

INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

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April 09, 2014

Jim Yong Kim
President
The World Bank
1818 H Street, NW
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**RE: Guidance in a Time of Change:
Including Indigenous Peoples in the Bank's Goals of Ending Extreme
Poverty and Building Shared Prosperity without Discrimination**

Dear President Jim Yong Kim,

We write today asking you to issue an action-oriented statement directing the Bank to squarely address indigenous peoples' poverty, to work with Indian governments to eradicate poverty in their communities, to clearly safeguard their collective rights as indigenous peoples; their rights as owners of their lands, territories and natural resources; and their basic human rights. Respecting indigenous rights can result in a win-win scenario that ensures the Bank invests in "human capital"¹ in a non-discriminatory way, and because we are certain that successfully tackling indigenous peoples' poverty is essential if the Bank is to achieve its twin goals of "ending extreme poverty" and "building shared prosperity."² Indigenous peoples may too often suffer extreme poverty, but this is not because they are anti-development. Indigenous peoples are land-owners, rights-holders and promoters of sustainable development. They are poor because these rights have been ignored, and it will be impossible to build shared prosperity without acknowledging these facts and fully respecting their rights.

Your leadership on this critical topic is of great importance during the restructuring processes the

¹ President Jim Kim, Address at Inspection Panel 20th Anniversary (Sept. 27, 2013), <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:23434152~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html>.

² World Bank, World Bank Group Strategy, Oct. 2013, https://openknowledge.worldbank.org/bitstream/handle/10986/16095/32824_ebook.pdf (last visited Jan. 15, 2014)

World Bank has embarked upon. Even though poverty in indigenous communities is more severe than for any other population in the Bank's borrowing countries, we have not seen any communication from you addressing this issue.³ Therefore, we respectfully encourage you to provide the Bank with much needed guidance to ensure that the poorest of the poor are not again left behind.

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

Under your leadership, the Bank has simultaneously embarked in two important processes. First, the Bank is revising its safeguard policies, which are intended to prevent harm to people and the environment. We have already provided the Bank with substantive comments and recommendations on these revisions⁴ which we hope will be taken into account. Secondly, based on the approval of the World Bank Group Strategy (Strategy) in October 2013, the Bank has embarked in a major internal process aimed at achieving the Bank's twin goals of "ending extreme poverty" and "building shared prosperity."⁵ This letter outlines our preliminary suggestions for reasonable actions that the Bank can take to incorporate indigenous issues into this Strategy and process.

Within these processes, we hope that you ensure that the World Bank applies lessons learned from past wrongdoings, especially those incidents where the violation of indigenous peoples' rights resulted in their suffering grave harm. Otherwise, the Bank will continue to not only contribute to the violation of indigenous peoples' rights—as occurred when over 10,000 Maya Achi Indians lost their lands and saw their family members massacred to make way for the Bank-financed Chixoy Hydroelectric Project in Guatemala⁶—but the Bank, along with borrowing countries, will also continue to incur responsibility, and liability, for these consequences. As you may know, the United States Congress recently passed the Appropriations Act of 2014, which asks the U.S. Executive Director to the Bank to report to the U.S. Secretary of Treasury on the steps being taken to implement the Chixoy Reparations Plan.⁷ Certainly, this is not the "global practice"⁸ the Bank would like to promote worldwide. We hope you will ensure that the Bank will take the necessary steps for implementation.

Investing in "human capital" must include full respect of all vulnerable peoples', and particularly indigenous peoples', human rights if it is to generate meaningful returns. The Center agrees with you that under the Strategy's "smart risk-taking" element,⁹ it is critical that risk not be transferred to the most vulnerable.¹⁰ To avoid this risk-transfer, the Bank must commit to refuse to finance activities that would contravene borrowers' obligations under human rights treaties, especially when the rights of indigenous

3 See World Bank Office of the President, All News, http://www.worldbank.org/en/about/president/all-news?term=&lang_exact=English&displayconttype_exact=Speeches+and+Transcripts&os=0 (last visited Feb. 10, 2014).

4 See, e.g., Indian Law Resource Center, Submission to the World Bank on the Review of its Social and Environmental Safeguard Policies, May 2013, <http://www.indianlaw.org/sites/default/files/ILRC%20WB%20Submission%20Final.pdf>.

5 See generally World Bank, World Bank Group Strategy, *supra* note 2.

6 See Government of Guatemala, Coordinadora de Comunidades Afectadas por la Hidroeléctrica de Chixoy, Organization of American States, World Bank and Inter-American Development Bank, Informe de Identificación y Verificación de Daños y Perjuicios Ocasionados a las Comunidades Afectadas por la Construcción de la Hidroeléctrica Chixoy [Report on the Identification and Verification of Damages Caused to Communities Affected by the Chixoy Dam] (2009) (on file with the Indian Law Resource Center).

