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| **ESF draft Guidance Notes for Borrowers** | | |
| **Guidance Note   Reference** | **Comments of Government   of India** | |
| **Overall** | As WB E&S Policy for IPF is not covered under present Guidance meant for Borrowers, Management should include following point for Staff Guidance.   1. For projects involving multiple sub-projects covered under Para 30-31 of ESS   1, no such Guidance as agreed by the Management, has been provided on the   issue. We may ask Management to include in Guidance:   ‘if   there are more than one sub-projects in a project, each sub-project must be   classified by the Borrower in accordance with the four risk categories   defined in the Environmental and Social Framework (ESF). The Environmental   and Social Standards (ESS) required for each sub-project will, for assessment   and operational purposes, reflect the risk of that sub-project alone.’   1. Management is   requested to include in Staff Guidance that the Bank will consider the   requirements of paragraph 40 of the Environmental and Social Policy in the   same manner as specified in Para 5, Para 7 and Footnote 4 of the ESS 9 on   Financial Intermediaries. 2. We welcome deletion of illustrative listing   of disadvantaged and/or vulnerable groups from the text of the Policy and   Standards. This would rightly shift the responsibility of determining the   relevance and necessity of identifying people with ‘sexual orientation’ to   the Staff in a project context only. However, to ensure that the Staff is not   put into an awkward situation in countries where such classification or   identification is not legally or constitutionally permissible, it would be   advisable that “The Projects in countries where ‘Sexual Orientation is not   legally or constitutionally recognized” is included in the Section IV-Exception of the Directives:  Suitable directive and staff guidance should be issued in this regard. | |
| **ESS 1: Assessment and Management of Environmental and   Social Risks and Impacts** | |  | |
| **Guidance Note   Reference** | | **Comments of Government   of India** | |
| **Overall** | |  | |
| **GN11.3.** Facilities or   activities that are “carried out, or planned to be carried out, contemporaneously with the project,” do not need to exist or occur in   precisely the same period of time as the proposed project The most common   period of time for consideration of Associated Facilities would be from   project identification to the project completion. | | A   specific time span/limit may be defined for on time implementation of ‘carried   out, or planned to be carried out, contemporaneously with the project’. | |
| **23.** The Borrower will   carry out an environmental and social assessment18 of the project to assess   the environmental and social risks and impacts of the project throughout the   project life-cycle.19 The assessment will be proportionate to the potential   risks and impacts of the project, and will assess, in an integrated way, all   relevant direct,20 indirect21 and cumulative22 environmental and social risks   and impacts throughout the project life-cycle, including those specifically   identified in ESSs2–10. | | There should be guidance on how to identify   and assess risks and impacts mentioned in para 23. This should be in sync   with Staff Guidance or there may be conflict on their interpretation during   assessment and its review by the Bank Staff.  There   should be clear guidance on subjective terms like relevant past, foreseeable   future, unplanned yet predictable activities. | |
| **GN23.3.** Different methods   and tools can be used to identify and assess the environmental and social   risks and impacts of a project. These can vary depending on the baseline data   available and the nature and significance of the environmental and social   risks and impacts. Footnote 18 and Annex 1 of ESS1 identify methods and tools   that are commonly used. | | There   can be more detailed guidance on Different risk assessment methods and tools as   enumerated in Footnote 18 to enable Borrowers to make correct choices   depending on nature of projects and likely risks associated based on past   experiences | |
| **GN23.4** (Footnote   21). Induced   impacts are indirect economic impacts that may be generated by a project,  both positive and negative, that are not associated with the physical   footprint of the project, and not a direct result of the project’s physical   impact/activities. | | This   may be better explained through examples. | |
| **GN25.2.** ‘Independent’ means   that the specialist is able to provide professional, objective and impartial   advice, without consideration of future work, and avoiding conflicts with   other assignments or their own business or personal interests. Such   independence supports the objectivity of the environmental and social   assessment, without regard to vested interests and without reason to   influence the outcome of the assessment. In certain circumstances, where the   specialist has been involved in the preparation, design and implementation of   the project (for example, early feasibility studies), they may be still   engaged in conducting the assessment if the Borrower can demonstrate to the   satisfaction of the Bank that there is no conflict of interest, and that to   engage such a specialist would be of benefit for the assessment. | | The   language of Guidance on conflict of interest in engaging such specialist it   says ‘borrowers are required to demonstrate **to the satisfaction of the Bank’** is not conforming to the   ESF language and needs to be deleted. | |
| **32**. The environmental   and social assessment will also identify and assess, to the extent   appropriate, the potential environmental and social risks and impacts of   Associated Facilities. The Borrower will address the risks and impacts of   Associated Facilities in a manner proportionate to its control or influence   over the Associated Facilities. To the extent that the Borrower cannot   control or influence the Associated Activities to meet the requirements of   the ESSs, the environmental and social assessment will also identify the   risks and impacts the Associated Facilities may present to the project. | | Guidance   on E&S assessment of Associated Facilities Para 32 may be added | |
