

INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

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Executive Directors and Counselors

Inter-American Development Bank
1300 New York Avenue, NW
Washington, D.C. 20577

RE: Consultations on the Operational Policy on Indigenous Peoples

Distinguished Directors and Counselors,

The purpose of this letter is to provide you with suggestions on how the Indian Law Resource Center believes the Inter-American Development Bank (I.D.B.) should seek inputs from indigenous peoples and experts on its operational policy OP-765 Indigenous Peoples, among others. All of this, in response to the request for suggestions made by several Executive Directors and/or their Counselors, especially those with whom we met on April 15, and because of the upcoming consultations that the I.D.B. will begin this year to review and update several of its socio-environmental operational policies.

In our opinion, the I.D.B. must seek said inputs by applying the best practices. In particular, the practices supported by the I.D.B. itself to develop its policy on indigenous peoples, as well as those practices held by other banks when updating their indigenous peoples policies—e.g. the World Bank and the International Finance Corporation (I.F.C.). It should be noted that indigenous peoples and organizations from the region will not accept inferior participation standards than those supported by these best practices.

1. Consultation process dedicated to indigenous peoples

The I.D.B. must hold face-to-face meetings with representatives of indigenous peoples. The purpose of these meetings should be to collect inputs from such representatives on how to improve the safeguard measures contained in the existing policy on indigenous peoples, among others. The I.D.B. must ensure the participation of the representatives of project-affected indigenous communities, as well as of the main indigenous organizations from its borrowing countries. It is recommended that these meetings take place in geographical areas where the I.D.B. has encountered

socio-environmental problems during the design and implementation of its projects, not in borrowing countries' capital cities.

The way in which the I.D.B. supported this practice for the development of its policy on indigenous peoples was superior to that of other banks. It is important to note that, under the presidency of Mr. Enrique V. Iglesias, the I.D.B. created an Indigenous Advisory Council that was formed by representatives of indigenous organizations from the region, to "accompany the process of reviewing and defining the final draft of the [Indigenous Peoples Policy]."¹ No other bank has adopted a similar method. Thus, for a period of two years, about 44 face-to-face meetings with indigenous representatives were held at the regional level.²

2. Meetings with experts on indigenous issues

The I.D.B. must facilitate face-to-face meetings with experts on indigenous issues. The purpose of these meetings should be to discuss those issues not covered by its existing policy on indigenous peoples, among others. These issues include, but are not limited to, the following: (1) cadastre, demarcation, titling, registry and indemnification or protection of collectively-held indigenous lands; and (2) the free, prior, and informed consent of indigenous peoples. The I.D.B. should facilitate the participation of indigenous and non-indigenous experts who have proven experience and expertise on indigenous issues in the Western Hemisphere.

Recently, other banks have conducted similar meetings, which were held behind closed doors and by invitation only. For example, in 2013, the World Bank held one of these meetings in Manila, Philippines.³ In 2010, the I.F.C. did so in Washington, D.C.⁴ Both of these meetings focused on the issue of free, prior and informed consent.

The probability of harms to indigenous communities due to projects contingent upon the cadastre, demarcation, titling, registry and indemnification or protection of collectively-held indigenous lands is very high. Surprisingly, the I.D.B.'s policy on indigenous peoples does not address this issue as it should. That is why, for example, indigenous communities in the Amazon brought forth a complaint to the Independent Consultation and Investigation Mechanism due to harm caused by a land titling project in Peru financed by the I.D.B.⁵ Both the Inter-American Human Rights Commission⁶ and Court⁷ have processed and continue to receive cases against the I.D.B.

¹ B.I.D., Unidad de Pueblos Indígenas y Desarrollo Comunitario, *Criterio de Elegibilidad y Selección del Consejo Asesor Indígena*, supra note 2.

² B.I.D., Unidad de Pueblos Indígenas y Desarrollo Comunitario, *Informe sobre el proceso de consulta – Estrategia para el Desarrollo Indígena y Política Operativa sobre Pueblos Indígenas*, Sept. 2, 2005, pág.1.

³ Banco Mundial, *World Bank's Safeguard Policies Review and Update - Expert Focus Group on the Emerging Area Free, Prior, and Informed Consent of Indigenous Peoples*, Mar. 21, 2013, https://consultations.worldbank.org/Data/hub/files/safeguards_focus_group_fpic_manila_summary_final_0.pdf (visita de Agos. 28, 2018).

