



**Public Comment Submission: Draft Guidance Notes for Borrowers
Improving Guidance for the Protection and Inclusion of Marginalized Groups**

Overview

As a development finance institution with the express mission to alleviate poverty, the World Bank must ensure its policies and programs are consistent with the needs, interests, and rights of those that are most disadvantaged, marginalized or vulnerable.¹ Children, persons with disabilities, women and girls, LGBTQ people, and refugees, among others, are often the most likely to experience poverty, and to be harmed by or excluded from the development process. While BIC supports the sharper focus on social issues that the Bank has adopted in the new Environmental and Social Framework, we wish to express our frustration and concern that--despite repeated assurances by Bank staff--the draft Guidance Notes (GNs) do not provide the necessary clarity and information for Borrowers to adequately address risks to marginalized groups,² and should be substantially revised to prioritize their protection, inclusion and participation.

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¹ BIC has concerns around how the draft Guidance Notes address many issues, including Borrower Systems, disclosure, etc.--see recommendations submitted jointly with Human Rights Watch and others, to which BIC, as well as other submissions from civil society organizations.

² References to “marginalized groups” in this document should be considered to include the groups described as “disadvantaged or vulnerable” in the Bank Directive on Addressing Risks and Impacts on Disadvantaged or Vulnerable Individuals or Groups, including children, persons with disabilities, women and girls, and LGBTQ people, as well as others that are not listed, such as refugees.

Introduction

Despite the vague commitment to nondiscrimination and abstract language in the Environmental and Social Framework (ESF), BIC welcomed the expanded coverage of the ESF to explicitly include “disadvantaged or vulnerable” groups when it was approved. The forthcoming Guidance Notes (GNs) were held out as an opportunity to provide further clarity,³ and instructions for Borrowers that often have limited capacity and interest in ensuring these groups can benefit from--and not be harmed by--Bank projects. The drafts released for public comment, however, fail to provide the much needed detail and examples to convey the gravity of potential harms to marginalized groups or the significance of addressing and mitigating them. This failure could serve to undermine the expansion of the policies by leaving borrowers unprepared to meet their new responsibilities, and unclear as to what is expected of them.

This submission outlines some of the ways in which the draft GNs should be revised to better address potential impacts on disadvantaged, marginalized, or vulnerable groups. Where possible, references to provisions in the draft notes are provided and specific language changes are suggested. Given the lack of substance in the current drafts, however, many of the recommendations are more narrative and broader in form--demonstrating the importance of our ask that the World Bank *substantially* revise this current set of drafts to add the necessary missing information and guidance, and produce another set of drafts for public consultation. We also strongly recommend that civil society be consulted early in the development of further Good Practice Notes to ensure their quality and applicability for marginalized groups.

Assessing and Managing Risks to Disadvantaged or Vulnerable Groups: Getting to “how”

Potential impacts on disadvantaged, marginalized, or vulnerable groups may not be immediately obvious to Borrowers, but the World Bank has decades of experience to draw upon to provide better guidance on how to identify risk early in the project cycle to ensure harmful impacts on these groups are avoided. In fact, the ESF provides some helpful language on *what* Borrowers should assess--i.e. differentiated impacts of projects on “disadvantaged or vulnerable” groups--but it does not address *how* to identify or mitigate those impacts. The draft GNs do not even include a list of “disadvantaged or vulnerable” groups for Borrowers to know who those people might be, even though such a list is included in the Bank Directive on Addressing Risks and Impacts on Disadvantaged or Vulnerable Individuals or Groups. In order for Borrowers to know what issues to be scoping for and to include in the environmental and social impact assessment, it is paramount that the updated GN for ESS1 contain the list of “disadvantaged or vulnerable” groups from the Directive, among others.

³ In addition to promising further clarity around issues related to marginalized groups, Bank staff committed to providing more specificity on issues such as Borrower systems, disclosure, etc.

Types of Risks

Marginalized groups face a disproportionate share of adverse impacts to their livelihood and existence, as well as the potential for discrimination, prejudice, harassment, or violence against them, which can impact their ability to access project benefits. While the ESF rightly points out that differentiated social impacts should be assessed, the provisions in the ESS1 GN that are supposed to provide further guidance on the type of social risks and impacts identified in the ESF (i.e. GN28.1 and 28.2) fail to do so. These provisions should be expanded to provide much more information on the types of risks that should be assessed. Because each group also experiences different levels of risk depending on their specific vulnerabilities, the GNs must be updated to reflect the complexity of assessing differentiated types of risks as well as varying levels of risks. Examples of what to look for and references to additional resources for more information must also be provided.

