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Inter-American Development Bank

Sustainable Development Department  
Indigenous Peoples and Community Development Unit

**Strategy for Indigenous Development and  
Operational Policy on Indigenous Peoples**

**Report on the Consultation Process**

2 September 2005

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## I. INTRODUCTION

In the course of the preparation of the Strategy for the Development of Indigenous Peoples and the Operational Policy on Indigenous Peoples, the Indigenous Peoples and Community Development Unit of the Sustainable Development Department (SDS/IND) with support from the regional departments and the country offices, conducted a consultation process from April 2004 through August 2005. This process was consistent with an internal mandate of the Bank <sup>1</sup>, as well as with the requests and recommendations of indigenous organizations. The Preliminary Consultation Plan accompanied the Profile of the Strategic Framework for Indigenous Development endorsed by the Policy and Evaluation Committee of the Board of Executive Directors on 11 March 2004. Consistent with the recommendations of the indigenous organizations regarding the way in which the consultations were to be conducted, the Consultation Plan prioritized the face-to-face and electronic consultations in the early stages on the basis of the profiles in order to present inputs for the preparation of the final documents. The Plan encompassed a shorter electronic consultation on the drafts of the final documents once they were approved by the Programming Committee of the Administration for public dissemination and consultation. To carry out the consultation process, financial support was obtained from a donor country using trust fund resources.

The consultation was carried out between March 2004 and August 2005. A total of 44 consultation meetings were held at the regional level and in 13 countries of the region, with a total of 1,680 participants, a majority of which were representatives of indigenous organizations. In almost all cases the consultation events took place over a two to three day period. The methodology for the consultations, the selection mechanisms of indigenous representatives through their own organizations, and the decision to prioritize the first stages of document preparation based on the profiles rather than the later stages of consultation on the draft final documents, were the result of a number of pre-consultation meetings with indigenous representatives. In addition, a specialized NGO (ALOP) conducted an electronic consultation in which 772 individuals and organizations were invited to present comments. Finally, an Indigenous Advisory Council, integrated by 10 renowned indigenous professionals and leaders, assisted in the preparation of the final draft documents.

The Consultation Plan included the preparation of a report on the consultation in which the comments received throughout the process as well as the degree to which and the way in which these comments were addressed in the drafts of the final documents. The consultation report that follows accompanies the final documents to be considered by the Board of Executive Directors of the Bank. This report has two sections: the first one on the consultation process and the second one on the results, including a summary of the most important comments. Complementing this summary are four annexes with more detailed information on the different stages of the consultation process. As agreed to during the last consultation meeting held with indigenous organizations of the region in San Jose, Costa Rica, in August 2005, one of the annexes is a *verbatim* transcript of the recommendations of this meeting. The website of the Indigenous Peoples and Community Development Unit has the aide memoir of each of the consultation meetings, a detailed report on the electronic consultation as well as an extensive matrix with all comments received and the way in which they were addressed in the final documents.

This consultation process has been very important, to deepen not only the Bank's understanding of the demands and points of view of indigenous representatives in particular, but also of other stakeholders, including governments and other sectors of civil society. For the Bank this has been an unprecedented consultation process in terms of intensity, scope and depth, carried out over a relatively short period of time. The process benefited from a donor contribution without which the Bank would not be in a position

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<sup>1</sup> Consistent with the rules established in the document: "Review of Strategies, Policies and Sectoral Guidelines" (GN-2077-15) approved by the Board of Directors in January, and the document: "Procedures for Consultation of Strategies and Policies" (CP-2916-1) of March 2005.

to engage in such extensive consultation processes. Although, as with any consultation process, this process had its limitations in terms of coverage and methodology, including the timely availability of the documentation in the different languages, it has been an important learning experience for the Bank involving not only headquarters but also the country offices, including the Civil Society Advisory Councils (CASCs). The process yielded very valuable inputs which contributed to the successive drafts of the Policy and Strategy documents, as well as to the identification of stakeholders and to the opening of communication channels that will have a permanent impact on strengthening the dialogue with indigenous organizations in borrowing member countries.

## II. THE CONSULTATION PROCESS

### A. Modes of Consultation

The consultation meetings were held on the basis of the profiles of the Strategic Framework on Indigenous Development and the Operational Policy on Indigenous Peoples, consistent with the new Procedures for the Consultation on Strategies and Policies approved on 20 April 2005, and with the preference expressed by indigenous representatives to be consulted on an initial version (profile) rather than on a more advanced version (draft final document). The consultation meetings based on the profiles concluded in mid February of 2005. At the request of the indigenous representatives, which participated in the Annual IDB-Civil Society Consultation Meeting which took place in Panama in February of 2005, a final consultation meeting was held (August 21 and 22 in Costa Rica), to review the draft final documents approved by the Programming Committee on 29 June 2005.

The electronic consultation started in May 2004, in parallel with the consultation meetings, with the creation of a specific webpage on the Bank's *Internet* page to receive comments electronically. A first phase of the electronic consultation took place on the basis of the profiles, and once the Programming Committee released the draft final documents, a second electronic consultation directed at government agencies in charge of indigenous policies, donor agencies, and interested indigenous organizations including participants in the earlier consultation meetings. The *Asociacion Latinoamericana de Organizaciones de Promocion* (ALOP), an NGO specialized in electronic consultations, was hired to conduct this targeted electronic consultation.

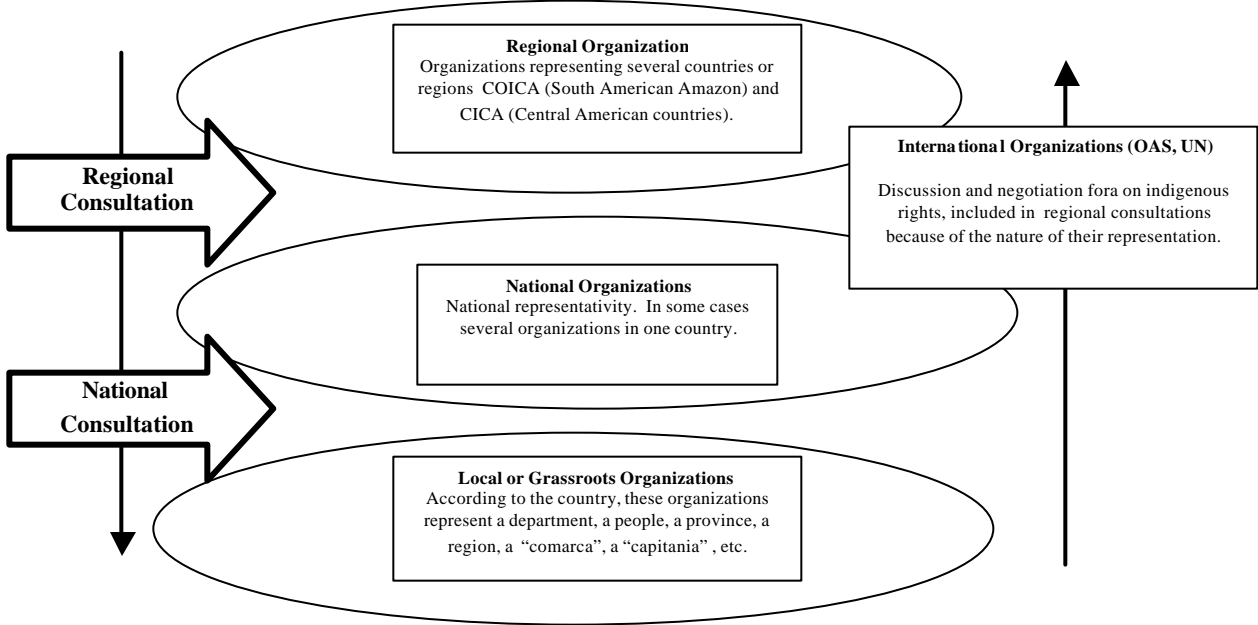
In addition, an Indigenous Advisory Council was established on the basis of a list of candidates proposed by indigenous organizations and of selection criteria previously agreed to, in order to ensure geographic coverage, gender equality, professional expertise and prior experience with projects financed by the Bank. This Committee comprised 10 indigenous specialists, 5 men and 5 women, and held two working sessions: one in December of 2004 and one in February of 2005 to assist the Bank's technical team in the revisions of the preliminary drafts of the final documents as well as the inputs received through the consultation process.

