

STAKEHOLDER ENGAGEMENT IN SUSTAINABLE FINANCE

Indigenous Peoples Rights & Free, Prior and Informed Consent

WEBINAR
5 DECEMBER 2017



WHAT WE WILL DISCUSS TODAY

- A focus on meaningful stakeholder engagement as part of a solid human rights due diligence process in financial decision-making
- Indigenous peoples rights and the free, prior and informed consent – a specific issue: from standards affecting the industry to implementation from a right-holders perspective
- Practice-sharing and insights from public and private financial institutions on engaging with indigenous peoples and communities
- An overview of experiences across countries and sectors to take stock of solutions, challenges to resolve and the road ahead



Juan Antonio Martinez Legaria

Social Practice Leader
Environmental and Social Unit
Inter-American Development Bank (IDB)



Sociocultural Assessment and Culturally Appropriately Consultations for IDB projects on indigenous peoples



The Bank seeks to support sociocultural development processes that are appropriate to the economy and governance of indigenous peoples, giving priority to territorial and cultural integrity.

To prevent or mitigate direct or indirect adverse impacts on indigenous peoples or their individual or collective rights or assets, the IPP requires during project preparation:

- sociocultural impact evaluations;
- culturally appropriately consultation processes (all adverse impacts);
- mitigation measures, monitoring, and fair compensation (all adverse impacts);
- good faith negotiation processes (moderate and significant adverse impacts);
- agreements (significant adverse impacts).

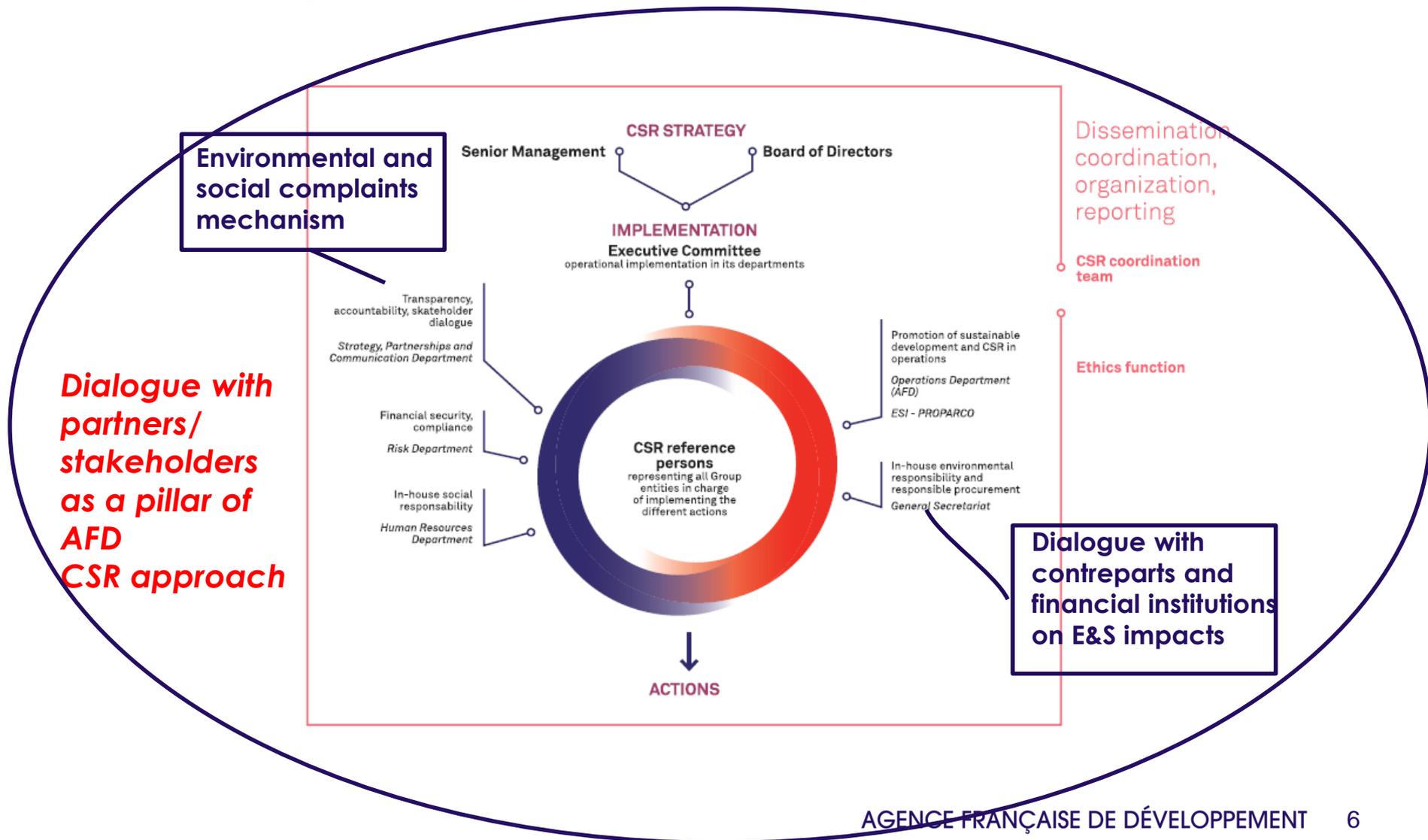
There are several experiences that illustrate the success of the right application of IPP, one relevant example is the Land Titling Project in the Peru benefiting the demarcation of Indigenous Territories in the Amazon.

