



World Bank's Safeguard Policies Review and Update
Expert Focus Group on the Emerging Area
Free, Prior, and Informed Consent of Indigenous Peoples
Manila, Philippines
March 21, 2013

On March 21, 2013, a focus group of international experts was held in Manila, Philippines, on the subject of Free, Prior, and Informed Consent of Indigenous Peoples (FPIC). This focus group was part of the World Bank safeguard policies review and update process and the topic of Free, Prior, and Informed Consent of Indigenous Peoples is one of the emerging areas that stakeholders have asked the World Bank to consider during the review. Other emerging areas include: labor and occupational safety, disability, climate change, gender, human rights, land tenure and natural resources. More information about this process is available on the safeguards review [website](#). The terms of reference for participants of focus groups for emerging areas are available [here](#).

Participants in the focus group comprised Indigenous Peoples (IP) experts from a variety of civil society, governmental, and research organizations from around the world (see [list of participants](#)). It was agreed at the outset that the focus group would be conducted in accordance with Chatham House rules, and that participants would speak in their individual capacities rather than as representatives of their respective institutions. In addition to participating experts, five World Bank staff members were present.

The focus group meeting began with the World Bank team presenting the purpose and agenda for the meeting. To help define the objective and scope of the meeting, three presentations were provided. This was followed by comments and questions from the floor.

- Presentation on the WB safeguards policy review process, describing the context and rationale, objectives and expected outputs, approach, and the three phases of the review and update process;
- Presentation on the WB Indigenous Peoples policy (OP 4.10), including its objectives and applications;
- Presentation on IFC's Performance Standard 7 (PS 7) on Indigenous Peoples, describing the IFC's process requiring FPIC, including a case study that highlights the FPIC process in a project cycle.

The discussion was guided by four questions:

1. How should FPIC issues be addressed in the environmental and social assessment process?
2. What are the "Whos," "Whens," and "Hows" of FPIC?
3. How would FPIC work in specific country contexts?

Following is a synthesis of key observations of participants during the day. It should be emphasized that these observations are not reported here as necessarily representing the substantive consensus of the group. They are instead summarized here as key issues put on the table by one or more individual experts that received attention during the consultation and that were proposed for further consideration as the process goes forward.

1. General observations

Participants of the focus group asked that the World Bank maintain a distinct safeguard policy for Indigenous Peoples and update the relevant safeguard policies in light of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), especially the Indigenous Peoples Policy & Involuntary Resettlement Policy. It was suggested that FPIC should be connected to substantive rights (collective ownership rights to land and resources, right to self-government, right to development, and benefit-sharing); procedural rights (due process of law). Indigenous Peoples Plans should be seen as key opportunities to take into account Indigenous Peoples' own development priorities. Environmental Assessment processes should assess both positive (do good) and negative impacts (do-no harm) on the rights of Indigenous Peoples

2. How should FPIC issues be addressed in the environmental and social assessment process?

- **Consider a rights-based approach in reviewing the IP policy.** The rationale of FPIC is anchored in human rights principles and closely linked with the rights of Indigenous Peoples under the UN Declaration on the Rights of the Indigenous Peoples (UNDRIP). The concept of FPIC was introduced in order to ensure protection of fundamental rights. Therefore the linkage between human rights and FPIC needs to be made explicit in the safeguards framework and policy. There was general participant consensus that the implementation of FPIC (and discussion on benefit sharing, due process guarantees, etc.) will not be meaningful unless there is proper connection with important issues such as human rights, land rights, right to natural resources, customary law, among others. The World Bank should look at these development issues in updating its IP policy.
- **Give emphasis to articulate the “do good” principle.** The current World Bank system focuses on risk management and mitigation. The “do good” rationale promotes the rights of the Indigenous Peoples and ensures that they receive social and economic benefits from the projects to achieve better development results. The safeguards process therefore should move towards assessment of benefits from a narrower focus on mitigation.
- **Consider inclusion of FPIC elements in the World Bank’s safeguards policy, principle and operations.** The policy needs to be conceived and made operational given the context of countries with laws on IPs and those who don’t recognize Indigenous Peoples. How to capture this into the safeguards, translate into requirements for and clarity of the roles of the borrower and the World Bank is important.
- **“Broad Community Support” is ambiguous.** Participants expressed concern about the ambiguity of the World Bank’s concept of “broad community support” — there are no clear indicators