Both modes of consultation, consultation meetings and electronic consultations, involved: (i) indigenous organizations with representativity at the national level, and depending on the level of coverage of the former, with representatives of regional, local and community based organizations; and (ii) NGOs working with indigenous peoples, government entities responsible for indigenous issues, experts on indigenous issues and representatives of international donor agencies. Figure I displays the categories of organizations that were consulted, as well as the level of articulation of the participating indigenous entities.

**B. Consultation Phases**

The consultation phase on the Profiles included had several steps: (i) preliminary, in which technical elements, proposals and demands of indigenous peoples were identified for the preparation of the profiles, the consultation plan and the identification of stakeholders; (ii) dissemination (prior information), with the objective to create broad awareness of the materials to be consulted; (iii) consultation meetings and electronic consultations on the basis of the profiles which prioritized the participation of indigenous organizations, but also included government agencies in charge of indigenous issues, representatives of international cooperation agencies, and members of the Civil Society Advisory Groups (CASCs) which exist in most of borrowing country offices of the Bank; (iv) meetings of the Indigenous Advisory Council to assist Bank staff with the review of the preliminary drafts based on the inputs received in the early stages of the consultation process; (v) electronic consultations on the final draft documents as authorized by the Programming Committee on 29 June 2005; and (vi) the final consultation meeting with representatives of indigenous organizations of the region held on 21 and 22 August 2005 in San José, Costa Rica.

**Figure 1**



Throughout the consultation process the profiles and later the draft documents were available to the public on the *Internet* for interested parties to comment.

**1. Consultation Meetings**

Approximately 1.681<sup>2</sup> people participated in the consultation meetings, including representatives from NGOs, governments, donor agencies, etc., and especially indigenous leaders from national, regional and local organizations. Of this number 62% participated in national consultations and 38% in regional consultations, meetings of the Indigenous Advisory Councils and others.

<sup>2</sup> This number does not include the participants in the preliminary stages of information and pre-consultation.

Two types of meetings were held: (i) national workshops and meetings designed to facilitate the participation of indigenous leaders and organizations of each country and involve the Bank's country offices and their respective Civil Society Advisory Councils (CASCs); and (ii) regional meetings to understand the general point of view of indigenous peoples in a particular region, to broaden the scope to include those countries in which, for different reasons, a national consultation could not be held and to respond to the specific requests of the regional indigenous organizations to be able to participate in the consultation process. In addition, approximately 20 indigenous representatives participated in the annual IDB-Civil Society Meeting, which took place in Panama in February 2005, in which they presented their points of view to the top Administration of the Bank.

**Table 1. Participants in the consultation meetings**

Nr.	Stage	Meetings	Participants	Men	Women
<b>i</b>	<b>Profiles of the Strategy and Policy</b>				
1.1	Preliminary phase	8	216	169	47
1.2.	Information and Dissemination	9	264	183	81
1.3	Consultation meetings	26*	1167	862	305
<b>ii</b>	<b>Draft Strategy and Policy</b>				
2.1	Consultation meeting	1	34	30	4
<b>Total</b>		<b>44</b>	<b>1.681</b>	<b>1.244</b>	<b>437</b>

(\*) Of the 26-consultation meetings, 13 were national and 13 were regional meetings.

Finally, at the request of indigenous representatives at the IDB-Civil Society meeting in Panama, a final consultation meeting was organized on the bases of the draft final documents released by the Programming Committee in June 2005. This meeting, which took place in August 2005 in San Jose, Costa Rica, involved 32 representatives of indigenous organizations of 16 countries (and 2 representatives of the *Consejo Indigena Centroamericano* (CICA) which helped to organize the event). At the suggestion of the indigenous representatives in the Panama meeting, the participants in this final consultation meeting were selected directly by the organizations with greatest representativity in their countries, and who directly participated in the coordination of this event<sup>3</sup>.

## 2. Electronic Consultations

In order to disseminate the documents to a broader audience and to complement the consultation meetings, an electronic consultation was conducted. Following the same process as the face-to-face meetings, the electronic consultation was carried out in two stages, the first one focused on the profiles and the second one on the final drafts. The participants in the first stage were for the most part non-governmental organizations and academic experts. The second stage, which was broader in scope, included specialists on indigenous issues (both indigenous and non-indigenous), NGOs, government representatives and others.

The electronic consultation started in May 2004 with the creation of a specific webpage on the Bank's Internet site designed in such a way that it could receive comments in electronic form. Subsequently an NGO, the *Asociación Latinoamericana de Organizaciones de Promoción* (ALOP) was hired to assist in the electronic consultation process. Information on the consultation process was available on the IDB and

<sup>3</sup> Invitations to this meeting were sent to 35 indigenous organizations (in 19 countries) with representativity at the national or sub-national level, who selected and accredited their representatives to the meeting.

ALOP websites and also easily accessible via internet browser. ALOP sent invitations to indigenous organizations, non-governmental organizations, universities and academic centers to invite them to participate in the electronic consultation. A total of 16 contributions were received during this first phase. During the second phase a wider effort was undertaken directed at a universe of 772 electronic addresses of indigenous organizations who participated in the first stage, NGOs, representatives of governments, universities and donor agencies. All of them were periodically informed during the process and were repeatedly invited to participate. Although 89% of the list of invitees opened their messages on a regular basis, only 33 comments were received, which is a 4.3 response rate.

To ensure that the indigenous participants in the first stage of the consultation would have access to the final draft documents authorized for public consultation by the Programming Committee on 29 June 2005, by the beginning of July, via the Bank's country offices, hard copies of the documents were sent to them.

### **III. RESULTS OF THE CONSULTATION PROCESS**

#### **A. Consultation Meetings on the Profiles**

The major issues addressed by the participants at this stage include (see Annex I for more details):

- (i) The definition of the concept of Development with Identity about which many indigenous peoples have their own views and definitions.
- (ii) The identification, prevention and mitigation of potential negative impacts in projects, including the application of free, prior and informed consent.
- (iii) Abstaining of financing projects that pose risks to the territorial, social and cultural integrity of indigenous peoples.
- (iv) A direct relationship between the Bank and indigenous peoples with regard to the financing of projects.
- (v) The protection and administration of indigenous territories, assets and environment, putting emphasis on collective rights.
- (vi) The cultural appropriateness of social services (health, education, housing, sanitation) to the specificity of indigenous peoples.
- (vii) Autonomy of decision-making regarding collective rights.
- (viii) Recognition of indigenous economies, their productive practices and their articulation with the market.
- (ix) Demand for capacity building geared towards the administration and execution of projects, and more active participation throughout the project cycle.
- (x) Consideration of national and international legislation on indigenous rights.
- (xi) The creation of a Fund to facilitate the implementation of the Policy and the Strategy, specifically regarding the financing of projects for indigenous peoples.

- (xii) Respect for community justice practices and customary rights.
- (xiii) The role of the Bank in relation to urban and migrant indigenous people.
- (xiv) The role of the private sector.

