



Review and Update of the World Bank's Environmental and Social Safeguard Policies Phase 3 Feedback Summary

Date: February 2, 2016

Location (City, Country): Nairobi, Kenya

Audience (Government, Implementing agencies, Multi-stakeholder, etc.): Civil Society Organizations (CSOs), Government of Kenya (GOK) Project Implementation Units (PIUs), development partners and representatives from the Kingdom of Lesotho and Republic of Mozambique.

Overall Comments

There were 85 participants at the consultative meeting including representatives from civil society organizations (CSOs), development partners, several Project Implementation Units (PIUs) from GOK/World Bank funded projects, development partners and representatives from the Kingdom of Lesotho and Republic of Mozambique.

- i. The meeting acknowledged that the new proposed Environment and Social Safeguards Framework (ESF) was an improvement on the current ESF and noted the following:
 - It is broader in scope and more inclusive,
 - It is more people focused,
 - It goes further towards protecting the environment,
 - Issues of rangeland ecosystems have been included in ESS1 and will address the pertinent issues found in the fragile Arid and Semi-Arid Lands (ASAL) of the country.
- ii. All the previous policies that have been triggered under World Bank funded projects in several government ministries have been expanded in the new ESF and now include issues of labour and informal land ownership.
- iii. In the new ESF, the Grievance Redress Mechanism is developed and fully incorporated into the ESF.

Concerns

- (i) When the Bank ESF refers to ILO (International Labour Organization) and United Nations Framework Convention on Climate Change (UNFCCC) (in relation to climate change), is the Bank not becoming an enforcer for these International Bodies?
- (ii) Current safeguard policies require formulation of project specific frameworks i.e. Vulnerable and Marginalized Groups Framework (VMGF); Resettlement Policy Framework (RPF); Integrated Pest Management Framework (IPMF) and Environmental and Social Management Framework (ESMF); when we are not sure where project investments are to be placed and how they would impact on both the environment and the social facets, but anticipate certain impacts. We normally prepare plans for the same during implementation. It is not clear how this arrangement is going to be actualized in the ESF. Will borrowers be required to prepare just one framework and a plan for the entire project cycle? Borrowers need guidance through capacity building and other measures.
- (iii) The trigger thresholds are not as clear in the new ESF as they are in the current framework (e.g. OP 4.09 in the current framework it is clearly stipulated when we should prepare the PMP). In the new ESF it does not come out strongly when we need to prepare e.g. a PMP.
- (iv) The cost of bearing safeguard instruments has been a major concern for us as the Borrower. Can the Bank provide guidelines for cost of consultancies related to safeguards?
- (v) In Kenya, the Environment Management Coordination Act (EMCA) 1999 Revised 2015, has outlined sub-projects that may/may not undergo full Environmental Impact Assessment (EIA) study (schedule 2). Is it possible for this framework to provide such a list so that we can reduce the cost and time taken before actual investment can be implemented?
- (vi) There is need to have consultations between CSOs and the government on the ESF to promote transparency and accountability.
- (vii) There were questions about what criteria was used by the Bank to select the 52 issues during the review and updating of the safeguards.
- (viii) The CSOs noted that too many conditions for borrowers can hurt the people and contribute to increased levels of poverty instead of eradicating poverty.
- (ix) For on-going projects under current Bank operational policies e.g. Regional Pastoral Livelihood Resilient Project (RPLRP) Kenya, once the new ESF is approved, should we continue under the current Bank Operation Policies or do we adopt the new ESF?
- (x) How complete is the WB definition of the Vulnerable and Marginalized Groups (VMGs) and what groups does the Bank's definition include?

Ranking of ESS

- (xi) “**ESS7 Indigenous People**” had the highest score with 10 participants ranking it their most important ESS. This was aligned with discussions on Indigenous People (IPs) which was one of the issues that predominated the consultations.
- (xii) “**ESS 5 Land acquisition and involuntary resettlement**” and “**ESS 10 Stakeholder engagement**” came a close second with 9 participants ranking them as important. This ranking is again closely aligned with the discussion during the consultations as these two issues featured prominently.
- (xiii) **ESP/ESS1**, though ranked by only 3 people using the red dots generated a lot of interest and debate. The spirited debate is an indicator of the importance the participants attached to this standard.

