

COMPILED RECOMMENDATIONS FROM INDIGENOUS PEOPLES IN THE VARIOUS COMMUNICATIONS TO THE WORLD BANK¹

- I. Recommendations to the ESS7
- II. Overall recommendations to the draft WB Environmental and Social Framework
- III. Recommendations to the process and conduct of the Review/Update of the WB's Safeguard Policies
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I. RECOMMENDATIONS TO THE ESS7

Recommendations from IPs	Content of the draft ESS7	Follow up recommendations
ESS7 should be the main reference of the Bank and the Borrower for projects affecting indigenous peoples. All other ESS should give reference to ESS7 when it is identified that indigenous peoples will be affected. Further, there is a need to ensure that the provisions in ESS7 is aligned with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) particularly on the recognition of the rights of indigenous peoples to their land, territories and resources, development, Free Prior and Informed Consent (FPIC) and cultural heritage among others.	Para 9: When the Borrower is concerned that the process of identifying groups for purposes of applying this ESS would create a serious risk of exacerbating ethnic tension or civil strife, or where the identification of culturally distinct groups as envisioned in this ESS is inconsistent with the provisions of the national constitution, the Borrower may request the Bank for an alternative approach, in which risks and impacts of the project on Indigenous Peoples will be addressed through the application of the ESSs other than ESS7.	Remove Section 9 where governments can simply “opt out” of applying the policy requirements intended to protect indigenous peoples. Remove associated paragraph 33 in the World Bank Social and Environmental Policy.
Requirement for the proper conduct of Free Prior and Informed Consent (FPIC) instead of Free Prior and Informed Consultation. It should be clear that the right to FPIC gives the affected community the right to give or withhold their consent to any programs and projects to be implemented in their territories.	B. Circumstances Requiring FPIC ---Para 19-22	See additional recommendations in the attached comments to the WB safeguard policies
Measures to respect and protect the collective rights of indigenous peoples to their lands, territories and resources, cultural heritage and distinct identities	Reflected in Paras 23-27	Paragraph 24, section (c) includes the phrase ‘or, as a last resort, undertaking land acquisition’ when the point of FPIC is to remove the possibility of land acquisition as defined by the Bank. Remove this phrase from section (c) and from section (f) (i), also in paragraph 24 where it

¹ See <https://www.dropbox.com/sh/zdtpf5u9ae0un55/AAampxEIWsHq1sOIAKZpjTeka?dl=0>

		reads 'or, where land acquisition is necessary, ...'
Recognition of pastoralism as a distinct lifestyle and pastoralists as indigenous peoples of Africa	Reflected in Paragraph 7.	
Measures to prohibit forced relocation of indigenous peoples from their territories and resources (including involuntary restrictions on livelihood activities and access to natural resources)	Reflected in para 25 but with a vaguely worded footnote (14) which could be read by Borrowers to exempt FPIC for relocation where individual titles to land have been awarded.	[Add to the end of paragraph 19] The requirement to obtain FPIC applies irrespective of whether or not legal title is held, and the nature of that title. AND edit fn 14 to read: 14 Typically, Indigenous Peoples claim rights and access to, and use of land and resources through traditional or customary systems, many of which entail communal property rights. These traditional claims to land and resources may not be recognized under national laws. Where Indigenous Peoples individually hold legal title, or where the relevant national law recognizes customary rights for individuals, the requirements of ESS5 will apply, in addition to the requirements under paragraph 25 of this ESS.
Measures to protect indigenous peoples in voluntary isolation. Under no circumstances should projects be undertaken in their territories, nor projects with an assessed risk of impacting on them be funded.	Para 17: There may be situations involving the exceptional vulnerability of remote groups with limited external contact, also known as peoples "in voluntary isolation" or "in initial contact". Projects that may have potential impacts on these peoples require appropriate measures to recognize, respect and protect their land and territories and environment, health and culture, as well as measures to avoid all undesired contact with them as a consequence of the project.	17: There may be situations involving the exceptional vulnerability of remote groups with limited external contact, also known as peoples "in voluntary isolation" or "in initial contact". Projects that may have potential impacts on these peoples require appropriate measures to recognize, respect and protect their rights to their land and territories and environment, health and culture, as well as measures to strictly avoid all undesired contact with them as a consequence of the project.
Mechanisms for the full and effective engagements and participation of indigenous peoples at all levels (local, national, regional and international) and in all programs, activities and projects affecting them to make the development process more inclusive of indigenous peoples	Reflected in para 18	
To account for the gender dimension in terms of risks and impacts as well as the vulnerabilities and needs of women	Insufficient as currently included (para 18, para 24(c))	Include gender dimensions in the discussion of FPIC (para 20)
Include measures to support, promote and respect traditional knowledge at all stages in projects, including assurances that no traditional knowledge	Reflected in para 26-27, Cultural Heritage	Paragraph 26. remove the qualifier 'significant' from impacts which will be avoided where possible.