## **B. Consultation Meeting on the Draft Reports**

Annex II presents in more detail the issues raised by the participants in the last consultation meeting held on 21 and 22 of August 2005 in Costa Rica, as well as the responses by the Bank's team. In several cases, it was only necessary or possible to offer a clarification, in other cases the issues would be considered in the operational guidelines, and in still other cases the Bank's team considered it feasible to recommend revisions in the last versions of the Policy and Strategy to be presented to the Programming Committee of the Administration. Finally, there are several suggestions with regard to how to ensure that the concerns of participants that could not be incorporated in the final documents could be presented to the Executive Directors of the Bank and to the public in general. With this purpose, in addition to the description of the points of view in this section and in Annex II, this report transmits in Annex III the original comments by the participants as they were presented by them during the meeting in Costa Rica. The main issues put forward by the participants consulted in the meeting, are summarized as follows:

- (i) Recognize and explicitly incorporate in the documents the principle of free, prior and informed consent in projects that directly affect indigenous territories, communities and peoples.
- (ii) Put more emphasis and make changes to the sections related to the strengthening of the institutional capacity of indigenous peoples.
- (iii) Use the terms "lands and territories" jointly and consistently.
- (iv) Be more precise, clarify or substitute some terminology, including parts of the definition of indigenous peoples, the minimization of negative impacts, consensus building, and other terms related to environmental issues and the establishment of the indigenous advisory council.
- (v) In some cases revise the use of terminology such as "whenever possible", "whenever relevant" and other qualifiers.
- (vi) Clarify how the Bank would respond to non-compliance with the necessary requirements for avoiding significant negative impacts on indigenous peoples and their rights, specifically in terms of the consequences of this lack of compliance on the approval and execution of projects. Categorically state that the Bank would abstain from financing projects the impacts of which would put the territorial, cultural and social integrity of indigenous peoples at risk.
- (vii) Ensure adequate participation of indigenous peoples in the identification of specific socio-culturally appropriate indicators for development with identity in projects and for the evaluation of the implementation of the Policy and the Strategy.
- (viii) Clarify that the international jurisprudence (the sentences of the Inter-American Court on Human Rights and the Reports of the Inter-American Commission on Human Rights) are included as part of the normative framework on indigenous rights.
- (ix) Include the demand for the direct relationship of the Bank with indigenous organizations in the financing of projects and clarify the limitations of the Bank in terms of granting loans and technical cooperations directly to indigenous organizations.



- (x) Honor the agreement that the comments of the participants in the meetings directly reach the Executive Directors of the Bank as part of the documentation that will be distributed for their consideration of the proposed Policy and Strategy and be made available to the public. In addition, the Board will be consulted regarding a meeting of indigenous representatives with the Executive Directors of the Bank.

### **C. Electronic Consultations**

Annex IV summarizes in more detail the results of the electronic consultation, which took place between June 29 and August 15 2005. In many cases the proposals were consistent with the comments received during the consultation meetings, and in other cases the issues needed to be dealt with in more detail, especially in the Strategy. Several of the points made will be treated in the operational guidelines. The major issues raised by participants included:

- (i) Respect for the rights of indigenous peoples to be consulted. The qualification “whenever possible” undermines the recognition of this right.
- (ii) Protection of rights on lands, territories and natural resources which indigenous peoples use or possess, whatever the circumstances.
- (iii) The need to reference applicable international legal norms.
- (iv) Concern regarding the implementation of the Policy and the Strategy, especially with respect to the participation of indigenous peoples in the project cycle and the absence of the requirement of free, prior and informed consent.
- (v) Expanding the proposed initiatives to improve the participation of indigenous organizations in information technology.
- (vi) The importance of direct relationships with indigenous representatives elected by their organizations or communities, in projects that may negatively affect them.
- (vii) The financing of projects directly to indigenous communities, without government intermediation.

## ANNEX I

### RESULTS OF THE CONSULTATION MEETINGS IN THE FIRST PHASE

(June 2004 – February 2005)

#### I. INTRODUCTION

The first stage of the face-to-face consultations were held on the basis of the profiles of the Operational Policy on Indigenous Peoples and the Strategy for Indigenous Development approved by the Bank's Board of Directors on 11 March 2004. Of the 26 meetings that were held at the national and regional level, a summary is presented of the inputs received, many of which have been totally or partially integrated in the draft final documents. Detailed aide memoirs of each consultation meeting, as well as an extensive matrix of comments received and the way in which they were (or were not) considered in the documents that were presented to the Programming Committee in April and June of 2005 are available on the website of the Indigenous Peoples and Community Development Unit. The main issues are summarized below, organized according to the different chapters of the Strategy and the Policy.

#### II. PROFILE OF THE STRATEGY ON INDIGENOUS DEVELOPMENT

##### A. **Development with Identity**

Indigenous representatives analyzed the concept of **development with identity** using the following criteria: (i) support for indigenous peoples in the process of strengthening their identity; (ii) economic growth that goes hand in hand with the strengthening of cultural identity and based on the concepts of reciprocity and redistribution; (iii) participatory development with social and gender equity; (iv) institutional strengthening and legal security of territories and assets; and (iv) recognition of and respect for the diversity and multiplicity of criteria used by indigenous peoples as well and the changing historical context, at the same time taking into account the collective knowledge and natural resources as symbolic, economic, political and organizational capital.

##### B. **Give Visibility to Indigenous Peoples and their Specificity**

**Visibility of indigenous peoples** and their specificity are understood as: (i) inclusion of the values, traditional knowledge, ancestral wisdom in household surveys and poverty analysis; (ii) development of appropriate indicators that represent indigenous peoples as economic actors, not just social ones (i.e. the contribution of indigenous people to the Gross National Product of countries); (iii) highlighting socio-cultural vulnerability criteria and socio-cultural assessments to the extent that they enable consideration of the diversity of indigenous peoples in the definition of development strategies; (iv) recognition of indigenous territories and their management plans based on ancestral concepts; (v) disaggregation in census and surveys of indigenous peoples as citizens with specific rights; (vi) differentiation of urban and rural indigenous people; (vii) development of indicators that measure real poverty; (viii) understanding that poverty for indigenous peoples is the loss of lands and territories, natural resources, and traditional knowledge and practices; (ix) inclusion of authentic representation of indigenous identity in professional, political and technical arenas; (x) preparation of a dataset on each indigenous people to be included in information systems; (xi) participation of indigenous peoples in the preparation of an Indigenous Human Development report to be prepared by the United Nations.

### **C. Enabling Governance**

Enabling governance was analyzed along the following lines: (i) promotion of community self development recognizing traditional customs and practices; (ii) strengthening of ancestral institutions including justice systems and repositories of ancestral wisdom; (iii) recognition and strengthening of indigenous management articulated with public administration; (iv) equitable distribution of public expenditures as well as measures to promote and facilitate this process; (v) direct interaction with the communities without intermediaries in order to directly administer resources; (vi) need to train indigenous women and men in management techniques related to institutional, cultural, financial and human resources as well as in project preparation; (vii) promotion of self government including democratic elections of authorities according to local customs and practices; (viii) support for the strengthening of indigenous organizations, whichever their nature, through leadership training as well as organizational and management training ; (ix) consensus based participation to support local and national development plans; and (x) support for specialization of indigenous professionals to increase their management capacity in indigenous organizations and communities, in order to directly negotiate and manage projects.

### **D. Improve Access and Quality of Social Services**

According to the participants in the consultations, improving access and quality of social services entails the following actions: (i) support for educators and knowledge providers, and support for a holistic education that considers teaching the indigenous worldview at the primary, secondary and higher education levels respecting indigenous lifecycles; (ii) democratization and decentralization of social services; (iii) providing opportunities for the execution and administration of programs in health, education and housing, (iv) design and execution of social projects such as housing, sanitation, health, education, and cultural strengthening in culturally appropriate ways so as to not negatively affect the beneficiaries and their environment; (v) official recognition of indigenous mother tongues and introduction of subjects on indigenous heritage in school curricula for non-indigenous people; and (vi) promotion and respect for uses of traditional medicine, respect for traditional healers and their knowledge, and opening up space for indigenous medicine in health centers, including monetary compensation for these practices.

### **E. Improve Opportunities for Economic Development**

The opportunities for economic development were analyzed from the following perspectives: (i) the conceptualization of the indigenous economy taking into account four basic dimensions: territory, natural resources, indigenous technology, and organization and governance of indigenous peoples themselves; (ii) exploration of opportunities for traditional indigenous products and their insertion in the market under conditions of equity and competitiveness; (iii) strengthening the productive capacity of indigenous peoples; (iv) recognition of the role of women in the oral transmission of knowledge on productive practices, as heads of household, and in the productive process; (v) consolidation of strategic alliances to insert indigenous products into the market, (vi) improvement and adaptation of financial services; (vii) use of natural resources and biodiversity without jeopardizing indigenous assets (land, environment and culture); (viii) support for organic production and indigenous entrepreneurial development; (viii) technical assistance, support for marketing and development of mechanisms to reduce operational costs of projects for sustainable production; (ix) creation of a fund to promote business development of indigenous enterprises; (x) creation of training modules on management and communications in order to strengthen indigenous entrepreneurial capacity; (xi) opening of market niches; (xii) recognition of the rights of indigenous peoples to benefits derived from the extraction of natural resources that directly affect them.

