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Inter-American Development Bank
Sustainable Development Department
Indigenous Peoples and Community Development Unit

Operational Policy on Indigenous Peoples

Draft

(Authorized for public information)

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Preamble

The Bank's Eighth Replenishment Report, adopted in 1994, requires the systematic inclusion of indigenous issues in Bank policies and projects (document AB-1704, paragraph 2.27). This new proactive approach complements the earlier focus on avoiding or mitigating the adverse impacts of Bank projects on indigenous peoples, and coincides with the growing protagonism of indigenous peoples and organizations in their respective countries and at the international level. In this context, the Bank recognizes the specificity of the culture, rights, and aspirations of indigenous peoples issuing from their status as the descendants of populations that inhabited Latin America and the Caribbean at the time of the conquest or colonization.

The Bank's experience has given it an appreciation for the needs, rights, demands, and aspirations of indigenous peoples according to their own world view. Consequently, the Bank seeks to promote sociocultural development processes that are appropriate to the economy and governance of indigenous peoples, giving priority to cultural and territorial integrity, to a harmonious relationship with the environment, and to security in the face of vulnerability, while safeguarding the individual and collective rights of indigenous peoples. The Bank recognizes the need to consolidate conditions that enable indigenous peoples to exercise the right to determine their own political, economic, social, and cultural future within the framework of participation in democratic systems and of the construction of multicultural states. This policy seeks to consolidate the Bank's role and renew its commitment to the development with identity of indigenous people.

I. Definitions

- 1.1 **Indigenous peoples**, for the purposes of this policy, is a term that refers to peoples who meet the following three criteria: (i) they are descendants from populations inhabiting Latin America and the Caribbean at the time of the conquest or colonization; (ii) irrespective of their legal status or current residence, they retain some or all of their own social, economic, cultural, and political institutions and practices; and (iii) they recognize themselves as belonging to indigenous or precolonial cultures or peoples.
- 1.2 **Indigenous rights** include the collective and individual rights of indigenous peoples and their constituents,¹ whether originating in the indigenous juridical systems of each people,² in the

¹ When in conflict, collective rights will take priority, particularly with regard to rights over land, territory, and natural resources.

² The concept of indigenous juridical system, also known as internal or self-generated, includes laws of origin, customary rights, customs and uses, and indigenous justice and juridical systems, provided they do not contradict fundamental rights established in national legislation and international norms.

indigenous legislation issued by States, in other relevant national legislation or in applicable international law.³

- 1.3 **Indigenous governance** is defined as the scope of self-governance by indigenous peoples that, in keeping with applicable law, contemplates: (a) the recognition of the special relationship that exists between the land and ethnic and cultural identity; (b) a high degree of autonomy in the management of indigenous lands within the States of which they are part; and (c) the effective participation of indigenous peoples in local, provincial, and national government.
- 1.4 **Development with identity of indigenous peoples** refers to a process that includes the strengthening of indigenous territories, sound management of natural resources, the generation and exercise of authority, and respect for the cultural, economic, social, legal, and institutional rights and values of indigenous peoples in accordance with their own world view and governance. This concept rests on the principles of equity, holism [wholeness], reciprocity, and solidarity and seeks to consolidate the conditions for indigenous peoples and their constituents to thrive and grow in harmony with their surroundings, and in so doing tapping for that purpose the potential of their cultural heritage, natural assets, and social capital.

II. Objectives and Goals

- 2.1 The objective of this policy is to enhance the Bank's contribution to the development of indigenous peoples by supporting the region's governments and indigenous peoples in achieving the the following objectives:

- (a) **Support the development with identity of indigenous peoples**, including their capacity for self-governance..
- (b) **Safeguard indigenous peoples and their rights** against adverse impacts and exclusion in Bank-funded development projects.

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III. Scope of Application of the Policy

- 3.1 The policy applies to the Inter-American Development Bank and the Multilateral Investment Fund. Activities and instruments subject to the present policy include all Bank-supported operations and activities, including financial and nonfinancial products.

