

February 23, 2015

The World Bank
Environmental and Social Safeguard Policies Group
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Re: Phase 2 Consultation Meeting – Environmental and Social Safeguard Policies Review

Thank you for inviting Micon International Limited (Micon) to participate in the Environmental and Social Safeguard Policies Review (Review) on January 8, 2015 in Ottawa hosted by Export Development Canada's Corporate Social Responsibility Group. We were unable to join in person but contributed via the teleconference setup.

The documents found on your Review Website (<https://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies>) have been reviewed. Most of the following comments are focus on the various sections and subsections of the main document (first_draft_framework_july_30_2014.pdf).

Harmonization

During the teleconference, the World Bank speakers talked about harmonizing the World Bank Environmental and Social Standards (ESSs) with other systems like International Finance Corporation's Performance Standards (IFC PSs) and other standards.

In the documentation there is no mention of harmonization with other systems and no mention of IFC PSs. It is interesting to note that even the title and the numbering sequence of each ESS is exactly the same as the IFC PSs for 1 through 8 except a small addition to ESS 5 "...Restrictions on Land Use...". ESS 10 (Information Disclosure and Stakeholder Engagement" is covered in several of the IFC PSs, where necessary. We appreciate that the IFC PSs are focused toward privately funded projects while the ESSs are focused on government or government ministry projects; however there are a lot of similarities between the two systems. Several of the participants brought up this point during the teleconference.

Micon has undertaken numerous due diligence projects as Independent Engineer/Independent Technical Advisor for banks and other lending institutions; they need assurance that projects comply with Equator Principles III, IFC PSs and IFC Environmental, Health and Safety Guidelines. We believe it would be helpful for the similarities and the differences to be brought out in the documentation or in a companion document. A simple table could be developed to show the similarities and differences. It would also show governments, private industry and financial institutions that the World Bank system is harmonizing to other well-recognized environmental and social standards.

Classification

The new classification system of High Risk, Substantial Risk, Moderate Risk and Low Risk is much better than the ABC system as discussed in the "information_note_1_es_risk_classification_final_disclosure_october_7.pdf" document. However, in our opinion, this document needs further refinement. The "Attachment" Section defines the risk categories but we believe that the opening paragraph would be a concern to Borrowers. As a Borrower, it would be important to know at the earliest stage possible, what risk category a particular project falls into. To have the Bank "not take into account the application of possible mitigation measures identified during the environmental and social assessment at the project identification stage" but to base it "...on professional judgement and the information available at the time..." potentially creates needless uncertainty for the Borrower and, possibly, the Bank as well.

Actual examples of each category would be helpful to the Borrower.

The statement “The classification would be adjusted by the Bank, if and when necessary” (Section 5, 3rd sentence) protects the Bank but may place additional uncertainty on the Borrower. The classification category should be set, after thorough discussions between the Bank and Borrower. In a well-developed EIA/ESA, all impacts are identified and mitigative measures are identified. There should be no need for the Bank to change its mind half way through the project.

Many of the subsections in the risk categories (especially the High Risk” category) could, potentially, be very subjective. In-depth discussions between the Bank and Borrower are imperative and this should be stated in the document.

There appears to be a misspelled word in Section 5, last sentence “...life of the project though assessment, monitoring...”. I believe that “though” should in fact be “through”.

ESS-1

The provision in the ESS-1 Section 19, “the Borrower in consultation with the Bank will identify measures and actions to address any gaps in the ES Framework, to the extent that such measures and actions are necessary to ensure objectives materially consistent with the ESSs”, could delay projects if the ES Framework is deficient. Governments tend to move slowly when changing policies or procedures, which in turn could delay or cancel well deserving projects. These issues should be brought out in the initial phase of the project.