## **F. Promote Rights, Normative Framework and Legal Security**

According to consultation participants, the promotion of rights, normative frameworks and legal security for indigenous peoples implies: (i) recognition of knowledge of intellectual property rights on natural resources; (ii) respect for the self-determination of indigenous peoples in the context of respect for indigenous rights; (iii) implementation of mechanisms for independent legal assistance to indigenous peoples based on international standards; (iv) capacity building of lawyers defending the rights of indigenous peoples; (v) promotion of national and international legislation to recognize the rights of indigenous peoples; (vi) application of national and international norms with regards to lands, territories, regularization, expansion, demarcation and titling; (vii) explicit integration of economic, social and cultural rights in national planning processes; (viii) recognition of customary law, community property and traditional knowledge; (ix) respect for the concept of democracy among indigenous peoples and their own forms of organization and decision making; (x) inclusion of indigenous worldviews in the national legal framework; (xi) strengthening legislation pertaining to local governments on mitigation of negative impacts.

## **G. Implementation Actions**

Implementation activities need to consider: (i) redefining internal Bank rules and policies regarding the direct relationship with governments; (ii) facilitating and promoting the participation of indigenous peoples at all stages of the Bank's project cycle, so that the use of resources can be monitored and made accountable; (iii) mainstreaming indigenous issues as well as support for specific projects for indigenous peoples; (iv) preparation and implementation of instruments to measure the impacts of projects and public policies, taking into account cultural, economic, environmental, social and political aspects or impacts; (v) establishing an indigenous advisory council able to transmit and address the needs of indigenous communities, as well as national committees of indigenous peoples that would serve as interlocutors for the Bank and monitor development efforts; (vi) flexibilization of administrative rules and regulations so that indigenous peoples may have access to projects; (vii) creation of special funds, financed not with loans but with non-reimbursable resources, to meet indigenous needs; (viii) application of knowledge, technologies, methodologies and time and space concepts of indigenous peoples to the strategies for projects and their implementation; (ix) allowing for full and effective participation of communities, their members and their representatives during the stages of the project cycle; (x) promotion of development projects for the strengthening of cultural identity in health, education, economic self development and indigenous justice; and (xi) foster capacity building of professionals working with indigenous peoples.

# **III. PROFILE OF THE OPERACIONAL POLICY ON INDIGENOUS PEOPLES**

## **A. Development with Identity**

According to participants in the consultation meetings, development with identity involves: (i) the recognition of the relationship between nature, biodiversity and indigenous identity; (ii) socio-cultural adaptation of programs such as health or education to the specificity of indigenous peoples; (iii) recognition of the importance of capacity building and support for actions to promote equity and solidarity; (iv) respect for the definition of roles within indigenous communities as they are part of traditional culture and practices; (v) support for processes of empowerment, autonomy and participation in development programs; (vi) promotion and recognition of the participation of women in programs and projects; (vii) use of appropriate technology and the valorization of associated crops which enable preserving the fertility of the land; (viii) recognition of the territory as the basis for the indigenous economy; (ix) promotion of the participation of indigenous women and youth as an emerging force within their communities; (x) respect for the rights of indigenous peoples in the management of natural and

genetic resources, biodiversity and ancestral knowledge; and (xi) adoption of special measures to enable indigenous peoples to exercise their rights.

## **B. Safeguards**

The safeguards, according to participants in the consultation meetings, need to be oriented towards: (i) the unconditional defense of biodiversity, botany, intellectual property, archeological sites, etc. of indigenous peoples; (ii) the prevalence of collective rights over individual rights; (iii) respect for the internal organizing processes of each indigenous people; (iv) reduction of impacts of projects that weaken or go against the laws of origin, ancestral and customary rights, autonomy, self government, territory and cultural identity; (v) free, prior and informed consent before a project, operation or activity of the Bank within a territory of indigenous peoples, or that significantly affects them or their rights, is approved or initiated; (vi) abstention of support for projects that could have an impact on indigenous lands, territories and resources even when there is no legal title; (vii) measures to prevent or mitigate negative impacts on indigenous lands, territories and natural resources, and the right to receive compensation in case of negative impacts; (viii) implementation of norms for the protection of non-contacted indigenous peoples in order to guarantee the legal and social integrity of themselves and their territory; (ix) application of the concept of free, prior and informed consent as a principle in all of the project cycle and in all of the projects.

## **C. Implementation**

With regard to the implementation process, indigenous organizations considered: (i) the need to include contractual clauses in projects in order to mandate respect for the rights of indigenous peoples; (ii) inclusion of indigenous representatives in the project negotiation process, as well as in all stages of the project cycle; (iii) definition and application of procedures and mechanisms that are effective and verifiable to ensure compliance with the requirements for obtaining indigenous participation and consent; (iv) development of mandatory requirements to implement participatory monitoring and evaluation of all Bank projects, operations and activities that could affect indigenous peoples; (v) fair and equitable access of indigenous peoples to the transparency and accountability mechanisms; (vi) the opening of space within the Bank for incorporating consultants with expertise on indigenous issues, preferably indigenous professionals; and (vii) the right to fair compensation and the search for mechanisms to avoid negative impacts of projects in territories of indigenous peoples.

## ANNEX II

### RESULTS OF THE FINAL CONSULTATION MEETING IN COSTA RICA

(August 21 – 22, 2005)

#### Introduction

During the final Consultation of the Strategy for the Development of Indigenous Peoples and the Operational Policy on Indigenous Peoples, the participants representing indigenous organizations from the borrowing countries (“the participants”) put forward several comments and proposals related to the content of the documents. This summary presents those inputs along with the comments, responses and recommendations of the IDB team. The participants’ comments in the form originally presented are included in this report as Annex III.

#### A. Operational Policy

##### 1. General Comments and Proposals

**Consultation process during the project cycle.** The participants recommended that the policy require that the consultation process be carried out on the basis of free, prior and informed consent (FPIC). The IDB team does not recommend making changes in the documents with respect to this issue, because the general concept of FPIC has been taken into account, and the Policy document includes the corresponding mechanisms for consultation and good faith negotiation, as well as specific requirements differentiated according to type of impact, type and nature of operational processes, and stage of the of the project cycle. Nevertheless, the Bank shares the groups’ concern regarding the importance of adopting the measures needed to implement high quality consultation processes with results that reflect the views of affected indigenous peoples or groups and are effectively incorporated in Bank projects and programs.

**Institutional strengthening of indigenous peoples and organizations.** The participants proposed several changes related to the need to strengthen the institutional capacity of indigenous peoples and their organizations. The IDB team recommends including an additional phrase in paragraph 4.3 (j) to reflect the expressed concerns. Additionally, the team commented that this general concept is included in the Policy and in the Strategy, and that the Bank shares the participants’ view regarding the importance of this issue, particularly with regard to the development of indigenous leadership for management of development projects and business administration, as well as for the direction and development of indigenous consultation processes and effective participation in the implementation of the Policy and Strategy.

##### 2. Concepts and Terminology

In response to several comments, it was agreed that the text of the documents would be revised as need to ensure that the words “lands” and “territories” were used together consistently, and that the term “indigenous peoples” is used unless the level of specificity of a provision, or its referential basis do not require the use of other terms, such as: “population,” “groups,” or “communities.”

### **3. Scope of the Safeguards Against Adverse Impacts**

In response to several comments, the IDB team explained by requiring compliance with certain steps for the purpose of avoiding significant adverse impacts on indigenous peoples and their rights, the Policy establishes that the Bank will not approve operations when these requirements are not fulfilled. The team briefly explained the functions of project teams, management committees and the Bank's safeguard implementation and quality control systems.