will be appropriated, used or developed without explicit, free, prior and informed consent		
To conduct independent evaluation of the implementation of IP Policy to include case studies in order to draw the lessons and gaps that shall be accounted for in the review and update of the IP Policy		
The IP Policy shall remain as stand-alone and safeguard policies shall cover not only investment funding but shall also include Development Policy Lending (DPL), P4R, Country Systems as these also affect social, human rights and environment issues relevant for indigenous peoples.	This Policy applies to all projects supported by the Bank through the Investment Project Financing. These are the projects to which OP/BP 10.00, Investment Project Financing, applies. The World Bank Environmental and Social Policy does not apply to operations supported by Development Policy lending or those supported by Program-for-Results Financing.	
<p>The effective and immediate solution of the gaps and shortcomings of the implementation of OP4.0 based on the IP Policy Learning review. These gaps and shortcomings include the following problems:</p> <ul style="list-style-type: none"> i. Systemic failure to prepare indigenous peoples-appropriate planning documents; ii. Wide-spread failure to appropriately disclose planning documents to impacted indigenous peoples; iii. Lack of documentation related to the required broad community support (and therefore inability to confirm its existence); iv. Consistent inability to address land and resource rights appropriately in projects where such rights are relevant; v. Widespread failure to establish local or national level complaints mechanisms; and vi. Failure to establish the required benefit-sharing agreements for projects where lands or cultural resources are commercially developed. 		There remains significant work to be done to clarify how the implementation of the proposed ESS7 will take place, and how the increased emphasis on monitoring and progressive compliance will be managed by the Bank.

ADDITIONAL RECOMMENDATIONS TO THE ESS7²

<p>(Paragraph 8) The determination of whether indigenous peoples are present in, or have collective attachment to the project area should not rely solely with Bank. It should involve indigenous experts and indigenous representatives from the proposed project area.</p>		<p>This requires amendment to ESS7 Paragraph 8 and to the WSP Paragraph 33 as follows: 33. In order to determine the applicability of ESS7, the Bank will undertake a screening to determine whether Indigenous Peoples are present in, or have collective attachment to, the project area. In undertaking this screening the Bank consults with the potentially affected indigenous peoples, with indigenous peoples experts where required, and with the Borrower. ESS 7 paragraph 8 Following a determination by the World Bank that indigenous peoples are present in, or have collective attachment to the project area, undertaken in consultation with the potentially affected indigenous peoples and with the Borrower, the Borrower may be ...</p>
<p>(Paragraph 11) The participation of the affected Indigenous Peoples including indigenous experts should start in the determination of impacts (environmental and social impact assessments) and not just during the project design and implementation.</p>		<p>Paragraph 11. The Borrower will assess the nature and degree of the expected direct and indirect economic, social, cultural (including cultural heritage), and environmental impacts on indigenous peoples who are present in, or have collective attachment to, the project area. Impact assessment will be carried out in close consultation with the affected indigenous peoples. The Borrower will prepare a consultation strategy, in partnership with the affected indigenous peoples, and identify the means by which the affected indigenous peoples will effectively participate in all stages of the project cycle.</p>
<p>(Paragraph 13) For the action plan referred to here, and any other form of Indigenous Peoples' Plan or related planning document, the plan must be developed in close partnership with the affected indigenous peoples. The plan must reflect the self-determined development priorities of indigenous peoples, contain specific budget allocated against planned activities or objectives, have an associated</p>		

