



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

Phase 3

Feedback Summary

Date: January 26 and 27, 2016

Location (City, Country): Jakarta, Indonesia

Audience: Government representatives

Overview: The consultation was focused on gathering feedback from government departments on implementation challenges that may arise under the proposed second draft Environmental and Social Framework (ESF). A discussion was also structured around the outstanding issues List prepared for this 3rd round of consultations.

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	<ul style="list-style-type: none"> Several participants were concerned about the approach to Human Rights. It was perceived as adding additional requirements and burden as they are new concepts within the Environmental and Social Assessment (ESA) process. They believe this will add transaction costs and hamper project preparation and implementation.
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)	<ul style="list-style-type: none"> Several participants conveyed the sensitivities around the issue of non-discrimination and LGBTI. Caution was urged and the need for further discussion was recommended, as this issue could be a barrier for project preparation. A participant noted that Indonesian Law incorporates the non-discrimination principle. The law does not discriminate based on gender, ethnicity or sexual orientation. However, by being explicit about sexual orientation in the ESF, it seems like we are drawing attention to it.

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		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"> Several participants noted that if sexual orientation is included in the contracts with government, it will be a problem as it may imply that is legalized. This is an issue that is not often discussed openly.
	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"> Several participants requested consideration of the use of Borrower's E&S framework for assessment and management and asked for clarity about what is proposed under the ESF. There was understanding of the need to have a standard that applies globally. However, it was noted that not all countries are the same. For example, Indonesia is a middle-income country which already reflects best practice; it has both a Policy Level EA process (Strategic EA - SEA) and Project Level EA process (ESA). Further, the standard is considered too rigid and needs to be more flexible. It was suggested that there could be separate standards for countries that need more assistance from the WB compared to Indonesia (e.g. Rule 32 in Regulation 1; existing environmental license over AMDAL). This is to avoid adding more requirements that have an impact on the readiness criteria of the country. There were also references to work being done with the Asian Development Bank (ADB) to use the country-system approach in Indonesia (See comments under co-financing below).
	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	<ul style="list-style-type: none"> Several participants were supportive of harmonized guidelines with other MDBs. There were several references to the on-going work with the ADB to conduct an acceptability assessment of Indonesia's regulatory framework. The expectation is that Indonesia will be the first country to apply their country system with the ADB. One participant asked about how the new ESF would be applied for projects where there is co-financing.
	Adaptive risk management	8. Approach to monitoring E&S compliance and changes to the project during implementation	<ul style="list-style-type: none"> No feedback
	Risk classification	9. Approach to determining and reviewing the risk level of a project	<ul style="list-style-type: none"> No feedback

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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"> • A question was asked about how the ESF ensures an integrated approach. There are 10 standards and they appear to be applied in silos. • Several participants wanted more clarity on the ESF as compared to the Indonesian regulatory framework, especially in relation to social issues. Will the title of EIA and commitments need to be changed to ESIA and ESMP? Would it involve a delay in project preparation and implementation? It was noted that according to the regulations, the term “Environment” includes social and cultural aspects. But in practice, coverage of social issues is a weakness. • There was a question related to community empowerment projects (or community development projects known as CDD) for the provision of drinking water and sanitation in low-income communities. What are the requirements under the new ESF for these programs? These programs need to be considered differently to large infrastructure projects. The CDD type projects cannot be burdened with unnecessary requirements. • Definition of Project boundaries should be included within the ESF.
	Environmental and Social Commitment Plan (ESCP)	14. Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement	<ul style="list-style-type: none"> • There were several questions about how the ESCP will be implemented. It was considered as something new that will be binding for the Borrower. Several wanted to know if it is included in the loan agreement and then there are project delays, will the project be cancelled?
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</p>	<ul style="list-style-type: none"> • One participant sought clarification on prohibitions of child labor under ESS2. Are there some allowances?

