

World Bank Environmental and Social Safeguards Consultation

The Latin American Mining Monitoring Programme (LAMMP)

Firstly, we would like to thank you for the opportunity to contribute to the consultation process for the Environmental and Social Safeguards (ESS) framework.

We strongly encourage and welcome efforts to improve on environmental and human impacts of World Bank backed projects, especially with regards to natural resource extraction (i.e. mining, oil, gas, and logging).

However, we would like to draw your attention to many shortcomings and limitations with the draft ESS framework and its underlying policy and vision. In the following comments, LAMMP will stress on the dilution of the Bank's responsibility in the process of carrying out due diligence, weakening the importance of human rights for Bank-funded developments.

We also hope to point out how the over-reliance on the Borrower presents significant challenges especially in fragile States as well as the failure to adequately consult and engage with affected communities, resulting in further marginalization and increased incidences of human rights violations.

Shortcomings in the Environmental and Social Policy and its underlying "Vision for Sustainable Development"

1. The Environmental and Social Policy (ESP) sets out the requirements for the Bank in relation to the projects it supports. Among these requirements, the Bank is to carry out due diligence (cf. ESP, paragraph 3) to ensure the projects are environmentally and socially sustainable (cf. ESP, paragraph 2).

However, we notice with concern that this due diligence relies essentially on information provided by the Borrower in which the Bank will merely adopt an overseeing role. LAMMP believes this secondary role presents many limitations in this situation. Taking from paragraph 30 of the ESP: "The Bank recognizes that projects may have different levels of information regarding environmental and social risks and impacts available at the time the Bank carries out its due diligence", in such situation, the Bank will carry out its due diligence based on the information supplied.

This is incredibly problematic as this oversight would enable the Bank to give a go-ahead to projects without vital information about some of its impacts. It also goes on to say, that the Bank will partly base its decision on "the capacity and commitment of the Borrower to develop and implement projects in accordance with ESS". Without a clear criteria and explicit set of provisions, there is a danger that the ESS will simply act as fig leaves or mere formality for the Borrower implementing the project.

2. Moreover, there is a concern over the failure to adequately address human rights issues across the ESP and its underlying "Vision for Sustainable Development". Human rights are only briefly mentioned,

in paragraph 3 of the latter section: “It also embraces actions to remove barriers against those who are often excluded from the development process, such as women, children, youth and minorities [...]. In this regard, the Bank’s operations are supportive of human rights.” LAMMP expresses its concerns as to the little acknowledgement of human rights throughout the standards, especially as this reference relies only on a very narrow definition of rights solely based on non-discrimination.

Although it is not within the Bank’s role to enforce human rights, it has a responsibility to respect international human rights law and not to contribute to human rights violations. The Bank’s failure to integrate a comprehensive human rights approach into its environmental and social framework poses the risk of turning human rights into a side-issue. This may have critical impacts in countries or areas of weak institutions. The *UN Guiding Principles on Business and Human Rights* provides a useful framework to support business and development enterprises to integrate human rights into their operations.

Over-reliance on the Borrower: foreseeable challenges

The proposed ESS framework appears to rely essentially on the Borrower to carry out various key aspects of the project, diluting the responsibility of the Bank. This is particularly serious in countries or areas with weak or corrupt institutions, or in situation of conflicts.

3. A first area in which this presents a significant challenge is with regards to security involved in Bank-funded projects. This is presented in ESS4 on Community Health and Safety, by which the ESS states: “The Borrower will not sanction any use of force except when used for preventive and defensive purposes in proportion to the nature and extent of the threat”. Based on LAMMP's experience in the Latin American region, this contains many loopholes. Without adequate monitoring and investigation, nor provision regarding the use of fire arms or other weapons, the use of force may be used indiscriminately such as for the repression of community protesters.

4. Similar challenges emerge with regard to grievance mechanisms. As paragraph 28 within ESS4 states; “The Borrower will provide a grievance mechanism for affected communities to express concerns about the security arrangements and acts of security personnel”. This reliance on the Borrower’s good faith overlooks the reality of repression and criminalization of opposition on the ground, especially with regard to natural resource extraction projects that are highly contested by rural and indigenous communities.

