



July 29, 2014

To: Committee on Development Effectiveness (CODE)  
World Bank Group

Dear Members,

As you review the draft revised safeguard policies of the World Bank, including the policy provisions for indigenous peoples (ESS7) and decide on the way forward, we would like to raise our serious concerns for your consideration and action.

Contained in the draft ESS are new standards intended to “ensure that the development process fosters full respect for the human rights” of indigenous peoples (proposed ESS7). While we recognize that these standards have been improved in their inclusion of a requirement to obtain free, prior and informed consent (FPIC), the inclusion of an option for borrowing countries to opt-out of applying the policy at all undermines any advances. As currently formulated, the FPIC provisions are also weak and need amendment to be effective and appropriate.

Attached is the statement prepared jointly by the Asia Indigenous Peoples Pact (AIPP) and the Forest Peoples Programme (FPP) containing our views and recommendations in improving the draft for the second round of consultations. We have been engaging in the review process since it was launched in 2011 and we hope that the dilutions to the current safeguard policies shall be addressed properly, and the added provisions such as the on the free prior and informed consent of indigenous peoples be strengthened, along with the legal recognition of the rights of indigenous peoples to their lands and resources.

This statement has been endorsed by 84 indigenous peoples organizations/institutions, 59 support groups and 20 individuals.

Thank you for your attention and we look forward to your action in relation to our recommendations.

Respectfully,

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Member, UN Permanent Forum on Indigenous Issues  
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CC: Dr. Jim Yong Kim, President – World Bank; Luis Felipe Duchicela, Adviser on Indigenous Peoples; World Bank Executive Directors

## **Significant concerns with the proposed World Bank safeguards for indigenous peoples**

We have reviewed and considered the advance copy of the new proposed draft World Bank Environmental and Social safeguards (ESP and ESS). We are deeply dismayed by the overall weakening of the policy requirements for indigenous peoples with very serious implications, including the outright denial of the existence and rights of indigenous peoples under international human rights laws.

Not only are the standards for indigenous peoples (contained in ESS7) still below internationally accepted practice and international human rights law, but further it appears that even the standards in ESS7 will only apply to a minority of projects impacting on indigenous peoples and financed by the World Bank. It is imperative, in our view, that activities funded by the World Bank, either directly or through financial intermediaries, must be required to meet the same established standards for indigenous peoples. It is simply unacceptable that the implementation of policy requirements for indigenous peoples could be subject to an 'opt-out', or that borrowers can use their own borrower systems or national laws that are not aligned with the recognition of the rights of indigenous peoples under international human rights instruments.

It is urgent that the following issues be taken into consideration and effectively responded to:

### **1. Policy requirements to protect the rights of indigenous peoples must be universally applied to all Bank-financed activities impacting indigenous peoples**

#### **1.1. Immediately remove the proposal that governments can simply 'opt-out' of applying the policy requirements intended to protect indigenous peoples (ESS7)**

According to the draft, the Bank is proposing that borrowers (mainly, but not exclusively, governments) can request that they not apply Environmental and Social Standard 7 on Indigenous Peoples. Borrowers may request this if they consider that identifying indigenous peoples would, in some way, heighten ethnic tensions or increase conflict, or if recognizing culturally distinct groups is contrary to their national constitutions.<sup>1</sup> This directly and seriously undermines the specific and fundamental rights that indigenous peoples have over their lives, their lands and resources and the course of their own development, as already enshrined in international human rights law.

Encroachment on the lands, resources and territories of indigenous peoples is often undertaken with the implicit or explicit consent of the governments whose decisions often adversely impact indigenous peoples occupying such lands. Indeed,

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<sup>1</sup> ESS7, paragraph 9.

international legal standards protecting the rights of indigenous peoples exist in part due to the wilful actions of governments discriminating against, disenfranchising and alienating indigenous peoples from their lands and resources. If the decision on whether international human rights are to be respected or not rests solely with national governments, then the Bank is acting to undermine agreed international human rights standards, protected by UN and regional human rights instruments.

### **1.2. Need to improve respect for land rights as part of protecting the rights of indigenous peoples in ESS7**

The land rights of indigenous peoples have been recognized again and again under international and regional human rights law as fundamental to the very survival of the peoples themselves. Given the importance of this set of rights, it is critical that requirements intended to ensure that such rights are protected are clearly formulated. As such, the required 'plan for legal recognition of ... perpetual or long-term renewable custodial or use rights' must be developed in partnership with the peoples themselves, time-bound, designed against clear indicators, and with sufficient budget allowances.

