

PUBLIC CONSULTATIONS WITH CIVIL SOCIETY: GUIDELINES FOR PUBLIC AND PRIVATE EXECUTING AGENCIES





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Case studies. Legal frameworks applicable in 26 countries. IDB Operational Policies. Indicative chart of policies of other Multilateral Development Banks. Guiding Principles. Best Practices.

Acronyms:

Bank	Inter-American Development Bank
CS	Civil Society
CSO	Civil Society Organizations
EIAS	Environmental Impact Assessment System
ESMP	Environmental and Social Management Plan
FPIC	Free, Prior and Informed Consent (consultations with indigenous peoples)
Guidelines	For the purposes of this volume it is used as synonym for Source Book
IDB	Inter-American Development Bank
IDB Group	Inter-American Development Bank
IFC	International Finance Corporation
ILO	International Labour Organization
IP	Indigenous Peoples
LAC	Latin America and the Caribbean
MDB	Multilateral Development Banks
NGO	Non-Governmental Organizations
NIP	Native Indigenous Peoples
OP	IDB Operational Policies
OP 703	IDB Social and Environmental Safeguard Policy
OP 710	IDB Operational Policy on Involuntary Resettlement
OP 765	Operational Policy on Indigenous Peoples
Private Sector	For the purposes of this volume it is used as a synonym for the concepts of Corporations, Companies, Industries, and Firms.
RC	Rural communities
REDD +	Reducing Emissions from Deforestation and Forest Degradation
VPC	IDB Vice Presidency for Countries

These Guidelines constitute a study and provide guidance on institutionality and governability of public consultations.

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Prologue:

Based on an independent report carried out worldwide, the IDB group is a leader among the most influential international agencies in achieving development agendas in its countries of action.

As a leader, the IDB works for the reduction of poverty and inequity, the promotion of productivity and innovation, and for the generation of regional integration, together with the three main actors of development: Governments, the Private Sector, and Civil Society.

In order to address the countless challenges and the complexity of development-related issues for Latin America and the Caribbean, it is necessary to promote an intelligent interaction of these three main actors. This also implies working constantly in the elaboration of tools to better support the realization of operations, public policies, strategies, and programs.

Public consultations are one of the contact points between these three actors and, therefore, they constitute a tool and an opportunity of improving sustainability possibilities of the operations.

Public consultations have historically served to different purposes suffering changes on their scope and importance. At present, thanks to the technological innovation and the massive use of social networks, best practices in the matter have been spread exponentially thus evidencing the due diligence and good work of many Executing Agencies.

As will be evidenced in the content of this publication, development issues and local and international frameworks where they are inserted, require an interdisciplinary approach. As regards public consultations, advances in rules and legislations of the last decades make it possible for a more informed and technically prepared civil society, to provide pertinent input to governments and the private sector. The result of said contributions is the social innovation when said inputs are reflected in public and private interventions and generate improvements in the matter subjected to consultation.

The IDB Group, by means of this publication, supports Executing Agencies in the performance of more effective and efficient public consultations, furnishing information to create consultation plan, bringing together in a single document both, mandatory regulations contained in the legal frameworks of the twenty-six countries, and the IDB operational policies. Included herein are also guiding principles and best practices which further facilitate a pragmatic application in the field. For reference purposes, a descriptive chart is included on the treatment of public consultations by other Multilateral Development Banks.

These guidelines constitute a study and research, and aim at supporting both the Public and Private Sector in achieving a better engagement with the civil society as regards public consultations. For this purpose, methodologies are suggested, and figures are provided for operations which costs have been impacted due to social conflicts and where public consultations have the potential to develop an important role in avoiding or mitigating said conflicts.

Alexandre Meira da Rosa
Vice President for Countries
IDB Group



SECTION I

Specific purpose of these Guidelines: To support private and public Executing Agencies, whether financed by the IDB or not, in carrying out effective public consultations with the civil society in Latin America and the Caribbean, by supplying:

- a. Applicable legal frameworks of each of the 26 (twenty-six) countries of Latin America and the Caribbean where the IDB operates.
- b. Information to draw up public consultation plans including the legal framework applicable by country, the framework of applicable IDB Operational Policies (OPs) (should the operation be financed by the Bank) as well as guiding principles on universal best practices.
- c. A descriptive chart of the treatment of public consultations by other Multilateral Development Banks (MDBs).

General context: A cost-benefit analysis would indicate that even though good consultations translate into budget allocation, the lack of consultations or ineffective consultations exponentially increase the risks and therefore the costs of an operation.

In large-scale projects¹, mainly those related to mining, hydrocarbons, hydroelectrics²; infrastructure, and transport, there is a close relation between the impact of the projects and the conflicts with the civil society. In these terms, projects between \$3 and \$5 billion dollars have reported weekly losses of \$20 million due to delays in production caused by social conflicts.

As regards public consultations, rules and legislations establish “what” to do, Best Practices guide on guiding principles as to “where” and “when” to do it, and these Guidelines compile the above with legal frameworks of each country and IDB operational policies, thus organizing and facilitating “how” to do it.

It has been proven that operations between \$3 and \$5 billion dollars have reported weekly losses in the order of \$20 million due to delays in production caused by social conflicts. In large-scale projects there is a close relationship between these projects and conflicts with civil society. Effective public consultations play a decisive role in reducing the risks of these losses.

¹ In this case “large-scale projects” is understood as development operations aimed at achieving many benefits and which respond to extremely complex studies both from an investment perspective and from a perspective of the environment and social nature. They involve vast geographical areas, many people such as project specialists, a diversity of technical approaches in order for the operation to progress; different communities and/or groups of people benefited and/or affected; multiple years for the elaboration and execution thereof; integrated studies and environmental control measures.

² See “Opportunities in Dam Planning and Management” A communication Practitioner’s Handbook for Large Water Infrastructure” Leonardo Mazzei, Lawrence J.M> Haas, Donal T. O’Leary “<https://openknowledge.worldbank.org/bitstream/handle/10986/2311/626250PUBODam000id0182160BOX361487B.pdf?sequence=1>”

In the exploration phase of a project, daily losses of US\$ 10 thousands have been recorded for delays due to maintenance of exploration field conditions which were hindered by social conflicts. US\$ 50 thousand daily losses are estimated in assumptions of advanced exploration suspended as a result of conflicts between companies and communities.

Due diligence. Public Consultations and reduction of operational and execution risks: Contrast with experience reported by case studies

The effective public consultation is one of the milestones that contribute to the reduction of financial risks caused by social conflicts. The effective public consultation does not represent an infallible panacea and, even so, it increases the possibility of success of positive impacts. In this sense, some research emphasize that the conflict transfers social and environmental risks to the costs of the project³. In the study carried out by the Harvard University, were individualized factors influencing in translating social and environmental conflicts into business risks as a synonym for losses.

The higher costs derived from social conflicts are those related both to the inability of carrying out the projects themselves, and to the obstacle of developing new business expansion opportunities:

- In 2003, the owners of Tambogrande project in Peru reported a decrease of US\$ 59.3 million in their assets, after abandoning the proposed project due to conflicts with the communities.
- In 2006, those in charge of the Esquel project in Argentina were forced to deduct \$ 379 million from their assets, and renounce to the development of US\$ 1.33 billion in projected amounts, due to social conflicts.
- In 2011, the owners of Minas Conga project suspended the construction upon request of the Government of Peru and as a result of the conflicts between the company and the community.⁴
- In 2014, Anglo American confirmed the need to redesign its project Quellaveco due to the fallen of the metal prices as well as facing a conflict in the south of Peru by which the estimated cost of the project increased from US\$ 3.3 billion to US\$ 5 billion.⁵

In a study carried out based on 190 projects operated by the main international oil companies (large-scale project), it was shown that the time needed to comply with the stipulated project execution deadlines was doubled in relation to prior decades, due both to the fact that the area of the project was far away and its technical difficulty, and due to the proliferation of social conflicts⁶.

³ Harvard, Queensland y Clark "Conflict translates environmental and social risk into business costs" D. Franks, R. Davis, A. Bebbington, S. Ali, D. Kemp, M. Scurrah.

⁴ The total estimated production of the oilfield was of 15-20 million ounces of gold and 4-6 thousand million pounds of copper, having the main owner, Newmont (51.35%), submitted capital expenditure reports of US\$ 1455 million between 2010 and 2012. The minority partner, Compañía de Minas Buenaventura (43.65%), reported capital expenditures of US\$ 498 million in Minas Conga in 2012.

⁵ "The Cost of Conflict as Interpreted by Corporations" Harvard, Queensland y Clark. "Conflict translates environmental and social risk into business costs" D. Franks, R. Davis, A. Bebbington, S. Ali, D. Kemp, M. Scurrah.

⁶ The above study addressed corporative costs of 50 (fifty) cases of extractive projects with social conflicts worldwide, including initiatives of Peru, Argentina, and Chile. It was based on 45 confidential and thorough interviews to high-level executives of extractive industries (mining and energy).

The main companies interviewed revealed that the conflicts between companies and communities had translated into annual losses in the order of US\$ 100 million dollars, amounting to US\$ 750 thousand dollars per day assuming that the escalation of these conflicts caused greater damages such as affecting the electrical lines which forced the operation to stop completely.

In the exploration phase of a project, daily losses of US\$ 10 thousand dollars have been recorded for delays due to the hindrance of the exploration field maintenance conditions by social conflicts. Losses are estimated in US\$ 50 thousand daily assuming advanced explorations that are forced to stop their activities as a result of the community-company conflicts.

As regards Indigenous Peoples (IP)⁷, the results of four case studies of large-scale projects indicated either that, important economic savings were achieved by means of consultations in the search for free, prior and informed consent of local communities affected, or that significant financial losses were suffered after leaving out the opinion of the community. As noted in the report, the projects suffered financial losses due to delays in said projects as a result of disputes and social conflicts.

It is estimated that the gold mine Yanacocha in Peru suffered losses which translate into costs of US\$ 1.69 million for delays caused by the opposition of the community. Other examples of projects which have suffered delays or closures due to the opposition of the indigenous communities for not obtaining the so-called “social license to operate” include the hydroelectric project Belo Monte in Brazil, the hydroelectric project HidroAysén in Chile, the gold mine of Famatina in Argentina and the gold mine Conga in Peru.

In the specific case of IP, the international framework of human rights acknowledges the right to be consulted on the decisions affecting them. Among other sources of international law, the right to prior consultation has been acknowledged in ILO Convention 169, which has been ratified by many borrowing member countries of the IDB, in the Declaration of the United Nations on the Rights of Indigenous Peoples (2007), formally approved by all the borrowing member countries of the IDB, and in the formal decisions of the Inter-American Court on Human Rights⁸.

Together with the evolution of the international law of indigenous rights, there has been a wave of constitutional and legal reforms in Latin America since the 90s which has increased citizen participation in political processes and acknowledged the multi-ethnic character of citizenships⁹. Many of these reforms grant collective land tenure rights

⁷ See World Resource Institute, Herz, Viña, and Sohn 2007.

⁸ Formal decision of 2007 in the case of the Saramaka people v. Suriname which is binding for all borrowing member countries of the IDB.

⁹ Pinto and Ávila 2011

to indigenous peoples¹⁰ (at least in principle) and expressly acknowledge their right to prior consultation in relation to projects or policies affecting them.¹¹

Without prejudice to the above, in the past it was frequent for the public consultation to be seen by proposers or project teams as an unnecessary and bureaucratic burden, which only meant additional costs for projects in terms of time, money and complexity of transactions. Studies indicate that, apart from cost-saving, the consultation may improve the quality, efficacy, efficiency, equity, sense of belonging and thus, general sustainability of a project.

From the above it can be gathered, and the evidence supports so, that one of the main factors of success for the correct execution of development operations is to get to know improvement opportunities which were not foreseen. Well-planned public consultations represent a possibility of arranging the participation and inclusion of decisive input by the civil society. Therefore, getting acquainted with the institutionality and governability¹² of public consultations, as well as the practical application of its guiding principles and universal best practices is vital.

Companies operating in large-scale projects have identified delays due to social conflicts as one of the most frequent risk factors associated with the loss of productivity

- a. **IDB context:** As regards the engagement strategy with the Civil Society (CS), the IDB Group implements a series of information, dialogue, public consultations, collaboration and partnerships' efforts aimed at achieving better opportunities of inclusion and participation of the CS to the advance of development. As regards consultations, the IDB has Operational Policies (OPs) where it is mandatory to make public consultations¹³, and its application is also mandatory for every operation financed by the Bank.
- b. **Sectors and legal frameworks applicable and included in these Guidelines:** these Guidelines specify and include the legal obligations as regards public consultations established within the legislation and regulations of each of the twenty-six countries and belonging to:

¹⁰ Indigenous activism and local socio-political movements have played a key role in the promotion and formation of a new multiculturalism in the region, promotion not only for participation rights for indigenous peoples but for a greater environmental and social justice and the acknowledgement of ethnical and cultural diversity in general (Sieder 2002; Yashar 2006).

¹¹ Most recent examples include extensive reforms of the Political Constitution of the State approved in 2009 and the adoption of by-laws and rules on prior consultation in Peru in 2011 and 2012, respectively.

¹² Institutionality and governability of public consultations refers to the applicable legal framework, including laws and regulations, universal best practices and mandatory provisions or operational policies for the due diligence of the executing agency in the matter of public consultations, favoring the better execution of projects/strategies/programs subjected to consultations and their consequent rendering of accounts.

¹³ See Annex I - Executing Agencies and Projects financed by the IDB: Operational policies applicable as regards public consultations.

- a. Environmental Impact Assessment System
- b. Extractive Industries sector
- c. Energy sector
- d. Forestry sector
- e. Fishing sector
- f. Infrastructure sector

Sectors were chosen based on the impact of corresponding operations on the buffer communities to the areas of the project.

- c. **Indigenous Peoples:** These Guidelines include obligations set in national frameworks as regards consultations with indigenous peoples, models of universal best practices, based on international principles¹⁴ and experience in the field. For every operation that has an impact on indigenous territories and/or communities, it is of utmost importance to design and implement effective consultation processes¹⁵ aimed at establishing local agreements and in compliance therewith.
- d. **Consultation Plans:** The information required to draw up a consultation plan included herein is gathered based on answering questions of guiding principles and best practices (Sections II and III), including applicable legal frameworks (Section IV), and special regulations (Section V). Both guiding principles and best practices are the result of processing and gathering:
 - i. Practical provisions stated in the most advanced legal frameworks which lay down positive regulations (both national and international) on public consultations, including pertinent the IDB OPs.
 - ii. Experiences and lessons learnt in the field; and
 - iii. Treatment of the matter by other MDBs (see Section V Annex III).

Why should best practices be applied when they are not mandatory?

In the first place, best practices generate the conditions for a partnership between civil society and project proposers, to achieve the desired development objectives and therefore for the benefit of all those involved. The generation of this planned space of information and dialogue implies the possibility of conflict potential reduction, an improvement in decision-making and the quality of the project.

¹⁴ See Section Due diligence. Public consultations. Reduction of operational and execution risks: contrast with experience reported by case studies. Section I

¹⁵ As guidance, during the period of 2007-2011, the total number of projects to which the Operational Policy on Indigenous peoples of the Bank (OP 765) was applicable, and which orders the consultation with indigenous peoples potentially affected by a proposed project, increased from 19 projects in 2007 to 78 projects in 2011. These 78 projects represent 13% of all projects subjected to Environmental and Social Review (ESR) in 2011, exceeding the 8% of 2010. See: Deanne M. Barrow Consultation with Indigenous Peoples



It was noted that social conflicts related to large-scale projects translated into losses in the order of *US\$ 100 million annually, and US\$ 750.000 daily* when the escalation of the conflict caused damages which led to the detention of the whole operation.

As shall be seen in Sections II, III and IV (mainly the resulting models for the elaboration of consultation plans), if there is a gap in the legislation¹⁶, the application of best practices has the potential of reducing the level of tensions and disputes which arises frequently around development projects, mainly in the Extractive, Forestry, Energy, Fishing, and Infrastructure sectors.

Profile of the target group: Public or Private Executing Agencies financed with IDB funds or financed by other entities.

This study translated into a source book works as guidelines and suggestions, designed and applicable to be useful to every Executing Agency linked to Governments and/or the Private Sector interested in carrying out an investment project, program or strategy in any of the twenty-six countries focus of this assessment¹⁷.

The guidelines may be used by Executing Agencies both financed by the IDB funds (where the application of its OPs is mandatory) or for operations financed by other entities.

¹⁶ For those projects financed by the IDB, OPs shall be always applied and are mandatory for all projects financed by the Bank. Best practices and guiding principles contribute with OPs, as regards due diligence.
¹⁷ 26 borrowing member countries of the IDB from Latin America and the Caribbean: Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic and Suriname, Republic of Trinidad and Tobago, Uruguay and Venezuela.

Profile of the consulted audience: irrespective of the public or private source of financing

From the perspective of the Civil Society (SC), the classification of an operation as “Sovereign Guaranteed” or “Non-Sovereign Guaranteed” is indicative. Best practices as regards public consultations are governed by independent universal principles.

The distinction of the origin of financing of a project, from the perspective of stakeholders (belonging to the universe of CS), loses strength and even relevance. Universal best practices are applied to groups of people directly or indirectly¹⁸ affected by the execution of a project regardless of the entity -public or private- in charge of the operation.

The classification of an operation as public or private is indicative, from the perspective of the Civil Society. The focus for the latter is on the project’s impact.

Without prejudice to the above, and even though it was already mentioned, best practices are governed by universal principles; who is in charge of carrying out the consultations and leads it influences in the public perception. Due to a series of reasons beyond the scope of this analysis, in many cases, when the executing agency belongs to the private sector it is not fully trusted by many segments of the CS. In these terms, the elaboration of a consultation plan, its due communication and its socialization may make the real difference.

For the IDB, CS comprises a wide array of organizations: associations; academic institutions; Corporate Social Responsibility groups; non-profit professionals’ groups; social organizations; Non-Governmental Organizations (NGOs); syndicates; foundations; African descendants organizations; indigenous associations and communities; religious institutions; formal and informal organizations belonging to or representing the interests of their communities. These may act at a local, regional and international level.

¹⁸ People directly affected are those within the area of influence of the project and who are therefore physically close to it. People indirectly affected are those outside the area of influence of the project and therefore with less direct impacts. For example, a direct impact may be the dust suspended in the air and the increase in traffic of trucks circulating through a certain area in order to reach the project site. An indirect impact would arise from delays in the delivery of products or services in another area or an area far away from the area of intervention due to some activities of the project.



SECTION II

PUBLIC CONSULTATION: CONCEPT, OBJECTIVES, BEST PRACTICES AND PRINCIPLES:

1. What is a public consultation?¹⁹

It is a formal process organized in stages that follows a methodology and aims at providing reliable information, in order to receive input on a project/strategy/program. In contrast with a public hearing, or information or participation strategies to closed consultations, the public consultation follows its own methodologies and, as its name suggests, aims mainly at getting to know the doubts, questions and proposals of the stakeholders which will be directly affected (positively and/or negatively) by the implementation of a certain project/strategy/program.

2. Objective of the public consultation:

- To identify the civil society's knowledge which may improve the design of the project/strategy/program subjected to consultation.
- To gather input that may facilitate decision-making.
- To promote and include social innovation identifying further development opportunities that did not exist when the project was first designed.
- To incorporate measures to reduce negative impacts.
- To realize and get acquainted with the positions of the consulted stakeholders in order to confirm the social relevance of the project/program/strategy and/or, to carry out adjustments and/or incorporate measures to reduce the negative impacts of the project, promote its positive impacts, and achieve mitigation and compensation measures.

3. Best practices. Why to carry out a consultation and what for?

Apart from the mandatory nature established in the more advanced legislations in the matter and in some countries of the region, it is relevant to carry out consultations with the stakeholders directly affected by the following best practices:

Considered as a tool, public consultations have the potential to promote and include social innovation by identifying further development opportunities that did not exist when the project was first designed.

Successful projects are those addressed in a comprehensive manner, with broader development interventions, beyond mere physical assets. The sense of belonging, property and inclusion of the communities which depend on natural resources affected by the project, has the real potential of improving them by reducing social conflicts, contributing significantly to the efficacy and sustainability of an operation.

¹⁹ See also Public Consultations Guidelines and the Participation of stakeholders in Projects Financed by the IDB. (2013)

To promote social innovation with the inputs received and which are pertinent during public consultations to allow a more sustainable inclusive development which improves the externalities of the project.

Create partnerships with the Civil Society for an inclusive development. Agreeing on a “Social License”: the consultation provides legitimacy benefitting from the local knowledge on a certain subject or intervention area, being it mainly a right vested on people to be consulted. The legitimacy of the project is not automatic, it requires a plan and follow-up. Consultations work as a tool within said plan, not only as an element to avoid conflicts but also to improve an operation’s quality design. It is a direct way to clear up doubts and understand the needs of buffer communities with the potential added value of contributing to prevent possible socio-environmental conflicts. Legitimacy is attained by supplying opportune and clear information²⁰ on the project and impacts thereof; having a dialogue with communities as soon as possible, incorporating

relevant elements obtained in the consultation, prior to the decision-making process. *Without legitimacy, the possibility of a project facing social conflicts is high and therefore the financial risk thereof increases.*

Contribute to generating benefits and reduce operational risks of the project: As evidenced in Section I²¹, effective public consultations contribute to a series of benefits for the success of the project both for the Executing Agency and for the beneficiaries. On the other hand, the lack of clear and understandable information of the project together with the lack of contact with the Executing Agency related to the project, causes discomfort and mistrust in the communities. This discomfort may be translated, among other aspects, into helping deviation and delivery of erroneous information of the project by third parties;

the blockage of access routes to the project site; difficulty in finding local manpower and other services such as food and accommodation for the project’s personnel.

Create capacity for the community: The public consultation and the participation processes involve the delivery of information on a wide range of matters related to the project. During the consultation, the possible impacts and benefits are analyzed for stakeholders to form an opinion and make informed decisions on the basis of the same information available to the project team and the project proposer. During the process with some communities and their leaders, the need to receive training in specialized



20 There is a strong tendency of starting consultation processes once the project has financing, either in its design stage or in its execution stage. This is true in many cases with the genuine intention of not generating expectations in the neighboring communities to the areas of execution of the project. Without prejudice to the above, evidence shows that the dissemination of an early consultation plan contributes to improving externalities of a project as well as mitigating conflicts with the civil society. On the other hand, if the consultation was no longer in the design stage where inputs may be decisive to improve the project itself, it is healthy to schedule consultations with the affected communities so as to avoid the consultation fatigue syndrome (See section Consultation Fatigue page 24)

21 See: Due diligence, public consultations and reduction of operational and execution risks: contrast with experience reported by case studies, page 11

subjects may be frequent. When the ability and the experience of the pertinent community are increased, mainly as regards projects with a strong participation, better conditions are promoted in order to contribute to the success thereof during the implementation.

Create a setting for rendering of accounts and a protocol for the communication between the parties during the whole process of the project: This framework reinforces the political legitimacy of the consultations and related decisions aiding in the creation of trust between the parties involved.

Promote commitment with the project/strategy/program under consultation²²: When the ability and the experience of the pertinent community are increased, mainly as regards projects with a strong participation, better conditions are promoted in order to contribute to the success thereof during the implementation.

In projects involving joint management of resources and protected areas, such as many of the forestry initiatives of REDD+²³, support and participation of communities, mainly if they are indigenous peoples, may be necessary prerequisites both for practical reasons for the decisions related to the use of the soil which are made at a national level, and for regulatory reasons because forests and resources belong to lands owned by communities or where the latter have an interest regarding real estate (leasing, use, access to resources).



²² See Anne Perrault, Kirk Herbertson and Owen J. Lynch, Partnerships for success in protected areas : The public interest and the rights of local communities to the Prior Informed Consent, 19 Geo. Int'l Envtl. L. Rev. 475, 519 (2007)
²³ Reducing Emissions from Deforestation and Forest Degradation

Respond to a legal obligation: In several countries and mainly in many of the 26 (twenty-six) countries under study, it is a legal obligation to carry out public consultations. Projects, programs and/or strategies financed with IDB funds should always apply its OPs and, therefore, consultations governed by the same are mandatory. Should there be any discrepancy between local legislation and the OP, the most stringent regulation shall apply. Without prejudice to the above, and for operations not financed with IDB funds, when there is a gap in the legislation there are best practices gathered in these guidelines with high-stringency application standards that would nonetheless be dismissed if there were other even higher standards.²⁴

Promote social innovation identifying further development or shared value opportunities: Opportunities which were not contemplated in the original design of the project, but identified later on thanks to the input received from local knowledge can be integrated in the project itself, or in other initiatives sponsored by other private proposers or agencies.

EFFECTIVE CONSULTATION PLANS: THINGS TO CONSIDER

The first step to draw up a consultation plan, which will be shared with stakeholders, is to adapt it to mandatory rules (applicable legal framework, presented herein divided by sector and country, Section IV) and/or OPs of the donor (whichever is more stringent, see Section V). If there is a gap in the legislation, there are guiding principles (see section II) that serve to evaluate every stage of the consultation and act as filters to guarantee compliance with universal best practices (see Section I). In summary, what needs to be considered and is included in these Guidelines is:

1. *Applicable legal frameworks:* They are all those laws and mandatory regulations which govern the consultation for the operation/strategy/program subjected to consultation and in the corresponding country (See Section IV and V).
2. *Guiding principles:* They are filters to guarantee the best universal standards. The principles referred to in these Guidelines arise from the comparison of the most advanced legislations in the matter (within and outside of the Region). (See Section II)
3. *Best practices:* They include the guiding principles resulting from: the systematization of the most advanced legal provisions nationally and internationally; they are the result of the compilation of field experiences and the common denominator of projects individualized as potentially conflictive. (See Section I, II and III)

²⁴ See Section II, III and IV with the information of the applicable legal frameworks, IDB OPs, guiding principles and best practices to carry out the consultation plan to be distributed among the participants of the consultation.

As regards applicable and mandatory OPs for all operations financed by the IDB, see Section V which includes a chart summarizing said provisions. In all assumptions, the most demanding standards must be applied at all times. Section V also provides an indicative chart with other MDBs in order to provide a more complete context.

Consultation models and/or plans with IP pose a challenge due to the lack of international consensus on a single model and consultation level²⁵. The model presented herein²⁶ includes guiding principles on universal best practices as a minimum standard to be included.

Due to the above, guiding principles and the consultation model for IP suggested in this study are aimed at being illustrative to ensure certain stringency and quality and compliance with universal best practices.



Guiding principles:

1. **Accessibility: Is the proposed consultation accessible from different perspectives?**

Geographic accessibility: Applicable to consultations on-site where it should be guaranteed that the place of consultation is easily found and there is access to transportation²⁷;

Language accessibility: The consultation must be carried out in the local language

Style accessibility: the consultation must be carried out based on the consulted audience with easily understandable terms. Due to the above, technical language is reserved only for professionals and technicians who are specially consulted regarding the subject matter of the consultation.

²⁵ In such sense, various indigenous groups have advocated for the acknowledgement of a "free, prior and informed consent", or FPIC, known as "prior consultation and bona fide negotiations". Uncertainty still surrounds application matters, for example regarding the way in which to establish when there was no consent by the community, or how to guarantee the participation of subgroups which are traditionally poorly represented, such as women and young people.

²⁶ See Section IV Public consultation models.

²⁷ Ensuring local transportation is critical in many consultations carried out in remote zones and regarding audiences with no economic resources who are far away from the place of consultation.

Virtual accessibility: if the consultation is done virtually, familiarity and regularity of internet access on the part of the audience to be consulted is a decisive factor to consider (or dismiss) this means as effective.

2. Opportunity: Is the proposed consultation timely?

Prior to decision-making: The consultation, and therefore the Consultation plan distribution, must be done prior to the final decision-making of the project, strategy or program which gave rise to the consultation.

Consultation call: with a minimum time in advance. This time in advance will vary depending on local legislation and/or the IDB OPs should the operations be financed by the Bank²⁸. A well-known practice is to convene the consultation with at least two weeks²⁹ in advance, stating date, time and place (both for the performance of a consultation on-site and for the deadline to receive input in the virtual consultation).

3. Duration: How much should the proposed consultation and its phases last?

Each stage of the consultation process must foresee a minimum duration. Should there be a gap in the legislation, the calculation of a consultation phase duration is based on ensuring the quality of participation of all attendants (consultations on-site) and complexity of inputs required depending on the matter under consultation (mainly in virtual consultations). Depending on the number of participants present, it is advisable for the consultation on-site to last no less than two hours and no less than two weeks for virtual consultations.

4. Reciprocity/Feedback: Why to systematize the received input and provide feedback to the participants of the consultation? Feedback phase to be included in the Consultation Plan

When all the consultation phases end, the participant communities and/or stakeholders must receive feedback indicating all the received proposals, stating those proposals which were included in the project in question and those which were not included. Compliance with this principle also increases the credibility of the Executing Agency and has the potential of reducing controversies and the so-called consultation fatigue syndrome³⁰.

²⁸ See Section IV Legal frameworks applicable per country page 25.

²⁹ This time is given for participants of the consultation to have time to adjust and make the corresponding arrangements in their own schedules. See the adaptation of the model depending on the national legislation in the pertinent section of these Guidelines.

³⁰ See Consultation fatigue syndrome page 24



5. **Context: Is it the same to carry out a consultation in a rural or urban environment?**

As expected, approaching communities of rural areas, mainly those distant ones, is very different to those groups of urban or peri-urban zones which have access to information and tend to use social networks more frequently and in a regular way, thus facilitating participation in organized opinion forums. Therefore, the uses and customs of the population of the project's area of influence should be taken into account.

6. **Inclusion and Diversity³¹: Why is it important to keep a balance of gender and diversity among consulted people?**

Depending on the position, the social role, ethnic group and gender of the participants, the results of the consultation may vary and therefore non-inclusion or the lack of diversity may render the efforts unsuccessful and the consultation itself not effective enough or totally ineffective. Therefore, equilibrium of gender must be taken into account among consulted people, and diversity and racial and sexual orientation of participants should be promoted (in case they identify themselves in that way). It may even be necessary to carry out prior consultations with a single stakeholder group, apart from looking after a balance between general consultations. In order to do so, at the time of the call it is important to promote and ensure support for the participation of minority stakeholders or vulnerable stakeholders.

7. **Representativeness. Why is it important to have different groups of interest represented?**

The social fabric comprises complex patterns which at plain sight may not be differentiated. Non-differentiation as an approach strategy may ruin the efforts of having an adequate representation of the audience and thus weaken the consultation or make it null. Therefore, the consulted audience must represent different interests regarding the project in question. In order to do so, it is important to ensure that all groups of interest individualized in the planning phase (or even in the execution phase) of the project are duly represented (by themselves or by power of attorney to a third party with the due notarial certification and/or community meeting minutes and/or proxy).



*Uses and habits refer to the respect for the ways, traditions, trends, and times of the group of interest or of a certain community. Traditions refer to knowledge, principles and socio-cultural aspects that communities wish to preserve.
31 "Increasing the presence of women in consultations contributes to the inclusion of different points of view and interests, which may contribute to the better design and implementation of the project, and thus better results. Likewise, this may facilitate the empowerment of women, as it can help demonstrate the value of their contribution and strengthen their position in the community and in their respective households." See: "Gender and Renewable Energy: Wind, Solar, Geothermal and Hydroelectric Energy" <http://www.iadb.org/document.cfm?id=39647922>



SECTION III

STAGES OF THE GENERAL CONSULTATION PLAN

When organizing, calling, and performing consultations, keep in mind the following stages:

Step I: Preparation of the Consultation and Consultation Plan

1. **Revision of applicable legal frameworks, guiding principles and universal best practices:** Elaboration stage where applicable legal frameworks are duly revised, guiding principles and universal best practices are analyzed (see Sections I, II, III, IV, V hereof).
2. **Determination of the document to be subjected to consultation** which will be attached to the Consultation Plan at the moment of convening and providing information about the subsequent phases of the consultation. Guiding Principles should be kept in mind (see Section II), mainly in the content related to “Accessibility”.
3. **Budget and personnel:** budget lines allocated per consultation phase and the technical team responsible for leading each stage is appointed. The moderator of the consultation will be informed when disseminating the final Consultation plan among stakeholders.
4. **Timeframe:** setting of dates for each phase which will be included in the Consultation plan to be shared with stakeholders.
5. **Consultation type:** it is decided whether the consultation will be on-site or virtual, and said decision is included in the Consultation plan to be shared with stakeholders.
6. **Dissemination:** it is decided the frequency and means to convene to each stage of the consultation.
7. **Logistics:** it is decided the place where the consultation will take place (for on-site consultations), as well as the steps necessary to ensure stakeholders accessibility. (See Guiding principles Section II).
8. **Indication of subsequent steps:** the Consultation plan must indicate subsequent phases so that stakeholders are aware, in advanced, of the times required to process their input and the feedback or reciprocity stage on those input (See Section II). In this stage, the Executing Agency (unless national provision stating otherwise) is the one to call the Public Consultation indicating who shall chair it. If there is a Private Executing Agency it is advisable to keep informed Government’s authorities at all time.

