

**Safeguards Consultation Team
World Bank**

10 December 2014

Dear Madam/Sir,

On behalf of the German Institute for Ecology and Action Anthropology – INFOE, I am respectfully submitting our concerns and recommendations with regard to the World Bank safeguards currently being revised. As an NGO which has been working for the protection of the human rights and natural resources of indigenous peoples for more than 25 years, we have serious concerns regarding the Environmental and Social Standard ESS7 on Indigenous Peoples which we detail below.

In recent years, INFOE has put one focus of its work on Germany's engagement in the area of forest climate protection. Within the framework of bilateral development cooperation, the German Government is supporting the REDD-Readiness processes in a number of partner countries, assisting them in preparing their REDD strategies as participant countries of the Forest Carbon Partnership Facility (FCPF). In the charter of the FCPF, which is under the auspices of the World Bank, it is stated that the safeguards of the World Bank must be met. This means that the review of the World Bank standards directly impact on the design and implementation of REDD Readiness activities under the FCPF and thus also on the German engagement in this area. We therefore believe, that the World Bank must uphold high standards and further strengthen internationally recognized human rights as the leading actor for a responsible, sustainable and equitable development, including in such areas as climate change-related initiatives, reducing deforestation and agribusiness, among others.

INFOE hopes that our concerns and recommendations will be considered and we look forward to hearing from you.

Yours sincerely,



Sabine Schielmann
Executive Officer, INFOE

CC:

Ms. Ursula Müller, Executive Director for Germany at the World Bank Group

Ms. Marita Steinke, Head of Division 304 of the BMZ: Human rights; freedom of religion; gender equality; culture and development

Mr. Sören Dengg, Head of Division 402 of the BMZ: World Bank Group; IMF; debt relief

Mr. Frank Heinrich, Member of Parliament

Ms Bärbel Kofler, Member of Parliament

Ms. Gabriela Heinrich, Member of Parliament

Mr. Uwe Kekeritz, Member of Parliament

Mr. Niema Movassat, Member of Parliament

Concerns regarding standard ESS7 of the World Bank on Indigenous Peoples

Statement by INFOE – Institute for Ecology and Action Anthropology, Germany

1. Basic concerns¹

The basic approach of the standard falls behind international human rights standards and practice in relation to indigenous peoples, despite improvements it might contain in some points such as with regard to free, prior and informed consent (FPIC) in comparison to the previous standard (or OP4.00). There is no reference in the standard to the UN Declaration on the Rights of Indigenous Peoples.

While the German Development Cooperation (DC) follows a human rights approach and adverse impacts of projects on indigenous peoples are to be avoided, the World Bank standards do not even seem to be committed to the "do no harm" principle. In the standard ESS7 (Objective and paragraph 16) unavoidable negative impacts are permitted without specifying when negative impacts might be unavoidable. Only compensation should be provided for such unavoidable negative impacts with the project implementation instance, i.e. the borrower or respective national government deciding over kind and amount of the compensation.

The standard includes an option for states to bypass the standard if risks could arise which cause ethnic tensions or the identification of indigenous groups contradicts the national constitution. This means, that a State may declare that there are no indigenous peoples with corresponding human rights in the country. In such cases, the borrower or the government of the partner country may request that an alternative approach be agreed with the Bank. Hereby, the securing of indigenous rights is made subject to state sovereignty – or to say it otherwise - left to the national interpretation of international law and the standard thus becomes ineffective from an international human rights perspective. The decision to respect internationally recognized human rights or not, cannot lie with national governments alone, as this means the undermining of international human rights law, as enshrined in UN and regional human rights instruments. The standard thus undermines those hard-fought and already recognized rights of indigenous peoples at national, regional and international levels, and contradicts their right to self-identification and self-determination and their rights to their own development and to land and resources.

The standard does not contain specific requirements for assessing the respective national laws relating to the rights and interests of indigenous peoples and how these laws meet internationally recognized human rights standards. Furthermore, in case a government decides not to apply the standard there are neither possibilities nor mechanisms available for the affected indigenous peoples to contest such a decision and to claim their rights. Therefore, this circumvention clause must be taken out of the standard.

¹ We base our argumentation on the principles used in the evaluation of forest climate protection projects in the course of a research study by INFOE and on the Statement prepared by Asia Indigenous Peoples Pact (AIPP) and Forest Peoples Programme (FPP) on indigenous peoples' concerns with the proposed World Bank safeguards, downloaded from <http://www.aippnet.org/index.php/statements/1438-request-for-endorsement-significant-concerns-with-the-proposed-world-bank-safeguards-for-indigenous-peoples>

Basically, it is critical that the standards must be applied only to a part of the investments of the World Bank, namely investment lending. This means that about half of the investments made by the World Bank, which are being granted under the Program for Results and Development Policy Loans are not affected by the standards and thus for such activities and projects there is no protection for the rights of indigenous peoples. This also applies to subprojects funded by so-called interim financing institutions which also do not have to follow the standards, except where such projects belong to a category with the highest risk. Thus, the bulk of activities funded by interim financing institutions is exempted from applying the standards. This is contrary to the spirit and purpose of universal standards on which environmental and social standards are based.

Another critical point is the fact that the borrower is responsible for assessing the nature and degree of the impacts on indigenous societies and their environment, which gives rise to the question how impartiality is guaranteed and whether one can really expect the borrower to understand the full extent of the potential and multifold impacts of projects. The standards must provide for a second opinion and independent environmental and social impact assessment of any investment planned.