| **Annexures** | | Annexure 1 should also carry   Guidance on Assessment tools and methods.   Part   B on Institutional Capacity, if not clearly defined in some form of Guidance, may increase costs of Projects to Borrowers and strengthen apprehension that new ESF may   have financial implications for Borrowers.  **Annexure 3** on Management of   Contractors should also carry suitable Guidance. Merely introducing some of   the requirements in ESCP in tender documents may not be sufficient. There can   be some assurance to Borrowers on training and familiarising sessions   particularly on what’s new in ESSs. | |

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| **ESS 2:**   Labor and Working Conditions |  |
| **Guidance Note   Reference** | **Comments of Government   of India** |
| **Overall** | The   required Legislative framework is already in place in India to address the   issues highlighted in the guidance note. Workers’ arrangement for their   employment must follow the national /domestic laws. |
| **GN 2.2.**  ESS2 is in part informed by several   International Labour Organization (ILO) and United Nations (UN) Conventions.   These include:  •   ILO Convention 87 on Freedom of Association and Protection of the Right to   Organize  •   ILO Convention 98 on the Right to Organize and Collective Bargaining  •   ILO Convention 29 on Forced Labor  •   ILO Convention 105 on the Abolition of Forced Labor  •   ILO Convention 138 on Minimum Age (of Employment)  •   ILO Convention 182 on the Worst Forms of Child Labor  •   ILO Convention 100 on Equal Remuneration  •   ILO Convention 111 on Discrimination (Employment and Occupation).  Many   of these conventions and other international instruments are incorporated   into the national law of ratifying countries. | We   may ask Management to remove reference to the Conventions or may additionally   clarify- primacy of national Law will prevail – meaning thereby that only   Conventions already ratified by Borrower will be made applicable by the Borrowers in projects. |
| **GN3.5** (Footnote 3). A range of third parties may   be used to source or provide labor for a project. It is important to   understand the nature of the relationship between the third party and the   project worker to decide how the requirements of ESS2 apply to the worker. In   some circumstances, even where the worker is engaged on the project long   term, the control and legal responsibility for the worker remains with the   third party. In such circumstances, the worker is a “contracted worker” for   the purposes of ESS2, and the responsibilities of the Borrower are as set out   in Section E (Paragraphs 31-33) of ESS2. This is the case, for example, where   a contractor brings its own workforce to work on a project. In other   circumstances, the third party may source and recruit the worker on behalf of   the Borrower (or the entity involved in implementing the project, such as the   project implementation unit). In these circumstances, such workers are “direct   workers” for the purposes of ESS2. This is the case, for example, where a   labor broker or agent acts as an intermediary for the placement and   recruitment of workers in one country to be employed on a project in another country. | We still   do not understand when workers engaged through broker, agent or intermediary   will be classified as ‘contracted workers’. Illustration of situations where such labour is engaged is needed. Non-applicability in specific country   context for workers engaged through “brokers, agents or intermediaries” needs   to be further clarified. |
| **GN16.4.** Where workers’ freedom of association   and/or collective bargaining are prohibited or restricted under national law, the Borrower and third parties should engage with workers to address relevant   issues relating to their working conditions and terms of employment.   Alternative mechanisms may include recognizing worker committees, and   allowing workers to choose their own representatives for dialogue and   negotiation on terms and conditions of employment in a manner that does not   contravene national law. | Clarity   may be given on how contravention of national laws will be avoided. |
| **GN30.2.** In the event of an   occupational fatality, the Borrower reports to the Bank as soon as becoming   aware of the fatality. This is supported by similar reporting obligations by   third parties and primary suppliers to the Borrower. | We   may ask the management to suitably modify the part: “the Borrower reports to   the Bank’ |
| **GN34.1.** The type of projects in which community   workers are involved can vary considerably in terms of complexity, duration   and type of work, number of workers involved, types of project benefits, and   the way in which ESS2 applies to the participation of community workers.   Examples range from projects where the objective is to construct small-scale   community infrastructure to regional or national projects designed to provide   a social safety net to address unemployment or underemployment. The   application of ESS2 to such projects is designed to address the relevant   risks and impacts in a proportionate manner, tailored to the specific   context, objectives and design of the project.  **GN34.2.** For example, where the objective of the   project is the construction of community infrastructure for the benefit of an   identified community, with labor being provided directly by members of that   community, ESS2 requirements relating to OHS (Section D) and child and forced   labor (Section B), may be of most relevance. While the community may be   contributing its labor, it would be important to check the safety of the   working environment, the age of community workers, and the terms on which   labor is being mobilized.  **GN34.3.** Other projects may be of broader scope   and more long-term, such as those aimed at addressing structural issues of   unemployment or underemployment, including training, or providing assistance   as a response in fragile or conflict-affected situations. In such projects,   the elements of ESS2 that may be most relevant may relate to wages, terms and   conditions of employment, and training (Section A). | The   Guidance should have also clarified that the agreement referred to does not   need to be in writing, may be expressed in different ways, reflect the design   of the project, and reflect the way in which decisions are made in local   context.  And then Management can suggest on Good   Practice on documenting the same |