9. **Early identification of stakeholders**³² including groups identified previously by the legislation (if applicable) and by the population and communities which will be directly affected by the project.
10. **Indication of the binding or non-binding nature of the consultation together with the delivery of true, appropriate and understandable information** on the project in question with special emphasis on its potential positive and negative impacts. For the Consultation Plan to be distributed among stakeholders, it is vital to indicate the binding nature (opinions vested in the context of the consultation shall be considered as partial or final decisions) or non-binding (opinions vested shall be considered as guidance and taken as orientations by the Executing Agency). In some assumptions, the very legislation is the one to determine the nature that a consultation should abide by (see Section IV). An essential factor is that communities and interested groups have access to the project information³³ by the proposer so as to comply with this consultation stage³⁴.

Step II: Distribution of the Consultation Plan together with the Document object of the consultation

Phase I: *Dissemination of the Consultation Plan attached to the Document to be subjected to consultation* (the Consultation Plan includes all subsequent phases and it informs on the list of people invited to take part therein)

Phase II: *Stakeholders inputs:* Inclusion of information on the date, place, list of participants, moderator, and person in charge of information processing.

Phase III: *Systematization and Feedback on remarks and proposals from the stakeholders:* Attach list of participants and indicate time, place, and way of providing feedback on received inputs. This stage provides legitimacy and transparency to the consultation process which in turn strengthens the relation plan with the civil society, related to the main operation. As stated in the section “Risks of public consultations: Consultation Fatigue Syndrome”³⁵, some of the reasons for mistrust in consultations is not giving the information on all the proposals and remarks received³⁶.

³² The identification of stakeholders directly or indirectly affected with the implementation of the project and/or strategy to be consulted is vital. The executing agency is in charge of said identification (unless the legislation states that this is responsibility of the local national authority or if stakeholders are previously determined by legal means). There are different profiles of organizations and individuals as well as factors internal and external to the project and to the implementation region. There are variables in the representation of the same organizations and communities of the civil society which, due to their nature, change and have an impact on decision-making. Assuming implementation of projects in remote areas, an interdisciplinary work team is required which is aware of social dynamics in the area and is capable of communicating in the local language.

³³ See Accessibility page 19

³⁴ Among the lessons learnt, for some proposers not to submit information of the project in order to later on “complete” this lack of information with distorted, incomplete and untrue data of the project in question, creating a source of conflict, loss of credibility and thus also a loss of financial resources is emphasized as a bad practice.

³⁵ See Section III page 22

³⁶ See Idem ut supra



During feedback, participants must be communicated (on-site or virtually, depending on the audience) which proposals and remarks were incorporated to the project and which were not³⁷.

Continuous relationship and communication system: This phase is not part of the consultation process strictly speaking, but it provides an excellent opportunity of development. There is an intrinsic relation between consultations and communication. It is advisable to think of the main operation related to the public consultation, also in terms of communication taking into account different opportunities:

1. Strategic planning process of the main operation and related consultations, where communication may reinforce the political legitimacy of said main operation by means of consultations and decisions, stating investment or development plans and showing points of entry for stakeholders.

³⁷ See Section II: Feedback page 20



2. Elaboration of project steps where communications and consultations are used to understand how to manage risks and expectations as well as to build trust with groups of interest.
3. Implementation of the project where communication helps keeping confidence and extending partnerships with the civil society, and helps guaranteeing that agreements are complied with and strengthening lessons for future interventions.

Independent grievances mechanisms would be enabled so that communities can submit their concerns and suggestions in an anonymous and safe way. When there is also someone to follow up and answer requests, there is a reduction in problem escalation risks and it is a factor which contributes to conflict prevention and therefore prevention of the increase of financial risks of the project³⁸.

³⁸ See Section I Reduction of operational and reputation risks for the Executing Agency and its relation to effective processes of public consultation page 11

Effective and efficient public consultations versus failed public consultations: Risks of public consultations:

“Consultation Fatigue” syndrome

The phenomenon of consultation fatigue appears mainly when the aim of obtaining input from stakeholders is distorted. Carrying out insufficient consultations or, paradoxically, carrying out an excessive amount consultations on one or various subjects may become counterproductive.

There are four main risk factors which cause consultation fatigue and thus a decreasing credibility of the Executing Agency before the eyes of the involved civil society:

1. *Excessive number of unplanned consultations*, by excess or defect, the number of public consultations affects the final outcome. It is important that the determination of the number of consultations answers to a broader framework of relation with communities according to the needs of the project, strategy or program under consultation.
2. *Lack of feedback on input supplied* by the consultation audience, generating mistrust among stakeholders who participate in the consultation.
3. *Lack of clarity of the Consultation plan* where there is an indication of the stage and subsequent steps expected³⁹.
4. *Distortion of the objective of the consultation* to use them only as information or communication platforms, ignoring the main objective of collecting input which will be then analyzed and weighed to define the incorporation thereof in the design of the project in question, or not.

This is so, in the context of bringing of platforms and social networks where dissemination of best practices, but mainly of bad practices, is facilitated, and thus the multiplication of negative effects and the consequent escalation of conflicts, increase in costs, generalization of mistrust and discredit of the Executing Agency⁴⁰.

³⁹ See section III Consultation Plan page 22

⁴⁰ See Section I Reduction of operational and reputation risks for the Executing Agency and its relation to effective processes of public consultation page 11



SECTION IV

PRACTICAL APPLICATION

Application of legal frameworks, Guiding Principles, Universal Best Practices for the elaboration of general consultation plans and with indigenous peoples.

Application framework: This section includes:

- i. *The national legal framework* in the matter of public consultation for the Environmental Impact Assessment System, Mining, Fishing, Forestry, Energy and Infrastructure sectors.
- ii. *Guidance for elaboration the final Consultation Plan*, the text of which will be shared with stakeholders of the consultation and elaborated in accordance with: the guiding principles; the best practices (see Section I, II and III); OPs and legal frameworks of each country (see Section IV and V). If there is a disagreement between legal frameworks and other applicable provisions (e.g. IDB OPs), the most stringent regulation is applied.
- iii. *Guidance for elaboration the Consultation Plan with IP*, which combines national legislation and best practices in the matter. If there is no national legislation on the subject, the text refers to Section I and II hereof which details guiding principles and best practices.





COUNTRIES



ARGENTINA

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY⁴¹ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Argentina legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Argentina.
- In case this also being an operation with the IDB Group, provisions of its applicable Operational Policies (OP) must be incorporated.

⁴¹ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Argentina legal framework on public consultations⁴²:

Acts and regulations on participation and/or consultation on environmental issues (Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)	
Environmental Impact Assessment System:	<p>-Environment General Act⁴³, passed on NOV/06/2002. Articles: 19; 20; 21.</p> <p>*Environmental impact assessment: There is no national act; some provinces have passed regulations, among them:</p> <p>-Act No. 123 of Environmental Impact Assessment of Buenos Aires⁴⁴, last modification published on MAY/18/2012. Articles: 9 e); 26.</p> <p>-Environmental Impact Assessment Act, province of Santa Cruz⁴⁵, published on AUG/21/2003. Articles: 8 letter c); 15; 16; 17.</p> <p>-Act 10.208. Environmental Policy of the Province (Córdoba)⁴⁶, published on JUN/27/2014. Articles: 8 letter j); 13; 17 letter b); 21; 28; 29; 35; 36; 63 to 70.</p>
Mining:	There is no legislation on this matter.
Fishing:	There is no legislation on this matter.
Forestry:	There is no legislation on this matter.
Infrastructure:	There is no legislation on this matter.
Energy:	There is no legislation on this matter.
Other:	-Act No. 24.375⁴⁷ of adherence to the Biological Diversity Convention, published on OCT/06/1994. Article: 14 No. 1 subsection a).

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: Public hearings are mandatory for the authorization of those activities which generate negative and significant effects on the environment. Participants' opinion shall not be binding for convening authorities, but should the latter submit an opinion opposite to the results attained in the public hearing or consultation, they shall state its grounds and make it public.
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II.

42. This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if these regulations contain obligations concerning citizen consultation.

43. <http://www2.medioambiente.gov.ar/mlegal/marco/ley25675.htm>

44. <http://www.cedom.gov.ar/es/legislacion/normas/leyes/ley123.html>

45. <http://www.ambiente.gov.ar/?aplicacion=normativa&IdNorma=479&IdSeccion=0>

46. <http://www.cba.gov.ar/wp-content/4p96humuzp/2014/07/LEY-DE-POLITICA-AMBIENTAL-DE-LA-PCIA-10208.pdf>

47. <http://www2.medioambiente.gov.ar/sian/pan/Leyes-decretos/Ley24375.htm>

B.1 COUNTRY LEGISLATION.

The specific legislations on information and consultation for the following areas and sectors are presented herein below:

B.1.1. Environmental Assessment Systems of projects:

Three provinces have legislated on this matter:

Province of Buenos Aires.

Step 1: Once the Technical Report of the project has been approved, the Executive Power calls, in the term of 10 (ten) working days, a Public hearing by subject, according to the requirements established in Act No 6⁴⁸. The cost shall be on account of those in charge of the project. Stakeholders and potentially affected parties participate in this Hearing.

Province of Santa Cruz:

Step 1: Once the Technical Report is finished, the authority must publish it in the Official Gazette and in one or more national newspapers for 3 (three) days, for the citizenship to know.

Step 2: The Deputy Secretary of Environment shall call a Public hearing, which shall be open to any stakeholder and shall not be binding.

Step 3: The Authority shall consider the results of the citizen participation when issuing the Environmental Impact Statement.

Step 4: When it is time for the Authority to renew the Environmental Impact Statement, it shall include a technical assessment and a new Public hearing.

Province of Córdoba:

The Citizen Participation Process acknowledges the following instruments: a) Information and dissemination of the project; b) public hearing, and c) environmental popular consultation.

Step 1: The proposer of the project must publish for a period of 5 (five) days in a social communication means which reaches the provinces and in local means of the immediate setting, the decision to initiate said project, stating the nature, the objective and the purpose thereof, stating its exact location.

The proposer must publish a notice of the project, which shall be published in the official Website of the Application Authority within the 15 (fifteen) days following its submission.

⁴⁸ It creates the Public hearing Institute.

Step 2: The Application Authority shall determine the citizen participation mechanism applicable to the case, pursuant to de environmental complexity level of the project under study.

Public hearings and other consultation mechanisms shall be carried out prior to any resolution, with a non-binding and mandatory nature.

For those cases in which it is not mandatory, citizens or stakeholders, non-governmental organizations and the Ombudsman of the Province of Córdoba may request for a public hearing to be carried out.

The hearing must be carried out in the influence zone of the project and it shall be open.

To call for a public hearing, the Authority must publish: 1) Convening Authority; 2) Object of the public hearing; 3) Date, time, and place of holding; 4) Location of the implementation area; 5) Time and place to revise the file, enroll as a participant, and submit the documentation related to the object of the hearing; 6) Term for the registration of participants, and 7) Authorities of the public hearing.

Participants may request copies of the file and of the documentation related to the hearing.

Step 3: The Convening Authority must publish for 2 (two) days the call to the public hearing, with at least 20 (twenty) calendar days in advance, following the date set for its holding in the Official Gazette of the Province of Córdoba, in at least 2 (two) newspapers of province and local circulation and in its Website. The publication must include the same specifications required for the call. If required by the subject matter, publications may be extended to specialized means in the matter.

The citizen consultation process must be carried out in a term of no more than 60 (sixty) days counting from the date of the last publication of the abstract.

Step 4: Registration in the record authorized by the Authority is free and has no charge and is done by means of a preset form, with correlative numbering and which includes data thereof. This record must be enabled 15 (fifteen) days before the Hearing is made.

Step 5: After assessing the opinions, papers, technical and scientific reports arising from the citizen participation process, the Application Authority shall issue, in a maximum term of 45 (forty-five) days, the respective resolution, granting or denying the pertinent Environmental License. Participants' opinion or objection shall not be binding for the Application Authority, but should the latter submit an opinion opposite to the results attained in the public hearing or consultation, it shall state its grounds and make it public.

Step 6: Environmental Popular Consultation. Projects classified as high environmental complexity in the process of Environmental Impact Assessment, and which generate a special social conflict must be subjected to popular consultation.

Every person registered in the last electoral roll of the town and/or region potentially affected by the performance of the project are enabled to participate.

The results of the Environmental Popular Consultation must be adequately justified in the final resolution of the Application Authority as regards Environmental License.

B.1.2. Mining sector.

There is no legislation on the matter.

B.1.3. Fishing sector.

There is no legislation on the matter.

B.1.4. Forestry sector.

There is no legislation on the matter.

B.1.5. Energy sector.

There is no legislation on the matter.

B.1.6. Infrastructure sector.

There is no legislation on the matter.

B.2 OPERATIONS WITH THE IDB:

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II.

C. Best Practices for the Consultation Plan

See Guiding principles and Best Practices Consultations in Section II.

ARGENTINA

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- For any project: This indigenous population consultation model distinguishes the requirements for consultations according to Argentina legislation and universal best practice principles in force. Every Executing Agency must comply with these requirements when conducting an operation in Argentina.
- For IDB projects: In case this also being an operation with the IDB Group, it must comply with the provisions of its applicable operational policies (OP), mainly OP on indigenous peoples and the Strategy for indigenous development. See Section V Annex I and II.

Legal framework in Argentina on indigenous consultation:

Implementation acts, regulations or others Convention 169

Argentina ratified Convention 169 on July 3rd, 2000.

There is no regulations of indigenous consultation, without prejudice to a bill presented on SET/03/2014 by Indigenous Communities of the country⁴⁹.

49. https://www.google.cl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CBOQFjAAahUKEwixvb-Xi6THAhVDG5AKHYtJBGM&url=http%3A%2F%2Fwww.unredd.net%2Findex.php%3Foption%3Dcom_docman%26task%3Ddoc_download%26gid%3D12923%26Itemid%3D53&ei=yYTLVfGOL8O2wASLk5GYBg&usq=AFQjCNE8ZUb_6aYESZgdtkctjzkLmk6ug&bvm=bv.99804247,d.Y2l

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: In Argentina, indigenous subjects are contemplated in the Constitution (Art. 75 subsection 17) and ILO Convention 169.⁵⁰ The rules on these subsections has not been passed.
- IDB provisions: See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

Regulations which have not yet been passed to specify the principles noted in the Constitution (Art. 75 subsection 17) and ILO Convention 169.⁵¹

B.1.2. Mining sector.

There is no legislation on the matter.

B.1.3. Fishing sector.

There is no legislation on the matter.

B.1.4. Forestry sector.

There is no legislation on the matter.

B.1.5. Energy sector.

There is no legislation on the matter.

B.1.6. Infrastructure sector.

There is no legislation on the matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations. See Section V Annex I and II.

C. Best Practices for the Indigenous Consultation Plan

See Guiding principles and Best Practices for General and Indigenous Consultation in Section II.

⁵⁰ In 2014, Encuentro Nacional de Organizaciones Territoriales de Pueblos Originarios (ENOTPO) presented a bill aimed at regulating the prior, free and informed consultation of Native Peoples. It is currently in a General Legislation Commission of the Chamber of Deputies, with no support by a legislator.

⁵¹ See footnote of page ut supra.



BAHAMAS

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY⁵² ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Bahamas legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Bahamas.
- In case this also being a operation with the IDB Group, and there being a gap in the legislation on any of the principles of best practices, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

Bahamas legal framework on consultation is as follows⁵³:

⁵² Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

⁵³ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if these regulations contain obligations concerning citizen consultation.

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	-The Bahamas Environment, Science & Technology Commission Guidelines ⁵⁴
Mining:	-There is no legislation on this matter.
Fishing:	-There is no legislation on this matter.
Forestry:	Forestry Regulations⁵⁵ , dated 07/08/2014. Articles: 19 No. 3.
Infrastructure:	-There is no legislation on this matter.
Energy:	-There is no legislation on this matter.
Other:	-Coast Protection Act⁵⁶ , dated 12/30/1986. Articles: 4 No.1 letter d); 4 No.2; 4 no.4

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: Bahamas legislation does not state any procedure on this matter.
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Annex 1.

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

Bahamas legislation does not state any procedure on this matter.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on the matter.

B.1.4. Forestry sector.

Before approving a Forestry Management Plan, the Ministry must inform the contents thereof in its electronic site. It shall also publish the same during two consecutive days in another electronic site apart from two national newspapers, specifying the Plan's draft, the territory involved, the place where the plan may be consulted, and inviting the public to make written remarks to the environmental objectives and impacts of the Forestry Management Plan.

⁵⁴ <http://www.best.bs/guidelines.html> Bahamas does not have a law or other type of rule which establishes an Environmental Impact Assessment System. The only thing on this matter are the Guidelines of the Bahamas Environment Science and Technology (BEST) commission, which compliance is mandatory when submitting project of foreign companies.

⁵⁵ <http://faolex.fao.org/docs/pdf/bha144942.pdf>

⁵⁶ <http://faolex.fao.org/docs/pdf/bha39041.pdf>

B.1.5. Energy sector.

There is no legislation on the matter.

B.1.6. Infrastructure sector.

There is no legislation on the matter.

B.1.7. Other:

Coast sector:

When the Government starts a coastal protection work, it must publish the type of work to be performed and its cost, apart from the procedure that any individual can follow to object on the type of work performed and/or its cost. People shall have 28 days following the publication in order to raise any objection.

B.2 OPERATIONS WITH THE IDB:

See Section V Annex I and II

C. Consultation Plan: See and apply guiding principles and best practices section II except for specific modifications below:

1. Opportunity:
 - a. Before approving a Forestry Management Plan, the Ministry must inform the contents thereof in its electronic site. It shall also publish the same during two consecutive days in another electronic site apart from two national newspapers, specifying the Plan's draft, the territory involved, the place where the plan may be consulted, and inviting the public to make written remarks to the environmental objectives and impacts of the Forestry Management Plan.⁵⁷

⁵⁷ Provision from national legislation.

BAHAMAS

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES

A. Applicable framework:

- This indigenous population consultation model distinguishes the requirements for consultations according to Bahamas legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Bahamas.
- In case this also being an operation with the IDB Group, and there being a gap in the legislation on any of the principles of best practices, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.
- Bahamas has not ratified Convention 169.

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: This country has not ratified ILO Convention No. 169 on Indigenous and Tribal peoples in Independent Countries. It does not have legislation on indigenous consultation.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex 1.

B.1 NATIONAL LEGISLATION:

B.1.1. Environmental Impact Assessment System.

There is no legislation on the matter.

B.1.2. Mining sector.

There is no legislation on the matter.

B.1.3. Fishing sector.

There is no legislation on the matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure sector.

There is no legislation on the matter.

B.2 OPERATIONS WITH THE IDB:

See Section V Annex I and II

C. Best Practices for the Indigenous Consultation Plan

See Guiding principles and Best Practices applicable to Indigenous Consultation in Section II.



BARBADOS

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY⁵⁸ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Barbados legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Barbados.
- In case this also being an operation with the IDB Group, and there being a gap in the legislation on any of the principles of best practices (see below), provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

⁵⁸ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Barbados legal framework on public consultations:⁵⁹

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	-There is no legislation on this matter.
Mining:	-There is no legislation on this matter.
Fishing:	-There is no legislation on this matter.
Forestry:	-There is no legislation on this matter.
Energy:	-There is no legislation on this matter.
Infrastructure:	<p>- Town and Country Planning Act Sec⁶⁰, of JUL/08/1968.</p> <p>- <u>Article</u>: 9 No. 4 ; 9 No. 5; 9 No. 8; 27 No. 4.</p>
Other:	<p>-Coastal Zone Management Act⁶¹, of 1998.</p> <p><u>Article</u>: 5; 6 No. 1; 15 No. 3 and 4; Schedule: public enquiry procedure.</p> <p>- Marine Pollution Control Act⁶², of 1998.</p> <p><u>Articles</u>: 4 No. 6, 7 and 9. Schedule: No. 1 to 5.</p>

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The authority must inform the population, in writing, on the changes and proposals of certain plans in order for it to make any remark. Should that be the case, a public investigation must be carried out; however, remarks may be incorporated in the final document or not.
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

B.1 COUNTRY LEGISLATION.

The specific legislations on information and consultation for the following areas and sectors are presented herein below:

B.1.1. Environmental Assessment Systems of projects:

There is no legislation on the matter.

⁵⁹ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if these regulations contain obligations concerning citizen consultation.

⁶⁰ <http://faolex.fao.org/docs/pdf/bar81386.pdf>

⁶¹ <http://faolex.fao.org/docs/pdf/bar18058.pdf>

⁶² <http://faolex.fao.org/docs/pdf/bar18055.pdf>

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on the matter.

B.1.5. Energy sector.

There is no legislation on the matter.

B.1.6. Infrastructure sector.

Before approving development plans, the authority must publish a notice in 3 (three) issues of the official gazette and in at least one national newspaper. This notice must report that the new development plan or amendment proposal thereof has been drawn up by the authority; it must contain the places where said proposals may be queried by the public and the term to make remarks.

This term must be longer than 28 (twenty-eight) days following the last publication of a notice in the official gazette.

If remarks arise within said term, the authority must appoint a person to carry out a public investigation on the remarks and shall consider it together with the report of the person carrying out the investigation.

When a public investigation has been carried out, the authority shall consider whether any revision shall be carried out to the management plan draft.

As regards preservation and extension of marine areas, before approving any restricted area, the authority shall carry out a public investigation according to the guidelines. Once performed, the authority shall consider whether changes must be made to the draft by means of an order published in the official gazette.

Carrying out a public investigation calls for the following process:

1. The authority appoints the person in charge of carrying out the investigation, by means of a written document.
2. The name of the appointed person/s shall be published in the official gazette.
3. The realization of the investigation shall be published in three issues of the official gazette and in at least one national newspaper on the date designated by the authority. The first notice shall not be done in less than two weeks prior to the date.

B.1.7. Other

Management of Coastal Zone

When the draft of the management plan and the order delimiting a coastal management zone is presented to the authority for its approval, it shall order a public investigation where it presents the draft for remarks to be made.

Once the public investigation is performed, the authority shall decide if changes should be done to the draft.

In the context of the contamination level Management plan, before approving the list of contaminants, the authority shall notify by means of a publication in the official gazette at least 1 (one) time per week during a period of 2 (two) weeks and in at least 1 (one) local newspaper.

In the 2 (two) weeks following the last publication, any person may send its remarks to the authority. When a remark is made, the authority must perform a public investigation in which it shall submit the list of contaminants together with the maximum levels of concentration and any remark made thereto.

If the authority decides to take the report of the public investigation into account either to (i) approve including the proposed list of contaminants which generated the remark, or (ii) approve the prohibited concentration level specified, it must notify this decision to whoever made the remark by means of the official gazette.

B.2 OPERATIONS WITH THE IDB:

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan See and apply guiding principles and best practices section II except for specific modifications below:

2. Opportunity:

- a. Call for making remarks in writing: For urban development projects: Once the invitation to make remarks on the project is made, a term of 28 (twenty-eight) days following the publication of said invitation shall be granted⁶³.
- b. Coastal management projects: Once the invitation to make remarks on the project is made, a term of 2 (two) weeks following the publication of said invitation shall be granted⁶⁴.

⁶³ Provision from national legislation.

⁶⁴ Idem ut supra: Provision from national legislation

BARBADOS

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES

A. Applicable framework:

- This indigenous population consultation model distinguishes the requirements for consultations according to Barbados legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Barbados.
- In case this also being an operation with the IDB Group, and there being a gap in the legislation on any of the principles of best practices (see below), provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex 1.
- Barbados has not ratified Convention 169.



B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: This country has not ratified ILO Convention No. 169 on Indigenous and Tribal peoples in Independent Countries. It does not have legislation on indigenous consultation.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II.

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

There is no legislation on the matter.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on the matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations. See Section V Annex I and II

C. Indigenous Consultation Plan.

See Guiding principles and Best Practices applicable to Indigenous Consultation in Section II.



BELIZE

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY⁶⁵ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Belize legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Belize.
- In case this also being an operation with the IDB Group, and there being a gap in the legislation on any of the principles of best practices (see below), provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

⁶⁵ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Belize legal framework on public consultations⁶⁶:

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System: - **Environmental Protection Act**⁶⁷, published on NOV/28/1992, modified in 2000.

Articles: 18 No. 1, 2, 3 and 4; 26 letter C).

Mining: -There is no legislation on this matter.

Fishing: -There is no legislation on this matter.

Forestry: -There is no legislation on this matter.

Infrastructure: -There is no legislation on this matter.

Energy: -There is no legislation on this matter.

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: Consultation is mandatory for projects which are evaluated from an environmental perspective. The authority must provide information of the project; allow for an opportunity of dialogue between the proposer and the community, mainly the one in the area of influence of the project, and record the community's concerns regarding environmental impacts of the proposed project.
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System:

Step 1: Consultation is mandatory for projects which are evaluated from an environmental perspective. The authority must provide information of the project; allow for an opportunity of dialogue between the proposer and the community, mainly the one in the area of influence of the project, and record the community's concerns regarding environmental impacts of the proposed project.

Step 2: At any time during the environmental impact assessment, the Authority may request written comments from people interested in environmental impacts of the project.

Step 3: The Authority may send the written comments it received to the proposer who shall answer the questions raised therein.

⁶⁶ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.
⁶⁷ <http://faolex.fao.org/docs/pdf/blz5416.pdf>

Step 4: Every environmental assessment must take into account comments received by the public.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan

See and apply guiding principles and best practices section II.



BELIZE

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This indigenous population consultation model distinguishes the requirements for consultations according to Belize legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Belize.
- In case this also being an operation with the IDB Group, and there being a gap in the legislation on any of the principles of best practices, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II.
- Belize has not ratified Convention 169.

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: This country has not ratified ILO Convention No. 169 on Indigenous and Tribal peoples in Independent Countries. It does not have legislation on indigenous consultation.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

There is no legislation on this matter.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations. See Section V Annex I and II

C. Indigenous consultation plan.

See Best Practices Indigenous Consultation, Section II.



BOLIVIA

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY⁶⁸ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Bolivia legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Bolivia.
- In case this also being an operation with the IDB Group, and there being a gap in the legislation on any of the principles of best practices (see below), provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

⁶⁸ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Bolivia legal framework on public consultations:⁶⁹

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	<p>-Environmental Act, dated JUN/15/1992⁷⁰. <u>Articles:</u>92; 94.</p> <p>-Environmental Management General Regulations, of DEC/08/1995⁷¹. <u>Articles:</u> 73 to 78.</p> <p>-Environmental prevention and control regulations, of DEC/08/1995⁷². <u>Articles:</u> 23 letter c); 160; 162 and 164.</p>
Mining:	-There is no legislation on this matter
Fishing:	<p>-Fishing and Aquaculture Regulations, of AUG/14/1990⁷³. <u>Article:</u> 56.</p>
Forestry:	<p>-Forestry Act, dated JUL/12/1996⁷⁴. <u>Articles:</u> 8 No. 3.</p> <p>- Forestry Act Rules, dated JUL/12/1996⁷⁵. <u>Articles:</u>24 letter e) and 28.</p>
Infrastructure:	-There is no legislation on this matter
Energy:	-There is no legislation on this matter
Other:	<p>-Solid residue management rules, dated DEC/08/1995⁷⁶. <u>Article:</u> 15 letter b).</p>

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation:
Public hearings are mandatory for projects which are part of the Environmental Assessment System. If the proposer does not do this, then the Environmental Authority shall proceed to subject the Environmental Impact Assessment (EIA) to a period of public consultation and gather the reports deemed appropriate in each case, before issuing the Environmental Impact Statement.

69. This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

70. http://www.mmaya.gob.bo/uploads/documentos/ley_1333.pdf

71. <http://www.lexivox.org/norms/BO-RE-DS24176A.xhtml>

72. http://biblioteca.unmsm.edu.pe/redlieds/Recursos/archivos/Legislacion/Bolivia/reglamento_preencion.pdf

73. http://www.redesma.org/legislacion/agua_pesca/DS_22581_anexo_Reglamento_de_pesca.pdf

74. <http://www.cfb.org.bo/bolivia-forestal/ley-forestal-1700>

75. http://biblioteca.unmsm.edu.pe/redlieds/Recursos/archivos/Legislacion/Bolivia/DS_24453%20Reg%20Ley%20Forestal.pdf

76. <http://www.lexivox.org/norms/BO-RE-DS24176F.html>

The Authority is also obliged to carry out public hearings in order to approve requests or initiatives. Before answering in the term of 15 days, it should carry out the public hearing.

También es obligatorio para la Autoridad realizar audiencias públicas para aprobar peticiones o iniciativas. Antes de responder en el plazo de 15 días debe realizar la audiencia pública.

- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II.

B.1 COUNTRY LEGISLATION.

B.1.1. Environmental Impact Assessment System.

Step 1: Public hearings are mandatory for projects which are part of the Environmental Assessment System. If the proposer does not do this, then the Environmental Authority shall proceed to subject the EIA to a period of public consultation and gather the reports deemed appropriate in each case, before issuing the Environmental Impact Statement.

Step 2: The Competent Environmental Authority may make consultations to individuals, institutions or communities in the area of influence of the project, who may issue their remarks in written in a term of 15 (fifteen) working days counting from the day following the consultation.

Step 3:

Any natural person or group may send, by means of the Base Territorial Organization (OTB), its remarks, revisions, and proposals, in written, regarding a project to the Competent Environmental Authority, Competent Sectorial Organism or Municipal Government, in the area of its jurisdiction, and a legal and completely founded way.

Step 4: The Competent Environmental Authority shall take said remarks into account before issuing its report, and communicate them to the proposer for him to consider them.

Regarding authorizations to other initiatives before the Environmental Authority, the steps to follow are:

Step 1: The call shall be published ten days prior to the realization of the public hearing and shall contain the following information: (i) date and place of the meeting, (ii) agenda, and (iii) place where the pertinent documentation shall be available to stakeholders.

Step 2:

Stakeholders shall submit their remarks in written to the Competent Environmental Authority in a term of ten days, for them to be considered in the public hearing.

Step 3: The public hearing is carried out. It shall be presided over by the Competent Environmental Authority or its duly authorized representative. Under no circumstance shall the public hearing be aimed at solving controversies or claims.

Step 4: The Competent Environmental Authority shall answer in a term of no more than fifteen days and with a prior public hearing, to the requests interposed on the project in question.

Opinions which arise in the public hearing shall be consultative in nature, reason why it is up to the Competent Environmental Authority and the Technical Committee whether to take them into account partially or totally, to modify or dismiss them.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

Consultations shall be made with different social groups, mainly with the peasants, for them to express their projects.

B.1.4. Forestry sector.

A public hearing must be done when there is a call for bids for an area of forestry management or Land planning, and it shall be conducted in establishments suitable for the purpose.

Public hearings shall also be carried out when the authority deems it appropriate.

The call for the hearing shall be published ten days in advance and shall contain information on the date and place in which it will be performed, agenda, and place where the pertinent information will be available for stakeholders. Opinions which arise in public hearings are consultative in nature. In no case can claims or controversies be solved in a public hearing.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure sector.

There is no legislation on the matter.

B.2 OPERATIONS WITH THE IDB:

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan: See and apply guiding principles and best practices section II except for specific modifications below:

Opportunity:

- a. The call for consultation shall be made before the final decision making concerning the subject matter of the consultation
- b. Call for consultation shall be made at least 2 weeks in advance, indicating date, place, time.
- c. Calls for written remarks: the competent Environmental Authority may make consultations to individuals, institutions or communities in the area of influence of the project, who may issue their remarks in written in a term of 15 (fifteen) working days counting from the day following the consultation⁷⁷.
- d. Any natural person or group may send, by means of the Base Territorial Organization (OTB), its remarks, revisions, and proposals, in written, regarding a project to the Competent Environmental Authority, Competent Sectorial Organism or Municipal Government, in the area of its jurisdiction, and a legal and completely founded way⁷⁸.

Feedback:

The Competent Environmental Authority shall take said remarks into account before issuing its report, and communicate them to the proposer for him to consider them⁷⁹.

⁷⁷ Provision from national legislation

⁷⁸ Idem ut supra: Provision from national legislation

⁷⁹ Provision from national legislation

BOLIVIA

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This indigenous population consultation model distinguishes the requirements for consultations according to Bolivia legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Bolivia.
- In case this also being an operation with the IDB Group, and there being a gap in the legislation on any of the principles of best practices, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II



Bolivia legal framework on indigenous consultation:

Implementation acts, regulations or others Convention 169

Bolivia ratified Convention 169 on December 11th, 1991.

