

The 2012 IFC Performance Standard on Indigenous Peoples: What's the Fuss?

February 9, 2012 by [Amy K. Lehr](#)



The [new IFC Environmental and Social Performance Standards](#) -- in particular, Performance Standard 7 on indigenous peoples -- present a range of management and operational challenges for certain companies. For the first time, the Performance Standard includes a requirement of free, prior, and informed consent ("FPIC") from indigenous peoples.

The new Performance Standards went into effect in January 2012 and are applicable to a greater number of the IFC's investments than the 2006 Performance Standards, which only applied to project finance. Notably, the new Standards only apply to the IFC's new investments, while the the 2006 Performance Standards apply to existing investments. Notably, [the Equator Banks will apply the 2012 Performance Standards to new investments](#), which will result in their application to much of the world's project financing.

The 2006 Performance Standard on indigenous peoples required "free, prior, informed consultation." The requirement of consent in the new Performance Standard 7 comes on top of arguably more [rigorous and complex requirements in Performance Standard 1 that address engagement with all communities](#).

Performance Standard 7 requires IFC clients to identify adverse impacts on indigenous communities and develop action plans to address them with the informed consultation and participation of affected indigenous communities. In addition, companies are expected to seek the FPIC of communities when:

- The project will impact the lands and natural resources subject to traditional ownership or under customary use;
- The project will require relocation of communities; or
- The project will significantly impact critical cultural heritage of indigenous peoples.

What is FPIC? Definitions vary, but the IFC's definition will be influential. The IFC requires FPIC to be established through a good faith negotiation with the community. In addition, the client should document that there is a mutually accepted process for obtaining consent, and should ensure that there is evidence that the parties agree on the outcome of the negotiations. As we suggested in a previously published report, [Implementing a Corporate Free, Prior, and Informed Consent Policy: Benefits and Challenges](#), this means that companies should:

- Develop a formal agreement on the process with communities;
- Document the process to demonstrate it was followed; and
- Document the agreement, if one is obtained.

In addition, the Performance Standard requires companies to involve indigenous peoples' representative bodies and members of the affected communities, and provide sufficient time for decision-making. Finally, the process should include vulnerable groups, such as women and youth.

Our conversations with companies indicate that they are grappling with how to best implement the new standards. Many companies are accustomed to engaging in complex negotiations with indigenous peoples, but may need to adjust their practices. Specifically, they may be required to demonstrate, to the IFC or other stakeholders, that:

- The engagement process used to obtain consent was not imposed unilaterally by the company. The process should be tailored to a particular situation in consultation with the community;
- The process should seek the input of vulnerable groups and involve traditional decision-making bodies – again, precisely how this should be done may be culture and context-specific;
- The community agreed upon the process used to obtain consent; and
- The company has documented the community's agreement to the project, including the scope of that agreement.

In short, for some companies, the new Performance Standard 7 will require significant changes to company engagement processes. In other instances, it may simply require companies to more effectively document their existing good practices.

Given the controversy surrounding large scale infrastructure on indigenous lands around the world, companies should consider reviewing their practices and filling gaps to ensure they maintain their social licenses to operate, as well as their financing. When conducting such a review, companies should bear in mind that most national laws require consultation, not FPIC, so mere compliance with national law may not be sufficient to meet the requirements of the new Performance Standard.

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