

PUBLIC CONSULTATIONS: STEP BY STEP

**+300 regulatory and legal
frameworks applicable
in Latin America and the
Caribbean**



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**+300 regulatory and legal
frameworks applicable
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Caribbean**

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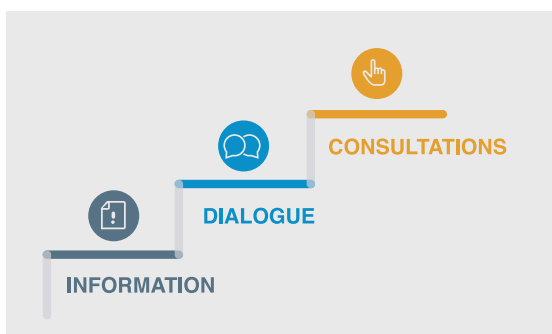
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WHAT, HOW AND WHY:

According to some studies¹, the majority of the complaints raised by communities and/or stakeholders regarding a certain project, strategy or policy have to do with the lack or insufficiency of a public consultation. Experience tells us that the darts of criticism not only aim at the consultation per se, but at the process as a whole. In fact, along our reviews of different projects, we have found that many consultations that were perfectly compliant with the applicable legislation and good practice standards were also fraught with the misconception that consultations are a single, one-time event instead of a continuous process.



Often times, the reason for these complaints can be traced to the absence of a preparatory

stage held prior to the consultation, a period where relevant information can be elicited from all stakeholders concerned through instances of dialogue that bring actors together and create mutual trust in a more informal context than a public consultation, which, as we shall see, must adhere to strict legal and regulatory mandates. A preparatory stage can also help to better mitigate the associated risks and create opportunities.

Evidence shows that public consultations² conducted after an information and dialogue process are indeed more effective³, since the early provision of relevant information and the identification of stakeholder perceptions and concerns⁴ enable a better understanding of the public's stance regarding a certain operation. Preparation also increases the effectiveness of dialogue processes by anticipating conflicts and/or resolving aspects that, despite being peripheral to the main issue, can have a negative impact if unaddressed. Preparatory actions held in advance of a consultation process facilitate the mutual knowledge of all interested parties, therefore promoting relationships of trust between them. Building trust is also key to ensure that the decisions adopted at the end of the consultation will be based on a broader understanding of each other's perspectives.

- 1 See Graham Watkins, Sven-Uwe Mueller, Hendrik Meller, María Cecilia Ramirez, Tomás Serebrisky, Andrea Georgoulas, *Lecciones de 4 décadas de conflictos en torno a proyectos de infraestructura en América Latina y el Caribe*, Inter-American Development Bank, 2017. See also *Análisis de cartera de solicitudes 2010-2017: una revisión estadística*: Programa de Reflexiones Institucionales, Victoria Márquez Mees, Esteban Tovar, Eva Heiss, Inter-American Development Bank, 2018.
- 2 For information on good engagement practices of the IDB group, see the following case studies: [manejo de fuentes de agua](#); [mercados laborales](#); [adaptación al cambio climático](#); [datos abiertos](#) e [infraestructura vial](#). Also check IDB's CIVICO 2020 available as from the second semester 2020 at [WiConnect](#).
- 3 For effective planning with communities, civil society and the public, check a ver la [IDB-Civil Society Engagement Strategy](#).
- 4 For experiences aimed at capturing the public's concerns and perceptions using Artificial Intelligence (AI) visit [CiviClytics](#). Also see the CIVICO publication ut supra.

In 2017, we came to realize the need for a document that would support the organization of effective public consultations in line with universal good practices and applicable legal and regulatory frameworks by sector in the different countries of Latin America and the Caribbean. To advance in this task, we made a compilation of the applicable legislation of Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela⁵.

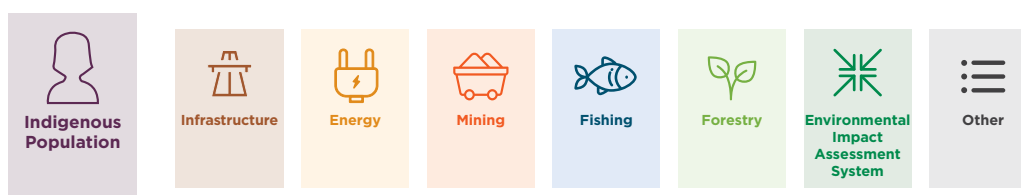
Special focus was placed on the legislation and regulations pertaining to the sectors that are most heavily criticized and therefore affect a larger portion of the population, i.e. the mining, fishing, forestry, infrastructure and energy sectors, as well as the environmental impact assessment system⁶. In an effort to facilitate and contribute to the preparation and holding of a consultation, we include a short description of the main points referred to in the relevant norms. All this information has been organized in Section 3 under the following icons:



Free, prior and informed consultation with indigenous peoples:

A special section has been devoted to the legislation and regulations regarding free, prior and informed consultation in the framework of ILO Convention 169 for indigenous peoples. Specific legislation was thus examined for the mining, fishing, forestry, infrastructure and energy sectors, as well as the environmental impact assessment system⁷.

Finally, and in order to help organize good public consultations, we present the applicable regulation with a brief description of the main points referenced, together with special cases that should be considered. All this information has been systematized in Section 3 under the following icons:



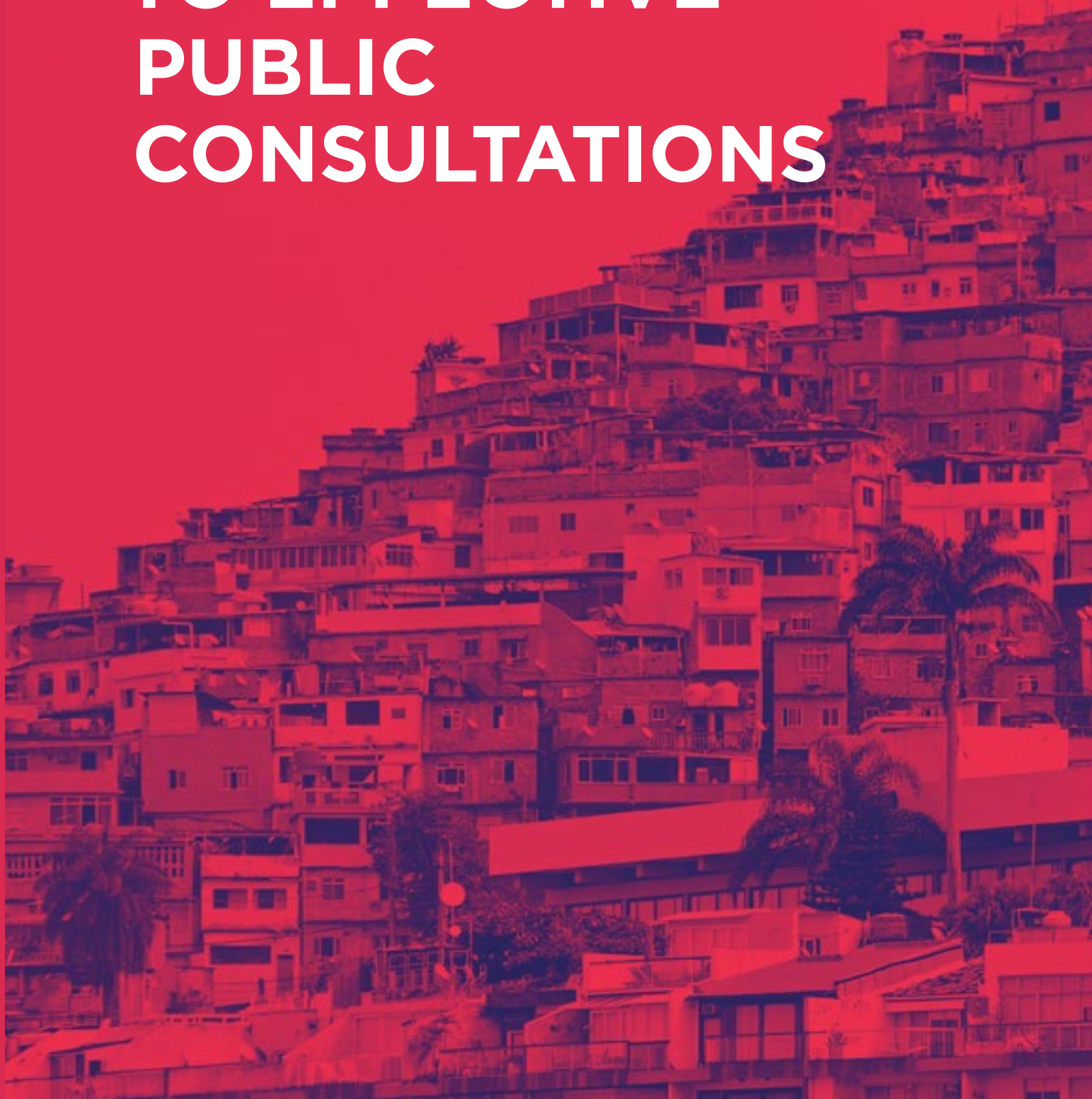
⁵ All these countries are borrowing member countries of the IDB Group.

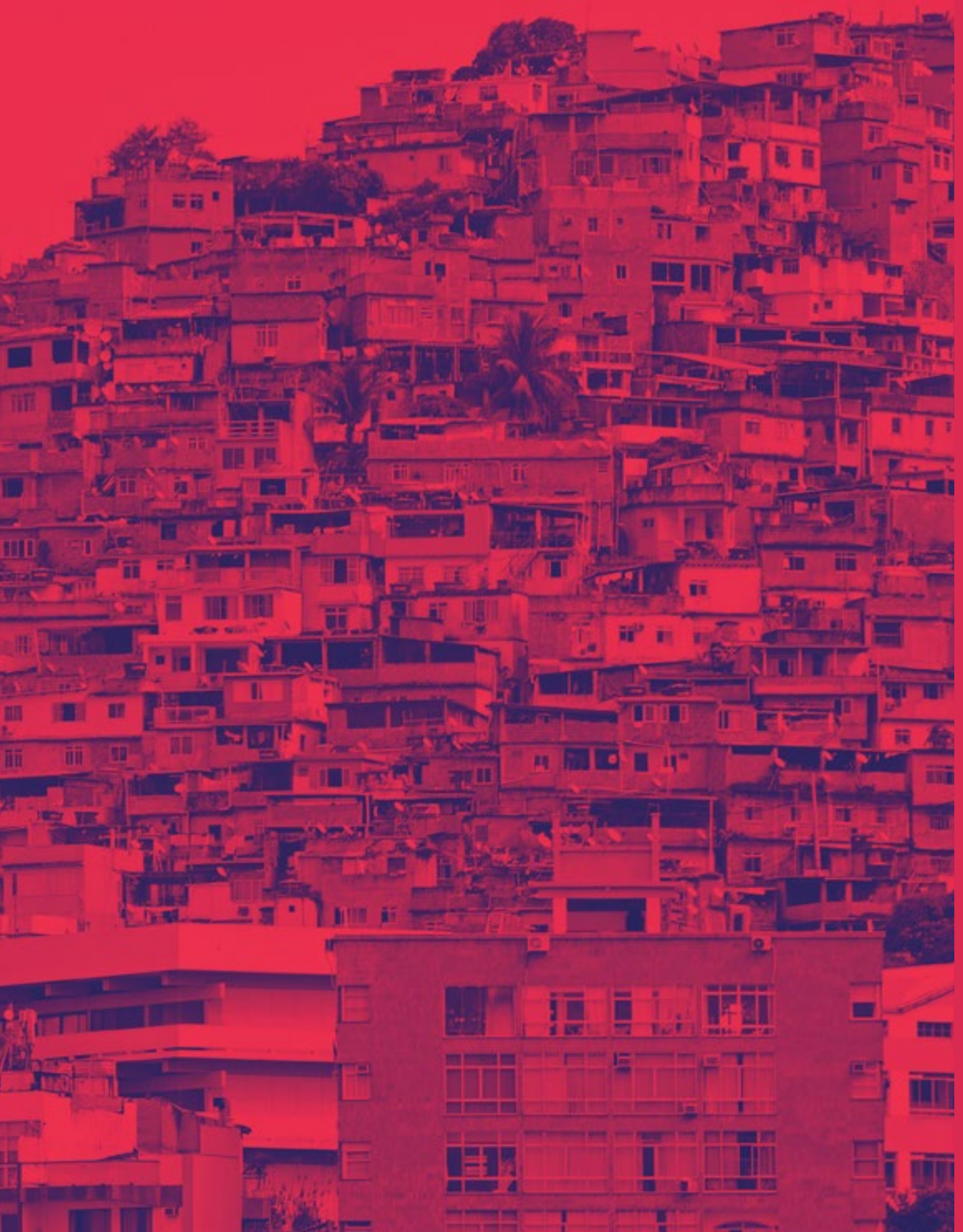
⁶ All data for this publication has been updated as of March 2020 at the national legislation level (not subnational).

⁷ All data for this publication has been updated as of March 2020 at the national legislation level (not subnational).

CHAPTER 1:

THE 4 KEYS TO EFFECTIVE PUBLIC CONSULTATIONS





THE 4 KEYS TO EFFECTIVE PUBLIC CONSULTATIONS

KEY No. 1: KNOW THE CONTEXT

Faced with the region's generally volatile economic contexts, much aggravated by the COVID-19 health emergency, citizens are less likely to prefer future benefits (like large-scale infrastructure projects) to programs that bring positive results in a shorter time span. Such an approach is also valid for vulnerable populations or groups without significant economic resources, whose main concerns tend to revolve around their present and immediate needs and not around a distant medium or long-term vision⁸.

In the same vein, public consultations do not operate out of context, but under specific political, social and economic circumstances that must be taken into account and where transparency plays a pivotal role. In order to better understand the local context, we use and provide artificial intelligence (AI) tools to access information sources in real time, such as [CiviClytiCs](#), and identify groups of interest using geo-referenced live and public maps like [WiConnect](#) and other sources such as previous surveys⁹.

KEY No. 2: INFORM, HOLD DIALOGUES, MAP YOUR STAKEHOLDERS:

The case studies mentioned in the introduction¹⁰ reaffirm the importance of preparatory due diligence actions as a passport to effective public consultations. We can distinguish three specific processes that must take place prior to a public consultation:



Provide and obtain information:

Provide information: Communicating the objectives and results expected from the projects, policies and/or strategies under consultation clearly and periodically is a widely recognized good practice. More often than not, mistrust between communities, institutions and/or executing agencies is mutual. Sometimes, the communities affected suspect the quality of the information provided to them and other times the executing agencies underestimate the capacity of these communities to give valuable inputs. It is therefore crucial to provide the communities concerned with the information they need to know without falling into vague descriptions or overly technical/specific concepts.

8 See Alejandro Izquierdo, Carola Pessino and Guillermo Vuletin (editors), [Mejor gasto para mejores vidas. Cómo América Latina y el Caribe puede hacer más con menos](#), Inter-American Development Bank, 2018.

9 According to AmericasBarometer, the level of trust in public institutions in 2019 was one of the lowest since 2004. On average, trust in the Government was 22%, in the Legislature 21%, in the Judiciary 24%, and in political parties 13%. For its part, the Latinobarómetro report for 2018 indicated that trust in the central institutions of democracy was one of the lowest since 1996, with a drop in trust in the private sector too. On average, 38% of the Latin American and Caribbean population trust national companies and 34% trust foreign companies. In this respect, see Zechmeister, Elizabeth J., and Noam Lupu (editors) Pulse of Democracy. Nashville, TN: LAPOP, 2019 and [visit Latinobarómetro here](#).

10 For information on good engagement practices of the IDB group, see the following case studies: [water source management](#); [labor markets](#); [climate change adaptation](#); [open data](#) and [road infrastructure](#). Also see Graham Watkins, et al. Ut supra.

Collect information: Evidence shows¹¹ that eliciting feedback from the stakeholders concerned and understanding their stance (and perceptions) about a certain issue increases the chances of explaining and clarifying doubts (instead of limiting our discourse to what we initially had in mind), thus enabling the construction of a shared agenda.

We have seen that those groups whose needs are genuinely valued and considered tend to change their perceptions and are more willing to enter into a relationship of trust with the other party, a critical and intangible value for the sustainability of any operation. Feedback can be collected by means of surveys during onsite visits or artificial intelligence (AI) tools during large-scale interventions. AI enables the analysis and processing of millions of data shared online for a better systematization of the public's perceptions, concerns and/or needs¹², which will ultimately have a major impact on the result of the consultation. In line with the above, the IDB Group has launched *Civicytics*¹³, an online platform which, among other functionalities, allows obtaining aggregated, structured and real-time information about the perceptions and concerns citizens post and share through the Internet.



Hold dialogues (not to be confused with consultations):

Once relevant information about the operation/policy/strategy is shared with the communities affected and feedback on perceptions and concerns is collected via field studies, surveys or AI tools, the next step is to organize thematic dialogue tables in preparation for an effective public consultation.

to smooth out any potential rough edges and improve communication between the parties, since they are not governed by strict legal or regulatory frameworks. Still, it must be remembered that dialogues are informal instances so it is also necessary to prepare a formal agenda with the topics set for discussion. Unlike public consultations, dialogues do not have as their main purpose to produce a concrete or actionable outcome or result, regardless of how desirable this may be. Their goal is to enable spaces for open, frank exchanges to present the different positions about the relevant topics. The fact that dialogues are voluntary contributes to building relationships of trust.



Map your stakeholders:

During both preparatory moments, stakeholder mapping is a dynamic process, as the initial information is continually updated with new inputs received during the stages of information and dialogue. In an effort to have a live, georeferenced map by country, the IDG Group has launched its *WiConnect*¹⁴ platform, which is regularly updated by its thousands of members. The platform helps to understand who is doing what, where and how in the region by providing access to the profiles of organizations and relevant group representatives.

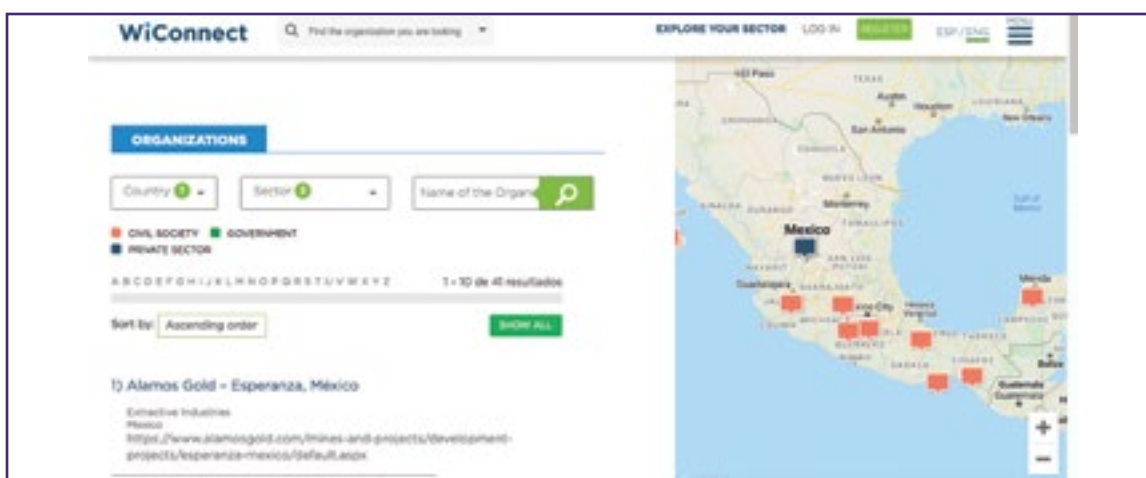
¹¹ A recent study determined that 68% of the infrastructure projects associated to social and/or environmental conflict had not been transparent in the way information was provided and decisions were made. The same study revealed that many of the communities interviewed were not initially hostile to the project, but changed their position after realizing they were not considered in the decision-making stage or information about the project was simply not shared with them. In this respect, see Graham Watkins, et al. *Ut supra*.

A more recent study established that in 47% of the claims received by the IDB's Independent Consultation and Investigation Mechanism (MICI) the claimants reported the information on the project was insufficient or untimely or that they simply did not have access to it. In this respect, see MICI et al. *Ut supra*.

¹² For experiences aimed at capturing the public's concerns and perceptions using Artificial Intelligence (AI) visit [Civicytics](https://civicytics.citibeats.com/#/). Also check the CIVICO publication *ut supra*.

¹³ See <https://covid19-civicytics.citibeats.com/#/>

¹⁴ See <https://wiconnect.iadb.org/en/>



KEY No. 3: PLAN, PLAN, PLAN¹⁵

As stated above, public consultations are an integral part of planning for effective citizen/community participation, and therefore should be addressed with a systemic approach. Public consultations may be held when (a) a regulatory framework is in place for different sectors (energy, fishing, extractive industries, etc.); (b) a regulatory and legal framework concerning indigenous peoples mandates so; (c) a donor operational policy establishes mandatory compliance in order to move forward with an operation, strategy or policy.

Once the mapping, information and dialogue actions have been planned and conducted, the public consultation is held following a

consultation plan shared with participants. Unlike information and dialogue actions that are (or should be) ongoing, public consultations are carried out at specific moments specified in the legislation or applicable operating policy, with objectives such as:

- Share the points/questions subject to consultation in order to elicit inputs on which decisions will be made.
- Obtain new inputs previously not considered during the information and dialogue preparatory stages.
- Validate and verify the data obtained during the preparation stage, as well as new data.
- Identify potential risks and opportunities that contribute to the sustainability of the issue consulted and were previously unknown.

BOX 1: POINTS AND PRINCIPLES OF MEANINGFUL PUBLIC CONSULTATIONS¹⁶

- ▶ **Preparation:** Conduct previous mapping and information actions (both to give and obtain information) as well as dialogues with stakeholders in an ongoing and recurrent manner along the entire project cycle, starting as early as possible.
- ▶ **Representativeness/equality:** Ensure different stakeholder groups are represented and participate. To do that: a. determine which actors potentially affected and benefited by the project should be part of the public consultation, including minorities and vulnerable groups; b. disaggregate data by gender; c. ensure consultation methodologies have been considered to guarantee a voice for vulnerable groups (seniors, LGBTIQ community, minorities, Afro-descendant and/or indigenous peoples, etc.).
- ▶ **Fair timing:** Hold the consultation before making any final decisions, when people still have the power to influence them with their inputs and participation.

¹⁵ See Flavia Milano and Andrea Sanhueza, *Public Consultations with Civil Society: Guidelines for Public and Private Executing Agencies*, Inter-American Development Bank, 2016.

¹⁶ See Flavia Milano and Andrea Sanhueza, *ut supra*.

- ▶ **Resources:** Assign human and financial resources (the former especially in the case of cultural mediators engaged in consultations with indigenous peoples).
- ▶ **Transparency:** Share the different stages and scheduling of each step, including the nature, scope and timeliness of stakeholders to influence the decisions regarding the issue being consulted.
- ▶ **Accessibility:** Ensure accessibility: (a) physical (transportation¹⁷ for cases of rural areas or vulnerable groups, special transportation for people with disabilities); (b) jargon (technical or non-technical); and (c) language (in case of indigenous languages without a written tradition).
- ▶ **Legitimacy:** To ensure the legitimacy of the process, provide access to the inputs received and the list of participants, even to people alien to the process, unless the regulation prohibits so. Only the author of each specific input is kept confidential to guarantee the freedom and continuity of comments.
- ▶ **Documentation:** Keep meeting minutes to record and document each step of the consultation process. Given their legal nature, public consultations must be systematically documented in minutes agreed for public dissemination by all participants. The method chosen to document the process – audio, video, written minutes, etc. – must also be determined.

COSTS DUE TO SOCIAL CONFLICT AFFECTING LARGE-SCALE INFRASTRUCTURE AND EXTRACTIVE OPERATIONS



Data on infrastructure investments suggests that this type of investment contributes to higher levels of per capita income in many countries of the region¹⁸. Within this category of large-scale operations, the extractive sector¹⁹ constitutes 4% of the region's GDP, similar to the income from agriculture.

In this scenario, the role of public consultations is critical. In fact, all large-scale infrastructure or extractive projects entail the deployment of heavy machinery across large plots of land, and with it a process of competition with local inhabitants for the use of local resources like water or energy for extended periods of time (often several years). This type of project usually causes a major impact on the environment and territorial social arrangements. Assuming that these operations will be free of conflict can seriously undermine the overall success of the project.

continued

¹⁷ Ensuring local transportation is critical in the case of consultations held in remote areas and for people without the resources to travel to the consultation venue. See Flavia Milano and Andrea Sanhueza, *ut supra*.

¹⁸ In Argentina, Bolivia, Chile, Costa Rica, Jamaica and Peru, the lack of investment in infrastructure, as well as delays and standstills in infrastructure investments, have a 1% impact on the country's GDP during the first year. This cost may even reach 15% of lost growth if the lack of investment persists for a period of 10 years. In this respect, see Eduardo Cavallo and Andrew Powell (coordinators), *Construir oportunidades para crecer en un mundo desafiante*, Inter-American Development Bank, 2019.

¹⁹ See Flavia Milano, *Extractive Sector and Civil Society: When the Work of Communities, Governments and Industries Leads to Development*, Inter-American Development Bank, 2018.



Case studies have shown that operations in the order of 5 billion dollars lose as much as 20 million dollars per week due to social conflicts²⁰. Also, conducting consultations without adequate planning (including preparatory mapping, information and dialogue actions) is a chancy business, as it may increase the risks of an operation.



A study by the IDB²¹ on the nature and consequences of conflict in infrastructure projects²² identifies the origin of conflicts as a multidimensional phenomenon that is more dynamic than traditionally thought. 81% of the projects reviewed experienced delays, with cost overruns in 58% of the cases examined²³. Similarly, researchers verified that 46% of the conflicts arise during the feasibility, planning and design phase, while 44% arise during the construction phase²⁴. This confirms the strategic importance of planning the mapping, information and dialogue actions from the very onset in order to clear the way for effective public consultations.



Investing time and resources early on in order to identify local opportunities for supporting the sustainability of the operation or to anticipate potential conflicts is part of the risk mitigation strategy. A study conducted by the IDB²⁵ showed that in 69% of the projects affected by some sort of conflict the developer had held the public consultation after the conflict had already broken out and delays and cost overruns had been incurred²⁶.



It is important to consider that the advent and lower cost of new transaction technologies have given the public a new role as actors of change, and the communities adjacent to a certain project are no exception. In the past, consulting the population concerned was seen more as a formal procedure than a substantive one, so many public consultations were held with no other purpose than to satisfy the requirement. While meeting this obligation helps to move on with the project, the drastic change in the public's role and their hyper-connectivity dramatically increase the risks of ignoring their voice..

20 See Daniel M. Franks, Rachael Davis, Anthony J. Bebbington, Saleem H. Ali, Deanna Kemp and Martin Scurrah, "[Conflict translates environmental and social risk into business costs](#)", vol. 111, number 21, Proceedings of the National Academy of Sciences of the United States of America (PNAS), 2014.

21 See Graham Watkins, et al. Ut supra.

22 The study includes an analysis of 200 infrastructure projects affected by conflicts in the natural resource extraction, energy, waste, water, transportation and urban infrastructure sectors. The cases were taken from experiences in 20 countries of Latin America and the Caribbean.

23 The delays recorded in the literature consulted were 5 years on average. Also, it was determined that the cost incurred by those projects for which information was publicly available (not in all the cases) overran the original budget by 69.2%, equivalent to US\$ 1.170 billion.

24 The data presented is consistent with a survey applied to actors involved in infrastructure projects, who reported that 32% of conflicts begin during the planning stage and reach their peak during the construction stage (49% of the cases).


25 See Graham Watkins, et al. Ut supra.

26 The factors that can precipitate hostilities include the failure to reply to concerns expressed by the community; technical personnel dismissing community concerns as "unscientific" or "lacking evidence"; the presence of militant organizations that paint the situation as "either black or white"; and the government's failure to mediate impartially between opposing stances and perspectives.

KEY No. 4: THE THREE PHASES OF PUBLIC CONSULTATION



PREPARATION

Actions required for preparing a public consultation	Due Diligence 
Review the applicable legal framework	Ensure compliance with applicable regulatory frameworks (see Section 3), as well as environmental or other operational safeguard policies (applicable to operations funded by donors or financing entities like the IDB Group ²⁷).
Elicit perceptions and concerns	See Key No. 1 and Key No. 2 above.
Inform about the main concerns	
Organize thematic dialogue tables to delve further into the concerns identified	
Map the actors concerned	
Confirm the integration of principles applicable to public consultations	See Box 1: Points and Principles of Meaningful Public Consultations.
Prepare the consultation plan	See Annex III Consultation Plan Model For online consultations, see Section 2.
Decide on the strategy for publicizing the public consultation	Determine the frequency and means utilized during each phase of the consultation (invitation, results, monitoring).

²⁷ In the case of operations financed by the IDB and/or IDB Lab, the following operational policies will apply: access to information (OP-102); environment and safeguards compliance (OP-703); natural disaster risk management (OP-704); public utilities (OP-708); involuntary resettlement (OP-710); gender equality in development (OP-761); and indigenous peoples (OP-765).

In the case of operations financed by IDB Invest, the following policies will apply: disclosure of information and environmental and social sustainability.

At the time of preparing the present publication, the IDB is in the process of modernizing its environmental and social policies. In consequence, we strongly suggest reviewing any updates made during the process.

Actions required for inviting to and implementing a public consultation	Due Diligence
Invite interested parties to participate in the public consultation at least 15 days in advance.	<p>Once the mapping, information and dialogue phases have been completed, invite the stakeholders concerned at least 15 days in advance. Consider that the applicable legislation may require the consultation to be applied to pre-established groups (See Section 3 for the applicable legislation for each sector).</p> <p>For further details about experiences with indigenous peoples, see Box 2 "Consultation to Indigenous Peoples".</p>
Determine the format of the public consultation (in person and/or online)	<p>Under normal circumstances, in-person consultations appear to be more effective, as they tend to observe local customs. If this is the case, when deciding whether the consultation will be in person or online, consider both geographical accessibility (easy access to the consultation venue) and/or online accessibility (ease of use and frequency of Internet access).</p> <p>Before the COVID-19 epidemic, online consultations were targeted at specific groups, mainly to obtain inputs on topics easily addressed online. After the COVID-19 crisis, consultations must consider alternative options. For more details, see Section 2.</p>
Disseminate the Public Consultation Plan + the document under consultation + Conduct the Public Consultation	<p>Call for and conduct the Public Consultation after disseminating the Consultation Plan, which includes the document under consultation.</p> <p>See Annex III Consultation Plan Model</p>



BOX 2: CONSULTATIONS TO INDIGENOUS PEOPLES

Context: With a population of over 45 million individuals, indigenous peoples are one of the most neglected groups in the region²⁹. The loss of identity and culture, coupled with a bigger exposure to disease³⁰, are still major challenges for these peoples. Recognizing the state of vulnerability indigenous peoples have to face underscores the importance of prioritizing their fundamental rights according to the United Nations Declaration on the Rights of Indigenous Peoples³¹.

Process: The success of a consultation with indigenous peoples will largely depend on its compliance with the obligation of observing the right to Free, Previous and Informed Consent (FPIC)³² and the existence of a preparatory phase (See Key No. 1 and Key No. 2). Observing FPIC protocols ensures indigenous people will participate voluntarily in the consultation process and that community members will have the freedom to consult with each other³³ before making a decision. Involving indigenous peoples during the preparatory

²⁸ For a Public Consultation Model, see Annex IV.

²⁹ See IDB [Environmental and Social Policy Framework](#) 2019

³⁰ See IDB [Environmental and Social Policy Framework](#) 2019

³¹ See the United Nations [Declaration on the Rights of Indigenous Peoples](#) 2006

³² See IDB [Environmental and Social Policy Framework](#) 2019

³³ See IDB [Environmental and Social Policy Framework](#) 2019

stage not only boosts participation. It also helps to develop a sense of inclusion³⁴ and ownership. Consultation organizers are just as important as the people who participate in it and therefore must have the capacity to negotiate and decide³⁵.

Participant diversity may be hampered if the jargon or the language of the materials under consultation are not appropriate (See Box 1, paragraph 6 “Accessibility”). So, despite the fact that consultations may resort to technologies enabling the translation of an official language, some indigenous communities with a purely oral tradition may still lack access to them. In this context, recruiting culturally experienced translators, including members of the community, is a helpful resource to avoid leaving sub-groups and individuals³⁶ out. Also, it is important to identify locally appropriate ways to include women and youth³⁷.

3 PHASE FEEDBACK AND CLOSURE

Actions during the provision of feedback and Public Consultation closure	Due Diligence
Documentation of the phases, assistants and systematization of inputs	<p>Prepare minutes with a list of the inputs received at the end of each phase to ensure transparency (See Box 1, paragraph 9 “Documentation”).</p> <p>Keep a record of participants³⁸ (See Box 1, paragraph 8 “Legitimacy”).</p> <p>Systematize inputs and identify those that were incorporated and those that were dismissed.</p>
Feedback on inputs and closure	<p>During the input feedback phase, distinguish between the contributions that were incorporated and those that were dismissed. Once feedback is provided (generally via email), the consultation process closes and the operation, strategy and policy are circulated among stakeholders.³⁹</p>

³⁴ See [Operational Policy on Indigenous Peoples and Strategy for Indigenous Development](#) 2006

³⁵ See Indigenous Corporate Training Inc [Meaningful Consultations with Indigenous Peoples](#), 2018.

³⁶ See Harvard Journal of Law and Technology Volume 25 # 1 Fall 2012. III. Lets Not Make it Worse: Issues to Consider in Adopting New Technologies (Bonnie Rose Hughes).

³⁷ See World Bank [Indigenous Latin America in the 21st Century](#), 2015.

³⁸ “Consultations with stakeholders must be systematically documented, retaining the evidence and the contributions leading to the decisions made during each phase of the consultation. This is especially true for situations of potential difficulties or opposition to a certain project where stakeholders claim they were not consulted appropriately.” See Flavia Milano and Andrea Sanhueza, *ut supra*. Also see Kvam, Reidar, *ut supra*, specifically Section 9 on “Documentation and public disclosure”.

³⁹ See Flavia Milano and Andrea Sanhueza, *ut supra*. Also see Kvam, Reidar, *ut supra*, especially Section 9 on “Documentation and public disclosure” and Section 7 on “Feedback to stakeholders and transparency in decision-making”.

BOX 3: BEWARE THE CONSULTATION FATIGUE SYNDROME

Consultation fatigue occurs mainly when the objective of the public consultation becomes blurred, transforming it into a collection of dialogues. Below are four problems, with their corresponding solutions to avoid the fatigue syndrome:

- ▶ **Too many unplanned consultations:** Whether because there are too many or too few, the number of public consultations affects the final result. The number of consultations must adhere to the applicable legal and regulatory framework. To avoid excess, preparing the process with information and dialogue is key (See Key No. 2 above).
- ▶ **Lack of clarity and poor dissemination of the Consultation Plan:** Failure to inform the phases and the next expected steps may lead to unrealistic expectations and conflicts. This may be avoided by conducting information and dialogue actions and by disseminating the Consultation Plan on a timely basis (See Key No. 4, especially phases 1 and 2).
- ▶ **Blurred consultation objective:** Consultations are sometimes used as mere information or dialogue platforms, without addressing the main goal of collecting inputs for decision-making. To avoid this, the preparation, implementation and closure phases must be clearly separated (See Key No. 3 and Annex III).
- ▶ **Lack of feedback to the inputs contributed by the public:** Receiving inputs without providing feedback about the use or the impact of those inputs usually fuels a feeling of being disrespected and distrusted among participants. To avoid this, follow the steps in Phase 3 of the consultation process (See Key No. 4 and Annex III).

BOX 4: GRIEVANCE REDRESS MECHANISM

It is a good practice to establish a grievance redress mechanism on site for large-scale infrastructure operations, especially in rural areas or zones inhabited by indigenous communities. This fact was also recognized by the IDB's Environmental and Social Policy Framework (EDPF). The mechanism was established to give communities the opportunity to express their concerns and suggestions in an anonymous and protected way during project implementation. This due diligence practice is a good way to anticipate problems that may lead to potential conflicts⁴⁰.

⁴⁰ See Flavia Milano and Andrea Sanhueza, *ut supra*. Also see Kvam, Reidar, particularly Annex II on "Grievance Redress Mechanisms at Project Level".

BOX 5: SUMMARY OF THE STEPS TO FOLLOW

1. Begin the consultation process

See “The 4 keys to Effective Public Consultations” in Section 1 and the Consultation Plan Model in Annex III.

2. Include applicable regulatory and legal frameworks by country and sector.

Section 3 “National Regulations on Public Consultations”.

**3. Include the principles of good practice and specific cases.**

See Box 1: “Points and Principles of Meaningful Public Consultations”

4. Incorporate specific regulations regarding indigenous peoples.

See Section 3 “National Regulations on Public Consultations”.

5. Apply IDB and IDB Invest applicable operational policies.

In case of discrepancies with the national regulations, the most stringent regulation shall prevail. See Annexes I and II for operations related to IDB and IDB Invest, and Annex III for operations with other Multilateral Development Banks.



CHAPTER 2:

ONLINE CONSULTATIONS: THE LESSONS OF COVID-19



ONLINE CONSULTATIONS: THE LESSONS OF COVID-19

The COVID-19 health emergency has signified new challenges to the realization of public consultations on operations, policies and strategies with representatives of indigenous peoples and communities in rural and/or low-connectivity areas. The challenge has also created an opportunity to delve more deeply into a system of online consultations already in use with specific audiences, although just as a temporary resource. The pandemic, however, has paved the way for its full integration into the public consultation process.

The actual effects and scope of new technologies applied to effective public consultations are still unknown. On the one hand, we believe nothing will replace in-person public consultations, but on the other we are convinced that eliciting meaningful inputs from the public is crucial to advance in development issues. Faced with an emergency or disaster scenario, all resources available must be activated so that nobody is left behind. This includes studying and promoting online consultations using the best technological platforms.



BOX 1: THE CHALLENGES OF ONLINE CONSULTATIONS

The challenge of distance: Although the challenge of physical distance may be mitigated by resorting to technological tools like videoconferences and the like, digital literacy and Internet Access still constitute a major barrier⁴¹. These challenges are not exclusive to indigenous and rural communities, but disregarding their negative impacts will only help to magnify them. For this reason, in these contexts the recommendation is to collect inputs using a combination of digital tools, including telephone calls, text messaging, and traditional mail.

The challenge of digital access: In most countries of the region, more than 50% of the population has access to a mobile phone, except Haiti, where access is only 43%⁴². But even if access is not an issue, the quality of the connection is not always reliable. Therefore, those consultations that rely purely on the use of the Internet run the high risk of leaving a sizeable portion of the population out⁴³. With this in mind, it is important to ensure the online consultation plan includes asynchronous communication modes that are not exclusively dependent on an Internet connection, such as telephone calls or text messaging.

41 See Harvard Journal of Law and Technology Volume 25 # 1 Fall 2012. III. Lets Not Make it Worse: Issues to Consider in Adopting New Technologies (Bonnie Rose Hughes).

42 See Fabricio D'almeida; Diego Margo *La Evolucion de las telecomunicaciones movil* 2018

43 See ITU *The State of Broadband 2017; Broadband Catalyzing Sustainable Development* 2017.

The challenge of digital gaps: Technology gaps in marginalized or vulnerable communities cause a direct impact on the diversity of the groups represented in online consultations. While the use of smartphones is effectively increasing in all demographic segments, it is more frequent among younger individuals⁴⁴, though not always in the same proportion. In Brazil, for instance, the number of youth using a smartphone grew by 24%, while the number of adult users over 50 years only grew by 16%⁴⁵. For its part, in Mexico the number of youth and seniors over 50 who use a smartphone grew by 12 and 20% respectively⁴⁶. Age is therefore a more important differentiating attribute than gender with respect to smartphone access and use⁴⁷. For this reason, the recommendation is to design online consultations that also include traditional participation mechanisms, such as landline calls.

KEYS TO CONCEIVE ONLINE PUBLIC CONSULTATIONS

BASE KEY: PROCEED WITH KEYS No. 1, 2, 3 AND 4!

Online consultations require the same actions presented in Section I for in-person consultations, i.e. understanding the reasons for the consultation⁴⁸, preparation⁴⁹ (information, dialogue, mapping)⁵⁰, implementation and closure⁵¹.

KEY No. 5: FOCUS ON THE AUDIENCE

In order to successfully carry out an online consultation, it is important to consider the following four factors about the audience:

- **Availability:** For whom the technology is (not) available? How can we make it available?
- **Accessibility:** For whom the technology is (not) affordable? How can we offset those expenses?
- **Knowledge:** Who is (not) familiar with the technology considered? How can we make tutorials to facilitate understanding?
- **Ability and Influence:** Who has (no) digital knowledge to use the technology effectively and “make their voice heard”? Which simple mechanisms can be made available to make stakeholder voice heard and/or provide basic digital training?

