

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

Phase 3

Feedback Summary

Date: January 21, 2016

Location (City, Country): Hanoi, Vietnam

Audience: Multi-stakeholders

ESF	Issue	Items	Feedback
Vision	Human Rights	<ul style="list-style-type: none"> • Approach to human rights in the ESF 	<ul style="list-style-type: none"> • Human right impact assessment should be used and should be community based, similar to the model developed by some CSOs. • Even though Vietnam has ratified several human rights treaties there is lot of restriction on such rights in the country in terms of, for example freedom of association and demonstration. • If there are differences between the World Bank and the government in the interpretation of human rights how does the ESF hope to resolve it.
ESP/ ESS1	Non-discrimination and vulnerable groups	<ul style="list-style-type: none"> • 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) • Specific aspects of the non-discrimination principle in complex social and political contexts, including where recognition of certain groups 	<ul style="list-style-type: none"> • In Vietnam not all ethnic minorities are vulnerable groups. How do you determine vulnerability (criteria)? • In some projects, ethnic minorities receive free access to health insurance even though they are not poor. On the contrary, some poor Kinh people do not receive such benefit because they do not belong to ethnic minorities. The ESF should be able to address such a policy gap.

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		is not in accordance with national law	
	Use of Borrower's Environmental and Social Framework	<ul style="list-style-type: none"> • 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) • 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 • Role of Borrower frameworks in high and substantial risk projects 	<ul style="list-style-type: none"> • N/A
	Co-financing/ common approach	<ul style="list-style-type: none"> • Arrangements on E&S standards in co-financing situations where the co-financier's standards are different from those of the Bank 	<ul style="list-style-type: none"> • N/A
	Adaptive risk management	<ul style="list-style-type: none"> • Approach to monitoring E&S compliance and changes to the project during implementation 	<ul style="list-style-type: none"> • N/A

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	Risk classification	<ul style="list-style-type: none"> • Approach to determining and reviewing the risk level of a project 	<ul style="list-style-type: none"> • Redefining the risk categorization and classification by removing environment categories A, B and C doesn't seem a good idea. By dividing the classification/categorization of risk into four categories it seems the ESF has been weakened, since only one fourth of the projects will have to fully apply the ESF.
ESS1	Assessment and management of environmental and social risks and impacts	<ul style="list-style-type: none"> • Assessment and nature of cumulative and indirect impacts to be taken into account • Treatment of cumulative and indirect impacts when identified in the assessment of the project • Establishing project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects • Circumstances under which the Bank will determine whether the Borrower will be required to retain independent third party specialists 	<ul style="list-style-type: none"> • N/A
	Environmental and Social Commitment Plan (ESCP)	<ul style="list-style-type: none"> • Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement 	<ul style="list-style-type: none"> • N/A
ESS2	Labor and working conditions	<ul style="list-style-type: none"> • Definition and necessity of and requirements for managing labor employed by 	<ul style="list-style-type: none"> • Human and labor rights is the main concern in Vietnam.

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		<p>certain third parties (brokers, agents and intermediaries)</p> <ul style="list-style-type: none"> • Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers • Constraints in making grievance mechanisms available to all project workers • Referencing national law in the objective of supporting freedom of association and collective bargaining • Operationalization of an alternative mechanism relating to freedom of association and collective bargaining where national law does not recognize such rights • Issues in operationalizing the Occupational Health and Safety (OHS) provisions/standards 	
ESS3	Climate change and GHG emissions	<ul style="list-style-type: none"> • The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC • Proposed approaches to measuring and monitoring 	<ul style="list-style-type: none"> • N/A

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		<p>greenhouse gas (GHG) emissions in Bank projects and implications thereof, in line with the proposed standard, including determining scope, threshold, duration, frequency and economic and financial feasibility of such estimation and monitoring</p> <ul style="list-style-type: none"> • Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard 	
ESS5	Land acquisition and involuntary resettlement	<ul style="list-style-type: none"> • Treatment and rights of informal occupants and approach to forced evictions in situations unrelated to land acquisitions • Interpretation of the concept of resettlement as a “development opportunity” in different project circumstances 	<ul style="list-style-type: none"> • N/A
ESS6	Biodiversity	<ul style="list-style-type: none"> • Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity • Role of national law with regard to protecting and conserving natural and critical habitats 	<ul style="list-style-type: none"> • Clarification was sought on criteria for biodiversity offsets. • Along with human welfare the standard must also have provision to protect and care for the welfare of animals.