Linda Zanfini

Corporate Social Responsibility Officer
Strategy, Partnerships and Communication
Agence Française de Développement (AFD)

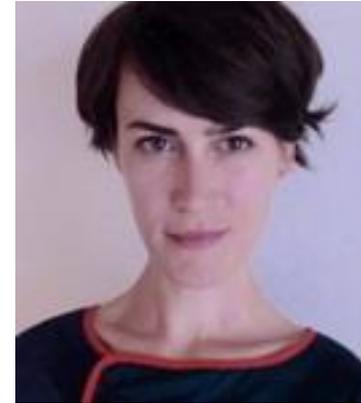


Social impacts: the dialogue with stakeholders as a pillar of the CSR approach at AFD



Sabina Timco Iacazzi

Human Rights and Social Issues Lead
UNEP Finance Initiative



FROM NORMS, STANDARDS & GUIDANCE ...

International instruments recognizing the rights of indigenous peoples, embedding the principle of free, prior and informed consent

- UN Declaration on the Rights of Indigenous Peoples (2007)
- ILO Convention No. 169 on Indigenous and Tribal Peoples (1989)
- Convention on Biological Diversity (1992)

Supported by international human rights instruments ICCPR, ICESCR, CERD
IPRs increasingly recognized in the context of climate finance mechanisms

UN Mechanisms and fora to advance and clarify IPRs & FPIC

World Conference on Indigenous Peoples, Permanent Forum on Indigenous Peoples, Special Rapporteur on the Rights of Indigenous Peoples, Expert Mechanism on the Rights of Indigenous Peoples, UN System Wide Action Plan for the Rights of Indigenous Peoples

Financial institutions concerned by

- Global standards of responsible business practice
 - UN Guiding Principles on Business and Human Rights...
- Industry standards and initiatives to advance good corporate practice
 - EP, IFC PS, UNGC, Dutch Covenant on Banks & Human Rights...
- National laws and regulations – fragmentation on IPRs & FPIC



... TO ON-THE-GROUND IMPLEMENTATION

- 10th years of UN Declaration on Indigenous Peoples' Rights informing national laws and policies, regional courts, industry initiatives, corporate practice
- 6th years of translating the UN GPs on Business & Human Rights in practice
- IPs key stakeholder in the Paris Accord and the SDGs implementation
- Better mobilization and understanding of rights by affected stakeholders

Challenges despite progress

- Roll- back on the rights of indigenous peoples to freely organize and strengthen their capacities to assert and claim their rights
- Land defenders facing criminalization and attacks in many countries
- Vulnerability due to socio-economic disadvantages, unique relationship to land and dependency on natural resources for basic needs & livelihoods
- Gap between the IPRs recognition at global & national levels, and on-the-ground implementation

(UN Special Rapporteur on the Rights of Indigenous Peoples, HRC 36th session, 2017)

Identifying, promoting and scaling good practice

- In the absence of legal harmonization, what can financial institutions do to meet their responsibility to respect human rights, in this specific area?
- What are good practice to build on ? What practical barriers to address ?
- Contextualizing the solutions: from global to local application