| **42.** The ability of the   Borrower to address these risks will depend upon the Borrower’s level of   control or influence over its primary suppliers. Where remedy is not   possible, the Borrower will, within a reasonable period, shift the project’s   primary suppliers to suppliers that can demonstrate that they are meeting the   relevant requirements of this ESS. | Suitable   Guidance Note is required as this may not be in consonance with national Procurement   laws/framework. |

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| **ESS 3:   Resource Efficiency and Pollution Prevention and Management** |  |
| **Guidance Note   Reference** | **Comments of Government   of India** |
| **Overall** |  |
| **5.** The Borrower will   implement technically and financially feasible measures for improving   efficient consumption of energy, water and raw materials, as well as other   resources. Such measures will integrate the principles of cleaner production   into product design and production processes to conserve raw materials, energy and water, as well as other resources. Where benchmarking data are   available, the Borrower will make a comparison to establish the relative   level of efficiency.  **6.** The efficient use   of energy is an important way in which the Borrower can contribute to   sustainable development. When the project is a potentially significant user   of energy, in addition to applying the resource efficiency requirements of   this ESS, the Borrower will adopt measures specified in the EHSGs to optimize   energy usage, to the extent technically and financially feasible.  **7.** When the project is   a potentially significant user of water or will have potentially significant impacts on water quality, in addition to   applying the resource efficiency requirements of this ESS, the Borrower will   adopt measures, to the extent technically and financially feasible, that   avoid or minimize water usage so that the project’s water use does not have   significant adverse impacts on communities, other users and the environment.   These measures include, but are not limited to, the use of additional   technically feasible water conservation measures within the Borrower’s   operations, the use of alternative water supplies, water consumption offsets   to maintain total demand for water resources within the available supply, and   evaluation of alternative project locations.  **10.**  When the project is   a potentially significant user of raw materials, in addition to applying the   resource efficiency requirements of this ESS, the Borrower will adopt   measures4 specified in the EHSGs and other GIIP to support efficient use of   raw materials, to the extent technically and financially feasible. | Resource   Efficiency be it in Energy Use or Water Use or Raw Material Use as mentioned   in the ESS 3 in Para 5, 6, 7 and 10 refers to use of measures which are   technically and financially feasible. This will require Guidance to   adequately explain as some of the techniques may be beyond borrower’s reach   either in terms of cost or capacity or its non-availability in Borrowing   country, which will make analysis of technical or financial feasibility   impractical.  Further, all the related   Guidance of above-mentioned Paras has escaped this ‘technical and   financial feasibility’ aspect. Guidance should be modified to include this   as prime factor when we look for resource efficiency. Borrowers should also   be enabled to carry out such analysis. |
| **GN6.1.** Sectors that   typically make significant use of energy include, for example, industrial   production, water pumping or transport. However, projects in other sectors   may also be significant users of energy; these include waste management, education, and health. | Borrower’s   country perspective may be used to guide “significant users of energy” |
| **GN8.3.** Various options   exist to improve water use efficiency. For example, urban water use   efficiency can be increased through use of water-saving technology, repairing   water distribution systems to reduce leakage, promoting water use, and   increasing storm water capture. Water use in agriculture, the largest   consumer of water, can be made more efficient through irrigation system   improvements, irrigation scheduling, improving water conveyance efficiency   and leakage losses, managing soils to reduce run off and reusing water on-farm.   Depending on the significance of the project’s potential impacts on   communities, other users or the environment, it may be useful to include an   assessment of the volume of water used per unit of production in the   project’s environmental and social assessment. | Overriding   clause of financial feasibility should be reflected adequately in the   Guidance. Traditional water conservation techniques in local areas and   various adaptation practices may be added as one of the options to improve   water use efficiency. |
| **GN13.2.** The assimilative   capacity of receiving water bodies may depend on numerous factors, including, for example, the total volume of water, flow and flushing rates, and the   loading of pollutants from other effluent sources in the area or region. The   assimilative capacity of soil may depend on the characteristics of both the   received discharge and the soil, as well as the type of microbial, chemical   and physical reactions that take place in the soil layer, and climatic   conditions. Waste may include sewage sludge, municipal solid waste, municipal   wastewater, industrial waste, agricultural waste, and leachates of manure   disposed on land or used as a fertilizer. To determine the assimilative   capacity of an airshed, emission levels, ambient air quality standards and   prevailing meteorological conditions are taken into account. Appropriate air   quality modeling or similar tools may be necessary to determine critical   emission loads. | Temperature may   also be considered as one of the factors affecting assimilative capacity of   receiving water bodies |