³ International legislation includes the United Nations Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the American Convention on Human Rights (1969), the International Covenant on Economic, Social, and Cultural Rights (1976), the International Convention on the Elimination of all Forms of Racial Discrimination (1966), the Convention on the Rights of the Child (1990), the International Labor Organization (ILO) Convention 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957), ILO Convention 169 concerning Indigenous and Tribal Populations in Independent Countries (1989), Agenda 21 adopted by the United Nations Conference on Environment and Development (UNCED) (1992), and the International Convention on Biological Diversity (1992). Other legal instruments in preparation are the draft United Nations Declaration on the Rights of Indigenous Peoples and the draft American Declaration on the Rights of Indigenous Peoples. With respect to the safeguards established in this policy, the international norms applicable as part of the definition of "rights" will be those that are ratified by the country associated with the relevant project and, in exceptional cases will also include those unratified norms that the Bank considers indispensable to ensure the sociocultural viability of the project.

IV. Policy Directives

- 4.1 The policy contains two sets of directives. The first requires the Bank to use its best efforts to **promote the development with identity** of indigenous peoples. The second creates **safeguards** designed to prevent or minimize exclusion and adverse impacts that Bank operations might generate with respect to indigenous peoples and their rights.

A. Promoting Development with Identity

- 4.2 The Bank will use its best efforts to support the region's governments and indigenous peoples, as well as relevant private sector and civil society actors, in mainstreaming indigenous issues in local and national development agendas and in the Bank's project pipeline. It will pursue this through specific initiatives and, where technically feasible and appropriate, the integration of complementary activities, operations, and general initiatives.

- (a) **Mainstreaming specifically indigenous issues in development agendas through independent operations.** The Bank will seek to support the initiatives of governments and indigenous peoples designed to promote indigenous social, economic, political, and organizational development through socioculturally appropriate activities and operations and innovative mechanisms. To this end, the Bank will conduct participatory diagnostic studies and promote the inclusion of the corresponding conclusions and recommendations into the design of projects, programs, and technical-cooperation operations. To be considered by the Bank, these operations must have the respective country's support or non objection and be based on socioculturally appropriate processes of consultation with the indigenous peoples concerned. The consultations carried out in a manner appropriate to the circumstances, with a view to reaching agreement or obtaining consent.⁴
- (b) **Mainstreaming indigenous specificity in projects with a general approach.** For activities and operations not specifically targeting indigenous peoples but of potential benefit to them, the Bank will provide incentives and support for borrowing member countries or project proponents to implement the appropriate adjustments to address the needs and development opportunities of indigenous peoples. This includes technically feasible complementary measures to: (i) identify and target indigenous peoples that could potentially benefit; (ii) implement socioculturally appropriate and effective consultation processes with these peoples; (iii) respect the traditional knowledge, cultural heritage, natural assets, social capital, and the systems specific to indigenous peoples with respect to territory, land tenure, law, economy, language, and spirituality system; (iv) adapt services and other activities to facilitate access to them by indigenous beneficiaries, including, whenever feasible, preferential treatment, adequate procedures and criteria, and programs for capacity-building and compensation of exclusion factor; and (v) design complementary measures and activities through a process of good faith negotiation with indigenous target groups.

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- 4.3 In its efforts to facilitate dialogue and support the mainstreaming of indigenous issues, the Bank will take into account the views and circumstances of the governments and of the indigenous peoples of each country. These efforts, through studies, independent operations, and specific complementary measures included in general operations will seek to address, as far as is feasible

⁴ The concepts of agreement and consent as used in this policy include as necessary characteristics reliance on proper information to affected persons as to the nature, scope, and impact of the activities concerned, and freedom from coercion or undue influence.

and appropriate, the various facets of development with identity, among which, the following come to the forefront:

