

Report No. 76852-AF

**The Inspection Panel** 

**Report and Recommendation**

**AFGHANISTAN: Sustainable  
Development of Natural Resources  
Project Additional Financing  
(P116651), and Sustainable  
Development of Natural Resources  
Project II (P118925)**

**April 23, 2013**

# **The Inspection Panel**

## **Report and Recommendation On Request for Inspection**

### **AFGHANISTAN: Sustainable Development of Natural Resources Project Additional Financing (P116651), and Sustainable Development of Natural Resources Project II (P118925)**

#### **A. Introduction**

1. In accordance with the Resolution (hereinafter “the Resolution”)<sup>1</sup> establishing the Inspection Panel (hereinafter “the Panel”), the purpose of this Report and Recommendation on Request for Inspection (hereinafter “the Report”) is to make a recommendation to the Board of Executive Directors as to whether the Panel should investigate the matters alleged in this Request related to the above-mentioned projects. The Panel’s recommendation is based on its consideration of the technical eligibility of the Request and its assessment of other factors as reflected in the Resolution.
2. The Panel’s determination of the technical eligibility of the Request, in accordance with the 1999 Clarification to the Resolution,<sup>2</sup> is set out in Section E below, and Section F summarizes the Panel’s observations on additional factors analyzed before making a recommendation to the Board. The Panel’s recommendation is presented in Section G.
3. On December 3, 2012 and December 6, 2012, respectively, the Inspection Panel received two requests for inspection related to the Afghanistan: Sustainable Development of Natural Resources projects (SDNRP, SDNRP Additional Financing, and SDNRP-2). In this Report, both requests are hereinafter jointly referred to as “the Request”, unless otherwise specified. Furthermore, both sets of Requesters have asked for their identities to remain confidential.
4. The first request was sent in Pashto by a resident of Mes Aynak area of Logar Province.<sup>3</sup> The requester refers to a report by the Alliance for the Restoration of Cultural Heritage

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<sup>1</sup> International Bank for Reconstruction and Development (Resolution IBRD 93-10) and International Development Association (Resolution 93-6), “The World Bank Inspection Panel”, September 22, 1993 (hereinafter “the Resolution”), para. 19. Available at:

<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ResolutionMarch2005.pdf>

<sup>2</sup> “1999 Clarification of the Board’s Second Review of the Inspection Panel”, April 1999 (hereinafter “the 1999 Clarification”). Available at:

<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/1999ClarificationoftheBoard.pdf>

<sup>3</sup> The Pashto request was translated into English by the Inspection Panel.

(ARCH International).<sup>4</sup> The second request was sent by the Kabul office of ARCH with a cover page in Dari. The request is supported by Afghans residing both within and outside Afghanistan who have asked to be represented by ARCH. This request includes two online petitions launched by expatriate Afghans who at the time the request was sent had gathered over 110,000 signatures.<sup>5</sup> It also refers to a campaign with similar goals launched by two Thai organizations.

5. The Panel registered the Request on January 4, 2013 and World Bank Management submitted its response to the Request for Inspection on February 8, 2013.<sup>6</sup>
6. The Panel's Report and Recommendation was originally due on March 5, 2013. On February 13 and March 5, the Panel requested the Board to approve two separate extensions of the deadline to submit this Report for reasons related to the timing of the Panel's eligibility visit in the light of security constraints in Afghanistan. The Board approved both extensions and the deadline was extended to April 22, 2013.

## **B. The Project**

7. The Request for Inspection raises concerns about the Bank support to the Afghanistan: Sustainable Development of Natural Resources projects (SDNRP, SDNRP Additional Financing, and SDNRP-2). By the time the Request was received by the Panel, the SDNR project was already closed and, is therefore, outside of the Panel's purview (see below section E. Determination of Technical Eligibility).
8. According to the Management Response, the three SDNRP operations are a part of a programmatic approach to oil, gas and mining sector development in Afghanistan. Management states that the objectives of SDNRP-AF and SDNRP-2 are closely aligned.
9. The objective of SDNRP-AF is to assist the Government of Afghanistan (GoA) "*in improving the Ministry of Mine's [MoM] capacity to effectively regulate the mineral and hydrocarbon resource sector in a transparent manner, and to foster private sector development.*"<sup>7</sup> SDNRP-AF has four components: (i) improving MoM's internal efficiency and streamlining internal processes; (ii) developing regulatory capacity to effectively regulate and handle mining and hydrocarbon activities; (iii) supporting the

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<sup>4</sup> According to ARCH-International's website, it is US-based non-profit organization with a focus on the preservation and restoration of archeological sites marred by crisis and war.

<sup>5</sup> The petition are respectively entitled (and available at): "*President Hamid Karzai: Prevent Destruction of Ancient Site of Mes Aynak & the Environmental Damage*" (<http://www.change.org/petitions/president-hamid-karzai-prevent-destruction-of-ancient-site-of-mes-aynak-the-environmental-damage-3>) and "*Save our Past – Ask UNESCO to Include Mes Aynak on the List of Endangered Sites*" (<http://www.change.org/petitions/save-our-past-ask-unesco-to-include-mes-aynak-on-the-list-of-endangered-sites>).

<sup>6</sup> Management Response to Request for Inspection Panel Review of the Afghanistan: Sustainable Development of Natural Resources-Additional Financing (P116651), and Sustainable Development of Natural Resources II (P118925). Hereinafter, the "Management Response".

<sup>7</sup> Additional Financing for the Sustainable Development of Natural Resources Project and Amendment to the Original Financing Agreement, Financing Agreement between the Islamic Republic of Afghanistan and the International Development Association, Grant Number H503-AF, Amendment Grant Number H238-AF, Dated December 20, 2009 (hereinafter "Financing Agreement SDNRP-AF"), Schedule 1, Project Description, p. 4.

development of mineral resources including enhancing the Recipient's capacity in the tendering process of key mineral deposits and revenue management; and (iv) enhancing sector governance. The legal agreement for the Additional Financing states that the Project supports the "*completion of the Aynak copper deposit transaction.*"<sup>8</sup>

10. The objective of SDNRP-2 is to assist the MoM and the National Environmental Protection Agency (NEPA) in "*further improving their capacities to effectively regulate the [GoA's] mineral resource development in a transparent and efficient manner, and foster private sector development.*"<sup>9</sup> SDNRP-2 components include, inter alia: (i) capacity building support to MoM in relation to the development of sector policy frameworks and the tendering process of the Hajigak iron ore deposit; (ii) strengthening the capacity of MoM and NEPA for regulation and monitoring of operations, including implementation of a licensing system, inspection and contract compliance monitoring functions; and (iii) support towards the preservation of Mes Aynak antiquities and support for alternative livelihoods through sustainable artisanal and small scale mining.
11. The Financing Agreement for SDNRP-2 stipulates that the Project would provide support to the Project Management Unit (PMU) in Project implementation, "*particularly in the areas of monitoring and evaluating Project activities, complying with fiduciary and safeguards requirements, public information disclosure and regulated public consultation processes.*"<sup>10</sup> It provides that the GoA will prepare, disclose and ensure that the Project is carried out in accordance with the Environment and Social Management Framework (ESMF), including any Resettlement Policy Framework (RPF), acceptable to the Bank. It also provides that GoA would "*ensure that the monitoring and regulation of all activities in the mining sector shall be carried out in accordance with the ESMF.*"<sup>11</sup>
12. The Project Paper for SDNR-2 states that, in terms of Project implementation support, funding will cover "*PMU staff costs, and consultant services to assist the PMU in carrying out day-to-day project management, public information disclosure and related public consultation processes, project fiduciary and safeguards management, and project monitoring and evaluation. The embedded technical expertise for environmental, social, cultural resource management, communications, and engineering disciplines will be a main mechanism for knowledge transfer around day-to-day activities within the MoM.*"<sup>12</sup> It adds that the PMU, will have overall responsibility for implementing the results monitoring system as well as specific responsibility for monitoring the results of the Project, "*supported by the World Bank Mining Team and reinforced through the PMU's local and*

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<sup>8</sup> Financing Agreement SDNRP-AF, Schedule 1, Project Description, Developing Mineral Resources, Part 3 (d), p. 5

<sup>9</sup> Second Sustainable Development of Natural Resources Project, Financing Agreement between the Islamic Republic of Afghanistan and the International Development Association, Grant Number H699-AF, Dated July 16, 2011 (hereinafter "Financing Agreement SDNRP-2"), Schedule 1, Project Description, p. 4.

<sup>10</sup> Financing Agreement SDNRP-2, Schedule 1, Project Description, Project Implementation Support, Part D, p. 5.

<sup>11</sup> Financing Agreement SDNRP-2, Schedule 2, Project Execution, Section I, E. Safeguards (b), p. 8.

<sup>12</sup> Emergency Project Paper on a Proposed Emergency Recovery Grant to the Islamic Republic of Afghanistan, Second Sustainable Development of Natural Resources Project, Report No: 61397 – AF, dated May 6, 2011 (hereinafter "Project Paper SDNRP-2"), dated May 6, 2011, p. iii.

