
Amsterdam, March 01, 2015

A comparison of existing OP 4.01 – Environmental Assessment and the first draft Environmental Social Standard 1 (ESS1).

Introduction

Since the late 80s Both ENDS has been engaging with the World Bank on the social and environmental impacts of its financing decisions. In the context of its long history of engagement with the Bank on these issues, this letter is an expression of our concerns over the dilution that the Bank seems to allow for its existing Environmental policies. The content is based on our first read of the Environmental and Social Policy (ESP) and draft ESS1 under review.

We have made a comparison between the proposed new Environmental Standard 1 and the existing Operational Policy 4.01. Where possible it is a one-to-one comparison of language. The comparison reveals dilutions, including some identified earlier by the Bank’s own Vice Presidents.1

President Kim as well several Bank board members have publicly committed at several occasions, to ensure that the World Bank’s review would not lead to a weakening or “dilution” of the existing Bank policy.

With our recommendations in this letter, we aim to make the Bank better ensure that it strengthens the safeguards for its banking activities and harmonize its’ safeguards with state of the art highest international standards (“Upward harmonization”).

Besides our concern for a weakening of the existing policy, we share some of our concerns in the discussion paper in annex 1.

Comparison of OP 4.01 and ESS 1.

1Revealed in leaked emails to the English newspaper Guardian: http://www.theguardian.com/business/2014/jul/06/activists-alarm-worldbank-leak-easier-loans
OP 4.1, par. 1 - 3 Subject: EA (ex-ante) requirement.

Existing OP 4.01:
- OP 4.01, par. 1 The Bank requires EA of projects proposed for Bank financing.
- OP 4.01, par. 2 The Bank favors preventive measures over mitigatory or compensatory measure whenever feasible.
- OP 4.01, par. 3 EA is initiated as early as possible in project processing etc.

First draft ESS 1:
- ESS 1, 2. Borrowers will conduct environmental and social assessment of projects proposed for bank financing, etc...
- ESS 1, 15. The Borrower will assess, manage and monitor the environmental and social risks and impacts of the project throughout the project life-cycle, etc.
- ESS 1, Annex 1, par. 8. Borrowers should initiate the environmental and social assessment as early as possible in project processing, etc.
- ESS 1, Annex 1, par. 8. Borrowers will consult with the Bank as early as possible so the environmental and social assessment is designed from the outset to meet the requirements of the ESS.

Analysis: the draft language shows ambivalences where it concerns the ex-ante requirement of an environmental assessment. OP 4.01 is more explicit in its demand for an EA in place for projects proposed for Bank financing.

Recommendation: ESP and ESS 1 should include language of Annex 1, par 8 that the environmental and social assessment has to be initiated and designed from the outset.

4.01, par. 2. Subject: Area of influence

Existing OP 4.01:
- OP 4.01, par. 2. EA evaluates a project’s potential environmental risks and impacts in its area of influence, etc. Footnote 3: The area of influence is for any project is determined with the advice of environmental specialists and set out in the EA terms of reference.
- OP 4.01, Annex A – Definitions. The area likely to be affected by the project, including all its ancillary aspects, etc., as well as unplanned developments induced by the project etc., the watershed within which the project is located; any affected estuary and coastal zone, off-site areas required for resettlement, etc., the airshed of influence, migratory routes, etc, and areas used for livelihood activities, or religious or ceremonial purposes of a customary nature.

First draft ESS 1:
- ESS 1, Area of influence is nowhere mentioned in ESS 1 or the Annex. Some of the issues (ed. Both ENDS). It is not fully clear if ancillary aspects are fully covered with language about associated facilities.
- Neither it is clear if language in ESS 1. Annex 1, par. 5 (and further) about the use of a combination or elements of a regional ESIA and other methods and tools would fully include all areas of influences as mentioned in the definition for an area of influence under -OP 4.01, Annex A – Definitions.

Analysis: allowance of different methods and tools to use by the borrower for carrying out the assessment and differentiating between different options available for carrying out the assessment, without a clear definition of the area of influence to be covered might lead to gaps and omissions.
Recommendation: A definition of Area of influence should be maintained.

4.01, par 3 Subject: EA and natural environment

Existing OP 4.01:
- EA takes into account the natural environment (air, water and land), etc. EA considers natural and social aspects in an integrated way.

