

Brazil ES Overview Assessment: Strengthening Borrower's Capacity & Systems

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ABSTRACT

Intending to evolve and look for better ways to respond to global challenges, the World Bank is in the midst of a lively process of updating its vision and mission: to end extreme poverty and boost shared prosperity on a livable planet. At the heart of the Bank's Environmental and Social Framework (ESF), is the constant effort to strengthen borrower ES frameworks and institutional capacity for ES risk management (ESRM). In this context, the ES Overview Assessment is being developed, a project that sought to systematically evaluate all ESF requirements, in light of the Brazilian legal framework, to assess the degree to which the application of the latter would bring materially consistent results to those expected by the ESF. To this end, a structured comparative methodology was developed which resulted in the degree of material consistency between the two frameworks and, importantly, identified short/medium/longer term opportunities for strengthening ES framework at the national/sub-national level. Measures were defined to be adopted during projects' preparation, in order to align with and/or complement legislation requirements, and thus enable the projects' ESRM to achieve the ESF's objectives as far as possible through the country's systems, contributing to its strengthening, creation of internal capacities, and knowledge sharing. The resulting set of tip-sheet notes is intended to serve as a decision-support toolkit for the borrowers to better design and coordinate projects' ES compliance strategy, and, above all, promote more sustainable and resilient projects.

KEYWORDS: environmental and social risk management, decision-support toolkit

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1. BACKGROUND

The World Bank Group works in every major area of development, and provides a wide array of financial products and technical assistance, and helps countries share and apply innovative knowledge and solutions to the challenges they face. Since 1947, the World Bank has funded over 12,000 development projects, via traditional loans, interest-free credits, and grants. The WBG is comprised of five institutions (IBRD, IDA, IFC, MIGA and ICSID) working for sustainable solutions to reduce poverty and build shared prosperity in developing countries.

When providing governments with financing to invest in projects — such as building a road, connecting people to electricity, or treating waste water — the World Bank aims to ensure that the people and the environment are protected from potential adverse impacts. This is done through policies that identify, avoid, and minimize harm to people and the environment. These policies require the borrowing governments to address certain environmental and social risks in order to receive World Bank support for investment projects, acknowledging that including environmental and social considerations into project design and implementation improves development outcomes.

In August 2016, the World Bank adopted a new set of environment and social policies called the Environmental and Social Framework (ESF). As of October 1, 2018, the ESF applies to all new World Bank investment project financing (IPF). The ESF supports green, resilient and inclusive development by strengthening protections for people and the environment and making important advances in areas such as labor, inclusion and non-discrimination, gender, climate change, biodiversity, community health and safety, and stakeholder engagement. It uses a risk-based and proportionate approach that applies increased oversight and resources to complex projects and allows for greater responsiveness to changes in project circumstances through adaptive risk management and stakeholder engagement. It promotes integrated environmental and social risk management.

As part of the WB Environmental and Social Policy for IPF, the ESF foresees the use and strengthening of borrower's environmental and social framework as one of its pillars. It supports the use of the borrower's ES Framework in the assessment, development and implementation of projects, provided this is likely to address the risks and impacts of the project, and enable the project to achieve objectives materially consistent with the ESSs.

To support increasing use and strengthening of the borrower's ES Framework, the ES overview assessment is a key instrument that supports the assessment of borrowers' existing policy, legal and institutional framework for addressing environmental and social risks and impacts, and related implementation capacity. The overview assessment identifies aspects of the existing framework that can be strengthened, and the capacity-building needed to support this.

In this context, Brazil's overview assessment process has initiated in 2022 and is currently reaching its third phase as summarized below:



Figure 1: The 3 phases of the overview assessment process.

2. OBJECTIVES

The objectives of this work are threefold:

- On the basis of the full overview assessment, to prepare brief notes based on each Environmental and Social Standard assessed aiming to disseminate and validate its findings through consultations with relevant national and subnational agencies and non-governmental stakeholders;
- To carry out meaningful consultations with governmental and non-governmental stakeholders to a) gather their views and inputs on how the country framework works in practice and; b) some recommendations for further enhancement of those frameworks; and,
- To summarize the findings of the overview assessment report (per ESS) and the consultation process in simple and short technical notes, that can be more easily used in the day-to-day operational work of ES teams and borrowers' teams.

The tip-sheet notes basically will serve as a practical toolkit for the implementation of projects financed by the World Bank in order to achieve the objectives of the ESF. Fundamentally, the work endeavored to answer the following questions: i) Which objectives and requirements of the Environmental and Social Standards are completely, partially or not achievable using the Brazilian system, and ii) What additional measures would borrowers need to adopt for their projects to achieve the objectives of the ESSs?

