

Methodology for Incorporating Human Rights into Social Impact Assessment and Management at Development Finance Institutions

Working Draft - - March 22, 2015

EXPLANATORY NOTES

Purpose: This document is a working draft of a methodology for incorporating human rights into the assessment and management of social risks and impacts in the context of development finance. The methodology is being developed by the Bank on Human Rights Coalition as an advocacy tool for promoting rights-respecting development and policy change within development finance institutions. It is designed to fit within the environmental and social framework of the World Bank, but also to be adaptable by other multilateral development finance institutions, aid agencies, and national development banks.

Scope: The methodology focuses on identification and management of social risks and impacts, including risks and impacts on the realization of human rights. It does not attempt to address necessary measures for the identification and management of environmental risks and impacts. This is not to imply that social and environmental risks and impacts are not interrelated, or that environmental impacts do not have human rights components, or to suggest that social and environmental assessment should be separate processes. Rather, the methodology's focus on social risks and impacts is intended to draw attention to aspects of development that are often overlooked by standard impact assessment policies and processes.

Process: BHRC is presently gathering feedback on this working draft - from Coalition members and allies, as well as other assessment, human rights, and development practitioners and experts – for further development and piloting.

SUMMARY OF METHODOLOGY

All investment operations financed by the World Bank will undergo Social Risk and Opportunities Analysis, conducted by the Bank, which will determine the operation's categorization and required due diligence. The Borrower, with support from the Bank, will be required to conduct a Social Impact Assessment (SIA) for all projects prior to project approval, and at all project stages. The purpose of SIA is to evaluate project alternatives and determine project design in order to maximize and ensure a fair distribution of positive social impacts, avoid human rights abuses, and minimize negative social impacts. This involves anticipating social impacts and the differentiation and distribution of those impacts on different segments of the population, analyzing the significance of those impacts based on scale and irremediability,

and identifying and evaluating mitigation measures. Bank, Borrower, and affected communities will establish a Commitment Plan which will include impact indicators, mitigation plan and timeline, supervision and monitoring plan, and budget. An investment operation will not be eligible for financing if it is likely to cause, contribute to or exacerbate human rights violations. [See Annex I for process overview]

COMPONENTS

- I. HUMAN RIGHTS POLICY COMMITMENT. A policy commitment that the World Bank will respect human rights and take all necessary measures to ensure that the activities it finances or otherwise supports do not cause, contribute to, or exacerbate human rights violations. Prohibition on financing any activity that contravenes the Borrower's obligations under international law.
- II. MITIGATION HIERARCHY. All adverse impacts are to be addressed along the following hierarchy: **Prevent** human rights violations, and **avoid** adverse impacts. Where an adverse impact cannot be avoided, **minimize** or reduce the impact. Where residual impacts remain, **restore** to the original condition or retribute. Where restitution or restoration is not possible, provide other acceptable **remedy**.
- III. SOCIAL IMPACTS DEFINITION. Definition of social impacts includes *inter alia* the following components: 1) direct, indirect, secondary, and cumulative impacts; 2) impacts on the realization or enjoyment of human rights; 3) disproportionate accrual of impacts on different groups due to their experience of marginalization, discrimination or exclusion; and 4) inequitable access to development benefits due to a group's experience of marginalization, discrimination or exclusion.

<<Project Stage: Identification and Screening>>

- IV. SOCIAL RISK AND OPPORTUNITY ANALYSIS [see Annex II]. To be performed by Bank Task Team Leader (TTL) in consultation with Social Specialists, based on information provided by Borrower and additional research by Bank. Purpose = to 1) identify and evaluate project alternatives; 2) inform project risk categorization; 3) identify relevant key issue areas and concerns for further investigation in the SIA; 4) provide input into stakeholder identification for the Stakeholder Engagement Plan; and 5) inform final project clearance at appraisal. The depth of inquiry is subject to available information at this stage.