Indigenous peoples Consultation Act of the indigenous territory and Isiboro Sécure-Tipnis National Park, dated February 10, 2012.⁸⁰

Articles: 3 to 11.

- **Scope of the Hydrocarbon Act and compliance with Referendum of July 18, 2004 on Hydrocarbon policy in Bolivia**, dated May 18, 2005.⁸¹

Articles: 114 to 118; 122; 131 final subsection; 133 and 138.

- **Consultation and participation regulations for hydrocarbon activities**, of FEB/16/2007.⁸²

Articles: 1 to 18.

- **Mother earth and comprehensive development for a good living framework act**, of OCT/15/2012.⁸³

Articles: 16 No.1.

Popular participation act, of APR/20/1994⁸⁴

Articles: 3 and 7 letter b).

- **Regulations to laws No. 1551 of popular participation and No. 1654 of administrative decentralization** of DEC/20/1996.⁸⁵

Articles: 1 and 2.

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: It is mandatory for competent authorities to consult rural, indigenous, and native peoples, in a prior, mandatory, and opportune way for a hydrocarbon project. The resulting decisions of the consultation shall be abided by. In all cases, the consultation shall be carried out in two moments: prior to the call for bids and to the approval of the Environmental Impact Assessments (EIA).
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II

80. <http://bolivia.infoleyes.com/shownorm.php?id=3617> y <http://www.gacetaoficialdebolivia.gob.bo/normas/buscar>

81. <http://www.ine.gob.bo/indicadoresddhh/archivos/alimentacion/nal/Ley%20N%C2%BA%203058.pdf>

82. <https://www.google.cl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0CCgQFjACahUKEwj4raanwrHHAhXHHJAKHdHXBcY&url=http%3A%2F%2Fwww.iadb.org%2Fresearch%2Flegislacionindigena%2Fleyn%2Fdocs%2FBol-DS-29033-07>

Consulta-Activ-Hidrocarb.doc&ei=a4_SVbjMHMe5wATRr5ewDA&usg=AFQjCNGTebstWqotFrqU15CdVVTvUgI94g&sig2=WUa2zYB7lxjv-wJo2mqggQ

83. <http://static1.squarespace.com/static/5246f14de4b03fcb7c62cfd/t/536d0bbe4b023ebcb5fef0b/1399655355430/LEYMADRETIERRABIOCULTURA%28bolsillo%29.pdf>

84. http://www.oas.org/juridico/spanish/blv_res16.pdf

85. <http://www.planificacion.gob.bo/sites/folders/vpc/dgpt/DS24447.pdf>

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

Authorities in charge of the consultation (which shall be financed by the Executive Power, and charged to the project) shall carry it out in two moments:⁸⁶

- a. Prior to the call for bids, authorization, hiring, call, and approval of hydrocarbon projects. Its aim is to inform those organizations capable of being affected about the scope of the project, the potential positive and negative social and environmental impacts, and the potential damages to collective rights of the Native Indigenous peoples (NIPs) and Rural Communities (RCs).
- b. Prior to the approval of the analytical and comprehensive Environmental Impact Assessment Studies. Remarks and recommendations gathered in the consultation must be deemed as main criteria to draw up and approve the analytical and comprehensive Environmental Impact Assessment Study. On request of the representative authorities, an administrative process shall begin for the environmental consulting company in charge of elaborating the analytical and comprehensive Environmental Impact Assessment Study when the consultation results are not duly incorporated.

The consultation in both times shall be performed with the representative authorities of the RCs and NIPs, any other type of individual or sectorial consultation being null.

Each consultation moment shall have the following phases:

- a. **Coordination and Information:** The call shall be in writing addressed to the representatives of the RCs and NIPs. Representative authorities shall carry out a preliminary meeting in the place and date they deem convenient, in a term of no more than 10 (ten) calendar days following the answer to the call.

In the preliminary meeting, all public information available shall be submitted in a printed copy and a digital copy to the representatives of NIPs and RCs. This information shall be complete⁸⁷, opportune⁸⁸, true⁸⁹ and appropriate⁹⁰.

⁸⁶ The Ministry of Hydrocarbons, the Ministry of Sustainable Development and the Ministry of indigenous issues and native peoples.

⁸⁷ Complete and full as regards content, coverage, influence, and potential social, economic and environmental impacts of the hydrocarbon project.

⁸⁸ It must be supplied to the local representative authorities of NIPs and RCs, prior to the process of consultation and participation.

⁸⁹ This information constitutes a sworn statement, responsibility assumed by the owner of the hydrocarbon project and Government officers, subject to Act No. 1178.

⁹⁰ Its spreading shall adapt to cultural, linguistic, organizational and social characteristics of each NIP and RC.

- b. **Organization and Planning of the consultation:** Representatives shall coordinate - according to their uses and habits - the submission of a written proposal for the consultation and shall communicate it to the authority in a term of no more than 10 (ten) calendar days following the preliminary meeting.

The proposal shall include: (i) Methodological plan, schedule and place, (ii) required specialized consultancy, (iii) Budget.

After receiving the proposal, a meeting shall be held in the area of influence of the project in a term of no more than 7 (seven) calendar days, to analyze the proposal and counter-proposal of the authority, in order to reach agreements and sign a memorandum of understanding which guarantees the execution of the consultation.

Should the NIPs not submit a proposal, a joint meeting shall be called in order to draw one up.

- c. **Execution of the consultation:** The consultation shall be executed by the authority in coordination with the representative authorities and in compliance with the memorandum of understanding.

The consultation shall be carried out in the terms established in the memorandum of understanding. Once these terms are complied with, there is an additional final term of up to 3 (three) months, in order to comply with the consultation.

- d. **Agreement.** The results of the consultation shall be expressed in an agreement validation document signed between the authority and the representative authorities, with the prior express authorization of RCs and NIPs likely to be affected.

This agreement validation document shall gather the position and recommendations agreed by NIPs and RCs likely to be affected

The consultation ends with an Agreement Validation Covenant. When it is the initial consultation, then the second consultation shall be carried out.

Should the consultation have a negative result, the Government may promote a conciliation process.



B.1.2. Mining sector.

There is no legislation on the matter.

B.1.3. Fishing sector.

There is no legislation on the matter.

B.1.4. Forestry sector.

Forestry management plans in native community lands shall be carried out, as long as these are not declared as protected areas, by performing consultation processes which consider the cultural and spiritual values of said lands.

B.1.5. Energy sector.

There is no legislation on the matter.

B.1.6. Infrastructure sector.

There is no legislation on the matter.

B.1.6. Other.

Indigenous peoples Consultation Act of the indigenous territory and Isiboro Sécure-Tipnis National Park, it governs all the aspects of the free, prior and informed consultation with indigenous peoples living in this National Park.

The objective of the consultation is to reach an agreement between the Plurinational State of Bolivia and NIPs and RCs Mojeño-Trinitario, Chimane and Yuracaré, as to:

- a. Define if the indigenous territory and national park Isiboro Sécure - TIPNIS must be an intangible area or not, in order to make the development of activities of indigenous peoples Mojeño-Trinitario, Chimane and Yuracaré, as well as the construction of the road Villa Tunari - San Ignacio de Moxos viable.
- b. Establish safeguard measures for the protection of the indigenous territory and national park Isiboro Sécure - TIPNIS, as well as that destined to prohibit or immediate eviction of illegal settlements respecting the limits of TIPNIS.

The consultation process must comply at least with the following stages: (i) Preparation, (ii) drawing-up of schedule and protocol, (iii) Collection of pertinent information, (iv) Prior notice, (v) Consultation publicity, (vi) Delivery of pertinent information, (vii) Consultation development, (viii) Results: signing of records of conclusions, and (ix) Notification of decisions.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations. See Section V Annex I and II

C. Indigenous Consultation Plan See and apply guiding principles and best practices section II except for specific modifications below:

OBJECTIVE:

Implement a bona fide⁹¹, free, prior and informed consultation process covering appropriate mechanisms according to sociocultural characteristics of each indigenous people and through its representative institutions, so that they take part in an informed way and an agreement or consent about the projects expected to be developed on their territories is achieved.

METHODOLOGY:

Best Practices concerning public consultations:

1. Opportunity:

The consultation must be prior, i.e. the one made in good time and which gives to the affected indigenous people the opportunity of influencing, in a real and effective way, to the extent in which the consultation is susceptible to affect it directly.

Any interested person, natural or legal, or representative institutions may request, on good grounds, the Environment Authority to carry out a consultation process. Well-founded requests are those indicating at least the facts and reasons behind them.

⁹¹ Bona fide is a guiding principle of the consultation, by virtue of which all intervening parties shall act in a faithful and correct way in order to reach an agreement or achieve the prior, free and informed consent.

The consultation shall have two moments: (i) To draw up TDR (Terms of Reference) to make an EIA (Environmental Impact Assessment) and (ii) During the assessment of the EIA by the Environmental Authority.

2. **Accessibility:**

The consultation must be made in places and times defined by the indigenous communities likely to be affected by the project concerned.

The consultation shall be made in Spanish and the language which may be understood by the indigenous peoples directly affected, whenever necessary. It shall be deemed necessary to make it in the language of the affected indigenous people when these communicate mainly in their own language.

The Government will provide financing so that indigenous communities taking part in a consultation may hire technical assistance if required⁹².

Information concerning the project shall be made available to institutions and organizations representing indigenous peoples, by methods and proceedings appropriate for such peoples, considering geography and the environment where they live.

3. **Duration:**

The consultation shall contemplate the following phases:

- a. **Call:** The call shall be in writing addressed to the representatives of the RCs and NIPs. Representative authorities shall carry out a preliminary meeting in the place and date they deem convenient, in a term of no more than 10 (ten) calendar days following the answer to the call.

In the preliminary meeting, all public information available shall be submitted in a printed copy and a digital copy to the representatives of NIPs and RC⁹³. This information shall be complete⁹⁴, opportune⁹⁵, true⁹⁶ and appropriate⁹⁷.

92 Provision from national legislation.

93 Provision from national legislation.

94 Complete and full as regards content, coverage, influence, and potential social, economic and environmental impacts of the hydrocarbon project.

95 It must be supplied to the local representative authorities of NIPs and RCs, prior to the process of consultation and participation.

96 This information constitutes a sworn statement, responsibility assumed by the owner of the hydrocarbon project and Government officers, subject to Act No. 1178.

97 Its spreading shall adapt to cultural, linguistic, organizational and social characteristics of each NIP and RC.

b. **Planning:** This stage must include: (i) Methodological plan (among other important aspects, the form of registration of meetings and the importance of having observers, mediators and/or ministers of faith) schedule and place (ii) required specialized consultancy, (iii) Budget.

c. **Preparation for the consultation** Representatives shall coordinate - according to their uses and habits - the submission of a written proposal for the consultation and shall communicate it to the authority in a term of no more than 10 (ten) calendar days following the preliminary meeting.

The proposal shall include: (i) Methodological plan, schedule and place, (ii) required specialized consultancy, (iii) Budget.

After receiving the proposal, a meeting shall be held in the area of influence of the project in a term of no more than 7 (seven) calendar days, to analyze the proposal and counter-proposal of the authority, in order to reach agreements and sign a memorandum of understanding which guarantees the execution of the consultation.

Should the NIPs not submit a proposal, a joint meeting shall be called in order to draw one up.

d. **Execution of the consultation:** The consultation shall be executed by the authority in coordination with the representative authorities and in compliance with the memorandum of understanding.

The consultation shall be carried out in the terms established in the memorandum of understanding. Once these terms are complied with, there is an additional final term of up to 3 (three) months, in order to comply with the consultation.

e. **Agreement.** The results of the consultation shall be expressed in an agreement validation document signed between the authority and the representative authorities, with the prior express authorization of RCs and NIPs likely to be affected.

This agreement validation document shall gather the position and recommendations agreed by NIPs and RCs likely to be affected.

The consultation ends with an Agreement Validation Covenant. When it is the initial consultation, then the second consultation shall be carried out.

Should the consultation have a negative result, the Government may promote a conciliation process⁹⁸.

- f. **Covenants.** The decision adopted by the Administration on the investment project must contain an assessment of the points of view, suggestions and recommendations proposed by the native peoples during the dialogue process, as well as the analysis of consequences resulting from the respective project approval, collective rights recognized constitutionally and on treaties ratified by the Government.

The covenant, as a result of the consultation process, is binding on the parties.

In case no covenant is reached, the state entities shall adopt all measures necessary to guarantee the collective rights of indigenous or native peoples, and rights to life, integrity and full development thereof.

4. **Context:**

The consultation shall be carried out according to the uses and habits of each one of the indigenous peoples or communities involved.

In those cases in which the project must be approved by two or more indigenous communities, they may make the decision jointly or separately, but under no circumstance can the indigenous peoples or communities be forced to implement mechanisms of decision-making different to their own.

5. **Inclusion and Diversity.**

Any indigenous people or representative institution directly affected by the measure being consulted may take part in said process at any time, but in compliance with what has been done so far.

6. **Representation.**

Participants in the consultation shall be the indigenous peoples exclusively affected, which will participate via their national, regional, or local representative institutions, depending on the scope of the project.

Each people shall freely determine its representative institutions, such as traditional indigenous organizations, indigenous communities or associations.

⁹⁸ Provisions of subsections c, d, and e from the national legislation.



BRAZIL

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY⁹⁹ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Brazil legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Brazil.
- In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

⁹⁹ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Brazil legal framework on public consultations¹⁰⁰:

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Sistema de Evaluación de Impacto Ambiental:	DECREE No. 8.243, DATED MAY/23/2014¹⁰¹ RESOLUÇÃO CONAMA n ° 001, dated 01/23/1986.¹⁰² <u>Article:</u> 11 § 2º RESOLUÇÃO CONAMA n.º 009, dated December 3, 1987¹⁰³ <u>Article:</u> 1 to 6. RESOLUÇÃO N° 237 , dated December 19, 1997¹⁰⁴ <u>Articles:</u> 3; 10, V; 14.
Mining:	Mining ¹⁰⁵ : Reference to CONAMA decisions.
Fishing:	ACT N° 11.959, DATED 29/06/2009.¹⁰⁶ Article: 7, III.
Biodiversity/ Forestry:	ACT N° 9.985, DATED JUL/18/2003¹⁰⁷ <u>Articles:</u> 5, II, III, IV, V; 18, §2º; 20, § 4o; 23, §1o; 27, §2; 29; 41, § 4o. ACT N° 13.123, DATED MAY/20/2015¹⁰⁸. <u>Article:</u> 6, § 3o ; 8, § 1o

100. This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if these regulations contain obligations concerning citizen consultation.

101 http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2014/Decreto/D8243.htm

Institui a Política Nacional de Participação Social - PNPS e o Sistema Nacional de Participação Social - SNPS. According to its Article 1: Art. 1º Fica instituída a Política Nacional de Participação Social - PNPS, com o objetivo de fortalecer e articular os mecanismos e as instâncias democráticas de diálogo e a atuação conjunta entre a administração pública federal e a sociedade civil.

102. <http://www.mma.gov.br/port/conama/res/res86/res0186.html>

103. <http://www.mma.gov.br/port/conama/res/res87/res0987.html>

104. <http://www.mma.gov.br/port/conama/res/res97/res23797.html>

105. Mining act, Decree No. 227, dated FEB/28/1967 does not establish a public hearing or another type of participation, except for neighbor licensees. Refer to CONAMA decisions. Bill 5807/2013 is currently pending, which does not establish a public hearing either, the same rule mentioned above being applicable. Example of reference, can be seen in article 12, paragraph 1 which states: "A criação ou ampliação de áreas de garimpagem fica condicionada à prévia licença do Ibama, à vista de Estudo de Impacto Ambiental (EIA) e respectivo Relatório de Impacto Ambiental (Rima), de acordo com a legislação específica ". EIAs and RIMA are stated in the above mentioned resolutions.

106. http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/Lei/L11959.htm

107. http://www.planalto.gov.br/ccivil_03/LEIS/L9985.htm

108. http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L1312.htm

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Infrastructure:	ESTATUTO DA CIDADE,(Act N° 10.257, dated JUL/10/2001¹⁰⁹ <u>Article:</u> 40 RESOLUÇÃO N.º 34 Conselho das Cidades, dated JUL/01/2005¹¹⁰ <u>Article:</u> 7 DECREE No. 3.420, DATED APRIL 20th, 2000.¹¹¹ <u>Articles:</u> 1;3;4-C, III, VI. Telecommunications: ACT N° 13.116, DATED APRIL 20TH, 2015.¹¹² <u>Article:</u> 24 Port: DECREE No. 8.033, DATED JUNE 27, 2013¹¹³ <u>Article:</u> 11, § 3o Airport: DECREE No. 7.624, NOVEMBER 22, 2011.¹¹⁴ <u>Article:</u> 11
Energy:	ACT N° 9.478, AUGUST 6, 1997.¹¹⁵ <u>Article:</u> 19
Water:	ACT N° 9.433, DATED 08/01/1997.¹¹⁶ <u>Article:</u> 34, III, IV
Agriculture:	ACT N° 8.171, DATED JANUARY 17, 1991.¹¹⁷ <u>Articles:</u> 8; 17, II; 28-A, II

109. http://www.planalto.gov.br/ccivil_03/leis/LEIS_2001/L10257.htm

110. <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=89&data=14/07/2005>

111. http://www.planalto.gov.br/ccivil_03/decreto/D3420.htm

112. http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13116.htm

113. http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/Decreto/D8033.htm

114. http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2011/Decreto/D7624.htm

115. http://www.planalto.gov.br/ccivil_03/leis/L9478.htm

116. http://www.planalto.gov.br/ccivil_03/LEIS/19433.htm

117. http://www.planalto.gov.br/ccivil_03/leis/l8171.htm



B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The Environmental Authority shall carry out a public hearing on the EIA of a project when it deems it necessary or when a civil entity, the Public Ministry, or 50 citizens request so.
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

B.1 COUNTRY LEGISLATION.

B.1.1. Environmental Impact Assessment System.

Step 1: The Environmental Authority shall carry out a public hearing on the EIA of a project when it deems it necessary or when a civil entity, the Public Ministry, or 50 citizens request so.

The hearing shall be carried out in an easily-accessible place for participants. More than one Meeting can be held, depending on the complexity of the project and the geographical location of applicants.

The Hearing shall be conducted by the Environmental Authority; here information on the project shall be delivered and there will be room for questions.

A record shall be kept with all the documents furnished during the hearing attached thereto. This record and the attached documents shall be an input for the project assessment.

B.1.2. Mining sector.

There is no legislation on the matter.

B.1.3. Fishing sector.

The sustainable development of the fishing sector shall be promoted by social participation.

B.1.4. Forestry sector.

A Commission for the Forestry National Program shall be created made up by four representatives of non-governmental organizations appointed by the Brazilian Forum of non-governmental organization and by social movements for the environment and development.

B.1.5. Energy sector.

The National Petroleum Authority must make a hearing when it issues an Administrative Resolution which affects the rights of economic agents, consumers of good and services of the industry of petroleum, natural gas and/or biofuel.

B.1.6. Infrastructure sector.

Port sector:

When a proposal is submitted for the sector, the Port Authority shall call a Public hearing with 10 days in advance.

The publication of the call for bids and the notice of the allocation of private projects of air and port must be preceded by a public consultation.

B.2 OPERATIONS WITH THE IDB:

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan

See Guiding principles and Best Practices Public Consultation in Section II.

BRAZIL

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES

A. Applicable framework:

- This indigenous population consultation model distinguishes the requirements for consultations according to Brazil legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Brazil.
- In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II



Legal framework in Brazil on indigenous consultation:

Acts, regulations and articles for implementation Convention 169

Brazil ratified Convention 169 on July 25th, 2002.

General rule of democracy/citizen participation

ACT Nº 6.001, DATED DECEMBER 19, 1973.¹¹⁸

Article: 42

DECREE No. 8.243, DATED 05/23/2014.¹¹⁹

DECREE No. 7.747, DATED MAY/06/2012¹²⁰

Articles:1; 3, III, XI;4, I “b”, II, III, VII

DECREE No. 1.775, DATED JANUARY 8, 1996.¹²¹

Article: 2, §3 °

ACT Nº 9.985, DATED JUL/18/2000¹²²

Articles :18, §2°; 20, § 4o ; 23, § 1o

ACT Nº 13.123, DATED MAY/20/2015.¹²³

Article:6, III, § 3o ; 8, § 1o

INSTRUÇÃO NORMATIVA FUNAI Nº01, JAN/09/2012¹²⁴

Articles:3, VIII;4, §2°;7; 10, IV

ACT Nº 9.433, DATED JAN/08/1997.¹²⁵

Articles: 39, § 3º

DECREE No. 6.040, DATED FEBRUARY 7, 2007.¹²⁶

Article: 1, X – Annex

Portaria116 FUNAI, FEB/14/2012.¹²⁷

Article:2

118. http://www.planalto.gov.br/ccivil_03/Leis/L6001.htm

119. http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2014/Decreto/D8243.htm

Institui a Política Nacional de Participação Social - PNPS e o Sistema Nacional de Participação Social - SNPS. Segundo artigo 1: Art. 1º Fica instituída a Política Nacional de Participação Social - PNPS, com o objetivo de fortalecer e articular os mecanismos e as instâncias democráticas de diálogo e a atuação conjunta entre a administração pública federal e a sociedade civil.

120. http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/decreto/d7747.htm

121. http://www.planalto.gov.br/ccivil_03/decreto/D1775.htm

122. http://www.planalto.gov.br/ccivil_03/LEIS/L9985.htm

123. http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13123.htm

124. <http://www.cpis.org.br/indios/html/legislacao/63/instrucao-normativa-n-1-9-janeiro-2012.aspx>

125. http://www.planalto.gov.br/ccivil_03/LEIS/l9433.htm

126. http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/decreto/d6040.htm

127. http://www.fundaj.gov.br/index.php?option=com_content&view=article&id=925:portaria-no-116-de-14-de-fevereiro-de-2012

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The environmental authority must coordinate the environmental licensing process for the projects which cause environmental, social and cultural impacts on the lands and the indigenous peoples.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

The environmental authority must coordinate the environmental licensing process for the projects which cause environmental, social and cultural impacts on the lands and the indigenous peoples.

The environmental authority may receive requests to follow-up activities that may cause environmental and socio-cultural impacts to the indigenous peoples and their lands, on request of: indigenous communities and/or organizations, organizations whose social object is relevant for the defense of indigenous peoples or environmental protection, federal prosecutors and other stakeholders.

The Authority shall inform the potentially-affected indigenous communities on the establishment of an internal procedure to follow up on the environmental licensing process.

The terms of reference to prepare the Environmental Impact Assessment (EIA) must indicate how indigenous communities will participate effectively in the whole process of data collection, reflection and discussion of impacts.

The environmental authority must coordinate the environmental licensing process for the projects which cause environmental, social and cultural impacts on the lands and the indigenous peoples.

B.1.2. Mining sector.

There is no legislation on the matter.

B.1.3. Fishing sector.

There is no legislation on the matter.

B.1.4. Forestry sector.

There is no legislation on the matter.

The environmental authority must coordinate the process licensing environmental to projects which may cause environmental and sociocultural impacts to land and indigenous peoples.

B.1.5. Energy sector.

There is no legislation on the matter.

B.1.6. Infrastructure sector.

There is no legislation on the matter.

B.1.7. Other.

Use of genetic resources and biodiversity

The Government acknowledges the right of indigenous peoples, traditional communities and traditional farmers to participate in the decision-making process at a national level, on issues related to the preservation and the sustainable use of its traditional knowledge associated with the genetic heritage of the country.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations. See Section V Annex I and II

C. Indigenous Consultation Plan.

See Best Practices Indigenous Consultation Section II.



CHILE

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY¹²⁸ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Chile legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Chile.
- In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

¹²⁸ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Legal framework in Chile regarding public consultations¹²⁹:

General acts on citizen participation and/or public consultations	Acts and regulations on participation and/or consultation on environmental issues (Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)	
<p>Act 20.500 on Associations and Citizen Participation in Public Sector Management, published on FEB/16/2011.¹³⁰</p> <p>Articles: 69 to 75.</p> <p>-LOC 18.695 of Municipalities. Passed on 5/9/2006; in force since 20/29/2014 [sic] until 7/31/2016.¹³¹</p> <p>Articles: 65 letter ñ); 67; 70 letter n); Title IV: art. 93 to 98; Municipal plebiscite: art. 99 to 104</p>	<p>Environmental Impact Assessment System:</p> <p>Forestry:</p> <p>Mining:</p> <p>Fishing:</p> <p>Infraestructure:</p> <p>Energy:</p>	<p>-Law 19.300 on General Bases of the Environment. Passed on 3/1/1994; in force since: 11/13/2010.¹³²</p> <p>Articles: 7 bis, ter and quater; 18 quater; 26; 27; 29; 30 bis; 30 ter; 70 letters m), r), v) and y); 71 letter e); 78 and 81 letter h).</p> <p>-Decree No. 40. EIAS Regulations¹³³, passed on OCT/30/2013; in force since OCT/06/2014.</p> <p>Articles: 18 letter o); 27; 29 subsection 2 and 3; 38 subsection 7; 44 n); 56 k); 70; Title V: 82 to 92; 93 to 96.</p> <p>- Decree 66 of 2013 of the Ministry of Social Development: Regulations guiding the Indigenous Consultation Procedure. Passed on NOV/15/2013; in force since: MAR/04/2014.¹³⁴ Art. 8</p> <p>-There is no relevant legislation.</p> <p>-There is no relevant legislation.</p> <p>-Ley General de Pesca y Acuicultura¹³⁵, y sus modificaciones, promulgada el 22/11/1989.</p> <p>Artículo: 9 bis inciso 6º.</p> <p>-Ordenanza General de Urbanismo y Construcciones¹³⁶, promulgada el 16/04/1992.</p> <p>Artículos: 2.1.11. Numerales 2, 5 y 6.</p> <p>-There is no relevant legislation.</p>

129 This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if these regulations contain obligations concerning citizen consultation.

130. <http://www.leychile.cl/Navegar?idNorma=1023143>

131. <http://www.leychile.cl/Navegar?idNorma=251693>

132. <http://www.leychile.cl/Navegar?idNorma=30667>

133. <http://www.leychile.cl/Navegar?idNorma=1053563>

134. Idem note 3.

135. http://www.subpesca.cl/normativa/605/articulos-88020_documento.pdf

136. http://fiscalia.mop.cl/legislacion/cont/mop/Decreto_Supremo_47_Ordenanza_General_de_Urbanismo_y_Construccion.pdf

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The consultation is not mandatory for projects which enter into the Environmental Impact Assessment System (EIAS). However, the Regulations state that the Environmental Assessment Services (EAS) may request the owner to inform the community about the characteristics of the project or activity, its impacts, suggested measures to mitigate, repair and compensate them, where applicable, as well as any other environmental measure suggested.
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II.

B.1 National Legislation.

B.1.1. Environmental Impact Assessment System:

Step 1: The proposer must publish the abstract of the Environmental Impact Assessment (EIA). Within the 10 (ten) days following the submission of the Environmental Impact Assessment, the owner of the project must publish in the Official Gazette and in a newspaper of the capital city of the region or of national circulation, depending on the case, an abstract endorsed by the Service which shall contain a background.¹³⁷

Step 2: Once the abstract is published, the owner of the project shall send an authorized copy of said newspaper, for it to be included in the file.

Step 3: Submitting project information. Once the project enters the EIAS, the EIA shall carry out information activities for the community, adapting them to social, economic, cultural and geographic characteristics of the population of the project's area of influence, the aim of which is to get to know the environmental assessment procedure, the rights granted during the same, the type of project or activity and the main effects of this type of projects.

137 a) Name of the natural or legal person in charge of the project, stating the name of the project.

b) Indication and brief description of the type of project in question.

c) Location of the place where the project is to be executed, stating main environmental elements considered in the baseline.

d) Amount of the estimated investment.

e) Indication of the main environmental effects that the project shall generate and the suggested mitigation, compensation and repair measures.

f) Indication of the institutions or places, including address and hours of service in which the Environmental Impact Assessment shall be available for questions and/or to make a copy thereof, and the indication of terms within which remarks may be made, including the address of the bodies where they must be sent.

g) Indication of the subjects on which the confidentiality mentioned in article 27 of the Law is requested, if applicable.

Step 4: Possibility for citizens to make remarks¹³⁸: Every natural or legal person has the right to make written remarks to the EIA. For this purpose, the term is of 60 days since the EIA enters the EIAS.

If during the assessment procedure, the EIA had suffered corrections which substantially affect the project, a new period of thirty days shall be opened for the citizens to provide remarks.

B.1.2. Mining sector.

There is no relevant legislation.

B.1.3. Fishing sector.

The management plan proposal suggested by the Deputy Secretary of Fishing shall be subjected to public consultation by means of the Deputy Secretary website, via a radio advertisement and publication of an abstract in a regional newspaper. Remarks may be made within a term of one month counting from the date of publication in the Website. The Deputy Secretary shall evaluate the pertinence of rephrasing the proposal and shall give a public answer to the remarks made.

B.1.4. Forestry sector.

There is no relevant legislation.

B.1.5. Energy sector.

There is no relevant legislation.

B.1.6. Infrastructure sector.

There is no relevant legislation.

C. Consultation Plan: See and apply guiding principles and best practices section II except for specific modifications below:

Opportunity:

Possibility for citizens to make remarks¹³⁹: Every natural or legal person has the right to make written remarks to the EIA. For this purpose, the term is of 60 days since the EIA enters the EIAS. If during the assessment procedure, the EIA had suffered corrections which substantially affect the project, a new period of thirty days shall be opened for the citizens to provide remarks¹⁴⁰.

¹³⁸ As regards citizenship remarks: All admissible citizen remarks must be considered as part of the environmental assessment process and the Environmental Assessment Service (EAS) shall deal with them, and shall make a statement, on good grounds in its resolution. Said statement shall be incorporated in the Assessment consolidated report

¹³⁹ As regards citizenship remarks: All admissible citizen remarks must be considered as part of the environmental assessment process and the Environmental Assessment Service (EAS) shall deal with them, and shall make a statement, on good grounds in its resolution. Said statement shall be incorporated in the Assessment consolidated report

¹⁴⁰ Provision from national legislation

CHILE

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES AND BEST PRACTICES.

A. Applicable framework:

- This indigenous population consultation model distinguishes the requirements for consultations according to Chile legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Chile.
- In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II



Legal framework in Chile on indigenous consultation:

Implementation acts, regulations or others Convention 169

Chile Chile ratified Convention 169 on September 15, 2008.

Decree 66 of 2013 of the Ministry of Social Development: Regulations guiding the Indigenous Consultation Procedure. Passed on NOV/15/2013; in force since: 3/4/2014.¹⁴¹

Articles: 2 to 8; art.9 to 11; and art.12 to 19.

-Act 19.253: It states rules for the protection, promotion and development of indigenous people, and it creates the national corporation of indigenous development. Passed on 9/28/1993; in force since 3/25/2014.¹⁴²

Articles: 34, 35, 36,39 letters a) and c), 46 letter c) and 74.

-Decree no. 40 of the Ministry of Environment: EIAS regulations. Passed on 10/30/2013; in force since 10/6/2014.¹⁴³

Articles: 85 and 86.

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: it is mandatory to implement a bona fide consultation process¹⁴⁴ covering appropriate mechanisms according to sociocultural characteristics of each indigenous peoples and through its representative institutions, so that they take part in an informed way and an agreement or consent is achieved about the project subjected to the Environmental Impact Assessment System.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations: See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

Step 1:

- When an Executing Agency has doubts whether its project affects one or more indigenous peoples or not, it shall contact the Environmental Assessment Service (EAS) before submitting its Environmental Impact Assessment in order to obtain information on its possible consultation process.
- Any interested person, natural or legal, or representative institutions may request, on good grounds, the EAS to carry out a consultation process. Well-founded requests are those indicating at least the facts and reasons behind them.

141. <http://www.leychile.cl/Navegar?idNorma=1059961>

142. <http://www.leychile.cl/Navegar?idNorma=30620>

143. <http://www.leychile.cl/Navegar?idNorma=1053563>

144 Bona fide is a guiding principle of the consultation, by virtue of which all intervening parties shall act in a faithful and correct way in order to reach an agreement or achieve the prior, free and informed consent.

Step 2:

- When a project subjected to assessment indicates that no effects are generated, but it is placed in indigenous lands, indigenous development areas or close to the indigenous peoples, the EAS shall hold meetings with the indigenous peoples located in the area of the project with the object of gathering opinions, analyzing them and, if applicable, determining the origin of the consultation. The EAS shall keep minutes of each one of the meetings where the opinions of the aforementioned groups will be gathered. These meetings shall take place during a period of no more than twenty days (for Environmental Impact Statement) and thirty days (for Environmental Impact Study) counting from the statement of admissibility of the project.

