

**Comments from the External Advisory Panel on the Operations Evaluations Department,
Operations Evaluations Group, and Operations Evaluations Unit Assessment of the World Bank
Group's Activities in the Extractive Industries Sector
June 18, 2003**

The external advisory panel¹ would like to thank the Operations Evaluations Department (OED), the Operations Evaluations Group (OEG), and the Operations Evaluations Unit (OEU) for the opportunity to provide comments on their reports reviewing the performance of the World Bank Group (WBG) in the extractive industries (EI). As an advisory panel, we believe our role is to provide comments, criticism, and recommendations based on each panel member's knowledge and experience. In general, we welcome the reports and support the recommendations. We view this process as an opportunity for the WBG to implement some much-needed changes in its approach towards the extractive industries. The panel would welcome the opportunity to present their views directly to WBG management if this is helpful.

The panel recognizes that the OED/OEG/OEU methodology of reviewing current and past projects in order to assess compliance with WBG policies and goals has its limitations since it cannot be exhaustive; can only rate projects against existing policies; and can only draw conclusions from the past. It is our view that solely reviewing past projects in order to reveal future policy direction is akin to driving a car forward based only on what the driver can see in the rear view mirror. Nevertheless, we commend the efforts to conduct the review and make recommendations in the context of the contemporary debate around the WBG's engagement in the EI Sector, despite these methodological limitations. However, the panel is still concerned about the reports, the recommendations, and how the Bank will respond. This memo summarizes the panel's concerns.

I. General Comments

The panel strongly believes that the recommendations within the OED/OEG/OEU reports (reports) should be the mandatory, minimum steps the WBG should immediately adopt in this sector. The reports identify serious sector problems and historically uneven compliance with WBG policies. In addition, there are certain areas where the analysis is incomplete and the recommendations need to be strengthened. The WBG could positively address many of these problems if it adopted the reports' existing recommendations and as well as the panel's proposed recommendations. Conversely, the WBG risks harming individuals, communities, companies, nations, the WBG's reputation, and would undermine its stated objective of poverty alleviation, if it only maintains the status quo or is slow to change. The panel strongly believes that projects currently under consideration, such as the Baku-Tbilisi-Ceyhan pipeline project and the West Africa Gas project should be an immediate focus for the implementation of the recommendations. Similarly, if the WBG is involved in reconstruction or management activities in Iraq, this comprehensive approach should be applied.

¹ James Cooney, Christina Echavarria, Arvind Ganesan, Michael Rae, and David Rice were the panel members.

The WBG appears to be somewhat risk averse towards projects because of poor governance, conflict, or other impediments to successful project implementation, according to the reports. The panel *believes that there are a small number of cases when it would be appropriate for the WBG to avoid involvement because the governance, environmental, or human rights risks are too high (No-Go Zones) and clear criteria should be established to identify those cases.* However, the No-Go Zone should not be the norm but rather a classification applied to those countries and projects where even the most comprehensive risk mitigation strategies are likely to fail. No-Go Zones notwithstanding, many countries with poor governance and many projects that present risks are precisely where the WBG should be involved since the WBG is uniquely positioned to address governance, provide needed support, and raise standards with both the public and private sectors. The panel *agrees with the recommendations that the WBG should limit its role to strengthening governance where country or sector governance is weak. However, this approach should take place within a comprehensive framework that contributes to good governance, poverty alleviation, and sustainable development; and ensures respect for human rights and environmental protection.*

II. An Integrated and Comprehensive Approach

The reports rightly recognize coordination across the Bank, IFC, and MIGA as an area for improvement, particularly the coordination between the EI sector units and the country teams. There is also a lack of consistency amongst the relevant safeguard and other policies of the IBRD/IDA, IFC and MIGA. Thus, the WBG cannot adequately manage the sustainable development impacts of EI projects. The panel *believes that a coordinated and integrated approach towards the EI and governments is essential and welcomes the recommendation to adopt a coordinated strategy within the CAS as an important first step towards correcting this problem.*

However, the WBG can go further and should make the Comprehensive Development Framework (CDF) the basis for all of the WBG's extractive sector strategies. The WBG's Comprehensive Development Framework (CDF) recognizes that sustainable development can only be achieved through the interaction of all developmental institutions in a country and internationally, including government agencies, civil society, bilateral and multilateral donors, and the private sector. According to the CDF all of these institutions must act in a mutually reinforcing and synergistic manner in order to improve governance, accelerate economic growth, raise living standards, and to protect human rights and the environment. *The WBG group should take a lead role in promoting the conceptualization and implementation of complementary or collaborative multi-institutional sustainable development programs for all future EI projects, based on the CDF.*