(who makes the judgment about whether broad community support has been obtained?). Evidence of agreement is missing in OP 4.10. The World Bank needs to think through an appropriate mechanism for such consensus building process. Moreover, the emphasis should be on clear understanding of IPs' customary laws and institutions. Safeguards instruments and processes such as broad community support should be adopted in order to advance the advocacy for indigenous culture and not be taken as tools invented just to get the IPs into agreement.

- **Assess the structures and governance rules on Indigenous Peoples and their lands.** Participants also generally held the view that there is a need to include a study on culture and institutions of the Indigenous Peoples in the review process, and stressed the importance of in-depth consultations in carrying-out cultural impact analysis. The World Bank's role in establishing standards and guidelines on how to apply these IPs' principles in the field is noted.
- Does PS7 work for public sector financing? Would the public sector discourse toward consent be more complicated? Or is the way forward to simplify matters? Should FPIC apply if IPs are in the area of the project, and if the project will materially affect IPs' international rights (human rights of IPs that are differentiated from others)? This is more pragmatic. IFC's formulation under PS7 is pretty good, particularly on land provisions.
- **Philippine Indigenous Peoples' Rights Act (IPRA) as point of reference.** Several participants submitted that the Philippine IPRA could be a useful point of reference. Lessons and experiences from the implementation of the law could be drawn upon and ultimately feed into the development of the World Bank's safeguards framework. The common participant view was that the IPRA is generally a good law. The main problem however lies in the implementation of the law and the level of detail and prescription. While the government created a commission to deal with the indigenous people, the agency lacks funds and the capacity to implement the law.

3. What are the "Whos," "Whens," and "Hows" of FPIC?

- **Take into account IPs' international rights in the application of FPIC.** Participants generally held the view that FPIC should be implemented in line with the provisions specified in the UNDRIP. Assessments need to be carried out with the aim of addressing human rights risks and potential impacts in a broader manner under the umbrella safeguard policy of the World Bank, i.e., need to address issues concerning right to self-determination and right to development, among others. The World Bank may need to consider how to translate these into World Bank procedures and implications for both the World Bank and borrower countries.
- **A better approach to assessing socio-cultural impacts is needed.** The social assessment in this context must look at social and cultural aspects systematically. There are no comprehensive checklists and regardless it is difficult to pinpoint impacts at the outset. So far, the following areas have been identified as important: (i) monetization of traditional economies and its spillover effects, (ii) impact on traditional organizations and governance, (iii) territorial integrity and sustainability, (iv) cultural land use, (v) acculturation, (vi) reproduction, (vii) change in behavioral patterns, and (viii) language.
- **Who, when and how of consent?** The Declaration states that IP government/institutions should be consulted. The concept of broad community support confuses this point if it is taken to mean simple majority decisions. IPs must be consulted if their rights will be affected. And the

“how” of the consent is to protect their rights. Is consent a one-time thing or not? Consent is only given under certain circumstances. If the circumstances are no longer present, is consent revoked?