Step 3:

- When a decision is made to carry out a consultation of indigenous peoples, it must be prior, this being deemed to be the one made in good time and which gives to the affected indigenous peoples the opportunity of influencing, in a real and effective way, in the extent to which said consultation is susceptible to affect it directly¹⁴⁵.
- The stages of the consultation must be carried out in a term of sixty days, counting from the working day following the last publication of the EIA abstract. Should the EIA suffer substantive modifications during its assessment, then a new term of thirty days shall be granted.

Step 4:

Planning of the consultation process¹⁴⁶:

Its purpose is to:

1. submit preliminary information on the project to be consulted to indigenous peoples;
2. determine, by the indigenous peoples and EAS, the intervening parties, their roles and functions, and
3. determine, together with EAS and indigenous peoples the methodology¹⁴⁷; the way of registration of meetings and the importance of having observers, mediators and/or ministers of faith. The consultation shall begin by convening to the first planning meeting the indigenous peoples likely to be directly affected, according to its scope, national, regional and local, of the affectation produced by the project under study. This notice shall be subject to the following rules:
 - i. Institutions representative of the indigenous peoples shall be called by the EAS by two publications in a newspaper which has circulation in the region where the indigenous peoples susceptible of being directly affected live. The meeting shall take place at least 15 days following the last publication, and there should be a term of no less than 5 days and no more than 10 days between the first and the second publication.

¹⁴⁵The consultation must have a flexible application, adjusting to the culture and the world view, reflecting habits, linguistic aspects, traditions, rites or demonstrations of the beliefs of the consulted indigenous peoples. The methodology must take into account the nature, content, and complexity of the measure to be consulted.

¹⁴⁶ In Chilean legislation this is called Stage 1.

¹⁴⁷ The methodology shall consider at least the way of being involved in the consultation process, signing agreements, places, terms, availability of means which guarantee the creation of an equal footing, as well as dissemination mechanisms and logistics in general.

- ii. The call shall be published in EAS Websites.
- iii. Besides, the call shall be made by any other suitable means to facilitate the timely knowledge of the call such as: radio advertisements, letters to the respective municipalities and other public entities which may facilitate its dissemination or any other suitable means.
- iv. The call shall be made in Spanish and the language which may be understood by the indigenous peoples directly affected, whenever necessary. It shall be deemed necessary to make it in the language of the affected indigenous people when these communicate mainly in their own language. The above shall be determined by the EAS depending on the special characteristics of each town.
- v. The call must indicate the reason for consultation and the date, time and place of beginning of the planning stage, as well as a telephone and an e-mail address to make questions about the process.
 - This stage shall comprise at least three meetings: One stage for the preliminary delivery of information on the project to be consulted; another one to determine the intervening parties and methodology, for which indigenous peoples shall have enough time to agree to the same internally; and, finally, another one to reach an agreement with EAS.
 - Agreements on this stage shall be recorded in the minutes which will contain the detailed description of the stated methodology, to be signed by the intervening parties appointed for such purposes.
 - If there is no agreement in some or all of the elements indicated before, the responsible entity shall keep record of this situation and the methodology to be applied, which shall keep the principles of the consultation safe.

Step 5:

*Submission of information and dissemination of the consultation process*¹⁴⁸.

- Its aim is to submit all the background of the project to be consulted to indigenous peoples, taking into account the reasons justifying the consultation, as well as the nature, scope and implication of the project.

The information must be submitted opportunely, using socioculturally suitable and effective methods and procedures, in Spanish and in the language of the indigenous peoples, when necessary, according to the characteristics of the indigenous peoples affected.

The information of the project to be consulted and of the process shall be constantly updated on the EAS Website.

¹⁴⁸ In Chilean legislation this is called Stage 2.

Step 6:

- *Internal deliberation of indigenous peoples*¹⁴⁹.

Its aim is that indigenous peoples analyze, study and determine their position through internal discussion and consensus regarding the project to be consulted, so they may intervene and prepare the stage for dialogue.

Step 7:

- *Dialogue*¹⁵⁰. Its aim is to promote the creation of agreements on the consulted project through dialogue. Within the established term for this stage, the meetings necessary to comply with the aim of the consultation must be held. In this instance, culture and decision-making methods of the indigenous peoples must be respected.

Agreements and disagreements in this stage shall be recorded in the minutes which shall also illustrate follow up and monitoring mechanisms and actions.

Step 8:

- *Systematization*, communication of results and end of the consultation process¹⁵¹. Its aim is to carry out a detailed account of the process which was carried out, from the evaluation of the origin of the consultation, if applicable, to the different stages and the agreements achieved, and the founded explanation of disagreements, all of which should appear in a final report.

Participants in the consultation shall be the indigenous peoples exclusively affected, which will participate via their national, regional, or local representative institutions, depending on the scope of the project. Each people shall freely determine its representative institutions, such as traditional indigenous organizations, indigenous communities or associations.

Should there be no certification as to the indigenous nature of an individual, he/she shall prove it by means of a certificate issued by the Corporación Nacional de Desarrollo Indígena.

Any indigenous people or representative institution directly affected by the measure being consulted may take part in said process at any time, but in compliance with what has been done so far.

The indigenous peoples participating in the consultation may request, on good grounds, its suspension to the EAS together with the term of the corresponding stage when acts or deeds outside the control of the parties have occurred which avoid the realization or impede any of the stages thereof. The suspension decision shall be based on a report on the acts or deeds which affect any of the stages of the

¹⁴⁹ In Chilean legislation this is called Stage 3.

¹⁵⁰ In Chilean legislation this is called Stage 4.

¹⁵¹ In Chilean legislation this is called Stage 5.

consultation procedure, but said suspension may not exceed the term of fifteen working days, should that be the case.

Once this term is over, the EAS may resume the consultation stage which was suspended, in a place and under conditions which guarantee process continuity, in coordination with the representatives of the indigenous peoples.

Intervening parties may not behave, or carry out actions or omissions which hinder the normal development of the prior consultation process or impede achieving its aim, nor any behavior, action or omission aimed at violating or ignoring the agreements reached.

B.1.2. Mining sector.

There is no legislation on the matter.

B.1.3. Fishing sector.

There is no legislation on the matter.

B.1.4. Forestry sector.

There is no legislation on the matter.

B.1.5. Energy sector.

There is no legislation on the matter.

B.1.6. Infrastructure sector.

There is no legislation on the matter.

B.2 OPERATIONS WITH THE IDB:

See Section V Annex I and II

D. Indigenous Consultation Plan: See and apply Guiding Principles and Best Practices section II except for specific modifications below:

Objective:

Implement a bona fide¹⁵², free, prior and informed consultation process covering appropriate mechanisms according to sociocultural characteristics of each indigenous people and through its representative institutions, so that they take part in an informed way and an agreement or consent about the projects expected to be developed on their territories is achieved.

¹⁵² Bona fide is a guiding principle of the consultation, by virtue of which all intervening parties shall act in a faithful and correct way in order to reach an agreement or achieve the prior, free and informed consent.

Methodology:

Best Practices concerning public consultations:

1. Opportunity:

The consultation must be prior, i.e. the one made in good time and which gives to the affected indigenous people the opportunity of influencing, in a real and effective way, to the extent in which the consultation is susceptible to affect it directly.

Any interested natural or legal person, or representative institutions may request mainly the Environmental Authority to carry out a consultation process. Well-founded requests are those requests indicating at least the facts and reasons behind them.

The consultation shall have two moments: (i) To draw up TORs to make the EIA and (ii) During the assessment of EIA by the Environmental Authority. For this second moment the consultation stages must begin on the working day following the last publication of EIA abstract.¹⁵³

2. Accessibility:

The consultation must be made in the places and times defined by the indigenous communities likely to be affected by the project concerned.

The consultation shall be made in Spanish and the language which may be understood by the indigenous peoples directly affected, whenever necessary. It shall be deemed necessary to be in the language of the affected indigenous people when these communicate mainly in their own language.

The Government will provide financing so that indigenous communities taking part in a consultation may hire technical assistance if required.

Information concerning the project shall be made available to institutions and organizations representing indigenous peoples, by methods and proceedings appropriate for such peoples, considering geography and the environment where they live.

3. Duration:

The consultation shall contemplate the following phases:

- i. **Call.**
- ii. **Planning:**

Its purpose is to: (i) give preliminary information on the project to consult to indigenous peoples; (ii) determine the intervening parties, their roles and functions by the indigenous peoples and EAS, (iii) determine jointly

¹⁵³ Provision from national legislation

between EAS and the indigenous peoples the methodology¹⁵⁴; the way of registration of meetings and the importance of having observers, mediators and/or ministers of faith, (iv) define required specialized consultancy, and (v) Budget.

The consultation shall begin by convening to the first planning meeting the indigenous peoples likely to be directly affected, according to its national, regional and local scope of the affectation produced by the project under study.

This call shall be subject to the following rules: (i) Institutions representing indigenous peoples shall be convened by EAS by two publications in a regional newspaper where indigenous peoples likely to be directly affected live; (ii) The meeting shall take place at least 15 days after the last publication, within a minimum period of 5 days and maximum period of 10 days between the first and second publications; (iii) The call shall be published in EAS website; (iv) the call shall be made by any other suitable means to facilitate the timely knowledge of the call.¹⁵⁵; (v) The call shall be made in Spanish and the language which may be understood by the indigenous peoples directly affected, whenever necessary, (vi) The call shall indicate the reason for consultation and the date, time and place of beginning of the planning stage, as well as a telephone and an e-mail address to make questions about the process.

This stage shall comprise at least three meetings: One stage for the preliminary delivery of information on the project to be consulted; another one to determine the intervening parties and methodology, for which indigenous peoples shall have enough time to agree to the same internally; and, finally, another one to reach an agreement with EAS.

Agreements on this stage shall be recorded in the minutes which will contain the detailed description of the stated methodology, to be signed by the intervening parties appointed for such purposes.

If there is no agreement in some or all of the elements indicated before, the responsible entity shall keep record of this situation and the methodology to be applied, which shall keep the principles of the consultation safe.¹⁵⁶

¹⁵⁴ The methodology shall consider at least the way of being involved in the consultation process, signing agreements, places, terms, availability of means which guarantee the creation of an equal footing, as well as spreading mechanisms and logistics in general.

¹⁵⁵ Such as: radio advertisements, letters to the respective municipalities and other public entities which may facilitate its spreading or any other suitable means.

¹⁵⁶ Provisions on the call for consultation come from the national legislation.

iii. **Preparation for consultation.**

Its aim is to submit all the background of the project to be consulted to indigenous peoples, taking into account the reasons for consultation, as well as the nature, scope and implication of the project.

The information must be submitted opportunely, using socio-culturally suitable and effective methods and procedures, in Spanish and in the language of the indigenous peoples, when necessary, according to the characteristics of the indigenous peoples affected.

The information of the project to be consulted and of the process shall be constantly updated on the EAS Website. Its aim is to submit all the background of the project to be consulted to indigenous peoples, taking into account the reasons for consultation, as well as the nature, scope and implication of the project.¹⁵⁷

iv. **Consultation implementation.**

There are two moments at the consultation implementation:

- i. **Internal deliberation of indigenous peoples**, which aim is that indigenous peoples analyze, study and determine their position through internal discussion and consensus regarding the project to be consulted, so they may intervene in and prepare the dialogue stage, and
- ii. **Dialogue**. Its aim is to promote the creation of agreements on the consulted project through dialogue. Within the established term for this stage, the meetings necessary to comply with the aim of the consultation must be held. In this stage, culture and decision-making methods of the indigenous peoples must be respected.

Agreements and disagreements at this stage shall be recorded in the minutes which shall also illustrate follow up and monitoring mechanisms and actions.

iii. **Covenants:**

The decision adopted by the Administration on the investment project must contain an assessment of the points of view, suggestions and recommendations proposed by the native peoples during the dialogue process, as well as the analysis of consequences resulting from the respective project approval, collective rights recognized constitutionally and on treaties ratified by the Government.

The covenant, as a result of the consultation process, is binding on the parties.

¹⁵⁷ All matters concerning the preparation of the consultation come from the national legislation.

In case no covenant is reached, the state entities shall adopt all measures necessary to guarantee the collective rights of indigenous or native peoples, and rights to life, integrity and full development thereof.

4. Context:

The consultation shall be carried out according to the uses and habits of each one of the indigenous peoples or communities involved.

In those cases where the project must be approved by two or more indigenous communities, these may make a decision jointly or separately, and in no case the indigenous peoples or communities may be forced to implement decision-making mechanisms different from their own mechanisms.

5. Inclusion and Diversity.

Any indigenous people or representative institution directly affected by the measure being consulted may take part in said process at any time, but in compliance with what has been done so far.

6. Representativeness.

Participants in the consultation shall be the indigenous peoples exclusively affected, which will participate via their national, regional, or local representative institutions, depending on the scope of the project.

Each people shall freely determine its representative institutions, such as traditional indigenous organizations, indigenous communities or associations.



COLOMBIA

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY¹⁵⁸ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Colombia legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Colombia.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

¹⁵⁸ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Colombia legal framework on public consultations:¹⁵⁹:

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	<p>-Act 99 of 1993, published on DEC/22/1993¹⁶⁰</p> <p><u>Articles</u>: 69 to 72; 76 and 108 subsection 2.</p> <p>-Decree 2041 of 2014¹⁶¹, published on OCT/15/2014.¹⁶¹</p> <p><u>Articles</u>: 15.</p> <p>-Decree 330 of 2007, published on FEB/08/2013.¹⁶²</p> <p><u>Articles</u>: 5.</p>
Mining:	-There is no legislation on this matter.
Fishing:	-There is no legislation on this matter.
Forestry:	-There is no legislation on this matter.
Infrastructure:	<p>-Land Use Planning Act (no. 1454), published on JUN/28/2011. ¹⁶³</p> <p><u>Article</u>: 23.</p>
Energy:	-There is no legislation on this matter.
Other:	<p>Decree 2372 of 2010, published on JUL/01/2010.¹⁶⁴</p> <p><u>Articles</u>: art. 42 and 47 paragraph 1.</p> <p>-Act 850 of 2003, which regulates citizen Oversight Entities, published on NOV/19/2003.¹⁶⁵</p> <p><u>Articles</u>: 15 letter a);</p>

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The Attorney General of the Nation or Delegate for Environmental and Agricultural Affairs, Ombudsman, Environment Minister, other environmental authorities, Governors, Mayors or at least one 100 (hundred) people or 3 (three) non-profit entities, may request holding a public hearing when an activity which may have an impact on the environment is carried out and for which an Environmental Permit or License is required.

¹⁵⁹ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

¹⁶⁰ Idem

¹⁶¹ <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=59782#53>

¹⁶² https://www.minambiente.gov.co/images/normativa/decretos/2007/dec_0330_2007.pdf

¹⁶³ <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=43210>

¹⁶⁴ <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=39961#0>

¹⁶⁵ <https://www.google.cl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=OCBwQFjAAahUKEwjsqYLvJDHAhXDzYAKHdHOCNY&url=http%3A%2F%2Fwww.iadb.org%2FResearch%2Flegislacionindigena%2Fleyn%2Fdocs%2FCO-Ley-850-03-Reglamento-Veedurias-Ciudadanas-Document1.docx&ei=g0DBVZLcBsObgwTR6aOwDQ&usg=AFQjCNG65t06LYRWVA-zHpYSS5zkOOW5GFA&bvm=bv.99261572,d.Y2I>

- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Annex 1.

B.1. NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

Step 1: Any natural or legal or private person, without the need to demonstrate any legal interest, may take part in administrative acts initiated for the issue, modification or cancellation of permits or licenses of activities affecting or which may affect the environment or for the imposition or revocation of sanctions for the non-compliance of environmental rules and regulations.

Step 2: In the event of a hearing, this shall be held before the issue, modification or cancellation of an environmental permit or license.

The public hearing shall be convened by the administrative authority to which it is requested, by edict, at least 30 days in advance of the decision to be debated. The edict shall contain date, place and time of the hearing and aim thereof. It shall be presided over by the chief of the competent body or his delegate. The edict shall remain kept in the secretary for 10 days, within which it shall be published in a national newspaper and the Bulletin of the respective office.

A representative of the petitioners, interested parties, competent authorities, skilled people and non-profit organizations which have previously recorded written material relevant to the debate, may intervene in the public hearing, and a record thereof shall be issued. Information and evidence deemed leading may be received in the hearing.

Step 3: The administrative decision shall take into account the interventions and evidence collected during the hearing.

Step 4: A public hearing may also be held, during the execution of a work which may have required environmental permit or license, when a violation of the requirements for its granting or of environmental rules is manifest.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II.

C. Consultation Plan.

See Best Practices Public Consultation in Section II.



COLOMBIA

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES AND BEST PRACTICES.

A. Applicable framework:

- This consultation model with indigenous population distinguishes the requirements for consultations according to Colombia legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Colombia.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

Indigenous consultation legal framework in Colombia:

Implementation acts, regulations or others Convention 169

Colombia ratified Convention 169 on August 7, 1991.

-Decree no. 1320 of 1998: Prior consultation with indigenous and Afro descendants communities is regulated for the exploitation of natural resources within their territory, published on JUL/13/1998.¹⁶⁶

Articles: 1, 2, 4; 5; 7; 9; 12; 13; 14; 16; 17.

-Act 70 of 1993, published on AUG/31/1993.¹⁶⁷

Articles: 3 no. 3; 22; 26 and 44.

-General Forestry Act (no. 1021), published on APR/24/2006.¹⁶⁸

Article: 19.

- Act 99 of 1993, published on DEC/22/1993¹⁶⁹

Article: 76.

¹⁶⁶. http://www.urosario.edu.co/jurisprudencia/catedra-viva-intercultural/Documentos/Decreto_1320_de_1998.pdf

¹⁶⁷. http://www.urosario.edu.co/jurisprudencia/catedra-viva-intercultural/Documentos/ley_70_1993.pdf

¹⁶⁸. <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=20126>

¹⁶⁹. <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=297>

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: Prior consultation is mandatory when the project is expected to be developed in areas of indigenous reservations or areas granted to Afro descendants communities¹⁷⁰.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

There are two scenarios for projects requesting environmental licenses:

- When the project uses generic Terms of Reference (TOR) given by the corresponding Environmental Authority, it shall inform the Ministry of Internal Affairs the way indigenous and/or Afro descendants communities likely to be affected are going to participate in the preparation of assessments.
- When the project has no generic TORs, the proposer shall receive from the Environmental Authority the request to prepare TORs and to make a prior consultation. At the same time the Environmental Authority shall inform the Ministry of Internal Affairs on the participation of indigenous and/or Afro descendants communities likely to be affected in the preparation of their assessments.

Step 1: The proposer must send a written invitation to representatives of indigenous and Afro descendants communities to participate in the preparation of assessments.

Step 2: If within 20 (twenty) days after the invitation was sent no answer was received from the indigenous peoples or Afro descendants communities, the proposer of the project shall inform the Ministry of Internal Affairs to verify within 10 (ten) days after receiving the communication, whether the representatives of those communities wish to participate and shall so inform the proposer.

In the event they decline to participate or fail to reply after the Government's contact, then the proposer shall prepare the environmental assessment without their participation.

Step 3:¹⁷¹ Within 15 (fifteen) days following the date of the environmental license application, the Environmental Authority shall ascertain the participation or non-participation of communities interested in making the

¹⁷⁰ Also when the project is expected to be developed in untitled zones permanently inhabited by such indigenous or Afro descendants communities.

¹⁷¹ Steps 3, 4 and 5 should also be implemented when a license for use, exploitation or affectation of Renewable Natural Resources is requested.

Environmental Impact Assessment, and shall convene a prior consultation meeting to be held within the following 30 (thirty) days preferably in the settlement area.

Such meeting shall be presided over by the Environmental Authority, and the Ministry of Internal Affairs shall be present. The proposer of the project and representatives of indigenous and/or Afro descendants communities involved in the assessment shall be present¹⁷².

Step 4: The following procedure shall be followed in the meeting¹⁷³: (i) The proposer of the project shall submit the assessment with special emphasis on identifying the possible impacts on indigenous communities and Afro descendants communities, and management proposal thereof; (ii) Representatives of indigenous communities and Afro descendants communities shall be heard; (iii) If there is an agreement on the identified impacts and the environmental management plan, the meeting will be over documenting expressly in minutes the agreement reached and it shall be signed by the representatives of the indigenous and Afro descendants communities and by the representatives of the Environmental Authority and the Ministry of Internal Affairs.

In case there is no agreement on environmental management plan or others, the Environmental Authority shall suspend the meeting only once within a maximum of 24 hours, so that the parties analyze proposals.

If, after the meeting is resumed, an agreement is reached the Minutes shall be signed.

If any of the indigenous or Afro descendants communities involved do not attend the consultation meeting, the absence must be excused before the Environmental Authority, within 8 (eight) days following the programmed date of the meeting. In case there is no valid excuse, it shall be presumed that it agrees with the prevention, mitigation or compensation measures of the impacts which may be caused.

Once the absence is excused, the Environmental Authority shall convene a new meeting for such purpose within the following 15 (fifteen) days.

Step 5: In case there is no agreement on the Environmental Management Plan, the meeting shall be considered terminated documenting expressly such fact in minutes and the Environmental Authority shall decide whether granting or not the environmental license.

B.1.2. Mining sector

The Ministry of Mining and Energy may, ex officio or upon request of Afro descendants communities, delimit in the areas granted to them, mining zones where exploration and exploitation of non-renewable natural resources

¹⁷² When it is necessary to consult several indigenous and Afro descendants communities, a single meeting shall be held, except when this is not possible due to conflicts between them.

¹⁷³ The meeting will be in Spanish, with translation to the language of the indigenous and Afro descendants communities present, where appropriate.

shall be carried out under technical conditions protecting and achieving the participation of such Afro descendants communities in order to preserve its cultural and economic characteristics, without prejudice of the acquired or constituted rights in favor of third parties

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations. See Section V Annex I and II

C. Indigenous consultation plan

See Best Practices Indigenous Consultation Section II.



COSTA RICA

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY¹⁷⁴ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Costa Rica legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Costa Rica.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

¹⁷⁴ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	<p>-Environment Organic Act.¹⁷⁶ Date of publication in the Official Gazette: October 4, 1995</p> <p>- Articles: 6 to 11; 23; 24; 29 letter d); 35 letter c); 60 final subsection and 78 letter c).</p> <p>-General Rules on proceedings of Environmental Impact Assessment (EIA)¹⁷⁷. Date of publication in the Official Gazette: June 28, 2004.</p> <p>Articles: 41; 42; 55 to 58; 63.</p>
Mining:	<p>-Mining Code.¹⁷⁸ Date of publication in the Official Gazette: October 22, 1982.</p> <p>- Article 6.</p>
Fishing:	- There is no legislation on this matter.
Forestry:	<p>Forestry Act.¹⁷⁹ Date of publication in the Official Gazette: April 16, 1996.</p> <p>- Article 37 subsection 2.</p>
Infrastructure:	-There is no legislation on this matter.
Energy:	-There is no legislation on this matter.
Other:	<p>-Biodiversity Act.¹⁸⁰ Date of publication in the Official Gazette: April 30, 1998.</p> <p>- Articles: 25 no.3; 83 and 101.</p>

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The consultation is not mandatory for projects which are part of the Environmental Assessment System (EIAS). However, any natural or legal person may request in writing to the Environmental Authority a public or private hearing to analyze the project. If the Authority does not authorize the public hearing it shall indicate a means to receive remarks on the project.
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

175 This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

176. http://www.oas.org/dsd/fida/laws/legislation/costa_rica/costa_rica_7554.pdf

177. http://ij.ucr.ac.cr/sites/default/files/documentos/reglamento_general_sobre_los_procedimientos_de_evaluacion_de_impacto_ambiental_eia.pdf

178. http://www.google.cl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=OCB0QFjAA&url=http%3A%2F%2Fwww.hacienda.go.cr%2Fcentro%2Fdatos%2FLey%2FLey%25206797-C%25C3%25B3digo%2520de%2520Miner%25C3%25ADa.doc&ei=LvuTVbiDPYWP-QGR47UY&usq=AFQjCNFSY9uvEljYE4_RJsM5P2YeGqC5Cw&sig2=_Q3ZfIOUFeA10pnpEHvisg

179. http://onfcr.org/media/uploads/cyclope_old/adjuntos/LeyForestal7575rp16236.pdf

180. <http://www.mabs.jp/countries/others/pdf/221e.pdf>

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

About delivery of information on the project entering EIAS:

Step 1:

- The Environmental Authority shall publish in a national newspaper, periodically, the list of environmental impact assessments received and shall point out the availability thereof for public consultation. It shall indicate times, consultation places, deadlines set to receive opinions, as well as the way in which these shall be submitted.

The information contained in the file about the environmental impact assessment shall be public and available to be consulted by any person or organization. However, those interested may request that the assessment integrated information be kept under reserve, if its publication may affect industrial property rights.

Step 2:

- Natural and legal persons shall be entitled to send their remarks in writing.

All observations submitted by the civil society shall be part of the project's administrative file, and shall be taken into account during the revision process of the Environmental Impact Assessment (EIA).

About public hearings:

Step 1:

- Hearings shall be requested in writing by the Environmental Authority, indicating postal address or telephone or fax number where the response will be given, including date and time of hearing. Hearings shall be set as follows: (i) Within fifteen natural days after being requested, in case of private hearing, and (ii) Within the following three months, in case of public hearing.

Step 2:

- The Environmental Authority in virtue of the potential environmental impact, shall determine whether or not it is necessary for the hearing to be held. In case of deciding not to hold the requested public hearing, it shall determine the mechanism by which remarks will be received.

Step 3:

- If the consultation is made, the Environmental Authority must coordinate the same with municipalities, development associations and interested people of the respective place. The productive sector within the project influence area must be included.

- The Environmental Authority will only hold a public hearing, which call shall be published twice in the country's leading newspaper at least 10 working days in advance.
- In the public hearing the proposer shall present the project with the technical team which made the EIA.

B.1.2. Mining sector.

Permits or concessions may be denied or conditioned, when such assessments are related to health and security of communities located in the surroundings. EIA analysis where the affected communities shall be part.[sic]

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan See and apply Guiding Principles and Best Practices section II except for specific modifications below:

Call for consultation:

Call for consultation shall be made at least 2 weeks in advance, indicating date, place, time¹⁸¹

Accessibility:

Natural and legal persons shall be entitled to send their remarks in writing.

¹⁸¹ Provision from national legislation

COSTA RICA

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES AND BEST PRACTICES.

A. Applicable framework:

- This consultation model with indigenous population distinguishes the requirements for consultations according to Costa Rica legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Costa Rica.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

Implementation acts, regulations or others Convention 169

Costa Rica ratified Convention 169 on April 2, 1993.

- **File 14352 or the Autonomous Development of Costa Rica Indigenous Peoples Act.**¹⁸²

- Bill: NOV/10/1998

Articles 9; 10; 12; 15; 25.

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The State and private sector institutions may execute, in the indigenous territories, works of social good, public service and infrastructure support. To do this, the Board of Directors of the territory must be consulted¹⁸³, which shall make the internal consultation to the extent of their possibilities.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II

¹⁸². <http://www.tuva.org/ngobe/Ley%20Indigena%20Exp12032D%2010Nov98.htm> : The only text which refers to the indigenous consultation was dismissed in March 2015.

¹⁸³ Integrated by indigenous representatives of the territory.

B.1 NATIONAL LEGISLATION

B.1.1. Environmental Impact Assessment System.

Step 1: In case a State Agency requests a consultation to the Board of Directors of the territories, and in case of a complex or technical issue, the State Agency shall provide indigenous communities with the economic resources so that they can directly hire technicians and consultants, in order to issue an independent and founded opinion about the subject matter.

The budget shall be made by common agreement between the state entity which makes the consultation and a representative of the Board of Directors of the territory, duly authorized for such purpose.

If there is no agreement on the amounts, these shall be resolved by an Arbitration Commission established pursuant to Act on Alternative Dispute Resolution and Promotion of Social Peace.¹⁸⁴

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations. See Section V Annex I and II.

C. Indigenous consultation plan: See and apply Guiding Principles and Best Practices section II except for specific modifications below

Objective:

Implement a bona fide¹⁸⁵, free, prior and informed consultation process covering appropriate mechanisms according to sociocultural characteristics of each indigenous people and through its representative institutions, so that they take part in an informed way and an agreement or consent about the projects expected to be developed on their territories is achieved.

¹⁸⁴ Act no. 7727, of December 9, 1997 and amendments thereof.

¹⁸⁵ Bona fide is a guiding principle of the consultation, by virtue of which all intervening parties shall act in a faithful and correct way in order to reach an agreement or achieve the prior, free and informed consent.

Methodology:

Best Practices concerning public consultations:

1. Opportunity:

The consultation must be prior, i.e. the one made in good time and which gives to the affected indigenous people the opportunity of influencing, in a real and effective way, to the extent in which the consultation is susceptible to affect it directly.

Any interested natural or legal person, or representative institutions may request mainly the Environmental Authority to carry out a consultation process. Well-founded requests are those requests indicating at least the facts and reasons behind them.

The consultation shall have two moments: (i) To draw up TORs to make the EIA and (ii) During the assessment of the EIA by the Environmental Authority.

2. Accessibility:

The consultation must be made in the places and times defined by the indigenous communities likely to be affected by the project concerned.

The consultation shall be made in Spanish and the language which may be understood by the indigenous peoples directly affected, whenever necessary. It shall be deemed necessary to be in the language of the affected indigenous people when these communicate mainly in their own language.

In case of a complex or technical subject of consultation, the State Agency shall provide indigenous communities with the economic resources so that they can directly hire technicians and consultants, in order to issue an independent and founded opinion about the subject matter¹⁸⁶.

Information concerning the project shall be made available to institutions and organizations representing indigenous peoples, by methods and proceedings appropriate for such peoples, considering geography and the environment where they live.

¹⁸⁶ Provision from national legislation.

3. Duration:

The consultation shall contemplate the following phases:

- iv. Call.
- v. **Planning:**
This stage must include: (i) Methodological plan (among other important aspects, the way of registration of meetings and the importance of having observers, mediators and/or ministers of faith) schedule and place (ii) required specialized consultancy, (iii) Budget.
- vi. Preparation for consultation
- vii. Consultation implementation
- viii. Covenants:

The decision adopted by the Administration on the investment project must contain an assessment of the points of view, suggestions and recommendations proposed by the native peoples during the dialogue process, as well as the analysis of consequences resulting from the respective project approval, collective rights recognized constitutionally and on treaties ratified by the Government.

The covenant, as a result of the consultation process, is binding on the parties.

In case no covenant is reached, the state entities shall adopt all measures necessary to guarantee the collective rights of indigenous or native peoples, and rights to life, integrity and full development thereof.

4. Context:

In those cases where the project must be approved by two or more indigenous communities, these may make a decision jointly or separately, and in no case the indigenous peoples or communities may be forced to implement decision-making mechanisms different from their own mechanisms.

5. Inclusion and Diversity.

Any indigenous people or representative institution directly affected by the measure being consulted may take part in said process at any time, but in compliance with what has been done so far.

6. Representativeness.

Participants in the consultation shall be the indigenous peoples exclusively affected, which will participate via their national, regional, or local representative institutions, depending on the scope of the project.

Each people shall freely determine its representative institutions, such as traditional indigenous organizations, indigenous communities or associations.



ECUADOR

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY¹⁸⁷ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Ecuador legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Ecuador.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

¹⁸⁷ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Ecuador legal framework concerning public consultations: ¹⁸⁸

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	<p>-Environmental Management Act¹⁸⁹, registered on SEP/10/2004.</p> <p>Articles: 28; 29.</p> <p>-Executive Decree 1040, which regulates the application of mechanisms for social participation established by the Environmental Management Act,¹⁹⁰ published on MAY/8/2008.</p> <p>Articles: The whole Regulation.</p>
Mining:	<p>-Mining Act⁹¹, published on JAN/29/2009</p> <p>Articles: 87; 89; 90.</p>
Fishing:	-There is no legislation on this matter.
Forestry:	-There is no legislation on this matter.
Infrastructure:	<p>-Organic Code of Territorial Organization, Autonomy and Decentralization¹⁹², published on OCT/19/2010.</p> <p>Articles: 146; 304.</p>
Energy:	<p>-Public Electricity Service Organic Act,¹⁹³ published on JAN/16/2015.</p> <p>Article: 6.</p> <p>-Executive Decree no. 1215, of FEB.13.2001 - Hydrocarbon Activities Environmental Regulation¹⁹⁴, altered by Decree 1.630/2009.¹⁹⁵</p> <p>Articles: 6, 9, 88 and 89.</p>

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: Consultation and other ways of participation are mandatory for projects submitted to environmental assessment. Its aim is to consider and incorporate citizenship remarks, especially directly affected population, which are technically and economically viable. Consultation mechanisms must be adapted to socio-cultural characteristics of population of the area of influence of the proposed project¹⁹⁶.

