

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

Phase 3

Feedback Summary

Date: October 29, 2015

Location (City, Country): Kunming, China

Audience (Government, Implementing agencies, Multi-stakeholder, etc.): Provincial governments (Xinjiang, Guandong, Hainan, Gansu, Hunan, Anhui, Guizhou, Yunnan, and Chongqing) and project management offices (PMOs)

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"> China supports a general statement on human rights in Vision statement in the ES Framework. The Bank should not be used as an instrument for human rights dialogue, otherwise it would bring Bank’s work to a political level. The Bank should stick to its non-political stand and not interfere with domestic affairs of borrowing countries.
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	<ul style="list-style-type: none"> The current definition of non-discrimination does not reflect local contexts. Some groups indicated as examples in the ESF do not regard themselves as vulnerable in China. The Bank should consider an alternative term for this to avoid further discrimination. Non-discrimination: In the ESF, there are provisions for vulnerable groups, such as SOGIE and disability. The Bank should respect national laws and tradition in implementing such requirements. Non-discrimination: The implementation of the non-discrimination principle needs to reflect the specific country context to avoid creating another vulnerability or discrimination. For example, in China, some minority groups already receive preferential support. Also, the Bank’s social assessment requires women’s participation to be analyzed. However, in some rural areas, there are only women, as the men have left

ESF	Issue	Items	Feedback
		<p>complex social and political contexts, including where recognition of certain groups is not in accordance with national law</p>	<p>to work in cities. In such areas, it does not make sense to monitor women’s participation.</p>
	<p>Use of Borrower’s Environmental and Social Framework</p>	<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"> • We are pleased to see the ESF attempting to mainstream the use of the borrower’s ES Framework. This would reduce the project cost. • The Bank should respect the sovereignty and national system of borrowing countries. • The Bank should follow and respect national requirements on confidentiality of business in the ES assessment. • Bank’s discretion: In the Second Draft ESF, the use of Borrower Framework is determined “at the discretion of the Bank”. However, Bank standards do not always match the reality of the project. For example, with regard to dam safety, China has relevant national law and institutions, yet, in one example, the Bank required an independent external expert be hired to make a survey of a dam that was 2 km away from the project. The survey by the expert took a long time, although the outcome was just a simple general description of the dam. So, the use of the Borrower’s framework should not only be determined at the discretion of the Bank, but also respect the Borrower’s specific circumstances. <ul style="list-style-type: none"> • Lower risk projects: In Chinese national law, a simplified environmental assessment is applied for low risk projects, including in the agriculture sector. It is recommended that the Bank use the borrower’s framework for low risk projects.
	<p>Co-financing/ common approach</p>	<p>7. Arrangements on E&S standards in co-financing situations where the co-financier’s standards are different from those of the Bank</p>	<ul style="list-style-type: none"> • The Bank should adopt a common approach in E&S requirements for all partners in co-financing.

ESF	Issue	Items	Feedback
	Adaptive risk management	8. Approach to monitoring E&S compliance and changes to the project during implementation	<ul style="list-style-type: none"> The shift of focus from project preparation to life-time risk management will have higher cost implications for PMOs. Adaptive risk management should not introduce such complex processes for local implementers.
	Risk classification	9. Approach to determining and reviewing the risk level of a project	<ul style="list-style-type: none"> Risk classification: The ESF introduces a new risk classification system with four levels of risks. More clarity is needed on what will be improved with this system. For example, in a province that is 90 percent mountainous, each subproject is small-scale and the risk is low. But the overall project would be categorized as A under the current system. The Bank should seek to reduce requirements for lower risk projects.
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"> Primary supplier and contractor: Questioning the application of the policy expanded to primary suppliers and contractors. The project boundary should be more clearly defined. Project boundary: The Bank should limit the scope of policy application to the project; it should not be unlimited. Otherwise, it would become too much of a burden for the Borrower with regard to social responsibility and cost increases. The Bank system should move closer to the domestic system. Associated facilities: It is needed for clearer definition of Associated Facilities under the ESF. All three criteria given for associated facilities should be met. Otherwise the project boundary would expand too much. Project boundary and land acquisition: In a project, the PMO signed cash compensation agreement with the resettled people. The government had minutes of the consultation which included a suggestion for providing supplementary facilities to support capacity for livelihoods of resettled people. While the minutes included such a suggestion, the final decision was pending on the resettled people. However, the villagers did not want the government to intervene their livelihood, so such facilities were not provided. The Bank disagreed with the government not fulfilling the commitment of building the supplementary facilities and therefore gave an unsatisfactory rating of the project. Such a meeting minutes should not be treated as part of the safeguards. The project