The design of in-person and online public consultations will vary depending on the audience. Ensuring the accessibility, representativeness and equality of online consultations from the very beginning is also possible⁵². Today, technology allows including people with disabilities (blindness, visual and hearing impairment, deafness, dumbness) by providing increased details about the functionalities offered by the software and/or platform used.

During the preparation phase, it is particularly important to consider that most indigenous peoples have a purely oral tradition and that there may be major access restrictions in areas of low connectivity. For this reason, it is advisable to provide and elicit information via telephone calls. During this stage, one important challenge is to implement toll free numbers for participants and to document the inputs received orally.

One of the lessons we have learned is to spread the same online consultation in real time over different days⁵³. The reason for this is to respect the participants’ personal time constraints and external obligations and to prevent potential connection issues due to the lack of technological infrastructure.

44 See Pew Research. *Smartphone Ownership is Growing Rapidly Around the World Not Always Equally*. 2019

45 See Pew Research. *Smartphone Ownership is Growing Rapidly Around the World Not Always Equally*. 2019

46 See Pew Research. *Smartphone Ownership is Growing Rapidly Around the World Not Always Equally*. 2019

47 See Pew Research. *Smartphone Ownership is Growing Rapidly Around the World Not Always Equally*. 2019

48 See Key No.1 in Section I of this publication.

49 See Key No.3 in Section I of this publication.

50 See Key No.2 in Section I of this publication.

51 See Key No.4 in Section I of this publication.

52 See Box 1: Principles of Effective Public Consultations, in Section I above.

53 See Flavia Milano and Andrea Sanhueza, ut supra. *Public Consultations with Civil Society: Guidelines for Public and Private Executing Agencies*, Inter-American Development Bank, 2016.

The most effective manner we could find was to allocate the first 30 to 60 minutes of the consultation to present the matter of discussion and to answer technical questions before participants can exchange their points of view in real time. The remaining 60/90 minutes were devoted to the classroom or chat group (sessions had a total duration of two hours).

Also, spreading the online consultation in real time over multiple days proved to be a good decision because it gave indigenous representatives the opportunity to return to their communities and consult with them. This is a point that we will continue studying with a sight on future consultations.

KEY No. 6: USE GRAPHIC RESOURCES

Another challenge we had to face was to convert as much information as possible into graphs. To do this, we focused on using graphic resources like images, diagrams, charts and even explanatory videos.

KEY No. 7: COMBINE METHODOLOGICAL ALTERNATIVES FOR THE ONLINE CONSULTATION

The inability to predict the COVID-19 health crisis and its magnitude made it impossible for us to fully test the effectiveness and real scope of the methodologies we developed during this emergency. Therefore, it is important to remember that they are still in an incipient phase of development and under permanent study and follow-up. However, in a trial-and-error effort, we propose three possible alternatives to in-person consultations for use when in-person consultations are not an option, or, as stated above, as a lesson learned to continuously improve future public consultation processes:

1. Online public consultations (in real time): During our tests of different methodologies, we invited people to participate online and in real time in our virtual classrooms using an experimental tool developed by the IDB and other popular platforms like Teams or Zoom. During this preparatory stage, we designed a simple training program conceived as a basic introduction to the use of technological tools. Also as preparation, we exchanged prior information (emails

with the document set for consultation and related questions), designed surveys to identify participant stances, considered the use of AI in those areas where we were already collecting citizen perceptions and concerns regarding the issue at hand. For the consultation itself, we considered virtual classrooms/video calls with groups of 30 to 50 participants lasting 2 hours each to obtain their inputs.

As mentioned before, and given the unforeseeable magnitude of the global health emergency, we acted as soon as we could to respond to every new challenge as it arose. We also considered extending the consultation period by dividing it into two rounds or two hours each, separated by one week to prevent the exhaustion produced by online meetings.

2. Online public consultations (in non-real time): As a Bank, we had already tested different experiences, creating ad hoc virtual platforms. Faced with the COVID-19 scenario, we maintained the same approach and held online public consultations in real time. We made an invitation to a large number of participants to join these ad hoc virtual platforms where the audience could provide inputs regarding the strategy/policy document by answering the same questions asked during online public consultations in real time.

The advantage of consultations in non-real time is that the audience had the flexibility to respond at their convenience⁵⁴. **Online consultations in non-real time are a non-exclusive complement to public consultations in real time (or in-person public consultations prior to the COVID-19 pandemic)**, since they allow a larger number of stakeholders to contribute their inputs and influence the decision-making process.

3. Exploring public consultations via telephone (in real time): The oral tradition of most indigenous peoples and the restrictions to technology access in low-connectivity areas led us to explore the effectiveness of telephone consultations. Following all the steps mentioned in this publication, a Consultation Plan was designed that could be shared with local




⁵⁴ The recommendation is to hold online consultations in non-real time over a minimum of two weeks. See Flavia Milano and Andrea Sanhueza, *Public Consultations with Civil Society: Guidelines for Public and Private Executing Agencies*, Inter-American Development Bank, 2016.

authorities representing the communities involved. As part of the preparation for the consultation (information and dialogue, see Key No. 1 in Section I) text messages were sent in order to receive simplified answers.

However, we realized that conducting public consultations over the phone has a number of limitations. They may be appropriate during the preparation of the process to provide guidance around the topics that will be addressed during the consultation, but text messages are simply not viable in a consultation that seeks to obtain higher levels of recommendations to decide on a certain course of action.

Some of the difficulties we encountered were the inability to implement toll free numbers without associated costs for the participant or requiring an Internet connection, and the difficulty to document the inputs received verbally.

Holding online public consultations in real time and online public consultations in non-real time has been the most effective way to obtain meaningful inputs, the impacts of which are still under study. Finally, we believe telephone exchanges cannot be considered public consultations (since they do not secure the principles of representativeness, equality, transparency and legitimacy)⁵⁵ although they may be very useful during the consultation preparation phase.

Format	Benefits	Limitations
Online Public Consultations (in real time) 	<ol style="list-style-type: none"> 1. Direct exchange between stakeholders with knowledge of the main topic to receive high-quality inputs/recommendations. 2. Lower cost than in-person consultations. 	<ol style="list-style-type: none"> 1. Little knowledge and/or access to digital platforms, especially in certain urban areas, rural, indigenous or low-connectivity areas. 2. Participation is hampered by the quality of connectivity. This is particularly true for consultations that utilize streaming. 3. More days required to prepare and conduct the consultation.
Online Public Consultations (in non-real time) 	<ol style="list-style-type: none"> 1. Greater diversity and inclusion of stakeholders (geographical reach, special needs). 2. Schedules may be adapted for increased participation. 	<ol style="list-style-type: none"> 1. Inputs not always relevant for the issue consulted. 2. Little knowledge and/or access to online platforms. 3. Participation is hampered by the quality of connectivity.
Telephone Exchanges 	<ol style="list-style-type: none"> 1. Immediate, far-reaching and simple communication to prepare the consultation. 2. Greater direct inclusion of stakeholders (geographical reach, special needs), unlimited number of participants. 	<ol style="list-style-type: none"> 1. Specific software required to document the inputs received, including specific budget. 2. Limits imposed by the service plan regarding the minutes available for calls and messaging. 3. Limited scope, not broad enough to be considered a public consultation.

⁵⁵ See Box 1 in Section I above: "Points and Principles of Meaningful Public Consultations".

CHAPTER 3:

REGULATORY AND LEGAL FRAMEWORKS BY COUNTRY AND SECTOR



Public consultation with civil society¹ in the framework of the national legislation of **Argentina**, the IDB group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Argentina as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Argentina.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

Public consultations or hearings are a mandatory requirement before approving development plans that may have a significant negative impact on the environment. The outcome of the consultation is not a binding obligation, but if the authorities' judgment conflicts with the opinions of the community, authorities will need to justify their stance and make it public. The Ministry of the Environment and Sustainable Development, through the Environmental Health Unit, will provide spaces for public discussion around environmental health issues.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN ARGENTINA²: Laws and regulations regarding participation and/or consultation on environmental matters



Infrastructure

Executive Power Decree No. 1185/90, published on 22nd June 1990³.

Resolution No. 57/96 from the Secretariat of Communications, published on 3rd September 1996 (Annex 1)⁴.

COUNTRY LEGISLATION:

With regard to information technologies and telecommunication, the competent authority may call to a public hearing to consult on matters with a potentially serious social impact. Any person with a genuine interest in the issue is welcome to participate.

Step 1 ► The authority convenes the hearing and chooses the location where it will be held. The call must be posted in a daily newspaper of national circulation at least 20 days before the date set for the hearing.

Step 2 ► During the preparatory stage, a court officer is appointed to act as impartial mediator in identifying participants, establishing time limits, disseminating the facts and receiving evidence.

Step 3 ► Individuals or organizations wishing to participate must provide the court officer with personal or institutional data and justify their interest in the issue at hand.

Step 4 ► The court officer distributes copies of the evidence and relevant documents to participants in the hearing.

Step 5 ► Once all participants have been accredited, they can submit their representations in writing up to five days before the public hearing is set to commence.

Step 6 ► The court officer invites participants to conciliation meetings. If disagreements are resolved during the preparatory stage, participants will sign a document for submittal to the competent authority, who will have 10 days to make a decision. In any case, the court officer will have three days to prepare a final report and submit it to the competent authority.

Step 7 ► Once the preparatory stage concludes, the formal public consultation begins. The head of the competent authority leads the process and all interventions are made orally. The entire hearing is recorded. The president may call to as many meetings as s/he deems necessary. Once the parties and witnesses have made their representations, the head of the competent authority issues a final resolution.



Energy

Resolution No. 164/16 from the Ministry of Energy and Mining, published on 29th August 2016⁵.

COUNTRY LEGISLATION:

The Advisory Council for Energy Policy provides spaces for discussing policies and energy plans with the public in order to create consensus.



Forestry

Law 26.331 for the Environmental Protection of Native Forests, enacted on 19th December 2007⁶. Art. 26.

Supplementary Law to National Law No. 26.331, published on 16th February 2009⁷.

COUNTRY LEGISLATION:

Citizen participation is required for all projects involving native forest exploitation. Provincial authorities have incorporated these procedures into their institutional frameworks.



Environmental Impact Assessment System

General Environmental Law⁸, adopted on 6th November 2002⁹. Articles: 19; 20; 21. Annex to Resolution No. 257/16 from the Ministry of the Environment and Sustainable Development¹⁰, published on 10th June 2016

COUNTRY LEGISLATION:

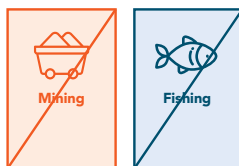
Public participation is an essential component in environmental impact assessment and land use planning procedures. Provincial authorities have incorporated these procedures into their institutional frameworks.



Other

Law No. 24.375¹¹ on the ratification of the Convention on Biological Diversity, published on 06th October 1994. Art. 14.1.a.

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.



- ▶ Public consultation with indigenous peoples in the framework of the national legislation of **Argentina**, the IDB Group's operational policies, guiding principles and good practices

This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the legislation of Argentina as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Argentina.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied, especially the Indigenous Peoples Policy and the Indigenous Development Strategy. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN ARGENTINA: laws, regulations and other measures concerning the implementation of convention 169



Indigenous Population

Argentina ratified ILO Convention 169 on 3rd July 2000. No legislation was identified regarding Indigenous Consultations.

COUNTRY LEGISLATION:

In Argentina, indigenous issues have been given constitutional rank (Constitution, Art. 75, paragraph 17) and ILO Convention 169. The supplementary law concerning these paragraphs has not been enacted.

Law 26.331 for the Environmental Protection of Native Forests, enacted on 19th December 2007¹². Art. 19.

Supplementary Law to National Law No. 26.331, published on 16th February 2009¹³.



Forestry

COUNTRY LEGISLATION:

All projects targeting the exploitation or sustainable management of native forests must observe the rights of the indigenous communities concerned.

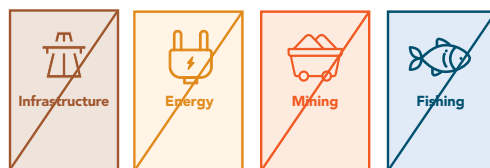


Environmental Impact Assessment System

COUNTRY LEGISLATION:

The supplementary law to add precision to the principles enunciated in the Constitution (Art. 75, paragraph 17) and ILO Convention 169 has not been enacted.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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



References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation contains obligations regarding citizen consultations.
- 3 See <http://www.saij.gob.ar/1185-nacional-creacion-comision-nacional-telecomunicaciones-dn19900001185-1990-06-22/123456789-0abc-581-1000-0991soterced?q=%28numero-norma%3A1185%20%29&o=13&f=Total%7CTipo%20de%20Documento/Legislaci%F3n/Decreto%7CFecha%7COrganismo%7CPublicaci%F3n%7CTema%7CEstado%20de%20Vigencia%7CAutor%7CJurisdicci%F3n&t=19>. Last accessed on March 2, 2020.
- 4 See <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=38958>. Last accessed on March 2, 2020.
- 5 See <http://www.saij.gob.ar/ministerio-energia-crea-consejo-consultivo-politicas-energeticas-nv15255-2016-08-26/123456789-0abc-552-51ti-lpsedadevon?q=%28numero-norma%3A164%-20%29&o=0&f=Total%7CTipo%20de%20Documento/Legislaci%F3n/Resoluci%F3n%7CFecha%7COrganismo/MEyM%7CPublicaci%F3n%7CTema%7CEstado%20de%20Vigencia%7CAutor%7CJurisdicci%F3n&t=1>. Last accessed on March 2, 2020.
- 6 See <http://www.saij.gob.ar/26331-nacional-presupuestos-minimos-proteccion-ambiental-bosques-nativos-lns0005381-2007-11-28/123456789-0abc-defg-g18-35000scanyel?q=%28numero-norma%3A26331%20%29&o=0&f=Total%7CTipo%20de%20Documento/Legislaci%F3n/Ley%7CFecha%7COrganismo%7CPublicaci%F3n%7CTema%7CEstado%20de%20Vigencia%7CAutor%7CJurisdicci%F3n&t=1>. Last accessed on March 2, 2020.
- 7 See <http://www.saij.gob.ar/91-nacional-decreto-reglamentario-ley-proteccion-ambiental-bosques-nativos-dn20090000091-2009-02-13/123456789-0abc-190-0000-9002soterced?>. Last accessed on March 2, 2020.
- 8 See <http://www.saij.gob.ar/25675-nacional-ley-general-ambiente-lns0004725-2002-11-06/123456789-0abc-defg-g52-74000scanyel?q=%28numero-norma%3A25675%20%29&o=0&f=Total%7CTipo%20de%20Documento/Legislaci%F3n/Ley%7CFecha%7COrganismo%7CPublicaci%F3n%7CTema%7CEstado%20de%20Vigencia%7CAutor%7CJurisdicci%F3n&t=1>. Last accessed on March 2, 2020.
- 9 Some provinces have enacted regulations regarding environmental impact assessment, including: Law No. 123 Environmental Impact Assessment of Buenos Aires (<http://www2.cedom.gob.ar/es/legislacion/normas/leyes/ley123.html>); Environmental Impact Assessment Law, Province of Santa Cruz (<http://www.saij.gob.ar/2658-local-santa-cruz-evaluacion-impacto-ambiental-lpz0002658-2003-07-10/123456789-0abc-defg-g52-74000scanyel?q=%28numero-norma%3A2658%20%29&o=2&f=Total%7CTipo%20de%20Documento/Legislaci%F3n/Ley%7CFecha%7COrganismo%7CPublicaci%F3n%7CTema%7CEstado%20de%20Vigencia%7CAutor%7CJurisdicci%F3n&t=8>); Law No. 10.208. Provincial Environmental Policy (Province of Cordoba) (<http://www.saij.gob.ar/10208-local-cordoba-politica-ambiental-provincial-lpo0010208-2014-06-11/123456789-0abc-defg-802-01000scanyel?q=%28numero-norma%3A10208%20%29&o=1&f=Total%7CTipo%20de%20Documento/Legislaci%F3n/Ley%7CFecha%7COrganismo%7CPublicaci%F3n%7CTema%7CEstado%20de%20Vigencia%7CAutor%7CJurisdicci%F3n&t=4> March 2, 2020. We recommend reviewing the relevant provincial regulation at <https://argentinambiental.com/legislacion/>
- 10 See <http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/264343/res257.pdf>. Last accessed on March 2, 2020.
- 11 See <http://www.saij.gob.ar/24375-nacional-aprobacion-convenio-sobre-diversidad-biologica-lnt0003953-1994-09-07/123456789-0abc-defg-g35-93000scanyel?q=%28numero-norma%3A24375%20%29&o=0&f=Total%7CTipo%20de%20Documento/Legislaci%F3n/Ley%7CFecha%7COrganismo%7CPublicaci%F3n%7CTema%7CEstado%20de%20Vigencia%7CAutor%7CJurisdicci%F3n&t=1>. Last accessed on March 2, 2020.
- 12 See <http://www.saij.gob.ar/26331-nacional-presupuestos-minimos-proteccion-ambiental-bosques-nativos-lns0005381-2007-11-28/123456789-0abc-defg-g18-35000scanyel?q=%28numero-norma%3A26331%20%29&o=0&f=Total%7CTipo%20de%20Documento/Legislaci%F3n/Ley%7CFecha%7COrganismo%7CPublicaci%F3n%7CTema%7CEstado%20de%20Vigencia%7CAutor%7CJurisdicci%F3n&t=1>. Last accessed on March 2, 2020.
- 13 See <http://www.saij.gob.ar/91-nacional-decreto-reglamentario-ley-proteccion-ambiental-bosques-nativos-dn20090000091-2009-02-13/123456789-0abc-190-0000-9002soterced?>. Last accessed on March 2, 2020.

Public consultation with civil society¹ in the framework of the national legislation of the **Bahamas**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the Bahamian legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in the Bahamas.

In addition, if this is a joint operation with the IDB Group and legal gaps are identified regarding one or more principles of good practice, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN THE BAHAMAS²: Laws and regulations regarding participation and/or consultation on environmental matters



Energy

Electricity Act of 30th December 2015³. Art. 64.

COUNTRY LEGISLATION:

If it deems it appropriate or if objections are received from persons with sufficient interest in the matter, the competent authority may start a consultation process regarding potential contraventions to the Act or compliance issues with licensing conditions for power generation, distribution or transmission projects.

Step 1 ► The competent authority must confirm reception of the objections within five days.

Step 2 ► Additional information about the objecting or third parties is requested.

Step 3 ► The objected party is informed about the preliminary decision regarding its obligations.

Step 4 ► The objected party has one month to present a defense case.

Step 5 ► The final decision on the case must be made no later than five months from the date the objection was first received.



Forestry

Forestry Regulations⁴ of 8th July 2014. Art. 19.3.

COUNTRY LEGISLATION:

Before approving a Forest Management Plan, the Minister must notify the public of the provisions of such plan by immediately posting it in its website. It must also post it in two consecutive issues of any daily newspaper published and circulating in the Bahamas specifying that a draft of the plan has been prepared, the land to which it relates, the venue where the draft may be inspected and inviting members of the public to make written comments with regard to the purposes, objectives and environmental impact of the Forest Management Plan.



Environmental Impact Assessment System

Environmental Planning and Protection Bill 2019⁵

COUNTRY LEGISLATION:

The Bahamian legislation does not consider any procedures in this regard.



Other

Coast Protection Act⁶ of 30th December 1986. Articles: 4.1.d; 4.2; 4.4.

Petroleum (offshore environmental protection and pollution control) regulations⁷, published on 15th July 2016. Art. 5.

COUNTRY LEGISLATION:

Coastal Sector: When commencing coast protection works, the Government must notify the public of the type of work to be carried out and its cost, as well as the procedure to be followed in order to object the type of work and/or its cost. The public will have 28 days from publication to submit their objections.

Petroleum: Before granting an environmental license for offshore operations, the Minister responsible for oil-related affairs must verify the operations are compliant with the requirements set by other environmental agencies and are respectful of people living in the surroundings of the production site whose interests may therefore be affected⁸.

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See and apply Guiding Principles and Good Practices I applicable to Consultations in Chapter 1, except for the specific modifications presented below.

Timeliness: Before approving a Forest Management Plan, the Ministry must notify the public of the provisions of such plan by posting it in its website. It must also post it in two consecutive issues of any daily newspaper published and circulating in the Bahamas, specifying that a draft of the plan has been prepared, the land to which it relates, the venue where the draft may be inspected and inviting members of the public to make written comments with regard to the purposes, objectives and environmental impact of the Forest Management Plan.⁹



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

Public consultation with indigenous peoples in the framework of the national legislation of the **Bahamas**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Bahamian legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in the Bahamas.

In addition, if this is a joint operation with the IDB Group and legal gaps are identified regarding one or more principles of good practice, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN THE BAHAMAS: Laws, regulations and other measures concerning the implementation of Convention 169



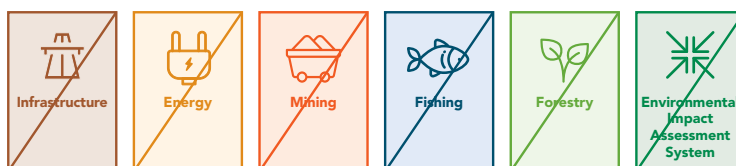
Indigenous Population

The Bahamas has not ratified ILO Convention 169.

COUNTRY LEGISLATION:

This country has not ratified ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries. Also, it does not have a legislation regarding indigenous consultations.

No specific legislation on the matter was identified:



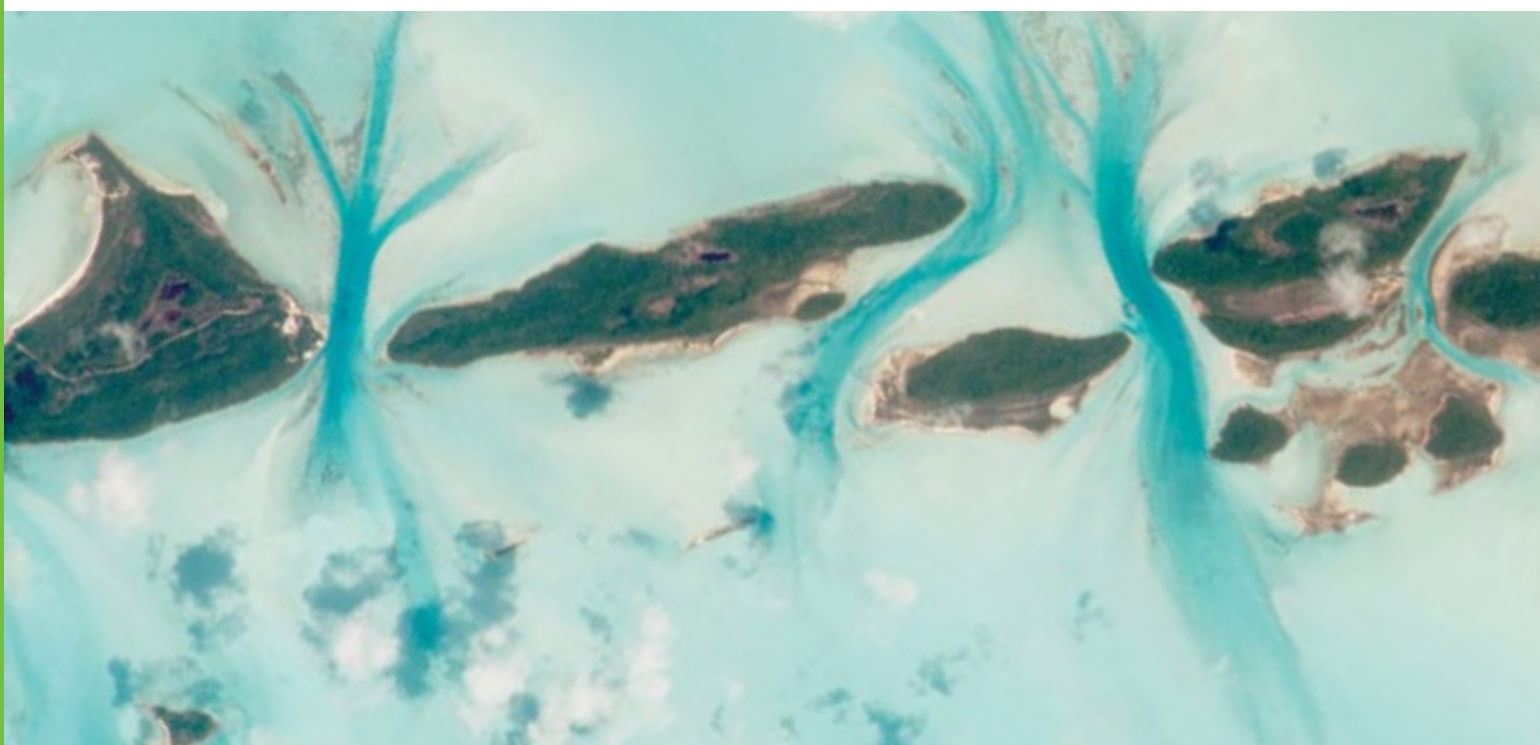
Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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



References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation contains obligations regarding citizen consultations.
- 3 http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0048/ElectricityAct2015_1.pdf
- 4 See http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/2014/2014-0038/ForestryRegulations2014_1.pdf. Last accessed on March 2, 2020.
- 5 See <https://www.bahamas.gov.bs/wps/wcm/connect/85f0b67d-c793-44d6-8f8b-4f9c2816adc7/Environmental+Planning+and+Protection+Bill%2C2019.pdf?MOD=AJPERES>. Last accessed on March 2, 2020. At the time of this publication, this bill was identified although it was still awaiting approval from the Parliament of The Bahamas.
- 6 See http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1968/1968-0037/CoastProtectionAct_1.pdf. Last accessed on March 2, 2020.
- 7 See http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/2016/2016-0039/PetroleumOffshoreEnvironmentalProtectionandPollutionControlRegulation2016_1.pdf. Last accessed on March 2, 2020.
- 8 See http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/2016/2016-0039/PetroleumOffshoreEnvironmentalProtectionandPollutionControlRegulation2016_1.pdf. Last accessed on March 2, 2020.
- 9 Provision included in the national legislation.



Public consultation with civil society¹ in the framework of the national legislation of **Barbados**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Barbados as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Barbados.

In addition, if this is a joint operation with the IDB Group and legal gaps are identified regarding one or more principles of good practice, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

The Authority must give printed notice of its intention to amend certain plans and invite the public to submit their observations. If this is the case, a public enquiry must be carried out, although the comments received may or may not be included in the final document.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN BARBADOS²: Laws and regulations regarding participation and/or consultation on environmental matters



Infrastructure

Town and Country Planning Act Sec³ of 08th July 1968. Articles: 9; 27.3; 27.4; 27. 5.

COUNTRY LEGISLATION:

Before approving a development plan, the Authority must publish notice in three issues of the Official Gazette and of at least one newspaper published in the Island.

The notice must inform that a new development plan or proposals for amendment of such plan have been prepared, and that copies of such plan or proposals are available for inspection by the public, including their location and the period afforded to make objections or representations.

This period will be no less than twenty-eight days from the date of publication of the notice in the Official Gazette.

Where objections or representations are made within the time specified in the notice, the Ministry must appoint a person to hold a public enquiry into the objection or representation and must consider the objection or representation together with the report thereon of the person holding the public enquiry.

Where a public enquiry has been held, the Authority must decide whether the draft management plan ought to be revised.

With regard to the preservation and expansion of marine areas, before approving any order designating a restricted area, the Minister must arrange for a public enquiry to be held in conformity with the provisions of the Schedule. After the public enquiry has been held, the Ministry must consider what, if any, revisions ought to be made to the draft order by making an order and publishing it in the Official Gazette.

Where a public enquiry is to be held, the following procedure must be followed: 1. The Minister appoints a person by instrument in writing to hold the public enquiry. 2. The name of every person appointed to hold a public enquiry is published in the Official Gazette. 3. Notice of the enquiry as well as the date for its holding is published in three issues of the Official Gazette and in at least one newspaper published in Barbados, the first notice being not less than two weeks before the date appointed.



Fishing

Coastal Zone Management Act⁴ of 1998. Articles: 5; 6; 15; Schedule: Public Enquiry Procedure.

Marine Pollution Control Act⁵ of 1998. Articles: 4.5, 4.6; 4.7; 4.9. Schedule: No. 1 through 5.

COUNTRY LEGISLATION:

When the draft management plan and order delimiting a coastal management area are presented to the Minister for approval, the Minister must call for a public enquiry at which the draft will be presented for discussion and representations.

continued

continued



Fishing

Once the public enquiry has been held, the Authority will consider what revisions, if any, ought to be made to the draft. With regard to the Pollution Control Plan, before approving the list of pollutants, the Minister must give notice by publication at least once per week for at least two weeks in the Official Gazette and in at least one local daily newspaper.

Within two weeks of the final publication of the notice, any person may notify the Minister of their objections. When an objection is made, the Minister must hold a public enquiry where the list of pollutants will be presented, together with their prohibited levels of concentration and any objections made to the list and to the prohibited levels.

If the Minister decides on considering the report of an enquiry (i) to approve the inclusion in the proposed list to which an objection has been made; or (ii) to approve the prohibitive level of concentration of the item specified, he must notify the objector accordingly and publish a notice of his decision in the Official Gazette.

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1, except for the specific modifications presented below.

Timeliness:

- a. Invitation to submit representations in writing: For town development projects: Once the invitation to submit comments to the proposed project has been published, the public will have at least twenty-eight days from the publication date to submit their representations⁶.
- b. For coastal management projects: Once the invitation to submit comments to the proposed project has been published, the public will have at least two weeks from the publication date to submit their representations⁷.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

- Public consultation with the indigenous population in the framework of the
- ▶ national legislation of **Barbados**, the IDB Group's operational policies, guiding principles and good practices

This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the legislation of Barbados as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Barbados.

In addition, if this is a joint operation with the IDB Group and legal gaps are identified regarding one or more principles of good practice, the relevant Operating Policy (OP) provisions should be applied. See section V, Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN BARBADOS: Laws, regulations and other measures concerning the implementation of Convention 169



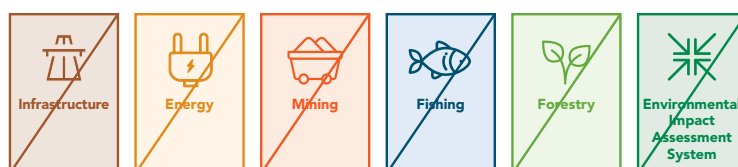
Indigenous Population

Barbados has not ratified ILO Convention 169.

COUNTRY LEGISLATION:

This country has not ratified ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries. Also, it does not have a legislation regarding indigenous consultations.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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



References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation contains obligations regarding citizen consultations.
- 3 See <http://extwprlegs1.fao.org/docs/pdf/bar81386.pdf>. Last accessed on March 2, 2020.
- 4 <http://faolex.fao.org/docs/pdf/bar18058.pdf>
- 5 <http://faolex.fao.org/docs/pdf/bar18055.pdf>
- 6 Provision included in the national legislation.
- 7 Idem ut supra: Provision included in the national legislation.



- Model for public consultations with civil society¹ in the framework of the national legislation of **Belize**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Belize as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Belize.

In addition, if this is a joint operation with the IDB Group and legal gaps are identified regarding one or more principles of good practice, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

Consultation is mandatory for all projects subject to environmental assessment. The authority must inform the public about the project; provide opportunities for dialogue between the applicant and the community, especially people living in the area of influence of the project; and record the public's concerns regarding the environmental impact of the project proposed.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN BELIZE²: Laws and regulations regarding participation and/or consultation on environmental matters



Forestry

National Protected Areas System Act No. 17 of 2015³. Arts. 18, 19 Schedule 54.1.

COUNTRY LEGISLATION:

In the event a forest reserve reclassification is announced, the Ministry of Agriculture must first conduct a public consultation with the people affected by this decision.



Environmental Impact Assessment System

Environmental Protection Act No. 70,⁴ published on 28th November 1992. Article: 20.5

Environmental Impact Assessment Regulations (Chapter 328), Articles: 2, 18.1; 18.2; 18.3; 18.4; 26.C.

Statutory Instrument 24 of 2007: Environmental Impact Assessment (Amendment) Regulations amending 2, 18.1, 18.3, 26.c

COUNTRY LEGISLATION:

Step 1 ► Consultation is mandatory for all projects subject to environmental assessment. The authority must inform the public about the project; provide opportunities for dialogue between the applicant and the community, especially people living in the area of influence of the project; and record the public's concerns regarding the environmental impact of the project proposed.

Step 2 ► At any time during the environmental impact assessment, the Authority may invite the public and all affected persons to submit written representations on or objections to the proposed project.

Step 3 ► The Authority may send the written comments received to the applicant, who must reply to the questions posed in the written comments.

Step 4 ► All environmental assessments must take into account the comments received from the public.



Other

National Protected Areas System Act, 2015 Arrangement of Sections, No. 17 of 2015⁵.
Articles: 18.1; 19.1.b; 19.2; 19.3.a; 19.3.b; 19.4; 19.5

COUNTRY LEGISLATION:

Any declaration, alteration, reclassification or revocation of a declaration of a protected marine or terrestrial area as well as the preparation of a protected area Management Plan must be preceded by a consultation process with nearby communities and affected parties.

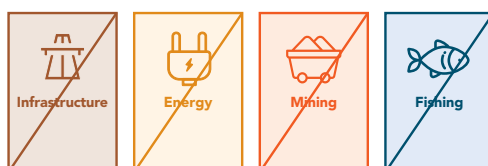
Step 1 ► The appropriate Ministry must publish its intention to declare, alter, reclassify or revoke a declaration of a protected area in two of the leading national newspapers and on air on two national radio stations. The publication must include a clear indication of the area that will be affected and contain sufficient information to enable members of the public to submit meaningful representations or objections.

Step 2 ► Within 60 days from the date of publication in the Gazette, any person may submit to the Ministry their written representations or objections.

Step 3 ► In addition, the Ministry may allow any interested person to make oral representations or objections.

Step 4 ► The Ministry must give due consideration to all representations or objections received in its decision regarding the declaration, alteration, reclassification or revocation of a protected area and the Management Plan.

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

- Model for public consultation with the indigenous population in the framework
- ▶ of the national legislation of **Belize**, the IDB Group's operational policies, guiding principles and good practices

This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Belizean legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Belize.

In addition, if this is a joint operation with the IDB Group and legal gaps are identified regarding one or more principles of good practice, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR PUBLIC INDIGENOUS CONSULTATION IN BELIZE

Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Belize has not ratified ILO Convention 169.

COUNTRY LEGISLATION:

This country has not ratified ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries. Also, it does not have a legislation regarding indigenous consultations. A ruling by the Supreme Court of Belize granted the Maya people the right to indigenous consultation in a case of road construction and commercial oil drilling⁶.



Environmental Impact Assessment System

COUNTRY LEGISLATION:

Supreme Court of Belize, Claim No. 394, 03th April 2014⁷.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation contains obligations regarding citizen consultations.
- 3 See <https://www.nationalassembly.gov.bz/wp-content/uploads/2016/09/Act-No.-17-of-2015-National-Protected-Areas-System-Act-2015.pdf>. Last accessed on March 2, 2020.
- 4 See <http://med.gov.bz/wp-content/uploads/2017/01/Belize-Environmental-Regulations.pdf> amended by <http://med.gov.bz/wp-content/uploads/2017/01/Belize-Environmental-Regulations.pdf>. Last accessed on March 2, 2020.
- 5 [Ibid.](#)
- 6 <https://www.informea.org/sites/default/files/court-decisions/Sarstoon-Temash-Institute-for-Indigenous-Management-et-al-v-The-Attorney-General-of-Belize-et-al-.pdf>
- 7 [Ibid.](#)

- Model for public consultations with civil society¹ in the framework of the national legislation of **Bolivia**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Bolivia as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Bolivia.

In addition, if this is a joint operation with the IDB Group and legal gaps are identified regarding one or more principles of good practice, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

Public hearings are mandatory for all projects entered into the Environmental Assessment System. If the project applicant fails to conduct it, the Environmental Authority will order a public consultation to review the EIA and obtain the reports deemed appropriate for each case before issuing an Environmental Impact Statement.

The Authority will also conduct a public hearing to approve petitions or initiatives. The hearing must be conducted within a period of 15 days.



LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN BOLIVIA²: Laws and regulations regarding participation and/or consultation on environmental matters

Political Constitution of the Plurinational State of Bolivia³. Articles 20.II, 343, 352.



Fishing

Law on Sustainable Fishing and Aquaculture of 03rd May 2019⁴. Articles 10.1; 43.

COUNTRY LEGISLATION:

Fishermen's or aquaculturists' associations may set up monitoring and control mechanisms to ensure compliance with the law.



Forestry

Forestry Law of 12th July 1996.⁵ Article 8.3.

Regulatory Norms of the Forestry Law of 12th July 1996.⁶ Articles 23.IV.b, 24.e; 28.

COUNTRY LEGISLATION:

Public hearings are mandatory whenever a forestry management area or a land use plan are placed for tender, or when the authority deems it relevant.

The call for the hearing will be posted at least 10 days before the event and will provide information on the date and venue for the event, the topics to be covered and the location where the relevant documents will be available for review.

The opinions expressed during the public hearings will be used for consultative purposes only. Under no circumstance will the hearing be used as an instrument to resolve disputes or claims.



Environmental Impact Assessment System

Law of the Environment of 15th June 1992.⁷ Articles 92; 94.

General Regulation of Environmental Management of 08th December 1995.⁸ Articles 73 through 78.

Regulation on Environmental Prevention and Control of 08th December 1995.⁹ Articles 23.c; 160; 162; 164.

Presidential Decree No. 3549 modifying the Regulation on Environmental Prevention and Control, published on 02nd May 2018¹⁰. Article 4 and Annex E: Public Consultation

COUNTRY LEGISLATION:

Step 1 ► Public hearings are mandatory for all projects entered into the Environmental Assessment System. The residents of the project's intervention area must be consulted. If the project applicant fails to hold the consultation, the Environmental Authority will

continued

continued



**Environmental
Impact
Assessment
System**

order a public consultation to review the EIA and obtain the reports deemed appropriate for each case before issuing an Environmental Impact Statement.

Step 2 ► The public consultation must include, at a minimum, the following documents: a map of the project's area of influence, a project abstract, the calls for consultation made, a timeline of the consultation, and a summary of the observations to the project implementation.

Step 3 ► The competent environmental authority may consult people, institutions or communities situated in the project's area of influence, who may submit their observations in writing within 15 business days from the business day immediately following the consultation.

Step 4 ► Any individual or collective entity may submit their written observations, criticism or proposals regarding a certain project to the Competent Environmental Authority, Sectoral Agency or Municipal Government, as appropriate, with all required technical and legal supporting documents. All representations will be channeled through the Territorial Grassroots Organizations (Organizaciones Territoriales de Base - OTB).

Step 5 ► The competent environmental authority must give due consideration to these representations before issuing its report, and forward them to the project applicant for consideration.

For other initiatives, the authorization procedure by the Environmental Authority will be as follows:

Step 1 ► The call will be posted 10 days prior to the public hearing and will indicate: (i) the date and venue for the meeting, (ii) the topics to be covered, and (iii) the location where the relevant documents will be available for public review.

Step 2 ► Stakeholders will have 10 days to submit their observations in writing to the Competent Environmental Authority for consideration during the public hearing.

Step 3 ► The public hearing commences. It is presided over by the Competent Environmental Authority or its duly accredited representative. Under no circumstance will the hearing be used as an instrument to resolve disputes or claims.

Step 4 ► The Competent Environmental Authority will have 15 days prior to the consultation to respond to the representations submitted in relation to the project.

The opinions expressed during the hearing will be used for consultative purposes only; the Competent Environmental Authority and the Technical Committee will be free to consider them fully or in part, modify them or simply disregard them.

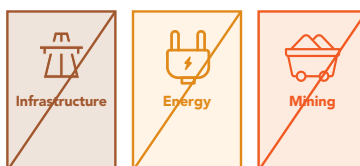


Other

Law on Integrated Waste Management No. 755 of 28th October 2015¹¹ Article 6.b.

Presidential Decree No. 2954, General Regulatory Norms of Law 755, of 19th October 2016¹². Articles 5 through 7.

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1, except for the specific modifications presented below.

Timeliness: a) the hearing will be called prior to any final decision regarding the subject of consultation; b) the call will be made at least 2 weeks before the consultation; c) invitation to submit observations in writing: the Competent Environmental Authority may consult individuals, institutions or communities within the project's area of influence, who may submit their representations in writing within 15 business days from the business day immediately following the consultation¹³; d) through their respective OTBs, any individual or collective entity may submit their written observations, criticism or proposals regarding a certain project to the Competent Environmental Authority, Sectoral Agency or Municipal Government, as appropriate, with all required technical and legal supporting documents.¹⁴

Devolution: The competent environmental authority must give due consideration to these representations before issuing its report. In addition, it must forward them to the project applicant for consideration¹⁵.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.