- (a) **Visibility and understanding of the challenges to indigenous development, in rural and urban contexts**, including the dynamics of internal and external indigenous migration, with a view to promoting effective development programs that geographically target rural and urban indigenous settlements, neighborhoods, or communities.
- (b) **Development of socioculturally appropriate solutions to increase the availability and quality of social services, particularly health and education**, for indigenous peoples, through the development of systems of their own, adaptation of general services, articulation of traditional elements with general systems with an intercultural perspective, and training for indigenous professionals and staff.
- (c) **Recognition, articulation, and implementation of indigenous rights**, including indigenous juridical systems that coexist with national legislation in a context of legal pluralism in the region.
- (d) **Support for indigenous culture, identity, language, knowledge of traditional arts and techniques, cultural resources, and intellectual property of indigenous peoples**,⁵ and assistance to governments and indigenous peoples in strengthening legal frameworks.
- (e) **Strengthening of titling and physical management processes for territories, lands, and natural resources** traditionally occupied or used by indigenous peoples, in accordance with applicable laws and rights, and with environmental protection objectives, including the promotion of sustainable cultural land uses and promotion of investment in community assets and productive projects in indigenous areas.
- (f) In natural resource management and extraction and protected area management projects, the **promotion of mechanisms for appropriate consultation, participation in land management, and benefit sharing** by the indigenous peoples on whose lands and territories the projects are conducted.
- (g) Development of socioculturally appropriate project alternatives for **better access by indigenous peoples to labor, production, and financial markets**, technical assistance, and information technology.
- (h) **Support for indigenous peoples governance** through: strengthening capacity, institutions, processes for management, decision-making, and territorial and land administration at the local, national, and regional levels; improving management of the public budget in order to promote the effective, efficient, equitable, and transparent use of public investment in the territories of indigenous peoples; and institutionalizing mechanisms for consultation and consensus between governments and indigenous peoples, especially in the design and implementation of strategies and public policies that affect these peoples.

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⁵ The definitions of "indigenous knowledge," "cultural resources," and "intellectual property" in applicable national and international law will be used as a reference standard.

- (i) **Support for leadership by women, youth, children, and the elderly** in indigenous development through the promotion of equal rights, taking into account indigenous peoples' own decisions.
- (j) **Strengthening of the institutional capacity** of indigenous peoples, government entities, the private sector, civil society, and the Bank itself to address indigenous issues.

B. Safeguards in Bank Operations

4.4 The Bank will conduct its operations in a way that prevents or minimizes direct or indirect adverse impacts on indigenous peoples or their individual or collective rights or assets. For this purpose, the Bank will adopt the technical criteria and procedures as necessary to apply the following specific safeguards, proportionately to the potential adverse impacts identified:

- (a) **Adverse impacts.** The Bank will institute mechanisms to identify and assess the potential adverse impacts of its operations on indigenous peoples, and to ensure that project proponents implement control measures, including processes of consultation and good faith negotiation with affected indigenous peoples or groups, in accordance with the procedures outlined in paragraph 5.3 of this policy. To this end, in a manner commensurate with the nature and intensity of each project's potential adverse impacts:
 - (i) The Bank will require and verify that the project proponent⁶ conduct an evaluation to determine the seriousness of potential adverse impacts on physical and food security, lands, territories, resources, society, rights, traditional economy, way-of-life and identity or cultural integrity of indigenous peoples, and to identify the indigenous peoples are affected and their legitimate representatives and internal decision-making procedures.
 - (ii) When potential adverse impacts are identified, the Bank will require and verify that the project proponent incorporate the design and implementation of the measures necessary to minimize or prevent such adverse impacts, including plans for consultation and good faith negotiation, mitigation measures, monitoring, and compensation.⁷
 - (iii) For cases of particularly significant potential adverse impacts that carry a high degree of risk to the physical, cultural, or territorial integrity of the affected indigenous peoples or groups, the Bank will further require and verify that the project proponent demonstrate that it has, through a good faith negotiation process consistent with the internal decision-making mechanisms of the affected indigenous peoples or groups, obtained agreements regarding the operation and measures to address the adverse impacts that support, in the Bank's judgment, is the sociocultural viability of the operation.
- (b) **Territories, land, and natural resources.** Operations that directly or indirectly affect the legal status, possession, or management of territories, lands, or natural resources traditionally

