

DRAFT FOR CONSULTATION OCTOBER 7, 2014

Information Note 2: Use and Strengthening of Borrower's Environmental and Social Framework

The Board has requested the release of this document for consultation purposes to seek feedback on its content. It has not endorsed the content of the draft, and the Committee on Development Effectiveness and the Board will consider the proposed document following such consultations.

This Information Note is intended to contribute to the discussion about how the Bank can best support the use and strengthening of the Borrower's own environmental and social legislation and institutions for the development of a project. This Information Note does not form part of the proposed draft Environmental and Social Framework.

Background

1. The profile of Bank Borrowers today is far more diverse than it was when the safeguard policies were first developed. Borrowers range from middle-income countries, with well-developed institutions and capacities, to low-income countries with weaker governance and institutions, to fragile and conflict-affected states. Within this diverse profile, there are countries with advanced legislation designed to protect their people and the natural environment, and those with evolving technical and institutional capacity to manage environmental and social issues.

2. As part of the efforts to increase aid effectiveness and development partner harmonization, the international development community has placed an increased emphasis on aligning and harmonizing approaches to environmental and social sustainability and development partner instruments with the way in which such issues are addressed by Borrowers.¹ This emphasizes the importance of ownership of development priorities by Borrowers, a focus on achieving sustainable impacts, and inclusive development partnerships which recognize the different and complementary roles of all actors in the development process.²

3. The Bank responded to these developments through a pilot program³. The approach taken in this program relies on Borrower countries' legal frameworks and institutions to address issues covered by the existing safeguard policies in project design and implementation where they are determined by the Bank to be equivalent in their coverage and acceptable in their implementation. The 2010 Independent Evaluation Group (IEG) evaluation entitled 'Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience' makes the case for enhancing the use of country systems (through revising the approach taken by the Bank which the IEG viewed as overly prescriptive and excessively focused at the project level) and an increased emphasis on strengthening country institutions. The IEG evaluation stated that the method taken in this program has not worked satisfactorily, has led to a lack of ownership by borrowers, and needs a major redesign for it to be successfully scaled up. The Bank's experience and the IEG evaluation, together with the other initiatives to increase aid effectiveness, have informed the Bank's thinking on how to help Borrowers strengthen their country institutions and systems incrementally to achieve more sustainable development outcomes, and this is reflected in this Information Note.

Introduction

4. The proposed World Bank Environmental and Social Policy promotes the use of the Borrower's Environmental and Social Framework (**ES Framework**) in the assessment, development and implementation of projects proposed for Bank support. The intention of this approach is to mainstream and strengthen **current best** Bank and Borrower practices, incorporate the **considerations-objectives and requirements** set out in the Environmental and Social Standards (**ESSs**), and focus on ways in which the Borrower's ES Framework for the project can be supported and strengthened **to meet or surpass these**.

1 The Paris Declaration (2005) and the Accra Agenda for Action (2008), and as reinforced by the High Level Forum on Aid Effectiveness in Busan (2011). See the website on aid effectiveness <http://www.oecd.org/dac/aideffectiveness/>.

2 See Busan Partnership for Effective Development Co-operation, 4th High Level Forum on Aid Effectiveness, 2011.

3 See <http://go.worldbank.org/RHRJVXDW60>.

Comment [A1]: IEG also stated that gaps between Bank safeguards and country systems, particularly on resettlement and IPs remain quite wide. Enhanced ownership incentives alone won't change close this gap in the short term.

Comment [A2]: The point of these edits is to improve practices, consistent with objectives and requirements set out in the Bank's Environmental and Social Standards (ESSs).

5. Use of the Borrower's ES Framework will allow the Bank and Borrower to build on and enhance existing Borrower legislation, institutions and capacity, and support incremental improvements in the national system for addressing environmental and social risks and impacts. It will allow the Bank, with reference to fulfilling the objectives of the ESSs, to focus on aspects of the project that are not addressed (or fully addressed) in the Borrower's existing ES Framework. It will build on what the Borrower already has in place, and help the Borrower to enhance the quality of the national environmental and social management framework. Where there are issues that are not addressed in the Borrower's ES Framework which are important for the project or affected communities, the Bank will focus on assisting the Borrower to design measures to ensure that the potential risks and impacts of the project and related community concerns are addressed to achieve sustainable and inclusive outcomes consistent with ESS objectives and requirements.