⁴ C.F.I., *Workshop: Free, Prior and Informed Consultation v. Consent*, July 29, 2010 (en archivos con el Centro).

⁵ M.I.C.I., Proyecto de Titulación y Registro de Tierras en Peru – Tercera Fase (PTRT-3), Caso No. MICI-PE-2015-0094, disponible en <https://www.iadb.org/en/mici/idb-public-registry-country> (visita de Sept. 26, 2018).

⁶ C.I.D.H., Audiencia: Titulación de tierras colectivas y protección de los pueblos indígenas Emberá, Wounaan, Kuna, Buglé, Ngöbe, Naso y Bribi en Panamá, Oct. 5, 2018, disponible en https://www.youtube.com/watch?v=s5bxtsrkiDc&t=0s&list=PL5QlapyOGhXtxcMOpg35GCa2M7dJo_QVh&index=33; Audiencia: Demarcación y titulación de tierras indígenas en el Caribe, Oct. 4, 2018, disponible en https://www.youtube.com/watch?v=rs9FUsGi3y4&t=0s&list=PL5QlapyOGhXtxcMOpg35GCa2M7dJo_QVh&index=27. Véase también, C.I.D.H., *Comunidad Maya Q'eqchi' Agua Caliente vs. Guatemala*, Informe de Admisibilidad No. 30/17,

borrowing countries because their cadastre, demarcation, titling and registry systems lead to violations of indigenous peoples' collective property rights to their lands. Both the World Bank and the I.F.C.'s new policies on indigenous peoples provide guidance on these matters.⁸

Free, prior and informed consent plays a vital role not only in preventing harm to indigenous peoples, but also in helping achieve project goals. Unfortunately, the I.D.B. policy on indigenous peoples does not provide for this safeguard measure.⁹ According to the Inter-American Human Rights Court, "when development or large-scale investment projects could have a major impact on an [indigenous] territory, the State has the obligation to not only consult with [indigenous peoples] but to also obtain their free, prior and informed consent according to their customs and traditions."¹⁰ The American Declaration on the Rights of Indigenous Peoples explicitly demands such consent.¹¹ That is why both the World Bank and the I.F.C. included consent requirements in their respective policies on indigenous peoples.¹²

We hope that these suggestions can guide the decisions to be made by the Board of Executive Directors on the plans that I.D.B. Management will eventually present on how it plans to carry out the process of reviewing and updating the policies, especially on how to seek inputs from indigenous peoples, organizations and experts. We believe that, by means of the best practices suggested here, the I.D.B will be able to count with a fresh and distinctive body of expertise on indigenous matters, which is critical to improve its policy on indigenous peoples.

Without further ado, we would like to express our highest regards.

Sincerely,



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Indian Law Resource Center

OEA/Ser.L/V/II.161 Doc.37, Mar. 18, 2017.

⁷ Caso de la Comunidad Indígena Xákmok Kásek vs. Paraguay, Corte I.D.H. (ser. C) No. 214 (Agos. 24, 2010); Caso de la Comunidad Indígena Sawhoyamaya vs. Paraguay, Corte I.D.H. (ser. C) No. 146 (Mar. 29, 2006); Caso de la Comunidad Indígena Yakye Axa vs. Paraguay, Corte I.D.H. (ser. C) No. 142 (Febr. 6, 2006).

⁸ Estándar 7 Pueblos Indígenas/Comunidades Locales Tradicionales Históricamente Desatendidas de África Subsahariana, Agos. 4, 2016, párr. 29.

⁹ Política Operativa sobre Pueblos Indígenas (OP-765), IDB Doc. No. GN2386-8 (feb. 22, 2006), pág. 8 (exigiendo solo "consultas y procesos de negociación de buena fe").

¹⁰ Caso del Pueblo Saramaka vs. Surinam, Corte I.D.H. (ser. C) No. 172 (Nov. 28, 2007), párr. 134.

¹¹ Declaración Americana sobre los Derechos de los Pueblos Indígenas, G.A. Res. 2888 (XLVI-O/16) (Jun. 15, 2016). XXIX(4).

¹² Estándar 7 Pueblos Indígenas/Comunidades Locales Tradicionales Históricamente Desatendidas de África Subsahariana, Agos. 4, 2016, párr. 24-28. Véase también, Norma de Desempeño 7 Pueblos Indígenas, C.F.I. Enero 1, 2012, párr. 13-17.