

NomoGaia and IFC had a series of exchanges regarding the content of this report. Based on IFC's feedback and additional research, one project evaluation shifted from 'unknown' to 'agreements confirmed' (PetroNova). However, many of IFC's comments (produced in a 19-page letter available at nomogaia.org) were not supported by documentation. As NomoGaia's evaluation relies on evidence, without additional information it was not possible for NomoGaia to adjust findings on the majority of IFC's concerns. In response to IFC's letter, NomoGaia has produced a point-by-point response. Three overarching comments merit attention here, as they are fundamental to the research. They pertain to NomoGaia's methodology for evaluating whether IFC's PS7 implementation could be externally validated; IFC's methodology for *assuring* PS7 is implemented; and IFC's processes for assuring that Indigenous Peoples are involved in the process of negotiation and agreement.

NomoGaia's methodological approach denotes absence of evidence as a barrier to verifying that PS7 was implemented. IFC asserts that a detailed FPIC verification process is undertaken and documented, but its Access to Information Policy bars it from providing the information that would validate that assertion. IFC made clear that internal assessments would not be made available, owing to the restrictive nature of its Access to Information Policy. Likewise, IFC does not disclose FPIC agreements without client consent. NomoGaia contacted company representatives from Equatorial Energia, Bilt Paper, Transform PNG and Africa Oil seeking FPIC documents, but responses were not provided by the time of publication. *Consulta Previa* documents for PetroNova and Pacific Midstream were located through Colombia's Ministry of Interior. For PetroNova, these agreements demonstrated agreement and included a non-consent option. For Pacific Midstream, numerous holdings had failed to secure consent from communities and in one case had failed to secure access to an existing pipeline on indigenous lands. As such, no adjustment was made to the Pacific Midstream categorization.

IFC states that clients respect traditional land usage regardless of host-state hostility to indigenous groups. Specifically, IFC's Global Social Lead reviews projects across regions to ensure consistent implementation of the standards, especially on complex issues like FPIC, supported by regional Principal Social Specialists. However, none of these specialists have indigenous expertise, and IFC is currently understaffed on social specialists. Additionally, IFC personnel were not aware of protocols that guide these Social Leads on determinations of indigeneity, such as evaluation of traditional land use, livelihoods and cultures. In particular, there don't appear to be protocols requiring evaluation that clients engage communities to ground their assessments of indigenous impacts in indigenous perspectives. Absent such expertise and processes, it would be difficult for IFC to have confidence that traditional land usage is consistently respected across geographies and throughout its portfolio. IFC asked for cases where indigenous peoples lacking legal protections were bypassed in IFC due diligence. This is the topic of a forthcoming NomoGaia report.

Finally, IFC states that FPIC agreements are "always present and available to impacted IP communities and their representatives." IFC does not have processes in place to assure either their presence or their availability, while it allows clients to make the documents privileged and inaccessible publicly. In this regard, it seems that IFC's nondisclosure agreements with clients are at odds with the Performance Standards' 'informed consent' commitments to affected indigenous peoples. IFC clients have paper copies for community leaders to hold, but community leaders often live outside the community, and social fissures can make these documents inaccessible to vulnerable populations within an indigenous community. Furthermore, literacy, education levels and language barriers can render paper copies of contracts impenetrable to communities. IFC does not evaluate what would make an agreement "present" to a community whose leaders live remotely or what would make it "available" to groups who do not speak or read the language of the written contract. IFC's ESAPs do not benchmark the terms of FPIC agreements. As a result, IFC cannot demonstrate that these agreements or their contents are "present and available" to affected indigenous communities.



