



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

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	N/A
ESP/ ESS1	Non-discrimination and vulnerable groups	2. 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) 3. Specific aspects of the non-discrimination principle in complex social and political contexts, including where recognition of certain groups	N/A

		is not in accordance with national law	
Use of Borrower's Environmental and Social Framework	<p>4. 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)</p> <p>5. 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</p> <p>6. Role of Borrower frameworks in high and substantial risk projects</p>	<ul style="list-style-type: none"> • 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. 	
Co-financing/ common approach	7. 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	8. Approach to monitoring E&S compliance and changes to the project during implementation	<ul style="list-style-type: none"> • 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. 	
Risk classification	9. Approach to determining and reviewing the risk level of a project	N/A	

ESS1	Assessment and management of environmental and social risks and impacts	<p>10. Assessment and nature of cumulative and indirect impacts to be taken into account</p> <p>11. Treatment of cumulative and indirect impacts when identified in the assessment of the project</p> <p>12. Establishing project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects</p> <p>13. Circumstances under which the Bank will determine whether the Borrower will be required to retain independent third party specialists</p>	<ul style="list-style-type: none"> 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.
	Environmental and Social Commitment Plan (ESCP)	<p>14. Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement</p>	<ul style="list-style-type: none"> 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.
ESS2	Labor and working conditions	<p>15. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries)</p> <p>16. Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers</p>	<ul style="list-style-type: none"> 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

		<p>17. Constraints in making grievance mechanisms available to all project workers</p> <p>18. Referencing national law in the objective of supporting freedom of association and collective bargaining</p> <p>19. Operationalization of an alternative mechanism relating to freedom of association and collective bargaining where national law does not recognize such rights</p> <p>20. Issues in operationalizing the Occupational Health and Safety (OHS) provisions/standards</p>	<p>measures. It is suggested that NEPA coordinate with ministries including safety department to address labor requirements under ESS2.</p> <ul style="list-style-type: none"> • 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.
ESS3	Climate change and GHG emissions	<p>21. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC</p> <p>22. 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</p>	<ul style="list-style-type: none"> • 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.

		23. Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard	
ESS5	Land acquisition and involuntary resettlement	24. Treatment and rights of informal occupants and approach to forced evictions in situations unrelated to land acquisitions 25. Interpretation of the concept of resettlement as a “development opportunity” in different project circumstances	<ul style="list-style-type: none"> • 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 restoration 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.
ESS6	Biodiversity	26. Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity 27. Role of national law with regard to protecting and conserving natural and critical habitats 28. Criteria for biodiversity offsets, including consideration of project benefits 29. Definition and application of net gains for biodiversity	N/A
ESS7	Indigenous Peoples	30. Implementation of the Indigenous Peoples standard in complex political and cultural contexts	<ul style="list-style-type: none"> • 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 ESS 1

		<p>31. Implementation of ESS7 in countries where the constitution does not acknowledge Indigenous Peoples or only recognizes certain groups as indigenous</p> <p>32. Possible approaches to reflect alternative terminologies used in different countries to describe Indigenous Peoples</p> <p>33. 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</p> <p>34. Criteria for establishing and implementation of Free, Prior and Informed Consent (FPIC)</p> <p>35. Comparison of proposed FPIC with existing requirements on consultation</p> <p>36. Application of FPIC to impacts on Indigenous Peoples' cultural heritage</p>	
ESS8	Cultural Heritage	<p>37. Treatment of intangible cultural heritage</p> <p>38. Application of intangible cultural heritage when the project intends to commercialize such heritage</p> <p>39. Application of cultural heritage requirements when cultural heritage has not been</p>	N/A

		legally protected or previously identified or disturbed	
ESS9	Financial Intermediaries	40. Application of standard to FI subprojects and resource implications depending on risk 41. Harmonization of approach with IFC and Equator Banks	<ul style="list-style-type: none"> Clarification was sought on the difference between current clauses in OP4.01 (Environmental Assessment) and the new provisions in ESS9, on financial intermediaries.
ESS10	Stakeholder engagement	42. Definition and identification of project stakeholders and nature of engagement 43. Role of borrowing countries or implementing agencies in identifying project stakeholders	<ul style="list-style-type: none"> 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.
General	EHSG and GIIP	44. 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	45. 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	<ul style="list-style-type: none"> 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.

		46. Mitigation of additional burden and cost and options for improving implementation efficiency while maintaining effectiveness	
	Client capacity building and implementation support	47. Funding for client capacity building 48. Approaches and areas of focus 49. Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations	<ul style="list-style-type: none"> • 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.

			<ul style="list-style-type: none"> Project implementation manuals and guidance notes should be translated into national languages to help implement safeguard requirements on the ground.
	Disclosure	50. 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	51. Bank internal capacity building, resourcing, and behavioral change in order to successfully implement the ESF 52. Ways of reaching mutual understanding between Borrower and Bank on issues of difficult interpretation	N/A
Other issues			<ul style="list-style-type: none"> 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.