ESF	Issue	Items	Feedback
			<p>boundary should be more clearly defined so that the project boundary is not determined by individual Bank staff's discretion.</p> <ul style="list-style-type: none"> • Scoping: For one local project, the Bank required a province-wide pollution survey. The Bank should improve the scoping of the project under the ESF. • ES assessment: In China, environmental assessment and social assessment are conducted by different agencies. No agency has the authority to combine these two into an integrated ES assessment. • Third party monitoring: Third party monitoring may be good to ensure effectiveness of project. But the cost of such monitoring should be borne by both the borrower and the Bank.
	Environmental and Social Commitment Plan (ESCP)	14. Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement	<ul style="list-style-type: none"> • ESCP: The proposed ESCP appears to be repetitive with other plans. It also appears to be time-consuming and costly. In China, there is no agency that undertakes the responsibility for such an instrument. Related to this, the commitment of contractors is defined in the contract, and the implementation of the contract is the responsibility of the contractors, not the PMOs. • ESCP: In China, environmental assessment and social assessment are conducted by different agencies. No agency has the authority to combine the two into a single document like the proposed ESCP. • ESCP: It is difficult for Chinese provincial governments and PMOs to prepare the ESCP. It is suggested that consultants of the Bank prepare it. Another suggestion is that the disclosure of the ESCP be done by the Bank only, not the Borrower. • ESCP: While the advantages of having an ESCP are understanding to ensure effectiveness in project implementation, there are concerns about the cost implication. The cost of monitoring the ESCP should be counted in the project cost. • ESCP: Technical assistance is needed to strengthen local capacity for the ESCP. • ESCP: The introduction of ESCP will be challenging. There is no professional team to monitor implementation. Also, as the ESCP is a legal document, it is not easy to revise it to reflect changes. Considering

ESF	Issue	Items	Feedback
			<p>this, the ESCP should not be too detailed; rather, it should be more like an “ESCP framework.”</p> <ul style="list-style-type: none"> • ESCP: It is suggested to select a few completed projects in China to conduct case studies by combining various plans such as EMP, RAP, and cultural plan into an ESCP by WB staff or consultants. This could show China how the ESCP actually looks and provide guidance for future projects.
ESS2	Labor and working conditions	<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 bargaining where national law does not recognize such rights</p> <p>20. Issues in operationalizing the Occupational Health and</p>	<ul style="list-style-type: none"> • Primary supplier: In many projects, primary suppliers are from outside the country. It is not easy to monitor whether such foreign primary suppliers meet the requirements of the ESF. It is suggested that the Bank monitor primary suppliers when they are located outside the Borrower country. • Freedom of association: The requirement on freedom of association should be consistent with national law.

ESF	Issue	Items	Feedback
		Safety (OHS) provisions/standards	
ESS3	Climate change and GHG emissions	<p>21. The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC</p> <p>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</p> <p>23. Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard</p>	<ul style="list-style-type: none"> • Assessment of climate change impact: In a local project financed by ADB, which had a component of dredging a small river, potential climate change impacts were required to be assessed. It took a long time and was costly to hire a consultant, for an outcome that only identified marginal impacts. The requirement regarding climate change should be limited to when such an assessment is really necessary. • GHG from agriculture project: While it is agreed that agriculture projects have climate change impacts, Bank support is needed on how to implement the requirements for GHG estimation and reduction. This is a new challenge.
ESS5	Land acquisition and involuntary resettlement	<p>24. Treatment and rights of informal occupants and approach to forced evictions in situations unrelated to land acquisitions</p> <p>25. Interpretation of the concept of resettlement as a “development opportunity” in different project circumstances</p>	<ul style="list-style-type: none"> • It is good news that the cost of resettlement is included in the total project cost. Also, the ESF allows the Bank to finance stand-alone resettlement projects. This would be very helpful as it allows resettlement to proceed before project appraisal. • Land acquisition: There was a case where land was acquired for a school project. The land was acquired one year before the Bank lending came in. The national approval procedures were cleared, land leveling was done and the land was vacated and ready for use. The Bank due diligence of land acquisition was required and conducted. The school never contacted with the village directly as it was the local government

ESF	Issue	Items	Feedback
			<p>which carried out land acquisition. The Bank due diligence caused the school to go back to the villagers. This gave villagers the wrong impression that the government was re-valuing their land and that they could get more compensation. This caused unnecessary burden and cost to PMO.</p> <ul style="list-style-type: none"> • Informal occupants: Chinese law does not recognize informal occupants. • Informal occupants: Support to informal occupants is not only inconsistent with national law, but could be misused by opportunistic informal settlers. It will also increase project cost. • Forced eviction: Chinese law allows the exercise of eminent domain. Forced eviction prohibited under the ESF should be more clearly distinguished from this. • Resettlement Planning Framework: The Bank should find ways to reduce the burden of local agencies to prepare framework documents. Many of them do not conform to the reality.
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>	
ESS7	Indigenous Peoples	30. Implementation of the Indigenous Peoples standard	<ul style="list-style-type: none"> • The definition of Indigenous Peoples is too generic and unclear. The definition of IP should be consistent with the country framework.