Ariel Meyerstein

Senior Vice President
Corporate Sustainability Program
Citi



Evolving Approach to Evaluating FPIC

Complexities of Implementation in Different Markets

December 5, 2017
Ariel Meyerstein
SVP, Corporate Sustainability



Screening for Indigenous Peoples Risks

- Risks to Indigenous Peoples identified in any ESRM-covered transaction are classified as an “Area of High Caution” that requires the transaction to go through enhanced due diligence. ESRM-covered transactions include corporate loans, capital market transactions and letters of credit above US\$50mm, project finance loans above \$10mm, and equity investments above \$5mm.
- In addition, while Citi’s policy does not cover all general corporate lending transactions, we have been developing an “ESRM Watchlist” process to flag certain clients with known elevated environmental, social or reputational risks (including Indigenous Peoples risks) which requires ESRM review for any transaction for the Watchlisted client, including general corporate purpose.
- For **project-related loans** with significant impacts on Indigenous Peoples’ land (both possessed or traditionally held/used) or critical cultural heritage, **Citi expects clients to engage in meaningful consultation with the objective of achieving FPIC as a complement to government-led efforts.** As of July 2017, this approach applies globally.
- We have developed an Indigenous Peoples Risk Screening Questionnaire to help guide our enhanced due diligence triggered under the Area of High Caution. The questions help evaluate country risk, company policy and commitment, and project characteristics that may increase risks to Indigenous Peoples. Some of the questions and topics were pulled from both the Foley Hoag report on social risks commissioned by DAPL lenders and First Peoples Worldwide’s Indigenous Rights Risks Report.

Typical timeline of engagement with client

Greenlight phase – initial due diligence

- Initial screen for IP issues
- Fact-gathering from client & third-party sources on what engagement has occurred
- If risks deemed too severe or client commitment a concern, can turn down involvement before proceeding too far
- Is “consent” required based on impacts?
- Consider need for on-site social consultant

Prior to Credit Approval

- Determine feasibility and level of commitment to correct deficiencies prior to close and to implement Action Plan post-close
- Assess consultation to-date and likelihood of social license to operate

Client Engagement

- Close inspection of documented engagement process
- Gap analysis and expectations presented to client through iterative discussion

Credit Approval

- Determine need for loan covenants, action plan and independent monitoring. Or for capital markets, advise on Offering Memorandum language

Challenges confronted in implementation in diverse contexts

- **Challenge #1: Regulatory criteria in various countries can be lacking and underprepares clients for bank due diligence and stakeholder engagement expectations.**
- **Challenge #2: Compounding Challenge #1, the timelines for financial approval pushed for by some clients are aggressive**
 - If financing requested before regulatory processes have matured or produced adequate information to make decisions, this can put banks in awkward position of making decisions with incomplete information and before democratic processes and rule of law have run their course.
 - Short-time frames also impose constraints on correcting any deficiencies in stakeholder engagement to-date.
- **Challenge #3: Further compounding Challenge #1, there is a lack of consensus around the norm of FPIC and not enough sophistication in discussion of the topic on all sides**
 - NGOs and Indigenous Peoples can have expectations that might extend beyond current well-settled contours of the norm under customary international law (e.g., precisely when consent required vs. consultation).
 - Different industries in different countries have different levels of experience applying the norm.
 - Different banks have varying degrees of understanding of the norm and its application, so getting alignment among funders for what clients are expected to do can be challenging.
- **Challenge #4: Applying FPIC in the context of general corporate purposes transactions, i.e., non-project-related loans or bonds, etc.**
 - Level of detail on use of proceeds often lacking; can be subjective to determine if it is truly a general corporate purposes loan or if there is a project that may receive a large share of the proceeds justifying further due diligence.
 - Leverage to impose conditions and monitor compliance in these transactions is almost completely lacking → but not impossible, so should always try and ask probing questions and push for as much disclosure and forward-looking commitments as possible.

Opportunities for scaling better practice

- **Opportunity #1: Collaborate in streamlining data sources and resources**
 - **Business-ready due diligence guidance:** Need to consolidate best practice guides and synthesize essential messages in a business-ready manner, including building-out business case to clients for early, enhanced and sustained stakeholder engagement (see “Costs of Community Conflict” research) and the upsides to a process focused on win-win outcomes.
 - **Country-level and IP-specific data:** Need to consolidate country-level data on different regulatory processes, status and experiences of IPs as well as detailed info on cultural practices, historical experience, territorial claims. Would help if main IP fora and advocacy organizations organized themselves and contributed to this consolidation.
 - All of the above needs to be in easy-to-access centralized location to facilitate constrained due diligence timeframes.
- **Opportunity #2: Enhance intra-industry and cross-industry dialogue and engagement between banks, regulators and Indigenous Peoples**
 - We need more fora to learn collaboratively from each other and to impress upon regulators that less process does not equal smoother sailing for banks or clients and certainly not for Indigenous Peoples.

