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April 19, 2005

For meeting of  
Board: Tuesday, May 10, 2005

FROM: Vice President and Corporate Secretary

**Revised Draft Operational Policy/Bank Procedures (OP/BP 4.10) Indigenous Peoples**

**Issues, Proposals and Recommendations**

1. Attached is a memorandum from the President and accompanying Issues Note entitled "Revised Draft Operational Policy/Bank Procedures (OP/BP 4.10) Indigenous Peoples - Issues, Proposals and Recommendations" dated April 15, 2005. Also attached are: (a) OP 4.10; (b) BP 4.10; (c) Revised Table A.1 (Environmental and Social Safeguard Policies -- Policy Objectives and Operational Principles) of OP 4.00 (Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects); (d) Staff Response to Public Comments: Revised Draft Policy on Indigenous Peoples; (e) Outline of the Indigenous Peoples Policy Guidebook; and (f) Legal Note by the Senior Vice President and General Counsel on Indigenous Peoples.
2. Following Board approval, the Issues Note, OP/BP 4.10, the Staff Response to Public Comments, and the Legal Note will be made publicly available.
3. Questions on this document may be addressed to Mr. Lintner (ext. 32508) or Mr. Rai (ext. 81298).

Distribution:

Executive Directors and Alternates  
President  
Bank Group Senior Management  
Vice Presidents, Bank, IFC and MIGA  
Directors and Department Heads, Bank, IFC and MIGA

Office of the President

April 15, 2005

**MEMORANDUM TO THE EXECUTIVE DIRECTORS**

**REVISED DRAFT OPERATIONAL POLICY/BANK PROCEDURES (OP/BP 4.10)  
INDIGENOUS PEOPLES**

**Issues and Proposals**

1. This paper proposes an update of the World Bank's operational policy on Indigenous Peoples. The revised policy content, which is reflected in the attached Revised Draft Operational Policy (OP) 4.10 on *Indigenous Peoples*, is being submitted to the Executive Directors for approval. OP/BP 4.10 is proposed to replace Operational Directive (OD) 4.20, *Indigenous Peoples*, which is currently in force.
2. This Revised Draft has been developed over the last seven years, evolving from an Approach Paper (1998) through a first draft (2001) to the present document. The process of consultation on the Approach Paper and the first draft has been both extensive and intensive, involving representatives of borrower governments, Indigenous Peoples leaders and Civil Society Organizations (CSOs) around the globe. Following these consultations and further revisions, the Revised Draft was discussed by the Committee on Development Effectiveness (CODE) in November 2004, which endorsed posting it for public comment. The Revised Draft was posted on the Bank's external website until February 28, 2005.
3. In finalizing the Revised Draft, Management has incorporated guidance from CODE and the Board in a number of areas, two of which are of particular note. First, the provisions of the current OD 4.20 have not been diluted in the Revised Draft OP. Second, in line with the August 3, 2004 Board decision on the Management Response to the Extractive Industries Review (EIR), the Revised Draft reflects the principle of "free, prior and informed consultation with affected communities" and clarifies the steps to ascertain the "broad community support" required for projects that are proposed for Bank financing. The Revised Draft also incorporates lessons learned in the Bank's engagement with Indigenous Peoples, including those identified by the Operations Evaluation Department (OED) in its evaluations in 2001-2002.
4. The time taken to finalize the Revised Draft reflects the complexity of the issues it addresses and the Bank's desire to follow an open and inclusive process. Substantial improvements have resulted from this process:
  - The Revised Draft: (a) clarifies many of the operational ambiguities in the current OD, such as the need for social assessment, application of the policy to economic migrants to urban areas, and the role of the borrower and the Bank in the screening process; (b) simplifies project processing requirements by establishing five clear steps: screening; social assessment; consultation with affected communities; preparation of plan or framework; and

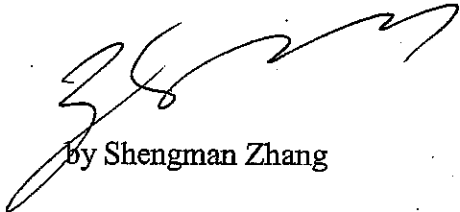
disclosure; and (c) provides for flexibility in carrying out project preparation activities by tailoring their breadth and detail to the nature, scale and potential effects of the project.

