ADDITIONAL FINANCING FOR THE FEDERAL WATER RESOURCES MANAGEMENT PROJECT

POLICY FRAMEWORK FOR EVENTUAL IMPACTS OF PROAGUA ON INDIGENOUS PEOPLE.

UGPO – PROJECT MANAGEMENT UNIT FOR CIVIL WORKS AT THE MINISTRY OF NATIONAL INTEGRATION

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Table of contents

Introduction: .............................................................................................................................................. 1

(a) Types of Subprojects eligible for financing by PROÁGUA. ............................................................ 1
(b) Potential for adverse impacts upon indigenous people by subprojects financed by the Project.......................................................... 3
(c) Plan for carrying out social evaluations in case of interference with indigenous groups ......................................................................................................................... 4
(d) Political framework for assuring a previous, free and informed consultation with the affected indigenous group(s) during the preparation and execution stages. .................. 4
(e) Institutional arrangements and capacity building (when necessary) for pre-evaluation, evaluation of the impacts upon the indigenous groups, preparation of Indigenous Plans and ombudsman mechanisms for cases of complaint. .................. 5
(f) Monitoring arrangements .................................................................................................................. 5

ANNEX A .................................................................................................................................................. 6
**Introduction:**

Brazil is home to about 400,000 people that are considered "indigenous" because they have pre-Colombian origins, traditions, languages and social organizations that differ from the majority of the population in the country. The indigenous population is very small, compared to the (estimated) 7 or 8 million indigenous people that inhabited the land that corresponds to the Brazilian territory as discovered by the Portuguese in 1500. This number has been decreasing along the centuries after the continent’s colonization due to infectious diseases, massacres, wars or the assimilation of the new culture. Nevertheless, the number of indigenous people may be much higher, if we consider the 800,000 people that have declared themselves "Indians" in the year 2000 census, or the people of indigenous descent that inhabit both rural and urban areas, but that have either partially or totally lost their indigenous identity. In short, there are no reliable data on these figures.

Today there are about 250 different ethnic groups in Brazil that speak between 170 and 180 different languages of pre-Columbian origin belonging to four distinct linguistic branches, and to some "isolated" ones. The population of indigenous ethnical groups in Brazil vary between a few dozen to 25,000 people. Nevertheless, an ethnic group does not constitute a "nation" and necessarily there is no social organization at the ethnic group level. The largest indigenous populations in Brazil lives in the States of Mato Grosso do Sul, Amazonas and Roraima, whereas the indigenous lands with the greatest territorial extension are located in the States of Roraima, Amazonas, Rondônia and Mato Grosso.¹

The 400,000 people classified as "indigenous" in Brazil live under the protection of the National Foundation for Indigenous People (FUNAI) established in 1968, which replaced the former Indian Protection Service established in 1909. The main legislation on indigenous people in Brazil are Articles 231 and 232 of the 1988 Constitution (included under Annex A, with the most relevant parts for the present document in bold) and Law 6001/73, "The Indigenous Peoples Statute", whose objective is to classify indigenous people as tutees, because they are "relatively incapable". There are other important laws and norms referring to indigenous people that may be relevant for addressing the topic under specific conditions.

*(a) Types of Subprojects eligible for financing by PROÁGUA.*

Subprojects financed by PROAGUA are activities proposed by the states that comply with technical, environmental, social and economic criteria, aiming at a better and more rational use of water resources, especially for human consumption. Beneficiary states for the implementation of subprojects funded by PROAGUA are located in the Northeast of Brazil, within the so-called “draught polygon” region that is subject to chronic water shortage due to an inappropriate rain regime and to the little retention of water by the soil.

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¹ It can be noticed that these states were not included in the original PROAGUA and their participation in the project during the additional financing does not include the execution of works.
Specifically, the financed subprojects include: pipelines for conducting water from a dam to a consumer center; (b) rehabilitation of dams and pipelines; (c) construction of new dams at strategic locations; and (d) small rural water supply systems. These projects must observe the improvement of water resource management of its respective participant state. A proposing state submits the technical studies of a proposed subproject to the Federal Unit who, based on the evaluation of these studies, selects the subproject for financing. Such analysis is carried out by the project’s management units at the Ministry of Integration (UGPO/MI) and at the National Water Agency (UGPG/ANA), in accordance with the process below:

Upon including a subproject in the POA - Operational Annual Plan, the proposing forwards to UGPO/MI the technical studies upon which the request is based, in the following order: WIR - Work Identification Report (RIO, in Portuguese), PTR - Preliminary Technical Report (RTP, in Portuguese) and FFR - Final Feasibility Report (RFV, in Portuguese).