First draft ESS 1:
- ESS 1 – Annex 1. Par. 7 c. Define and characterize the people and environmental and natural resources that could be affected by the project, including the extent to which people may rely upon or benefit from potentially affected eco-systems and their associated attributes.

Analysis: A detailed forest peoples’ ESS is lacking, as OP is lacking.

Recommendations: ESS 1 – Annex 1. Par. 7 c offers a starting point in ESS 1 for the further elaboration of a separate forest peoples’ ESS.

4.01, par. 4. Subject: independent EA experts for Cat A projects.

Existing OP 4.01:
- OP 4.01 par. 4. (Second part). For Cat. A the borrower retains independent EA experts not affiliated with the project to carry out the EA. for Category A high-risk projects borrower should normally engage an independent expert advisory panel.

First draft ESS 1:
- ESP. C Environmental and Social Due Diligence. Par 32, p. 15, and also Annex 1, par. 10 the bank will determine whether the borrower will be required to retain independent third party specialists to prepare or review all or part of the environmental and social assessment.
- ESS 1, par. 23. ...the Borrower may be required to retain independent third party specialists to prepare or review all or part of the assessment.
- ESS 1, par. 31 ... for projects that are High risk or contentious, etc. the Borrower may be required to engage one or more internationally recognized independent experts. Such experts may form part of an advisory panel or be otherwise employed by the Borrower, etc.
- ESS 1. Annex 1, par. 11. Where the Borrower is required by ESS 1 to engage internationally recognized independent experts, the experts will be expected to advice on key aspects of the project, including stakeholder engagement.

Analysis: OP 4.01 requires for Category A independent experts to prepare (or review) all or part of the EA. In the new draft policy and ESS it has been made dependent on the environmental and social due diligence, conducted by the Bank.

Recommendation: Projects with High risk and Substantial risk require for independent experts.

4.01, par 5. Subject: EA review.

Existing OP 4.01:
- 4.01, par. 5. ...The Bank reviews the findings and recommendations of the EA to determine whether they provide an adequate basis for processing the project for Bank financing, etc.
- 4.01, par. 5. ... The Bank may, if appropriate, require additional EA work, including public consultation and disclosure (for competed or partially completed EIAs before Bank involvement, ed. Both ENDS).

First draft ESS 1:
- ESP, B use and strengthening of Borrower's ES framework, par. 23. ... The Bank will review the Borrower's existing environmental and social framework (the ES Framework), etc.
- ESP, par. 24. The review conducted by the Bank will assess to what extent the Borrower's ES Framework addresses the risks and impacts of the project, etc.
- ESP, C. Environmental and Social due diligence, par. 28. ... The due diligence will assess whether the project is capable of being developed and implemented in accordance with the ESSs.
- ESP, par 29. The Bank's due diligence responsibilities will include, as appropriate: (a) reviewing the information provided by the Borrower relating to the environmental and social risks and impacts of the project, etc.
- ESP, par 30. The Bank recognizes that projects may have different levels of information provided by the Borrower relating to the environmental and social risks and impacts, etc. ... The Bank will assess the significance of the gaps in information, and the potential risk this may present to achieving the objectives of the ESSs. The Bank will reflect this assessment in the relevant project documents at the time the proposed financing is submitted for approval.
- ESS 1, par. 18. When a project is proposed for Bank support, the Borrower will provide information to the Bank in connection with the Bank's review of the Borrower's existing environmental and social framework relevant for the proposed project. (the ES framework).
- ESS 1, par 19. The Borrower, in consultation with the Bank, will identify measures and actions to address any gaps in the ES framework, etc. ... Agreed measures and actions, together with the timeframe for their completion, will form part of the ESCP (Environmental Social Commitment Plan, ed. Both ENDS).
- ESS 1, par. 34. The Borrower will develop and adopt an ESCP, which will set out measures and actions required for the project to achieve compliance with the ESSs over a specified timeframe. Etc.
- ESS 1, par. 35. The ESCP will take into account the findings of the environmental and social assessment, the Bank's social due diligence, and the results of engagement with stakeholders, etc.

Analysis:
In OP 4.01 the Bank reviews the EA and may require additional work before project approval. In ESP and ESS 1 it is agreed on measures and action through a ESCP, to address gaps in the EA, the ES framework, eventually to be taken after project finance approval.

Recommendation
EA project evaluations are required. And Borrower should fully meet all EA requirements before project finance approval.