| **GN16.1.** The environmental   and social assessment includes an estimate of the gross GHG emissions related   to the project, where technically and financially feasible. For projects   producing significant GHG emissions, it is important to characterize and   estimate direct GHG emissions from the project and, if feasible and relevant, indirect GHG emissions associated with the project’s use of energy but   occurring outside the project boundary (for example, GHG emissions from   purchased electricity, heat or cooling). Emissions arising from future   combustion of fossil fuel are not attributed to the fuel producers, but to   the end users of such fuels (for example, projects involving the extraction, transport or refining of hydrocarbons). For some projects designed to produce   GHG savings, in addition to gross GHG emission estimates, net emissions   calculations may be considered to inform project design. | GN   16.1 surprisingly goes beyond defined scope of GHG emissions estimation in   Para 16 which refers to only emissions from the Project, but Guidance even   talks of measurement of indirect emissions beyond Project’s boundary. This does   not reflect agreed position on GHG estimation during ESF draft discussion.   Similarly, net emissions calculations is burdensome on Borrowers. These   provisions in Guidance needs to be withdrawn immediately. |
| **GN18.2.** The project’s environmental   and social assessment identifies the hazardous waste that may be generated or   managed by the project, taking into account national law, GIIP, and the   EHSGs. It is good practice to conduct a hazard analysis, where a project has   the potential to release hazardous material, or where project operations   could result in injury to project workers or the public. A hazard analysis   allows for systematic identification of systems and procedures that could   result in accidental release of hazardous materials and associated risks.   Standard tools for hazard analysis include Hazard Identification (HAZID),  Hazard and Operability studies (HAZOP), Process Safety Management (PSM) and   Quantitative Risk Analysis (QRA). Where there is risk of a spill of   uncontrolled hazardous materials, a spill control, prevention, and   countermeasure response plan is prepared as part of the environmental and   social assessment. Information related to the project’s management measures   for hazardous materials is disclosed to stakeholders, including project   workers. | Clarification   may be sought on how borrowers’ capacity will be built on Hazard analysis   tools like HAZID, HAZOP, PSM, QRA. Would this be financially feasible? |
| **GN19.1.** Chemicals and hazardous   materials to be avoided are identified in relevant international conventions, such as: the Stockholm Convention on Persistent Organic Pollutants; the   Rotterdam Convention of Prior Informed Consent for Certain Hazardous   Chemicals and Pesticides in International Trade; the Montreal Protocol on   Substances that Deplete the Ozone Layer, and the Minamata Convention on   Mercury. The relevant international conventions are considered in the   environmental and social assessment as they relate to the project, regardless   of whether the Borrower is a registered party to those conventions. The   requirements of these conventions, protocols, and agreements are reflected in   any proposed mitigation measures. | Conventions   should be ratified by borrowers for their applicability. This Guidance should   be modified to conform to the primacy of national laws.     “Basel convention” on the control of   transboundary movements of hazardous wastes and their disposal may also be   added. |
| **GN19.4.** The Montreal   Protocol on Substances that Deplete the Ozone Layer, Annexes A and B list the   compounds—chlorofluorocarbons (CFCs), halons, carbon tetrachloride and   1,1,1-trichloroethane—the manufacture and consumption of which are to be   avoided. Continued use of CFC refrigerant already present within   refrigeration machinery is permitted, although in these circumstances it is   good practice to minimize refrigerant leakage. While the Montreal Protocol   does not anticipate complete phase out of hydrochlorofluorocarbon (HCFC)   refrigerants until January 1, 2040 in Article 5 countries, in many such   countries zero ozone depletion proven alternatives are already in use, have   supporting service infrastructure and are preferred to HCFCs. | This should be applicable as ratified by the   borrowers and primacy given to National Laws. |
| **GN22.1.** The Borrower checks   the list of pesticides proposed for procurement under the project against the   criteria of carcinogenicity, mutagenicity, or reproductive toxicity, as set   forth by relevant international agencies and outlined in the Globally   Harmonized System of Classification and Labelling of Chemicals (GHS). The   relevant international conventions are considered in the environmental and   social assessment as they relate to the project, regardless of whether the   Borrower is a registered party to those conventions. The requirements of   these conventions, protocols, and agreements are reflected in any proposed   mitigation measures. | Borrower’s capacity and technical and   financial feasibility should be taken into account. Also, this should be   applicable only to conventions ratified by borrowers and elaborate how primacy would be given to National Laws. |

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| **ESS 4: Community Health and Safety** |  |
| **Guidance Note   Reference** | **Comments of Government   of India** |
| **Overall** |  |
| **GN5.2.** Some groups within a community may be   particularly vulnerable to health and safety risks from a project because of,   for example, their age, health, level   of education, gender and/or disability. Identifying individual groups   considered to be vulnerable is an important part of the environmental and   social assessment. | Should   also include reference to “occupation” and “socioeconomic conditions |
| **GN6.3**. The certification or approval process by   competent authorities or professionals reflects the risk of adverse   consequences posed by the nature and use of the structural elements, and the   natural conditions of the area (e.g.   potential for hurricanes, earthquakes, flooding). The process also takes   into account the relevant engineering safety considerations, such as   geotechnical, structural, electrical, and mechanical specifications. Similar   considerations apply in determining whether third-party life and fire safety   audits are required. | Natural   Conditions in the area should   include reference to “extreme temperatures” as example |
