

EXECUTIVE
SUMMARY

HIGHS AND LOWS OF SAFEGUARDS

How do BNDES, China ExIm Bank,
IDB and CAF work?



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INTRODUCTION

Environmental and social safeguards are changing for public and private investment in Latin America. At the multilateral level, we are seeing the first major review and update of the safeguard policies of the World Bank (WB) in over a decade, as similar changes are contemplated by Inter-American Bank of Development (IDB), and the evolution of norms continues along with the increasing presence of the Development Bank of Latin-America (CAF). At the same time, the National Bank of Economic and Social Development (BNDES) of Brazil and the Bank of Exports and Imports of China (China ExIm Bank) -two anchors of the recently formed BRICS Bank are both introducing new environmental and social policy or guidance for both domestic and international investments. Finally, sweeping reforms of environmental and social standards are occurring at the national and subnational level across Latin America. To take stock of the effect and direction that these multiple processes of safeguard reform may be having, a coalition of civil society organizations have conducted a comparative analysis of the application of environmental and social standards applied by IDB, CAF, BNDES and China ExIm Bank in four emblematic infrastructure projects in the Andean - Amazon region. The study focuses on similarities and differences in how safeguards are applied in the context of the project cycle of several financing institutions. In doing so, the study provides insight into how key decision points in the safeguard process may be the basis for understanding the direction of ongoing harmonization among the social and environmental practices of these institutions.



Photo: Mario Zúñiga / DAR

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OBJECTIVES OF THE STUDY

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The present study compares the safeguards of environmental and social risk management applied by four international financial institutions -Inter-American Development Bank (IDB), The Brazilian Development Bank (BNDES), Export-Import Bank of China (ExIm Bank) and the Andean Development Corporation (CAF)- in four flagship infrastructure projects in the Andean-Amazon region. The focus of this analysis has been the project cycle of each institution, in order to do so the case studies were used as tools to understand -according to specific project -how each institution applies its socio-environmental safeguards regardless of whether or not they have an explicit policy.

This analysis is divided into three chapters. The first chapter presents the formal definition of safeguards and assesses the application of these throughout the project cycle. The second chapter discusses the project cycle available to each international financial institution and how the tools of safeguards were applied in the specific project. The third chapter evaluates how each bank has been applying its socio-environmental safeguards, identifying similarities, differences and gaps in implementation thereof. Finally, recommendations will be outlined with the aim of promoting debate about greater harmonization and consistency in the applicability of safeguards according to the highest international standards, regardless of the origin of the project-financing source.

ANALYZED INFRASTRUCTURE PROJECTS

Four infrastructure projects were chosen as case study; a) San Francisco – Mocoa Alternate Road Construction Project (Colombia), b) Villa Tunari – San Ignacio de Moxos Road (Bolivia), c) Coca Codo Sinclair Hydroelectric (Ecuador) and d) The Southern Interoceanic Highway (Peru), as each of these means a high-risk project, interest and importance to national development vision. Each project belongs to greater regional integration plans or development, which take high direct and indirect socio-environmental risks. A different financial institution funds each project, therefore depending on the financial institution's criteria, the application framework of safeguards and requirements for the borrower shall apply differently. The common denominator that allows us a comparative link between each institution is the project cycle. This, in turn, helps us to glimpse the gaps and overlaps between the instruments used by each institution in the management of social-environmental risk, and thus explores the implications of implementing adequate safeguards.

The analysis of the specific projects -through the project cycle- allows us to identify where the trends in harmonization of environmental and social management practices between these financial institutions and its partners in the region should aim.

SAN FRANCISCO – MOCOA ALTERNATE ROAD CONSTRUCTION PROJECT | COLOMBIA (IDB)

The IDB decided to finance the construction of San Francisco – Mocoa alternate road in Colombia, flagship project of this Bank due to the social and environmental provisions discussed in several studies, the IDB provided a total of US\$ 53 million for this work. The construction of the San Francisco – Mocoa alternate road was rated as highly complex (Category A according to the classification of the IDB) for its operation would generate significant negative environmental and social impacts, as the route of the road goes through the Protected Forest Reserve of The Upper Mocoa River Basin (RFPCARM). The latter houses a large water wealth of fauna, flora and ecosystem, and in turn it is indigenous territory of the Kamentza and Inga, and other indigenous people who recognize the importance of this area for their cultural existence.

