



**INDIAN LAW**  
RESOURCE CENTER  
JUSTICE FOR INDIGENOUS PEOPLES

July 11, 2011

Robert B. Zoellick  
President  
The World Bank  
1818 H Street, NW  
Washington, D.C. 20433

## **Updating and Strengthening the World Bank Indigenous Peoples' Policy**

Dear Mr. Zoellick:

The purpose of this letter is to express our concerns related to the World Bank (Bank) safeguard policy review process. Instead of adopting weak and general policies covering social issues, the Bank should strengthen its social safeguard policies by incorporating current human rights standards and maintaining separate safeguard policies for distinct issues. We also urge the Bank to conduct global, regional, and local consultations to ensure the full and effective participation of indigenous peoples during the safeguard policy review process. Finally, the Bank should ensure that its climate programs, and especially REDD+ programs, avoid promoting the violation of the rights of indigenous peoples, and instead, operate under safeguard policies that promote respect and protection for their rights.

The Indian Law Resource Center (Center) is a non-profit law and advocacy organization established and directed by American Indians. We provide legal assistance to indigenous peoples in 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.

Worldwide, indigenous peoples constitute some of the poorest of the poor. This poverty often stems from violations of their collective human rights. As an institution charged with eradicating poverty world-wide, incorporating the aspirations of indigenous peoples into the Bank's plans becomes a moral, strategic, and economic imperative. The safeguard policy update process is an historic moment and opportunity for the Bank to fulfill its mission and align its safeguard policies with current international human rights standards.

Development projects implicate the rights of indigenous peoples when projects take place on their lands or affect their natural resources or environment. When this happens, projects are often halted or become a flashpoint for resistance against development in general. The conflict between the indigenous people of the Xingu River Basin and Brazil over the construction of the Belo Monte hydroelectric dam illustrates this point. We understand that the Bank has not financed this project; BNDES, Brazil's national development bank, is heavily involved in its development. We note, however, that Brazil received a \$1.3 billion

### **MAIN OFFICE**

ROBERT T. COULTER, ESQ.

Executive Director

JANA WALKER, ESQ.

Admitted in AZ, DC, NM

KARLA E. GENERAL, JD, MA

GINNY UNDERWOOD

Director of Communications

BARBARA ANTHONY

Director of Development

Email: mt@indianlaw.org

### **WASHINGTON OFFICE**

ARMSTRONG A. WIGGINS

Director, Washington Office

LEONARDO A. CRIPPA, ESQ.

Admitted in Argentina

PHILOMENA KEBEC, ESQ.

Admitted in Minnesota

Email: dcoffice@indianlaw.org

loan from the Bank in 2009-10; a significant portion of this loan was directed at the improvement of BNDES' social and environmental policies. Noticeably absent from BNDES' new social and environmental policy, are safeguard policies strong enough to have prevented the Belo Monte crisis.

The Bank has made symbolic gestures to indigenous peoples by inviting indigenous individuals to high level meetings, such as the first "Dialogue between the Vice-Presidency of the World Bank and Indigenous Peoples" held at the Bank's headquarters in November 2010. However public relations efforts should not be confused with genuine attention to the rights of indigenous peoples. Instead, we demand that the Bank adopt safeguard policies that recognize the importance of avoiding human rights violations and actively promote protections for the rights of indigenous peoples. We make the following recommendations:

- 1. Including the Indigenous Peoples policy into a safeguard policy covering all vulnerable groups amounts to a regression of almost 30 years of policy development; instead, the policy on indigenous peoples should remain as a stand-alone policy and should be updated to reflect current international standards on the rights of indigenous peoples.**

For 29 years, the Bank has recognized that indigenous peoples have distinct rights; it has been an institutional leader in this area. In 1982, the Bank adopted its first "Tribal Policy" (Operational Manual Statement (OMS) 2.34 "Tribal People in Bank-financed Projects"). The Tribal Policy constituted a critical step forward in overcoming risks to indigenous peoples in the design and implementation of Bank projects. In 1991, the Bank adopted a revised policy (OD 4.20/BP 4.10), which paid particular attention to the rights of indigenous peoples to participate in, and benefit from, development projects. Within the 2005 policy review process, the Bank updated this policy (the current OP/BP 4.10) in light of fresh advances in international recognition of the rights of indigenous peoples.