| **GN11.4.** A road safety   assessment is conducted as part of the environmental and social assessment   when the traffic and road safety issues are likely to be significant for   the community or road users, for example in projects that involve new roads,  road improvements, traffic management, increasing traffic speed, bus rapid   transport and other forms of urban transport that may change the traffic mix.   The assessment considers risks to pedestrians, for example from bisecting   communities or pedestrian routes, creating transport nodes, or affecting   access to or traffic on a road. Both   construction-related and operational risks are considered. | “Both   construction-related, accidental   and operational risks are considered”. |
| **GN11.6.** Information on traffic incidents and   accidents is used to help manage traffic risks and impacts, and make   improvements to safety measures throughout the project life cycle. Monitoring   and reporting covers details of fatalities, injuries, crash types and   locations. An emergency response plan (ERP) may be appropriate to describe   the contingencies in place for emergency assistance in the event of incidents   and injuries (see Paragraph 20 of ESS4). It   is recommended to develop the ERP in consultation with the local communities   and local emergency responders. | “It is recommended   to develop the ERP in consultation with the local communities and local   emergency responders or local health   authorities” |
| **GN12.2.** Processes designed to promote driver and   vehicle safety would provide for vehicles to be maintained and   inspected/tested regularly, and for drivers to be provided with appropriate   training. Other issues to be addressed would include compliance with speed   limits, seatbelt use, and helmet use for motorcycle riders. Driver fitness   assessments, GPS in vehicles, and control of infractions received may all   form part of monitoring programs. | These measures   would take into account local regulations and viability as regards costs |
| **GN18.4.** Where the risks and impacts of community   exposure to hazardous materials and   wastes are potentially significant, it may be appropriate to develop a   Hazardous Waste Management Plan or a Hazardous Materials Management Plan for   implementation of mitigation measures throughout the project life-cycle. | The mitigation   measures would be commensurate with the level of risk and the capacity of the   client agency |
| **GN20.1**. A Risk Hazard   Assessment (RHA) is a mechanism to identify potential risks to community   health and safety that are caused by man-made or natural emergency events.   Where such emergency events could have a significant impact on the   communities, for example, fire, explosions, leaks or spills, this assessment   can be conducted either as part of the environmental and social assessment or   as a stand-alone activity. When there are risks that hazardous material or   substances may be released by a project, the potential for emergency events   needs to be assessed. The RHA can help determine if such emergency events   call for the preparation of an Emergency Response Plan (ERP), which describes   the measures to be put into place to address the emergency and protect those   at risk. | Capacity   of borrowers should be taken into   account for conduct of RHA to identify potential risks for community health   and safety. |

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| **ESS 5: Land   Acquisition, Restrictions on Land Use and Involuntary Resettlement** |  |
| **Guidance Note   Reference** | **Comments of Government   of India** |
| **Overall** | The primacy of national   laws/system must have stated.  In   lieu of compensation, the guidance note can also mention other methods for   land acquisition such as the transfer of ownership rights, wherever   applicable  The   restrictions of land-use referred in the ESS guidance note needs to mention the Master Plan regulations of the city concerned where the World Bank   assisted projects are to be implemented viz., Zoning regulations which   prescribes permissibility of various activities under each land use category |
| **2.** Experience and research   indicate that physical and economic displacement, if unmitigated, may give   rise to severe economic, social and environmental risks: production systems   may be dismantled; people face impoverishment if their productive resources   or other income sources are lost; people may be relocated to environments   where their productive skills are less applicable and the competition for   resources greater; community institutions and social networks may be   weakened; kin groups may be dispersed; and cultural identity, traditional   authority, and the potential for mutual help may be diminished or lost. For   these reasons, involuntary resettlement should be avoided. 4 Where   involuntary resettlement is unavoidable, it will be minimized and appropriate   measures to mitigate adverse impacts on displaced persons (and on host communities   receiving displaced persons) will be carefully planned and implemented.  **Footnote   4.**   Avoidance is the preferred approach in accordance with the mitigation   hierarchy in ESS1. It is especially important to avoid physical or economic   displacement of those socially or economically vulnerable to hardship as a   result. However, avoidance may not be the preferred approach in situations   where public health or safety would be adversely affected as a result. There   may also be situations where resettlement can provide direct development   opportunities for households or communities, including improved housing and   public health conditions, strengthened security of tenure or other   improvements to local living standards. | Guidelines should elaborate on how applicable national laws will be factored in. |