### **1.3. Inadequate Free, Prior and Informed Consent requirements in ESS7**

The inclusion of a requirement for obtaining the free, prior and informed consent is welcomed, but the formulation of such a requirement is of fundamental importance in that the requirement achieves the objective of ensuring indigenous peoples can exercise their right to self-determination and are full partners in the development process. The formulation currently proposed in paragraphs 18 and 19 fails to achieve this, and the following important amendments are, at a minimum, required:

1.3.1 Agreements reached with communities must be described and verified by the Bank together with independent experts, including time-bound actions necessary to ensure that agreements are met and clear budget allocations made to agreed actions.

1.3.2 In any case of violation or non-compliance with agreements reached with communities or in cases of violation of the policy requirements in ESS7 there must be a clear and accessible grievance mechanism that affected communities and peoples can access to redress, including but not limited to direct access to the Inspection Panel. Technical support for use of grievance mechanisms and/or the Inspection Panel must be available on request.

1.3.3 Disclosure of information must be required to be in a language and in forms, which are appropriate to the affected communities and able to be fully understood.

1.3.4 The involvement of indigenous peoples representative bodies and organisations must specifically include women and other community members in addition to councils of elders, village councils or chieftains (already mentioned).

1.3.5 Respect for the decision-making processes of indigenous peoples should be mandatory (not ‘where applicable’), must ensure respect for independence, and must ensure that decision-making processes are free from intimidation, manipulation and any form of undue pressure.

**1.4. The use of ‘borrower systems’ or national laws allows the ESS requirements to be set aside, without any clear process for determining adequacy.<sup>2</sup>**

The new proposals allow borrowers to follow national laws where they ‘materially meet’ the objectives of the standards. This implies a capacity within the Bank to assess not only all relevant national laws and systems but also historical practice against such laws and policies. However, as pointed out by the Bank’s Vice President’s comments on how, when, and with what budget such an assessment would be carried out is unclear.<sup>3</sup>

For ESS7 and requirements for indigenous peoples in particular, this means in effect that national governments can again elect not to apply the requirements for indigenous peoples as established in ESS7 without any recourse available to the affected peoples themselves. Under existing policy as described in OP4.00, the “equivalence” of national laws and processes against Bank safeguards is determined on a policy by policy basis and that “before deciding on the use of borrower systems, the Bank also assesses the acceptability of the Borrower’s implementation practices, track record and capacity”.<sup>4</sup> This does not appear in the new proposals, which also do not allow for indigenous peoples’ inputs into any assessment done nor the decision to set aside the requirements of ESS7 that could result.

Further, there are no specific requirements in the assessment of laws relating to the rights and interests of indigenous peoples in particular. Any assessment of such a set of national laws – proposed to be used in replacement of ESS7 – must include assessment of the extent to which a national legal framework for protection of indigenous peoples aligns with international human rights standards and law. This fails to appear in the proposed policy requirements.

**1.5. Further loopholes allow borrowers to circumvent requirements**

In addition to the loop-holes and opt-outs already described, which undermine the content of ESS7 as a standard for Bank-financed activities impacting on indigenous peoples, there are further policy dilutions which mean borrowers can avoid applying ESS7. It is critical that the proposed ESS apply ONLY to investment lending, and not to the two other main lending instruments that the Bank has, Programme for Results

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<sup>2</sup> This in clear contrast to the Asian Development Bank which has an entire policy dedicated to ensuring that use of country systems both strengthens domestic capacities in environmental and social impact assessment and management, and complies with ADB standards.

<sup>3</sup> WB VP Memos, May 2014

<sup>4</sup> OP4.00

and Development Policy Loans. Given that, at current levels, half of all Bank funding is channelled through instruments other than Investment Lending, these standards provide no consistency for indigenous peoples impacted by Bank-financed activities.

Furthermore, projects funded by financial intermediaries also need not comply with the environmental and social standards for any sub-project except those of the highest risk category. This means that the requirements of ESS7 will not be applied to the majority of sub-projects financed through financial intermediaries.<sup>5</sup> Such exclusions are not acceptable as they create discriminatory provisions depending on financial instrument used, and undermine the very concept of universal standards on which environmental and social standards are predicated.