¹⁸⁸ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

¹⁸⁹ <http://www.ambiente.gob.ec/wp-content/uploads/downloads/2012/09/LEY-DE-GESTION-AMBIENTAL.pdf>

¹⁹⁰ <http://www.ambiente.gob.ec/wp-content/uploads/downloads/2013/04/1-DECRETO-1040-04-2008.pdf>

¹⁹¹ Idem note 5.

¹⁹² <http://www.asambleanacional.gob.ec/es/leyes-aprobadas?leyes-aprobadas=All&title=ORGANIZACI%C3%93N&fecha=>

¹⁹³ <http://www.iner.gob.ec/wp-content/uploads/downloads/2015/05/LOSPEE.pdf>

¹⁹⁴ Altered by article 5 of Decree 1.630/2009, assigning competence to the Environment Minister.

¹⁹⁵ <http://www.calidadambiental.com.ec/web/biblioteca-virtual/hidrocarburos/5-decreto-ejecutivo-1215.html>

¹⁹⁶ There is a Draft to General Rules to Environmental Management Act.

http://util.socioambiental.org/inst/esp/consulta_previa/sites/util.socioambiental.org.inst.esp.consulta_previa/files/projeto_ley_ecuador.pdf

- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II.

B.1 COUNTRY LEGISLATION.

B.1.1. Environmental Assessment Systems of projects.

Step 1: The proposer must organize information meetings with the people directly affected, communicating the project main characteristics, its environmental impacts and the corresponding mitigation measures. Its objective is to clarify questions and doubts about the project and receive remarks and criteria from the community.

Step 2: The proposer shall make Participatory Workshops to identify local development plans and perceptions in order to insert their mitigation and/or compensating measures proposal into local development plans.

Step 3: Public Information Centers (PICs): The Impact Assessment and Environmental Management Plan, as well as didactic and visualized documentation shall be made available to the public in a readily access place, with personnel familiar with the project who may clarify doubts.

The Impact Assessment and Environmental Management Plan may also be published in a Website, as long as its location (URL) is enough widespread to guarantee access by citizens.

Step 4: Public Hearing: A Public Hearing shall be held where the project, the Impact Assessment and Environmental Management Plan will be didactically presented to then receive remarks and criteria from the community.

Step 5: The remarks received will be recorded in the Minutes of the information meetings, participatory workshops, public hearings, apart from those received by mail and e-mail.

Once remarks are recorded, these must be systematized and organized in categories indicating their treatment or way of incorporation to the Impact Assessment and Environmental Management Plan.

B.1.2. Mining sector.

The Government is responsible for executing social consultation and participation processes of mining projects. This competence cannot be delegated to any private authority. The Ministry of Finance shall provide the necessary budget.

The aim of consultations is to provide sustainable development of mining activity, taking precautions to ensure the rational use of mining resources, respecting the environment, social participation in environmental matters and development of places located in influence areas of a mining project.

If the consultation results in an overwhelming opposition of the corresponding community, the decision of developing the project shall be adopted by resolution of the Sectorial Ministry.

Consultations must be carried out in all stages of the mining activity. All mining concessionaire shall respect the people's right to access to information, participation and consultation processes on environmental management of mining activities.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

Before the start of all State oil bid, the entity in charge of carrying out oil bids shall apply consultation procedures together with the Ministry of Mining and Energy and the Environment Ministry.

The Deputy Secretary for Environmental Protection is in charge of coordinating the participation of organizations of local civil society, indigenous peoples, rural communities and people in general.

Projects once approved must include compensation and indemnity measures due to possible environmental affectations and damages of property which the project execution may cause to population. Indemnity calculations shall be made under the principle of official tables force.

The National Environmental Protection Department in charge of environmental monitoring and control of hydrocarbon operations may foresee citizen monitoring places through community representatives who will contribute with their observations and recommendations in surveys and meetings, which shall be assessed and considered by the National Environmental Protection Department for technical development of monitoring and control.

B.1.6. Infrastructure Sector.

Rural parish decentralized autonomous governments shall define a citizen participation system which will organize participation in the formulation, execution, monitoring and assessment of development and land use planning plans; and, in general, in defining public investment proposals.

B.2 OPERATIONS WITH THE IDB

The first action is to verify the classification given to the project by IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan.

See Consultations Best Practices Section II.

ECUADOR

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES AND BEST PRACTICES.

A. Applicable framework:

- This consultation model with indigenous population distinguishes the requirements for consultations according to Ecuador legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Ecuador.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II.

Indigenous public consultation legal framework in Ecuador:

Implementation acts, regulations or others Convention 169

Ecuador ratified Convention 169 on May 15, 1998

-Constitution of the Republic of Ecuador dated OCT.20.2008.¹⁹⁷

Articles: 57 no. 7 and 16.

-Act no. 86, Organic Act of Public Institutions for Indigenous Peoples of Ecuador of SEP.11.2007.¹⁹⁸

Articles: 3 letter i); General Provisions: First.

-Mining Act,¹⁹⁹ published on JAN/29/2009.

Article: 90.

Environmental Management Act²⁰⁰, registered on SEP/10/2004.

Article: 13.

197. http://www.asambleanacional.gob.ec/sites/default/files/documents/old/constitucion_de_bolsillo.pdf

198. http://codenpe.gob.ec/Ley_transparencia_2014/junio/Edgar/NORMAS%20DE%20CREACION%20DEL%20CODENPE/Ley%20de%20Instituciones%20indigenas

199. http://www.oas.org/juridico/PDFs/mesicic4_ecu_mineria.pdf y Ley de Reforma a la Ley de Minería: file:///C:/Users/prigo_000/Desktop/Ley%20Org%C3%A1nica%20Reformatoria%20a%20la%20Ley%20de%20Miner%C3%ADa.%20a%20la%20Ley%20Reformatoria%20para%20la%20Equidad%20Tributaria%20en%20el%20Ecuador%20y%20a%20la%20Ley%20Org%C3%A1nica%20de%20R%C3%A9gimen%20Tributario%20Interno.pdf

200. <http://www.ambiente.gob.ec/wp-content/uploads/downloads/2012/09/LEY-DE-GESTION-AMBIENTAL.pdf>

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: Free, prior and informed consultation must be made by the competent authorities for the plans of prospecting, use and commercialization of non-renewable resources on indigenous lands and which may affect environmentally and culturally.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

Consejo de Desarrollo de las Nacionalidades y Pueblos Indígenas (CODENPE) [Council for the Development of the Indigenous Peoples and Nationalities] is a consultation, coordination, planning and accountability body, which has the power to establish permanent dialogue and consultation mechanisms among indigenous peoples with the different sectors of Ecuador society, in order to agree on actions directed to the country's development process.

B.1.2. Mining sector.

Consultation processes shall consider a mandatory special proceeding for communities, peoples and nationalities, by their institutions, for those cases in which mining exploration or exploitation is carried out on their ancestral territories and lands and when such tasks may affect their interests.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

Before the start of all State oil bid, the entity in charge of carrying out oil bids shall apply consultation procedures together with the Ministry of Mining and Energy and the Environment Ministry.

Before executing plans and programs on hydrocarbon exploration and exploitation, the authority shall report the communities within the project influence area and know their suggestions and criteria. From the agreements generated as a result of these information meetings, a written record will be available by public instrument, which will be forwarded to the Deputy Secretary for Environmental Protection.

Conventions shall be drawn up under the compensation and indemnity principles due to possible environmental affectations and damages of property which the energy projects execution may cause to population. Indemnity calculations shall be made under the principle of official tables in force.

When such spaces or areas are within the National Heritage of Natural Areas, provisions of the management plan of such area shall be observed, pursuant to Forestry and Conservation of Natural Areas Act.

The Environmental Authority shall define and coordinate the citizen participation mechanisms in the monitoring of hydrocarbon projects through community representatives who will contribute with their observations and recommendations in surveys and meetings, which shall be assessed and considered by the Environmental Authority for technical development of monitoring and control.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations. See Section V Annex I and II

C. Indigenous Consultation Plan See and apply Guiding Principles and Best Practices section II except for specific modifications below:

Objective:

Implement a bona fide²⁰¹, free, prior and informed consultation process covering appropriate mechanisms according to sociocultural characteristics of each indigenous people and through its representative institutions, so that they take part in an informed way and an agreement or consent about the projects expected to be developed on their territories is achieved.

Methodology:

Best Practices concerning public consultations:

1. Opportunity:

The consultation must be prior, i.e. the one made in good time and which gives to the affected indigenous people the opportunity of influencing, in a real and effective way, to the extent in which the consultation is susceptible to affect it directly.

Any interested natural or legal person, or representative institutions may request mainly the Environmental Authority to carry out a consultation process. Well-founded requests are those requests indicating at least the facts and reasons behind them.

The consultation shall have two moments: (i) To draw up TORs to make the EIA and (ii) During the assessment of EIA by the Environmental Authority.

²⁰¹ Bona fide is a guiding principle of the consultation, by virtue of which all intervening parties shall act in a faithful and correct way in order to reach an agreement or achieve the prior, free and informed consent.

2. Accessibility:

The consultation must be made in the places and times defined by the indigenous communities likely to be affected by the project concerned.

The consultation shall be made in Spanish and the language which may be understood by the indigenous peoples directly affected, whenever necessary. It shall be deemed necessary to be in the language of the affected indigenous people when these communicate mainly in their own language.

The Government will provide financing so that indigenous communities taking part in a consultation may hire technical assistance if required.

Information concerning the project shall be made available to institutions and organizations representing indigenous peoples, by methods and proceedings appropriate for such peoples, considering geography and the environment where they live.

3. Duration:

The consultation shall contemplate the following phases:

- i. Call.
- ii. Planning: This stage must include: (i) Methodological plan (among other important aspects, the way of registration of meetings and the importance of having observers, mediators and/or ministers of faith) schedule and place (ii) required specialized consultancy, (iii) Budget.
- iii. Preparation for consultation
- iv. Consultation implementation
- v. Agreements:

The decision adopted by the Administration on the investment project must contain an assessment of the points of view, suggestions and recommendations proposed by the native peoples during the dialogue process, as well as the analysis of consequences resulting from the respective project approval, collective rights recognized constitutionally and on treaties ratified by the Government.

The agreement, as a result of the consultation process, is binding on the parties.

In case no agreement is reached, the state entities shall adopt all measures necessary to guarantee the collective rights of indigenous or native peoples, and rights to life, integrity and full development thereof.

4. Context:

The consultation shall be carried out according to the uses and habits of each one of the indigenous peoples or communities involved.

In those cases where the project must be approved by two or more indigenous communities, these may make a decision jointly or separately, and in no case the indigenous peoples or communities may be forced to implement decision-making mechanisms different from their own mechanisms.

5. Inclusion and Diversity.

Any indigenous people or representative institution directly affected by the measure being consulted may take part in said process at any time, but in compliance with what has been done so far.

6. Representativeness.

Participants in the consultation shall be the indigenous peoples exclusively affected, which will participate via their national, regional, or local representative institutions, depending on the scope of the project.

Each people shall freely determine its representative institutions, such as traditional indigenous organizations, indigenous communities or associations.



EL SALVADOR

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY²⁰² ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to El Salvador legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in El Salvador.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

²⁰² Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

El Salvador legal framework on public consultations: ²⁰³

General acts on citizen participation and/or public consultations	Acts and regulations on participation and/or consultation on environmental issues (Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)	
<p>-Municipal Code, of JAN/31/1986, published in Official Gazette on FEB/05/1986²⁰⁴</p> <p><u>Articles:</u> 4 no.8; 116 letters c) and d); 117; 123 and 125 F.</p>	<p>Environmental Impact Assessment System</p>	<p>-Environment Act²⁰⁶ of MAR/02/1998, published in the Official Gazette on MAY/04/1998.</p> <p><u>Articles:</u> 8; 9; 24; 25; 49 a); 77 a) and 80.</p> <p>-General Rules of Environment Act,²⁰⁷ of MAR/21/2000, published in the Official Gazette on APR/12/2000.</p> <p><u>Articles:</u> 10; 12; 14 e); 15 d); 16 g); 19 no.8 and 9; 23 i); 30; 32 and 70.</p>
<p>- Nonprofit Associations and Foundations Act of NOV/21/1996; published in the Official Gazette on DEC/17/1996.²⁰⁵</p> <p><u>Article:</u> 65.</p>	<p>Forestry:</p> <p>Mining:</p> <p>Energy:</p> <p>Infrastructure:</p> <p>Fishing:</p>	<p>-There is no legislation on this matter.</p> <p>-There is no legislation on this matter.</p> <p>-There is no legislation on this matter.</p> <p>-There is no legislation on this matter.</p> <p>-There is no legislation on this matter.</p>

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The consultation is mandatory for projects which are part of the Environmental Impact Assessment System (EIAS), which results may affect the population life quality, threaten health and environment. It is the responsibility of the proposer to finance public consultation.
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

B.1 COUNTRY LEGISLATION.

B.1.1. Environmental Assessment Systems of projects.

Step 1: The Ministry shall provide the owner with the format for the publication about the Environmental Impact Assessment, which shall be made within three consecutive days, in any of the national written media.

²⁰³ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.
²⁰⁴ <http://www.isd.org.sv/isd/index.php/ambito-electoral/84-isd-democracia/estudios-y-publicaciones/empoderamiento-ciudadano/legislacion-en-materia-de-desarrollo-municipal/385-codigo-municipal-de-el-salvador>
²⁰⁵ http://www.oas.org/juridico/spanish/mesicic3_siv_funciones.pdf
²⁰⁶ <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-del-medio-ambiente>
²⁰⁷ www.marn.gob.sv/index.php?option=com_phocadownload&view=category&download=57:1&id=7&Itemid=255

This publication shall be made within ten working days so that any affected person expresses his or her opinions or makes his or her remarks in writing.

Step 2: The consultation shall be organized by the Ministry and costs shall be the responsibility of the owner. The Ministry shall have a guide of procedures to develop the consultation.

Step 3: The communities involved and municipal governments shall be part of the consultation, in which territorial jurisdiction there is the project impact area. The owner must exhibit the project.

Step 4: The Ministry shall draft Minutes of the Public Consultation, which will contain the main points of discussion and the agreements adopted by the people present about the project. Such Minutes shall be signed by the attendants.

Step 5: The opinions received during the Public Consultation process shall be weighed under strictly technical criteria during the Environmental Impact Assessment.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB.

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan.

See Best Practices Public Consultation in Section II.

EL SALVADOR

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO BEST PRACTICES, NATIONAL LEGISLATION AND OPERATIONAL POLICIES IDB GROUP.

A. Applicable framework

- This consultation model with indigenous population distinguishes the requirements for consultations according to El Salvador legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in El Salvador.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

The Legal Framework concerning indigenous consultation in El Salvador is the following:

Implementation acts, regulations or others Convention 169

El Salvador has not ratified Convention 169.

*Decree no. 707: Let the Agreement of Amendment of Art. 63 of the Constitution be validated, acknowledging Indigenous Peoples. Issued on JUN/12/2014 and published in the Official Gazette on JUN/19/2014.*²⁰⁸

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: This country has not ratified ILO Convention No. 169 on Indigenous and Tribal peoples in Independent Countries. It does not have legislation on indigenous consultation.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Annex 1.

208. <http://www.asamblea.gob.sv/comisiones-legislativas/permanentes/comision-de-legislacion-y-puntos-constitucionales/legislatura-2012-2015/decretos/2014/06-junio/dec0707-leg-120614-pueblos-indigenas/?searchterm=indigenas>

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

There is no legislation on this matter.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations²⁰⁹. See Section V Annex I and II

C. Indigenous consultation plan.

See Best Practices Indigenous Consultation Section II.

²⁰⁹ The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof, and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.



GUATEMALA

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY²¹⁰ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Guatemala legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Guatemala.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

²¹⁰ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Guatemala legal framework concerning public consultations: ²¹¹

General acts on citizen participation and/or public consultations	Acts and regulations on participation and/or consultation on environmental issues (Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)	
<p>-Municipal Code, of FEB/4/2002, published in the Official Gazette on MAY/13/2002²¹²</p> <p>Articles: 17; 60 to 66 and 132.</p>	<p>Environmental Impact Assessment System:</p>	<p>Regulations on Environmental Assessment, Control, and Monitoring, dated JAN/27/2003.²¹⁶</p> <p>Articles: 49 to 53.</p>
<p>-General Decentralization Act, of SEP/6/2002; published in the Official Gazette on SEP/10/2002.²¹³</p> <p>Articles: 4 no.9; 5 no.4; 10 f); Chapter V: art.17 to 19.</p>	<p>Forestry:</p>	<p>-There is no legislation on this matter.</p>
<p>Articles: 4 no.9; 5 no.4; 10 f); Chapter V: art.17 to 19.</p>	<p>Mining:</p>	<p>-There is no legislation on this matter.</p>
<p>-Regulation of General Decentralization Act of SEP/6/2002, published in the Official Gazette on SEP/10/2002.²¹⁴</p> <p>Article: 4 f) and Chapter V: art. 19 to 21.</p>	<p>Energy:</p>	<p>-There is no legislation on this matter.</p>
<p>*Citizen Participation Law Initiative. Registration no.: 3550. Date to plenary: NOV/14/2006²¹⁵</p>	<p>Infrastructure:</p>	<p>-There is no legislation on this matter.</p>
<p>Articles: 19; 20 to 33; 36 to 39 and 51 to 57.</p>	<p>Fishing:</p>	<p>-There is no legislation on this matter.</p>
	<p>Other:</p>	<p>-Legislation on Environmental Management Framework. Dated DEC/8/2003.²¹⁷ Art.7.1.2; 2.3; 2.7; 3.2.9.</p>

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The proposer of the project shall involve people in the earliest possible stage thereof, in any instrument of environmental assessment that must be performed.
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

²¹¹ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.
²¹² <http://old.congreso.gob.gt/archivos/decretos/2002/gtdcx12-2002.pdf>
²¹³ <http://www.unicef.org/guatemala/spanish/LeyDescentralizacion.pdf>
²¹⁴ http://www.oas.org/juridico/spanish/gtm_res72.pdf
²¹⁵ <http://www.lexglobal.com/documentos/1178903304.pdf>
²¹⁶ <http://faolex.fao.org/docs/pdf/gua44629.pdf>
²¹⁷ Idem note 6.

B.1 COUNTRY LEGISLATION.

B.1.1. Environmental Assessment Systems of projects.

Step 1: During the drafting of the corresponding environmental assessment, the proposer shall make and execute a public participation plan, considering the following content:

- a. Way of stimulating public participation during the instrument drafting;
- b. Way of community participation (interviews, surveys, workshops, business assemblies and/or meetings);
- c. Information mechanisms to the various segments of the population;
- d. Request of information and response to community and particularly from environmental groups and similar organizations; and e) Way of resolution of potential conflicts.

Step 2: The proposer shall consign all citizen participation activities made during the drafting of the assessment instrument and propose communication and consultation mechanisms to be carried out during the document revision stage.

Step 3: The proposer shall publish in a national newspaper information about the project: name, location, type of activity, deadline to submit written remarks.

Step 4: Individual or legal persons may submit their remarks in writing within twenty working days after the Environmental Authority and the proposer have published that the Environmental Assessment Instrument has been submitted.

Step 5: The Environmental Authority shall consider those citizen remarks which have been submitted within the twenty days established and which have a technical, scientific and/or legal foundation.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB.

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Annex 1.

C. Consultation Plan: See and apply Guiding Principles and Best Practices section II except for specific modifications below:

1. Opportunity:
 - a. The call for consultation shall be made before the final decision making concerning the subject matter of the consultation
 - b. Call for consultation shall be made at least 2 weeks in advance, indicating date, place, time.
 - c. Individual or legal persons may submit their remarks in writing within twenty working days after the Environmental Authority and the proposer have published that the Environmental Assessment Instrument has been submitted²¹⁸.



²¹⁸ Provision from national legislation

GUATEMALA

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This consultation model with indigenous population distinguishes the requirements for consultations according to Guatemala legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Guatemala.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II.

Legal framework in Guatemala on indigenous consultation:

Implementation acts, regulations or others Convention 169

Guatemala ratified Convention 169 on June 5, 1996.

-Legislation on Environmental Management Framework,²¹⁹ Dated DEC/8/2003

Articles: 2 no. 7;7.1.2.

*Citizen Participation Law Initiative.²²⁰ Registration no.: 3550. Date to plenary: NOV/14/2006.

Article 31*

219. <http://www.bchguatemala.gob.gt/Members/admin/documentos/Acdg-gestiona%20ambiental.pdf>
220. Idem note 4.

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: It establishes a recognition of Guatemala's multi-cultural and multi-ethnic character.²²¹
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

It establishes a recognition of Guatemala's multi-cultural and multi-ethnic character.

B.1.1. Environmental Impact Assessment System.

There is no legislation on this matter.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations²²²: See Section V Annex I and II.

C. Indigenous consultation plan.

See Best Practices Indigenous Consultation in Section II.

²²¹ The Municipal Code establishes the obligation to consult indigenous communities or authorities of the municipality when the nature of the issue affects particularly rights and interests of the indigenous communities.

²²² The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof; and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.



GUYANA

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY²²³ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Guyana legislation and best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Guyana.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

²²³ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Guyana legal framework²²⁴ on consultation is as follows:

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	<p>-Environmental Protection Act,²²⁵ of 1996.</p> <p>Articles: 4 no.1 letter b); 11 no.7; 11 no.9 letter a) and b); 11 no.10; 18 no.2; 68 no.1 letter z).</p> <p>- Regulations Made Under Environmental Protection Act²²⁶, of 2000.</p> <p>Articles: 4 no.2.</p>
Mining:	-There is no legislation on this matter.
Fishing:	-There is no legislation on this matter.
Forestry:	<p>Guyana Forestry Act,²²⁷ of 2009.</p> <p>Articles: 10 no.1; 12; 23 no.1; 48 letter c); 51 no.1; 51 no.2 and 51 no.3.</p>
Infrastructure:	-There is no legislation on this matter.
Energy:	-There is no legislation on this matter.

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The consultation is mandatory for projects which are part of the Environmental Impact Assessment System (EIAS). This consultation must be made by the proposer while making the Environmental Impact Assessment (EIA) calling the interested public and organizations. Secondly, once EIA is part of the Environmental Impact Assessment System (EIAS) the Environmental Assessment Board must make public hearings.
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

B.1 COUNTRY LEGISLATION.

B.1.1. Environmental Assessment Systems of projects.

Step 1: Before the project environmental assessment begins the Authority shall publish a summary thereof in a general newspaper²²⁸.

²²⁴ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

²²⁵ http://www.mintic.gov.gy/smallbusiness/legislation/cap_2005_Environmental_Protection.pdf

²²⁶ <http://www.epaguyana.org/index.php/2014-02-10-20-21-58?task=document.viewdoc&id=10>

²²⁷ http://www.forestry.gov.gy/Downloads/Guyana_Forestry_Act_2009.pdf

²²⁸ The cost of the publication shall be assumed by the proposer.

Step 2: Once the project summary has been published, the public will have 28 days to send written comments to the authority asking questions which must be answered or aspects which must be considered on the Environmental Impact Assessment (EIA).

Step 3: During the EIA drafting the proposer shall organize a consultation with the public and the interested organizations. It must also provide at the request of the public copies of the information contained in the EIA.²²⁹

Step 4: Once the EIA has entered the Environmental Impact Assessment System (EIAS) the proposer must publish in a national newspaper that the EIA has entered for assessment and the public has 60 days as of this publication to make written comments to the Authority.

Step 5: Once EIA is part of the Environmental Impact Assessment System (EIAS) the Environmental Assessment Board must make public hearings.

For the forestry sector, Guyana Forestry Act of 2009 establishes:

The Forestry Commission shall consult relevant actors before granting a permission to enter, occupy and/or use specific sectors of the State forestry area.²³⁰ It shall also make consultations before approving a Forestry Agreement which includes a Forestry Management Plan and/or the obligation of planting certain plants and trees on specific areas of the State forest. Those people worried about the damage the forestry permit may cause will be part of this Forestry Agreement.

The Environmental Protection may draft a regulation to create a protected forestry area. Before it is approved it must call a public hearing by public notification to discuss this regulation and receive oral and written comments.

The Forestry Commission shall at the request of any interested party provide information in its power and which is authorized by law to be provided.

Any person may make a written request of information. The Commission will have at most 45 days to provide the information requested.²³¹ In case the information requested is not provided the Commission must give its reasons.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

²²⁹ The photocopies charged by the proposer must have a reasonable price.

²³⁰ To make scientific, education and training research, recreational or eco-tourism purposes, take photographs, film, record videos or record sounds, and any other purpose notified to the Forestry Commission.

²³¹ Except for the commercially sensitive information or that which may harm the national security.



B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB.

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan: See and apply Guiding Principles and Best Practices section II except for specific modifications below:

1. Opportunity:

Once the project summary has been published, the public will have 28 days to send written comments to the authority asking questions which must be answered or aspects which must be considered on the Environmental Impact Assessment (EIA).²³²

²³² Provision from national legislation

GUYANA

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This consultation model with indigenous population distinguishes the requirements for consultations according to Guyana legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Guyana.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

Legal framework in Guyana on indigenous consultation:

Implementation acts, regulations or others Convention 169

-Amerindian Act,²³³ of MAR/14/2006.

Articles: 15 letter a); 48 letter d) and 48 no.2.

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: This country has not ratified ILO Convention No. 169 on Indigenous and Tribal peoples in Independent Countries. It has indigenous consultation legislation in mining projects.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II

233. <http://www.amerindian.gov.gy/legislation-the-amerindian-act/>

B.1 NATIONAL LEGISLATION:

B.1.1. Environmental Impact Assessment System.

There is no legislation on this matter.

B.1.2. Mining sector.

Any mining project to be developed in indigenous lands, or rivers, streams or other sources of water within the limits of indigenous lands shall be consulted to indigenous communities. Guyana Geology and Mines Commission may facilitate consultations but may not be able to participate in negotiations.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations²³⁴ See Section V Annex I and II

C. Indigenous consultation plan.

See Best Practices Indigenous Consultation in Section II.

²³⁴ The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof; and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.

HAITI

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY²³⁵ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Haiti legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Haiti.

In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

Haiti legal framework concerning public consultations:²³⁶

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	-Décret portant sur la Gestion de l'Environnement et de Regulation de la Conduite des Citoyens et Citoyennes pour un Développement Durable, ²³⁷ of January 26, 2006.
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Articles: 58; 69; 70.

Mining:	-There is no legislation on this matter.
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Fishing:	-There is no legislation on this matter.
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Forestry:	-There is no legislation on this matter.
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Infrastructure:	-There is no legislation on this matter.
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Energy:	-There is no legislation on this matter.
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²³⁵ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

²³⁶ <http://faolex.fao.org/docs/pdf/hai65901.pdf>

²³⁷ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: It establishes that a public hearings system shall be created for projects environmentally assessed.
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

B.1 COUNTRY LEGISLATION.

B.1.1. Environmental Assessment Systems of projects.

It establishes that a public hearings system shall be created for projects environmentally assessed.

The Environmental Authority will make available to the public in different parts of the territory, through the appropriate channels, the registration of environmental assessments and results thereof.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB.

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan.

See Consultation Best Practices Section II



HAITI

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

This section does not apply. Haiti has no indigenous population or specific minority groups.

HONDURAS

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY²³⁸ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Honduras legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Honduras.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

Honduras legal framework on public consultations²³⁹:

Acts and regulations on participation and/or consultation on environmental issues (Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	<p>-General Environment Act.²⁴⁰ Date of publication in the Official Gazette: June 30, 1993.</p> <p>-<u>Articles:</u> 10; 11 and 102.</p> <p>-Regulation of Environment General Act.²⁴¹ Date of publication in the Official Gazette: February 05, 1994.</p> <p>-<u>Articles:</u> 88 to 91.</p>
Mining:	-There is no legislation on this matter.
Fishing:	<p>-New Fishing Act²⁴². Passed by the National Congress on January 20, 2015.</p> <p>-<u>Articles:</u> 12 final subsection; 30.</p>
Forestry:	<p>-Forestry, Protected Areas and Wildlife Act.²⁴³ Date of publication in the Official Gazette: February 26, 2008.</p> <p>-<u>Articles:</u> 2 no.5; 18 no.14; 22 no.7; 23 no.7; 24 no.9.</p>
Infrastructure:	<p>-Land Use Planning Act.²⁴⁴ Date of publication in the Official Gazette: September 18, 2004.</p> <p>-<u>Articles:</u> 5 no.3 and 5; 7 no.4; 8; 13 no.6; 35 to 39.</p>
Energy:	-There is no legislation on this matter.

238 Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

239 This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

240. http://www.oas.org/dsd/fida/laws/legislation/honduras/honduras_104-93.pdf

241. http://www.ccichonduras.org/es/descargas/leyes/LEGISLACIÓN_AMBIENTAL/REGLAMENTO_GENERAL_A_LEY_DEL_AMBIENTE.PDF

242. Idem note 3.

243. Idem note 2.

244. http://www.observatoriodescentralizacion.org/download/leyes_vigentes/ley_de_ordenamiento_territorial.pdf



A. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The consultation is not mandatory for projects which are part of the Environmental Assessment System (EIAS). However the proposer must hold a public hearing when requested in the Terms of Reference (TOR), or at the request of the public or the Secretary of State at Environment Office (SEDA).
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

B.1 COUNTRY LEGISLATION.

B.1.1. Environmental Assessment Systems of projects.

Step 1: People and NGOs may send their questions and suggestions to SEDA about TORs with which the Environmental Impact Assessment is drafted.

Time and mechanisms for receiving these comments shall be determined by DECA (Directorate General of Evaluation and Environmental Control), within 30 (thirty) days for approving TOR's proposal submitted by the proposer.

Step 2: DECA shall inform the interested parties in writing whether or not their remarks were taken into account.

Based on their provided grounds, justifications and technical criteria, is at DECA's discretion to include the public observations within the terms of reference.

Step 3: Once the proposer prepares the EIA (according to TOR provisions), a copy of the EIA shall be located at the places mentioned in TORs.

Step 4: These copies may be consulted by the public and NGOs within 30 (thirty) calendar days as of the notification of EIA finalization.

Step 5: The public and NGOs which believe that EIA has not foreseen important impacts and/or has not proposed appropriate mitigation measures, may request DECA to make the necessary amendments.

Step 6: When it is not specified in TORs and at the request of the public, NGOs or SEDA, the proposer shall submit the results of EIA before town hall meetings which allow an exchange of ideas with the public and NGOs.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB.

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

B. Consultation Plan See and apply Guiding Principles and Best Practices section II except for specific modifications below

Opportunity:

- a. The call for consultation shall be made before the final decision making concerning the subject matter of the consultation
- b. Call for consultation shall be made at least 2 weeks in advance, indicating date, place, time.
- c. People and NGOs may send their questions and suggestions to Secretary of State at Environment Office (SEDA) on TORs with which the Environmental Impact Assessment is drafted. Time and mechanisms for receiving these comments shall be determined by DECA (Directorate General of Evaluation and Environmental Control), within 30 (thirty) days for approving TOR's proposal submitted by the proposer.²⁴⁵

²⁴⁵ Provision from national legislation

HONDURAS

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This consultation model with indigenous population distinguishes the requirements for consultations according to Honduras legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Honduras.

In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

Honduras legal framework on indigenous consultation:

Implementation acts, regulations or others Convention 169

Honduras ratified Convention 169 on March 28, 1995.

-Forestry, Protected Areas and Wildlife Act.²⁴⁶ Date of publication in the Official Gazette: February 26, 2008.

- Article 22 no.7.

- **New Fishing Act.**²⁴⁷ Passed by the National Congress on January 20, 2015.

- Articles: 26 to 32.

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The mandatory nature of consultation with indigenous and Afro-Honduran communities is specifically established for fisheries and aquifer sector.

246. <http://www.tsc.gob.hn/leyes/Ley%20Forestal,%20Areas%20Protegidas%20y%20Vida%20Silvestre.pdf>

247. http://www.observatoriodescentralizacion.org/download/iniciativas_de_ley_aprobadas_en_el_congreso_nacional_/DICTAMEN%20LEY%20DE%20PESCA%20Y%20ACUICULTURA%20final%20agosto%202019.pdf. This act was passed by Honduras National Congress, but has not yet been published. It will substitute the current Fishing Act of 1959.

- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

The fishing and aquaculture area shall have an active, free and informed participation of fishing and aquaculture organizations representing these interests of groups in each area.

Step 1: The Government shall promote training and development programs of fishing and aquaculture companies based on organizational and self-management dynamics of each indigenous people, in full compliance with the legitimate aspirations of preserving their traditions.



The Government shall promote the prior, free and informed consultation for establishing fishing and aquaculture rules and policies about interests stated by indigenous and Afro-Honduran peoples and communities, through indigenous organizations and their legally credited models of governance.

