

Performance Standard 7

Indigenous Peoples

October 1, 2007

Introduction

1. Performance Standard 7 recognizes that Indigenous Peoples, as social groups with identities that are distinct from dominant groups in national societies, are often among the most marginalized and vulnerable segments of the population. Their economic, social and legal status often limits their capacity to defend their interests in, and rights to, lands and natural and cultural resources, and may restrict their ability to participate in and benefit from development. They are particularly vulnerable if their lands and resources are transformed, encroached upon by outsiders, or significantly degraded. Their languages, cultures, religions, spiritual beliefs, and institutions may also be under threat. These characteristics expose Indigenous Peoples to different types of risks and severity of impacts, including loss of identity, culture, and natural resource-based livelihoods, as well as exposure to impoverishment and disease.
2. Private sector projects may create opportunities for Indigenous Peoples to participate in, and benefit from, project-related activities that may help them fulfill their aspiration for economic and social development. In addition, this Performance Standard recognizes that Indigenous Peoples may play a role in sustainable development by promoting and managing activities and enterprises as partners in development.

Objectives

- To ensure that the development process fosters full respect for the dignity, human rights, aspirations, cultures and natural resource-based livelihoods of Indigenous Peoples
- To avoid adverse impacts of projects on communities of Indigenous Peoples, or when avoidance is not feasible, to minimize, mitigate, or compensate for such impacts, and to provide opportunities for development benefits, in a culturally appropriate manner
- To establish and maintain an ongoing relationship with the Indigenous Peoples affected by a project throughout the life of the project
- To foster good faith negotiation with and informed participation of Indigenous Peoples when projects are to be located on traditional or customary lands under use by the Indigenous Peoples
- To respect and preserve the culture, knowledge and practices of Indigenous Peoples

Scope of Application

3. The applicability of this Performance Standard is established during the Social and Environmental Assessment process, while implementation of the actions necessary to meet the requirements of this Performance Standard is managed through the client's Social and Environmental Management System. The assessment and management system requirements are outlined in Performance Standard 1.
4. 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," or "tribal groups."

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5. In this Performance Standard, the term “Indigenous Peoples” is used in a generic sense to refer to a distinct social and cultural group possessing the following characteristics in varying degrees:

- Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others
- Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories
- Customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture
- An indigenous language, often different from the official language of the country or region

6. Ascertaining whether a particular group is considered as Indigenous Peoples for the purpose of this Performance Standard may require technical judgment.

Requirements

General Requirements

Avoidance of Adverse Impacts

7. The client will identify through a process of Social and Environmental Assessment all communities of Indigenous Peoples who may be affected by the project within the project's area of influence, as well as the nature and degree of the expected social, cultural (including cultural heritage¹), and environmental impacts on them, and avoid adverse impacts whenever feasible.

8. When avoidance is not feasible, the client will minimize, mitigate or compensate for these impacts in a culturally appropriate manner. The client's proposed action will be developed with the informed participation of affected Indigenous Peoples and contained in a time-bound plan, such as an Indigenous Peoples Development Plan, or a broader community development plan with separate components for Indigenous Peoples consistent with the requirements of paragraph 9.²

Information Disclosure, Consultation and Informed Participation

9. The client will establish an ongoing relationship with the affected communities of Indigenous Peoples from as early as possible in the project planning and throughout the life of the project. 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 on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues. The process of community engagement will be culturally appropriate and commensurate with the risks and potential impacts to the Indigenous Peoples. In particular, the process will include the following steps:

- Involve Indigenous Peoples' representative bodies (for example, councils of elders or village councils, among others)
- Be inclusive of both women and men and of various age groups in a culturally appropriate manner

¹ Additional client requirements on protection of cultural heritage are set out in Performance Standard 8.

² The determination of the appropriate plan will require technical judgment. A community development plan may be appropriate when Indigenous Peoples are integrated into larger affected communities.

