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Use of Country Systems

Acceptability Analysis

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Acronyms

EIA Environmental Impact Assessment

IDB Inter-American Development Bank

NGO Non-Governmental Organization

RAP Resettlement Action Plan

1. INTRODUCTION

The results of the analysis of equivalence of a country safeguards system provide the foundation and starting point for the analysis of that system's acceptability in two respects, both of which are evident in the implementation guidelines for IDB (Inter-American Development Bank) Policy Directive B.16:

Following the equivalence analysis, which focuses on the existence of legal instruments, the acceptability analysis focuses on implementation practices, track record, and capacity of relevant country institutions to implement, enforce, and apply the safeguard principles mentioned above. The Bank is developing a detailed guidance document that will present a methodology to analyze and address capacity assessment of borrowers.¹

First, the reference to “the safeguards principles mentioned above” is to those aspects of the country system that were found to be equivalent or to have gaps in equivalence that can be bridged before the borrower undertakes the execution of relevant operational activities. In other words, the acceptability analysis is normally undertaken only for the safeguards for which the findings of equivalence have been positive – i.e., either no gaps between the safeguard and the corresponding IDB policy, or gaps that can be bridged during preparation or implementation of the proposed operation. Second, the acceptability analysis is concerned primarily with the capacity and performance of the various institutions charged with the responsibility for implementing the country safeguards system, and these institutions are identified in the legal instruments that were considered in the equivalence assessment.

Policy Directive B.16 makes it clear that the Bank will be responsible for determining acceptability. The implementation guidelines specify that an environmental specialist in the project team must be assigned that function.² The purpose of this part of the technical note is to provide the specialist with detailed guidance and advice on how to carry it out.

2. THE DEFINITION OF ACCEPTABILITY

Acceptability analysis encompasses performance and capacity. Performance can be divided into three elements – reliability of application, compliance of processes, and effectiveness of

¹ Quiroga, R. and J. Milewski, 2007. *Implementation Guidelines for the Environment and Safeguards Compliance Policy*. Inter-American Development Bank (Publication ENV-151), p. 59.

² *Ibid.*

outcomes. Reliability is achieved when the safeguard concerned is applied without exception to all undertakings to which it is applicable. A safeguard process is compliant when the involved institutions have in place procedures for carrying out their assigned functions and produce outputs (safeguards instruments) that are satisfactory when measured against the requirements in the equivalent safeguard. Effectiveness of outcomes is measured on the ground: were the potential impacts predicted in an EIA (Environmental Impact Assessment) successfully avoided or mitigated? Did unforeseen impacts occur, and if so, how well did the executing and regulatory agencies respond? Have displaced people attained living standards at least equivalent to pre-resettlement levels? Are health, safety and environmental standards being achieved at the project site and in surrounding communities? Are stakeholders satisfied with the level of communication and consultation from the proponent? Are regulators enforcing and proponents following reporting requirements?

Capacity underlies all aspects of performance to some extent but is also a measure of acceptability in its own right. The specialist analyzing this aspect of acceptability will assess for each relevant institution whether it has the human, technical and financial resources to carry out the functions assigned to it in the country safeguards system.

3. ACCEPTABILITY IS A CONTINUUM

Implementation of each safeguard that has been found to be equivalent to IDB policy may be rated fully acceptable, partially acceptable, or not acceptable. A determination of *fully acceptable* implies that the relevant agencies and other actors have adequate capacity to implement the safeguards and that their record of performance demonstrates reliable application, compliant processes, and effective outcomes. The country system can then be applied with little or no gap-filling. At the other end of the continuum is the determination of *not acceptable*, which is reached when there are gaps in capacity of one or more agencies that prevent or seriously constrain implementation of the safeguard and/or a track record of shortfalls in implementation too serious to be resolved within the timeframe for project preparation or early stages of implementation. In this case, the Implementation Guidelines dictate that the Bank's safeguard will apply. However, good practice calls for the Bank to work with the borrower on a strategy to facilitate use of country systems in a subsequent operation, if the borrower is interested in making the effort.