- The Revised Draft also strengthens requirements, in that: (a) the Bank will provide project financing only where free, prior and informed consultation results in broad community support; and (b) commercial development of affected Indigenous Peoples' cultural resources and knowledge is conditioned upon their prior agreement to such development.
- Finally, the Revised Draft has been made consistent with OP 4.00, *Piloting the Use of Borrower Systems to Address Environmental and Social Safeguards Issues in Bank-Supported Projects*, through addition of a new paragraph (paragraph 5) on the use of country systems. Table A1 (section E) of OP 4.00 has been revised to make it consistent with the Revised Draft OP 4.10.

### ***Recommendation***

5. I recommend that the Executive Directors approve the policy content of the revised draft Operational Policy (OP/BP 4.10), *Indigenous Peoples*, as set out in Section F of the attached Issues Note. I also recommend that the Executive Directors approve the disclosure of (a) the Issues Note, (b) the Legal Note on Indigenous Peoples and (c) the accompanying paper entitled *Staff Response to Public Comments: Revised Draft Policy on Indigenous Peoples*.
6. If Executive Directors approve, Management will issue OP/BP 4.10 to replace the existing Operational Directive 4.20, *Indigenous Peoples*. The new OP/BP will apply to all projects with a concept review on or after July 1, 2005. The new OP/BP will be publicly available in accordance with the *World Bank Policy on Disclosure of Information*.

James D. Wolfensohn  
President



by Shengman Zhang

**REVISED DRAFT OPERATIONAL POLICY/BANK PROCEDURES (OP/BP 4.10)  
INDIGENOUS PEOPLES**

**ISSUES AND PROPOSALS**

**ENVIRONMENTALLY AND SOCIALLY SUSTAINABLE DEVELOPMENT**

**APRIL 14, 2005**

**REVISED DRAFT OPERATIONAL POLICY/BANK PROCEDURES (OP/BP 4.10)**  
**INDIGENOUS PEOPLES**

**Issues and Proposals**

**A. Background**

1. Indigenous Peoples are an important part of the global population. There are approximately 250 million Indigenous Peoples worldwide. Indigenous Peoples are distinct populations in that the land on which they live, and the natural resources on which they depend, are inextricably linked to their identities and cultures. Therefore, dispossession or restriction of access has brought not only economic impoverishment but also loss of identity and threats to their cultural survival.
2. In a number of countries, Indigenous Peoples have faced discrimination not only in terms of their basic rights to property, language and culture, but also in terms of access to basic services and essential material conditions for their way of life. Socio-economic conditions and access to services are often significantly worse for Indigenous Peoples. Not surprisingly, Indigenous Peoples today are among the poorest and most socially excluded populations in the world.
3. The vulnerability of Indigenous Peoples is multi-faceted—including economic, cultural and social as well as environmental and demographic dimensions. Because of this, issues related to Indigenous Peoples and development are complex: development projects affecting Indigenous Peoples require special measures to ensure that these communities receive culturally compatible benefits and are not adversely affected by development projects.
4. From the perspective of Indigenous Peoples, benefits of development should be focused on social, cultural, environmental, spiritual and community aspects in addition to economic advancement. Indigenous Peoples sometimes view the principles and efforts of mainstream development as unsustainable, inappropriate or even intrusive.
5. National legislation in a number of countries affords special recognition to Indigenous Peoples—referred to as "indigenous ethnic minorities," "aboriginals," "hill tribes," "minority nationalities," "scheduled tribes" and "tribal groups." Legislation in a few countries, such as the Philippines and Colombia, fully recognizes the rights of Indigenous Peoples related to land and natural resources, and significant strides have been made elsewhere toward recognizing land claims of Indigenous Peoples. Thirteen countries in Latin America, three Nordic countries and Fiji have ratified ILO Convention 169, which is the foremost international legal instrument to recognize the rights of Indigenous Peoples.
6. Indigenous Peoples are becoming highly organized at the grassroots level, and are increasingly connected by national, regional and international networks. Over the last decade Indigenous Peoples leaders have begun to articulate successfully the concerns of Indigenous Peoples in international fora such as the United Nations Working Group on Indigenous Populations (UNWGIP) and United Nations Permanent Forum on Indigenous Issues (UNPFII).
7. Prominent discussions on the rights of Indigenous Peoples in which the Bank has been engaged include those on the Report of the World Commission on Dams and the recent EIR. In these discussions, Indigenous Peoples have demanded that their rights with respect to lands customarily used by them be recognized and their right of free, prior and informed consent be

respected. Recently, Indigenous Peoples leaders also made their voices heard during the World Summit on Sustainable Development (Johannesburg, August 2002), at the 3<sup>rd</sup> World Water Forum (Kyoto, March 2003), and at the World Parks Congress (Durban, September 2003).

