

جمهوری اسلامی افغانستان
اداره ملی حفاظت محیط زیست



د افغانستان اسلامي جمهوریت
د چاپیریال ساتنې ملی اداره

Islamic Republic of Afghanistan
National Environmental Protection Agency

NATIONAL ENVIRONMENTAL IMPACT ASSESSMENT POLICY

An Integrated Approach to Environmental Impact Assessment in Afghanistan

Final (November 2007)

INTRODUCTION TO THE POLICY

I am pleased to be able to provide the final policy for environmental impact assessment processes in Afghanistan. The following policy document represents an important stage in implementing Chapter 3 of the Environment Law. It defines how the administration of EIA procedures should be undertaken. The policy has been developed through assistance of the United Nations Environment Programme to the National Environmental Protection Agency. It has been widely consulted by distribution of a draft version and national consultation with relevant stakeholders in Afghanistan. This final policy version represents the comments received through this process.

We will undoubtedly face many challenges in mainstreaming environmental considerations through development projects. Weak technical capacity, limited funding and low awareness of stakeholder responsibility will all have an influence on the success of EIA in Afghanistan. However, in time it is believed that EIA will become one of the cornerstones of Afghanistan's response to sustainable development ideals.

Given the immense task to recreate our infrastructure and economy after many years of conflict it is proposed that the EIA procedure should not be seen as a hindrance to development opportunities. Rather it should be seen as legitimate process that adds value to project design and implementation and averts potential unwanted social and environmental impacts that can result in costs that are often shifted to the Government. Social and environmental considerations are the responsibility of all and as such it is NEPA's responsibility to ensure tools such as EIA are implemented effectively.

In time regulations will be developed making this policy a legal requirement. However, as stated in this policy it is envisaged that an interim arrangement will be implemented to allow the system to develop flexibility and reduce the administrative burden that can often occur in Government.

With these issues in mind I commit to you this final policy document and seek the assistance of all stakeholders in ensuring its implementation remains a success and testament to Afghanistan's commitment to environmental and social protection.

Mostapha Zaher
Director General
National Environmental Protection Agency

Acronyms

ANDS –Afghanistan National Development Strategy
EA – Environmental Assessment
EIA – Environmental Impact Assessment
EIS – Environmental Impact Statement
EL – Environment Law
IEE – Initial Environmental Examination
NEPA – National Environmental Protection Agency
UN – United Nations
UNEP – United Nations Environment Programme

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Executive Summary

Over the past 30 years both developed and developing countries have implemented and refined EIA processes so now they are commonplace and accepted by society in general as one way to improve environmental conditions through the development agenda. However, during this period Afghanistan has been subject to significant conflict which as a result has caused it to fall behind in global trends brought about by the environment movement.

With this background in mind, the purpose of this policy document is to take the first step in developing a formal EIA procedure in Afghanistan. This procedure will form the basis of an administrative process which can be adopted by the Government of the Islamic Republic of Afghanistan.

In the development of national EIA systems it is generally advisable to follow the regional trends while still focusing on best practice

and country specific conditions wherever possible. Afghanistan is however, in a distinctive geographic location which means that there is little harmony amongst various regional models.

The objectives of EIA have been described as:

- To ensure that environmental considerations are explicitly addressed and incorporated into the development decision making process;
- To anticipate and avoid, minimize or offset the adverse significant biophysical, social and other relevant effects of development proposals;
- To protect the productivity and capacity of natural systems and the ecological processes which maintain their functions; and
- To promote development that is sustainable and optimizes resource use and management opportunities.

The EIA policy vision of Afghanistan is:

The use of EIA shall be implemented by the Government to protect the environment and community well-being in Afghanistan thereby assisting the progress of sustainable development.

The vision will be implemented by (i) developing sound capacity within Government to be able to develop and implement EIA; (ii) ensuring the work of donor organizations enhances Government capacity to understand EIA principles and processes; (iii) encouraging proponents to work closely with Government on proposed projects with potentially "significant adverse impacts"

The policy approach will be to develop a flexible EIA system that NEPA can implement in line with its existing capacity and future development. It must be recognized that UNEP is a key partner for the NEPA and will support the development of capacity around

this approach. This policy will develop a staged approach that supports the provisions of the Environment Law promulgated in January 2007. Initially, however it is proposed to implement interim regulations that will seek coordination of a flexible administrative process through NEPA.

1 Introduction

1.1 Context of EIA Policy

Afghanistan is a landlocked country of plains and mountains. The last official census in Afghanistan was in 1979. The registered population was then about 15.5 million. The present (2004) population estimates vary between 22 and 29 million. Extracting a living from the country's mountainous dry lands has never been easy, but nearly 25 years of armed conflict, and seven years of extreme drought have created widespread human suffering and environmental devastation across the country. Infrastructure has been destroyed and many institutions and administrative systems have collapsed.

Putting the country back on a path towards sustainable development will be an immense task, requiring long term support from the international community. With careful planning, there remains potential to overcome the current problems and to rebuild institutional capacity and restore the natural resources of the country. Many urgent needs are competing for the attention of the government and the donor community. While at first thought it might seem that environmental issues are not a top priority, in fact they lie at the heart of current efforts to reestablish the basis for sustainable livelihoods for the country's people and a sound economic footing for broad based development. Consequently, no time should be wasted in seizing the opportunity to integrate environment into the reconstruction process for the current and future benefit of all Afghans.

The environmental issues in Afghanistan are manifold and complex. They include topics such as sustainable use, conservation and protection of natural resources, biodiversity, protection of specific areas, institutional arrangements, environmental information, education, training and research, legislation and regulation, and environmental impact

assessment (EIA). EIA and the associated environmental management is one of the high priority issues.

1.2 EIA in a Regional Context

In the development of national EIA systems it is generally advisable to follow the regional trends while still focusing on best practice and country specific conditions wherever possible. Afghanistan is however, in a distinctive geographic location which means that there is little harmony amongst various regional models. In a recent review¹ of EIA in six regional neighbours it was obvious that different approaches are present in the region and these relate to certain issues such as, size of country, level of economic development, institutional and political structures and technical and political capacity to implement EIA systems.

It should be noted that all regional neighbours of Afghanistan have some legislated system of EIA. The development, administration and implementation of EIA in these countries are mandated into one administrative body of government. This in all instances is the national environmental authority and may be a department, agency or committee (as in the old Soviet system). In some instances some authority to manage the EIA system has been delegated to provincial level governments (e.g. in China, Pakistan, India). However, it can be assumed that this delegation has only occurred after some period of development of national EIA systems, following trends of decentralization currently prevalent in modern views on governance.

The administrative processes adopted by various neighbours vary significantly. For instance, the former Soviet states have

¹ This was a review entitled "Review of Environmental Impact Assessment Procedures: A Review of Regional Countries to Inform the Development of EIA in Afghanistan" UNEP, 2005. Six countries were reviewed in this paper including Iran, China, India, Uzbekistan, Turkmenistan and Pakistan.

developed a system that is strictly controlled by the government. This includes decision making power often vested into the political arm. In opposition to this both Pakistan and India have legislated provisions for public participation in the EIA process and decision making power resting with senior technical bureaucrats.

The lack of conformity in EIA systems can be a problem in assessment of transboundary issues resulting from development projects (e.g. major infrastructure development). However, at this stage this is an issue of little importance given the diversity that exists in the region and that Afghanistan has no EIA system at present.

Despite this lack of conformity the following important insights can be gained from EIA procedures in the region:

- EIA is implemented under enabling legislation and associated regulations to implement administrative procedures.
- The role of the central (or provincial) level governments is to administer and make decisions regarding development projects that are likely to have an adverse impact on the environment.
- In all instances the proponents of development projects are responsible for the preparation of EIA documents and associated environmental management plans.
- Management of environmental impacts coming from development projects is the responsibility of proponents with oversight from the environmental agency.

Therefore, the EIA process, as an administrative process, should be viewed as one that involves a number of actors. The role of the government, the public and project proponents should be clearly identified.

1.3 Institutional Mandate and Capacity

The mandate for developing, legislating, implementing and managing any EIA system is, in most cases around the world, the responsibility of the environmental agency. There is no good reason why this should not be the same for Afghanistan. As discussed however, there a number of actors who participate in EIA development and its implementation. The role of EIA in any society is dictated by the capacity of the actors involved and this can be viewed from several perspectives.