Model for public consultation
with the indigenous population
in the framework of the national
▶ legislation of **Bolivia**, the IDB
Group's operational policies, guiding
principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Bolivian legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Bolivia.

In addition, if this is a joint operation with the IDB Group and legal gaps are identified regarding one or more principles of good practice, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN BOLIVIA: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Political Constitution of the Plurinational State of Bolivia, Articles 353, 403

Law No. 1257, Bolivia ratified ILO Convention 169 on 11th December 1991.

Law on Consultation to Indigenous Peoples of the Isiboro-Sécure Indigenous Territory and National Park – TIPNIS of 10th February 2012.¹⁶ Articles 3 through 11.

COUNTRY LEGISLATION:

Competent authorities (CA) are mandated to consult peasant, indigenous and native peoples in a prior, compulsory and timely manner in relation to all hydrocarbon projects. Decisions resulting from the consultation must be observed. In all cases, the Consultation will be conducted at two different moments: the first one prior to the call for tender and the second prior to the approval of the EIA. The OEP must observe and guide the prior consultation processes convened by public institutions.



Mining

Law of Mining and Metallurgy of 28th May 2014.¹⁷ Title VI.

Ministerial Resolution of 30th January 2015.¹⁸ Articles 28 through 37.

Plenary Session Resolution No. 118 (Plurinational Electoral Body - OEP), Regulation for the observation and guidance of Prior Consultation Processes of 26th October 2015.¹⁹

COUNTRY LEGISLATION:

The Administrative Jurisdictional Mining Authority (AJAM) convenes and carries out the prior consultation²⁰. The costs of the process are covered with funds provided by the project applicant.

The prior consultation is mandatory for all mining contracts likely to have a direct effect on the collective rights of the population affected.

Mining operations in their prospection and exploration phases do not require prior consultation. The procedure is only applied in the case of applications for new mining contracts.

All agreements between the competent authority, the applicant and the population consulted are binding and compulsory for the parties; however, the communities consulted do not have the power to veto the execution of the mining activities.

The consultation covers the potential effects of the applicant's work and investment plans, which are presented together with the application for the mining contract.

The steps of the prior consultation are as follows:

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Mining

Step 1 ► AJAM identifies the population whose collective rights may be affected and orders the prior consultation. The designated Unit will have 5 business days from the order to prepare a report identifying the population to be consulted²¹.

Step 2 ► AJAM will have 3 business days after the identification report is issued to notify the applicant and the population of the upcoming consultation process. The consultation may not extend beyond three meetings and will have a maximum duration of four months. The time between each meeting shall not exceed 7 business days²². The call for consultation indicates the date, venue and time for the first meeting, which must be carried out within 20 business days from the resolution date. Failure to attend the meeting will be interpreted as acceptance of the Work Plan²³.

Step 3 ► During the first meeting, the applicant explains the activities envisaged in its work plan, identifies the collective rights it believes may be affected and the proposed mitigation mechanisms, and presents the conditions for an agreement. The population consulted present their observations and proposals for a potential agreement.

Step 4 ► If the deliberation process leads to an accord between the parties, the consultation ends with the signature of the respective Agreement. If the parties cannot agree during the first meeting, the Regional Director of AJAM convenes a second meeting. If the parties cannot agree during the second meeting, the Regional Director of AJAM convenes a third and final meeting.

Step 5 ► If the parties fail to reach an agreement during the third and last meeting, the mediation and decision phase begins. The National Director of AJAM initiates a convergence and mediation process between the applicant and the population consulted, which must conclude within 15 business days²⁴.

Step 6 ► If no agreement is reached within the 15 business days allocated for the mediation period, the procedure is terminated and the final decision phase begins.

Step 7 ► After examining the technical report prepared by the relevant unit, the Ministry of Mining and Metallurgy issues a Ministerial Resolution to resolve the case. The resolution must be issued within 15 business days from reception of the relevant information.



Forestry

Regulatory Norms of the Forestry Law of 12th July 1996.²⁵ Article 28.

COUNTRY LEGISLATION:

All forestry management plans intended for development in native community lands not declared protected areas must undergo a consultation process that must take into account the community's cultural and spiritual values.



Environmental Impact Assessment System

Hydrocarbons Law of 18th May 2005.²⁶ Articles 114 through 118; 122; 131 inc. final; 133; 138.

Presidential Decree No. 29033, Regulation of the Consultation and Participation for Hydrocarbon Activities of 16th February 2007.²⁷ Articles: 1 through 18.

Presidential Decree No. 29574, amending the Regulation of the Consultation and Participation for Hydrocarbon Activities of 21st May 2008²⁸.

Presidential Decree No. 2298, amending the Regulation of the Consultation and Participation for Hydrocarbon Activities of 18th March 2015²⁹.

COUNTRY LEGISLATION:

The consultation, which is financed by the Executive but charged to the project, is conducted at two moments³⁰:

a) Prior to the tender, authorization, contract, call for and approval of hydrocarbon projects. The purpose is to inform those communities likely to be affected by the project of its potential socio-environmental positive and negative impacts, and its potential repercussions on the collective rights of Native Indigenous Peoples (PIO) and Peasant Communities (CC).

b) Prior to the approval of the Comprehensive Analytical Environmental Impact Evaluations. The observations and recommendations obtained during the consultation must be considered as key inputs for the preparation and approval of the Comprehensive Analytical Environmental Impact Evaluation. The representing organizations may initiate an administrative sanctioning procedure against the environmental consultant in charge of preparing the Comprehensive Analytical Environmental Impact Evaluation if the results of the consultation have not been properly incorporated.

In both cases, the consultation will include representatives from CCs and PIOs. Any other type of individual or sectoral consultation will be void.

Each moment of the consultation will include the following steps:

a. Coordination and Information: A written invitation is sent to CC and PIO representatives. If no reply is received to the first call after 15 days, the competent authority will make a second call through at least two of the following channels: publication in printed media, publication via radio spot, direct communication.

If the meeting is not held after a maximum of 10 days due to the absence of PIO and CC representatives, a new and final call is made via notarized letter. If the meeting is not held or no written reply is received after 10 days, the competent authority will be free to decide on the methodology and the schedule to conduct the consultation.

If PIO and CC representatives confirm their attendance, all representatives will be convened to a preliminary meeting on the date and at the venue of their choice within 10 calendar days from the reply to the invitation received.

The purpose of the preliminary meeting is to provide PIO and CC representatives with all the public information available in one printed or electronic volume. The information must be thorough³¹, timely³², accurate³³ and appropriate³⁴.

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Environmental Impact Assessment System

b. Conducting the Preliminary Planning Meeting: Once the meeting has started and attendance has been verified, the CA³⁵ will present the objectives and the scope of the project being consulted. Participants will agree on the methodology, timeline and execution budget for the consultation, which will be recorded in a memorandum of understanding.

If no agreement is reached regarding the methodology during the first meeting, the CA will have 5 business days to convene a second meeting to define the methodology, timeline and budget.

If the outcome is once again unsuccessful, the CA will have 5 business days to define the methodology, timeline and budget for the consultation. The decision will be announced via printed media, radio spots and notarized letter to the respective PIOs and CCs.

The methodology will comprise the activities and/or procedures used to carry out the Consultation, which shall not exceed 45 calendar days.

c. Holding the Consultation: The consultation will be held by the authority in coordination with the relevant representatives in compliance with the terms of the memorandum of understanding.

The consultation must be held within the timeframe established in the memorandum. Once the time limit expires an additional peremptory deadline of up to 1 month may be allowed to carry out the consultation.

d. Convergence. The agreements resulting from the consultation are recorded in a validation document signed by the authority and the respective representatives, who must have been expressly authorized by the potentially affected CCs and PIOs.

The Agreement Validation Document contains the stance of the PIOs and CCs likely to be affected as well as their common recommendations.

The consultation ends with an Agreement Validation Accord. If this is the first moment of the consultation, the process moves on to the second moment.

If the consultation cannot be completed or carried out, the CA issues an administrative resolution indicating the status of the consultation and specifying the steps taken to conduct the process. The resolution is added to the EIA.



Other

Framework Law of Mother Earth and Integrated Development for Living Well of 15th October 2012.³⁶ Article 16.1.

Framework Law on Autonomy and Decentralization of 19th July 2010.³⁷ Article 87.V.

COUNTRY LEGISLATION:

The Law on Consultation to Indigenous Peoples of the Isiboro-Sécure Indigenous Territory and National Park – TIPNIS – regulates all aspects of the prior, free and informed consultation to the indigenous peoples residing in the National Park.

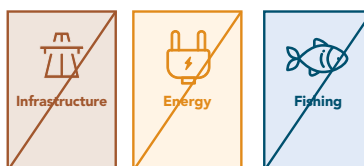
The purpose of the consultation is to reach an agreement between the Plurinational State of Bolivia and the Mojeño-Trinitario, Chimane and Yuracaré PIOs and CCs regarding the following:

a. Define whether the Isiboro-Sécure Indigenous Territory and National Park – TIPNIS – should be declared intangible zone in order to promote the activities of the Mojeño-Trinitario, Chimane y Yuracaré peoples and the construction of the Villa Tunari - San Ignacio de Moxos highway.

b. Establish the safeguard measures required to protect the Isiboro-Sécure Indigenous Territory and National Park – TIPNIS – and to prohibit and immediately evict illegal settlements while respecting the TIPNIS demarcation line.

The consultation process will include, at a minimum, the following phases: (i) Preparation of the consultation, (ii) Preparation of the timeline and protocol, (iii) Elicitation of relevant information, (iv) Prior notice, (v) Consultation advertising, (vi) Delivery of relevant information, (vii) Consultation process, (viii) Results: signing of conclusion documents, and (ix) Dissemination of decisions.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1, except for the specific modifications presented below.

OBJECTIVE: To implement a good-faith process of free, prior and informed consultation³⁸ with participation mechanisms that are appropriate to the sociocultural characteristics of each indigenous people, in order to promote informed participation and reach an agreement or consent regarding the implementation of the proposed projects in their territories.

METHODOLOGY

Good practices regarding public consultations:

1. Timeliness

Consultations must be prior, i.e. conducted with sufficient time to allow the affected indigenous people to actually and effectively participate in a decision that may impact them directly.

Any individual, legal entity or representing organization with sufficient justification may ask the Environmental Authority to carry out a consultation. Justified requests are those that present, at a minimum, the facts and reasons that support their claim.

The consultation must include two stages: (i) elaboration of the TORs needed to prepare the EIA, and (ii) evaluation of the EIA by the Environmental Authority.

2. Accessibility

The consultation must be carried out at the time and venue chosen by the indigenous communities potentially affected by the project proposed.

The consultation will be conducted in Spanish and in a language understood by the communities that will be affected directly, as appropriate. The language of the affected indigenous community will be preferred if it is the language of choice for most everyday communications.

Information on the proposed project will be made available to the institutions and organizations representing the indigenous communities through means and procedures that are appropriate for this task, considering their geographical and environmental conditions.

3. Duration

The consultation will comprise the following stages:

a. Call for Consultation

The invitation will be made in writing to CC and PIO representatives. All representatives will hold a preliminary meeting on the date and at the venue of their choice within 10 calendar days from the reply to the call received.

The purpose of the preliminary meeting is to provide all the public information available in one printed or digital volume to PIO and CC representatives³⁹. The information must be thorough⁴⁰, timely⁴¹, accurate⁴² and appropriate⁴³.

b. Planning

Once the meeting has started and attendance has been verified, the CA will present the objectives and the scope of the project being conducted. Participants will agree on a methodology, timeline and execution budget for the consultation, which will be recorded in the meeting minutes.

c. Preparation

If no agreement is reached regarding the methodology during the first meeting, the CA will have 5 business days to convene a second meeting to define the methodology, timeline and budget. If the outcome is once again unsuccessful, the CA will have 5 business days to define the methodology, timeline and budget for the consultation. The decision will be announced via printed media, radio spots and notarized letter to the respective PIOs and CCs.

c. Execution:

The consultation will be held by the authority in coordination with the relevant representatives in compliance with the terms of the memorandum of understanding.

The consultation must be held within the time limit established in the memorandum. Once the time limit expires an additional peremptory deadline of up to 1 month may be allowed to carry out the consultation.

e. Convergence

The agreements resulting from the consultation will be recorded in a validation document signed by the authority and the respective representatives, after being expressly authorized by the potentially affected CCs and PIOs.

The Agreement Validation Document contains the stance of the PIOs and CCs likely to be affected as well as their common recommendations.

The consultation ends with an Agreement Validation Accord. If this is the first moment of the consultation, the process moves on to the second moment.

If the consultation results in an adverse decision, the State may promote a conciliation process⁴⁴.

f. Agreements

The Government decision regarding the investment project must take into account the opinions, suggestions and recommendations made by the indigenous peoples during the consultation, as well as the effects of the project approval on the collective rights recognized both constitutionally and by virtue of the international treaties ratified by the State.

The final agreement resulting from the consultation process is binding for all parties concerned. If no agreement is reached, government agencies will take every measure required to safeguard the collective rights of indigenous peoples as well as their right to life, integrity, and full development.

4. Context

The consultation must observe the customs and traditions of each one of the indigenous peoples or communities involved.

If the project needs to be approved by two or more indigenous communities, the communities may reach a decision either jointly or separately. In any case, indigenous communities may under no circumstance be forced to use a decision-making mechanism other than their own.

5. Inclusion and Diversity

All indigenous peoples or representing institutions directly affected by the matter being consulted may step in at any moment, provided they respect all agreements reached thus far.

6. Representativeness

The only indigenous peoples allowed in the consultation will be those affected directly, who will participate via their national, regional or local representatives depending on the scope of the project.

Each community will be free to choose the institutions that will represent them, such as traditional indigenous organizations, indigenous communities or associations.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation should contain obligations regarding citizen consultations.
- 3 See <http://www.sepdavi.gob.bo/cs/doc/159Bolivia%20Consitucion.pdf>. Last accessed on March 20, 2020.
- 4 See <http://www.gacetaoficialdebolivia.gob.bo/edicions/view/961NEC>. Last accessed on March 2, 2020.
- 5 See <http://www.gacetaoficialdebolivia.gob.bo/edicions/view/1944>. Last accessed on March 2, 2020.
- 6 See <http://extwprlegs1.fao.org/docs/pdf/bol10124.pdf>. Last accessed on March 2, 2020.
- 7 See <http://extwprlegs1.fao.org/docs/pdf/bol6919>. Último acceso: 2 de marzo del 2020. pdf
- 8 See <http://extwprlegs1.fao.org/docs/pdf/bol179888.pdf>. Last accessed on March 2, 2020.
- 9 See <http://extwprlegs1.fao.org/docs/pdf/bol179629.pdf>. Last accessed on March 2, 2020.
- 10 See <http://www.gacetaoficialdebolivia.gob.bo/edicions/view/1061NEC>. Last accessed on March 2, 2020.
- 11 See <http://www.gacetaoficialdebolivia.gob.bo/edicions/view/801NEC>. Last accessed on March 2, 2020.
- 12 See <http://www.gacetaoficialdebolivia.gob.bo/normas/buscar/2954>. Last accessed on March 2, 2020.
- 13 Provision included in the national legislation.
- 14 Provision included in the national legislation.
- 15 Provision included in the national legislation.
- 16 See <http://www.gacetaoficialdebolivia.gob.bo/edicions/view/341NEC>. Last accessed on March 2, 2020.
- 17 See <http://www.gacetaoficialdebolivia.gob.bo/edicions/view/652NEC>. Last accessed on March 2, 2020.
- 18 See <http://www.mineria.gob.bo/juridica/20150130-15-2-21.pdf> Último acceso: March 2, 2020.
- 19 See https://www.oep.org.bo/consultaprevia/wp-content/uploads/sites/2/2016/12/reglamento_consulta_previa.pdf. Last accessed on March 2, 2020.
- 20 See <http://www.gacetaoficialdebolivia.gob.bo/edicions/view/652NEC>. Last accessed on March 2, 2020.
- 21 See <http://www.mineria.gob.bo/juridica/20150130-15-2-21.pdf>. Last accessed on March 2, 2020.
- 22 See <http://www.mineria.gob.bo/juridica/20150130-15-2-21.pdf>. Last accessed on March 2, 2020.
- 23 See <http://www.mineria.gob.bo/juridica/20150130-15-2-21.pdf>. Last accessed on March 2, 2020.
- 24 See <http://www.mineria.gob.bo/juridica/20150130-15-2-21.pdf>. Last accessed on March 2, 2020.
- 25 See <http://extwprlegs1.fao.org/docs/pdf/bol10124.pdf>. Last accessed on March 2, 2020.
- 26 See <http://www.gacetaoficialdebolivia.gob.bo/normas/buscar/3058>. Last accessed on March 2, 2020.
- 27 See <http://www.gacetaoficialdebolivia.gob.bo/normas/buscar/29033>. Last accessed on March 2, 2020.
- 28 See <http://www.gacetaoficialdebolivia.gob.bo/edicions/view/3092>. Last accessed on March 2, 2020.
- 29 See <http://www.gacetaoficialdebolivia.gob.bo/edicions/view/736NEC>. Last accessed on March 2, 2020.
- 30 The Ministry of Hydrocarbons and Energy, the Ministry of Sustainable Development and the Ministry of Indigenous Affairs and Native Peoples.
- 31 Thorough and comprehensive in its contents, coverage, projections and expected social, economic and environmental impacts of the hydrocarbon project.
- 32 Information must be delivered to the local PIO and CC representatives prior to the consultation.
- 33 This information is the equivalent of an affidavit, which binds the hydrocarbon project developer and public servants under Law No. 1178.
- 34 Dissemination must be consistent with the cultural, linguistic, organizational and social characteristics of each PIO and CC.
- 35 CA stands for Competent Authority, in this case the Ministry of Hydrocarbons and Energy.
- 36 See <http://www.gacetaoficialdebolivia.gob.bo/normas/buscar/300>. Last accessed on March 2, 2020.
- 37 See <http://www.gacetaoficialdebolivia.gob.bo/edicions/view/154NEC>. Last accessed on March 2, 2020.

- 38 Good faith is one of the guiding principles of consultation. According to it, all participants in a consultation must act fairly and properly in order to reach consensus or obtain their free, prior and informed consent.
- 39 Provision included in the national legislation.
- 40 Thorough and comprehensive in its contents, coverage, projections and expected social, economic and environmental impacts of the hydrocarbon project.
- 41 Information must be delivered to the local PIO and CC representatives prior to the consultation.
- 42 This information is the equivalent of an affidavit, which binds the hydrocarbon project developer and public servants under Law No. 1178.
- 43 Dissemination must be consistent with the cultural, linguistic, organizational and social characteristics of each PIO and CC.
- 44 Provisions c, d and e are included in the national legislation.



Model for public consultations with civil society¹ in the framework of the national
► legislation of **Brazil**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Brazil as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Brazil.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

The Environmental Authority will hold a public hearing to discuss the EIA of a certain project if deemed necessary or if requested by a civil entity, the Public Prosecutor or a group of at least 50 citizens.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN BRAZIL²: Laws and regulations regarding participation and/or consultation on environmental matters



Infrastructure

City Statute, Law No. 10257 of 10th July 2001³. Article 40.

Resolution No. 34, Council of Cities, of 01st July 2005⁴ amended through Resolution No. 34 of 26th March 2014. Article 7.

Decree No. 3420 of 20th April 2000 amended through Decree No. 4864 of 20th April 2000.⁵ Articles:1; 3; 4.C.III; 4.C.VI.

(Telecommunications) Law No. 13116 of 20th April 2015.⁶ Article 24.

(Seaport) Decree No. 8033 of 27th June 2013 amended through Decree No. 9048 of 10th May 2017.⁷ Article 11.3.

(Airport) Decree No. 7624 of 22nd November 2011.⁸ Article 11.

(Water) Law No. 9433 of 08th January 1997.⁹ Articles 34.III; 34. IV.

(Agriculture) Law No. 8171 of 17th January 1991 amended through Law No. 10246 of 02nd July 2001.¹⁰ Articles 8; 17.II; 28.A. II.

COUNTRY LEGISLATION:

Whenever an application for the ports sector is received, the Port Authority must call for a Public Hearing 10 days in advance.

The call for tender and the notice of award for private airport or seaport projects must be preceded by a public consultation.



Energy

Law N° 9478 of 06th June 1997 amended through Law No. 12490.¹¹ Article 19.

CONAMA Resolution No. 462 of 24th July 2017 (wind power)¹². Article 6.

Law No. 13576 of 26th December 2017 (biofuel)¹³. Article 24.

Decree No. 9308 of 27th June 2019¹⁴. Article 22

COUNTRY LEGISLATION:

The National Petroleum Authority must hold a public hearing whenever an Executive Resolution affects the rights of economic agents and/or consumers of goods and services from the petroleum, natural gas and/or biofuel industry.

With regard to wind power projects, the authority responsible for granting the Environmental License may hold a consultation to discuss the environmental assessment.

continued

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**Energy**

When the accrediting company issues or renews a certificate of efficient biofuel production, the RenovaBio Committee, composed of various ministries and coordinated by the Ministry of Mining and Energy, must carry out a public consultation for thirty days. The Committee must ensure the draft certificate is widely publicized. The suggestions received must be incorporated into the process or turned down with suitable justification. A report on the consultation process must be submitted to the competent federal authorities.

**Mining**

Law No. 13575 of 26th December 2017¹⁵. Articles 13; 15.

COUNTRY LEGISLATION:

If the rules applied by the National Mining Agency affect the rights of economic agents, the rules will be discussed during a public consultation or hearing.

**Fishing**

Law No. 11959 of 29th June 2009.¹⁶ Article 7.III.

COUNTRY LEGISLATION:

Sustainable development of the fishing sector must include social participation.

**Forestry**

Law No. 9985 of 18th July 2000¹⁷. Articles 5.II; 5.III; 5.IV; 5.V; 18.2; 20.4; 23.1; 27.2; 29; 41.4.

Law No. 13123 of 20th May 2015.¹⁸ Articles 6.3; 8.1.

COUNTRY LEGISLATION:

A commission is created for the National Forestry Program, which consists of four representatives from non-governmental organizations appointed by the Brazilian Forum of Non-Governmental Organizations and Social Movements for the Environment and Development.

**Environmental
Impact
Assessment
System**

CONAMA Resolution No. 001 of 31st January 1986¹⁹. Article 11.2.

CONAMA Resolution No. 009 of 03rd December 1986²⁰. Articles 1 through 6.


Resolution No. 237 of 19th December 1997²¹. Articles 3; 10.V; 14.


COUNTRY LEGISLATION:

The Environmental Authority will hold a public hearing to discuss the EIA of a certain project if deemed necessary or if requested by a civil entity, the Public Prosecutor or a group of at least 50 citizens.

continued

continued

 <p>Environmental Impact Assessment System</p>	<p>The hearing must take place at a venue easily accessible to all participants.</p> <p>More than one meeting may be carried out depending on the complexity of the project and the geographical location of the petitioner. The hearing will be conducted by the Environmental Authority, which will provide information on the project and answer related questions.</p> <p>A report including all documents presented during the hearing will be attached to the main document in the form of annexes. The report and all annexes will constitute an input for evaluating the project.</p>
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 <p>Other</p>	<p>Law No. 13848 of 25th June 2019²². Articles 9 through 12.</p> <p>.....</p> <p>Genetic resources and additional traditional knowledge</p> <p>.....</p> <p>Decree No. 8772 of 12th May 2016²³. Article 4.</p> <p>.....</p> <p>COUNTRY LEGISLATION:</p> <p>Regulators²⁴ may elicit the opinions of those interested via consultation or public hearing.</p> <p>Public consultations also apply to new regulation proposals. The public consultation commences when the proposed rule, its technical analysis and supporting documents are published in the official gazette and in the webpage of the relevant agency. The process will last for 45 days, during which stakeholders may send in their opinions and observations. The observations must remain available for public review at the agency's head office and its webpage for ten days. The board of directors will consider these contributions in its final decision report, which must be publicly available for 30 days.</p> <p>In addition, the regulator may call for public hearings on matters deemed relevant. The call must be published five business days in advance in the official gazette and other media. During these five days, the agency posts the proposed regulation or other proposals together with their supporting technical information in its institutional webpage and at a physical location. The agency may also establish additional participation arrangements. The report will be publicly available for 30 days after the end of the hearing.</p>
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Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

Model for public consultation with indigenous peoples in the framework of the national

- ▶ legislation of **Brazil**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Brazilian legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Brazil.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN BRAZIL: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Brazil ratified ILO Convention 169 on 25th July 2002.

General rule on democracy and citizen participation.

Law No. 6001 of 19th December 1973.²⁵ Article 42.

Decree No. 7747 of 05th June 2012.²⁶ Articles 1; 3.III; 3.XI; 4.I.b; 4.II; 4.III; 4.VII.

Decree No. 1775 of 08th January 1996.²⁷ Article 2.3.

Law No. 9985 of 18th July 2000.²⁸ Articles 18.2; 20.4; 23.1.

Law No. 13123 of 20th May 2015.²⁹ Articles 6.III.3; 8.1.

Regulatory Instruction FUNAI No. 01³⁰ of 09th January 2012. Articles 3.VIII; 4.2; 7; 10.IV.

Regulatory Instruction FUNAI No. 02³¹ of 27th March 2015. Articles

Law No. 9433 of 08th January 1997.³² Article 39.3.

Decree No. 6040 of 07th February 2007.³³ Article 1.X (Annex).

Ordinance No. 116 FUNAI of 14th February 2012. Article 2.

COUNTRY LEGISLATION:

The environmental authority must evaluate the granting of environmental licenses to those projects that may have potential environmental and sociocultural impacts on indigenous peoples and lands.



Environmental Impact Assessment System

COUNTRY LEGISLATION:

The environmental authority must evaluate the granting of environmental licenses to those projects that may have potential environmental and sociocultural impacts on indigenous peoples and lands.

If requested by the environmental authority, the National Indigenous Foundation (FUNAI)³⁴ will take a stance regarding a certain environmental licensing process. The FUNAI oversees the participation process to ensure it is appropriate for the indigenous people and, in case of doubts, it may recommend denying the environmental license.

The environmental authority may receive petitions to monitor activities likely to cause environmental and sociocultural impacts on indigenous communities and their lands, provided the requests come from the indigenous communities themselves, organizations that advocate for the rights of indigenous peoples or environmental protection, federal prosecutors or other stakeholders.

continued

continued



Environmental Impact Assessment System

The Authority will inform the potentially affected indigenous communities of the internal procedure for monitoring the environmental licensing process.

The Terms of Reference needed to prepare the Environmental Impact Assessment (EIA) must indicate the manner in which indigenous communities will participate during data collection, analysis and discussion of the expected impacts.



Other

COUNTRY LEGISLATION:

Use of Genetic Resources and Biodiversity

The State recognizes the right of indigenous peoples, traditional communities and traditional farmers to participate in decision-making processes at country level on matters related to the conservation and sustainable use of ancestral knowledge regarding the country's genetic heritage.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation should contain obligations regarding citizen consultations.
- 3 See http://www.planalto.gov.br/ccivil_03/leis/LEIS_2001/L10257.htm and http://legislacao.planalto.gov.br/legisla/legislacao.nsf/Viw_Identificacao/lei%2010.257-2001?OpenDocument. Last accessed on March 28, 2020.
- 4 See http://www.cidades.gov.br/images/stories/ArquivosCidades/ArquivosPDF/Resolucoes/resolucao-34-2005_alterada.pdf. Last accessed on March 28, 2020.
- 5 See http://www.planalto.gov.br/ccivil_03/decreto/D3420.htm and http://legislacao.planalto.gov.br/legisla/legislacao.nsf/Viw_Identificacao/DEC%203.420-2000?OpenDocument. Last accessed on March 28, 2020.
- 6 See <https://anatel.gov.br/legislacao/leis/807-lei-13116> and http://legislacao.planalto.gov.br/legisla/legislacao.nsf/Viw_Identificacao/lei%2013.116-2015?OpenDocument. Last accessed on March 28, 2020.
- 7 See http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Decreto/D8033.htm. Last accessed on March 28, 2020.
- 8 See http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2011/Decreto/D7624.htm. Last accessed on March 28, 2020.
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- 13 See <http://extwprlegs1.fao.org/docs/pdf/bra172738.pdf> and http://legislacao.planalto.gov.br/legisla/legislacao.nsf/Viw_Identificacao/lei%2013.576-2017?OpenDocument. Last accessed on March 28, 2020.
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- 15 See <http://extwprlegs1.fao.org/docs/pdf/bra172959.pdf>, <http://legis.senado.leg.br/norma/26330853> and http://legislacao.planalto.gov.br/legisla/legislacao.nsf/Viw_Identificacao/lei%2013.575-2017?OpenDocument. Last accessed on March 28, 2020.
- 16 See http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Lei/L11959.htm and http://legislacao.planalto.gov.br/legisla/legislacao.nsf/Viw_Identificacao/lei%2011.959-2009?OpenDocument. Last accessed on March 28, 2020.
- 17 See http://www.planalto.gov.br/ccivil_03/LEIS/L9985.htm and http://legislacao.planalto.gov.br/legisla/legislacao.nsf/Viw_Identificacao/lei%209.985-2000?OpenDocument. Last accessed on March 28, 2020.
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- 23 See <http://extwprlegs1.fao.org/docs/pdf/bra154091.pdf> and <https://www2.camara.leg.br/legin/fed/decret/2016/decreto-8772-11-maio-2016-783077-norma-pe.html>. Last accessed on March 28, 2020.
- 24 This applies to the energy, petroleum and natural gas, telecommunications, water, transportation and mining sectors, among others.
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- 30 See <https://workshoplegislaaoambiental.blogspot.com/2012/01/instrucao-normativa-n-de-9-de-janeiro.html>. Last accessed on March 28, 2020.
- 31 See <http://www.funai.gov.br/arquivos/conteudo/cglic/pdf/IN%2002-30%20de%20marco%20de%202015-%20Licenciamento%20Ambiental.pdf>. Last accessed on March 28, 2020.
- 32 See http://www.planalto.gov.br/ccivil_03/Leis/L9433.htm. Last accessed on March 28, 2020.
- 33 See http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6040.htm. Last accessed on March 28, 2020.
- 34 See <http://www.funai.gov.br/>. Last accessed on March 28, 2020.

Public consultation with civil society¹ in the framework of the national legislation of **Chile**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Chile as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Chile.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

The Environmental Assessment Service (SEA) sets out the mechanisms needed to ensure informed citizen participation in the evaluation of Environmental Impact Assessments and Statements, where applicable. The Service will provide opportunities for the project developer to meet with the community to keep it informed on the peculiarities of the project or activity. These meetings will be held in a timely fashion using simple, direct and easily understandable language. A record will be kept of all activities conducted.

All citizen observations deemed admissible will be incorporated into the environmental assessment process, and the Service will ultimately resolve about them. The resolution will be included in the Consolidated Evaluation Report.

According to the Regulation, the SEA may ask the developer to inform the community about the characteristics of the project or activity, the expected impacts and their corresponding mitigation, repair and/or compensation measures, as applicable, as well as any other environmental measure proposed.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN CHILE²:

General laws regarding citizen participation and/or public consultation

Laws and regulations regarding participation and/or consultation on environmental matters

Decree-Law No. 1, Consolidated, Coordinated and Systematized Text of Constitutional Organic Law No. 18575 on the General Bases for State Administration.³ Articles 69, 70, 73 and 74.

Constitutional Organic Law No. 18695 on Municipalities, enacted on 09th May 2006⁴ Articles 65.; 93, 96 and 97; 99 through 104.



Infrastructure

General Ordinance on Urban Development and Construction⁵, enacted on 16th April 1992. Article 2.1.11. paragraphs 2, 5 and 6.

Exempt Resolution No. 315 from the Ministry of Public Works, enacted on 06th February 2015⁶.

COUNTRY LEGISLATION:

Step 1 ► In order to encourage the public to participate in the development of public policies, in December of each year the Ministry of Public Works (MOP) receives requests for topics for consultation during the next year.

Step 2 ► The authority selects the topics that will be consulted.

Step 3 ► The MOP posts the selection in its webpage.

Step 4 ► During the first quarter of each year, the MOP posts these topics.

Step 5 ► The MOP posts details on the consultation, including the date, venue, methodology, feedback mechanisms, background, guiding principles and expected results.

Step 6 ► The dialogue is held on the dates indicated and includes three phases: Accreditation and presentation; topic development; plenary closure session.

Step 7 ► The Ministry will have 45 days from the Participatory Dialogue Meeting to post the report, including the presentations made, the agreements reached, and disagreements identified, and the commitments assumed by the Ministry.



Energy

Exempt Resolution No. 117 from the Ministry of Energy, enacted on 26th September 2018⁷

COUNTRY LEGISLATION:

Step 1 ► In order to encourage the public to participate in the development of public policies, the Ministry of Energy defines the topics for consultation at least 10 days prior to the event.

Step 2 ► The Ministry conducts in-person participatory dialogues between civil society representatives and the authority.

Step 3 ► Alternatively, the Ministry may conduct online public consultations.

Step 4 ► The Ministry responds to the observations received during the consultation.



Mining

Exempt Resolution No. 319 from the Ministry of Mining; in force since 07th February 2015⁸.

Exempt Resolution No. 30 from the Chilean Copper Commission; in force since 27th March 2015⁹.

COUNTRY LEGISLATION:

Step 1 ► In order to encourage the public to participate in the development of public policies, the Ministry of Mining may indicate those matters of public interest where citizen opinions are most important.

Step 2 ► Once a year, the Ministry convenes a public consultation that is held online during a one-month period.

Step 3 ► The public may submit their questions and queries regarding the topics proposed by the Ministry.

Step 4 ► After 20 days from concluding the consultation, the Ministry publishes the answers to the queries received.



Fishing

General Law of Fishing and Aquaculture¹⁰ and its amendments, enacted on 22nd November 1989.

Law No. 20657 amending the General Law of Fishing and Aquaculture, published on 09th February 2013¹¹.

Exempt Resolution No. 964 from the Ministry of Economy, Promotion and Tourism, in force since 17th March 2015¹².

COUNTRY LEGISLATION:

Step 1 ► In order to encourage the public to participate in the development of public policies, the National Fishing and Aquaculture Service may indicate those matters of public interest where citizen opinions are most important.

Step 2 ► The Service organizes participatory in-person dialogues between civil society representatives and authorities to elicit their opinions.

Step 3 ► Alternatively, the Service may conduct online public consultations through a variety of platforms.

Step 4 ► Within 30 business days from concluding the public consultation, the Service publishes a summary of the topics covered during the hearing in its webpage.



Forestry

Resolution No. 104 from the National Forestry Corporation, enacted on 20th March 2015¹³.

COUNTRY LEGISLATION:

Step 1 ► In order to encourage the public to participate in the development of public policies, the National Forestry Corporation (CONAF) may indicate those matters of public interest where citizen opinions are most important.

Step 2 ► Every year in December, the Corporation receives requests for topics to be included in consultations during the following year.

Step 3 ► The authority selects the topics that will be consulted.

Step 4 ► CONAF posts the selected topics in its webpage.

Step 5 ► During the first quarter of each year, CONAF posts these topics.

Step 6 ► CONAF posts details regarding the topic consulted, the consultation timeline, methodology and expected results.

Step 7 ► CONAF conducts participatory dialogue between civil society representatives and the authority. The event comprises three phases: Opening of the event and introduction of participants; presentation of the authority's stance and group work; event closure.

Step 8 ► Publication of the dialogue report.

Step 9 ► The report must be published within 45 days.

CONAF may also conduct online consultations using the same methodology.





Environmental Impact Assessment System

Law No. 19300 on the General Basis for the Environment, enacted on 01st March 1994; in force since 13th November 2010.¹⁴ Articles 7 bis, 7 ter and 7 quater; 18 quater; 26; 28; 29; 30 bis; 30 ter; 70.m; 70.y; 71.e; 81 h.

Decree No. 40. SEIA¹⁵ Regulation, enacted on 30th October 2013; in force since 06th October 2014. Articles 18.o; 27; 29; 38; 44.n; 56.k; 70; 82 through 84, 87, 88, 90, 91, 92, 94 through 96.

Decree No. 32 of 2015 from the Ministry of the Environment: Regulation for Strategic Environmental Assessment, enacted on 17th August 2015; in force since 04th November 2015. Article 24¹⁶.

COUNTRY LEGISLATION:

Step 1 ► EIA abstract publication. After submitting the EIA, the project developer will have ten (10) days to publish an abstract authorized by the SEA in a daily newspaper of regional or national circulation, as appropriate, containing the relevant information.¹⁷

Step 2 ► Once the abstract has been published, the project developer will submit a notarized copy of the newspaper that published the abstract for inclusion in the project application file.

Step 3 ► Project information. Once the project is entered into the EIA system, the SEA will inform the community using those means that are appropriate to the social, economic, cultural and geographic characteristics of the residents of the project's area of influence. The purpose is to familiarize the community with the environmental assessment procedure, their rights, the type of project or activity and the main impacts of this type of project.

Step 4 ► Citizen observations¹⁸. Any individual or legal entity may submit observations to the EIA in writing within 60 days from the business day immediately following the last publication of the abstract.

If during the assessment the EIA receives rectifications that substantially modify the project, a new 30-day period will be allocated for the public to send in their observations.



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1, except for the specific modifications presented below.

Timeliness:

Possibility to submit observations¹⁹. Any individual or legal entity may submit written observations to the EIA within 60 days from the date the EIA enters the EIA system. If during the assessment the EIA receives rectifications that substantially modify the project, a new 30-day period will be allocated for the public to send in their observations²⁰.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

- Public consultation with indigenous peoples in the framework of the national legislation of **Chile**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Chilean legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Chile.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN CHILE: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Chile ratified ILO Convention 169 on 15th September 2008.

Decree No. 66 of 2013 from the Ministry of Social Development: Regulatory Norms of the Indigenous Consultation Procedure, enacted on 15th November 2013; in force since 04th March 2014. Articles 2 through 8; 9 through 11; 12 through 19.

Law No. 19253, establishing Rules regarding the Protection, Promotion and Development of Indigenous Peoples, and creating the National Corporation for Indigenous Development (CONADI), enacted on 28th September 1993; in force since 25th March 2014. Articles 34, 35, 36, 39.a; 39.c, 46.c; 74.

Decree No. 40 from the Ministry of the Environment: Regulatory Norms of the EIA System, enacted on 30th October 2013; in force since 06th October 2014.²¹ Articles 27, 85; 86.

COUNTRY LEGISLATION:

It is a requirement to implement a good-faith process of free, prior and informed consultation²² with participation mechanisms that are appropriate to the sociocultural characteristics of each indigenous people, in order to promote informed participation and reach an agreement or consent regarding the project in the EIA System.



Environmental Impact Assessment System

COUNTRY LEGISLATION:

Step 1 ► Whenever an Executing Agency is unsure whether its project will affect one or more indigenous peoples, it must contact the SEA to inquire about any prior consultation requirements before filing its Environmental Impact Assessment.

Any individual, legal entity or representing organization with sufficient justification may ask the SEA to carry out a consultation. Justified requests are those that present, at a minimum, the facts and reasons that support their claim.

Step 2 ► If a project subject to evaluation reports no impact but is intended for development in indigenous lands, indigenous development areas, or in proximity to indigenous populations, the SEA will hold meetings with the indigenous peoples residing in the area of project influence to elicit their opinions, analyze them and order the consultation, if warranted. The SEA will prepare a report of the meetings that will include the opinions of the groups affected. The meetings will be conducted within 20 days or 30 days from the declaration of admissibility of the project for Environmental Impact Statements and Environmental Impact Assessments, respectively.

Step 3 ► If conducted, the indigenous consultation must be prior, i.e. it must be conducted sufficiently ahead of the project to allow the directly affected indigenous people to actually and effectively participate in the decision²³. The consultation must be completed within 60 days from the business day immediately following publication of the EIA abstract. If the evaluation introduces substantial modifications to the EIA, a new consultation period of 30 days will be allocated.

continued

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Environmental Impact Assessment System

Step 4 ► Common Elaboration of the Consultation²⁴: The purpose is to:

1. provide indigenous people with preliminary information on the project being consulted;
2. jointly determine (indigenous peoples and SEA) the participants in the consultation, their roles and functions;
3. jointly determine (indigenous peoples and SEA) the methodology²⁵; the instruments used to record the meetings; and the relevance of including observers, mediators and/or witnessing officers. The consultation will begin by convening the indigenous peoples likely to be affected to the first planning meeting. The peoples convened will depend on the national, regional and/or local reach of the project. The call will be subject to the following rules:
 - i. The SEA will summon the institutions representing the indigenous peoples through two publications in a daily newspaper circulating in the region intended for project development. The meeting will be held at least 15 days after the last publication, which must be made between 5 and 10 days from the first publication.
 - ii. The call will be posted in SEA's website.
 - iii. The meeting will also be publicized through any means deemed appropriate to ensure the targeted public learns about the meeting, such as radio spots, posters set up at the respective municipal and public offices, etc.
 - iv. The call will be made in Spanish and in a language understood by the communities that will be affected directly, as appropriate. The language of the affected indigenous community will be preferred if it is the language of choice for most everyday communications. This will be determined by the SEA in accordance with the peculiarities of each people.
 - v. The call must state the reason for the consultation as well as the date, time and venue of the planning meeting, and a telephone number and email address to forward any questions regarding the process.