4.01, par. 8. Subject: scope and screening,

Existing OP 4.01:
- OP 4.01, par. 8. The Bank undertakes environmental screening of each proposed project to determine the appropriate extent and type of EA.
First draft ESS 1:
- **ESS 1, Annex 1. par. 4.** The Borrower will consult with the Bank to determine the process to be used, taking into account a number of activities, including scoping, etc.
- **ESS 1, Annex 1. 7a.** conduct a scoping exercise to identify all aspects of the project. If needed, a visit by Bank specialists to resolve uncertainty in project scoping/screening.

**Analysis:** According to OP 4.01 each proposed project has to be screened. In the draft ESS, screening and scoping are to be delegated to the Borrower and the Borrower will consult the bank to determine the appropriate process to be used (extent and type of EA).

**Recommendation:** The Bank should undertake environmental screening, so maintenance here of existing language in OP 4.01.

**4.01, par 7. Subject: EA instruments. (see under par. 2. Subject: Area of influence, ed. Both ENDS)**

**4.01, par 8. Subject: classification.**

Existing OP 4.01:
- **OP 4.01, par. 8.** The Bank classifies the proposed project into one of four categories, etc. Category A, Category B, Category C, Category F.
  - OP 4.01, par 8 (a) A proposed project is classified as Category A if it is likely to have significant adverse environmental impacts etc. Impacts may affect an area broader than the sites or facilities subject to physical works, etc.
  - OP 4.01, par. 8 (b) A proposed project is classified as Category B if impacts are site-specific; few if any of them are irreversible, etc.

First draft ESS 1:
- **ESP, par 20.** The Bank will classify all projects (including intermediated financing projects) into one of four classifications: High Risk, Substantial Risk, Moderate Risk or Low Risk.

ESS 1 and Annex 1: yet no information about categorization available (ed. Both ENDS) Information note 1 has been published for consultation purposes, however it not clear to us if an information note is valid for consultation. It does not provide rules and standards (ed. Both ENDS).

**4.01, par. 9-10 Subject: Subprojects**

Existing OP 4.01:
- **OP 4.01, par. 9.** …during the preparation of each proposed subproject, the project coordinating entity or implementing institution carries out appropriate EA according to country requirements and the requirements of this policy, etc. If the Bank is not satisfied that adequate capacity exists for carrying out EA, all Category A subprojects and, as appropriate, Category B subprojects – including any EA reports – are subject to prior review and approval by the Bank.

New draft ESS 1:
- **ESP, par. 34.** For all projects involving the preparations and implementation of subprojects, the Borrower is responsible for classifying the sub-projects.
ESP, par 38. Ibid for Financial intermediated subprojects.

ESS 1, Annex, par 29. Where subprojects are classified as High Risk, the environmental and social assessment will be consistent with ESS 1 to 8 and ESS 10.

Analysis: to make a borrower responsible for classifying sub-projects invites clients to downplay high risk into substantial risk.

Recommendations: in line with ESP, par 20 about projects, The Bank has to be the entity that classifies projects (including subprojects.) High-risk projects as well projects with substantial risk have to be subject to prior review and approval by the Bank.

ESS 4.01, par. 14. Subject: Public consultation

Existing OP 4.01:

- OP 4.01, par. 14. For all Category A and B projects, during the EA process, the borrower consults project-affected groups and local NGOs about the project’s environmental aspects and takes their views into account. The borrower initiates such consultations as early as possible. For Category A projects, the borrower consults these groups at least twice, (a) shortly after environmental screening and before the terms of reference for the EA are finalized; and (b) once a draft EA report is prepared, etc.

New draft ESS 1:

- ESS 1, par. 16. (a) The borrower will conduct environmental and social assessment of the proposed project, including stakeholder engagement.
- ESS 1, par. 16 (b) Disclose appropriate information and undertake stakeholder engagement in accordance with ESS 10.
- ESS 1, Annex 1, art. 4. The environmental and social assessment will include and take into account coordination and consultation of affected people and other stakeholders, particularly at an early stage, etc.

Analysis: OP 4.01 is conform international practice for Environmental Impact Assessments, as expressed in Aarhus convention among others, to hold consultations shortly after the screening and once a draft EA report has been prepared, before project finance approval. The new draft language is less to the point, where it concerns the timing for the consultations.

Recommendation: to initiate consultations in accordance with international practice and international law (and to borrow language in this regard from the UN).