



Global Tailings Review Consultation – LAPFF Response

20 December 2019

Dear Professor Oberle,

Many thanks for the opportunity to comment on the draft Global Tailings Review. The Local Authority Pension Fund Forum (LAPFF) is encouraged by the progress made by the investor tailings dam initiative so far and is pleased to be able to contribute to this consultation process by way of this initiative. The Forum also fully supports the initiative's submission, but would like to make a few additional comments.

The Forum welcomes this effort to improve the safety of tailings dams globally, and welcomes the vast majority of the content of this review. There are only a few points that might benefit from greater clarity and stronger language. These points are set out below:

LAPFF welcomes the Review's zero tolerance policy for human fatalities and call for zero harm to people and environment from the inception of project planning. It is the Forum's view that the lifecycle focus of the standard will help to prevent further dams from collapsing, which must be a primary goal of this initiative. Linking insurance to the availability and cost of insurance is another welcome addition to the Review to help create incentives for a zero tolerance approach to tailings dam safety.

To this end, the Forum welcomes the call for a key decision-making role for affected communities in the Review process, as well as the general consideration of affected stakeholder input throughout the standard. This information is critical not just to protect lives and environments, but to protect investment value. Therefore, the Forum supports the Review's consequences-based approach to risk and the inclusion of stakeholder mapping as necessary components of the proposed due diligence process.

In terms of areas that might need another look, it would be helpful if the Review could clarify that Topic Area Two is rooted in international human rights and environmental law, not voluntary standards. While it is important to cite the voluntary standards and to use them appropriately, it is equally important to highlight that they are rooted in hard law that States are required to enforce against companies operating within their jurisdictions. These laws are not negotiable, voluntary standards.

The international human rights and legal frameworks should be used in respect of Topic Area Five too, in relation to the re-establishment of ecosystems and long-term recovery of affected communities, and in Topic Area Six in relation to access to information. Along these lines, under the Role of the State, it would be helpful to make clear that States have a legal duty to protect, respect and fulfil human rights. This obligation includes, as referenced, appropriate implementation and enforcement mechanisms.

In the Forum's experience, risk thresholds for companies should be informed by human rights impact assessments. Impact should inform the concept of risk because the full scope of business risks cannot be determined without first identifying the human rights impacts taking place. This framing might already be captured by the consequence-based risk analysis proposed, but it seems worth clarifying. Furthermore, Principle Eleven needs to refer to human rights impact assessments, not just risk assessments for the reason just mentioned.

There is reference in the Appendices to the UN Guiding Principles on Business and Human Rights (UNGPs). This reference might be made more explicit in the text in aligning the Review's human rights due diligence process with the UNGPs, especially in reference to Principle 14 on grievance mechanisms and UNGP Pillar Three. It might also be worth making reference to the French loi de vigilance and the developing laws in Switzerland, Germany and Norway covering this area.

In relation to working with public sector bodies to implement solutions, I would like to share feedback from community members from Brazil with whom LAPFF has been speaking. These community representatives fear that public bodies in Brazil are corrupt and are captured by corporate interests. To this end, it might be worth making clear that investors expect state bodies to comply with their legal obligations, and that if this compliance does not occur, investors will take action to encourage this compliance.

Thank you again for the opportunity to respond to this consultation. I do hope these comments are useful. Please do not hesitate to contact my colleague, Lara Blecher at lara.blecher@pirc.co.uk, if you have questions on this consultation response.

Sincerely,



Cllr Doug McMurdo
Chair, LAPFF