This phase will include at least three meetings: the first one to deliver information on the project subject to consultation; the second one to determine the participants and the methodology employed, allowing enough time for internal deliberation by the indigenous people; and the third one to agree on it with the SEA.

The agreements reached during this phase will be documented in the meeting minutes, which will contain a detailed description of the methodology adopted and will be signed by the participants designated to such effect.

If no agreement is reached regarding one or more aspects, the agency responsible will leave a note and describe the new methodology used, which must remain consistent with the principles of the consultation.

continued



**Environmental
Impact
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Step 5 ► Information Dissemination about the Consultation²⁶.

The purpose is to provide the indigenous people with as much project information as possible, including the reasons that justify it and its nature, scope and implications. The information must be delivered in a timely manner, using socioculturally appropriate and effective methods and procedures, and in Spanish and the indigenous language, as applicable.

The information on the project and the consultation must be permanently updated in SEA's website.

Step 6 ► Internal Deliberation by the Indigenous People(s)²⁷.

The purpose is to allow the indigenous people(s) to analyze, examine and take a stance on the project through internal debate and deliberation so that they can prepare their participation in the dialogue phase.

Step 7 ► Dialogue²⁸. The purpose is to negotiate agreements on the project consulted through a dialogue process. All meetings necessary to fulfill the purpose of the consultation must be conducted during the timeframe allocated for this step. All dialogues must be respectful of the culture and decision-making procedures of indigenous peoples. All agreements and disagreements will be documented in the meeting's minutes, which will also describe the monitoring mechanisms and actions.

Step 8 ► Classification and communication of the results, and conclusion of the consultation process²⁹. The purpose is to prepare a detailed account of the process, since the evaluation of appropriateness, if applicable, to the different steps completed, the agreements reached and the reasons for any disagreements. All of this will be included in the final report.

The only indigenous peoples allowed in the consultation will be those affected directly, who will participate via their national, regional or local representatives depending on the scope of the project. Each community will be free to choose the institutions that will represent them, such as traditional indigenous organizations, indigenous communities or associations.

In case of doubt about an individual's indigenous status, the person will need to provide a certificate of ethnicity issued by CONADI.

All indigenous peoples or representing institutions directly affected by the intended project may step in at any moment, provided they respect all agreements reached thus far.

The indigenous people may ask the SEA to suspend the consultation and the time limit for the current phase in case of actions or events outside the parties' control that prevent the continuation of the process or hamper any phase thereof. The decision to suspend the consultation will depend on the submittal of a report explaining the events or actions affecting any of the steps of consultation. In any case, the suspension will not exceed 15 business days.

Once the period elapsed, the SEA, in coordination with indigenous representatives, may resume the consultation at a venue and under conditions that guarantee the continuity of the process.

Participants may not engage in behavior, acts or omissions that may prevent the successful completion of the prior consultation process, the achievement of its objectives, or ignore the commitments already made.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1, except for the specific modifications presented below.

PURPOSE:

To implement a good-faith process of free, prior and informed consultation³⁰ with participation mechanisms that are appropriate to the sociocultural characteristics of each indigenous people, in order to promote informed participation and to reach an agreement or consent regarding the implementation of the proposed projects in their territories.

METHODOLOGY:

Good practices regarding public consultations:

1. Timeliness

Consultations must be prior, i.e. conducted with sufficient time to allow the affected indigenous people to actually and effectively participate in a decision that may impact them directly. Any individual, legal entity or representing organization with sufficient justification may ask the Environmental Authority to carry out a consultation. Justified requests are those that present, at a minimum, the facts and reasons that support their claim.

The consultation must include two stages: (i) elaboration of the TORs needed to prepare the EIA, and (ii) evaluation of the EIA by the Environmental Authority. In this second stage, consultation must begin on the business day immediately following the last publication of the EIA.³¹

2. Accessibility

The consultation must be carried out at the time and venue chosen by the indigenous communities potentially affected by the project proposed.

The consultation will be conducted in Spanish and in a language understood by the communities that will be affected directly, as appropriate. The language of the affected indigenous community will be preferred if it is the language of choice for most everyday communications.

The State will provide funds so that participating indigenous communities can hire technical assistance, if required.

Information on the proposed project will be made available to the institutions and organizations representing the indigenous communities through means and procedures that are appropriate for this task, considering their geographical and environmental conditions.

3. Duration

The consultation will comprise the following phases:

i. Call for consultation

ii. Planning

The purpose is to: (i) provide indigenous people with preliminary information on the project being consulted; (ii) jointly determine (indigenous peoples and SEA) the participants in the consultation, their roles and functions; (iii) jointly determine (indigenous peoples and SEA) the methodology³², the instruments used to record the meetings and the relevance of including observers, mediators and/or witnessing officers; (iv) determine the need for specialized advice; and (v) Budget.

The consultation will begin by convening the indigenous peoples likely to be affected to the first planning meeting. The peoples convened will depend on the national, regional and/or local reach of the project.

The call will be subject to the following rules: (i) The SEA will summon the institutions representing the indigenous peoples through two publications in a daily newspaper circulating in the region where the indigenous people likely to be directly affected are situated; (ii) The meeting will be held at least 15 days after the last publication, which must be made between 5 and 10 days from the first publication; (iii) The call will be posted in SEA's website; (iv) the meeting will be publicized through any means deemed appropriate to ensure the targeted public learns about the meeting.³³; (v) The call will be made in Spanish and in a language understood by the communities that will be affected directly, as appropriate, (vi) The call must state the reason for the consultation as well as the date, time and venue of the planning meeting, and a telephone number and email address to forward any questions regarding the process.

This stage will include at least three meetings: the first one to deliver information on the project subject to consultation; the second one to determine the participants and the methodology employed, allowing enough time for internal deliberation by the indigenous people; and the third one to agree on it with the SEA.

The agreements reached during this phase will be documented in the meeting minutes, which will contain a detailed description of the methodology used and will be signed by the participants designated to such effect.

If no agreement is reached regarding one or more aspects, the agency responsible will leave a note and describe the new methodology used, which must remain consistent with the principles of the consultation.³⁴

iii. Preparation of Consultation.

The purpose is to provide all the project information to the indigenous people, including the reasons that justify it and its nature, scope and implications.

The information must be delivered in a timely manner, using socioculturally appropriate and effective methods and procedures, and in Spanish and the indigenous language, as applicable.

The information on the project and the consultation must be permanently updated in SEA's website. The purpose is to provide the indigenous people with as much project information as possible, including the reasons that justify it and its nature, scope and implications.³⁵

iv. Implementation of the consultation.

The implementation process distinguishes two phases:

- i. Internal Deliberation by the Indigenous Peoples. The purpose is to allow the indigenous people(s) to analyze, examine and take a stance on the project through internal debate and deliberation so that they can prepare their participation in the dialogue phase.
- ii. Dialogue. The purpose is to negotiate agreements on the project consulted through a dialogue process. All meetings necessary to fulfill the purpose of the consultation must be conducted during the timeframe allocated for this step. All dialogues must be respectful of the culture and decision-making procedures of indigenous peoples.

All agreements and disagreements will be documented in the meeting's minutes, which will also describe the monitoring mechanisms and actions.

v. Agreements

The Government decision regarding the investment project must take into account the opinions, suggestions and recommendations made by the indigenous peoples during the consultation, as well as the effects of the project approval on the collective rights recognized both constitutionally and by virtue of the international treaties ratified by the State.

The final agreement arising from the consultation process is binding for all parties concerned.

If no agreement is reached, government agencies will take every measure required to safeguard the collective rights of indigenous peoples as well as their right to life, integrity, and full development.

4. Context

The consultation must observe the customs and traditions of each one of the indigenous peoples or communities involved.

If the project needs to be approved by two or more indigenous communities, the communities may reach a decision either jointly or separately. In any case, indigenous communities may under no circumstance be forced to use a decision-making mechanism other than their own.

5. Inclusion and Diversity

All indigenous peoples or representing institutions directly affected by the intended project may step in at any moment, provided they respect all agreements reached thus far.

6. Representativeness

The only indigenous peoples allowed in the consultation will be those affected directly, who will participate via their national, regional or local representatives depending on the scope of the project.

Each community will be free to choose the institutions that will represent them, such as traditional indigenous organizations, indigenous communities or associations.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation should contain obligations regarding citizen consultations.
- 3 See <https://www.leychile.cl/Navegar?idNorma=191865>. Last accessed on March 2, 2020.
- 4 <http://www.leychile.cl/Navegar?idNorma=251693>
- 5 http://fiscalia.mop.cl/legislacion/cont/mop/Decreto_Supremo_47_Ordenanza_General_de_Urbanismo_y_Construccion.pdf
- 6 See https://www.mop.cl/CentrodeDocumentacion/Documents/Participacion%20Ciudadana%20y%20Transparencia/Resolucion_MOP_315-2015_Norma_General_Participacion_Ciudadana.pdf. Last accessed on March 2, 2020.
- 7 See http://www.minenergia.cl/archivos_bajar/leylobby/Octubre/RES_EX_SUB_117.pdf. Last accessed on March 2, 2020.
- 8 <https://www.leychile.cl/Navegar?idNorma=1074576>
- 9 <https://www.leychile.cl/Navegar?idNorma=1075774>
- 10 See <https://www.leychile.cl/Navegar?idNorma=13315>. Last accessed on March 2, 2020.
- 11
- 12 <https://www.leychile.cl/Navegar?idNorma=1075546>
- 13 See http://www.conaf.cl/wp-content/files_mf/1450467872RESOLUCI%C3%93NN%C2%BA1042015.pdf. Last accessed on March 2, 2020.
- 14 <http://www.leychile.cl/Navegar?idNorma=30667>
- 15 <http://www.leychile.cl/Navegar?idNorma=1053563>
- 16 See <https://www.leychile.cl/Navegar?idNorma=1083574>. Last accessed on March 2, 2020.
- 17 a) Name of the private or legal person responsible for the project and name of the project; b) Identification and overview of the type of project; c) Intended location of the project, including the main environmental elements considered in the baseline; d) Estimated investment amount; e) Identification of the main environmental impacts anticipated and the mitigation, compensation and repair measures proposed; f) Indication of the venues where the EIA will be available for public consultation and/or reproduction, including the address and hours of operation, as well as the time limit to submit representations and the address of the agencies where these will be received; g) Identification of the matters requiring information withholding, as provided under article 27 of the Law, in case such information is requested.
- 18 With regard to citizen observations: All citizen observations deemed admissible will be incorporated into the environmental assessment process, and the Environmental Assessment Service (SEA) will ultimately resolve about them. The resolution will be included in the Consolidated Evaluation Report.
- 19 With regard to citizen observations: All citizen observations deemed admissible will be incorporated into the environmental assessment process, and the Environmental Assessment Service (SEA) will ultimately resolve about them. The resolution will be included in the Consolidated Evaluation Report.
- 20 Provision included in the national legislation.
- 21 <http://www.leychile.cl/Navegar?idNorma=1053563>
- 22 Good faith is one of the guiding principles of consultation. According to it, all participants in a consultation must act fairly and properly in order to reach consensus or obtain their free, prior and informed consent.
- 23 The consultation methods must be consistent with the culture, worldview, customs, language, traditions, rites or beliefs of the indigenous peoples consulted. They must also be adapted to the nature, contents and complexity of the measure consulted.
- 24 Referred to as Step 1 under the Chilean legislation.
- 25 The methodology must include, at a minimum, the participation mechanisms, the formalization of the agreements reached, the venues and timeframes, the instruments used to guarantee a level playground, and the general dissemination and logistics mechanisms.
- 26 Referred to as Step 2 under the Chilean legislation.
- 27 Referred to as Step 3 under the Chilean legislation.
- 28 Referred to as Step 4 under the Chilean legislation.
- 29 Referred to as Step 5 under the Chilean legislation.
- 30 Good faith is one of the guiding principles of consultation. According to it, all participants in a consultation must act fairly and properly in order to reach consensus or obtain their free, prior and informed consent.
- 31 Provision included in the national legislation.
- 32 The methodology must include, at a minimum, the participation mechanisms, the formalization of the agreements reached, the venues and timeframes, the instruments used to guarantee a level playground, and the general dissemination and logistics mechanisms.
- 33 These means may include radio spots, posters in the respective municipal and public offices, etc.
- 34 All provisions regarding the call for consultation are taken from the national legislation.
- 35 All provisions regarding the preparation of the consultation are taken from the national legislation.

Public consultation with civil society¹ in the framework of the national legislation of **Colombia**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Colombia as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Colombia.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

The Prosecutor General or the Delegate for Environmental Affairs, the Ombudsman, the Minister of the Environment, other environmental authorities, governors, mayors, or at least 100 people or 3 not-for-profit organizations may request a public hearing whenever a proposed development requiring an environmental license is determined to cause an environmental impact.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN COLOMBIA²: Laws and regulations regarding participation and/or consultation on environmental matters



Infrastructure

Law No. 1454 on Land Use, published on 29th June 2011.³ Art. 23.



Mining

Law 685 of 2001⁴, which issues the Mining Code and enacts other government policies. Art. 259

COUNTRY LEGISLATION:

In those cases where the signing of a contract is contingent upon the consultation to third parties, community representatives, or social groups or organizations, efforts will be made to ensure they are duly and properly notified of the call for public hearing through the appropriate means and in adherence to the applicable legislation.



Environmental Impact Assessment System

Law No. 99 of 1993, published on 22nd December 1993⁵. Articles: 69 through 72; 76; 108.2.

Decree No. 2041 of 2014, published on 15th October 2014.⁶ Art. 15.

Decree No. 330 of 2007, published on 8th February 2014.⁷ Art. 5.

COUNTRY LEGISLATION:



Step 1 ► Any private individual or legal/private entity may, without the need to demonstrate any legal interest whatsoever, participate in public processes for the granting, amendment or cancellation of permits or licenses issued to entities that affect or may affect the environment, or for the imposition or revocation of sanctions for non-compliance with environmental rules and regulations.

Step 2 ► If it is decided that a hearing is warranted, the hearing must be conducted prior to the granting, amendment or cancellation of the environmental permit or license. The administrative authority receiving the request summons the hearing through a notice issued at least 30 days prior to the meeting. The notice includes the date, venue and time of the hearing, as well as its purpose. The meeting is presided over by the head of the competent agency or a delegate. The notice must remain posted at a secretary's office for 10 days and must also be published in a daily newspaper of national circulation and in the newsletter of the relevant entity.

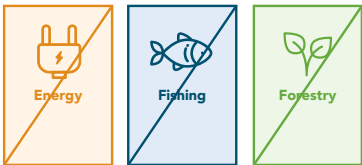
Participants in the public hearing may include a representative of the petitioners, any stakeholders, competent authorities, experts, and not-for-profits having submitted supporting documentation and evidence prior to the meeting. Written minutes of the

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 Environmental Impact Assessment System	<p>meeting will be kept. During the hearing, consideration will be given to information and evidence deemed pertinent.</p> <p>Step 3 ► The administrative decision will be made based on the representations and evidence presented during the hearing.</p> <p>Step 4 ► A public hearing may also be convened during the execution of an operation requiring an environmental permit or license if it becomes evident that the conditions for granting such permit or the relevant environmental regulation have been violated.</p>
 Other	<p>Decree No. 2372 of 2010, published on 7th January 2010.⁸ Articles: 42; 47 paragraph 1.</p> <p>.....</p> <p>Law No.850 of 2003 on Civilian Watchdogs, published on 19th November 2003.⁹ Art. 15.a.</p> <p>.....</p> <p>Decree No. 1073 of 2015, which issued the Regulatory Decree of the Mining and Energy Administrative Sector. Article 2.2.5.10.2.11</p>

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

- ▶ Public consultation with indigenous peoples in the framework of the national legislation of **Colombia**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Colombian legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Colombia.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

Prior consultation is mandatory whenever a project is intended for development in an indigenous reservation or in land adjudicated to Afro-Colombian communities¹⁰. The consultation must precede the execution or implementation of any project that may affect the rights of indigenous peoples.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN COLOMBIA: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Colombia Colombia ratified ILO Convention 169 on August 7, 1991.

Decree No. 1320 of 1998, which regulates pre-consultation processes with indigenous and Afro-Colombian communities in relation to activities involving the exploitation of natural resources in their territories, published on 15th July 1998.¹¹

Presidential Directive No. 01, which guarantees the fundamental right to prior consultation, enacted on 26th March 2010¹².

Presidential Directive No. 10: A guide for conducting prior consultations, enacted on 07th November 2013¹³. Stages 3, 4 and 5.

Law No. 70 of 1993, published on 31st August 1993.¹⁴ Articles: 3.3; 22; 26; 44.

Law No. 99 of 1993, published on 22nd December 1993¹⁵. Art. 76.

Sentence T-766-2015 issued by the Constitutional Court and enacted on 16th December 2015¹⁶.

Sentence SU123/18 of 2018 issued by the Constitutional Court¹⁷.





Mining

COUNTRY LEGISLATION:

The Ministry of Mining and Energy may, out of its own initiative or in response to a petition from Afro-Colombian communities, delineate mining areas within their adjudicated territories where the exploration and exploitation of non-renewable natural resources is conditioned to technical considerations that protect and promote their participation, in an effort to preserve their cultural and economic traditions regardless of any rights acquired by or granted to third parties. According to the Constitutional Court, any government initiative or project that has a direct impact on indigenous and Afro-Colombian communities requires a prior consultation in order to obtain their consent. The prior consultation process must include the following stages¹⁸:

- I. Confirmation of the presence of ethnic communities in the area: Review the request for prior consultation, analyze the data available, verify conditions in the field, confirm the potential impacts in the area of influence, determine the need for prior consultation, and issue the confirmation.
- II. Coordination and preparation: Identify community representatives and summon all stakeholders.
- III. Pre-consultation: Appoint a working team, convene the pre-consultation meeting, inform communities about the legal framework, present the proposed development, and establish the methodology for the prior consultation.
- IV. Prior consultation: Convene meetings, conduct workshops to identify potential impacts and define management strategies, conduct meetings for reaching consensus, notarization.
- V. Monitoring of agreements: Periodic reports by the executing agency regarding the observance of agreements, end of the consultation.



Environmental Impact Assessment System

COUNTRY LEGISLATION:

There are two possible scenarios for projects applying for an environmental license:

- If the project includes generic Terms of Reference (TOR) provided by the relevant environmental authority, the developer will provide the Ministry of the Interior with details on how potentially affected indigenous and/or Afro-Colombian communities are expected to participate in the corresponding assessment.
- If the project does not include generic TOR, the environmental authority will give the developer the application form required to prepare the TOR and conduct a prior consultation. The environmental authority will also notify the Ministry of the Interior of the participation mechanism established for potentially affected indigenous and/or Afro-Colombian communities in the preparation of the respective studies.

Step 1 ► The developer must send a letter inviting representatives of indigenous and Afro-Colombian communities to participate in the preparation of the assessment.

continued

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Environmental Impact Assessment System

Step 2 ► If after twenty (20) days from sending the invitation the developer receives no reply from the indigenous or Afro-Colombian communities, the project developer will notify the Ministry of the Interior. The Ministry will then have ten (10) days from the notification date to determine whether community representatives have an interest in participating and then inform the developer.

If there is no interest in participating or if no reply is received after the Ministry's contact, the developer will proceed with the environmental assessment without participation from the communities concerned.

Step 3 ►¹⁹ Within fifteen (15) from the date of application for the environmental license, the environmental authority will confirm the participation/non-participation of the communities in the preparation of the Environmental Impact Assessment, and will summon a prior consultation meeting to be held within the next thirty (30) days, preferably in the area where the communities reside.

The meeting will be presided over by the environmental authority and will be attended by the Ministry of the Interior, as well as the project developer and representatives of the indigenous and/or Afro-Colombian communities involved in the assessment²⁰.

Step 4 ► The meeting will have the following structure²¹: (i) the project developer presents the assessment, emphasizing the potential impacts on the indigenous and Afro-Colombian communities affected, together with a proposal for managing these impacts; (ii) the representatives from the indigenous and Afro-Colombian communities take the floor to express their opinions and/or concerns; (iii) if there is consensus regarding the impacts identified and the environmental management plan, the meeting is terminated and the terms of the consensus reached are placed on record in a document that will be signed by the representatives of the indigenous and/or Afro-Colombian communities as well as the representatives of the environmental authority and the Ministry of the Interior.

If no consensus is reached regarding the environmental management plan or other measures, the environmental authority will adjourn the meeting only once and for not more than 24 hours to give the parties more time to consider the proposals. If after the second meeting the parties reach consensus, they will sign the Agreement.

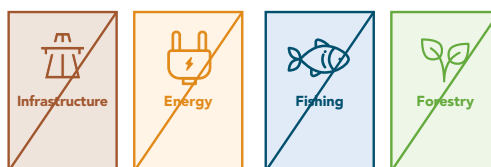
If any of the indigenous or Afro-Colombian communities concerned fails to attend the consultation meeting, it must justify its absence with the environmental authority within eight (8) days from the date set for the meeting. If the absence is not justified, the absent party will be considered as accepting the measures proposed to prevent, mitigate or compensate the potential impacts caused.

Conversely, if the absence is justified, the environmental authority will reconvene a new consultation meeting within fifteen (15) days.

Step 5 ► If no consensus is attained regarding the Environmental Management Plan, the meeting will be called off placing on record that no agreement could be reached. The environmental authority will then decide whether it grants the environmental license or not.



No specific legislation on the matter was identified:²²



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation contains obligations regarding citizen consultations.
- 3 See <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1681347>. Last accessed on March 2, 2020.
- 4 See <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1666077>. Last accessed on March 2, 2020.
- 5 See <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1635523>. Last accessed on March 2, 2020.
- 6 See <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1389917>. Last accessed on March 2, 2020.
- 7 See <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1848783>. Last accessed on March 2, 2020.
- 8 See <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1872443>. Last accessed on March 2, 2020.
- 9 See <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1669667>. Last accessed on March 2, 2020.
- 10 The same principle applies if the project is intended for development in untitled land that is permanently inhabited by indigenous or Afro-Colombian communities.
- 11 See <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1266073>. Last accessed on March 2, 2020.
- 12 See <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=DirectivasP/30021369>. Last accessed on March 2, 2020.
- 13 See <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=DirectivasP/30021326>. Last accessed on March 2, 2020.
- 14 See <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1620332>. Last accessed on March 2, 2020.
- 15 See <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1635523>. http://www.suin-juriscol.gov.co/viewDocument.asp?id=20001201#ver_20001207. Last accessed on March 2, 2020.
- 16 See <http://www.corteconstitucional.gov.co/relatoria/2015/T-766-15.htm>. http://www.suin-juriscol.gov.co/viewDocument.asp?id=20001201#ver_20001207. Last accessed on March 2, 2020.
- 17 See <http://www.corteconstitucional.gov.co/relatoria/2018/SU123-18.htm>. http://www.suin-juriscol.gov.co/viewDocument.asp?id=20001201#ver_20001207. Last accessed on March 2, 2020.
- 18 By presidential instruction.
- 19 Steps 3 through 5 are also required in the case of applications for the use, development or exploitation of Renewable Natural Resources.
- 20 Whenever multiple indigenous and Afro-Colombian communities need to be consulted, only one meeting will be held, except when ongoing conflicts between them render this option impractical.
- 21 The meeting will be held in Spanish and translated into the languages of the indigenous and Afro-Colombian communities present, as appropriate.
- 22 Art. 19 of the General Forestry Law No. 1021, published on 24th April 2006 (See <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1695810>. Last accessed on March 2, 2020) provides that indigenous and Afro-Colombian communities are the exclusive beneficiaries of the forestry resources located in their territories. All development proposals must therefore be subject to prior consultation with the communities concerned. However, this provision was declared unenforceable on 23th January 2008 through Sentence C-030/08 (See http://www.suin-juriscol.gov.co/viewDocument.asp?id=20001201#ver_20001207. Last accessed on March 2, 2020). The declaration of unenforceability is the derogation of a law by the Constitutional Court on grounds of unconstitutionality or conflict with the principles stated in the Constitution. As a consequence, the law ceases to be in effect and no longer imposes an obligation.

Public consultation with civil society¹ in the framework of the national legislation of **Costa Rica**, the IDB group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Costa Rica as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Costa Rica.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

Consultation is not mandatory for projects included in the Environmental Impact Assessment System (EIAS). However, any individual or legal entity may submit a written petition to the environmental authority requesting a public or private hearing in order to examine a certain project. If the authority rejects the request for public hearing, it must still provide a means for receiving observations to the project.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN COSTA RICA²: Laws and regulations regarding participation and/or consultation on environmental matters



Mining

Mining Code³. Published in the Official Gazette on 22nd October 1982. Article 6⁴.

COUNTRY LEGISLATION:

Permit or concession applications may be turned down or conditioned if the assessment involves the health and safety of neighboring communities.



Forestry

Forestry Law⁵. Published in the Official Gazette on 16nd April 1996. Article 37, paragraph 2.



Environmental Impact Assessment System

Organic Law of the Environment⁶. Published in the Official Gazette on 04th October 1995. Articles: 6 through 11⁷; 23; 24; 29.d; 35.c; 60 inc. final; 78.c.

General Regulation on Environmental Impact Assessment Procedures⁸. Published in the Official Gazette on 28th June 2004. Articles: 41⁹; 42; 55 through 58¹⁰; 63. .

COUNTRY LEGISLATION:

About the project information fed into the EIAs:


Step 1 ► The Environmental Authority will periodically post the list of environmental impact assessments received in a daily newspaper of national circulation and inform of their availability for public consultation. It will also indicate the time and the venues for consultation, the deadlines to receive observations, and the form to submit them.


The information contained in the environmental impact assessment document will be publicly available for consultation by any individual or organization. However, the developer may request that some information related to the assessment be withheld if it is determined that disclosure would infringe industrial property rights.

Step 2 ► Individuals and legal entities may submit their representations in writing. All observations received from Civil Society will be included in the project administrative file and must be considered during the EIA review process.

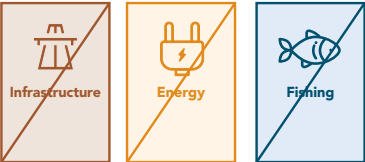
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 Environmental Impact Assessment System	<p>About public hearings:</p> <p>Step 3 ► Requests for hearings must be sent to the Environmental Authority in writing, indicating the postal address, telephone or fax number, and the time and date for informing the decision. Hearings will be scheduled (i) within fifteen calendar days from reception of the request in the case of private hearings, and (ii) within three months from reception of the request in the case of public hearings.</p> <p>Step 2 ► After considering the potential environmental impact, the Environmental Authority will determine whether there is sufficient ground to warrant the consultation or not. If it opts not to conduct the public hearing, it will determine the manner in which observations will be received.</p> <p>Step 3 ► If the consultation is conducted, the Environmental Authority will coordinate the event with the local municipalities, associations for development and stakeholders concerned, as well as the producers located within the area of influence.</p> <p>The Environmental Authority will only conduct one public hearing, which will be convened by announcing it twice in a major daily newspaper circulating in Costa Rica at least 10 business days prior to the event.</p> <p>During the public hearing, the developer will present the project together with the technical team that prepared the EIA.</p>
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 Other	<p>Biodiversity Lw¹¹. Published in the Official Gazette on 30th April 1998. Articles 25.3; 83; 101.</p>
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No specific legislation on the matter was identified:





Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1, except for the specific modifications presented below.

Call for consultation:

The hearing must be summoned at least 10 business days in advance, indicating the date, venue and time for the meeting.¹²

Accessibility:

Individuals and legal entities may submit their representations in writing.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.



- Public consultation with indigenous peoples in the framework of the national legislation of **Costa Rica**, the IDB Group's operational policies and good practices



This model for consultation with indigenous peoples contains the requirements for consultations in adherence to the Costa Rican legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Costa Rica.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR PUBLIC INDIGENOUS CONSULTATION IN COSTA RICA: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Costa Rica ratified ILO Convention 169 on April 2, 1993.

COUNTRY LEGISLATION:

Prior Consultation is mandatory if it is determined that the collective rights of indigenous peoples may be affected by a government decision or a bill promoted by the Executive or the private sector. The specific matters to be consulted are those mentioned in ILO Convention 169 and in the United Nations Declaration on the Rights of Indigenous Peoples, particularly the development or exploitation of natural resources within their lands or territories. All agreements reached are binding for the parties.



Other

Presidential Decree No. 40932 on the general mechanism for consultation with indigenous peoples, issued on 3rd March 2018¹³

Biodiversity Law¹⁴, published in the Official Gazette on 30th April 1998. Article 83.

COUNTRY LEGISLATION:

The agency responsible for conducting indigenous consultations is the Technical Unit for Indigenous Consultation (UTCI) under the Ministry of Justice and Peace. Each indigenous territory will create territorial instances for indigenous consultation as counterparts of the UTCI for the preparation of consultations.

Step 1 ► Project developers must request a prior consultation whenever their proposed interventions affect the collective rights of indigenous peoples. Indigenous peoples may request a prior consultation if they feel that a certain project will affect their rights. The request must fulfill a number of conditions.

Step 2 ► The UTCI will have 8 days to resolve on the request. If not all conditions were met, the requesting party will have 5 days to fulfill them. The UTCI notifies the territorial entity for indigenous consultation of its intention to conduct a prior consultation. The territorial entity may consent to the prior consultation in the terms proposed by the UTCI or establish other conditions within 15 days.

Step 3 ► Within the next 15 business days, the UTCI resolves on the beginning of the consultation. The resolution must prove that collective rights have or will be affected. The resolution may be challenged by lodging an appeal for revocation.

Step 4 ► ¹⁵During the first meeting, the counterparts discuss and decide on the methodology to be used as well as other aspects of the consultation. The UTCI will have 8 business days to validate this Consultation Plan.

Step 5 ► ¹⁶The executing agency initiates a dialogue to provide the indigenous communities concerned with all the relevant information both in Spanish and in their indigenous language(s). The indigenous people may contribute information regarding their culture, world view, etc.

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Other

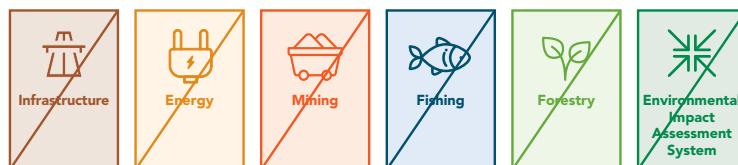
Step 6 ►¹⁷ The indigenous people examines all the evidence in private within the time limit established in the Consultation Plan. The indigenous people may decide to hire advisors of their choice who will be financed by the UTCI. The indigenous people will have two options: (i) grant its consent or not, and (ii) modify the project in order to mitigate, offset or prevent the affectation of collective rights.

Step 7 ►¹⁸ The parties engage in dialogue in order to reach consensus. Three situations may arise: If the indigenous people gives its consent, the project negotiation starts. If the indigenous people proposes modifications, the parties will try to reach minimum standards for agreement. If the indigenous group declines to give its consent and is not willing to reach minimum agreements, the Government may proceed with the project only if it can invoke a superior public interest with full respect for Human Rights¹⁹.

Step 8 ►²⁰ The UTCI will have 10 business days to review the lawfulness of the agreement and recommend improvements. The issuance of the final document marks the end of the consultation process. If differences cannot be resolved, the process ends with the realization that no agreement can be reached.

Step 9 ►²¹ The Government, the indigenous peoples, the UTCI and the territorial instances monitor compliance with the agreements. Executing agencies submit progress reports to the UTCI to confirm compliance or to justify the lack of advances in this respect.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1, except for the specific modifications presented below.

PURPOSE:

To implement a process of free, prior and informed consultation²² in good-faith, with participation mechanisms that are appropriate to the socio-cultural characteristics of each indigenous people with a view to promote informed participation and reach an agreement or consent regarding the implementation of the proposed projects in their territories.

METHODOLOGY:

Good practices regarding public consultations:

1. Timeliness

Consultations must be prior, i.e. conducted with sufficient time to allow the affected indigenous people to actually and effectively participate in a decision that may impact it directly.

Any individual, legal entity or representing organization with sufficient justification may ask the Environmental Authority to carry out a consultation. Justified requests are those that present, at a minimum, the facts and reasons that support them.

The consultation must include two stages: (i) elaboration of the TORs needed to prepare the EIA, and (ii) evaluation of the EIA by the Environmental Authority.

2. Accessibility

The consultation must be carried out at the time and venue chosen by the indigenous communities potentially affected by the project proposed.

The consultation will be conducted in Spanish and in a language understood by the communities that will be affected directly, as appropriate. The language of the affected indigenous community will be preferred if it is the language of choice for most everyday communications.

If the matter of consultation is complex and highly technical, the UTCI will provide funds so that the indigenous community can hire practitioners and advisors who can explain and provide an independent, justified opinion on the matter²³.

Information on the proposed project will be made available to the institutions and organizations representing the indigenous communities through means and procedures that are appropriate for this task, considering their geographical and environmental conditions.

3. Duration

The consultation will comprise the following stages:

Call for Consultation

Planning: (i) the methodology to be used (e.g. how the consultation will be recorded and the relevance of having observers, mediators and/or a witnessing officer, among others), the schedule and the venue; (ii) any specialized advice needed; (iii) budget.

Preparation of consultation: (iv) Implementation of the consultation; (v) Agreements: The Government decision regarding the investment project must take into account the opinions, suggestions and recommendations made by the indigenous peoples during the consultation, as well as the effects of project approval on the collective rights recognized both constitutionally and by virtue of the international treaties ratified by the State.

The final agreement arising from the consultation process is binding for all parties concerned.

If no agreement is reached, government agencies will take every measure required to safeguard the collective rights of indigenous peoples as well as their right to life, integrity, and full development.

4. Context

If the project needs to be approved by two or more indigenous communities, the communities may reach a decision either jointly or separately. In any case, indigenous communities may under no circumstance be forced to use decision-making mechanisms different than their own.

5. Inclusion and Diversity

All indigenous peoples or representing institutions directly affected by the matter being consulted may be part of the process at any moment, provided they respect all agreements reached thus far.

6. Representativeness

The only indigenous peoples allowed in the consultation will be those affected directly, who will participate via their national, regional or local representatives depending on the scope of the project.

Each community will be free to choose the institutions that will represent them, such as traditional indigenous organizations, indigenous communities or associations.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation contains obligations regarding citizen consultations.
- 3 See http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=48839&nValor3=115415¶m2=3&strTipM=TC&lResultado=25&strSim=simp. Last accessed on March 2, 2020.
- 4 The Constitutional Court, through resolution No. 17155 of 5th November 2009, rendered the judgment that: "this article shall not be considered unconstitutional if interpreted in the light of Article 50 of the Political Constitution in the terms of this ruling."
- 5 See http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=41661&nValor3=118544&strTipM=TC. Last accessed on March 2, 2020.
- 6 See http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=27738&nValor3=116998&strTipM=TC. Last accessed on March 2, 2020.
- 7 Art. 8 was supplemented with Art. 12 of the Forestry Law No. 7575.
- 8 See http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=53029&nValor3=116925¶m2=1&strTipM=TC&lResultado=8&strSim=simp. Last accessed on March 2, 2020.
- 9 Amended by Article 2 of Presidential Decree No. 34688.
- 10 Art. 57 amended by Article 8 of Presidential Decree No. 32734 and Article 59 amended by Article 9 of the said Presidential Decree.
- 11 See http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=39796&nValor3=119205&strTipM=TC. Last accessed on March 2, 2020.
- 12 Provision included in the national legislation.
- 13 See http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=86267&nValor3=111809&strTipM=TC. Last accessed on March 2, 2020.
- 14 See http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=39796&nValor3=119205&strTipM=TC. Last accessed on March 2, 2020.
- 15 Stage 3 in the regulation.
- 16 Stage 4 in the regulation.
- 17 Stage 5 in the regulation.
- 18 Stage 6 in the regulation.
- 19 The UTCL is responsible for ensuring the agreements adhere to the current legislation. The territorial entity is responsible for consulting and rendering accounts to the indigenous people. The executing agency is responsible for accepting only those agreements that adhere to the legal framework and ensure respect for human rights.
- 20 Stage 7 in the regulation.
- 21 Stage 8 in the regulation.
- 22 Good faith is one of the guiding principles of consultation. According to it, all participants in a consultation must act fairly and properly in order to reach consensus or obtain free, prior and informed consent.
- 23 Provision included in the national legislation.

Public consultation with civil society¹ in the framework of the national legislation of **Ecuador**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Ecuador as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Ecuador.

In addition, if this is a joint operation with the IDB Group and legal gaps are identified regarding one or more principles of good practice, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

The right of the population to live in a healthy environment includes the right to participate in any decision regarding actions that cause or may cause an environmental impact or damage. Consultation and other forms of participation are mandatory for projects considered of medium and high environmental impact. Its purpose is to reveal the potential socio-environmental impacts of a certain project, development or activity, and to elicit and incorporate the public's opinions and observations, especially those of the residents in the area of direct influence, provided these opinions and observations are technically and economically viable. Consultation mechanisms must be appropriate for the sociocultural characteristics of the people residing in the project's area of influence.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN ECUADOR²: Laws and regulations regarding participation and/or consultation on environmental matters

Constitution of the Republic of Ecuador of 20th October 2008³. Article 398.



Infrastructure

Organic Code on Territorial Organization, Autonomy and Decentralization⁴, published on 19th October 2010. Articles 146; 304.

COUNTRY LEGISLATION:

The autonomous governments of decentralized rural districts will define the mechanism for public participation in the formulation, implementation, monitoring and evaluation of development and land use plans and, in general, in proposals for public investment.



Energy

Organic Law of the Public Electric Power Service⁵, published on 16th January 2015. Article 6.

Presidential Decree No. 1215 of 13th February 2001. Substitute Rules of the Environmental Regulation for Hydrocarbon Operations in Ecuador,⁶ amended through Decree No. 1630/2009.⁷ Articles 6, 88, and 89.

COUNTRY LEGISLATION:

The Ministry of the Environment is responsible for coordinating the participation of civil society organizations, indigenous people, peasant communities and the public in general.

In fulfilling its duties of controlling and monitoring the environmental performance of hydrocarbon operations, the Ministry of the Environment may provide spaces for citizen oversight through community representatives who may contribute observations and recommendations during surveys and meetings. These will be evaluated and considered by the National Environmental Protection Administration for technical control and monitoring purposes.



Mining

Mining Law⁸, published on 29th January 2009. Articles 87; 89; 90.

Ministerial Agreement No. 37⁹, Environmental Regulations of mining activities, Ministry of the Environment, published on 27th March 2014. Articles 12; 16; 22; 68.

Agreement MERNNR-MERNNR-2019-0028-AM, Public Mining Policy 2019 - 2030¹⁰. Action Line 2: Environmental and social responsibility. Public Policy 3.1, guideline d.

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Mining

COUNTRY LEGISLATION:

The 2019 – 2030 mining policy strengthens governance within the mining sector and guarantees effective public participation during all stages of the project, including public hearings, transparency in Previous, Free and Informed Consultation (PFIC) processes, and continuous dialogue, among other mechanisms.

The State is responsible for conducting public participation and social consultation in mining projects. This authority cannot be delegated to any private body. The Ministry of Finance must provide the necessary funding.

Social participation is a prerequisite to obtain an environmental license for all medium and large mining projects in Category III (advanced exploration) and Category IV (exploitation). In the first case, the participatory project is led by the project developer in coordination with the Ministry of the Environment, while in the second case it is led by the Ministry in coordination with the project developer.

The purpose of the consultations is to promote the sustainable development of mining activities, guaranteeing a rational utilization of mining resources, respect for the environment, social participation in environmental matters, and the development of the communities located within a mining project's area of influence.

If the majority of the community consulted opposes the project, the Ministry will resolve on whether to proceed with the project or not.

Consultations are mandatory for all stages of a mining project. All mining concessions must respect the right of access to information, participation and consultation regarding the environmental management of mining activities.





Environmental Impact Assessment System

Organic Code of the Environment of 12th April 2017 (last amended of 21st April 2018)¹¹. Articles 5; 184.

Presidential Decree No. 752¹², Regulatory Norms of the Organic Code of the Environment of 21st May 2019. Articles 440; 441; 463 through 481.