Proj. #	Company	Country	Year	Project Type	Documentation that would enable NomoGaia to reassess categorization
32170	Equatorial Energia	Brazil	2012	Energy Distrib.	Agreements with quilombolas through FCP
31903 42138	Klabin	Brazil	2012 2019	Pulp Mills	Clarity on how IFC evaluated the impacts of wood sourcing (from average 120km from the mill), milling and effluent into the Tibagi River on the Tibagy-Mococa peoples as well as Kaingang, Queimadas, faxinal communities and 27 identified quilombos. Information or mapping of Klabin's sourcing (from 37 municipalities covering 182,000ha in 2019)
32075	PetroNova	Colombia	2012	Oil/Gas	Consulta Previa reports demonstrating consent for populations within the concession
32057	OCL India	India	2012	Cement	Clarity on how IFC concluded that impacts on communal forests (including access to firewood), playground, defecation area, household lands and a Tulsī-Tola (cultural site) did not require FPIC.
32265	UltraTech	India	2013	Cement	Clarity on how IFC concluded that (1) the individual titles held by indigenous peoples undermined their communal and ancestral ties to the land; and (2) the 20-30 HHs living on the boundary of the mine would not experience impacts on cultural activities or lands.
33842	President Energy	Paraguay	2013	Oil/Gas Exploration	Consultative agreement with la Princesa. Protocols for determining specific (potential) FPIC requirements once the project was defined. Evaluations of potential impacts of seismic lines
30266	Zhaoheng Hydropower	China	2013	Large Hydro	Clarity on how IFC determined that (1)China's legal tenure arrangements (which undermine traditional or customary land claims) dissolve PS7 requirements, and (2) rivers have no cultural significance to IPs
27286	Stora Enso	China	2013	Pulp Mills	Clarification reconciling the statement that FPIC was considered unnecessary, with the 2014 ESAP requirement that the client "update its Stakeholder Engagement Plan specifically to engage local ethnic groups in a culturally appropriate manner. Where adverse impacts are identified, ... ensure free, prior, and informed consultation with identified ethnic communities."
30977	Kabeli	Nepal	2013	Large Hydro	Clarity on how IFC/client evaluated (1) the cultural value of water bodies to affected IPs; (2) the impacts on 9 indigenous households as unrelated to traditional, land-based livelihoods; and (3) whether impacts on access to cultural sites merits FPIC (p. 70 of the SAP describes 4 such sites)
34607	Biosev	Brazil	2014	Sugar Mills	Document titled Participatory Social Impact Assessment, which I would argue is part of ESIA or Third Party Monitoring Reports under AIP 2012; Documentation establishing that Biosev does not source cane from lands demarcated by FCP, INCRA or FUNAI
34553	Pacific Midstream	Colombia	2014	Oilfield Services	Consultation protocols (GFN), FPIC agreements. IFC invested when the holding company had 3 oil pipeline assets and one electrical line asset. IFC's investment was equity and thus should have included maintenance on existing pipelines, which involves impacts from maintenance work. Ministry of Interior declared Petroeléctrico de los Llanos to have no IPs. Oleoducto Bicentenario de Colombia crosses U'wa lands , the U'wa weren't allowing access when IFC invested and continue not to allow access. At Oleoduto de los Llanos Orientales , Achagua and Piapoco communities in Puerto Lopez (Meta), were found on the Turpial-La Victoria reserve in 2011 & CP was court-ordered . IFC doesn't say whether CP was completed. IFC does say CP was completed for the Maisheshe La Chivera community on the Cresciente-Tolu pipeline . The project faced staunch opposition and did not go forward, and IFC never mandated FPIC.
34602	Bilt Paper	Malaysia	2014	Pulp/Paper	Consultation protocols, FPIC agreements
35312	Transform	PNG	2014	Oil/Gas Exploration	Consultation protocols, FPIC agreements
35400	Tian Lun Gas	China	2015	Energy Distrib.	Clarity regarding how Chinese regulatory requirements "reflect a process of good faith negotiation and could constitute the required [FPIC] as stipulated in Performance Standard 7."
36699	African oil	Kenya	2015	Oil & Gas	Consultation protocols, FPIC agreements
37567	GEC	Vietnam	2016	Small Hydro	Clarity reconciling IFC's findings that "Most of GEC's HPPs are situated in areas inhabited by one or more of Vietnam's ethnic minorities" (ESRS) with the conclusion that "IFC due diligence did not identify impacts" to trigger FPIC.
39652	CELSE	Brazil	2017	Powerplant	Clarity reconciling the need for a quilombola study under Brazilian law with the finding that CELSE does not impact quilombos (preferably with attention to sedimentation in waterways).
39151	FRV Solar India	India	2017	Solar Park	Clarity regarding how impoverished, landless indigenous peoples are exempted from FPIC protections on the basis of their landlessness (i.e. analysis of PS7 Para 6, sentence 2)
39821	JK Paper III	India	2017	Pulp & Paper	Clarity on (1) how IFC concluded that wood sourcing does not impact indigenous lands or resources; & (2) why IPs displaced by JK in 2010 did not merit FPIC (see PS7 Para 6, sentence 2)
40616	Chenguang	China	2018	Food Prod.	Clarity on how IFC concluded impacts associated with client's supply chain did not require FPIC
40646	Rewa Mahindra	India	2018	Solar	Clarity on IFC/client's evaluation of indigenous impacts with regard to resettlement of 5 IP households and with regard to impacts on watersheds and communal grazing lands.
39254	Elecorte	Colombia	2019	Energy Distrib.	Clarification of which (and how many) legal cases IFC is following with regard to this client/project
41576	Nafoods	Vietnam	2019	Agriculture	Clarity regarding why (1) PS7 Para 6 was not applied to recently displaced Hmong HHs; (2) HH lands are not considered to hold communal value to the displaced Thai populations
39354	Oriental Infratrstr.	India	2020	Highway Constr.	Clarity regarding whether IFC/client does not consider market activities among legitimate traditional livelihoods for indigenous peoples and, if so, how it drew this conclusion. Clarity on whether IFC/Client updated the RAP for Nagur Bypass Section NH-7, which, in publicly available documentation, only covered 67 km of the 117-km footprint.