## **2. Focus on self-reporting and reliance on borrowers to meet standards without appropriate improvements in monitoring skills or requirements**

Moving now to broader concerns with the ESS system as a whole, the World Bank's new commitment to paying attention to implementation is certainly welcome. The Bank to date has a very poor track record in monitoring and supervising the implementation of its projects throughout the project cycle. This has been amply documented by the Bank's own OED/IEG evaluation reports over the past 20 years, and specifically highlighted in the internal desk review of projects applying OP4.10 on indigenous peoples.

It is not clear how World Bank monitoring will be improved to meet these new responsibilities. For ESS7, World Bank monitoring must be attached to key indicators, involve independent experts, and linked to clear, known and enforceable sanctions for failure to comply with requirements, which includes suspension of funds and compensation for harms suffered. The World Bank has an independent Indigenous Peoples' Advisory Body that should play an important role in monitoring compliance with the established standards for indigenous peoples.

## **3. Inspection Panel role is unclear and made more difficult**

The role and mandate of the Inspection Panel comes into question with the new structure, where requirements for the Bank are largely limited to due diligence and monitoring contained in the proposed World Bank Environment and Social Policy. In the various instances where the ESSs are proposed not to apply (for instance where national frameworks are to be applied, or where a financial intermediary is implementing projects with moderate or lower risk category), the role of the Inspection Panel is again unclear.

The new proposed Environment and Social Policy also adopts a large number of phrases that serve to dilute and obfuscate hard commitments or requirements against which the Bank can be held accountable. Phrases such as 'in a timeframe acceptable to the Bank', 'where applicable', 'where financially feasible', 'materially

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<sup>5</sup> ESS1, paragraph 29.

consistent with objectives’, ‘may’ rather than ‘shall’, all serve to weaken the actual standards against which borrowers are expected to act and to be held accountable, and make the task of the Inspection Panel difficult if not impossible.

#### **4. Failure to incorporate meaningful standards on land tenure governance and failure to apply ESS5 requirements to land titling or land administration projects**

Despite commitments received from the President of the World Bank during the consultation period, the new standards on land (incorporated into ESS5 and joining existing standards on involuntary resettlement) do not adhere to the standards already existing in the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forest and Fisheries. In particular, the requirements of ESS5 do not provide sufficient protection from the real and increasing threats of large-scale land-grabbing for industrial agriculture specifically mentioned in the Voluntary Guidelines. Further, the exclusion list included in ESS5 (for activities NOT covered by the policy) represents a significant narrowing of the scope of the existing Involuntary Resettlement policy of the World Bank. By excluding land titling and land regularization processes, the Bank risks excluding large scale and long-term impacts of resettlement from the policy designed specifically to address such impacts.

#### **5. Critical information missing from the draft**

There are significant gaps in the information being provided to CODE for review. The proposed document for public consultation does not include an implementation plan, any budget references or commitments, discussion of staff skills to account for the changing roles of Bank’s staff envisioned in the new proposals, or a plan to roll-out of the policy through staff training. It also does not contain any detail about the reforms of staff incentives and safeguard implementation procedures that are required to drastically improve the track record the Bank has on meeting its social and environmental commitments. We believe that CODE must request the Bank to provide a budgeted, planned, and clear implementation process for the new proposed standards, as assessing such processes in the absence of Bank commitments to appropriately implement them is impossible.

This statement has been endorsed by the following indigenous peoples organizations/institutions, support groups and individuals.

#### **INDIGENOUS PEOPLES ORGANIZATIONS AND INSTITUTIONS**

<b>#</b>	<b>ORGANIZATION</b>
1	Adivasi Navjeevan Gathan Navjyoti Agua (ANGNA), India
2	Adivasi Women's Network (AWN), India
3	African Indigenous Peoples Network (AIPN)

