



25 years Netherlands Commission for
Environmental Assessment

Review of the 6 September 2018 Draft Updated GEF Policy on Environmental and Social Safeguards



28 September 2018
Ref: 7266



Advisory Report by the NCEA

Subject	Review of the 6 September 2018 Draft Updated GEF Policy on Environmental and Social Safeguards
To	Global Environment Facility
Request by	Ms Marjolein Geusebroek – Dutch Ministry of Foreign Affairs
Date	28 September 2018
From	The Netherlands Commission for Environmental Assessment
Members of the working group	Ms Ellen De Keyser (expert), Mr David Annandale (expert), Mr Rob Verheem (Technical Secretary)
Quality control	Ms Ineke Steinhauer
Reference	7266

Photo (cover): Mr Roel Slootweg

© Netherlands Commission for Environmental Assessment (NCEA). *Review of the 6 September 2018 Draft Updated GEF Policy on Environmental and Social Safeguards*. 2018. 11 pages.

Contact

W www.eia.nl

T +3130 234 76 60

E ncea@eia.nl

Table of contents

Summary	2
1. Introduction.....	4
2. Review of the new ESS policy	5
2.1 Overall observations	5
2.2 Review of the ESS policy requirements	6
2.3 Review of individual Minimum Standards	7
2.4 Implications of the New EES Policy for partner agencies and the private sector	10
Annex 1: Text suggestions	11

Summary

Introduction

On 16 June 2018 the Global Environment Facility (GEF) released a first draft of the updated Policy on Environmental and Social Safeguards for early consultation with the multi-stakeholder Working Group on Environmental and Social Safeguards. Following this consultation, the GEF released on 6 September 2018 a revised draft for wider consultation.

The Dutch Ministry of Foreign Affairs is part of the Multi-stakeholder Working Group and asked the Netherlands Commission for Environmental Assessment (hereafter 'NCEA') for an independent quality review of the new draft Policy from a sustainable development perspective: first of the 16 June draft and subsequently of the revised 6 September draft.

This report focuses on those elements of the revised 6 September draft that in our opinion could still benefit from possible further improvement. We do not repeat those recommendations in our earlier advice on the first draft (see [here](#)) that are adequately covered in the revised draft.

Review of the new ESS policy

Overall

The quality of the proposed updated GEF safeguards (hereafter "the new ESS policy") has considerably improved compared to the 2011 version. It is now better aligned with other state of the art multilateral agency safeguard procedures. It includes a number of entirely new minimum standards, such as on labour and working conditions and community health, safety and security. It also includes "revamped" standards dealing with biodiversity, involuntary resettlement, and indigenous people. And has a stronger emphasis on social issues, along with requirement for partner agencies to report more carefully on project post-approval monitoring.

Having said this, there is still some room – and sometimes need – for further improvement when comparing the new ESS against the safeguards frameworks of 'peers' such as IFC, WB, EBRD and EIB. This is further deliberated under the detailed recommendations in this advice.

As to the robustness of the new approach: with the addition of the requirement for partner agencies to "document and report", GEF has introduced an increased level of robustness to its project due diligence process. The old policy did not require partner agencies to monitor project management and compliance. It does mean, though, that the new requirements will put considerable burden on the capacity of both GEF secretariat and partner agencies.

Detailed

A more detailed review of the new policy leads to the following recommendations for its further improvement.

Policy requirements:

- To provide clarification on how lessons learned by monitoring the GEF portfolio are incorporated in change management procedures.

Minimum Standard 2 – Accountability, Grievance and Conflict Resolution:

- To make the accountability mechanism included in 1.A.5.c accessible to all stakeholders, by replacing in 1.A.5.c ‘project- or program-affected people’ with ‘stakeholders’;
- To incorporate in 1.A.6 the requirement of grievance mechanisms to ‘keep complainants abreast of progress with cases brought forward’ (in line with the requirement of the accountability mechanism in 1.A.5.d).

