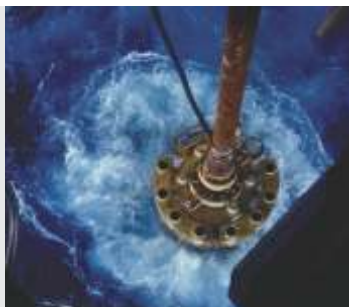




Socio-environmental licensing for hydrocarbon exploration activities in Latin America and the Caribbean

Proposals for an efficient regulatory framework



May 2012

Introduction and objectives of the report



“Socio-environmental impact assessment is a vital tool in the activities developed by the oil and gas industry to ensure the sustainable development of countries”. The society, the governments and the oil and gas industry strongly agree on this statement.

The awareness by the society and the local governments -as well as by industry- on the tangible benefits of the socio-environmental impact assessment of hydrocarbon projects has fostered the maturing of the process of Socio-Environmental Impact Assessment throughout the years.

The concept of Socio-Environmental Impact Assessment has been widely adopted at various levels of the legislative and regulatory procedures of governments. Legal specifications are generally part of a process of official approvals, and establish when the socio-environmental impact assessment should be carried out, who is responsible for its implementation, its scope, contents and timing, and the requirements and scope of the public consultation process.

The oil and gas industry has assimilated wide experience in the Socio-Environmental Impact Assessment processes, as well as in their streamlining into the socio-environmental management systems. Simultaneously, the requests for information by government agencies and social organizations, including academic groups, are increasing. This arises from greater awareness and/or more regulations at the international level on issues such as biodiversity and the rights of indigenous peoples, among other relevant issues that challenge the sustainable development of the countries of Latin America and the Caribbean.

In this context, the Regional Association of Oil, Gas and Biofuels Sector Companies in Latin America and the Caribbean (ARPEL) has decided to develop this Report with the purpose of sharing some key aspects regarding the socio-environmental licensing of projects with the stakeholders in Latin America and the Caribbean. This report describes:

- The challenges identified in the application of the regulatory frameworks related to the socio-environmental licensing of hydrocarbon exploration operations in the countries of the Region.
- Suggestions that facilitate the process of approval of socio-environmental licenses for hydrocarbon exploration within the framework of the sustainable development criteria of the countries of the Region.

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Regulatory and institutional aspects



The institutional and regulatory frameworks for socio-environmental licensing vary considerably in Latin American countries. A recurrent issue in all the countries is the high number of government entities involved in the process and the long time required to make decisions about the socio-environmental viability of a project.

Depending on the political and administrative organization of the country, there may be local, regional or national control agencies, and also sectoral control entities. In addition, exploration projects sometimes develop in areas or ecosystems that are considered strategic from the environmental viewpoint, in protected natural areas or archaeological heritage sites, where restrictions increase. On top of that, the number of control agencies and authorizations, permits or concessions also increases in such cases. All this represents a challenge and often a risk that industry is willing to manage in order to advance toward obtaining the legal authorization to start its projects.

Key regulatory and legal aspects of the socio-environmental assessment of projects

As the socio-environmental awareness of the society increases, environmental regulations in different countries also become stricter, and government agencies further increase the requirements for information to be considered for the socio-environmental evaluation of projects. This situation requires an extensive analysis by the governments to classify and prioritize the requested information as a way to avoid a high percentage of delayed assessment and implementation of the projects under study. On the other hand, it is also important that government authorities focus their efforts on following-up and monitoring the socio-environmental licenses already granted, supervising the control of the impact of the projects during the phase of execution. In turn, achieving a balance in these aspects will be beneficial for the government.

The concentration of the government control in a small number of duly coordinated agencies, both national and regional or local, reduces the time required to grant the socio-environmental license and the unnecessary delay to start the projects.

The oil and gas industry has assimilated wide experience in the Socio-Environmental Impact Assessment processes, as well as in their streamlining into the socio-environmental management systems



It is important to ensure that the control agency has an adequate number of duly trained professionals with proper criteria and experience to ensure that the evaluation of the Socio-Environmental Impact Study is performed within the prescribed term. This will provide certainty to the State, to the company presenting the study and to the society involved in the public consultation process.