In practice, it is frequently the case that implementation will be found to be *partially acceptable*. Gaps exist, but they can realistically be bridged. Depending on the nature of the gap, gap-filling activities may include any or all of:

- Actions that must be carried out during project preparation or prior to effectiveness;
- Actions that can be included in an action plan that provides for gap-filling during project implementation but before the borrower undertakes execution of the relevant operational activities; and
- Actions to ensure that acceptability that has already been achieved, or will be achieved as part of the gap-filling action plan, is sustainable in the long term.³

4. TARGET INSTITUTIONS

Some elements of acceptability analysis can be carried out where safeguards are enforced, whether that is at the national or state/provincial levels, or both. To the extent that this is appropriate and possible, it provides the additional benefit of producing results that will be applicable across more than one project, in more than one sector. Similarly, results of acceptability analysis of sectoral institutions can be extended to additional projects in the same sectors. Inevitably, though, some of the acceptability analysis has to be performed at the level of the developer or executing agency and thus will be project-specific. It is useful prior to beginning the analysis of acceptability with an institutional matrix, using information from the analysis of equivalence – i.e., the institutions charged with administering the laws and regulations of the country system and those responsible for complying with them – and from the project description.

National institutions responsible for implementing country environmental and social safeguards systems may include any or all of the following:⁴

- Ministry or Department of Environment, sometimes combined with other portfolios such as tourism, energy, natural resources, water, that sets national policy and standards; often issues and enforces environmental approvals for development projects

³ By way of explanation, there are cases when it is expedient to fill a gap during project preparation by inserting a provision in the loan agreement. As an example, a borrower could be required to engage a consultant to monitor implementation of resettlement plans. This would be a short-term resolution of a gap in capacity. To sustain acceptability over the long-term, the borrower's action plan would call for recruitment of a staff member, with adequate budget and training, to replace the consultant.

⁴ The requirements of international conventions and treaties are normally enshrined in national legislation and managed by national agencies, hence encompassed in the analysis at the national level. In rare cases, there are international bodies that have safeguards requirements, such as multi-country river basin authorities or regional economic cooperation associations that also need to be considered in analysis of country systems.

- Environmental Protection Agency or similar body that is sometimes established in addition to or instead of the ministry or department and is charged with enforcing compliance with environmental standards and management plans, management of hazardous waste, etc.
- Lands Commission, Ministry of Lands, or the equivalent, that sets policy and procedures for land acquisition and resettlement
- National Parks Department, Wildlife Management Commission, or similar agency that oversees protected area and natural habitat management
- Ministry of Agriculture, if it has the responsibility for regulation of pesticide imports and use and for implementation of integrated pest management
- Ministry of Industry, if it has the responsibility for pollution prevention
- Ministry of Cultural Affairs or similar body that sets policy regarding indigenous peoples and oversees the protection of their rights
- Ministry of Antiquities, or comparable agency (if separate from Ministry of Cultural Affairs), and/or National Archaeological Museum
- Line ministries or agencies that oversee or execute projects in sectors typically supported by IDB (if the intent is to make the national-level analysis as broad as possible) or in the sector of the proposed IDB-supported project.

Sub-national institutions are important in many countries. In some cases, such as in Argentina, they have the lead role in enforcement of country safeguards for all projects. In others, such as Brazil, the responsibility is shared; certain projects are within the purview of the state or provincial agencies because of type, location, or scale, while others are overseen by the national agency. Agencies of local government may also have a significant role. Responsibilities may be similarly divided among levels of government in the individual sectors. In the case of land acquisition and particularly expropriation for public projects, it is often the case that local government has the primary responsibility. Sub-national institutions do not need to be enumerated here, as they typically mirror the organizations at the national level, but they should be included in the institutional matrix.

Project executing agencies are normally responsible for the preparation of environmental and social assessments, resettlement action plans, and other safeguards

instruments, and for the implementation and monitoring of the recommendations and management plans that are contained in them. They include:

- Line ministries or agencies at the national and sub-national levels
- Local governments
- Special-purpose government agencies, such as airport or port authorities, irrigation management districts, river basin commissions, public housing authorities
- Parastatal entities, such as national or sub-national power or water utilities
- Private sector companies

News Media and NGOs (Non-Governmental Organizations) should be included in the analysis. Well-functioning media and competent NGOs have historically played significant roles in promoting the establishment and functioning of effective country systems. In some countries, NGOs have an official role in environmental assessment; some environmental laws require that technical review committees for EIAs include NGOs, and the list of stakeholders with which EIA preparers must consult usually includes NGOs. One parastatal electric utility engages an NGO as an independent monitor and auditor of EMP implementation. NGOs have assisted in resettlement activities, serving for example as third party witnesses to payments of compensation. Often, NGOs are best placed to communicate with indigenous peoples affected by development projects. Media and NGOs should not be neglected in the analysis of acceptability.