- 1.2. IFC notes that application of PS7 is reliant first on the presence of conditions in Paragraph 5. These four conditions are indicative of indigeneity but Para 5 notes that they may be present to varying degrees. Further, Paragraph 6 clarifies that PS7 “may also apply to communities or groups that have lost collective attachment to distinct habitats or ancestral territories in the project area, occurring within the concerned group members’ lifetime, because of forced severance, conflict, government resettlement programs, dispossession of their lands, natural disasters, or incorporation of such territories into an urban area.” If IFC decides not to apply PS7 to those populations, it seems important that it articulate why. I have not found any public articulation of why indigenous populations recently displaced from their ancestral lands are ineligible for indigenous protections under PS7 in the cases considered in the draft report. **IFC does not document a process for bypassing Paragraph 6 stipulations about displaced peoples, particularly in India (Ultratech), China (Chenguang Bio), and Vietnam (Nafoods).**
- 1.3. IFC recognizes language in GN48 allows that privately held indigenous lands might still be subject to community-based decision processes. **If IFC knows of cases where this language in GN48 is applied, that would be useful.** I found, potentially, one, at Upper Trishuli, but the impacts on communal ancestral lands and culturally significant landscapes also triggered FPIC in that case, so it is difficult to attribute the PS7 processes to the GN48 provisions regarding individually titled household lands.
- 1.4. IFC observes that it is “NomoGaia’s interpretation based on a desktop analysis of available public disclosure materials” that FPIC should have been applied at 19 projects. **If IFC/clients will provide evidence to the contrary, NomoGaia will revise the report.**
- 1.5. IFC refers to the text box articulating IFC’s reasons for foregoing FPIC as “misleading”. **The interpretation is based on IFC’s own disclosures and can be modified if IFC and clients supply documentation that contrasts with current disclosures and reporting through IFC.**
- 1.7. The challenge of documentation is genuine with regard to potential projects, particularly those that IFC opts not to finance. IFC has, indeed, walked away from projects that initially applied PS7, including a wind project on Masai lands in Kenya. However, that project moved forward with financing from the US development finance institution, OPIC. Disclosure rules restrict IFC from publishing information about the challenges projects face in meeting Performance Standards, but these projects often proceed through other channels, and there is a risk that they proceed under the financing of entities that have less stringent safeguards, after advancing considerably under IFC oversight. Perhaps the board needs to consider the implications of an Access to Information Policy that withholds information about critical risks from other would-be investors.
- 1.8. I would welcome an explanation of how IFC addresses host-state adversity referenced in the quoted lines. IFC expectations that clients respect traditional land usage are not demonstrated in public reporting reviewed by NomoGaia. **IFC personnel were not aware of the existence of any protocols for how IFC and clients assess the concept of traditional land use, or the concept of cultural impact. Absent standard understandings of these concepts, the risk that IFC relies on legal standards increases.**
- 1.9. IFC comments that in the Nafoods Vietnam) investment “no Critical Heritage was impacted.” It is not clear how IFC made this assessment or what it means. Critical cultural heritage as referenced in PS7 is not purely a reference to physical objects (which are covered in PS8), so assessment of impacts on heritage would, it seems, necessitate engagement with affected peoples. **At Nafoods, the IFC has not demonstrated that it analyzed how communities interact with the landscape and how they perceive land use changes to affect their cultural practices. With regard to the displaced Hmong households, IFC has not articulated why they were not eligible for PS7 protections under the language of clause 2, para 6, instead relying on clause 1.**
- 1.10. The text in question notes that FPIC would necessitate freely given indigenous consent “prior” to impacts. IFC’s response notes that IFC may decide to proceed with an investment if the client can “close the PS requirement gaps.” With regard to ex-post “free, informed consent,” IFC notes that it continues to be necessary based on the contents of Para 6 (IFC notes GN63) but does not say how that determination is



