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DIEGO BARRAS

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Request for inspection
Executive Secretary of the Inspection Panel

To: Executive Secretary, the Inspection Panel 1818 H Street NW, MSN 10-1007, Washington, DC 20433, USA

Email: ipanel@worldbank.org

1. We Edwin Montenegro, President of the Organización Regional de los Pueblos Indígenas de la Amazonía Peruana (ORPIAN –P: Santiago District, Bagua, Amazonas, Perú); Jorge Pérez, President of the Organización Regional de los Pueblos Indígenas del Oriente (ORPIO: Iquitos, Iquitos, Loreto, Perú); represented, in this case by César Gamboa Balbín, Executive Director of Derecho, Ambiente y Recursos Naturales (DAR: Jirón Huáscar 1415, Jesús María.
2. We have suffered, harm as a result of the World Bank's failures or omissions in the Boosting Human Capital and Productivity Development Policy Financing with a Deferred Drawdown Option. P156858: The objectives of the DPF-DDO are to support Peru's efforts to boost human capital and productivity by: (i) enhancing the education policy framework to enable better quality of skills, (ii) facilitating the entry, operation, and exit of firms; and (iii) reducing transaction costs in trade; located in Peru.
3. Harm

The Development Policy Loan project titled "Boosting Human Capital and Productivity" reported the passage of Law 30230 in Peru as an accepted prior action before Peru could receive the project funds from the World Bank. This law was enacted on July 12, 2014¹. It aims at investment promotion, tax reform, and the simplification of "doing business" in Peru.² It covers specifics such as tax reform for certain industries, including mining, hydrocarbons, and small and medium sized enterprises.³ It has been touted as an "economic stimulus decree" that has reduced or eliminated the borrower's capacity to 1) guarantee the territorial rights of indigenous peoples and 2) Prevent local communities from being affected by oil spills and other environmental harms caused by extractive industries under the supervision of Agency for *Environmental Assessment and Enforcement*⁴.

¹ http://www.proinversion.gob.pe/RepositorioAPS/0/0/arc/LEY_30230_12072014/LEY30230.pdf

² http://www.proinversion.gob.pe/RepositorioAPS/0/0/arc/LEY_30230_12072014/LEY30230.pdf

³ http://www.proinversion.gob.pe/RepositorioAPS/0/0/arc/LEY_30230_12072014/LEY30230.pdf

⁴ Organismo de Evaluación y Fiscalización Ambiental. <http://www.oefa.gob.pe/en/>

Prior actions are actions that the borrowing country government (in this case Peru) must complete before the project is approved, and must complete in order to receive the loan from the World Bank.⁵ The World Bank defines prior actions as the following: "Prior Actions are a set of mutually agreed policy and institutional actions that are deemed critical to achieving the objectives of a program supported by a development policy operation and that a country agrees to take before the Board approves a loan (credit or grant)."⁶ Law 30230 is used as an example of how Peru is meeting both prior action 6 and 7 in the loan agreement.

Law 30230 and the Boosting Human Capital and Productivity Development Policy Loan

Law 30230 was referenced in prior action #6 and #7 in the program document of the Development Policy Loan project titled "Boosting Human Capital and Productivity: Development Policy Financing with a Deferred Drawdown Option" in the following terms, respectively: "The Borrower has taken measures to limit the discretion of all government bodies to impose regulations and administrative procedures outside the national legal framework, by strengthening INDECOPI's power to sanction non-compliance with the national legal framework, as evidenced by the enacting of Law No. 30230 published in the Official Gazette on July 12, 2014."⁷ INDECOPI is the National Institute for the Defense of Competition and Intellectual Property Protection.⁸ Prior action 7 is referenced in the following: "The Borrower has taken measures to simplify the withholding regime for VAT payments to reduce operating costs for firms, as evidenced by the enactment of Law 30230 published in the Official Gazette on July 12, 2014."⁹