5. METHODOLOGY FOR ASSESSING PERFORMANCE

Throughout the process of gathering information on acceptability, it is important not only to find out what the current situation is but also to identify proposed, planned, or ongoing actions to improve performance. This information will be useful when it becomes time to prepare the gap-filling plan.

5.1 Assessing Reliability of Safeguards Application

The reliability aspect of performance is most relevant to regulatory and licensing authorities. In many countries, specific types of projects are exempted from compliance with environmental impact assessment requirements; disaster relief and national defense activities are typical. Whether or not the official exemptions are appropriate is a question for the analysis of

equivalence. The analysis of acceptability is concerned with the extent to which all types of projects not officially exempted in the safeguards laws or regulations are subjected to the requirements of the country system. Examples of failures in reliability include situations in which environmental agencies are able to enforce safeguards on projects of private developers but not on those of other government agencies, or in which individual project proponents are able to evade safeguards requirements through political influence or corrupt practice. Widespread reliability problems may be an indicator of a culture of non-compliance, in which development projects are permitted to proceed prior to safeguards approval, or a lack of political will or political support at high government levels for enforcement of safeguards, any of which can be major impediments to the achievement of acceptability.

Low reliability may also be caused by lack of capacity. Shortages of staff to review EIAs and other instruments can affect reliability in two ways. Large backlogs of documents can cause reviewing agencies to make cursory reviews or no reviews at all. In addition, many environmental assessment laws specify a review period, at the end of which an EIA is automatically approved if the reviewing authority has not acted on it. In either case, the result is that some projects are not subjected to a proper level of environmental and social due diligence.

The most obvious sources of information on reliability are the regulatory authorities themselves, primarily the environmental ministry or agency and its counterparts dealing with land and indigenous peoples, cultural resources, pesticides, etc. They will know, for example, if projects in certain sectors are being licensed to proceed prior to or altogether without safeguards approval. They may speak candidly about pressure from higher authority or politicians to grant approvals for projects that have not fully met safeguards requirements. However, it is not sufficient to consult with only them. Economic development and planning agencies see a wide variety of projects in different sectors and should be asked about reliability of safeguards application. Sources outside the government should also be consulted. Reputable attorneys and environmental and social impact management consultants that work with project developers will certainly have views on this subject. Professional associations can be the most efficient way to contact them. National environmental and social development NGOs will certainly have opinions; they can perhaps identify the project types or sectors and the estimated numbers or percentage that escape safeguards requirements and comment on sources of interference that

degrade the integrity of safeguards processes. The experiences of bilateral and other multi-lateral development finance agencies may also be informative.

5.2 Assessing Compliance of Process

In this phase of acceptability analysis, IDB examines both process and outputs. Executing agencies as well as sectoral and regulatory agencies normally have in place formal and informal procedures for putting into practice the legal requirements of country safeguards. They often have published guidelines to facilitate compliance with the legal instruments. How detailed these guidelines are depends in part on the extent to which the laws and regulations themselves define the processes and procedures – something that will have been covered in the analysis of equivalence. When looking at guidelines and similar instruments that are neither laws nor regulations, the boundary between analysis of equivalence and analysis of acceptability may not be a sharp one. Here are two typical situations.