4	Aliansi Masyarakat Adat Nusantara/AMAN (Indigenous Peoples' Alliance of the Archipelago), Indonesia
5	Alyansa Dagiti Pesante iti Taeng Montanyosa (Mt. Province Peasant Alliance), Philippines
6	Asia Indigenous Peoples Network on Extractive Industries and Energy (AIPNEE)
7	Asian Indigenous Women's Network (AIWN)
8	Association of Indigenous Peoples in Ryukyus (AIPR), Japan
9	BAI (National Network of Indigenous Women in the Philippines)
10	Bangladesh Indigenous Peoples Forum
11	Barisan Pemuda Adat Nusantara (BPAN)/The Archipelago Indigenous Youth Front, Indonesia
12	Bhaiya Ram Munda Foundation, India
13	Binnadang (Women Alliance in Mt. Province), Philippines
14	Borok Inter Tribal Peoples Development Centre (BITPDC), India
15	Borok Peoples Human Rights Organization (BPHRO), India
16	Bunong Indigenous Peoples Communities' Alliances, Cambodia
17	Cambodia Indigenous Peoples' Alliances
18	Cambodia Indigenous Youth Association (CIYA)
19	Center for Sustainable Development in Mountainous Areas (CSDM), Vietnam
20	Centre for Organisation Research & Education, India
21	Centro Juventude Covalima (Covalima Youth Centre), Timor Leste
22	Chin Human Rights Organization (CHRO), Myanmar
23	Chirapaq, Center of Indigenous Cultures of Peru
24	CHT Indigenous Jumma Association Australia (CHTIJAA)
25	Civil Society Women Organization(CSWO), Meghalaya, India
26	Continental Network of Indigenous Women of the Americas – ECMIA- American Continent, Peru
27	Cordillera Peoples Alliance - Mt. Province, Philippines
28	Cordillera Peoples Alliance, Philippines
29	Dewan Adat Papua, Indonesia
30	Ethnic Youths Development Center (EYDC), Myanmar
31	Fondation Batwa, Africa
32	Gobi Soil, Mongolia
33	Grassroot Development Network, India
34	Highlander Association, Cambodia
35	Indigenous Center for Land, Resource and Governance (ICLRG), India
36	Indigenous Concerns Resource Center- Kenya
37	Indigenous Information Network-Kenya
38	Indigenous Knowledge and Peoples Network Mainland Montane Southeast Asia (IKAP), Thailand
39	Indigenous Peoples for Agriculture Development in Cambodia (IADC)
40	Indigenous Peoples Foundation for Education and Environment (IPF), Thailand
41	Indigenous Peoples Movement for Self Determination and Liberation (IPMSDL)
42	Indigenous Peoples Working Group on REDD+, Cambodia

43	Indigenous Rights Active Member in Cambodia
44	Indigenous Women League Nepal (IWL Nepal)
45	INNABUYOG (Alliance of Indigenous Women Organizations in the Cordillera Region), Philippines
46	International Council for the Chittagong Hill Tracts, Australia
47	Jaringan Orang Asal SeMalaysia (JOAS/Indigenous Peoples Network of Malaysia)
48	Kachin Peace Network, Myanmar
49	Kalipunan ng Mga Katutubong Mamamayan ng Pilipinas (KAMP), Philippines
50	Kapaeeng Foundation, Bangladesh
51	Karbi Human Rights Watch (KHRW), India
52	Kirat Chamling Language Culture Development Association, Nepal
53	Kirat Yakthung Mangenna Chumlung, Nepal
54	Kirat Youth Society (KYS), Nepal
55	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), Nepal
56	Maa Civil Society Forum- Kenya
57	MAITUD (Movement for the advancement of inter-tribal unity and democracy), Philippines
58	Maleya Foundation, Bangladesh
59	Mishing Bane Kebang (Mishing Apex Council), India
60	Mongolia Nomadic Herders' Movement
61	Montañosa Research & Development Center, Inc.
62	MPYA (Mt. Province Youth Alliance), Philippines
63	Naga Peoples Movement for Human Rights (NPMHR), India
64	Naga Women's Union (NWU), India
65	National Indigenous Women Federation (NIWF), Nepal
66	Nepal Federation of Indigenous Nationalities (NEFIN)
67	Nepal Kirat Kulung Bhasa Sanskriti Utthan Sangh
68	NGO Federation of Indigenous Nationalities (NGO FONIN), Nepal
69	Organization to Promote Kui Culture (OPKC), Cambodia
70	Papora Indigenous Peoples Association (PIDA)
71	Partners of Community Organizations in Sabah (PACOS Trust)
72	Perempuan AMAN, Indonesia
73	Piselebuhan Bansa Subanen, Inc, Philippines
74	POINT (Promotion of Indigenous and Nature Together), Myanmar
75	Saami Council
76	Samajik Seva Sadan (SSS), India
77	Sarawak Dayak Iban Association, Malaysia
78	Shan Women's Action Network (SWAN), Myanmar
79	TADEK (Young Artists Movement for Democracy and Cultural Rights) - Mt. Province, Philippines
80	Tangguyub People Center, Philippines
81	TARA-Ping Pu
82	Vietnam Indigenous Knowledge network – VTIK
83	Youth Federation of Indigenous Nationalities (YFIN), Nepal