² See attached comments to the ESS7

<p>clear time line agreed in advance, include associated monitoring indicators for assessment of results gained, and be subject to regular participatory assessment with the affected peoples. A draft framework plan should be developed and provided as an annex to ESS7 to provide consistency and clarity for borrowers and certainty for affected peoples.</p>		
<p>The formulation of the Indigenous Peoples Plan or the broader integrated community development shall involve the meaningful participation of the affected Indigenous Peoples and indigenous experts and the plan shall have specific indicators and measures for Indigenous Peoples to be able have equitable access to project benefits.</p> <p>This must include, at a minimum, the following characteristics: written agreement on project benefits; the establishment of a project-level grievance mechanism for non-compliance; and clear sanctions and enforcement mechanisms to resolve conflicts at the project level and ensure compliance with agreed plans. The terms of the project benefits included in the plan must be established as part of the process of obtaining and maintaining Free, Prior and Informed Consent.</p>	<p>Paragraph 23: .Where projects are likely to have significant impacts on land that is traditionally owned or under customary use or occupation by Indigenous Peoples, the Borrower will prepare a plan for legal recognition of their perpetual or long –term renewable custodial or use rights</p>	<p>The land rights of indigenous peoples have been recognized again and again under international and regional human rights law as fundamental to the very survival of the peoples themselves. Given the importance of this set of rights, it is critical that requirements intended to ensure that such rights are protected are clearly formulated. As such, the required “plan for recognition of their perpetual or long –term renewable custodial or use rights” must be developed in partnership with the indigenous peoples themselves, time-bound, designed against clear indicators and with sufficient budget allowance.</p>
<p>(Meaningful consultation tailored to indigenous peoples) The consultation process shall involve not just indigenous peoples’ representative bodies and organizations but also other community members. The process shall likewise ensure transparency and the meaningful participation of women and youth and where needed to conduct separate consultations with them to ensure that their views are taken into account.</p>		
<p>Customary decision making processes of indigenous peoples respects and recognizes collective decision of the community resulting to an independent decision free from coercion or manipulation. Conflicting views shall be resolved by community members and the Bank and Borrower shall adhere</p>	<p>Meaningful Consultation Tailored to Indigenous Peoples, Footnote 9: Internal decision making processes are generally but not always collective in nature. There may be internal dissent, and decisions and may be challenged by some in the</p>	

<p>to the final outcome of the decision making process taking into account the legitimate views and issues raised by community members as bases for their decision.</p>	<p>community.</p>	
<p>Paragraph 20 be rephrased as follows: Customary decision making processes of indigenous peoples respects and recognizes collective decision of the community resulting to an independent decision free from coercion or manipulation. Conflicting views shall be resolved by community members and the Bank and Borrower shall adhere to the final outcome of the decision making process taking into account the legitimate views and issues raised by community members as bases for their decision.</p>	<p>Paragraph 20 (d): FPIC does not require unanimity and may be achieved even when individuals or groups within or among affected Indigenous Peoples explicitly disagree.</p>	
<p>In this process, the Borrower shall not only acquire the FPIC of the affected community but the process should be conducted in partnership with the indigenous peoples themselves through a clear mechanism.</p>	<p>Paragraph 24: If the borrower proposes to locate a project, or commercially develop natural resources, on land traditionally owned by or under customary use of occupation of, Indigenous Peoples, and adverse impacts can be expected, the Borrower will take the following steps and obtain their FPIC:</p> <ul style="list-style-type: none"> (a) Document efforts to avoid and otherwise minimize the area of land proposed for the project; (b) Document efforts to avoid and otherwise minimize impacts on natural resources subject to traditional ownership or customary use or occupation; (c) Identify and review all property interests, tenurial arrangements and traditional resource usage prior to purchasing, leasing or, as a last resort, undertaking land acquisition; (d) Assess and document Indigenous Peoples' resource use without prejudicing any Indigenous Peoples' land claim. The assessment of land and natural resource use will be gender inclusive and specifically consider women's role in the management and use of these resources; 	

	<p>(e) Ensure that affected Indigenous Peoples are informed of: (i) their land rights under the national law, including any national law recognizing customary use rights; (ii) the scope and nature of the project; and (iii) the potential impacts of the project; and</p> <p>(f) Where a project promotes commercial development of their land or resources, afford due process, and offer compensation together with culturally appropriate sustainable development opportunities to Indigenous Peoples, at least equivalent to that which any landowner with full legal title to the land would be entitled, including.....</p>	
<p>FPIC should be applied in all processes/aspects of any project affecting Indigenous Peoples or affecting any member of indigenous peoples' communities. Where individual titles exist within indigenous territories, such legal ownership must of course be recognized, but the requirements of paragraph 25 of ESS7 must be retained. Traditional and customary collective tenure is often unrecognized, leading to individual titles being secured in the absence of any available collective tenure. However this does not mean collective tenure is absent, and certainly does not mean that a project affecting an entire community need only gain approval from individual land holders. FPIC must be obtained from the whole project affected community irrespective of tenure arrangements.</p>	<p>Relocation of Indigenous Peoples from Lands and Natural Resources Subject to Traditional Ownership of Under Customary Use or Occupation, Footnote 14: Where Indigenous peoples individually hold legal title, or where the relevant national law recognizes customary rights for individuals, the requirements of ESS5 will apply, rather than the requirements under paragraph 25 of this ESS.</p>	
<p>In this, the Borrower should not just ensure the fair and equitable benefit sharing but also the intellectual property rights of Indigenous Peoples (ie patenting should be determined by Indigenous Peoples).</p>	<p>Cultural Heritage, Paragraph 27:The Borrower will also ensure fair and equitable sharing of benefits from commercialization of such knowledge....</p>	
<p>(Grievance mechanism) Include – Clear sanctions shall be identified for any violations committed. I.e. Grave violations committed against indigenous peoples shall result to the discontinuity of the project.</p>		