A categorization of the projects and consequently of the environmental studies would allow to define a single control agency and thus avoid that the same study be submitted to several control agencies with different requirements.

In some Latin American countries, although the socio-environmental license is strongly related to the authorization, it does not grant *per-se* an authorization and/or concession to use and/or affect natural resources. Specific permits must be obtained with this purpose (for example, to use water, to cut forests, to make changes in the use of soils, etc.) from the authorities governing the specific activities, which may be sectoral authorities different to those coordinating, validating and approving the assessment, and then granting the socio-environmental license. Therefore, if not approved by the environmental institutions, those coordination instances facilitating the timely issuance of permits complementing the license make the process more efficient.

Apart from the regulatory permits required to use and/or affect natural resources, it is also important to consider the agreements with private parties, for example, to create special rights-of-way, as these processes are governed by other regulations. In these cases, it is advisable to develop mechanisms to achieve reasonable agreements in a timely manner, thus avoiding the submittal of cases to the courts.

The license period depends on the compliance with all and each of the environmental and social requirements and commitments made under the license. It is recommended that the license period be equivalent to the useful life of the project, including the phase of closure or abandonment. In those cases where the projects do not begin immediately after the permits are granted, it is advisable that the license provides reasonable time frames not longer than five years, as the basic socio-environmental characteristics generally do not undergo significant changes during such a lapse of time.

The concentration of the government control in a small number of duly coordinated agencies reduces the time required to grant the socio-environmental license

Content of the socio-environmental impact studies



The terms of reference established by the government authorities to request for socio-environmental permits, authorizations, concessions or licenses seek to locating and describing the project activities and characterizing the area from the social and environmental point of view regarding the potential impacts that might be made based on the characteristics of the environment. These requirements also provide the presentation of a Socio-Environmental Management Plan to prevent, minimize, compensate or restore the socio-environmental impacts identified. The functionality or usefulness of this information is as follows:

- The identification of the requesting party and its legal representative, the location of the project and the determination of compliance with the legal requirements for evaluation is essential information for the corresponding procedure.
- The detailed description of the project phases - construction, operation and abandonment - is essential information to know the magnitude of the project and guarantee from the early stages that the decommissioning and abandonment are considered in the planning phase.
- The environmental and social characterization of the area, as well as the interaction of the project with the environment, determining the demand for resources and the potential impacts on the ecosystems or areas of ecological or social interest is important information to determine the potential impact on the territory of indigenous peoples, the potential intervention on areas of special management and other relevant aspects to assess the environmental impact. In some countries, the request for the socio-environmental license does not depend on the submittal of this information, as detailed information about these issues is required during the assessment process.
- The potential socio-environmental impact scenarios are established and alternatives are proposed not only to solve any potential problem but to prevent from the beginning of the project the deterioration of the natural resources in the project impact area. This information is displayed in the company Socio-Environmental Management Plan to pursue with the project.
- Although public informative sessions are not required in all countries, the early participatory socialization of the information with the local community during project planning is fundamental to provide insights on the project and to facilitate the insertion within the social environment where the project is executed.

The Socio-Environmental Management Plan is aimed to prevent, minimize, compensate or restore the socio-environmental impacts identified



Some key aspects regarding the contents of the socio-environmental studies and the assessment process

Socio-environmental impact studies may widely differ in their scope and details, both regarding the definitions of each project and the characterization of the environmental components to be affected by the execution of the project, and regarding the methods and models used to predict the impact, considering that the assessment must be carried out in a balanced manner according to the type of project, its location and the existing environmental and social conditions. It is fundamental to have comprehensive terms of reference clearly defining the scope and details of these studies in order to ensure a minimum level of objectivity and quality of the socio-environmental assessment project.

Completing the socio-environmental assessment process in the terms established by the legal regulations in force is a challenge to government authorities. Compliance with these deadlines would ease the implementation of socio-environmentally viable projects that promote the progress of the country.

Thus, it is very important to agree on some terms of reference whose purpose is to ensure that the stakeholders share common concepts and scopes. This expedites the socio-environmental licensing process and avoids any discretionary actions, without detriment to the protection of the environment.