Bank management now plans to collapse the Bank's 10 social safeguard policies into one umbrella policy covering all vulnerable people. What most concerns the Center with consolidation is that one umbrella policy will confuse the rights that distinct groups enjoy, lowering the standard for all groups, but especially for indigenous peoples. To a certain extent, this is already happening. Bank Climate programs such as the Forest Carbon Partnership Facility and the Forest Investment Program have adopted policies that fail to sufficiently distinguish between the collective rights of indigenous peoples and the rights of local communities.

The Bank has historically recognized that its failure to recognize these distinctions could harm, or even destroy, indigenous peoples. In its 1982 "Tribal Policy", the Bank acknowledged that "failure to design components of projects to benefit these poorest of the poor in developing member nations widens the gap between nationals and the tribal peoples, and may even result in the destruction of the tribal peoples," and "failure to understand customary tribal rights to land will result in considerable implementation of delays... Tribal groups may also, at some future date, resort to legal actions to claim reinstatement of their original territories or compensation for loss of these lands, if acquired in a manner inconsistent with acceptable customary laws and practice." Simply stated, weak safeguard policies encourage undue risk: risk that the Bank will harm indigenous peoples; and risk that Bank projects will be delayed or fail due to legal challenges.

The UN Declaration on the Rights of Indigenous Peoples (UN Declaration), now a consensus document, sets forth many distinct rights indigenous peoples enjoy. These rights include the right to self-government and self-determination, and the right to legal recognition of their collective right to lands, territories, and natural resources. These rights are distinct from the rights enjoyed by other groups: local communities, women, workers, etc. Certainly, Bank safeguard policies should recognize and protect the rights of vulnerable individuals and communities; however, the safeguard policies should also recognize that indigenous peoples enjoy distinct protections due to their unique relationship with their lands, territories, and natural resources, and their political, social, and historical circumstances.

Instead of weakening the indigenous peoples' policy by consolidating it as one component of a vulnerable peoples' policy, the Bank should strengthen OP/BP 4.10 by incorporating principles from the UN Declaration and other standards that recognize the collective rights of indigenous peoples. The International Finance Corporation (IFC) incorporated many of these principles into its Performance Standard 7, including adoption of Free, Prior and Informed Consent and Benefit Sharing for the use or sale of cultural or natural resources belonging to indigenous peoples.

We stand with others calling for the Bank to incorporate human rights standards into the Bank's safeguard policy, especially with respect to the policy on indigenous peoples. In a joint letter to the Bank President dated July 2010, the three UN mechanisms with specific mandates on the rights of indigenous peoples (UN Special Rapporteur on the Rights of Indigenous Peoples, UN Permanent Forum on Indigenous Issues and UN Expert Mechanism on the Rights of Indigenous Peoples) emphasized that the Bank should ensure that its policy reforms are consistent with international standards related to the rights of indigenous peoples, especially those on consultation and free, prior and informed consent. The letter is attached for your information.

## **2. The Bank should adopt a stand-alone Human Rights safeguard policy to assist countries in avoiding human rights violations and achieving sustainable growth.**

In the last century, the world community created universal and regional systems for the protection of the fundamental rights of persons. These fundamental rights became known as "human rights," not social risks or impacts. The world community also developed an autonomous system to address labor rights, the International Labor Organization, based on the universal belief that lasting peace could only be achieved if social justice and labor rights are promoted. The Bank, however, continues to avoid the language of human rights; it has also failed to develop a labor rights policy.

Assessments of human rights impacts and risks are critical for assuring the effectiveness of the Bank's projects and essential to the Bank's overall goal of eradicating poverty. As part of the safeguard policy review process, the Bank should develop a safeguard policy to allow for the assessment of each project's impact on human rights and provide guidance on how to avoid undue risk. The failure to incorporate human rights within the safeguard policy review process would constitute a significant step backward for the Bank.