By answering these questions, this activity represented an opportunity to advance dialogue with Government on policy actions and capacity building needs to improve the country's institutional and legal frameworks (including implementation and enforcement) in the discussed areas, where pertinent. It is expected to facilitate preparation of new World Bank financed operations and provide upstream advice to the Government in improvement of key environmental and social frameworks and systems.

3. MATERIALS AND METHODS

The comparative analysis between Brazilian legislation and the World Bank's Environmental and Social Standards was basically based on discretizing all the requirements presented in the ESF and conducting a sufficiency analysis using five categories:



Figure 2: Classification used in the comparative analysis between Brazilian legislation and the World Bank's Environmental and Social Standards.

Furthermore, the fifth classification criterion used was: requirements that derive exclusively from the contract with the World Bank (bilateral demands). These requirements are not covered by the use of the Brazilian regulatory framework insofar as they would not be required or necessary if there were no loan agreement with the World Bank.

An assessment matrix (example below) was the tool used to compile and classify information about the ESSs requirements. The first column presents the item in which the obligation is positioned in the Standard (paragraph), followed by the part of the paragraph that is important for the analysis (requirement). The next column deals with the classification of the project life cycle stage.

The fourth column indicates the correspondence of the obligation in national legislation, observing in which national legal provisions the aspects of the requirement are addressed. Next, the degree of adherence to national legislation is indicated, followed by comments on the specific item. Finally, the identified gap is recorded, when applicable. The matrix allows for a series of filters that enable quick visualization and grouping according to classifications.

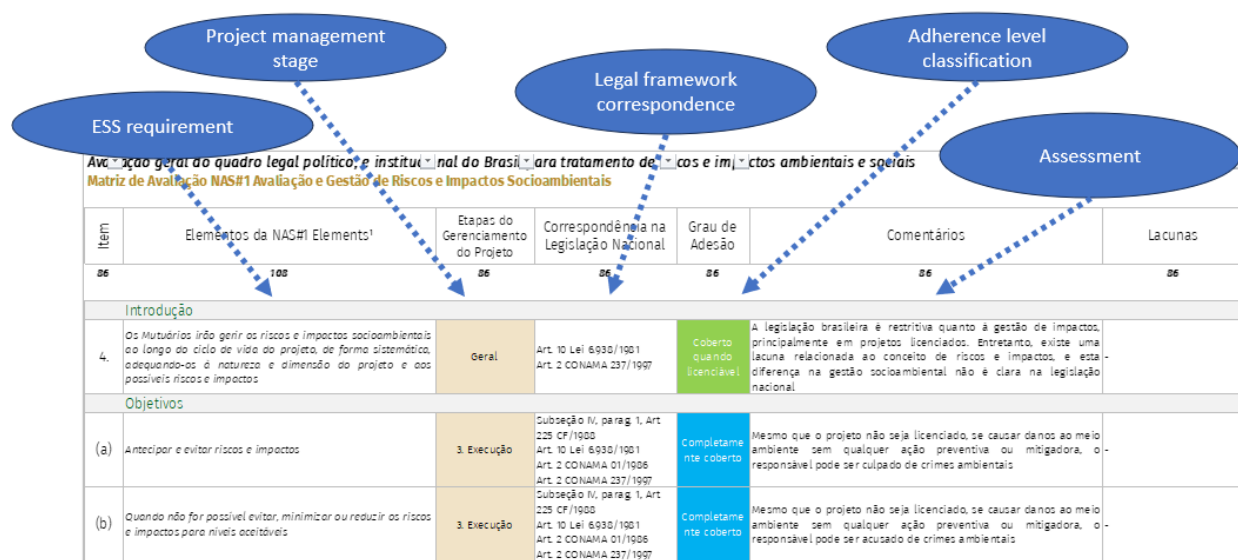


Figure 3: Example of evaluation matrix used in the comparative analysis between Brazilian legislation and the World Bank's Environmental and Social Standards

Based on the classification, the degree of adherence of Brazilian legislation in relation to the requirements of each of the World Bank's Environmental and Social Standards was measured by an algorithm. This algorithm corresponds to the weighted average of the value given to each requirement based on the classification categories, by the weights assigned to them.

$$GA = \frac{(1 * PLA) + (1 * CQL) + (0.5 * PRA)}{NEA}$$

Where: DA = Degree of Adherence; PLA = Number of requirements/objectives Fully Achievable; CQL = Number of requirements/objectives Achieved When Subject to Licensing; PRA = Number of requirements/objectives Partially Achievable; NEA = Total number of elements analyzed

From the degree of adherence to each of the requirements and objectives, measures to be additionally adopted by Borrowers in order to complement the demands of Brazilian legislation that they already have to follow were listed with the aim to allow project's E&S to achieve the objectives of the WB's set of Environmental and Social Standards. It is worth highlighting that, in this analysis, gaps related to the ability to implement this legislation are not considered, as it is based on the assumption that – at the project level – measures can be implemented to correct them.