The requirements established by government authorities concerning technical, legal, economic, environmental and social information on the projects under the socio-environmental assessment process must be those necessary to determine if the project complies with the requirements to be evaluated, and to establish that the information supplied provides sufficient grounds for decision-making at the time of the corresponding assessment.

In this context, with the purpose of agreeing on the form and contents of the social and environmental assessment required, it is very useful to promote training events, seminars or other forums to agree on the technical skills required of the professionals who participate in the licensing processes.

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It is highly recommendable that the institutions have socio-environmental assessment manuals providing guidelines (to those in charge of the assessment and those being assessed), with the purpose of focusing on the relevant socio-environmental aspects of hydrocarbon exploration processes based on the nature and characteristics of the environment where those projects will be executed.

If the requirements established by the government authority to grant the corresponding socio-environmental permit, authorization, concession or license are those strictly essential for the project identification and to determine the compliance with the legal requirements of the request, it will be possible to focus the environmental assessment more objectively, as the agency in charge of the assessment will be required to know the details of the characterization, evaluation, and management and control measures proposed.

While it is indispensable that the government authorities know and understand the scope, magnitude and consequences of the implementation of the projects, so that they can have the required tools to make decisions about their socio-environmental viability, it is necessary to consider that certain information cannot be submitted at the moment of the request, but must be made known to the assessment authority during the assessment process, through consultation with other sources, upon knowing the environmental conditions in the field and the concepts and opinions of other institutions on these issues.

In order to avoid that socio-environmental assessment processes compete with unnecessary bureaucratic requirements that are not essential for decision-making, and rather disrupt and hinder the assessment process, it is necessary to establish a set of minimum requirements to be applied to all the evaluation processes, and other specific requirements that would be requested according to the nature and complexity of the specific application.

During the socio-environmental assessment process, it is necessary to prevent any potential bias or the creation of unfounded prejudices by the professionals in charge of the assessment by supplying sufficient technical, economic, legal, environmental and social information in a timely manner, so that the type of project, and therefore, the precautionary measures, restrictions and approaches to consider when making decisions during the assessment process are known in advance.

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Public participation and consultation



The purpose of the public consultation is to consider the decisions, criteria, interests, concerns, knowledge, remarks and technical and economically viable recommendations of the stakeholders, and to inform the stakeholders about the hydrocarbon exploration project. The laws of the different countries generally establish that the stakeholders (usually communities near the area of influence of the project) must be consulted through appropriate procedures, and in particular through representative institutions, and that the consultation must be carried out in good faith and in an appropriate manner in order to reach an agreement regarding the proposed prevention and mitigation measures. During the consultation process, all the stakeholders must be assured that the consultation will avoid greater conflicts during the execution and development of a project.

Key Aspects to consider in the regulation of the public participation and consultation

The ideas provided in this document may be used as a reference by those governments that are undergoing the process of development of a methodology for public participation and consultation, or that have a program for the continuous review of their methodologies.

Definition and scope of the public participation and consultation in the socio-environmental impact assessment process

Public consultation is a form of participation whose purpose is to consider, during the decision-making process, all the criteria, interests, opinions, knowledge, remarks and recommendations of the community regarding the contents and scope of the Socio-Environmental Impact Study chapters containing the detailed description of the project and its different phases, as well as the identification, evaluation and mitigation of impacts, and the socio-environmental management measures. Public consultation implies the previous identification of the stakeholders in the area of influence of the project, as well as the appropriate information mechanisms that might be used to start and maintain an effective dialogue.

Public consultation is a double-way process by which the State and/or the company inform the population of the potential socio-environmental impacts (both positive and negative) related to the project, the control and management plans for any negative impacts, and the maximization plans for any positive impacts.

It is necessary to establish a set of minimum requirements to be applied to all the evaluation processes, and other specific requirements that would be requested according to the nature and complexity of the specific application



On the other hand, the company gathers information on the concerns and initiatives of the communities located in the area of influence of the project (for example, cultural aspects, local use of the ecosystem, etc.). The procedure to follow later will be in agreement with the legal and regulatory requirements of each country.