made or what criteria led IFC to conclude that Bilt, GEC and OSE could retroactively obtain the consent of displaced peoples or could bypass peoples displaced within their lifetimes.

1.11. [IFC plans to revise how PS7 is applied on oil and gas exploration projects]

1.12. **IFC disputes that it “deferred to legal processes in some countries as “aligned” with FPIC” and claims to conduct “its own due diligence.” IFC’s basis for this position, based on public documents, is unclear.**

Here, for example, is IFC’s articulation of Colombia’s Pacific Midstream’s *Environmental and Social Mitigation Measures* for PS7: “The IP certification process in Colombia is conducted by the Minister of Interior and is a well structured and documented process that includes site visits, community consultation, and participation of qualified anthropologists. The process provides adequate safeguards for communities’ rights and uses IP identification criteria that are consistent with IFC PS7. The Process of ‘Consulta Previa’ as per Colombian legislation follows the process and achieved objectives that are consistent with Free, Prior and Informed Consent.” No supplementary due diligence is publicly referenced. The language is the same for projects displacing ethnic minorities in China, where the law is widely recognized to be weakly implemented and, regarding some communities, is explicitly antagonistic. Likewise in Brazil, IFC regularly references FUNAI as the arbiter of indigeneity; AfroBrazilians are safeguarded under a separate agency, FCP, which is only referenced in one of IFC’s 56 projects in Brazil (CELSE), although Afro-Brazilians are also present in the influence area of Belagricola, Borborema and HDB, to name a few.