First, there are the political considerations and the current progress in Afghanistan to a new political order is worth considering in the establishment of this policy. Given the pace of development that is required to overcome a long period of internal struggle maintaining a high level of support to the application of EIA and sustainable development ideals is a difficult thing to balance. However, in the emerging political regime of Afghanistan there is evidence of a desire to mainstream environmental issues into the development agenda. This is most clearly noticeable from two perspectives:

1. In May 2005, National Environmental Protection Agency was established which is currently directly under the responsibility of the President's office. This provides legitimacy to the role of environmental management and thus the development of a coherent EIA system.
2. The inclusion of environment into Afghanistan's National Development Strategy (ANDS).

Most infrastructure and development projects currently being undertaken are being done so with the assistance of donor funds. Donor organisations have their own system of environmental assessment (EA) which is mostly a mandatory part of funding to a country. In the circumstances where there is

no national legislation to guide the EA process, donors will by default use their own EA processes. At present in Afghanistan this occurs often with little or no reference to NEPA, the agency responsible for EIA. Often the donor EIA studies themselves are not lodged or provided to NEPA. Therefore, it is important that some progress be made in this area.

Second, is the issue of technical capacity and in the context of Afghanistan's history there has been little opportunity to develop a functioning education and administrative system geared towards environmental management as has occurred in many other countries. As a result, there is no institutional memory for EIA and no internally trained individuals with specific skills in the area of EIA. Accordingly, there is very little resident skill and knowledge related to environmental matters. While some externally trained Afghans may become more involved in the activities of NEPA the primary focus at this stage needs to be concerned with development of technical capacity within NEPA.

Inherent in the issue of no previous environmental legislation and management is the fact that as a result the private sector is also unfamiliar with any procedures related to EIA. Furthermore, the general public in Afghanistan is likely to be less aware and knowledgeable of environmental issues generally. Therefore, it will take a significant amount of time and effort to encourage the private sector in Afghanistan to understand, abide by and develop the technical detail often required for EIA studies with project development. However, some ad-hoc environmental assessment and management is taking place through various conditions attached to funding grants and alike.

These issues are important and need to be reflected in the development of this policy as it would be unrealistic to expect to establish a

fully functioning EIA system immediately. It is therefore, necessary to develop a strategic approach that assumes some oversight by NEPA on EIA, the development of NEPA's capacity to undertake this oversight and ensuring a process that facilitates Afghanistan's development agenda. At the centre of this policy approach is the need for the Government of Afghanistan to have some knowledge and consideration of the development impacts of donor funded projects.

1.4 Foundation of this Policy

This document represents the policy for an EIA system in Afghanistan. This EIA system will be directed towards the assessment of impacts from project proposals under a proposed legislative and administrative system as documented in the Environment Law of Afghanistan. It acknowledges the present environmental problems and institutional setting, including lack of relevant regulations, standards and data as well as weak institutions and their unclear mandates. In this respect however, this policy paper recognizes the following foundations for the ongoing development of EIA:

1. The establishment of an independent National Environmental Protection Agency in Afghanistan. Even though this organization is still in a nascent stage it will develop over time and this policy recognizes that this organization has responsibility for the implementation and management of EIA processes in Afghanistan.
2. Afghanistan's Environment Law came into force in January 2007 after ratification by the Parliament, and provides a framework for the development of this policy and the relevant stages of EIA.

These three factors are an important foundation for the development of the policy approach that is developed herein. Apart

from this background, the scope of this document includes:

Section 2 - A description of a generic EIA system and its inherent parts;

Section 3 - the policy vision, principles and strategy, the EIA system and its component parts, flow diagrams and roles of various parties required to be fulfilled in the process;

Section 4 – describes the next steps that need to be undertaken in implementing this policy.

This document also contains a number of important annexes that provide reference for the EIA process. These include:

Annex 1 – Detailed screening lists

Annex 2 – Industry and facility classification based on potential to pollute

Annex 3 – Information to be supplied by proponents

2 What is EIA?

2.1 Introduction

Environmental impact assessment is a systematic process to identify, predict and evaluate the environmental effects of proposed projects, plans or policies. This process is applied prior to major decisions and commitments being made. Whenever necessary, social, cultural and health effects are considered an integral part of EIA.

The definition of EIA as described in the Environment Law is:

Environmental impact assessment refers to the procedures used for evaluating the likely environmental and consequent social impacts, both beneficial and adverse, of proposed projects, plans, policies or activities where there is a possibility of significant adverse effects arising as a result, in order to improve the quality and development impact of such projects by identifying ways of improving project selection, siting, planning, design, and implementation.

2.2 Objectives of EIA

The objectives of EIA have been described as:

- To ensure that environmental considerations are explicitly addressed and incorporated into the development decision making process;
- To anticipate and avoid, minimize or offset the adverse significant biophysical, social and other relevant effects of development proposals;
- To protect the productivity and capacity of natural systems and the ecological processes which maintain their functions; and
- To promote development that is sustainable and optimizes resource use and management opportunities.

2.3 Operating Principles

From an operational perspective the EIA process should be applied:

- As early as possible in decision making and throughout the life cycle of the proposed activity;
- To all development proposals that may cause potentially significant effects;
- To biophysical impacts and relevant socio-economic factors, including health, culture, gender, lifestyle, age, and cumulative effects consistent with the concept and principles of sustainable development;
- To provide for the involvement and input of communities and industries affected by a proposal, as well as the interested public;
- In accordance with internationally agreed measures and activities.

2.4 Operating Stages of EIA

EIA systems have been in operation in many countries for about the last 30 years. However, they are a much more recent introduction in developing countries. Fortunately, the stages of EIA are fairly common and the process can be described as a common generic process (Figure 1). Specifically, the EIA process should allow for:

Proposal identification – projects with the potential to cause significant adverse impacts on the environment need to be identified and NEPA should be informed of the proposal.

Screening – is a process that is undertaken to determine whether or not a proposal should be subject to EIA and if so, to what level.

Scoping – is undertaken to identify the issues and impacts that are likely to be important and to establish the terms of reference for an EIA study.

Examination of alternatives – is required to establish the preferred or most environmentally sound and benign option for achieving proposal objectives.