### **4. Evaluation Processes**

In response to several comments with respect to evaluation processes and criteria included in the Policy and Strategy, the IDB team recommends expanding paragraph 8.5 of the Strategy to indicate explicitly that "The Bank will adopt evaluation instruments and procedures that support the adequate participation of indigenous peoples in the identification of indicators and in the evaluation processes related to the implementation of the policy and strategy."

### **5. Direct Access to Financing**

Even though specific changes in the texts of the Policy and Strategy are not required, the participants insisted on the importance of ensuring that the financial and technical resources of Bank projects reach indigenous peoples directly. In this respect, the IDB team provided the following explanations:

- In view of its inter-governmental character, the Bank can only make loans directly to the governments of borrowing member countries and to private and governmental entities (provinces, municipalities, etc.) that meet certain legal and financial criteria that indigenous peoples currently do not fulfill. Therefore, the possibility of direct loans is currently unavailable.
- However, the Bank manages limited resources for technical cooperation and small projects (MIC, MIF, trust funds) that, with the non-objection of the governments, can finance the initiatives of indigenous peoples and organizations. Additionally, the Bank could support viable initiatives by governments in conjunction with indigenous organizations to create financial or administrative vehicles and mechanisms, which, under shared criteria and management, could make financing available directly for investments in indigenous communities. The Strategy discusses this possibility and considers possible actions in this regard.
- The Bank shares the concern expressed by the participants that the resources of projects designed to benefit indigenous peoples should effectively reach them. To this effect, the operational guidelines will include measures for follow-up and accountability.

### **6. Continuity of the Consultation Process on the Strategy and Operational Policy**

The participants advanced several comments on the need to undertake a continuous exchange regarding the Strategy and Policy documents and the process of their approval. They also indicated interest in manifesting additional comments on the documents directly to Bank Directors. In response, the IDB team indicated that:

- The report on the consultation process (of which the present summary is part) would include the participants' proposal as well as the responses of the IDB team in their integrity. The report will accompany the final drafts submitted to the Bank's Board. The report and the drafts will be publicly available.

- The indigenous communities representatives have the prerogative to send comments directly to the authorities of their respective countries and to the offices of their Directors in the Bank.
- In response to specific questions regarding the possibility that a group of indigenous representatives meet with Directors before Board consideration of the final documents, the IDB team recommends that the Programming Committee consider this possibility and consult with the Board in this regard.

## 7. Definitions

The participants proposed a series of clarifications and specifications in paragraphs 1.1, 1.2, (footnote), 1.3, and 1.4. The IDB team recommends including these changes because they are consistent with the concepts and scope of the original text.

The IDB team does not recommend including the change proposed in paragraph 1.4 that would imply the application of the definition criteria regarding “indigenous peoples” for the purposes of application of the Policy individually rather than jointly as established in the current text. The IDB team explained that together the criteria allow for a definition that is sufficiently broad to accommodate the various realities of indigenous peoples in Latin America and the Caribbean, including urban indigenous peoples, while upholding those characteristics that justify the specificity of the Policy –preexistence and cultural differentiation—and recognizing the importance of self-identification (self-designation).

The team does not recommend elimination the word “applicable” from paragraph 1.2, and explained that his word refers to the need to distinguish between those legal norms that are in force in a given country from those that are not, when the country has not adopted (and ratified) the corresponding international instrument.

## 8. Support for Development with Identity (Section IV-A)

In paragraph 4.2(b) the participants proposed substituting the term “target group” with “indigenous peoples.” The team recommends substituting it with “affected indigenous communities” in view of the need to indicate that in the context of specific project impacts it is necessary to use terminology that reflects the specificity of affected groups.

The participants proposed eliminating the word “legitimate” in paragraph 4.4(a)(i). The team recommends replacing it with the word “genuine.” The team explained the need to rely on effective representation in the operational context of the Bank, but recognized the participants’ concerns regarding the possible implications of the term “legitimate.” The team pointed out additionally that “genuineness” would refer to the internal decision-making processes of indigenous peoples mentioned in the same paragraph.

There was consensus regarding the need to include more explicit references to environmental considerations. The team recommends adding the following phrase at the end of paragraph 4.3(e): “and indigenous environmental management of their lands and territories.”

## 9. Safeguards in Bank Operations

The participants proposed including an additional clarification in footnote 11. The team recommends including the clarification revising it to avoid a contradiction with respect to the possibility of obtaining community inputs.



The participants proposed eliminating the word “minimize” in paragraph 4.4. The team recommends replacing it with “mitigate,” having explained that this was the scope of the original text.

The participants proposed eliminating the phrase “whenever it is relevant for its operations” in paragraph 4.4(c). The team recommends eliminating it since it is not possible to take account of irrelevant matters and the phrase is redundant.

The participants proposed adding “favorable to indigenous peoples” at the end of paragraph 4.4(c). The team does not recommend including this proposal since the Bank cannot ignore existing country laws. The team explained, however, that in case of conflicts between norms, or of valid norms that might negatively impact indigenous peoples, the legal and socio-cultural viability analysis of Bank projects required by this and other bank policies would ensure that those activities that generate negative impacts on indigenous peoples that cannot be mitigated would not receive financing.

The participants proposed eliminating from paragraph 5.3 (a) phrases such as “if the project so warrants” and “whenever possible.” The team does not recommend these changes; having explained that it is not always possible to conduct consultations in the earliest phases of programming and identification. Nevertheless, the team pointed out that the Policy seeks to express a commitment to implement these processes unless there are circumstances that justify the contrary. The team explained that the Bank would apply sound and transparent criteria to determine when projects warrant early consultation, and when it is possible to carry them out. Therefore, this determination will not be arbitrary.

The participants proposed replacing “experts on indigenous issues” in paragraph 5.3(a), with “indigenous experts.” The team does not recommend changing the text, having explained that the use of indigenous experts is allowed and desirable but should not be exclusive.

The participants proposed eliminating the expression “good faith negotiation” from various paragraphs in favor a concept of binding consultation. The team does not recommend making the change. The team explained that good faith negotiation is the mechanism through which the Bank proposes to integrate the consultation process in the final content of its operations, and to include the results of the consultation in mainstreaming, mitigation and compensation measures, as well as in the agreements required for operations with significant adverse impacts, or in the agreements and consent for independent operations focused specifically on indigenous peoples.

## **B. Strategy for the Development of Indigenous Peoples**

Considering that the changes proposed by the participants for the Strategy document largely reflect the same issues raised with regard to the Policy, the recommendations summarized in this Section B are justified in Section A. When that is not the case, additional comments are included.

### **1. Specific Suggestions**

The following changes were recommended for inclusion in the text of the Strategy:

- Paragraph 2.1(c)- replace “self-identify” with “self-designate.”
- Footnote 9- add “as well as the corresponding international jurisprudence.”
- Paragraph 2.5- add “harmony with the environment.”

- Paragraph 2.6- eliminate “a high degree” in line 19, and replace “appropriate” with “effective” in line 20.
- Paragraph 3.7- replace “influence” with “participation” in the title.
- Paragraph 5.1- replace “minimize” with “mitigate.”
- Paragraph 5.2 (a) add “and indigenous organizational structures” in line 3, and replace “self-sufficiency” with “security” in line 4.
- Paragraph 6.2 (e)- add parentheses “particularly their own socially based grassroots organizations.”
- Paragraph 6.2 (g)- replace “dissemination” with “timely diffusion.”
- Paragraph 6.4 (c)- add in lines 6 “and in accordance with the specific development and management outlook of the indigenous peoples involved.”
- Paragraph 6.4 (e)- add “and of the environment” in line 1 and at the end of the sentence: “Additionally, the Bank will support the development of indigenous peoples’ own capacity for environmental management, as well as other indigenous initiatives in the areas of environmental management, enterprise and service provision.”
- Paragraph 6.4 (g) replace the word “coastal.”
- Paragraph 7.3 (d)- bold.
- Paragraph 7.6 (a)- add “...and guidelines will take into account the points of view of indigenous peoples...”
- Paragraph 7.6 (b)- replace “protect” with “safeguard” and add “and their rights.”
- Paragraph 7.7 (a)- replace “legitimate” with “appropriate.”
- Paragraph 7.7 (b) – replace “seek” with “promote.”
- Paragraph 7.7- add a new subparagraph (g) as follows: “In a manner that is consistent with its policies and procedures, facilitate financing for indigenous peoples to conduct their own consultation processes.”
- Paragraph 7.8- add “ and the indigenous peoples affected by the project in line 2.
- Paragraph 7.9- add the term “advisory councils” and at the end “ The advisory councils will be primarily composed of delegates from indigenous organizations from borrowing countries, selected by said organizations.”
- Paragraph 8.5- add the phrase “in all areas of development with identity,” and at the end add the sentence “The Bank will adopt evaluation instruments and procedures that support the

adequate participation of indigenous peoples in the identification of indicators and in the evaluation processes related to the implementation of the policy and strategy.”