Based on these studies and on field visits, the UGPO team assesses each subproject, in accordance with the following information: (a) summary description of the sub-project (location, social benefits, target population, rationale); (b) environmental analysis of the river basin (anthropic activities, land ownership structure, economic activities, main ecosystems and present status of conservation); (c) analysis of alternatives that may allow for the achievement of the intended objective through the proposed sub-project, including the possibility of non-execution of the development; (d) main uses of water within the river basin and its availability for the sub-project being proposed; (e) quality of water; (f) water resource steering plans; (g) analysis of the region's basic infrastructure; (h) State instruments for environmental management and control, including the capacity for hydro-meteorological monitoring; (i) governmental programs in the region regarding sanitation and water resources; (j) the institutional capacity of the state secretariats for water resources; (k) present status of environmental licensing and water concessions; (i) reliability of the supply provided by selected water; (j) interference on other water uses; (k) interference on legally protected areas (environmental conservation units, indigenous areas, areas of ecological interest or cultural relevance); and (l) need for resettlement. After such analysis is made, specific reports and summary cards are prepared for each sub-project. Such reports include: (i) environmental indicators; (ii) likely positive and negative impacts; (iii) mitigating measures for negative impacts, including improvements in the monitoring system; and (iv) conclusive opinion regarding the environmental feasibility of each proposed sub-project.

Upon evaluation of the FFR by UGPO/MI, this report, as well as the positive opinion (if that is the result of the evaluation) of UGPO/MI will be forwarded to UGP/ANA, so that it may verify compliance to the existing eligibility criteria. Upon approval by UGP/ANA, the proposing state prepares the Basic Project, which shall allow for the bidding of work contracts, upon receiving approval from UGPO and a non-objection from the World Bank.
In the WIR - Work Identification Report (RIO, in Portuguese), the first document to be prepared by the proposing State, the environmental information is restricted to the identification of eventual impacts that could render unfeasible the acceptance of the work being proposed to PROAGUA, or request such major modifications that would not allow the Project to meet its deadlines. After the WIR stage which assesses the development’s feasibility from the environmental point of view, comes the Preliminary Technical Report - PTR (RTP, in Portuguese) stage.

During the PTR stage a much deeper environmental assessment is carried out, contemplating the identification, analysis and assessment of the development’s most meaningful impacts and the identification of the main mitigating and/or compensatory measures.

Such analysis must contemplate the several different technical alternatives that are conceived under the engineering studies and shall help – or even condition – the selection of the alternative or alternatives to be developed, from the point of view of its (their) feasibility. Such alternatives must be conceived or assessed according to their capacity to achieve the main objective of the proposed development, including the possibility of non-executing the development.

During the FFR - Final Feasibility Report (RFV, in Portuguese) preparation stage, the mitigation and compensation measures recommended by the PTR must be detailed into specific programs for their implementation (this will compose the Environmental Management Plan), which must contain the objectives and goals, the action strategy, the executing bodies, clearly defined responsibilities, schedule and costs.

(b) Potential for adverse impacts upon indigenous people by subprojects financed by the Project.

Potentially, the adverse impacts upon indigenous people are:

Flood
1. Flooding part of the territory of one or more indigenous groups;
2. Use of water resources on indigenous land;
3. Environmental damage caused by the construction of pipelines;
4. Indirect development impacts induced by a subproject (eg. drawing population to an area close to indigenous land due to water availability, increasing the potential for invasions or the undue use of resources on indigenous land.)

It is worth mentioning that, due to restrictions to the use of water resources on indigenous land imposed by the Federal Constitution, the aforementioned type 2 impacts are very unlikely to occur. On the other hand, water resources subprojects such as dams and pipelines may benefit indigenous groups through the supply of water to indigenous villages.
(c) Plan for carrying out social evaluations in case of interference with indigenous groups.

On the occasion of the submission of any subproject by a State, the proposing State must check the presence of any indigenous group living within or close to the area being either directly or indirectly affected by the works. The State must use resources such as official FUNAI information and maps, consultations with FUNAI, consultations with NGOs and publications such as *Povos Indígenas no Brasil* (Indigenous People in Brazil), published by Instituto Socioambiental. Both Indigenous groups officially identified by FUNAI and those waiting for identification by FUNAI should be considered. Such verification is the responsibility of the proposing State, but must also be checked upon by UGPO/MI.