*international safeguard specialists. The latter will be supported through the relocation of an additional international safeguard staff member to Kabul.*<sup>13</sup>

13. The Project Paper states that while the Project is “*not directly involved in mine investments, its role in facilitating sustainable mineral sector investments requires an Environmental Category “B”, which is in line with current Bank practice.*”<sup>14</sup> It lists the Environmental Assessment Policy (OP/BP 4.01), the Physical Cultural Resources Policy (OP/BP 4.11) and the Involuntary Resettlement Policy (OP/BP 4.12) as triggered.<sup>15</sup>
14. The Project Paper adds, as part of the risk assessment framework, that there are safeguard-related risks for local people around the development of large scale projects. These include, in particular, deficiencies in existing land acquisition laws and the lack of provision for Resettlement Policy Frameworks. The Project Paper for SDNRP-2 states that, as proposed mitigation measures, “*strong and sustained World Bank – Government collaboration has already led to improvements in resettlement policies, including preparation of an initial RAP for Aynak.*”<sup>16</sup> It also adds that the SDNRP-2 provides a strong focus on supporting the government regarding safeguard issues in the sector overall and especially in its oversight of Aynak and in its preparatory work for Hajigak iron ore mine.<sup>17</sup> It also states that the Bank team is closely cooperating with the international social consultant working for MoM, who is preparing the household census for project-affected people in Aynak and preparing the RAP with all required documentation, and continues to be assisting them “*on continuous basis with advice re RAP.*”<sup>18</sup>
15. The Management Response states that the Bank’s extractives industries sector work is guided by the 2005 World Bank Group Management Response to the Extractive Industries Review. This document includes, among other principles, the protection of the rights of people affected by extractive industries investments. In line with the above stated principle, the Project includes several actions to assist the MoM and NEPA to build their capacity to manage environmental and social impacts and risks. These include strengthening the GoA’s mining and environmental laws and regulations and the capacity to enforce them, both at the sectoral level and at the individual transaction level.

### **C. The Request**

16. The Request includes claims of both a general and specific nature as listed below. What follows is a summary of the Request. The Request is attached to this Report as Annex I.

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<sup>13</sup> Project Paper SDNRP-2, p. 12.

<sup>14</sup> Project Paper SDNRP-2, Annex 9 Environmental and Social Safeguards Framework, p. 102.

<sup>15</sup> Project Paper SDNRP-2, Safeguard and Exception to Policies, p. 3. The Draft Environmental and Social Management framework, dated January 20, 2013, adds that the Safety of Dams Policy (OP/BP 4.37) was also triggered under the SDNR-2, due to a requirement for advice from the SDNR-2 team on the tailings dam for the Aynak copper mine.

<sup>16</sup> Project Paper SDNRP-2, Annex 4 Operational Risk Assessment Framework, p. 47.

<sup>17</sup> Project Paper SDNRP-2, Annex 4 Operational Risk Assessment Framework, p. 47-48.

<sup>18</sup> Project Paper SDNRP-2, Annex 9B Social Safeguard Issues, pp. 121-122.

17. In general, the Request states that Mes Aynak<sup>19</sup> is “*slated for destruction in connection with a copper mining project supported by the World Bank.*” The Request states that the mining operation will cause “*heavy losses*” to community members and to the culture and history of Afghanistan. It states that the mine “*is partially managed, overseen and funded by the World Bank*” and because of the Bank’s failures or omissions, the area of Aynak and Logar Province will suffer harm. The Request states that the “*apparent negligence of the World Bank in not ensuring that environmental safeguards are in place, imminently endangers the health of the population living there, the quantity and safety of their water supply and (...) the Kabul River with potential consequences even cross-border into Pakistan.*” It adds that there have been no attempts by the Bank to inform the local population on the Project or its risks. It adds that the initial resettlement efforts were fraught with problems and “*violent incidents.*”
18. **Claims related to the environment.** The Request states that there is a failure to provide a basic Environmental Assessment. It claims that the initial categorization of the Project as Category “C” (re-categorized as “B” under SDNRP-AF) affected decisions about environmental and social issues at a critical juncture. It adds that the dangers to public health, including failure to develop a mine closure plan, and possible release of toxic chemicals into the air, soil and water have not been properly assessed. The Request states that no environmental impact assessment or plan for mitigating the environmental risks were developed or made public and reviewed by independent experts. It adds that no siting alternatives were undertaken in the feasibility studies. It further claims that copper mining is associated with a number of significant risks to human health and to the natural environment, and impacts can continue to be felt even after mine closure.
19. Additionally, the Request states that the contract for Mes Aynak was not awarded in compliance with the environmental requirements of the current Afghan Minerals Law and associated Regulations. It also states that an adequate mitigation plan does not exist and there is no indication that monitoring can be successfully accomplished, given prevailing levels of non-transparency. The Request further states that, according to UNICEF, there is already evidence of arsenic in wells in Logar Province which is attributed to earlier small-scale copper mining. The Request states that the landscape will be impacted, including agricultural areas such as Mohammad Agha of Logar in which some of the Requesters reside, and that copper mines permanently alter the landscape due to the high ratio of waste to ore.
20. **Impacts on water quality (pollution).** The Request claims that it is not uncommon that the waste resultant from copper mines piles up to 400 hectares in size. According to the

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<sup>19</sup> “Mes” means copper in the Dari and Pashto languages. According to the Request: “*Aynak was on the Silk Road. As far back as 5000 years ago, this mineral rich area was already the locale for the mining, smelting and production of metals. Eventually, a wealthy and sprawling Buddhist city grew in Mes Aynak, guarded by a mountain-top fortress and walls, holding several religious complexes and multiple stupas, and containing commercial and residential districts. This remains today, buried beneath the ground; it is a find comparable to Pompeii. Its scientific value is obvious, as it holds unique information about early metal production and trade. The art works and artifacts including gold jewelry that have thus far been unearthed are of high artistic quality, indicating that the lower strata - where looters did not yet have access – likely hold much more. The tourism potential of such an accessible and fascinating site is obvious as well.*”

Request, toxic contaminants in copper mining (including heavy metals and acid drainage) are most commonly found in mine pits (underground workings; waste rock piles; tailings and other ponds; spent leach piles). The Request adds that these have the potential to degrade ground water, surface water, soil, and air quality during mine operation and after mine closure. If any of this waste infiltrates the underlying ground surface, according to the Request, it could reach the water table and potentially contaminate ground water. The Request states that, except for iron, all of these contaminants are toxic to humans and to aquatic life and are known to accumulate in the environment and concentrate in the food chain.

21. **Impacts on the groundwater (water depletion).** According to the Request, there is a fear that the mining activities would require a great amount of water, so much so that local communities will be unable to find drinking water or to provide water for their animals and agricultural needs. It states that Logar Province is a primarily agricultural province, whose population consists largely of farmers, who grow wheat, maize, and a variety of vegetables and fruit and that “*agriculture relies on an extensive, traditional irrigation system (karez system).*” The Request states that communities fear that the mining project will draw down the underground water resources, and streams and wells may dry out. They are concerned that the Bank is not ensuring that environmental safeguards are in place, imminently endangering the health of the population living there, and the quantity and safety of their water supply.
22. **Inadequate resettlement plan, loss of livelihood, and livelihood restoration.** The Request states that the Mohammad Agha area (where mining activities will occur) is agricultural land. It states that communities are concerned that agricultural produce will be impacted causing losses to their livelihood. The Request adds that people have been ousted from their area and are still homeless. This created an increase in density in other neighborhoods (“*even burial space has become difficult to find*”). The Request states that there are no clear indications of the number of people to be resettled or lists of villages affected and that the host-area, the As-wahab Baba (or Ashab Baba) resettlement area, is agricultural and the total area given to the resettled community is not sufficient. The Request states that evicted families have been asked to build their homes at their own expense. It states that the resettlement plans do not list community members from the Aynak area who are currently refugees in Iran or Pakistan. It also states that stress for land in the host-area is exacerbated and increasing the risk of conflict and unrest among the local population.
23. The Request states that the host area is claimed by the Stanakzai tribe, which has warned the residents of Aynak area not to enter their land or else they will face consequences. It adds that the people of Aynak will not wish to settle in the host area even if they are forced to do so, and they were not presented any choices or viable alternatives. The Request adds that the promised compensation (in a Government decree) for expropriated land was not specified. It also mentions allegations of corruption while registering land ownership.

24. **Special risk to a vulnerable indigenous minority (the Kuchis).** The Request states that one of the affected groups; the Kuchis are nomadic and designated as a vulnerable population by the United Nations Assistance Mission in Afghanistan (UNAMA). It adds that they are considered “*as one of the principal vulnerable populations in the country.*” The Request cites OP 4.10 (Indigenous Peoples) in this connection.
25. **The need for preservation of Mes Aynak archeological find.** The Request states that, thousands of years ago, copper had been extracted from this part of Afghanistan, as a result of which a city came into being (Mes Aynak). According to the Request, the ruins of this historical city still exist under the ground and are very important from an archeological standpoint as they give deep insight into ancient Afghan history that is thousands of years old. The Request mentions that the current practice of using “*godown*” (storage areas) to store statues found during excavation of these historical sites is not a sustainable method to preserve a whole city. The Request states that “*emergency archeology*” or “*salvage archeology*”, which is in effect in Mes Aynak, should be a last resort method that should not apply to Mes Aynak “*where one finds an isolated buried city.*” It states that the archeological survey<sup>20</sup> conducted under the auspices of the Bank, is neither comprehensive nor did it use state of the art data collection techniques (e.g. “*through ground penetrating aerial photography and laser-based remote scanning technology*”). The Request states that the failure to properly map, explore and evaluate the site is alarming given the magnitude and importance of Mes Aynak, adding that the Bank is funding workers and archeologists on the site with the goal to salvage objects from the upper strata of the deposit, which is highly prejudicial to these objects.
26. The Request states that international best practice standards for cultural preservation require that a survey and mapping of the site should have been carried out which would have led to a mining plan indicating the extent to which the site could be responsibly excavated, documented and preserved in harmony with the copper mining effort, and finally, a joint plan for heritage preservation and copper mining inclusive of timelines could have been developed. It adds that this did not happen and instead a decision was made, with the support of the Bank, to practice salvage archeology instead of site preservation. It also adds that archeologists were continuously given incorrect estimates of how short a time they had to rescue whatever they could before mining commenced, hence creating a false state of urgency. The Request states that if the current plan goes forward, the sites’ lower levels will never be excavated and all the information contained therein will be lost forever, which is arguably a loss to the history of science, since the lower levels of the site include artifacts and data about the history, the methods and tools utilized in mining in earlier millennia. The Request states that Afghanistan already “*lost Buddha statues of Bamiyan (...) and now the approximately 5,000-year-old city of Aynak, which is much more significant than the Bamiyan statues, is being ignored.*”
27. **Lack of disclosure and consultations.** The Request states that the “*relevant and necessary information*” was never shared with the community members. It states that in the summer of 2011, community members were informed of an important meeting in

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<sup>20</sup> Délégation Archéologique Française en Afghanistan, Mes Ainak, A comprehensive assessment of the archaeological issue.