- The national environmental management law requires environmental assessments, defines in general the content of an EIA and the relationship of the EIA preparation and review process to project planning and approval, and specifies certain categories of projects for which EIA is mandatory. The environmental agency issues regulations to implement the law defining the process for initiating and conducting, reviewing and approving the EIA, and specifying lesser environmental studies for lower-risk projects that do not require full EIA. All of this material is reviewed by IDB, and the country EA system is deemed equivalent. The environmental agency also issued internal guidelines for EIA review, sectoral guidelines to assist project proponents in preparing EIA in various sectors, and templates for documents with which proponents notify the agency of intended projects and submit preliminary environmental and social information for screening purposes. Certain ministries, for public works, energy, and transportation, for example, also issued guidelines for preparation of lower-level environmental studies. IDB would take up the various guidelines in the analysis of acceptability. Some of its findings would apply nationally while others such as the guidelines of the line ministries would apply only to projects in the respective sectors.
- The national lands act authorizes expropriation of property for public purposes, establishes the rights of property owners, and defines due process. The analysis of

equivalence determines that the country system is equivalent to IDB's resettlement policy with one exception – no rights are recognized for illegal occupants of the land to be acquired. The proponent, a national electric utility, has a corporate policy on land acquisition and step-by-step guidelines for the acquisition process. The policy requires the utility to provide resettlement assistance to illegal occupants. In this instance, the existence of the policy may be accepted as filling the gap in equivalence, but only for projects executed by the electric utility. The step-by-step guidelines would be examined in the analysis of acceptability in order to determine whether they would lead to a land acquisition process that complies with the lands act and the corporate policy, but they might also be considered in the analysis of equivalence as part of the complete set of instruments governing land acquisition.

The basic questions when examining processes, procedures and guidelines are: (i) the extent to which they are consistent with the legal requirements; (ii) whether they are implemented in ways that lead to achievement of the objectives of those legal requirements; and (iii) how coherent, efficient, and transparent they are. Interviews with “consumers” both within the agencies and outside (project developers, NGOs) will be the best source of this information.

The second part of this phase of the analysis of acceptability concerns outputs. IDB will determine whether project proponents and their consultants prepare safeguards instruments of satisfactory quality, whether approving authorities conduct competent reviews, whether the licenses or permits are only issued after agencies wait for environmental approval before allowing projects to proceed, and whether parties carry out and document the required public disclosure and stakeholder consultations. These determinations should be based on review of a sample of safeguards instruments and related reviews and approvals. Ordinarily, two to four instruments of each relevant type is sufficient. Whether the instruments are all from projects executed by a single entity or are from projects in one sector that may be executed by different agencies depends on the design of the IDB operation.

The review will be most fruitful if it covers the entire chain of outputs for each project in the sample. The first step in accomplishing this is to list the outputs that should be available if the project has properly complied with the country system. For example, the outputs for a large infrastructure project could include the following:

- Notification, project brief or initial environmental evaluation submitted to the regulatory agency for screening
- Determination by the regulatory agency that a full EIA is required
- Terms of reference for the EIA for review by the regulatory agency
- Agency comments and approval of the terms of reference
- Draft EIA
- Regulatory comments on the draft
- Final EIA
- Resettlement action plan
- Mitigation framework for impacts on indigenous peoples
- Evidence of required public disclosures and consultations

If some of the items in the list for a project cannot be found, it will indicate either a process that has not been fully compliant or the existence of shortcomings in data management, either of which have implications for acceptability.

The reviewers should apply professional judgment in assessing the quality of documents but should also recognize that the requirements the documents must meet are those of the elements of the country safeguards system that IDB has determined to be equivalent, not those of IDB. In this respect, it is of the utmost importance that the sample of projects selected for document reviews includes operations in the relevant sector(s) and by the relevant agencies that are not donor-financed; the quality of safeguards outputs produced when there is no multilateral or bilateral agency involved is the true test of acceptable implementation of the country system.

5.3 Assessing Effectiveness

There are two fundamental questions to be answered: are the executing agencies implementing the recommendations and action plans in the safeguards instruments, and does their implementation result in avoidance or adequate mitigation of potential adverse environmental and social impacts? A related question concerns the performance of the regulatory agencies that are responsible for overseeing compliance with the country system; do they enforce the reporting requirements the system imposes on the executing agency, and are they sufficiently active in field monitoring of the projects? The recommended approach for the acceptability analysis is to use the same projects for which the safeguards instruments were reviewed in the previous step

and to rely on two main sources of information – the monitoring and audit reports required under the country system, and visits to the sites.

