



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

Phase 3

Feedback Summary

Date: November 16 and 17, 2015

Location: Lima, Peru

Audience: Government

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	
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	

	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"> • Participants inquired when Borrower framework assessments would take place and stated that if the assessment happened on a project-by-project basis it would increase the cost for Borrowers, who must pay for the higher costs. • Participants asked if framework assessments would apply to the entire Borrower framework or if they would only apply to a specific sector? • Participants stated that the national Environmental Impact Assessment System was equivalent to the proposed ESF's requirements for impact assessments. • Participants stated that the government needed to improve its capacity to manage safeguards; several participants mentioned that coordination among institutions also required improvement. Its scope should be shared with the entire public sector. • Participants stated that because the Strengthening Biodiversity Conservation through the National Protected Areas Project's (PRONANP, for its acronym in Spanish) low to moderate risks, the World Bank should consider applying the Peruvian Framework instead of the Bank's Environmental and Social Safeguards Policies. • Participants considered that although the Lima Metro Phase 2 project is categorized as high risk, the use of Borrower's systems could also be considered as an adequate means of safeguards management.
	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	
	Adaptive risk management	8. Approach to monitoring E&S compliance and changes to the project during implementation	
	Risk classification	9. Approach to determining and reviewing the risk level of a project	
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</p>	

		<p>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>	
	Environmental and Social Commitment Plan (ESCP)	14. Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement	
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</p>	<ul style="list-style-type: none"> • Participants expressed support for the inclusion of protections for people who were handicapped due to work accidents in the proposed Framework. • Participants stated that it was necessary to include disability prevention as an objective in the proposed Framework. • Participants mentioned that accident-prevention was properly managed by SUNAFIL. • Participants asked who would be responsible for financing the safety management of small projects being undertaken in rural areas. • Participants stated that there are very few cases of people who have become disabled due to work-related accidents in small communities. • Participants inquired if the loss of productivity caused by an accident outweighed the cost of preventing them by providing safety equipment. • Participants indicated that the costs of accidents should be considered in a broader, long-term context that takes into account savings in health and disability payments. • Participants mentioned that applying safety standards to community work would increase project costs, and that it could turn into a restriction for small subprojects

		Occupational Health and Safety (OHS) provisions/standards	<p>in rural areas.</p> <ul style="list-style-type: none"> • Participants inquired if Borrower frameworks could be used specifically for the management of labor-related issues. • Participants mentioned that hiring local workers could help prevent social conflicts by creating jobs. This will require transparent procedures and well publicized in the local communities for local hiring, such as hiring by turns, restrictions on age, gender considerations, etc. • Participants mentioned that in the Spanish translation of ESS 2, the word “<i>comedor</i>” should be used instead of “<i>cantina</i>”, as in Peru the latter is used as a synonym for bar. • Participants mentioned that ESS 2 and ESS 4 requirements may imply additional costs for the Borrower –for example, the purchase of helmets, safety vests and other equipment. Others thought that savings due to accidents avoided could outweigh the costs. • Participants inquired if the grievance mechanism mentioned in paragraph 23 of ESS 2 has the objective of replacing grievance mechanisms included in Borrower Frameworks. They explained that this could generate problems for the government because the use of a different grievance mechanism could be interpreted as an intentional bypass of negotiations with workers, as per the application of legislation issued in response to ILO treaties signed by Peru. Most mining companies have public procedures for grievances, and these are made known to the communities, including formats that will be available for anybody wishing to file a complaint. • Participants expressed concerns regarding possible overlaps between labor-related cases in the Peruvian judicial system and complaint in the Inspection Panel.
ESS3	Climate change and GHG emissions	<p>21. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC</p> <p>22. Proposed approaches to measuring and monitoring greenhouse gas (GHG) emissions</p>	

		<p>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>	
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"> • Participants mentioned that in the Bank’s current resettlement policy it is important to accurately establish the area of influence of the project. However, it is important to differentiate area of impact from area of influence. • Participants stated that they preferred the term “livelihood restitution” over “compensation.” • Participants mentioned that the proposed ESF should require an analysis of the land where communities will be resettled, as well as an analysis of the area of influence of the project. In case of need of resettlement the community should be involved in locating the potential sites for resettlement. The site for resettlement should never be “imposed”. • Regarding the Lima Metro Phase 2 Project: participants stated that it was implemented by the Ministry of Transport, who developed resettlement instruments (“PACRIS”) which comply with OP 4.12. • Participants stated that they did not foresee difficulties arising specifically because of the adoption of ESS 5, but rather that current implementation challenges will remain regardless of whether PACRIS are developed in compliance with OP 4.12 or ESS 5 because of a need to improve government capacity. • Regarding the Lima Metro Phase 2 Project: participants stated that they have only had one case of an illegal occupant, which would have been deal under ESS 5 in the same manner as it was dealt under OP 4.12.