### ***B. Policies on Indigenous Peoples***

8. The policy on Indigenous Peoples, one of the most politically sensitive and complex of all the Bank's safeguard policies, has the potential to benefit directly or indirectly Indigenous Peoples around the world. In 1982, the World Bank became the first multilateral financial institution to adopt an operational policy on tribal people. The Operational Manual Statement (OMS 2.34) aimed at safeguarding rights and interests of tribal people and protecting them from adverse impacts from Bank-financed projects. The OMS required that development projects affecting tribal people include either a "tribal component or parallel program" specifically targeted to them.
9. In 1991 the Bank replaced OMS 2.34 with the Operational Directive (OD) 4.20 on Indigenous Peoples, which remains in force. The OD goes beyond the safeguard provisions of the OMS. It requires that Indigenous Peoples receive culturally compatible social and economic benefits and that local preferences be identified through direct consultation. The OD includes a strategy for meaningful consultation with and informed participation of Indigenous Peoples. The policy requires projects to provide culturally appropriate benefits to Indigenous Peoples and to avoid adverse impacts.

### ***C. Policy Revision and Consultation Process***

10. In the process of revising OD 4.20, many internal and external consultations were held. The policy revision process began in 1998 when a joint ESSD-LEG Working Group was asked to draft an Approach Paper for the revision of OD 4.20 and to carry out consultations with internal and external stakeholders. Based on these consultations, the first version of draft Operational Policy (OP 4.10) was prepared. The first draft policy version was discussed at CODE in February 2001.
11. Following CODE's endorsement of conducting consultations with external stakeholders, a wide range of stakeholders was consulted, among them representatives of borrower governments, Indigenous Peoples Organizations (IPOs), other CSOs, academia and development institutions. The draft policy documents (OP/BP 4.10, Version of March 23, 2001) were circulated in eleven languages (Arabic, Bahasa-Indonesia, Cebuano, Chinese, English, French, Hindi, Portuguese, Russian, Spanish, and Vietnamese). For the first time in Bank history, extensive, direct consultations were undertaken with Indigenous Peoples' leaders from around the world, rather than with CSOs acting as intermediaries. Representatives of borrower governments were normally invited to consultations held in their countries. A number of countries did send representatives, among them Brazil, India, Mexico, Panama, Peru, Philippines, Russia, Venezuela and Vietnam. The Bank participated in 32 consultation meetings with external stakeholders from 35 countries. About 1,200 stakeholders participated in these meetings. Written input was also received from 345 individuals.
12. In 2002, the Bank held two roundtables with global Indigenous Peoples leaders on outstanding issues. Consultations continued in 2003 and input into policy revision was garnered at annual

meetings of the UNPFII and the UNWGIP. In May 2004, representatives of Indigenous Peoples and Bank Legal Department staff held a meeting to discuss the draft policy. Internally, discussions were held with the Legal Department, OPCS, all six Regions and representatives of the relevant Sectors and Networks as well as IFC and MIGA.

13. For the final round of public comments, which ended on February 28, 2005, the Revised Draft (Version of December 1, 2004) was posted in three languages (English, French and Spanish). During the public comment period, the Bank received comments from twenty-one entities. Seven came from IPOs and six from other non-governmental organizations (NGOs). The remainder came from United Nations (UN) bodies, a bilateral development agency, a professional association, the private sector and individuals. The majority of the comments concerned the rights of Indigenous Peoples and international law. See attached Response to Public Comments on Revised Draft Indigenous Peoples Policy.
14. Management estimates that the total cost for the consultation process over the last seven year period amounted to one million US dollars. One of the unanticipated positive outcomes of the long and intensive consultation period was, in Management's view, improved direct engagement with Indigenous Peoples leaders.

