

March 15, 2002

President James Wolfensohn
World Bank
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President Wolfensohn:

We are writing to you in our capacity as indigenous leaders and representatives from the Americas to express our deep concern and frustration about the current revision of the Bank's Operational Directive on Indigenous Peoples. These concerns relate to the substance of the revised policy (OP 4.10) and the manner in which the Bank has attempted to discuss the revision with indigenous representatives. We ask that you personally intervene in this matter to ensure that the Bank upholds indigenous peoples' human rights.

First, OP 4.10, as presently drafted, is substantially incompatible with indigenous peoples' internationally recognized human rights and, therefore, is also substantially at odds with the international legal obligations of the Bank and its members to account for and respect those rights. These obligations were voluntarily accepted by Bank members through the exercise of their sovereign will. The Bank, a creation of its members, is a subject of international law and bound by its norms. The revised policy sets standards far below human rights standards accepted by and binding on the vast majority of Bank members. It also undermines any credible claim that the Bank may have towards alleviating indigenous peoples' poverty, safeguarding indigenous peoples' rights and interests, achieving sustainable development and promoting good governance and the rule of law.

The preceding is particularly apparent, for example, in the failure of the revised policy to guarantee indigenous rights to lands, territories and resources. On this point, United Nations High Commissioner for Human Rights, Mary Robinson, stated in her December 2001 Presidential Fellow's Lecture at the Bank, that, for indigenous peoples, "... economic improvements cannot be envisaged without protection of land and resource rights. Rights over land need to include recognition of the spiritual relation indigenous peoples have with their ancestral territories. And the economic base that land provides needs to be accompanied by a recognition of indigenous peoples' own political and legal institutions, cultural traditions and social organizations. Land and culture, development, spiritual values and knowledge are as one. To fail to recognize one is to fail on all."

This statement is consistent with international human rights law, which requires that indigenous peoples' ownership and other rights to their lands, territories and resources be legally recognized and respected, which includes titling, demarcation and ensuring their integrity. These rights are recognized and protected in connection with a variety of other rights, including the general prohibition of racial discrimination, the right to property, the right to cultural integrity and as part and parcel of the right to self determination.

Paragraphs 12 and 13 of draft OP 4.10 require nothing more than the Borrower "takes into account" indigenous individual and collective rights, that the Borrower "gives particular

attention to” indigenous rights and, with a view to the Borrower’s legislation, “that consideration is given to establishing legal recognition of the customary or traditional land tenure systems of affected indigenous peoples or granting them long-term renewable rights of custodianship and use.” The indigenous rights referred to are the “individual and collective rights to use and develop the lands that they occupy” Use and development of lands may be incidents of ownership but they are not equivalent; ownership amounts to control, although not necessarily absolute control, over the property at issue.

In practice, should the state be opposed to recognition of and respect for indigenous ownership rights, it need not do so and may implement a variety of projects in violation of indigenous peoples human rights as defined by international law. That this is left to the discretion of the Borrower is clear from paragraph 20(e), which permits the Bank to provide technical assistance, “[a]t the Borrower’s request,” to “establish legal recognition of the customary or traditional land tenure systems of indigenous peoples, or grant long-term renewable rights of custodianship and use.”

This is not only inconsistent with human rights standards, it is also entirely inconsistent with the Bank’s public views on the centrality of property rights to overall development and poverty alleviation efforts. The Bank’s 1998 publication entitled ‘Development and Human Rights: The Role of the World Bank’, for instance, states unequivocally that

Property is the ultimate potential asset of every poor person. It is the foundation upon which citizens participate in community and political life. When poor people own property in a secure and recognized fashion, they are more likely to attend school, seek medical care, invest in land, protect the environment, and build social harmony. Unfortunately, because of ill-defined institutions and inefficient, burdensome, and often corrupt bureaucratic systems, many of the world’s poor are prevented from fully realizing the value of their property. The main problem in developing countries is that property claims by the poor, while acknowledged within the community, are too often not recognized by the state. As a result, these informal owners, who account for more than 50 percent of the poor, lack access to the social and economic benefits that secure property rights provide.¹

By failing to adequately and effectively recognize and protect indigenous property rights, the Bank is guilty of the same failure that it attributes to states with all of the attendant consequences identified above. Finally, the OP is also inconsistent with your own stated position that “Without the protection of human and property rights, and a comprehensive framework of laws, no equitable development is possible.”²

Second, the recently concluded consultations on the policy have been cursory and substantially inadequate. We are extremely disappointed by the process, most of which was

¹ *Development and Human Rights: The Role of the World Bank*. Washington D.C.: World Bank (1998), at 18.

