

INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

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December 5, 2012

Jim Yong Kim
President
The World Bank
1818 H Street, NW
Washington, D.C. 20433

Indigenous Peoples' Participation in the Safeguard Review

Dear President Jim Yong Kim and the Safeguards Review team;

The Indian Law Resource Center is a non-profit law and advocacy organization established and directed by American Indians. We provide legal assistance to indigenous peoples of the Americas who are working to protect their lands, resources, human rights, environment and cultural heritage. We have been advocating for better policies on indigenous peoples' issues within international institutions such as the United Nations and the World Bank since 1980.

As the World Bank has now initiated the process of reviewing and updating its safeguard policies, we direct this letter to you, President Kim, as well as to the individual staff working on this effort, including Joachim von Amsberg, Vice President and Network Head, Operations Policy and Country Services; Cyril Muller, Vice President, External Affairs; Anne-Marie Leroy, Senior Vice President and World Bank Group General Counsel; Rachel Kyte, Vice President and Network Head, Sustainable Development; Paul Bermingham, Director, Operations Policy and Country Services; Cyprian Fisiy, Director for Social Development; Motoko Aizawa, Advisor, Sustainable Development Network; Stephen Lintner, Senior Technical Advisor, Operations Policy and Country Services; and Charles Di Leva Chief Counsel, Environmental and International Law, in order to convey several concerns and recommendations regarding the critical issue of indigenous peoples' participation.

As Bank studies have noted, indigenous peoples continue to be among the poorest of the poor. Developing an approach to development which fully respects the rights of indigenous peoples is therefore a win-win situation for indigenous peoples, as well as for the Bank and its member states engaged in the fight to reduce global poverty.

As you are aware, ensuring the full and effective participation of indigenous peoples is critical to achieving a good outcome to the safeguards review and update process. This requires having processes that specifically solicit the analyses, experiences, and recommendations of indigenous peoples, and ensure that these contributions are incorporated in a meaningful way in final policy outcomes.

Unfortunately, in past policy reviews at the Bank, indigenous peoples' participation has been seriously undermined by the following factors: lack of dedicated consultations with indigenous peoples, consultations that didn't reach indigenous peoples' direct representatives, information not being made available in an accessible language and format, and failure of policy drafting processes to meaningfully incorporate indigenous peoples' inputs.

In an effort to have a more effective process during the present review, we raise the following questions and offer several recommendations:

- As the safeguards review is already underway, there should be a specific plan for facilitating the full and effective participation of indigenous peoples. This plan should be developed in consultation with indigenous peoples and disseminated widely to indigenous peoples networks.
- A major problem with previous consultations labeled as indigenous peoples consultations is that they did not actually reach the direct representatives of Indian nations. In this same vein, the current consultation plan appears to rely on consultations at the global and regional level. Dedicated in-country consultations must be held with representatives of indigenous nations. Because most Bank projects take place in rural or isolated areas, these consultations must be accessible by indigenous peoples on a wide-scale, not just those with access to capital cities.
- Past consultations have been criticized for lack of good faith and a failure to take indigenous peoples' input into consideration in a meaningful way. What is the methodology for incorporating input from consultations – who will do this and how will it be done?
- The current consultation plan appears to rely heavily on on-line consultations. On-line consultations are inaccessible for the vast majority of indigenous peoples, especially those living in isolated areas. What is the process for informing indigenous peoples without access to the internet about the review and soliciting their input?
- The experiences of communities who have been impacted by Bank projects are critical for a successful review of the safeguard policies. We understand that select affected communities will be surveyed, however, we recommend that engagement involve all indigenous communities affected by Bank projects, and that a mechanism be established to gather the experiences and recommendations of affected communities on an ongoing and systematic basis.

- We welcome the Bank’s interest in exploring important issues such as land tenure and natural resources and human rights. As these issues pose special implications for indigenous peoples, their specific input should be sought. The scope of indigenous peoples’ consultations should be all policy issues relevant to indigenous peoples – from the Forest Policy to Use of Borrower Systems – and not limited to just the Indigenous Peoples Policy or the issue of free, prior, and informed consent.
- It is similarly critical that the learning review take into account the experience of experts on indigenous peoples issues and lessons learned regarding the implementation of the Indigenous Peoples’ Policy and other relevant policies. Particular attention should be paid to the 2011 Learning Review on implementation of the Indigenous Peoples Policy as well as Inspection Panel investigations of projects affecting indigenous peoples.
- While Bank Management has stated the anticipation that the review process will result in an “integrated framework,” it remains unclear what an “integrated framework” means, or what models and components are under consideration. The consultation process should give a clear indication of what is being considered or envisioned for an “integrated framework,” and should directly solicit inputs on the critical questions of structure, scope, applicability and enforceability that will determine safeguard effectiveness.
- The consultation plan states that policy documents will be made available in seven languages. What provisions will be made for translation into additional languages, including native languages, where populations affected by Bank activities do not speak one of these languages?

We hope these questions and recommendations are taken into consideration in the development of a plan for the full and effective participation of indigenous peoples. We are available to discuss these issues in greater detail and to assist in the development of both a process and outcome that effectively safeguard the rights and wellbeing of indigenous peoples.

Sincerely,

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