Kabul planned by the Bank regarding the Project, however, they were not invited to attend it.

28. The Request adds that residents' land was expropriated by government decree without prior consultation. It states that community members are "*very worried about this project.*" According to the Request, "*to date, no EA has been made public.*" The Request adds that the Bank attempted to comply with environmental protection requirements by hiring an independent monitoring agency, but that a lack of access, information, and transparency made it impossible for these consultants to fulfill their mandate.
29. **Designation of the Project as an Emergency Operation.** The Request states that the Bank designated the operations related to Mes Aynak as an emergency operation allowing the Bank "*to exempt the project*" from certain safeguard requirements. The Request states that copper mining at Mes Aynak, which is a long term commercial project, does not meet the conditions of an emergency operation. The Request asks "*in what way does the mining of copper represent an emergency? We fear that this designation only serves the purpose of circumventing protections and regulations that by rights should apply.*" The Request acknowledges that Afghanistan indeed suffers from security challenges, adding that this does not justify "*jettisoning*" the Bank's well-crafted rules.
30. The Request lists a number of Policies, including: Rapid Response to Crises and Emergencies OP/BP 8.00, Emergency Recovery Assistance OP/BP 8.50, Environmental Assessment OP/BP 4.01, Environmental Action Plans OP/BP 4.02, Natural Habitats OP/BP 4.04, Water Resources Management OP/BP 4.07, Indigenous People OP/BP 4.10, Physical Cultural Resources Policies OP/BP 4.11, Involuntary Resettlement OP/BP 4.12, Projects on International Waterways OP/BP 7.50, Projects in Disputed Areas OP/BP 7.60, Project Supervision OP/BP 13.05 and The World Bank Policy on Disclosure of Information.

#### **D. The Management Response**

31. A summary of Management Response follows, and a copy is attached to this Report as Annex II.
32. Management believes that the Request does not distinguish between the obligations of the Bank through its technical assistance support under the Project, and those of the GoA and the mining company.
33. **Claims related to the Environment Assessment - categorization.** Management states that the Environmental Assessment Categorization was changed from "C" to "B", as required under BP 4.01, for the SDNRP Additional Financing and SDNRP-2 because of the change in Project scope and the potential to realize inbound investments. Management states that the Project document for the first operation, SDNRP, envisioned reclassification "*In the event that a specific transaction leads to a potential direct investment by either the Government of Afghanistan or resources provided through IDA,*

*an application for reclassification of the project will be considered.*” Management adds that once investor interest and potential for private sector participation grew, the Government sought additional financing from the Bank to include investment facilitation support for private sector participation; thus the Additional Financing operation was placed as Category “B”. The subsequent operation, SDNRP-2, was also categorized as “B” and the Environmental Assessment (OP/BP 4.01), Physical Cultural Resources (OP/BP 4.11), and Involuntary Resettlement (OP/BP 4.12) policies were triggered.

34. **Claims related to the Environment Assessment – documentation and process.** Management states that the process of identifying and studying the potential environmental and social impacts of the Aynak mine development is still ongoing and the required safeguard documents for mitigation and risk management are being developed. Management states that the Terms of Reference (ToR) for the ESIA were reviewed by the Bank and the Feasibility Study (FS) will be informed by the ESIA which, with the Environment Management Plan (EMP), are being prepared by the mining company in accordance with Afghan law. Management also states that local consultations will be undertaken on the ESIA and EMP. Management states that mining at Aynak was originally scheduled to commence in 2013, however, it is unlikely to commence before 2016 given the time required to complete engineering, procurement and construction. This delay, according to Management, gives the mining company adequate time to consult with key project-affected people and stakeholders and prepare and disclose the ESIA, EMP, and FS for regulatory approval by the GoA.
35. **Claims related to the Environment Assessment – identification of impacts.** Management states that it recognizes the environmental and social risks associated with mining and that all potential impacts related to the Aynak mine development, including those raised in the Request, are required to be considered in the preparation of the relevant safeguard instruments by the mining company. As part of Project supervision, the Bank will continue to advise the Government and monitor the situation. Management adds that SDNRP2 has several actions to assist the MoM and NEPA to build their capacity to manage environmental and social impacts and risks, including strengthening the GoA’s mining and environmental laws and regulations and the capacity to enforce them. One of the key outputs under the Project is the preparation and implementation of the ESMF and Resettlement Policy Framework (RPF), consistent with the applicable safeguard policies of the Bank. The ESMF including the RPF will undergo a consultation process undertaken by the GoA. Management states that notwithstanding the delay in finalizing the ESMF, the SDNRP-2 continues to support capacity building for regulatory oversight of the ESIA and EMP implementation for the mine development, consistent with applicable Bank policies and national law, including the ESMF.
36. **Monitoring and supervision.** Management states that the Project has been adequately supervised and takes a proactive approach in managing implementation risks. It considers that it is important to distinguish between the roles, responsibilities and obligations of the Bank under the Bank-supported Project; and those of the MoM and the Mining Company under a commercial mining concession agreement. Management states that the Request does not recognize this critical distinction. As part of Project

supervision, Management states that it engages with the MoM and NEPA on compliance monitoring issues, including those related to commercial mining transactions.

37. Management states that the Project has added an international senior social development specialist conversant in Dari with knowledge of Afghanistan and a project management specialist, both based in the field. The Project, according to Management, has also been financing several activities to complement regular supervision by Bank staff. For example, the Project is financing the services of an expert consultancy (GAF) to monitor and report to the GoA on contractual and regulatory compliance, including the preparation and implementation of the ESIA, EMP and Feasibility Study (FS) for the mining exploitation activities. Management states that post-mining landscaping will be covered within the FS under the mine closure plan section. Also, the Project was instrumental in obtaining the services of national/international archaeologists to support DAFA (Délégation Archéologique Française en Afghanistan), the Ministry of Mines (MoM), the Ministry of Information and Culture (MoIC) and the mining company at Mes Aynak.
38. **Inadequate resettlement plan, loss of livelihood, and livelihood restoration.** Management states that the first draft of the RPF for the Project was received in February 2013 and is being finalized and will be part of the GoA's ESMF. Management states that the RPF is undergoing consultations and that the issues raised in the Request will be addressed in the RPF. Management also states that the Requesters' concern relate to the proposed commercial mining activities and that resettlement is a shared responsibility between the MoM and the mining company, with the former taking the lead on preparation and implementation of RAPs, while the latter finances the cost of resettlement including monetary compensation for loss of land and assets.
39. According to Management, the Bank is providing technical assistance as part of the Project's objective to strengthen regulatory and monitoring oversight of the MoM, including resettlement and land acquisition. Prior to the approval of SDNRP-2, between 2008 and September 2010, the MoM began its engagement with the affected Project Affected Families (PAFs) in Aynak and relocated some in Wali Killai,<sup>21</sup> and paid them a partial compensation for loss of housing and rent. Upon learning of this the Bank advised the GoA of the need to employ appropriate procedures in line with national law and applicable safeguard policies. According to Management, the MoM agreed and proceeded accordingly, including preparing the first RAP for the Project in January 2012, which, according to Management, addressed the gaps in the work previously done. Management states that the RAP is consistent with the RPF of the ESMF for the Bank funded Irrigation Restoration and Development Project, approved by the Afghan Land Authority and subsequently cleared by the Bank in December 2010.<sup>22</sup>
40. Management states that an additional RAP will be prepared for a tailing dam site and access roads. It states that at this stage, the Aynak mine development impacts 62 PAFs

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<sup>21</sup> "Killai" means village in Pashto.

<sup>22</sup> Management Response, p. 27, fn. 8.

and 55 non-resident PAFs who were displaced during the conflict in 1979-1989, all of whom are entitled to receive compensation and resettlement assistance.