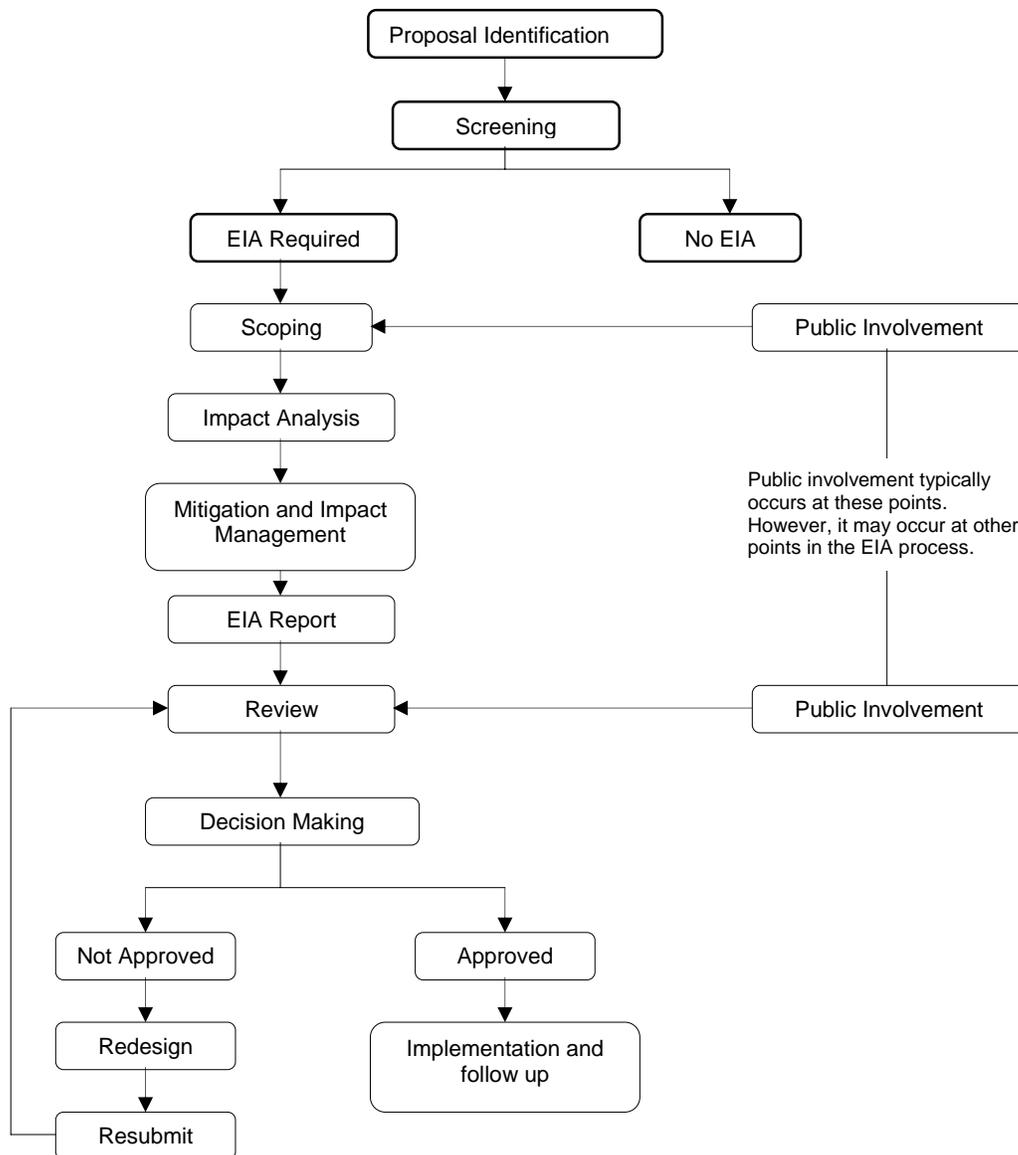


Figure 1: The EIA Process²

Impact analysis – is the process that will identify and predict the likely environmental, social and other related effects of the proposal.

Mitigation and impact management – to establish the measures that are necessary to avoid, minimize or offset predicted adverse impacts and, where appropriate to incorporate these into an environmental management plan or system.

Evaluation of significance – is required to determine the relative importance of and acceptability of residual impacts (i.e. impacts that cannot be mitigated).

Preparation of an environmental impact statement (EIS) or report – to document clearly and impartially impacts of the proposal, the proposed measures for mitigation, the significance of effects, and the concerns of the interested public and the communities affected by the proposal.

² This figure represents a generic EIA process as highlighted in the UNEP EIA Training Resource Manual, Second Edition, UNEP, 2002.

Review of the EIS – to determine whether the report meets its terms of reference, provides a satisfactory assessment of the proposal(s) and contains the information required for decision making.

Decision making – to approve or reject the proposal and to establish the terms and conditions for its implementation.

Follow up – to ensure that the terms and conditions of approval are met; to monitor the impacts of development and the effectiveness of mitigation measures; to strengthen future EIA applications and mitigation measures and where required, to undertake environmental audit and process evaluation to optimize environmental management.

3 Policy Vision, Principles, Strategy and Process

The EIA policy vision of Afghanistan is:

The use of EIA shall be implemented by the Government to protect the environment and community well-being in Afghanistan thereby assisting the progress of sustainable development.

The vision will be implemented by (i) developing sound capacity within Government to be able to develop and implement EIA; (ii) ensuring the work of donor organizations enhances Government capacity to understand EIA principles and processes; (iii) encouraging proponents to work closely with Government on proposed projects with potentially “significant adverse impacts”

3.1 Guiding Principles

The following guiding principles³ will be built into the EIA process. Environmental Impact Assessment should be:

Purposive - the process should inform decision making and result in appropriate levels of environmental protection and community well-being.

Rigorous - the process should apply “best practicable” science, employing methodologies and techniques appropriate to address the problems being investigated.

Practical - the process should result in information and outputs which assist with problem solving and are acceptable to and able to be implemented by proponents.

Relevant - the process should provide sufficient, reliable and usable information for development planning and decision making.

Cost-effective - the process should achieve the objectives of EIA within the limits of

available information, time, resources and methodology.

Efficient - the process should impose the minimum cost burdens in terms of time and finance on proponents and participants consistent with meeting accepted requirements and objectives of EIA.

Focused - the process should concentrate on significant environmental effects and key issues; i.e., the matters that need to be taken into account in making decisions.

Adaptive - the process should be adjusted to the realities, issues and circumstances of the proposals under review without compromising the integrity of the process, and be iterative, incorporating lessons learned throughout the proposal's life cycle.

Participative - the process should provide appropriate opportunities to inform and involve the interested and affected publics, and their inputs and concerns should be addressed explicitly in the documentation and decision making.

Interdisciplinary - the process should ensure that the appropriate techniques and experts in the relevant bio-physical and socio-economic disciplines are employed, including use of traditional knowledge as relevant.

Credible - the process should be carried out with professionalism, rigor, fairness, objectivity, impartiality and balance, and be subject to independent checks and verification.

³ These guiding principles are from Principles of Environmental Impact Assessment Best Practice, International Association for Impact Assessment.

Integrated - the process should address the interrelationships of social, economic and biophysical aspects.

Transparent - the process should have clear, easily understood requirements for EIA content; ensure public access to information; identify the factors that are to be taken into account in decision making; and acknowledge limitations and difficulties.

Systematic - the process should result in full consideration of all relevant information on the affected environment, of proposed alternatives and their impacts, and of the measures necessary to monitor and investigate residual effects.

3.2 The Policy Approach

The policy approach will be to develop a flexible EIA system that NEPA can implement in line with its existing capacity and future development. It must be recognized that external donors, line ministries, public and private interests are key partners for the NEPA and each will need to take responsibility to development of capacity in the area of EIA. The policy will need to be flexible and adaptive to the ground conditions yet develop an approach that supports the provisions within the EL.

Therefore, the following key points of the policy are:

- The proponent if undertaking a project in the 1 or 2 category will be required to submit to NEPA sufficient information that will allow NEPA to make a decision on the category and terms of reference.
- If the project proponent can submit sufficient information that deals with the environmental impacts and management of those impacts at the early stages of the project then the NEPA may release a permit, or conditional permit for commencement of works within 65 days

of submission of appropriate information to NEPA.

- If a project is likely to give rise to significant adverse effects that are likely to be irreversibly or difficult to manage then a full EIA process may be required before the proponent can commence works related to the project.
- The proponent, if required, will prepare a detailed EIA as set out in the terms of reference on advice from the Board of Experts.
- Any permit released will contain legal conditions that NEPA will require the proponent to abide by in the implementation of the project. These conditions will relate to the management and mitigation of social and environmental impacts as deemed appropriate by NEPA and in accordance with the information supplied by the proponent.
- Proponents will be required to lodge a final copy of the EIA report and any environmental management requirements outlined in that report to NEPA.
- On completion of the project, and if deemed necessary by NEPA, the proponent will be required to submit to NEPA a detailed environmental monitoring plan that details how potential impacts, if any arise, of the operation phases of the project will be monitored and managed.
- In the case that the operation phase of the project will give rise to pollution or activities that may lead to a pollutant being released into the environment, the proponent will be required to obtain an appropriate permit from NEPA which stipulates the requirements for polluting activity to occur.
- In the case that facilities will give rise to pollution it is necessary for this activity to also be managed by the NEPA. For this purpose permits will also be required based on a facilities potential to pollute which has been categorized by industry/facility type in Annex 2. The

method used for gaining a permit for new facilities is achieved through integrated assessment in the EIA system. Further detail on pollution control permit systems is contained in the draft Pollution Control Policy.

This policy approach is the “model” that has been established through consultation and coordination with stakeholders. However, due to certain constraints it is necessary to invoke an interim EIA process which will maintain facets of this approach but will in the first instance be much simpler. The main focus of these interim procedures will be on the achievement of best practice standards in the EIA process. This interim process is explained in more detail in section 4.

3.3 The Policy Process

The basis for undertaking an EIA process is to minimize the adverse effects from development proposals. The definition of ‘adverse effect’ as contained in Box 1. This definition coincides with the policy vision that seeks to place the communities’ health and well being at the centre of the policy objective. This is achieved by ensuring the environment is protected from harmful activities.

Box 1 – Definition of Adverse Effect

“adverse effect” means any actual or potential effect on the environment that may in the present or in the future harm the environment or that may lead to an impairment of the ability of people and communities to provide for their health, safety, cultural and economic well-being.