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⁶ "Project proponents" include borrowers in the public and private sectors during the preparation as well as execution stages of projects.
⁷ When the Bank considers it necessary in order to ensure fair compensation, it may require measures that complement the scope of the relevant national legislation in accordance with applicable international standards.

occupied or used by indigenous peoples, under rights or claims that are legally recognized or pending recognition,⁸ will include specific safeguards, consistent with national legislation on indigenous rights, the obligations of applicable international treaties, indigenous juridical systems, and norms regarding ecosystem and land protection. Such safeguards include: (i) respect for legally recognized as well as collective and customary rights over indigenous lands, territories and natural resources;⁹ (ii) in projects for natural resource extraction and management and protected areas management, the inclusion of: (1) prior consultation mechanisms to safeguard the physical, cultural, and economic integrity of the affected peoples and the sustainability of the protected areas and natural resources; (2) land co-management mechanisms; and (3) fair compensation and, whenever feasible, participation in project benefits; and (iii) where legal or administrative protection is insufficient to ensure the physical integrity and legal status of the affected lands and resources, include restrictions on project activities or corrective or compensatory measures.

- (c) **Indigenous rights.** The Bank will take into account, whenever relevant to its operations, respect for the collective and individual rights and for indigenous peoples' own normative systems, in the context of national legislation and applicable international treaties in effect in each country.
- (d) **Prevention of ethnically based discrimination.** In Bank projects where explicit or implicit factors exist that exclude indigenous peoples and individuals from the benefits of Bank-funded activities on ethnic grounds, the project activities will include such corrective measures, such as: (i) informing indigenous organizations and individuals of their rights under labor, social, financial, and business legislation and of the recourse mechanisms available; (ii) dissemination, training, and measures to eliminate access barriers to benefits and resources such as credit, employment, business services, health services and education services, and other benefits generated or facilitated by the projects; (iii) granting to indigenous workers, entrepreneurs, and beneficiaries the same protection afforded under national legislation to other individuals in similar sectors and categories, taking into account gender issues and ethnic segmentation in goods and labor markets, as well as linguistic factors; and (iv) assuring equal opportunity for proposals submitted by indigenous peoples.
- (e) **Indigenous culture, identity, language, and traditional knowledge.** In recognition of the special sociocultural and linguistic characteristics of indigenous peoples, Bank operations will include such measures as are necessary to protect these assets from potential adverse impacts. In relevant projects, a consultation and good faith negotiation process will be used to identify the potential risks and impacts and to design and implement socioculturally appropriate measures. In case of commercial development of indigenous cultural and knowledge resources, the Bank will require prior agreement by the affected peoples that includes safeguards for intellectual property and traditional knowledge, as well as provisions for their equitable participation in the benefits derived from such commercial development.
- (f) **Transborder indigenous peoples.** In regional projects involving two or more countries or in border areas where indigenous peoples are present, the Bank will adopt such measures as are necessary to ensure that its projects do not adversely affect transborder peoples. These

⁸ Land and territories whose recognition or legal status is openly and legitimately in dispute.

⁹ Seventeen out of 19 countries with indigenous populations in Latin America and the Caribbean recognize customary law. A comprehensive overview and comparative analysis of legislation pertaining to indigenous peoples in all countries of the region has been prepared by the Bank and can be found at: www.iadb/sds/ind.

will include consultation and good faith negotiation processes, legal security and territorial control programs, and other culturally appropriate programs related to rights and priorities in health, freedom of movement, dual nationality, and cultural, social, and economic integration between the affected peoples.