ESS-7

The ESS-7 “Indigenous People” section should be looked at in more detail as it relates to nomadic indigenous peoples and their perceived land titles. If this Standard is enacted as is, it could become a problem for Borrowers, let alone the project(s), themselves and corresponding funding. It could also aggravate relationships between neighbouring indigenous people. As an example, Canada’s latest Supreme Court decision has given rights to the Tsilhqot’in First Nation (FN) over 17,000 ha of British Columbia (BC), as part of their nomadic area land claims. This is the first time this has been done in Canada. The rights encroach upon or overlap other FN land claims that have not been settled. It has also affected several planned developments in that area. This decision has thrown the federal and particularly the provincial governments into confusion as to on how to proceed. It has and will continue to prevent or slowdown development decisions in this area of BC as well as land claim settlements, in general. Zambia is in the same position as BC with over 200 indigenous people groups within their border. Thankfully this problem has not arisen there, to my knowledge. I am sure that other jurisdictions may be in the similar situations.

Further, the Borrower should and must consult with all affected indigenous peoples in the area of the project, regardless of whether those people are nomadic (seasonal use or occupation) or not, period. This would eliminate the need for Section 6, subsection (b), Section 7 and 8.

The statement in Section 9 “...project-affected communities (of Indigenous Peoples) will be treated at least as well as other projected-affected people.” The phrase, “at least as well” is subjective and open to interpretation. We suggest that the wording should be amended to read “in the same manner as”, or similar. This statement should be more emphasized throughout all the ESSs.

The phrase in Section 11 “...Indigenous Peoples will participate in the project design and implementation.”, should be re-worded. Many Indigenous Peoples do not have the technical skills to participate directly with project design let alone implementation. Moreover, “participate in ... implementation” suggests direct involvement on a par with the Borrower’s consultants and contractors. We suggest “...Indigenous Peoples will participate in the discussion pertaining to project design and implementation.”. These discussions would be essential to provide the designer and implementers with input and insight to potential impacts and other issues related to a project.

Section 21 concerns “Free, Prior and Informed Consent” (FPIC) of affected Indigenous Peoples which cannot be ascertained by the Bank. It is unclear what the phrase “...the aspects of the project relevant to those Indigenous Peoples will not be processed further.” means. Re-wording of this Section may be needed to make the meaning and intent of this phrase more obvious.

Section 23 and Section 24 deal with land claims and titles. Canada has been working on land claims issues for over a century and there is still a long way to go. Projects may be delayed and/or canceled if these sections are required to be satisfied. It is recommended that the Bank seeks the benefit of Canadian experience.

EES-8

Section 10 deals with “Chance Finds” of Cultural significance. This is an important issue on many projects. The description of Chance Finds should be part of the document itself, rather than as a footnote.

Section 14 describes assigning value to cultural heritage with assistance from stakeholders. Most stakeholders and Indigenous Peoples would assign a “priceless” value on heritage items. There needs to be an independent arbitration mechanism to assign value.

Sections 23 to 25 deal with natural features of cultural significance. There should be guidelines for these situations and/or provision for independent experts in the field to be used to assess the significance of these natural features. Otherwise, these can be used or manipulated by special interest groups that want to stop a project, at all cost. These sections could be invoked to prevent a project from advancing by claiming natural features within the project area are culturally significant, when they may not be.

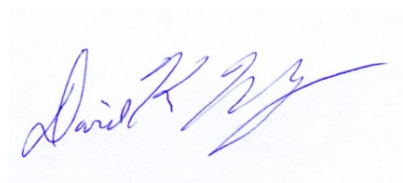
ESS-10

Section 2 describes stakeholders concerns. As you know, there are real and perceived concerns. Both are valid to the stakeholder and should be documented. The Borrower needs to filter out which concerns are real and which ones are perceived, and document each accordingly.

Section 5 defines stakeholders. The phrase “where appropriate, other stakeholders” includes nongovernmental organizations (NGOs). Many international NGOs tend to be anti-development and sometimes confrontational. Many international NGOs stir up local discontent against projects, that in reality, will benefit the country and its people. There should be a clear mechanism to limit international NGOs participation in the ESS process and the project.

I hope these suggestions are helpful in your review process. If you have any queries concern any of our comments, please do not hesitate to call. Again thank you for inviting us to participate in this review.

Yours truly



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