The EIA policy was written within the broad framework of the EL⁴ using it as a guide. The Law provides the legitimacy and basis for the development of the EIA process as articulated in this policy. This policy paper is

⁴ This policy is based on the English translation of the EL originally prepared in Dari and Pashto. The English version is not considered a legal text and as such is used as a guide to the official EL published in the Government Gazette. All attempts have been made to provide an accurate interpretation however. For legal purposes the official Dari or Pashto version should be consulted.

written to identify the administrative processes that will need to be established in subsequent regulations.

3.3.1 Applications

The first step of undertaking any development project is to identify if the project will have any adverse effects. A project that is likely to have an adverse effect is also called a prohibited activity. Article 13 of the EL requires that no person or entity in Afghanistan can implement a project which is “...likely to have significant adverse effect on the environment...”. If a project is likely to have an adverse effect then the proponent⁵ is required, by law, to apply to NEPA for a permit to undertake the activity (see Article 16).

However two questions arise from this: How does a proponent know whether a project needs to have a permit? And: How will NEPA make a decision on whether a project needs to have a permit or not?

In other words the parties involved in the EIA process need some certainty on the initial decision which needs to be made concerning the need for a permit or not. This stage is known as the screening stage described earlier and requires a decision to be made by NEPA as to whether an EIA study is required. If it is determined that an EIA study is required then the proponent will need to fulfill the EIA requirements in order to obtain a permit to undertake the required work. No work can commence without the appropriate permit being obtained from NEPA.

3.3.2 Screening of Projects/Activities

The stages of the administrative process for screening are as follows:

⁵ Proponent is described as the person who is responsible for implementing the project. This can be a Government Ministry, an NGO, or a private company or individual.

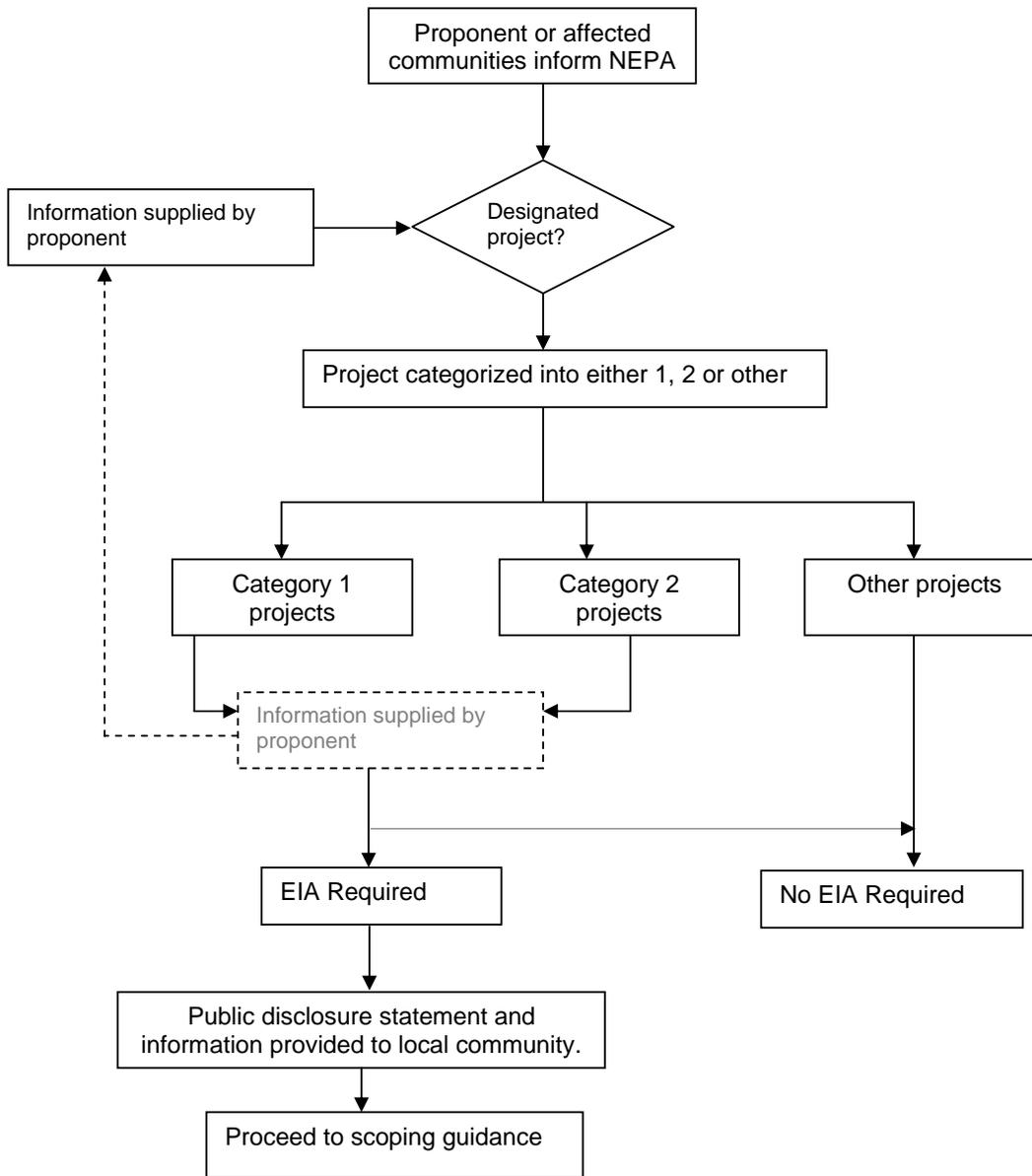


Figure 2: Administrative procedure for screening of projects

Project identification and referral – this is the first stage of the EIA process and requires that the project proposal is referred to NEPA. This is the direct responsibility of the proponent however, in the event that the proponent fails to refer to the project to NEPA, affected communities or individuals will have the right to inform NEPA of the proposed project.

Identifying a designated project – is undertaken with the use of specific lists of project types that classify projects based on

the potential impacts of certain project types (see Annex 1). These lists can be based on experience from other countries and lists proposed for Afghanistan have been developed from other countries in the region. Apart from using lists that categorize industry types, location of proposed projects is an important consideration. That is, a project in a protected area is likely to have more adverse effects than one which is not. In time, NEPA will develop regulations that determine what an ‘environmental sensitive area’ is and where more caution is required in project implementation.

Project categorization – is undertaken to provide guidance on the likelihood of the significance of the impacts stemming from particular projects. Each category has a definition as follows:

1. A proposed project is classified Category 1 if it is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented, and affects an area broader than the sites or facilities subject to physical works.
2. A project is classified as Category 2 if its potential adverse environmental impacts on human populations or environmentally sensitive areas (e.g. wetlands, forests, grasslands and other natural habitats) are less adverse than those of Category 1 projects. These impacts are site specific, and few are irreversible.

Lists to classify polluting industries are also included in Annex 2. Industries in certain categories, based on their potential to pollute will also require a pollution control permit. These lists are integrated with the EIA screening lists. As far as is practicably possible the two types of permits will be integrated into one administrative process.

Information supplied by the proponent – this ideally should be provided at the outset so sufficient information can be supplied to NEPA to allow them to categorise the project. It is expected that as a minimum proponents should provide the equivalent of IEE document that is widely used by relevant donors. However, in the event that insufficient information is provided by the proponent, NEPA can request the proponent to provide additional information prior to a decision being made as to whether an EIA is required or not. Only once these steps have been completed can a decision be made on the need for an EIA or not. The type of

information that should be provided by the proponent is included in Annex 3.

Decision making – with sufficient information being supplied by the proponent it will be possible for NEPA to make a decision as to whether an EIA is required, and what category is determined by NEPA. Once NEPA is satisfied with the information provided by the proponent the decision making process should take no longer than 21 days. The proponent will be advised by letter from the NEPA.

Public disclosure – will be provided within 7 days from the written notification of the proponent. Public disclosure will include information being made available to the general public at NEPA's Kabul and relevant regional offices. The proponent will be responsible for costs associated with public disclosure which will be covered by the application fee lodged with NEPA on license application.

Following the decision that an EIA is required the next stage is scoping of the project proposal.

Scoping of activities is a process that aims to provide some guidance to proponents on the amount or 'scope' of work that is required to address the environmental concerns of the proposed project.