Alfred Netch

Head, Environmental, Health and Safety
International Development Corporation (IDC)





IDC Social Risks Presentation

By IDC

Date: 5 December 2017



Industrial Development Corporation

Your partner in development finance

Agenda



Your partner in development finance

- How you engage with communities as part of your environmental and social due diligence?
- How you make sure you get communities' consent prior to implementing investments that could impact them?
 - IDC Environmental Health & Safety (EHS) Approach
 - Development Impact Support (DIS) Approach
 - Corporate Social Investment (CSI) Approach
- Case Study

Chapter 7 of the Constitution of SA

- The right to a **clean environment and sustainable development** is fundamental and closely connected to the right to health and well-being.
- The responsibility for the provision of a safe and healthy environment is outlined in a range of legislation and different sections of the Constitution.
- Section 24 of the Constitution provides **that everyone has a right to an environment that is not harmful to their health and well-being**; and to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation; and **secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development**.
- One of the greatest challenges facing South Africa and the rest of the world is to improve the quality of human life for both the present and future generations through sustainable development.
- The IDC aligns its funding processes with the legislative framework when making **investment decisions** (for **EIAs** and **EMPRs** approval).

- According to NEMA (Act 107 of 1998) “Public Participation Process, means a process by which potential **interested** and **affected parties** are given an opportunity to comment on, or raise issues relevant to a development/project application”.

THE OBJECTIVES OF THE PUBLIC PARTICIPATION

- To inform and involve the community and the stakeholders
- To **identify** and **address community** and the stakeholder’s **concerns**
- To provide opportunities for the community & stakeholders to identify **priorities** and determine **alternatives** to minimize/mitigate potential negative impacts.

PUBLIC PARTICIPATION PROCESS INCLUDES:

- Radio and TV interviews – this can be achieved by advertising on radio station with selected language depending on the language that is common to the people who reside in the area where the development will take place.
- Websites (providing basic information)
- Newsletters- an advert can be placed in the local Newspaper

IDC EHS Approach



- Site notices- advert notices will can be erected around different areas that are mostly used by people in the area/village o development.
- Direct mail-electronic or postal- when the potential interested and affected parties and individual have been identified and registered they can be sent email and exchange comment, concerns and way forward to the project
- Public meetings- public meetings can be arranged with the public, I&AP have to hear their view on the development/project.
- House to house visits (where possible) - where possible house to house visits can be conducted to notify the community of the proposed project, to inform them about public participation meeting and to get their view of the development/project.
- All these steps are to be followed before environmental authorization could be granted by relevant authority and in case of **an appeal** the process has to be repeated.

Development Impact Support (DIS) Approach



Your partner in development finance

- How you engage with communities as part of your environmental and social due diligence?
 - Community Consultation
 - Community Involvement
 - Social Capital
- How you make sure you get communities' consent prior to implementing investments that could impact them?
 - Social facilitation (SF)

What is Social Facilitation?

- It is a process / technique / tools to promote community involvement for participatory and inclusive development

Why Social Facilitation?

- Promote community partnerships with the IDC;
- Establish an enabling environment for the implementation of projects at community level;
- Enable and empower communities to actively participate in their identified projects;
- To offer the communities with the opportunities to be part of the projects and also take ownership so as to protect the projects;
- To encourage community based institutions to support the identified projects;
- To mobilize communities around the projects for their support and participation

IDC Case Study



Industrial Development Corporation

Your partner in development finance





THANK YOU



Industrial Development Corporation

Your partner in development finance



Emmanuelle Bru

Manager, Stakeholder Dialogue and Human Rights
BNP Paribas



WEBINAR INDIGENOUS RIGHTS AND THE FPIC



EMMANUELLE BRU
DECEMBER 5th, 2017



BNP PARIBAS

The bank for a changing world

FPIC in project finance credit policy

- **Key fact:** on April 5, BNP Paribas decided to **exit the Dakota Access Pipeline** project
 - ✓ Decision made following to further reviews of the project, including consultation with all the relevant stakeholders
 - ✓ It signalled the importance of full and detailed consultation on projects that impact large numbers of stakeholders
 - ✓ After selling its USD 120m share in the USD 2.5bn loan, BNP Paribas was no longer involved in the project

- **Actions taken to strengthen project financing criteria:**
 - 1. Joint letter from BNP Paribas and 9 other EPFIs to the EPA on improving the EP standards**
 - On May 22, 2017, we proactively submitted a request to the EPA and invited other EPFIs to join this initiative
 - Our request is to standardize the EPs' project financing criteria applying to both Developing and Designated Countries
 - And more particularly the obligation to obtain a FPIC (Free, Prior and Informed Consent) from impacted communities

 - 2. Strengthening of BNP Paribas' project finance credit policy**
 - To encourage our clients to seek for a Free, Prior and Informed Consent from the communities impacted by their projects
 - Even in countries where the World Bank Performance Standards do not apply in the frame of the EPs

 - 3. Participation of BNP Paribas to the new 'Designated Countries Working Group'**
 - Continuing to express our support to this initiative on improving the Equator Principles' standards
 - Closely monitoring its future outcomes following 2017 Annual General Meeting in Sao Paulo