Minimum standard 3 – Biodiversity Conservation and the Sustainable Management of Living Natural Resources:

- To maintain in the new safeguards the requirements on the protection of forests that are in the existing safeguards.

Minimum Standard 4 – Restrictions on Land Use and Involuntary Resettlement:

- To align the provisions of this standard with the provisions of Minimum Standard 5 on Indigenous Peoples; particularly to avoid displacement by ensuring that alternatives to the project itself are assessed prior to assessing alternative project or program designs;
- To clarify in the definitions section what is meant by affected persons being provided with ‘technically and economically feasible resettlement alternatives and assistance’ and ‘choices among feasible resettlement options’;
- To further strengthen and align the two paragraphs on ‘Physical Displacement’ (1.A.9.f) respectively ‘Economic displacement’ (1.A.9.g).

Implications of the new ESS policy for partner agencies and the private sector:

- The NCEA recommends to make it clear that any non-grant instruments funded with private sector collaborations are also covered by the policy.

1. Introduction

On June 16, 2018 the GEF released a *first* draft of the updated Policy on Environmental and Social Safeguards for early consultation with the multi-stakeholder Working Group on Environmental and Social Safeguards.

Following this consultation, the GEF released on September 6, 2018 a *revised* draft for wider consultation.

The Dutch Ministry of Foreign Affairs is part of the Multi-stakeholder Working Group and asked the Netherlands Commission for Environmental Assessment (hereafter 'NCEA') for an independent quality review of the new draft Policy from a sustainable development perspective: first of the 16 June draft and subsequently of the revised 6 September draft.

This report is a review of the *revised* draft. It focuses on those elements that in our opinion could still benefit from possible further improvement. We do not repeat those recommendations in our earlier advice¹ on the *first* draft that are adequately covered in the *revised* draft.

This advice was compiled by an expert group consisting of the following members:

- Ms. Ellen De Keyser – social impacts and human rights
- Mr. David Annandale – environmental impacts
- Mr. Rob Verheem – secretary of the expert group

The advice consists of the following sections:

- Summary
- Introduction
- Review of the *revised* draft GEF policy (hereafter 'the new ESS policy'):
 - a brief background to the *positioning* of the new ESS policy, and the reasoning behind the development of an updated draft;
 - an *overall* assessment of the new policy, focusing on new additions and deletions;
 - a review of the *policy requirements* and of each new *minimum standard*;
 - concluding comments on the possible *implications* of the new policy.

¹ Click [here](#) for the full advice on the June 16 draft of the updated GEF Policy on ESS.

2. Review of the new ESS policy

2.1 Overall observations

Positioning of the GEF ESS Policy

The first GEF environmental and social policy, known as “Agency Minimum Standards on Environmental and Social Safeguards”, was approved by the GEF Council in November of 2011. It is therefore now over 6 years old. The 2011 policy was inspired by the objectives and Operational Principles contained in the World Bank’s Operational Policy 4.00². The GEF policy was different from those of its development agency “cousins” in that it focused entirely on setting criteria for its Agencies, Partner Agencies, and Project Agencies to meet. The GEF does not directly oversee its own projects.

One of the drivers of the current GEF safeguards reform is the fact that the thinking about how multi-lateral funding agencies should deal with the environmental and social consequences of the projects they fund has changed considerably since 2011. For this reason, a number of multi-lateral agencies have either developed new environmental and social frameworks, or updated old ones. In the former category sits a number of UN agencies (UNDP, UNIDO, UNICEF), and some new development institutions (GCF, AIIB). In the latter category sits the World Bank and the IFC.

There is now a greater focus on post-approval compliance and monitoring, and less stress on “front-end” ex ante assessment. The safeguard procedures of donor agencies have also expanded to include a greater emphasis on so-called “emerging issues”, such as human rights, non-discrimination equity; climate change and disaster risk; biodiversity offsets; invasive alien species; supply chains; sustainable resource management; community health, safety and security; hazardous materials; involuntary resettlement; the application of free, prior informed consent (FPIC); cultural heritage; and labour and working conditions. In particular, since the approval of the World Bank’s completely revamped environmental and social framework in 2017, the link between the original GEF minimum standards and the World Bank’s Operational Policies has been broken.