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	
ESP/ESS1-3 scores	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>C. Older people are not mentioned in discussions of non-discrimination, yet the world is aging fast and Kenya is no exception. The rights of older people need to be considered effectively in this standard to avoid them being inadvertently excluded and marginalized. Sustainable Development Goals (SDGs) specifically commit to not leaving anyone behind. The new ESF needs to ensure that it is aligned with the SDGs.</p> <p>C. The standard for human rights needs to adopt UN Guidelines on eviction and specific aspects of the non-discrimination principles.</p> <p>C. The trigger mechanisms under standard (ESS1) are not clear.</p>
	Use of Borrower’s	Q. Role of Borrower frameworks in	Q. The CSO participants wanted to know if the new ESF will have approaches or

	Environmental and Social Framework	<p>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>R. 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>S. Role of Borrower frameworks in high and substantial risk projects</p>	<p>solutions for issues in ongoing projects. They noted that there needs to be several avenues to solve problems that arise in projects during implementation that also include CSOs as they are not borrowers.</p> <p>Q. The CSOs wanted to know if the Bank has a fund for CSOs which would then allow them to become full participants.</p>
	Co-financing/ common approach	T. Arrangements on E&S standards in co-financing situations where the co-financier's standards are different from those of the Bank	Q. The cost of making use of the safeguard instruments can be prohibitive for the borrower; these costs include those of hiring consultants as the capacity for some of the safeguards may not be available in the Borrower country. Who will bear the cost of safeguards consultancies in the main project and in sub-projects?
	Adaptive risk management	U. Approach to monitoring E&S compliance and changes to the project during implementation	
	Risk classification	V. Approach to determining and reviewing the risk level of a project	
ESS1 2 scores	Assessment and management of environmental and social risks and impacts	<p>W. Assessment and nature of cumulative and indirect impacts to be taken into account</p> <p>X. Treatment of cumulative and indirect impacts when identified in the assessment of the project</p> <p>Y. Establishing project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI</p>	

		<p>subprojects and directly funded sub-projects</p> <p>Z. 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)	AA. Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement	
ESS2 1 score	Labor and working conditions	<p>BB. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries)</p> <p>CC. Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers</p> <p>DD. Constraints in making grievance mechanisms available to all project workers</p> <p>EE. Referencing national law in the objective of supporting freedom of association and collective bargaining</p> <p>FF. Operationalization of an alternative mechanism relating to freedom of association and collective bargaining where national law does not recognize such rights</p> <p>GG. Issues in operationalizing the Occupational Health and Safety</p>	

		(OHS) provisions/standards	
ESS3 5 scores	Climate change and GHG emissions	<p>HH. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC</p> <p>II. 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>JJ. Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard</p>	<p>C. Aspects in the new ESF that measure climate change need to be strengthened.</p> <p>C. There is need to define projects that will require estimation of GHGs emissions and the exceptions and thresholds for this standard in the new ESF.</p> <p>C. ESS 3 talks about projects minimizing GHG emissions. Broadly, we have our activities in livestock focusing on adaptation rather than mitigation which is costly in the livestock sector and is a long-term process.</p> <p>Q. Is it possible to exempt some livestock sector projects from giving inventories on GHG?</p>
ESS4	Community health and Safety	KK.	
ESS5 9 scores	Land acquisition and involuntary resettlement	<p>LL. Treatment and rights of informal occupants and approach to forced evictions in situations unrelated to land acquisitions</p> <p>MM. Interpretation of the concept of resettlement as a “development opportunity” in different project circumstances</p>	<p>Q. Does this standard address land issues e.g. access, resettlement and compensation of unregistered land?</p> <p>Q. How does this standard handle land compensation of land whose ownership is being contested in court?</p> <p>C. Issues of gender in the proposed new ESF are inadequately addressed and still need improvement. In ESS5 an important point on gender is placed in footnote 18. This point should be moved to the body of the main document to strengthen ESS5.</p>
ESS6	Biodiversity	<p>NN. Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity</p> <p>OO. Role of national law with regard</p>	<p>Q. Will the partner implementers be trained on how to monitor Green House Gases (GHGs) within sub-projects? This training needs to be considered because many implementing partners do not have the capacity to monitor GHGs</p>