Presidential Decree No. 1040 that regulates the implementation of the Social Participation mechanisms set in the Environmental Management Law¹³, published on 08th May 2008.

Organic Law of Citizen Participation¹⁴, published in the Supplement to Registro Oficial (official gazette) No. 175 of 20th April 2010.

Organic Law of Water Resources, Uses and Utilization of Water¹⁵, Second Supplement to Registro Oficial No. 305 of 6th August 2014. Articles 71 and 82.

Ministerial Agreement 061¹⁶, Reform of Book VI on Environmental Quality or the Unified Text of Secondary Legislation of the Ministry of the Environment

Ministerial Agreement No. 109, Reform of Ministerial Agreement No. 061, published in the Special Edition of Registro Oficial No. 640 of 23rd November 2018¹⁷.

Ministerial Agreement No. 013¹⁸, Reform of Ministerial Agreement No. 109, published in the Supplement to Registro Oficial No. 466 of 11th April 2019.

COUNTRY LEGISLATION:

The public participation process commences once the environmental assessment has been approved. To organize and conduct the process, the national environmental authority prepares a database of facilitators who act independently of the project developer.

Step 1 ► Planning the citizen participation process

- i. The environmental facilitator visits the project's area of influence.
- ii. The facilitator identifies the calling and participation mechanisms that are most appropriate.
- iii. The facilitator presents a citizen participation plan.
- iv. Funding for the participation process must be provided by the project developer.
- v. The competent authority will have 15 days from appointing the facilitator to send the participation plan to the developer.

Step 2 ► Calling

- i. The means utilized for the call must be identified in the plan and may include publication in mass media with widespread coverage in the area intended for project development; high-impact social media; information posters; written communications.
- ii. The notice of call must include an abstract of the project as well as the webpage from where the environmental assessment may be downloaded.
- iii. In the case of projects intended for development in areas inhabited by indigenous communities, the announcement must be both in Spanish and the languages of the areas directly affected by the project.

continued

continued



Environmental Impact Assessment System

Step 3 ► Citizen participation mechanism

- i. The participation activities included in the plan are initiated. These may include public presentation meeting; environmental socialization workshops; distribution of informational documents; webpage; public information center; and any other defined by the competent environmental authority.
- ii. Technical tools are also applied to evaluate the public's opinion regarding the environmental assessment.

Step 4 ► Systematization report

- i. The environmental facilitator prepares a systematization report and includes all means of verification. The report includes the analysis of the information obtained during the process.
- ii. The systematization report must be issued within 25 days from informing the developer of the planning report.
- iii. The competent environmental authority will have 10 additional days to notify the developer of the systematization report.

Step 5 ► Review and incorporation of citizen opinions

- i. The developer will have 5 days from the notice of systematization report to incorporate the public's opinions and observations to the environmental impact assessment, provided they are technically and economically viable.
- ii. The competent environmental authority ensures the opinions and observations have been included in the EIA.
- iii. The developer will have 5 days to include any relevant observations that may have been left aside.
- iv. The competent environmental authority must resolve on these observations within 5 days.
- v. The observations and opinions included in the assessment are publicized to the community using the mechanisms established in the planning document.
- vi. If during the consultation the majority of the community votes against the project, the competent environmental authority will resolve on whether to proceed with the project or not.



Other

Agreement No. CPCCS-PLE-SG-003-E-2019-024, Rules on the Rendering of Accounts¹⁹. Art. 21.

Organic Code on Territorial COOTAD²⁰, published in the Supplement to Registro Oficial No. 303 of 19th October 2010. Articles 29 and 141.

COUNTRY LEGISLATION:

Public hearings regarding accountability provide spaces for the exchange of well-reasoned arguments between the public and the authority rendering the accounts. Public hearings are inclusive of all sectors and must be held at a time that facilitates citizen participation. Practices or actions involving political proselytism or personal/partisan propaganda at any level are not permitted. In order to promote dialogue and

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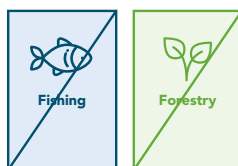


Other

a relaxed atmosphere, the public officers from the institution rendering the accounts will not be present during the hearing, with the exception of the person presenting the accountability report and their technical support team.

In case the public entity withholds information, the Council sends a formal petition to the Comptroller General's Office to initiate an investigation.²¹ In addition, the Council may apply the following sanctions to non-complying officers: penalty equivalent to one month's salary; suspension from office for 30 days; and removal from office if, despite the penalty or suspension, the officer still refuses to provide the information requested²².

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.



Public consultation with indigenous peoples in the framework of the national legislation of **Ecuador**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Ecuadoran legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Ecuador.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR PUBLIC INDIGENOUS CONSULTATION IN ECUADOR: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Ecuador ratified ILO Convention 169 on 15th May 1998.

Constitution of the Republic of Ecuador of 20th October 2008²³. Articles: 57.7; 16.

Organic Law of Councils for Equality, enacted on 03rd July 2014. Art. 6.

Mining Law²⁴, published on 29th January 2009. Article 90.

Presidential Decree No. 752²⁵, Regulatory Norms of the Organic Code of the Environment of 21st May 2019. Article 462.

Decree No. 1247, Regulatory Norms on the Execution of Prior, Free and Informed Consultation regarding the Tendering and Assignment of Hydrocarbon Areas and Blocks, published on 02nd August 2012²⁶.

Resolution No. 001-10-SIN-CC by the Constitutional Court, published on 21st April 2010²⁷.

COUNTRY LEGISLATION:

PFIC is mandatory for all projects involving the prospection, exploitation and sale of non-renewable resources found in indigenous territories and likely to have a cultural or environmental impact on these communities.



Energy

COUNTRY LEGISLATION:

In fulfilling its duties of controlling and monitoring the environmental performance of hydrocarbon operations, the Ministry of the Environment may provide spaces for citizen oversight through community representatives who may contribute observations and recommendations during surveys and meetings. These will be evaluated and considered by the Environmental Authority for technical control and monitoring purposes.



Mining

COUNTRY LEGISLATION:

The consultation process will include a special mandatory procedure to ensure the participation of communities, peoples and nationalities whenever a mining project is intended for development in their lands and ancestral territories, and their interests are likely to be affected.



Mining Hydrocarbon

COUNTRY LEGISLATION:

Step 1 ► The competent authority appoints an official to oversee the consultation process.

Step 2 ► The supervisor verifies the communities residing in the area of influence of the oil blocks.

Step 3 ► The competent authority designates a facilitator to conduct the consultation process. The facilitator must be accredited in the Facilitator Register of the Ministry of the Environment.

Step 4 ► The competent authority announces the consultation by posting the call in two consecutive issues of a major daily newspaper of local circulation, in the website of the relevant line ministry, via radio spots or written communications, etc.

Step 5 ► The consultation must be carried out within 30 days from the last posting of the call.

Step 6 ► The facilitator organizes the consultation via different processes such as public hearings, presentations, meetings, information workshops, media campaigns, delivery of printed material, etc. During the event, information is provided regarding the project, opinions are elicited and the information is systematized.

Step 7 ► During the consultation, the competent authority opens a local Consultation Office. The Consultation Office centralizes the information on the project and publicizes potential compensation activities in the fields of social protection, health, education and sanitation.

Step 8 ► The community affected may file their opinions and comments with the Consultation Office. The competent authority systematizes all the opinions and recommendations received and selects those that are technically feasible and legally appropriate for inclusion in the project's social, cultural and environmental plans.

Step 9 ► Once the consultation period expires, the socio-environmental facilitator submits a report to the supervisor and to the competent authority. The competent authority has 15 days to request additional information or to approve the report.

Step 10 ► If consensus is reached between the parties, the environmental authority integrates all agreements as guidelines into the community relations and environmental management plans.

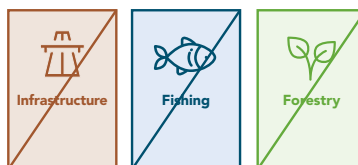


Environmental Impact Assessment System

COUNTRY LEGISLATION:

Pursuant to the Constitution of the Republic of Ecuador, line ministries are responsible for conducting PFIC procedures for all plans and projects involving the prospection, exploitation and sale of non-renewable natural resources found in lands or territories inhabited by indigenous, Afro-Ecuadorian or Montubio communities and nationalities that may be environmentally or culturally affected by such plans and projects.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1, except for the specific modifications presented below.

Purpose:

To implement a good-faith process of free, prior and informed consultation²⁸ with participation mechanisms that are appropriate to the sociocultural characteristics of each indigenous people. The objective is to promote informed participation and reach an agreement or consent regarding the implementation of the proposed projects in their territories.

Methodology:

Good practices regarding public consultations:

1. Timeliness

Consultations must be prior, i.e. conducted with sufficient time to allow the affected indigenous people to actually and effectively participate in a decision that may impact them directly.

Any individual, legal entity or representing organization with sufficient justification may ask the Environmental Authority to carry out a consultation. Justified requests are those that present, at a minimum, the facts and reasons that support their claim.

The consultation must include two stages: (i) elaboration of the TORs needed to prepare the EIA, and (ii) evaluation of the EIA by the Environmental Authority.

2. Accessibility

The consultation must be carried out at the time and venue chosen by the indigenous communities potentially affected by the project proposed.

The consultation will be conducted in Spanish and in a language understood by the communities that will be affected directly, as appropriate. The language of the affected indigenous community will be preferred if it is the language of choice for most everyday communications.

The State will provide funds so that participating indigenous communities can hire technical assistance, if required.

Information on the proposed project will be made available to the institutions and organizations representing the indigenous communities through means and procedures that are appropriate for this task, considering their geographical and environmental conditions.

3. Duration

The consultation will comprise the following stages:

- i. Call for Consultation
- ii. Planning: This stage must include: (a) the methodology to be used (e.g. how the consultation will be recorded and the relevance of having observers, mediators and/or a witnessing officer, among others), the schedule and the venue; (b) any specialized advice needed; (c) budget.
- iii. Preparation of the consultation.
- iv. Implementation of the consultation.
- v. Agreements: The Government decision regarding the investment project must take into account the opinions, suggestions and recommendations made by the indigenous peoples during the consultation, as well as the effects of the project approval on the collective rights recognized both constitutionally and by virtue of the international treaties ratified by the State.

The final agreement arising from the consultation process is binding for all parties concerned. If no agreement is reached, government agencies will take every measure required to safeguard the collective rights of indigenous peoples as well as their right to life, integrity, and full development.

4. Context

The consultation must observe the customs and traditions of each one of the indigenous peoples or communities involved.

If the project needs to be approved by two or more indigenous communities, the communities may reach a decision either jointly or separately. In any case, indigenous communities may under no circumstance be forced to use a decision-making mechanism different than their own.

5. Inclusion and Diversity

All indigenous peoples or representing institutions directly affected by the matter being consulted may step in at any moment, provided they respect all agreements reached thus far.

6. Representativeness

The only indigenous peoples allowed in the consultation will be those affected directly, who will participate via their national, regional or local representatives depending on the scope of the project.

Each community will be free to choose the institutions that will represent them, such as traditional indigenous organizations, indigenous communities or associations.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation should contain obligations regarding citizen consultations.
- 3 http://www.asambleanacional.gob.ec/sites/default/files/documents/old/constitucion_de_bolsillo.pdf
- 4 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/suplementos/item/4082-suplemento-al-registro-oficial-no-303>. Last accessed on March 20, 2020.
- 5 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/suplementos/item/1382-segundo-suplemento-al-registro-oficial-no-418>. Last accessed on March 24, 2020.
- 6 See <http://www.ambiente.gob.ec/wp-content/uploads/downloads/2012/09/RAOHE-DECRETO-EJECUTIVO-1215.pdf>. Last accessed on March 20, 2020.
- 7 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/registro-oficial/item/4253-registro-oficial-no-561>. Last accessed on March 24, 2020.
- 8 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/suplementos/item/4384-suplemento-al-registro-oficial-no-517>. Last accessed on March 24, 2020.
- 9 See http://www.ambiente.gob.ec/wp-content/uploads/downloads/2015/02/REGLAMENTO_AMBIENTAL_DE_ACTIVIDADES_MINERAS_MINISTERIO_AMBIENTE.pdf. Last accessed on March 24, 2020.
- 10 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/registro-oficial/item/11735-registro-oficial-no-508>. Last accessed on March 24, 2020.
- 11 See <http://www.ambiente.gob.ec/wp-content/uploads/downloads/2018/09/Codigo-Organico-del-Ambiente.pdf>. Last accessed on March 24, 2020.
- 12 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/suplementos/item/11732-suplemento-al-registro-oficial-no-507>. Last accessed on March 24, 2020.
- 13 See <http://www.ambiente.gob.ec/wp-content/uploads/downloads/2013/04/1.-DECRETO-1040-04-2008.pdf>. Last accessed on March 24, 2020.
- 14 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/suplementos/item/3794-suplemento-al-registro-oficial-no-175>. Last accessed on March 24, 2020.
- 15 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/suplementos/item/1813-segundo-suplemento-al-registro-oficial-no-305>. Last accessed on March 20, 2020.
- 16 <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/ediciones-especiales/item/1918-edicic%C3%B3n-especial-no-316>. Last accessed on March 24, 2020.
- 17 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/ediciones-especiales/item/11114-edicic%C3%B2n-especial-n%C2%BA-640>. Last accessed on March 24, 2020.
- 18 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/registro-oficial/item/11533-registro-oficial-no-466>. Last accessed on March 20, 2020.
- 19 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/registro-oficial/item/12486-registro-oficial-no-129>. Last accessed on March 24, 2020.
- 20 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/suplementos/item/4082-suplemento-al-registro-oficial-no-303>. Last accessed on March 24, 2020.
- 21 Organic Law of the Council of Citizen Participation and Social Control of 9th September 2009, article 11. See: <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/suplementos/item/4394-suplemento-al-registro-oficial-no-22>. Last accessed on March 24, 2020.
- 22 Organic Law of Transparency and Access to Information of 18th May 2004, article 23. See: <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/suplementos/item/6506-suplemento-al-registro-oficial-no-337>. Last accessed on March 24, 2020.
- 23 http://www.asambleanacional.gob.ec/sites/default/files/documents/old/constitucion_de_bolsillo.pdf.
- 24 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/suplementos/item/4384-suplemento-al-registro-oficial-no-517>. Last accessed on March 24, 2020.
- 25 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/suplementos/item/11732-suplemento-al-registro-oficial-no-507>. Last accessed on March 24, 2020.
- 26 See <https://www.registroficial.gob.ec/index.php/registro-oficial-web/publicaciones/registro-oficial/item/5478-registro-oficial-no-759>. Last accessed on March 24, 2020.
- 27 See <http://portal.corteconstitucional.gob.ec:8494/FichaRelatoria.aspx?numdocumento=001-10-SIN-CC>. Last accessed on March 24, 2020.
- 28 Good faith is one of the guiding principles of consultation. According to it, all participants in a consultation must act fairly and properly in order to reach consensus or obtain their free, prior and informed consent.

Public consultation with civil society¹ in the framework of the national legislation of **El Salvador**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of El Salvador as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in El Salvador.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

Consultation is mandatory for all projects registered in the Environmental Impact Assessment System (EIAS) that may affect the quality of life of the population and/or threaten their health or the environment. The applicant is responsible for financing the public consultation.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN EL SALVADOR²: General laws regarding citizen participation and/or public consultations

Municipal Code of 31st January 1986, published in the Official Gazette on 05th February 1986³. Articles: 4.8; 116.c; 116. d; 117; 123; 125.f.

Law of Nonprofit Associations and Foundations of 21st November 1996; published in the Official Gazette on 17th December 1996.⁴



Forestry

PEI Salvador National Forestry Policy 2016 – 2036, December 2016⁵.

COUNTRY LEGISLATION:

The forestry policy seeks to promote community participation in forestry control and protection activities through inter-institutional coordination arrangements.



Environmental Impact Assessment System

National Environmental Law of 02nd March 1998, published in the Official Gazette on 04th May 1998⁶. Articles: 8; 9; 24; 25; 49.a; 77.a; 80.

General Regulation of the National Environmental Law⁷ of 21st March 2000, published in the Official Gazette on 12th April 2000. Articles: 10; 12; 14.e; 15.d; 16.g; 19. 8; 19.9; 23.i; 30; 32; 70.

Decree No. 17 (Amendments to the General Regulation of the National Environmental Law)⁸, published on 15th March 2007. Art. 1⁹.

Decree No. 39 (Amendments to the General Regulation of the National Environmental Law)¹⁰, published on 15th March 2007. Art. 1¹¹

COUNTRY LEGISLATION:

Step 1 ► The Ministry gives the applicant the format required for the publication regarding the Environmental Impact Assessment.

Step 2 ► The applicant must publish the EIA on three consecutive editions of any daily newspaper of national circulation. The EIA must be published within ten working days.


Step 3 ► Any person that feels affected may express their opinions or make representations in writing.

Step 4 ► The Ministry calls for the consultation¹².

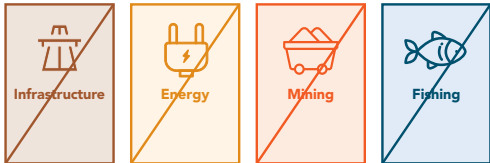
Step 5 ► The consultation is open to the communities involved and the municipal governments whose territorial jurisdiction will be impacted by the project. The applicant presents the project.

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continued

 Environmental Impact Assessment System	Step 6 ► The Ministry prepares the minutes of the Public Consultation, including the main points of discussion and the agreements reached in relation to the project. The minutes are signed by all attendees.
	Step 7 ► The representations made during the Public Consultation are later examined from a strictly technical standpoint during the Environmental Impact Assessment Evaluation.
 Other	Law on Equality, Equity and Eradication of Discrimination against Women (Legislative Decree 645). Article 32, paragraph b.
 COUNTRY LEGISLATION: When issuing their policies, public institutions with competence in matters of environmental protection must take into account the socio-environmental effects that cause men and women to be affected differently, and therefore must adopt and incorporate the following standards: (...) guarantee that policies concerning the training, control, protection and management of natural resources, the environment, biodiversity, and the impacts of climate change are formulated and executed in adherence to the principle of equal opportunities and treatment for men and women regarding the access and participation in these processes.

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

- Public consultation with indigenous peoples in the framework of the national legislation of **El Salvador**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Salvadoran legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in El Salvador.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN EL SALVADOR: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

El Salvador has not ratified ILO Convention 169.

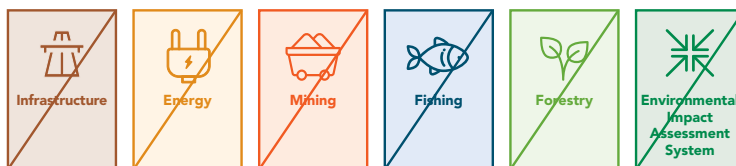
Decree No. 707: Amendment to the Agreement for the Reformation of Art. 63 of the Constitution, recognizing Indigenous Peoples. Enacted on 12th June 2014 and published in the Official Gazette on 19th June 2014.¹³

* Public Policy for the Indigenous Peoples of El Salvador, 2015¹⁴.

COUNTRY LEGISLATION:

This country has not ratified ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries. Also, it does not have a legislation regarding indigenous consultations. However, in 2015 the national government issued a public policy regarding the indigenous peoples of El Salvador. In its government management strategy, the policy proposes the establishment of multisectoral mechanisms for prior, free and informed consultation of indigenous peoples.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation contains obligations regarding citizen consultations.
- 3 See https://www.transparencia.gob.sv/system/documents/documents/000/118/598/original/codigo_municipal.pdf?1500371766. Last accessed on March 2, 2020.
- 4 See <https://www.transparencia.gob.sv/system/documents/documents/000/002/473/original/8887B.PDF?1500359918>. Last accessed on March 2, 2020.
- 5 See: https://www.transparencia.gob.sv/system/documents/documents/000/192/479/original/POLITICA_FORESTAL_DE_EL_SALVADOR_2016_2036.pdf?1500380154. Last accessed on March 2, 2020.
- 6 See https://www.transparencia.gob.sv/system/documents/documents/000/002/488/original/LEY_DE_MEDIO_AMBIENTE.pdf?1568221022. Last accessed on March 2, 2020.
- 7 See https://www.transparencia.gob.sv/system/documents/documents/000/314/662/original/REGLAMENTO_DE_LA_LEY_DEL_MEDIO_AMBIENTE.pdf?1568667663. Last accessed on March 2, 2020.
- 8 See https://www.transparencia.gob.sv/system/documents/documents/000/277/009/original/Decreto_17_.Reformas_al_Reglamento_de_la_Ley_de_Medio_Ambiente.pdf?1549467727. Last accessed on March 2, 2020.
- 9 Decree No. 17 modifies Article 19 of the General Regulation of the National Environmental Law.
- 10 See https://www.transparencia.gob.sv/system/documents/documents/000/001/580/original/decreto_39_reformas_reglamento_ley_medio_ambiente.pdf?1500359894. Last accessed on March 2, 2020.
- 11 Decree No. 39 modifies Article 30 of the General Regulation of the National Environmental Law.
- 12 The Ministry provides a guide specifying the procedures for carrying out the consultation. The applicant must assume the costs of the consultation process.
- 13 See <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/0306D587-DB5A-4F4B-A0CE-4714996E4370.pdf>. Last accessed on March 2, 2020.
- 14 <https://www.transparencia.gob.sv/institutions/capres/documents/108037/download>

- Public consultation with civil society¹ in the framework of the national legislation of **Guatemala**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Guatemala as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Guatemala.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

Public participation is mandatory for all projects with high and moderate-high potential environmental impact². All development megaprojects must be preceded by a public participation mechanism.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN GUATEMALA³: General laws regarding citizen participation and/or public consultations

Political Constitution of the Republic of Guatemala⁴. Article 173.

Municipal Code of 04th February 2002, published in the Official Journal on 13th May 2002⁵. Articles: 17; 60 through 64, 66.

General Decentralization Law of 06th September 2002, published in the Official Journal on 10th September 2002. Articles: 4.9; 5.4; 10.f; 17 through 19. Regulatory Norms of the General Decentralization Law of 06th September 2002, published in the Official Journal on 10th September 2002. Articles: 4.f; 19 through 21.



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Governmental Agreement No. 137-2016 of 11th July 2016⁶. Articles 3.71, 43 through 47.

COUNTRY LEGISLATION:

Step 1 ► Prior to, during and at the end of the relevant environmental, control and monitoring process, the applicant must conduct the following public participation actions, and the Social Training and Participation Office under the Ministry of the Environment and Natural Resources issues the Terms of Reference and specific contents required for implementing them:

- a. The applicant publishes the call for public consultation in a major daily newspaper of national circulation and in a local newspaper circulating in the areas where the project is intended for development. The announcement is published in both newspapers on the same date, in Spanish and in the predominant language of the area where the project is intended for development.
- b. The applicant conducts interviews and surveys and, in the case of projects with a higher potential environmental impact, workshops, assemblies and/or work meetings, with special consideration of the language and culture of the inhabitants of the project's area of influence.
- c. In the case of projects with a higher potential environmental impact, the applicant informs the population concerned of the instruments that make up the environmental assessment by airing a radio spot for 5 business days during a period of one week on a radio station with coverage in the area of the project.
- d. The applicant prepares a guideline for participation with details on the communication strategies with the local community during the preparation of the environmental impact assessment, the resolution of potential conflict, and the activities developed during project implementation.

Step 2 ► At least one day before the public consultation commences, the applicant files the environmental impact assessment with the Ministry of the Environment and Natural Resources.

Step 3 ► The public will have 20 days counted from the third day after publication of the call for consultation to make observations and submit representations, during a period referred to as "public view". Once the period has elapsed, the relevant observations and representations are submitted to the applicant so that it can incorporate them into the environmental impact assessment.

continued

continued



Environmental Impact Assessment System

Step 4 ► In its final decision on the environmental impact assessment, the Ministry of the Environment and Natural Resources resolves the observations and representations submitted during the public view period, on condition that these observations are supported by technical, scientific or juridical evidence.

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1, except for the specific modifications presented below.

Timeliness:

- The hearing must be summoned before any final decision concerning the proposed plan is made.
- The hearing must be convened at least 2 weeks in advance, indicating the date, venue and time for the consultation.
- Individuals and legal entities will have 20 business days to submit their observations in writing after the Environmental Authority and the applicant post the notice of presentation of the Environmental Assessment Instrument⁷.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

- Public consultation with the indigenous population in the framework of the national legislation
- ▶ of **Guatemala**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Guatemalan legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Guatemala.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



MARCO LEGAL EN GUATEMALA SOBRE CONSULTA INDÍGENA: Leyes, reglamentos u otros de implementación Convenio N° 169



Indigenous Population

Guatemala ratified ILO Convention 169 on 05th June 1996.

Political Constitution of the Republic of Guatemala⁸. Articles 66 and 67.

Decree No. 12-2002, Municipal Code⁹. Art. 65

Law on Urban and Rural Development Councils¹⁰, Decree No. 11-2002. Article 26.

Operational guidelines for the implementation of consultation to indigenous peoples, July 2017.¹¹

COUNTRY LEGISLATION:

Guatemala is composed of multiple ethnic groups, particularly indigenous groups of Mayan descent. The State recognizes, respects and promotes their way of life, customs, traditions, social organization structure, the use of indigenous clothing for men and women, and their languages and dialects.¹²

The national legislation recognizes the multicultural and multiethnic composition of Guatemala.



Environmental Impact Assessment System

Step 1 ► The agency responsible for deciding on the environmental assessment resolves on the need to consult indigenous peoples. To that end, it reviews the relevant information, visits the area of influence of the project, verifies the presence of indigenous peoples and identifies potential impacts. If it is determined that a consultation process is warranted, it coordinates the process with the Ministry of Labor and Social Security (acting as advisor). The advising ministry opens a file for follow-up.


Step 2 ► The agency contacts the indigenous peoples, coordinates the call for consultation in order to inform about the project, coordinates translation into local languages and prepares a register of the institutions representing the indigenous peoples.

Step 3 ► The agency elaborates a Consultation Plan together with the indigenous peoples concerned. The process includes accrediting the indigenous representatives, agreeing on the rules for participation, requesting and disseminating information on the project, and designing the consultation mechanism which contains the procedures to ensure respect to the indigenous peoples, the channels used for disseminating information, the conflict resolution procedures, the timeline and the nature of the agreements.

Step 4 ► The entity responsible informs about the project (or the government action) and provides details such as its nature, reach, duration, impact and personnel involved.

Step 5 ► This step solicits further information if required and the indigenous peoples concerned evaluate the project in private. The agency must ensure the community will receive the necessary technical support.

continued

 <p>Environmental Impact Assessment System</p>	<p>Step 6 ► Conditions for dialogue are established and an intercultural dialogue session is conducted. Indigenous peoples' queries and concerns are presented, the order of addressing the different issues is established, solutions are identified and agreements are promoted.</p> <p>Step 7 ► A document is prepared with details on all binding agreements and the final report is issued. Based on all documents, the agency resolves on the project and informs all parties concerned.</p> <p>Step 8 ► The parties set up a commission that verifies compliance with all agreements and prepares a monitoring and evaluation plan.</p>
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No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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





References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 These are projects in categories A and B1 in the environmental classification.
- 3 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation should contain obligations regarding citizen consultations.
- 4 See <https://cc.gob.gt/constitucionpolitica/>. Last accessed on March 20, 2020.
- 5 See <https://sepaz.gob.gt/wp-content/uploads/2019/10/Cdigo-Municipal.pdf>. Last accessed on March 20, 2020.
- 6 See <http://www.marn.gob.gt/Multimedios/4739.pdf>. Last accessed on March 20, 2020.
- 7 Provision included in the national legislation.
- 8 See <https://cc.gob.gt/constitucionpolitica/>. Last accessed on March 20, 2020.
- 9 See <https://sepaz.gob.gt/wp-content/uploads/2019/10/Cdigo-Municipal.pdf>. Last accessed on March 20, 2020.
- 10 See <http://www.infom.gob.gt/archivos/normativos/leyconsejodesarrollo.pdf>. Last accessed on March 20, 2020.
- 11 See https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GTM/INT_CERD_ADR_GTM_29808_S.pdf. Last accessed on March 20, 2020.
- 12 The Municipal Code establishes the consultation to indigenous communities or authorities of the municipality as mandatory whenever a certain issue has a significant impact on the rights and interests of the indigenous communities.

Model for public consultations with civil society¹ in the framework of the national legislation of Guyana, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the Guyanese legislation as well as the principles for good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Guyana.

In addition, if this is a joint operation with the IDB Group and legal gaps are identified regarding one or more principles of good practice, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

Consultation is mandatory for all projects included in the Environmental Impact Assessment System (EIAS). The consultation is to be carried out by the developer while preparing the Environmental Impact Assessment (EIA), convening members of the public along with interested bodies. Second, once the EIA enters the Environmental Impact Assessment System (EIAS), the Environmental Assessment Board is required to conduct public hearings.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN GUYANA²: Laws and regulations regarding participation and/or consultation on environmental matters



Forestry

Guyana Forestry Act³ of 2009. Articles: 10.1; 12; 23.2; 48.c; 51.1; 51.2; 51.3.

COUNTRY LEGISLATION:

La política forestal busca fomentar la participación de las comunidades en las actividades de control y protección forestal mediante mecanismos de coordinación interinstitucional.



Environmental Impact Assessment System

Environmental Protection Act⁴ of 1996. Articles: 4.1.b; 11.7; 11.9.a; 11.9.b; 11.10; 18.2; 68.1.z.

Regulations Made Under Environmental Protection Act⁵, of 2000. Art. 4.2.

COUNTRY LEGISLATION:

Step 1 ► Before any environmental impact assessment is begun, the Agency must publish a summary of the project in at least one daily newspaper⁶.

Step 2 ► Once the summary has been published, members of the public will have 28 days to make written submission to the Agency setting out questions and matters that require to be answered or considered in the Environmental Impact Assessment.

Step 3 ► During the course of the EIA, the developer must consult members of the public, interested bodies and organizations. It will also provide to members of the public on request copies of the information obtained for the purpose of the EIA.⁷

Step 4 ► Once the EIA has been entered into the Environmental Impact Assessment System, the developer must publish a notice in at least one daily newspaper confirming that the EIA has been submitted to the Agency for evaluation and members of the public will have sixty days from the date of publication of such notice to make their written submissions to the Agency.

Step 5 ► Once the EIA enters the Environmental Impact Assessment System (EIAS), the Environmental Assessment Board is required to conduct public hearings.

With regard to the forestry sector, the Guyana Forests Act of 2009 establishes that:

The Forest Commission may, after consultation with relevant stakeholders, grant any person a Use Permit to enter, occupy and/or use a specified area of State Forest.⁸ The Commission may, after consultation with relevant stakeholders, grant an Afforestation Agreement that includes an approved Forest Management Agreement and/or the obligation to plant specified trees and plants in a specified area of State Forest. The Afforestation Agreement shall include those individuals expressing concerns regarding the potential damage of granting a use permit.

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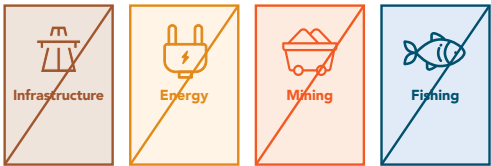
**Environmental
Impact
Assessment
System**

The Environmental Protection Agency may make an order declaring a specified area to be a protected forest area. Before making the order, the Agency must publicly notify the proposed order, hold a public hearing to discuss the proposed order and receive oral and written submissions.

The Commission must on request provide all information at its disposal that the law authorizes to disclose.

Any person may make a written request to the Commission for any information held by the Commission. The Commission must provide the information requested no later than 45 days after receiving the request.⁹ If the information requested is withheld, the Commission must explain the reasons for such withholding.

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1, except for the specific modifications presented below.

Timeliness: Once the summary has been published, members of the public will have 28 days to make written submission to the Agency setting out questions and matters that require to be answered or considered in the Environmental Impact Assessment.¹⁰



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

- Model for public consultation with indigenous peoples in the framework of the national legislation of **Guyana**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples highlights the requirements for consultations in adherence to the Guyanese legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Guyana.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN GUYANA: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Amerindian Act¹¹ of 14th March 2006. Articles: 15.a; 48.1.d; 48.2.

COUNTRY LEGISLATION:

This country has not ratified ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries. It has a set of legislations for indigenous consultations regarding mining projects.

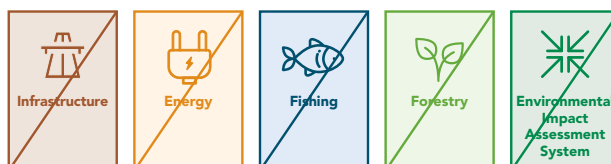


Mining

COUNTRY LEGISLATION:

Any mining project to be conducted on Village lands or in any river, creek, stream or other source of water within the boundaries of Village lands must undergo a consultation process with indigenous communities. The Guyana Geology and Mines Commission may facilitate the consultations to be held but may not take part in any negotiations.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation contains obligations regarding citizen consultations.
- 3 See <https://mola.gov.gy/information/laws-of-guyana?limit=20&limitstart=160>. Last accessed on March 2, 2020.
- 4 See <https://mola.gov.gy/information/laws-of-guyana?limit=20&limitstart=120>. Last accessed on March 2, 2020.
- 5 See <https://mola.gov.gy/information/laws-of-guyana?limit=20&limitstart=120>. Last accessed on March 2, 2020.
- 6 The developer shall bear the cost of publishing.
- 7 The developer shall charge no more than the reasonable cost of photocopying.
- 8 For the purposes of conducting scientific research, education or training, recreation or eco-tourism, taking photographs or making films or videos or sound recordings, and any other purpose publicly notified by the Commission.
- 9 Except for commercially sensitive information or any information the disclosure of which is likely to prejudice the national security.
- 10 Provision included in the national legislation.
- 11 See <https://mola.gov.gy/information/laws-of-guyana?limit=20&limitstart=160>. Last accessed on March 2, 2020.



- Public consultation with civil society¹ in the framework of the national legislation of Haiti, the IDB Group's operational policies, guiding principles and good international practices





This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Haiti as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Haiti.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. Annex I and II.

The country legislation provides the creation of a system of public hearings for projects subject to environmental assessment.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN HAITI²: Laws and regulations regarding participation and/or consultation on environmental matters

 <p>Environmental Impact Assessment System</p>	<p>Décret portant sur la Gestion de l'Environnement et de Regulation de la Conduite Decree defining the National Policy on Environmental Management and regulating the Conduct of Citizens for Sustainable Development³ enacted on 26th January 2006. Articles 58; 6; 70.</p> <hr/> <p>COUNTRY LEGISLATION: The country legislation provides the creation of a system of public hearings for projects subject to environmental assessment.</p> <p>The Environmental Authority will publicly post the list of environmental assessments and their results in different parts of the country and through appropriate means.</p>
 <p>Other</p>	<p>Political Constitution of Haiti of 1987 amended through Constitutional Law of 9th May 2011 and 19th June 2012. Article 217.</p>

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1.

N.B. If it becomes evident that regulatory and legal requirements for consultation on and implementation of development projects are mostly unavailable or non-existent, it is strongly recommended to adjust local practices to internationally recognized standards in order to secure the support of all stakeholders directly concerned and ensure a smooth implementation of the project.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

Public consultation with the indigenous population in the framework of the national

- ▶ legislation of **Haiti**, the IDB group's operational policies, guiding principles and good practices



This section is not applicable, since Haiti does not have an indigenous population or specific minority groups.



References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation should contain obligations regarding citizen consultations.
- 3 <http://faolex.fao.org/docs/pdf/hai65901.pdf>

Public consultation with civil society¹ in the framework of the national legislation of **Honduras**, the IDB Group's operational policies, guiding principles and good international practices







This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Honduras as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Honduras.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

Consultation is not mandatory for environmental license applications filed with the National Environmental Impact Assessment System (SINEIA). Nevertheless, the applicant must organize a public hearing if specified in the Terms of Reference (TORs), or at the behest of the public or the Ministry of Environment (SEDA). The technical information regarding applications for environmental licenses is considered classified and therefore remains undisclosed.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN HONDURAS²: Laws and regulations regarding participation and/or consultation on environmental matters

 <p>Infra- estructura</p>	<p>Land Use Law³, published on 30th December 2003. Articles 5.3; 5.5; 7.4; 8; 13.6; 35 through 39.</p> <hr/> <p>COUNTRY LEGISLATION: Participating citizens will seek to achieve consensus, agreements, equitable commitments, the right to be informed, and prompt solutions to problems and issues in compliance with the requirements for petition established by law.</p> <p>Mechanisms and spaces for citizen participation, expression and information are created.</p>
 <p>Fishing</p>	<p>General Fishing and Aquaculture Law, published on 05th August 2017⁴. Art. 9.</p> <hr/> <p>COUNTRY LEGISLATION: The National Council of Fisheries and Aquaculture is the consulting and coordinating entity that gathers representatives from the fishing and aquaculture sectors as well as indigenous peoples and environmental organizations.</p>
 <p>Forestry</p>	<p>Forestry, Protected Areas and Wildlife Law⁵, published in the Official Gazette on 26th February 2008. Articles 2.5; 18.14; 23.7; 24.9.</p>
 <p>Environmental Impact Assessment System</p>	<p>General Environmental Law⁶, published in the Official Gazette on 30th June 1993. Articles: 9.e, 11-b; 102 and 103.</p> <hr/> <p>Regulation of the General Environmental Law⁷, published in the Official Gazette on 05th February 1994. Article 10: Paragraphs 88 through 91.</p> <hr/> <p>Ministerial Agreement 1402-2018⁸, published on 17th June 2018.</p> <hr/> <p>Executive Agreement No. 008-2015⁹, Regulatory norms of the National Environmental Impact Assessment System. Articles 20, 43, 44, 58, 59, 60 and 61.</p> <hr/> <p style="text-align: right;">continued</p>

continued



Environmental Impact Assessment System

COUNTRY LEGISLATION:

The Ministry of the environment will promote the public participation of civil society during the entire process of environmental assessment.

Step 1 ► The applicant must submit its application for Environmental License together with proof of publication of the notice of application filing in a major daily newspaper of national circulation within 5 business days from publication.

If the application is for a project, works or activity deemed as having a very high potential environmental impact or risk, the applicant must also publish the final version of the Environmental Impact Assessment, specifying the manner in which the public can access the results of the assessment.

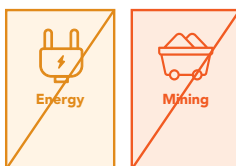
Step 1 ► The applicant must deliver a copy of the EIA at the venues officially designated by the Environmental Evaluation and Control Office (DECA) for the public consultation. Any individual or legal entity may make representations, whether because they consider significant impacts have been overlooked, adequate mitigation measures have been skipped, or doubts, complaints or other objections have been left out.

Step 1 ► Anyone who thinks the Assessment has disregarded significant impacts or failed to propose appropriate mitigation measures may request the Secretariat of Energy, Natural Resources, Environment and Mines (MIAMBIENTE) to take corrective action. MIAMBIENTE is free to decide whether it incorporates the proposed rectifications or not.

Step 1 ► Depending on the environmental significance of the project, works or activity, MIAMBIENTE may order a public consultation where the public can discuss the project and the EIA under review, at the cost and expense of the applicant.

The outcome of the public hearing will be recorded and taken into account in MIAMBIENTE's final decision.

No specific legislation on the matter was identified:





Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1, except for the specific modifications presented below.

Timeliness:

- a. The hearing must be summoned before any final decision concerning the proposed plan is made.
- b. The hearing must be convened at least 2 weeks in advance, indicating the date, venue and time for the consultation.
- c. Individuals and NGOs may submit to SEDA their queries and suggestions regarding the TORs used to prepare the Environmental Impact Assessment. DECA will post the deadlines and means used to receive the public's representations within the 30-day period established for approving the TORs proposed by the Applicant.¹⁰



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.



- Public consultation with indigenous peoples in the framework of the national legislation of **Honduras**, the IDB group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Honduran legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Honduras.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN HONDURAS: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Honduras ratified ILO Convention 169 on 7th March 1991.

Forestry, Protected Areas and Wildlife Law¹¹, published in the Official Gazette on 26th February 2008. Article 22.7.

General Fishing and Aquaculture Law published on 05th August 2017¹². Art. 26 through 30.

Executive Agreement No. 008-2015¹³: Regulatory norms of the National Environmental Impact System. Art. 25.

COUNTRY LEGISLATION:

The obligation to conduct consultations with indigenous and Afro-Honduran communities is enshrined in the legislation, specifically in reference to the fishing and aquaculture sector.



Fishing

COUNTRY LEGISLATION:

The areas used for fishing and aquaculture activities in indigenous territories must be considered traditional fishing sites. Managing those areas requires the active participation of indigenous community representatives. The State is responsible for protecting and preserving the indigenous fishing and aquaculture traditions.