Finally, another driver of GEF safeguards reform has been the publication of a formal GEF evaluation of the 2011 policy. This evaluation called for the GEF to: review the minimum standards; improve safeguards monitoring and reporting; and support capacity development, expert convening, and communications.

Overall Assessment of the New ESS Policy

The new policy goes a long way towards alignment with state of the art multilateral agency safeguard procedures, such as the new Environmental and Social Framework (ESF) of the World Bank. The new policy includes entirely new minimum standards on labour and working conditions; community health, safety and security; and resource efficiency and pollution prevention. It also includes “revamped” standards dealing with biodiversity, involuntary resettlement and indigenous people.

² OP 4.00: Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank Supported Projects.

Again, in line with the ESF, the new GEF policy has a stronger emphasis on identification and management of social issues, along with the requirement for partner agencies to report more carefully on project post-approval monitoring. As to human rights, the updated GEF policy takes the same approach as the ESF does: the policy makes broad statements to support human rights, then embeds rights issues at different points of the policy.

All in all, it is clear that the quality of the new ESS policy has considerably improved compared to the 2011 version. Having said this, there is still some room – and sometimes need – for further improvement when comparing the new ESS against the safeguards frameworks of ‘peers’ such as IFC, WB, EBRD and EIB. This is further deliberated in this advice under the recommendations for the individual minimum standards.

Robustness of the new approach

With the addition of the requirement for partner agencies to “document and report” (paragraphs 12 – 17 of the new safeguards policy), GEF has introduced an increased level of robustness to its project due diligence process. The old policy did not require partner agencies to monitor project management and compliance. The new policy requires that agencies report at project mid-term, and at project completion.

Another important implication of the new policy are the significant requirements that it places on partner agencies. First, agencies need to come into compliance with the new Minimum Standards within 6 months, or develop a concrete, time-bound action plan to achieve compliance. This may place some partner agencies under considerable pressure, given the time it takes to follow the required procedures for high-level approval of needed amendments. Furthermore, the new policy will put considerable burden on the capacity of both GEF secretariat and partner agencies because of the new monitoring and enforcement requirements.

2.2 Review of the ESS policy requirements

The new policy includes a section outlining “policy requirements”. This is basically an introduction to the minimum standards, and an indication to partner agencies as to how they should meet the new policy’s demands. The section consists of four sub-sections: (i) “Minimum Standards for Agency Policies, Procedures, Systems and Capabilities”; (ii) “Documentation and Reporting in GEF-Financed Projects and Programs”; (iii) Portfolio Monitoring and Reporting; and, (iv) GEF Conflict Resolution Commissioner.

Sub-sections (i) and (iv) are duplicated from the original policy. Sub-sections (ii) and (iii) are new, and significant. This is because they require partner agencies to provide an Environmental and Social Management Plan, or equivalent, with “complete information regarding the relevant Environmental and Social Risks and Impacts associated with the proposed project, and associated measures to address such risks and impacts”. In addition, agencies are required to provide information on the “implementation of relevant environmental and social management measures at project mid-term, if applicable, and at project completion”. It is clear then that the new policy places more emphasis on post-approval monitoring by partner agencies.

The NCEA recommends that the Policy should provide clarification on how lessons learned by monitoring the GEF portfolio are incorporated in change management procedures. This could include capacity building of Agencies and further development of policies and guidelines, in order to continuously improve the performance of the portfolio, or at least commit to incorporating results of monitoring in change management procedures.

In their response to comments received on the June 16 draft of the new ESS the GEF secretariat indicates that '*Opportunities for learning and capacity development will be discussed in a cover note that introduces the policy for Council consideration, based on further discussion among the Working Group on Environmental and Social Safeguards*'.

2.3 Review of individual Minimum Standards

Below recommendations are made for Minimum Standards 2, 3 and 4. There are no recommendations for the other Minimum Standards.