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		<p>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>	
ESS3	Climate change and GHG emissions	<p>21. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC</p> <p>22. Proposed approaches to measuring and monitoring greenhouse gas (GHG) emissions in Bank projects and implications thereof, in line with the proposed standard, including determining scope, threshold, duration, frequency and economic and financial feasibility of such estimation and monitoring</p> <p>23. Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard</p>	<ul style="list-style-type: none"> • Several participants asked for clarity and guidance on the requirements for generating GHG calculations. What methodology will be prescribed? What is the threshold? How will it be modeled? Who will bear the cost? When should we use IPCC? Or can we use national standards? • There were a few questions on the requirement to calculate GHG's emissions. Will it be applied to all projects, including CDD projects? Whose responsibility will it be? PIU or government as this may have a budget implication?
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 new Indonesian regulations for land requirement (acquisition and compensation) as compared to WB requirements, were discussed. It was noted that there are now many more similarities, and squatters are now covered under the Law 212. Further detailed comparisons are needed. • A participant expressed concern about squatters opportunistically moving in once project announcements are made. • There was an objection noted regarding the WB requirement to cover livelihood restoration costs for squatters. This is more than the law requires. • It was also noted that, based on the Islamic belief, land donation (grant) is allowed by Indonesian laws. The new standard should not restrict voluntary land donation.

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			<ul style="list-style-type: none"> • Several participants encouraged WB to be mindful that different terminology is used in Indonesia; the legal term is <i>land procurement</i>. Terminology affects communication with stakeholders. • Land issues are huge in Indonesia; 60-70% of court cases are about land disputes. There is a new bill to protect the IPs including the protection of customary land, which is almost 54 million hectares in the country. In addition, the land acquisition process is different in urban settings versus rural settings, given the customary law. So these should be treated separately and differently • One participant wanted the issue of squatters to be revisited between the Borrowers and the Lenders. Land acquisition should be carried out by the government. The JEDI Project was referenced where barriers to implementing the Resettlement Policy Framework were encountered. A new governor was not informed about WB requirements under OP 4.12 that had already been agreed. Delays in construction of new housing was an issue. It was later clarified that construction of housing is continuing and the project will not proceed until resettlement is complete. • Clarity is also sought on how the current safeguards policy (OP 4.12) and the proposed ESS5 are applied to squatters on public land engaged in illegal activities, such as selling liquor and prostitution. Should we still provide compensation for their structures even though their businesses are illegal? • According to the law, people who are resettled have options. The preference is to pay cash but WB safeguards policies discourage cash payments. • What are the entitlement rights for illegal occupants on public land, since it's the people of Indonesia that own this land and they are occupying it illegally? • The new Law # 2 allows compensation for people who occupy public land and does not state in which form. Livelihood restoration is however not covered under the law and this becomes a problem in implementation of projects. • In Jakarta, there is a land regulation from 2014 to compensate based on 25% of market value, as long as occupants can give evidence of ownership.
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>	<ul style="list-style-type: none"> • Some participants believe that ESS6 sets up high standards for biodiversity conservation and the difficulties of implementing Biodiversity Management Plans were acknowledged. There are significant challenges, including how to carry out a Biodiversity Management Plan without burdening parties, lack of proper coordination among ministries, capacity and limited budget allocation for biodiversity. However, participants believe it is doable and implementing such plans will improve the sustainability (the wealth of Indonesia is connected to