II. Overall recommendations to the draft Environmental and Social Framework

RECOMMENDATIONS	CONTENT OF THE DRAFT ENVIRONMENTAL AND SOCIAL FRAMEWORK
<p>The main framework of the WB Safeguard Policies (not only IP Policy) shall be consistent with and adhere to international human rights instruments especially with the UN Declaration on the Rights of Indigenous peoples (UNDRIP) and ILO Convention 169</p>	<p>The draft ESF does not refer to or adequately reflect the standards contained in international human rights instruments, including the UNDRIP and ILO169. We continue to recommend that these international standards are referenced in the text to provide borrowers with clarity on the existing obligations incumbent on State Parties to those Conventions and instruments.</p>
<p>The Bank's own responsibilities for due diligence reflect the responsibility of the Bank to establish a direct consultative relationship with the affected indigenous peoples, from screening. Paragraph 33 (WSP): 33. In order to determine the applicability of ESS7, the Bank will undertake a screening to determine whether Indigenous Peoples are present in, or have collective attachment to, the project area. In undertaking this screening the Bank consults with the potentially affected indigenous peoples, with indigenous peoples experts where required, and with the Borrower. [...]</p>	<p>Currently in the WSP there is no reflection of the requirement for the Bank to undertake screening for indigenous peoples in consultation with the peoples themselves. This is in contrast to the requirements of OP 4.10 where consultation is required. Paragraph 33 (WSP): 33. In order to determine the applicability of ESS7, the Bank will undertake a screening to determine whether Indigenous Peoples are present in, or have collective attachment to, the project area. Where the Borrower has raised valid concerns regarding the application of ESS7 ... Paragraph 8 OP 4.10 8. Early in project preparation, the Bank undertakes a screening to determine whether Indigenous Peoples (see paragraph 4) are present in, or have collective attachment to, the project area. In conducting this screening, the Bank seeks the technical judgment of qualified social scientists with expertise on the social and cultural groups in the project area. <u>The Bank also consults the Indigenous Peoples concerned and the borrower.</u> The Bank may follow the borrower's framework for identification of Indigenous Peoples during project screening, when that framework is consistent with this policy.</p>
<p>The use of a country's own laws and policies in place of Bank standards must be allowed only after a higher threshold is met. This includes assessment of the actual practice of that country in meeting the standards incorporated into its national laws and policies, and must include open consultation with the affected peoples or communities for whom the Bank standards would be set aside.</p>	<p>Use of Borrower's ES Framework, paragraph 18. When a project is proposed for Bank support, the Borrower will provide information to the Bank in connection with the Bank's review of the Borrower's existing environmental and social framework relevant for the proposed project (the ES Framework). (see also paragraphs 19 and 20)</p>
<p>All projects funded by World Bank financing and impacting on indigenous peoples must be subject to the same standards. To do otherwise is to establish an incentive for more complex projects to be bundled under sub-project classification where a requirement for Free, Prior and Informed Consent (for example) was not applied. While the very highest risk projects are not in danger of this, sub-projects with 'substantial risk' to the lives and livelihoods of indigenous peoples could be financed by the Bank without reference to the requirements</p>	<p>Sub-projects under a financial intermediary. Paragraph 29 ... If the project involves the preparation of subprojects, the Borrower will carry out appropriate environmental and social assessment of each subproject in accordance with national law. Where subprojects are classified as High Risk, the environmental and social assessment will be consistent with ESSs 1 to 8 and ESS10. Borrowers will ensure that subprojects are structured to meet national regulatory requirements relating to environmental and social risks and impacts, and where subprojects are classified as High Risk, they are also structured to meet ESSs 1 to 8 and ESS10.</p>

of ESS7.	
(Conduct of environment and social risk assessments) Ensure the participation of indigenous experts and indigenous peoples in environment and social risk assessments and any impact to indigenous peoples should trigger the implementation of ESS7. See recommendation above regarding Paragraph 33 of the WSP.	Consultation between the Borrower and the affected indigenous peoples begins at project design, NOT at impact assessment or screening. Paragraph 11. The Borrower will assess the nature and degree of the expected direct and indirect economic, social, cultural (including cultural heritage), and the environmental impacts on Indigenous Peoples who are present in, or have collective attachment to, the project area. The Borrower will prepare a consultation strategy and identify the means by which affected Indigenous Peoples will participate in project design and implementation. Subsequently, effective project design and documentation will be developed as set out below.