- (g) **Uncontacted indigenous peoples.** In view of the exceptional nature of uncontacted indigenous peoples, as well as their special vulnerability and the impossibility of applying prior consultation and good faith negotiation mechanisms, the Bank will not finance projects with potential adverse impacts located in areas occupied directly by uncontacted indigenous peoples, also known as “peoples in voluntary isolation.”¹⁰ For projects located near such areas, the necessary measures will be adopted to safeguard the cultural, territorial, and physical integrity of these peoples and to avoid contact with them as a direct or indirect consequence of the project.

V. Implementation

5.1 The Bank will adopt the necessary measures to implement the safeguards established in this policy and to identify opportunities to actively promote the inclusion of development with identity of indigenous peoples in general development plans and in the Bank’s project pipeline. These measures will be described in detail in specific guidelines regarding procedural and technical matters approved for this purpose in accordance with paragraph 6.4 and, and as far as is possible, will follow existing Bank procedures for the environmental and social review of its operations.

5.2 **Strategic measures.** For countries with indigenous populations of significant size, diversity, or vulnerability, country strategy and programming processes, as well as sector, national subregional and operational strategies will effectively consider development with identity. In its preliminary analysis for these processes, the Bank will consider the following aspects of indigenous issues in each country or region: (a) the identification of priorities for development with identity and the challenges and opportunities involved; (b) normative and institutional conditions; (c) the experience of the Bank and of other multilateral agencies; and (d) the setting of strategic priorities for the Bank. Whenever feasible, this analysis will include inputs from indigenous peoples as well as governments. Where the findings of the preliminary analysis so warrant, the Bank will discuss with the government the strategic objectives and possible actions to address priority issues for the development with identity of indigenous peoples in the country, and reflect the agreements reached in the strategy papers. Where appropriate, the programming paper will include specific activities and goals for development with identity to be included in the Bank’s pipeline for the country, and preliminary risk management measures and criteria to facilitate the application of the safeguards established in this policy.

5.3 **Operational measures.** The procedures for the application of this policy will include the following process guarantees:

- (a) The Bank, taking into account the views of indigenous peoples, will systematically perform a technical review of all operations submitted for its consideration in the programming and identification stages in order to: (i) determine whether indigenous peoples who might be

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¹⁰ This scope of this safeguard is limited in scope to cases of small groups and peoples living mainly in the Chaco and the Amazon jungle refuge areas who do not wish to establish contact with Western civilization, and whose health, culture, and way of life are extremely vulnerable to external contact.

affected are present and identify potential impacts and benefits for these peoples be they direct, indirect, cumulative or regional; and (ii) depending on the nature, scope, and intensity of the impacts and benefits identified, determine the level of analysis needed to address indigenous issues, including sociocultural analyses and consultation and good faith negotiation processes. . This review will be performed by the responsible Bank division. If the project so warrants, the review will rely on experts in indigenous issues and, whenever possible, on inputs from the indigenous peoples who might be affected by the project. The findings of this review will be incorporated into the project concept paper.

- (b) Once the decision to proceed with a project with potential adverse impacts has been made, the Bank will provide guidance for and to the Bank's satisfaction, as early as possible in the project cycle, verify compliance by the project proponent with the following requirements: (i) preparation of sociocultural evaluations as inputs for the loan document, analysis mission, and the project environmental and social review; (ii) implementation of socioculturally appropriate and duly documented consultation and good faith negotiation processes with the affected indigenous peoples in relation to project design, analysis of alternatives, preparation, due diligence, and execution;¹¹ and (iii) incorporation into the project of enforceable measures for mitigation, restoration, and compensation reflected in the content of the loan document and contract and detailed in plans for indigenous protection, compensation, and development or in other instruments in a timely manner.
- (c) In addition to the requirements described in the preceding paragraph (b), for projects with particularly significant adverse impacts on indigenous peoples or groups, the Bank will require that the project proponent provide, no later than by the date of consideration of the operation by the Board of Executive Directors, evidence duly verified by the Bank and to the Bank's satisfaction of the agreements reached with the affected peoples, as stipulated in paragraph 4.4(a)(iii) of this policy.¹²
- (d) The Bank will adopt supervision and evaluation measures designed to verify that the project proponent fulfill, to the Bank's satisfaction, the measures agreed to meet the requirements of this policy with respect to each project, including socioculturally appropriate mechanisms for the participation of affected indigenous peoples in the monitoring and evaluation of those measures. If these requirements are not met, the Bank will take the corrective actions necessary for the project proponent to correct the problems identified within an acceptable timeframe.