**D. Guidance from CODE/Board for the Revision of the Policy**

15. The revision of the Indigenous Peoples policy benefited from guidance that CODE and the Board provided to Management on several occasions:
  - When CODE met on February 22, 2001 to discuss the draft OP/BP 4.10, Indigenous Peoples, it stressed that "the language of the OP should not be weakened in further revisions."
  - At a September 18, 2002 meeting on the OED Evaluation, *Implementation of OD 4.20: An Independent Desk Review*, CODE underlined the need for clarity in the definition of Indigenous Peoples, the costs and benefits of applying the policy and the role of the Bank in harmonizing Indigenous Peoples policies across the Multilateral Development Banks (MDBs).
  - Board discussions on the EIR on August 3, 2004 led to revisions that reflect the Management Response to the EIR with regard to "free, prior and informed consultation" and "broad community support."
16. On November 29, 2004, CODE met to discuss the present Revised Draft. Members commended staff efforts to produce a more user-friendly document and the extensive consultation process undertaken to date. Members broadly agreed on several issues, namely: retaining consistency with the Board's view on the EIR; no outright ban on physical relocation; and the four criteria for defining Indigenous Peoples. The following issues were discussed extensively by CODE members:
  - *Use of Borrower Framework for Identification of Indigenous Peoples.* Management clarified that borrower definitions and regulatory frameworks should be used when they exist and are consistent with OP/BP 4.10 but should not be relied on alone; a number of borrower

countries either do not have any legislation concerning Indigenous Peoples or have legislation that is not aligned with the principles underlying the OD and proposed OP.

- *Harmonization and Emerging Principles of International Law.* Management clarified that principles of international law regarding Indigenous Peoples are not yet fully established but are rather emerging; the Bank is following this issue closely. With regard to harmonization, the Bank is working with regional development banks with whom it partners regularly, to achieve consistency in co-financed operations. It is partnering with the Asian Development Bank and Inter-American Development Bank to jointly prepare a guidebook on Indigenous Peoples.
- *Use of Term "Indigenous Peoples."* Following the request of one member of CODE to review the title of the OP, Management confirmed its belief that the current title of the revised draft policy is appropriate. The Revised Draft notes that the term is used in a generic sense to refer to those people who meet the established criteria, namely self-identification and identification by others; collective attachment to ancestral territories; customary cultural, economic, social or political institutions and an indigenous language. The Revised Draft clearly recognizes that: (a) there is no universally accepted definition of "Indigenous Peoples;" and (b) these groups may be referred to in different countries by such terms as "indigenous ethnic minorities," "aboriginals," "hill tribes," "minority nationalities," "scheduled tribes," or "tribal groups." Management also noted that changing the title would be inconsistent with the practice in the Bank since 1991 as well as with the current UN System and other MDBs. Including the word "tribal people" could raise expectations of about 200 million people in Sub-Saharan Africa, the Middle East and North Africa and parts of South Asia. See also the Legal Note on Indigenous Peoples prepared by the General Counsel.

#### ***E. OED Evaluation of Implementation of Indigenous Peoples Policy***

17. The Revised Draft adopts six of the seven recommendations contained in the OED report.

- It clarifies the intent, scope and requirements of the policy.
- It clearly distinguishes between the do no harm provisions, aimed at addressing adverse impacts, and the do good aspects that focus on proactive development measures.
- It facilitates a process to assist borrower countries with significant numbers of Indigenous Peoples in identifying ways to provide culturally appropriate assistance to Indigenous Peoples.
- It strengthens provisions to ensure effective participation of Indigenous Peoples during project design and implementation, and to systematically monitor project impact and outcomes on Indigenous Peoples.
- It clarifies gender and generational dimensions of the policy.
- It includes a mechanism for dispute resolution which will increase Indigenous Peoples Plan effectiveness.



As discussed in the CODE meeting in September 2003, Management did not agree with the seventh OED recommendation to rely solely on a country's legal framework for identification of Indigenous Peoples.

18. In response to comments from OED at the CODE meeting in November 2004, Management noted that the definition of Indigenous Peoples had been tightened by clarifying that the attachment of Indigenous Peoples to land is "collective," and by deleting the reference to Indigenous Peoples having primarily subsistence-oriented production. Management clarified that "nomadic" and "transhumant" groups are also covered under the current OD if and when they meet the characteristics used to identify Indigenous Peoples. Regarding the Bank's responsibility in identifying Indigenous Peoples, Management clarified that, as with other safeguard policies, due diligence is to be executed by Bank staff and accountability rests with them at the project level. Management clarified that the borrower carries out the social assessment and prepares the Indigenous Peoples Plan (IPP).