To clarify the different types and levels of risks that exist, the ESS1 GN should discuss how to assess impacts to persons with disabilities including risks posed by a project that could disrupt connections and relationships (familial, community, etc.) that provide necessary assistance and support, as well as any potential missed opportunities for creating or enhancing accessibility and inclusion (such as a barrier-free built environment). It must also be made clear that these risks could be quite different from the type and level of risks that other groups such as LGBTQ individuals might face, including access to safe spaces from criminalization and violence or quality healthcare.

Hidden or Commonly Overlooked Impacts

The updated GNs must also emphasize that potential impacts to marginalized groups are often hidden or overlooked. For example, there has traditionally been a belief that impacts on children need to be considered only for projects that are seen as directed at children, such as education or health projects. This, coupled with the view that the ways in which children are impacted by other types of projects are similar to the impacts on adults, has led to decades of assessments that overlook unique, devastating impacts of projects on children. *How to assess impacts like these, and how they might be different from impacts that other groups experience--such as persons with disabilities, ethnic minorities, or refugees--must also be made clear in the updated GNs.*

To clarify how impacts are hidden or overlooked, the GNs should discuss how projects may have hidden impacts on children's health or rates of violence in a community, or may lead to circumstances in which the resources families and communities have available to dedicate to children are diminished. For example, "age" should be added to the list of vulnerabilities in ESS4 GN15.8, as children are especially vulnerable to health risks from projects because of their growing minds and bodies.

Another important example of hidden impacts are those related to sexual exploitation or abuse (SEA) and gender based violence (GBV). Given the sensitivity and difficulty of identifying such

risks, the updated GNs must make more references to SEA and GBV in relevant sections and provide more detail on how to prevent them. For example, the following language (in brackets) should be added to ESS4 GN5.3: “Where an assessment identifies risks [including SEA of children or GBV] that may arise from the interaction of project workers with local communities, the environmental and social documents for the project describe such risks and measures to address them.” Language at the end of the paragraph must also be changed to reiterate the zero-tolerance policy of the Bank for GBV, in line with our recommendations on the mitigation hierarchy (see below). Similarly, while we welcome the reference in ESS4 GN16.1 to the World Bank’s Guidance Note on Managing Risks Related to Labor Influx, a specific reference should be added to the risks posed to children, and specifically girl children as well as women, associated with labor influx.

Applying the Mitigation Hierarchy

More guidance is also necessary for how to apply the mitigation hierarchy with respect to impacts on marginalized groups. For example, ESS1 GN 27.2 should make clear that impacts on children are to be avoided and prevented by applying the best interests of the child principle⁴ as a primary consideration in addressing risks and impacts of a proposed project. It should also be clear that, for certain risks, including SEA and GBV, there will be no acceptable level of risk reduction or mitigation, and that “step 4” (i.e. compensation or offsets) is never acceptable when risks of SEA or GBV are present—consistent with President Kim’s statement that the Bank has a “zero-tolerance policy” for GBV.⁵

Use of Independent Specialists

Given the sensitivity and importance of properly addressing risks to disadvantaged, marginalized, or vulnerable groups, a stronger recommendation for the use of independent specialists should be made in the ESS1 GN. For example, when assessing risks to persons with disabilities, whose issues are not generally well understood and have multidimensional social and environmental barrier issues, an independent specialist would almost always be recommended. Accordingly, wording in ESS1 GN25.1 should be changed to state that it is “necessary” rather than “appropriate” to “engage independent specialists to undertake the parts of an assessment” pertaining to such groups.

⁴ For more information on the best interests of the child principle, see Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14 [hereinafter General comment No. 14].

⁵ See President Kim’s remarks on the establishment of the GBV Task Force, stating that “We have zero tolerance for gender-based violence,” at <http://www.worldbank.org/en/news/press-release/2016/10/13/world-bank-launches-global-task-force-to-tackle-gender-based-violence>.

Ensuring Meaningful Participation of Disadvantaged, Marginalized or Vulnerable Groups

As ESS10 makes clear, effective and meaningful stakeholder engagement is incredibly important for the sustainability and success of a project. Requirements in ESS10 should therefore have robust, corresponding guidance for Borrowers on how and when to carry out their new obligations under this standard--particularly with respect to engagement with marginalized groups. However, the ESS10 GN fails to provide Borrowers with a better understanding of how, when or with whom they should be consulting to fulfill requirements that stakeholder engagement be inclusive and meaningful.