² *A Proposal for a Comprehensive Development Framework, Memorandum from James Wolfensohn, President of the World Bank, to the Board, Management and Staff of the World Bank Group*, Jan. 21, 1999.

taken up with ambiguous and misleading presentations by Bank staff. Additionally, Bank staff responsible for the revision have *a priori* precluded addressing the issues that we deem most important while at the same time maintaining that the Bank is engaged in good faith consultation with us. These issues are land rights, the right to free and informed consent and self-determination. Bank staff have said that these issues will not be addressed as part of any revisions to the draft policy subsequent to the consultations. Revisions, according to Bank staff, are limited to technical matters. In our opinion, this is not good faith consultation. It renders the consultations of little consequence – primarily a public relations exercise - and raises serious questions about the Bank’s commitment to involve indigenous peoples in decisions affecting our rights and lives.

Finally, we have repeatedly asked that Bank staff working on the revision as well as Bank lawyers sit with us and with eminent experts in international law to discuss OP 4.10’s compatibility with international human rights standards and the international legal obligations of the Bank to respect and implement these standards. At first, they had agreed to this during a meeting held in London in August 2001 and substantial efforts were made to organize this meeting, including inviting experts and asking the Bank to nominate persons to take part in a roundtable discussion on the subject. However, despite the efforts of indigenous peoples, this was the last we heard from the Bank. Written requests to set a date for the roundtable were ignored. Only in January 2002, did we learn, through informal channels, that the Bank had decided not to participate.

In February 2002, we were told at a public meeting that the Bank had decided not to participate in the roundtable because staff felt that the proposal originated from NGOs rather than indigenous peoples. This statement was patronizing and offensive and implied that indigenous peoples and leaders are unable to think and act for ourselves. We made this view clear and received a public apology the following day. However, while the apology was appropriate, it does nothing to allay our concerns about OP 4.10, the process by which it is elaborated and its final content. Moreover, we are left wondering why the Bank is so reluctant to engage in serious discussion and debate about indigenous peoples’ human rights and OP 4.10.

Our concerns about OP 4.10 are further sharpened by our experience with another Bank policy, the recently adopted OP 4.12 on Involuntary Resettlement. Rather than prohibit involuntary resettlement as a gross violation of indigenous peoples’ rights to, among others, cultural integrity and survival, the Bank will finance activities involving forcible resettlement, even resulting in significant adverse impacts on our cultural survival. This policy manifestly violates two norms of customary international law binding on the Bank and its members.

In conclusion, we refer again to Mary Robinson, who recently noted that “there is the beginning of convergence of thinking between the Bank and OHCHR on the centrality of human rights to sustainable development.”³ We ask that you make revision of the Bank’s policy on indigenous peoples a test and demonstration of this convergence of thinking and

³ *Statement by Mary Robinson, United Nations High Commissioner for Human Rights at the Open-Ended Working Group on the Right to Development.* Geneva, 25 February 2002.

ensure that this policy does not violate indigenous peoples' internationally recognized rights. We seek full compliance with the Bank's international legal obligations. Surely the Bank is required to follow the same rule of law that it requires of its Borrowers and others.

President Wolfensohn, we need your intervention and leadership in this matter. Therefore, we respectfully request the following:

- That you meet with a delegation of indigenous leaders to discuss the concerns and issues raised here;
- That you personally intervene to ensure that the revised Bank policy is consistent with indigenous peoples' human rights;
- That you facilitate and encourage your staff to participate in a roundtable discussion on the compatibility of OP 4.10 with human rights standards and the Bank's international legal obligations, and that this roundtable be part of the official record of the consultation process on the policy.

Yours respectfully,

Signed:

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