**F. *Important Revisions to the Policy***

19. *The Revised Policy Retains Safeguards Provision of the OD.* The Revised Draft Indigenous Peoples policy (OP 4.10) has retained the policy requirements of the current OD 4.20 that Bank-financed projects are designed not only to avoid adverse impacts but equally importantly to provide culturally appropriate benefits.
20. In terms of changes to the policy, the Revised Draft accomplishes the following:
- (a) *Clarification and Simplification.* The Revised Draft improves on OD 4.20 in three critical ways.
- It clarifies numerous ambiguities related to: (a) the need for social assessment; (b) application of the policy to economic migrants to urban areas; and (c) the role of the borrower vs. the Bank in screening to determine whether Indigenous Peoples are present in project area.
  - It simplifies the project processing requirement by establishing five clear steps: screening; social assessment; consultation with affected communities; preparation of plan or framework; and disclosure.
  - It adds flexibility into the project processing requirements by: (a) specifying that the level of detail is proportional to the complexity of the proposed project and commensurate with the nature and scale of the proposed project's potential effects; and (b) proposing a planning framework (instead of an up-front plan) for projects that involve preparation and implementation of annual investment programs and multiple subprojects as well as a process framework for projects involving parks and protected areas.

To complement this clarification and simplification, new Bank Procedures (BP 4.10) have been finalized and are included in the Board Package. A detailed Indigenous Peoples Policy Guidebook (see attached Outline of Guidebook) is also being prepared to provide guidance to staff in project processing.

(b) *Strengthened Areas*. Requirements of the Revised Draft are stronger than those of OD 4.20 for the following.

- *Free, prior and informed consultation resulting in broad community support*. Reflecting Board discussions on the EIR on August 3, 2004 and the Management Response to the EIR, project-affected Indigenous Peoples are afforded a stronger voice through a process of free, prior and informed consultation. The Bank will provide project financing only where free, prior and informed consultation results in broad community support. The Bank will not agree to physical relocation of Indigenous Peoples if they have not provided their broad support.
- *Prior agreement with Indigenous Peoples for commercial development of cultural resources*. Commercial development of affected Indigenous Peoples' cultural resources and knowledge is conditioned upon their prior agreement to such development.

21. The Board approved the Operational Policy on *Piloting the Use of Borrower Systems to Address Environmental and Social Safeguards Issues in Bank-Supported Projects* (OP/BP 4.00) on March 18, 2005. The latest Revised Draft of OP 4.10 (April 6, 2005) has been made consistent with OP 4.00 through addition of a new paragraph (para. 5):

*"Use of Country Systems*: The Bank may decide to use a country's systems to address environmental and social safeguard issues in a Bank-financed project that affects Indigenous Peoples. This decision will be made in accordance with the requirements of the applicable Bank policy on country systems.<sup>1</sup>"

#### G. *Outstanding Issues*

22. *Four Outstanding Issues of Indigenous Peoples*. There are four issues on which the Revised Draft policy does not meet fully the expectations of some external stakeholders. These issues were raised during earlier consultations and again in the final round of public comments on the Revised Draft:

- *Recognition of self-identification as the principal criterion for determining indigenous status*. The Revised Draft gives greater weight to self identification criterion but does not call for it as principal criterion for reasons of difficulty in operationalization.
- *Recognition of the right of free, prior and informed consent of Indigenous Peoples regarding development projects which affect them*. By this, Indigenous Peoples would want the "right to say no" to World Bank-financed project that affect them. The Revised Draft provides Indigenous Peoples a significant voice in projects that affect them. It requires the borrower to conduct free, prior and informed consultations and to seek broad community support from Indigenous Peoples in deciding whether to proceed with the project. The Revised Draft does not, however, recognize the right of Indigenous Peoples to veto projects that affect them.

<sup>1</sup> The currently applicable Bank policy is OP/BP 4.00, *Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-Supported Projects*. Applicable only to pilot projects using borrower systems, the policy includes requirements that such systems be designed to meet the policy objectives and adhere to the operational principles related to Indigenous Peoples identified in OP 4.00.