1.13. IFC contests the assertion that “IFC does not clearly implement oversight to ensure that clients assess the impacts on those peoples to understand how cultures and lands may be impacted.” IFC responds that “IFC makes use of its global social quality assurance structure, our internal experts and in some cases external experts.” **The majority of IFC’s internal experts are environmental experts, as the bank is navigating a severe shortage of social experts. Until November, IFC had no internal indigenous rights expertise** (an indigenous rights specialist has reportedly been hired for the Asia-Pacific region). Even if IFC’s internal processes oversee PS7 application, that oversight is not clearly implemented. As an external researcher reviewing IFC’s own documentation, there is no way to validate IFC’s assurance that it is meeting its standards. IFC asserts that written agreements are “always present and available to impacted IP communities and their representatives,” but IFC does not say how this is available to them. Communities engaged by Oxfam have not managed to access these agreements even with the support of a world-famous INGO. If IFC validates client assertions that indigenous communities fully understand the terms of their communal agreements with clients, it should document that clearly.

Section 2: Responses to NomoGaia’s Recommendations. The IFC agrees with many of NomoGaia’s recommendations but takes issue with one in particular, labeled 2.5

2.5. NomoGaia recommended that IFC georeference its investment footprints so that locations could be validated against known indigenous lands. IFC replied that its Environmental and Social Review Summaries provide “a description of the project location (e.g. village, municipality)... and there is often project documentation with site maps and coordinates. This has not been our experience, having reviewed the PS7 portfolio in detail and the broader Category A and B portfolio generally. In practice, “Project Location” can be as vague as “Cambodia, Peru and Indonesia” (Rider Iron & Steel), or “Turkey, Romania, Iraq, Mexico, Argentina and Indonesia” (Novomet). Location data for Proteak Mexico is “Costa Rica, Colombia and Mexico.” In the case of Hidrovias do Brasil, the IFC financed a ‘river contouring’ and port network in the Amazon Basin without knowing project footprints or automatically triggering PS7, although the riverine areas of the Amazon are home to the majority of Brazil’s indigenous populations. **Respectfully, we think it would be useful for IFC to know the project locations of its borrowers and its equity holdings, and to share this information publicly.**



Section 3: Project-Specific Responses

3. IFC provided feedback project-by-project on the PS7-flagged projects reviewed. The feedback provided on most projects does not include new information or actively refute NomoGaia's findings. Although most justifications reiterate IFC determinations, **some provide additional information and background on projects, which is deeply welcome.**
- 3.1. In China and Vietnam, IFC continued to rely on the concept of "collective ancestral ownership" to determine FPIC applicability, which is unlikely to effectively identify indigenous communities in a communist state where land is regularly coopted by the state. IFC also referred to "critical heritage sites", seeming to bypass cultural heritage that is not physically demarcated. In a major agricultural investment in the Xinjiang Uighur Autonomous Region, IFC did not produce evidence that it had evaluated potential labor abuses on agricultural land or due diligence on its clients sourcing but rather noted that "such land use change could be attributed to larger economic dynamics in the area." Whether it *is* attributable to other actors is not stated. For Stora Enso's Guangxi paper mill, IFC did not explain why, in 2014, it included in its ESAP, a requirement that, "the Company will, as needed, update its Stakeholder Engagement Plan specifically to engage local ethnic groups in a culturally appropriate manner. Where adverse impacts are identified, the engagement sub-plan will include an ongoing communication process which will ensure free, prior, and informed consultation with identified ethnic communities, so as to facilitate their informed participation in Project related issues affecting them directly." This was referred to as "expected" in 2015 and "pending/in progress" ever since. In 2014, the Forestry Stewardship Council found labor violations and a prevalence of migrant labor, as well as that the "Ethnic Affairs and Religion Committee of the Guangxi Autonomous Region was specifically set up to be... harmonizing ethnic relationships" (p. 73 of 160). External literature suggests that 'harmonization' has the effect of diluting cultural differences, even while the region remains entrenched in poverty (<https://journals.openedition.org/cybergeo/23808?lang=en>)
- 3.2. In PNG, NomoGaia concluded that FPIC should have occurred but did not. IFC reports that FPIC processes were, in fact, required and underway before IFC exited the investment. However, there is no reference to indigeneity, FPIC or IFC Performance Standards in either of the available ESAs, and IFC's Environmental and Social Action Plan for the project includes requirements to "Stakeholder Engagement. i) Formalize current stakeholder engagement activities in a Stakeholder Engagement Framework (SEF) ii) Develop an affected indigenous community profile to continue demonstrating Free, Prior and Informed Consent in line with PS7. iii) Establish formalized grievance mechanisms for affected communities" and to "Develop and implement a Corporate Land Acquisition and Compensation policy in line with national requirements and IFC PS 5 outlining the principles, guidelines and approaches related to all future land acquisition." It is not clear how PS7 and FPIC could be met if land acquisition was to be conducted according to PS5, or how it could have been conducted if the client did not yet have an engagement strategy for, profile of, or grievance mechanism available to the affected community. Absent evidence of an agreement built on good-faith negotiation, the available public documentation does not demonstrate that FPIC was achieved.
- 3.3. JK Paper: It is regrettable that IFC did not respond to the specific details highlighted in the Indian PS7 cases. JK Paper, for example, caused the dislocation of indigenous peoples in a 2010 investment, within the current generation but prior to the 2017 investment that applied PS7, yet FPIC was not considered because it predated IFC's FPIC requirement. That determination seems to violate the letter and intent of PS7 Para 6 Clause 2. The stated opposition to JK Paper's operations by Adivasi women also merited comment.
- 3.4. Bilt Paper faced two separate CAO complaints. One was, indeed, about labor violations (notably made by the indigenous populations that used to own the land they were then employed to work by Bilt). The other pertained to land acquisition, water impacts and loss of biodiversity (http://www.cao-ombudsman.org/cases/case_detail.aspx?id=229). The complaint was brought by the indigenous traditional