The development of scientific and technical assessments on hydro-biological resources, activities for sports and recreational fishing, aquaculture concessions and the establishment of land use planning measures in indigenous areas shall be subjected to prior consultation.

As a consequence of consultation, recommendations seeking the best development with indigenous and Afro-Honduran peoples identity shall be forwarded to the General Directorate of Fisheries (DIGEPESCA).

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations²⁴⁸: See Section V Annex I and II

C. Indigenous consultation plan.

See Best Practices Indigenous Consultation Section II.

²⁴⁸ The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof; and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.

JAMAICA

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY²⁴⁹ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Jamaica legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Jamaica.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

Legal framework on public consultations in Jamaica²⁵⁰:

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment Service:	- There is no legislation on this matter.
Mining:	- There is no legislation on this matter.
Fishing:	- There is no legislation on this matter.
Forestry:	- The Forest Act , ²⁵¹ operational date, 1996. Articles: Section 10 no. 1 letter B, no. 2 and 3.
Infrastructure:	- The Town and Country Planning Act ²⁵² , operational date February 1, 1958. Last amended 1999. - Article: section 6 no. 1, 2 and 3.
Energy:	- There is no legislation on this matter.
Other:	- The Water Resources Act , ²⁵³ operational date April 1, 1996. Article: Section 40 no. 3, letter B and C.

249 Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

250 This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

251. <http://faolex.fao.org/docs/pdf/jam7934.pdf>

252. <http://moj.gov.jm/sites/default/files/laws/Town%20and%20Country%20Planning%20Act.pdf>

253. <http://moj.gov.jm/sites/default/files/laws/Water%20Resources%20Act.pdf>



B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The Authority must publish certain plans in case these affect the interested people. The Authority must take into account comments of the community in its decision. In some cases it must make public hearings as appropriate.
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

B.1 COUNTRY LEGISLATION.

The specific legislations on information and consultation for the following areas and sectors are presented herein below:

B.1.1. Environmental Assessment Systems of projects:

There is no legislation on this matter.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

The Authority must report about the possibility of declaring a forest preserve zone²⁵⁴ 90 days before making a decision to give the opportunity to the public to send comments.

Every time the Authority revisions or revokes the decision of declaring a forest preserve zone it must inform the public to have the possibility to send comments. The Authority must take into account comments received in its decision.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

Any interested person may object a territory development plan stating that it is harmful for the local people economy.

Every person must send in writing to the Authority within 14 (fourteen) days after the period is finished

Interested person means: (i) any local authority, (ii) any owner within the land intended to be intervened.

(iii) any person who has any land in the place, for any period of time; any person whose unexpired portion has at least 3 (three) years at the day of objections; or who has the option of renewing the lease for a period of no less than 3 (three) years.

(iv) any person who under the Water Resources Act has the right to make use of public water within the territory intended to be intervened and that this person will be affected by this development.

B.1.2.7. Other.

Water quality plans (Water Resources Act). To make a draft of a water quality control plan, the Authority shall publish a call at least for 2 (two) consecutive weeks on any national newspaper, in order to inform people about proposals so they are able to make remarks within at least 30 (thirty) days.

The Authority shall also make public hearings as deemed appropriate.

B.2 OPERATIONS WITH THE IDB:

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan

See Consultation Best Practices Section II.

²⁵⁴ Among other uses, the forest preserve zones shall have the following: development of forest resource, generation of forest products,

JAMAICA

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

This consultation model with indigenous population distinguishes the requirements for consultations according to Jamaica legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Jamaica.

In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

Jamaica has not ratified Convention 169.



B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: This country has not ratified ILO Convention No. 169 on Indigenous and Tribal peoples in Independent Countries and has no indigenous legislation.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

There is no legislation on this matter.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations²⁵⁵: See Section V Annex I and II

C. Indigenous consultation plan

See Best Practices Indigenous Consultation in Section II.

255 The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof; and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.



MEXICO

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY²⁵⁶ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Mexico legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Mexico.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

²⁵⁶ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	<p>- General Act of Ecological Balance and Environmental Protection.²⁵⁸ Publication date on Official Gazette: January 28, 1998.</p> <p>- Articles:</p> <p>20 bis 5 no. 7; 34; 47; 58 no. 3; 65; 66 no. 3; 79 no. 6 and 10; 157; 158; 159.</p> <p>- Regulation of General Act of Ecological Balance and Environmental Protection concerning Environmental Impact Assessment.²⁵⁹ Date of publication in the Official Gazette: May 30, 2000.</p> <p>- Articles: 4 no.4; 26 no.3; 37 to 43.</p>
Mining:	- There is no legislation on this matter.
Fishing:	<p>- General Act of Sustainable Fishing and Aquaculture.²⁶⁰ Date of publication in the Official Gazette: July 24, 2007.</p> <p>- Articles: 29 no.10; 39 no.3 and 86 no.5.</p>
Forestry:	<p>-General Act of Sustainable Forestry Development.²⁶¹ Date of publication in the Official Gazette: February 25, 2003.</p> <p>- Articles: 39; 76; 147 no.1; 149 to 154; 157</p>
Infrastructure:	<p>-Act of Sustainable Rural Development.²⁶² Date of publication in the Official Gazette: December 07, 2001.</p> <p>- Articles: 13 no. 1; 24; 25; 31 no.8; 137.</p>
Energy:	<p>-Electricity Industry Act.²⁶³ Date of publication in the Official Gazette: August 11, 2014.</p> <p>Articles: 11 no.8; 119;</p>

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The consultation is not mandatory for projects which are part of the Environmental Assessment System (EIAS). However, any natural or legal person may request in writing to the Environmental Authority a public hearing to analyze the project.
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

²⁵⁷ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

²⁵⁸ http://www.oas.org/dsd/fida/laws/legislation/mexico/mexico_1988.pdf

²⁵⁹ http://www.cnsns.gob.mx/acerca_de/marco/reglamentos/equilibrio_ecologico_impacto_ambiental.pdf

²⁶⁰ http://www.diputados.gob.mx/LeyesBiblio/pdf/LGPAS_040615.pdf

²⁶¹ www.diputados.gob.mx/LeyesBiblio/ref/lgdfs/LGDFS_orig_25feb03.doc

²⁶² http://www.diputados.gob.mx/LeyesBiblio/ref/lhrs/LDRS_orig_07dic01.pdf

²⁶³ http://www.cfe.gob.mx/ConoceCFE/1_AcercadeCFE/MarcoLegalNormativo/Lists/Leyes1/Attachments/26/Leydelaindustriaelectricalago.pdf

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System

About delivery of information on the project entering EIAs:

Step 1: The Environmental Authority shall weekly publish in the Ecological Gazette and electronic media, the list of Environmental Impact Assessments received.

The file shall be available to any person for consultation, indicating times, consultation places, deadlines set to receive opinions, as well as the way in which these shall be submitted.

The information contained in the file about the environmental impact assessment shall be public and available to be consulted by any person or organization. However, those interested may request that the assessment integrated information be kept under reserve, if its publication may affect industrial property rights.

Step 2: Any citizen of the community concerned may, within ten days following the publication of the project extract, request the Environmental Authority to make available to the public the EIA in the corresponding state.

Step 3: Within 20 (twenty) days after receiving EIA in the corresponding state, any interested party may send his project remarks in writing, which may be added to the file. Observations must contain the complete name of the person and domicile thereof.

Step 4: The public consultation process and results of the remarks and proposals made shall be recorded by the Environmental Authority on the resolution issued by the same. These results shall also be published in the Ecological Gazette.

About public hearings:

Step 1: Hearings shall be requested in writing to the Environmental Authority, within ten days as of the publication of the Environmental Impact Assessments lists (EIA) stating (i) the work or activity concerned; (ii) Reasons for this request; (iii) The name or business name and domicile of the applicant.

Step 2: The Environmental Authority within five days shall, after receiving the request, notify the interested party its decision of making or not the public consultation.

Step 3: If consultation is made, the day after it is decided the Environmental Authority must notify the proposer which must publish within five days as of the notification takes effect, an extract of the work or activity on a newspaper of wide circulation in the state where it is intended to be carried out.

The project extract must include the following: (i) Name of person responsible for the project;

(ii) Brief description of the project; (iii) Place where it is intended to be executed, making reference to existing ecosystems and condition thereof at the time of making the assessment, and (iv) Indication of the main environmental effects which may be caused and mitigation and remedial measures proposed.

Step 4: During consultation, the Environmental Authority together with local authorities may organize a public information meeting when the project concerned may cause serious ecological imbalances or damages to public health.

Step 5: The Environmental Authority shall, within 25 (twenty-five) days as of the initiation of public consultation is solved, issue a call with the date, time and place of the meeting.

The call shall be published only once in the Ecological Gazette and a newspaper of wide circulation in the corresponding state.

Step 6. The meeting shall be held within no more than five days after the date of publication of the call and it shall take place in a single day.

The proposer shall explain the environmental technical aspects of the project, the possible impacts and the identified prevention and mitigation measures.

Step 7: Minutes will be drafted indicating names and domiciles of participants, questions and remarks submitted and the proposer's responses. Participants may request a copy of the Minutes.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

The fishery management plans shall include the organization of the area administration and participation mechanisms of individuals and communities settled on the same.

B.1.4. Forestry sector.

The corresponding Authority shall promote the participation of society in planning, designing, applying and assessing programs and instruments of forest policy, convening farmers organizations, forest producers, industrialists, farming and indigenous communities, educational and research institutions, social and private movements, associations or individuals related to forest technical services and other interested people to submit their opinions and proposals concerning programs and instruments of national, regional, state, district or local forest policy.

B.1.5. Energy sector.

The Authority is entitled to make consultations to take into account interests and rights of the indigenous communities and peoples where electric industry projects are developed under the social impact assessment for electric industry projects.

In such consultation, the Regional Electricity Commission (CRE), the State productive companies and subsidiaries and affiliates thereof, as well as individuals may participate.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Annex 1.

C. Consultation Plan: See and apply Guiding Principles and Best Practices section II except for specific modifications below

Opportunity:

Within 20 (twenty) days after receiving EIA in the corresponding state, any interested party may send his project remarks in writing, which may be added to the file. Observations must contain the complete name of the person and domicile thereof.²⁶⁴

²⁶⁴ Provision from national legislation



MEXICO

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This consultation model with indigenous population distinguishes the requirements for consultations according to Mexico legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Mexico.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

Mexico legal framework concerning indigenous consultation:

Implementation acts, regulations or others Convention 169

Mexico ratified Convention 169 on September 05, 1990.

- **Act of National Commission for the Development of Indigenous Peoples,**²⁶⁵
Publication date on Official Gazette (DO): May 21, 2003.

- Articles: 2 no. 1, 9, and 16; 12; 13; 16; 3 no.5 and 6; art. 5.

-**Organic Statute of National Commission for the Development of Indigenous Peoples.**²⁶⁶ Date of publication in the Official Gazette: July 26, 2010.

- Articles: 2 no.9 and 11; 10 no.10 and 11; 19 no.7; 25 no.3.

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The National Commission for the Development of Indigenous Peoples has the obligation to consult indigenous communities every time the State promotes projects which have a significant impact on their living conditions and environment.²⁶⁷
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

The National Commission for the Development of Indigenous Peoples has the obligation to consult indigenous communities every time the State promotes projects which have a significant impact on their living conditions and environment. Some of its duties are designing and operating, under the Advisory Council in the National Commission, an indigenous consultation and participation system, establishing technical and methodological procedures to promote the participation of authorities, representatives and indigenous peoples communities in the formulation, execution and assessment of development plans and programs²⁶⁸

The only existing indigenous consultation act in this country is the Act on the Consultation of Indigenous Peoples for State Governments and Municipalities of San Luis de Potosí.

http://148.235.65.21/LIX/documentos/leyes/102_Ly_Consulta_Indigena.pdf.

265. <http://www.diputados.gob.mx/LeyesBiblio/pdf/261.pdf>

266. www.diputados.gob.mx/LeyesBiblio/regla/n9.doc

267 The Commission has a Board of Consultants made of indigenous and other representatives, as body of consultation and connection with indigenous peoples and society.

268 Legislation does not provide further discussion of this matter.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations²⁶⁹: See Section V Annex I and II

C. Indigenous consultation plan.

See Best Practices Indigenous Consultation Section II.

²⁶⁹ The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof, and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.



NICARAGUA

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY²⁷⁰ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Nicaragua legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Nicaragua.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

²⁷⁰ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Nicaragua legal framework on public consultations: ²⁷¹

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	- Environmental Assessment System , published on DEC/22/2006. ²⁷² <u>Articles:</u> 3 no. 3; 4 no. 11; 33. - General Act on the Environment and Natural Resources , ²⁷³ published on JAN/31/2014. <u>Articles:</u> 2; 12; 21; 40; 57 no.3; 72 subsection 2°; 73.
Mining:	- There is no legislation on this matter.
Fishing:	- There is no legislation on this matter.
Forestry:	- There is no legislation on this matter.
Infrastructure:	- There is no legislation on this matter.
Energy:	- There is no legislation on this matter.
Other:	- Act of conservation and sustainable use of biological diversity , ²⁷⁴ published on SEP/5/2012. <u>Articles:</u> 7; 8 °10; 12 no. 17; 60 to 63; 102.

B. Resumen sobre la obligatoriedad para realizar consultas de acuerdo a legislación del país y Políticas Operativas (PO) del Banco.

- Country legislation: The Ministry of Environment and Natural Resources (MARENA) shall establish the regulation which governs the public consultation on Environmental Assessment processes, based on the proactive inclusion principles (all actors and policy makers involved in the process) and shared responsibility (the State and civil society join forces to prevent and mitigate impacts to the environment by a decision agreed).
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

²⁷¹ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

²⁷² <http://www.intur.gob.ni/DOCS/inversiones/SISTEMA%20DE%20EVALUACION%20AMBIENTAL.pdf>

²⁷³ Idem note 3.

²⁷⁴ Idem note 5.

B.1 COUNTRY LEGISLATION.

B.1.1. Environmental Impact Assessment System.

The Ministry of Environment and Natural Resources (MARENA) shall establish the regulation which governs the public consultation on Environmental Assessment processes, based on proactive inclusion principles (all actors and policy makers involved in the process) and shared responsibility (the State and civil society join forces to prevent and mitigate impacts to the environment by a decision agreed).

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.1.7. Other:

Use of genetic resources:

When a natural or legal person receives the approval to make biotechnology research, he must ensure the effective participation of the people, especially those groups providing genetic resources and, provide all information available about the use, security and possible effects derived from the transfer, handling and use of any resulting body.

B.2 OPERATIONS WITH THE IDB:

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan

See Consultations Best Practices in Section II.

NICARAGUA

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This consultation model with indigenous population distinguishes the requirements for consultations according to Nicaragua legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Nicaragua.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.



Legal framework on indigenous consultation in Nicaragua:

Implementation acts, regulations or others Convention 169.

Nicaragua ratified Convention 169 on August 25, 2010.

- **Citizen Participation Act**, published on OCT/22/2003²⁷⁵

Articles: 20; 22; 25; 32 final subsection; 33 no. 4; 40 no. 6; 41 and 51 no. 7.

- **General Act on the Environment and Natural Resources** published on JAN/31/2014.²⁷⁶

Articles: art.4 no. 4 and 72 subsection 2.

- **Act on the communal property regime of the indigenous peoples and ethnic communities of the Autonomous Regions of Nicaragua Atlantic coast and Bocay, Coco, Indio and Maíz Rivers**, published on DEC/13/2002²⁷⁷

Articles: 2 no. 3; 3; 12, 16;17; 18; 40 letter a); 44 letter b) no.2.

- **Act of conservation and sustainable use of biological diversity**²⁷⁸, published on SEP/5/2012.

Articles: 1; 10 no.4; 60 to 63; 69; 70 no. 1; 77.

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The consultation is mandatory for the processes for defining indigenous territories and for the access to biological resources in biodiversity projects.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

B.1.1.Environmental Impact Assessment System.

- In cases of granting of concessions and contracts of rational exploitation of natural resources of subsurface on indigenous lands , the municipality shall give its opinion, prior consultation with the indigenous community on whose lands natural resources are found.

275. <http://legislacion.asamblea.gob.ni/Normaweb.nsf/164aa15ba012e567062568a2005b564b/f78ca467f5c96d0306257257005fbadc?OpenDocument&Highlight=2,ind%C3%ADgena>

276. <http://legislacion.asamblea.gob.ni/Normaweb.nsf/164aa15ba012e567062568a2005b564b/f9264c09bd98d79706257c7d005668fd?OpenDocument&Highlight=2,indigena>

277. <http://legislacion.asamblea.gob.ni/Normaweb.nsf/164aa15ba012e567062568a2005b564b/f59730333b3f6fa5062571b200559533?OpenDocument&Highlight=2,ind%C3%ADgena>

278. <http://legislacion.asamblea.gob.ni/Normaweb.nsf/164aa15ba012e567062568a2005b564b/6b731be4e96f5e9406257ab4007383c6?OpenDocument&Highlight=2,ind%C3%ADgena>

- This consultation does not exhaust the requirement by the Regional Council or any entity of directly consulting communities concerning natural resources exploitation. The corresponding Regional Council shall issue the resolution prior consultation to the communities on whose lands natural resources are found.
- The process of demarcation and legal recognition of territorial ownership of indigenous communities shall be made with full direct participation of indigenous peoples and ethnic communities with voice and vote, by their traditional authorities. Communities shall have translation to their mother tongues and shall be assisted by skilled people. Both the translator and skilled people must be chosen and appointed by the communities

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.



B.1.7. Other.

Conservation and sustainable use of biological diversity.

Prior informed consent by indigenous and Afro-descendant peoples is required to access their biological resources or the intangible element associated to them, or the access to collective knowledge thereof.

Consultation on the territories of indigenous and Afro-descendant peoples shall be a prior, free, informed and bona fide consultation.

Consultation and consent proceedings shall respect the traditional organization forms of indigenous and Afro-descendant peoples and local communities.

Step 1: All information requested on the project concerned must be submitted before getting their consent.

Step 2: The applicant must make a public consultation with the community where the resource is found, with the participation of representatives thereof and local authorities.

Step 3: Communities must give their consent through a letter of consent and after in a Permission to Access Agreement.

Step 4: The Office of Biodiversity and the Ministry of Environment and Natural Resources (MARENA) shall guarantee that the permit granted has a consent letter of indigenous communities attached.

Step 5: Based on the project's nature, an environmental assessment or risk assessment shall be made. This assessment must be approved by the entity concerned, based on the valid Environmental Assessment System, with the participation of the indigenous or Afro-descendent authority in case of their territories.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations²⁷⁹: See Section V Annex I and II

C. Indigenous consultation plan.

See Best Practices Indigenous Consultation Section II.

²⁷⁹ The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof; and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.



PANAMA

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY²⁸⁰ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Panama legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Panama.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

²⁸⁰ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Panama legal framework on public consultations: ²⁸¹

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	-General Environment Act²⁸² of JUL/01/1998. <u>Articles:</u> 9; 21; 97; 103. -Decree 123 of 2009,²⁸³ published on AUG/24/2009. <u>Articles:</u> 9 letter g); 12; 13; 28 to 31; 33 to 35; 37; 42.
Mining:	- There is no legislation on this matter.
Fishing:	- There is no legislation on this matter.
Forestry:	- There is no legislation on this matter.
Infrastructure:	-Act no. 6 regulation land use planning for urban development²⁸⁴ FEB/1/2006. <u>Articles:</u> 7 no. 10; 8 no.5; 26 no. 3; 35.
Energy:	-Act no. of 1997 dictating Regulatory and Institutional Framework for Provision of the Electricity Public Service²⁸⁵, published on FEB/5/1997. <u>Articles:</u> 146.

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: It is mandatory for the private or public proposer to involve citizens, from the earliest possible stage, in making and assessing the Environmental Impact Assessment if his project.
- The legislation distinguishes Assessments Categories I, II and III and for each one of them has requirements regarding public consultation²⁸⁶.

²⁸¹ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

²⁸² Ibid.

²⁸³ <http://www.cnpmi.org.pa/images/mesa-de-dialogo/marco-legal/marco-legal-6.pdf>

²⁸⁴ <http://faolex.fao.org/docs/pdf/pan61787.pdf>

²⁸⁵ [http://www.energia.gob.pa/pdf_doc/MarcoLegal/B-Sector-Electrico/Ley6-1997\(GO26871-C\).pdf](http://www.energia.gob.pa/pdf_doc/MarcoLegal/B-Sector-Electrico/Ley6-1997(GO26871-C).pdf)

²⁸⁶ The Environmental Impact Assessment process contemplates three categories of Environmental Impact Assessment in virtue of eliminating, mitigating and/or compensating the potential environmental effects.

Category I refers to projects, works or activities which may cause non-significantly negative environmental impacts and which do not produce significant environmental risks. Category II, to projects, works or activities which execution may cause significantly negative environmental impacts which partially affect the environment, which may be eliminated or mitigated with readily applicable measures. Category III, refers to projects, works or activities which execution may cause indirect, cumulative and/or synergistic negative environmental impacts with quantitative and/or qualitative significance.

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

Step 1: The proposer shall publish and circulate at his expense, an extract of the Environmental Impact Assessment in two means, one being mandatory and the other one optional. The National Environmental Authority (hereinafter, ANAM) shall decide together with the proposer the optional means. This extract shall be published and circulated twice within 7 (seven) calendar days, as of the first publication.

Distinction according to Assessment Category:

For Assessments Category I, the proposer must make at least two activities: information meetings (mandatory) and interviews or surveys.

The Environmental Impact Assessment (EIA) must contain a description of the activities made (including dates) with the community directly affected by the project, apart from submitting evidence, and an analysis of the results obtained.

It must include as a complement the perception of the community directly affected reported by diverse media²⁸⁷

For Assessments Category II, the proposer must draft and execute a Citizen Participation Plan during the preparation stage of the Environmental Impact Assessment. This plan shall contain the following elements:

- a. Identification of key actors within the project influence area (communities, authorities, organizations, others);
- b. Participation techniques applied to key actors (surveys, interviews, assemblies, work meetings, etc.), results obtained and analysis thereof.
- c. Information dissemination techniques employed.
- d. Information request and response to community.
- e. Contribution from key actors.
- f. Identification and way of resolution of possible conflicts caused or increased by the project.

Also, during the revision stage of the Environmental Impact Assessment, the promoter must make a formal consultation, when ANAM orders its execution, whether if applicable or at the request of the community or communities located within the project influence area (signed by at least 2% of citizens residing in the project influence area). For such purpose, everything related to the Environmental Impact Assessment subject to assessment shall be made available to the community. The request for the performance of this consultation shall be received within 15 (fifteen) working days, as of the last publication of the previously referred Assessment extract.

²⁸⁷ Either by opinions verbally expressed through participation in opinion programs, comments or news in radio stations and TV stations, by public and private, individual and collective writings directly received or published in newspapers, magazines or any other written means of communication.

For Assessments Category III, apart from the elements indicated for Assessments Category II, a public forum must be made during the assessment process, before the decision-making stage about the Assessment. The date shall be coordinated with ANAM, which shall also act as moderator. The proposer must credit the call method of participants.

The proposer must, within 5 (five) days after the public forum is held, forward ANAM a report about what was stated during the forum, which shall be included in the file.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan

See Consultation Best Practices Section II.

PANAMA

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO BEST PRACTICES, NATIONAL LEGISLATION AND OPERATIONAL POLICIES IDB GROUP.

A. Applicable framework:

- This consultation model with indigenous population distinguishes the requirements for consultations according to Panama legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Panama.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

Legal framework in Panama on indigenous consultation:

Implementation acts, regulations or others Convention 169

Panama has not ratified Convention 169.

-Act 3 of 1995, published on JAN/18/1995.²⁸⁸

Articles: 5 no.12.

-General Environment Act of JUL/01/1998.²⁸⁹

Articles: 21 no. 2; 63; 96 to 99; 103.

²⁸⁸. <http://docs.panama.justia.com/federales/leyes/3-de-1995-jan-20-1995.pdf>
²⁸⁹. http://www.oas.org/juridico/spanish/pan_res67.pdf

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: Consultation must be made when the project is developed within the territory of indigenous communities. The consultation shall be oriented to make agreements with representatives of the communities, regarding their rights and habits, as well as to obtain compensatory benefits for the use of their resources, knowledge or lands.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II.

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

Consultation must be made when the project is developed within the territory of indigenous communities. The consultation shall be oriented to make agreements with representatives of the communities, regarding their rights and habits, as well as to obtain compensatory benefits for the use of their resources, knowledge or lands.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations²⁹⁰: See Annex 1.

C. Indigenous Consultation Plan.

See Best Practices Indigenous Consultation Section II.

290 The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof; and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.



PARAGUAY

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY²⁹¹ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Paraguay legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Paraguay.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated.

²⁹¹ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Paraguay legal framework on public consultations:²⁹²

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	- Decree no. 453, by which Act no. 294/1993 “Environment Impact Assessment” is regulated ²⁹³ , passed on OCT/8/2013.
Mining:	- There is no legislation on this matter.
Fishing:	- There is no legislation on this matter.
Forestry:	- There is no legislation on this matter.
Infrastructure:	- There is no legislation on this matter.
Energy:	- There is no legislation on this matter.
Other:	- Act no. 3239/2007 about Paraguay Water Resources ²⁹⁴ , passed on JUN/14/2007. <u>Article:</u> 4 Letter ñ). - Act no. 352 of Protected Wildlife Areas ²⁹⁵ , of 1994. <u>Article:</u> 9.

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The authority must provide participation stages so that people makes remarks on the environmental impact assessment.

Public hearings may be held after the first participation stage and the Government decides holding it. However, they will be mandatory when the project affects indigenous communities or when neighbors or the ones directly affected have requested the same.

IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

292 This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

293. <http://asuncioncentrohistorico.com/docs/ANEXO%208-7-2-%20DOCUMENTACION%20ESCRITA/OTROS%20DOCUMENTOS/E-%20decreto%20453.pdf>

294. http://www.siaqua.org/sites/default/files/documentos/legislacion/ley_recursos_hidricos_paraguay_0.pdf

295. http://www.cej.org.py/games/Leyes_por_Materia_juridica/AMBIENTAL/LEY%20352.pdf

B.1 COUNTRY LEGISLATION.

The specific legislations on information and consultation for the following areas and sectors are presented herein below:

B.1.1. Environmental Assessment Systems of projects:

Step 1: Once the Environmental Impact Assessment is made, the Authority shall make it available to the public for 10 (ten) working days on its website, its main office and any other place deemed convenient.

The Authority shall notify this by publishing a call on 2 (two) national newspapers for 3 (three) consecutive days and a radio station when, after analyzing the preliminary Environmental Impact Assessment or submitting the Environmental Impact Assessment extended in those cases where (i) remarks have not been submitted or (ii) the deadline for making the same has expired.

Step 2: Any person may submit comments to the environmental impact assessment within 10 (ten) working days, which are sent to the owner of the project who may answer the same within 5 (five) working days if deemed appropriate.

Remarks may be partially or totally incorporated to the Environmental Impact Assessment according to its technical assessment.

Step 3: Within 10 (ten) working days after the deadline for submitting remarks or answering remarks, the Authority may decide whether to call a public hearing. The silence maintained by the Authority implies its decision not to make the same.

In case of calling the same, no more than 30 (thirty) working days should pass between the Authority's decision and the end of the hearing.

The public hearing shall be mandatory when the project may directly affect indigenous communities or is requested by neighbors or potential directly affected people.

Step 4: The Authority shall issue an Environmental Impact Statement within 20 (twenty) working days after the hearing is ended or as of the decision not to make it.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II.

C. Consultation plan: See and apply Guiding Principles and Best Practices section II except for specific modifications below:

Objective:

Facilitate a dialogue which allows gathering inputs and perspectives which are economically, legally and technically feasible, by the parties affected and interested in the project.

Opportunity:

- a. The call for consultation shall be made before the final decision making concerning the subject matter of the consultation
- b. The call for consultation shall be made at least 2 weeks in advance, indicating date, place, time.
- c. Any person may submit comments to the environmental impact assessment within 10 (ten) working days, which are sent to the owner of the project who may answer the same within 5 (five) working days if deemed appropriate²⁹⁶.

Accessibility:

Accessibility to project information: it is advisable to install Information Centers about the project with visual and didactic information available to the public in a readily access place, with personnel familiar with the project who may clarify doubts.

Representativeness: An effort must be made to make an audience representing different interests about the project concerned. Efforts such as making interviews with key actors who have an appropriate knowledge of the community participants, identifying updated databases of community actors about public services present in the community, among others.

²⁹⁶ Provision from national legislation

PARAGUAY

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This consultation model with indigenous population distinguishes the requirements for consultations according to Paraguay legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Paraguay.
- In case this is also an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated.

Legal framework in Paraguay on indigenous consultation:

Implementation acts, regulations or others Convention 169

Paraguay ratified Convention 169 on August 10, 1993.

-**Paraguay National Constitution**,²⁹⁷ passed on JUN/20/1992.

Article: 65.

-**Protocol proposal for a Consultation and Consent Process with Paraguay Indigenous Peoples**.²⁹⁸

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: This country acknowledges in Art. 65 of its Constitution, the right of participation of indigenous peoples and communities. However, it still does not have any legislation on indigenous consultation.

IDB provisions: The Bank establishes consultation processes and agreement for four types of operations: See Section V Annex I and II

297. http://www.oas.org/juridico/spanish/par_res3.htm

298. Esta propuesta fue impulsada por el Programa Nacional Conjunto ONU REDD, programa firmado por las 3 partes que lo integran (Secretaría del Ambiente, Instituto Forestal Nacional y la Federación por la Autodeterminación de los Pueblos Indígenas (FAPI). Esta última, en Octubre del año 2014, votó la propuesta del link, propuesta que fue reconocida por el Instituto Paraguayo del Indígena (INDI) como un aporte valioso hacia el perfeccionamiento de los instrumentos nacionales. <http://www.forestpeoples.org/sites/fpp/files/publication/2011/05/fapi-protocols-fpic.pdf>

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

There is no legislation on this matter.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.1.7. Other.

Indigenous peoples have the right to participate in the economic, social, political and cultural aspects of the country, according to their customary uses.

The protocol Proposal for a Consultation and Consent Process with Paraguay Indigenous Peoples is an initiative promoted by ONU REDD National Joint Program, a program signed by 3 constituent parties (Secretariat of the Environment, National Forestry Institute and Federation of the Self-determination of Indigenous Peoples (FAPI), which aims to serve as a tool for incorporating mandatory indigenous consultation processes for the approval of projects, according to provisions of ILO Convention 169.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations²⁹⁹. See Section V Annex I and II

C. Indigenous Consultation Plan.

See Best Practices Indigenous Consultation Section II.

²⁹⁹ The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof; and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.



PERÚ

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY³⁰⁰ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Peru legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Peru.

In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

³⁰⁰ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Peru legal framework on public consultations:³⁰¹

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	<p>-REGIONAL GOVERNMENTS ORGANIC ACT (ACT NO. 27867, NOV/08/2002)³⁰²</p> <p>Articles: 8 No.; 10 No.2 letter h); 11 -A.</p> <p>-MUNICIPALITIES ORGANIC ACT (ACT NO. 27972, MAY/06/2003)³⁰³</p> <p>Articles: 7; 9, 14, 34; 26; 73: 3.3, 5, 6.4, 7.2; 84: 1.7, 2.6, 2.9; 86, 3.1</p> <p>-ENVIRONMENTAL IMPACT ASSESSMENT NATIONAL SYSTEM ACT (ACT NO. 27.446, APR/20/2001).³⁰⁴</p> <p>Articles: 10;13; 14</p> <p>-General Environment Act (act No. 28611, MAY/13/2008)³⁰⁵</p> <p>Articles: 41 to 51.</p>
Mining:	<p>-SUPREME DECREE NO. 028-2008-EM, MAY/26/2008³⁰⁶</p> <p>The whole Regulation.</p>
Fishing:	- There is no legislation on this matter.
Forestry:	<p>-FORESTRY AND WILDLIFE ACT. ACT NO. 29763, JUL/21/2011)³⁰⁷</p> <p>Articles: (Preliminary title): I, II,1,2,3; 19 letter c); 20; 22;24;148.</p>
Infrastructure:	- There is no legislation on this matter.
Energy:	<p>-R.M. No. 596-2002-EM/DM, DEC.21.02³⁰⁸</p> <p>The whole Regulation.</p>
Other:	<p>-WATER RESOURCES ACT (ACT NO. 29.338, MAR/30/2009)³⁰⁹</p> <p>Articles: (Preliminary title): II No. 3 and 10; 10; 24 to 32.</p>

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: Public entities and authorities establish formal mechanisms in order to facilitate effective citizen participation and promote its development and use through natural or legal persons related to, interested or involved in the Environmental Impact Study.