| **GN4.1**. Definitions of “land acquisition” practices or “restrictions on land use,” set out in   Paragraph 1 and Footnotes 1 and 2 of ESS5, include important clarifications   that help to determine whether ESS5 applies in a specific project. While “land acquisition” refers to any method by which land is acquired for a   project, it is typically understood to mean expropriation or some form of   negotiated transfer for project purposes. Footnote 1 notes that actions that   may not be generally understood to fall under “land acquisition” are also   covered by the term. For example, when the government displaces occupants   from state land for purposes of a project, even though the state is the   owner, the act of repossessing the land from the occupants is considered land   acquisition for purposes of ESS5. | This   Guidance should clarify how applicable national laws will be factored in. GN 4.1 expands scope of ‘land   acquisition’ as referring to include ‘any method’ by which land is acquired   for the project. Understanding of footnote 1 of this ESS is also not   correctly interpreted. This Guidance should state “primacy of national laws”. |
| **GN4.13.** Voluntary land   donations are documented. This calls for (a) written notification indicating   the location and amount of land that is sought and its intended use; and (ii)   a formal statement of donation, establishing informed consent, confirming   that there is no disputed ownership and that there are no claims by renters,  users, squatters or encroachers, and signed by each owner or user involved. Any   taxes or fees owed for processing or registration of the land transfer, if   applicable, are paid in full by the Borrower, who maintains the records of   donations, including documentation. Documentation   is made available for review in any grievance that may arise. | This   has been too vastly interpreted beyond what is stated in Footnote 10 of ESS   and should be corrected. |
| **GN4.14.** As with any other   activity involving project affected people, a grievance mechanism is in place   to allow consideration of, and timely response to, grievances raised by land   donors (and other persons affected by the transfer of land). In terms of   vulnerable people or communities, women users of land to be donated, or in   the case of collective or community lands to be donated, users of those lands   may be at risk of being passed over in the decision-making process, unless   they are consulted. | Channels   of communication should ensure that the quorum of stakeholders includes representatives   of vulnerable communities as well. |
| **GN8.1.** Paragraph 8 refers   to situations in which the Bank is providing support to a process by which a   Borrower develops better plans, typically covering large areas, which is   viewed as a type of technical assistance, as described in Footnote 5 of ESS1.   If the project also finances implementation of output from the technical   assistance that results in involuntary resettlement, then ESS5 applies.   Finally, Paragraph 8 does not exempt project support for plans developed for   the creation or extension of projected   areas or parks, for which a “process framework” or similar instrument may   be required under Paragraph 21. | “Projected”  may be replaced by “protected” |
| **GN9.2**. While ESS5 does not   apply to forced displacements resulting from natural disasters, conflict, crime or violence, it is applicable when project activities cause   displacement of already settled refugees or internally displaced persons.   ESS5 also applies to state-imposed relocation of people or businesses as a   subsequent response to a natural disaster or conflict – for example, where   project activities involve the involuntary relocation of people from an   affected area because of concern that the disaster, or other event, could   reoccur. | This   is an incorrect interpretation. May be corrected. Already settled refugees or   IDPs may be resettled for a number of reasons and therefore bringing them within ambit of ESS   5 makes such decisions difficult. There can be emergency situations –   security of refugees etc. Similarly, temporary displacements as part of   natural disaster management even if involuntary should be exempted. |
| **GN20.2.** The cut-off date   for determining eligibility for compensation or other assistance is intended   to help prevent encroachment by opportunistic settlers. It is most effective   when it is well communicated, documented, and disseminated, including by   providing clear demarcation of areas designated for resettlement. Individuals   taking up residence in, or use of, the project area after the cut-off date   are not eligible for compensation or resettlement assistance. Similarly, the   loss of fixed assets (such as built structures, crops, fruit trees, and   woodlots) established after the cut-off date is not compensated. | As   any settlers on the land after a pre-determined cut-off date will not   eligible for compensation, care must also be taken that the original settlers   do not make unfair land transactions during the time that the land project is   under implementation to try to dispose it off to avoid long-drawn   compensation disputes, etc |
| **GN31.2**. Due process is   understood to include the following types of procedural protections: (a) an   opportunity for genuine consultation with those affected; (b) adequate and   reasonable notice for all affected persons prior to the scheduled date of   eviction; (c) information on the proposed evictions, and, where applicable,   on the alternative purpose for which the land or housing is to be used, to be   made available in reasonable time to all those affected; (d) especially where   groups of people are involved, government officials or their representatives   to be present during an eviction; (e) all persons carrying out the eviction   to be properly identified; (f) evictions not to take place in particularly   bad weather or at night unless the affected persons consent otherwise; (g) provision   of legal remedies; and (h) provision, where possible, of legal aid to persons   who are in need of it to seek redress from   the courts. | Prevailing National Laws should be recognized and factored in. |

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| **ESS 6: Biodiversity Conservation and Sustainable   Management of Living Natural Resources** |  |
| **Guidance Note   Reference** | **Comments of Government   of India** |
| **Overall** | In   cases where countries do not have robust environmental policies and guidance, the international global biodiversity standards should be taken into   consideration within their legal framework especially for regional hotspots   that have global impact. |