When considering the regulation of the public participation and consultation, it is important to clearly define the following:

- What is the consultation scope and topic?
 - Pre-Bid Consultation (consultation before the concession of new exploration and production areas) – The scope refers to the viability of executing petroleum projects in territories with communities close to the area of influence of the project. The industry does not participate at this stage. The State consults with the communities in alignment with its sustainable development objectives.
 - Execution Consultation – The scope refers to the project description, the potential socio-environmental impacts and the plans regarding the socio-environmental control and management of the negative impacts and the maximization of the positive impacts. This process may be promoted by the company or by the State, but should never be carried out without the participation of the State.
- Which communities should participate and which communities should have a public consultation? It is important that the national regulatory framework establishes the responsibility of the government for this action, as this is very important for the useful life of the project. The consultation must consider the communities in the direct and indirect areas of influence of the project, i.e., all those areas that might be altered, modified or affected during the project construction, operation or dismantling. An accurate definition, along with clear rules by the government, and transparency and good faith in the supply of information by the operators, are fundamental ingredients for adequate and sustainable relationships with the local communities.
- How is participation promoted? Adequate regulations about the mechanisms to call for the participation of the citizens ensure that all the communities and relevant stakeholders have been effectively called to participate. The following issues are particularly important:

*Public
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- Calling for participation well in advance. It is important that the State, through the competent authority, establishes the mechanisms and the time frames - in agreement with the deadlines set for the development of the Socio-Environmental Impact Study - to call the communities to participate in the public consultation.
- Using mass media suitable for the community and its customs.
- Keeping documented records of the call process.
- As regards the information requested by stakeholders, it is important that the regulations state precisely the type and nature of the information to be requested and supplied.
- How will the results of the process of consultation be used? As long as the regulatory framework in force is complied with, it is universally accepted that, in order to implement the results of the consultation process, these results must be technically and economically viable. It is also important that the regulations state precisely the type and nature of the comments made on the Socio-Environmental Impact Studies admissible by the authorities in charge of the assessment, so that they are considered part of the licensing process.

Adequate regulations about the mechanisms to call for the participation of the citizens ensure that all the communities and relevant stakeholders have been effectively summoned to participate

Some notes on compensations

It is very important to include in the regulations those issues regarding compensations for temporary short and medium term environmental effects that cannot be remedied.

- The compensation must be clearly differentiated from the payments for the use of the land and the "economic benefits" that the project will generate.
- It is important to consider the valuation of impacts as the fundamental basis to establish the compensation, and not to leave the negotiation exclusively in the hands of the companies and the communities.
- Adopting a standard methodology to calculate the valuation of impacts.
- It is necessary to state the mechanism for identification of the communities to be compensated, the quantification of the compensation, the methodology for payment and the documents evidencing payment.

Frequently – but not necessarily always - the logical concern of the communities is the economic impact of the project in the short, medium and long term. It is extremely important that the regulations establish the mechanisms through which all or part of the proceeds from the project that the State receives (taxes, levies, royalties, etc.) are adequately distributed and effectively used for the benefits of the directly or indirectly affected communities. It is also important that the regulations establish the mechanisms through which the communities will be informed of the amount of the benefits and their distribution to (or use by) each community.



Indigenous Communities

The regulations of the different countries determine that, on some occasions, the governments address the consultation differently when indigenous communities are involved instead of local rural communities. In the case of indigenous communities, the ILO Convention 169 says: *“In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands.”*

It is thus important that regulations make clear aspects related to the following:

- Right to veto.
- Mechanisms for the State to make the decision of continuing or not with the call for bids in those cases where, there being no right to veto, some or all the communities are opposed.
- In case of opposition to the oil activities by all the communities or some of them, where the State decides to continue with the call for bids, the interested companies must be informed about such situation, so that they may evaluate their interest in the area.

Training

It is important not to minimize the importance of proper training of the communities regarding technical and legal aspects, and the legal frameworks regarding the operations of the hydrocarbon industry, and of the impacts of the operations as well as of the industry regarding anthropological, cultural and communicational aspects.

