

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

Phase 3

Feedback Summary

Date: February 2, 2016

Location (City, Country): Tokyo, Japan

Audience: multi-stakeholders (NGOs, development partners, business and academia)

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	<ul style="list-style-type: none"> • The ESF should clarify that the borrower must respect international human rights law. In many cases, the government itself is the actor which violates human rights, such as suppression of freedom of expression and forced eviction. In many countries, national laws for human rights are not enforced. • The Bank should make a commitment to respect human rights, rather than simply characterize human rights as aspirational.
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	<ul style="list-style-type: none"> • Definition of disabilities: While the formulation of disabilities in the ESF is “physical, mental or other disabilities”, the alternative is simply “disabilities”. The definition under UN Convention on the Rights of Persons with Disabilities (UNCRPD) is “persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.” • Accessibility: The Bank should develop a detailed guideline on accessibility to make sure that Borrowers comply with the principle of accessibility, including physical infrastructure and information such as website. • Stakeholder engagement with persons with disabilities: The involvement of persons with disabilities in Bank projects should not be limited to being “beneficiaries”. They should participate in the project design, monitoring and evaluation. The Bank should offer learning and training events for borrowers on disabilities. • Reasonable accommodation and disabilities: Regarding stakeholder engagement and employment of persons with disabilities, “reasonable

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			<p>accommodation” is a key concept. Under UNCRPD, “reasonable accommodation” means “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”. Arrangement of a sign language interpreter and braille copies are examples. The Bank should develop guidelines, case studies and reference materials to clarify how far the Bank staff and borrowers are expected to do.</p>
	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"> • The “Objectives” of ESSs are very limited, thus the reliance on “objectives” only would dilute the standards significantly. Requirements for the use of Borrower’s Framework should be consistent with Operational Principles of OP4.00 Table A1. • The safeguards should not be waived in favor of utilizing countries’ domestic laws and regulatory frameworks.
	Co-financing/ common approach	7. Arrangements on E&S standards in co-financing	<ul style="list-style-type: none"> • Requirements for applying a common approach for co-financing should be consistent with Operational Principles of OP4.00 Table A1.

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		situations where the 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"> N/A
	Risk classification	9. Approach to determining and reviewing the risk level of a project	<ul style="list-style-type: none"> The difference in the definitions of “Substantial Risk” and “Moderate Risk” is unclear. Also, there is only a small difference in the requirements for these risk categories. The current category A, B and C system should be maintained.
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"> There is a dilution in the formulation of mitigation hierarchy. ”Reduce” in the proposed mitigation hierarchy should be eliminated in alignment with IFC and other MDBs. “Acceptable level” in the proposed mitigation hierarchy is unclear and requires further guidance. All ESSs should be required for all sub-projects.
	Environmental and Social Commitment Plan (ESCP)	14. Legal standing of the ESCP and implications of changes to	<ul style="list-style-type: none"> N/A

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		the ESCP as part of the legal agreement	
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> <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"> • The Bank should ensure that the safeguards will protect labor rights including freedom of association.
ESS3	Climate change and GHG emissions	21. The relation between provisions on climate change in the ESF and broader	<ul style="list-style-type: none"> • For projects with more than 25,000 tons of CO2-equivalent annually, Borrowers should disclose the information on GHG emissions.

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		<p>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"> • Whether and how the reduction target of GHG emissions will be integrated in the ESF should be clarified.
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"> • The protection for those facing involuntary resettlement should not be restricted to people with formal land titles. • Clarification was sought on how the Bank will track/monitor the implementation of measures related to involuntary resettlement, economic displacement and livelihood restoration.
ESS6	Biodiversity	26. Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity	<ul style="list-style-type: none"> • The objectives in ESS6 are very weak and inconsistent with its requirements. They need to be redrafted. • ESS6 is difficult to understand, including the definition of “natural habitat”. ESS6 needs to be improved.

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		<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"> • Biodiversity offset is difficult to verify and achieve. A cautious approach should be taken for biodiversity offsets. • The relations between the sections on “critical habitats” and “legally protected area” are unclear. • The Bank is requested to review the appropriateness of “anticipated” used in ESS6, para 24 (e) for no net reduction. The standard should be clearer and stronger. • It is positive that the coverage of ESS6 is broader than the current policy on forests. However, the Bank should not forget the importance of forests, as has been confirmed in the Paris agreement on climate change.
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 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>	<ul style="list-style-type: none"> • Projects that impact Indigenous Peoples' lands and resources will be required to secure their free, prior, informed, consent (FPIC). The Bank should clarify whether this requirement still applies when recipient country does not recognize the affected communities as Indigenous Peoples. • ESP, para 51, provides that “the Bank may follow the Borrower’s framework for identification of IPs during project screening, when that framework is consistent with this Policy (ESS7)”. However, the definition of IPs by Borrowers may have a significant risk, when there is a political tension between the Borrower and affected IPs. Thus, the Borrower’s framework for identification of IPs should not be used.

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		<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"> • N/A
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"> • N/A
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"> • N/A
General	EHSG and GIIP	<p>44. Application of the Environmental, Health and Safety Guidelines (EHSGs) and Good International</p>	<ul style="list-style-type: none"> • N/A

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		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	
	Feasibility and resources for implementation	<p>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</p> <p>46. Mitigation of additional burden and cost and options for improving implementation efficiency while maintaining effectiveness</p>	<ul style="list-style-type: none"> • N/A
	Client capacity building and implementation support	<p>47. Funding for client capacity building</p> <p>48. Approaches and areas of focus</p> <p>49. 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"> • N/A
	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"> • There is no requirement to disclose ES assessment documents (described in footnote 16, ESS1) by Borrowers, which is a significant dilution. ES assessment documents should also be disclosed by Borrowers, prior to the approval by the Bank.

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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"> • Support development of robust business plan and budget, including internal capacity development to support Borrower’s capacity building in raising Borrower’s Framework and its enforcement.
Other issues			<ul style="list-style-type: none"> • The Bank should not reduce its role of supervision and due diligence regarding projects, and shift that role to client governments. • The Bank should also become an accessible workplace for staff with different needs and further encourage employment of persons with disabilities. • Clarification was sought on the AIIB’s safeguard policy. • Clarifications were sought on the relations with the safeguards requirement in REDD+, GCF and FCPF. • Clarification was sought on the Bank’s position on Indigenous Peoples’ traditional land ownership and landscape approach.