7 U.S. Consolidated Appropriations Act, 2014, p. 1240.

8 World Bank, World Bank Group Strategy, *supra* note 2, at para. 57.

9 *Id.*, at 65.

10 President Jim Kim, Address at Inspection Panel 20th Anniversary, *supra* note 1.

peoples are at stake. Other multilateral development banks are already assuming this commitment.¹¹

Ending indigenous peoples' poverty by working with indigenous peoples as equal partners for development

Working with indigenous peoples as equal partners for development will help the Bank not only to better identify their communities' development needs, but also to "do good" for indigenous peoples, instead of merely striving to "do no harm." The Bank cannot be successful in ending extreme poverty if indigenous peoples' development needs continue to be excluded from or marginalized in Bank strategies and policies. Indigenous peoples have the most to gain, and to lose, from development. Projects based on the same old development models have in too many cases ignored indigenous peoples' needs, or worse, exacerbated indigenous peoples' poverty.

President Kim, indigenous peoples expect true leadership and your guidance during this time of change. Our people cannot afford continued neglect under development models that have historically failed to benefit our communities. Indian nations need to hear how the Bank is going to tackle their communities' extreme poverty, and how this will be carried out within the Bank's new structure. Surprisingly, none of your numerous press releases and statements addresses indigenous poverty.¹² Simply turning a blind eye to indigenous peoples, the poorest of the poor,¹³ will do nothing to end the extreme poverty of the developing world's most vulnerable. We call on you to correct this oversight and issue action-oriented recommendations to lift indigenous peoples from poverty and to provide increased funding for their own development projects, especially now that the Bank's fight against extreme poverty has received record setting financial support.¹⁴

Our Indian governments and grass-roots elected leaders are the legitimate representatives of the communities that own the lands and resources targeted for development projects, not the regional indigenous civil society organizations the Bank tends to talk to. These government and representative leaders want to directly engage with the Bank, but they are also demanding changes in Bank practice to protect their rights as peoples, as governments, and as the lawful owners of their lands, territories and natural resources. Indians are not anti-development. We are the first practitioners and greatest advocates of sustainable development, of development that enhances our human rights and protects the lands we own, so that our peoples can share equally in this world's prosperity.

Engaging with indigenous governmental authorities is the best way to learn about their communities' development needs. As a doctor, we are sure you know how difficult it is to treat a patient without firsthand knowledge of their suffering. Likewise, the Bank cannot hope to contribute to a particular community's development unless it works directly with that community and sees their situation up close.

The Bank must address indigenous peoples as distinct social, legal and political entities, not as mere civil society organizations. Unfortunately, the Bank has embarked on a comprehensive review of

¹¹ European Bank for Reconstruction and Development, Environmental and Social Policy, para. 9, (2008), <http://www.ebrd.com/downloads/research/policies/2008policy.pdf>.

¹² See generally World Bank Office of the President, All News, *supra* note 3.

¹³ Gillette Hall & Harry Patrinos, Indigenous Peoples, Poverty, and Development, Apr. 2010, http://siteresources.worldbank.org/EXTINDPEOPLE/Resources/407801-1271860301656/full_report.pdf.

¹⁴ Press release, World Bank Office of the President, World Bank's Fight against Extreme Poverty Gets Record Support: \$52 Billion for IDA, the World Bank's Fund for the Poorest (Dec. 17, 2013), <http://www.worldbank.org/en/news/press-release/2013/12/17/world-bank-fight-extreme-poverty-record-support>.

its social and environmental safeguard policies, including the Indigenous Peoples Policy, without a plan for engagement and consultation with indigenous governmental authorities. On various occasions, Bank staff have committed to establishing such a process, not just for the safeguards policy review, but on broader issues of engagement, development, and policy implementation as well.¹⁵ Disappointingly, we have not yet seen any action towards this.

We are deeply concerned that such a plan (if it exists) will simply perpetuate past Bank practice of consulting with indigenous regional civil society organizations. Certainly, this approach runs counter to the Bank's commitment to hold "global, regional and local consultations" with indigenous peoples.¹⁶ The idea that one consultation with Bank-selected indigenous civil society organizations could generate responses representative of an entire region of indigenous nations and peoples is plainly unreasonable. Yet for years in the Latin American and Caribbean region we have seen the Bank self-select a handful of non-governmental organizations or indigenous individuals to meet with, and then claim it has "consulted with indigenous peoples." That is not a useful process and we hope this does not happen again.