Article 19 of Law 30230 has led to a reduction in the potential fines that can be levied against companies operating in Peru for environmental infractions such as oil spills. Furthermore, the shortened review period for environmental assessments and changes in land policies introduced in Articles 20-22 have also reduced incentives for oil companies to strictly comply with environmental standards. The reduction in these fines has led to the oversight of several hydrocarbon companies regarding oil pipeline maintenance and has caused numerous oil spills in the Peruvian Amazon¹⁰. These companies have failed to invest in the proper pipeline maintenance necessary to prevent these spills, and have failed to properly remediate the harm caused by these spills. The oil spills have permanently affected the health and environment of the communities living in the regions where these have occurred. Indigenous communities and civil society organizations have filed an appeal against articles 19 - 23, 36, 38, 39, 40, 42 - 51 and the third

⁵ <http://www.dar.org.pe/wp-content/uploads/2017/01/009361-Ejecutivo-WB-DPF-ENG02.pdf>

⁶ <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1244732625424/Q&Adplrev.pdf>

⁷ <http://documents.worldbank.org/curated/en/483991468284660170/pdf/RAD1994832267.pdf>

⁸ <https://www.indecopi.gob.pe/sobre-el-indecopi>

⁹ <http://documents.worldbank.org/curated/en/483991468284660170/pdf/RAD1994832267.pdf>

¹⁰ <http://excesosincastigo.convoca.pe/english>

complementary disposition of Law N° 30230 asserting that it violates their rights provided in the Constitution, and this appeal is currently in progress¹¹.

Law 30230

Although Law 30230 aims to promote investments and tax reform, in reality significantly weakens environmental and social regulations, including inter alia expedited approval of environmental impact assessments in Article 21, greatly reduced fines for environmental infractions in Article 19, and the weakening of indigenous peoples' land tenure rights in Articles 45-51¹². Article 19 weakens the capacity of the Ministry of Environment (MINAM, in Spanish) and the Agency for Environmental Assessment and Enforcement (OEFA, in Spanish) which is housed within the Ministry of Environment. Environmental and social outcomes have been weakened by removing incentives for businesses operating in Peru to comply with environmental laws by reducing fines for noncompliance, which could result in conflicts of interest. Another example of the Ministry of Environment's reduced capacity is that it can no longer create Natural Protected Areas, as stipulated in Article 20¹³, but the effects go beyond this. Article 22 of Law 30230 also provides companies with the right to any surrounding land that is necessary to complete a project, effectively removing rights of local community members.¹⁵

Some of the main changes introduced by Law 30230 include a 50% reduction in the fines levied for environmental infractions (Article 19).¹⁶ Article 22 of Law 30230 has also changed the definition of a "recurring offender" to only include companies who repeat infractions within the same six month period.¹⁷ Every six months their slate is wiped clean, and infractions committed more than six months ago are forgotten. Finally, in Article 21 of Law 30230, the comment period for an Environmental Impact Report is reduced to only 45 days.¹⁸ This means that if any agency objects to the findings of an Environmental Impact Report they only have 45 days to make their case.

¹¹ <http://www.dar.org.pe/wp-content/uploads/2017/01/009361-Ejecutivo-WB-DPF-ENG02.pdf>

¹² http://www.dar.org.pe/archivos/docs/amicus_ley30230_julio15.pdf

¹³ http://www.dar.org.pe/archivos/docs/amicus_ley30230_julio15.pdf

¹⁴ <http://rightsandresources.org/en/blog/new-law-in-peru-to-severely-curtail-land-rights-for-indigenous-peoples-and-smallholder-farmers/#sthash.y6pKpILR.dpbs>

¹⁵ [http://rightsandresources.org/en/blog/new-LAW-in-peru-to-severely-curtail-land-rights-for-indigenous-peoples-and-smallholder-farmers/#sthash.y6pKpILR.dpbs](http://rightsandresources.org/en/blog/new-law-in-peru-to-severely-curtail-land-rights-for-indigenous-peoples-and-smallholder-farmers/#sthash.y6pKpILR.dpbs)

¹⁶ <http://excesosincastigo.convoca.pe/english>

¹⁷ http://dar.org.pe/archivos/publicacion/154_analisis_Ley30230.pdf

¹⁸ http://dar.org.pe/archivos/publicacion/154_analisis_Ley30230.pdf

Petroperu has avoided millions of dollars in environmental fines due to this law¹⁹, and Pluspetrol, an Argentinian company has avoided S/. 25 million in fines²⁰. This law has been recognized by the Peruvian government as having caused harm to the environment and indigenous communities. Almost three years after the law was passed, on May 16, 2017 the congress of Peru voted overwhelmingly to repeal Article 19 of Law 30230, which limits the ability of OEFA to impose sanctions and fines.²¹ The executive branch has 30 days to respond to this vote.²²