VILLA TUNARI - SAN IGNACIO DE MOXOS ROAD | BOLIVIA (BNDES)

The case of the highway that was never built, between Villa Tunari and San Ignacio de Moxos –which would cross the Isiboro Sécore National Park and Indigenous Territory (TIPNIS)– is an example of how the BNDES acts in projects outside Brazil.

The process that the governments of Bolivia and Brazil, BNDES (with a financial commitment of 80%) and OAS, S.A. constructor, continued to finance and build the project demonstrates a particular and different form of acting of the BNDES in connection with its operational policies (including environmental and social safeguards policies). The decision to build this project had great rejection of indigenous organizations that had the support of large sectors of the Bolivian population (environmentalists, academics, human rights defenders and public opinion in general). This decision, also, brought to the fore the need for transparency and broad participation to discuss the process of project planning and decision making prior to the adoption of such enterprise.

COCA - CODO SINCLAIR HYDROELECTRIC PLANT | ECUADOR (CHINA EXIM BANK)

The Analysis of the Coca - Codo Sinclair hydroelectric project (located on the Ecuadorian Amazon and currently running with an advance of 55%) lets identify five stages in the project cycle of the China Exim Bank according to the Environmental Management Plan of the Project: a) origination; b) preparation or due diligence; c) negotiation, approval and procurement; d) implementation; and e) operation and closure.

On the other hand, although the existence of an important regulatory framework for Chinese investment abroad, expressed as a set of social, labor and environmental policies in Chinese law as well as in institutions responsible for monitoring, there is little clarity about the specific mechanisms available to ensure compliance with these regulations. Thus, the analyzed case suggests that independent mechanisms for assessing social and environmental risk were not implemented by the bank prior to the procurement of funding for the project, but the credit approval was supported by the fulfillment of the requirements provided under Ecuadorian law.

THE SOUTHERN INTEROCEANIC HIGHWAY | PERU (CAF)

One of the flagship projects that promotes regional integration, co-financed by the CAF and the Peruvian government, was the Southern Interoceanic Highway (hereinafter CVIS). The CVIS is part of Peru-Brazil-Bolivia axis road and it was concessioned through five (05) stretches covering 5,404 km in its entirety. This analysis refers to the 1,009 km that make up Sections 2, 3 and 4, which directly involve the Amazon; and that were facilitated by several co-financing of the CAF. The process of awarding the award of this project was accelerated, being declared a public need¹ in 2004 and granted as a concession in 2005. By 2006, the CAF funding was obtained (the total CAF funding of the three sections amounted to US\$ 700 million, disbursements were made in 2006, 2008 and 2010). The CVIS has been considered an iconic and innovative project in terms of the challenges of managing social and environmental risk for both Peru and the CAF.

¹ On April 29, by act no. 28214, the implementation of the southern interoceanic highway Peru – Brazil - IIRSA is declared as a public necessity of national interest. Among other rules that evidence the willingness to expedite the implementation of the project, it can be seen the D.S. No. 022-2005 exempting sections included in the CVIS application of rules of the National Public Investment System (SNIP), referring to the pre-investment stage. Likewise, regional Emergency Decrees No. 008-2005 and No. 011-2005 seeking to facilitate the financing of public works concessions of infrastructure and public services and facilitate the start of construction.

HYPOTHESIS

The purely comparative analysis of the safeguards of the four institutions begins from a number of hypotheses.

1. The project cycle of each financial institution reflects the specific application framework of safeguards in each project -thus being this our focus.

2. The project cycle is similar for each bank, covering five sequential stages, project identification, preparation, negotiation, implementation and operation -each stage with its particularities.

3. Within each stage of the project cycle there are certain decision-making times that are the most important to define the key characteristics of an effective application of safeguards. These decision milestones indicate the comparison link between project cycles for each institution.

METHODOLOGY

The base of research evidence is the available documentation on the project cycle, supplemented by information based on interviews, analysis of secondary materials and experiences of research organizations. For each project, a historical time frame of the project cycle was built to display the sequence of decisions, identify milestones and the decision makers, so documents deadlines can be traced and analyzed, and finally, to examine the impact of political events. The time frames are attached to the end of each case.

