

**Review and Update of the World Bank’s Environmental and Social Safeguard Policies**

**Phase** 3

**Feedback Summary**

**Date: December 13, 2015**

**Location (City, Country): Kabul, Afghanistan**

**Audience: Government and implementing agencies**

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| **ESF** | **Issue** | **Items** | **Feedback** |
| Vision | Human Rights  | 1. Approach to human rights in the ESF
 | N/A |
| ESP/ESS1 | Non-discrimination and vulnerable groups | 1. Explicit listing of specific vulnerable groups by type/name (age, gender, ethnicity, religion, physical, mental or other disability, social, civic or health status, sexual orientation, gender identity, economic disadvantages or indigenous status, and/or dependence on unique natural resources)
2. Specific aspects of the non-discrimination principle in complex social and political contexts, including where recognition of certain groups is not in accordance with national law
 | N/A |
| Use of Borrower’s Environmental and Social Framework | 1. Role of Borrower frameworks in the management and assessment of environmental and social (E&S) risks and impacts where these will allow projects to achieve objectives materially consistent with Environmental and Social Standards (ESSs)
2. Approach for making decision on the use of Borrower frameworks, including the methodology for assessing where frameworks will allow projects to achieve objectives materially consistent with the ESSs, and the exercise of Bank discretion
3. Role of Borrower frameworks in high and substantial risk projects
 | * The National Environmental Protection Agency (NEPA) is the country’s policy-making institution. It sets national laws, regulations and guidelines and provides license for development projects. **The Bank should coordinate with NEPA** when rolling out the proposed ES Framework. It should **not duplicate the national system**. The Bank standard should be used only when there is a gap in the national system.
* At the same time it was acknowledged that currently NEPA’s capacity to monitor, inspect and enforce need considerable strengthening, before Afghan regulatory systems can be seen as materially equivalent with the ESS.
* Clarification was sought on the difference in approach between **OP4.00** (piloting the use of country system) and the use of Borrower’s ES Framework under the proposed ES Framework.
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| Co-financing/ common approach | 1. Arrangements on E&S standards in co-financing situations where the co-financier’s standards are different from those of the Bank
 | N/A |
| Adaptive risk management | 1. Approach to monitoring E&S compliance and changes to the project during implementation
 | * The term “**adaptive**” in adaptive risk management needs to be defined in the context of comprehensive safeguards management, as it suggests, and may be confused with, an approach related to climate change adaptation.
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| Risk classification | 1. Approach to determining and reviewing the risk level of a project
 | N/A |
| ESS1 | Assessment and management of environmental and social risks and impacts | 1. Assessment and nature of cumulative and indirect impacts to be taken into account
2. Treatment of cumulative and indirect impacts when identified in the assessment of the project
3. Establishing project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects
4. Circumstances under which the Bank will determine whether the Borrower will be required to retain independent third party specialists
 | * Given the ongoing **fragility and violent conflict** in many areas in Afghanistan, the assessment and management of risks to **human security** could entail significant incremental effort. The Bank should **provide further guidance** on this matter.
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| Environmental and Social Commitment Plan (ESCP) | 1. Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement
 | * The **difference between the ES Management Plan (ESMP) and the ES Commitment Plan (ESCP)** needs to be clarified. Currently, ESCP looks like another hand-cuffing for the Borrower. Its benefit for the Borrower is unclear.
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| ESS2 | Labor and working conditions | 1. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries)
2. Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers
3. Constraints in making grievance mechanisms available to all project workers
4. Referencing national law in the objective of supporting freedom of association and collective bargaining
5. Operationalization of an alternative mechanism relating to freedom of association and collective bargaining where national law does not recognize such rights
6. Issues in operationalizing the Occupational Health and Safety (OHS) provisions/standards
 | * Inside the country, the ILO has an extensive labor standard program, including child labor, forced labor and collective bargaining. The country has ratified a number of ILO conventions. A new labor law is also in place. However the implementation capacity is lacking in the country, e.g. the labor inspection program is very weak. **The Bank should coordinate with ILO’s program** in rolling out ESS2. In particular in the infrastructure sector, where labor issues are very pronounced.
* While ESS2 requires the Borrower to have in place written labor management procedures, the National Environmental Protection Agency (NEPA) has **no mandate and capacity to monitor workers’ safety measures**. It is suggested that NEPA coordinate with ministries including safety department to address labor requirements under ESS2.
* **Capacity** of the authorities and the **security situations** are key factors in implementation and monitoring, but currently a challenge.
* The Bank should also consult with the **Ministry of Labor** and **Ministry of Social Protection**. There is no single ministry in Afghanistan which covers all social safeguards issues including labor, but responsibilities are scattered and allocated to several institutions.
* The country should introduce **insurance** and **pension** systems for the labor force.
* Clarification was sought on “**freedom of association and collective bargaining respecting national law**” in the presentation.
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| ESS3 | Climate change and GHG emissions | 1. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC
2. Proposed approaches to measuring and monitoring greenhouse gas (GHG) emissions in Bank projects and implications thereof, in line with the proposed standard, including determining scope, threshold, duration, frequency and economic and financial feasibility of such estimation and monitoring
3. Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard
 | * The **estimation and annual reporting of greenhouse gas emissions** could become very burdensome to borrowers with capacity constraints. The threshold and types of projects with requirement for estimation requirement should take this into consideration.
* The requirements on climate change under the proposed ES Framework should be proportionate to the scale of the project. It **should** **not be mainstreamed into all projects without contextual adjustments**.
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| ESS5 | Land acquisition and involuntary resettlement | 1. Treatment and rights of informal occupants and approach to forced evictions in situations unrelated to land acquisitions
2. Interpretation of the concept of resettlement as a “development opportunity” in different project circumstances
