF	Issue	Items	Feedback
			<p>3. Issues for which we <b>can find a more reasonable way</b> to achieve the same objective, if better structured. One way for this would be clarification or explanation through guidance materials.</p> <p>In phase 3 consultations, the Bank team should listen to the borrowers against these criteria, and revise the proposed ESF accordingly.</p> <ul style="list-style-type: none"> <li>• The Bank team should <b>not use the existing safeguard policies or those of other MDBs for justifying the ESF</b>. Each element of the ESF should be examined on its own merit. Even existing standards/safeguards, if these fall in any of the above three categories, these should be dealt with accordingly.</li> <li>• As in the case of procurement reform, the Bank should use <b>a simple test</b> if the proposed standard will be feasible under the Borrower’s framework in a country such as India it is ok. If it does not work, something must be wrong with the standard.</li> <li>• India has no inherent rejection to something good just because its implementation is difficult. It also has no such rejection to something foreign just because it is coming from outside the country. The key is <b>appropriate balance</b>, judiciousness and wisdom.</li> <li>• The proposed ESF has been changed drastically from the first to second draft. The coverage of workers has been expanded extensively; the use of Borrower’s framework has been limited to the discretion of the Bank. India is a country of rule of law. The Bank should value it. <b>India has a sense that its case has not been duly recognized by the Bank.</b></li> <li>• While some tough comments were made, the country reconfirms that the Bank continues to be their <b>preferred long-term partner for development.</b></li> </ul> <p>[INFRASTRUCTURE SECTOR]</p> <ul style="list-style-type: none"> <li>• The Bank should adopt a <b>gradual/ calibrated approach</b>. The Bank may define a <b>minimum approach</b>.</li> </ul> <p>[ENVIRONMENTAL SECTOR]</p>

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			<ul style="list-style-type: none"> <li>• <b>Regarding grievance redress mechanism</b> (ES Policy, Para 58), the Bank should note that there is a lobby group opposing all hydro power project. For example, a lobby group approached Inspection Panel on a Bank-funded hydro power project. Nothing adverse found after 2 years of detailed investigations. The proposed system needs to be modified to avoid misuse by such a group, so that project-affected parties will have no direct approach to World Bank Corporate Grievance Redress Service (GRS) or the Inspection Panel. They should first need to approach grievance mechanism at project. If not satisfied, they should approach to concerned government authorities, then GRS.</li> <li>• <b>Security personnel:</b> The requirement on security personnel in ESS4 has to be seen in national/local contexts and is best decided by law enforcement authorities. PIUs cannot perform this function.</li> </ul> <p>[SOCIAL SECTOR]</p> <ul style="list-style-type: none"> <li>• Besides costs, proposed draft Framework will result in substantial delays in the formulation and implementation of new projects.</li> <li>• ES issues should not override the objective of <b>poverty alleviation</b>.</li> <li>• “Risks of having a project” shall also be compared with “<b>risks of not having the project</b>”.</li> </ul> <p><b>Environmental and Social Procedure (ESP)</b> shall be simple and allow flexibility to Bank’s TTL in reaching a negotiated agreement on ESCP.</p> <ul style="list-style-type: none"> <li>• In ESS-4, Security has to be seen in national/local context and is best decided by the law enforcement authorities. PIUs can’t perform this function.</li> <li>• Regarding the required appointment of the <b>panel of internationally known experts</b> in their field (Para 4, and footnote 2 of Annex 1 on safety of dams to ESS4 in page 69), since India has more than 5000 large dams and the country’s dam safety record is comparable to any developed country, the proposed provisions are not rational. These provisions should be dropped.</li> <li>• Regarding para 4 in Annex 1 to ESS4 on safety of dams (<b>TOR for dam safety panel</b>), the provision presupposes neglect or ignorance on the</li> </ul>

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			<p>part of Borrower on every aspect of dam building. Moreover, it also assumes that Panel specialists are master of every trade. In fact such approach for centralized roles is contradictory to dam safety philosophy. These provisions shall be dropped.</p> <ul style="list-style-type: none"> <li>• Regarding Para 5 in Annex 1 to ESS4 on safety of dams (requirement of <b>informing the Bank of panel meetings</b>), the stipulation indicates tendency for the micromanagement of the project; and presupposition that Borrower will not implement the project as per committed plan (i.e. ESCP). These provisions shall be dropped.</li> <li>• Annex 1 to ESS4 is no longer required. It should be deleted.</li> </ul>