- *The full recognition of customary land rights of Indigenous Peoples.* While the Revised Draft does not call for full recognition of land rights, it requires the borrower to set forth an action plan for the recognition of such rights.
- *Prohibition of physical relocation of Indigenous Peoples (unless consented to by them).* The Revised Draft does not prohibit physical relocation, but requires the borrower to seek broad support of the affected communities prior to carrying out the physical relocation.

#### **H. *Update of Annex to Piloting the Use of Borrower Systems to Address Environmental and Social Safeguard Issues in Bank-supported Projects***

23. During the February 24 Board discussion of the report, *Expanding the Use of Country Systems in Bank-Supported Operations: Issues and Proposals* (R2005-0018), Management was requested to update Table A1 of the new OP 4.00, *Piloting the Use of Borrower Systems to Address Environmental and Social Safeguards Issues in Bank-Supported Projects* to make it consistent with the Revised Draft OP 4.10 and to present it to the Board together with the Revised Draft. The section of Table A1 related to Indigenous Peoples (section E) is attached here.

#### **I. *Cost of Doing Business***

24. The ambiguities in the current OD have resulted in added cost to the Bank and the borrower; it is one of the most frequently cited policies in Inspection Panel cases. The Revised Draft will reduce transaction costs for two reasons: (a) it clarifies to whom the policy applies and the Bank's role in determining policy application; and (b) it simplifies project processing steps. In addition, OP/BP 4.10 will be accompanied by the Indigenous Peoples Guidebook (under preparation) to aid staff in application of the policy.
25. On the other hand, the process of free, prior and informed consultation leading to broad community support will add costs to project preparation. Overall, the net transaction cost is likely to be lower for both the Bank and the borrower.

#### **J. *Evolution of the Bank's Approach to Indigenous Peoples***

26. Over the past decade the Bank's discussions with Indigenous Peoples and their advocates have frequently been focused narrowly on the Bank's Indigenous Peoples safeguard policy. While needed, this has had the unfortunate effect of obscuring the wide and increasingly diverse range of activities that the Bank has undertaken in its approach to Indigenous Peoples.
27. In order to address this issue, the Bank has taken a proactive approach in its work with Indigenous Peoples. This shift in approach is best expressed as a move from "doing no harm" to "doing good." The Bank Paper, *Empowering People by Transforming Institutions: Social Development in World Bank Operations* (R2005-0017; February 2, 2005) reinforces this approach, placing Indigenous Peoples and other vulnerable groups at the center of development, so that they can have control over their own future.

28. Proactive measures supported by the Bank at the request of the borrower country include:

- Strengthening and improving the policy and institutional frameworks affecting Indigenous Peoples and their relations with other groups of national society;
- Building indigenous capacity for self-development, based upon their cultural heritage and knowledge;
- Demonstrating the important role that Indigenous Peoples can play in the management of fragile ecosystems and biodiversity conservation; and
- Disseminating the experience learned from such indigenous development initiatives to national governments and the international donor community.

29. *Direct Partnerships with Indigenous Peoples:* Over the last decade, the Bank has moved away from working only with NGO representatives and is now engaging directly with Indigenous leaders. The Bank helped establish an Inter-Agency Group on Indigenous Peoples in Latin America, with the Inter-American Development Bank and the Fund for the Development of Indigenous Peoples of Latin America (*Fondo Indigena*) as main partners. Bank staff have participated for several years in two high level international Indigenous Peoples' fora (UN Working Group on Indigenous Populations in Geneva and the UN Permanent Forum on Indigenous Issues in New York). In an effort to implement the more proactive aspects of the approach, the Bank has begun to establish direct partnerships and dialogues with Indigenous Peoples and their representative organizations, while continuing its work with borrower governments and CSOs. As a result of these changes, the general relationship between Indigenous Peoples leaders and the Bank has improved significantly.

30. *Direct Funding to Indigenous Peoples Communities:* The World Bank Grants Facility for Indigenous Peoples also is part of the refocusing of the Bank's strategy. The Grants Facility provides grants directly to Indigenous Peoples organizations for empowerment and inclusion of Indigenous peoples. While small in scale, this initiative is viewed as a concrete step by the Bank to address poverty among Indigenous Peoples. The Grants Facility receives support from the Government of Norway and the Government of Canada has also expressed interest in supporting it.