

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

Phase 3

Feedback Summary

Date: October 27, 2015

Location (City, Country): Beijing, China

Audience (Government, Implementing agencies, Multi-stakeholder, etc.): Central government and institutions

Overview: The consultations in China took place with the central government in Beijing and with representatives of provincial Project Implementation Units (PIU) in Kunming, and covered policy and strategic issues as well as practical issues of project implementation. The consultations benefited from significant preparation by Chinese counterparts, which ensured that most of the topics on the list of outstanding issues were discussed. The Bank team also met with the Assistant Minister of Finance and the Vice Governor of Yunnan Province, who provided the strategic perspective of senior government representatives. Chinese counterparts expressed their support for the safeguards review process, and their commitment to achieving a good outcome.

ESF	Issue	Items	Feedback
Vision	Human Rights	1. Approach to human rights in the ESF	<ul style="list-style-type: none"> • Human rights: The Bank is suggested to seek common ground. And the language on human rights in Vision statement should be general.
ESP/ ESS1	Non-discrimination and vulnerable groups	2. Explicit listing of specific vulnerable groups by type/name (age, gender, ethnicity, religion, physical, mental or other disability, social, civic or health status, sexual orientation, gender identity, economic disadvantages or indigenous status, and/or dependence on unique natural resources) 3. Specific aspects of the non-discrimination principle in complex social and political contexts, including where recognition of certain groups is not in accordance with national law	<ul style="list-style-type: none"> • Non-discrimination: There are groups mentioned in the ESF that many find controversial, which the laws of many Borrower countries do not recognize as legal, such as SOGIE or religious groups (cult). Also, since information on mental and physical disability or health status should be treated as private and confidential, it is unclear how the Borrower and Bank staff could implement the requirement of non-discrimination in this regard.

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	Use of Borrower's Environmental and Social Framework	<p>4. Role of Borrower frameworks in the management and assessment of environmental and social (E&S) risks and impacts where these will allow projects to achieve objectives materially consistent with Environmental and Social Standards (ESSs)</p> <p>5. Approach for making decision on the use of Borrower frameworks, including the methodology for assessing where frameworks will allow projects to achieve objectives materially consistent with the ESSs, and the exercise of Bank discretion</p> <p>6. Role of Borrower frameworks in high and substantial risk projects</p>	<ul style="list-style-type: none"> • It is a welcome and major step for the Bank to mainstream the use of national systems. The Chinese framework on EIA, etc. is more stringent than that of the Bank. For small community based or small grant operations, the bank safeguard requirements should be as simple as possible. • Clarification was sought on why the language used changed from “the country system” to “the Borrower’s framework”. • The Bank’s safeguards should be consistent with Chinese law and national policies.
	Co-financing/ common approach	7. Arrangements on E&S standards in co-financing situations where the co-financier’s standards are different from those of the Bank	<ul style="list-style-type: none"> • Co-financing: In some past Board project documents, the Bank seemed to apply different approaches in E&S requirement for different co-financiers, requiring some MDB/bilateral donors to apply the Bank’s E&S standards but not on others.
	Adaptive risk management	8. Approach to monitoring E&S compliance and changes to the project during implementation	
	Risk classification	9. Approach to determining and reviewing the risk level of a project	<ul style="list-style-type: none"> • In agricultural projects that are upgrades of existing ones, there will not be many social and environmental impacts; a list of measures to control impacts on the environment has been prepared. For such lower risk projects, it is suggested that the Bank reduce the safeguard requirements.