Harm

There have been numerous oil spills in the Peruvian Amazon since 2014. According to Oracio Pacori, a congressman who voted to repeal Article 19 on May 16, 2017 stated, “[Article 19 of Law 30230] through mild sanctions, has not been a deterrent; on the contrary, it has actually increased the number of infringements.”²³ In fact, infringements have increased by 62% in the mining sector and 14% in the hydrocarbon sector, following the passage of this law.²⁴ On January 25th, 2016 an oil spill occurred in Chiriaco, in the region of Amazonas²⁵, affecting up to 6,000 people in surrounding communities, with a total of 45 different indigenous communities reporting health impacts.²⁶ Around 3,000 barrels of oil spilled into the Chiriaco and Morona rivers. In Chiriaco, the company bought barrels of oil back from anyone who collected them, creating a perverse incentive that led villagers, including children, to scoop up oil along riverbanks without any protective gear.²⁷ Community members reported feeling symptoms such as headaches, nosebleeds, nausea and stomach aches, all of which affected children and the elderly most severely.²⁸ Community members also saw a massive die-off of fish, approximated at between two and seven tons²⁹ and other animals immediately following the oil spill.

An oil spill also occurred near the community of Cuninico on June 30th, 2014, spilling over 2,358 barrels of crude oil³⁰. Over 20,000 indigenous families in the Urarinas district were affected by this

¹⁹ <http://excesosincastigo.convoca.pe/english>

²⁰ <http://larepublica.pe/impresa/politica/713575-los-millones-perdonados-las-petroleras-por-el-gobierno-de-humala>

²¹ <http://www.muqui.org/details/itemlist/tag/Ley%2030230>

²² <http://www.muqui.org/details/itemlist/tag/Ley%2030230>

²³ <http://www.muqui.org/details/itemlist/tag/Ley%2030230>

²⁴ <http://www.muqui.org/details/itemlist/tag/Ley%2030230>

²⁵ <http://convoca.pe/investigaciones/las-huellas-del-petroleo-que-intentaron-esconder>

²⁶ “Informe de Seguimiento: Vigilancia Epidemiologica Post Desastre Por Derrame de Petroleo en el Distrito Imaza/Provincia Bagua/Region Amazonas - Enero, Febrero del 2016.” Gobierno Regional Amazonas.

²⁷ <https://news.mongabay.com/2016/06/breaking-oil-spill-in-peruvian-amazon-puts-local-communities-at-risk/>

²⁸ <https://www.theguardian.com/environment/2014/dec/09/the-amazon-oil-spills-overlooked-by-environmental-leaders-in-lima>

²⁹ <https://www.scientificamerican.com/article/oil-spill-in-amazon-sickens-villagers-kills-fish/>

³⁰ Tessa Torres Sanchez, President of the Direct Council, OEFA. June 9, 2016. Powerpoint Presentation.

oil spill, which includes the community of Cuninico.³¹ Approximately two hectares of forest were damaged by this oil spill, and there was again a massive die-off of fish and other animals, similar to the impacts seen in the Chiriaco oil spill.³² Fish were previously a main food source for these community members, but many reported that the remaining living fish tasted like oil following the spill. Now community members must make the choice between eating the local contaminated fish or purchasing fish from another community. As recently as September 2016, Cuninico community members have reported lingering impacts from the oil spill, such as health problems and a reduction of fish and farmland.³³ There have been five oil spills in this region just in 2014.

Law 30230 and Harm

The changes in environmental oversight imposed by Law 30230, specifically Articles 19, 20, 21, 22, and 42-51 have caused harm to the communities in Chiriaco and Cuninico. Article 19 has been particularly harmful, leading to reduced fines and oversights on the part of oil companies, which has caused oil spills in the communities of Cuninico and Chiriaco. In June 2016, a report was released showing elevated levels of mercury and cadmium in villager's urine.³⁴ Scientists stated that monitoring health, water, fish, and vegetation in the event of an oil spill are necessary steps to take in order to correctly determine the impact of the oil spill and effectively mitigate the impacts.³⁵ OEFA has found TPH (Total Petroleum Hydrocarbons) in soil samples in amounts up to 1500% over the legal amount.³⁶ According to the Center for Disease Control and Prevention (CDC) "Some of the TPH compounds, particularly the smaller compounds such as benzene, toluene, and xylene (which are present in gasoline), can affect the human central nervous system. If exposures are high enough, death can occur. Breathing toluene at concentrations greater than 100 parts per million (100 ppm) for more than several hours can cause fatigue, headache, nausea, and drowsiness."³⁷ These are the exact symptoms many community members reported following the oil spills.