landholders. If there is some reason IFC does not see this complaint as pertinent to the displaced indigenous populations I would welcome analysis to that effect.

- 3.5. OSE India: IFC's assertions directly contradict the content of the client's own ESIA's, referenced in the report.
- 3.6. FRV Solar India: IFC responds that FPIC was deemed "not applicable... because lands acquired from IP community members were "assigned" lands (that is government land assigned to landless and poor families)" suggesting that NomoGaia may have identified this as a case where "too few" indigenous peoples were affected when in fact it was a matter of the indigenous people being "too poor." In any case, IFC does not articulate how it determined that indigenous lands, livelihoods and cultures were unaffected by displacement.
- 3.7. Rewa Mahindra: IFC states that an E&S specialist confirmed the client's determination of no FPIC but does not describe whether the project affects water bodies and/or communal grazing lands. The solar park site does not fall within a Scheduled Area as defined in the Fifth Schedule of the Constitution of India, but 30% of the population of the nearest community is scheduled tribe or scheduled caste, and five indigenous households "were identified as land sellers." It would have been helpful if IFC responded specifically to the conditions around the land acquisition from these indigenous households.
- 3.8. Kabeli Dam: At least 9 indigenous households lost ancestral land. What does IFC mean when it states, "the project-affected land and resources were not subject to collective and ancestral attachment"? The basis for these claims are not available in public sources and are contradicted by IFC's own project information.
- 3.9. OCL India: IFC's response is contradicted by IFC's own project information, which notes that communal lands and individually titled indigenous households would be acquired. The SIA lists several communal lands that are not individually titled, including a forest where firewood is gathered, a site for communal defecation, and a playground. A cultural shrine was removed and was slated to be relocated "in consultation with the communities," but there is no indication that communities consented to its removal. The ESIA concluded that the loss of communal forest was not "material" but it never indicates that communities deemed it such.
- 3.10. UltraTech: Again, IFC's response suggests that FPIC is only required if homes are relocated, which is just one of three triggers for FPIC.
- 3.11. HCR Nepal: Information provided on this project is informative, denoting that land acquisition involved willing-buyer-willing-seller agreements between Sherpa families/relatives and that ICP was integrated into development and management. This information is not available publicly and the terms of the ICP would be useful.
- 3.12. Africa Oil: I have not been able to locate IFC's response to Oxfam's report on community consent in Turkana. If IFC has made public the consent agreement or any other material, I would welcome them. I would not be able to conclude that "a valid consultation process involving good faith negotiations" occurred without some sort of documentation to this effect, given how publicly the community has challenged this claim.
- 3.13. President Energy: IFC states both that FPIC was deemed not necessary and activities did not impact IP lands but also that "the project did engage with the IP community of La Princesa prior to commencing some activities in their land and signed an access and compensation agreement." This consultation is appropriate under the terms of PS7, even though IFC describes it as not "necessary." It is regrettable that the assessment did not, apparently, consider how the clearing of 3d seismic lines could increase access for cattle farmers and illegal actors to expand into indigenous lands. The potential for indirect impacts on indigenous peoples is high and still unarticulated.
- 3.14. Klabin: Klabin owns 17 industrial facilities across Brazil including in areas within 10km of identified indigenous communities (The ESIA for Puma I identified two indigenous communities of the Kaingang ethnic group in the project's indirect area of influence (wood sourcing): Queimadas and Tibagy-Mococa; For Puma II Klabin has identified 9 indigenous areas, 41 faxinal communities and 27 communities of quilombo