Building shared prosperity by safeguarding indigenous peoples' collective ownership of their lands and resources

Making development work for indigenous peoples requires safeguarding indigenous peoples' collective ownership of their lands and resources. Taking their lands and resources to make room for new projects is not development. This model creates indigenous poverty, it displaces peoples from their territories, and it cannot build shared prosperity. Indigenous peoples have a special attachment to their lands and resources that goes beyond a market-based conception of mere possession and production. This "distinctive and profound spiritual and material relationship"¹⁷ forms the "fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival."¹⁸ Moreover, their collective ownership necessarily includes the right of an indigenous nation or community to use, develop, control and benefit from the lands and resources under its possession, a right recognized under international law,¹⁹ regardless of whether or not it holds formal title.²⁰

Mr. President, indigenous peoples' survival depends on their collectively held lands, territories and resources. Our communities cannot continue to pay the price of the Bank's ambivalence towards safeguarding their collective ownership rights. Failing to safeguard these rights poses serious risks for indigenous peoples. It also threatens the very projects that use indigenous lands and resources. The lessons learned from the Bank-funded Chixoy Hydroelectric Project apply here. Stronger safeguard policies that protect indigenous peoples' collective ownership will make sustainable development more feasible, shared prosperity more likely, and strengthen efforts to combat climate change.

15 Letter from Joachim von Amsberg, Vice President & Head of Network, World Bank Operations Policy and Country Services, to Indian Law Resource Center (Dec. 21, 2012) (on file with the Center). See World Bank, World Bank Sets the Stage for Stronger Engagement with Indigenous Peoples, June 14, 2013, http://www.worldbank.org/en/news/feature/2013/07/09/stronger_engagement_with_indigenous_peoples.

16 Letter from Joachim von Amsberg, Vice President & Head of Network, World Bank Operations Policy and Country Services, to Indian Law Resource Center (Aug. 5, 2011) (stating that "[o]nce we do begin the consultation process, we are committed to carrying out, as you urge us to, 'global, regional and local consultations'") (on file with the Center).

17 U.N. Special Rapporteur, Erica-Irene Daes, *Prevention of Discrimination and Protection of Indigenous Peoples and Minorities: Indigenous Peoples and their Relationship to Land*, para.121, E/CN.4/Sub.2/2001/21.

18 *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Inter-Am. Ct. H.R. (ser. C) No. 79, para. 159 (Aug. 31, 2001).

19 U.N. Declaration on the Rights of Indigenous Peoples Art. 26, G.A. Res. 61/295, U.N. Doc A/RES/61/295 (Sept. 13, 2007). See also International Labor Organization, Convention concerning Indigenous and Tribal Peoples in Independent Countries Art. 14, 15, ILOLEX C169 (June 27, 1989).

20 *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, *supra* note 18, at para. 151 (upholding that "possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property"). See also Inter-Am. Comm'n H.R., Inter-Am. Comm'n H.R., *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System* 111, OEA/Ser.L/V/II, Doc. 59/09 (Dec. 30, 2009) (stating that indigenous peoples' "traditional possession of ancestral [lands] has effects equivalent to those of State-issued full ownership property titles").

The Bank's land strategies exemplify the Bank's ambivalence in this regard. These strategies, such as the Land Governance Assessment Framework (LGAF),²¹ are largely based on a market logic that has often resulted in dispossession of Indian lands.²² One need only to look at the allotment process in the U.S., where the U.S. government divided Indian lands into individually titled plots in order to spur economic development; Indian-held land dropped from 138 million acres to just 48 million in less than 50 years.²³ Many Indian Nations were left landless and impoverished, and many are still struggling today to fix the resulting economic and social devastation.

The Bank's emphasis on "land tenure" is troubling. Land tenure is a very vague concept that risks undermining the ownership rights of indigenous peoples proclaimed in the U.N. Declaration on the Rights of Indigenous Peoples (U.N. Declaration) and upheld under international law.²⁴ Surprisingly, even as the Bank recognizes the centrality of land for development and directs increasing investment towards securing "land tenure",²⁵ the Bank is considering following the Food and Agriculture Organization's policy on "land tenure",²⁶ a policy criticized for failing to meet the applicable legal standards reflected in the U.N. Declaration.²⁷ We encourage the Bank to follow the European Investment Bank's approach instead, and explicitly ask borrowers to take the U.N. Declaration into account when indigenous peoples' lands and resources are involved.²⁸