The panel recognizes that the reports could not fully evaluate the sustainable development impact and contribution of EI projects because of their mandate. The reports generally evaluated EI projects under the following criteria:

- their overall fiscal contribution;
- a limited analysis and evaluation of governance;
- their fulfillment of project economic and other objectives;

- compliance with safeguard policies that existed when the project was commissioned

The reports suggest that under-performing EI projects primarily fell short of fiscal and governance targets and sometimes failed to meet economic or other targets. The panel believes, however, that the most likely cause of poor performance of EI projects relates to their sustainable development impacts, which lies outside the scope of the study's evaluation and could not be measured fully. Only a few projects have been commissioned by the WBG that incorporate the multi-institutional approach or the CDF framework. Based on the information in the reports and the panel members' own experience, the panel *believes that a thorough assessment is needed to determine the performance of projects in terms of the CDF.*

The study rightly recommends that the WBG must formulate and implement integrated sector and country-level strategies for transforming resource endowments into sustainable development. With respect to mining the WBG must take a comprehensive perspective on the economic, social and environmental impacts of mining as well as the full potential contribution of mining to sustainable economic, social and environmental progress in host countries. WBG mining sector projects should include an analysis of and strategy for the interaction of mining projects in a country with other developmental actors (governmental agencies, civil society organizations, bilateral and multilateral donors and other parts of the business community) in a manner that optimally achieves the potential contribution of mining to sustainable development. The impacts and potential contribution of mining must be viewed within the context of the mining life cycle from exploration, through development, production, and closure.

The OED report mentions the concept of livelihoods, but it appears that there is an incomplete description of what it means. The panel suggests that the WBG adopt the normative definition used by United Kingdom's Department for International Development (DFID):

A livelihood comprises the capabilities, assets (including both material and social resources) and activities required for a means of living. A livelihood is sustainable when it can cope with and recover from stresses and shocks and maintain or enhance its capabilities and assets both now and in the future, while not undermining the resource base.

The WBG should incorporate a Sustainable livelihoods framework within its safeguard policies as a mechanism to mainstream the environment within a holistic framework, and in consequence develop tracking tools to evaluate and report on the contribution of projects to creation or maintenance of sustainable livelihoods.

III. Governance and Human Rights

The reports recognize the importance of good governance as a means to ensure that mineral, oil and gas wealth can be harnessed for sustainable development. The reports rightly highlight corruption, inequitable rent distribution, and poor revenue management as areas of concern and where the WBG can play an important role. These are critical issues that must be dealt with, and the panel strongly supports the recommendations to implement comprehensive strategies in order to ensure that governments and

companies are transparent and accountable. For example the WBG could adopt in current and future projects the principles of the Extractive Industries Transparency Initiative (EITI), audits, and other strategies detailed in the reports.

However, the panel believes that governance is too narrowly interpreted and should include meaningful public participation throughout a project's life-cycle, and respect for human rights. Incorporating these issues would contribute to a more comprehensive strategy to improve governance.

Respect for human rights should be integral to any WBG activities in the EI. A considerable amount of criticism and resistance to EI projects is based on the inability or unwillingness of governments to ensure that economic benefits are equitably distributed within a country, and to properly guarantee the rights of specific citizen groups, in particular the most vulnerable ones. Similarly, companies are criticized for their inability or unwillingness to operate responsibly.

A major problem is inadequate public participation and a lack of information. This has implications for human rights, since in many countries the lack of formal participatory mechanisms or the lack of government accountability leads to violent resistance to projects, civil unrest, or a repressive response from the state that results in human rights abuses. Similarly, a growing body of evidence suggests that restrictions on freedom of expression and information inhibit the ability of the public, civil society, and the media to adequately monitor a government's use of revenue and its overall performance, as well as the social and environmental performance of many companies. The absence of such oversight greatly undermines transparency, accountability, and governance. However, the reports do not fully discuss this aspect of EI projects. *The WBG must ensure that it will not accept such restrictions, especially if they involve public participation or oversight with EI projects, such as efforts to restrict journalists or civil society from reporting alleged misuse of EI revenue or negative impacts on local livelihoods.*