- A. Organized based on a series of **issue areas**, such as Employment and Labor, Public Health, Indigenous Peoples, and Security.
 - B. Risks and opportunities are measured against a **standard** for each issue area. Each standard is designed not only to prevent human rights violations and other harm, but also to “do good,” supporting the fulfillment of human rights and delivering shared prosperity and sustainable development. The standards are based on human rights norms and best practice among development finance institutions.
 - C. Each issue area has a set of **risk indicator questions** to be answered by the Bank Task Team Leader based on a preliminary investigation. Each risk indicator question contains **resources** for answering the question, such as project documents, EIAs for similar projects, transparency rankings, human rights reports, etc.
 - D. Identify **anticipated social impacts**, drawing from **registry of possible impacts**, and identify **key issue areas/scoping** for SIA.
 - E. **Definition of social impacts** which includes *inter alia*: 1) direct, indirect, secondary, and cumulative impacts; 2) impacts on the realization or enjoyment of human rights; 3) disproportionate accrual of impacts on different groups due to their experience of marginalization, discrimination or exclusion; and 4) inequitable access to development benefits due to a group’s experience of marginalization, discrimination or exclusion.
 - F. Where assessment of a given impact scenario is incomplete or impossible to undertake at the time of analysis, a **precautionary approach** should be applied.
 - G. Identify and evaluate **project alternatives** to prevent human rights abuses and maximize development benefits.
 - H. Identify, evaluate (based on appropriateness, sufficiency, feasibility, and capacity), and prioritize feasible **mitigation measures** to avoid, minimize, restore, and remedy negative social impacts.
 - I. Determine **significance** (in terms of scale and irremediability) of anticipated impacts, including cumulative and residual impacts post-mitigation, in order to determine project risk level, and to prioritize mitigation measures.
 - J. Identify initial estimates of **resource needs** and **timelines** for mitigation measures.
- V. **RISK CATEGORIZATION.** Purpose = To determine 1) whether project falls within acceptable risk levels, and 2) level of due diligence required for risk management. Based on the identified anticipated social impacts, their significance pre- and post- mitigation, as well as the distribution of impacts, projects will be placed under one of the following risk categories:
- A) **Unacceptable Risk:** The project type is on **Exclusion List**;

B) High Risk:

1. The project is likely to have adverse social impacts significant in terms of scale or irreparable character; or
2. Certain social groups likely to be disproportionately adversely affected; or
3. The project type is on **Presumptive High/Substantial Risk List**.

C) Substantial Risk:

1. The project may have adverse social impacts significant in terms of scale or irreparable character; or
2. Certain social groups may be disproportionately adversely affected; or
3. The project type is on the **Presumptive High/Substantial Risk List**.

D) Moderate Risk:

1. The project does not pose risk of adverse social impacts significant in terms of scale or irreparable character;
2. The project may have adverse social impacts, but feasible, appropriate and sufficient avoidance and minimization measures can readily be designed and implemented to prevent these; and
3. Any impacts which cannot be avoided through design alternatives would be readily remediable if they were to occur.

E) Low Risk:

The project poses little or no risk of adverse social impacts.

Categorization at this stage is provisional, subject to additional findings of the SIA.

Presumptive High/Substantial Risk List includes *inter alia*:

- 1) Project/Activity has a high level of complexity, e.g. land reform, closed facilities.
- 2) Project/Activity has a large physical footprint, e.g. extractive industry, highways.
- 3) Project/Activity involves hazardous or dangerous materials
- 4) Potential impacts are difficult to identify and assess at this stage.
- 5) There is a presence of indigenous peoples in, or with a collective attachment to, the project area.
- 6) Project involves land acquisition or physical or economic displacement.
- 7) Project likely to involve significant migration in/out of the project area.
- 8) Any investment in a country and/or sub-national district that has experienced conflict within the past five years. Conflict is defined as (a) violence between population groups, (b) violence committed by the state against civilians or opposition groups, or (c) violence committed by non-state armed groups against civilians.

VI. CONCEPT REVIEW. A report detailing the process and findings of the Social Risk and Opportunities Analysis is reviewed with internal team, including social specialists, regional safeguards unit and development effectiveness staff. A categorization/risk rating is assigned and TOR outlining the scope of SIA is defined. Project risk categorization and SIA TOR must be cleared by Regional Safeguard Advisor in order for project preparation to proceed.

<<Project Stage: Preparation>>

VII. SOCIAL IMPACT ASSESSMENT (SIA). Purpose = to design successful sustainable development projects in concert with potentially affected communities, that prevent human rights violations, avoid and minimize negative impacts, and maximize positive impacts and their fair distribution. SIA utilizes a process of analysis and decisionmaking that 1) evaluates project design alternatives based on potential impacts; 2) evaluates mitigation measures; 3) produces mitigation plan and monitoring and supervision plan; and 4) captures this analysis in a clear, public, transparent document allowing for more effective and participatory implementation and monitoring.

A) Due Diligence **procedural requirements** for all SIAs:

- 1) **SIA TOR** developed by Bank and Borrower based on Social Risk and Opportunities Analysis, to include key issue areas, relevant staffing and expertise needed, including human rights expertise, and methodology for SIA.
- 2) **Consultation of SIA TOR** with stakeholders for High and Substantial Risk projects, as defined in the Stakeholder Engagement Plan.
- 3) **SIA conducted for all projects or programs, during each stage** of the project cycle and upon any major change in project or context. Depth and scope is commensurate and proportional to the potential risks and impacts of the project/program and its risk classification assigned by the Bank.
- 4) **Meaningful and continuous participation** of affected community, including marginalized individuals and groups, and civil society organizations working with the community. Including through provision of capacity-building and independent legal/expert advice.
- 5) **Access to information** in understandable language/format on project/program, partners, location, alternatives, risks, benefits and their likelihood, and relevant rights under national and international law.
- 6) **Records input of project-affected communities** and marginalized individuals and groups and how it was incorporated, or why it was not incorporated.
- 7) **Bank supports and reviews SIA**, including through regular site visits by TTL and Social Specialists. Categorization is reviewed by Bank every 6 months during construction, and annually during implementation. Any downgrading of categorization requires approval by Regional Safeguards Advisor and Board.