Comment [A3]: While improvements will usually be incremental, the use of the Borrower's ES Framework will allow for support of improvements which could in some cases turn out to be transformational—for example, by getting the borrower to address risks which had been previously overlooked, e.g. cumulative or trans-boundary risks, or community health and safety.

Comment [A4]: It's important that ES Frameworks consider not only the project itself but also its effects, especially on local communities.

6. The definition of the Borrower's ES Framework is specific to the project. The aspects of the Borrower's ES Framework that are relevant will vary from project to project, depending on such factors as the scale and location of the project; the type of project or sector; the potential environmental and social risks and impacts; the legal and institutional framework; the role, authority and capacity of the Borrower and the implementing agencies. While the focus is on the project and its potential risks and impacts, and identifying and assessing the environmental and social framework within which it will be developed and implemented, the Bank will, wherever feasible and appropriate (i.e. consistent with para. 5 above), use the opportunity to achieve systemic improvements in Borrower legislation, institutions and capacity.

Comment [A5]: this statement seems to contradict IEG's diagnosis of why country systems pilot was not working -- an exclusive focus on project level of analysis and intervention.

Comment [A6]: ...clarifying the aspects of the project that are a concern.

7. When a project is proposed for Bank support, the Bank will review the Borrower's existing environmental and social framework as relevant for the development and implementation of the project. The review will focus specifically on the project, the potential risks and impacts and the way in which the Borrower's existing environmental and social framework would address these. The Bank will assess whether the Borrower's ES Framework (i) is likely to be able to address the potential risks and impacts of the project, including concerns of affected communities, and (ii) will enable the project to achieve objectives and requirements materially consistent with the ESSs. Where this is not the case - where issues are identified or concerns are raised - the Borrower will adopt measures and actions to address these. The Bank will work with the Borrower and affected communities to identify and agree on such measures and actions, and these will be recorded in the Environment and Social Commitment Plan (ESCP), with responsibilities, timeframes, budgets, outcome indicators for completion, as well as potential corrective actions when actions are not achieved.

Comment [A7]: see comment above on project focus

Comment [A8]: ...Specified here (and throughout) because of their importance, especially in the design phase, to project success.

8. The proposed approach, which focuses at the outset on the Borrower's existing national environmental and social framework, recognizes the importance of project ownership and stakeholder engagement in achieving sustainable environmental and social outcomes. It also recognizes the very real developments that have taken place in national systems for addressing environmental and social risks and impacts over the past decades, including increased transparency and dialogue with stakeholders. The approach is intended to support Borrowers proactively and efficiently, building on the national process of addressing environmental and social risks and impacts and assisting Borrowers to further develop their broader environmental and social system. Borrowers will generally do this incrementally, through specific project experience and targeted initiatives which may be supported by the Bank and other development partners, although broader, wholesale, or transformational changes may be possible in countries committed or open to more rapid development.

Comment [A9]: While the original text is generally accurate, the Bank should leave the door open for countries committed to more rapid development, e.g. ones emerging from conflict or lengthy terms of poor governance and political will is strong.

Review by the Bank

9. The Borrower's ES Framework to be reviewed by the Bank will be specific to the project and its potential risks and impacts. This will include, as appropriate:

- a. the country's policy, legal and institutional framework, including its national, sub-national, or sectoral implementing institutions and applicable laws, regulations, rules and procedures,
- b. (plans for) stakeholder engagement and information disclosure for the project; and

Comment [A10]: While this may be part of (a), if it is not, it needs to be explicitly included; if it is, it still helps to have it recognized as a stand-alone element of the ES Framework.

c. ~~to~~ implementation track record and capacity, which are relevant to the environmental and social risks and impacts of the project.

10. The purpose of the Bank's review of the Borrower's ES Framework will be to:

- a. assess whether the Borrower's ES Framework is likely to be able to address the risks and impacts of the project (including those identified in the ESSs and by stakeholders);
- b. assess to what extent use of the Borrower's ES Framework will enable the project to achieve objectives and requirements materially consistent with the ESSs; and
- c. identify /resolve issues that need to be addressed in the context of the project to achieve such objectives.