ESF	Issue	Items	Feedback
		<p>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> <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>	<ul style="list-style-type: none"> • The level of compensation to Indigenous Peoples should be the same as for other people to avoid further discrimination and unfairness. • Where ethnic minorities get the same benefit as the Han, the necessity of preparing an Indigenous Peoples Plan is questionable.
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>	<ul style="list-style-type: none"> • Physical cultural resources: The definition of physical cultural resources is unclear under the Bank's current safeguard policy. This has caused problems on the ground. In a rural road project, the Bank's task team decided that a tomb was covered under the policy on physical cultural resources. Although the local people disagreed that it was a physical cultural resource, the project design had to be changed. The Bank should respect domestic law and local voices.

ESF	Issue	Items	Feedback
		39. Application of cultural heritage requirements when cultural heritage has not been legally protected or previously identified or disturbed	
ESS9	Financial Intermediaries	40. Application of standard to FI subprojects and resource implications depending on risk 41. Harmonization of approach with IFC and Equator Banks	
ESS10	Stakeholder engagement	42. Definition and identification of project stakeholders and nature of engagement 43. Role of borrowing countries or implementing agencies in identifying project stakeholders	
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	45. Implementation and resource implications for Borrowers, taking into account factors such as the expanded scope of the proposed ESF (e.g., labor	<ul style="list-style-type: none"> • Primary supplier and contractor: The application of the policy to primary suppliers and contractors will create difficulties in project preparation and implementation, and will be very costly for the Borrower. It may also make potential bidders less willing to participate in Bank-financed projects. Also, the Bank's procurement policy on lowest

ESF	Issue	Items	Feedback
		<p>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>	<p>cost value bidding may lead to lower contracted workers' salary and working conditions.</p> <ul style="list-style-type: none"> • Flexibility: The first impression of the ESF is that project costs will significantly increase to address new issues and requirements such as labor issues, ESCP, stakeholder engagement plan and emergency preparedness plan. The presentation during the consultation emphasized that the new framework would introduce more flexibility than the current safeguard policies. It is not at all clear how such flexibility will be realized. There is no proof.
	Client capacity building and implementation support	<p>47. Funding for client capacity building</p> <p>48. Approaches and areas of focus</p> <p>49. Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations</p>	<ul style="list-style-type: none"> • While the proposed ESF is thorough and ambitious, capacity building and simplification of the process would be very helpful for local project implementers. • When the ESF is approved, the Bank should provide technical assistance and grants to help local agencies to fully understand the new policy. • While the ESF requires professional judgment in many aspects, capacity building should be provided to PMOs, Bank staff and consultants to ensure quality and avoid deviations. • The Bank's staff guidance has a dogmatic approach and is rigid in applying the Bank safeguard policies. It should be revised to allow flexibility to accommodate each country context. • China shares the same goal as the proposed ESF. It is suggested to do a comparison analysis between the Chinese system and the ESF to identify any gaps.
	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	

ESF	Issue	Items	Feedback
		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 Finance Minister for China pays high attention to the operational level of the safeguard policy. In the recent ministerial meeting in Lima with US and EU partners, safeguard policy was also discussed and got much attention from all attended ministers. • The Bank’s safeguard policy review process has been going on for three years and it is hoped that it can come to a conclusion as soon as possible. • In principle, the safeguard policy review will be beneficial to the Bank and member countries. However, the proposed ESF appears to set out general guidance only without providing detailed procedures. While the ESF is a globally applied policy, one dish cannot satisfy all customers. It should be applied flexibly and practically to reflect the reality of each developing country. In particular in China, there are significant regional differences. The Bank should conduct a field trip to the western region to ensure that the ESF is implemented properly on the ground. • The proposed ESF is very demanding and contains a huge amount of information. It should be shortened and simplified. • International rivers: Participants spoke of one province located where there are six big international rivers. Because of the requirement of notification to neighboring countries, a project component for underground pipe laying was dropped. Otherwise the whole project would have been cancelled. It is recommended that the Bank review OP7.50 and seek to introduce more flexibility in this notification requirement. The Bank should respect the willingness of local communities, maximize beneficiaries’ interest, and consider the overall project design in a holistic manner and not let certain safeguard policies undermine local people’s interest.

ESF	Issue	Items	Feedback
			<ul style="list-style-type: none"> <li data-bbox="987 207 1921 380">• International rivers: In another example of a water drainage system project, the underground drainage system component was cancelled because of the requirements under the Bank's safeguard policy on international waterways. This means that there are roads without a drainage system. This is not good for the local people.