**SUPPORT GROUPS**

#	ORGANIZATION
1	Action to the Community Development Center, Vietnam
2	ALMACIGA, Spain
3	ARTICLE 19 Defending freedom of expression and information, UK
4	Ateneo School of Government, Philippines
5	Bangladesh NGOs Network for Radio and Communication (BNNRC)
6	Bank Information Center (BIC), US
7	Bantay Kita, Philippines
8	Boat People SOS (BPSOS), US
9	Both ENDS, Netherlands
10	Burma Partnership, Myanmar
11	Center for International Environmental Law (CIEL), US
12	Center for Orang Asli Concerns, Malaysia
13	Centre for Human Rights and Development, Mongolia
14	Centre for Research and Advocacy, Manipur, India
15	Centre national de coopération au développement, CNCDD-11.11.11 - Belgium
16	Centre of Research & Development in Upland Area (CERDA), Vietnam
17	Citizens Concern for Dams and Development, India
18	Coalition to Abolish Modern-day Slavery in Asia (CAMSA), US
19	Coastal Livelihoods and Environmental Action Network (CLEAN), Bangladesh
20	Committee on the Protection of Natural Resources in Manipur, India
21	Damauli UNESCO Club, Nepal
22	Defensa y Conservacion Ecologica de Intag, Ecuador
23	Diakonia Asia
24	Environmental Investigation Agency, US
25	Feto iha Kbiit Servisu hamutuk (FKSH) - Empowering women, Timor Leste
26	Friends of the Earth Japan
27	Green Community Alliance (GCA), Laos
28	Hawai'i Institute for Human Rights
29	Heinrich Böll Stiftung Cambodia
30	Human Rights Ambassador for Salem-News.com, UK
31	Human Rights First Rwanda Association, Rwanda
32	Inclusive Development International, US
33	Indigenous Community Support Organization (ICSO), Cambodia
34	Indigenous World Association, Canada
35	International Work Group for Indigenous Affairs (IWGIA), Denmark
36	Jamaa Resource Initiatives, Kenya
37	Japan Tropical Forest Action Network(JATAN)
38	Justice and Peace Network
39	Land Core Group Myanmar

40	Law and Policy of Sustainable Development Research Center (Vietnam)
41	MECC-Mongolian Environmental Civil Council
42	Minority Rights Group International, UK
43	Natural Justice, US
44	NGO Coalition for Environment (NGOCE), Nigeria
45	Non-Timber Forest Products Exchange Programme (NTEP-EP Asia)
46	Northeast Peoples Alliance (NEPA), India
47	OT Watch, Mongolia
48	Persatuan Kesedaran Komuniti Selangor (EMPOWER), Malaysia
49	Philippine Indigenous Peoples Links (PIPLinks)
50	Pro Natura – Friends of the Earth Switzerland
51	Rainforest Foundation Norway (RFN), Norway
52	Shimin Gaikou Centre, Japan
53	Social Justice Connection, Canada
54	SONIA, Italy
55	Spectrum-Sustainable Development Knowledge Network, Myanmar
56	Steps without Border, Mongolia
57	Tamthai Fund of Chiangmai, Thailand
58	Tribal Environmental Policy Center
59	Ulu Foundation, Hawaii

## INDIVIDUALS

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5	Mr. Chhit Chhorn	Chief of Legal entity IP community of Por group and IP representative in Battambang province, Cambodia
6	Mr. Klim Nhem	IP representative in Rattanakiri province, Cambodia
7	Mr. Veng Bun Mong	Chief of legal entity IP community of Kroeng group in La Ork village, Rattanakiri province, Cambodia
8	Mr. Seuth Tuon	IP representative in Koh Kong province, Cambodia
9	Mr. Ly Lim	IP representative in Kratie province, Cambodia
10	Maen Pakk	IP representative in Preah Vihear province, Cambodia
11	Mr. Phea Sohear	Chief of community forestry of Kuy group in Phnom Daek Chom Bok Hoh village, Preah Vihear province, Cambodia

12	Mr. Nut Nou	Legal entity IPs community in Chok Char, Mondulkiri, Cambodia
13	Mr. Dorn Thy	Legal entity IPs community in Khmoum, Mondulkiri, Cambodia
14	Mr. Hear Sa morn	Legal entity IPs community in Srae angdol, Mondulkiri, Cambodia
15	Mr. Sang Proukk	Legal entity IPs community in Khtong, Mondulkiri, Cambodia
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