

## World Bank Safeguard Consultation Phase 2

### Comments from the Society for Threatened Peoples Switzerland on the Environmental and Social Standard 7

1. FPIC: The shift from “free, prior and informed consultation” towards “free, prior and informed **consent**” **is a long expected and necessary step towards the acknowledgement of the rights of indigenous peoples**. FPIC is based on two international agreements, the ILO convention 169 and the Declaration of the rights of Indigenous Peoples, and consent is the most important instrument in order to realize them. Therefore ESS 7 shall not go below this standard.
2. The ESS however lack references to the **rights of other traditional local populations** other than Indigenous Peoples. In many areas the classification of traditional peoples into indigenous and non-indigenous communities might create additional conflicts between them. For non-indigenous communities who traditionally live in the area, FPIC shall also become a requirement.
3. **Two loopholes pose risk** the effectiveness of FPIC according to the proposed version: First is the **Opt-Out-Option in paragraph 9** (when „applying ESS7 would create a serious risk of exacerbating ethnic tensions or civil strife, or is inconsistent with the provision of the national constitution.“) We fear that in most contested operations, this exception will be used to realize the project despite fierce opposition.
4. Second, Paragraph 21: A project that does not get FPIC from affected Indigenous Peoples **can nevertheless be realized** if the borrower covers the costs of the questioned part of the project, while the World Bank might cover all other costs („the aspects of the project relevant to those indigenous peoples will not be processed further. In such cases the Borrower will ensure that the project will not cause adverse impacts on such Indigenous Peoples“.)
5. **No to the definition of Indigenous Peoples** that excludes a significant number of indigenous peoples: The definition of Indigenous peoples in paragraph 6 defines that Indigenous Peoples must fulfil all 4 definition criteria (although „in varying degrees“). The 4 criteria are linked with an „and“ - therefore all 4 criteria must be met. Criteria (d) will exclude many indigenous peoples or descendants of Indigenous Peoples who, through centuries of occupation, were forced to assimilate and to accept the language of the dominating society thus losing their own language. This year for example, Peru declassified the biggest part of the traditional „Campesinos“, descendants of indigenous peoples, from their status of being Indigenous Peoples using exactly this argumentation. Also the Amerindians of Guyana and many North-American indigenous tribes only speak English and would be excluded from the rights they fought so strongly since centuries. Definition (d) therefore cannot be a binding requisite.
6. Paragraph 12: Projects designed specifically to **benefit** indigenous peoples **need the FPIC**, not only their engagement, Benefit sharing is a major issue and might lead to local development if done the right way.
7. **Avoidance and mitigation of adverse impacts** (p. 16 and 17) **also need the FPIC** of the affected communities before they become effective. Further, restoration after the projects end shall be part of the mitigation efforts, and its funding shall be guaranteed by the borrower.
8. Paragraph 17: projects that may have impacts on indigenous peoples who live in **voluntary isolation or in „initial contacts“ shall not be supported by the World Bank** at all. The risks related to forced contacts are simply too big.
9. FPIC, Paragraph 20: It shall be clearly stated that **FPIC does include the right to accept (the right to say yes), the right to veto (the right to say no) and the right to negotiate the way the project shall be executed (the right to say how)**.



10. The description of the FPIC lacks the **right to withdraw consent** in the cases when borrowers don't meet their obligations or if unexpected negative impacts appear during the activities. FPIC is an ongoing relationship and process.
11. A new paragraph (after p. 20) is needed that states that in order to get consent, a **detailed description** of the planned project and all activities and their expected positive and negative impacts (informed) is needed, prior to any activities of the borrower or its contractors (prior), and free from any pressure and manipulation by the borrower, by his contractors or by other stakeholders (free), to obtain FPIC. Option: It can also be included in paragraph 14 (see next point).
12. **Impacts on indigenous peoples: Paragraph 24:** 1. Add a point that an overall documentation about the project is needed that describes in details all activities and the positive and negative impacts that are expected for the indigenous populations, presented in a culturally appropriate way (language, presentation); 2. Add to (d) In case of major impacts, a participatory map of the land rights and uses by the indigenous peoples and other groups of local populations shall be elaborated; 3. New (below (e)): Ensure that the borrower knows and respects the traditional land use and property rights of affected indigenous peoples; 4. (f): Make a different point out of (f) (iii) since compensation and benefit sharing agreement are two completely different issues. Not to forget that both compensation and benefit sharing are mutually negotiated based on FPIC.
13. **Grievance Mechanism:** Please add that all affected Indigenous Peoples shall know and understand the grievance mechanism, that it takes into account their traditional dispute resolution mechanisms and that a permanent contact person known to them is delegated who is skilled, willing and able to communicate and mandated to negotiate with affected IP. Also an appeal procedure at an institution that is independent from the Borrower must be made available.
14. **Clear criteria are missing under which conditions the World Bank suspends or even cancels further financing of the project.**

Bern, Switzerland, 16<sup>th</sup> of December 2014

Christoph Wiedmer  
Director  
[christoph.wiedmer@gfbv.ch](mailto:christoph.wiedmer@gfbv.ch)  
Phone 00 41 31 939 00 01  
Mobile 00 41 79 679 01 24

---

The **Society for Threatened Peoples (STP)** is an international human rights organisation working for the protection of persecuted minorities and indigenous peoples. The STP documents human rights violations, raises public awareness and represents the interests of the affected communities before the authorities and policy-makers. It supports local initiatives aimed at strengthening the human rights of minorities and indigenous peoples, working nationally and internationally with other organisations and individuals pursuing similar goals. The STP has consultative status at both the United Nations Economic and Social Council (ECOSOC) and the Council of Europe.