In case an indigenous group is identified close to the proposed works, a preliminary assessment of the subprojects eligibility must be made. In case a subproject is verified as being eligible for financing by PROAGUA, the proposing State must inform UGPO/MI and:

- Appoint a multidisciplinary team at State level for addressing the issue;
- Identify and hire an anthropologist or indigenist who is familiar with the group(s) and whose credentials are acceptable to UGPO/MI;
- Carry out preliminary studies among the potentially affected group(s), following the list of topics established by the Bank’s Safeguard Policy (OP 4.10 and its Annex A).

In case the proposed subproject is maintained, the proponent must:

- Carry out a social evaluation of the affected group(s);
- Contact the affected group, identifying leaderships, spokesperson, and discuss the works being proposed;
- Receive suggestions about the nature of the subproject and how it could benefit the indigenous group.

(d) Political framework for assuring a previous, free and informed consultation with the affected indigenous group(s) during the preparation and execution stages.

The proposing state must assure that:

1. Competent professionals carry out the social evaluation of the indigenous group for the subproject;
2. Consultations with the indigenous group(s) take place in a culturally appropriate manner;
3. The indigenous group(s) have the opportunity to voice their opinions about the subproject, including their right not to agree with its execution;
4. The Social Evaluation report must be submitted to UGPO/MI before the subproject is approved;
5. The relationship between the proposing state’s UEGP and the indigenous group(s) is maintained during the works preparation and execution stage, with ample opportunities for communication;
6. There is a specific channel of communication between the State and the indigenous group(s) for the registration of complaints (ex. through the Public Ministry);
7. All costs regarding the preparation of the Indigenous Plan’s Social Evaluation are the responsibility of the participating State.

(e) Institutional arrangements and capacity building (when necessary) for pre-evaluation, evaluation of the impacts upon the indigenous groups, preparation of Indigenous Plans and ombudsman mechanisms for cases of complaint.

Before a subproject’s final approval by UGPO/MI there is need for:
- Revision and approval of the Social Evaluation by competent professionals;
- Drafting an Indigenous Plan (IP) in accordance with the World Bank Safeguard Policy (OP 4.10 and its Annex B)
- Submitting the technical package, along with the Social Evaluation and the IP for the World Bank’s no-objection.

(f) Monitoring arrangements

During project execution, UEGP must carry out regular visits (at least on a quarterly basis) in order to verify whether:
- The IP is being duly complied with;
- The indigenous group(s) maintain an appropriate communication with the contractor;
- The indigenous group(s)’s concerns and demands are being taken into account;
- Quarterly reports are being prepared and timely delivered to UEGP/PROAGUA;
- A final report, evaluating subproject results and impacts, is being prepared and delivered within one year after the conclusion of the works.
ARTICLE 231. The social organization, costumes, language, believes and traditions of Indians are hereby recognized, as well as their original right over the land they traditionally occupy, whereas the Union is responsible for their demarcation and for protecting their right and assets. § 1 - Land traditionally occupied by Indians are those inhabited by them on a permanent basis, those used for their productive activities, those essential for the preservation of the environmental resources necessary for their well-being and those necessary for their physical and cultural reproduction, in accordance with their uses, customs and traditions. § 2º - All land traditionally occupied by Indians is hereby destined to their permanent possession, and all wealth existing in their soil, rivers and lakes will be for their exclusive use. § 3º - The use of water resources, including their energy potential, the research and mining of mineral wealth on indigenous land only may be carried out upon authorization by the National Congress, after listening to the affected communities, assuring them a participation in the results obtained from the mining, as established by law. § 4º - The land referred to by this article is inalienable and unavailable, and the rights over it are imprescriptible. § 5º - The removal of indigenous groups from their land is hereby forbidden, except, “ad referendum” by the National Congress in case of catastrophe or epidemics that may put their population at risk, or in the interest of the Country's sovereignty, upon deliberation by the National Congress, their immediate return being guaranteed, in any hypothesis, once the risk is over. § 6º - Are hereby made null and void, without any legal effect, any acts that aim at the occupation, dominium and possession of the land referred to under this article, or the exploitation of natural wealth of the soil, the rivers and lakes existing therein, except when there is relevant public interest of the Union, according to the provisions of a complementary law, whereas the nullity and extinction do not entitle to indemnity or actions against the Union, except, as established by law, regarding improvements deriving from good-willed occupation. § 7º - The provisions of art. 174, § 3 and § 4 are not applicable to indigenous land.

ARTICLE 232. The Indians, their communities and organizations are legitimate parties for starting a suit for the defense of their rights and interests, whereas the Public Ministry shall intervene in all acts of the suit.