Minimum Standard 2 – Accountability, Grievance and Conflict Resolution:

This Standard duplicates the accountability and grievance standard that exists in the original policy, with the important addition of “conflict resolution” in the Standard’s title.

The NCEA recommends to make the accountability mechanism included in 1.A.5.c accessible to all stakeholders, and not only project- or program-affected people as is currently stated in the standard. In other words, to replace in 1.A.5.c ‘project- or program-affected people’ with ‘stakeholders’. This is important as in practice it often occurs that stakeholders in the wider project area are not aware of the existence of an accountability mechanism, or have no access to it. This may for example apply to local government authorities, civil society organisations or members of indirectly affected communities. It easily leads to absence of tracking their concerns and issues which may lead to opposition that could be avoided by giving them the same access as directly affected people.

Secondly, the NCEA recommends that for reasons of transparency and in line with the requirement of the accountability mechanism in Annex 1.A.5.d, the ESS policy incorporates in Annex 1.A.6 the requirement of grievance mechanisms to ‘keep complainants abreast of progress with cases brought forward’.

Minimum Standard 3 – Biodiversity Conservation and the Sustainable Management of Living Natural Resources:

There are a number of noteworthy changes to the Standard that was originally titled “natural habitats”. Perhaps the most significant, positive, change is the addition of a “biodiversity” focus, which did not exist to the same extent in the original policy. Also, as part of the requirement for agencies to consider the mitigation hierarchy in their application of Minimum Standard 1, Standard 3 allows for the consideration of environmental offsets.

However, there are also a number of deletions from the original natural habitats Standard, apparently downplaying the importance of forests in the consideration of biodiversity and sustainable management of natural resources. For example, a number

of requirements that were part of the original ESS are no longer part of the new ESS, such as the requirements for agencies to:

- (i) apply the precautionary principle;
- (ii) “not finance natural forest harvesting or plantation development that will involve conversion or degradation of critical forest areas or related critical natural habitats”;
- (iii) “ensure that forest restoration projects maintain or enhance biodiversity and ecosystem functionality and that all plantation projects are environmentally appropriate, socially beneficial and economically viable”;
- (iv) “give preference to siting physical infrastructure investments on lands where natural habitats have already been converted to other land uses”; and,
- (v) “consult appropriate experts and key stakeholders, including local nongovernmental organisations and local communities, and involve such people in design, implementation, monitoring, and evaluation of projects, including mitigation planning”.

All these requirements have now been deleted from minimum standard 3.

In a response the GEF secretariat arguments that in the new ESS it has revised the text to ‘*reflect a broader alignment of the GEF’s minimum standards with the environmental and social policies of other institutions, with equivalent or stronger protections of all Habitats, including forests*’. However, the only significant change in the new ESS that relates to forests appears to be under Minimum Standard 3, where it now states that “*Agencies do not propose for or implement with GEF funding projects or programs that would involve adverse impacts on Critical Habitats, including forests that are Critical Habitats*”.

In our opinion, while the inclusion of a biodiversity focus in this Standard is welcome, the new ESS still is considerably weaker on forest protection than the previous ESS. In addition, there is no mention of the precautionary principle in the new draft. For this reason, the NCEA **recommends to maintain in the new ESS policy the requirements in the original ESS policy.**

Minimum Standard 4 – Restrictions on Land Use and Involuntary Resettlement:

In the new policy, the original Involuntary Resettlement standard is significantly extended to add the concept of “restrictions on land use”. In addition, the Standard now focuses specifically on “affected Disadvantaged or Vulnerable Individuals or Groups”. Another notable addition (in Annex 1: 11e) is the compensation for “economic displacement”. The original policy only considered compensation for physical displacement. Overall, the new Minimum Standard significantly extends the original involuntary resettlement standard.

Having said this, it is also clear that in comparison to international good practice and the safeguards of other organisations there is room for further improvement. Below some recommendations are made.