41. Management states that delays in issuing compensation are a systemic problem and a result of an incomplete and outdated land registry system in Afghanistan. Pending clarification of land title issues, the payments are waiting in escrow as cases are resolved in court. The allotment of housing plots in the resettlement site is planned for March-April 2013 in Ashab Baba, and agricultural land is planned to be allocated in two sites, namely Kalai Daulat and Abba Zaki. The process of land clearance (the Land Authority process of determining ownership) of these areas is ongoing and may take an additional three months. Management also states that with respect to host community acceptance of resettled population, GoA has confirmed that the issues have been resolved and the resettlement site in Ashab Baba town is in progress.
42. **Designation of Kuchis as Indigenous People.** Management states that it agrees with the designation of the Kuchis as “*one of the principal vulnerable populations in the country*” by the United Nations Assistance Mission in Afghanistan (UNAMA). However, Management disagrees with Requesters’ characterization of the Kuchis as “*an indigenous minority population*” based on this designation, and argues that Kuchis do not qualify as Indigenous Peoples as set forth in OP 4.10, which defines Indigenous Peoples based on four distinct socio-cultural criteria, none of which include economic vulnerability. Management states Kuchis are Pashtun pastoral nomads, many of whom have over centuries gradually moved from pastoral nomadism to settled agriculture as their livelihood. Management Response adds that “*among the Pashtuns and other ethnic groups in Afghanistan, there is no clear-cut socio-cultural distinction between settled and migrating groups.*” Management adds that during the consultations conducted for the preparation of the above-mentioned RAP, no indication was found of the presence of pastoral nomads (Kuchis) among the resident PAFs. Management concludes that OP 4.10 Indigenous People policy is not applicable to this Project.<sup>23</sup>
43. **Preservation of Mes Aynak archeological find.** Management states that while it shares the Requesters’ objectives for the Mes Aynak site and “*strives to cooperate to this end with all relevant stakeholders, including the Requesters.*”<sup>24</sup> Management disagrees with a number of allegations that the Requesters have raised in this Request. Management states that it has followed OP 4.11 Physical Cultural Resources, taking into consideration the unique circumstances and exceptional security challenges at Mes Aynak.
44. Management states that based on the advice and guidance it provided, including international expertise, the GoA has made significant efforts to protect the physical cultural resources at Mes Aynak. Management also states that it responded to the requests of GoA for technical assistance: (a) in addressing immediate emerging issues concerning cultural protection and mining; and (b) in developing measures for capacity building to

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<sup>23</sup> Management Response, p. 8, para. 23, and p. 29.

<sup>24</sup> Management Response, p. 23.

close skills gaps and undertake more systematic preparation and implementation of cultural property management plans.

45. According to Management, SDNRP-2 has allocated USD5 million to archaeological and artisanal and small scale mining issues and an additional USD30 million will be needed for full recovery and preservation of cultural artifacts for the Mes Aynak site. Management disagrees that there is destruction of irreplaceable cultural heritage. Management states that in 2010, the MoM and the MoIC signed a Memorandum of Understanding to ensure that the Aynak mine development conserves and preserves the physical cultural resources found on the site, and that the two ministries would continue to work closely together for the safe removal and/or *in situ* preservation of the resources. Management states that MoM, through SDNRP-2, MoIC, and the French Ministry of Foreign Affairs through DAFA are funding current activities. Management adds that future “*capacity building at MoIC will be supported by the MoM through continued use of DAFA, combined with the global expertise of UNESCO [the United Nations Organization for Education, Science and Culture] under SDNRP2, for which procurement is underway to support MoIC’s preparation of the Mes Aynak Archaeological Management Plan.*”<sup>25</sup> This plan, according to Management, will provide options for reconciling mining and cultural protection by informing the ESIA prepared by the mining company. When the mining company begins exploitation, it will be a staged activity providing opportunity for continued archaeology on priority areas within the Red Zone and implementation of the management plan for the broader Mes Aynak site.
46. According to Management, DAFA’s earlier work was not intended to comprise a comprehensive assessment. Management states that going forward, DAFA in cooperation with UNESCO, will continue its work in the field and will explore options for GoA management of physical cultural resources of the broader Mes Aynak site. Management adds that in its understanding, the time allocated for the assessment of historical cultural assets was set by the GoA in the expectation that mining would commence in 2012. Given the delay in the ESIA and FS, more time is available for preparation of the Mes Aynak Archaeological Management Plan including its continued assessment.
47. Management states that the combined measures of selective mitigation (including salvage archaeology and documentation) and preservation of the broader Mes Aynak site are appropriate under Bank Policy. Management adds that the GoA’s phased approach to both archaeology and mineral exploitation includes a wide range of mitigation measures, ranging from (a) salvage archaeology in the Red Zone where physical cultural resources are at risk of loss from first phase exploitation; and (b) archaeological options for the remainder of the broader site. These measures will be further elaborated in the management plan to be prepared by MoIC (with assistance from DAFA and UNESCO).
48. Management states that the option for *in situ* preservation (e.g., a heritage park) will be analyzed as part of the GoA’s preparation of the Mes Aynak Archaeological Management Plan for the broader site, and is envisioned by the Bank. Management adds that other

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<sup>25</sup> Management Response, p. 19.

sites in the broader Mes Aynak area are being considered by DAFA for *in situ* preservation given extensive structures, monasteries, stupas, possibly statues and for the protection of antiquity mining technology. According to Management, DAFA reports that “*no evidence of Bronze Age cultural resources have been found.*”<sup>26</sup> Ongoing archaeological activities supporting the preparation of the Mes Aynak Archaeological Management Plan would inform as to “deeper layers” of Bronze Age physical cultural resources across the broader Mes Aynak site.

49. Management states that exploitation of the site is highly unlikely to commence before 2016 given the time needed for the mining company to complete the preparatory technical work (ESIA and FS) and obtain regulatory approval. Management also states that it has been advised by the GoA that mining operations will only start once clearance has been received from MoIC as per Afghan law. Management states it will continue to monitor this commitment of the GoA and also the achievement of other agreed milestones, and will undertake appropriate measures. Management understands that the mining company as part of the FS is considering mining technology options for deeper portions of the deposit.
50. Management adds that the Bank has been actively discussing the issue with relevant UN agencies, and bilateral donors (US, Egypt, China, Japan) with expertise in the subject matter. Further, Management has proactively advised the GoA to involve the mining company in this discussion of the long term sustainability of the Mes Aynak archaeological site.
51. **Lack of disclosure and consultations.** Management states that it will follow up with the GoA to ensure disclosure of the relevant documents in line with the ESMF, which is being prepared following Bank policy. Management understands that prior regulatory approval will take approximately one year, which will give the mining company adequate time to consult with key project-affected people and stakeholders and prepare and disclose the ESIA, EMP, and FS for regulatory approval by the GoA. Management also stated that the Bank will remind the Ministry of Mines to ensure that development takes place only after the reports are prepared, reviewed and disclosed. Management states that the Ministry of Mines has made concerted efforts to ensure that sufficient information dissemination activities have taken place, including the sharing of information through its website.
52. Concerning the resettlement-related consultations and disclosure of information, Management states that the project affected families (PAFs) are being provided with adequate information on compensation methodology, social mobilization and the grievance redress mechanism with support from the International Rescue Committee, an international NGO. According to Management, the January 2012 RAP documents the meetings and consultations, with respect to compensation issues, held with the stakeholders and PAFs (including the PAFs relocated in Wali Killai), in accordance with Bank policy. Management adds that as part of the land clearance process by the Afghan

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<sup>26</sup> Management Response, p. 21.

Land Authority, extensive consultations with the PAFs took place to validate ownership claims to land. It adds that the RAP was disclosed in February 2012 and, since then, the MoM has been conducting regular meetings with the communities and with Civil Society Organizations regarding the RAP.

53. Regarding consultation on the protection of physical cultural resources with national/international experts, Management states that this is a GoA responsibility. Management states that two meetings provided input towards strengthened GoA consultations and came up with a range of recommendations: (a) the GoA April 2012 Mes Aynak Big Tent Meeting, supported under SDNRP-2; and (b) the May 2012 ARCH Washington Workshop.
54. In Management's view it is paramount to take into consideration the unique circumstances and exceptional security challenges at Mes Aynak. Management wishes to stress its strong concern that disclosure and/or local consultation present serious challenges to the safety and integrity of the Mes Aynak cultural property site, as well as the lives of the national and international archaeologists, and communities providing workers.
55. **Designation of the Project as an Emergency Operation.** Management Response considers that OP 8.00 was correctly applied to this operation.<sup>27</sup> It also considers that this OP 8.00 does not contain provisions to bypass or waive safeguard requirements. It adds that *“operating in a conflict situation requires a heightened level of flexibility in order to move rapidly under difficult conditions and to take advantage of windows of opportunity that emerge in these contexts. OP 8.00 may be used in conflict situations to provide this flexibility as conflict is a ‘man-made crisis’ specifically authorized under the policy.”*<sup>28</sup> Management Response also adds that, nevertheless, the Project recognizes the need to assist the GoA in addressing environmental and social issues emerging from any commercial mining investment. Management states that in the context of the Project, *“it is important to stress that the investment component of the Aynak mine development is not financed by the Bank, and therefore is not governed by OP 8.00, but rather by Afghan law and the ESMF of the Project.”*<sup>29</sup>
56. The Management Response notes that some of the Operational Policies cited in the Request are not applicable to the Project, including: OP 4.00 (Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects); OP 4.04 (Natural Habitats); OP 4.07 (Water Resources Management); OP 7.50 (International Waterways), and OP 7.60 (Projects in Disputed Areas).

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<sup>27</sup> Management refers to the May 2009 Interim Strategy Note (ISN), as well as the following ISN (for 2012-2014, considered in April 2012), which authorized the use of OP/BP 8.00 for Projects in Afghanistan.

<sup>28</sup> Management Response, p. 14.

<sup>29</sup> Management Response, pp. 13-14.