Finally, the Bank's current practice of doing business in countries that lack a sound legal framework that respects indigenous peoples' collective ownership is a real concern. For instance, the Bank has gone forward with a Land Administration Project in Guatemala that has resulted in land registration efforts that benefit agribusiness, yet make indigenous peoples' lands more vulnerable.²⁹ We encourage the Bank to engage in countries with a sound legal framework in place. In Nicaragua, for instance, the Bank-funded Land Administration Project has supported the enforcement of an international human rights ruling on collective indigenous land ownership, and helped many indigenous communities to secure collective land titles.³⁰ With secure legal title, these communities are now able to fully exercise their ownership and self-determination rights, and the risk of future land conflicts is effectively eliminated. Bank projects that respect indigenous peoples land ownership and other human rights can end indigenous poverty and build prosperity that indigenous people can share.

President Kim, to end extreme poverty of indigenous peoples, bring prosperity to their

21 KLAUS DEININGER, HARRIS SELOD & ANTHONY BURNS, *THE WORLD BANK, THE LAND GOVERNANCE ASSESSMENT FRAMEWORK: IDENTIFYING AND MONITORING GOOD PRACTICE IN THE LAND SECTOR* 14 (2012) (stating that securing land tenure will facilitate low-cost land transfers to more productive use, increase access to credit and income-generating employment and spur investment).

22 Projects often give priority to titling of individual lands over collective lands. See Remarks by Alf Jerve & Liza Grandia at Indian Law Resource Center's Panel: "Indigenous Peoples' Lands and Development: World Bank Interventions and Lessons Learned" (Oct. 19, 2013), available at <http://indianlaw.org/mdb/Oct-2013-panel>.

23 WILLIAM C. CANBY, *AMERICAN INDIAN LAW IN A NUTSHELL* 23 (5th Ed. 2009).

24 U.N. Declaration on the Rights of Indigenous Peoples, *supra* note 19, Art. 26.

25 See, e.g., KLAUS DEININGER, HARRIS SELOD & ANTHONY BURNS, *supra* note 21.

26 FOOD AND AGRICULTURE ORGANIZATION, *VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE OF LAND, FISHERIES AND FORESTS IN THE CONTEXTS OF FOOD SECURITY* (2012), <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

27 U.N. Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Report to the U.N. General Assembly 12-13, U.N. Doc. A/67/301 (Aug. 13, 2012) (pointing out the provisions of the FAO Guidelines that fall below the legal standards reflected in the U.N. Declaration, especially those relating to land and resources —i.e. provision 9.5 failing to establish the free, prior and informed consent of the affected indigenous peoples as a precondition of removal from their traditional lands).

28 European Investment Bank, Statement of Environmental and Social Principles and Standards, para. 53 (2009), http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf

29 See JORGE GRÜNBERG, LIZA GRANDIA & BAYRON MILIAN, *THE WORLD BANK, TIERRA E IGUALDAD: DESAFÍOS PARA LA ADMINISTRACIÓN DE TIERRAS EN PETÉN, GUATEMALA* (1st Ed. 2012).

30 See World Bank, Nicaragua - Land Administration Project, Project ID P056018, <http://www.worldbank.org/projects/P056018/land-administration?lang=en&tab=overview>

communities, and best implement the “smart risk taking” approach, we respectfully recommend that you start with the Bank’s own transformation:

1. Explicitly address indigenous peoples’ distinct rights and development priorities within the safeguards review, issue strategies, and the modernization/change process.
2. Ensure that all policies, strategies, and Bank activities respect indigenous peoples’ human rights, consistent with the U.N. Declaration on the Rights of Indigenous Peoples, International Labor Organization Convention 169, and binding case law from regional human rights courts; especially when indigenous lands, territories and resources are at stake.
3. Create an indigenous peoples fund to support efforts aimed at ending indigenous peoples’ poverty and provide funding for their own development projects.
4. Develop a strategy for serious, proactive, and transparent engagement with indigenous peoples’ governmental authorities as equal partners for development.
5. Provide the staffing, resources, and incentive structure to ensure that the Bank is able to effectively support indigenous peoples’ development.
6. Develop a study on indigenous peoples’ land and development, with a focus on indigenous peoples’ collective ownership over lands and resources, to affirm its centrality in the Bank’s fight against extreme poverty and in all land-related projects and strategies.
7. Revise risk assessment policies and tools to effectively and explicitly identify human rights risks and prevent project-related human rights violations.

The Center remains eager to work towards ending indigenous peoples’ poverty and producing the strongest possible Bank policy on indigenous peoples. We also welcome Bank officials, especially those from the Legal Department, to engage in a dialogue on these issues.

Sincerely,



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