III. Recommendations to the process and conduct of the Review/Update of the WB's Safeguard Policies

RECOMMENDATION	STATUS OF IMPLEMENTATION
Translation and dissemination of relevant documents relating to the review/update process in languages understood by indigenous peoples	The draft Environmental and Social Framework are available in Bahasa Indonesia and Vietnamese
All input provided by indigenous peoples and others be put in a matrix with attribution and with reference to items included in the draft IP Policy and to be made public the earliest possible.	
Conduct of specific consultations with indigenous peoples at the national, regional and global levels during the public consultations of the first draft and the second draft of the IP Policy in particular, and safeguard policies in general.	<ul style="list-style-type: none"> • Regional consultation with indigenous peoples in Africa, Johannesburg, November 21 2014 • Sub-regional consultation with indigenous peoples in Africa, Yaounde, Africa, March 3 2015 • Sub-regional consultation with indigenous peoples in Africa, Nairobi, Kenya, February 27 2015 • Southeast Asia Indigenous Peoples Regional Dialogue – February 6, 2015 • Consultation with Indigenous Peoples in Nepal – November 28, 2014 • Consultation with indigenous peoples in Bangladesh – November 25, 2014 • Consultation with ethnic minorities in Vietnam – October 28, 2014 • Southeast Asia: Subregional Dialogue with Indigenous Peoples – November 6-7, 2013 • Informal Exchange on the World Bank's Review/Update on the IP Policy – December 8, 2012
Ensure the effective participation of indigenous peoples in the conduct of in-country consultations with key actors and stakeholders	
Ensure the effective participation of indigenous experts in UN bodies and	

mechanisms in the review/update process	
Coordinate with the IP working group on the review process to be established by indigenous peoples to facilitate information dissemination and exchange, submissions and inputs, conduct of consultations at the regional and global levels	
Working groups on FPIC and land tenure be established to provide inputs and guidance in the drafting the IP Policy update	<ul style="list-style-type: none"> • Formation of the Expert Working Group on FPIC – conducted one meeting in 2013 • Formation of Expert Group on Land Tenure and Natural Resources • Formation of Expert Working Group on Cultural Heritage – scheduled to meet on Feb. 17, 2015
Provide for a mechanism for different stakeholders to exchange views on their recommendations to content of the safeguard policies especially on the IP Policy	
To hold a dialogue between indigenous leaders and the Executive Board of the WB relating to the IP Policy recommendations of indigenous peoples in particular and to other safeguards in general preferably after the first draft of the safeguard policies	

IV. General recommendations to the World Bank

RECOMMENDATION	STATUS OF IMPLEMENTATION
Establishment of an independent World Bank Indigenous Peoples Advisory Council (similar to the World Bank External Advisory Group on Forests). It should be established by respecting the self-selection process of indigenous peoples during its composition and be based on Terms of References that have been developed with indigenous peoples' substantive involvement and input.	
Establishment of consultative mechanisms at the national and regional levels to better provide indigenous peoples with the ability to provide effective inputs to the Bank's operational units and influence at all levels of decision-making within the Bank, as well as contributing to the work of the Indigenous Peoples Advisory Council.	
Recruitment of a senior-level staff as a dedicated Focal Point for Indigenous Issues with the mandate to coordinate with key UN mechanisms, dealing with the rights of indigenous peoples (UN Permanent Forum on Indigenous Issues, UN Expert Mechanism on the Rights of Indigenous Peoples, UN Special Rapporteur on the Rights of Indigenous Peoples) and providing secretariat support to the Indigenous Peoples' Advisory Council. The current Indigenous Peoples Advisor was	

asked by the Senior Management to take an early retirement and he has not been replaced. He should be replaced by a senior, director-level position.	
Internal capacity-building of the staff of the Bank to ensure that staff is better informed and better able to implement the requirements of both Bank policy and international standards on the rights of indigenous peoples	
Dedicated financial support for the capacity building for indigenous peoples	
(Inspection Panel) Ensure that requirements are clear and mandatory, that all projects shall meet the requirements of the ESS. Instead of standard being presented as flexible expectations to be met over time, they are required to be fully met throughout the life of the project.	