		<p>to protecting and conserving natural and critical habitats</p> <p>PP. Criteria for biodiversity offsets, including consideration of project benefits</p> <p>QQ. Definition and application of net gains for biodiversity</p>	
<p>ESS7</p> <p>10 scores</p>	<p>Indigenous Peoples</p>	<p>RR. Implementation of the Indigenous Peoples standard in complex political and cultural contexts</p> <p>SS. Implementation of ESS7 in countries where the constitution does not acknowledge Indigenous Peoples or only recognizes certain groups as indigenous</p> <p>TT. Possible approaches to reflect alternative terminologies used in different countries to describe Indigenous Peoples</p> <p>UU. 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>VV. Criteria for establishing and implementation of Free, Prior and Informed Consent (FPIC)</p> <p>WW. Comparison of proposed FPIC with existing requirements on consultation</p> <p>XX. Application of FPIC to impacts on Indigenous Peoples' cultural heritage</p>	<p>C. In the new ESF, the Indigenous Peoples' (IPs) provisions are inadequate.</p> <p>C. Under the new ESS7 there is the opt-out waiver which should be removed as it goes against the objective and spirit of this standard as it will give governments the option of choosing not to comply with the requirements of this standard.</p> <p>C. The IP issue should be integrated with the Vulnerable and Marginalized Groups (VMGs) and there should be focus on identifying which groups are more vulnerable than the other in a specific project?</p> <p>C. Previous projects have been poorly monitored; will this new ESF guide and improve the monitoring of projects?</p> <p>Q. On the issue of Free Prior Informed Consent (FPIC) for Indigenous Peoples, what criteria and document will act as proof of free consent?</p> <p>C. We need consultations with WB and GOK to set out the criteria of proof of free consent to avoid any future conflicts.</p> <p>Q. What frameworks is the World Bank putting in place to ensure there is an adequate M&E framework in the new ESF and at what point will the IPs be involved in M&E?</p> <p>Q. Is it possible to have a tripartite engagement between IPs, WB and GOK which will bring them together to review and find solutions that can mitigate the negative impact of projects on IP?</p> <p>Q. How is the World Bank addressing IPs in traditional forests? The GOK has its own approach which may not always be adequate, nor does it adequately protect the rights of the traditional forest IPs.</p> <p>Q. Why are the African Institutions on IP not well represented here?</p> <p>Q. IP have a debate over local resources use and ownership? Interpretation of who an IP is has been an issue.</p> <p>Q. The new ESF defines VMGs. How is the agenda for VMGs relevant for IPs?</p> <p>Q. The new ESF addresses issues of squatters, how does the new ESF address IPs in the context of squatters?</p> <p>Q. The World Bank should ensure that the interests of the youth from marginalized IP communities are captured in the new ESF especially when they are in search of work in cities.</p>

<p>ESS8 1 score</p>	<p>Cultural Heritage X1</p>	<p>Q. Treatment of intangible cultural heritage R. Application of intangible cultural heritage when the project intends to commercialize such heritage S. Application of cultural heritage requirements when cultural heritage has not been legally protected or previously identified or disturbed</p>	<p>Q. ESS8 tries to advance the agenda by encouraging countries to think through the protection of their cultural heritage. Further, this ESS continues to protect tangible heritage but how do we link intangible to tangible heritage? C. (ESS8, bullet 37) Communities should be allowed to give direction on how they would prefer intangible cultural heritage to be handled in a project. This would require consultations between IPs and the government to help the latter understand the importance of local perspectives and ideas e.g. some communities may believe that there are spirits in selected local rocks which require special handling. C. (ESS8, bullet 38) Culture is a way of life and has an aspect of religion within it. The example of Maasai culture which combines social political, economic and religious aspects was given. Thus a project that commercializes a heritage is commercializing a way of life and so there is need for consent from the people who practice this culture. C. (ESS8, bullet 39) ILO 155 has not been ratified by Kenya. We should ask the Kenya government to build institutions which recognize and protect cultural heritage. The government can also develop regulations on how cultural property can be handled.</p>
<p>ESS9 1 score</p>	<p>Financial Intermediaries</p>	<p>T. Application of standard to FI subprojects and resource implications depending on risk U. Harmonization of approach with IFC and Equator Banks</p>	
<p>ESS10 9 scores</p>	<p>Stakeholder engagement</p>	<p>V. Definition and identification of project stakeholders and nature of engagement W. Role of borrowing countries or implementing agencies in identifying project stakeholders</p>	<p>C. The suggested criteria to engage the stakeholders in project activities should include the following:</p> <ul style="list-style-type: none"> • Continuity and feasibility of sustainable resource management, • Projects should have measures in place to protect them against fake stakeholders who turn-up at a proposed project site when they think they can benefit from possible compensation or other benefit. <p>C. There should be direct engagement with IPs before, during and after project implementation. C. Communities living downstream of a project are not adequately provided for in the new ESF. C. The World Bank needs to work with communities to develop gender tools to use in project reviews.</p>

General	EHSG and GIIP	X. 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 implementation	Y. 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 Z. Mitigation of additional burden and cost and options for improving implementation efficiency while maintaining effectiveness	Q. How is the World Bank going to standardize the ESF from one borrower to another when the context of individual countries varies so much? Q. The World Bank needs to take leadership in defining how borrowers' frameworks will be used together with this ESF in the event that the borrower's framework is strong enough.
	Client capacity building and implementation support	AA. Funding for client capacity building BB. Approaches and areas of focus CC. Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations	
	Disclosure	DD. Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)	
	Implementation of the ESF	EE. Bank internal capacity building, resourcing, and behavioral change in order to successfully	

		implement the ESF FF. Ways of reaching mutual understanding between Borrower and Bank on issues of difficult interpretation	