11. The assessment by the Bank of the potential use of the Borrower' ES Framework for a specific project will also take into account:

- a. The type, scale and complexity of the project;
- b. The location and the area potentially affected, directly and indirectly, by the project;
- c. The potential environmental and social risks and impacts of the project (including but not limited to those identified in the ESSs and by stakeholders, especially project-affected communities);
- d. The jurisdiction, authority and implementation effectiveness of the different institutions having control over the project, including the interfaces between them in terms of executive, ~~and~~ legislative and judicial authority.

12. The review of the Borrower's ES Framework will include an assessment by the Bank of:

- a. The country's general policy, legal and institutional framework, as these are relevant to the specific environmental and social risks and impacts of the project;
- b. Laws, regulations, rules and procedures (including permits and approval requirements) applicable to the project' sector including regional and local requirements that are relevant to the environmental and social risks and impacts of the project;
- c. Inconsistencies, lack of clarity or conflict as to relevant authorities or jurisdiction, including differences between national and regional/local authorities or jurisdiction;
- d. Previous experience with the Bank or other IFIs and the track record¹ of Borrower and the national, sub-national, sectoral and local institutions involved in the preparation and/or implementation of the project;
- e. Technical and institutional capacity of the Borrower and relevant national, sub-national or sectoral implementing institution or agency related to the project.

13. The Borrower will provide information to the Bank and stakeholders on the proposed project relevant to the Bank's review of the Borrower's ES Framework, consistent with routine timing requirements outlined in ESS10. This may include recent studies and assessment conducted by the Borrower or third parties, in particular on other similar projects developed in similar contexts that are relevant to the proposed project.

14. When undertaking the review, the Bank may also rely on and incorporate the finding of recent studies and prior assessments conducted by the Bank or third party experts or local communities in so far as these are relevant to the proposed project and its potential environmental and social risks and impacts.

Comment [A11]: ...since indirect impacts may outweigh direct impacts in some cases.

Comment [A12]: such a specification is made more difficult by removal of a definition of area of influence (and the weak definition of associated facility).

Comment [A13]: ...as stakeholders may be an important source of such information.

Comment [A14]: It is not only the law, but its implementation that matters.

Comment [A15]: I.e., is there adequate recourse for affected parties?

Comment [A16]: as one of the most sensitive and complex aspects of ESIA, the Bank must assure adequate time for stakeholder review of the Bank's self-assessment before the decision to use and/or strengthen the Borrower framework is made. ESS10 must restore minimum disclosure thresholds proportionate to risk.

¹ Illustrative examples of how a Borrower's track record might be measured include: a checklist of qualitative or quantitative indicators for minimum review time period, significance of a public record, experience with comparable project risks, evidence of significant health, safety or environmental accidents or complaints, evidence of effective stakeholder engagement, etc.

15. The Bank's review will take into account any environmental and social assessments that are in process or approved by national, state, or local authorities, any required permits or approvals and any other national, state, or local instruments relevant to the assessment or management of environmental and social risks.

Comment [A17]: There are many instances where sub-national processes are more relevant than national ones.

Objectives Materially Consistent with the ESSs

16. In addition to confirming that use of the Borrower's ES Framework is likely to be able to address the potential risks and impacts of the project, the Bank will assess to what extent the application of the Borrower's ES Framework will enable the project to achieve objectives materially consistent with the ESS. The objectives are set out in each of the ESSs, as identified below.

17. Assessment and Management of Environmental and Social Risks and Impacts (ESS1)

- To identify, evaluate and manage the environment and social risks and impacts of the project and all subprojects to achieve sustainability in a manner consistent with the that meets the objectives and requirements of ESSs.

-To adopt a mitigation hierarchy approach to:

- a) Anticipate and avoid social and environmental risks and impacts to workers, affected communities, and the environment;
- b) Where avoidance is not possible, minimize risks and impacts;
- c) Once risks and impacts have been minimized, mitigate them; and
- d) Where residual risks or impacts remain, compensate for or offset, as appropriate.

- To utilize and develop national environmental and social institutions, systems, laws, regulations and procedures that meet Bank standards in the assessment, development and implementation of projects.

- To promote improved environmental and social performance, in ways which recognize and enhance Borrower capacity.

- To maximize the positive development impacts and inclusion of all in access to project benefits.