## **E. Determination of Technical Eligibility**

57. Panel Member Eimi Watanabe together with Senior Operations Officer Serge Selwan visited Kabul, Afghanistan, on April 7-12, 2013. During its visit, the Panel team met with the Requesters and other affected community members including those owning land in Mes Aynak but currently resident elsewhere. It also met with Government officials of the Ministry of Finance, the Ministry of Mines, the Ministry of Information and Culture, the Project Management Unit at the Ministry of Mines and the Aynak Authority. The Panel team also met with UNESCO, DAFA, and IRC (International Relief Committee). In addition, the Panel team met with Bank staff in the country office. The Panel team visited the archeological site at Aynak and the resettlement area.
58. The Panel wishes to express its appreciation to all those mentioned above for sharing their views and exchanging information and insights with the Panel. The Panel also wishes to thank the Government of Afghanistan for meeting with the Panel team. The Panel extends its thanks to the Requesters and other affected people who met with the Panel team and to the Country Director and staff in the Country Office for meeting with the Panel team, discussing the issues and providing relevant information, and assisting with logistical arrangements.
59. The Panel's review is based on information presented in the Request, on the Management Response, on other documentary evidence, and on information gathered during the site visit, and meetings with Requesters and other affected people, and Bank Management. This section covers the Panel's determination of the technical eligibility of the Request, according to the criteria set forth in the 1999 Clarification.
60. The Panel is satisfied that the Request meets all six technical eligibility criteria provided for in paragraph 9 of the 1999 Clarifications.
61. The Panel notes that its confirmation of technical eligibility, which is a set of verifiable facts focusing to a large extent on the content of the Request as articulated by the Requesters, does not involve the Panel's assessment of the substance of the claims made in the Request.
62. Criterion (a): "*The affected party consists of any two or more persons with common interests or concerns and who are in the borrower's territory.*" The Panel confirms that the Requesters live in the borrower's territory and share interests that may be affected by Project activities. The Panel considers the requirement of paragraph 9(a) as met.
63. Criterion (b): "*The request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester.*" The Requesters assert that the mining operation at Aynak will cause "*heavy losses*" to community members and to the culture and history of Afghanistan. The Requesters state that the mine is overseen by the World Bank and because of the Bank's failures or omissions, Aynak, Logar Province will suffer harm. The Requesters raise many concerns related to the environment in Aynak, to the resettlement



activities resulting from the mining operation, and to the safeguard of the cultural heritage present at Aynak. The Panel is thus satisfied that the requirement of paragraph 9(b) is met.

64. Criterion (c): *“The request does assert that its subject matter has been brought to Management’s attention and that, in the Requester’s view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank’s policies and procedures.”* The Requesters state that they have raised their concerns with World Bank staff on several occasions through multiple meetings, contacts and communications in person, via email, phone or teleconference without satisfaction. The Request includes a list providing information of 6 meetings and 52 phone/email exchanges (appendix “d”) with the Bank. The Panel is satisfied that this criterion has been met.
65. Criterion (d): *“The matter is not related to procurement.”* The Panel is satisfied that the claims with respect to harm and non-compliance included in the Request for Inspection do not raise issues of procurement under the Project and hence this criterion is met.
66. Criterion (e): *“The related loan has not been closed or substantially disbursed.”* The Request for Inspection raises issues related to three Bank-financed operations in Afghanistan: Sustainable Development of Natural Resources projects (SDNRP, SDNRP Additional Financing, and SDNR-2). At the time the Panel received the Request for Inspection, the SDNR project was already closed and, therefore, outside of the Panel’s purview. The other two operations, SDNR-AF and SDNR-2 were still ongoing at the time of receipt of the Request for Inspection. The SDNR-AF closing date is May 31, 2013, and SDNR-2’s closing date is June 30, 2016. At the time of the receipt of the Request for Inspection SDNR-AF was 49.10% disbursed and SDNR-2 was 6.14% disbursed.
67. Criterion (f): *“The Panel has not previously made a recommendation on the subject matter or, if it has, that the request does assert that there is new evidence or circumstances not known at the time of the prior request.”* The Panel confirms that it has not previously made a recommendation on the subject matter of the Request.

## **F. Observations on Other Factors Supporting the Panel’s Recommendation**

68. In making its recommendation to the Board, the Panel also considers whether there is a plausible causal link between the Project and the harm alleged in the Request, and whether alleged non-compliance and harm may be potentially of a serious character. The Panel records its preliminary observations on these elements below, noting that the Panel can only make a definitive assessment of the Bank’s compliance with its policies and procedures, and any adverse material effect this may have caused, through an investigation. The Panel also takes into account statements of any remedial actions provided by Management to address the matters raised in the Request.
69. At the onset, the Panel wishes to indicate that it fully appreciates the critical importance of the Mes Aynak copper mine, expected to bring in USD400 million per annum to the

economy of Afghanistan, as well as the challenges posed for all stakeholders in implementing a project of this magnitude under challenging circumstances. Even more so, when it is the first of such ventures in the country. The Panel recognizes the important role and contribution of the Bank in supporting the entire process of bidding, contract reviews, and development of social and environmental norms and standards for the mining sector, and the efforts to address serious capacity constraints on the part of GoA.

70. The Panel also wishes to highlight the importance of the issues raised by the Requesters. The social, environmental and cultural concerns are of a serious nature, as elaborated in more detail below. As noted by Management, the earlier resettlement of affected people had not been up to safeguard standards. The potential environmental impacts of copper mining are enormous, as are the cultural, historical and potentially economic significance of Mes Aynak archaeological remains.

**(i) The issue of link between the Project and alleged harm**

71. Management in its Response states categorically that that “*the Requesters have no basis to claim and are also not able to demonstrate that their rights or interests have been or will be, directly and adversely affected by a failure of the Bank to implement its policies and procedures.*”<sup>30</sup> The Panel wishes to emphasize that it does not, and never has, interpreted the term ‘demonstrate’ in the Resolution to mean that Requesters, who are often vulnerable people and without access to professional help, must present a well-articulated analysis to ‘demonstrate’ a link between harm and the Bank’s application of its policies. It is however a responsibility of the Panel, in its consideration of whether an investigation is warranted, to assess whether there is a plausible causal link between the alleged harm and the Project supported by the Bank. If there is not a plausible link, it follows that there cannot be a basis for claiming that non-compliance of the Bank has contributed to the harm.
72. Management’s emphasis that there is “no basis” to the claims rests in part on the observation that “*the Request fails to distinguish between the obligations of: (a) the Bank through its technical assistance support, under the project; and (b) those of the GoA and the mine developer (...) under the mining concessions agreement.*”<sup>31</sup> The Panel agrees that this is an important distinction to make in the context of this Request.
73. The Panel notes that the Bank is not financing any commercial mining activity under the mining concession agreement between the GoA and the mine company in Aynak copper mine. However, this does not mean that the activities supported under the Bank financed Project do not have important implications for some of the issues of harm raised by the Request.
74. As noted above, the SDNRs support the preparation of the ESMF, including the RPF. The ESMF is an overarching document which will guide the exploitation/mining

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<sup>30</sup> Management Response, p. 7, para. 19.

<sup>31</sup> Management Response, p. 7, para. 20.

activities in Afghanistan, and needs to be prepared consistently with Bank policies. The ESMF also governs the ESIA, EMP and RAP to be prepared for Mes Aynak and, according to the Financing Agreement, governs how the Government needs to monitor and regulate all activities in the mining sector.<sup>32</sup> Non-compliance with Bank safeguard policies in the preparation of the ESMF, including the RPF, could lead to deficiencies in the preparation of the ESIA and RAP that might be a cause of harm of the type alleged in the Request.

75. In addition, the SDNR-2 is supporting the implementation of the Archeological Recovery and Preservation Plan of the Aynak heritage. The Bank's policy on Physical Cultural Resources, OP 4.11, is applicable. As a result, the Requesters' claims related to the recovery and preservation of Aynak antiquities are within the scope of the Bank financed project and the Panel has the mandate to review the Bank's compliance with the Bank policies and procedures and related harm. The following section includes the Panel's preliminary review of compliance and harm related to the issues raised in the Request.
76. The element of timing is also important. The Panel notes that some of the statements in the Request for Inspection are based on the assumption that commercial mining will commence in 2013, and thus put stress on site-related activities (including the archaeology work) in a way that causes harm (e.g., greater pressure for salvage operations at the expense of possible options for in-situ preservation). The Management Response indicates that the "*exploitation [of the copper mine] is unlikely to begin before 2016, thus allowing time for more analysis and documentation of environmental, cultural and social measures.*"<sup>33</sup> The delay enables not only time for more analysis and documentation, as Management states, but to monitor that site-related activities, including resettlement and archaeological exploration, are undertaken fully according to the agreed upon plans.

**(ii) Issues of compliance and harm**

77. The Request broadly distinguishes between three areas of harm, or potential harm, and related issues of compliance, namely (a) environmental impacts within the area of influence of mining operations, (b) involuntary resettlement and restrictions on land use resulting from acquisition or zoning of land for the mine; and (c) impacts on the Mes Aynak cultural heritage site. The Panel notes that all three issues represent considerable risks and potential serious harm.

*(a) Environmental impacts within the area of influence of mining operations*

78. The Request raises a number of significant concerns in regard to the environmental impacts within the area of influence of mining operations. These include the lack of proper analysis of the possible release of toxic chemicals into the air, soil and surface and underground water, during the mining, and also after closure, thus negatively impacting

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<sup>32</sup> See Financing Agreement SDNRP-2, Schedule 2, Project Execution, Safeguards (b), p. 8.