In examining reports, IDB should first verify that reporting requirements are being followed and, second, use the reports to assess the outcomes of implementation of safeguards in the project. Examples of the reports to be obtained and reviewed are: routine environmental monitoring, implementation of environmental management plans and resettlement action plans, accident or incident reports, and, if the project is sufficiently advanced, third party audits of environmental outcomes or of restoration of the livelihoods of displaced persons.

Site visits should include some or all of the following, as appropriate:

- Verification that the environmental and social management plan and related documents are available on-site and that staff assigned to manage environmental and social issues are familiar with them.
- Visual inspection for environmental impacts and for evidence of implementation of impact management measures;
- Visual inspection of resettlement communities;
- Discussion with affected communities to assess adequacy of disclosure and consultation during preparation and implementation of the project, level of satisfaction with impact management, adequacy of grievance procedures, suitability of handling of cultural property;
- Discussion with displaced persons to assess effectiveness and transparency of implementation of resettlement action plans, land acquisition process, adequacy of compensation, restoration of livelihoods;
 - Discussion with indigenous people on their satisfaction with consultation and awareness activities and quality of implementation of peoples' mitigation frameworks;
- Review of monitoring reports and audits, for content and for compliance with reporting requirements in permits and environmental and social safeguards instruments;
- Discussion with NGOs that have been involved with the project, if any, to obtain their opinions on effectiveness of safeguards; and

- Discussion with implementing agency staff, to obtain their views on both the success of safeguards implementation and the performance of regulatory agencies in monitoring the project.

6. METHODOLOGY FOR ANALYSIS OF CAPACITY

Acceptable capacity is fundamental to acceptable performance, and there will inevitably be some overlap in the analysis of these two aspects of acceptability. At the national and sub-national levels, IDB will be analyzing the capacities of the regulatory agencies involved with the elements of the country safeguards that have been found to be equivalent – some or all of the agencies listed on page 3 – as well as relevant line ministries. The team conducting the analysis will collect the following information for each agency:

- Date the agency was established (pertinent for environmental agencies, which often are relatively new);
- General organizational chart, showing where safeguards functions fit in the overall structure;
- Detailed organizational chart for the safeguards functions, in both central and regional offices;
- Job descriptions for key personnel with safeguards duties, showing roles, responsibilities and authorities;
- Staffing, including total numbers for the agency and numbers, levels and specializations of staff assigned to safeguards, in central and regional offices;
- Annual budget for the agency and budget allocated to safeguards functions;
- Other safeguards resources, such as laboratories, vehicles, management information systems, libraries, repositories for artifacts, databases for hazardous materials, public information centers and websites;
- Staff training programs;
- Description of the agency decision-making process *vis-à-vis* safeguards;
- Internal guidelines, rules or procedures to assist staff in carrying out their functions in a consistent and effective manner; and
- Measures of performance that will assist IDB in determining whether there are gaps in capacity, such as the backlog of safeguards document reviews, the average time required

for reviews and approvals, the frequency of site visits broken down by project type and environmental assessment category, the number of monitoring reports received and the number reviewed, the response time when called upon for assistance at a project site, e.g., for a chance find of artifacts or an accidental chemical spill.

The IDB analysts will review the information collected and, as there are few criteria that can be applied, will need to rely heavily on professional judgment. However, they will also want to make use of three other sources of capacity analysis. One is agency management; officials are normally quite open in identifying areas in which they need more resources to support their safeguards functions. A second is the environmental and social development NGO community, which will almost certainly have opinions as to whether the agencies have sufficient capacity. The third is the executing agencies, which will be able to provide information from their viewpoint on such aspects of safeguards administration as the time required to obtain approvals, the skills and knowledge of the agency personnel they deal with, and the response time for requests they have made, all of which will shed some light on agency capacity.

Having collected the information, the analyst will need to use it to make judgments on a number of aspects of capacity:

- Does the agency have the necessary authority to carry out its mandates?
- Is the institutional structure adequate to support its mandates and functions?
- Is technically competent management staff allocated to appropriate organizational units within the organization, including headquarters and field offices?
- Is there sufficient continuity of personnel to develop and maintain institutional knowledge?
- Does the institution have access to independent technical experts when necessary to supplement its in-house expertise?
- Does the institution have access to legal counsel regarding its critical mandates?
- Does the institution have adequate equipment and mobility to support its functions in an independent manner?

