



Protect, Promote and Build Capacity of Indigenous Peoples

COMMENTS ON THE WORLD BANK PROPOSED SAFEGUARDS FOR INDIGENOUS PEOPLES

Environment and Social Standard 7(ESS 7)

General comments

The main objective of this submission is to highlight key issues for indigenous peoples in the new Environmental and Social safeguard system proposed by the World Bank with particular focus on ESS7 on indigenous peoples.

We welcome the inclusion of the Free Prior Informed Consent (FPIC) in the draft policy and assert that it needs to be aligned with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the recognition of the different roles of indigenous youth, children and women.

Reiterate that the ESS7 should be the main reference standard for the Bank and Borrower for all projects affecting Indigenous Peoples and guide for the other bank standards.

The restriction in the application of the policy to specific bank financing presents a challenge for indigenous peoples, ideally the standard should apply to all the bank financing. Separation of responsibilities between the Bank and the Borrower will weaken application of standard due to bank focus on monitoring role.

The bank should avoid projects that will have adverse impacts on Indigenous Peoples.

The use of "opt out" clause in the policy presents a challenge for the abuse of Indigenous peoples rights and shall undermine the rights of Indigenous peoples. We make reference to the Working Group on Indigenous Populations of the African Commission on Human and Peoples Rights (ACHPR) in its communication with the World Bank stated that any 'alternative approach' to indigenous peoples in Africa would undermine the work of the Commission, which has started to bear fruit by gradually inspiring and guiding national laws and policies. An 'alternative approach' would also undermine the Commission's on-going work to sensitize stakeholders about what the concept means in Africa.

We endorse submissions made by Asia Indigenous Peoples Pact (AIPP) and Indigenous Peoples of the Eastern Africa region.

Scope of Application

Para 5.. There is no universally accepted definition of Indigenous Peoples. Indigenous Peoples may be referred to in different countries by such terms as “indigenous ethnic minorities,” “aboriginals,” “hill tribes,” “minority nationalities,” “scheduled tribes,” “first nations,” [pastoralist] [hunter-gatherers] or “tribal groups.” As the applicability of such terminology varies widely from country to country, the Borrower may agree with the Bank on an alternative terminology for the Indigenous Peoples as appropriate to the circumstances of the Borrower.

This para does not take into account the self-determination principle of Indigenous Peoples by placing responsibility to Borrower to agree on alternative terminology. We recommend inclusion of pastoralist, and hunter-gatherers.

8. Following a determination by the World Bank that Indigenous Peoples are present in, or have collective attachment to the project area, the Borrower may be required to seek inputs from appropriate specialists [including **Indigenous Peoples experts**] to meet the consultation, planning, or other requirements of this ESS.

We recommend that Indigenous peoples experts, organisations and representative should be consulted

9. Where 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 to agree on 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. The Borrower will initiate the request for such an alternative approach through written communication with the Bank, setting out a detailed rationale for the request. In doing so, the Borrower will also provide detailed information confirming how the alternative approach will address risks and impacts of the project on Indigenous Peoples. The alternative approach will be structured so that relevant project-affected communities (of Indigenous Peoples) will be treated at least as well as other project-affected people. The agreement between the Bank and the Borrower regarding this approach will be set out in the ESCP.

We recommend removal of the alternative approach application by the Borrower. This section fails to acknowledge the international instruments/treaties and jurisprudence that have evolved over time with respect to Indigenous peoples. The alternative approach will create more divisions and ethnic strike.

Requirements

11. The Borrower **[together with the indigenous peoples]** will assess the nature and degree of the expected direct and indirect economic, social, cultural (including cultural heritage),⁵ and environmental impacts on Indigenous Peoples who are present in, or have collective attachment to, the project area. The Borrower **[with the full and effective participation of Indigenous Peoples]** 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.

13. When Indigenous Peoples are the sole, or the overwhelming majority of, direct project beneficiaries, the elements of an action plan may be included in the overall project design and preparation of a stand-alone plan is not necessary.

We recommend that an Indigenous Peoples Plan should be prepared as a stand alone document and with the participation of affected Indigenous Peoples.

Providing Equitable Access to Project Benefits

14. When Indigenous Peoples are not the sole project beneficiaries, planning requirements will vary with circumstances. The Borrower will design and implement the project in a manner that provides affected Indigenous Peoples with equitable access to project benefits. The concerns or preferences of Indigenous Peoples will be addressed through meaningful consultation and project design, and documentation will summarize the consultation results and describe how Indigenous Peoples' issues have been addressed in project design. Arrangements for ongoing consultations during implementation and monitoring will also be described.

Whether Indigenous Peoples are sole beneficiaries or not, if they are affected by the project they should be involved in planning, design, implementation and monitoring.

15. If specific actions relating to providing equitable access to project benefits will occur during the implementation phase, the Borrower will prepare a time-bound action plan, such as an Indigenous Peoples plan. Alternatively, a broader integrated community development plan incorporating necessary information relating to the affected Indigenous Peoples may be prepared where appropriate.

We recommend the deletion of "where appropriate". Indigenous Peoples plan should be prepared and the determination of benefits and benefits sharing arrangement should be done at project design level.

Meaningful Consultation Tailored to Indigenous Peoples

18..(a) Involve Indigenous Peoples' representative bodies and organizations⁸ (e.g., councils of elders or village councils, or chieftains) and, where appropriate, other community members;

We recommend that this section involves participation of not only Indigenous Peoples representatives, bodies and organizations but also the indigenous women and youth.

Circumstances Requiring Free, Prior and Informed Consent (FPIC)

This section does not reflect the principles of FPIC enshrined in the UNDRIP. The section is weak and does not respect the Indigenous peoples customary decision making processes.

Impacts on Lands and Natural Resources Subject to Traditional Ownership or Under Customary Use or Occupation

23. Indigenous Peoples are often closely tied to their land and related natural resources.¹⁰ frequently, land is traditionally owned or under customary use or occupation. While Indigenous Peoples may not possess legal title to land as defined by national law, their use of the land, including seasonal or cyclical use, for their livelihoods, or for cultural, ceremonial, and spiritual purposes that define their identity and community, can often be substantiated and documented. 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.

We recommend that Indigenous peoples plan be prepared with participation of affected Indigenous peoples communities . Strengthening of tenure rights of Indigenous peoples is important.

24. If the Borrower proposes to locate a project, or commercially develop natural resources, on land traditionally owned by, or under the customary use or occupation of, Indigenous Peoples, and adverse impacts can be expected, the Borrower will take the following steps and obtain their FPIC:

We recommend that the Para (a) to (f) should ensure the full and effective participation of Indigenous peoples.

Cultural Heritage

27. Where a project proposes to use the cultural heritage including knowledge, innovations, or practices of Indigenous Peoples for commercial purposes, the Borrower will inform the affected Indigenous Peoples of:

We recommend that the sections includes “recognition of Indigenous peoples intellectual property rights