<sup>33</sup> Management Response, p. 7, para. 10.

the environment as well as human health. According to a Ministry of Mines presentation, “at full production from open pit, the mine will generate about 60 million tonnes of waste rock and 9.7 million tonnes of tailings, per annum” which “are the biggest environmental impacts of the mine.”<sup>34</sup>

79. The Requesters claim that large quantities of water required for mining activities would draw down the underground water resources and streams, which will dry up wells and impact agricultural and livestock needs. In addition, the Panel team heard from various other sources their concerns over potential water quality and availability issues, including how the mining may impact water availability in Kabul City, which shares the same aquifer as Aynak. The Request also raised issues regarding the lack of consultation and dissemination of information. They also argued that the initial World Bank categorization of SDNRP as Category “C”, later upgraded to Category “B” affected decisions and plans at a critical juncture.
80. Management has responded that while it recognizes the seriousness of environmental risks associated with mining, these issues will be taken into account in the preparation of the ESIA by the mining company, and will inform the Feasibility Study (FS). As stated above, the Financing Agreement for SDNR-2 requires the Government to monitor and regulate all activities in the mining sector in accordance with the ESMF.<sup>35</sup> The ESMF, in turn, is a key output of the Project, and Management confirms that it is still to be finalized.
81. With regard to the Requesters’ concerns about lack of consultation and information on environmental impacts, Management states that they will follow up with the GoA to ensure disclosure of the relevant documents in line with the ESMF. They have also undertaken to remind the Ministry of Mines to ensure that development takes place only after the reports are prepared, reviewed and disclosed. Further, since prior regulatory approval will take approximately one year, according to Management, this will give the Mining Company adequate time to consult with key project-affected people and stakeholders and prepare and disclose the ESIA, EMP, and FS for regulatory approval by the GoA. Management has also pointed to the concerted efforts of the Ministry of Mines to ensure that sufficient information dissemination activities have taken place, including the sharing of information through its website.

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<sup>34</sup> Islamic Republic of Afghanistan, Ministry of Mines, Sustainable Development of Natural Resources Program (SDNRP), Aynak Copper Mine Compliance Monitoring Project, Project Overview Updated May 2012. Available at: [http://mom.gov.af/Content/files/AYNAK\\_PROJECT\\_UPDATE\\_MAY\\_2012.pdf](http://mom.gov.af/Content/files/AYNAK_PROJECT_UPDATE_MAY_2012.pdf)

“Tailings consist of ground rock and process effluents that are generated in a mine processing plant. Mechanical and chemical processes are used to extract the desired product from the run of the mine ore and produce a waste stream known as tailings. This process of product extraction is never 100% efficient, nor is it possible to reclaim all reusable and expended processing reagents and chemicals. The unrecoverable and uneconomic metals, minerals, chemicals, organics and process water are discharged, normally as slurry, to a final storage area commonly known as a Tailings Management Facility (TMF) or Tailings Storage Facility (TSF).” Taken from Tailings.info, available at: <http://www.tailings.info/basics/tailings.htm>

<sup>35</sup> Financing Agreement SDNRP-2, Schedule 2, Project Execution, Section I, E. Safeguards (b), p. 8.

82. With regard to the issue of classification, Management states that as SDNRP was initially designed to build regulatory capacity within the country and no investment proposals had been received by the Government at that time, the Project was classified as a Category “C” project. Subsequently, with the expanded scope of SDNRP-AF which included investment facilitation support for private sector participation, the categorization was changed to “B”. SDNRP-2, was also categorized as “B” given the sector development potential and investor interest, triggering the following safeguard policies: (a) Environmental Assessment (OP/BP 4.01); (b) Physical Cultural Resources (OP/BP 4.11); and (c) Involuntary Resettlement (OP/BP 4.12).
83. **Panel’s review.** The Panel fully concurs with the Requesters and Management on the potential enormity of the environmental risks associated with copper mining. The Panel notes that the potential environmental impacts raised by the Requesters will need to be considered and addressed in the Environmental and Social Impact Assessment (ESIA) and Environmental Management Plan (EMP) and Feasibility Study (FS) for the Mes Aynak site.
84. According to the Management’s Response, these documents “*will be governed by a national sectoral Environmental and Social Management Framework (ESMF) that the GoA is preparing with Bank support.*”<sup>36</sup> The Panel notes that the ESMF remains under preparation, and Bank Management has committed that it will be prepared consistent with Bank policy. According to the understanding of Management, the specific concerns of the Requesters about mining techniques and associated potential impacts will be covered in the ESIA and EMP being prepared by the Mining Company. Furthermore, Management is stating that the time required for regulatory approval of these documents will enable adequate dissemination of information and consultation with relevant stakeholders. In its Response, Management notes that it “*will follow up with the GoA to ensure disclosure of the relevant documents in line with the ESMF, which is being prepared following Bank policy.*”<sup>37</sup>
85. In the absence of the critical environmental and social safeguard documents, the Panel considers that it is premature to review any plausible link between potential issues of environmental harm and Bank’s non-compliance at this stage.
86. Regulatory oversight involves not only the preparation of documents but ensuring their review and eventual monitoring during implementation in accordance with the ESMF. Management reports GoA and Bank’s significant efforts to build the capacity of the nascent NEPA which is responsible for reviewing and approving safeguards documents and undertaking this process for a mining project of this magnitude for the first time. Further, given the institutional capacity challenges, the Project has contracted an independent monitoring agency to monitor compliance with the contractual and

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<sup>36</sup> Management Response, p. 2, para. 9. The Panel notes some inconsistency between this statement in paragraph 9 and the Response on p.15, which states that the Mining Company is preparing the ESIA and EMP in accordance with Afghan Law, quoting applicable provisions of the Afghan law. The Panel is not in a position to clarify the discrepancy, given that it does not have access to the contract between GoA and the Mining Company.

<sup>37</sup> Management Response, p. 15.

regulatory obligations under the mining concession agreement for the next three years. The Panel takes note of these additional measures in place to strengthen GoA's regulatory oversight.

*(b) Involuntary resettlement and restrictions on land use*

87. During its visit to Afghanistan, the Panel team met with the Requesters, and other people affected by acquisition of land for the mine. Some of the affected-people the Panel met with had already been affected by land acquisition and were in the process of being resettled. Other affected-people included residents of villages whose livelihoods are being affected by the security perimeter as well as Kabul residents with land holdings in the affected villages. These affected-people were from the villages of Bar and Koz Chimari, Wali Baba, Gul Hamed (also referred to as Adam Kalai), Siso Tangi, Hesar Tangi, Pachai (also referred to as Abdurahman Kalai), and Niozi.
88. The people informed the Panel that they were not against the mining operation, but wanted to ensure their rights. They stated that they were promised many things but they just wanted to be treated in accordance with the Bank's Policy. They questioned the revenue-sharing from the mining operation and wondered about the share that Logar people would get from the mining revenues. They also stated that the resettled and directly affected people should get priority in labor opportunities. One of the affected people stated that he tried to raise his concerns on four different occasions. Another person identified himself as a Kuchi.
89. With respect to the earlier and ongoing resettlement, the following concerns were raised with the Panel:
  - *Value of land underestimated.* Some of the affected people informed the Panel that their customary land holdings were estimated on the basis of a tax rate they paid decades ago, which was a fraction of a later tax rate, thus underestimating their holding size by a factor of five.
  - *All customary land not accounted for.* People claimed that the full extent of their customary rights to land held for generations were not being recognized. The Panel team was told that two to three decades back, many villagers fled the affected villages and became refugees in other parts of Afghanistan or even Pakistan and Iran. These families still have rights to land in the affected villages, but were not included in the resettlement plan. They also mentioned that in Chenari village, because of a generations-old family feud, some of the villagers were denying others their rights to the land. They stated that a formal recognition of such customary rights would contribute to resolving disputes.
  - *Full compensation not being paid.* Those affected by the early resettlement activities which took place between 2008 and September 2010, stated that they were told to destroy their houses, save the windows and doors, and would be given 37,500 Afghanis (the national currency of Afghanistan) in compensation. However, they did not receive the total amount and were told that the remaining money was lost.

- *Eviction before resettlement site completed.* One of the individuals at the meeting with the Panel team said he was a lawyer representing 76 families out of approximately 200 who had to move from Siso Tangi village and are currently living in temporary accommodations and many are still homeless several months after they were told to evict. The lawyer mentioned to the Panel team that these families had complained to the Parliament.
  - *Problems at the resettlement site (Ashab Baba).* Some of the people stated that they have to build new homes at their own expense. The site is depended on water-pumps and they fear that these will break down and not be repaired. They will not have access to wells. Furthermore, people are concerned that the area where they are being allocated agricultural land is claimed by the Stanakzai tribe, and the tribe has warned the residents of Aynak area not to enter their land. The Request states that no viable alternatives were provided.
  - *Problems with replacement farming land.* People informed the Panel team that they would be receiving farming land in Abba Zaki and Kalai Daulat, six to seven kilometers from the resettlement site. These plots are of poorer quality and also poor in water resources. They added that the Kalai Daulat area was claimed by four different tribes and that they would never dare to go there. They also stated they are losing access to grazing land. Raising of sheep and goats is an important part of the farming economy and families typically have 100 to 150 heads of livestock.
90. As regards future expropriation and restrictions on land use the Requesters raised the following concerns:
- *Lack of information.* They complained that there is no list of villages that will be affected and no clear indication of the numbers of people to be resettled.
  - *Effects of the security perimeter.* It was mentioned that about five to six thousand jeribs of land in Daho (including the areas of Niozi, Ahmad Zai, Abdulrahim Zai, Popalzi, and Benyazi) have been designated as being within the security perimeter, thus restricting access to it by surrounding villagers. Those whose agricultural land was within the security perimeter and whose turn to irrigate was during the night, claimed that they were forbidden to enter the security perimeter at night by the soldiers at the check-posts, and thus unable to irrigate. They further added that they had been told that some of this land was or would be used for the railway, customs facilities, township for workers, and a road, and that they were in a state of great uncertainty: “we don’t know what to do, should we stay? We don’t have access to our land or water to irrigate the rest of it.”
91. Management responds that while there were inadequacies in the initial land acquisition undertaken by GoA and the Mining Company, problems were corrected following Bank advice. Subsequently, GoA has prepared a Resettlement Action Plan (RAP) and undertook local consultations, both of which, according to Management, are consistent with Bank policy. Management further states that the “*RPF [Resettlement Policy Framework] for the Project is currently being finalized, including undergoing consultations, and will be part of the GoA’s ESMF. The issues raised in the Request will*

*be addressed in the RPF.*”<sup>38</sup> A second RAP will be prepared for the future involuntary resettlement associated with tailings dams, access roads and other activities.