remnants inside its wood sourcing range.). As part of the permitting process, Klabin engaged an anthropologist to develop an Indigenous Peoples plan, which was approved by FUNAI, but does not appear to have ever engaged with traditional communities (such as the 41 faxinal communities and 27 quilombola communities inside its wood sourcing range). It's not clear how IFC can conclude that the "associated facilities and plantations do not have any direct impacts" on these communities without having engaged with them or assessed potential impacts.

- 3.15. Pacific Midstream: IFC describes the consulta previa process pursued for a pipeline under construction at the time of IFC's investment. These processes are usually public through the Government of Colombia but could not be located. If IFC has divested from Pacific Midstream, that is useful information, but my understanding is that, as an equity owner in the holding company, PM's assets continue to be responsive to the Performance Standards. At the time of investment, PM held four assets, three of which impacted indigenous peoples and only one of which had secured Consulta Previa agreements.
- 3.16. CELSE Brazil: IFC both states that FPIC was deemed "not applicable" but also that the client is now pursuing consultation processes with the quilombola communities within 10 kilometers of the project site under Brazilian law. It would be useful to understand how Brazilian law determined that communities were entitled to prior consultation but IFC determined they were ineligible for FPIC, or how IFC determined quilombolas are 'not impacted'.
- 3.17. Elecnorte Guajira faced numerous lawsuits by indigenous claimants. Some have been found invalid, as referenced by IFC, while others have not. If IFC has a position on the most recent work stoppage order linked to indigenous consultation, reported in BN Americas in August 2020, that would be helpful (<https://www.bnamericas.com/en/news/colombia-court-order-raises-red-flags-for-us15bn-renewables-pipeline>)
- 3.18. Equatorial Energy: IFC's reference to FUNAI but not FCP suggests attention to indigenous peoples but not to quilombolas. This is the concern at the core of NomoGaia's findings
- 3.19. PetroNova: In reviewing the documentation and considering IFC's response, NomoGaia has changed the rating on this project to denote that the client pursued Consulta Previa processes and secured agreements from communities.
- 3.20. Biosev, as IFC notes, sources sugarcane from legally established indigenous lands. There are numerous other indigenous lands within the cane sourcing zone that have not been certified by FUNAI. IFC's response to this project seems to confirm NomoGaia's finding that IFC relies on legal determinations for indigeneity rather than self-determination and other factors. It is regrettable that IFC did not respond to the findings that Terena Indians describe themselves as affected and that Biosev's "participatory social diagnosis" does not appear to have involved the participation of any community members, indigenous or otherwise.