

The President
Asian Development Bank

The Board of Directors
Asian Development Bank

Safeguard Policy Update Team
Asian Development Bank

3rd of February 2009

To the President of the Bank and the Executive Directors,

We are writing to you to raise our serious concerns on the present state of the draft Safeguard policy after the consultations hosted by ADB in November 2007 and again in 2008.

We have engaged in the consultation process of the Bank in good faith and have presented and discussed our comments and our concrete recommendations to strengthen the Safeguard Policy Statement. We are thereby expressing our strong and collective disappointment at the lack of inclusion of our concrete recommendations in the present language of the W-Paper. These recommendations were based on experiences from real projects funded by ADB impacting on indigenous peoples. We have taken our time to study the projects and the related safeguards, and have explained our conclusions to the SPU Team throughout the consultation and review process over the years, and also explaining why certain recommendations cannot be compromised as those are the basic minimum safeguards that will not only protect indigenous peoples but also help the Bank to enhance its development effectiveness. We enclose a brief analysis of our recommendations against the released W-Paper which displays the limited extent to which our recommendations were taken onboard.

In particular, the application of the principle of free, prior and informed consent (FPIC) is not only limited to certain activities but also lacks substance for its operation. We have clearly indicated our concern on this point many times, including in our written submissions and oral presentations during the Indigenous Peoples Workshop Consultation and the Multi-stakeholders Consultation.

The explanation provided for the retention of the same content and language in reference to FPIC disappointingly does not address the concerns we have raised. We have repeatedly expressed our disagreement with the operationalization of FPIC as "Broad Community Support". To reiterate again, this does not support and encompass the principles and substance of FPIC. We have also strongly presented our position that the application of FPIC should not be limited to the defined three project categories but should apply to ALL projects affecting indigenous peoples based on the respect of the collective rights of indigenous people. We proposed as a compromise position that the ADB could apply FPIC to a specific set of activities, but that in such a case the specific set of activities should include: (i) impacts on cultural resources and knowledge of Indigenous Peoples, (ii) physical and/or economic displacement of indigenous peoples, (iii) impacts on natural resources on lands used with impacts on the livelihood, or cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples, and (iv) projects involving health and education activities for Indigenous Peoples.

Further, we have also forwarded other specific recommendations to strengthen the Policy. One of our core recommendations is the inclusion of a provision for a validation process in the conduct and outcome of environmental and social impact assessments involving indigenous peoples. This recommendation is made based on negative experiences of indigenous communities which has lead to approval of projects based on false information or misrepresentation of the views and interests of the affected communities.

Based on the above, the current draft of the SP is unacceptable to us. While the inclusion of FPIC is a welcome step, the present draft appears to be more lip service than substantive protections to uphold the rights and welfare of affected indigenous communities. This is a clear dilution of the intent and spirit of FPIC and is therefore unacceptable.

We hereby strongly call on the SPU team to review our submissions and presentations, and make the necessary inclusion of our recommendations in order to strengthen the policy. If our common objective and interest is to strengthen the policy, we cannot see any justification of why our specific recommendations have not been included. We will be compelled to call for the rejection of the safeguard policy if the final paper does not include our specific demand for the FPIC provision and the validation process in relation to the environment and social impact assessment

We shall continue to assert our right to FPIC and its implementation in accordance with the international recognition of our collective rights with its principles and substance. Along this line, we shall engage in all avenues and forms of legitimate action to generate attention on the non-compliance and non-recognition of our collective right to FPIC.

Based on the explanation provided by the SPU team, we believe there is a lack of understanding and appreciation on the principles and substance of FPIC, especially when it comes to its operationalization related to the respect for the rights of indigenous peoples.

In this context, we have expressed our willingness to have a more thorough discussion with the Bank on this very important and sensitive issue, and possibly work together towards developing a common framework for the operationalization of FPIC. We remain willing to do this. If the Bank alters the definition of FPIC to remove reference to Broad Community Support we would be happy to engage with the Bank on establishing effective and practical measures to operationalize FPIC.

We believe this is the opportunity for the Bank to demonstrate its political will to be in conformity with international human rights, not only as a mere lip-service, but also in its application. This we believe is the best way forward in strengthening the Safeguard Policy.

With regards,

Joan Carling, Secretary General, Asian Indigenous Peoples' Pact Foundation (AIPP)

Abdon Nababan, Aliansi Masyarakat Adat Nusantara (AMAN)

Rukka Sombolinggi, Aliansi Masyarakat Adat Nusantara (AMAN)

Mina Susana Setra, Aliansi Masyarakat Adat Nusantara (AMAN)

Farmark Hlawning, Chin Human Rights Organization

Nima Lama, Secretary-Foreign Affairs, Nepal Federation of Indigenous Nationalities (NEFIN)

Jennifer Corpuz, Tebtebba Foundation (Indigenous Peoples' International Centre for Policy Research and Education)

Bernice See, Philippines

Jiten Yumnam, Forum for Indigenous Perspectives and Action

Benedict Solang, Center for Development Programs in the Cordillera - Cordillera Peoples Alliance

Ramananda Wangkheirakpam, North East peoples' Alliance on Trade, Finance and Development