New sector policy on unconventional oil and gas

✓ **Context:**

- Massive production of unconventional is incompatible with a 2°C scenario
- Large environmental impacts : water pollution, ground impact, biodiversity loss...
- Large social impacts: access to resources for communities, protection of cultural rights (sacred territories), etc.
- Development of unconventional oil and gas production: +27% for conventional oil and gas vs. +127% for unconventional between 2014 and 2040

✓ **In line with its new sector policy, BNP Paribas will:**

- No longer do business with companies whose principal business activity is the exploration, production, distribution, marketing or trading of oil and gas from shale and/or oil from tar sands
- Cease financing of projects that are primarily involved in the transportation or export of oil and gas from shale or oil from tar sands
- Not finance any oil or gas exploration and production projects in the Arctic region
- Actively support clients in the energy sector who are committed to being part of the energy transition



THANK YOU!

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*“Stakeholder engagement in sustainable finance:
Indigenous Peoples Rights and the Free, Prior and
Informed Consent.”*



FND

FINANCIERA NACIONAL
DE DESARROLLO AGROPECUARIO,
RURAL, FORESTAL Y PESQUERO

- 1. Indigenous peoples in Mexico. Main characteristics**
- 2. *Marco de Planificación de Pueblos Indígenas***
- 3. Main objectives**
- 4. Basic characteristics of FRI**
- 5. Strategy and supports**
- 6. Credit process**
- 7. Strengthen financial capacities**
- 8. Strategy: Monitoring and Divulgation**
- 9. Institutional Collaboration FND - CDI**
- 10. Forest Investment Program (BID-FIP)**

1. Indigenous people in Mexico. Main Characteristics

General

- ✓ 15.7 million habs.
- ✓ 7/10 indigenous households members are in poverty
- ✓ 3/4 of indigenous language speakers are in poverty
- ✓ States with higher rates of indigenous households: Yucatán (51.4%), Oaxaca (45.9%), Chiapas (33.4%), Quintana Roo (32.7%) y Campeche (21.3%)

FND credits to indigenous locations:

Year 2017	Number Of Credits	Amount (md)
Direct (first tier)	3,513	62.6
Indirect (second tier)	568	52.2
TOTAL	4,081	114.8

Main entry barriers to credit:

- ✓ Low scale of economic units
- ✓ High level of market intermediation

Definition

- MPPI is a strategy of FND to enhance coverage and promote financial inclusion to indigenous populations
- The strategy contemplates, among others:
 - ✓ Institutional capabilities development
 - ✓ **Based on *Fondos Regionales Indigenas* (FRI)**
 - ✓ Specific support to indigenous projects to be approved by FND
 - Potential to receive credit
 - Technically viable

3. Main Objectives

Main Objectives:

- ✓ Credit as an efficient and sustainable tool to promote economic development



Fondos Regionales Indígenas (FRI)

To facilitate credit access

- ✓ Total respect to economic and cultural environment
- ✓ To enhance roots
- ✓ Financial inclusion

4. Basic Characteristics of FRI

Operation:

- ✓ Every FRI has a General Assembly (Corporate government)
- Decides resources management
- Pre selection of potential projects (based on business plan)
- ✓ Social linkages and territory presence
- ✓ They use register, control and monitoring practices on their projects
- ✓ Tracing



It is useful for FND to
mitigate risk

5. Strategy and Supports

- **Basic elements:**

- ✓ Transit from FRI to EIF
- ✓ Gradual increase on credit lines
 - Quantitative and qualitative pre evaluations diagnosis
 - Asistance to develop bussiness plans