Board of experts - the responsibility of the scoping process lies with NEPA, however to assist in the process NEPA will convene a "Board of Experts" to be involved in the process. The designation of this board of experts is provided for in Article 20 of the EL. It is appointed by the Director General of NEPA and can include 8 permanent members with 4 additional members able to be appointed on a case by case basis. The Director General may deem that proponents are suitably qualified from a technical perspective to participate as temporary

members of the Board of Experts. Relevant experts will need to be found and encouraged to actively participate in the Board. It will be

an integral body to the smooth functioning of NEPA.

3.3.3 Scoping of Projects/Activities

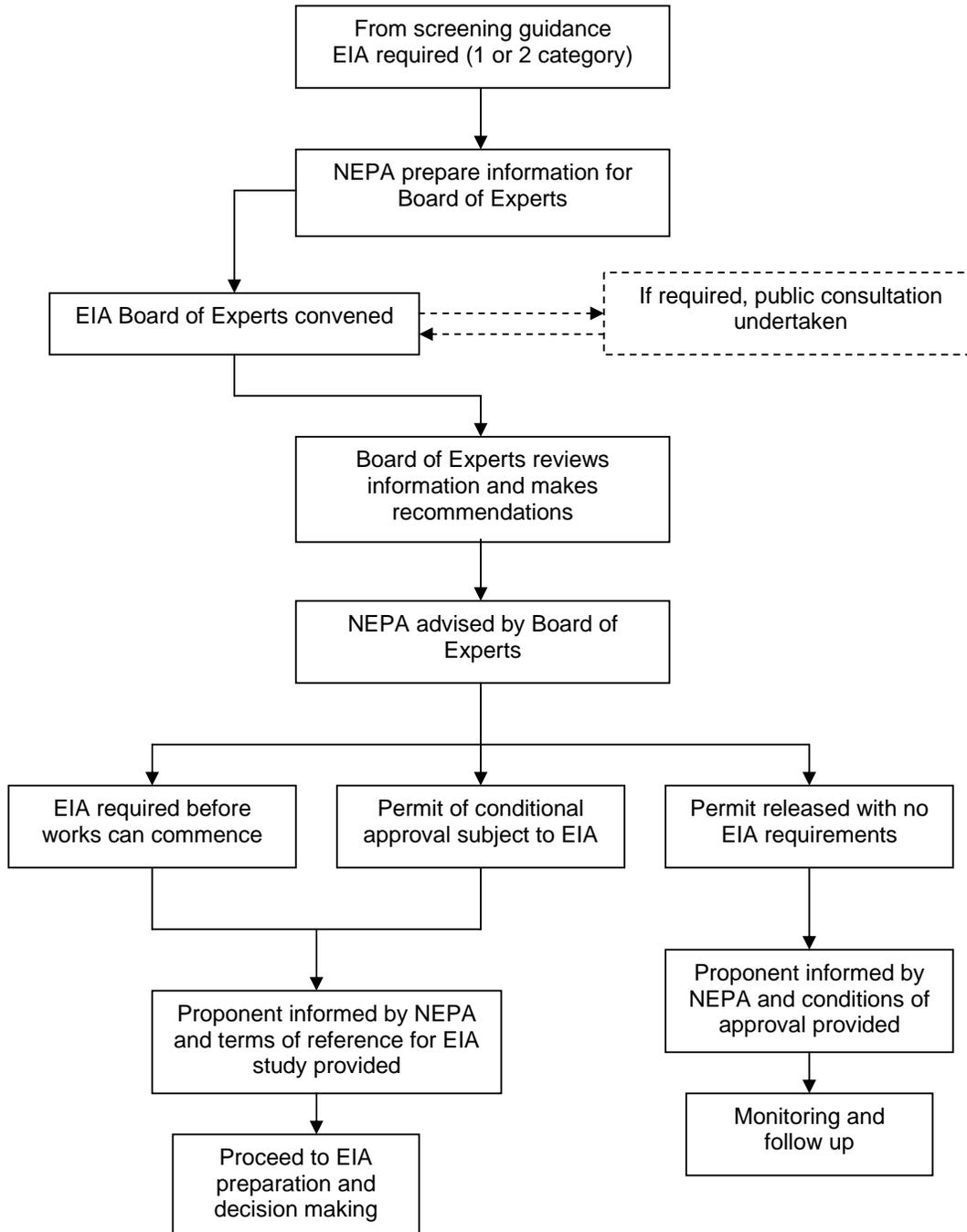


Figure 3: Administrative procedure for scoping of project proposals

Public participation - The EL provides the opportunity for public consultation to occur as

part of the EIA process – see Article 19. Sub-articles 1 and 2 of Article 19 will be invoked in

the screening and scoping process. As described in the screening process, public disclosure of the proposed project will be undertaken as a precursor to the public consultation provided for in the scoping process. The public consultation included in the scoping process will extend to a public hearing in the affected locations where this is deemed necessary. It is only expected however that these public hearings will occur in the most significant of projects where the communities will be adversely affected from project impacts. If the proponent provides a detailed public consultation strategy as part of its project proposal the Board of Experts may waive the need to hold a public enquiry at the scoping stage. This will fulfill the requirements of sub-articles 3 and 4 of Article 19 in the EL. If a public hearing is held the NEPA regional offices will assist in facilitating this action.

Advice provided – by the Board of Experts is designed as a sound basis for decision making on the terms of reference that will be provided to the proponent. The Board will also provide advice as to whether a project is required to undergo the full EIA process. That is, if the Board considers that the information supplied by the proponent is sufficient to avoid the need to undertake an EIA it may recommend that a permit with appropriate conditions is released immediately by NEPA. This is unlikely to happen however, unless a comprehensive mitigation plan is provided as stipulated in Article 15 of the EL.

Decision making – has been incorporated into the scoping process to allow for an abbreviated system of EIA, or flexibility that can provide quicker outcomes for project implementation. That is, there are three possible decisions that could be made by the NEPA including:

1. No permit granted and EIA required: this decision would invoke the full EIA system and no construction works would be

allowed to commence on site until such time as the EIA procedure has been completed and an appropriate decision and licence released by NEPA.

2. Conditional permit granted and EIA required: this decision would also invoke the need for an EIA but this decision would allow the proponent to proceed with works on site subject to the lodgement and completion of an EIA study and comprehensive mitigation plan. Ideally, this will only be achieved if the proponent has satisfied NEPA by providing sufficient information on the project and mitigation of adverse effects.
3. Permit released with no EIA requirements: this would result in the release of a permit under article 16 of the EL with no further reporting requirements except for monitoring and follow-up.

The most important outcome of the screening and scoping process is the opportunity for proponents receive the necessary permit to commence work as stipulated in Article 16 of the EL. The reason why there is such a tiered arrangement is to ensure that the majority of project works are not unnecessarily hindered by an EIA procedure which can be time consuming and restrictive to investment and expenditure in the relevant sectors requiring development in Afghanistan. It is expected that the only projects that would require a full EIA process are those where irreversible social and environmental impacts are likely to occur.

The time frame required to complete the scoping process should be stipulated in regulations but will depend on whether public consultation is undertaken or not. If the need for public consultation is required during scoping the process will take a minimum of 45 days and maximum of 60. In the event that all public consultation processes are undertaken by the proponent in the EIA process the time frame to complete scoping should be no longer than 45 days.

3.3.4 EIA Report

If an environmental impact statement is required to be prepared it shall include:

1. A full description of the project, plan, policy or activity and the aim or aims it is intended to achieve;
2. An identification, description and assessment of:
 - a) the likely environmental impacts and benefits, including cumulative impacts and benefits, of the project, plan, policy or activity on soil, water, air, forests, climate, human health, animals and plants, landscape, archaeological property, cultural heritage, cultural values, social and economic well-being and livelihoods, human settlements (including involuntary resettlement) and their interactions;
 - b) the likely environmental impacts and benefits of alternative means of carrying out the project, plan, policy or activity, including the preferred means and the alternative of not undertaking the project, plan, policy or activity at all;
 - c) the likely environmental impacts of alternatives to the project, plan, policy or activity that would achieve the same aim as the project, plan, policy or activity was intended to achieve;
 - d) all relevant measures that could be undertaken to avoid, remedy or mitigate any significant adverse

effects that could be caused by the project, plan, policy or activity;

- e) all relevant measures that will be taken to monitor the likely environmental impacts and benefits of implementation of the project, plan, policy or activity on affected persons; and
- f) any other information prescribed by NEPA or by regulation; and
- g) an identification of ministries, institutions, authorities, stakeholders, organisations, communities and other bodies and persons from which either a separate authorisation is required or that are likely to be affected by implementation of the proposed project, policy, plan or activity.