The Government must promote indigenous consultation whenever fishing and aquaculture regulations/policies involve the interests of indigenous peoples, and also when activities like scientific and technical studies, tourist and sports fishing, aquaculture concessions and land use measures are planned in their territories.

The process of defining a fishing and aquaculture area must include the active, prior and informed participation of the fishing and aquaculture organizations that represent the interests of the local groups concerned.

Step 1 ► The Government will foster programs for training and developing fishing and aquaculture companies based on the organizational and self-management practices of each indigenous people and in full adherence to their legitimate desire to conserve their traditions.

The Government will encourage prior, free and informed consultation when issuing fishing and aquaculture rules and policies that touch upon on the interests of indigenous and Afro-Honduran peoples and communities, through their indigenous organizations and their officially recognized governance arrangements.

The matters subject to prior consultation include the development of scientific and technical studies of hydrobiological resources, tourist and sports fishing, aquaculture concessions, and land use planning in indigenous territories.

After the consultation, those recommendations seeking development with full respect of indigenous and Afro-Honduran peoples are submitted to the General Directorate for Fisheries and Aquaculture (DIGEPESCA).

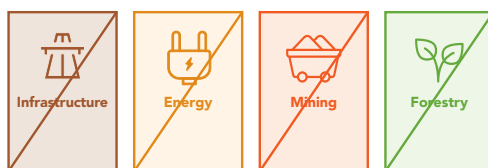


Environmental Impact Assessment System

COUNTRY LEGISLATION:

Projects, works or activities intended for development in lands adjudicated to local indigenous peoples and communities must be duly publicized among those communities.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation should contain obligations regarding citizen consultations.
- 3 See <http://extwprlegs1.fao.org/docs/pdf/hon41355.pdf>. Last accessed on March 2, 2020.
- 4 <http://extwprlegs1.fao.org/docs/pdf/hon170043.pdf>
- 5 <https://www.tsc.gob.hn/web/leyes/Ley%20Forestal,%20Areas%20Protegidas%20y%20Vida%20Silvestre.pdf>
- 6 See <https://www.tsc.gob.hn/biblioteca/index.php/leyes/18-ley-general-del-ambiente>. Last accessed on March 2, 2020.
- 7 See https://www.tsc.gob.hn/web/leyes/Reglamento_General_de_la_Ley_del_Ambiente_Último_acceso:_2_de_marzo_del_2020_.pdf
- 8 Not available online. The technical information on environmental license applications is considered classified.
- 9 See https://www.tsc.gob.hn/web/leyes/Reglamento_sistema_nacional_de_evaluacion_impacto_ambiental.pdf. Last accessed on March 2, 2020.
- 10 The Bank's Policy establishes that when the potentially affected indigenous peoples show no interest in taking part in the consultation process, the project proponent must present evidence of its good faith efforts to consult the affected peoples; of the fact that conditions are not met for conducting a consultation together with an analysis of the causes for the lack of interest; and of the alternative means used to identify necessary and socioculturally appropriate mitigation measures.
- 11 See <https://www.tsc.gob.hn/web/leyes/Ley%20Forestal,%20Areas%20Protegidas%20y%20Vida%20Silvestre.pdf>. Last accessed on March 2, 2020.
- 12 <http://extwprlegs1.fao.org/docs/pdf/hon170043.pdf>
- 13 See https://www.tsc.gob.hn/web/leyes/Reglamento_sistema_nacional_de_evaluacion_impacto_ambiental.pdf. Last accessed on March 2, 2020.

Public consultation with civil society¹ in the framework of the national legislation of

► **Jamaica**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the Jamaican legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Jamaica.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

The Authority must publish certain plans in the event the project proposed affects the population interested. The Authority must consider the comments from members of the public in its decision. In some cases, it may conduct public hearings if it deems it appropriate.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN JAMAICA²: Laws and regulations regarding participation and/or consultation on environmental matters



Infrastructure

The Town and Country Planning Act³, operational date February 1, 1958. Last amended 1999. Articles: 6.1; 6.2; 6.3.

The town and country planning (Kingston and Saint Andrew and The Pedro Cays) provisional development order, published on 8th May 2017⁴

Policy SP TELE4, Appendix 14: General Development Standards for Telecommunication Network.

COUNTRY LEGISLATION:

Every interested person may object to any provisional development order upon the ground that such order is against the interests of the economic welfare of the local population.

The person must give notice in writing to the Authority within fourteen (14) days after the expiration of the period.

“Interested person” means: (i) any local authority concerned, (ii) any person in whom is vested any freehold estate in any land within the locality to which the provisional development order relates.

(iii) any person in whom is vested any term of years in any land in such locality, the unexpired portion of which in the day on which such objection is made is not less than three years, or who holds an option to renew such lease for a period of not less than three years.

(iv) any person who is entitled under the Water Resources Act to exercise any right in relation to the use of any public water in a public stream within the locality and whose interest therein will be affected by the application of the order.

The installation of telecommunication antennas requires a public consultation before granting approval⁵. The executing agency will be responsible for conducting the consultation. Details on the consultation (results, type of consultation, location and date, list of attendees) must be submitted together with the application.



Forestry

The Forest Act⁶, operational date, 1996. Articles: 10.1.B; 10.2; 10.3.

COUNTRY LEGISLATION:

The Authority must inform the public about the possibility of declaring a forest reserve⁷ at least 90 days before making the order to allow the public to submit comments in relation to the proposed order.

Whenever the Authority proposes to amend or revoke an order to declare a forest reserve, it must give public notice of its intention and provide an opportunity for public comment.

The Authority must take into account any comments received before making an order.



Other

The Water Resources Act⁸, operational date 4th January 1996. Articles: 40.3.B; 40.3.C, 40.4.

Disaster Risk Management Act, 19th February 2015⁹. Articles: 30; 31; 32.

COUNTRY LEGISLATION:

Water Quality Control Plans (Water Resources Act). For the purpose of preparing a draft Water Control Quality Plan, the Authority must publish a notice at least once in each of two consecutive weeks in a daily newspaper circulating in Jamaica, indicating the proposals and specifying the period during which representations may be made, which will be no less than thirty days.

The authority must also hold public hearings as it considers appropriate.

No development will be authorized in areas considered vulnerable to natural disasters without an authorization from the Office of Disaster Preparedness and Emergency Management (ODPEM).¹⁰ Designating an area as Specially Vulnerable Area requires a public consultation process.

Step 1 ► Before making an order, the competent Ministry must publish a draft of the proposed designation in the Gazette and in at least one issue of a daily newspaper published and circulating in Jamaica. The draft order must offer an exact delimitation of the area proposed for designation.

Step 2 ► After the publication, the Director General of the ODPEM must present the draft order for discussion and comment at a public consultation with all public and private actors the Director General considers relevant.

Step 3 ► Within eight weeks after concluding the consultation, the Director General must submit a report thereon to the Minister.

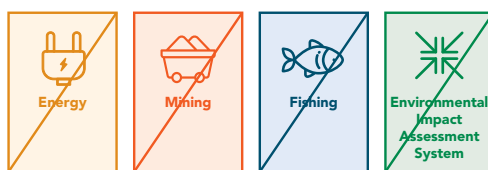
Step 4 ► If the Director General considers it necessary to prepare a precautionary plan for the mitigation and prevention of disasters in a designated specially vulnerable area, he will order the publication of a notice in at least one daily newspaper circulating in Jamaica containing a draft of the proposed plan and inviting the public to submit comments.

Step 5 ► On written application by any person, the Director General must permit access to any technical studies used in the preparation of the draft special areas precautionary plan.

Step 6 ► The Minister must allow a period of not less than four weeks and not more than eight weeks for the receipt of comments. After this period, the Director General will submit to the Minister a report on the comments received.

Step 7 ► After considering the report, the Minister may approve the special area precautionary plan.

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.



Public consultation with the indigenous population in the framework of the national legislation of **Jamaica**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Jamaican legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Jamaica.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN JAMAICA: Laws, regulations and other measures concerning the implementation of Convention 169



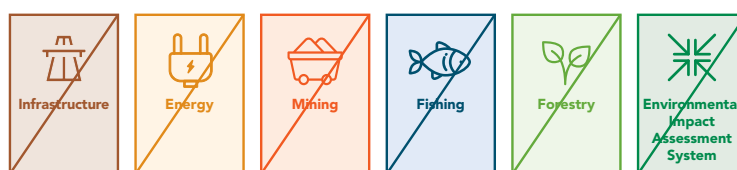
Indigenous Population

Jamaica has not ratified ILO Convention 169.

COUNTRY LEGISLATION:

This country has not ratified ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries and does not have a legislation regarding indigenous matters.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation contains obligations regarding citizen consultations.
- 3 <http://moj.gov.jm/sites/default/files/laws/Town%20and%20Country%20Planning%20Act.pdf>
- 4 <http://extwprlegs1.fao.org/docs/pdf/jam171270.pdf>
- 5 This regulation only applies to the parishes of Kingston, Saint Andrew and Pedro Cays.
- 6 See <https://moj.gov.jm/laws/forest-act>. Last accessed on March 2, 2020.
- 7 Forest reserves shall be used for the following purposes, among others: the development of forest resources, the generation of forest products.
- 8 <http://moj.gov.jm/sites/default/files/laws/Water%20Resources%20Act.pdf>
- 9 See https://japarliament.gov.jm/attachments/341_The%20Disater%20and%20Preparedness%20and%20Emergency%20Management%20Act,%202015%20No.1.pdf. Last accessed on March 2, 2020._
- 10 Office of Disaster Preparedness and Emergency Management.



Public consultation with civil society¹ in the framework of the national legislation of **Mexico**, the IDB Group's operational policies, guiding principles and good practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Mexico as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Mexico.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

Consultation is not mandatory for projects included in the Environmental Impact Assessment System (EIAS). However, any individual or legal entity may submit a written petition to the Environmental Authority requesting a public hearing to examine a certain project. The Environmental Authority will develop a National System of Information on the Environment and Natural Resources that will be available to answer any questions.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN MEXICO²: Laws and regulations regarding participation and/or consultation on environmental matters



Infrastructure

Law of Sustainable Rural Development³, published in the Official Gazette on 07th December 2001. Articles 13.1; 24; 25; 137.



Energy

Law of the Electrical Industry⁴, published in the Official Gazette on 11th August 2014. Articles 118; 119.

COUNTRY LEGISLATION:

The Authority may hold public consultations in an effort to protect the interests and rights of indigenous communities and peoples residing in areas intended for the development of electric power projects.

The consultations may be attended by the Regional Commission for Electricity (CRE), state-owned production enterprises and their subsidiaries and affiliates, and private individuals.



Fishing

General Law of Sustainable Fishing and Aquaculture⁵, published in the Official Gazette on 24th July 2007. Articles 17.16; 2229.10; 39.3; 86.5.

COUNTRY LEGISLATION:

One of the underlying principles that guide the formulation and implementation of the National Fisheries and Aquaculture Policy is the participation and consensus of producers and their communities. The National Fisheries and Aquaculture Council fulfills the functions of coordinator, consultant, consensus seeker and advisor. It is composed of representatives from the central and subnational governments, social organizations, and fishermen and aquaculture associations.

Fishing management plans must specify the manner in which the area will be managed and the participation mechanisms for individuals and communities residing in it.



Forestry

General Law of Sustainable Forestry Development, published on 5th May 2018⁶. Articles: 146 through 153.

The relevant authority promotes citizen participation in the planning, design, implementation and evaluation of the programs and instruments contained in the forestry policy by convening peasant organizations, forestry and industrial producers, agricultural and indigenous communities, educational and research institutions, social and private organizations, associations or individuals providing technical forestry services, and any other stakeholders to submit their opinions and proposals regarding the programs and instruments of the national, regional, state, district or municipal forest policies.

The agreements between the relevant authority and any individual or legal entity may include any of the aspects contained in the sustainable forestry development plans.

State Forestry Councils play a consulting role and are formed by representatives from forestry communities, civil society, women's and youth associations, and other groups. Their composition is established in local laws.



Environmental Impact Assessment System

General Law of Ecological Balance and Environmental Protection⁷, published in the Official Gazette of the Federation on 28th January 1998. Articles: 20bis.5.VII and VIII; 34; 47; 58.3; 65; 66.III; 79.VI; 79.X; 157; 158; 159.

Regulatory Norms of the General Law of Ecological Balance and Environmental Protection in Matters of Environmental Impact Assessment⁸, published in the Official Gazette on 30th May 2000 (last amended 31st October 2014). Articles: 4.4; 26.3; 37 through 43.

COUNTRY LEGISLATION:

About the project information fed into the EIAS:

Step 1 ► Each week, the Environmental Authority will publish the list of environmental impact assessments received in the Ecological Gazette and in electronic media. The file will be available for public consultation during business days and hours, both at the head offices of the Ministry and the relevant Regional Office.

The information contained in the EIA document will be publicly available for consultation by any individual or organization. However, the developer may request that some information related to the assessment be withheld if it is determined that disclosure would infringe industrial property rights or jeopardize the confidentiality of commercial data.

Step 2 ► All residents of the community concerned will have 10 days from publication of the project abstract to ask the Environmental Authority to make the EIA available to the public at the relevant federal office.

Step 3 ► Within 20 days from the EIA becoming available to the public, anyone may submit their observations in writing for inclusion in the file. All observations must contain the sender's full name and address.

continued



**Environmental
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Step 4 ► In its resolution, the Environmental Authority will indicate the public consultation process together with the results of the observations and proposals received. The results will also be published in the Ecological Gazette.

About public hearings:

Step 1 ► Requests for hearings must be submitted in writing to the Environmental Authority within 10 days from publication of the lists of EIAs received, indicating (i) the project or activity at hand; (ii) the reasons justifying the petition, and (iii) the name and address of the sender.

Step 2 ► Within 5 days from receiving the request, the Environmental Authority will inform the petitioner of its decision to carry out the public consultation or not.

Step 3 ► If the hearing is authorized, the Environmental Authority will have one day from its approval to notify the developer of the need to publish an abstract of the project. The developer will publish the abstract in a daily newspaper of statewide circulation within five days from receiving the notice⁹.

Step 4 ► During the consultation, the Environmental Authority in coordination with local authorities may call for a public informational meeting if it is determined that the project under consideration may cause severe ecological imbalances or is detrimental to the public health or the ecosystems.

Step 5 ► The Environmental Authority will have 25 days from the date of authorizing the public consultation to communicate the date, time and venue of the meeting. The call will be published only once in the Ecological Gazette and in a major daily newspaper of statewide circulation in the relevant federal state.

Step 6 ► The meeting must take place within five days from publication of the call for consultation and during one day only. The applicant must present the technical and environmental facts that support the project, its potential impacts and the prevention and mitigation measures identified.

Step 7 ► A final report will be prepared with the names and addresses of all participants as well as the questions and observations presented and the applicant's responses. Participants may request a copy of the final report.

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1, except for the specific modifications presented below.

Timeliness

Within 20 days from reception of the EIA at the respective federal agency, anyone may submit their observations to the project in writing, which will be added to the file. All observations must contain the sender's full name and address.¹⁰



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

- Public consultation with indigenous peoples in the framework of the national legislation of **Mexico**, the IDB group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Mexican legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Mexico.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN MEXICO: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Mexico ratified ILO Convention 169 on 5th September 1994.

Political Constitution of the United Mexican States¹¹. Art. 2.B.IX.

General Law of Ecological Balance and Environmental Protection¹², published in the Official Gazette on 28th January 1998. Articles 47, 58.3 and 79.10.

Law of the National Institute of Indigenous People, published on 04th December 2018¹³. Articles: 4; 5; 6; 11.

National Human Rights Commission, General Recommendation 27/2016 on the Right to Prior Consultation of Indigenous Peoples and Communities of Mexico¹⁴

General Law of Sustainable Forestry Development, published on 5th May 2018¹⁵. Articles: 3.34; .

Hydrocarbons Law, published on 11th August 2014.¹⁶ Art. 120.

Electric Industry Law, published on 11th August 2014¹⁷. Articles: 1¹⁷ through 120.

Ministry of Energy¹⁸

Protocol for the consultation to the Yaqui community on the construction and operation of the Sonora gas pipeline in Yaqui territory (Segment Guaymas – El Oro) of 10th July 2014¹⁹.

Protocol for the implementation of prior, free and informed consultation on a wind generation project of 02nd December 2014²⁰.

Protocol for the implementation of prior, free and informed indigenous consultation regarding the Puebla 1 hydroelectric project of 10th April 2015²¹.

COUNTRY LEGISLATION:

The National Institute of Indigenous People must consult the indigenous communities involved whenever the Federal Executive promotes projects that may cause a significant impact on their life conditions and the environment.²²



Energy

COUNTRY LEGISLATION:

In an effort to take into account the interests and rights of the indigenous communities residing in areas intended for the development of hydrocarbon projects, the Ministry of Energy will conduct the necessary PFIC procedures as well as any other action required to safeguard them, in coordination with the Ministry of Governance and relevant government bodies.

During the consultation, the Ministry of Energy may invite the Agency, state-owned production enterprises and their subsidiaries and affiliates, and any private individuals, as established in the current legislation.

Consultations seek to reach agreements or obtain consent, as appropriate, according to the applicable regulations.

The Ministry of Energy and the Ministry of Governance will coordinate their actions to carry out PFIC processes on hydrocarbon projects²³. The purpose of the consultation is to reach agreements or obtain consent, as appropriate, in accordance with applicable regulations.

In the case of electric infrastructure projects, the Ministry of Energy must inform the applicant of the presence of vulnerable social groups in the area(s) intended for project development and hold the consultation. The applicant must submit an assessment that includes the potential social effects of the project together with the corresponding mitigation measures.

Step 1: Acuerdos Previos ► Agreements are sought with indigenous communities regarding the methodology used in the consultation, the timeline, participation mechanisms, etc.

Step 2: Information ► Information on the project and its potential impacts on the indigenous community is made available to the public. Information is disseminated via one or more assemblies and through printed and electronic media. Communities in the area of direct influence may request the holding of technical meetings on specific topics.

Step 3: Deliberation ► Indigenous communities discuss and analyze the information provided in private and may ask the authorities to supply additional data. The duration of the deliberation step is agreed to by the communities and the authorities, in adherence to the traditional deliberation time limits of the communities involved.

Step 4: Consultation ► Meetings are organized to seek agreements. The main instrument during this phase is the consultation assembly with vast participation in each community. The date and venue for the assembly is agreed to by the communities and the authorities. During this step the parties concerned verify all agreements are signed appropriately.

Step 5: Agreement Execution and Monitoring ► A Follow-up and Monitoring Committee is set up to verify compliance with the agreements.



Forestry

Legal instruments must guarantee the prior, free and informed consent of indigenous communities and peoples. During their preparation and execution, forestry programs must respect the unrestricted participation of residing indigenous peoples and communities.



Environmental Impact Assessment System

The National Institute of Indigenous People must consult the indigenous communities involved whenever the Executive promotes projects that can cause a significant impact on their life conditions and environment.

As a unit of the Commission's Advisory Council, its duties include the design and operation of an indigenous consultation and participation system, laying the foundations and the methodological procedures to promote the participation of authorities and indigenous representatives and communities in the formulation, implementation and evaluation of development plans and projects²⁴.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation should contain obligations regarding citizen consultations.
- 3 See http://www.diputados.gob.mx/LeyesBiblio/pdf/235_120419.pdf. Last accessed on March 28, 2020.
- 4 See http://www.diputados.gob.mx/LeyesBiblio/pdf/LIElec_110814.pdf. Last accessed on March 28, 2020.
- 5 See http://www.diputados.gob.mx/LeyesBiblio/pdf/LGPAS_240418.pdf. Last accessed on March 28, 2020.
- 6 See http://www.diputados.gob.mx/LeyesBiblio/pdf/LGDFS_050618.pdf. Last accessed on March 28, 2020.
- 7 See http://www.diputados.gob.mx/LeyesBiblio/pdf/148_050618.pdf. Last accessed on March 28, 2020.
- 8 See http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LGEEPA_MEIA_311014.pdf. Last accessed on March 28, 2020.
- 9 The abstract must contain the following: (i) Name of the person responsible for the project; (ii) Project overview; (iii) Location of the intended development site, with explicit reference to existing ecosystems and their condition at the time of conducting the EIA; and (iv) List of the main potential environmental impacts and proposed mitigation and reparation measures.
- 10 Provision included in the national legislation.
- 11 See http://www.diputados.gob.mx/LeyesBiblio/pdf/1_060320.pdf. Last accessed on March 28, 2020.
- 12 See http://www.diputados.gob.mx/LeyesBiblio/pdf/148_050618.pdf. Last accessed on March 28, 2020.
- 13 See http://www.diputados.gob.mx/LeyesBiblio/pdf/LINPI_041218.pdf. Last accessed on March 28, 2020.
- 14 See http://www.dof.gob.mx/nota_detalle.php?codigo=5447796&fecha=12/08/2016. Last accessed on March 28, 2020.
- 15 See http://www.diputados.gob.mx/LeyesBiblio/pdf/LGDFS_050618.pdf. Last accessed on March 28, 2020.
- 16 See http://www.diputados.gob.mx/LeyesBiblio/pdf/LHidro_151116.pdf. Last accessed on March 28, 2020.
- 17 http://www.diputados.gob.mx/LeyesBiblio/pdf/LIElec_110814.pdf
- 18 The following documents have not been formally approved by regulatory provision of the Ministry of Energy. As of March 31, 2020 the only material available was the website of the ministry with a proposal of the foundations for the public consultation process.
- 19 https://www.gob.mx/cms/uploads/attachment/file/15240/Protocolo_de_Consulta_Previa_a_Tribu_Yaqui__ulio_2014_.pdf
- 20 https://www.gob.mx/cms/uploads/attachment/file/25575/Protocolo_Consulta_Previa.pdf
- 21 https://www.gob.mx/cms/uploads/attachment/file/16129/8_PROPOSTA_DE_PROCOLO_DE_CONSULTA_PH_PUEBLA1_abril_2015_.pdf
- 22 The Commission has an Advisory Council formed by indigenous and other representatives that acts as a consulting and linking body with indigenous peoples and society. <https://www.govserv.org/MX/Mexico-City/349192601762121/Comisi%C3%B3n-Nacional-para-el-Desarrollo-de-los-Pueblos-Ind%C3%ADgenas>
- 23 The phases described below concerning Previous Agreements, Information, Deliberation, Consultation and Agreement Execution and Monitoring have been taken from the Protocols, although these are still not enforced since they have not been formally approved by a resolution from the Secretary of Energy. They are only mentioned in the Ministry's website and their goal is to lay out the foundations for the public consultation.
- 24 Many Mexican states rely on a regulatory framework on indigenous peoples and communities, many of which include provisions regarding indigenous consultations. For example, the state of Durango has enacted specific laws to regulate prior, free and informed consultation.

Public consultation with civil society¹ in the framework of the national legislation of **Nicaragua**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Nicaragua as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Nicaragua.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

The Environmental Impact Assessment System is governed in part by the principles of proactive inclusion (all stakeholders and decision makers are involved in the process) and shared responsibility (the State and Civil Society join forces towards the prevention and mitigation of environmental impacts through a shared decision). Public consultation is mandatory for projects with high potential environmental impact (environmental category II)².

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN NICARAGUA³: Laws and regulations regarding participation and/or consultation on environmental matters

Political Constitution of the Republic of Nicaragua⁴ and its amendments. Article 50

Text of Law No. 40⁵, Law of Municipalities and its amendments. Article 36.

Law No. 475, Law of Citizen Participation⁶

Law No. 621 on Access to Public Information, adopted in 2007⁷, Article 20 paragraph n.
Decree 8-2004⁸, Regulatory Norms of Law of Citizen Participation and its amendments⁹.

Decree 78-2002 "Standards, Guidelines and Criteria for Land Management"¹⁰. Article 77.



Fishing

No specific legislation was identified in relation to this sector. However, see section "other", Law No. 690 for the Development of Coastal Zones.



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Decree 20-2017 (Environmental Assessment System), published on 29th November 2017¹¹. Articles 3.3; 3.4; 24.f, 25.e

MARENA Ministerial Resolution 03-2000 of 18th May 2000¹². Articles 9; 11, 12 and 13.

General Law of the Environment and Natural Resources and its amendments, published on 31st January 2014.¹³ Articles 12; 21; 40; 57.3; 73.

COUNTRY LEGISLATION:

Step 1 ► Once the EIA is approved, the competent environmental authority informs the applicant that the project has been selected for public consultation.

Step 2¹⁴ ► The applicant must obtain the documents required for the consultation from the competent environmental authority's office.

Step 3 ► The applicant announces the availability of the EIA only once in two daily newspapers of national circulation two days before the public hearing is set to begin.

Step 4 ► Once the public consultation has ended and the opinions and suggestions presented during the hearing have been received, the relevant technical working group reviews them for incorporation into the technical report.

The Ministry of the Environment and Natural Resources is responsible for the consultation process and therefore will determine the participation mechanism in the Terms of Reference specifically prepared for the EIA.



Other

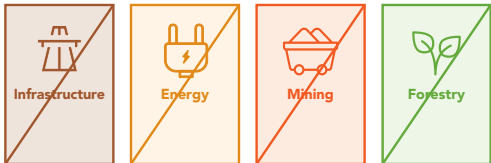
Law of Conservation and Sustainable Use of Biological Diversity¹⁵, published on 19th October 2012. Articles 7; 8.10; 12.17; 60 through 63; 102.

.....
Law No. 690, Law for the Development of Coastal Zones¹⁶. Article 47.
.....

COUNTRY LEGISLATION:
In order to obtain the communities’ prior informed consent for gaining access to the genetic resource or its intangible component, the applicant must hold a public consultation with the community residing in the area where the resource is located, with participation of its representatives and local authorities.

The competent authority will review the consultation process, for which purpose it will call for a public hearing at least 30 days in advance to present the main elements of access, environmental impacts and expected actions once the genetic material has been obtained through bio-prospection.

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Section V, Annex I and II.

- Public consultation with the indigenous population in the framework of the national legislation
- ▶ of **Nicaragua**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Nicaraguan legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Nicaragua.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN NICARAGUA: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Nicaragua ratified ILO Convention 169 on 25th August 2010.

Law No. 40, Law of Municipalities and its amendments¹⁷. Article 67

Law of Citizen Participation, published on 22nd October 2003¹⁸. Articles 20; 22; 25; 32 last paragraph; 33.4; 40.6; 41; 51.7.

General Law of the Environment and Natural Resources, published on 31st January 2014.¹⁹ Articles 4.4; 20.6; 72.

Law of Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and the Bocay, Coco, Indio, and Maíz Rivers²⁰, published on 23rd January 2003. Articles 2.3; 3; 12; 16; 17; 18; 40.a; 44.b.2.

Law of Conservation and Sustainable Use of Biological Diversity²¹, published on 05th September 2012. Articles 1; 10.4; 60 through 63; 77.102.

Regulatory Norms of Law No. 489, Law of Fishing and Aquaculture, published on 25th February 2005²². Article 153.

Law No. 28, Statute of Autonomy of the Atlantic Coast Regions of Nicaragua and its amendments.

Decree No. 36-2002, for the Administration of a System of Permits and Environmental Impact Assessment in the Autonomous Regions of the Atlantic Coast²³. Articles 7, 15 through 20.

COUNTRY LEGISLATION:

Consultation is mandatory for all processes defining indigenous territories and biodiversity projects requiring access to their biological resources.



Fishing

COUNTRY LEGISLATION:

Once the competent authority receives the application for aquaculture concession in indigenous or ethnical territory or in lands undergoing demarcation, it will have 7 days to hold the consultation and obtain the prior consent from indigenous or ethnical communities. The competent authority may form a tripartite commission with the regional council and the community. If the community opposes the project, the negotiation process established in the EIAS must begin, as provided under Article 17 of Law No. 445 on Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic coast of Nicaragua and the Bocay, Coco, Indio and Maíz Rivers.



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COUNTRY LEGISLATION:

Before granting concessions or contracts for the rational exploitation of underground resources located in indigenous lands, the municipality will consult with the indigenous community residing in the area.

This consultation is no impediment for the Regional Council or any other entity to consult the communities directly on issues related to the exploitation of natural resources. The relevant Regional Council will resolve on the matter after consulting the communities residing in the lands where the natural resources are located.

If the community opposes the project, the Regional Council must initiate negotiations with the community. For the negotiation, the community will be represented by its traditional authorities and advised by the technical experts of its choice. Under no circumstance will displacement be considered an option. The Central Government participates directly in the negotiations.

Once the consultation is over, the community, the Regional Council and the applicant will sign an agreement that must state the technical terms and the economic benefits the community will receive. The negotiation process must ensure environmental preservation and provide for indemnities in case of potential damages.

The demarcation and legal recognition of property rights of the indigenous community lands will involve the direct participation of indigenous peoples and ethnic communities entitled to voice and vote through their traditional authorities. During the consultation, the communities will be assisted by translators and technical practitioners, who will be selected and appointed by the communities involved.



COUNTRY LEGISLATION: Conservation and Sustainable Use of Biological Diversity.

The prior and informed consent of indigenous and Afro-descendant peoples is required in order to gain access to their biological resources or associated intangible component, or to the collective knowledge on these resources.

Consultations held in the lands of indigenous and Afro-descendant peoples will be prior, free, informed, and in good faith.

Consultation and consent procedures must observe the traditional organization mechanisms of indigenous and Afro-descendant peoples and local communities.

Step 1 ► All the information required about the project at hand will be delivered before the consultation.

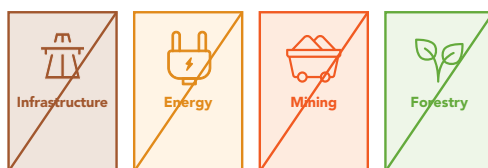
Step 2 ► The applicant will conduct a public consultation with the residents of the area where the resource is located, with participation from their representatives and local authorities.

Step 3 ► The communities involved will give their approval in the form of a letter of consent that will later be perfected into an Access Permission Agreement.

Step 4 ► The Biodiversity Office and the Ministry of the Environment and Natural Resources (MARENA) must ensure the permit granted contains the letter of consent from the indigenous, ethnical or local communities or municipal authorities.

Step 5 ► Depending on the nature of the project, an environmental or risk assessment will be required. The assessment must be approved by the competent authority in adherence to the current Environmental Assessment System, and with participation from the indigenous or Afro-descendant authority of the territory involved.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

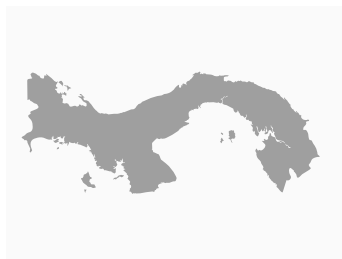
The Bank has established consultation and agreement processes for four (4) types of operations. See Section Annex I and II.

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 To find out which projects are included in Category II See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=907D4E65C363CC8D062583520054FE79&action=openDocument>. Last accessed on March 28, 2020.
- 3 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation should contain obligations regarding citizen consultations.
- 4 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=C93CBD0FF408D07306257C8C004F6953&action=openDocument>. Last accessed on March 28, 2020.
- 5 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=6B6FC62AB52A976C06257B0A006131F0&action=openDocument>. Last accessed on March 28, 2020.
- 6 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=F78CA467F5C96D0306257257005FBADC&action=openDocument>. Last accessed on March 28, 2020.
- 7 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=675A94FF2EBFEE9106257331007476F2&action=openDocument>. Last accessed on March 28, 2020.
- 8 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=39B84D4CAFEA808E0625710800541AB8&action=openDocument>. Last accessed on March 28, 2020.
- 9 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=FD34B986512B9997062570A10058347A&action=openDocument>. Last accessed on March 28, 2020.
- 10 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=3978E356F78CC1DB062570CE005CC0D4&action=openDocument>. Last accessed on March 28, 2020.
- 11 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=907D4E65C363CC8D062583520054FE79&action=openDocument>. Last accessed on March 28, 2020.
- 12 See <http://www.tramitesnicaragua.gob.ni/media/RM03-2%20permiso%20ambiental%20sinpa%20complementarios.pdf>. Last accessed on March 28, 2020.
- 13 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=F9264C09BD98D79706257C7D005668FD&action=openDocument>. Last accessed on March 28, 2020.
- 14 <http://www.tramitesnicaragua.gob.ni/procedure/443/372/step/1364?l=es>
- 15 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=6B731BE4E96F5E9406257AB4007383C6&action=openDocument>. Last accessed on March 28, 2020.
- 16 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=46F4788C835B6077062576550054B9E6&action=openDocument>. Last accessed on March 28, 2020.
- 17 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=6B6FC62AB52A976C06257B0A006131F0&action=openDocument>. Last accessed on March 28, 2020.
- 18 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=F78CA467F5C96D0306257257005FBADC&action=openDocument>. Last accessed on March 28, 2020.
- 19 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=F9264C09BD98D79706257C7D005668FD&action=openDocument>. Last accessed on March 28, 2020.
- 20 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=F59730333B3F6FA5062571B200559533&action=openDocument>. Last accessed on March 28, 2020.
- 21 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=6B731BE4E96F5E9406257AB4007383C6&action=openDocument>. Last accessed on March 28, 2020.
- 22 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=824EE302EB60D1C0062570A60067A3DF&action=openDocument>. Last accessed on March 28, 2020.
- 23 See <http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=89436DD30CA2DCDF062570F9005B113B&action=openDocument>. Last accessed on March 28, 2020.

Public consultation with civil society¹ in the framework of the national legislation of

► **Panama**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Panama as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Panama.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

The public or private developer has the obligation of involving the public, from the very onset, in the preparation and evaluation of its project's EIA. In addition, the Ministry of the Environment must call for a public consultation on environmental matters which, due to their importance, require the public's opinion.

The legislation distinguishes three types of studies, Categories I, II and III, each one with specific requirements for public consultation 286.



LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN PANAMA:

Laws and regulations regarding participation and/or consultation on environmental matters



Infrastructure

Law No.6 Regulating Land Use for Urban Development, 01st February 2006² Articles 7.10; 8.5; 26.3; 35.

Law No. 14³ of 2015, amending Law No. 6. Article 2.

Law No. 6 of 2002, Regulatory Norms for Transparency in Public Management⁴. Articles 24 and 25.

COUNTRY LEGISLATION:

Urban planning authorities whose decisions affect the rights of specific groups must allow them to participate through their representatives in order to promote the convergence of social, economic and land planning interests.



Energy

Law No. 6 of 1997 establishing the Regulatory and Institutional Framework for the Electricity Public Service, published on 05th February 1997.⁵ Article 146.

Law No. 266 of 1996, Law creating the Public Services Regulator and its amendment⁷ through Decree Law No. 10. Articles 19.18

COUNTRY LEGISLATION:

The State will guarantee the right of communities to participate in the decisions of the electricity sector that may affect them. All decisions will be made after consulting these communities.



Fishing

Cabinet Resolution No. 175⁸ of 20th December 2016 (National Action Plan for Sustainable Fisheries)



Environmental Impact Assessment System

Consolidated text of Law No. 41 of 1998, General Law of the Environment⁹. Article 8, 51.

Decree No. 123 of 2009, Regulatory Norms of the General Law of the Environment, published on 24th August 2009.¹⁰ Articles 9.g; 12; 13; 28 through 31; 33 through 35; 37; 42.

Presidential Decree No. 155, amending Decree No. 123 of 05th August 2011¹¹. Articles 3; 4; 5; 6 and 8.

Law No. 8, creating the Ministry of the Environment, published on 27th March 2015¹². Article 5.

Presidential Decree No. 111 of 25th August 2016¹³. Articles 10 through 17.

COUNTRY LEGISLATION:

Step 1 ► After receiving the EIA, the National Environmental Authority (ANAM) may request civil society organizations to provide additional information.

Step 2 ► Once the EIA has been approved for evaluation, the ANAM will make the document available to the community¹⁴. The public will have 8 or 10 days to make observations to EIAs in Category II or III respectively, or request a public hearing.

Step 3 ► The developer publishes and circulates, at its cost and expense, an abstract of the EIA in two media, one of which is mandatory and the other one of its choice. The abstract must be published and circulated twice within five (5) calendar days from the first publication or circulation.

Distinction according to EIA category:

For assessments in Category I, the developer must use either Interviews or surveys¹⁵. The EIA must contain a description of the activities conducted (including all dates) with the community directly affected by the project, together with evidence and an analysis of the results obtained.

It must also provide the perceptions of the community directly affected, obtained through different means.¹⁶



For EIAs in Category II, the developer must formulate and implement a Citizen Participation Plan during the entire preparation of the EIA. The plan must contain the following elements:

a. an identification of key actors within the project's area of influence (communities, authorities, organizations, etc.); b. the elicitation techniques utilized (surveys, interviews, assemblies, work meetings, etc.), the results obtained and their analysis; c. information dissemination techniques utilized; d. request for information and community response; e. contributions from key actors; f. identification of potential conflicts created or intensified by the project and resolution measures proposed.

Step 4 ► During the EIA review, the developer must also conduct a formal consultation if the ANAM deems it necessary due to the nature of the project or because the community located within the project's area of influence has asked for it (the petition must be signed

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 <p>Environmental Impact Assessment System</p>	<p>by at least 2% of the residents affected). To this end, all documents related to the EIA will be made available for public review. The request for consultation must be received within fifteen (15) days from the last publication of the EIA abstract.</p> <p>In addition to the specifications for EIAs in Category II, EIAs in Category III require a public forum during the evaluation stage before a decision is reached on the Assessment. The date must be set in coordination with ANAM, which will also act as moderator.</p> <p>The developer must indicate the form of convening participants.</p> <p>Step 5 ► Within five (5) days from concluding the public forum, the developer will submit to ANAM a report with the topics discussed during the forum for inclusion in the file.</p>
 <p>Other</p>	<p>Law No. 23 – Adoption of the Marrakesh Agreement establishing the WTO, the Protocol of Panama’s Accession to the WTO with its annexes and list of commitments, and the adjustment of the national legislation to international standards. - Title V: Provisions Regarding the Protection of Plant Breeder Rights¹⁷. Article 93.8</p>

No specific legislation on the matter was identified:





Good Practices for the Consultation Plan

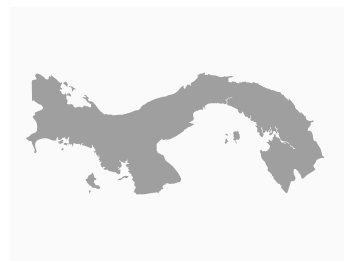
See Guiding Principles and Good Practices applicable to Consultations in Chapter 1.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

Public consultation with the indigenous population in the framework of the national legislation of **Panama**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Panamanian legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Panama.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN PANAMA: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Panama has not ratified ILO Convention 169.

Law No. 3 of 1995, published on 8th January 1995.¹⁸ Article 5.12.

Consolidated text of Law No. 41 of 1998, General Law of the Environment¹⁹. Articles 93, 98.

Law No. 37 of 02nd August 2019 establishing consultation and free, prior and informed consent of indigenous peoples²⁰.

COUNTRY LEGISLATION:

Este país no ha ratificado el Convenio N° 169 sobre Pueblos Indígenas y Tribales en Países Independientes de la OIT y tampoco cuenta con legislación en materia indígena.



Environmental Impact Assessment System

COUNTRY LEGISLATION:

Consultations are mandatory whenever a project is intended for development in indigenous community territory. The consultation will seek to establish agreements with community representatives regarding their rights and customs, as well as the benefits offered as compensation for the utilization of their resources, knowledge or land.



Other

COUNTRY LEGISLATION:

In the case of legislative and administrative measures, the consultation must be held by State agencies in an intercultural dialogue setting and using the native language as well as Spanish. The purpose of the consultation is to reach consent agreements between the State and indigenous peoples.

Step 1 ► The indigenous peoples to be consulted are identified by State agencies that promote consultation in conjunction with indigenous authorities.

Step 2 ► State agencies inform the relevant indigenous organizations that they will be consulted.

Step 3 ► Since the formulation of the project or program, State agencies must inform the indigenous peoples about the reasons, implications, impacts and consequences of the legislative or administrative measure.

