



Forest Peoples Programme

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Patricia Miller
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12th October 2007

Dear Patricia,

Re: IFC written response to FPP enquiries about the application of IFC Performance Standard 7 in six IFC projects (Project Numbers: 25914, 26110, 25389, 23792, 25637 and 24880)

Thank you for the response to the FPP's request for information on the application of Performance Standard 7 and related safeguards in specific projects being partially or fully funded by the International Finance Corporation.¹

Issues arising in IFC response:

We appreciate the IFC's reply to our enquiry and have found the information useful. However, some of the information provided by the IFC in relation to specific projects gives rise to further queries. We would welcome IFC's response to further questions we have about the application of PS7 and associated standards which we present below.

In a number of responses in the IFC letter it is indicated that in a Category B project the IFC is not required to verify either free, prior and informed consultation (FPICon) or Broad Community Support (BCS). For instance, in your response to a query over project #25637 you state: "this is a Category B project with limited impacts on the affected community. Therefore, this project does not require free, prior and informed consultation and because of this, an IFC determination of Broad Community Support is not required under the April 30, 2006 IFC Policy on Social and Environmental Sustainability." (your letter, page 5)

FPP concerns:

We have two key concerns with this presentation of requirements under the IFC safeguard system. By 'safeguard system', we are referring to the entirety of your safeguards, including the Policy on Social and Environmental Sustainability, the Disclosure Policy, Performance Standards 1 – 8 and Guidance Notes 1 – 8.

¹ Letter to Mr. Liam Taylor Re. "Forest Peoples Programme Enquiry Regarding Performance Standard 7." Sent to the FPP by Email on Wednesday, 10 October 2007.

The first and most important concern for us is the non-application of key provisions of Performance Standard 7. As we understand Performance Standard 7, based on our reading of the Standard and its accompanying Guidance Notes, it is to be applied to all projects that will adversely impact indigenous peoples. To illustrate, paragraph 9 provides that “*in projects with adverse impacts on affected communities of indigenous peoples*, the consultation process will ensure their free, prior and informed consultation and facilitate their informed participation” (emphasis added).

It is our understanding from paragraph 20 of the IFC’s *Policy on Social and Environmental Sustainability* that it is incumbent on IFC staff to verify the existence or absence of BCS in all cases where “...clients are required to engage in a process of free, prior and informed consultation” (i.e., not only where affected communities may be subject to significant adverse impacts as per paragraph 15 of the same policy).

As we read it under PS7 and the IFC PSES, in the case of indigenous peoples the FPIC and BCS safeguards apply not only to significant impacts requiring a category A classification but to all projects with potential adverse impacts. Neither the severity of the negative impact nor the categorization of the project are instrumental with regards to the need for FPIC under Performance Standard 7 which is triggered as soon as potential adverse impacts are noted. The identification of possible adverse impacts would in turn trigger the requirement on IFC to verify BCS under its PSES and ESRP, and to apply the good faith negotiation standard as well under PS7 in some cases – see below.

In Guidance Note 7, information under G15, 16 and 17 provides further detailed guidance on how such consultation should be conducted, in particular that “during the process of information disclosure, consultation and informed participation, the client should engage with the affected communities of Indigenous Peoples in a process of ‘free, prior, and informed consultation,’ which entails consultation that occurs freely and voluntarily, without any external manipulation, interference or coercion, and without intimidation” (GN7: G15). As we see it, Performance Standard 7 is not subsumed by Performance Standard 1, but rather applies independently and in conjunction with IFC’s PSES and ESRP when indigenous peoples are present in the project area, project area of influence, or affected by the associated facilities of a project.

To illustrate our second concern, we would like to draw your attention to the “special requirements” section of Performance Standard 7, paragraphs 11 – 15. These paragraphs detail the specific conditions under which the usual standard of free, prior and informed consultation and informed participation is extended into a requirement for “good faith negotiation with the affected communities” leading to a documented “successful outcome” (PS7: para 12). There are three triggers for this increased level of requirement from clients of the IFC, namely:

- (a) if the client proposes to locate the project on, or commercially develop natural resources located within, traditional or customary lands under use and adverse impacts (including loss of access or restriction on land use) can be expected
- (b) if relocation of indigenous peoples is unavoidable in the project design
- (c) where a project proposes to use the cultural resources, knowledge, innovations, or practices of indigenous peoples for commercial purposes.

These special requirements may apply to projects not categorized as A, and therefore any such single categorization is an incorrect and inappropriate trigger for Performance Standard 7. The FPICon and Good Faith Negotiation standards may also apply to projects for which potential adverse impacts are not considered to be significant (for instance, in the commercial development of cultural knowledge for the benefit of indigenous communities). Thus, in our view, “significance of impact” as judged by IFC consultants or the client is likewise an inappropriate trigger for the application of Performance Standard 7.

Instead, the triggers for application of Performance Standard 7 are as detailed in the Standard itself, and as described above: any project with adverse impacts on indigenous peoples as per the requirements of paragraph 9, and any project triggering special requirements, as per the requirements of paragraphs 11 – 15.

We hope you can confirm whether our interpretation of requirements under PS7 and related IFC standards and procedures are accurate. In particular, we wish to obtain confirmation that: (i) under PS7 the requirement for free, prior and informed consultation (FPICon) is required in all cases where adverse impacts may be anticipated on affected communities of indigenous peoples (irrespective of the scale of such negative impacts); (ii) the *magnitude* of harmful impacts does not affect the application of the good faith negotiation standard, which is triggered by other criteria; (iii) the application of FPICon under PS7 places a duty on IFC staff to verify the existence or absence of BCS in accordance with paragraph 20 of its PSES, and generally that (iv) PS7 contains special measures to protect the rights and interests of indigenous peoples in IFC loan operations, in addition to those protections established in other relevant IFC Performance Standards and contained in the IFC’s PSES and ESRP.

If the IFC considers any of these understandings are incorrect, please provide us with the interpretations used by the IFC and the justification for them. If we are missing something key in the IFC’s safeguard framework, please also advise accordingly.

We look forward to hearing your response to the queries we raise in this letter and to receiving any clarifications that you may have on the PPS in general, and PS7 in particular.

Sincerely,

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Helen Leake
Policy Advisor, Responsible Finance Programme

cc

Ms. Lucie Giraud, IFC

Ms. Rachel Kyte, IFC

Ms. Motoko Aizawa, IFC

Mr. Peter Taylor, International Finance Division, DFID

Mr. Alex Gibbs, UK Executive Director for the World Bank

Ms. Caroline Sergeant, Alternative ED for the World Bank

Mr. Paul Williams, Advisor on the World Bank/UKDEL

Mr. Liam Taylor