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ESS1	Assessment and management of environmental and social risks and impacts	<p>10. Assessment and nature of cumulative and indirect impacts to be taken into account</p> <p>11. Treatment of cumulative and indirect impacts when identified in the assessment of the project</p> <p>12. Establishing project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects</p> <p>13. Circumstances under which the Bank will determine whether the Borrower will be required to retain independent third party specialists</p>	<ul style="list-style-type: none"> • Cumulative impact: Clarification was sought on the methodology that the Bank uses to measure cumulative impacts. • Local expert: ES assessment is very important to ensure that impacts are assessed before the implementation of the project. The Bank should involve local experts to hear the voice of local people, since these are the people the Bank is ultimately seeking to assist. While it is useful to hear from external experts, sometimes they lack local knowledge. The Bank should keep a balance between local and outside experts. • Long-term impact: Among the many considerations of environmental and social impacts, both long-term and short-term aspects should be included. The Bank needs to be aware of the impacts the project will have in the long term. For example, resettlement is not just about change of location; people’s lifestyle will be changed forever. There is a need to establish new social capital. If a new dam is going to be built, it is important to see the long-term impacts on the ecosystem. Such changes cannot be seen in the short term. • Third party specialist: Examples were provided regarding dams and ethnic minorities. <i>Dam safety:</i> At the outset of project development, there is a requirement to assess the safety of dams providing direct water to the project area. A relevant analysis has to be conducted. In such a case, it means that the borrower has to assess dozens of dams even though they are located very far away from the project. An independent third party has to be retained, as under the Bank policy, certification from the Ministry of Water Resources is insufficient. Each year a report on these dams has to be prepared. In China, the government pays due attention to dam security, yet for Bank projects, it is necessary to invite a third party independent expert to conduct the assessment. These Bank requirements are very costly. Therefore the Bank is suggested to rely on borrower’s assessment framework to the farthest possible extent to avoid duplication. <i>Ethnic minorities.</i> The example given is of an agricultural project providing benefit to farmers. The government spends a lot of money conducting surveys and monitoring to make a report. Under Chinese law, stakeholders’ views must be sought and a majority of farmer’s signatures

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			<p>obtained. Without this, the project will not receive government approval. Yet in Bank projects, it is still necessary to hire an independent third party to conduct an assessment, only for ethnic minorities. This costs money and increases total investment costs. The Bank should not require an independent third party to be hired for such projects.</p> <ul style="list-style-type: none"> • Associated facilities: Too broad definition of associated facilities will present difficulties for co-financing.
ESS2	Labor and working conditions	<p>14. Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement</p> <p>15. Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries)</p> <p>16. Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers</p> <p>17. Constraints in making grievance mechanisms available to all project workers</p> <p>18. Referencing national law in the objective of supporting freedom of association and collective bargaining</p> <p>19. Operationalization of an alternative mechanism relating to freedom of association and collective</p>	<ul style="list-style-type: none"> • Labor standards need to be matched with the level of development of the country. • Reference to international treaties: Participants recognize that the Bank is promoting labor issues under the ESF. However, this should not be used as a tool to intervene in the political sphere. The Bank can refer to general principles, but not specific labor treaties to strike an appropriate balance. • Contractors: Regarding ESS1 and ESS2, if the requirements are expanded to contractors and subcontractors, this will have a major impact for labor-intensive countries. Such expansion will not be accepted. • Alternative mechanism: It should be clarified that an alternative mechanism in para 16 under ESS2 will be considered only where the national law allows such mechanism. • Alternative mechanism: IFC has special wording for this. A council can be formed. It should be clarified whether the ESF will use IFC's approach or another flexible mechanism, and how the ESF will define such a mechanism to put it into operation. • Primary supplier: The impact of this concept is significant. Participants suggested that the definition of primary suppliers be qualified using quantitative indicators. Otherwise, the project cost will significantly increase. For example, the requirements for the primary supplier will affect the bidding process. The Bank should consider coordinating with