4. RESULTS AND DISCUSSION

The results of the ES assessment are summarily presented in the table below. It is noteworthy that such results/numbers are still preliminary and be further revised and fine-tuned as an output of the third phase of the ES overview assessment.

ESS	Completely covered	Covered when licensed	Partially covered	Not covered	Elements	Adherence
ESS 01	22	23	11	19	75	67%
ESS 02	19	0	7	2	28	80%
ESS 03	37	5	15	6	63	79%
ESS 04	9	10	8	2	29	79%
ESS 05	8	8	16	17	49	49%
ESS 06	17	19	9	13	58	70%
ESS 07	8	7	12	2	29	72%
ESS 08	18	29	22	2	71	82%
ESS 10	1	11	3	1	16	84%
TOTAL	139	112	103	64	418	-
SCORE	251		51.5	0	302.5	72%

Table 1: Preliminary Results of the ES assessment

Nine brief (tip-sheet) notes based on each one of the Environmental and Social Standard (ESS) - with the exception of ESS9 - Finance Intermediaries - have been prepared aiming to disseminate and validate the findings of the overview assessment (Phase 1) through consultations with relevant national and subnational agencies and nongovernmental stakeholders.

The tip-sheet notes consider how well the use of the Brazilian Legislation would allow the achievement of the objectives set by each ESS as well as how much they will address the specific requirements each ESS makes for the adequate management of environmental and social issues. In addition, the notes make recommendations on measures task teams and Borrowers can take - at the project level - to improve the

procedures for E&S risk management. These notes are meant to be easily used in the day-to-day operational work of ES teams and Project Management Units.

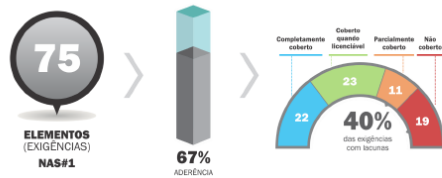
Figure 4: Example of the tip-sheet note for the ESS 1.

Avaliação e Gestão de Riscos e Impactos Socioambientais

1. OBJETIVO DA NOTA

Esta Nota Comparativa tem por objetivo servir para orientar as equipes do Banco Mundial e de seus Mutuários no Brasil, durante a preparação de operações e implementação de suas atividades, no que se refere à identificação, avaliação e gestão de seus riscos e impactos socioambientais, permitindo promover melhores desempenhos socioambientais e fortalecer a capacidade dos Mutuários. A análise buscou indicar que objetivos da Norma Ambiental e Social 1 – Avaliação e Gestão de Riscos e Impactos Socioambientais do Quadro Ambiental e Social do Banco Mundial (doravante designada por Norma 1) podem ser alcançados plenamente ou parcialmente utilizando o marco regulatório nacional e quais de seus requisitos são assim atendidos.

2. GRAU DE ADEÇÃO



3. VISÃO GERAL

A Norma 1 define as responsabilidades do Mutuário no que diz respeito à avaliação, gestão e monitorização de riscos e impactos socioambientais associados a cada fase de um projeto apoiado pelo Banco, por meio do Financiamento de Projetos de Investimento, para a consecução de resultados ambientais e sociais consistentes com as Normas Ambientais e Sociais do Quadro Ambiental e Social do Banco Mundial. A Norma 1 é a norma que conjuga e direciona a aplicação das outras nove Normas do QAS. É também onde estão estabelecidos os processos e orientações para a avaliação e gestão dos riscos e impactos dos projetos financiados pelo Banco, o que inclui a avaliação da capacidade institucional do mutuário e as obrigações bilaterais de reporte e comunicação entre as partes.

Na legislação federal brasileira, a Norma 1 pode ser considerada especialmente refletida na Política Nacional do Meio Ambiente (Lei 6.938 de 1981), que é o guarda-chuva da regulamentação da gestão de impactos ambientais no País. Um degrau abaixo, mas de igual importância e reatamento das diretrizes da Norma 1, encontram-se as resoluções CONAMA 001 e 237, que estabelecem critérios básicos e diretrizes gerais para elaboração de estudos de impacto ambiental e para o licenciamento ambiental de projetos potencialmente poluidores ou que possam causar degradação ambiental e social. O licenciamento ambiental é o principal instrumento desta política no que toca à gestão de riscos e impacto de projetos. É no âmbito do processo de licenciamento ambiental que se dá a avaliação prévia dos potenciais impactos do projeto, inclusive sobre os direitos dos possíveis afetados, e onde são definidas as medidas a serem cumpridas para mitigação e ou compensação desses impactos. Não menos importante para avaliação do reatamento da Norma 1 na legislação brasileira é a Lei de Crimes Ambientais (Lei 9.605 de 1998), que estabelece sanções penais e administrativas derivadas de condutas e atividades lesivas ao meio ambiente, e resguarda, em algum grau, o financiador em relação a uma má conduta do mutuário em sua gestão socioambiental.