Additional due diligence required for Substantial Risk projects:

- Provision for SIA verification by Independent Panel of Social Experts, including human rights experts where appropriate.
- On-going independent monitoring.
- Monitoring and reporting directly to World Bank Board.
- Plan for more frequent site visits by Social Specialists during implementation.
- Affected community is encouraged to undertake its own, community-led impact assessment.

Additional due diligence required for High Risk projects:

- Publish SIA in draft form with consultation 120 days before appraisal mission.
- Provision for SIA verification by Independent Panel of Social Experts, including human rights experts where appropriate.
- On-going independent monitoring.
- Monitoring and reporting directly to World Bank Board.
- Plan for more frequent site visits by Social Specialists during implementation.
- Affected community is encouraged to undertake its own, community-led impact assessment.
- Independent funding is provided, e.g. through a trust fund, for community-led assessment, if requested.

B) Substantive requirements for all SIAs [See Annex II]:

- 1) **Project Purpose** and Description.
- 2) **Analysis** of how project will contribute to **poverty reduction and shared prosperity**.
- 3) **Study area** will reflect the project's entire *area of influence*, including areas and communities likely to be affected by cumulative impacts; assets or facilities and or associated works directly owned or managed by the borrower and an integral part of the main project intervention; supporting/enabling activities, assets or facilities, supply chains or project procurement; associated facilities not funded as part of the project but that are required for the successful operation of the project; areas and communities potentially affected by impacts from unplanned but predictable developments caused, contributed to, or induced by the project that may occur later or at a different location.
- 4) **Gap analysis of legal and institutional framework, capacity, and enforcement**, including gaps between national law and practice versus obligations under international law.

- 5) **Stakeholder Engagement Plan**, including comprehensive and context-specific stakeholder and rights-holder identification and analysis conducted in consultation with Bank and stakeholders. Includes identification of individuals and communities actually and potentially impacted by the project, in particular groups which may be more vulnerable to specific impacts, as well as other relevant stakeholders, and the specific, particular and differentiated impacts that the project may have on each of these groups. Additionally includes plan for consultation and engagement.
- 6) Relevant **socioeconomic history and context**, including discrimination and inclusion, and other human rights issues, and conflict analysis where relevant.
- 7) **Baseline assessment**, including level of rights-enjoyment of affected population, disaggregated.
- 8) Description of the **potential positive and negative social impacts** (direct, indirect, secondary, cumulative) of the project, including impact on poverty reduction and shared prosperity, disaggregated according to vulnerability. This is a narrative account of where, when, why, and how the particular impact would be envisaged to transpire, develop, play-out, and the specific group(s) of people that stand to be impacted, with particular reference to any social group(s) that may be especially vulnerable to the impact at hand, by virtue of their disproportionate exposure to the impact, sensitivity to the impact, or limitations on their ability to respond, recover and/or adapt to the impact.
- 9) Impacts are drawn from **registry of possible impacts**, refined based on **key issue areas/scoping** identified from Social Risks and Opportunities Analysis, and from outcome of **consultations**.
- 10) Anticipated impacts are measured against a **standard** for each issue area. Each standard is designed not only to prevent human rights violations and other harm, but also to “do good,” supporting the fulfillment of human rights and delivering shared prosperity and sustainable development. The standards are based on human rights norms and best practice among development finance institutions.
- 11) Each issue area has a set of **risk indicator questions**. Each risk indicator question contains **resources** for answering the question, such as project documents, EIAs for similar projects, transparency rankings, human rights reports, etc.
- 12) **Definition of social impacts** includes *inter alia* the following key factors: 1) direct, indirect, secondary, and cumulative impacts; 2) impacts on the realization or enjoyment of human rights; 3) disproportionate accrual of impacts on different groups due to their experience of marginalization, discrimination or exclusion; and 4)