There is evidence that these oil spills have occurred as a result of an outdated and crumbling oil pipeline that is in dire need of maintenance. The oil pipeline in this region is now over 40 years old.³⁸ Osinergmin, the oversight body of the Ministry of Energy and Mining, found that there were

³¹ Ministerio del Ambiente Resolución Directoral No. 844-2015-OEFA/DFSAL.

³² http://dar.org.pe/archivos/loUltimo/lu_204/np_loreto_240714.pdf

³³ <http://voices.nationalgeographic.com/2016/09/07/things-shouldnt-be-like-this-lingering-effects-of-peru-jungle-oil-spills/>

³⁴ <https://news.mongabay.com/2016/06/breaking-oil-spill-in-peruvian-amazon-puts-local-communities-at-risk/>

³⁵ <https://www.scientificamerican.com/article/oil-spill-in-amazon-sickens-villagers-kills-fish/>

³⁶ <http://convoca.pe/investigaciones/los-millones-perdonados-las-petroleras>

³⁷ <https://www.atsdr.cdc.gov/phs/phs.asp?id=422&tid=75>

³⁸ <https://www.scientificamerican.com/article/oil-spill-in-amazon-sickens-villagers-kills-fish/>

at least 5 cases of spills since 2014 caused by corrosion in pipelines, whereas there had been zero spills in the previous 3 years caused by corrosion³⁹. In fact, in the case of the Cuninico oil spill, the Institute of Legal Defense (IDL) found that the aging oil pipeline was responsible for the oil spill, and that Petroperu was responsible, as stated in resolution number 844-2015-OEFA/DFSAL.⁴⁰⁴¹ Specifically, there was a 30 cm crack in the oil pipeline, and 6 cm break that ruptured the pipeline⁴². Furthermore, according to Mongabay, “On June 24, 2016 OEFA sanctioned Petroperú over its failed cleanup of the 2014 spill in Cuninico, and the agency has three other cases open against the company related to the 2016 Chiriaco and Morona spills that could result in millions of dollars in fines.”⁴³ With reduced fines for environmental infractions such as oil spills, oil companies such as Petroperu no longer have a strong incentive to invest in oil pipeline maintenance.

In addition, article 19 says that OEFA have to “prefer actions of prevention and correction from the offender during a 3 year old period, and only perform sanction processes in case of non-compliance on correcting actions; also the fines will not surpass the 50% of what it is established by law except when “real and very severe health damage” is proven⁴⁴. Is important to note that only health damage is taken into account leaving environmental damage off the table. In practice, is very difficult to prove a direct link between the activity and personal health damage. In the case of Petroperu’s oil spills, OEFA was unable to enforce and monitor cleanup efforts⁴⁵, and the commission of health did not declare a health emergency because they were only provided information on the status of the cleanup from Petroperú.⁴⁶ Furthermore, OEFA froze or reduced fines in the mining and hydrocarbons sectors by S/.55, 6 million.⁴⁷ Article 19, have left the Peruvian government with no legal tools to act in a way that the really protects its citizens right to health and to enjoy of a good ecological environment.

Petroperu and the government of Peru have both recognized that there was harm to communities and the environment caused by these oil spills. In fact, Petroperu apologized to the communities in a public hearing in mid-2016.⁴⁸ Furthermore, OEFA has stated that Article 19 of Law 30230 has led to reduced fines for environmental infractions, which has in turn caused companies to commit

³⁹ Division of Supervision of Liquid Hydrocarbons, Osinergmin September, 2016.

⁴⁰ Ministerio del Ambiente Resolución Directoral No. 844-2015-OEFA/DFSAL.