- **Supports:**

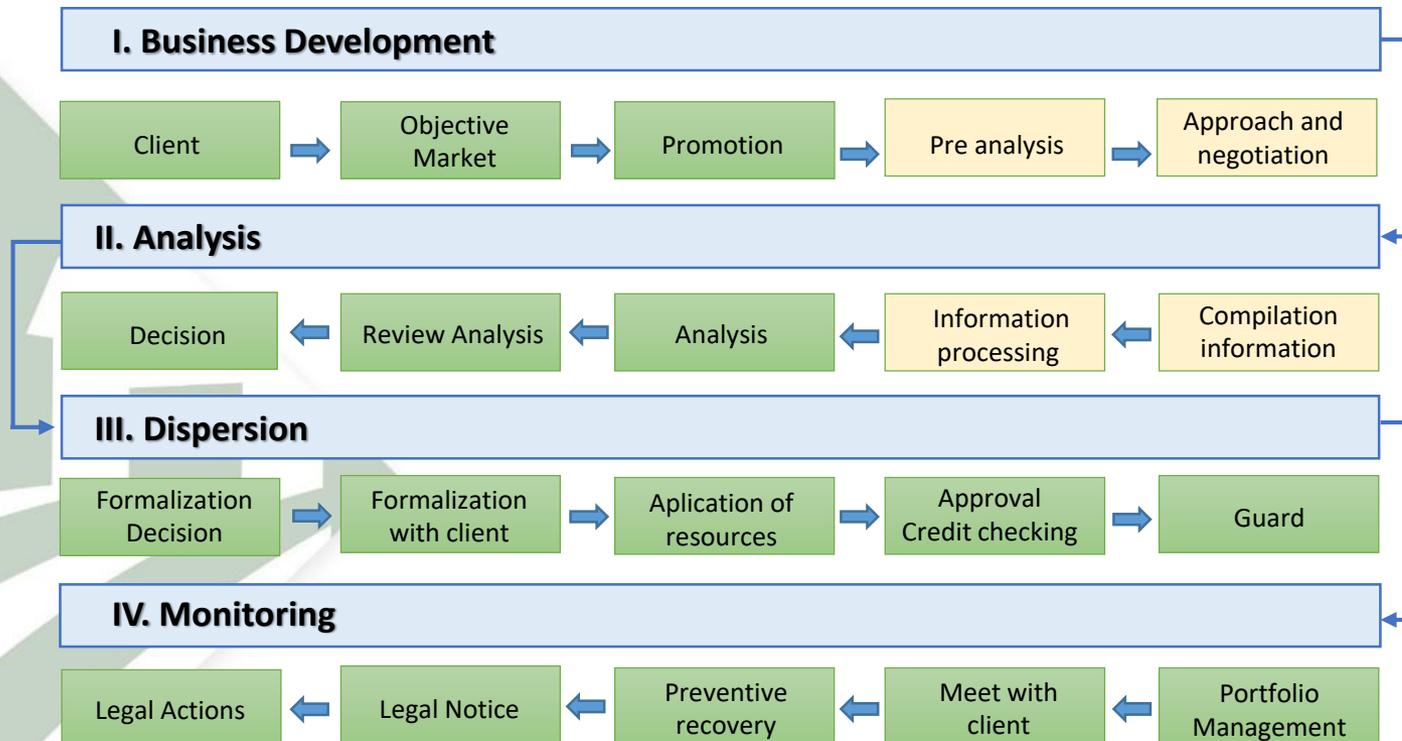
- **Pre Approval**

- Business plan
- Elaboration of manuals

- **Project Execution**

- Business assistance and financial training
- Purchase of furniture and equipment
- Financial rating

6. Credit Process



7. Strengthen financial capacities

- ✓ Training
- ✓ Integration of credit files
- ✓ Legal formalities

Credit analysis

- ✓ Guarantee funds
- ✓ Financial statements

- ✓ Training
- ✓ Equipment
- ✓ Training, courses and lectures of financial items
- ✓ Mitigation of financial cost

Project Execution

Monitoring:

- ✓ FND grants financial monitoring to EIF's (as any other)
- ✓ Complain: Mechanisms of consulting with FND
- ✓ FND has a monitoring system "LUCY" emits default alerts

Divulagation:

- ✓ Through local radio stations (indigenous language)
- ✓ Training workshops



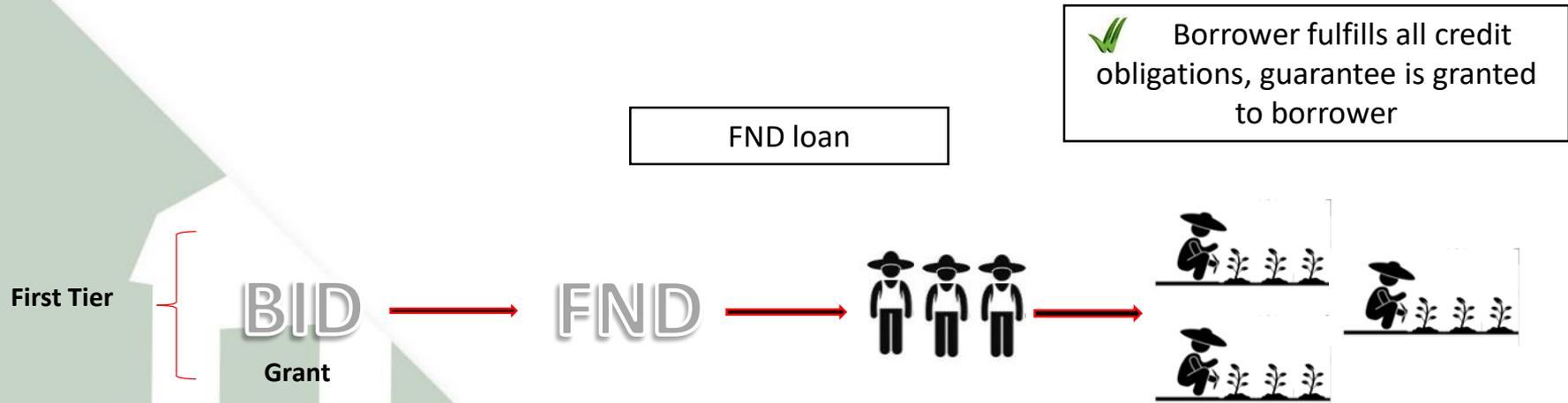
- **2011: FND y CDI Collab Agreement**
 - Credit guarantees fund (1.5 md)
 - Credit through first and second tier.
 - Project pre selection (CDI)
 - 2017: 8 FRI has become EIF
 - Currently: Past due ratio 0%**