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| **ESS 7: Indigenous Peoples/Sub-Saharan African   Historically Underserved Traditional Local Communities** |  |
| Guidance Note   Reference | Comments of Government   of India |
| **Overall** |  |
| **11.** A key purpose of   this ESS is to ensure that Indigenous Peoples/Sub-Saharan African   Historically Underserved Traditional Local Communities present in, or with   collective attachment to, the project area are fully consulted about, and   have opportunities to actively participate in, project design and the   determination of project implementation arrangements. The scope and scale of   consultation, as well as subsequent project planning and documentation   processes, will be proportionate to the scope and scale of potential project   risks and impacts as they may affect Indigenous Peoples/Sub-Saharan African   Historically Underserved Traditional Local Communities.  **12**. A key purpose of   this ESS is to ensure that Indigenous Peoples/Sub-Saharan African   Historically Underserved Traditional Local Communities present in, or with   collective attachment to, the project area   are fully consulted about, and have opportunities to actively participate in,   project design and the determination of project implementation arrangements.   The scope and scale of consultation, as well as subsequent project planning   and documentation processes, will be proportionate to the scope and scale of   potential project risks and impacts as they may affect Indigenous   Peoples/Sub-Saharan African Historically Underserved Traditional Local   Communities. | Para   12 is repetition of Para 11. |
| **GN27.1** If FPIC cannot be   ascertained by the Bank, the project design will be adjusted to eliminate the   aspects of the project relevant to the affected IP/SSAHUTLC. For example, if   affected communities of IP/SSAHUTLC do not provide their FPIC to the proposed   construction of a new road through their land, the project may, depending on   circumstances, consider rerouting the road to avoid acquisition of the land   or physical displacement of the communities. In such cases, measures included   in the IP/SSAHUTLC Plan help avoid any adverse impacts on the communities. | GN   27.1 FPIC still needs more Guidance. May clarify what is meant by ‘if IP do   not provide FPIC’? |
| **GN32.1.** “Cultural heritage” is both tangible and intangible. Tangible cultural heritage includes movable   or immovable objects, sites, structures, groups of structures, and natural   features and landscapes that have cultural significance. Intangible cultural   heritage includes practices, representations, expressions, knowledge and skills, as well as the   instruments, objects, artifacts and cultural spaces associated with that   communities and groups recognize as part of their cultural heritage. Further   explanation and requirements on cultural heritage are set out in ESS8. | May provide clarification on whether applicability of ESS provisions for “intangible” cultural heritage is consistent with similar provisions in ESS 8   (Para 7)? |

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| **ESS 8: Cultural Heritage** |  |
| **Guidance Note   Reference** | **Comments of Government   of India** |
| **Overall** |  |
| **GN5.1.** Besides the more   obvious excavations, demolition, or other physical changes that may affect   cultural heritage sites and structures, an irrigation project that results in   a rise and fall of the water table in an area may damage the foundations of   ancient buildings or artifacts, or an energy project to construct   transmission lines may disfigure   historic or natural landscapes. | Includes  “besides the more obvious excavations...”. Therefore, no change is proposed |
| **GN7.1.** The environmental and social assessment   takes into consideration the significance of intangible cultural heritage   likely to be affected and whether and how the project may materially impact   this heritage; if impacts are identified, measures and actions to mitigate   them are put into place. For example, project activities may require cutting of trees that are used for cultural or   religious practices and are considered to be sacred. | The   example given is of circumstances that would be difficult to establish and implement and therefore should be deleted or modified. |
| **GN8.1** Direct impacts, such as those caused by   construction activities, are often the most readily apparent. They generally   result from excavation, dredging, flooding or the vibration caused by heavy   machinery. The environmental and   social assessment also considers the indirect and cumulative impacts that may   occur during implementation or after completion of a project, for example, from changing conditions in a watershed area, or from increased traffic and   construction along a new or improved road. | Guidelines that are less technically and financially feasible should be avoided. Expected measures should take into consideration   borrower’s capacity. |
| **GN10.1.** Methods for   documenting and protecting cultural heritage typically include field surveys   to identify cultural heritage likely to be impacted by the project. Manual   survey techniques over small areas may be appropriate while for larger areas,  various survey techniques and technologies for carrying out cultural heritage   surveys (for example photogrammetry, remote sensing for cross referencing and   comparing survey data) may be more appropriate | Guidance that have unviable cost and technical feasibility issues should be avoided. |
| **GN14.2**. In case of   disagreement about the significance of the cultural heritage affected by the   project or the approach to its management, it may be helpful to engage   third-party experts. | Clarification   is needed on role played by such third party experts or may state “if borrowers   feel the need, they may engage third-party experts” |
| **GN18.2.** In some places,  burial grounds or cemeteries may not be recognized as cultural heritage. For   example, they may be recent or of an indeterminate age, not considered of   historical or archaeological value, or unrelated to the current local   population. In these circumstances, consultations with the project-affected   parties and other stakeholders to determine appropriate mitigation measures   in accordance with ESS1. | GN   18.2 seems unnecessary. |