Continuing to reject a human-rights based approach appears contrary to the position of the Nordic countries, which have contributed substantially to the Bank through the Nordic Trust Fund with the goal of better incorporating respect for human rights in Bank operations. It also cannot be justified by the argument that the Articles of Agreement prohibit it. Since 2006, two individuals serving as General Counsel for the Bank have released legal opinions recognizing that the balance has now shifted in favor of protecting human rights in development practices. First, Roberto Danino concluded that the Articles of Agreement do allow the Bank to acknowledge the human rights dimension of its policies and operations. Later, Ana Palacio agreed with Mr. Danino's observations and went on to conclude that the Bank may update its internal legal stance according to the current international law standards on human rights. Finally, the IFC, a member of the World Bank Group, has incorporated a human rights-based approach to several areas of its updated Policy and Performance Standards.

While the Bank should learn from the forward-thinking leadership of the IFC, it must go further. The IFC has made a critical step forward by, not only adopting the Guide to Human Rights Impact Assessment and Management in June 2010, but also updating its PS 7 Indigenous Peoples in light to the UN Declaration. The IFC's Guide to Human Rights Impact Assessment and Management, however, remains a voluntary tool. The Bank should adopt a Human Rights safeguard policy to ensure that human rights are addressed in every Bank-funded project.

**3. The Bank should carry out more extensive consultations with indigenous peoples generally, but especially, during the safeguard policy update and consolidation process.**

As part of the safeguard policy review process, and in general, the Bank should ensure the full and effective participation of indigenous peoples. We have seen the Bank beginning to consult with indigenous people on issues that affect their interests and rights, but more should be done. The Bank's practice of choosing one indigenous individual to represent an entire region (i.e. Africa, Latin America, and Asia) does not amount to effective consultation. Further, while consulting with members of the Permanent Forum is a good start, we urge the Bank to consult with indigenous peoples at the regional, national, and grassroots levels. The Bank should provide key information in a proper and timely fashion well in advance of consultations.

Since the commencement of the safeguard policy update and consolidation process in September 2010, nearly nine months have passed and the Bank has shared very little information. The Bank has not shared whether the policies exist in draft form; no draft policies have been released. We are aware of only two occasions when Bank officials provided information on the review process. These presentations, at the Bank Spring meetings and the UN Permanent Forum on Indigenous Issues, provided little substantive information about the proposed policies. Instead, these presentations focused on the review process itself. The failure to communicate in a timely fashion about the substance of the proposed policies seems to violate the recently adopted Bank "Access to Information Policy." The Center encourages the Bank to promptly release the proposed policies and provide stakeholders, including indigenous peoples, a detailed timeline of how the process is expected to proceed.

**4. A rights-based approach to safeguard policies is particularly important for the Bank’s climate programs, including REDD+ programs, which should recognize the rights of indigenous peoples to self-government and their rights to lands, territories and natural resources.**

REDD+ presents some of the same challenges the Bank faces in ordinary development projects, but there are additional challenges as well. For some time, the Bank has recognized that projects developed on lands wrongfully taken from indigenous peoples will be vulnerable to future legal challenges. Poor practices in REDD+ programs will also alienate the Bank’s best potential allies in the fight against climate change – the indigenous people who love the land, the waters and the forests. Many indigenous peoples in Mexico and Central and South America already oppose REDD+. They fear that such climate change initiatives are simply a new way for states to steal their lands, territories, and natural resources. At least one state, Indonesia, seems to be preparing for REDD+ programs by forcibly evicting indigenous peoples from their homes and territories.