In time it is envisaged that sector guidelines will be established that provide specific guidance on the preparation of EIA reports. However, until such time the above conditions will be developed into general guidelines to guide the development of EIA reports which is the responsibility of proponents to complete. NEPA only provides guidance on what the EIA report should contain.

3.3.5 Approval Procedure

The approval procedure as stipulated in the EL gives clear responsibility to NEPA to provide the conditions under which a project may proceed.

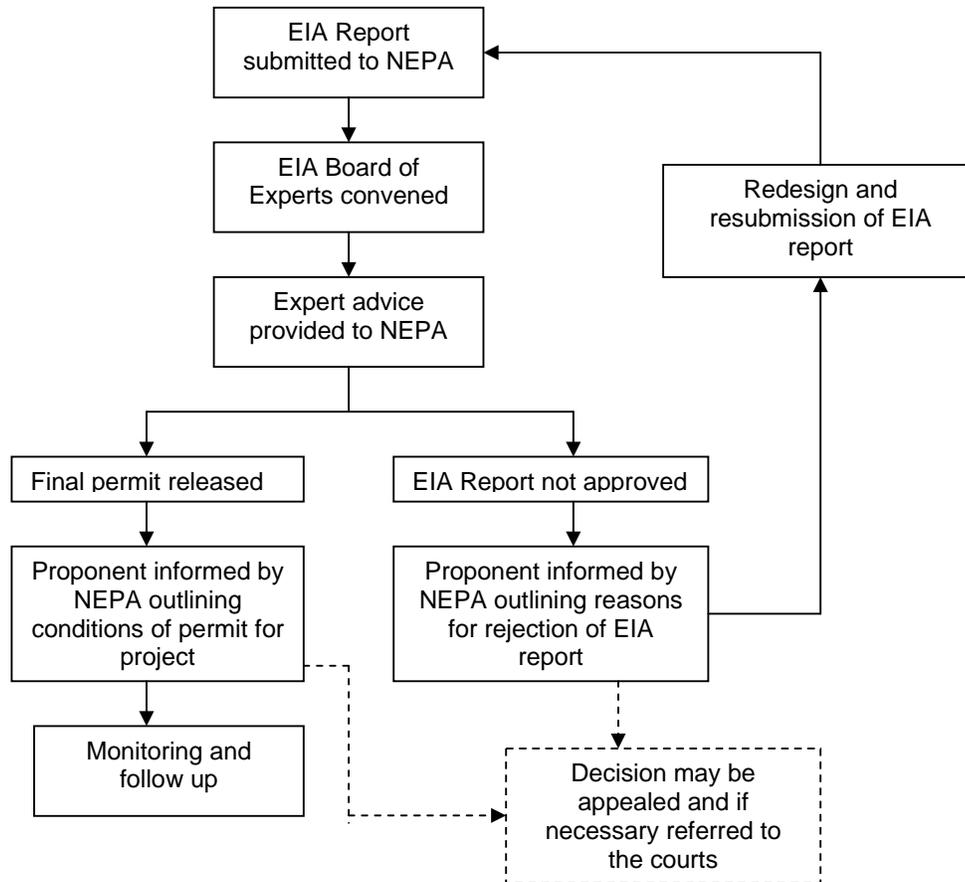


Figure 4: Approval procedure

The approval process is designed to deal with the situation where through the scoping process the NEPA has made a decision that an EIA report needs to be prepared by the proponent. It may be that the proponent has been granted permission to commence works but has still been requested to prepare an EIA report. In this case the approval procedure will still be used but it is highly unlikely that any project will not be approved under this process.

For projects that have not been given permission to commence works the proponent will be required to prepare a detailed EIA that will deal with the terms of reference prepared by NEPA. Given these two different levels of assessment it is likely that those projects which have the most severe possible impacts will need to go

through the full EIA process. These are most likely to be Category 1 projects.

In the event the EIA report is not approved by NEPA the proponent will need to:

- Revise the project, plan, policy or activity on the basis of any comments by NEPA after its review of the environmental impact statement.
- Prepare a final record of opinion for submission and consideration to NEPA, which shall include:
 - a copy of the project, plan, policy or activity as adopted;
 - a statement of how the environmental impact statement and any expressed opinions have been taken into account; and
 - a copy of the amended environmental impact statement.

The preparation of an EIA report will always remain the responsibility of the proponent. This is clearly stated in the law (see Article 18).

The granting of a permit in the context of this policy is designed to occur with the lodgment and assessment of sufficient information from the proponent. This may not necessarily include a detailed environmental impact assessment but should as a minimum include sufficient information to allow an assessment of the potential for the project, plan, policy or activity to impact on the environment. As such, the more information is provided at the outset the greater the possibility that it will be sufficient information to assess the project requirements. All proponents will be encouraged to provide as much detail on the environmental impacts and their management at the outset of the projects. This allows the process to be more strategic and reduces the time required for assessments.

3.3.6 Appeals Procedure

If the proponent has any objection with the decision of NEPA then the proponent has the right of appeal through the application of Article 17 of the EL. This article applies for any decision made by NEPA on the suitability of a project to proceed under certain conditions or to be redesigned and resubmitted to NEPA if the EIA report is considered inappropriate.

If however, a proponent wishes to lodge an appeal then they will be unable to commence work until the appeal decision has been made by the Director General of the NEPA. In which case, a permit for proceeding of works granted previously will be immediately revoked by NEPA on lodgement of appeal. It will be proposed that the regulations dealing with EIA will require appeals to be lodged within 30 days of release of the permit. If an appeal is not lodged in this time the proponent will be required to abide by the

conditions laid down in the permit to proceed with works.

4 Next Steps

4.1 Interim Procedures

Until such time as this policy can be implemented through the publishing of official regulations it will be necessary that interim environmental impact measures can be implemented. Article 21 of the EL discussed the required approach. This article is directed at proponents who will undertake projects likely to have an adverse impact on the environment.

Currently, donor organizations would be subject to their own EIA policies where these are developed and implemented by the relevant donor agency. In the case where a proponent does not have specific EIA guidelines then an appropriate standard such as those employed by the World Bank or ADB should be substituted for the purposes of undertaking an EIA. Importantly, the preparation of any EIA should be undertaken in conjunction with and the approval of NEPA (see Article 21). Currently, this appears to be occurring on few occasions and the undertaking of EIA studies (or not) appears to be with little or no reference to NEPA who are the government agency with primary mandate for environmental protection in the country.

Additionally, the Government of Afghanistan suffers from a weak technical understanding and capacity to implement this final policy as such it is prudent to develop the interim procedures highlighted in the Law. This will have several benefits and allow the organic development of EIA in Afghanistan as capacity, stable governance and rule of law develop over time. The interim administrative arrangements proposed are shown in Figure 5.

4.2 Relationship to Other Laws

The EIA regulation is one regulation that will be established under the Environment Law. The most important piece of companion regulation to be considered in the

implementing the EIA regulation will be the pollution control regulations. Any of the prescribed activities under category 1 or 2 projects could well require licensing under the proposed pollution control regulations. This would only be required however, if the project gave rise to pollution as listed in the prescribed list of polluting activities (Annex 2). That is, those which fell into the red or orange category would require a pollution control license under the Environmental Law.

Additionally, the EIA regulations will not stop the proponent from requiring other approvals to be achieved under any other law in Afghanistan. In fact, it will be the proponents responsibility to show that approvals under other laws have been applied for and possibly granted.

4.3 Capacity Building

Development of the technical capacity of all actors in the EIA process remains a key challenge for the next 3-5 years and possibly beyond. UNEP has the mandate to develop the capacity of NEPA and will work closely with NEPA to manage the interim EIA procedures. Once the interim procedures have been implemented, attention will need to be paid to the following activities:

- Support the capacity development of EIA cells within the relevant line ministries to support the implementation of EIA in line ministries.
- Provide technical training to staff in line ministries and NEPA on administrative and legal matters.
- Provide training to relevant staff in selected processes such as agro-based industries, mining, industrial process, waste management and alike.
- Support the development of network of professional and technical experts within Kabul University or other institutions to serve on the Board of Experts.
- Provide training to all parties on the procedures and rules for the operation of a Board of Experts.