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		bargaining where national law does not recognize such rights 20. Issues in operationalizing the Occupational Health and Safety (OHS) provisions/standards	the procurement policy. The treatment of grievance mechanism cannot be manipulated by business interest.
ESS3	Climate change and GHG emissions	21. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC 22. Proposed approaches to measuring and monitoring greenhouse gas (GHG) emissions in Bank projects and implications thereof, in line with the proposed standard, including determining scope, threshold, duration, frequency and economic and financial feasibility of such estimation and monitoring 23. Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard	<ul style="list-style-type: none"> • Indirect emissions: Estimation of indirect emissions that involve offsite generation by others, especially when sourced by a third party, would be very difficult to do and would disadvantage developing countries. • Paris negotiation: Although it would be reasonable to wait until the climate negotiations in Paris have concluded, it is important to note that any climate change requirements need to be agreed with developing countries. The previous threshold of GHG estimation (25000t) has been removed from the document. It should be noted that the new threshold should be acceptable to developing countries.
ESS5	Land acquisition and involuntary resettlement	24. Treatment and rights of informal occupants and approach to forced evictions in situations unrelated to land acquisitions	<ul style="list-style-type: none"> • Forced eviction: Clarification was sought on the difference between the forced eviction forbidden under ESF and eminent domain exercised under national law. • Compensation in installments: In the first draft ESF, Borrowers were allowed to provide compensation in installments. The second draft ESF has deleted this paragraph. Bank projects in China have provided

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		25. Interpretation of the concept of resettlement as a “development opportunity” in different project circumstances	<p>compensation in different phases without problem, so this is confusing. It should be clarified whether the proposed ESF will indeed result in any changes in this regard.</p> <ul style="list-style-type: none"> • Resettlement as a development opportunity: It is unclear what this really means. The Bank should provide clearer explanation on this.
ESS6	Biodiversity	<p>26. Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity</p> <p>27. Role of national law with regard to protecting and conserving natural and critical habitats</p> <p>28. Criteria for biodiversity offsets, including consideration of project benefits</p> <p>29. Definition and application of net gains for biodiversity</p>	<ul style="list-style-type: none"> • Ecosystem services: This was introduced in the second draft ESF. Defining “ecosystem services” as a concept is fine, but introducing requirements is different. It is impossible for Borrowers to assess and implement measures for such a new concept that encompasses provisioning services, regulating services, cultural services and supporting services. The local implementers are very concerned about this. There is no estimation of project cost and time that will be incurred in implementing this concept.
ESS7	Indigenous Peoples	<p>30. Implementation of the Indigenous Peoples standard in complex political and cultural contexts</p> <p>31. Implementation of ESS7 in countries where the constitution does not acknowledge Indigenous Peoples or only recognizes certain groups as indigenous</p> <p>32. Possible approaches to reflect alternative terminologies used in different countries to describe Indigenous Peoples</p>	<ul style="list-style-type: none"> • In China, the concept of ethnic minority is not so simple. The Bank should assess the country specific context. • The proposed ESS7, para 6 (c), sets out one of the characteristics of IP as “Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture.” As there may be some illegal political groups who fall into this category but may violate the laws and regulations of the Borrower, this formulation should be changed.

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		<p>33. Circumstances (e.g. criteria and timing) in which a waiver may be considered and the information to be provided to the Board to inform its decision</p> <p>34. Criteria for establishing and implementation of Free, Prior and Informed Consent (FPIC)</p> <p>35. Comparison of proposed FPIC with existing requirements on consultation</p> <p>36. Application of FPIC to impacts on Indigenous Peoples' cultural heritage</p>	
ESS8	Cultural Heritage	<p>37. Treatment of intangible cultural heritage</p> <p>38. Application of intangible cultural heritage when the project intends to commercialize such heritage</p> <p>39. Application of cultural heritage requirements when cultural heritage has not been legally protected or previously identified or disturbed</p>	<ul style="list-style-type: none"> • Intangible cultural heritage: The ESF has added “intangible cultural heritage”. The proposed definition is problematic. While the need for protection of such heritage is understandable, it is impossible to operationalize the definition such as “expressions” or “ideas.” It will result in much misunderstanding. It is recommended to use the definition established in UNESCO.
ESS9	Financial Intermediaries	<p>40. Application of standard to FI subprojects and resource implications depending on risk</p> <p>41. Harmonization of approach with IFC and Equator Banks</p>	<ul style="list-style-type: none"> • FI projects should not be treated the same way as investment project financing.