92. With respect to concerns about the adequacy of consultations, Management is of the view that *“the project affected families (PAFs) are being provided with adequate information on compensation methodology, social mobilization and the grievance redress mechanism with support from the International Rescue Committee.”*<sup>39</sup>
93. **Panel’s review.** The Panel considers that the issues of harm noted above, raised in the Request and further supplemented in meetings with the Panel team, indicate that certain aspects of resettlement actions on the ground may not yet be in compliance with the Bank’s safeguard standards. The Panel notes that Management recognizes that there were *“inadequacies”* in the initial land acquisition actions, and states that these *“were corrected following Bank advice.”*<sup>40</sup> The Bank has also provided financing for a Senior Social Development Advisor who has supported the Ministry of Mines in the preparation of the RAP issued in January 2012. In connection with resettlement, the Project is also supporting the establishment of a Grievance Mechanism. The Project continues to support capacity development for regulatory oversight and monitoring.
94. As noted above, one of the key outputs under the Project is the preparation and application of an Environmental and Social Management Framework (ESMF) consistent with the applicable Bank safeguard policies, of which a Resettlement Policy Framework (RPF) is a component. The intent is for the ESMF to be used by the MoM and NEPA on a sector-wide basis. The Panel understands that the ESMF/RPF is now being finalized. It is the Panel’s view that the Bank is responsible for ensuring the RPF meets the standards of OP 4.12 on Involuntary Resettlement, and will guide project specific RAPs developed in the extractive industries sector.
95. During its visit, the Panel team learned that titled land will be compensated for slightly higher than the market value, and that compensation will be given to absentee land owners. It also learned that claims to agricultural lands under customary tenure will be compensated on the basis of an ‘equity principle’ which implies equal treatment of all claimants. In the current RAP, this principle has been justified to avoid difficult adjudication of claims, including likely overlapping claims. The Panel team was informed that the compensation entitlement is expected to be beneficial to the majority of affected persons, even if it would leave some with less compensation than their claim to customary land reflects.
96. The Panel notes that Management in its Response commits that *“the issues [related to resettlement] raised in the Request will be addressed in the RPF.”*<sup>41</sup> The Panel understands that Management will continue to provide advice on the monitoring of the

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<sup>38</sup> Management Response, p. 27.

<sup>39</sup> Management Response, p. 27.

<sup>40</sup> Management Response, p. 8, para. 22.

<sup>41</sup> Management Response, p. 27.



resettlement activities in Mes Anyak to ensure that its outcomes are in line with the principles of the RPF.

97. The Panel notes that one affected person with whom the Panel met said he is Kuchi and that his access to pasture land is affected by the security perimeter. This is an issue that may be addressed in the context of the RPF. Regarding the status of the Kuchis, the Panel accepts Management's explanation that Kuchis, according to UNAMA, are designated as a vulnerable population and will be treated accordingly in the preparation of relevant safeguard instruments.
98. The Panel is of the view that it is premature at this stage to conclude that there are issues of possible serious non-compliance by the Bank. It notes, however, that the issues noted above, raised by Requesters, are of a serious character and warrants Management's attention during the finalization of the ESMF/RPF and subsequent supervision.

*(c) Impacts on Mes Aynak archaeological remains*

99. The Request states that "*the Bank has continued to support hasty salvage archaeology,*" which is typically employed as a "*last resort,*" assuming "*that there is no alternative to the destruction of the site itself.*" It states that "*options and alternatives were never explored,*" and that the archeological survey conducted under the auspices of the Bank, is not "*comprehensive.*" The Request states that the survey did not use state of the art data collection techniques. It adds that if the current plan goes forward, the lower strata will never be excavated and all the information contained therein will be lost forever affecting all Afghans and arguably the history of science. The Request mentions that this heritage site could attract tourists and contribute to Afghanistan's revenue.<sup>42</sup>
100. The Panel team visited the vast and heavily guarded Mes Aynak site, and witnessed scores of workers and archaeologists at work, in excavating the dwellings and religious structures in the Lower Town and one of the monasteries. The so-called most critical Red Zone, which is entirely in the Central Copper Zone slated for open-pit mining, is densely dotted with archaeological remains of settlements, monasteries, other religious buildings and caves against the background of the copper-mountain which has been mined for over 5000 years, characterized by black streaks which are the layers of slag from ancient mining activity. Some portions of Buddhist statues and stupas remain protected on site. The team understood that much of the precious statues and artifacts that were close to the surface have been removed, many of them currently on display in the Kabul Museum, while others are in storage.
101. During its visit, the Panel team heard from local affected people that they have great pride in, and value, the archeological treasure of Mes Aynak. They stated that they had

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<sup>42</sup> The Panel observes that the Request for Inspection included documents which were signed by large number of Afghans living abroad as well as many other nationals concerned about the preservation of Mes Aynak Archeological site. The Panel notes that the Physical Cultural Resources Policy, OP 4.11, states that the "*cultural interest*" of such resources "*may be at the local, provincial or national level, or within the international community.*"

always known about the existence of the archaeological site but never plundered its artifacts; the looting, according to them, had been the work of powerful people. The team was also informed that once they understood the significance of the finds, the villagers wanted the artifacts to remain in the Province, so that their children could also appreciate them for generations to come. The Request for Inspection notes the increasing interest in protecting Mes Aynak on the part of people outside the immediate local area and throughout the world. OP 4.11 on Physical Cultural Resources reflects that some cultural property may be of significance at local, national and international levels.

102. The Panel team was informed that there are over 5000 archaeological sites in Afghanistan, some of which are even bigger than Mes Aynak, with significant archaeological finds (Kharwar was repeatedly named). However, the Panel understood that only Mes Aynak is currently being thoroughly excavated whereas many of the other sites are being heavily plundered (as was Mes Aynak before the establishment of the security perimeter in 2010). Mes Aynak is unique in terms of its co-occurrence of significant Buddhist remains and copper mining. Beyond the artistic and historical value of the statues, coins and artifacts being excavated, the exploration of this co-occurrence is revealing a new dimension to the understanding of the history of Buddhism in the region, in how the wealth from copper-mining sustained the Buddhist superstructure that unified the region during the Kushan period, all along the Silk Road, as attested by the coins that have been discovered along its length being minted from Mes Aynak copper. The team was informed that it was a rare example of entrepreneurship in ancient Buddhism.
103. While the archaeological remains had been excavated previously on various occasions, the Panel was informed that neither the Ministry of Mines nor the Mining Company were aware of its existence at the time when the contract was being negotiated and until the matter was brought to the Cabinet in 2009 by the Ministry of Information and Culture.
104. The Requesters have raised the following concerns:
  - Salvage archaeology whereby important finds are removed and stored is not a sustainable method to preserve a whole city. Archeologists were continuously given incorrect estimates of how short a time they had to rescue whatever they could before mining commenced, hence creating a false state of urgency;
  - The archeological survey<sup>43</sup> to properly map, explore and evaluate the site, conducted under the auspices of the Bank, is neither comprehensive nor did it use state of the art data collection techniques;
  - A proper survey and mapping would have led to a mining plan indicating the extent to which the site could be responsibly excavated, documented and preserved in harmony with the copper mining effort, and finally, a joint plan for heritage preservation and copper mining inclusive of timelines could have been developed, instead of the salvage archeology.
  - If the current plan goes forward, the sites' lower levels will never be excavated and all the information contained therein, including artifacts and data about the

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<sup>43</sup> Délégation Archéologique Française en Afghanistan, Mes Ainak, A comprehensive assessment of the archaeological issue.

history, the methods and tools utilized in mining in earlier millennia will be lost forever.

- Bank has failed to respond to proposals for consultative meetings with independent experts of both mining and archaeology, and other stakeholders, to explore options and alternatives.