301 This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

302. <http://www.bpaprocop.com/normativa/nor.php?mod=ley-27867>

303. [http://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/6FB6BC171E0F6830052579140073B7C2/\\$FILE/27972.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/6FB6BC171E0F6830052579140073B7C2/$FILE/27972.pdf)

304. <http://www.minam.gob.pe/wp-content/uploads/2013/10/Ley-y-reglamento-del-SEIA1.pdf>

305. <http://cdam.minam.gob.pe/novedades/leygeneralambiente2.pdf>

306. http://www.diremmoq.gob.pe/web13/files/publicaciones/normas/ds028_2008.pdf Citizen Participation Regulation in the Mining Sub-sector

307. http://www.regionayacucho.gob.pe/informacion/ley_29763.pdf

308. <http://biblioteca.unmsm.edu.pe/redlieds/Recursos/archivos/MedioAmbienteMinero/RM596-2002-EM.pdf> Approves the Consultation and Participation Regulations in the Approval Process of Environmental Studies in Energy and Mine Sector.

309. <http://www.ana.gob.pe/media/316755/leyrh.pdf>

The foregoing notwithstanding citizen participation mechanisms suggested by parties interested in the project of Environmental Impact Study.

IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

Citizen participation is a dynamic, flexible and inclusive process supported in the application of multiple modalities and mechanisms oriented towards the broad exchange of information, dialogue, construction of consensus and decisions in general.

There are formal and non-formal mechanisms of citizen participation. The Study should establish both. Formal mechanisms are defined by the Competent Authority and performed under their management and conduction, while non-formal mechanisms are driven by the project proposer pursuant to the Citizen Participation Plan approved by the Competent Authority or by own initiative.

In the Environmental Assessment process, various citizen participation mechanisms may be presented. This mechanism constitutes an instrument for disseminating information and formulating opinions, observations, suggestions, comments and other contributions. Mechanisms shall be conducted in a responsible way and bona fide and do not include any right of veto on projects which constitute the subject matter of citizen participation process.

Notwithstanding the specific mechanisms that might be suggested, the project owner or the Competent Authority, mechanisms may be used, such as: publication of notices; distribution of Executive Summaries and public access to the complete text of environmental study; observation and suggestion boxes; offices of citizen information and participation; guided tours; consultation with promoters; mechanisms for directing observations and suggestions before the authority; workshops or information meetings; public hearings with interpreters in local languages, accordingly, among others.

Although Environmental Studies are divided into Categories, there are similar processes in each one of them:

Step 1: The environmental authority shall make available information and documents in a simple and clear format for communities of those places more affected by the project. Information relating to the Environmental Impact Study shall be simple and close to the public at the expense of the owner.

The environmental authority has the power to request from the community or its representatives, records or observations about the investment project suggested.

Step 2: There shall be a public calling for citizen participation processes through mass media of greatest extent, by publishing a notice which cost shall be assumed by the proposer. The spread shall be performed besides, by electronic mass media.

Studies shall be made available to the public for observations and comments, in the regional headquarters of the project sector.

Step 3: The public hearing shall be performed in the area where the investment project shall be performed, trying that the place chosen is the one which allows greater participation of those potentially affected. The hearing shall be carried out at the latest 5 (five) days before the expiration of the formal consultation period.

Step 4: The public participation process shall be duly documented and registered in the file, all the information generated as from such consultation being of public knowledge.

Environmental Studies are divided into 3 (three) categories³¹⁰. Studies of the three categories shall include a Citizen Participation Plan.

Studies in Category I:

For the case of the DIA, it is established that the sector shall publish in the official gazette during the first week of each month, a list of companies which presented a DIA, granting them a 20-calendar days as from the publication date, for the interested people to take note of it and in case they do not agree, to be able to contest the resolution; otherwise, it shall be deemed agreed and final.

Studies in Category II:

The owner shall prepare the "Citizen Participation Plan". The owner shall present in the corresponding paragraph of the EIA the supported results of the development of the Citizen Participation Plan, where strategies, actions and mechanisms of involvement and participation of authorities, population and entities which represent the civil society duly proven, in the different stages of preparation of the EIA are evidenced.

³¹⁰ Category I - Environmental Impact Statement.- Includes those projects whose execution does not cause significant negative environmental impacts.

Category II - Semi-detailed Environmental Impact Study.- Includes those projects whose execution might cause mild environmental impacts and whose negative effects might be eliminated or minimized by adopting easily applicable measures. Projects in this category shall need a Detailed Environmental Impact Study.

Category III - Detailed Environmental Impact Study.- Includes those projects whose characteristics, scope and/or localization, might produce significant negative environmental impacts from a quantitatively or qualitatively, demanding a deep analysis for revising its impacts and suggesting the corresponding environmental management strategy. Projects in this category shall need a detailed Environmental Impact Study.

When the competent authority determines the origin of the public hearing carried out, the Citizen Participation Plan shall additionally contain the consolidated report of observations formulated by the citizens during such process. The report shall only include requests for explanations, corrections or extensions of information requested by the population and civil society duly proven, highlighting the way in which these were answered.

Study in Category III:

The owner shall prepare the "Citizen Participation Plan". The owner shall present in the corresponding paragraph of the EIA the results of the development of the Citizen Participation Plan, where strategies, actions and mechanisms of involvement and participation of authorities, population and entities which represent the civil society duly proven, in the different stages of preparation of the EIA are evidenced.

It shall contain the consolidated report of the observations formulated by the citizens during the process of Public Hearing including supported opinions of explanations, corrections or extensions of information made by the population and entities which represent the civil society duly proven, highlighting the way in which these were answered in the preparation process of the EIA.

Likewise, those citizen participation actions that might be necessary to implement as part of the environmental monitoring plan shall be pointed out.

B.1.2. Mining sector.

People have the right to participate in a responsible manner in the process of decision-making about issued relating to mining activity.

The following are transgressions of legal provisions on citizen participation. Actions or measures made by authorities, miners or populations involved, preventing or hindering the onset, development or termination of a citizen participation process, constitute a transgression to the rules related to citizen participation.

The competent authority shall determine the mechanisms to consider in citizen participation processes as appropriate, according to the particular characteristics of the area of influence of mining activity, of the project and its magnitude, of the population involved, the situation of the environment and other relevant aspects.

Citizen participation mechanisms that might be employed are: to facilitate access by the population to executive summaries and contents of Environmental Studies; public notices of citizen participation in printed and/or radio media; performing surveys, interviews or focus groups; distribution of information materials; guided tours to the project area or facilities; spread of information through a team of facilitators; participatory workshops; public hearings; submission of contributions, comments or



observations before the competent authority; establishing a permanent information office; participatory environmental monitoring and vigilance; use of traditional means; round-table discussions and others which the competent national authority determine by ministerial resolution in order to guarantee a suitable citizen participation.

The competent authority shall select citizen participation mechanisms which turn out to be more fit for guaranteeing the right for citizen participation of the population involved, considering the characteristics of such population and particularities of the mining project.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

Step 1: Once the EIA enters the Ministry of Energy and Mining, and as far as possible with a minimum of prior participative workshops, the Administration shall set the place, date and time for its support in the corresponding Public Hearing.

For such end, the village closest to the project, the date and time which guarantee better assistance to the population, shall be considered.

Depending on the scope of the energy project and its territorial incidence, more than one Public Hearing may be established in the closest town and also in other towns.

The Administration shall make available to the population involved, the place, date and time of the Public Hearing through the following media:

1) A notice in the Official Gazette El Peruano and a notice in a newspaper of greater spread in town, at least 40 days calendar before the date scheduled for the Hearing. A copy of the notice published in the Official Gazette "El Peruano" shall be sent by the Owner of the project to the Regional Authority the day after it was published; who in turn shall send it to Municipalities of the project direct influence zone as regards distance.

2) 4 (four) daily notices in a radio station with the most reach in the town(s) where the project shall be developed; these shall be spread for 5 (five) days after the notice indicated in the above number was published, and for 10 (ten) days before the Public Hearing is carried out; it should be specified that the EIA and the Executive Summary are available for interested parties for their assessment when deemed appropriate.

Step 2: The Public Hearing shall be carried out pursuant to the following: The fitting out of a place suitable for carrying out the Public Hearing shall be coordinated in terms of capacity, infrastructure and safety of the place.

The Public Hearing shall be carried out in Spanish or in the language prevailing in the place. Representatives of the company or entity which prepared the EIA, shall turn to interpreters if due to language matters they are not able to suitably communicate at the Public Hearing. When appropriate, the general committee shall enable an interpreter in the town if Spanish is not widely spoken by the population.

The general committee shall not allow the entrance into the Public Hearing of people under the clear influence of alcohol or drugs.

The chairman of the general committee shall begin the Public Hearing inviting representatives of the company and the entity which prepared the EIA to support such study. These people should have proven their representativeness before the general committee before commencing the exposition.

Once the support is concluded, the chairman of the general committee shall invite participants to pose their questions in written or oral form through the enabled interpreter if this was the case. Once questions are answered by exponents, a second roundtable and/or final clarifications shall be carried out. Each question shall be cleared by exponents or members of the general committee immediately after it was posed. Each intervention for posing questions may not be longer than five minutes.

Once all questions are cleared, representatives of the Regional Authority, of the corresponding Municipality and other authorities, shall have a maximum lapse of five minutes by intervention in order to pose final comments. Next,

the general committee shall receive from participants the documents they submit. Questions which due to their complexity or nature require an additional need, shall be answered additionally in writing in the term of 5 working days, being these questions and answers part of the file.

Everything exposed and discussed in the Public Hearing shall be registered with the aid of audio equipment and if possible through an audiovisual recording. Likewise, the minutes shall comprise the summary of what was exposed and discussed in the hearing, which shall be signed by the members of the general committee, the representative of the Owner of the project, the representative of the entity which prepared the EIA and participants who wish to do so.

Every person shall have access to a copy of the minutes, as well as of the written version of audio and audiovisual recording of the hearing, by the process of access to public information provided in Act no. 27806, Transparency and Access to Public Information Act.

Step 3: Within 30 (thirty) days calendar following the date of the Public Hearing, the interested public may submit documents with observations, proposals and suggestions. Such documents and all the above mentioned and submitted during Public Hearing, shall be assessed by the Administration and considered in the corresponding report, being part of the file as annexes or by executive summary.

B.1.6. Infrastructure sector.

There is no legislation on this matter.

C. Consultation Plan: See and apply guiding principles and best practices section II except for specific modifications below:

Opportunity:

- a. The call for consultation shall be made before the final decision making concerning the subject matter of the consultation
- b. Call for consultation shall be made at least 2 weeks in advance, indicating date, place, time.
- c. Environmental Impact Studies shall be made available to the public for observations and comments, in the regional headquarters of the project sector.³¹¹

³¹¹ Provision from national legislation



PERU

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This indigenous population consultation model distinguishes the requirements for consultations according to Peru legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Peru.

In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

Peru legal framework on indigenous consultation:

Implementation acts, regulations or others Convention 169

Peru ratified Convention 169 on February 2, 1994.

-REGULATION OF ENVIRONMENTAL IMPACT ASSESSMENT NATIONAL SYSTEM ACT (ACT NO. 27446, APR/20/2001).³¹²

Article: 71.

-FORESTRY AND WILDLIFE ACT. ACT NO. 29763)³¹³

Articles: (Preliminary title): II No. 2, 3 and 12; 21;22; 82; 141;148.

-SUPREME DECREE NO. 008-2007-MIMDES, OCT/04/2007.³¹⁴

Article: 42.

-WATER RESOURCES ACT (ACT NO. 29338, MAR/30/2009)³¹⁵

Articles: 64; 118.

-PRIVATE INVESTMENT ACT IN THE DEVELOPMENT OF ECONOMIC ACTIVITIES IN NATIONAL LANDS AND RURAL AND NATIVE COMMUNITIES (ACT NO. 26505)³¹⁶

Articles: 10; 11.

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: Free, prior and informed consultation must be made by the competent authorities for the plans of prospecting, use and commercialization of natural resources in the habitat or on indigenous lands and which may affect environmentally and culturally.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Annex 1.

312. <http://www.minam.gob.pe/wp-content/uploads/2013/10/Ley-y-reglamento-del-SEIA1.pdf>

313. <http://www.actualidadambiental.pe/wp-content/uploads/2013/12/Ley-Forestal-y-de-Fauna-Silvestre-29763.pdf>

314. It regulates the Act for the protection of indigenous or native peoples in isolation and initial contact. Neither the act nor the regulation, except for its article 42, establish the consultation of indigenous populations involved. However, it is an act created with the aim of regulating the ILO Convention 169. Finally pursuant to its articles 9 and 43 the civil society may be part in the process of creating reservations. http://www.cultura.gob.pe/sites/default/files/content_type_archivos/archivosPDF/2014/03/decreto_supremo_no_008-2007-mimdes.docx

315. <http://www.ana.gob.pe/media/316755/leyrh.pdf>

316. http://www.snmpe.org.pe/nuestros-sectores-snmpe/hidrocarburos_nuestros_sectores/legislacion/medio-ambiente-y-comunidades/ley-n-26505-ley-de-la-inversion-privada-en-el-desarrollo-de-las-actividades-economicas-en-las-tierras-del-territorio-nacional-y-de-las-comunidades-campesinas-y-nativas.html

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

The indigenous consultation is implemented in a mandatory way by the State, when projects of national or regional development are susceptible of affecting collective rights, physical existence, cultural identity, quality of life or development of indigenous communities or native peoples.

The aim of the consultation is to achieve an agreement or consent between the State and indigenous or native peoples regarding projects which affect them directly.

The Right to Prior Consultation Act sets 7 minimum stages which the indigenous consultation process shall follow:

Step 1. State entities shall identify the suggested project and in case of concluding there is probably a direct affectation of collective rights from indigenous communities, there shall be a prior consultation. Representative organizations and institutions of indigenous peoples may request to apply the consultation process regarding the project considered to be directly affecting the same.



Step 2. Identification of indigenous peoples to be consulted. The identification of indigenous peoples to be consulted shall be performed based on the contents of the suggested measure, the degree of direct relation with the indigenous people and the territorial scope.

Step 3. Publicity of the project. It shall be made available to institutions and organizations representing indigenous peoples to be consulted, by methods and proceedings appropriate for such peoples, considering geography and the environment where they live.

In order to perform the consultation the language diversity of indigenous or native peoples of the area shall be considered.

Step 4. Information about the project. State entities shall render information on the project to indigenous peoples and their representatives, since the beginning of the consultation process and in advance, about reasons, implications, impacts and consequences of the project.

Step 5: Internal assessment of indigenous organizations. Indigenous institutions and organizations shall have a reasonable term for analyzing scopes and incidences of the project, and the direct relation existing between the contents of the suggested project and the affectation of community collective rights.

Step 6: Dialogue process between State representatives and indigenous community representatives. A dialogue shall be made between project foundations and possible consequences of the same on the exercise of collective rights of indigenous peoples. These shall be made available to officers and authorities in charge of performing the consultation process. The opinions from native peoples or communities shall be part of a consultation record, which shall contain all acts and facts performed during its development.

Step 7: Decision. The decision adopted by the Administration on the investment project must contain an assessment of the points of view, suggestions and recommendations proposed by the native peoples during the dialogue process, as well as the analysis of consequences resulting from the respective project approval, constitutionally recognized collective rights and on treaties ratified by the Peruvian Government.

The agreement, as a result of the consultation process, is binding on the parties.

In case no agreement is reached, the state entities shall adopt all measures necessary to guarantee the collective rights of indigenous or native peoples, and rights to life, integrity and full development thereof.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

A prior, free and informed consultation shall be performed in order to obtain an agreement or consent of the suggested measures relative to forestry management and wildlife.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation and agreement processes for 4 (four) types of operations³¹⁷: See Annex 1.

C. Indigenous Consultation Plan See and apply guiding principles and best practices section II except for specific modifications below:

Objective:

Implement a bona fide³¹⁸, free, prior and informed consultation process covering appropriate mechanisms according to sociocultural characteristics of each indigenous people and through its representative institutions, so that they take part in an informed way and an agreement or consent about the projects expected to be developed on their territories is achieved.

Methodology:

Best Practices concerning public consultations:

1. Opportunity:

The consultation must be prior, i.e. the one made in good time and which gives to the affected indigenous people the opportunity of influencing, in a real and effective way, to the extent in which the consultation is susceptible to affect it directly.

Any interested person, natural or legal, or representative institutions may request mainly the Environment Authority to carry out a consultation process. Well-founded requests are those requests indicating at least the facts and reasons behind them.

³¹⁷ The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof; and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.

³¹⁸ Bona fide is a guiding principle of the consultation, by virtue of which all intervening parties shall act in a faithful and correct way in order to reach an agreement or achieve the prior, free and informed consent.

The consultation shall have two moments: (i) To draw up TDR to make EIA and (ii) During the assessment of EIA by the Environmental Authority.

2. Accessibility:

The consultation must be made in places and times defined by the indigenous communities likely to be affected by the project concerned.

The consultation shall be made in Spanish and the language which may be understood by the indigenous peoples directly affected, whenever necessary. It shall be deemed necessary to make it in the language of the affected indigenous people when these communicate mainly in their own language.

In order to give access to information about the project, this information shall be made available to institutions and organizations representing indigenous peoples to be consulted, by methods and proceedings appropriate for such peoples, considering geography and the environment where they live³¹⁹.

3. Duration:

The consultation shall contemplate the following phases:

- i. Call.
- ii. Planning: This stage must include: (i) Methodological plan (among other aspects, the way of registration of meetings and the importance of having observers, mediators and/or ministers of faith) schedule and place (ii) required specialized consultancy, (iii) Budget.
- iii. Preparation for consultation
- iv. Consultation implementation
- v. Agreements:
 - a. The decision adopted by the Administration on the investment project must contain an assessment of the points of view, suggestions and recommendations proposed by the native peoples during the dialogue process, as well as the analysis of consequences resulting from the respective project approval, collective rights constitutionally recognized and on treaties ratified by the Government.
 - b. The agreement, as a result of the consultation process, is binding on the parties³²⁰.
 - c. In case no agreement is reached, the state entities shall adopt all measures necessary to guarantee the collective rights of indigenous or native peoples, and rights to life, integrity and full development thereof.³²¹

³¹⁹ Provision from national legislation

³²⁰ Provision from national legislation

³²¹ Idem ut supra: Provision from national legislation

4. Context.

In those cases where the project must be approved by two or more indigenous communities, these may make a decision jointly or separately, and in no case the indigenous peoples or communities may be forced to implement decision-making mechanisms different from their own mechanisms.

5. Inclusion and Diversity.

Any indigenous people or representative institution directly affected by the measure being consulted may take part in said process at any time, but in compliance with what has been done so far.

6. Representativeness.

Participants in the consultation shall be the indigenous peoples exclusively affected, which will participate via their national, regional, or local representative institutions, depending on the scope of the project.

Each people shall freely determine its representative institutions, such as traditional indigenous organizations, indigenous communities or associations.



DOMINICAN REPUBLIC

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY³²² ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Dominican Republic legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Dominican Republic.
- In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

³²² Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Dominican Republic legal framework on public consultations³²³:

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	<p>-General Act on the Environment and Natural Resources³²⁴, AUG/18/2002.</p> <p><u>Article</u>: 43;</p> <p>-Regulation of the System of environmental permits and rules³²⁵, passed on MAY/27/2004</p> <p><u>Articles</u>: 19 m); 25 to 33.</p> <p>-Environmental Impact Assessment Process,³²⁶</p> <p><u>Articles</u>: 4 No.9; 5.2.3 c); 5 N°4.6; 5.4.10; 5.7.</p>
Mining:	-There is no legislation on this matter.
Fishing:	-There is no legislation on this matter.
Forestry:	<p>-Act 118-99 dictating the Forestry Code³²⁷ DEC/23/1999.</p> <p><u>Article</u>: 87</p>
Infrastructure:	-There is no legislation on this matter.
Energy:	-There is no legislation on this matter.

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The Environmental Assessment process shall be democratic and open, so the participation of all interested parties and citizens in general shall be promoted in such process.

IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

Public view:

In those projects in which an Environmental Impact Study is required, the proposer shall perform public view of the affectation area of the project (influence zone), which shall be of open invitation and advertised in a national newspaper or through media attainable to communities in the environment of the project. The information advertised shall be clear, precise and brief, indicating the nature of the project, its exact location and purpose thereof.

³²³ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

³²⁴ <http://www.disaster-info.net/PED-Sudamerica/leyes/leyes/mexicocaribe/dominicana/medamb/ley64.pdf>

³²⁵ <http://faolex.fao.org/docs/pdf/dom103544.pdf>

³²⁶ http://www.disaster-info.net/PED-Sudamerica/leyes/leyes/mexicocaribe/dominicana/medamb/Procedimiento_Impacto_Ambiental.pdf

³²⁷ http://www.cedaf.org.do/eventos/forestal/Legislacion/Dominicana/Ley_118-99.pdf

Public Hearing:

Step 1: When the magnitude of possible project impacts and/or the perception of these effects by citizens indicate so, the revision process of the Study shall require carrying out Public Hearings. For such case, the proposer shall be notified that the revision process of the Study shall require 30 (thirty) additional calendar days. This hearing shall be coordinated by the Secretary of State of Environment and Natural Resources through Environmental Assessment Board.

Step 2: The participation in such hearing shall be confirmed in advance. The community has to submit comments and observations in writing. Such comments and observations shall be annexed to the Revision Technical Report (ITR) document result of the revision process of the Study.

If the consultation process is not considered enough or slanted, and thus, requires expansion, the Secretary of State of Environment and Natural Resources may extend the terms for a month. In this month the Public Consultation shall be deepen and extended.

Step 3: The Final report of the Environmental Impact Study shall include at least records of the public consultation activities and proof of the participation of subjects involved.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan:

See Consultation Best Practices Section II.

DOMINICAN REPUBLIC

CONSULTATION MODEL WITH INDIGENOUS
POPULATION ACCORDING TO BEST PRACTICES,
NATIONAL LEGISLATION AND OPERATIONAL
POLICIES IDB GROUP.

A. Applicable framework:

- This consultation model with indigenous population distinguishes the requirements for consultations according to Dominican Republic legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Dominican Republic.
- In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated.

Dominican Republic has not ratified Convention 169.



B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: This country has not ratified ILO Convention No. 169 on Indigenous and Tribal peoples in Independent Countries. It does not have legislation on indigenous consultation.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II.

B.1 NATIONAL LEGISLATION.

There is no legislation on this matter.

B.1.1. Environmental Impact Assessment System.

There is no legislation on this matter.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations³²⁸: See Section V Annex I and II

B.3. INDIGENOUS CONSULTATION PLAN.

See Best Practices indigenous consultation in Section II.

³²⁸ The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof, and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.



SURINAME

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY³²⁹ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES..

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Suriname legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Suriname.
- In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated.

³²⁹ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Suriname legal framework on public consultations³³⁰:

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System: NIMOS: Environmental Assessment Guidelines Volume I: Generic.³³¹ 2009.

Pages: 4 and 9.

Annex no. 5:

Annex no. 6: Page 1; 2; 7.

Annex no. 7: Page 2.

Annex no. 10

Mining: There is no legislation on this matter.

Fishing: There is no legislation on this matter.

Forestry: There is no legislation on this matter.

Infrastructure: There is no legislation on this matter.

Energy: There is no legislation on this matter.

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The authority has Principles for performing Environmental Impact Studies whose fulfillment is not mandatory for owners.

IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

B.1 COUNTRY LEGISLATION.

The specific legislations on information and consultation for the following areas and sectors are presented herein below:

B.1.1. Environmental Assessment Systems of projects:

Citizen participation is contemplated in different stages of the environmental assessment process:

Step 1: "Screening": Once the authority has decided that an environmental impact study is required for a project, the owner shall publish a notice of intention in the media in the term of 7 (seven) days for the population to able to perform observations to the study.

³³⁰ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

³³¹. Idem

This term shall be extended to 60 (sixty) days in case the owner appeals the authority decision.

“Scoping”: If necessary, the notice of intention shall go with the notice of public consultations in which the population may comment on issues to be considered by the environmental impact study. The owner shall provide opportunities for “stakeholders” and the public in general to express their concerns.

Step 2: The authority may:

(i) prepare and make available for the population a summary of the study in an accessible language.

(ii) publish in the media information on environmental impacts of the project and mitigation measures suggested and;

(iii) receive observations performed by the population.

The final document of the environmental impact study shall contain results and methodology used in public consultations, observations performed and answers to these.

Step 3: Revision: Once the authority has evaluated the environmental impact study document, it may check its contents using a “checklist” and the specific guidelines of the project, checking that the stages of participation have been carried out.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan.

See consultation Best Practices Section II

SURINAME

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This indigenous population consultation model distinguishes the requirements for consultations according to Suriname legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Suriname.
- In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

Suriname legal framework concerning indigenous consultation:

Implementation acts, regulations or others Convention 169

Suriname has not ratified Convention 169.

-NIMOS: Environmental Assessment Guidelines Volume I³³²: Generic. 2009

Page: Annex 10 item 11.5, page 21.

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: In the principles created by the authority a list of aspects is contemplated which shall include the indigenous consultation for the revision stage of projects.

IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II

³³². http://www.staatsolie.com/pio/images/stories/PDF/environmental_assessment_guidelines_vol1_generic_aug2009.pdf

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

The checklist with which the authority compares the Environmental Impact Study of a project contemplates an item that corroborates if the project affects indigenous communities, and if so, if these were consulted about it.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations³³³: See Section V Annex I and II

C. Indigenous consultation plan.

See Best Practices indigenous consultation in Section II.

³³³ The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof; and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.



TRINIDAD AND TOBAGO

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY³³⁴ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Trinidad and Tobago legislation and best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Trinidad and Tobago.

In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Section V Annex I and II

³³⁴ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	<p>-Environmental Management Act, of 2000.³³⁶</p> <p>Articles: 27; 28; 29; 35 No.5; 36; 69 No.2.</p> <p>-Environmental Management Act Rules, of 2000.³³⁷</p> <p>Articles: 5 No.2 and 3; 9.</p> <p>-Environmentally sensitive Areas Rules, of 2001³³⁸</p> <p>Articles: 5 No.4.</p>
Mining:	There is no legislation on this matter.
Fishing:	There is no legislation on this matter.
Forestry:	There is no legislation on this matter.
Infrastructure:	There is no legislation on this matter.
Energy:	There is no legislation on this matter.
Other:	<p>-Noise Pollution Control Rules,³³⁹ of 2000.</p> <p>Articles: 16 No.4.</p> <p>-Petroleum Act,³⁴⁰ of 1969.</p> <p>Article: 8.</p>

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The consultation may be requested by the Authority if it deems there is sufficient interest from the public about the project concerned. The level of public interest may be determined according to an amount of written observations received from the public.

IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

³³⁵ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

³³⁶ http://www.ema.co.tt/docs/legal/cur/Act_3_of_2000.pdf

³³⁷ http://www.ema.co.tt/new/images/pdf/certificate_of_environmental_clearance_rules.pdf

³³⁸ <https://www.cbd.int/doc/case-studies/lr/lr-tt-rule-area-en.pdf>

³³⁹ http://www.ema.co.tt/new/images/pdf/noise_pollution_control_rules_2001.pdf

³⁴⁰ http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/62.01.pdf

B.1 COUNTRY LEGISLATION.

B.1.1. Environmental Assessment Systems of projects.

Step 1: The environmental authority shall create the Terms of Reference (TOR) of the Environmental Impact Study (EIA) and shall deliver the same to the proposer for its revision. The proposer when appropriate shall perform a consultation with relevant agencies, non-governmental organizations and other members of the public in order to collect comments on these TOR.

Step 2: The proposer shall have 28 days in order to deliver to the environmental authority comments on the TOR and a report on the consultation performed.

Step 3: Once the EIA entered the Environmental Impact Assessment System (EIAS), the environmental authority shall publish a notice in the Official Gazette and in other general press media. This notice shall contain a description of the project apart from informing where the project documentation is, the period of time for performing observations and where to send them.

Step 4: The authority shall keep an administrative file of the project, which shall be publicly available in one or more offices³⁴¹.

Step 5: The public has the possibility to formulate written comments and hold a public hearing if the authority deems so. The public may submit written comments within no less than 30 days since the notice is published in the Official Gazette. If the authority determines there is sufficient interest from the public in the project it may ask the proposer to perform a public hearing for receiving oral comments.

Specifically for oil extraction projects any person may object the delivery of a license for operation if the same affects the rights of such person provided in the Petroleum Act. Objections shall be submitted before the Environment Ministry within 30 days since the license request was published by the proposer.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

³⁴¹ The administrative file shall include a written description of the suggested project, main environmental aspects contemplated in the project, copies of documents and other supporting materials which the authority considers useful for the public to understand the several aspects of the project and a statement by the proposer about the reasons for carrying it out.

B.1.6. Infrastructure sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB.

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan: See and apply guiding principles and best practices section II except for specific modifications below:

Opportunity:

- a. The call for consultation shall be made before the final decision making concerning the subject matter of the consultation
- b. Consultation call shall be made at least 2 weeks in advance, indicating date, place, time.
- c. The public may submit written comments in a term not less than 30 days since the notice is published in the Official Gazette.³⁴²



³⁴² Provision from national legislation

TRINIDAD AND TOBAGO

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES

A. Applicable framework:

- This consultation model with indigenous population distinguishes the requirements for consultations according to Trinidad and Tobago legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Trinidad and Tobago.

In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated.

Trinidad and Tobago has not ratified Convention 169.

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: This country has not ratified ILO Convention No. 169 on Indigenous and Tribal peoples in Independent Countries. It does not have legislation on indigenous consultation.

IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. There is no legislation on this matter.

B.1 NATIONAL LEGISLATION:

B.1.1. Environmental Impact Assessment System.

There is no legislation on this matter.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations³⁴³: See Section V Annex I and II

C. Indigenous consultation plan.

See Best Practices indigenous consultation in Section II.



³⁴³ The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof; and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.



URUGUAY

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY³⁴⁴ ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Uruguay legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Uruguay.
- In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

³⁴⁴ Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Uruguay legal framework on public consultations³⁴⁵:

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	- Environmental Impact Assessment Regulation , from SEP/21/2005. ³⁴⁶ <u>Articles:</u> 15 and 16.
Mining:	- There is no legislation on this matter.
Fishing:	- There is no legislation on this matter.
Forestry:	- There is no legislation on this matter.
Infrastructure:	- Land Planning and Development Act , from JUN/30/2008. ³⁴⁷ <u>Articles:</u> 24; 25; 26; 72; 73 final subsection; 76 letter d). - Regulation of Land Planning and Development Act , from NOV/16/2009. ³⁴⁸ <u>Articles:</u> Chapter I: 2 subsection 3; Chapter II: 8 subsection 2.
Energy:	- There is no legislation on this matter.
Other:	- Act 18.610 of National Water Policy , published on OCT/28/2009. ³⁴⁹ <u>Articles:</u> 8 letter j); 18 and 19.

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The public hearing is mandatory for all projects in Category C³⁵⁰.

IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

B.1 COUNTRY LEGISLATION.

B.1.1. Environmental Assessment Systems of projects.

Step 1: The Environmental Authority shall carry out a public hearing on the EIA of a project when for a project of Category C or when it is deemed

³⁴⁵ This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

³⁴⁶ <http://www.mvotma.gub.uy/ciudadania/item/10002467-decreto-349-005.html>

³⁴⁷ <http://www.mvotma.gub.uy/ciudadania/biblioteca/marco-legal/item/10002485-ley-18308.html>

³⁴⁸ <http://www.mvotma.gub.uy/ciudadania/biblioteca/marco-legal/item/10006360-decretos-221-2009-400-2009-y-523-2009.html>

³⁴⁹ <http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18610&Anchor=>

³⁵⁰ It includes those projects of activities, buildings or works whose execution might produce significant negative environmental impacts, whether there are prevention or mitigation measures provided or not.

necessary or when requested by a civil entity, the Public Prosecutor or 50 citizens.

The hearing shall be carried out in an easily-accessible place for participants.

More than one Meeting can be held, depending on the complexity of the project and the geographical location of applicants.

The Hearing shall be conducted by the Environmental Authority where the information of the project shall be delivered and then a space for questions shall be enabled.

Minutes shall be issued with annexes comprising every document submitted during the Hearing. These Minutes and annexed documents shall be an ingredient for project assessment.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure sector.

The public hearing is mandatory for Local Plans and for every Land Planning Special Instrument, being its performance optional for the other instruments.

Omission of social participation mandatory stage shall cause the nullity of the corresponding land planning instrument.

Every interested person may be able to submit proposals duly grounded to be considered by competent public institutions in land planning instruments.

B.2 OPERATIONS WITH THE IDB.

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation plan:

See Consultation Best Practices Section II.