Variability in access to information of each financial institution was the main limitation of the study and one of the clearest gaps that suggests differences in the practice of safeguards.

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KEY QUESTIONS THE REPORT TRIES TO ANSWER

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- **What are the turning points in the implementation of safeguards? Is there consistency between the most critical moments for each institution?**
- **Relate to the application of safeguards, what can be learned from each of the patterns of alignment of each institution? Which are the commonalities and institutional priorities for risk management?**
- **What are the most important gaps in the application of safeguards of each institution?**
- **What might be the first steps to close these gaps?**

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RESULTS FROM THE STUDY

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The results that we want to highlight are focused on the financial institution within the context of each project -and not the project itself- obtaining information on risk management actions undertaken by each institution. This approach indicates the moments and factors that determine the quality of implementation of safeguards.

The comparative framework between the financial institutions has been its project cycle –a long process that can last up to 40 years. Each of the four Banks has similar project cycles, but the differences may lie on the time limits used in each cycle, the sequence of each cycle, the decision-making process, and the level of informed participation of the parties involved. These are some of the factors analyzed to compare the quality of applicable social and environmental safeguards to each stage. It should be noted that these criteria are not taxative. When raising them, we aim to elucidate trends in the decision-making throughout the project cycle in each of these institutions and glimpse the downward or upward trend in the application of safeguards.

The identified criteria and results were as follows:

1. THE ORGANIZATIONAL FRAMEWORK OF THE PROJECT CYCLE MAINTAINS A COMMON PATTERN AMONG THE FOUR BANKS, BUT VARIES IN TERMS OF THE LEVEL OF FLEXIBILITY AND THE USE OF NATIONAL RISK MANAGEMENT SYSTEMS.

We note that the project cycle is quite similar for each bank, covering five sequential stages, identification, preparation, negotiation, and implementation and operation, which are grouped according to the particularities of each Bank. The project cycle varies according to the financial institution in terms of its mandatory safeguards policy instrument. Variability was observed also in the duration of certain periods and levels of dependence on national systems for managing social and environmental risk. In some institutions the project cycle will be explicitly defined in any of its Operational Policies (for the IDB) However, in other cases it is observed that the identification of the project cycle is given through the analysis of the specific case. In the case of the CAF, the project cycle is guided by the standards of this institution that includes their Environmental Strategy, Guidelines on environmental and social aspects, social and environmental safeguards and Manuals and Guides of Evaluation and Monitoring. In the case of the China ExIm Bank is defined by their Guidelines and in the case of BNDES is defined by a political and commercial negotiation strategy of governments. Preparation deadlines range from 05 months (for ExIm Bank) to 23 months (for the IDB).

The four financial institutions Safeguards frameworks maintain a close relationship with the internal legal system of the countries where the projects are implemented. Each bank trusts, supports and uses national environmental and social risk management systems to varying degrees as a principle of its policies or strategies, but also as a central element in the design and implementation of the project.

The balance can be tilted on one side to expressly apply the Bank's Operational Policies (such as IDB), or, on the contrary, decide to apply the national legislation on social and environmental issues (such as BNDES and China ExIm Bank). However, it may be the case of institutions like the CAF that considers the social and environmental safeguards of the borrower along with the standards it has as a financial institution and both of which must also be complied by the borrower.

2. DELAYS ARE OBSERVED IN THE DEVELOPMENT OF THE PROJECT THAT RESULT FROM PERMEABILITY OF THE SAFEGUARD FRAMEWORK AND POLITICAL INTERFERENCE IN THE INITIAL STAGE OF THE CYCLE.

The duration of the project cycle can be influenced and even determined by external factors to the administrative or technical processes of the financial institution –as the political aspect– that determine the acceleration or delay in project implementation. Several gaps are observed in the normal cycle sequence, where some important decisions were made before the end so as to have the results of the previous stages. In the case of the CVIS, the indirect impact assessment came after the start of the project on Sections 2, 3 and 4; in the case of Villa Tunari - San Ignacio Moxos, the process followed to approve the financing differs from the project cycle (Processing Operations for BNDES) which is defined in operational policies. Tendering and contracting of the construction company were performed before initiating the risk analysis. Besides, the construction began before completing this analysis and before economic, social and environmental viability studies of the project were made. In the Coca - Codo Sinclair project, negotiations began before a brief preparation phase. While in Pasto Mocoa, the quick progress of the work construction is observed despite delays in implementing the mitigation program.