⁴¹ <https://news.mongabay.com/2016/07/health-concerns-food-insecurity-linger-months-after-peruvian-oil-spills/>

⁴² Tessa Torres Sanchez, President of the Direct Council, OEFA. June 9, 2016. Powerpoint presentation.

⁴³ <https://news.mongabay.com/2016/07/health-concerns-food-insecurity-linger-months-after-peruvian-oil-spills/>

⁴⁴ <http://www4.congreso.gob.pe/pvp/leyes/ley30230.pdf>

⁴⁵ <https://news.mongabay.com/2016/06/breaking-oil-spill-in-peruvian-amazon-puts-local-communities-at-risk/>

⁴⁶ <https://news.mongabay.com/2016/06/breaking-oil-spill-in-peruvian-amazon-puts-local-communities-at-risk/>

⁴⁷ <http://convoca.pe/agenda-propia/paquetazo-ambiental-las-5-preguntas-que-las-autoridades-no-responden>

⁴⁸ <https://infoamazonia.org/en/2016/06/petroperu-apologizes-to-communities-for-oil-spills-in-the-amazon/#!/story=post-15814>

more environmental crimes.⁴⁹ The president of OEFA stated that “[these fines] are not a preventative mechanism because they do not effectively deter environmental infringements.”⁵⁰

4. Section 10 of Operational Policy 8.60 (the policy that applies to Development Policy Loans), titled “forests” states that it is the responsibility of the World Bank to “determine whether specific country policies supported by the operation are likely to cause significant effects on the Member Country’s environment, forests, and other natural resources”. Given that Law 30230 was passed in July of 2014, the World Bank had ample time to review the possible effects of this law on the environment, forests, and other natural resources of Peru prior to granting the Development Policy Loan in early 2016.

However, the environmental impact of this law was not properly assessed, and environmental impacts of the project were referenced only in the following sentence “The specific policies supported by the DPF-DDO are not likely to have significant effects on Peru’s environmental resources (e.g. forests, water resources, etc.) and natural habitats” (P. 29).

It was further stated that “Peru has adequate environmental controls in place and environmental legislation and regulations are aligned with good international practices.” However, the reality is that after the passage of Law 30230, Peru no longer has the proper and adequate environmental controls in place to effectively incentivize mining and hydrocarbon companies from avoiding environmental infractions. Immediately following the passage of this law there were a series of oil spills in several communities in the Amazon, including the communities of Cuninico and Chiriaco. Given that the Development Policy Loan was approved in February 2016, it was the responsibility of the World Bank to analyze the effects of the recently passed laws in Peru, including Law 30230.

The failure of the World Bank to recognize the potential impacts of this law on the environment, forests and people of Peru was a negligent oversight. There is precedent for oversights such as this, as stated by the Independent Evaluation Group: “The pressure to deliver operations quickly, combined with the lack of a formal role for environmental or social specialists, provide incentives for task teams to deprioritize management of environmental and social risks in DPOs.”⁵¹

It is the belief of the presenters that OP 8.60 is not a sufficient environmental and social safeguard for Development Policy Loans. Due to this situation, we think the case should be eligible.

⁴⁹ <http://www.convoca.pe/agenda-propia/oefa-reconoce-impacto-nocivo-de-la-ley-del-paquetazo-ambiental>

⁵⁰ <http://www.convoca.pe/agenda-propia/oefa-reconoce-impacto-nocivo-de-la-ley-del-paquetazo-ambiental>

⁵¹ https://ieg.worldbankgroup.org/Data/reports/Managing_ES_Risks_in_DPF.Sept18.2015.pdf

According to the Bank Information Center (BIC) “The policy lacks detailed requirements on how risk assessment and mitigation should take place and how a country system analysis should take place, as well as clear and verifiable requirements for transparency, participation and accountability in policy design and implementation.”⁵² This case exemplifies that substantial harm can be caused by Development Policy Loans and that this harm was not sufficiently assessed by the World Bank prior to granting the loan. Because there is no project level grievance mechanism for Development Policy Loans, the affected communities were unable to raise their complaints directly in an effective forum prior to this complaint. OP 8.60 should undergo review at the level of World Bank management and should be changed to more closely match the Environmental and Social Safeguards in place for other types of World Bank lending instruments.