- inequitable access to development benefits due to a group's experience of marginalization, discrimination or exclusion.
- 13) Where assessment of a given impact scenario is incomplete or impossible to undertake at the time of analysis, a **precautionary approach** should be applied.
 - 14) **Assessment of the significance** of each of the identified impacts based on scale and irremediability, for the purpose of prioritizing mitigations measures.
 - 15) Description of all plausible **alternatives** that may avoid human rights violations, avoid and minimize potential adverse social impacts, and maximize and ensure fairest distribution of positive social impacts.
 - 16) Description, **evaluation and justification of the choice of mitigation measures** (probability of measure being effective, based on prioritization, appropriateness, sufficiency, feasibility, capability) proposed to avoid, minimize and – where necessary – remedy each of the anticipated adverse social impacts, including necessary **mitigation resources and timeline** for implementation.
 - 17) Assessment of the **significance of any residual impacts** anticipated to persist or occur after the implementation of the avoidance and minimization elements of the proposed mitigation hierarchy commensurate to each identified impact.
 - 18) Identification of **impact indicators**, for both positive and negative impacts.
 - 19) **Monitoring and supervision** measures and timeline for Borrower and Bank.
 - 20) **Participatory monitoring** measures and timeline for community.
 - 21) Plan for appropriate **grievance mechanisms**.

VIII. ENVIRONMENTAL AND SOCIAL COMMITMENT PLAN. Jointly agreed upon by Borrower, Bank, and affected community. Purpose = to provide a comprehensive and collaborative project framework for Bank, Borrower and affected communities to effectively manage social risk and maximize sustainable development results in participative, transparent, and rights-respecting manner. Funding disbursement is appropriately pegged to successful completion of each stage of the Commitment Plan. No high or substantial risk activities are eligible for deferral of appraisal or compliance timing past board approval (e.g. borrower frameworks, financial intermediaries, common approach agreements etc). Commitment Plan includes the following:

- A) Project design;
- B) Project implementation plans, measures, budgets and timelines, including Indigenous Peoples Plan, Resettlement Action Plan, Benefit-Sharing agreements, etc;
- C) Mitigation measures and timeline;
- D) Indicative budget for all Commitment Plan actions;
- E) Responsible parties for each action;

- F) Impact indicators;
- G) Time-bound supervision, participatory monitoring and reporting plans;
- H) Time-bound Stakeholder Engagement Plan; and
- I) Remedies for non-compliance by specified timeline.

<<Project Stage: Appraisal and Approval>>

IX. SOCIAL ELIGIBILITY REVIEW. Purpose = to determine eligibility for financing. Bank will determine eligibility for financing based on whether the following criteria are met:

- A) Project has shown it will contribute to **poverty reduction and shared prosperity**;
- B) Where relevant, project has demonstrated third-party verified **free, prior and informed consent** of Indigenous Peoples, **Broad Community Support** of affected communities, and **general welfare/public interest threshold** for involuntary resettlement;
- C) SIA meets **substantive and procedural requirements** above;
- D) Categorization and SIA are consistent with/have been **confirmed by input from affected communities**;
- E) Project **does not pose unacceptable risk**; and
- F) Any **significant adverse social impacts are addressed** by avoidance or minimization measures.

X. APPRAISAL REVIEW. Content and process of completed SIA are assessed by Regional Safeguard Advisor. Approval required in order to proceed to consideration by the Board.

<<Project Stage: Implementation>>

XI. IMPLEMENTATION/MONITORING AND SUPERVISION. Purpose = Delivery of sustainable development results and management of social risks and impacts.

- A) SIA will be revisited/updated by Borrower in consultation with project-affected communities (as specified in the Stakeholder Engagement Plan) at each stage of implementation - construction, operation, rehabilitation or decommissioning – and upon any major changes in project design or context, including any additional financing, and quarterly during implementation.
- B) In-country personnel will inform TTL and social specialists of any significant changes in the project or the general context that might affect the social impacts of the project.
- C) Bank will review SIA updates and perform necessary site visits to monitor project implementation, mitigation, and social impacts.
- D) Affected communities will be engaged in participatory monitoring.
- E) High and substantial risk projects will utilize independent monitoring with reporting directly to Board.

- F) Reporting of Commitment Plan implementation, including SIA related activities, shall include primary source evidence as well as verified performance indicators.
- G) Where actual impacts, mitigation measures, and residual impacts do not match those anticipated in the SIA, or impact indicators are not met, the SIA will be updated and implementation and mitigation plans will be adjusted to ensure that sustainable development impacts are maximized and negative impacts are avoided and minimized. If the SIA cannot be adjusted to satisfactorily address impacts, compliance remedies, including funding termination, will be employed.

<<Project Stage: Evaluation>>

XII. MIDTERM AND COMPLETION REPORTS will be drafted by the Bank and Borrower in consultation with affected communities. Funding disbursement will be linked to realization of impact indicators.

XIII. TRANSPARENCY. Social Risk and Opportunities Analysis, Categorization, SIA, Indigenous peoples Plan, Resettlement Plan, and other Plans, and Commitment Plan will be disclosed to the public and potentially affected communities in a language and form accessible to those communities, as TORs prior to project preparation and as full completed drafts prior to project approval (120 days prior for high and substantial risk projects), and whenever updated. On-going monitoring, Midterm and Completion Reports will be disclosed to the public and affected communities.