Similarly, legal institutions need to be independent and functional in order to ensure respect for human rights. The OED report recognizes the importance of legal institutions in the following passage:

[S]ectoral governance in the context of the EI sector is more closely concerned with a satisfactory legal, regulatory, and institutional framework to manage environmental and social risks, involving and protecting local communities against negative impacts of EI activities, including abuse of individual rights,² ensuring investor compliance with the law, and protecting investor contractual rights. This requires that appropriate environmental, financial, and compensation regulations exist and are enforced, with the effective participation of the local communities, while the rights of investors are respected.

² Since abuse of individual rights, mostly in connection with site security arrangements for project sites, has been alleged in connection with some EI projects – albeit none in connection with projects in the Bank portfolio under review – the Bank needs to consider its position on these issues. While extractive industry leaders and some governments subscribe to Voluntary Principles on Security and Human Rights, the Bank has no comparable guidance. [original footnote from text]

The OED and OEG reports recognize that security for extractive industry projects is an area where human rights are a concern. Both reports also note that the WBG is behind the industry and some governments because of its lack of policy on the issues. The OED report only recommends that the WBG should “also recognize the expanding awareness of the human rights dimension of Bank policies and projects, and explore possible avenues for addressing the issues, especially where it lags industry best practice.” OEG also recommends updating policies and procedures related to security and human rights. The panel strongly supports the OEU’s analysis that some “projects experienced incidents where alleged violations of rights of individuals occurred in connection with site security. Such violations can increase risks to MIGA-guaranteed projects (increasing conflict and affecting operations) and to MIGA itself (reputational risk as well as claims brought under civil war and disturbance and expropriation coverage). Even though these issues related to human rights are part of MIGA’s due diligence process when they impact on covered risks, greater awareness during underwriting by MIGA staff and ensuring that they are adequately dealt with by investors would better address such risks,” and the recommendation to incorporate “standards recognizing the rights of individuals relating to security arrangements at EI projects into its policies and operational regulations.” The panel *encourages the WBG to examine and adopt existing and generally accepted standards such as the Voluntary Principles on Security and Human Rights.*

While these are positive steps, they are limited. The WBG should not view the protection of human rights as limited to updating policies and procedures, but should urgently develop new policies and implement them. The panel *believes that the WBG should develop a comprehensive strategy to address human rights issues, particularly in the areas of freedom of expression, information, security, and legal institutions. Public participation is also essential. The WBG should have a strategy to ensure governments respect these rights, companies have adequate policies and procedures in place to ensure that they do not exacerbate tensions or contribute to human rights violations, and political risk insurance is structured to mitigate the risks from human rights violations. At a minimum, those policies should include a risk and impact assessment, mitigation strategies, ongoing monitoring, reporting, complaints mechanisms, and support for strengthening institutions that can enhance transparency and accountability.*

IV. Indicators

There are no demonstrably robust indicators of EI project effects on the quality of environmental and social conditions, on social capital and civil society dynamism, on the distribution of EI generated wealth, on human rights and the rule of law, or on macro and sector governance. As a consequence, the WBG is unable to measure with any degree of confidence the extent to which EI projects impact on or contribute to poverty reduction, good governance, and sustainable development. This fact renders the study’s evaluation of EI projects in terms of sustainable development somewhat problematic. Until highly informative sustainable development indicators for the EI sector are developed, in which the WBG as well as its key external constituencies have a high level of confidence, the WBG will be constrained in its ability to set sustainable development targets for projects under consideration, to measure the sustainable development impact and contribution of projects in progress, or to conduct *ex-post* sustainable development evaluations of EI projects following their completion.