As proper training of the parties will provide more guarantees regarding the success of the consultation and participation process, it is vital that the State plans all the corresponding measures regarding this issue.

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Resolution of conflicts

At the beginning of a hydrocarbon project there may be conflicts between the company and the communities. These conflicts may occur, either because the company or the communities do not accept the rights of the other stakeholder, or when one of the stakeholders does not comply with the agreements signed. The State is responsible for providing conflict resolution mechanisms. The following key aspects may be considered in this regard:

- It is important that the State provide the means and establish the competent authority in charge of conflicts' resolution.
- If there are any conflicts, their solution through legal or judicial means might require a long time and a great amount of money. Therefore, it would be advisable to consider alternative conflict resolution methods, such as conciliation, mediation, negotiation and/or arbitration through public or private institutions with specific jurisdiction, who have become knowledgeable about the issue through adequate training. The alternative conflict resolution methods should be used to solve the conflict with no need to stop the operations, as this delay in operations is costly for all the stakeholders (loss of profits and royalties, etc.).
- It is essential for alternative conflict resolution methods to be useful that the three parties understand how they are implemented and the issues related to the project, both regarding operations and community issues.
- As the conflicts considered here refer to socio-environmental regulations, the State should be particularly careful to consider the compliance with previous agreements and contracts, which sometimes may be subject to other regulations or laws.
- It is important that the regulation includes the obligation of the State to guarantee that conflict resolution through the above-mentioned alternative methods become law for the stakeholders in conflict, and also to guarantee their enforcement.

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Approval period



The approval periods for socio-environmental impact studies and the license to start the operations must consider the regulatory reality of the country and ensure that the approval process meets the sustainable development objectives of the country. Operators take the approval periods into consideration within their overall risk analysis of the investment to be made. The economic gear related to seismic and drilling operations, and if commercially viable, also production operations, will begin to roll and bring benefits to both parties. The local, regional and national economy will be benefited by the increase in the activities regarding the services related to the operations (as well as taxes and royalties, in case of production operations), while the company may optimize the use of the resources assigned to the project. This explains the importance of this issue in the regulatory framework.

Time required for effective participation and public consultation

Time is a critical factor that is part of the risk of any project. In general, the governments tend to establish strict deadlines in oil contracts to complete the exploration activities and the development and abandonment plans. This is added to the fact that in oil and gas industry projects, the exploration stage requires flexible and dynamic plans that enable to determine in a short term the potential of a block for an optimal development plan. Even more, if the project requires external financing, it does not start until it is certain that the project is socio-environmentally viable, both regarding the regulatory terms of the country and the standards required by the financial organization. It is vital to consider these aspects when regulating the time frames for participation and consultation in order to be in agreement with the strategy of the countries to stipulate clear investment opportunities.

It is desirable that the regulatory framework establishes the maximum time frames for:

- The mandatory processes of consultation and/or information.
- Receiving requests for information.
- Receiving comments regarding the socio-environmental impact studies
- Replying to the requests for information.

The approval process of the socio-environmental impact studies must address the sustainable development objectives established by the country



It is also important to establish in the regulatory framework the effects of exceeding the previously mentioned time limits.

The time frames for the effective participation and consultation must be defined in order to enable the timely execution of the project, and it is important that the term of notice (of the socio-environmental impact) and the term of response (by the government and the communities) be balanced with the time limits of the project, the situation of the communities and the commitments of the government. These time limits usually depend on the project stage and type, the nature of the communities and other aspects for each particular case, and on the regulations applicable in each country. The duration of the procedure should be consistent with the periods established in the licenses or in the project, as well as with the needs of development of the State and the society.

In view of the above, the conclusion is that, while it is difficult to determine fixed time limits to ensure effective participation and public consultation, due to the great number of variables to consider, it is vital that the regulations clearly state those time limits in order to ensure the transparency of the process for all the stakeholders.

The State must consider that it is difficult to implement projects without previous agreements with the communities living in the area of influence of those projects, and that if the process is delayed beyond the time compatible with the exploration and development plans of the industry, the risk of the company will increase and become a critical factor to make decisions about the investments to be made in the country.

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These companies place their trust in ARPEL:

Member Companies



Member Institutions



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