Who: Appropriately Identifying and Engaging Specific Disadvantaged, Marginalized, or Vulnerable Stakeholders

The ESS10 GN provides no guidance for para. 11 in ESS10, which requires the Borrower to identify project-affected parties that are disadvantaged or vulnerable. Without a clear understanding of who the Bank is referring to when highlighting disadvantaged or vulnerable groups, it is highly likely that certain groups will not be identified, nor will their needs be accommodated to ensure that they can actively and meaningfully engage in consultations and access project documents. In addition to adding a list in the updated GN for ESS1 (see our recommendation above), the updated GN for ESS10 must also contain the list of marginalized groups from the Directive, among others.

The draft GNs also fail to clarify how a Borrower should conduct stakeholder engagement for projects in which the risks are significant, but only to a small group or subgroup. ESS10 GN4.2 states that, "The level and frequency of stakeholder engagement conducted is proportionate to the risks and impacts of the project." Similarly, ESS10 GN13.4 states that, "the SEP is proportionate to the stakeholder concerns regarding the risks and impacts associated with the project." This guidance leads to many more questions than answers, for example:

- *Is the level and frequency solely dependent on the risk classification of the project?*
- *If there is significant risk on a small group of stakeholders, which is not reflected in the risk classification, does that still mean frequent engagement?*
- *If so, is frequent engagement with all stakeholders required or only the small group to whom the project poses significant risks?*

Such vague and abstract "guidance" increases the possibility that significant risks to individual marginalized groups will not be taken into account in the overall stakeholder engagement processes. The GNs must therefore make clear that certain projects pose significant risks to some groups, for example those who may have compound disadvantages or vulnerabilities--i.e. girls at risk of sexual exploitation or abuse from an influx of labor--but are less risky to other groups such as the elderly. Accordingly, GNs must also make clear "who" it is that Borrowers need to engage throughout the project cycle to ensure significant risks--even if only impacting a smaller group within the larger community--are avoided.

When: Identifying Important Points in the Project Cycle

The updated GNs must provide greater clarity on when stakeholder engagement requirements are triggered in the project cycle, and include examples of how in practical terms these requirements should be applied. For example, ESS10 para. 6 states, “Borrowers will engage with stakeholders throughout the project life-cycle, commencing such engagement as early as possible...and in a timeframe that enables meaningful consultations with stakeholders on project design.” Yet, there is no corresponding guidance on when “as early as possible” should be, or when a “timeframe that enables meaningful consultations” should begin or end. The corresponding guidance note should include examples of timelines for engagement that would allow for meaningful consultation, and how certain marginalized groups may require earlier or more extended engagement based on their specific vulnerabilities or interests.

How: Consulting and Engaging Disadvantaged, Marginalized, or Vulnerable Groups

The updated GNs must include additional clarification, examples, and resources for how to ensure the inclusion of marginalized groups in consultation and engagement processes. Throughout the ESS10 GN, there are references to accommodation and communication needs, but there are no examples provided of what those are, where a Borrower can go to get information about effective techniques for information disclosure, or how to actually support the needs of stakeholders requiring accommodations. As this is a new area not covered by the current safeguard policies, there needs to be explicit instructions to ensure Borrowers know how to do this. The GN for ESS5 includes a useful provision along these lines which should be adopted and expanded upon in ESS10:

“It is important that affected disadvantaged or vulnerable individuals or groups have a voice in consultation and planning processes. This may involve special efforts to include those who are particularly vulnerable to hardship because of physical or economic displacement. Depending on the project context, this may be people living below the poverty line, the landless, the elderly, the disabled, or women- and children-headed households. Community engagement in this case may include dedicated focus groups, and members of disadvantaged or vulnerable groups should be included among the representatives of affected communities. Project-affected vulnerable people may also require assistance to participate in consultation events or discussion forums, for example, through provision of transportation to consultation venues, or visits to individual households for consultation purposes. Affected persons identified as disadvantaged or vulnerable may also need additional help to understand their options for resettlement and compensation” (ESS5 GN17.3).

Other provisions in ESS5 are less helpful, however. For example, GN17.3 references “children-headed households” here, but does not provide guidance on the differentiated measures that are necessary for engaging with children. Given their relative lack of power, greater vulnerability, and issues around their protection, all of the relevant GNs must explain that

engaging with children (as well as youth) will necessarily be different from other marginalized groups. Yet there is also no guidance to para. 16 of ESS10--a key provision in the policy that requires the SEP to address obstacles to participation, and differentiated measures for effective participation, which are important issues when dealing with children. While specific SEPs will differ depending on context, additional guidance must be added here that outlines some of the key principles and actions that go into designing and planning a SEP that includes children, including adhering to the best interests of the child principle,⁶ adopting a child protection policy, obtaining informed consent, addressing confidentiality, and avoiding manipulation.