Considerando a vigência das citadas legislações, e diversas outras analisadas no presente levantamento, a análise mostrou que o arcabouço legal brasileiro alcança um grau de aderência com a Norma 1 de 67%. A maior parte das lacunas tem como berço o maior rigor do Banco em relação à avaliação e gestão dos riscos e impactos ambientais e sociais dos projetos, como será explorado a seguir.

Each of the Tip-sheet notes is organized into seven sections:

1. Purpose of the note
2. Degree of adherence (infographics)
3. Overview
4. Which objectives of the ESS are achievable using the Brazilian system?
5. Which objectives of the ESS are partially achievable using the Brazilian system?
6. Which objectives of the ESS are not achievable or which of its requirements are not covered when using the Brazilian system?
7. What additional measures do borrowers need to take for their projects to achieve all the objectives of the ESS?

During the process of preparing the tip-sheet notes, consultations were carried out (in the format of interviews) with selected stakeholders, group of professionals, including technical experts and

managers from different segments, such as consultancy, private sector, public bodies (licensing agencies, regulatory bodies, local authorities, etc.). The degree of adherence between ESSs and the legal framework is considered significant (with particular consideration to ESS 5 and 6). This result suggests that the use of Brazilian legislation can, to a large extent, ensure the achievement of the objectives of the 9 ESSs analyzed.

Notwithstanding, there are two factors that need to be considered. Firstly, and as highlighted by the vast majority of experts consulted, there is great heterogeneity in the country in terms of institutional capacity to enforce the requirements established by legislation. Secondly, because the requirements included in each standard can be classified – among themselves and in the context of each standard – as critical or complementary to achieving the objectives of each of them, the degree of adherence – even if objectively calculated and equalizing all requirements to each other – does not reveal this scaling or, more clearly, the different relevance of the requirements among each other.

5. FINAL CONSIDERATIONS

As a result of the ES overview assessment process, important lessons could be drawn. The degree of adherence between the Brazilian legislation and the ESSs is much greater when considering the objectives of the latter rather than their specific requirements. The high degree of alignment between the two regulations suggests that: a) in many respects, the use of the Brazilian system incremented by a few additional precautions would allow achieving the objectives of the ESSs and, on the other hand, that b)

the application of these standards does not represent an excessive burden in relation to what the Borrowers are already obliged by law to carry out in terms of the ES risk management of their projects, but only some complementarities.

In general, the projects located at the “extremes” of the Bank’s ES risk classification (high-substantial and low risk) show a greater tendency to allow the use of national systems related to the assessment of ES risks and impacts and the implementation of applicable control measures.

- Higher risk projects – due to the fact that they are obligatorily subject to environmental licensing according to Brazilian legislation – are necessarily subject to a rigorous assessment of their potential environmental and social impacts and require the adoption of prevention, mitigation and/or measures compensation, which cover most of the relevant issues highlighted by the ESSs. Therefore, in relation to them, it can be expected that the requirements of the Brazilian legislation would allow the achievement of the objectives of the ESSs. Some exceptions to this rule would be found in specific requirements of ESS 5 and 6, which would require gap-bridging measures.
- Moderate risk projects are in a range that denotes a more careful assessment, on a case-by-case basis, of the potential alignment between regulations. On the one hand, according to the requirements of the ESF, they require the application of studies, analyzes and specific measures for the management of their environmental and social risks; on the other, following the national regulations, many times such projects will be able to fit in the projects “exempt” or subject to “waiver of licensing”, which would not imply the implementation of specific measures, but rather, basic compliance with environmental and social standards for projects.

Finally, during the different rounds of consultations and interviews, it was observed that, there is a great need for ongoing engagement and technical training with Borrowers and other public agencies involved in the project implementation process (licensing agencies, regulators, etc.) for greater and better dissemination of the WB’s Environmental and Social Standards. Also, as a result of the consultation process held on April 2024 (Phase 3), which involved a series of meetings and high-level discussions about the preliminary results of the assessment, the ES toolkit will be further revised and fine-tuned to reflect the outcomes of the engagement.

6. ACKNOWLEDGMENTS

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