Step 4 ► All agreements reached are binding for both parties.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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



References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 See https://www.gacetaoficial.gob.pa/gacetas/25478_2006.pdf. Last accessed on March 28, 2020.
- 3 See <https://www.gacetaoficial.gob.pa/pdfTemp/27767/50508.pdf>. Last accessed on March 28, 2020.
- 4 See https://www.gacetaoficial.gob.pa/gacetas/24476_2002.pdf. Last accessed on March 28, 2020.
- 5 See https://www.gacetaoficial.gob.pa/pdfTemp/26871_C/34587.pdf. Last accessed on March 28, 2020.
- 6 See https://www.gacetaoficial.gob.pa/gacetas/22962_1996.pdf. Last accessed on March 28, 2020.
- 7 See https://www.gacetaoficial.gob.pa/gacetas/25493_2006.pdf. Last accessed on March 28, 2020.
- 8 See https://www.gacetaoficial.gob.pa/pdfTemp/28196_A/59543.pdf. Last accessed on March 28, 2020.
- 9 See https://www.gacetaoficial.gob.pa/pdfTemp/28131_A/58191.pdf. Last accessed on March 28, 2020.
- 10 See https://www.gacetaoficial.gob.pa/pdfTemp/26352_A/20518.pdf. Last accessed on March 28, 2020.
- 11 See https://www.gacetaoficial.gob.pa/pdfTemp/26844_A/34095.pdf. Last accessed on March 28, 2020.
- 12 See https://www.gacetaoficial.gob.pa/pdfTemp/27749_B/50251.pdf. Last accessed on March 28, 2020.
- 13 See https://www.gacetaoficial.gob.pa/pdfTemp/28104_A/57665.pdf. Last accessed on March 28, 2020.
- 14 The EIA evaluation process includes three EIA categories depending on the project's degree of impact and the measures proposed for the elimination, mitigation and/or compensation of potential environmental impacts. Category I includes those projects, works or activities that may cause little or no negative impacts and do not imply a significant environmental risk. Category II encompasses those projects, works or activities that may cause significant negative impacts on the environment but may be mitigated with easily applicable measures. Category III comprises those projects, works or activities that may cause indirect, cumulative and/or synergic quantitative and/or qualitative environmental damage.
- 15 Projects in Category I with minor environmental risks may propose Good Environmental Practice Guidelines to define the environmental mitigation measures. These guidelines must be approved by the Ministry of the Environment. The Ministry subjects the Guidelines to a participatory process. Step 1. The Ministry posts the notice of public consultation in a major daily newspaper of national circulation. The notice must be published three times within 7 calendar days. Step 2. The Ministry subjects the Guidelines to review by the National Advisory Commission on the Environment. Step 3. The public will have 20 business days to submit their observations. Step 4. The Ministry will have 20 business days to reply to the observations. Step 5. Within 10 days from sending its reply, the Ministry prepares a technical report, proposes potential amendments to the Guidelines and approves them.
- 16 Whether obtained verbally in the form of participation in talk shows, comments of news on radio or TV stations, through public and private documents, or individual and collective submissions received directly or published in newspapers, magazines or any other printed means.
- 17 See https://www.gacetaoficial.gob.pa/gacetas/23340_1997.pdf. Last accessed on March 28, 2020.
- 18 See https://www.gacetaoficial.gob.pa/gacetas/22707_1995.pdf. Last accessed on March 28, 2020.
- 19 See https://www.gacetaoficial.gob.pa/pdfTemp/28131_A/58191.pdf. Last accessed on March 28, 2020.
- 20 See https://www.gacetaoficial.gob.pa/pdfTemp/28090_A/57373.pdf. Last accessed on March 28, 2020.



Public consultation with civil society¹ in the framework of the national legislation of **Paraguay**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Paraguay as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Paraguay.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

The authority must provide opportunities for participation to allow the public to make observations to the EIA.

Public hearings may be held after the first round of participation and at the initiative of the Government. However, hearings will be mandatory whenever the project affects indigenous communities or a petition is received from the neighbors directly affected.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN PARAGUAY²: Laws and regulations regarding participation and/or consultation on environmental matters



Infra- estructura

Decree No. 453, Regulatory Norms of Law No 294/1993 on Environmental Impact Assessment. Articles 2.a, 2.f, 2.k, 2.l, 2.m.



Energy

Decree No. 453, Regulatory Norms of Law No 294/1993 on Environmental Impact Assessment. Articles 2.e, 2.h, 2.i.



Mining

Decree No. 453, Regulatory Norms of Law No 294/1993 on Environmental Impact Assessment. Article 2.d.



Fishing

Decree No. 453, Regulatory Norms of Law No 294/1993 on Environmental Impact Assessment. Article 2.r.

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Forestry

Decree No. 453, Regulatory Norms of Law No 294/1993 on Environmental Impact Assessment. Article 2.b.

.....



Environmental Impact Assessment System

Decree No. 453, regulating Law No. 294/1993 on Environmental Impact Assessment³, enacted on 08th October 2013, and its amendments⁴. Articles 6, 7.b and 16.

Resolution No. 640/14, setting forth the General Rules for Public Hearings in the Framework of Law No. 294/93 on Environmental Impact Assessment, its Regulatory Decree No. 453/13 and its amendments and addendum No. 954/13⁵. Article 5.

COUNTRY LEGISLATION:

Step 1 ► Once the EIA has been drafted, the authority will post it for public review in its webpage and at its local office or any location deemed convenient for a period of 10 days starting on the day immediately following its last publication. The authority may extend this period for another 10 days in the case of large-scale projects requiring the presentation of an EIA.

The authority will announce this extension by posting a notice in two (2) major daily newspapers of national circulation for three (3) consecutive days and airing a radio spot if, after the preliminary EIA evaluation, (i) no observations have been submitted or (ii) the time limit for receiving observations has expired.

Step 2 ► The public will have ten (10) days to may make observations to the EIA, which will be forwarded to the project developer for reply within five (5) days, if deemed appropriate.

Depending on their technical feasibility, observations may be incorporated into the EIA in full or in part.

Step 3 ► Once the observations reception period has elapsed, the authority will have ten (10) business days to decide whether it calls for a public hearing or not. Silence on the part of the authority will mean the hearing will not be held.

Conversely, if the hearing is convened, there will be a time limit of thirty (30) business days between the decision to hold the hearing and its conclusion.

Public hearings will be mandatory whenever the intended project is likely to affect indigenous communities directly or a petition is received from neighbors or other potentially affected parties.

Public hearings will have the following structure: i) opening: reading of the general rules for public hearings, ii) project presentation: the applicant or a representative shows the audience a Power Point presentation with an overview of the salient aspects of the project in no more than 40 minutes, iii) registration of speakers: registration of participants who will take the floor during the hearing, iv) discussion: registered speakers take turns to discuss matters directly related to the issue at hand.

Step 4 ► The authority will have ninety (90) days from the end of the hearing or from the decision not to hold it to issue the environmental impact statement.



Other

Law No. 3239/2007 on the Water Resources of Paraguay⁶, enacted on 14th June 2007. Article 4.ñ.

Law No. 352 of Protected Wildlife Areas⁷ of 1994. Article 9.

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1, except for the specific modifications presented below.

Purpose:

To enable dialogue in order to obtain inputs and proposals that are economically, legally and technically viable from project stakeholders and the affected population.

Timeliness:

- The hearing must be summoned before any final decision concerning the proposed plan is made.
- The hearing must be convened at least 2 weeks in advance, indicating the date, venue and time for the consultation.
- The public will have ten (10) days to may make observations to the EIA, which will be forwarded to the project developer for reply within five (5) days, if deemed appropriate⁸.

Accessibility:

Access to project information: installing information centers on the project at a location of easy access is recommendable, with visual aids available to the public and trained staff who can answer questions.

Representativeness:

All efforts should be made to ensure the audience attending the hearing is representative of the different interests involved in the project. These efforts may include holding meetings with key stakeholders with sufficient knowledge of the community, identifying databases with updated information on community actors, and finding out which public services are available, among others.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

- Public consultation with the indigenous population in the framework of the national legislation of **Paraguay**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Paraguayan legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Paraguay.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN PARAGUAY: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Paraguay ratified ILO Convention 169 on 10th August 1993.

National Constitution of Paraguay⁹, enacted on 20th June 1992. Article 65.

Decree No. 1039 adopting the Protocol for the Process of Consultation and Free, Prior and Informed Consent of Indigenous Peoples Living in Paraguay of 28th December 2018¹⁰.

COUNTRY LEGISLATION:

The process of consultation and free, prior and informed consent is mandatory for all activities likely to affect the rights to land, territories, life and traditional livelihoods of indigenous peoples. It is the right of indigenous peoples to decide whether they grant their consent or not, whether they wish to participate in the consultation or not, and to terminate the consultation at any time.



Environmental Impact Assessment System

COUNTRY LEGISLATION:

All consultation processes must be conducted by the Paraguayan Institute of Indigenous Peoples (INDI) or the institution acting in its representation.

Step 1 ► The project developer must request the indigenous peoples affected for permission to consult them. The request must be made during the last stages of project planning and in writing. Indigenous peoples must reply in writing whether they grant permission or not.

Step 2 ► Indigenous peoples may ask the developer to submit a specific consultation request form, which must be approved by indigenous peoples.

Step 3 ► The request will be presented by INDI and must include the developer's identification, legal status, full description of the project, proof of compliance with legal and good-practices standards, and a contact person. The request must be presented in the language specified by the indigenous people, who must also designate one or more contact persons.

Step 4 ► The indigenous people must reply to the developer in writing, giving or denying its consent for the consultation. If the reply is given verbally, a neutral third party will need to be present¹¹.

Step 5 ► After granting permission, the indigenous people gives the developer a date to start the consultation. The project must therefore allocate the funds required by indigenous representatives to inform their communities and reach a decision.

Step 6 ► The indigenous people may request the developer to make a preliminary presentation of the project to the community (not just its leaders or advisors), to make itself available for questions, and to provide additional information in their language. The indigenous people must organize the call for consultation. Costs will be discussed with the indigenous people and covered by the developer.

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Once consent for consultation is given, the process starts in good faith. The consultation is an interactive process that lasts until the project is completed.

Step 7 ► The process must identify the indigenous peoples and the developer(s), as well as any other stakeholders such as sponsors, investors, partners, etc. The representatives from the parties and INDI must also be identified, together with anybody with authority to negotiate.

Step 8 ► Each party must explain its decision-making procedures, including the identification of authorized decision-makers, the time required and the duration in office of those authorized to make decisions. Each party has the right to choose its advisors. The indigenous people may request the project developer to provide funding for independent advisors.

Step 9 ► The parties must agree on the consultation period, with due observance of the indigenous customs and decision-making procedures. The duration of the consultation will vary depending on the number of people involved, the indigenous peoples affected, the complexities of the consultation, the amount of information and the decision-making mechanisms. The indigenous people may explain their customs and rules so that stakeholders may interact smoothly with the community. All external actors must also observe them.

Step 10 ► The indigenous people, the INDI or the developer may, at any time, request an impartial third person to step in as mediator or facilitator, provided the request is consented to by all parties. Third parties may also be invited as guest observers, in which case consent is not required.

Step 11 ► All funds and services in kind provided by the developer during the consultation process must be recorded, documented in writing and maintained in a file.



Step 12 ► An independent entity will conduct a detailed analysis of the project's cultural, social and environmental impacts. The analysis will be supervised by the parties and INDI, and must be prepared in consultation with the indigenous people and with full participation of the community concerned. The conclusions of the analysis must be incorporated into the agreement between the parties.

Step 13 ► The consultation is an ongoing process of information exchange. The developer must provide information in a manner that is culturally appropriate, using everyday language, preferably with diagrams, maps, videos, etc. and in conjunction with an agreement on the mechanisms for delivering such information in case of widespread illiteracy. All information must be delivered at least two weeks prior to any meeting. All exchanges and understandings must be documented and signed by the parties.

Step 14 ► Before any decision is made by the indigenous people, an agreement must be reached at least on the following: Intellectual property, benefit sharing, land demarcation and titling; provision of funds and services outside the benefits; restitution or compensation for lands and resources in case of interference; environmental recovery and mitigation measures; dispute resolution; monitoring procedures; role of independent entities; negotiation mechanisms and continuous negotiation processes until project conclusion; prioritization of mitigation measures; confidentiality of the information; measures to promote the rights of the indigenous people. The agreement on benefit sharing must include transparent mechanisms for their distribution and

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 <p>Environmental Impact Assessment System</p>	<p>management. All agreements must be documented and signed, and are mandatory and binding.</p> <p>Step 15 ► If the indigenous people refuse consent, the developer must accept the decision.</p>
 <p>Other</p>	<p>Indigenous peoples have the guaranteed right to participate in the economic, social, political and cultural life of the country in accordance with their traditional customs.</p>

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation should contain obligations regarding citizen consultations.
- 3 See <http://digesto.senado.gov.py/ups/leyes/8350.pdf>. Last accessed on March 28, 2020.
- 4 See <http://extwprlegs1.fao.org/docs/pdf/par135604.pdf>. Last accessed on March 28, 2020.
- 5 See <http://extwprlegs1.fao.org/docs/pdf/par135608.pdf>. Last accessed on March 28, 2020.
- 6 See <http://digesto.senado.gov.py/ups/leyes/4447%20.pdf>. Last accessed on March 28, 2020.
- 7 See <http://digesto.senado.gov.py/ups/leyes/5096%20.pdf>. Last accessed on March 28, 2020.
- 8 Provision included in the national legislation.
- 9 See http://www.bacn.gov.py/CONSTITUCION_ORIGINAL_FIRMADA.pdf. Last accessed on March 28, 2020.
- 10 See https://www.mec.gov.py/documentos/documentos_resoluciones/48679?style=original. Last accessed on March 28, 2020.
- 11 The purpose of having a neutral third party is to safeguard the interests of the respective parties.

Public consultation with civil society¹ in the framework of the national legislation of **Peru**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Peru as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Peru.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

Public entities and authorities establish formal mechanisms to facilitate effective citizen participation and promote their development and utilization by individuals or legal entities interested or involved in the Environmental Impact Assessment, regardless of any other citizen participation arrangements proposed in the EIA.



LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN PERU²: Laws and regulations regarding participation and/or consultation on environmental matters



Energy

Presidential Decree No. 002-2019-EM, Regulatory norms on citizen participation regarding hydrocarbon activities

COUNTRY LEGISLATION:

Steps of Citizen Participation during the negotiation or the call for tender and execution of contracts for hydrocarbon exploration and/or exploitation

Citizen Participation in relation to the negotiation or tender and execution of contracts for hydrocarbon exploration and/or exploitation includes the following stages:

- Prior to negotiation or tender commencement.
- Prior to the submittal of the draft contract to the Ministry of Energy and Mining.
- Following contract execution.

Steps of Citizen Participation during the environmental impact assessment

Citizen Participation related to the evaluation of the Environmental Impact Assessment and supplementary instruments for the environmental management of hydrocarbon activities includes the following steps:

- Prior to the submittal of the Environmental Assessment or the Supplementary Environmental Management Instrument.
- During the review of the Environmental Assessment or the Supplementary Environmental Management Instrument.

Once the Environmental Assessment has been approved, citizen participation must abide by the provisions contained in the assessment and the current legislation and is subject to any environmental oversight actions by the Competent Authority.



Mining

Presidential Decree No. 028-2008-EM, Regulatory norms on citizen participation in the mining subsector, 26th May 2008³.

Ministerial Resolution No. 304-2008-MEM-DM, Regulatory norms on citizen participation in the mining subsector, 24th June 2008⁴.

COUNTRY LEGISLATION:

This sector considers the following citizen participation arrangements: Access to the summary and full contents of the environmental impact assessment; posting of calls for citizen participation; surveys, interviews and focal groups; distribution of informational materials; guided tours to the project area; elicitation of public opinions; participatory workshops; public hearing; presentation of contributions to the authority; permanent information office; participatory environmental monitoring; conventional media; dialogue tables.

Participation may contain different features depending on the stage of the mining project.

continued



Exploration projects

Category I

Step 1 ► The executing agency provides a hard copy and an electronic copy of the environmental assessment to the regional energy and mining office, district and provincial municipalities, and peasant or native communities.

Step 2 ► The authority announces the posting of the environmental assessment in its webpage within 5 days from reception of the application for approval.

Step 3 ► After the posting of the environmental assessment has been announced, the public will have 10 days to submit their observations to the competent authority. The authority must take into account the public's observations in its evaluation of the environmental assessment.

Category II

Step 1 ► The executing agency provides a hard copy and an electronic copy of the environmental assessment to the regional energy and mining office, district and provincial municipalities, and peasant or native communities.

Step 2 ► The authority announces the posting of the environmental assessment in its webpage within 5 business days from reception of the application for approval.

Step 3 ► The executing agency publishes a notice of availability of the environmental assessment in the El Peruano official gazette and in the local legal newspaper of the respective region. Within 5 days from submitting the environmental assessment, the executing agency must request the format to be used for publication and, after 5 days from receiving the format, it must post the notice.

Step 4 ► Within 5 days from posting the notice in El Peruano, the executing agency must arrange the broadcasting of three daily announcements over a period of 5 days by a radio station with coverage in the region or district intended for the project in order to inform the public of the availability of the environmental assessment⁵.

Step 5 ► The executing agency will have 5 days from the last publication to submit the original pages of the gazette and the contract with the radio station to the competent authority.

Step 6 ► After publication of the notice in El Peruano, the public will have 25 calendar days to submit their observations.

Step 7 ► The authority informs the executing agency of the observations received.

Exploitation and benefit projects⁶

Step 1 ► Before preparing the EIA, the executing agency must organize a participatory workshop as well as any other citizen participation mechanism in the region intended for project development in order to inform the community about the EIA, the project scope and the relevant regulatory framework. The competent authority must participate in the workshop.

Step 2 ► While preparing the EIA, the executing agency must organize a participatory workshop as well as any other citizen participation mechanism in the region intended for project development in order to inform the community about the progress and outcomes of the EIA. The competent authority must participate in the workshop.

continued



Mining

Step 3 ► The executing agency prepares a Citizen Participation Plan and includes it in its application for EIA approval. The plan describes the citizen participation mechanisms available during the EIA evaluation and the execution of the mining project, and considers the observations received in previous participatory workshops⁷.

Step 4 ► After the presentation of the plan, the competent authority will have 7 days to make any observations. The executing agency will have 10 days to incorporate the observations received.

Step 5 ► The executing agency provides a hard copy and an electronic copy of the EIA together with 20 printed copies of the EIA summary to the regional energy and mining office, district and provincial municipalities, and peasant or native communities. The authority distributes these copies to other stakeholders to facilitate dissemination.

Step 6 ► Once the CPP has been approved, the competent authority will have 5 days to post the EIA executive summary in its webpage, indicating the date of file reception, the date of posting it in its website, and the deadline for submitting representations.

Step 7 ► The executing agency releases the Training Plan using the format provided by the competent authority. After 7 days, it must post the relevant participation mechanisms in *El Peruano* and in the local legal newspaper of the respective region. In addition, the Participation Plan is publicized through five daily notices broadcast during a period of 10 days by a radio station with coverage in the area of project influence (starting on the 5th calendar day from publication in *El Peruano*), and by means of posters in A2 format⁸.

Step 8 ► Following publication in *El Peruano*, the public will have a maximum of 30 days to submit their observations on the EIA to the competent authority. The competent authority considers the observations contained in the EIA evaluation report and, if deemed relevant, relays them to the executing agency for incorporation.

Step 9 ► The executing agency submits a printed and a digital copy of the observations incorporated to the relevant authorities and communities concerned.

Step 10 ► If the competent authority deems it appropriate, a public hearing is conducted within 40 days after publication of the notice in *El Peruano*. The authority defines the date and venue where the hearing will be carried out. The hearing is conducted in Spanish, with translators available if required.

Step 11 ► A Steering Committee is established for the hearing. The chairman opens the hearing and the applicant's representatives present the EIA; three rounds of questions are permitted, the first two in writing and the last one verbally. The applicant's representatives or the authorities answer the questions, as appropriate. At the end of the audience, a meeting report is signed by the Steering Committee, the executing agency, the representatives from the company that prepared the EIA, and any participants who wish to do so⁹.

Step 12 ► During the project, the executing agency may implement any of the participation mechanisms included in the CPP, most preferably the permanent information office and participatory environmental monitoring.



Forestry

Forestry and Wildlife Law (Law No. 29763) of 21st July 2011¹⁰. Articles: Preliminary title I, II.1, II.2, II.3; 19.c; 20; 22; 148.

COUNTRY LEGISLATION:

Every individual has the right and the duty to participate responsibly in decisions regarding the definition and implementation of policies that regulate forestry and wild vegetation ecosystems. The regional government is responsible for setting up permanent mechanisms for citizen participation. One such mechanism is the Forestry and Wildlife Management Committee that operates at regional level with the main mission of participating in the preparation and execution of public proposals and policies.

At national level, the National Forestry and Wildlife Commission acts as consultant to the National Forestry and Wildlife Service.



Environmental Impact Assessment System

Organic Law of Regional Governments (Law No. 27867 of 08th November 2002)¹¹. Articles 8.1; 10.2.h; 11.A.

Organic Law of Municipalities (Law No. 27972 of 06th May 2003)¹². Articles 7; 9.14, 9.34; 26; 73.3.3; 73.5; 73.6.4; 73.7.2; 84.1.7; 84.2.6; 84.2.9; 86.3.1.

Law of the National Environmental Impact Assessment System (Law No. 27446 of 20th April 2001).¹³ Articles 10.1.d; 13; 14.

Presidential Decree No. 019-2009-MINAM. Regulatory norms of Law No. 27446, Law of the National Environmental Impact Assessment System. Annexes III and IV

Presidential Decree No. 002-2009-MINAM. Regulatory norm on transparency, access to public environmental information and participation and citizen consultation on environmental matters. Articles 21 through 34.

General Environmental Law (Law No. 28611 of 13th May 2008)¹⁴. Articles 41 through 51.

Legislative Decree 1055, amending the General Environmental Law, 27th June 2008¹⁵.

COUNTRY LEGISLATION:

The legislation sets up formal and informal instances for citizen participation and the Assessment must establish both types. Formal instances are defined by the Competent Authority and are carried out under its guidance and supervision. Informal instances are promoted by the Applicant in accordance with the Citizen Participation Plan approved by the competent authority or out of its own initiative.

During the Environmental Assessment, different mechanisms for citizen participation may be presented. The assessment contributes to the dissemination of information and the formulation of opinions, comments, suggestions, and remarks but does not grant any power of veto.

While environmental impact assessments are divided into categories, they all share a common structure:

continued



Environmental Impact Assessment System

Step 1 ► The environmental authority provides those communities most directly affected by the project with information regarding the EIA in a format that is simple and easy to understand. The procedure is funded by the applicant.

The environmental authority has the power to ask the community or its representatives to submit their observations or further information regarding the investment development proposed.

Step 2 ► The applicant must, at its cost and expense, post a call for citizen consultation in a major daily newspaper of national circulation and online through electronic media. The assessments will be made available for public examination at the regional meeting venue of the sector intended for the project.

Step 3 ► The public hearing will be carried out in the area intended for the investment project, ensuring that the venue chosen provides the widest access opportunities to the communities potentially affected. The hearing must take place no later than five (5) days before the end of the period allocated for formal consultation.

Step 4 ► The public participation process must be duly documented and recorded and all the information generated during the consultation must be made publicly available. The Ministry of the Environment must publish all agreements and recommendations in its online portal. If recommendations are not taken into account, the Ministry will have 30 days to justify its reasons for not including them.

Environmental Assessments are divided into (3) categories¹⁶, all of them with a Citizen Participation Plan (CPP).

Category I Assessments:

During the first week of each month, the authority will post in the Official Gazette a list of the companies that have submitted an EIS. The companies will have 20 calendar days from publication to discuss the EIS with the stakeholders concerned. If no agreement is reached, the public may contest the resolution. Otherwise, it will be deemed consented and agreed to.

Category II Assessments:

The applicant must prepare a CPP whose results and supporting evidence will be included in the relevant section of the EIS-sd, together with the strategies, actions and mechanisms established for the participation of authorities, the public, and accredited civil society organizations during the different steps of the EIS-sd.



If the competent authority determines the public hearing is warranted, the CPP must also contain a consolidated report with the comments and observations made by the public during the process. The report will only include requests for clarification, rectification or additional information made by the public and accredited civil society organizations, with details on how these requests were addressed.

Category III Assessments:

The applicant must prepare a CPP whose results and supporting evidence will be included in the relevant section of the EIS-d, together with the strategies, actions and mechanisms established for the participation of authorities, the public, and accredited civil society organizations during the different steps of the EIS-sd.

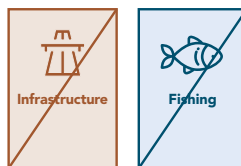
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 <p>Environmental Impact Assessment System</p>	<p>The report must contain the consolidated report of the observations received from the public during the public hearing, including requests for clarification, rectification or additional information made by the public and accredited civil society organizations, with details on how these requests were addressed during the preparation of the EIS-d. It must also identify the citizen participation measures required to enforce the environmental surveillance plan.</p>
 <p>Other</p>	<p>Law of Water Resources (Law No. 29338 of 30th March 2009)¹⁷. Articles: Preliminary title II.3, II.10; 10; 24 through 32.</p> <p>Ministerial Resolution No. 027-2001-MITINCI-DM, Guidelines for Citizen Participation for Environmental Protection in Manufacturing.</p>



No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1, except for the specific modifications presented below.

Timeliness

a) The consultation must be convened before any final decision regarding the subject matter of the consultation; b) the call for consultation must be publicized at least 2 weeks before the consultation, indicating the date, venue and time; c) Environmental Impact Assessments must be made available at the regional office of the area concerned so that the public can make observations and remarks.¹⁸



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

- Public consultation with the indigenous population in the framework of the national legislation of **Peru**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Peruvian legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Peru.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN PERU: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Peru ratified ILO Convention 169 on 2nd February 1994.

Law on the Right of Indigenous Peoples to Prior Consultation, Law No. 29785 of 31st August 2011¹⁹.

Presidential Decree No. 001-2012-MC, Regulatory norms of Law No. 29785, published on 3rd April 2012²⁰.

COUNTRY LEGISLATION:

It is the right of indigenous or aboriginal peoples to be consulted in advance on the legislative or executive measures that will have a direct impact on their collective rights, physical existence, cultural identity, quality of life or development. Consultation is also mandatory with regard to national or regional development plans, programs or projects directly affecting these rights. The entity responsible for enforcing the right to consultation is the Vice-Ministry of Interculturality.

Key aspects of the national legislation:

Legislative or executive measures applicable to all sectors.

The Government calls for an Indigenous Consultation as a mandatory requirement whenever a national or regional development project is likely to affect the collective rights, physical existence, cultural identity, quality of life or development of indigenous communities or aboriginal peoples.

The goal of the consultation is to reach agreements or obtain consent by enabling dialogue between Government representatives and indigenous or aboriginal peoples concerning projects that will affect them directly. The consultation must be conducted within 120 calendar days.

The Law on the Right to Prior Consultation establishes the following steps for the indigenous consultation:

Step 1 ► Government bodies must identify the proposed project. If it is determined that the collective rights of indigenous communities are likely to be affected, a prior consultation process will be summoned. The organizations and institutions representing indigenous peoples may request a consultation regarding a process believed to affect them directly²¹.

Step 2 ► Identification of the indigenous peoples to be consulted. The indigenous peoples to be consulted are identified based on the scope of the project and the direct effect on the indigenous people concerned and the territory affected. The indigenous peoples are identified based on the Official Database.

Step 3 ► The indigenous people(s) participate in the consultation through their representatives, who are appointed according to their own traditional arrangements.

continued

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Indigenous Population

The representatives must be accredited for the consultation with the government entity by means of a formal accreditation document. The indigenous peoples will have 30 calendar days from reception of the Consultation Plan to appoint their representatives.

Step 4 ► The public entity responsible for the process provides the representatives with a Consultation Plan that identifies the people to be consulted as well as the time limit, the methodology and the mechanisms for accessing the information. Preparatory meetings may be held with the indigenous peoples concerned to inform them about the Consultation Plan proposed.

Step 5 ► Dissemination of the project. The institutions and organizations representing the indigenous communities are informed about the upcoming consultation using means and procedures that are appropriate for this task, considering their geographical and environmental conditions. The consultation must take into account the linguistic diversity of the indigenous or aboriginal peoples inhabiting the area²².

Step 6 ► Information on the project²³. Government entities provide information on the project to the indigenous peoples and their representatives from the onset of the consultation process and with sufficient time, specifically with reference to the justification, impacts and consequences of the project. The information step has a duration of 30 to 60 calendar days.

Step 7 ► Private evaluation by indigenous organizations²⁴. Indigenous institutions and organizations will be given a reasonable time frame to examine the reach and scope of the project as well as any direct causative links between the contents of the proposal and the affectation of the community's collective rights.

Step 8 ► Indigenous representatives will have a maximum of 30 calendar days to submit a written and signed document²⁵ stating their stance on the plan proposed. If they agree to it, the consultation will come to an end. If they disagree, the competent authority will call to a first dialogue meeting. In case of diverging opinions, all parties will be called to participate in the dialogue. If the indigenous peoples' representatives do not provide any feedback, the process will move on to the decision stage.

Step 9 ► Dialogue between Government and indigenous community representatives²⁶. A dialogue is convened to discuss any points of conflict between the government's proposal and that of the indigenous peoples during the private evaluation stage. Indigenous peoples are free to use their own language. The time limit for this step is 30 calendar days, with the possibility of extending it by mutual agreement.

Step 10 ► If due to external circumstances the dialogue must be interrupted, the competent authority may adjourn it for a maximum of 15 days. If dialogue is halted because the principle of good faith is not honored or because the indigenous peoples withdraw from the process, the authority issues a report and the process moves on to the decision stage.

Step 11 ► Once dialogue concludes, participants prepare and sign a Consultation Document with details of all full and partial agreements and the causes of disagreement. If the indigenous peoples refuse to sign the document, the process moves on to the decision stage.

continued

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Indigenous Population

Step 12 ► Decision. The Government's decision regarding the investment project must take into account the opinions, suggestions and recommendations made by the indigenous peoples during the consultation, as well as the effects of project approval on the collective rights recognized both constitutionally and by virtue of the international treaties ratified by the Peruvian State.

The final agreement arising from the consultation process is binding for all parties concerned.

If no agreement is reached, government agencies will take every measure necessary to safeguard the collective rights of indigenous peoples as well as their right to life, integrity, and full development.

Step 13 ► The competent authority posts the consultation report in its website.



Energy

Presidential Decree No. 002-2019-EM, Regulatory norms on citizen participation regarding hydrocarbon activities. Art. 8.4, 22, 32,1,c.

COUNTRY LEGISLATION:

Participation during the negotiation or the call for tender and execution of hydrocarbon exploration/exploitation contracts

Whenever the consultation takes place in an area inhabited by indigenous or aboriginal peoples, their participation must be guaranteed by ensuring the presence of translators and interpreters accredited in the National Register of Indigenous Language Interpreters and Translators under the Ministry of Culture.

Participation in the framework of the Environmental Impact Assessment for hydrocarbon activities

Whenever the consultation takes place in an area with indigenous or aboriginal peoples, their participation must be guaranteed by ensuring the presence of translators and interpreters accredited in the National Register of Indigenous Language Interpreters and Translators under the Ministry of Culture.



Forestry

Forestry and Wildlife Law No. 29763²⁷. Articles: II.2; II.3; II.12; 21; 22; 82; 141; 148.

Presidential Decree No. 018-2015-MINAGRI, Regulatory norms on forest management, published on 27th October 2017²⁸. Articles: 6; 7; 30; 34; 128; 137.

Presidential Decree No. 019-2015-MINAGRI, Regulatory norms on wildlife management²⁹. Art. 124.

Presidential Decree No. 021-2015, Regulatory norms on forestry and wildlife management in native and peasant communities³⁰ of 29th September 2015. Articles: 7; 8; 19.

Presidential Decree No. 008-2007-MIMDES of 04th October 2007.³¹ Art. 42.

COUNTRY LEGISLATION:

Prior, free and informed consultation is a requirement for any forestry management plan that has the potential to affect the collective rights of indigenous or aboriginal peoples. The indigenous consultation must take place before approving the plan proposed and is mandatory in the following cases:

- Forest zoning planning in areas used, occupied, possessed or requested by indigenous communities and/or titled to them. The prior consultation will be conducted by the Technical Committee for Forest Zoning.
- The establishment of permanent production forests and protection forests.
- Authorization for forest clearance (deforestation) if it affects peasant and native communities. The National Forestry Service verifies compliance with the indigenous consultation requirement.
- Forestry and wildlife management activities in buffer zones inside conservation areas if they are located in peasant, native, indigenous or aboriginal community territories.



 <p>Environmental Impact Assessment System</p>	<p>Regulatory Norms of the Law of the National Environmental Impact Assessment System, Law No. 27446 of 20th April 2001³². Art. 71.</p> <hr/> <p>COUNTRY LEGISLATION:</p> <p>The Peruvian State protects the rights of peasant and native communities recognized in the Political Constitution of Peru, respecting their social, collective and cultural identity, as well as their customs, traditions and institutions. It promotes the effective participation of these communities by paying attention to the implications of the project's area of influence, its reach, environmental conditions and other relevant aspects and by fostering measures to promote better understanding between the parties. It also seeks to ensure that the project design and development abides by the principles and regulations governing the EIAs, and that adequate measures are taken to prevent, minimize, control, mitigate, recover and offset, as appropriate, the negative impacts and potential risks that may arise, in adherence to ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries³³.</p>
 <p>Other</p>	<p>Law of Water Resources, Law No. 29338 of 30th March 2009³⁴. Articles: 64³⁵; 118³⁶.</p> <hr/> <p>Law of Private Investment in the Development of Economic Activities in the Lands of the National Territory and of Peasant and Native Communities, Law No. 26505³⁷. Articles: 10; 11.</p> <hr/> <p>Presidential Decree 020-2016-MINAGRI, Regulatory norms on the formalization and recognition of agrobiodiversity zones for the conservation and sustainable use of native species farmed by indigenous peoples³⁸, published on 14th December 2016. Art. 1.</p> <hr/>

No specific legislation on the matter was identified:





Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1, except for the specific modifications presented below.

OBJECTIVE

To implement a good-faith process of free, prior and informed consultation³⁹ with participation mechanisms that are appropriate to the sociocultural characteristics of each indigenous people in order to promote informed participation and reach an agreement or consent regarding the implementation of the proposed projects in their territories.

METHODOLOGY

Good practices regarding public consultations:

1. Timeliness

Consultations must be prior, i.e. conducted with sufficient time to allow the affected indigenous people to actually and effectively participate in a decision that may impact them directly.

Any individual, legal entity or representing organization with sufficient justification may ask the Environmental Authority to carry out a consultation. Justified requests are those that present, at a minimum, the facts and reasons that support their claim.

The consultation must include two stages: (i) elaboration of the TORs needed to prepare the EIA, and (ii) evaluation of the EIA by the Environmental Authority.

2. Accessibility

The consultation must be carried out at the time and venue chosen by the indigenous communities potentially affected by the project proposed.

The consultation will be conducted in Spanish and in a language understood by the communities that will be affected directly, as appropriate. The language of the affected indigenous community will be preferred if it is the language of choice for most everyday communications.

To ensure access to the project information, the institutions and organizations representing the indigenous communities will be informed about the upcoming consultation regarding the plan proposed using means and procedures that are appropriate for this task, considering their geographical and environmental conditions⁴⁰.

3. Duration

The consultation will comprise the following stages:

- i. Call for consultation.
- ii. Planning: This stage must include: (a) the methodology to be used (e.g. how the consultation will be recorded and the relevance of having observers, mediators and/or a witnessing officer, among others), the schedule and the venue; (b) any specialized advice needed; (c) budget.
- iii. Preparation of consultation.
- iv. Implementation of the consultation.

v. Agreements:

- a. The Government decision regarding the investment project must take into account the opinions, suggestions and recommendations made by the indigenous peoples during the consultation, as well as the anticipated effects of project approval on the collective rights recognized both constitutionally and by virtue of the international treaties ratified by the State.
- b. The final agreement arising from the consultation process is binding for all parties concerned⁴¹.
- c. If no agreement is reached, government agencies will take every measure necessary to safeguard the collective rights of indigenous peoples as well as their right to life, integrity, and full development.⁴²

4. Context

If the project needs to be approved by two or more indigenous communities, the communities may reach a decision either jointly or separately. In any case, indigenous communities may under no circumstance be forced to use a decision-making mechanism different than their own.

5. Inclusion and Diversity

All indigenous peoples or representing institutions directly affected by the matter being consulted may step in at any moment, provided they respect all agreements reached thus far.

6. Representativeness

The only indigenous peoples allowed in the consultation will be those affected directly, who will participate via their national, regional or local representatives depending on the scope of the project.

Each community will be free to choose the institutions that will represent them, such as traditional indigenous organizations, indigenous communities or associations.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation should contain obligations regarding citizen consultations.
- 3 <http://extwprlegs1.fao.org/docs/pdf/tri105177.pdf>
- 4 <https://www.senace.gob.pe/download/senacenormativa/NAS-4-6-06-RM-304-2008-MEM-DM.pdf>
- 5 The announcement must identify: the name of the mining project and the developer, the district where the project is to be carried out, the way to access the environmental assessment, the time limit to receive observations, and the entity to which observations must be submitted.
- 6 For small or artisanal mining projects under Category I, the competent authority only posts the reception of the environmental assessment. People interested in reviewing it must contact the competent authority's office.
- 7 The Plan structure is: Background information; proposal and justification of participation mechanisms during the EIA evaluation process; proposal and justification of participation mechanisms during project execution; project schedule.
- 8 Posters must be placed at the head offices of the regional government and the regional Energy and Mining Directorate; the offices of provincial and district municipalities; venues with high public traffic; and community or similar centers.
- 9 If the public hearing is canceled or adjourned before or during its development, the competent authority may set a new date. If the hearing cannot be conducted again, it may be replaced by alternative participation mechanisms.
- 10 http://www.regionayacucho.gob.pe/informacion/ley_29763.pdf
- 11 https://www.mincetur.gob.pe/wp-content/uploads/documentos/institucional/gestion_descentralizada/transferecia_sectorial/normas_proceso_transferecia/1_LEY_Nro_27867.pdf
- 12 [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/$FILE/27972.pdf)
- 13 <https://www.senace.gob.pe/download/dra/criterios-tecnicos/5-Ley-7446.pdf>
- 14 http://www.ana.gob.pe/sites/default/files/normatividad/files/ley_n-28611.pdf
- 15 [http://www2.congreso.gob.pe/sicr/cendocbib/con2_uibd.nsf/662D7667CEE7C4BB0525770300734850/\\$FILE/7_DeclLeg_N%C2%BA_1055_Modifica_la_Ley_N%C2%BA_28611_Ley_General_del_Ambiente.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con2_uibd.nsf/662D7667CEE7C4BB0525770300734850/$FILE/7_DeclLeg_N%C2%BA_1055_Modifica_la_Ley_N%C2%BA_28611_Ley_General_del_Ambiente.pdf)
- 16 Category I - Environmental Impact Statement (DIA): Applicable to investment projects with potentially mild negative effects on the environment.
Category II - Semi-detailed Environmental Impact Assessment (EIA-sd): Applicable to investment projects with potentially moderate negative effects on the environment.
Category III - Detailed Environmental Impact Assessment (EIA-d): Applicable to investment projects with potentially significant negative effects on the environment.
- 17 <http://www.ana.gob.pe/media/316755/leyrh.pdf>
- 18 Provision included in the national legislation.
- 19 <http://consultaprevia.cultura.gob.pe/wp-content/uploads/2014/11/Ley-N---29785-Ley-del-derecho-a-la-consulta-previa-a-los-pueblos-ind--genas-originarios-reconocido-en-el-Convenio-169-de-la-Organizacion-Internacional-del-Trabajo-OIT.pdf>
- 20 <https://sinia.minam.gob.pe/normas/reglamento-ley-derecho-consulta-previa-pueblos-indigenas-originarios>
- 21 Indigenous peoples may request participation in a consultation process already under way within 15 calendar days from the publication of the Consultation Plan. In the case of a new consultation, the time limit of 15 days starts on the day following the publication of the plan proposed in the Official Gazette. If the plan has not been published, a consultation process may be requested before the measure proposed is ordered. The government authority will have 7 calendar days from reception of the petition to resolve it. Provision included in the national legislation.
- 22 Publicizing the project is the first step of the process.
- 23 Second step of the process.
- 24 Third step of the process.
- 25 This step may also be accomplished verbally, as provided in the national legislation.
- 26 Fourth step of the process.
- 27 <http://www.actualidadambiental.pe/wp-content/uploads/2013/12/Ley-Forestal-y-de-Fauna-Silvestre-29763.pdf>
- 28 <https://www.serfor.gob.pe/wp-content/uploads/2016/03/REGLAMENTO-PARA-LA-GESTION-FORESTAL-1.pdf>

- 29 http://www.rinya.maff.go.jp/j/riyou/goho/kunibetu/per/3-14per-shinrinyasei_2.pdf
- 30 <https://www.serfor.gob.pe/wp-content/uploads/2016/03/REGLAMENTO-PARA-LA-GESTION-FORESTAL-Y-DE-FAUNA-SILVESTRE-EN-COMUNIDADES-NATIVAS-Y-CAMPESINAS.pdf>
- 31 Regulates the Law for the Protection of Indigenous Peoples in Isolation and Initial Contact. Except for Article 42, neither the law nor its regulatory norms provide for consultation to these indigenous peoples. Still, the law was created in an effort to regulate ILO Convention 169. Pursuant to articles 9 and 43, civil society may participate in the creation of reserves. http://www.cultura.gob.pe/sites/default/files/content_type_archivos/archivosPDF/2014/03/decreto_supremo_no_008-2007-mimdes.docx
- 32 <http://www.minam.gob.pe/wp-content/uploads/2013/10/Ley-y-reglamento-del-SEIA1.pdf>
- 33 Provision included in the national legislation.
- 34 <http://www.ana.gob.pe/media/316755/leyrh.pdf>
- 35 This article regulates the rights of peasant and native communities to use the water resources found in their territories.
- 36 This article regulates the rights of native Amazonian communities and indigenous peoples.
- 37 http://www.snmpe.org.pe/nuestros-sectores-snmpe/hidrocarburos_nuestros_sectores/legislacion/medio-ambiente-ycomunidades/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
- 38 <http://extwprlegs1.fao.org/docs/pdf/per161556.pdf>
- 39 Good faith is one of the guiding principles of consultation. According to it, all participants in a consultation must act fairly and properly in order to reach consensus or obtain their free, prior and informed consent.
- 40 Law No. 29785 on the Right to Prior Consultation to Indigenous Peoples, which is recognized in ILO Convention 169. Art. 11.
- 41 Law No. 29785 on the Right to Prior Consultation to Indigenous Peoples, which is recognized in ILO Convention 169. Art. 15.
- 42 Presidential Decree No. 001-2021-MC, Regulatory norms on the Law on the Right to Prior Consultation to Indigenous Peoples: Art. 23.