 | * **Post resettlement monitoring** should be enhanced. Currently there is a big gap between the preparation of resettlement action plan (RAP) and its implementation, monitoring and verification. Implementation of measures under RAP such as livelihood restauration and skill development must be monitored.
* **Ministries (e.g. Ministries for Labor and Social Affairs) and the National Environmental Protection Agency (NEPA) should coordinate better** in the preparation and implementation of RAP.
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| ESS6 | Biodiversity | 1. Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity
2. Role of national law with regard to protecting and conserving natural and critical habitats
3. Criteria for biodiversity offsets, including consideration of project benefits
4. Definition and application of net gains for biodiversity
 | N/A |
| ESS7 | Indigenous Peoples | 1. Implementation of the Indigenous Peoples standard in complex political and cultural contexts
2. Implementation of ESS7 in countries where the constitution does not acknowledge Indigenous Peoples or only recognizes certain groups as indigenous
3. Possible approaches to reflect alternative terminologies used in different countries to describe Indigenous Peoples
4. Circumstances (e.g. criteria and timing) in which a waiver may be considered and the information to be provided to the Board to inform its decision
5. Criteria for establishing and implementation of Free, Prior and Informed Consent (FPIC)
6. Comparison of proposed FPIC with existing requirements on consultation
7. Application of FPIC to impacts on Indigenous Peoples’ cultural heritage
 | * While there are different tribes in Afghanistan, **none of them satisfies the criteria of Indigenous Peoples** under the OP4.10 and the proposed ESS7. Their protection is seen sufficiently managed under the non-discrimination clauses on vulnerable groups in ESS1
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| ESS8 | Cultural Heritage | 1. Treatment of intangible cultural heritage
2. Application of intangible cultural heritage when the project intends to commercialize such heritage
3. Application of cultural heritage requirements when cultural heritage has not been legally protected or previously identified or disturbed
 | N/A |
| ESS9 | Financial Intermediaries | 1. Application of standard to FI subprojects and resource implications depending on risk
2. Harmonization of approach with IFC and Equator Banks
 | * Clarification was sought on the difference between current clauses in OP4.01 (Environmental Assessment) and the new provisions in ESS9, on financial intermediaries.
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| ESS10 | Stakeholder engagement | 1. Definition and identification of project stakeholders and nature of engagement
2. Role of borrowing countries or implementing agencies in identifying project stakeholders
 | * It should be clarified whether stakeholder engagement and information disclosure will involve **security forces**. The Bank should note that involving security forces in the project design and implementation is necessary in countries under **fragile and post-conflict situations (FCS)** but that it will **entail significant additional effort and cost to a project**.
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| General |  EHSG and GIIP | 1. Application of the Environmental, Health and Safety Guidelines (EHSGs) and Good International Industry Practice (GIIP), especially when different to national law or where the Borrower has technical or financial constraints and/or in view of project specific circumstances
 | N/A |
| Feasibility and resources for implementation | 1. Implementation and resource implications for Borrowers, taking into account factors such as the expanded scope of the proposed ESF (e.g., labor standard), different Borrower capacities and adaptive management approach
2. Mitigation of additional burden and cost and options for improving implementation efficiency while maintaining effectiveness
 | * There are **too many requirements on documentation** under the proposed ES Framework, including ES Commitment Plan (ESCP), Stakeholder Engagement Plan (SEP) and Emergency Response Plan (ERP). This is inconsistent with the risk-based and outcome-based approach of the proposed ES Framework. Such requirements are difficult to both monitor and implement particularly in a project with a number of community-driven **subprojects**. More flexibility in documentation should be introduced.
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| Client capacity building and implementation support | 1. Funding for client capacity building
2. Approaches and areas of focus
3. Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations
 | * There is lack of understanding of safeguard issues and also implementation capacity among Afghan implementing agencies. Currently there are only two or three persons in charge of safeguards / E&S compliance in implementing agencies. Efforts to ensure **safeguards compliance are usually confined to WB implementation support missions**, rather than being implemented continuously as part of project quality assurance. The Bank should **raise awareness and build capacity on safeguards** when rolling out the proposed ES Framework.
* It will be important to conduct a **mapping of national institutions regarding E&S assessment and management competencies**, and to allocate clear responsibilities for specific ESS or parts thereof.
* Unless accompanied by building both **technical and monitoring capacity** of key agencies, including and especially the National Environmental Protection Agency (NEPA), the ES Framework will not be successful.
* Capacity building would have to include enhancing in both **human and financial resources, and building functioning systems**.
* Afghanistan still is in conflict rather than being post-conflict. The country needs a lot of support in developing laws and procedures**. Incentives to attract government commitment** to comply with E&S issues should be provided.
* There should be **effective mechanisms to penalize non-compliance with E&S standards and provisions**. If public oversight mechanisms are too weak, a workable approach could be to use works contracts as enforcement platform, by e.g. making **payments contingent on due safeguards implementation**.
* **However, penalizing** **the borrower should be avoided**. Rather, it should be penalizing **non-compliance by the contractor** that would foster compliance with safeguards requirements, in particular community and worker’s health and safety.
* Project implementation manuals and guidance notes should be **translated into national languages** to help implement safeguard requirements on the ground.
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| Disclosure | 1. Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)
 | N/A |
| Implementation of the ESF | 1. Bank internal capacity building, resourcing, and behavioral change in order to successfully implement the ESF
2. Ways of reaching mutual understanding between Borrower and Bank on issues of difficult interpretation
 | N/A |
| Other issues | * Government representatives were curious to learn about key feedback received in other countries in the region (**India and Bangladesh**).
* In the **case study presentation**, the expected additional level of effort on ESS4 appears to underestimate the potential additional cost and staff effort for risk assessment, especially in **locations** **with high security threats.**
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