- To promote adaptive management of project risks and impacts by acting, *inter alia*, to:

- Ensure all risks receive appropriate attention in an ESCP/ESMP that is broadly consulted prior to appraisal and has clear, accessible presentation of the top risks and mitigation actions.
- Use the ESCP to identify relevant budget, timing, performance indicator, monitoring method, responsible authority, and redress mechanisms should the Borrower not meet these parameters.
- Implement and monitor the effectiveness of ESMP, with rapid feedback and response mechanisms.
- Ensure community or third party monitoring when frameworks are used.
- Report annually on ESMP implementation, ensuring verifiable, accurate performance information.

18. Labor and Working Conditions (ESS2)

- To promote safe and healthy working conditions.

- To promote the fair treatment, non-discrimination and equal opportunity of project workers.

- To protect project workers, including vulnerable categories of workers such as women, children and migrant workers.

- To avoid the use of forced and child labor.

19. Resource Efficiency and Pollution Prevention (ESS3)

- To avoid or minimize adverse impacts on human health and the environment by avoiding or minimizing pollution from project activities.

- To promote more sustainable use of resources, including energy and water.

- To avoid or reduce project-related GHG emissions and promote low-emission alternatives, in particular ecosystem-based approaches.

20. Community Health and Safety (ESS4)

Comment [A18]: Edits to paras. 17 through 25 are the same as those we are proposing for the objectives of the ESSs themselves. The goal in all cases is to add specificity/clarity and in some cases to promote more comprehensive/inclusive safeguards.

- To anticipate and avoid adverse impacts on the health and safety of the affected communities during the project life-cycle from both routine and non-routine circumstances.
- To ensure that the safeguarding of personnel and property is carried out in a manner that avoids or minimizes risks to the affected communities.

21. Land Acquisition, Restrictions on Land Use and Involuntary Resettlement (ESS5)

- To avoid involuntary resettlement or, when unavoidable, minimize involuntary resettlement by exploring project design alternatives.
- To avoid forced eviction.
- To mitigate unavoidable adverse social and economic impacts from land acquisition or restrictions on land use by: (a) providing timely compensation for loss of assets at replacement cost and (b) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.
- To assist displaced persons in their efforts to improve, or at least restore, their livelihoods and living standards.
- To improve living conditions of poor or vulnerable persons who are physically displaced, through provision of adequate housing, access to services and facilities, and security of tenure.

22. Biodiversity Conservation and Sustainable Management of Living Natural Resources (ESS6)

- To protect and conserve biodiversity and natural ecosystems using a precautionary approach.
- To promote the sustainable management of living natural resources through the adoption of practices that integrate conservation needs and development priorities, recognizing the importance of living natural resources to the livelihoods of the poor in developing economies.
- To maintain and enhance the benefits provided by local and global ecosystem services.
- To prevent the conversion and degradation of critical habitats as a result of Bank-financed projects, limit conversion and degradation of all other natural habitats to be consistent with sustainable development, and avoid or mitigate any negative impacts to natural habitats or ecosystem services.

23. Indigenous Peoples (ESS7)

- To ensure that the development process fosters full respect for the human rights, dignity, aspirations, identity, culture, and natural resource-based livelihoods of Indigenous Peoples.
- To avoid adverse impacts of projects on Indigenous Peoples and their lands, territories, or resources, or when avoidance is not possible, to minimize, mitigate and/or compensate for such impacts.
- To promote sustainable development benefits and opportunities for Indigenous Peoples in a manner that is accessible, culturally appropriate and inclusive.
- To improve project design and implementation and promote local support by establishing and maintaining an ongoing relationship based on meaningful consultation with the Indigenous Peoples affected by a project throughout the project's life-cycle.
- To ensure the Free, Prior, and Informed Consent (FPIC) of affected Indigenous Peoples in all Bank projects, except for projects where Free, Prior, and Informed consultation is accepted as sufficient, as the three circumstances described in ESS7, para. 9.
- To recognize, respect and preserve the culture, knowledge, and practices of Indigenous Peoples, and to provide them with an opportunity to adapt to and benefit from changing conditions in a manner and in a timeframe acceptable to them.

24. Cultural Heritage (ESS8)

- To protect cultural heritage from the adverse impacts of project activities and support its preservation.
- To address cultural heritage as an integral aspect of sustainable development.
- To promote the equitable sharing of benefits from the use of cultural heritage.