Clarifying Requirements vs. Good Practice

The GNs must be carefully written to ensure they do not undermine requirements in the policies by reframing the standards with suggestive or permissive language. For example, whether and how to consider and address security concerns of consultation participants as well as those submitting complaints is not clear. ESS10 GN22.1 states that, “Security and accessibility are expected to be considered when designing a consultation program, especially in fragile and conflict situations.” The use of the words “expect” and “consider” here makes it seem as though this is a suggestion rather than an obligation, and the text from the ESS indicates this is to be addressed not just “considered.” The lack of information on how a Borrower should actually fulfill this also implies it is optional and largely subjective.

ESS10 also states that “the Borrower may be required to retain independent third party specialists to assist in the stakeholder identification and analysis” (para. 12), but provides no guidance on when this requirement is triggered. Because of the specialized knowledge and competency required to identify and engage stakeholders that are disadvantaged, marginalized, or vulnerable, guidance for Borrowers must specify that in high-risk projects and projects that pose significant risks to certain marginalized groups or subgroups, they are required to engage independent third party specialists to conduct initial stakeholder analysis, develop the stakeholder engagement plan, and the project level grievance mechanism. Guidance on this topic should also include recommendations for situations where there is risk of retaliation against complainants and critical voices among the community. Accordingly, project risk rating should take into account borrowing government track records on stakeholder engagement.

To ensure marginalized groups have access to remedy in the event they experience harm related to projects, the GNs must also make clear that Borrowers are required to provide information that is accessible to communities about the Inspection Panel.

⁶ See, General comment No. 14, *supra* note 4.

Other Issues Relevant for Disadvantaged or Vulnerable Groups

Resettlement

Disadvantaged, marginalized, or vulnerable groups often disproportionately bear the risks and negative impacts of resettlement programs. Accordingly, the ESS5 Guidance Note must be substantially revised in order to provide the guidance necessary for Borrowers to address the unique impacts of resettlement on each of these groups.

As BIC recommends for ESS1, and ESS10, the ESS5 GN must specifically identify marginalized groups--by listing the groups from the Directive, among others--and provide guidance on incorporating the needs and concerns of each group into the resettlement process. While GN18.1 discusses the “need to consider the situation of women” in resettlement planning processes, and sets out a list of circumstances to be assessed as part of a “comprehensive planning process,” the GN does not address the specific considerations that must be incorporated into the resettlement planning process for other marginalized groups. As an example, some of the additional challenges that people with disabilities face during the resettlement process include: their relationships with family and communities of support for livelihood and well being; the importance of environmental and social accessibility that provides inclusion into the social fabric of the community, neighborhoods, and groups by supporting or permitting access into networks necessary for inclusion; and the need to ensure that resettlement sites provide a barrier-free built environment, educational environment, work environment; and communication devices and accommodations.

Beyond a stand-alone discussion of issues related to specific groups, the draft ESS5 GN does not clarify that the Borrower must design and implement differentiated measures throughout the resettlement process in order to adequately identify and address the impact of resettlement on these groups. For example, GN20.1. should incorporate specific measures to identify and establish baseline information on marginalized groups. These groups, especially persons with disabilities, children, and the elderly, often face additional difficulties to being counted in a census. GN22.1 should ensure that budgets include disaggregated information on entitlements and additional support measures needed. GN23.1 should ensure that Borrowers disaggregate resettlement outcomes, in order to assess the outcomes of resettlement for different categories of marginalized groups. GN27.1 should incorporate adequacy for these groups into its definition of adequate housing, particularly accessibility for persons with disabilities.

In other instances, the draft ESS5 GN indicates the Borrower should examine risks and impacts to marginalized groups, but does not provide specific steps to ensure that the Borrower complies with Bank policy. For example, para. 26 of ESS5 does not articulate how the Borrower might “pay[] particular attention” to “gender aspects and the needs of the poor and the vulnerable” in resettlement plans that involve physical displacement. While GN27.2 states that “[a]dditional measures may be necessary for vulnerable groups during physical relocation, particularly pregnant women, children, the elderly, and the disabled,” it does not provide any examples of the types of additional measures needed for each group. Further, language should

be added that makes clear that additional measures will be (as opposed to “may be”) necessary for children in any physical relocation effort. For example, measures to address children’s safe access to school to ensure the burden of relocation does not disrupt their education.

