



Review and Update of the World Bank’s Environmental and Social Safeguard Policies
Phase 2
Consultation with Indigenous Peoples Representatives
Draft Feedback Summary

Date: November 21, 2014

Location: Johannesburg, South Africa

Audience: African Indigenous Peoples Representatives

Overview and Key Issues Discussed: On November 21, 2014, the World Bank held a Consultation Meeting with African Indigenous Peoples in Johannesburg, South Africa. The meeting was held in the context of the World Bank’s multi-phased process to review and update its environmental and social safeguard policies. The purpose of the meeting was to obtain Indigenous Peoples’ views and insights with the intent of ascertaining how to improve the effectiveness and efficiency of its safeguard policies, as well as to inquire on how it can address broader development issues of interest to Indigenous Peoples in the region. Indigenous Peoples representatives were invited to the dialogue in close coordination with Indigenous Peoples communities.

A brief overview of the Draft Environmental and Social Framework (ESF) was presented at the beginning of the consultation meeting and prior to initiating the dialogue. It is important to underscore that although participants could comment on any issue, most remarks focused on Environmental and Social Standard 7 (ESS 7) on Indigenous Peoples.

Stakeholder Feedback
1. General Comments
<p><i>Clarifications:</i></p> <ul style="list-style-type: none"> • Legal Status of Environmental and Social Standards (ESS). Participants inquired about the future legal status of the ESS and asked to what extent countries would have to abide by their stipulations. • Project Accountability. Participants asked if there were mechanisms to assess the project accountability and if so, what they entailed. • United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Participants inquired about the World Bank’s adherence to UNDRIP and its consideration during the

composition of the draft ESF.

Recommendations:

- **UNDRIP.** Participants expressed that the Bank should not lend money to countries that have not adopted UNDRIP.
- **Additional Meetings.** Representatives expressed a need to have additional meetings with African IPs.
- **Visa Assistance.** Some participants suggested that the World Bank improve its assistance in helping invitees acquire visas to the countries where consultations are held.

2. Environmental and Social Standard 7 (ESS7): Indigenous Peoples

Comments:

- **Free, Prior and Informed Consent (FPIC).** Participants lauded the inclusion of FPIC as part of ESS 7.
- **Alternative Approach (paragraph 9).** Participants highlighted that the last decade has been particularly beneficial for the rights of Indigenous Peoples in Africa because it has seen the emergence of building blocks for their legal protection. They outlined five achievements that they believe could be eroded if the alternative approach is adopted by the World Bank as it is currently drafted. These are as follows:
 - The concept of Indigenous Peoples in Africa has been brought into legal systems. Participants outlined that this was particularly evident in the report developed by the African Commission's Working Group on Indigenous Peoples, which was endorsed by the African Union. That report states that not addressing Indigenous Peoples development issues in post-colonial Africa may exacerbate ethnic divides.
 - The ongoing constructive dialogues on Indigenous Peoples between African states and regional mechanisms.
 - The constructive position of some African states in the UN human rights council – Representatives articulated that several countries have a positive track-record of reporting on the implementation of their Indigenous Peoples policies in the UN.
 - Indigenous Peoples domestic legal policy and frameworks in African states – Representatives stated that one example was Kenya's 2010 constitution that now identifies pastoralists as communities that were disadvantaged by discrimination.
 - The positive legacy of OP4.10 – Representatives outlined that OP4.10 has contributed to a better understanding of Indigenous Peoples rights in Africa and that the alternative approach could erode that legacy.
- Participants expressed that some IPs currently do not benefit from World Bank projects under OP4.10, and that some governments may use the alternative approach as an opportunity to opt-out of ESS 7.
- The alternative approach was both rejected and supported by different IP Representatives, with

the majority of the participants rejecting its inclusion in the final draft.

Recommendations:

- **Borrower Country Track Record on Issues Pertaining to Indigenous Peoples.** The World Bank must look at a borrower country's track record on Indigenous Peoples prior to project financing. Several attendees expressed that their countries of origin did not properly respect Indigenous Peoples rights.
- **Benefit Sharing and Capacity Building for Indigenous Peoples.** Participants mentioned that Indigenous Peoples do not always benefit from World Bank financed projects and rarely receive project funds. Participants emphasized their desire to see the World Bank promote Indigenous Peoples capacity building so that more Indigenous Peoples understand how to take advantage of project benefits.
- **Indigenous Peoples Local Knowledge.** Participants highlighted the need to move beyond an approach where the benefits of local knowledge are shared, to an approach that allows IP communities to decide what is done with their local knowledge. On this point, participants emphasized the need to improve respect for Indigenous Peoples intellectual property.

3. Environmental and Social Standard 8 (ESS8): Cultural Heritage

Recommendations:

- Participants expressed that this standard should be drafted with language that conveys a message of obligation. For example, one representative mentioned that on page 81, paragraph 27, the word "will" should be changed to "shall." The edited paragraph would therefore read:

Where a project proposes to use the cultural heritage including knowledge, innovations, or practices of Indigenous Peoples for commercial purposes, the Borrower **shall** inform the affected Indigenous Peoples of: (a) their rights under national law; (b) the scope and nature of the proposed commercial development; and (c) the potential consequences of such development; and obtain their FPIC. The Borrower **shall** also ensure fair and equitable sharing of benefits from commercialization of such knowledge, innovation, or practice, consistent with the customs and traditions of the Indigenous Peoples.