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ESS10	Stakeholder engagement	<p>42. Definition and identification of project stakeholders and nature of engagement</p> <p>43. Role of borrowing countries or implementing agencies in identifying project stakeholders</p>	
General	EHSG and GIIP	44. Application of the Environmental, Health and Safety Guidelines (EHSGs) and Good International Industry Practice (GIIP), especially when different to national law or where the Borrower has technical or financial constraints and/or in view of project specific circumstances	
	Feasibility and resources for implementation	<p>45. Implementation and resource implications for Borrowers, taking into account factors such as the expanded scope of the proposed ESF (e.g., labor standard), different Borrower capacities and adaptive management approach</p> <p>46. Mitigation of additional burden and cost and options for improving implementation efficiency while maintaining effectiveness</p>	<ul style="list-style-type: none"> • While the Bank’s safeguard policies are forward-looking, they are very difficult to implement. The capacity of local people is poor, and a lot of developing countries are frustrated by the work involved in fulfilling such requirements. The Bank should be more flexible and take a step-by-step approach. • There is a trade-off between the burden of the local implementers and the quality of the project. If very high standards are in place, it is difficult for people to implement them, and high standards are meaningless if they are not implemented. So it is important to allow flexibility in implementation. Such flexibility could be allowed based on the project nature or its location. • It is important that the Bank helps borrowers strengthen capacity building and provide training activities, prepare guidance note on key topics, develop case studies on different types of projects, and provide clearer procedures.

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			<ul style="list-style-type: none"> Participants wished to know if the Bank had statistics on safeguard implementation as a percentage of total project costs. The Bank should also estimate the resource implications of introducing the ESF. The Bank's E&S framework is well-organized and structured. But it should be able to pursue a systematic implementation to ensure quality.
	Client capacity building and implementation support	47. Funding for client capacity building 48. Approaches and areas of focus 49. Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations	<ul style="list-style-type: none"> Cooperation program should be inclusive, flexible, practical and efficient and make the best use of limited personnel and financial resources. The Bank and China should cooperate on technical matters.
	Disclosure	50. Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)	
	Implementation of the ESF	51. Bank internal capacity building, resourcing, and behavioral change in order to successfully implement the ESF 52. Ways of reaching mutual understanding between Borrower and Bank on issues of difficult interpretation	
Summarized comments			<ul style="list-style-type: none"> The Chinese side requests the Management to further revise the draft ESF according to the comments and suggestions in this consultation. The consultation has been constructive, friendly and pleasant. MOF has put much effort in organizing the review of the ESF. More than 100 institutions have been engaged in this process.

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			<ul style="list-style-type: none"> • China is not only a borrower, but also the third largest shareholder of the Bank. It is a key emerging donor. China is well-positioned to play a constructive role in the Bank. • China believes the Bank should stick to its development mandate and non-political nature. Issues such as human rights and labor issues are politically very sensitive. A proper approach is needed. • China supports the Bank’s safeguard reform, but is concerned about its practicability and cost implication. The perfect should not be the enemy of the good. • Once the ESF has been approved, it is suggested that the Bank and China cooperate on the following: <ol style="list-style-type: none"> 1. Comparison study between Chinese ES framework and ESF followed by technical assistance to narrow any identified gap; 2. Use of China’s domestic institutions in the implementation of ESF, such as Chinese auditing office. 3. Use of Chinese institutions as center of excellence for capacity building; and 4. Piloting staff guidance on how to implement flexibility at the country level. • IFC and the Chinese government agency jointly developed guidance for green and sustainable credit banking. If the Bank can systematically summarize experience of the guidance implementation, it might help the Bank promote green banking in other countries. • The Bank’s twin goals of ending extreme poverty and promoting shared prosperity should be the overarching principle of the ESF. Forcing excessive requirements on borrowers is not consistent with this principle. Also the Bank cannot have a one-size-fit-all approach. • While the introduction of flexibility is welcome, the criteria for such flexibility is unclear. • This safeguard policy review process has taken a long time and has already been delayed by a year. This is because many issues, such as human rights and freedom of association, are not related to the goals of the World Bank Group. The presentation says that safeguard policies

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			should be modern, but if it does not improve efficiency and increases project cost, the reform cannot be called a success.