URUGUAY

CONSULTATION MODEL WITH INDIGENOUS POPULATION . ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This indigenous population consultation model distinguishes the requirements for consultations according to Uruguay legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Uruguay.

In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

Uruguay has not ratified Convention 169.

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: This country has not ratified ILO Convention No. 169 on Indigenous and Tribal peoples in Independent Countries. It does not have legislation on indigenous matters.
- IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Annex 1.

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

There is no legislation on this matter.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations³⁵¹: See Section V Annex I and II

C. Indigenous consultation plan.

See Best Practices indigenous consultation in Section II.

³⁵¹ The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof; and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.



VENEZUELA

PUBLIC CONSULTATION MODEL WITH CIVIL SOCIETY³⁵² ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This public consultation model distinguishes the requirements for consultations according to Venezuela legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Venezuela.
- In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

³⁵² Any natural or legal person has the right to access and know the paper or electronic record of the project assessment, make remarks within the established term and get founded answers thereof.

Venezuela legal framework on public consultations:³⁵³

Acts and regulations on participation and/or consultation on environmental issues

(Environmental Impact Assessment System, Mining, Fishing, Forestry, Infrastructure and Energy)

Environmental Impact Assessment System:	Environment Organic Act, ³⁵⁴ published on DEC/22/2006. <u>Article:</u> 41. -Rules on Environmental Assessment of activities capable of deteriorating the Environment, ³⁵⁵ published on APR/26/1996. <u>Article:</u> 26.
Mining:	- There is no legislation on this matter.
Fishing:	- There is no legislation on this matter.
Forestry:	Forest Act, ³⁵⁶ published on AUG/6/2013. <u>Articles:</u> 5 No. 4; 25; 26; 105.
Infrastructure:	Organic Act for Land Planning Managements and Planning, ³⁵⁷ amendment published on FEB/28/2007. <u>Articles:</u> 9 No.1; 20 No. 2; 22; 41; 71; 78; 154; 160; 164 to 166.
Energy:	- There is no legislation on this matter.

B. Summary on obligatory nature to make consultations according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The consultation is not mandatory for projects which shall prepare an Environmental Impact Study (EIA). The Ministry of Environment and Renewable Natural Resources may order a revision and public consultation process of the EIAs. If the same is carried out, observations or comments shall be sent in written form including technical, scientific and legal grounds supporting them.
- IDB provisions: The Bank in turn establishes different mandatory requirements for the consultations depending on the type of classification and OP applicable to the project. See Section V Annex I and II

353 This legal framework does not include Regional and Local Governments regulations. It is very important that the Executing Agency verifies if this regulation contains obligations concerning citizen consultation.

354. <http://www.minamb.gob.ve/files/Ley%20Organica%20del%20Ambiente/Ley-Organica-del-Ambiente-2007.pdf>

355. <http://www.vitalis.net/Normas%20sobre%20evaluaci%C3%B3n%20ambiental%20de%20actividades%20susceptibles%20de%20degradar%20el%20ambiente.pdf>

356. Idem note 5.

357. <https://www.google.cl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=OCBwQFjAAahUKEwJhwp7GuJLHhAhUCG5AKHvfXCXM&url=http%3A%2F%2Fwww.iadb.org%2FResearch%2Flegislacionindigena%2Fleyn%2Fdocs%2FVEN-Ley-OrgPlanificacionOrdenacion-Territorio.doc&ei=cETCVeHKBoK2wATXrqeYBw&usg=AFQjCNFcz7Kb3eENV9D8olzldnCiZnz9A>

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Assessment Systems of projects.

Step 1: The proposer of the project who should prepare an Environmental Impact Study (EIA) shall publish in a local newspaper, a notice informing about the onset of the Study.

Step 2: The Ministry of Environment and Renewable Natural Resources may order a revision and public consultation process of the Studies. Observations or comments shall be sent in written form including technical, scientific and legal grounds supporting them.

Step 3: Observations might be totally or partially incorporated into the Studies according to their technical analysis.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

There is no legislation on this matter.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB

The first action is to verify the classification given to the project by the IDB. Each type of project has differentiated requirements. See Section V Annex I and II

C. Consultation Plan

See consultation Best Practices Section II

VENEZUELA

CONSULTATION MODEL WITH INDIGENOUS POPULATION ACCORDING TO NATIONAL LEGISLATION, IDB GROUP OPERATIONAL POLICIES, GUIDING PRINCIPLES AND BEST PRACTICES.

A. Applicable framework:

- This indigenous population consultation model distinguishes the requirements for consultations according to Venezuela legislation and universal best practice principles in force today on these topics. Every Executing Agency must comply with these requirements when conducting an operation in Venezuela.
- In case this also being an operation with the IDB Group, provisions of its applicable operational policies (OP) must be incorporated. See Annex 1.

Venezuela legal framework on indigenous consultation:

Implementation acts, regulations or others Convention 169

Venezuela ratified Convention 169 on July 22, 2002.

-**Organic Act of Indigenous Peoples and Communities**,³⁵⁸ published on DEC/27/2005.

Articles: 6;11;13 to 19;33; 54; 55; 59.

- **Demarcation and Guarantee of the Habitat and Lands of Indigenous Peoples Act**,³⁵⁹ published on DEC/01/2001.

Article: 8.

- **Environment Organic Act**³⁶⁰, published on DEC/22/2006.

Article: 41.

- **Forest Act** ³⁶¹, published on AUG/6/2013.

Articles: 26; 52 No. 3; 105.

358. <http://www.unes.edu.ve/bibliotecaunes/custodia/leyes/ley34.pdf>

359. <http://www.minpi.gob.ve/images/descargas/leyes/leydemarcacion.pdf>

360. <http://www.minamb.gob.ve/files/Ley%20Organica%20del%20Ambiente/Ley-Organica-del-Ambiente-2007.pdf>

361. http://www.minamb.gob.ve/files/leyes-2014/Ley%20de%20Bosques%20Revisada_WEB.pdf

B. Summary on obligatory nature to make consultations to indigenous peoples according to the country legislation and the Bank Operational Policies (OP).

- Country legislation: The prior, free and informed consultation shall be performed before every activity of natural resources use and any other type of development projects capable of directly or indirectly affecting indigenous peoples or communities involved, under penalty of nullity of the act granting the license. The same shall be bona fide considering language and organizational customs of communities. The new phase of a project or extension thereof shall comply with the consultation process perfectly.

IDB provisions: The Bank establishes consultation processes and agreement for four types of operations. See Section V Annex I and II

B.1 NATIONAL LEGISLATION.

B.1.1. Environmental Impact Assessment System.

Step 1: Projects shall be presented within no less than 90 days in advance of the date in which indigenous peoples and communities consider the same. All information regarding nature, aims and scope of the project shall be submitted as well as benefits and possible environmental, social and cultural damages.

Communities shall rely on the technical support by the executing agency of the country indigenous policy and other State institutions.

Step 2: Meetings: Indigenous peoples and communities shall arrange meetings with proposers with the aim of clarifying doubts on the contents and scope of the project for submitting observations and modifications. These shall be considered in the Study reformulation. These meetings shall be carried out before finishing the final Meeting. This meeting shall provide technical and legal advice by officers representing State indigenous organisms or local, regional or national indigenous organizations.

Step 3. Assemblies: Assemblies shall be carried out pursuant to uses and habits of each one of the indigenous peoples or communities involved.

In case the project should be approved by two or more indigenous communities, these may jointly or separately decide, not being able at any time to be bound to make decisions differently from the others.

Proposers may be able to attend the Assembly if it was previously agreed by the community.



Step 4. Every project undergoing a prior consultation of peoples and communities shall be established in written form and mutually agreed. In case of breaching consultation and participation conditions for exploration, exploitation and use of natural resources and execution of projects, or in case there are non-anticipated changes in the original project design known, the concession agreement shall be void and with no right to compensation.

Should peoples and communities express their opposition to the project, proposers might be able to submit alternative proposals going on with the process of discussion.

Indigenous authorities shall be involved in planning and executing land demarcation works.

It is forbidden the execution of any type of project in indigenous habitats and lands by natural or legal person both public or private, which has not been previously approved by indigenous peoples or communities involved.

The use of natural resources property of the Nation in indigenous peoples' habitats and lands, shall be subjected to prior, free and informed consultation.

B.1.2. Mining sector.

There is no legislation on this matter.

B.1.3. Fishing sector.

There is no legislation on this matter.

B.1.4. Forestry sector.

Forestry activities authorized through administrative acts affecting indigenous habitats and lands, shall be subjected to prior consultation of indigenous communities.

The use of forestry assets in spaces demarcated as indigenous habitats and lands, when it is not directly performed by the corresponding communities, shall guarantee them the right to be a part in benefits generated by the activity, and to be previously informed and consulted in the corresponding study of environmental and sociocultural impact study.

B.1.5. Energy sector.

There is no legislation on this matter.

B.1.6. Infrastructure Sector.

There is no legislation on this matter.

B.2 OPERATIONS WITH THE IDB:

The Bank establishes consultation processes and agreement for 4 (four) types of operations³⁶²: See Annex 1.

C. Indigenous Consultation: Plan See and apply guiding principles and best practices section II except for specific modifications below.

Objective:

Implement a bona fide³⁶³, free, prior and informed consultation process covering appropriate mechanisms according to sociocultural characteristics of each indigenous people and through its representative institutions, so that they take part in an informed way and an agreement or consent about the projects expected to be developed on their territories is achieved.

Methodology:

Best Practices concerning public consultations:

³⁶² The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof; and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.

³⁶³ Bona fide is a guiding principle of the consultation, by virtue of which all intervening parties shall act in a faithful and correct way in order to reach an agreement or achieve the prior, free and informed consent.

1. Opportunity:

The consultation must be prior, i.e. the one made in good time and which gives to the affected indigenous people the opportunity of influencing, in a real and effective way, to the extent in which the consultation is susceptible to affect it directly.

Any interested person, natural or legal, or representative institutions may request mainly the Environment Authority to carry out a consultation process. Well-founded requests are those requests indicating at least the facts and reasons behind them.

The consultation shall have two moments: (i) To draw up TDR to make EIA and (ii) During the assessment of EIA by the Environmental Authority.

2. Accessibility:

The consultation must be made in places and times defined by the indigenous communities likely to be affected by the project concerned.

The consultation shall be made in Spanish and the language which may be understood by the indigenous peoples directly affected, whenever necessary. It shall be deemed necessary to make it in the language of the affected indigenous people when these communicate mainly their own language.

Information concerning the project shall be made available to institutions and organizations representing indigenous peoples, by methods and proceedings appropriate for such peoples, considering geography and the environment where they live.

3. Duration:

The consultation shall contemplate the following phases:

- i. Call.
- ii. Planning: This stage must include: (i) Methodological plan (among other important aspects, the way of registration of meetings and the importance of having observers, mediators and/or ministers of faith) schedule and place (ii) required specialized consultancy, (iii) Budget.
- iii. Preparation for consultation
- iv. Consultation implementation
- v. Agreements:
 - a. The decision adopted by the Administration on the investment project must contain an assessment of the points of view, suggestions and recommendations proposed by the native peoples during the dialogue process, as well as the analysis of consequences resulting from the respective project approval, collective rights recognized constitutionally and on treaties ratified by the Government.

- b. The agreement, as a result of the consultation process, is binding on the parties.
- c. In case no agreement is reached, the state entities shall adopt all measures necessary to guarantee the collective rights of indigenous or native peoples, and rights to life, integrity and full development thereof.
- d. In case of breaching consultation and participation conditions for exploration, exploitation and use of natural resources and execution of projects, or in case there are non-anticipated changes in the original project design known, the concession agreement shall be void and with no right to compensation.
- e. Should peoples and communities express their opposition to the project, proposers might be able to submit alternative proposals going on with the process of discussion³⁶⁴.

4. Context.

The consultation shall be carried out according to the uses and habits of each one of the indigenous peoples or communities involved.

In those cases where the project must be approved by two or more indigenous communities, these may make a decision jointly or separately, and in no case the indigenous peoples or communities may be forced to implement decision-making mechanisms different from their own mechanisms.

5. Inclusion and Diversity.

Any indigenous people or representative institution directly affected by the measure being consulted may take part in said process at any time, but in compliance with what has been done so far.

6. Representativeness.

Participants in the consultation shall be the indigenous peoples exclusively affected, which will participate via their national, regional, or local representative institutions, depending on the scope of the project.

Each people shall freely determine its representative institutions, such as traditional indigenous organizations, indigenous communities or associations.

³⁶⁴ Provisions d and e from national legislation.

SECTION V

ANNEXES

Annex I

Executing Agencies and Projects financed by the IDB: Chart for project classification A, B, C

Below there are a series of steps to be verified and complied with in those projects financed by the IDB. The first action of the Executing Agency is to verify the project classification. Each type of project has differentiated requirements.

Type of project	Definition	Preparation Phase	Mandatory Participants for Consultation	Potential Participants for Consultation
Category A	Project which has the potential to cause significant negative environmental impacts and associated social effects.	At least two consultations should be carried out before entering EIAS, during the delimitation of environmental assessment or revision processes and during the revision of assessment reports.	The affected parties, that is, individuals, groups of individuals or communities that may be directly impacted by an operation financed by the Bank, shall be convened. These impacts may be positive or negative. The affected parties may designate representatives as part of the consultation process.	Consultations may be carried out with interested parties for obtaining a broader range of perspectives. Interested parties are those individuals or groups who have expressed support or concern relating to operations financed by the Bank, whether suggested or existing.
Category B	Project which has the potential to cause localized and short-term negative impacts including associated social impacts and for which there already are effective mitigation measures available.	At least one consultation should be carried out during the preparation or revision of the Environmental and Social Management Plan (ESMP ³⁶⁵)	The affected parties, that is, individuals, groups of individuals or communities that may be directly impacted by an operation financed by the Bank, shall be convened. These impacts may be positive or negative. The affected parties may designate representatives as part of the consultation process.	Also consultations may be carried out with interested parties for obtaining a broader range of perspectives.
Category C	Project which does not cause negative environmental impacts or the same are minimal.	There is no need to perform a consultation. However it is a Best Practice to always perform a consultation.		

³⁶⁵. It is necessary to verify case by case the opportunity to prepare the ESMP.

The Bank in its Indigenous Operational Policy establishes consultation and agreement processes for 4 (four) types of operations.

Independent projects for indigenous peoples: Shall include participative studies of diagnostic for the performance of project activities in consultation with beneficiaries.

Projects which shall implement safeguards: Consultation or negotiation processes shall depend on impacts which the project has on indigenous communities.

The first action is to verify the classification given to the project by IDB. Each type of project has differentiated requirements. See Chart 1 above.

Projects with positive inclusion: Are those which identify opportunities for transversally incorporating indigenous issues. Although this inclusion is not mandatory, the Bank shall promote it. For defining aspects to be incorporated consultation and negotiation processes shall be performed for determining possible beneficiaries and ensure that activities are culturally suitable.

For Technical Cooperations, loans which do not finance traditional investments and flexible loan instruments. When the preliminary assessment indicates that the PPI is applicable, consultation processes shall be carried out.

The Bank's policy states that if peoples once convened do not want to be part of the consultation, then the proposer of the project must furnish evidence of his bona fide attempts to make the consultation, the fact that there are no conditions to carry it out and an analysis of the reason for not taking part and foundations thereof; and the alternative means used to identify the necessary and socio-culturally appropriate mitigation measures.

Annex II

Executing Agencies and Projects financed by the IDB: Summary chart on IDB requirements as regards public consultations.

Operational Policy	Applies to the project of the Executing Agency involved: YES/NO:	What does it state about consultations?
Environment and Safeguard Enforcement ³⁶⁶ 2006	YES	Safeguards establish performing consultations for environmental assessment processes, specifically for 4 cases:
OP 703	-Financial and non-financial products, -Operations in public and private sectors, Acquisition processes and management of Bank facilities. ³⁶⁷	a) Operations in Category “A” shall perform consultations at least twice during the preparation of the project, during the phase of delimitation of environmental assessment or revision processes, and during the revision of assessment reports. b) Operations in Category “B” shall perform consultations with parties affected at least once, preferably during the preparation or revision of ESMP, according to what was agreed with the borrowing member. ³⁶⁸ c) Projects with cross-border impacts shall have their own consultation framework with the affected parties. ³⁶⁹ d) Production or significant use of hazardous materials, shall be prepared in consultation with communities and potentially affected workers. ³⁷⁰

366. In < <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=665905>>

367. Inter- American Development Bank (IDB), Policy of Environment and Social Safeguard

OBS: pg8, 4.14: The Bank shall only finance operations and activities which comply with this Policy's guidelines. It is also applied to projects under preparation after the policy came into effect.

368. Consultation shall provide information in places, languages and formats which allow bona fide consultations with affected parties, and are able to comment on the project. EIAs or other relevant analysis shall be made available to the public pursuant to the Bank's Information Availability Policy (OP-102). During the execution of the project, affected parties should be informed about environmental and social mitigation measures affecting them, as defined in ESMP. This policy shall be complemented with Implementation Lineaments made available to the public under the Information Availability Policy (OP-102)

OBS. Page numbers are pursuant to document numbers and not with the PDF file numbers.

369. Idem Pg. 12, B8, 4.22.

370. Ibid. Pg. 13, B10, 4.25

Operational Policy	Applies to the project of the Executing Agency involved: YES/NO:	What does it state about consultations?
<p>Indigenous Peoples and Strategy for Indigenous Development 2006³⁷¹</p> <p>OP 765</p>	<p>YES</p> <p>All Executing Agencies working with the Bank</p>	<p>The Policy establishes consultation or negotiation and agreement processes for two types of Bank operations:</p> <p>a) For the following typology of projects³⁷²:</p> <p><i>Independent projects for indigenous peoples:</i></p> <p>Shall include participative studies of diagnostic for the performance of project activities in consultation with beneficiaries.</p> <p><i>Projects with positive inclusion:</i></p> <p>Are those which identify opportunities for transversally incorporating indigenous issues. Although this inclusion is not mandatory, the Bank shall promote it. For defining aspects to be incorporated consultation and negotiation processes shall be performed for determining possible beneficiaries and ensure that activities are culturally suitable.</p> <p><i>Projects which shall implement safeguards:</i></p> <p>Consultation or negotiation processes shall depend on impacts which the project has on indigenous communities.</p> <p>If impacts are minimal consultations with indigenous peoples may be part of the consultations established by safeguards and there is no need for specific consultations with indigenous peoples.</p> <p>If impacts are mild or significant a mitigation scheme shall be prepared where consultation, bona fide negotiation and agreement processes are specified, correspondingly.</p> <p>Consultations for significant adverse impact projects for indigenous peoples shall end with an agreement on the Mitigation Scheme.</p> <p>b) For Technical Cooperations, loans which do not finance traditional investments and flexible loan instruments. When the preliminary assessment indicates that the PPI is applicable, consultation processes shall be carried out.³⁷³</p> <p>If peoples would not like to be part of a consultation: It may fulfill this requirement by submitting evidence of: its bona fide attempts to perform the consultation, the fact that there are no conditions for developing the same and an analysis of why being a part and grounds; and alternative means used for identifying necessary and socio-culturally appropriate mitigation measures.³⁷⁴</p>
<p>Access to information 2010³⁷⁵</p>	<p>NO</p> <p>Applies to the Bank</p>	

371. In < <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1442306>>

372. Banco Interamericano del Desarrollo (IDB), "Guías Operativas de la Política Operativa Sobre Pueblos Indígenas (PPI)". Pg.12 y 14

373. Idem Pg. 22

374. Ibid. Pg. 27

375. Information created by the IDB; -Information in hands of the IDB (except for exceptions); -Information the Bank produces regarding the Assessment and Supervision Office, the Institutional Integrity Office, the Penalty Committee and the Independent Mechanism of Consultation and Investigation

Operational Policy	Applies to the project of the Executing Agency involved: YES/NO:	What does it state about consultations?
Gender Equality 2010 ³⁷⁶		<p>About consultations, it establishes the following:</p> <p>b) In consultations specifically associated to projects, the inclusion of women and men appreciably affected to issues of gender and socio-culturally appropriate.³⁷⁷</p>
Involuntary Resettlement 1998 ³⁷⁸ OP 710		<p>About consultations, it establishes the following:</p> <p>a) When the project affects indigenous communities, they shall mainly agree with the resettlement plan and the compensation.³⁷⁹</p> <p>b) In the preliminary plan part of the EIA, a significant consultation shall be carried out with the affected population.³⁸⁰</p> <p>c) In the final plan, there shall be provisions for consultation and the participation of local entities (public or private) which may contribute to the execution and assume the responsibility of the operation and the maintenance of programs and infrastructure.³⁸¹</p> <p>d) Only as an exception the displacement of affected indigenous communities (other minorities) shall be allowed and in those cases the following will be necessary:</p> <ul style="list-style-type: none"> -their full consent with full knowledge on the resettlement and other mitigation measures and -full participation in the design of the compensation plan.³⁸² <p>e) The resettlement planning shall consider the opinions of women affected and it shall show their priorities.³⁸³</p>

376. In < <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35428394>>

377. Banco Interamericano de Desarrollo (IDB), "Política Operativa sobre Igualdad de Género en el Desarrollo". Pg.7, 4.16.

378. In <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=2032319>

379. Banco Interamericano del Desarrollo (IDB), "Reasentamiento involuntario Política operativa y documento de antecedentes". Pg.3, IV, 4.

380. Idem Pg.5, 6.

381. Ibid.Pg. 6, 6.

382. Ibid.Pgs.27 and 28.

383. Pg. 28

Annex III

Multilateral Development Banks: Indicative chart on Civil Society and Public Consultations instruments:

MDB	Civil Society and Public consultation guidelines (how to do an effective consultation)	Frameworks where Public Consultation provisions are included	Policies dealing with or predicting public consultations with civil society (when to consult)	Legal frameworks applicable to public consultations divided by country	Legal framework applicable to public consultations for Latin America and the Caribbean
Inter-American Development Bank	Public consultations with civil society: Guidelines for private/public executing agencies /Legal framework of 26 countries, consultation plan models with guiding principles and good universal practices	Gender and Renewable Energy: Wind, Solar, Geothermal and Hydroelectric Energy Strategy for promoting citizen participation in Bank activities (GN-2232-5 / 2004)	Environmental safeguards compliance policy OP 703. (2006) Access to information policy OP-102. (2010) Involuntary resettlement policy OP-710. (1998) Operational policy on indigenous peoples (OP-765) (2006) Operational policy on gender equality in the development (OP-761) (2010)	YES	YES

MDB	Civil Society and Public consultation guidelines (how to do an effective consultation)	Frameworks where Public Consultation provisions are included	Policies dealing with or predicting public consultations with civil society (when to consult)	Legal frameworks applicable to public consultations divided by country	Legal framework applicable to public consultations for Latin America and the Caribbean
International Finance Corporation ³⁹²	<ul style="list-style-type: none"> - Manual on practices about public disclosure and consultation. (1998)³⁹³ - Relations with community and other social actors: - Manual on practices recommended for companies doing business with emerging markets. (2007)³⁹⁴ 		<ul style="list-style-type: none"> - Study procedure of environmental and social effects of projects. (Version 2013)³⁹⁵ - Operational policy , environmental assessment (OP 4.01) (1998)³⁹⁶ - Operational policy 4.04, natural habitats. (1998)³⁹⁷ - Operational policy 4.10, indigenous peoples. (2005)³⁹⁸ - Operational policy 4.11, cultural heritage protection (1999, revised in 2001)³⁹⁹ - Operational policy 4.12, involuntary resettlement (2001, revised in 2013)⁴⁰⁰ - Operational policy 4.36, forests. (1998)⁴⁰¹ - Operational policy 7.50, international watercourse. (1998, revised in 2012)⁴⁰² - Policy on access to information. (2012)⁴⁰³ - Policies on environmental and social sustainability. (2012)⁴⁰⁴ 		

392. IFC has no specific policy for the extractive sector (oil, gas and mining). There are case studies, projects, press releases, but no specific manual or policy. However, it appears to apply Performance Rules on Environmental and Social Sustainability (note 19), adopted by the majority of main commercial banks in the Equator Principles. For information on the projects, cases, press releases, see: http://www.ifc.org/wps/wcm/connect/Industry_EXT_Content/IFC_External_Corporate_Site/Industries/Oil,+Gas+and+Mining/.
393. http://www.ifc.org/wps/wcm/connect/4ab5fd80488552fbad14ff6a6515bb18/DoingBetterBusiness_Spanish.pdf?MOD=AJPERES (Spanish version). IFC (Agribusiness, Financial Institutions, Global Manufacturing, Health & Education, Telecoms, Media & Technology, Infrastructure Oil, Gas & Mining, Private Equity and Investment Funds, Tourism, Retail & Property)
394. http://www.ifc.org/wps/wcm/connect/b7fe528048855c5a8ba4db6a6515bb18/IFC_StakeholderEngagement_Spanish.pdf?MOD=AJPERES
395. <http://www.ifc.org/wps/wcm/connect/190d25804886582fb47ef66a6515bb18/ESRP%2BManual.pdf?MOD=AJPERES> (English version, updated in 2013).
396. <http://siteresources.worldbank.org/OPSMANUAL/Resources/210384-1170795590012/OP401Spanish.pdf> (Spanish version 1999) or http://www.ifc.org/wps/wcm/connect/a7c211004885574abbfcfb6a6515bb18/OP401_EnvironmentalAssessment.pdf?MOD=AJPERES
397. http://www.ifc.org/wps/wcm/connect/6a26908048855643b98cfb6a6515bb18/OP404_NaturalHabitats.pdf?MOD=AJPERES (English version.)
398. <http://siteresources.worldbank.org/OPSMANUAL/Resources/210384-1170795590012/OP4.10.July1.2005.Spanish.pdf>
399. <http://siteresources.worldbank.org/INTFORESTS/Resources/OP411.pdf>
400. <http://siteresources.worldbank.org/OPSMANUAL/Resources/210384-1170795590012/OP412Spanish.pdf>
401. http://www.ifc.org/wps/wcm/connect/587f618048855cb18c7cde6a6515bb18/OP436_Forestry.pdf?MOD=AJPERES (English version.)
402. <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,contentMDK:20064667-menuPK:64701637-pagePK:64709096-piPK:64709108-theSitePK:502184-isCURL:Y,00.html> (English version, revised in 2012). I included this OP since the document Manual on Practices for Public Consultation and Disclosure is mentioned as instrument indicating the need for a public consultation. However, there is nothing that specific.
403. http://www.ifc.org/wps/wcm/connect/d6f1e00049a79ce5b9c2fba8c6a8312a/SP_Spanish_2012.pdf?MOD=AJPERES
404. http://www.ifc.org/wps/wcm/connect/aad62b804942f9baab8dff4f5ddda76e/SustainabilityPolicy_Spanish.pdf?MOD=AJPERES. The Sustainability Framework comprises Performance Policy and Rules of the IFC on Environmental and Social Sustainability, and the Policy on Information Access of the IFC. Environmental and Social Sustainability Policy describes commitments, functions and responsibilities of the IFC as regards environmental and social sustainability.

MDB	Civil Society and Public consultation guidelines (how to do an effective consultation)	Frameworks where Public Consultation provisions are included	Policies dealing with or predicting public consultations with civil society (when to consult)	Legal frameworks applicable to public consultations divided by country	Legal framework applicable to public consultations for Latin America and the Caribbean
			<ul style="list-style-type: none"> - Development rules on environmental and social sustainability. (2012)⁴⁰⁵ - Development rules for private sector activities. (2013)⁴⁰⁶ - Manual of practices: assessment and management of environmental and social risks in agro-commodities supply chain. (2013)⁴⁰⁷ - Manual of environmental and social management: metal product manufacture. (2015)⁴⁰⁸ - Manual of environmental and social management: Textiles. (2014)⁴⁰⁹ 	NO	NO
European Bank for Reconstruction and Development	NO	Environmental and Social Procedures. Guidance Note on Indigenous Peoples. ⁴¹⁰	Environmental and Social Policy. Pgs. 5; 30-33; 44-51.(2014) ⁴¹¹ Public Information Policy. (2014) ⁴¹²	NO	NO

405. http://www.ifc.org/wps/wcm/connect/55d37e804a5b586a908b9f8969adcc27/PS_Spanish_2012_Full-Documents.pdf?MOD=AJPERES. "Performance Rules are destined to clients offering orientation for identifying risks and impacts with the aim of helping prevent, mitigate and manage risks and impacts as a way of sustainably carrying out business, including the obligation by the client to include interested parties and disclose project activities."

406. <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:23408394-menuPK:4564185-pagePK:64709096-piPK:64709108-theSitePK:502184,00.html>

407. http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/learning+and+adapting/knowledge+products/publications/publications_handbook_agrosupplychains. The manual was performed considering practices whose aim was the improvement of environmental and social risk management of agro-commodities companies, in particular, in their supply chain. By means of eight procedure rules, the IFC requests from its clients the identification, mitigation and management of risks mentioned and impacts as a way to conduct their business. The document is focused in five types of commodities; palm oil, soy, cacao, sugarcane and coffee. However, it may be used as guideline for other types of agro-commodities.

408. http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/learning+and+adapting/knowledge+products/publications/publications_handbook_esms-metalproductsmanufacturing. The aim of this Manual is to show technical means for integrating social and environmental aspects in the management of companies, thus, there is more efficiency in the reduction of environmental impacts for employees and in nearby communities. Consultations with affected communities are forecasted. (pages 41, 56, 59, among others.) Based on the procedure rule n.1.

409. http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/learning+and+adapting/knowledge+products/publications/esms_implementation_handbook-textiles_apparel. Same idea of the Manual for manufacturing metal products.

410. <http://www.ebrd.com/news/publications/guides/guidance-note-on-indigenous-peoples.html>

411. <http://www.ebrd.com/who-we-are/our-values/environmental-and-social-policy.html>

412. <http://www.ebrd.com/what-we-do/strategies-and-policies/public-information-policy.html>

MDB	Civil Society and Public consultation guidelines (how to do an effective consultation)	Frameworks where Public Consultation provisions are included	Policies dealing with or predicting public consultations with civil society (when to consult)	Legal frameworks applicable to public consultations divided by country	Legal framework applicable to public consultations for Latin America and the Caribbean
African Development Bank	Handbook On Stakeholder Consultation And Participation In ADB Operations. (2007) ⁴¹³	<p>Environmental and Social Assessment Procedures for African Development Bank's Public Sector Operations.⁴¹⁴ Pg. 15-16 (2001)</p> <p>Climate Finance Tracking Guidance Manual - Water Sector. Pg. 35. (2013)⁴¹⁵</p> <p>Staff Guidance on Project Completion Reporting and Rating. Pg. 11 and 16. (2012)⁴¹⁶</p> <p>Checklist for Gender Mainstreaming in the Water and Sanitation Sector. Pg. 5 and 9. (2009)⁴¹⁷</p> <p>Environmental and Social Assessment Procedures. Pg. 16. (2001)⁴¹⁸</p>	<p>Framework for Enhanced Engagement with Civil Society Organizations. (2012)⁴¹⁹</p> <p>Cooperation with Civil Society Organizations: Policy and Guideline. (1999)⁴²⁰</p> <p>Bank Group Involuntary Resettlement Policy. Pgs. 7, 10, 14, 20, 23, 24, Annex A pg.1. (2013)⁴²¹</p> <p>Environmental Safeguards Policy. Pgs. 18-19 and 23. (2004)⁴²²</p>	NO	NO

413. <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Handbook%20on%20Stakeholder%20Consultaion.pdf>

414. http://www.afdb.org/fileadmin/uploads/afdb/Documents/Procurement/Project-related-Procurement/Environmental_and_Social_Assessment_Procedures_for_AfDB_Public_Sector_Operations_-_June_2001.pdf

415. http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Climate_Finance_Tracking_Guidance_Manual_-_Water_Sector.pdf

416. http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/PCR_-_Staff_Guidance__3_.pdf

417. <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Checklist%20for%20Gender%20Mainstreaming%20in%20the%20Water%20and%20Sanitation%20Sector%20EN.pdf>

418. <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/ENVIRONMENTAL%20AND%20SOCIAL%20ASSESSMENT%20PROCEDURES.pdf>

419. <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Framework%20for%20Enhanced%20Engagement%20with%20Civil%20Society%20Organizations.pdf>

420. <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/10000024-EN-COOPERATION-WITH-CIVIL-SOCIETY-ORGANIZATIONS-POLICY-AND-GUIDELINES.PDF>

421. <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/10000009-EN-BANK-GROUP-INVOLUNTARY-RESETTLEMENT-POLICY.PDF>

422. <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/10000027-EN-BANK-GROUP-POLICY-ON-THE-ENVIRONMENT.PDF>









PUBLIC CONSULTATIONS WITH CIVIL SOCIETY: GUIDELINES FOR PUBLIC AND PRIVATE EXECUTING AGENCIES



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