Labor

The list of ILO conventions in the ESS2 GN is welcome, but the list should be expanded to include other conventions and international standards that are relevant to specific provisions or themes in the GNs, including: the Convention on the Rights of the Child (relevant to, e.g., para. 19 in ESS2), the Convention on the Elimination of All Forms of Discrimination against Women (relevant to, e.g., GN.13.5) and the Convention on the Rights of Persons with Disabilities (relevant to, e.g., GN13.6).

Labor standards take on particular importance when applied to marginalized groups. For example, ESS2 GN17.3 instructs Borrowers to terminate the employment of a child under the minimum age for work, if they are discovered working on the project, “in a responsible manner.” The GN should include an explanation of why the phrase “in a responsible manner” is important—namely, that terminating the employment of a child can have significant consequences for the child and his or her family or dependents, including pushing the child into employment in the informal economy, creating greater risk of exploitation. The provision should also be fleshed out to better explain what “in a responsible manner” means, including that termination should conform with the best interests of the child principle,⁷ and that steps must be taken to ensure the child’s financial condition is not worsened, including through remediation and financial compensation. GN19.2 on hazardous work should also include language on terminating a child “in a responsible manner” and refer back to the further guidance suggested here on how to do so in a way that is consistent with international standards.

Conclusion

The examples and recommendations in this submission represent just some of the changes that need to be made to the draft Guidance Notes to ensure they provide the necessary support for Borrowers in implementing the new ESF. Subjecting detailed guidance to further public scrutiny will not significantly delay the rollout of the new policies, but will ensure that Borrowers receive complete, well-informed advice from the outset. While the policies themselves are important, detailed guidance can make an enormous difference in ensuring that all people are able to benefit from Bank projects, and avoid being harmed by them. We look forward to the opportunity to review and comment on substantially revised drafts of these Guidance Notes.

⁷ See General comment No. 14, *supra* note 4.

Annex: Resources and practical guidance for Borrowers on how to implement the ESF

Assessment

Good practice on assessing risks, designing, and implementing measures against gender-based violence and violence against children in infrastructure projects, World Bank Inspection Panel: <http://ewebapps.worldbank.org/apps/ip/PanelCases/98-Inspection%20Panel%20Investigation%20World%20Report.pdf> (See Annex 2)

Recommendations for preventing sexual exploitation and abuse, World Bank: <http://documents.worldbank.org/curated/en/482251502095751999/pdf/117972-WP-PUBLIC-recommendations.pdf>

Integrating a child focus into poverty and social impact analysis, World Bank and UNICEF: <http://documents.worldbank.org/curated/en/138331468322461599/pdf/665630WP00PUBL020110Layout0FinalPxP.pdf>

Children's rights in impact assessments, The Danish Institute for Human Rights and UNICEF: https://www.unicef.org/csr/css/Children_s_Rights_in_Impact_Assessments_Web_161213.pdf

Integrating child rights in development cooperation, European Union and UNICEF: <https://resourcecentre.savethechildren.net/sites/default/files/documents/child-rights-toolkit-web-links.pdf>

Emerging Lessons Series No. 3: Environmental Assessment, World Bank Inspection Panel: <http://ewebapps.worldbank.org/apps/IP/IPPublications/Emerging%20Lessons%20Series%20No.%203%20-%20Environmental%20Assessment.pdf>

Stakeholder Engagement and Consultation

Emerging Lessons Series No. 4: Consultation, Participation & Disclosure of Information, World Bank Inspection Panel: <http://documents.worldbank.org/curated/en/891651511972161278/pdf/121756-WP-PUBLIC-ADD-SERIES-IPNConsultationReportFinalwebwithlinks.pdf>

Guidance Note on Stakeholder Consultations in Investment Operations, World Bank: <http://documents.worldbank.org/curated/en/830941468323985308/pdf/671210WP00PUBL0ultati ons0Note0web20.pdf>

Guide to improve accessibility for persons with disabilities for inclusive meetings, Handicap International: http://proadiph.org/IMG/pdf/guide_accessibilite_anglais.pdf

Ask me guidelines for effective consultation with people with disabilities, National Disability Authority, Ireland: <http://nda.ie/nda-files/-Ask-Me-Guidelines-for-Effective-Consultation-with-People-with-Disabilities1.pdf>

Guidelines for consulting with children and young people with disabilities, Plan International: <https://plan-international.org/publications/guidelines-consulting-children-and-young-people-disabilities>

A toolkit for monitoring and evaluating children's participation, Save the Children UK : https://resourcecentre.savethechildren.net/node/8107/pdf/me_toolkit_booklet_6.pdf

Information Disclosure

Example of easy to read documents for project-affected communities and stakeholders, Human Rights Watch: https://www.hrw.org/sites/default/files/accessible_document/zambia1017_easyread_web.pdf