## 2. Additional Comments

Land markets- Paragraph 6.4 (c). In response to a request to include in the document a statement indicating that no indigenous peoples would relinquish their rights of possession to their lands and habitat, the team explained that in this context the Bank will limit itself to supporting initiatives of indigenous peoples (and recommended including a parenthesis in lines 67 of the paragraph). These initiatives would be in principle designed to seek innovative instruments that would enable indigenous peoples to take advantage of the potential value of their lands under arrangements that respect their own vision regarding acceptable forms of use, occupation, possession and legal and physical control. In this context, the definition of whether to participate in resource utilization schemes should be absolutely voluntary; therefore, it is not appropriate or necessary to impose categorical limitations on the forms of participation each people may choose in the future.

Advisory Council- Paragraph 7.9. The participants advanced several considerations regarding the terms of reference of the advisory councils. In response, the Team recommends including the changes indicated above in paragraph 7.9. Additionally, the team explained that these aspects would be further described in the guidelines and will take into account the inputs of indigenous peoples involved on a case-by-case basis.

Institutional Strengthening. Several comments. There was consensus on the importance of the issue. It was recommended to include the changes indicated in paragraph 7.7 of the Strategy into subsection 4.3 (j) of the Policy.

Environment. Several comments. There was consensus on the need to be more explicit in the inclusion of environmental issues. The team recommends the changes indicated above for paragraph 6.4(e) of the Strategy.

## ANNEX III

### REPORTS OF THE WORKING GROUPS AT THE CONSULTATION MEETING IN COSTA RICA

(21 – 22 August 2005)

This annex contains a *verbatim* transcript of the conclusions and recommendations of the working groups in the final meeting of the consultation process. The participants requested and the Bank team agreed that these reports would be made available to the Board of Directors and to the public in their original form (hence they have not been translated into English). For a summary of the recommendations contained in these reports and the response by the Bank team, see Annex II.

## I. POLÍTICA OPERATIVA SOBRE PUEBLOS INDÍGENAS

### A. Grupo 1

#### 1. Preámbulo

Es importante plantearle al BID, que las observaciones, comentarios y sugerencias que se realicen [de nuestra parte], puedan ser tomadas en cuenta, ya que si se convoca a un proceso de consulta, [por lo] mínimo se debe analizar e integrar los resultados que broten de la reuniones. Esto lo planteamos en base a la aplicación de nuestros derechos y a la legislación nacional e internacional.

#### 2. Propuesta de cambios

*Objetivos: inciso (b)* salvaguardar a los pueblos Indígenas de los impactos negativos.

*1.1* Se propone [reemplazar]{omitir} la palabra **autoidentifican** por **autoadscripción**.

*1 definiciones: Incisos 1.3.*

Se propone agregar después de “...**con las normas de derecho aplicables...**” [la frase] {el párrafo} ‘**y de acuerdo a las propias formas de organización de los pueblos indígenas**’.

Se propone omitir las palabras “**un alto grado**”.

Se propone que se cambie las palabras “**participación apropiada**” por las palabras “**participación efectiva**”.

*1.4* Se propone cambiar {el párrafo}“**buena administración...**” por “ **la armonía con los recursos naturales**”.

Se propone agregar la palabra “**ejercicio**” posterior a la palabra “**...y el respeto...**”

Se propone cambiar “**estar bien**”, por “**contar con bienestar**”.

*4.2 (b)* se {propone cambiar} {omite el párrafo} “**grupo meta**” por “**pueblos indígenas**”. Se recomienda realizar una lectura general y realizar este cambio [donde se encuentre].

4.4 (a) (i) se propone eliminar la palabra “**legítimos**”.

En el pie de página, numeral 11, se debe cambiar el párrafo “**intentos en buena fé de realizar la consulta**” por el párrafo “**de que no existan condiciones para desarrollar la consulta, este debe ser consensuado y verificado con la comunidad, analizando los motivos y condiciones del por qué no se participa y cuáles son los fundamentos de ambos.**”.

4.4 (c) [Se propone] suprimir “**tendrá en cuenta, siempre que eso sea relevante para sus operaciones**”.

Se [propone] agregar, posterior al párrafo de legislación nacional, “**favorable a los Pueblos Indígenas**” .

[Mencionar] pueblos indígenas prioritariamente en el objetivo.

5.3 [Se propone] (a) eliminar la palabra “**amerite**”.

[Se propone] agregar la palabra “**indígena**” después de “**expertos**” (consultores),

[Se propone] eliminar el párrafo siempre que sea posible.

Se [solicita que se] omita la palabra concertación. Se recomienda revisar todo el texto y cuando estén las palabras **consulta y concertación**, como en este caso, se omita **concertación**.

Página 8 inciso c: impactos potenciales adversos. Se debe crear un pie de página que indique que se creen las condiciones para que los pueblos indígenas desarrollen sus procesos de consulta.

El tema de **adversos** debe ser revisado en todo el documento.

Sugerencias y comentarios:

- El documento debe reflejar que la consulta debe ser con consentimiento libre, previo e informado.
- La consulta debe ser vinculante, que esto no es un instrumento legal, se debe prever en el documento, que se respete y promueva el resultado de las consultas.
- Acceso al financiamiento por parte de los Estados, se debe crear un fondo de participación de los Pueblos Indígenas, lo que les permita crear las condiciones para realizar los procesos de verificación al cumplimiento de la política y estrategia.
- Se debe agregar el tema fortalecimiento institucional de los pueblos indígenas.
- Es importante aclarar que dentro del párrafo de pueblos no contactados se aclara que no se podrán ejecutar proyectos que afecten, mientras que en los párrafos sobre pueblos indígenas no es categórico, por lo que [se] plantea que se integre que no se ejecutaran proyectos donde los territorios indígenas salgan afectados.
- Se debe integrar categóricamente la palabra Consulta, en el documento.
- Que donde se exista la palabra tierra este acompañada de la palabra “Territorios”
- Cuando se integra la palabra legislación debe estar acompañada con la palabra “aquellas que beneficien o no afecten a los pueblos indígenas”.

## **B. Grupo 2**

### **1. Preámbulo**

Sugerencias: como mejorar el concepto de libre determinación.

#### Definiciones: Punto. 1.1

Cuando se lea (i) **las aportaciones antes de la conquista...** se debería leer.. **son descendientes de los pueblos que habitaban en la región de América Latina y el Caribe antes de la conquista o colonización.**

En referencia [a] los tres criterios para reconocer pueblos indígenas .. **se pueda elegir cualquiera de los tres criterios.**

#### Punto. 1.2

Quitar la parte **aplicables** y agregar al pie de página en la cita 3 **Las Jurisprudencias Internacionales que comprenden las sentencias de la Corte Interamericana e Informes de la Comisión.**

#### Punto 1.3.

Quitar en donde dice un **“El reconocimiento de un alto grado de autonomía”** y cambiarlo por **“reconocimiento de autonomía”.**

### **Sugerencias y comentarios**

Que [en] los documentos se unifiquen los conceptos de **“Tierras y territorios”** así como también **“Pueblos y Poblaciones”.**

Los efectos adversos. En el punto 4.4 a (ii)

Asegurarse que en la estrategia se explique que cuando los efectos no son significativos en relación al proyecto se pueda minimizar el efecto negativo. Pero cuando es un riesgo significativo se debe evitarlo.