10. Forest Investment Program (BID-FIP)

Background

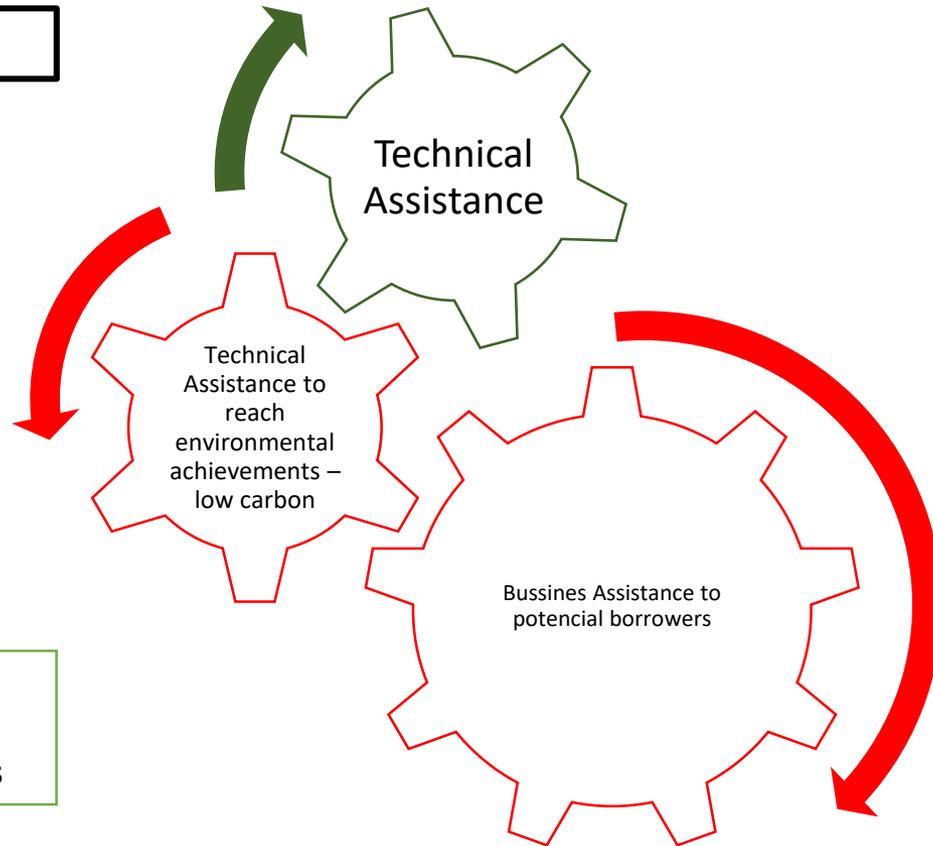
- **2013:** México is selected as one out of 8 countries to develop a pilot
- **Total amount 15 md:**
 - Component 1. Credit line 10 mdd.
 - Component 2. Grant 5 md.
- **Target:**
 - Ejidos
 - Comunidades
- **Objective:**
 - To reduce carbon emissions
- **Activities:**
 - Forest management, conservation agriculture, silvopastoral systems, sawmill of Wood, intensive and technified corn, better livestock management, agrofostery systems, charcoal, ecotourism, beekeeping, medicinal plants.





