March 8, 2017

Mr. Mark King
Ms. Anne-Katrin Arnold
CC: World Bank Safeguards Team and Relevant Stakeholders


Dear Safeguards team and other Stakeholders,

The International Corporate Accountability Roundtable (ICAR) harnesses the collective power of progressive organizations to push governments to create and enforce rules over corporations that promote human rights and reduce inequality.

ICAR welcomes the World Bank’s interest in identifying and minimizing the risk to communities posed by Borrowers using public and private security personnel by including related provisions within the new Environmental and Social Framework, ESS4. To provide needed clarity and specificity in implementing this standard, we recommend that any accompanying Guidance Note reference existing international consensus on applicable norms as detailed below. We additionally recommend that the guidance note provide clarity on the issue of “preventive use of force” to ensure that the standard does not produce confusion or an overreach in terms of when such force is justified. Finally, we would encourage the Bank, in its administration of loans triggering these provisions, to require additional assurances in high-risk situations, defined as those where loan related activities are being conducted in countries that are not participating in multistakeholder initiatives to manage public and private security risk.

At a minimum, the Guidance note accompanying this safeguard should parallel the IFC’s similar safeguard and reference the United Nation’s Code of Conduct for Law Enforcement Officials and the United Nations’ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. This is a minimum threshold for Good International Industry Practice, which the safeguard indicates should guide Borrowers in their retention of security personnel.

While ESS4 recognizes the need for due diligence in critical areas of hiring, training, equipping, supervising and monitoring security personnel it is unnecessarily vague about the prevailing standard of care associated with such activities. The accompanying Guidance Note should clearly reference the numerous international initiatives that guide state and private sector use of security personnel, consistent with applicable international law. We have identified below these additional standards that should be referenced. They reflect important consensus among participating governments, private sector and civil society.
It is also important that the guidance notes provide greater clarity regarding the use of preventive or defensive force by direct or contracted workers. ESS4 states that such use of force is permissible so long as in proportion to the nature and extent of the threat. Without greater clarification, this could lead to inappropriate use of force in the context of Bank-financed activities, in two respects –offensively and/or where the threat is limited to private property and does not involve a threat to life.

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) emphasize that use of firearms is only appropriate to prevent “a particularly serious crime involving grave threat to life” or to prevent an accused’s escape, and only when less extreme means are insufficient to achieve these objectives. The International Code of Conduct for Private Security Service Providers (ICoC) provisions on rules on the use of force, Section F, paras. 30-32, reference the UN Basic Principles as well as applicable law, including national and international law. The ICoC requires that Signatory Companies “not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious crime involving grave threat to life.”

The Voluntary Principles do not provide a basis for using force preventatively.

Both the ICoC and the Voluntary Principles recognize two additional principles guiding the use of force: strict necessity and proportionality to the threat.

The Guidance Notes should therefore clarify that Good International Industry Practice recognizes that public and private security:

- take all reasonable steps to avoid the use of force, e.g. including lesser forms of security;
- that firearms not be used against persons except in self-defense or defense of others against imminent threat of death or serious injury or to prevent the perpetration of a particularly serious crime, and
- in all cases, use of force should not exceed what is strictly necessary and to an extent proportional to the threat.

Additional Standards that should be referenced should include:

The Montreux Document, a joint project of the Swiss government and the International Committee of the Red Cross, clarifies for States their obligations under international human rights and humanitarian law in relation to private military and security companies operating in armed conflicts. The Document recognizes that States have a range of relationships – from contracting, to territory of operation, to place of incorporation. It also sets forth good practices that States should adopt with respect to private military and security companies operating in areas of armed conflict as well as outside armed conflict. The Document’s recommendations are based on State practice and include, among other examples, verifying the track record of companies, examining the procedures they take to vet their staff, considering whether security personnel are adequately trained to respect human rights including training specifically on use of force and firearms, and investigating whether company policies on human rights are fully integrated into internal company processes. The Montreux Document has broad support. Currently 54 States support the Montreux Document. Representatives of civil society and of industry were consulted in the development of the recommendations.

things, training, vetting and rules on the use of force and weapons training as well as management systems in support of these commitments. The Association, made up of governments, companies and civil society representatives, is an oversight mechanism to ensure that PSCs adopt the Code, implement its provisions in their field operations and provide effective grievance mechanisms within the meaning of the UN Guiding Principles on Business and Human Rights. Several member States, including the Swiss and Australian governments, the US Department of State and the UN Department of Safety and Security, require PSCs to become ICOCA members as a condition of eligibility to bid on potential contracts.

The Voluntary Principles on Security and Human Rights inform relationships between private extractive companies and public security, to promote respect for human rights and reduce the risk of abuse. The Voluntary Principles also recognize the need for extractive companies to retain private security where host governments are unable or unwilling to provide public security, and set forth additional principles to guide those arrangements to promote respect for human rights. The ten current government participants actively engage in ongoing dialogue and learning to address challenges associated with security and human rights in the context of extractive industry operations.

For those activities and operations arising in countries that are not part of one or more of these initiatives, ICAR respectfully recommends that the World Bank require additional assurances with respect to identifying and addressing risks posed by the use of public or private security. These may include, but not be limited to, a written plan from the Borrower laying out its process for assessing the risk posed to affected communities as a result of hiring PSCs and its stakeholder engagement associated with that assessment to mitigate such risk; additional due diligence steps to identify and select PSCs to be used; alignment of the policies of the selected PSC(s) with ICOCA – particularly on selection, vetting, training, RUF, weapons handling, incident reporting and grievance procedures; inclusion of counterpart language in contract and subcontracts with PSCs.

We appreciate your interest in this important issue and your ongoing concern for communities put at risk by the use of private security in connection with activities funded by the World Bank.

Sincerely,

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