5. A second area in which this reliance on the Borrower presents shortcomings is within the identification of stakeholders, especially those directly affected. For instance, the Borrower is given “an opt-out” option with regards to ESS7 and Indigenous Peoples (cf. paragraph 9). Consequently, this poses a risk of undermining Indigenous Peoples’ right to free, prior and informed consent as well as their right to self-determination.

6. From experience in Latin America, LAMMP noted the dangers of the negotiations around the concept of indigeneity and the indigenous status, assigned to some but not to others by the state. This process effectively restricts the rights of many communities who are denied consultation. LAMMP believes this is relevant to ESS7 regarding its definition of indigenous peoples, the scope of the standard and encourages the extension of free, prior informed consent to other traditional affected populations.

7. The Bank also claims that in its effort for inclusion of vulnerable groups, the Borrower must perform a stakeholder identification and analysis. This process aims to take into account “age, gender, ethnicity, religion, physical or mental disability, social or civic status, sexual orientation, gender identity, economic disadvantages or indigenous status, and/or dependence on unique natural resources” (ESP). LAMMP believes that by putting all of these groups in the same "vulnerable peoples" category may overlook the unique needs and challenges of each. Women from rural and indigenous communities are disproportionately affected by large-scale development projects and the impacts are multi-layered and complex.

8. Finally, the draft ESS framework poses important risks with regard to involuntary resettlement (ESS5). This Standard fails to provide any protective measures to prevent land grabs as it does not prohibit projects that result in the forced evictions of communities. This ultimately gives the Borrower carte blanche to carry out forced evictions for the purpose of a Bank-funded project. LAMMP would like to remind that forced evictions constitute a violation of several fundamental and internationally recognised human rights such as the right to adequate housing, food, water, work, security of the person, and freedom from cruel, inhuman and degrading treatment ¹ .

Failure to meaningfully engage with affected communities

9. The draft ESS10 on *Information disclosure and Stakeholder Engagement* requires for the Borrower to “engage with stakeholders by providing them with access to timely, relevant, understandable and accessible information, and by consulting in a culturally appropriate manner and free of manipulation, interference, coercion and intimidation” (cf. paragraph 6). Whereas we welcome this provision, LAMMP is concerned about the lack of opportunity for communities to actively engage on issues that affect them. Stakeholder engagement is defined as procedure that is relative: “For projects with little or no impact on project affected communities, stakeholder engagement may be minimal” (cf. paragraph 14). This poses the risk of a loophole in which the Borrower may prescribe engagement as irrelevant. Also, LAMMP adds that consultation must be free as well as accessible and transparent.

10. Meaningful consultation is discussed as part of the Stakeholder Engagement Plan (SEP) in paragraph 16 of this ESS: “measures that will be used to remove obstacles to participation [...]. Where applicable

1 <http://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx>

the SEP will include differentiated measures to allow the effective participation of those identified as disadvantaged or vulnerable”. As well as the loopholes previously referred to, participation is poorly defined, for example allowing more women to attend consultation meetings does not necessarily imply they can actively engage in decision-making. Clear provision must be made as to how much power community members are given to review, question, challenge and input into a project’s life-cycle.

11. The failure to adequately consult and engage with affected communities is particularly worrying with regards to ESS5 on *Land Acquisition, Restrictions on Land Use and Involuntary Resettlement*. In this ESS, provides no measures to protect the rights of displaced peoples and to ensure their situation is not deteriorated following loss of land, home, productive activities as a result of a Bank-funded projects.

12. Similarly compensation is presented as a formality in the relocation process and overlooks significant complexities, for instance the fact that in Latin American rural and indigenous communities, women are the main workers of the land and carers of the household although they often have no legal ownership under traditional tenure systems. The ESS5, by failing to provide measures for adequate consultation women are further affected by involuntary resettlement effectively reinforcing and contributing to gender inequality.