For example, the World Bank’s own Independent Evaluation Group found in 2015 that there are “significant gaps in how environmental and social risks are managed through OP 8.60 in development policy financing (DPF)”, and furthermore that “the Bank’s identification of risk was inconsistent.”⁵³ These gaps consisted of a focus on short term impacts rather than longer term impacts, ambiguity in the sequencing of requirements, and a lack of incentives and requirements for comprehensive environmental and social reporting.⁵⁴ The Independent Evaluation Group has also found that “over the last 10 years 70% of the Bank’s lending to the forest sector was through DPLs, which are not currently covered by OP 4.01 (the safeguard covering forests and land, in effect prior to 2017) and have no requirement for environmental assessment (EA).”⁵⁵ Although these recommendations were made prior to the World Bank’s environmental and social safeguards review completion in 2016, many of the recommendations still apply because they were not incorporated into the review process.

⁵² <http://www.bankinformationcenter.org/wp-content/uploads/2013/05/7-DPL-Primer.pdf>

⁵³ http://ieg.worldbankgroup.org/Data/reports/Managing_ES_Risks_in_DPF.Sept18.2015.pdf

⁵⁴ <http://www.bankinformationcenter.org/our-work/safeguards/development-policy-loans/>

⁵⁵

<https://consultations.worldbank.org/Data/hub/files/submissionfromthebankinformationcenteronthearchitectureofsafeguardpolicies.pdf>

Further information:

http://dar.org.pe/archivos/publicacion/154_analisis_Ley30230.pdf

http://www.dar.org.pe/archivos/loUltimo/lu_200/doc_tecnico_pl_3627.pdf

http://www.mediafire.com/file/8z562qqhiba64na/20160302155444_INDECI_AMAZONAS.pdf



**ALGUNAS SANCIONES CON RESOLUCIONES FIRMES APLICADAS POR OEFA
AL SECTOR MINERO E HIDROCARBURÍFERO**

EMPRESA	UNIDAD	INFRACCIÓN	AÑO	SANCIÓN / MEDIDA PREVENTIVA
CHINALCO	Toromocho	Descarga de efluentes en lagunas Huacacocha y Huacacocha.	2014	Implementó y amplió diques de contención e infraestructura para encausamiento del efluente.
VOLCÁN COMPAÑIA MINERA	Cerro de Pasco	Exceder límites máximos permisibles en tres y dos punto de control, respecto de dos parámetros.	2014	150 UIT y 100 UIT.
XTRATA TINTAYA	Tintaya	Presencia de 1.7% del valor normal de sedimentos de cobre predominante en la zona, en una área de 1000 metros de pastos naturales debido al bombeo de agua realizado desde un canal de la empresa.	2014	50 UIT, 6 UIT y 6 UIT respectivamente
		No comunicar el incidente al OEFA.		
		No presentar el informe de investigación del incidente		
		Verter agua de relaves sin tratamiento hacia la laguna Yanacocha.		
CASTROVIRREYNA COMPAÑIA MINERA	Unidad Minera San Genaro	Superar los LMP en efluente de agua de relavera.	2013	70 UIT
		Efluente cuyo punto de monitoreo no se encontraba establecido en el instrumento de gestión ambiental.		
CATALINA HUANCA SOCIEDAD MINERA	Concesión de Beneficio San Jerónimo	Descarga directa al río Mishka de aguas provenientes del sistema de drenaje subterráneo de uno de sus depósitos de relaves y no redirigirla hacia la planta de beneficio San Jerónimo, como lo indicaba su EIA.	2012	60 UIT
		Exceder el LMP en un punto de control.		
MINERA YANACOGCHA	Conga	Incumplimiento de cinco compromisos del EIA, entre ellos la instalación de una plataforma de exploración a menos de 50 metros de un bofedal y un curso de agua estacional.	2012	127.75 UIT
PLUSPETROL NORTE	Lote 192 (1 AB)	Pluspetrol Norte fue multado en primera instancia con más de 20 millones de soles por haber contaminado y desaparecido la laguna Shanshococho, ubicada en el Lote 1AB que opera en Loreto; por haber afectado con hidrocarburos líquidos a la laguna. Monto: 3410.15 UIT; por la pérdida ecológica irrecuperable del ecosistema que conformaba la laguna, al haber realizado actividades de drenaje y remoción de suelos sin contar con el Instrumento de Gestión Ambiental correspondiente. Monto: 2000 UIT; por incumplir con informar al OEFA sobre la regularización de los trabajos de intervención en la cocha. Monto: 4.39 UIT; por no comunicar al OEFA, dentro de las 24 horas, la afectación ambiental a la cocha. Monto: 2.36 UIT.	2013	3410.15 UIT, 2000 UIT, 4.39 UIT y 2.36 UIT

Fuente: OEFA. Elaboración: Propia.