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		<ul style="list-style-type: none"> • Criteria for biodiversity offsets, including consideration of project benefits • Definition and application of net gains for biodiversity 	
ESS7	Indigenous Peoples	<ul style="list-style-type: none"> • Implementation of the Indigenous Peoples standard in complex political and cultural contexts • Implementation of ESS7 in countries where the constitution does not acknowledge Indigenous Peoples or only recognizes certain groups as indigenous • Possible approaches to reflect alternative terminologies used in different countries to describe Indigenous Peoples • 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 • Criteria for establishing and implementation of Free, Prior and Informed Consent (FPIC) • Comparison of proposed FPIC with existing requirements on consultation 	<ul style="list-style-type: none"> • It was suggested that guidance should be adopted on the relationship between human rights and ethnic minorities. • Gender issues should be mainstreamed into ESS1 and 7. It is unclear how a separate gender policy (OP 4.20) should be applied. • Clarification was sought on how the ESF recognizes/defines ethnic minorities. • It was pointed out that Vietnam does not use the term “indigenous peoples” but instead it uses the term “ethnic minorities”. Clarification was sought on whether this different nomenclature could constitute a breach of the ESS7. • The statement in para 5 of ESS7 was considered to be “puzzling”. Clarification was sought as to why the statement was in ESS7, i.e. why is there no universal definition of Indigenous Peoples. • Support was expressed for the removal of the “opt out” clause from ESS7 in the second draft of the ESF. However, there was concern expressed that waivers would be sought. Further clarification needs to be provided on the granting of waivers to ESS7. • Clarification was sought on the application of FPIC to cultural heritage of ethnic minorities. • Clarification was sought on the operationalization of FPIC – will UNDRIP be considered.

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		<ul style="list-style-type: none"> • Application of FPIC to impacts on Indigenous Peoples' cultural heritage 	
ESS8	Cultural Heritage	<ul style="list-style-type: none"> • Treatment of intangible cultural heritage • Application of intangible cultural heritage when the project intends to commercialize such heritage • Application of cultural heritage requirements when cultural heritage has not been legally protected or previously identified or disturbed 	<ul style="list-style-type: none"> • N/A
ESS9	Financial Intermediaries	<ul style="list-style-type: none"> • Application of standard to FI subprojects and resource implications depending on risk • Harmonization of approach with IFC and Equator Banks 	<ul style="list-style-type: none"> • The role of the FI in screening E&S risk and impacts was limited. The FIs are ignorant of environmental and social management in their lending operations. The FIs in Vietnam have very limited capacity in implementing safeguard standards. The Bank should also focus on capacity building/regulation enforcement of FIs.
ESS10	Stakeholder engagement	<ul style="list-style-type: none"> • Definition and identification of project stakeholders and nature of engagement • Role of borrowing countries or implementing agencies in identifying project stakeholders 	<ul style="list-style-type: none"> • N/A
General	EHSG and GIIP	<ul style="list-style-type: none"> • Application of the Environmental, Health and Safety Guidelines (EHSGs) and Good International Industry Practice (GIIP), especially when different to 	<ul style="list-style-type: none"> • N/A

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		national law or where the Borrower has technical or financial constraints and/or in view of project specific circumstances	
	Feasibility and resources for implementation	<ul style="list-style-type: none"> • 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 • Mitigation of additional burden and cost and options for improving implementation efficiency while maintaining effectiveness 	<ul style="list-style-type: none"> • N/A
	Client capacity building and implementation support	<ul style="list-style-type: none"> • Funding for client capacity building • Approaches and areas of focus • Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations 	<ul style="list-style-type: none"> • The capacity of the government agencies is very limited in the country. It should be strengthened for the effective implementation of the ESF.
	Disclosure	<ul style="list-style-type: none"> • 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"> • N/A
	Implementation of the ESF	<ul style="list-style-type: none"> • Bank internal capacity building, resourcing, and 	<ul style="list-style-type: none"> • N/A

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		behavioral change in order to successfully implement the ESF <ul style="list-style-type: none"> • Ways of reaching mutual understanding between Borrower and Bank on issues of difficult interpretation 	
Other issues			<ul style="list-style-type: none"> • The list of outstanding issues is for the Board of the Bank, not for us. • It was questioned why the application of ESF excluded Development Policy Operations (footnote 4, ESS1). The limited scope of application of the ESF was of concern. • Clarification was required as to which framework prevails – ESF or national legal framework. • Concern was expressed that the proposed ESF appears to limit the mandate of the Inspection Panel. • Not clear how the new standard will be implemented in the context of Vietnam. The government of Vietnam is also in the process of revising its policies so not sure how that will fit in this new standard • Public participation should be supplemented by community participation.