2. Consultation and FPIC

The human rights strategy of the German Federal Ministry for Economic Cooperation and Development (BMZ) defines for German Development Cooperation that the free, prior and informed consent (FPIC) of indigenous peoples is necessary in any planning that affects them.² We understand that FPIC is required for all kinds of project planning without exception. While the World Bank standard on Indigenous Peoples now contains provisions for FPIC, these are weak and inadequate. The need to ensure FPIC is reduced to three cases: when a project has an impact on indigenous peoples' traditionally occupied and used lands or natural resources; when a project makes resettlement from traditional areas necessary or if the cultural heritage of indigenous peoples is concerned. This does not recognize that FPIC is a fundamental human rights principle that is directly connected to the right to self-determination of indigenous peoples as equal partners in the development process. The restriction to three cases excludes numerous other potentially serious interventions through projects. Rather, FPIC must be guaranteed if a project affects indigenous peoples in a way in which it does not affect other groups of society.³ This also applies to projects causing changes in the way of life of indigenous peoples, including the exercise of their cultural, economic, and religious practices. According to the UN Declaration on the Rights of Indigenous Peoples FPIC shall in particular be ensured if legislative or administrative measures are adopted, which may affect indigenous peoples or when harmful substances should be stored in their territories (Articles 19 and 29 of the UN Declaration).

The provisions concerning FPIC in paragraph 20 remain unclear in some parts. Paragraph 20 (d) states that FPIC does not require unanimity. This might cause conflicts within or among indigenous communities and peoples, especially because it is not further specified, how then „consent“ comes about, i.e. by which majority of votes, whether this consent then is reached in

² BMZ-Strategiepapier 4/2011: Menschenrechte in der deutschen Entwicklungspolitik. Page 19

accordance with the cultural practices and decision-making procedures of the indigenous group concerned or otherwise determined procedures.

To strengthen, supplement and specify paragraphs 18 to 20 of ESS7 the following suggestions are made:⁴

- Indigenous people should always be involved in the project design without restrictions when projects or actions affect them.
- Agreements reached between the recipients of World Bank borrowers and indigenous communities must be verified by the World Bank, together with independent experts;
- In the event of any breach or non-observance of agreements with communities or in cases of violation of the political requirements of the ESS7, a complaints mechanism must be in place for the affected communities which is clear and can easily be accessed by the affected communities.
- Disclosure of information in consultation and FPIC processes must take place in a language and manner that are appropriate for the affected communities and can be fully understood by them.
- The representative institutions and indigenous peoples' organizations participating in consultation and FPIC processes must be elected by the indigenous peoples concerned themselves and include women and other community members apart from councils of elders, community councils or traditional leaders.
- Decision-making processes of indigenous peoples must always be respected. In addition to adequate time it should also be ensured that these processes can take place in accordance with the cultural practices and free from any pressure and manipulation.

3. Land Rights

The land rights of indigenous peoples are recognized in international and regional human rights standards and have been repeatedly reaffirmed as fundamental for the survival of indigenous peoples. Given the importance of these rights, it is crucial that the relevant requirements are clearly stated in the standard to ensure that these rights are protected. Therefore, the required "plan for the legal recognition of their perpetual or long-term renewable custodial or use rights", must be developed in partnership with indigenous peoples themselves, time-bound, in accordance with clear indicators and with sufficient funds.⁵

In relation to land rights it is to be noted that the new standard ESS5 on Land Acquisition, Restrictions on Land Use and Involuntary Resettlement does not provide sufficient protection from large-scale land grabbing as it is increasingly happening for example for the expansion of industrial agriculture. Furthermore, the standard must not be applied for example in land titling and land regulation processes. As a result, potentially serious and long-term effects of resettlement policies, for which this standard was specifically developed, are being disregarded.

³ (A/HRC/12/34). Report of the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya on PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT. 15 July 2009

⁴ We base our recommendations on the Statement: *Significant concerns with the proposed World Bank safeguards for indigenous peoples, from 29. July 2014*, by Asia Indigenous Peoples Pact (AIPP) and Forest Peoples Programme (FPP). See download link under footnote 1

⁵ Ibid.

4. Forest Protection and Biodiversity

In the context of forest climate protection projects it is also necessary to take a look at standard ESS6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources. Here a strong focus on species diversity can be observed, while ecological integrity and the local communities and indigenous peoples dependent on natural resources are largely ignored. The clear economic orientation is shown by the fact that virtually no area must be spared from potentially destructive economic interventions. Under certain conditions biodiversity offsets are apparently possible everywhere, even in protected areas, as long as avoidance, minimization and restoration measures have been applied.

The commercial and industrialized use of forest, land and resources has priority over the needs and user practices of the local population directly dependent on these resources. Deforestation projects, where established international standards and certification schemes cannot be followed, should be kept to a minimum and be justified by national legislation whereby industrialized deforestation is made possible even in sensitive areas. While paragraph 3 of ESS6 states “the need to consider the livelihood of Indigenous Peoples” this is not further addressed in the rest of the standard. Throughout the provisions of ESS6, economic interests and state sovereignty are given priority over environmental and social needs.

Prepared by Sabine Schielmann, INFOE – Institut für Ökologie und Aktions-Ethnologie e.V.