105. Management states that it shares the Requesters’ objectives “*for the protection of physical cultural resources at Mes Aynak, but disagrees with their characterization a number of specific assertions.*”<sup>44</sup> According to Management, “*GoA has initiated a phased approach to both archaeology and mineral exploitation that supports the coexistence of commercial mining activities and the management of physical cultural resources. The Minister of Mines has publicly stated that no mining exploitation can begin until the regulatory review processes are completed.*”<sup>45</sup> Management adds that the MoM and the MoIC signed a Memorandum of Understanding “*to work closely together for the safe removal and/or in situ preservation of the resources.*”<sup>46</sup>
106. According to Management, DAFA’s preliminary excavation plan based on an initial assessment, prepared in 2010 on the expectation that mining would commence in 2012, was never meant as a comprehensive assessment. Management states that a phased approach to excavation and work planning has been applied, in consideration of phased exploitation by the Mining Company. Management states that the measures currently under consideration, “*for which there is more time for further assessment, range from: (a) Red Zone salvage archaeology where physical cultural resources are assessed to be at risk of loss from first phase exploitation; and (b) archaeological options proposed by DAFA for the remainder of the broader site, to be further elaborated in the management plan to be prepared by MoIC (with assistance from DAFA and UNESCO).*”<sup>47</sup> According to Management, this Mes Aynak Archaeological Management Plan will include option for in situ preservation (e.g., a heritage park).
107. With regards to the inadequacy of proper surveys, Management disagrees, and states that the documentation is extensive, and that 10,000 “contexts” (a wall or floor) have been recorded, and that a comprehensive digital plan of the Red Zone has been completed. Further, a 3D imaging equipment is under procurement and high resolution (10cm) aerial images will be taken with a drone (subject to clearance).
108. In response to the claim of non-consultation, Management recognizes the significant role of ARCH, as “*the most visible civil society organization on Mes Aynak cultural protection, engaging with the Bank for the past 16 months.*”<sup>48</sup> Management also states that it shares with ARCH the recommendation to use independent civil society archaeologists, geologists and mining engineers. Management adds that they have proactively advised GoA to involve the Mining Company in the discussion of the long

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<sup>44</sup> Management Response, p. 8, para. 26.

<sup>45</sup> Management Response, p. 8, para. 26.

<sup>46</sup> Management Response, p. 19.

<sup>47</sup> Management Response, p. 21.

<sup>48</sup> Management Response, p. 23.

term sustainability of the Mes Aynak archaeological site. According to Management, a Mes Aynak Big Tent Meeting, which was subsequently “*reduced in scope by the GoA, and the ARCH Washington Workshop form a basis for broader consultations to be undertaken by MoIC, as defined within the ToR for UNESCO.*”<sup>49</sup>

109. **Panel’s review.** SDNR-2 supports the Mes Aynak Archaeological Project (MAAP) directed by the Ministry of Information and Culture and the Ministry of Mines, financing the preservation of Aynak antiquities. According to Management, technical assistance is being provided: “(a) *in addressing immediate emerging issues concerning cultural protection and mining; and (b) in developing measures for capacity building to close skills gaps and undertake more systematic preparation and implementation of cultural property management plans. SDNRP-2 has allocated USD5 million to archaeological and artisanal and small scale mining issues. The EPP notes that an additional USD30 million will be needed for full recovery and preservation of cultural artifacts for the Mes Aynak.*”<sup>50</sup> Accordingly, it is the Panel’s view that the Requesters’ claims related to the recovery and preservation of Aynak antiquities are within the scope of the Bank financed Project requiring compliance with Bank’s policies and procedures.
110. The Panel notes that the archaeological site was not known to the Ministry of Mines and the Mining Company at the time the concession was granted, and the indication that commercial mining was imminent, may be the background to the initial period of “*hasty salvage archaeology*”, which the Requesters are critical of. The Panel also notes that some argue that the “*salvage archaeology*” also saved the artifacts from further plundering. Further, as SDNRP-2 was approved by the Executive Board in May, 2011, Bank cannot be held accountable for the lack of systematic approach to preservation in the immediate period after the mining concession was granted. Bank subsequently financed DAFA’s preliminary excavation plan which, according to Management, was never meant as the long term archaeological management plan.
111. As for the present, DAFA indicated to the Panel team that a management plan for the time period up to 2016 that is under preparation would enable a more thorough excavation of the Red Zone, involving recording of each stone being removed, and 3D imaging of the finds, thus enabling the complete reconstruction of the structures. There are a number of sites of significance outside of the Red Zone, thus outside of the Central Copper Zone, which may be suitable for *in situ* preservation. Management responds that, “*Areas 10 and 12 are being considered by DAFA for in situ preservation given extensive structures, monasteries, stupas, and possibly statues. Area 14 may represent options for in situ protection of antiquity mining technology.*”<sup>51</sup>
112. The Panel was also informed that, to excavate the lower strata which may contain deposits from earlier periods of history, the surface layer has to be removed. The Panel team understood from DAFA that the longer term time frame up to 2016 as envisaged in

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<sup>49</sup> Management Response, p. 20.

<sup>50</sup> Management Response, pp. 18-19.

<sup>51</sup> Management Response, p. 21.

the Archaeological Management Plan, with adequate number of archaeologists (40) and workers (200), would enable them to excavate and document the lower layers, not only of the Red Zone but also of the other identified sites.

113. Upon returning from Kabul, the Panel team had further interaction with ARCH that was providing technical advice to the Requesters on the archaeological aspects of the Request. ARCH confirmed that the concerns of harm may adequately be covered by the aforementioned Archaeological Management Plan, to excavate and document the lower layers as well as the surface layer, of the Red Zone and of the other identified sites, with consideration being given to possibility of *in situ* preservation for the latter, with certain important provisos as follows:

- In order to improve communication and transparency and ensure ongoing dialogue amongst all relevant stakeholders, a standing committee should be created that includes officials from the Afghan ministries of mining and culture; from the mining company; independent experts from the fields of archaeology, mining, environmental protection and archaeology; and civil society.
- At the beginning of the project, in our opinion due diligence would have required that a proper, state of the art site survey of the archaeological deposits should have been conducted, and a meeting of mining technology experts with archaeological experts should have been convened. These two steps would have produced necessary information that should have been factored into the project planning from the start. Neither of these things has happened even until today. We regard this as negligence. It has caused actions to be taken and decisions to be made in the absence of knowledge and information. Although very belatedly, these two things should still happen now. There should be a proper site survey which includes magnetic resonance imaging that enables identification of objects below the surface. And there must be concrete timelines for these surveys so that work is actually accomplished and not just delayed over and over again. Similarly, there must be a timeline to ensure that the Environmental Impact Assessment is actually conducted and completed within a reasonable time-frame. This has not happened in the past 5 years and must happen soon.
- There should also be a meeting of international archaeological and mining experts, and the archaeologists from the site and the technical experts from the mining company, to together discuss the possible mining techniques and their potential alternatives with the goal of reducing the negative impact on the site, and ensuring that substantial designated portions of the site can remain undamaged by detonations and mining.
- The archaeology must ensure quality of staffing, and the proper expertise across the range of archaeological specializations. It must also be resourced such that archaeologists have vehicles (including adequate fuel for the vehicles), necessary tools and machinery, and dedicated security to enable them to work unimpeded. This has not been the case previously.

- There needs to be ongoing oversight and follow-up to all these recommendations and to those regarding environmental safety and community well-being. The track record of performance is not good. For example, a so-called "technical meeting including civil society" organized by the project in Kabul, by the time it took place, had deteriorated to a non-technical lecture event in exclusion of civil society. There needs to be some mechanism to ensure that things are put on a better track and remain there.
- In a separate communication, ARCH also suggested a survey recording features associated with the ancient mining activity such as mine entrances, trenching and other open casting, spoil tips, beneficiation areas (crushing evidence stone tools etc), which should reveal the extent of the mined area, as well as giving some clues as to the broad dates of the workings

114. These important issues being raised by ARCH are timely in the context of the Archaeological Management Plan process currently underway.

115. The Panel is of the view that it would be premature to investigate possible Bank non-compliance in relation to the issues of harm and potential harm being raised by the Requesters, given that the Archaeological Management Plan is still under preparation.

116. The Requesters have raised concerns about capacities to ensure adherence to plans. The Panel thus notes the importance of Management's response that MoM will support capacity building at MoIC under SDNRP-2, and Management is also proposing that UNESCO should lead in setting up a committee of national and international *"to meet regularly and provide scientific advice to archaeological operations and the related management of cultural assets."*<sup>52</sup>

## **G. Recommendation**

117. The Requesters and the Request meet the technical eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications.

118. The Panel notes that both Requesters and Management share common concerns and interests with regard to: i) the prevention and mitigation of potential environmental harms from copper mining; ii) the preservation of the physical cultural heritage in Mes Aynak in the best possible manner; and, iii) the resettlement of affected families to be in accordance to Bank safeguard standards. Capacity building in support of strengthened regulatory frameworks and monitoring has been, and continues to be the objectives of the Project and of the Bank's engagement in its context. The Panel also recognizes that the Project has played a vital role in pursuing these objectives in the midst of an environment posing many challenges, not least in terms of capacity.

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<sup>52</sup> Management Response, p. 20, fn. 5.

119. The Panel also recognizes that the key social and environmental instruments that will guide the implementation of the Project are still in the process of preparation.
120. The Panel remains concerned that in the areas of involuntary resettlement, consultation and disclosure of information, there appear to be gaps between the Bank's standards and what has taken place. There are also uncertainties in the manner in which the antiquities and the archaeological site, inclusive of what may lie in the lower strata, will be preserved at the present time.
121. According to Management, these concerns are to be addressed in the Resettlement Policy Framework and the Archaeological Management Plan. The environmental issues raised by the Requesters are, according to Management, being addressed in the ESIA and will in turn inform the Feasibility Study. The Panel expects that these planning frameworks and documents are accompanied by robust monitoring action to ensure full implementation on the ground as per the required standards.
122. Considering the above, the Panel does not recommend an investigation at the present time of whether the Bank has complied with its operational policies and procedures related to the Project. The Panel notes that this recommendation does not preclude the possibility of a future claim relating to non-compliance and harm.