Model for public consultations with civil society¹ in the framework of the national legislation

► of **Suriname**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the Surinamese legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Suriname.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

The Authority offers guidelines for preparing Environmental Impact Assessment Reports, although compliance with them is not mandatory.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN SURINAME²: Laws and regulations regarding participation and/or consultation on environmental matters



Environmental Impact Assessment System

Environmental Assessment Guidelines Volume I³: Generic. 2009. Pages: 2, 3, 4, 7 and 9. Annexes 5, 6 (Pages 1, 2 and 7), 7 (Page 2) and 10.

COUNTRY LEGISLATION:

Citizen participation is considered at different stages of the environmental assessment process:

Step 1 ► Once the Authority decides an environmental impact assessment is required for a certain action, the applicant must publish a notification of intent in the media within 7 days to allow members of the public to make comments on the proposed project. The time limit may be extended to 60 days in case of appeal by the applicant. If needed, the notification will be accompanied with announcements of public consultations, where the public can make comments on issues they wish to be considered in the EA. The applicant must provide an opportunity for stakeholders and the general public to express their concerns.

Step 2 ► The Authority may:

- (i) prepare and disclose to the public a summary of the assessment using non-technical language.
- (ii) publish in the media the information on the environmental impacts of the project and the proposed mitigation measures and; The final version of the EIA must contain the results and the methodology for public consultations, public concerns and responses to those concerns.

Step 3 ► Review: After evaluating the EIA report, the Authority may conduct a compliance review using a compliance checklist and comparing the report against the terms of reference, ensuring all minimum components are there.

No specific legislation on the matter was identified:





Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.



Model for public consultation with indigenous peoples in the framework of the national legislation of **Suriname**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Surinamese legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Suriname.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN SURINAME: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

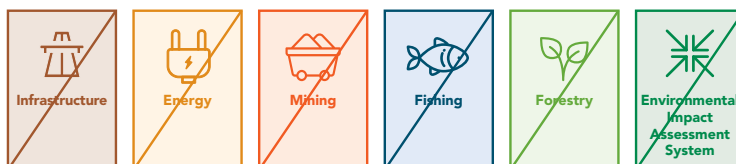
Suriname has not ratified ILO Convention 169.

Environmental Assessment Guidelines Volume I⁴: Generic. 2009. Annex 10, paragraph 11.5.

COUNTRY LEGISLATION:

The guidelines prepared by the Authority contain a list of minimum aspects to be included in the indigenous consultation during the project reviewing phase.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation contains obligations regarding citizen consultations.
- 3 See http://opportunities.staatsolie.com/media/1248/environmental_assessment_guidelines_vol1_generic_aug2009.pdf. Last accessed on March 2, 2020.
- 4 See http://opportunities.staatsolie.com/media/1248/environmental_assessment_guidelines_vol1_generic_aug2009.pdf. Last accessed on March 2, 2020.

- Model for public consultations with civil society¹ in the framework of the national legislation of **Trinidad and Tobago**, the IDB Group's operational policies, guiding principles and good international practices





This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Trinidad and Tobago, as well as the principles for good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Trinidad and Tobago.

In addition, if this is a joint operation with the IDB Group and legal gaps are identified regarding one or more principles of good practice, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

The Authority may hold a public hearing if it determines there is sufficient public interest in discussing the proposed action. The level of public interest may be determined by the number of verbal comments received from members of the public.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN TRINIDAD AND TOBAGO²: Laws and regulations regarding participation and/or consultation on environmental matters

 <p>Environmental Impact Assessment System</p>	<p>Environmental Management Act of 2000³ (updated to 2014). Articles: 27; 28; 29; 35.5; 36; 69.2.</p> <hr/> <p>Certificate of Environmental Clearance Rules.⁴ Articles: 5.2; 3; 9.</p> <hr/> <p>Environmentally Sensitive Areas Rules of 2001.⁵ Art. 5.4.</p> <hr/> <p>COUNTRY LEGISLATION:</p> <p>Step 1 ► The environmental authority must prepare the draft Terms of Reference (TOR) for the Environmental Impact Assessment (EIA) and give them to the applicant for review. The applicant will, where appropriate, conduct consultations with relevant agencies, non-governmental organizations and other members of the public on the draft TOR.</p> <p>Step 1 ► The applicant will have 28 days to submit written representations to the Authority with comments about the TOR and a report of the consultations with relevant actors.</p> <p>Step 1 ► Once the EIA enters into the Environmental Impact Assessment System (EIAS), the Authority must publish a notice in the Gazette and at least one daily newspaper of general circulation. The notice must provide a description of the matter under consideration, identify the location where the register is being maintained, state the length of the public comment period, and advise where the comments are to be sent.</p> <p>Step 1 ► The Authority must maintain an administrative record regarding the proposed action and make such administrative record available to the public at one or more locations⁶.</p> <p>Step 1 ► The public may submit written comments and hold a public hearing if the Authority determines it appropriate. The public may submit written comments for no less than thirty days from the date of notice in the Gazette. If the Authority determines there is sufficient public interest, it may hold a public hearing for discussing the proposed action and receiving verbal comments.</p> <p>Specifically in the case of oil drilling projects, any person may object to the issue of a license on the ground that it is inconsistent with, or would interfere with, rights held by that person under the Petroleum Act. All objections must be lodged with the Ministry of the Environment within thirty days of the publication of the notice of application for license.</p>
 <p>Other</p>	<p>Noise Pollution Control Rules, of 2000.⁷ Art. 16.4.</p> <hr/> <p>Petroleum Act, of 1969.⁸ Art. 8.</p> <hr/>

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1, except for the specific modifications presented below.

Timeliness:

- a. The hearing must be summoned prior to the final decision phase regarding the proposed action.
- b. The hearing must be summoned at least 2 weeks in advance, indicating the date, location and time.
- c. The public may submit written comments for no less than thirty days from the date of notice in the Gazette.⁹



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

- Model for public consultation with indigenous peoples in the framework of the national legislation of **Trinidad and Tobago**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the legislation of Trinidad and Tobago as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Trinidad and Tobago.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN TRINIDAD AND TOBAGO: Laws, regulations and other measures concerning the implementation of Convention 169



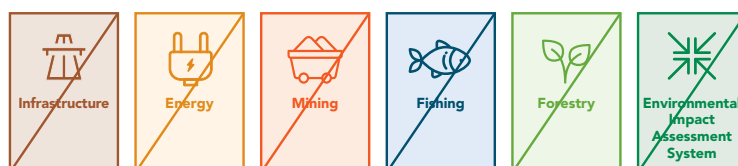
Indigenous Population

Trinidad and Tobago has not ratified ILO Convention 169.

COUNTRY LEGISLATION

This country has not ratified ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries. Also, it does not have a legislation regarding indigenous consultations.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation contains obligations regarding citizen consultations.
- 3 See https://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/35.05.pdf. Last accessed on March 2, 2020.
- 4 See <http://extwprlegs1.fao.org/docs/pdf/tri105177.pdf>. Last accessed on March 2, 2020.
- 5 <https://www.cbd.int/doc/case-studies/lr/lr-tt-rule-area-en.pdf>
- 6 The administrative record must include a written description of the proposed action, the major environmental issues involved in the matter, copies of documents or other supporting materials which the Authority believes would assist the public in developing a reasonable understanding of those issues, and a statement of the Authority's reasons for the proposed action.
- 7 See https://www.ema.co.tt/images/Files/pdf/noise_pollution_control_rules_2001.pdf. Last accessed on March 2, 2020.
- 8 See http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/62.01.pdf. Last accessed on March 2, 2020.
- 9 Provision included in the national legislation.

Public consultation with civil society¹ in the framework of the national legislation of

► **Uruguay**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Uruguay as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Uruguay.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

Country Legislation: A public hearing is mandatory for all projects in Category C².

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN URUGUAY³: Laws and regulations regarding participation and/or consultation on environmental matters



Infrastructure

Law of Land Use and Sustainable Development of 30th June 2008.⁴ Articles 24; 25; 26; 72; 73 last paragraph; 76.d.

Law of Land Use and Sustainable Development of 30th June 2008.⁵ Articles 2; 8.

Decree No. 523/009, establishing the instruments for Land Use and Sustainable Development and the relevant procedures⁶. Article 1.

COUNTRY LEGISLATION:

During the preparation of the instruments to be used in the regional, departmental and inter-departmental contexts, a report will be issued with the main assessments conducted and the general criteria and proposals that will guide the final document.

In all the cases indicated, the competent authority will order publication of the NOPA for at least thirty days for public consultation and reception of feedback. The instruments used will be submitted to the competent authority for approval before the public hearing and then the proposal reception period can commence.

The public audience is mandatory for Local Plans and for all Special Land Use Instruments. It is optional for all other instruments.

Non-compliance with mandatory social participation rules will void the relevant land use instrument. Anyone with an interest may submit well-founded proposals for consideration by the competent authorities in the land use instruments.



Mining

Law No. 19126⁷ on Large-scale Mining Activity. Articles 6, 68

COUNTRY LEGISLATION:

All requests for large-scale mining project authorization require a thorough environmental impact assessment and a public hearing.

The Executive will promote the right of access to information and information transparency and will foster public participation by creating a Monitoring Commission for each Large-Scale Mining project that will function for the entire duration of the project.

The Monitoring Commission will be highly participatory in nature and will convene representatives from the community and from the National, Departmental and Municipal governments. It will also receive relevant, non-confidential economic information as well as relevant environmental information. The information will be provided by the Government and also by the Large-Scale Mining Project developer and will include details of the activities, impact and performance.



Fishing

Law No. 19175 on Hydrobiological Resources, published on 07th January 2014. Article 12.

Decree No. 115/18, Regulatory Norms on Law No. 19175, published on 24th April 2018. Articles 56 through 64.

COUNTRY LEGISLATION:

A number of instances have been created to promote the participation of people interested in decisions about fishing and aquaculture, notably the Fishing Advisory Board, the Aquaculture Advisory Board and Zonal Fishing Councils. The main purposes of the Zonal Fishing Councils are to promote coordination between the different sectors involved and to facilitate the participation of fishermen's organizations in the decision-making process.



Environmental Impact Assessment System

Law No. 16466, Law on Environmental Impact Assessment⁸. Article 14, Regulatory Norm on the Environmental Impact Assessment of 21st September 2005.⁹ Articles 14; 15; 16; 20; 21.

COUNTRY LEGISLATION:

The environmental assessment system considers two mechanisms for public participation: Public Hearing and *Puesta de Manifiesto* (Notice of Public Availability - NOPA).

The Environmental Authority will hold a public hearing on the EIA for all projects in Category C, i.e. a project with significant negative environmental impacts, regardless of whether prevention or mitigation measures have been considered or not. In any case, the Authority may conduct it after considering the cultural, social or environmental ramifications of the project.

Notice of Public Availability. The abstract of the environmental assessment contains a notice that these documents are available so that anyone with an interest may consult them and submit representations in writing. The NOPA is publicized by posting a notice in the official gazette, a daily newspaper of national circulation and a local newspaper.



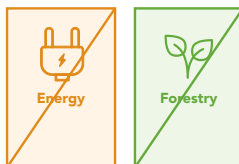
Other

Law 18610 of the National Water Policy, published on 28th October 2009.¹⁰ Articles 8.j; 18; 19.

Law No. 19272, Law of Decentralization and Citizen Participation¹¹. Article 13.4.



No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

- Public consultation with indigenous peoples in the framework of the national legislation of **Uruguay**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Uruguayan legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Uruguay.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN URUGUAY: Laws, regulations and other measures concerning the implementation of Convention 169



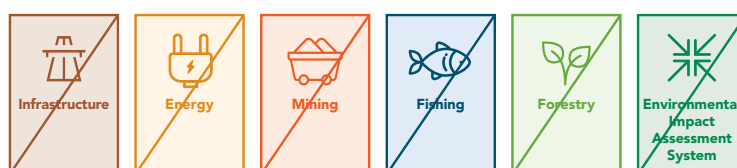
Indigenous Population

Uruguay has not ratified ILO Convention 169.

COUNTRY LEGISLATION:

This country has not ratified ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries. Also, it does not have a legislation regarding indigenous matters.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 Category C includes projects involving activities, works or construction that may bring about significantly negative environmental impacts, regardless of whether prevention or mitigation measures have been considered or not.
- 3 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation should contain obligations regarding citizen consultations.
- 4 See <https://www.impo.com.uy/bases/leyes/18308-2008>. Last accessed on March 20, 2020.
- 5 See <https://www.impo.com.uy/bases/decretos/221-2009>. Last accessed on March 20, 2020.
- 6 See <https://www.impo.com.uy/bases/decretos/523-2009>. Last accessed on March 20, 2020.
- 7 See <https://www.impo.com.uy/bases/leyes/19126-2013>. Last accessed on March 20, 2020.
- 8 See <https://www.impo.com.uy/bases/leyes/16466-1994>. Last accessed on March 20, 2020.
- 9 See <https://www.impo.com.uy/bases/decretos/349-2005>. Last accessed on March 20, 2020.
- 10 See <https://www.impo.com.uy/bases/leyes/18610-2009>. Last accessed on March 20, 2020.
- 11 See <https://www.impo.com.uy/bases/leyes/19272-2014>. Last accessed on March 20, 2020.



Public consultation with civil society¹ in the framework of the national legislation of **Venezuela**, the IDB Group's operational policies, guiding principles and good international practices



This public consultation model identifies the requirements for consultations conducted in adherence to the legislation of Venezuela as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Venezuela.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.

Consultation is not mandatory for projects that require an Environmental Impact Assessment (EIA). The Ministry of Environment and Renewable Natural Resources may order the review and public consultation of the EIA. If the consultation is conducted, all representations must be submitted in writing, including all supporting technical, scientific and legal evidence.

LEGAL FRAMEWORK FOR PUBLIC CONSULTATIONS IN VENEZUELA²: Laws and regulations regarding participation and/or consultation on environmental matters



Energy

Decree No. 1615 (Organic regulation of the Ministry of Popular Power of Electricity), published on 20th February 2015³. Articles 9.13; 14.2; 14.7.

COUNTRY LEGISLATION

The Vice-Ministry of Electric Service under the Ministry of the Popular Power of Electricity is responsible for promoting community participation in the formulation, monitoring and evaluation of policies for the electricity sector.



Fishing

Decree No. 1408, Law on Fisheries and Aquaculture, published on 18th November 2014⁴ Articles 77 through 84.

COUNTRY LEGISLATION

Municipal and Fishermen's councils have the authority to exercise social control over fishing and aquaculture activities. Their functions include enforcing compliance with the Law of Fishing and Aquaculture and participating in the advisory councils that may be formed by the competent line ministry. In addition, the Socialist Institute of Fishing and Aquaculture must present the relevant technical standards for public consultation and render accounts to municipal and fishermen's councils once every six months.



Forestry

Forest Law⁵, published on 06th August 2013. Articles 5.4; 25.

COUNTRY LEGISLATION:

All activities related to the use of forests that affect or are likely to affect the communities involved must undergo popular consultation in the area intended for project development.



Environmental Impact Assessment System

Organic Law of the Environment⁶, published on 22nd December 2006. Article 40.

Regulations on Environmental Evaluation of Activities Capable of Degrading the Environment⁷, published on 26th April 1996. Article 26.

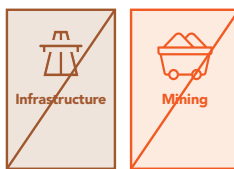
COUNTRY LEGISLATION:

Step 1 ► The project developer responsible for preparing the EIA will post a notice informing about the beginning of the Assessment in a daily newspaper of local circulation.

Step 2 ► The Ministry of Environment and Renewable Natural Resources may order the review and public consultation of the assessments. All representations must be submitted in writing, including all supporting technical, scientific and legal evidence.

Step 3 ► The representations received may be fully or partially incorporated into the Assessments if the technical analysis recommends doing so.

No specific legislation on the matter was identified:



Good Practices for the Consultation Plan

See Guiding Principles and Good Practices applicable to Consultations in Chapter 1.



Operations with the IDB Group

The first thing to do is to determine the classification given to the project by the IDB. Each project type has its own particular requirements. See Annex I and II.

Public consultation with the indigenous population in the framework of the national

- legislation of **Venezuela**, the IDB Group's operational policies, guiding principles and good practices



This model for public consultation with indigenous peoples contains the requirements for consultations in adherence to the Venezuelan legislation as well as the principles for universal good practices currently applicable to these matters. All Executing Agencies must abide by these requirements when undertaking a project in Venezuela.

In addition, if this is a joint operation with the IDB Group, the relevant Operating Policy (OP) provisions should be applied. See Annex I and II.



LEGAL FRAMEWORK FOR INDIGENOUS CONSULTATIONS IN VENEZUELA: Laws, regulations and other measures concerning the implementation of Convention 169



Indigenous Population

Venezuela ratified ILO Convention 169 on 22nd May 2002.

Organic Law of Indigenous Peoples and Communities⁸, published on 27th December 2005. Articles 6; 11; 13 through 19; 33; 54; 55; 59.

Law on Demarcation and Guarantee of Habitat and Lands of Indigenous Peoples⁹, published on 01st January 2001. Articles 10 and 15.

Organic Law of the Environment¹⁰, published on 22nd December 2006. Article 41.

Forest Law¹¹, published on 06th August 2013. Articles 26; 105.

Decree No. 2265 (Creates the Presidential Commission for the Defense of Indigenous Peoples' Rights in the Mining Industry), published on 08th March 2016¹². Article 5.5.

COUNTRY LEGISLATION:

Prior, free and informed consultation is mandatory for all activities involving the utilization of natural resources or any other development project that is likely to affect, either directly or indirectly, the indigenous peoples or communities involved. Failure to hold the consultation will result in rejection of the application. The consultation must be conducted in good faith, considering the language and organizational structure of the communities. Every new phase or extension of a project must comply with the consultation requirements in full.



Mining

COUNTRY LEGISLATION:

The Presidential Commission for Eco-socialist Development and Protection of the Rights of Indigenous Peoples in Mining Activities is formed by representatives from government institutions. Its mission is to promote the participation mechanisms of indigenous peoples in the formulation and execution of mining projects.



Forestry

COUNTRY LEGISLATION:

Forestry activities authorized via executive orders that affect the habitat/lands of indigenous peoples must undergo prior consultation with the indigenous communities involved.

If not conducted by the indigenous communities themselves, the use of forestry resources in areas demarcated as indigenous habitats/lands must guarantee them the right to share the benefits of the activity and to be previously informed and consulted regarding the relevant environmental and sociocultural impact assessment.



Environmental Impact Assessment System

COUNTRY LEGISLATION:

Step 1 ► All projects must be submitted at least 90 days before the date of consultation with indigenous peoples and communities and must contain all the information regarding the nature, purpose and scope of the project, as well as the benefits and potential environmental, social and cultural damages.

Communities will receive technical support from the entity responsible for the country's indigenous policy and other State institutions.

Step 2 ► Meetings: Indigenous peoples and communities will schedule meetings with the applicant in order to clarify doubts on the contents and scope of the project and to make observations and propose modifications, which will be considered when redrafting the assessment. These meetings must be held before the final Assembly and the communities may receive technical and legal counseling from representatives working for State indigenous agencies or local, regional or national indigenous organizations.

Step 3 ► Assemblies: Assemblies must observe the customs and traditions of each one of the indigenous peoples or communities involved.

If the project requires approval from two or more indigenous communities, they may reach a decision jointly or separately but may not be forced to decide in a manner different than their traditional arrangements.

The applicant(s) may be present during the Assembly if previously authorized by the community.

Step 4 ► All projects having undergone prior consultation by indigenous peoples and communities will be put down in writing by mutual agreement.

Any non-compliance with the conditions for consultation and participation during the exploration, exploitation and utilization of natural resources or during the execution of the project, or any unannounced changes to the original project consulted will void the concession contract without the right to indemnity or compensation whatsoever.

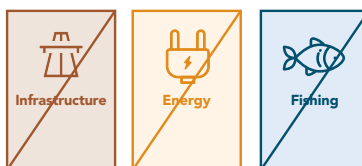
If indigenous peoples and communities express their opposition to the project, the applicant(s) may present alternative solutions in order to continue with the discussion process.

Indigenous authorities will participate in the planning and execution of the land demarcation process.

All other projects undertaken by any individual or public/private entity in the indigenous habitat/lands are forbidden unless previously approved by the indigenous peoples or communities involved.

Utilizing public natural resources in the habitat/lands of the indigenous peoples must be subject to prior, free and informed consultation.

No specific legislation on the matter was identified:



Good Practices for the Indigenous Consultation Plan

See Guiding Principles and Good Practices applicable to General and Indigenous Consultations in Chapter 1, except for the specific modifications presented below.

Purpose:

To implement a good-faith process of free, prior and informed consultation¹³ with participation mechanisms that are appropriate to the sociocultural characteristics of each indigenous people, in order to promote informed participation and reach an agreement or consent regarding the implementation of the proposed projects in their territories.

Methodology:

Good practices regarding public consultations:



1. Timeliness

Consultations must be prior, i.e. conducted with sufficient time to allow the affected indigenous people to actually and effectively participate in a decision that may impact them directly.

Any individual, legal entity or representing organization with sufficient justification may ask the Environmental Authority to carry out a consultation. Justified requests are those that present, at a minimum, the facts and reasons that support their claim.

The consultation must include two stages: (i) elaboration of the TORs needed to prepare the EIA, and (ii) evaluation of the EIA by the Environmental Authority.

2. Accessibility

The consultation must be carried out at the time and venue chosen by the indigenous communities potentially affected by the project proposed.

The consultation will be conducted in Spanish and in a language understood by the communities that will be affected directly, as appropriate. The language of the affected indigenous community will be preferred if it is the language of choice for most everyday communications.

Information on the proposed project will be made available to the institutions and organizations representing the indigenous communities through means and procedures that are appropriate for this task, considering their geographical and environmental conditions.

3. Duration

The consultation will comprise the following stages:

- I. Call for Consultation



- II. Planning: This stage must include: (a) the methodology to be used (e.g. how the consultation will be recorded and the relevance of having observers, mediators and/or a witnessing officer, among others), the schedule and the venue; (b) any specialized advice needed; (c) budget.
- III. Preparation of consultation.
- IV. Implementation of the consultation.
- V. Agreements:
 - a. The Government decision regarding the investment project must take into account the opinions, suggestions and recommendations made by the indigenous peoples during the consultation, as well as the anticipated effects of project approval on the collective rights recognized both constitutionally and by virtue of the international treaties ratified by the State.
 - b. The final agreement arising from the consultation process is binding for all parties concerned.
 - c. If no agreement is reached, government agencies will take every measure required to safeguard the collective rights of indigenous peoples as well as their right to life, integrity, and full development.
 - d. Any non-compliance with the conditions for consultation and participation during the exploration, exploitation and utilization of natural resources or during the execution of the project, or any unannounced changes to the original project consulted will void the concession contract without indemnity whatsoever.
 - e. If indigenous peoples and communities express their opposition to the project, the applicant(s) may present alternative solutions and continue with the discussion process¹⁴.

4. Context

The consultation must observe the customs and traditions of each one of the indigenous peoples or communities involved.

If the project needs to be approved by two or more indigenous communities, the communities may reach a decision either jointly or separately. In any case, indigenous communities may under no circumstance be forced to use a decision-making mechanism different than their own.

5. Inclusion and Diversity

All indigenous peoples or representing institutions directly affected by the matter being consulted may step in at any moment, provided they respect all agreements reached thus far.

6. Representativeness

The only indigenous peoples allowed in the consultation will be those affected directly, who will participate via their national, regional or local representatives depending on the scope of the project.

Each community will be free to choose the institutions that will represent them, such as traditional indigenous organizations, indigenous communities or associations.



Operations with the IDB Group

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

References

- 1 All individuals and legal entities have the right to access and inspect the physical or electronic copy of the project evaluation, make comments within the timeframe established and receive a well-reasoned reply to them.
- 2 This legal framework does not include regional and local government regulations. The Executing Agency must determine whether this regulation should contain obligations regarding citizen consultations.
- 3 See <http://extwprlegs1.fao.org/docs/pdf/ven148085.pdf>. Last accessed on March 20, 2020.
- 4 See <http://extwprlegs1.fao.org/docs/pdf/ven147977.pdf>. Last accessed on March 20, 2020.
- 5 See <http://extwprlegs1.fao.org/docs/pdf/ven127126.pdf>. Last accessed on March 20, 2020.
- 6 See <http://extwprlegs1.fao.org/docs/pdf/ven69651.pdf>. Last accessed on March 20, 2020.
- 7 See <http://extwprlegs1.fao.org/docs/pdf/ven17517.pdf>. Last accessed on March 20, 2020.
- 8 See <http://extwprlegs1.fao.org/docs/pdf/ven174043.pdf>. Last accessed on March 24, 2020.
- 9 See https://www.acnur.org/fileadmin/Documentos/Pueblos_indigenas/ley_habitat_tierras_indigenas_ven.pdf. Last accessed on March 20, 2020.
- 10 See <http://extwprlegs1.fao.org/docs/pdf/ven69651.pdf>. Last accessed on March 20, 2020.
- 11 See <http://extwprlegs1.fao.org/docs/pdf/ven127126.pdf>. Last accessed on March 20, 2020.
- 12 See <http://extwprlegs1.fao.org/docs/pdf/ven167861.pdf>. Last accessed on March 20, 2020.
- 13 Good faith is one of the guiding principles of consultation. According to it, all participants in a consultation must act fairly and properly in order to reach consensus or obtain their free, prior and informed consent.
- 14 Provisions d and e are included in the national legislation.

ANNEXES





Annex I: Executing Agencies and IDB-Financed Projects: References regarding the application of IDB Operational Policies for public consultations

The link <https://www.iadb.org/en/mpas> contains the updated version of the IDB Environmental and Social Policies.

Important aspects of the Environmental and Social Policy Framework to consider:

Environment

- Priority is placed on the protection of biodiversity, allowing the use of biodiversity offsets as mitigation measures, except in instances of critical habitat.
- Borrowers must undertake a regular assessment of the vulnerability of their projects to natural hazards and climate change.

Social

- The IDB makes an explicit, long-term commitment to respect Indigenous Peoples, Afro-descendent and other traditional people's collective rights.
- Mechanisms for promoting non-discrimination and inclusion of vulnerable groups are established; gender equality has been included as a separate performance standard; workers and their rights must be protected in a manner consistent with international agreements.
- Measures are established to avoid or minimize risks and impacts on community health, safety and security, including the risks exacerbated by the local context.
- Stakeholder engagement and information disclosure constitute a central aspect addressed in a separate performance standard.

Institutional

- The policy establishes a dynamic approach to manage environmental and social risks throughout project implementation. In other words, it is recognized that risk ratings may change during a project's lifespan and therefore require continuous monitoring and supervision.
- Capacity strengthening through effective environmental and social management systems, with continuous technical monitoring and supervision, and IDB training for its clients. Support for capacity building must be provided in a manner that is proportionate to the needs of the borrower to meet specific project requirements.
- A common approach is adopted for operations co-financed with other financial institutions to facilitate project design and implementation, where possible.

Updates on the Modernization of the IDB Environmental and Social Policies are available at <https://www.iadb.org/en/mpas>



Annex II: Executing Agencies and Projects Financed by IDB-Invest: References regarding the application of IDB-Invest Operational Policies for public consultations

The new IDB Invest Environmental and Social Sustainability Policy became effective on December 15, 2019. In it, the following changes stand out:

- Greater emphasis on human rights and stakeholder engagement, including the implementation of an engagement and grievance mechanism aimed at proactively addressing client complaints before they escalate into problems.
- Increased focus on gender and gender identity issues.
- Enhanced protection for indigenous peoples, especially those in voluntary isolation.
- New section on disaster risk management and greater focus on climate change and low carbon development.
- More clarity regarding IDB Invest's role and client responsibilities.
- More clarity and improvements to the contents on financial institutions.

To access the policy, visit <https://www.idbinvest.org/en/consultation/environmental-and-social-sustainability-policy>



ANNEX III: TEMPLATE FOR THE CONSULTATION PLAN TO BE SHARED WITH THE AUDIENCE IN CONJUNCTION WITH THE CALL FOR CONSULTATION.

The fields IN GRAY are indications that must be completed by the Calling/Executing Agency.

Project/Policy/Strategy XXX

Pursuant to the guidelines established by INDICATE THE NAME OF THE AGENCY AND/OR SOURCE OF APPLICABLE LAW/REGULATION regarding public consultations TO INDIGENOUS PEOPLES AND/OR CONSULTATIONS ON MINING, FISHING, NATURAL RESOURCES, SOCIAL AND ENVIRONMENTAL IMPACT ASSESSMENTS, NUMBER XXX, as well as INDICATE ALL OTHER APPLICABLE CODES OR REGULATIONS, we present the following Plan for Consultation with INDICATE AUDIENCE AND/OR NAME OF THE COMMUNITY OR LOCALITY in relation to INDICATE DOCUMENT(S)/PROCESS(ES) UNDER CONSULTATION.

1. Consultation objective:

To elicit opinions and obtain relevant perspectives and inputs from stakeholders for use in the preparation of INDICATE DOCUMENT(S)/PROCESS(ES) UNDER CONSULTATION.

2. Points to consider:

This consultation is INDICATE WHETHER GUIDING OR BINDING (depending on the applicable regulation) for AGENCY/APPLICANT RESPONSIBLE FOR CONDUCTING THE CONSULTATION, who reserves the right to evaluate the inputs received during each phase indicated herein for inclusion in the final document or dismissal.

3. Consultation components:

3.1. Initial information: This Consultation Plan is shared with INDICATE AUDIENCE AND/OR NAME OF THE COMMUNITY AND/OR LOCALITY, and is accompanied by the announcement of virtual consultation opening (INDICATE WHETHER THERE ARE PLANS TO CREATE AN AD-HOC WEBPAGE). This plan is part of the invitations to in-person meetings that have as their purpose to inform about the objective, scope and methodology of the consultation and the tentative dates for each phase. The initial information also includes questions about which the INDICATE AGENCY/APPLICANT CARRYING OUT THE CONSULTATION seeks guidance from the participating audience.

3.2. Duration of the consultation: The consultation will be held in three phases: call for consultation, holding of the consultation, feedback to the inputs received. The phases will include BRIEFLY DESCRIBE THE OBJECTIVES OF EACH PHASE. The three phases will remain open for INDICATE PERIOD, starting on the date of consultation opening, scheduled for INDICATE DATE.

3.3. Types of consultation:

3.3.1. Virtual consultation in non-real time (open without invitation):

During the XXX days the public consultation will remain open, a dedicated site will be available at INDICATE WEB ADDRESS

to keep the public updated on the progress of the formulation of INDICATE DOCUMENT(S)/PROCESS(ES) SUBJECT TO CONSULTATION, the time limit for receiving inputs during each phase of the consultation, and an indication of the expected in-person meetings, as per paragraph 4 below.

3.3.2. In-person and virtual consultations in real time (by invitation):

A total of INDICATE NUMBER in-person sessions will be held at INDICATE ADDRESS (VENUE AND/OR LINK TO ACCESS THE VIRTUAL PUBLIC CONSULTATION IN REAL TIME) to discuss the topics under consultation in greater detail. Sessions will last at least 2 hours. Following the presentations by the representatives of AGENCY/APPLICANT RESPONSIBLE FOR CONDUCTING THE CONSULTATION, a consultation will be held to obtain an in-depth perception of attendees' opinions and to collect inputs. To systematize the main ideas discussed, participants may be divided into working groups. The idea is to promote broader participation and increase the opportunities for exchanging and collecting inputs regarding the topics suggested by the facilitator, in line with the main pillars and/or questions of the consultation. Each group will designate a secretary responsible for taking notes of the inputs that will be later recorded in the minutes of each consultation phase.

4. Phase I: Preparation

4.1. Call for consultation:

4.1.1. A dissemination campaign will be conducted to advertize and provide information on the consultation of INDICATE DOCUMENT(S)/PROCESS(ES) UNDER CONSULTATION, as well as the opening date for each phase and the expected timeline of the process.

4.1.2. Invitations to in-person and/or virtual meetings in real time will be made at least 15 days in advance and will be accompanied by this Consultation Plan.

4.1.3. In addition, the working document for each phase of INDICATE DOCUMENT(S)/PROCESS(ES) UNDER CONSULTATION will be shared, together with a guide with questions aimed at facilitating the elaboration and processing of comments received in relation to the topics of the consultation.

4.1.4. The comments obtained during in-person and virtual consultations will be submitted to AGENCY/APPLICANT RESPONSIBLE FOR CONDUCTING THE CONSULTATION within the deadlines established for analysis and consideration.

4.2. Consultation team: The entire consultation process and the in-person and virtual meetings in real time will be organized by INDICATE THE NAMES AND FUNCTIONS OF TEAM MEMBERS.

4.3. Actor mapping:

4.3.1. Audience by type of consultation:

4.3.1.1. Online public consultations (in non-real time): The page INDICATE WEB ADDRESS will provide access to virtual consultations in order to receive inputs from various stakeholders, such as INDICATE THE PROFILE OF ORGANIZATIONS, AGENCIES, COMMUNITY

REPRESENTATIVES, INDIGENOUS PEOPLES REPRESENTATIVES, etc.

- 4.3.1.2.** In-person and online public consultations (in real time): In-person consultations will be held to further delve into the topics open for inputs. The dates and venues for the consultation will be published at INDICATE WEBPAGE and other information channels. Due to space and logistics constraints, participation will be by invitation and/or previous registration through INDICATE WEBPAGE. The criteria for selection will consider factors such as having INDICATE REPRESENTATIVES FROM ORGANIZATIONS/ ASSOCIATIONS/ UNIONS/ COMPANIES/ GOVERNMENT involved in one or more of the topics under consultation. Special attention will be given to equitable gender representation and diversity in the audience. An annex will provide details of the institutions and individuals invited to participate, with a matrix indicating the inputs received and analyzed. However, individual authors will remain anonymous (See paragraph 6 below).
- 4.3.1.3.** In addition to paragraph 3.1 and in order to ensure transparency in both types of consultation, updates will be regularly published at INDICATE WEBPAGE.

4.4. Consultation team responsible for processing the information:

- 4.4.1.** The Consultation Team will carry out both the preparation phase and the processing of the information received from each type of consultation (in-person and virtual in real time, and online in non-real time), regarding the different phases to be considered, analyzed and possibly incorporated into the final document.

5. Phase II: Holding the consultation:

- 5.1.** Opening, with dissemination of topics/documents and questions regarding INDICATE DOCUMENT/PROCESS UNDER CONSULTATION
- 5.1.1.** During this phase, which is scheduled for opening on INDICATE DATE, INDICATE DOCUMENT/PROCESS UNDER CONSULTATION will be shared online, together with questions from the audience. They will be identical to those used during in-person or virtual consultations in real and non-real time.
- 5.1.2.** For both consultation modalities (in-person and virtual), the time limit for receiving inputs will be indicated. At the end of the period established for receiving inputs, the Consultation Team will process the inputs submitted by the audience.
- 5.1.3.** During this phase, a total of INDICATE NUMBER in-person and virtual consultations will be held according to the following timeline: INDICATE CONSULTATION TIMELINE.
- 5.1.4.** The list of guests and participants in this phase will be provided in a separate annex delivered with the final version of DOCUMENT/PROCESS UNDER CONSULTATION.

5.2. Advances after processing the first inputs received during the opening phase¹ for **INDICATE (SECOND) DOCUMENT/PROCESS UNDER CONSULTATION**:

- 5.2.1.** During this second phase, **INDICATE (SECOND) DOCUMENT/PROCESS UNDER CONSULTATION** with the changes introduced after processing the inputs will be shared.
- 5.2.2.** This phase regarding **INDICATE (SECOND) DOCUMENT/PROCESS UNDER CONSULTATION** will be available at **INDICATE WEB ADDRESS** and is scheduled for **INDICATE DATE**. The same page will inform on the inputs received during the previous phase, the sections where they were incorporated, and the list of participants (without attribution of any individual comments or suggestions).
- 5.2.3.** The virtual consultation for this phase will remain open for inputs for a period of **INDICATE PERIOD**.
- 5.2.4.** All inputs received in person and online during this Phase will be posted at **INDICATE WEBPAGE**. See paragraph 4.1.1.
- 5.2.5.** In-person consultations will be attended by the Consultation Team, who will address the changes between **INDICATE (FIRST) DOCUMENT/PROCESS UNDER CONSULTATION** and **INDICATE (SECOND) DOCUMENT/PROCESS UNDER CONSULTATION**; the topics related to **INDICATE TOPICS TO BE ADDRESSED DURING THE CONSULTATION**; as well as specific questions to obtain inputs from participants. The following is a list of the tentative dates and venues for the consultations. **INDICATE SCHEDULE**
- 5.2.6.** The list of guests and participants in this phase will be informed in a separate annex provided with the final version of **INDICATE DOCUMENT/PROCESS UNDER CONSULTATION**.

6. Phase III: Closure and feedback on inputs provided with the final version

6.1. The page **INDICATE WEBPAGE** and other media accessible to the audience will publish the inputs received during both phases, distinguishing those that have been incorporated from those that have not, and sharing the final version of **INDICATE DOCUMENT(S)/PROCESS(ES) SUBJECT TO CONSULTATION** after approval by **INDICATE AGENCY/DEPARTMENT RESPONSIBLE FOR FINAL APPROVAL**.

7. Outputs

7.1. The Consultation Team will prepare a summary of the topics discussed with the attendees to in-person and virtual consultations, as well as the comments received during each phase. The summary will be included in the final version of **INDICATE DOCUMENT(S)/PROCESS(ES) UNDER CONSULTATION** in the form of a weblink. The document will include:

- A consolidated matrix with all relevant observations and recommendations to **INDICATE DOCUMENT(S)/PROCESS(ES) SUBJECT TO CONSULTATION** contributed by participants in Phase I of the consultation on **INDICATE (FIRST) DOCUMENT/PROCESS**

¹ Once the initial inputs have been received, conducting a second consultation in order to share with the audience the changes to the first draft of the document/process under consultation is a good due diligence practice. This second part of the consultation may also be used to discuss other documents different from the one(s) reviewed during the first phase. In general, this applies to process that require public consultations on multiple documents associated to one operation/initiative.

- SUBJECT TO CONSULTATION (in person or online), specifying the inputs considered when preparing the policy draft.
- A consolidated matrix with all relevant observations and recommendations to INDICATE DOCUMENT(S)/PROCESS(ES) SUBJECT TO CONSULTATION contributed by participants in Phase II of the consultation on INDICATE (FIRST) DOCUMENT/PROCESS SUBJECT TO CONSULTATION (in person or online), specifying the inputs considered when preparing the policy draft.
- Aspects deserving special attention by INDICATE AGENCY/APPLICANT RESPONSIBLE FOR CONDUCTING THE CONSULTATION thanks to the contributions received from civil society.

An Annex with the final list of all organizations invited to participate in the consultation (both in person or virtual), with details of the participants in each session, including disaggregation by INDICATE RELEVANT CRITERIA FOR DISAGGREGATION (e.g. region, gender, sector of labor, etc.).

PUBLIC CONSULTATIONS: STEP BY STEP

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