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| **ESS 9: Financial Intermediaries** |  |
| **Guidance Note   Reference** | **Comments of Government   of India** |
| **Overall** |  |
| **GN4.6.** Where a World Bank   project includes technical assistance to an FI, the FI follows the   requirements set out in ESS1 as relevant and appropriate to the nature and   risks of the technical assistance. | GN   4.6 may apply to FIs |
| **GN7.2.** The ESMS includes processes for screening   and categorizing proposed subprojects based on their potential environmental   and social risks and impacts, conducting environmental and social assessments   and monitoring subproject environmental and social performance. An existing   ESMS may need to be strengthened to meet the requirements of ESS9, in which   case it is recommended that a time-bound action plan be used by the FI for   this purpose. | The   time bound action plan may be limited up to National requirements, in mutual   agreement with the project developer and only for future projects. |
| **GN7.3.** An effective ESMS   is commensurate with the highest level of environment and social risk that is   anticipated in FI subprojects and/or portfolio. The ESMS is reviewed and   enhanced by the responsible FI as needed prior to supporting a new FI   subproject with higher levels of environmental and social risks and   impacts. | Guidance may factor in adherence with National   Regulatory requirements. |
| **GN7.4** Where the Borrower   on-lends Bank funds, the contractual arrangements between on-lending parties   should set out the requirements of ESS9 including establishment of ESMS and   the application of ESS2 to the Responsible FI. | GN   7.4 may not be applied retrospectively. Moreover, this condition should apply   only when FIs have the majority contribution as an on-lending party. Guidance can clarify this. |
| **GN11.1.** Paragraph 11   applies to the Responsible FI, and the requirements of Paragraph 11 are   incorporated in the ESMS. Examples of exclusions include the ineligibility of   subprojects or general purpose activities that are high risk or have   significant adverse environmental or social impacts, or ineligibility of   business activities that involve land expropriation, involuntary resettlement   or loss or damage to assets. | The   FI will seek compliance w.r.t. national laws to all its sub-projects. |
| **GN11.2.** Where Bank support is provided for a   general purpose, as set out in Paragraph 5(b) of ESS9, the exclusions in the   legal agreement apply to the entire portfolio of the FI. Where the World Bank   support is for clearly defined subprojects, the exclusions apply only to   those subprojects. | Some   value/threshold needs to be specified |
| **GN16.1.** If the risk profile of an FI subproject   increases significantly, and the FI’s existing environmental and social   procedures are not adequate to address this increased risk, the FI modifies   such procedures as necessary. | Project   specific Modification of procedures may not be feasible/practical. |
| **GN24.1.** ESS10 sets out requirements relating to the   disclosure of information to allow stakeholders to understand the potential   risks and impacts of FI subprojects. This information is disclosed in the   relevant local languages and in a manner, that is accessible and culturally   appropriate, and prior to approval of the FI subproject. Further details on stakeholder   engagement are set out in ESS10. | For   Projects in which Bank entry is at later stage and the projects are not prepared   in anticipation of Bank financing, certain deviation as per National Guidance   requirements should be accepted. |

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| **ESS 10: Stakeholder Engagement and Information   Disclosure** |  |
| **Guidance Note   Reference** | **Comments of Government   of India** |
| **Overall** | For   Projects in which Bank entry is at later stage and the projects are not prepared   in anticipation of Bank financing, certain deviation as per National Guidance   requirements should be accepted. |
| **GN 10.1.** (c) Third, discussions are conducted   with representatives of the stakeholders identified and with persons knowledgeable   about the local, country and sector contexts and undertake media and social   media searches to verify the list and identify any other project-affected or   interested parties and to find out how to contact them. | Guidance that result in impractical and financially unviable actions may be deleted. |
| **17.** When the stakeholder engagement with local   individuals and communities depends substantially on community   representatives,5 the Borrower will make reasonable efforts to verify that   such persons do, in fact, represent the views of such individuals and   communities, and that they are facilitating the communication process in an   appropriate manner.6  Footnote 5. For example, village heads, clan   heads, community and religious leaders, local government representatives, civil society representatives, or teachers. | Footnote   5 attached to the expression ‘community representatives’ in Paragraph 17 of   the ESS10 includes ‘clan leaders’ and ‘religious leaders’ as examples of   community representatives. Bringing ‘clans’ and ‘religion’ in the development   process can be quite troublesome in many situations. These examples should be avoided. |
| **GN18.1.** The use of the SEP framework approach is   appropriate where the design and location of the project cannot be known   during project preparation, or when a project has multiple subprojects that   will only be designed during project implementation. In such cases, the   framework sets out the principles to be followed for stakeholder engagement, indicates how people are notified as key information becomes known. The SEP is updated as and when specific   details become known, for example the specific locations, stakeholders and   schedule of activities. | Guidance should clarify the Specific   remedies should be agreed |
| **GN19.2.** It is important to remain responsive to   requests for information from project-affected parties and other interested   parties-through the project cycle, and set   up appropriate systems to make available project information | More clarity is needed. |