- Provide support to the Committee for Environmental Coordination 10) in the role and functions of the Committee to integrate EIA into and across Government.
- Support Kabul University to develop and teach a course dedicated to EIA to ensure the future strength of EIA and the potential to develop a private sector industry.

4.4 Regional Offices

At this stage, NEPA has staffed 28 Provincial offices and these need to be utilized in the EIA process. To commence with it is proposed that the relevant Provincial offices of NEPA will be responsible for advertising the public disclosure of the proposed project. This should be undertaken in conjunction with the proponent. Effort should be made to advertise the project and seeking any community comments relevant to the EIA process. The remainder of the interim procedures will be managed by the central NEPA office until such time as the system is functioning adequately and the roles of regional offices can be defined based on resources and capacity.

4.5 Enforcement

For effective enforcement of the policy, NEPA will need to establish the administrative procedures and institutional structure to allow enforcement of the EL, the EIA Regulations and this policy. This will include the development of regulations and standards that mirror the intent and approach of this policy.

Initially, it is proposed to focus on the work of donors, UN agencies and international NGOs given they usually have enforceable requirements to conduct EIAs as part of their activity. Similarly, if there are environmental laws in place in the host country then these organizations will be required to abide by the laws in place in Afghanistan in relation to EIA. It is also hoped that these organizations

through the use of international consultants will be able to assist NEPA in developing the EIA system through imparting their experience on NEPA national staff. Therefore, the enforcement approach should be to engender some capacity development as well.

Once NEPA has developed skills in the art of EIA administration and enforcement it could extend its influence to encompass the private sector. This by necessity would require some decentralization of central authority to the regional NEPA offices. Additionally, in the absence of capacity by proponents to undertake EIA work this level of enforcement for national EIA procedures may take some time to develop.

4.6 Policy Review

This policy should be reviewed on a 5 yearly basis to ensure the EIA process is effective. The review should be based on an evaluation of how the system is working across government and how effective it is. The effectiveness review should lead to administrative and legislative changes documented in a policy review report.

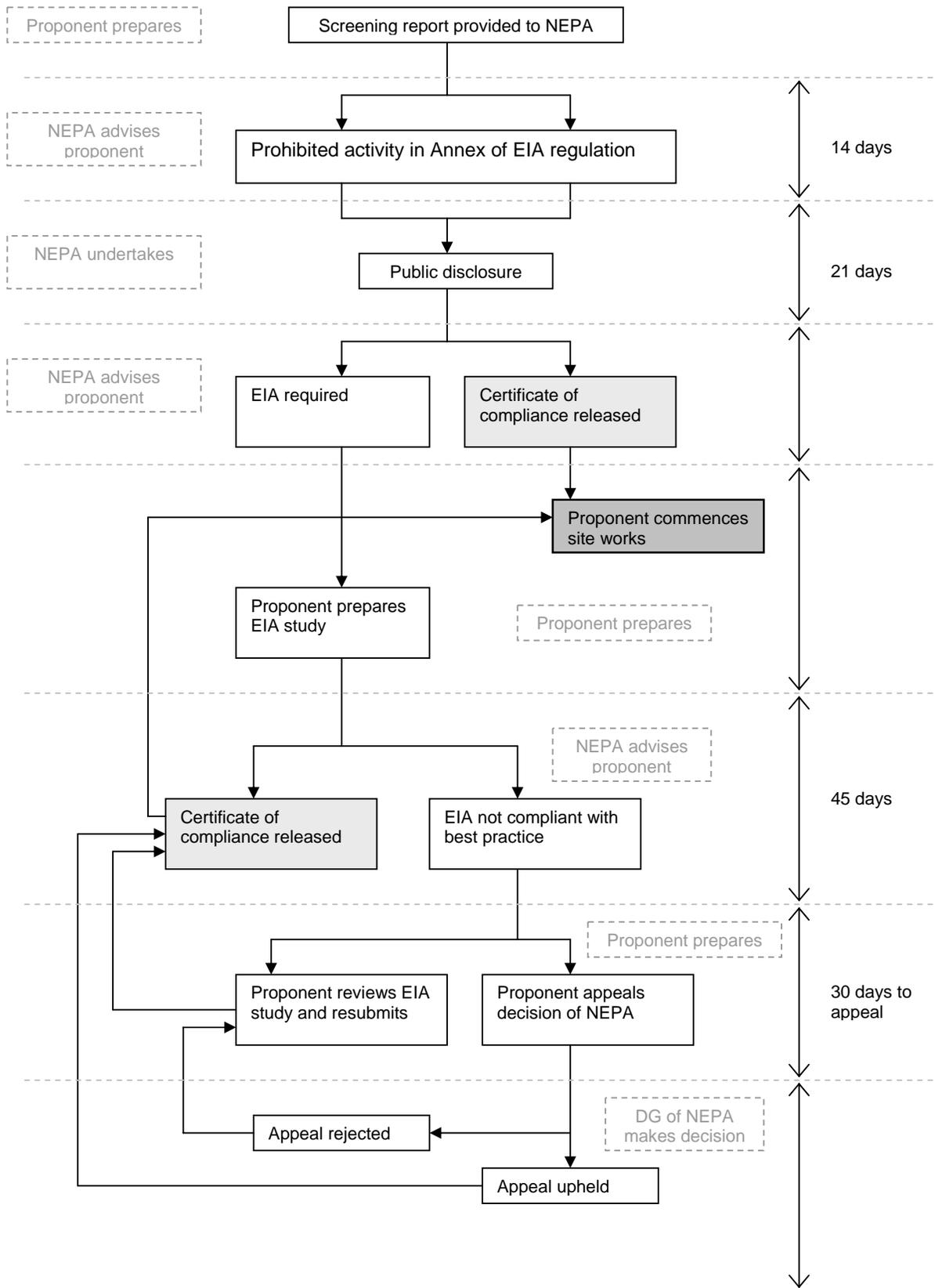


Figure 5: Interim EIA Procedure

Annex 1 – Project Screening Lists

Category 1– Projects likely to have significant adverse impacts

A. Energy

1. Hydroelectric power generation over 50 MW
2. Thermal power generation over 200 MW
3. Transmission lines (11 KV and above) and grid stations
4. Nuclear power plants (or projects)
5. Petroleum refineries

B. Manufacturing and processing

1. Cement plants
2. Chemicals projects
3. Fertilizer plants
4. Food processing industries including sugar mills, beverages, milk and dairy products, with total cost of \$1.5mUS and above
5. Industrial estates (including export processing zones)
6. Man-made fibers and resin projects with total cost of \$1.5mUS and above
7. Pesticides (manufacture or formulation)
8. Petrochemicals complex
9. Synthetic resins, plastics and man-made fibers, paper and paperboard, paper pulping, plastic products, textiles (except apparel), printing and publishing, paints and dyes, oils and fats and vegetable ghee projects, with total cost more than \$150,000US
10. Tanning and leather finishing projects

C. Mining and mineral processing

1. Mining and processing of coal, gold, copper, sulphur and precious stones
2. Mining and processing of major non-ferrous metals, iron and steel rolling
3. Smelting plants with total cost of \$800,000US and above

D. Transport

1. Airports
2. Federal or Provincial highways or major roads (except maintenance, rebuilding or reconstruction of existing roads) with total cost of \$800,000 and above. Widening of existing roads may require an EIA.
3. Ports and harbor development for ships of 500 gross tons and above
4. Railway works

E. Water management, dams, irrigation and flood protection

1. Dams and reservoirs with storage volume of 50 million cubic meters and above or surface area of 8 square kilometers and above
2. Irrigation and drainage projects serving 15,000 hectares and above

F. Water supply and treatment

Water supply schemes and treatment plants with total cost of \$400,000USD and above

G. Waste Disposal

1. Waste disposal and/or storage of hazardous or toxic wastes (including landfill sites, incineration of hospital toxic waste)
2. Waste disposal facilities for domestic or industrial wastes, with annual capacity of 10,000 cubic meters and above.

