



## Review and Update of the World Bank's Environmental and Social Safeguard Policies

### Phase 3

### Feedback Summary

**Date:** December 14, 2015

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

**Audience:** Development partners (donors)

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	<ul style="list-style-type: none"> <li>We would like to see strengthened references to existing <b>human rights agreements</b> in the proposed ES Framework.</li> </ul>
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	<ul style="list-style-type: none"> <li>It is welcome that the proposed ESF has <b>gender</b> aspects firmly anchored and will promote their application across Bank-financed operations.</li> <li>The proposed ES Framework should contribute to mainstream <b>gender and non-discrimination</b> into Bank-financed operations, and ensure the ESS prevail where there are discrepancies with domestic legislation.</li> </ul>

		recognition of certain groups is not in accordance with national law	
Use of Borrower's Environmental and Social Framework	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) 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 6. Role of Borrower frameworks in high and substantial risk projects		<ul style="list-style-type: none"> <li>• On the use of borrow frameworks, we support this in theory. However, some pilot work on borrower frameworks revealed a lot of risks. So we, in line with concerns expressed by other donors, support <b>prudent implementation accompanied by support to Afghanistan with appropriate capacity development</b> before relying entirely on a borrower safeguard framework.</li> <li>• Most of our bilateral assistance to Afghanistan is via the Afghanistan Reconstruction Trust Fund (ARTF) administered by WB. So we request the Bank to take a <b>cautious approach</b> in the use of the Borrower Framework of Afghanistan, considering the high risk circumstances.</li> <li>• It should be clarified <b>how flexibly the Bank will make use of the borrower's framework</b> when there is a gap between the ESS and national requirements.</li> </ul>
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		<ul style="list-style-type: none"> <li>• The harmonization of ESF with other donors at policy level needs to be complemented by <b>coordination of donors in Afghanistan on operational level</b>. This will require resources and the establishment of effective platforms for getting all stakeholders on the same page. The Bank is expected to assume a leading role in organizing and coordinating such efforts.</li> </ul>
Adaptive risk management	8. Approach to monitoring E&S compliance and changes to the project during implementation		N/A

	Risk classification	9. Approach to determining and reviewing the risk level of a project	<ul style="list-style-type: none"> <li>Clarification was sought on the methodologies of the proposed <b>risk classification</b> system, and how the Bank would manage to better bring resources to where the risk is highest...</li> </ul>
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"> <li>In the proposed ES Framework, there should be a reference to <b>site-specific EMP</b> [<i>Note: this seemed rather an issue of terminology, as the ESMP specified in ESS1 really means an instrument tailored to project / site specific conditions</i>].</li> <li>Clarification was sought on some details going beyond the purpose and scope of the ESS, e.g. on the calculation model to be applied on <b>ecological flows in hydropower projects</b>.</li> </ul>
	Environmental and Social Commitment Plan (ESCP)	14. Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement	N/A
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</p>	<ul style="list-style-type: none"> <li>The inclusion of <b>labor standard</b> in the ESF was generally and universally welcomed.</li> </ul>

		<p>contractors, community and voluntary labor and primary suppliers</p> <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>	
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</p>	<ul style="list-style-type: none"> <li>• While these are appropriate measures in view of reducing overall greenhouse gas emissions, this will add <b>additional cost</b> for cash constrained countries such as Afghanistan that contribute very little to GHG emission in the first place. Instead of applying it unilaterally across all projects, it is better to <b>set a minimum threshold for conducting such assessment</b>.</li> <li>• Many / most donors currently have efforts under way to <b>strengthen climate change requirements</b> in their bilateral development projects, and thus see the ESS's provisions as a welcome element of cross-donor harmonization.</li> </ul>

		<p>economic and financial feasibility of such estimation and monitoring</p> <p>23. Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard</p>	
ESS5	Land acquisition and involuntary resettlement	<p>24. Treatment and rights of informal occupants and approach to forced evictions in situations unrelated to land acquisitions</p> <p>25. Interpretation of the concept of resettlement as a “development opportunity” in different project circumstances</p>	<ul style="list-style-type: none"> <li>• <b>Resettlement and land management in general are difficult issues</b> in Afghanistan, particularly with regards to Kuchis (<i>Note: a nomadic tribe and one of the poorest ethnic / cultural communities in Afghanistan</i>). Generally, the majority of Afghans do not possess legal property documents. Implementation of ESS5 is going to be very tough in Afghanistan. As such, the country must develop clear and robust policies and strategies to address these issues.</li> </ul>
ESS6	Biodiversity	<p>26. Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity</p> <p>27. Role of national law with regard to protecting and conserving natural and critical habitats</p> <p>28. Criteria for biodiversity offsets, including consideration of project benefits</p> <p>29. Definition and application of net gains for biodiversity</p>	N/A
ESS7	Indigenous Peoples	30. Implementation of the Indigenous Peoples standard	<ul style="list-style-type: none"> <li>• This is a <b>politically sensitive issue</b> in this country. While countries in Latin America, India and other parts of the world have somehow</li> </ul>

		<p>in complex political and cultural contexts</p> <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>	<p>identified their indigenous population and recognized them in their national-level legal framework, this has not been done in Afghanistan. The government of Afghanistan would have to invest considerable effort to develop assessment frameworks for the identification of indigenous population solely for development purposes; which may not be feasible in the short or medium term.</p> <ul style="list-style-type: none"> <li>• While there has been a national-level legal framework recently developed for involuntary resettlement, there is <b>no such framework for Indigenous Peoples</b>. In Afghanistan there are people who could be recognized as Indigenous Peoples.</li> </ul>
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</p>	N/A

		cultural heritage has not been 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"> <li>While IFC's Performance Standard has been regarded as international best practice, the Bank is proposing another set of standards with the ES Framework. This may <b>confuse stakeholders</b>, especially borrowing Governments and their implementing agencies, as to what is the international best practice.</li> </ul>
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	N/A
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"> <li>We are concerned that the WB may not have fully accounted for the <b>costs of implementing</b> these new, tougher safeguards. In order for these safeguards to be effective, WB staff at the country level especially, will need to be trained and dedicated to safeguards issues.</li> <li>Under the current Bank <b>monitoring system</b>, safeguard issues do not appear to be sufficiently monitored. This should be <b>strengthened, along with a penalty for non-compliance</b>.</li> </ul>

		46. Mitigation of additional burden and cost and options for improving implementation efficiency while maintaining effectiveness	<ul style="list-style-type: none"> <li>• With the introduction of the proposed ES Framework, more pressure will be put on the Borrower for proper implementation. However, in the country under <b>fragile and conflict-affected situations</b>, safeguards have yet to become a strategic agenda for the government.</li> <li>• There are also areas where Government and rule of law have <b>very limited reach</b>, and contractors / engineers / consultants have <b>very limited access</b>. In such circumstances, the Bank needs to consider ways to provide enhanced support the Borrower in the implementation of the Framework.</li> </ul>
	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"> <li>• For a Country like Afghanistan which has low capacity to assess and manage environmental and social risks (and generally <b>serious problems with the rule of law and enforcement of legal provisions</b>), the Bank should work with the Borrower to <b>identify priority areas for capacity building based on the track record of existing programs</b>, evident capacity gaps and need for additional resources.</li> </ul>
	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"> <li>• We would like to see a broader application of the E&amp;S Framework. This exercise has been long and costly, yet the safeguards will only apply to trust funds and projects but not e.g. <b>policy-based lending</b> or the <b>IFC</b>.</li> </ul>