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		<p>28. Criteria for biodiversity offsets, including consideration of project benefits</p> <p>29. Definition and application of net gains for biodiversity</p>	<p>biodiversity). It was also highlighted the need for an agreement with all parties so no one entity will shoulder the burden alone</p> <ul style="list-style-type: none"> • It was also noted that Biodiversity Management Plans are something quite new. There are connections with civil works that need to be aware of special handling requirements. • If the project location is pre-existing, and the Biodiversity Management Plan comes later, can we continue with the project?
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 consultation</p> <p>36. Application of FPIC to impacts on Indigenous Peoples' cultural heritage</p>	<ul style="list-style-type: none"> • One participant noted that the terminology used in Indonesia is <i>local people</i>, not indigenous. • Several participants urged caution regarding projects in Papua, the difficulty of applying the current OP 4.12 and the further delays due to new requirements under the proposed ESS 7. There are many new areas that have to be opened up. All the projects have land issues. The Papua people have their own law for land acquisition (“We don’t want to hamper with this”). The IPs/Local People say that they are distressed but the state cannot accommodate them. • In Indonesia, there are different interpretations of who is considered indigenous. There is a bill currently being proposed in parliament that should help, as it identifies customary local communities as indigenous. In their views, the identification of IP should be based on the customary practice or because of heritage. Introducing something new may confuse people. • There was concern about the requirement for FPIC in relation to forestry projects.
ESS8	Cultural Heritage	<p>37. Treatment of intangible cultural heritage</p>	<ul style="list-style-type: none"> • Clarification is sought on the term <i>intangible</i> cultural heritage. This is not a term used in local languages. If not properly defined, it can be misused; Indonesia is a

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		<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>	country with individuals who believe in superstition and this belief cannot be used to derail a project.
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"> • No feedback
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"> • No feedback
General	EHSG and GIIP	<p>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</p>	<ul style="list-style-type: none"> • No feedback
	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</p>	<ul style="list-style-type: none"> • A participant indicated that overall they are very supportive of the safeguards policies review and update process. It's a timely review because the member countries have changed a lot over 20 years. The ESF provides flexibility and clarity on roles and responsibilities of borrower and bank. • Several participants requested that no additional burden be added since the current safeguards are already quite complicated. Could ESF costs be capped at a percentage of total project costs? How can transaction costs be reduced? Are there any special capacity building efforts to reduce the costs?

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		implementation efficiency while maintaining effectiveness	<ul style="list-style-type: none"> • One participant noted that the ESF references to <i>Borrower</i> are confusing since sometimes it's a grant. It was noted that IFC Performance Standards refers to <i>clients</i>. • The environmental assessment process is already lengthy, and the projects will take even longer with the new ESF due to the expanded scope of work (new social aspects, land tenure and ownership, etc.). How long would it take? For example, energy projects need to move fast. But based on their experience with WB projects, it's always a lengthy process. A participant suggested that projects could have a steering committee to manage technical aspects. This might help shorten the process.
	Client capacity building and implementation support	47. Funding for client capacity building 48. Approaches and areas of focus 49. Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations	<ul style="list-style-type: none"> • No feedback
	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"> • No feedback
	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"> • Several participants expressed concerns about a stricter process that will take even longer. They requested no new requirements although one participant understood the need to add clarity regarding existing requirements
General issues			<ul style="list-style-type: none"> • The top outstanding issues discussed during the second part of the consultations are the 'non-discrimination' principle, vulnerable groups (especially, LGBTI), GHG measuring and monitoring, Human Rights, and the use of Borrower's Frameworks • Participants asked several questions related to overall implementation of the ESF and noted some challenges. For example, applying the standards at a project-level, when the issues are at a policy level. Project-level application is too late.

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			<ul style="list-style-type: none"> • They also asked for the overall timeframe of the ESF implementation. I.e. when will the ESF be approved and launched? • A few participants wanted to submit written comments • The top outstanding issues discussed during the second part of the consultations are the ‘non-discrimination’ principle, treatment and rights of informal occupants, legal standing of ESCP and link with legal agreement, reducing GHG emissions, and application of ESS in co-financing. • How much flexibility is in the proposed ESF? With reference to the case study that was presented, some participants were concerned that it is possible that their projects would not meet the ESS. Another participant suggested that a clearer guideline could reduce costs from a consultant owing to less back and forth (e.g. clear requirements about satisfactory documents, monitoring, etc.). This will make a more efficient process. We could go through a more detailed exercise to compare projects under both standards. • There was a question about whether the ESF would apply to grants. • Several participants raised the linguistic implications of certain terms since some concepts don’t exist in the local languages (e.g. intangible, IP, etc.). Translations of terminologies should be carefully done.