The NCEA recommends:

- **To align the provisions of this standard with the provisions of Minimum Standard 5 on Indigenous Peoples. Particularly in terms of taking avoiding displacement as a first principle:** by always starting with studying alternatives to the project, and only where project alternatives are not feasible studying alternative project designs.
- **To clarify in the definitions section what is meant by affected persons being provided with ‘technically and economically feasible resettlement alternatives and assistance’ (1.A.9.e.ii) and ‘choices among feasible resettlement options’ (1.A.9.f.i).**

- **To further strengthen and align the two Annexes on ‘Physical Displacement’ (1.A.9.f) respectively ‘Economic displacement’ (1.A.9.g) by:**

Transferring text to a more appropriate position:

- Moving the text ‘including land-based compensation where possible – equal to the existing land in productive potential, location, and security of tenure, ownership or use rights’ from 1.A.9.f.i to 1.A.9.g.ii., as this text is applicable to economic displacement;
- For the same reason: transferring ‘livelihoods’ from the paragraph on ‘physical displacement’ to the paragraph on ‘economic displacement’;
- Vice versa: removing the term ‘living standards’ from the paragraph on economic displacement (as it is a term applicable to physical displacement).

Further specifying text:

- Including in 1.A.9.g.ii a specification of the levels to which livelihoods should be improved or restored (comparable to the specification under ‘physical displacement’);
- Some further specification in 1.A.9.f.ii (new text underlined): that “(...) adequate replacement residential land and housing with security of tenure and (...).

See Annex 1 for an example of how the two articles could read including the above suggestions.

2.4 Implications of the new EES Policy for partner agencies and the private sector

Possibly the most important implication of the new ESS policy is the significant requirements that it places on partner agencies, as was discussed earlier in this report under ‘Robustness of the new approach’. Another issue that partner agencies will need to address is the requirement in Annex 1: paragraph 3 that “unless otherwise specified, Agencies demonstrate that the relevant policies, procedures, systems and capabilities are applied broadly across Agency activities, not limited to GEF-financed projects and programs”. This may well be of consequence for some partner agencies, where their safeguard procedures only relate to GEF funded projects.

Finally, an issue that does not appear to be dealt with in the new policy is how private sector projects should be assessed and managed. The partner agencies that obtain funds from the GEF to implement projects work predominantly with developing country government agencies. It should be noted, however, that GEF has initiated a significant private sector collaboration. Through what it terms “non-grant instruments”, the GEF has supported ten private sector collaborations, using \$91 million of GEF funds, and \$1,689 million of co-financing. It is not clear whether these new private sector arrangements are covered by the new GEF Policy. **The NCEA recommends to make it clear that any non-grant instruments funded with private sector collaborations are also covered by the policy.**

Annex 1: Text suggestions

Text suggestion for 1.A.9.a:

“All viable project alternatives and alternative project or program designs are assessed to avoid where feasible, or minimise any risks or adverse impacts of Economic Displacement or Physical Displacement from Restrictions on Land Use and Involuntary Resettlement”.

Text suggestion for Annex 1.A.9.f:

“Where Physical Displacement occurs, displaced persons with title or a claim recognisable under national law are provided with:

- i. Choices among feasible resettlement options;
- ii. Adequate replacement residential land and housing with security of tenure and/or cash compensation, access to services, and resources/organisation to support maintenance of social organisation and social cohesion;
- iii. Relocation assistance suited to their needs; and
- iv. Assistance to improve, or at least restore, their living standards, in real terms, to pre-displacement levels or to levels prevailing prior to the start of project implementation, whichever is higher.”

Text suggestion for Annex 1.A.9.g:

“Where Economic Displacement occurs, affected persons with title or a claim recognisable under national law are provided with:

- i. Proper and timely compensation for the loss;
- ii. Assistance to improve, or at least restore, their livelihoods, their means of income-earning capacity, and production levels, in real terms, to pre-displacement levels or to levels prevailing prior to the start of project implementation, whichever is higher, including land-based compensation where possible – equal to the existing land in productive potential, location, and security of tenure, ownership or use rights; and
- iii. Transitional support, as necessary.”