Hay diversidad de realidades en la región y eso provoca que la política se quede corta para responder las realidades de los distintos pueblos afectados.

Se podría realizar un conjunto de recomendaciones a la política operativa del BID. A los efectos que los directivos del Banco y los Estados tengan en cuenta cual es la postura de los pueblos participantes en esta consulta. Detallando en concreto cuáles son los temas específicos que afectan la integridad de las tierras y territorios como así también cualquier cosa que afecte a los pueblos/ poblaciones indígenas.

El Banco no sólo debe hablar de capacitación ya que esto es mínimo, sino de formación gerencial , para que haya una participación efectivas de los indígenas en los proyectos que sean afectados.. para que los pueblos involucrados en proyectos de grandes inversiones puedan tener líderes capacitados.

Debemos asegurarnos que cada cierto tiempo se realice una evaluación por parte de las organizaciones indígenas involucradas que asegure el cumplimiento de la política operativa.

### **Pregunta**

Que posibilidades hay de que el grupo del Directorio del Banco nos reciba para poder plantear estas propuestas?

## II. ESTRATEGIA PARA EL DESARROLLO DE LOS PUEBLOS INDÍGENAS

### A. Grupo 1

Se comienza desde la página 12, porque las observaciones a la política se hacen también en la Estrategia.

- Que [en] donde se menciona el tema de tierras debe estar incluido el [de] **territorio**, esto [debe ser] aplicable a todo el documento de la estrategia. De igual manera, [se debe] cambiar el termino grupos por **pueblos indígenas** .
- En donde se mencione pueblos también aparezca **comunidades y pueblos indígenas** y viceversa. debiese aparecer tanto en la estrategia como en la política el tema de **medio ambiente**
- En todo el documento tanto en la estrategia como en la política [se debe establecer que] no se debiese financiar proyectos que tengan un impacto negativo en los territorios, comunidades de los pueblos indígenas.

#### Página 24, 7.9

Con respecto al consejo asesor, se propone que no se le denomine consejo sino ente asesor; y el mismo debiese quedar instalado previo a la implementación de la política y estrategia del BID. Se debe constituir una comisión preparatoria temporal para la formulación de una propuesta para la conformación del ente asesor indígena, esta propuesta debe contemplar objetivos y alcances de este ente, resultados , funciones, atribuciones, integración, temporalidad y funcionamiento.

El ente asesor debe estar constituido por delegados de las organizaciones indígenas de los países prestatarios elegidos por las organizaciones indígenas.

#### Página 13 punto v punto 5.1.

lí: que se elimine la palabra **minimizar**.

#### Página 15, 6.2 inciso b

La adopción de medidas políticas y legales que garanticen la participación de los pueblos indígenas en la estructuración de los ingresos y egresos de los estados.

#### Página 17 numero 6.4 inciso e (ii)

Se elimine cuando sea posible.

#### Página 20, punto 7.1

Eliminar **el recuadro 10**.

#### Página 22, punto 7.6 inciso b

Cambiar la palabra proteger por **salvaguardar y respetar sus derechos**.

Página 23, punto 7.7 inciso a) requerirá diagnósticos, filtros por expertos indígenas mediante procesos de consulta y concertación tempranos y socioculturalmente apropiados, encaminados a identificar los afectados indígenas y sus representantes (se elimina **legítimos**).

Agregar en inciso g) **asegurar el financiamiento para que los pueblos indígenas realicen su proceso de consulta**.

Punto 7.8

Agregar: El proponente, y los pueblos indígenas del proyecto así como los pueblos indígenas involucrados.

Página 24, inciso 7.9

Eliminar del párrafo el término **significativamente**.

**B. Grupo 2**

**1. Comentarios generales**

Punto 6 (b)

Ventajas comparativas.

En los conceptos de ‘Desarrollo Indígena’ el grupo no comparte con estos conceptos. La terminología que quizás se aproxima es “**Desarrollo Cosmogónico**”.

Punto 5.2 Fortalecer el territorio y la gobernabilidad... se sugiere agregar **tierras** y en relación a la gobernabilidad.

Punto 5.2 (a)

Autosuficiencia se [debe] reemplazar por “**soberanía alimentaria**”.

Punto 6.1 políticas públicas. Se debe cambiar reconocimiento por “**efectiva participación**”.

6.2 (e) se debe hacer un paréntesis, porque no se debe seguir apoyando a aquellas organizaciones que actúan en nombre de las comunidades indígenas. Más BIEN, SE DEBE PONDERAR A LAS ORGANIZACIONES INDÍGENAS).

FORTALECER LAS ORGANIZACIONES PROPIAS. Porque es la única forma de fortalecer a nuestros pueblos.

Que el Banco busque mecanismos para que a la inversa de apoyar a las organizaciones no gubernamentales .. se apoye a las organizaciones tradicionales CON BASE SOCIAL.

6.1 (i) se debe omitir la contratación de **especialistas indígenas** (se lee expertos indígenas).

6.2 (g) promover la.... información DISEMINACIÓN ( se DEBER LEER DIFUSIÓN OPORTUNA).

6.5 (d) el Banco apoyará esfuerzos e iniciativas de los pueblos indígenas... PROMOVER LOS MERCADOS INTERNOS INDÍGENAS DE RENTA DE LA TIERRA Y PARA FACILITAR EL USO DE LAS MISMAS COMO CAPITAL PROPIO... COMENTARIO las tierras son inajenables, inalienables no podemos comercializar con ellas porque es nuestra madre tierra. En referencia al punto 6.5 b.

Se debe incluir en el documento (**en ninguno de los casos de iniciativa comercial, los pueblos indígenas cederán o renunciarán [a] sus legítimos derechos a la posesión de la tierras o su hábitat**). En referencia a todo el inc. (b).

6.5 (f) el Banco **tratará** (se debe leer **apoyará**).



6.5 (g) **COSTALES** se debe leer **COSTEROS**.

7.2 MUCHAS DE ESTAS INICIATIVA DE APOYO de integración comercial no provienen de la iniciativa de los pueblos indígenas sino de los gobiernos.

7.3 (d) se debe resaltar con negrillas a los efectos de tema de interés comunitario. Se agregue **INDÍGENA** [donde se lee] **COMUNIDADES INDÍGENAS**.

7.6 (c ) en el lugar que dice **acuerdo o consentimiento**. SE DEBE LEER **ACUERDO Y CONSENTIMIENTO**.. y esta misma terminología que se aplique [a] los inc, subsiguientes, en donde [haya] relación.

7. 6 [donde dice] **no perjudiquen o menoscaban a los pueblos indígenas**. SE DEBE LEER **NO PERJUDIQUEN O MENOSCABEN LOS DERECHOS DE LOS PUEBLOS INDÍGENAS**.

7.6 (a) [donde dice] **fortalecerá los estándares y lineamientos en materia de pertenencia ..** SE DEBE LEER .. **ESTANDARES Y LINEAMIENTOS DEFINIDOS POR PUEBLOS NDIGENAS EN MATERIA DE PERTENENCIA Y VIABILIDAD**.

7.7 (a) [quitar] y **siempre que sea posible** [donde] SE LEE .. **FILTROS... Y SIEMPRE QUE SEA POSIBLE**.

7.7 (b) [Se debe tachar] **procurará** {SE TACHA}.SE {LEE} [debe leer]... **ASEGURARA** .. y en la frase final [eliminar] **cuando sea pertinente**. {SE ELIMINA pero} [y] se agrega una coma entre **espacios de diálogo y con representantes indígenas**.

7.7 (f) en la frase **compensación o desarrollo indígena**, existe una interrogante en esa frase, porque no se comparte con la terminología desarrollo indígena.