- **Due process is also important.** Where there is a right, there should also be due process. For example, consent should be carried out within a reasonable time frame. The competency of the decision making process is important. Also the Declaration refers due process requirements, like the need for translators and interpreters, and provision of legal counsel (Article 13.2), and adequacy of time and means for IPs (Article 14), etc.
- **OP4.01 lacks procedural details.** There is not much on consultation, though the World Bank should refrain from prescription and let the local circumstances guide the process. Regarding land, OP4.10 does not say much more than customary land – it does not deal with territories, occupation, acquisition, etc. OP4.10 also does not empower IP institutions or emphasizes enough about transparency. OP4.10 does not seem to be written in order to leave a legacy – it is written to serve the loan. OP4.10 cannot serve the loan alone – it must serve the government, which is entrusted to protect rights. The impression is that the assessments are to assess risks only – why can’t assessments look at opportunities, e.g., how to advance IP land rights – this is a legacy that will go on after the loan is finished. Participants want the new World Bank safeguard policies framework to have more robust guidance on social assessment and stakeholder engagement (similar to IFC’s PS7, which builds on the broader principles in Performance Standard 1 (PS1)).
- **To better implement FPIC policy, issues on capacity building should be addressed.** The lack of capacity both by IP communities and government agencies handling IP concerns was particularly emphasized. The group therefore stressed the need of capacity building for Indigenous communities and government agencies responsible for the implementation of IPs’ development plans. They need to be reoriented to enable IPs to be real partners in development, and not just a passive recipient of development.
- **Promote strategic planning for Indigenous communities to craft its own development plan to reinforce World Bank’s “do good” orientation.** Assessments should look at strategic integration of IP development in project activities implemented by the World Bank. A strategic planning for Indigenous communities to promote better understanding of their rights and equip them to prepare their own development models will be helpful in this respect. The focus should be on developing opportunities as opposed to mitigating adverse impacts. The Philippine Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) can also be a good reference to look at to better appreciate how IPs conceptualize and implement their development plans and strategies.
- **Take advantage of upstream avenues in furthering IPs’ concerns.** The Country Assistance Strategy (CAS) exercises call for in-depth consultation and strong participation from the government, IP groups, and civil society to provide their inputs. It is therefore possible for the IP issues to be dealt with upstream; there is no need to reinvent the wheel. The next key question that needs to be addressed -- who will represent the IP groups in such consultation processes? Often community leaders don’t speak up.

4. How would FPIC work in specific country contexts?

- **Take into account the varying country contexts.** The framework should not be too specific with the IP processes and should avoid prescriptive procedures. The World Bank deals with a number of governments that have its own laws and constitutional processes. It is imperative to look at the country legal perspective of FPIC implementation and address the IP rights in specific country contexts. Three possible scenarios were explored: (i) when a country has national laws on land rights and IPs, and recognizes FPIC; (ii) when a country does not recognize land rights of IPs; and (iii) when a country does not recognize IPs. The key here is to have the right underpinning of principles and the right mix of expertise to apply judgment on IP matters. For those countries where IPs are recognized, the challenge lies on how to effectively engage with the Indigenous Peoples. The UNDRIP provides for at least three conditions: (i) provision of interpreters; (ii) adequate time and means for consultations; and (iii) provision of legal counsel. This set of elements may be incorporated in the development of the policy framework. There should also be provision on monitoring of the FPIC implementation and this entails resources.
- **Review of existing laws on FPIC and its implementation is critical in the development of the safeguards framework.** Lessons could be drawn from the national IP laws in the Philippines, Ruanda and Ethiopia, i.e., how the IP policy was conceptualized and implemented, what are the gaps, challenges, and recommended actions to address key IP issues towards effective implementation of the IP law.
- **There are varying national IP law systems and these should be relied upon cautiously.** Participants expressed concern about the ambiguity of the IP definition even in countries with established IP law systems--which groups are Indigenous under the World Bank policy? What triggers the safeguards policy? Other issues that are relevant to the policy--(i) land rights; (ii) criteria of customary lands; and (iii) non-customary but otherwise acquired.
- **Give emphasis on capacity building.** There was a predominant view among participants that continuous capacity building is needed by the IPs, government and private sector--to empower the IPs, and for the government and the private sector to better understand and respond to the concerns of Indigenous Peoples. Capacity building for development planning for the IPs as well as for engagement and consultation was suggested by the group.
- **World Bank's role in IPs' economic development was highlighted.** Several participants submitted that the World Bank may play a role in helping Indigenous People fully realize its economic development by introducing the idea of their own development, providing appropriate knowledge on business management and entrepreneurship that is culturally sensitive and sustainable. It is also hoped that the World Bank will support the IP proposal and assist in the realization and implementation of the UNDRIP as a development institution.