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- Provide sufficient time for Indigenous Peoples' collective decision-making processes
- Facilitate the Indigenous Peoples' expression of their views, concerns, and proposals in the language of their choice, without external manipulation, interference, or coercion, and without intimidation
- Ensure that the grievance mechanism established for the project, as described in Performance Standard 1, paragraph 23, is culturally appropriate and accessible for Indigenous Peoples

Development Benefits

10. The client will seek to identify, through the process of free, prior, and informed consultation with and the informed participation of the affected communities of Indigenous Peoples, opportunities for culturally appropriate development benefits. Such opportunities should be commensurate with the degree of project impacts, with the aim of improving their standard of living and livelihoods in a culturally appropriate manner, and to fostering the long-term sustainability of the natural resource on which they depend. The client will document identified development benefits consistent with the requirements of paragraphs 8 and 9 above, and provide them in a timely and equitable manner.

Special Requirements

11. Because Indigenous Peoples may be particularly vulnerable to the project circumstances described below, the following requirements will also apply, in the circumstances indicated, in addition to the General Requirements above. When any of these Special Requirements apply, the client will retain qualified and experienced external experts to assist in conducting the Assessment.

Impacts on Traditional or Customary Lands under Use

12. Indigenous Peoples are often closely tied to their traditional or customary lands and natural resources on these lands. While these lands may not be under legal ownership pursuant to national law, use of these lands, including seasonal or cyclical use, by communities of Indigenous Peoples for their livelihoods, or cultural, ceremonial, or spiritual purposes that define their identity and community, can often be substantiated and documented. Paragraphs 13 and 14 below specify the requirements that the client will follow when traditional or customary lands are under use in a manner described in this paragraph.

13. If the client proposes to locate the project on, or commercially develop natural resources located within, traditional or customary lands under use, and adverse impacts³ can be expected on the livelihoods, or cultural, ceremonial, or spiritual use that define the identity and community of the Indigenous Peoples, the client will respect their use by taking the following steps:

- The client will document its efforts to avoid or at least minimize the size of land proposed for the project

³ Such adverse impacts may include impacts from loss of access to assets or resources, or restrictions on land use, resulting from project activities.

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- The Indigenous Peoples' land use will be documented by experts in collaboration with the affected communities of Indigenous Peoples without prejudicing any Indigenous Peoples' land claim⁴
- The affected communities of Indigenous People will be informed of their rights with respect to these lands under national laws, including any national law recognizing customary rights or use
- The client will offer affected communities of Indigenous Peoples at least compensation and due process available to those with full legal title to land in the case of commercial development of their land under national laws, together with culturally appropriate development opportunities; land-based compensation or compensation-in-kind will be offered in lieu of cash compensation where feasible
- The client will enter into good faith negotiation with the affected communities of Indigenous Peoples, and document their informed participation and the successful outcome of the negotiation

Relocation of Indigenous Peoples from Traditional or Customary Lands

14. The client will consider feasible alternative project designs to avoid the relocation of Indigenous Peoples from their communally held⁵ traditional or customary lands under use. If such relocation is unavoidable, the client will not proceed with the project unless it enters into a good faith negotiation with the affected communities of Indigenous Peoples, and documents their informed participation and the successful outcome of the negotiation. Any relocation of Indigenous Peoples will be consistent with the Resettlement Planning and Implementation requirements of Performance Standard 5. Where feasible, the relocated Indigenous Peoples should be able to return to their traditional or customary lands, should the reason for their relocation cease to exist.

Cultural Resources

15. Where a project proposes to use the cultural resources, knowledge, innovations, or practices of Indigenous Peoples for commercial purposes, the client will inform the Indigenous Peoples of: (i) their rights under national law; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development. The client will not proceed with such commercialization unless it: (i) enters into a good faith negotiation with the affected communities of Indigenous People; (ii) documents their informed participation and the successful outcome of the negotiation; and (iii) provides for fair and equitable sharing of benefits from commercialization of such knowledge, innovation, or practice, consistent with their customs and traditions.

⁴ While this Performance Standard requires substantiation and documentation of the use of such land, clients should also be aware that the land may already be under alternative use, as designated by the host government.

⁵ Where members of the affected communities of Indigenous Peoples individually hold legal title, or where the relevant national law recognizes customary rights for individuals, the requirements of Performance Standard 5 will apply, rather than the requirements under this heading.