25. Financial Intermediaries (ESS9)

-Specify how the FIs will assess and manage environmental and social risks associated with project related investments or subprojects, and promote good environmental and social business practices in the subprojects they finance.

-To promote good environmental and sound human resources management within the FIs **and achieve the same level of environmental and social protection and benefits as if the Bank were lending directly to the FIs' borrowers.**

26. Information Disclosure and Stakeholder Engagement (ESS10)

- To outline a systematic approach to stakeholder engagement that will help Borrowers build and maintain a constructive relationship with their stakeholders **and ensure disadvantaged and vulnerable groups' participation**, in particular project-affected communities.

- To promote improved environmental and social performance **and sustainability** of Borrowers through effective engagement with their stakeholders.

- To promote and provide means for adequate engagement with project-affected communities throughout the project cycle on issues that could potentially affect them and to ensure that meaningful environmental and social information is **fully** disclosed to them and to other stakeholders **in a timely manner**.

- To ensure that all stakeholders have ways to access project information and raise issues **in a timely manner**;

- To ensure that project-affected communities have accessible means to raise issues and grievances, and that Borrowers respond to and manage such issues and grievances appropriately, **including through full and timely implementation of all ESSs.**

Identification of Issues

27. The Bank will assess, **in consultation with relevant stakeholders including project-affected communities**, to what extent the Borrower's ES Framework addresses the potential risks and impacts of the project. The review will look at all risks and impacts of the project, including **direct, indirect, and cumulative ones**, and those specifically identified in the ESSs. The review will look at how specific aspects of the Borrower's ES Framework address:

- identification and assessment of the specific potential risks and impacts of the project;
- the design of mitigation measures in accordance with the hierarchy set out in ESS1; and
- application and enforcement of required mitigation measures.

28. The Bank will also assess whether, and to what extent, the use of the Borrower's ES Framework will enable the project to achieve objectives consistent with the ESSs **and to meet ESS requirements**.

29. The review may recommend using all or part of the Borrower's ES Framework for the preparation and implementation of the project. The recommendation will relate to the use of the ES Framework for the specific project. However the results of the project-specific review may be considered in assessing subsequent projects to be prepared and implemented by the relevant agency and, in appropriate circumstances, a recommendation may cover all projects proposed by the agency within a **specific timeframe maximum of four years, to be fully reviewed thereafter**. The review may also recommend not using the Borrower's ES Framework **and using the Bank's instead**. This may be appropriate in cases where: the project is complex and high **or substantial** risk; capacity and institutional aspects are limited; or in contexts of fragility and conflict. In such cases the Bank will nevertheless provide support, when appropriate and feasible, and together with other development partners, to the development of the Borrower's ES Framework for future consideration.

[29a.] **Any recommendation to use all or part of a Borrower's ES Framework will be accompanied by full documentation of items identified in paragraphs 9-12 above. Particularly for all high and substantial risk activities to be supported, this documentation will include, but not be limited to, the Bank-verified risk spread or incidence across existing Borrower subproject portfolios, the assessed probability that the Borrower ES**

Comment [A19]: To ensure that all significant potential risks and impacts of the project are captured in the Bank's assessment.

Comment [A20]: Since these are relevant, often important, and may be missed by project sponsors.

Comment [A21]: The use of the Borrower's ES Framework should still result in meeting ESS requirements, where relevant, and should not (be interpreted to) absolve them from these (minimum) requirements.

Comment [A22]: ...since these may still be large, complex, and in or near sensitive areas

Framework will be able to effectively manage the risk, and the sequence of agreed remedial actions to be taken when the Borrower does not effectively manage impacts as set out in the ESCP.

Identification of Measures and Actions

30. The review conducted by the Bank may identify issues where the application of the Borrowers' ES Framework to the project would be inconsistent with the ESSs, or areas in which the Borrower's ES Framework does not address a specific potential material risk or impact of the project. These may relate to any aspect of the Borrower's ES Framework or a specific project risk or impact, and could include, for example: limited requirements on social protection, including resettlement; inconsistencies in the legal and regulatory requirements between national and local authorities; weak sector legislation or cooperation between different Ministries or local authorities; poor implementation or enforcement record; limited institutional and technical capacity.