In the case of an executing agency or project developer, the analysis of capacity covers many of the same topics:

- General organizational chart, showing where safeguards functions fit in the overall structure;

- Detailed organizational chart for the safeguards functions, in both central and regional offices;
- Job descriptions for key personnel with safeguards duties, showing roles, responsibilities and authorities;
- Numbers, levels and specializations of staff assigned to safeguards;
- Annual budget for the agency and budget allocated to safeguards functions;
- Other safeguards resources, such as laboratories, vehicles, management information systems, public information center and website;
- Staff training programs;
- Internal guidelines, rules or procedures to assist staff in carrying out their functions in a consistent and effective manner; and

If the executing agency is a line ministry, a large parastatal utility or similar organization that will be implementing multiple projects in its sector, it would normally already have established safeguards capacity. In that case, the types of information identified for national agencies should be collected and analyzed. If, on the other hand, IDB is conducting the analysis on a single project developer or a single implementing agency, the shorter list above will be appropriate. Since it is often the case in IDB-supported projects that the executing agency requires some capacity-building as part of the lending operation for implementation of safeguards, the analysis does not differ much from the capacity assessment that would be performed as part of an EIA or a RAP. Some of the safeguards capacity will likely be being established specifically for the project. Some of it may be obtained from consultants, where skilled staff cannot be engaged in a timely manner, or where the need is temporary. In such cases, the issue of sustained capacity during project operation is particularly pertinent.

7. PRESENTATION OF RESULTS

Findings. The results of the analysis of acceptability do not lend themselves readily to presentation in a matrix such as the one that is used for equivalence. Possible exceptions are the findings of the review of outputs and outcomes, which may be able to be summarized in matrix form. Unavoidably, though, the diagnostic report will need to rely heavily on narrative. Several options exist for organizing the presentation of the findings. One is by agency, with performance and capacity discussed for each. When the analysis has covered many agencies, this may be the

most manageable approach. A second, workable when there are not too many agencies, is by category of acceptability; a section on performance would have subsections for each of the agencies, and a separate section on capacity would cover that topic in subsections for each agency.

Strengths and Weaknesses. In either case, it is useful to follow the presentation of findings with a “strengths and weaknesses” section because it performs two useful functions. It is an opportunity to highlight the positive aspects of acceptability in implementing the country system, giving credit to the client country for what it is doing well and thereby avoiding some or all of the criticism that has been leveled at the review process as being inflexible, Bank-centric, and focused on shortcomings. It is also an opportunity for the analyst to pull together in one place what needs to be addressed in gap-filling.

Current and Proposed Measures to Improve Acceptability. It has been a common experience in analyses of acceptability conducted by the World Bank that client countries have already recognized some or perhaps all of the gaps between their country systems and international norms. They may have activities underway to bridge these gaps. There should be a third section in the presentation of findings that covers this information. Failing to include it in the report leads to criticisms that the analysis is, again, Bank-centric and focused on the negative, but also prescriptive – i.e., that the Bank only recognizes its own recommendations for improvement in acceptability.

8. GAP ANALYSIS AND ACTION PLAN

The three sections on findings just described set the stage for development of a gap-filling action plan. The process should begin with the identification of all of the gaps that would need to be remedied to achieve acceptable implementation of each element of the country system for which equivalence has been or will be established. Each gap should be characterized in terms of the appropriate timing for gap filling – prior to Board approval, prior to effectiveness, during implementation prior to relevant project activities, or in the longer term to sustain acceptability.

Whereas most of the analytical work to this point will have been accomplished by IDB staff or consultants to IDB, formulation of the gap-filling action plan is best accomplished in consultation with the client. There are two main reasons for this recommendation. First, the client will need to agree to the action plan prior to Board approval, and agreement will be

facilitated by participation in the planning. Second, the client's judgment will be important in determining whether gap-filling actions IDB might suggest are politically, financially, or technically feasible. Once agreed, the action plan should be presented as the last part of the diagnostic report, in matrix format with columns for identification of the gap, description of the gap-filling action, institutional responsibility for the action, required timing for completion of the action (as discussed in the preceding paragraph) and expected completion date.