

High-Level Dialogue on the Proposed ESS 7 on Indigenous Peoples

Dialogue Outcome Summary

On February 11 and 12, 2016, the World Bank convened a High-Level Dialogue on the proposed Environmental and Social Standard 7 on Indigenous Peoples (ESS 7), in Addis Ababa, Ethiopia. Participants included the World Bank's Executive Director for EDS14 and two of his advisors; government officials from Ethiopia, Kenya, Tanzania, Sudan, and South Sudan; and Indigenous Peoples Experts including the current and former United Nations Special Rapporteur on the Rights of Indigenous Peoples, a representative from the United Nations Office of the High Commissioner for Human Rights, a member of the Expert Mechanism on the Rights of Indigenous Peoples, as well as a representative of the African Commission's Working Group on Indigenous Populations/Communities in Africa.

The Dialogue had the objective of facilitating a discussion on key outstanding issues regarding the proposed ESS 7, and took place in the context of the ongoing review and update process of the World Bank's Safeguards Policies. Among the issues discussed were alternative terminologies used in different regions to describe Indigenous Peoples, and the implementation of Free, Prior and Informed Consent (FPIC). The Dialogue was held under Chatham House rules.

World Bank Management and staff attended as a resource for the participants at the meeting, and the views expressed at the meeting as detailed in this summary do not represent the views of the World Bank.

Among the government participants and experts that attended the meeting, broad acceptance was expressed in the following areas:

- Broad acceptance that, while the term *Indigenous Peoples* is a widely accepted concept in international law, it presents implementation challenges in Africa.
- Broad acceptance that the title of ESS 7 does not accurately reflect the realities in Africa, and therefore that additional terminology should be included in the title of the Standard.
- Broad acceptance that Free, Prior, and Informed Consent (FPIC) should not be interpreted as a veto, and may be achieved using nationally accepted processes for engagement.
- Broad acceptance that the outcome of the FPIC process needed to be operationally defined consistent with the current approach under OP 4.10 where the outcome is broad community support.
- Broad acceptance that FPIC refers to (i) a collective expression by the affected Indigenous Peoples communities, through [individuals and/or] their recognized representatives, of broad community support for the project activities, and (ii) that such broad community support may exist even if some individuals or groups object to project activities.

- Broad acceptance that the following proposals should be considered in the next draft of the proposed Environmental and Social Framework:

Possible draft alternative title: Indigenous Peoples and Historically Underserved Traditional Local Communities

Draft, proposed paragraph 18 (new text in **bold**):

[...] For the purposes of this ESS, FPIC is established as follows:

- a) The scope of FPIC applies to project design, implementation arrangements and expected outcomes related to risks and impacts on the affected Indigenous Peoples;*
- b) FPIC builds on and expands the process of meaningful consultation described in paragraph 17 above and ESS10, and will be established through good faith negotiation between the Borrower and affected Indigenous Peoples;*
- c) The Borrower will document: (i) the mutually accepted process between the Borrower and Indigenous Peoples, **which could include nationally accepted processes for engagement; (ii) outcomes from meaningful consultations, which may include formal or informal agreements as well as dissenting views; and (iii) evidence of agreement between the parties on the outcome of the negotiations;***
- d) FPIC does not require unanimity and may be achieved even when individuals or groups within or among affected Indigenous Peoples explicitly disagree.*

New draft, proposed paragraph 19 (current paragraph 19 now becomes paragraph 20):

Operationally FPIC is interpreted in the same manner as free prior and informed consultation leading to broad community support. For the purposes of this ESS, consent of affected Indigenous Peoples communities refers to a collective expression by the affected Indigenous Peoples communities, through [individuals and/or] their recognized representatives, of broad community support for the project activities. Such broad community support may exist even if some individuals or groups object to project activities.