31. The Borrower in consultation with the Bank and relevant stakeholders, including project-affected communities, will identify and agree measures and actions to address such issues to the extent that such measures and actions are needed to ensure that the environment and social risks and impacts of the project are properly identified, addressed and implemented, and that the project achieves objectives materially consistent with the ESSs. Any issues that cannot be addressed in a timely manner will be brought to the attention of the Board for further consideration.

32. Such measures and actions may be implemented during project preparation or implementation and will include, where necessary, measures and actions to address the capacity and needs of the Borrower and other third party institutions or agencies to assist them in preparing and implementing the project in a manner materially consistent with the objectives and requirements of the ESSs.

33. The Bank will discuss and agree with the Borrower and relevant stakeholders, including project-affected communities, appropriate measures and actions to address the issues that have been identified through the review. These will be set out in the ESCP, with timeframes for completion.

34. For some projects, the ESCP will capture all relevant measures and actions of the Borrower required to enhance or supplement the Borrower's ES Framework, and there will be no requirement for any further plans or actions. In other cases, as contemplated in Annex 2 to ESS1 on the Environmental and Social Commitment Plan, there may be a need for additional plans or further details or consultations.

Changes in Borrower's ES Framework

35. The Borrower will be required to notify the Bank in a timely manner of a material change in the Borrower's ES Framework that may adversely affect the project or project-affected communities. Such a change will relate to be subject to the review of the Borrower's ES Framework conducted by the Bank.

36. Where the Bank has been notified by the Borrower of a material change in the Borrower's ES Framework that may adversely affect the project or project-affected communities, the Bank will assess the extent to which the change is inconsistent with the ESSs and the ESCP. The Bank will discuss with the Borrower and project-affected communities ways to address the change, and may agree additional measures and actions. This assessment, discussion, and agreement should be achieved in timely manner (generally, within 90 days of notification).

Procedure

37. The review of the Borrower's ES Framework will be carried out by the Bank project team's environment and social development specialist. The initial review of the Borrower's ES Framework can begin as part of the Systematic Country Diagnostic when potential projects are already identified, and be reflected in the CPF. Further review of the Borrower's ES Framework will be prepared by the Bank team as part of identification and

Comment [A23]: A frequent challenge at the IFC is that all information is not always provided for the Board to make adequate decisions regarding the Bank's appetite for risk. Some minimum standards are needed for informing all Bank stakeholders about how these judgment calls are made.

Comment [A24]: ...Since their input may be valuable in determining needed measures and actions.

Comment [A25]: ...since timing matters for risk mitigation.

Comment [A26]: This and subsequent edits all are to ensure a process sufficiently inclusive so as to ensure that potential risks and impacts are identified and appropriately addressed.

Comment [A27]: where appropriate, the signal that use of Borrower ES Frameworks should begin with earliest possible analysis.

preparation of the project, and relevant information will be included in the Project Concept Note (*PCN*) documents, including the Integrated Safeguards Data Sheet (*ISDS*). If the Bank team recommends the use of all or part of the Borrower's ES Framework and the recommendation is cleared by the Regional Safeguard Advisor, the initial review will be disclosed in summary in the Project Information Document (PID) and further developed, and will inform the content of the ESCP.

Comment [A28]: the RSA clearance responsibility should be explicitly affirmed for all external stakeholders knowledge.

38. The ESCP will incorporate the material measures and actions that have been agreed with the Borrower to address issues or enhance the Borrower's ES Framework, as well as timeframes and other relevant information, including concerns of stakeholders, to ensure the implementation of the measures and actions.

39. The Bank will monitor the implementation of all or the part of the Borrower's ES Framework agreed upon, the Borrower's implementation and enforcement practices, track record and capacity in accordance with the Bank's review and measures and actions identified in the ESCP for the duration of the project. The use of community or third party monitoring will be required for any use of Borrower ES Frameworks of high or substantial risk activities.

40. The Bank will require revisions to the ESCP to meet the ESSs requirements and/or take other measures it deems appropriate if the implementation is unsatisfactory or there are changes may adversely affect the project or project-affected communities, and are inconsistent with the ESSs and the ESCP. The sequence of actions to address instances of unsatisfactory ESCP implementation will be agreed and specified in the ESCP.