VI. Coordination and Internalization of Indigenous Issues

- 6.1 The Bank will implement dissemination and training measures to raise awareness of to indigenous issues within the institution and in the region, and to improve the degree of knowledge and sensitivity of its staff and local counterparts to with regard to indigenous peoples.

¹¹ As an exception, when the potentially affected indigenous peoples show no interest in taking part in the consultation process, evidence of the project proponent's good faith efforts to consult the affected peoples, and of the alternative means used to identify necessary and socioculturally appropriate mitigation measures will satisfy this requirement.

¹² As an exception, evidence of good faith negotiation and agreements may be presented: (a) before the first disbursement for operations with preliminary or general agreements with indigenous peoples that may involve subsequent stages of additional negotiation and final or specific agreements on operational grounds; and (b) throughout operations with investments not specified a priori, with a plan for consultation and negotiation agreed with the affected indigenous peoples identified in advance, and available for any indigenous peoples subsequently identified.

- 6.2 The Bank will take the necessary measures to eliminate the barriers to entry faced by indigenous peoples and, whenever technically viable and feasible, will ensure equality of conditions for indigenous participation as direct beneficiaries, permanent staff, and suppliers of goods and services in Bank-financed contracts. Such measures will be consistent with the Bank's procurement norms and may include special instruments and procedures designed to identify and implement eligibility criteria and simplified, differentiated procedures in line with the particular characteristics of indigenous candidates, information and training programs, and other appropriate measures.
- 6.3 The Bank's application of this policy will be consistent with all relevant Bank policies, strategies, and guidelines, and particularly other safeguard policies, including operational policy OP-710 on involuntary resettlement. In case of conflict, the standard that offers the highest degree of protection of indigenous peoples and their rights will govern.
- 6.4 The Programming Committee of Management will issue guidelines to facilitate the implementation of this policy. The Indigenous Peoples Development Strategy will also guide implementation of this policy. The operational guidelines for sociocultural evaluation, the Environment and Safeguards Compliance Policy, the specific, applicable sector instruments, and methodological tools and guidelines issued from time to time by the Bank will serve this same purpose. Bank management will update the guidelines periodically to reflect the evolution of international good practices. The guidelines will be made publicly available.

VII. Indicators, Monitoring, and Reports

- 7.1 The guidelines for this policy will set out verifiable indicators of compliance with this policy and of its effectiveness, including the effectiveness of projects in improving the living conditions of indigenous peoples and in considering their cultural specificity. The Bank's evaluation instruments will be used, as applicable, to monitor these indicators. The Bank will publish a report from time to time on the results of the implementation of this policy.

VIII. Entry into Force

- 8.1 This policy will take effect six months after it has been approved by the Bank's Board of Executive Directors, to allow time for Management to implement the necessary procedural adjustments.
- 8.2 The policy will apply to all projects entering in the Bank's pipeline on or after the effective date of the policy.¹³ The policy will apply to reformulations of projects requiring the approval of the Board of Executive Directors requested on or after the effective date.
- 8.3 The policy will apply to country strategies and, as pertinent, to sector or regional strategies, initiated on or after the date on which the policy is approved.

¹³ For purposes of this paragraph, the date of entry into the Bank's pipeline will correspond to the date of approval of the Project Concept paper for public sector projects and to the date of signature of the mandate letter of private sector projects.