3. DIFFERENCES IN THE QUALITY OF THE ASSESSMENT PROCESS AND ENVIRONMENTAL AND SOCIAL MANAGEMENT ARE EVIDENT IN PROCEDURAL ISSUES AND MITIGATION PROGRAMS.

Although each financial institution has its own instruments for measuring and managing environmental and social risks, identified key differences are observed during the decision-making. The most significant gaps in practice are related to the effective use of appropriate evaluation instruments, the level of incidence of the Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) in the planning and design of the project. As well as in the level of independence of the Bank due diligence, the level of access to necessary information and timely consultation of the affected population.

The main product of the assessment process is the risk management program, in which a large variability in their size, budget, governance and local ownership are noted. The large variation in these criteria helps explain, in some cases, gaps, conflicts and other problems encountered in the implementation of the project. Late and not very transparent actions may negatively affect the decision-making in the environment and the communities involved in the project; in some cases, they generate conflicts affecting governments and even financial institutions.

The biggest gaps in the implementation of safeguards are manifested mainly in the deficiencies of access to information during the project cycle. Transparency and access to information allows us to obtain an in-depth knowledge of the institution, the funded projects, and their risk management capabilities and concepts.

Large differences are observed in access to project documents, for instance in the case of Pasto Mocoa about 60 documents of the project cycle are accessible –several of them translated into different languages– in comparison with only three in the case of Coca - Codo Sinclair project, as well as the preciseness of this information in relation to the time of decision-making, the quality of the documents, among others. While in the case of CAF, the information of the project cycle is not public, but it should be highlight the wide availability of its officials to provide relevant information to this document in all meetings that were requested. A very different situation in the case of Villa Tunari - San Ignacio de Moxos, in which the BNDES has not allowed access to any document related to the project.

- **PRIOR CONSULTATION.** In the two projects that are part of the analysis and in which you can apply the ILO Convention N° 169, Consultation has been conducted after the decision-making. In the case of the project financed by the BNDES, the so-called “prior consultation” made to the indigenous people and made after funding decisions, construction and beginning of work, was implemented in a context of questioning its legality, timeliness, institutionality, and respect for indigenous collective rights. In the other project, it is shown that it cannot be really considered as a consultation process for several reasons: they are informative workshops, the affected population is not involved, and they are meetings held by the companies and not by states who are required to implement the query.
- **PUBLIC CONSULTATION.** Established in the environmental legislation of the countries as a tool for participation and to address the concerns of society in relation to projects and their impacts on the population and territory. Although in the early days of its implementation in many cases it came to meet objectives in terms of improving the management and implementation of projects in addition to involving people in the planning and execution, it has evolved into a simple bureaucratic process which is fulfilled to meet the standards of the country and / or funding requirements. It has had a tendency to become informative and propaganda project benefits workshops or the collection of public concerns about the investment that is intended to run and other needs without responding to these concerns and reach consensus. That is, without

ensuring broad and effective participation. In this sense, failing to constitute a space for analysis and discussion on investment and the project. Besides, the concerns of people rarely come to influence the decisions of authorities and funders.

Generally, financial institutions contribute to the flexibility of this instrument and reducing public participation and quality of the decision-making because the trend is the formal verification of completion of the process (the existence of records and lists of participants) instead of verifying the quality of it and that it has reached the full and effective participation. In cases such as the project funded by the BNDES, public consultation was the responsibility of the company entrusted with the construction of the project and whose main priority and goal was at all times do the job that corresponds to its specialty (infrastructure construction) and not to respond to the concerns of different actors involved in the process, even less to involve indigenous communities of TIPNIS that for years expressed their concerns and opposition to the project.

4. MECHANISMS AVAILABLE IN EACH BANK FOR PROCESSING COMPLAINTS ARE PARTICULARLY DIFFERENT. HOWEVER, IT IS IMPORTANT TO NOTE THAT, REGARDING ONE EXCEPTION, THE GENERAL RULE IS THAT BANKS DO NOT EXPLICITLY PROVIDE A POLICY IN THIS REGARD AND THE ONLY BANK THAT DOES HAVE A DEFINITE AND CLEAR PARAMETERS MECHANISM, IDB, LACKS CONFIDENCE.