There are no grievance mechanisms for Development Policy Loans, but the complaint has been raised with OPCS, executive directors, and World Bank management (see attached correspondence).

The issues were raised initially over email and then in a series of meetings and reports. These issues were also raised in a report titled: "World Bank Development Policy Finance and Climate Change: Is the Bank Providing the Right Incentives for Low-Carbon Development in Peru." World Bank staff were invited to input into this report prior to its release, but declined to do so. Following publication, Bank staff provided comments which were promptly addressed by the authors of the report. There has been no further communication between the authors and Bank staff to date.

It can also be noted that many of the findings raised by the IEG in 2015 are reiterated in the experience with this DPL project. The Bank response to the IEG report was very similar to

responses received in correspondence with Bank management and other departments over this specific project as well as issues raised with OP 8.60 overall. In all cases the Bank has responded in a similar manner, as exemplified in their response to the IEG report: "It looks at environmental and social "risks," that is, the potential for adverse effects, and does not examine the positive environmental and social contributions that many DPFs make."⁵⁶ However, this response downplays the importance of these potential risks, and is not rational - it is the job of the IEG to focus on the risks, while the World Bank is likely to focus more on the benefits. By not responding to the serious risks that many DPLs pose, the Bank is disregarding their own responsibility in problems caused by projects such as this.

The communities harmed by this project need to be compensated by the World Bank for the tangible and intangible harm that was caused to them. Prior to compensation, there should be a thorough assessment of the harm caused, including health and environmental harm, assessed by the relevant government agencies. Some tangible harm includes the loss of clean drinking water and food, which could be compensated by the delivery of clean water and culturally appropriate food supply. Several communities felt that they had to leave their homes because their homes were too close to the oil spill and therefore were no longer habitable. These families should be compensated for the cost of relocation. Past and likely future health expenses should also be included in compensation. Furthermore, many livelihoods and cultural resources were lost due to this oil spill, and the World Bank should compensate these.

While Article 19 of Law 30230 is being revoked, the complainants believe that all downstream legal changes caused by Law 30230 need to be assessed, especially pertaining to the internal structure of OEFA.

For future projects the requesters would like to see improved DPF transparency for all Development Policy Loans (DPLs). DPL programs should disclose: 1. All measures contained in DPL-supported laws, policies, and investment frameworks. 2. All current and planned investment projects related to the DPL operation. 3. The government's planned projects associated with the DPL operation: carbon intensive vs. low carbon projects; and projects involving both direct and indirect drivers of deforestation, for example. 4. Whether the DPL reforms will enhance or undermine the governance capacity of key ministries regarding social and environmental safeguards. Finally, 5. DPLs should include a stipulation for broader stakeholder consultation prior to granting given their unique role in affecting national and sub-national policy changes, especially if these are changes in policies that will impact land tenure rights of indigenous peoples as it is in this specific case⁵⁷ and must go through a Prior Consultation Process according to Peruvian

⁵⁶ https://ieg.worldbankgroup.org/Data/reports/Managing_ES_Risks_in_DPF.Sept18.2015.pdf

⁵⁷ Articles 45-51 of 30230 Law.

National Law⁵⁸. DPLs can drive development trends for many years, so it is critical that DPLs are carefully assessed for environmental and social risks.