- Promote financial inclusion with no distortion
- Based on incentives: individuals respond to “aligned incentives”

Activities

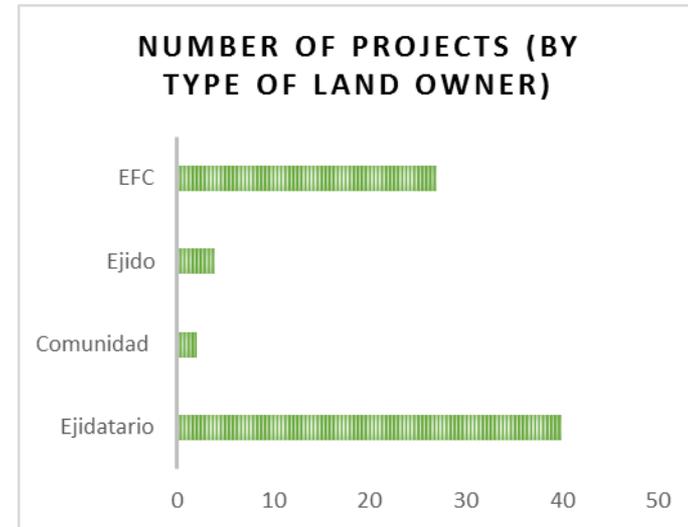


FND believes that Technical Assistance (during the entire Project life) is crucial for success

Status (November 2017)

Total Amount **# Projects**
\$5.7 md **73**

Credits by State		
State	Amount	Number of projects
Campeche	\$0.140	16
Chiapas	\$2.910	22
Chihuahua	\$0.590	18
Jalisco	\$0.011	2
Oaxaca	\$1.100	7
Durango	\$0.170	2
Quintana Roo	\$0.750	5
Veracruz	\$0.004	1
Total	\$5.70	73

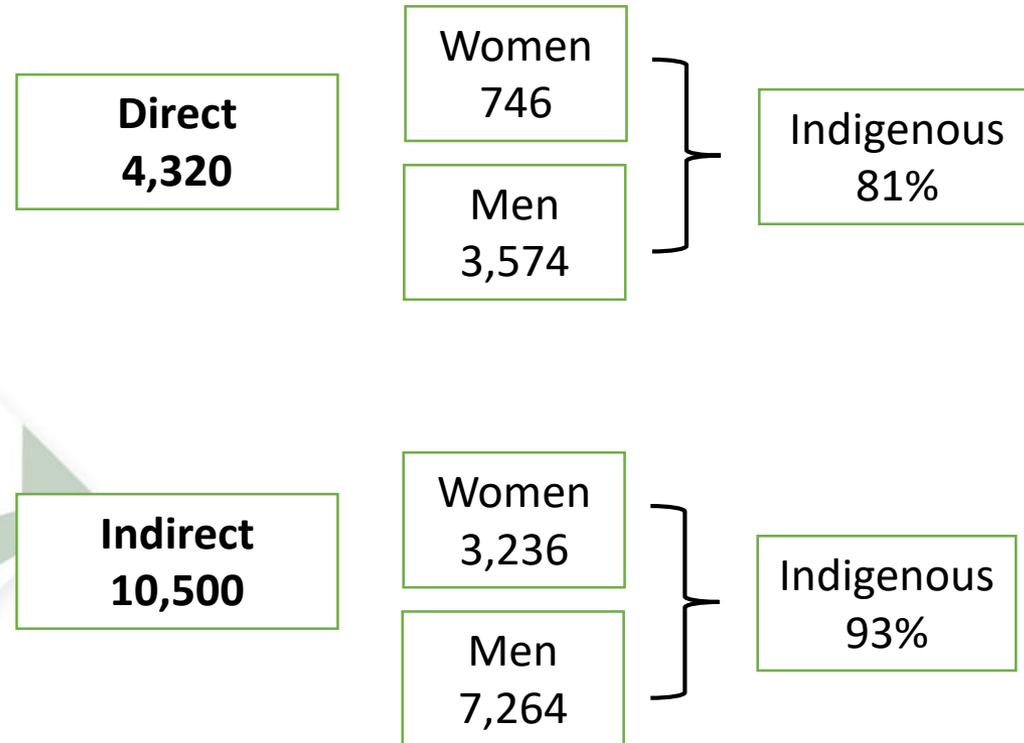


Special indicators	
Indigenous locality	High poverty
31	42

Credits per activities



FIP Beneficiaries



$\Sigma = 14,820$ direct and indirect beneficiaries

THANK YOU !



THANK YOU !

Ariel Meyerstein, Citi, U.S.

Alfred Netch, International Development Corporation, South Africa

Emmanuelle Bru, BNP Paribas, France

Hector Peña, Financiera Nacional de Desarrollo, Mexico

Karely Guzmán Soto, Financiera Nacional de Desarrollo, Mexico

Juan Antonio Martinez Legaria, Inter-American Development Bank

Linda Zanfini, Agence Française de Développement

Sabina Timco Iacazzi, UNEP Finance Initiative (moderator)

