

Inspection Panel
Comments on the Second Draft of the
Proposed Environmental and Social Framework

June 17th, 2015

Introduction

1. This note provides the comments of the Inspection Panel to CODE on the second draft of the proposed World Bank's Environmental and Social Framework (ESF). This note builds on Information Notes 1 and 2 (2012 - 2013), and on the comments already presented by the Panel to CODE on the first draft of the ESF in July 2014.

Scope

2. Given that the Panel's work requires interpretation of compliance with the World Bank's environmental and social safeguard policies, any review of these policies would benefit from the Panel's inputs, particularly: (i) where changes in the safeguard's framework may impact the ability of the Panel to interpret them; and (ii) where the substantial Panel experience gained over 22 years can inform the enhancement of these policies.

Overall Comments

3. In its previous comments, the Panel provided views on the general structure and scope of the draft ESF, and shared lessons and experiences from Panel cases to highlight aspects that in the Panel's view required more careful consideration. The Panel finds the second draft ESF to be substantially improved, more precise, and clearer. The Panel is also pleased to see that comments it provided earlier have been carefully considered and in most cases taken on board.

4. The Panel notes that some questions remain, especially with respect to the responsibilities and accountabilities of the World Bank in the application of the new ESF. The comments below do not delve into the actual substantive content of the ESS, but rather focus on aspects of the Policy that, in the Panel's view, warrant additional clarity.

Coverage

5. The Panel notes that, although the new draft does not change the current safeguard architecture given that it applies to Investment Project Financing only, this review presents the opportunity to deliberate on the need to harmonize the safeguards coverage for instruments such as Development Policy Lending (DPL), and Programs for Results (P4R), which represent a considerable portion of the Bank's lending portfolio.

6. In this context, the Panel would appreciate clarifications from Management regarding the percentage of the Bank's portfolio that will be covered by the proposed ESF, and how harmonization with projects governed by different frameworks is planned in order to ensure consistency in the application of the safeguard instruments across the portfolio.

Technical Assistance

7. Regarding Technical Assistance (TA), the draft states that the policy applies to all projects supported through Investment Project Financing and notes in a footnote that: *“these projects may include technical assistance supported by the Bank through Investment Project Financing”* adding that *“some technical assistance activities may, of themselves, have no potential environment or social risks or impacts”* and that *“the requirements set out in paragraphs 13-17 of ESS1 will be applied to technical assistance activities as relevant and appropriate to the nature of the risks and impacts.”*

8. The Panel notes that a recent Request for Inspection (the “Haiti Mining Dialogue Technical Assistance”) raised issues from TA activities with significant environmental and social risks financed under a Bank-Executed Trust Fund. In its “Notice of Non-Registration and Observations Regarding the Policy Framework Applicable to Technical Assistance,” the Panel agreed with the Requesters that the proposed mining law could have significant and considerable adverse environmental and social consequences, unless consideration was given to the highest possible environmental and social standards, and noted that the issues presented in the Request were serious and legitimate. The Panel, however, noted the inconsistency and gap in the application of operational policies and procedures given that Bank-Executed Trust Funds were not covered by the Bank’s operational policies (and thus the Panel was unable to register the Request). The Panel concluded that the application of the policy framework should be based on a robust risk assessment of the potential environmental and social impacts of the technical assistance activities, rather than the financing instrument used.

9. The Panel therefore wishes to see clarifications on whether activities similar to the recent Haiti case will be covered by the ESF given their high risk classification, regardless of the type of financing utilized or its execution.

Accountability

10. The Panel remains unclear about the roles and ultimate responsibilities of the Bank and borrower countries. For example, the Panel notes that paragraph 16 of the Policy states *“The Bank will “require” the Borrower to prepare and implement projects so that they meet the requirements of the ESSs in a manner and a timeframe acceptable to the Bank.”* The Panel notes a change in terminology and language from the current safeguard policies, which call for the Bank to *“ensure”* the consistency of Borrower’s actions with applicable safeguard policies. Would the change in terminology also entail a change in the Bank’s responsibilities and a potential shift of accountability for harm that may be caused by Bank-financed operations to the Borrower?

11. The Panel hopes that Management will clarify this change, and above all, whether there is any material alteration of the Bank’s responsibility and accountability framework for harm that may be caused to affected people when the ESSs are not properly implemented. More specifically, what is the accountability framework under the draft ESF, and thus the requirements for the Bank to follow up on Borrower’s obligations, should the Borrower not comply with the requirements of the Environmental and Social Commitment Plan (ESCP) and not meet the ESSs?

Monitoring and Supervision

12. The Panel would also appreciate more specificity with respect to the roles and responsibilities of the Bank in carrying out the monitoring and implementation support for the Borrower's implementation of ESCP and ESSs. The draft Policy notes that the extent of Bank's monitoring will be proportionate to the environmental and social risks of the Project and that *"the Bank will provide implementation support regarding the environmental and social performance of the project, which will include reviewing the Borrower's monitoring reports on compliance of the project with the requirements of the legal agreement, including the ESCP."* Under the draft Policy, it seems that the supervision responsibilities of the Bank stem primarily from information provided by the Borrower with a more "hands-off" approach from the Bank, while there does not seem to be any framework or criteria to evaluate the quality of the information provided by the Borrower, or the methodology used in gathering it.

13. Additionally, Panel cases in the past have highlighted concerns over Bank supervision (including cases such as DRC-Forests; Panama-Land Management; and Cambodia-LMAP). These and other cases underscored instances where inadequate supervision led to harms, including: (i) failure to identify and adequately respond to issues and problems as they emerged; (ii) lack of follow-up on pre-identified problems or inattention to warning signs, often compounded by lack of funds for supervision; (iii) high staff turnover, inadequate coordination in Project management and supervision, and heavy work demands on task team leaders; (iv) inadequate or insufficient expertise (e.g. too few safeguards or social specialists) as part of the supervision teams; and, (v) lack of field presence.

14. In this context, the Panel emphasizes the need for the rollout of the new ESF to be complemented with sufficient resources (human and budgetary) to match the risks and complexities of projects, so that proper responses can be deployed as they arise, in order to avoid or mitigate potential harms to people and the environment.

Language Regarding the Inspection Panel

15. The Panel notes that paragraphs 11 and 58 refer to the Panel's investigations as *"independent compliance audit."* The Panel notes that the ESF should adopt the language included in the Inspection Panel's Resolution or the language that is now customarily included in the World Bank's PADs.

Concluding Remarks

16. The Inspection Panel appreciates Management's efforts and hard work in preparing the second draft of the ESF, and hopes that these comments will be useful in the preparation of the next draft. The Panel stands ready to provide additional comments as needed.