What we have seen from the Bank has not been encouraging. Bank REDD+ programs focus on measuring, reporting, and verifying carbon, and avoid addressing issues important to indigenous peoples – securing title to lands, territories and natural resources; avoiding forced relocations; ensuring that REDD+ programs have robust benefit-sharing components that allow indigenous communities to continue to practice their ways of life. Bank REDD+ programs operate under a cloak of secrecy and fail to share important information with the public. For example, the FCPF empowered a taskforce to harmonize safeguard policies of three organs (the FCPF, the UN-REDD Programme, and the Inter-American Development Bank) without soliciting public input. FCPF management selected indigenous individuals to participate in this taskforce, without publically requesting input from grassroots communities. Non-English speakers were effectively excluded from meaningfully participating on the taskforce because all of the working documents were written in English and most of the meetings were conducted in English. Most troubling is the fact that the “common approach” developed by the taskforce and adopted by the Participants’ Committee of the FCPF has never been made available for public comment.

Institutions designing REDD+ programs must ensure that (1) climate programs adopt safeguard policies that recognize and protect the rights of indigenous peoples to self-government and rights to land, territories, and natural resources and encourage the full and effective participation of indigenous peoples in every stage of program development; (2) indigenous peoples actually benefit from REDD+; (3) indigenous peoples do not suffer for the environmental damage caused by others; (4) REDD+ programs prohibit the involuntary relocation of indigenous peoples; and (5) states that engage in human rights violations related to REDD+ are excluded.

It is in the best interest of the Bank and other multilateral institutions to work with indigenous peoples and ensure that REDD+ programs have the highest degree of safeguard policies for the rights of indigenous peoples. Accordingly, we urge the FCPF and other Bank climate programs to conduct extensive consultations with indigenous peoples on REDD+ and develop REDD+ safeguard policies to ensure both the success of the programs and the full and effective participation of indigenous peoples. A copy of our comments on the FCPF and UN-

REDD Programme's Draft Guidelines on Stakeholder Engagement is attached for your information.

The Center remains eager to work towards producing the strongest possible Bank policy on indigenous peoples. We also welcome Bank officials, especially those from the legal department, to engage in dialog on these issues.

Sincerely,



Robert T. Coulter  
Executive Director  
Indian Law Resource Center



Armstrong Wiggins  
Washington Office Director  
Indian Law Resource Center



Leonardo Crippa  
Multilateral Development Banks  
Program Director  
Indian Law Resource Center

Enclosures:

Indian Law Resource Center's *Comments and Recommendations on the Forest Carbon Partnership Facility and UN-REDD Programme's Draft Guidelines on Stakeholder Engagement in REDD+ Readiness, with a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities.*

Letter to President Zoellick from Mr. James Anaya, Special Rapporteur on the Rights of Indigenous Peoples; Mr. Carlos Mamani UN Permanent Forum on Indigenous Issues and UN Expert Mechanism on the Rights of Indigenous Peoples (July 22, 2010).

cc:

His Excellency Barack Obama, President of the United States  
The Honorable Hillary Clinton, U.S. Secretary of State  
The Honorable Timothy F. Geithner, U.S. Secretary of the Treasury  
The Honorable Gary Locke, U.S. Secretary of Commerce  
Senator Daniel Akaka, Chairman, U.S. Senate Committee on Indian Affairs  
Senator John Barrasco, Vice Chairman, U.S. Senate Committee on Indian Affairs  
Congressman Don Young, Chairman, Sub-committee on Indian and Alaska Native Affairs  
Congressman Dan Boren, Ranking Minority Member, Sub-committee on Indian and Alaska Native Affairs  
Senator Tim Johnson, Chairman, U.S. Senate Committee on Banking, Housing and Urban Development

Senator Richard C. Shelby, Ranking Member, Senate Committee on Banking, Housing and Urban Development

Congressman Spencer Bachus, Chairman, House Committee on Financial Services

Congressman Jeb Hensarling, Vice Chairman, House Committee on Financial Services

World Bank Executive Directors

Her Excellency Dilma Rousseff, President of the Federative Republic of Brazil

His Excellency Stephen Harper, Prime Minister of Canada

His Excellency Naoto Kan, Prime Minister of Japan

His Excellency Herman Van Rompuy, President of the European Council

His Excellency Jens Stoltenberg, Prime Minister Kingdom of Norway

His Excellency David Cameron, Prime Minister of the United Kingdom