8.4 (vi) [Reemplazar] **Mejora en el acceso [con] procuración e impartición** (sic, administración?) **de Justicia**.

8.5. [agregar] **en todos los ámbitos que tienen que ver con el desarrollo ...**

Nota: texto original de las mesas de discusión, posteriormente editado por SDS/IND, 26.08.05. Los textos en [] complementan o reemplazan textos en {}.

## ANNEX IV

### SUMMARY OF RECOMMENDATIONS RECEIVED DURING THE SECOND PHASE OF THE ELECTRONIC CONSULTATION PROCESS

(29 June – 15 June 2005)

#### I. INTRODUCTION

This Annex summarizes the additional recommendations and comments of the Bank's team in response to the observations received on the final drafts of the Policy and Strategy through the electronic consultation. Given that a large number of these observations refer to the same issues raised in the consultation meeting with indigenous representatives of the borrowing member countries, in Costa Rica on 21 and 22 August, the summary of the observations received in that meeting (Costa Rica Summary - Annex II) is used as a reference. When deemed necessary additional adjustments to the texts were recommended for inclusion in the final drafts of the documents presented to the Board of Directors.

#### II. OPERATIONAL POLICY ON INDIGENOUS PEOPLES

##### A. General Comments

Gender. The Bank team considers the comment on the need to better develop the gender perspective to be valid. However, given the sensitivity of this issue and its cultural specificity, the team opted for a more general commitment, leaving the more specific definition of perspectives for future more in-depth study in the context of indigenous peoples and communities, and in coordination with the Bank's new Policy on Gender Equity under preparation.

Relationship between Indigenous Peoples and the State. The importance of this relationship, as the key issue for the development with identity of indigenous peoples in the long term, is acknowledged, and is extensively addressed in the Policy. However, it is important to recognize the diversity of situations and the constant evolution in this area, and to understand that the Policy is limited to setting standards for action by the Bank.

Indigenous Participation. This issue is extensively addressed in the Policy, which includes many of the process requirements to which the comment makes reference, leaving the impression that several of the observations originate in a faulty interpretation of the scope of the Policy. See paragraphs 1, 3, 4 and 9 of Section A of the Costa Rica Summary. Some of the considerations are very specific points which fall under the general purview of the Policy and will be specifically addressed in the operational guidelines for the implementation of the Policy.

Human Rights. The interpretation that the Policy only recognizes indigenous territorial rights backed by legal titles is incorrect. The Policy recognizes all legally valid rights and for this purpose it considers customary law, national and international legislation, including the corresponding jurisprudence. Regarding jurisprudence see point 7 of Section A and point 1 of Section B.1 of the Costa Rica Summary.

Indigenous Rights. There is no fundamental difference between the focus of the Policy and the comments regarding the approval status of the *Declarations* referred to, or the mandatory nature of compliance with international treaties. The term "applicable" refers precisely to the need to distinguish between countries that have ratified the international norms and those that haven't. In any event, these criteria will be further

dealt with in more detail in the operational guidelines. Refer to paragraphs 7 and 9 of Section A of the Costa Rica Summary. Regarding free, prior and informed consent, refer to paragraph 1 of Section A of the Costa Rica Summary.

Safeguards. The safeguards establish requirements for the approval of Bank financing for operations that potentially affect indigenous peoples. If these requirements are not met, the Bank will not approve these operations. Refer to paragraph 3 of Section A of the Costa Rica Summary.

## **B. Concepts**

Indigenous Peoples. Notwithstanding the importance of correctly identifying the subjects for the application of the Policy, this point is considered to be sufficiently addressed therein. On the one hand, the definition of “indigenous peoples” for the purpose of the Policy establishes minimum characteristics for eligibility. On the other hand, the Policy leaves space for working with different levels of eligible subjects – peoples, communities, affected groups and even individuals – depending on the issues, impacts and benefits, and actions under consideration. The operational guidelines will establish appropriate criteria to make determinations in each case, consistent with the principles established in the Policy and the applicable legal norms. Refer to paragraphs 7 and 8 of Section A of the Costa Rica Summary. No further adjustments to the texts are recommended.

The notion of Indian vs. Indigenous. The term indigenous is considered to have widespread acceptance and does not need to be changed. In addition, it is important to note that the representatives of indigenous organizations in Costa Rica and in earlier consultation events never expressed a desire to change the term “indigenous”.

Local Actors and Institutions. The Policy and Strategy recognize a wide spectrum of indigenous realities, specifically referring to aspects such as migration and the partial articulation with other social groups. See, for example, paragraphs 4.3 (a), (b), (c), (g) and (h), 4.4 (d) and (e) and 6.2.

Local Authorities The Policy recognizes the importance of articulation indigenous systems of authority with local public authorities and of strengthening the institutional structure of indigenous communities and organizations. See, for example, paragraphs 4.3(h) and (b).

### Specific Suggestions for Modifications in the Text

- Sustainable actions- page 2, 3rd paragraph. These issues are included in the concept of development with identity.
- Declarations of the UN and OAS systems - page 1, note 3. The note is sufficiently clear on the distinction between treaties in force and declarations pending approval. There are no conceptual differences between the content of the comments and the scope of the Policy.
- Strengthening of territories- page 2, paragraph 1.4. This general concept is shared by the indigenous representatives who participated in the consultation process and integrates the strengthening of control and access to territories, as well as improvements in their physical and administrative management.
- Option of rejection as a result of the consultation, page 3, first paragraph. This is not a conceptual or editorial problem, but rather one of interpretation. The possibility that the consultation does not

result in an agreement is considered and implies that, if the applicable requirements are not met, the respective operation cannot be approved by the Bank.

- The term “ remedial measures” is used as a synonym for “corrective measures” to avoid repetition of the same term in the same sentence. The concept is to correct events of non-compliance even when it has not been possible to avoid them, as the term “precautionary measures” would suggest.

### III. STRATEGY FOR INDIGENOUS DEVELOPMENT

#### A. General Comments

Upholding the Usual Logic of Exploitation. The Strategy together with the Policy attempt to establish opportunities for a new logic regarding development with identity and self development of indigenous peoples, as well as process requirements that ensure the socio-cultural viability of Bank operations. The concept of socio-cultural viability requires: good faith negotiations, a satisfactory level of agreement by the peoples and communities affected, compliance of their rights regarding consultation and participation consistent with applicable legal norms, and a net flow of benefits to the affected communities. The Bank recognizes the importance of assuring the quality of these processes during the course of the implementation of its operations in the new context of the Policy and the Strategy. The Bank also recognizes the limitations of its scope of action with respect to exogenous processes that could jeopardize the interests of indigenous peoples in the future.

Cultural Considerations. The Strategy and the Policy consider awareness raising and training activities which will encourage Bank and government staff to understand cultural issues of concern to indigenous peoples. See, for example, paragraph 7.5 of the Strategy.

Overlap of Legality and Legitimacy. The Bank recognizes the complexity of this issue. The Strategy attempts to have these concepts and processes complement each other and seeks compliance with the legal requirements as well as voluntary appropriation which meets the criteria for legitimacy. Without any doubt it will be important to stress the need for access to quality information in a timely manner order to clarify issues of interpretation.

#### B. Specific Suggestions for Modifications of the Texts

To a large extent the specific suggestions are related to the conceptual issues already discussed in Annex II, in Section II and in point A of Section III of this Annex , including the changes recommended in the text, whenever applicable.

The Bank team considered suggestions for clarification and illustration consistent with the concepts discussed above and with the scope of the texts of the Strategy and the Policy for inclusion in the implementation guidelines in the first instance. In exceptional cases, the team recommended additional changes to the final text of the Strategy to be submitted to the Board of Directors. As a result of this process, additional revisions were included in the following paragraphs of the Strategy: 1.2, 2.1, 2.2, 2.3, 2.4, 2.6, 3.2, 3.4, 3.9, 4.5, 5.1, 6.1 (b), 6.4 (a), 7.1, 7.2 (d), 7.4 (a) and (c), 7.9, 8.2 (f-new), and 8.4 (i) (v), (xii-new) and (xv-new).