ESS6	Biodiversity	<p>26. Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity</p> <p>27. Role of national law with regard to protecting and conserving natural and critical habitats</p> <p>28. Criteria for biodiversity offsets, including consideration of project benefits</p> <p>29. Definition and application of net gains for biodiversity</p>	<ul style="list-style-type: none"> • Participants mentioned that the new Forestry Law promotes the use of “legal” wood (obtained through legal concessions), which is in line with the proposed ESF. They mentioned that issues related to biodiversity in the proposed ESF would be easily harmonized with national law. • Participants mentioned that requirements on the origin/legality of goods acquired by the government were also similar to those found in the proposed ESF. • Regarding biodiversity compensatory measures: participants stated that rather than creating new protected areas, it was more feasible to implement compensatory measures in degraded areas. • Participants stated that in the proposed framework it was unclear who would be responsible for compensating communities for adversely affecting biodiversity.
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> <p>35. Comparison of proposed FPIC with existing requirements on</p>	<ul style="list-style-type: none"> • Participants mentioned that national law complies, and in some instances exceeds, the policy requirements of O.P. 4.10. • Participants vehemently opposed the inclusion of FPIC in the proposed ESF and stated that it contradicted national law. • Participants stated that for all projects impacting Indigenous Peoples, national law requires authorities to carry out consultations with the objective of reaching an agreement or obtaining consent. However, they underscored that the final decision on whether or not to move forward with a project remains with the government and that communities do not have veto power. • Participants strongly recommended that the World Bank consider waivers for the application of ESS7. • Participants expressed concern that the proposed ESS 7 may contravene or be seen as superseding international treaties, for example, ILO Convention 169. • Participants expressed concern about the definition of Indigenous Peoples and stated that it may contravene national law (<i>Ley de Consulta Previa</i>). They mentioned that the government has a list of all communities that qualify as indigenous and that that list is reviewed periodically. They mentioned that the proposed Framework does not have such a list and that determining indigenesness on a project-by-project basis would be costly and tedious for the

		<p>consultation</p> <p>36. Application of FPIC to impacts on Indigenous Peoples' cultural heritage</p>	<p>Borrower. The government list is quite comprehensive, but some non-listed communities may claim their indigenous status hoping to be consulted and as a consequence, see that their interests and concerns are considered, and/or may attempt to request compensations for potential negative impacts.</p> <ul style="list-style-type: none"> • Participants asked the World Bank to explain how the IFC had applied Performance Standard 7 in the Latin America. • Participants mentioned that the government cannot always carry out consultations, as required by the <i>Ley de Consulta Previa</i>, due to a lack of coordination among relevant agencies. They mentioned that agencies sometimes do not agree on who should be in charge of the consultation process, and that for an Indigenous Community to be consulted under the <i>Ley de Consulta Previa</i>, the community has to be “registered” and included in the government’s list, which may be a protracted process. Participants mentioned that, for example, when the PRONANP project was being prepared, the list did not include all Indigenous groups that would be impacted by the project. • Participants mentioned that national law pertaining to biodiversity conservation (<i>modalidades de conservación</i>) requires the consent of populations that live in the project area. They highlighted that the law requires consent to establish how conservation will be attained. Participants inquired if consent would have to be reached again in cases where conservation management changed during project implementation. • Participants stated that the <i>Ley de Consulta Previa</i> requires that the government keep written documentation (<i>actas</i>) of the consultation process and of how consent is reached. They highlighted that that keeping records of the consultation process and of how consent was reached would not be an additional cost for the government. Actas (proceedings) should also be kept previous to Consulta Previa, during the assemblies to inform communities about the project. • Participants expressed that ESS 7 raised the bar too high and that it could ultimately create obstacles for project implementation.
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>	<ul style="list-style-type: none"> • Participants inquired why the EIAs' terms of reference did not include fossil sites or paleontological remains as areas to be considered during project design.

		39. Application of cultural heritage requirements when cultural heritage has not been legally protected or previously identified or disturbed	
ESS9	Financial Intermediaries	40. Application of standard to FI subprojects and resource implications depending on risk 41. Harmonization of approach with IFC and Equator Banks	
ESS10	Stakeholder engagement	42. Definition and identification of project stakeholders and nature of engagement 43. Role of borrowing countries or implementing agencies in identifying project stakeholders	<ul style="list-style-type: none"> • Participants mentioned that Peru has a law on citizen participation (<i>participación ciudadana</i>) that contains several of the requirements found in ESS 10. They highlighted that the government already has a system to monitor and ensure citizen participation. • Participants mentioned that national law requires citizen participation and consultation during project-implementation, but not during project design, as required under ESS 10. • Participants mentioned that informal grievance mechanisms exists in rural areas and are often managed by the community. Informal grievances mechanisms are too fuzzy. These need to be made explicit, and include formats for people willing to place a claim, and procedures to assess the claim should be made explicit.
General	EHSG and GIIP	44. Application of the Environmental, Health and Safety Guidelines (EHSGs) and Good International Industry Practice (GIIP), especially when different to national law or where the Borrower has technical or financial constraints and/or in view of project specific circumstances	
	Feasibility and resources for	45. Implementation and resource implications for Borrowers,	<ul style="list-style-type: none"> • Participants asked who would cover additional costs that may arise during the life-cycle of a project, for example due to changes in risk classification and new

implementation	<p>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>	<p>findings that require additional mitigation measures.</p> <ul style="list-style-type: none"> • Participants inquired if the World Bank foresaw additional costs arising for the Peruvian Government for using the proposed Framework. • Participants expressed that there could be additional costs due to the management of cumulative impacts in forests.
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>	
Disclosure	<p>50. Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)</p>	
Implementation of the ESF	<p>51. Bank internal capacity building, resourcing, and behavioral change in order to successfully implement the ESF</p> <p>52. Ways of reaching mutual understanding between Borrower and Bank on issues of difficult interpretation</p>	<ul style="list-style-type: none"> • Participants asked what supervision and monitoring systems would be put in place by the World Bank for the implementation of the proposed Framework.

Other issues

- Participants expressed that the Bank should be concerned about borrowers not being able to implement the proposed Framework only when governments do not comply with their own frameworks.
- Participants mentioned that ESS 4 should not include references to disability and mentioned that universal access should be included in ESS 4.