Currently, EI companies, often in collaboration among themselves or sometimes with civil society organizations, are actively engaged in developing and testing various indicators of their impact on or contribution to the different dimensions of sustainable development. Several non-governmental organizations are independently studying or conducting trials of sustainable development indicators for the EI sector. *As the study recommends, the panel believes that the WBG should work together with these stakeholders to develop indicators of economic, social and environmental sustainability of EI projects, which could be used both by the WBG and by key external constituencies, including EI companies. The development of indicators to track progress towards improved governance is also crucial in order to evaluate the impact of WBG EI policies in countries with poor governance.*

A limited number of cost-effective highly informative EI sustainable development indicators are required. The WBG is endowed with a large number of very qualified specialists in all aspects of the quantitative and qualitative dimensions of sustainable development, and regularly publishes a broad array of different measurements of economic, social and environmental progress at the country level. The panel recommends *that the WBG apply that talent to determining not only the relative significance of the various macro indicators of sustainable development that it regularly monitors and reports on, but also, and most especially, the effects on the most significant indicators of EI projects in terms of sustainable development outcomes.*

V. Sectoral Issues

While the OED report briefly describes the WBG approach to climate change, it does not elaborate or recommend a specific strategy for extractive industries. *The panel believes that there should be an integrated carbon management strategy as part of the WBG's comprehensive approach to extractive industries.*

The study rightly recommends that, where appropriate, the WBG should help integrate artisanal and small-scale mining (ASM) with the formal sector and internalize their environmental and social impacts, while at the same time creating alternative employment opportunities and supporting the consolidation of ASM activities for greater efficiencies, improved health and security and economies of scale. Currently, non-governmental organizations, ASM organizations, international cooperation agencies, developing country governments and others, are engaged in regional and global collaborative efforts directed at the transformation of ASM into an activity that contributes to sustainable development. The panel believes *that the WBG should work together with these groups to address the formalization of the sector where appropriate, and should help developing country governments establish policies, laws and regulations that not only promote sound environmental and social practices by ASM, but more importantly optimize the potential economic contribution of each country's mineral endowment from ASM and from large scale mining.*

This is a very important issue, not only for ASM but also for large-scale mining. The interaction of mineral exploration companies and mining companies with artisanal miners in many developing countries is becoming increasingly frequent and problematic. Exploration and mining companies are entering ever more remote frontier zones where ASM is already established or is attracted by the exploration and developmental activities of the companies. In general, neither exploration and mining companies nor host country governments have a comprehensive understanding of the issues and options for dealing with

ASM on mineral concessions. *The WBG needs to develop appropriate assessment and decision criteria for ensuring that the encounter of exploration and mining companies with ASM results in the optimal benefit for both parties and the maximum overall contribution to poverty reduction and sustainable development. .*

The matter of mine closure rightly receives considerable attention in the study. Aspects of this issue include:

- developing appropriate mechanisms to ensure that adequate financing is in place for mine closure, particularly for projects in the WBG's portfolio;
- consistent implementation of WBG guidelines with respect to social issues related to mine closure;
- post-closure assessments of environmental and social conditions at the site of WBG mining projects, incorporating a sustainable livelihoods approach; and
- addressing closed and abandoned mines with a legacy of clean-up costs that no one is willing or able to pay

The WBG is uniquely placed to take a leadership role in promoting best practice with respect to all aspects of mine closure, especially by setting an example through the mining projects in its portfolio. With respect to abandoned mines, the panel *advises the WBG to:*

- *prioritize the abandoned mine sites whose reclamation would make the most significant economic, social and environmental contribution;*
- *develop appropriate (less capital more labor intensive) technologies for reclamation in the context of competing developing country needs for scarce financial resources, with a view to achieving 80 percent of the effect for 20 percent of the cost of industrial country standards of mine reclamation; and*
- *amend the terms of reference of the Global Environmental Facility so as to accommodate grants to developing country governments for the purpose of reclaiming abandoned mines.*

With respect to the policy framework for the EI, the panel advises the WBG that improved and new guidelines are needed on indigenous peoples relationship to EI projects, resolving conflicts of exploration and mining companies with artisanal and small-scale miners, biodiversity protection in exploration and extraction and mine tailings management (including deep sea tailings disposal), in addition to addressing the gaps identified in the study (consultation and disclosure, public participation, community development, social issues of mine closure, security, hazardous materials management, and acid rock drainage).

VI. Conclusion

The panel values and supports the efforts by OED/OEG/OEU to effect improvements in the WBG's engagement in extractive industries. And while the panel supports the resolutions and recommendations made, it believes they should be strengthened, be made more comprehensive and their impact on WBG policies should be made public in a proactive manner.

The panel urges the WBG to be bold, to demonstrate leadership, and to take significant steps in order to demonstrably improve the impact of the extractive industries on people's lives, governance, human rights, and the environment. The WBG is uniquely placed to make a change and the panel strongly supports it in doing so.

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