In the particular case of the IDB certain weaknesses can be seen with concern in key aspects, such as the independence of their functions, access to the complainants, the transparency of its proceedings, and effectiveness to remedy identified problems. In 2014 the policy governing the operation of the Independent Consultation and Investigation Mechanism (known in Spanish as MICI) in the IDB entered a review process to strengthen the mechanism in these areas, showing the Bank's commitment to improve the existing mechanism. A fact that contrasts with the experience still evident in BNDES and China ExIm Bank where improvisation, denial and/or total dependence on national bodies to respond and remedy complaints regarding consulting projects have prevailed. In the case of the CAF, although there is no formal complaints mechanism policy, internally they do have a process to address any complaint, grievance or report.

RECOMMENDATIONS

The trend towards the reduction of social and environmental standards as evidenced by the review and updates of the World Bank Operational Policies should alert other international financial institutions –including those studied in this analysis– and prevent the adoption of minor standards as this will adversely affect the populations of the area of influence of funded projects and the environment. Therefore, in order to strengthen safeguards and policies based on the cases analyzed in this paper it is proposed to the international financial institutions to adopt the following recommendations:

- Contribute to harmonize their Transparency and Access to Information policies, this will allow a better understanding of the financial institution itself, the projects it funds, the criteria they consider for investment, and environmental and social management that applies to its project portfolio.
- Exercise active transparency and ensure the availability and accessibility of the greater amount of information on their websites and spaces available, without waiting for it to be requested. In the case that there is information that may not go public, support the position on objective reasons. Although the National Development Banks claim to make use of national laws on access to information, it does not detract that they can create and implement their own policies on Transparency and Access to Information.
- Create opportunities for participation that promote the exchange of information and dialogue with the civil society affected (national or international) and communities involved in projects that they fund
- Establish a formal, accessible and effective mechanism of grievance that assists requests for non-compliance during the execution of the project, regardless of the existence of similar mechanisms within the sponsoring companies or contractors of the projects or those provided by public institutions from the host country.
- Its safeguard policies should strengthen the assessment criteria at each stage of the project cycle (environmental impact study, social impact assessment, environmental management plan, prior consultation, etc.) It is vital to have internal and independent mechanisms of assessment of those requirements and not only rely on the assessment made by the official institutions of the host country. A transparent, representative and effective social participation process should accompany the independent assessment carried out by financial institutions.
- Make accountability public and accessible. In addition to making documentation visible for each stage of the project cycle, it should clearly identify those responsible for the decisions made at each stage.
- Have clear mechanisms for development assessment of the process of the prior consultation, free and informed in the

countries where the investments are executed. According to the requirements established by most of these institutions as part of its project cycle, the compliance with the provisions of Convention N° 169 of the ILO and the specific constitutional requirements of each host country should be monitored, ensuring that it is carried out prior to the signing of any credit agreement and / or project.

- Identify, prior to the beginning of works, the direct and indirect social and environmental impacts that could be caused by the operation to be financed. The budget allocation for both cases should be proportional to the total investment in the project.
- Condition disbursement of loans to the fulfillment of its social and environmental safeguards. The loan may be suspended depending on the severity and social and environmental impacts arising from the non-compliance of the safeguards.
- In the case that the financial institution holds an Operational Policy of safeguards, it should have a manual and/or guide defining and establishing the specific methodologies to be followed by the borrower to achieve satisfactory compliance with the policies and requirements of the institution. In the case that the financial institution administers the "Country System", this should ensure through mechanisms of internal and independent assessment that the borrower comply with the current national legislation on environmental and social issues applicable to the project.
- Implement an institutionalized Ex-post monitoring system and supervision to assess the achievement of objectives and performance indicators of the project (economic, social and environmental) throughout the complete period of life of this, and not only in the early years of its implementation and operation.
- Contribute to the institutionalization of alternative Ex-post monitoring involving other players in environmental management, including communities

and civil society. Evaluation reports of the state regulatory agency, or concessionaire should not only be considered but also those issued by the communities.





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