H. Urban development and tourism

1. Land use studies and urban plans (large cities)
2. Large-scale tourism development projects with total cost more than \$800,000US

I. Environmentally Sensitive Areas

All projects situated in environmentally sensitive areas

J. Other projects

Any other project likely to cause an adverse environmental effect as determined by the Executive Deputy Director General of the NEPA

Category 2 – projects with potentially adverse impacts**A. Agriculture, Livestock and Fisheries**

1. Poultry, livestock, stud and fish farms with total cost more than \$150,000
2. Projects involving repacking, formulation or warehousing of agricultural products

B. Energy

1. Hydroelectric power generation less than 50 MW
2. Thermal power generation less than 200 KW
3. Transmission lines less than 11 KV, and large distribution projects
4. Oil and gas transmission systems
5. Oil and gas extraction projects including exploration, production, gathering systems, separation and storage
6. Waste-to-energy generation projects

C. Manufacturing and processing

1. Ceramics and glass units with total cost more than \$800,000US
2. Food processing industries including sugar mills, beverages, milk and dairy products, with total cost less than \$1.5mUS
3. Man- made fibers and resin projects with total cost less than \$1.5mUS
4. Manufacturing of apparel, including dyeing and printing, with total cost more than \$500,000US
5. Wood products with total cost more than \$400,000

D. Mining and mineral processing

1. Commercial extraction of sand, gravel, limestone, clay, sulphur and other minerals not included in Schedule II with total cost less than \$1.5mUS
2. Crushing, grinding and separation processes
3. Smelting plants with total cost less than \$800,000

E. Transport

1. Federal or Provincial highways and roads (except maintenance, rebuilding or reconstruction of existing metalled roads) with total cost less than \$800,000
2. Ports and harbor development for ships less than 500 gross tons

F. Water management, dams, irrigation and flood protection

1. Dams and reservoirs with storage volume less than 50 million cubic meters of surface area less than 8 square kilometers
2. Irrigation and drainage projects serving less than 15,000 hectares
3. Small-scale irrigation systems with total cost less than \$800,000US

G. Water supply and treatment

Water supply schemes and treatment plants with total cost less than \$400,000US

H. Waste disposal

Waste disposal facility for domestic or industrial wastes, with annual capacity less than 10,000 cubic meters

I. Urban development and tourism

1. Housing schemes
2. Public facilities with significant off-site impacts (e.g. hospital wastes)
3. Urban development projects

J. Other projects

Any other project likely to cause an adverse environmental effect as determined by the Deputy Executive Director General of the NEPA

Annex 2 – Industry/Facility Classification

These categories are provided for the purpose of identifying the potential of an industry to give rise to pollution. This annex needs to be read in conjunction with the Pollution Control Policy to determine the need for an industry type to submit an application for a pollution control license. The highest potential polluters are red category industry followed by orange category followed by green.

Red Category

1. Thermal power generation (> 200 MW)
2. Nuclear power generation and related activities (heavy water production, rare earths, etc.)
3. Petroleum refineries
4. Olefinic petrochemical complexes
5. Airports and other oil depots
6. Industrial parks
7. Production of petrochemical intermediates (DMT, Carpolactam, LAB, etc.) and basic plastics (LDPE, HDPE, PP, PVC)
8. Exploration of oil, gas and their production, transportation and storage
9. Cement plants
10. Production of fertilisers
11. Production or formulation of plant protection chemicals (pesticides, insecticides, and fungicides)
12. Chlor alkali industry
13. Production of hydrocyanic acid and its derivatives
14. Production of meta amino phenol
15. Production of asbestos and asbestos products
16. Glass and fibre glass production and processing
17. Production of synthetic rubber
18. Manufacture of resins
19. Production of viscose staple and filament yarn
20. Basic manufacturing of organic and inorganic chemicals
21. Integrated paint complexes and manufacture of basic raw materials for paints
22. Pulp and paper mills
23. Newsprints
24. Production of bulk drugs and pharmaceuticals
25. Distilleries
26. Food processing (sugar mills, slaughtering, etc.)
27. Primary metallurgical industries (aluminium, copper, lead and zinc smelters, production of iron and steel and ferro-alloys)
28. Foundries
29. Electroplating
30. Metal finishing industries
31. Lime kilns
32. Mining of major minerals, coal, sulphur, precious stones, etc. (with leases > 5 ha)
33. Stone crushers
34. Dyes
35. Tanning and leather finishing
36. Integrated textile processing mills
37. Storage batteries integrated with manufacture of oxides of lead and lead antimony alloys
38. Hospitals, clinics and diagnostic laboratories
39. Disposal and/or storage of hazardous or toxic wastes (land fills, incinerators, etc.)
40. Other waste disposal/storage facilities with annual capacity > 10,000 m³

Orange Category

1. Brick kilns
2. Mining below 5 ha
3. Fruit and vegetable processing in medium and large scale
4. Food processing (vegetable oils, beverages, maize/corn starch, rice bran oil, dhal mills, integrated milk plants, steeping and processing of grain, rice hullers/shellers, wheat trashing, etc.)
5. Production of katha and other agriculture based production
6. Blending and bottling of IMFL
7. Ayurvedic medicines formulation
8. Roller flour mills
9. Manufacture of tobacco products
10. Small dyeing and printing units
11. Cotton spinning and weaving
12. Formulation of fragrance, flavours and food additives and industrial perfumes
13. Basic manufacturing of soap and detergent and production of shampoos
14. Formulation of cleaning powder
15. Laundries and dry cleaners
16. Rubber and PVC shoe manufacturing
17. Plastic industry (bags, tubes, pipes, etc.)
18. Sizing and de-sizing of fabric
19. Manufacture of pulp and paper based on recycled paper
20. Paint formulation
21. Bone crushing plants
22. Bone china crockery
23. Manufacture of agricultural implements
24. Tyre re-treading
25. Engineering industries (except metal finishing)
26. Manufacture of printed circuit boards (excluding electro plating)
27. Welding units
28. ACSR conductor insulation
29. Automobile servicing and repair stations
30. Reclamation of used oil
31. Manufacture of activated carbon
32. Production of oxygen, acetylene and other industrial gases
33. Manufacture of naphthalene balls
34. Manufacture of melamine wares
35. Manufacture of bakelite switches
36. Manufacture of laboratory ware
37. Manufacture of steel furniture, fasteners, etc.
38. Washing of equipment and regular floor washing, using considerable cooling water
39. Washing of fabrics (job work)

Green Category

Other production not classified as red or orange.

Annex 3 – Information to be supplied by Proponents

The following is guidance on the information that should be provided by proponents to NEPA. Proponents may choose to submit more information dependent on the project type. However, if insufficient information is provided then the EIA process cannot be commenced by NEPA. Therefore adherence to this guidance would be advisable.

The Proponent: Name, address, telephone, email and contact point for further queries, for the individual or organisation proposing the project

The Project: Brief description of the nature and purpose of the project. Outline plans or drawings. Size of the project in terms of, for example, site area, size of structures, throughput, input and output, cost, duration. Programme for implementation including construction, commissioning, operation, decommissioning, restoration, after-use. Scale of construction activities required.

The Location: A map and brief description of the site and its surrounding area showing physical, natural and man-made features such as topography, land cover and land use (including sensitive areas such as housing, schools, recreation areas); physical/spatial planning policies or zoning; areas or features designated for their nature conservation, landscape, historic, cultural or agricultural importance; water features including groundwater and flood protection zones; planned future developments.

Potential Sources of Impact: Completion of a Rapid Environmental Assessment⁶ should provide insight into the potential sources of impact. Any further information which provides detail on the following factors would be useful; emissions to air land or water or any residues that may arise from construction and operation activities and the proposed methods of discharge or disposal, any noise, vibration or heat generated from the project, hazardous or raw materials to be used or stored at the site and procedures for safe management and requirements for raw materials and energy and their likely sources.

Mitigation: Brief description of any measures the developer proposes to use to reduce, avoid or offset significant adverse effects would be useful.

Other information which may be useful:

- identification of other permits required for the project;
- relationship of the project to other existing or planned activities;
- other activities which may be required or may occur as a consequence of the project (e.g. extraction of minerals, new water supply, generation or transmission of power, road construction, housing, economic development)
- planned future developments on or around the site;
- additional demand for services such as sewage treatment or waste collection and disposal generated by the project;
- photographs of the site and its surroundings.
- alternative sites, processes or environmental mitigation measures considered by the developer.

⁶ An REA is a checklist of potential impacts arising from a project. Checklists are developed for specific sectors and will be available at NEPA.