We believe it is necessary to review Operational Policy (OP) 8.60 in order to ensure that the environmental and social safeguards and standards applied to Development Policy Loans are consistent with those applied to other World Bank projects, including the stipulation that public consultations are carried out prior to the granting of a loan.⁵⁹ These demands have previously been communicated to the Bank, as early as 2013 at the start of the review of the World Bank's environmental and social safeguards.⁶⁰ Furthermore, the IEG suggested that "BP 8.60 could be revised to specify procedures to ensure that the provisions of OP 8.60 with respect to environmental and social risks are adequately applied."⁶¹ For a full list of demands to changes in the World Bank's treatment of Development Policy Loans, please see page 8 of "World Bank Safeguards & Development Policy Lending: A Primer on Why DPLs Should be Part of the Safeguard Review."⁶²

<http://www.dar.org.pe/wp-content/uploads/2017/01/009361-Ejecutivo-WB-DPF-ENG02.pdf>

<https://consultations.worldbank.org/Data/hub/files/submissionfromthebankinformationcenteronthearchitectureofsafeguardpolicies.pdf>

<http://www.bankinformationcenter.org/wp-content/uploads/2013/05/7-DPL-Primer.pdf>

⁵⁸ Article 2 of Prior Consultation Law. "[...] *Is the right of indigenous peoples to be consulted about legal or administrative measures which affects directly their collective rights, physical existence, cultural identity, quality of life or development [...]*"

⁵⁹ <http://www.bankinformationcenter.org/wp-content/uploads/2017/03/Kim-letter-on-DPF-FINAL.pdf>

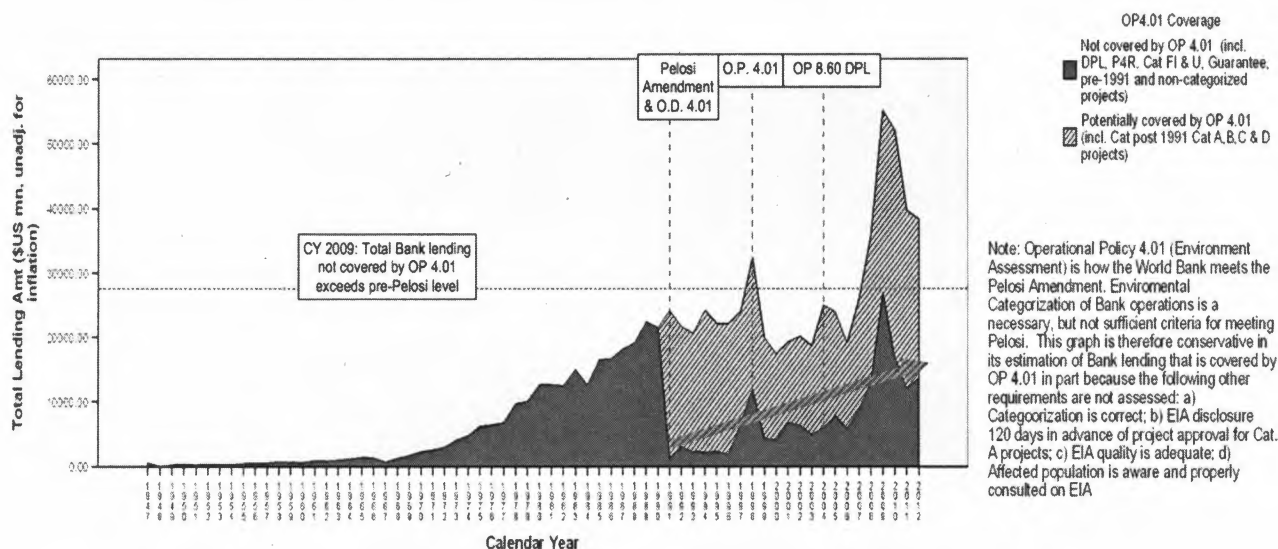
⁶⁰

<https://consultations.worldbank.org/Data/hub/files/submissionfromthebankinformationcenteronthearchitectureofsafeguardpolicies.pdf>

⁶¹ https://ieg.worldbankgroup.org/Data/reports/Managing_ES_Risks_in_DPF.Sept18.2015.pdf

⁶² <http://www.bankinformationcenter.org/wp-content/uploads/2013/05/7-DPL-Primer.pdf>

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Source: BIC Calculations from World Bank Project database

Source:

<https://consultations.worldbank.org/Data/hub/files/submissionfromthebankinformationcenternthearchitectureofsafeguardpolicies.pdf>

6. We request the Inspection Panel recommend to the World Bank's Executive Directors that an investigation of these matters be carried out.

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We do authorize you to disclose our identities

