

**A brief independent guide to the
Inter-American Development Bank's
New Operational Policy on
Indigenous Peoples (OP-765)**

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FPP Guide
to IFI standards

Introduction

The Inter-American Development Bank (IDB) is the largest public multilateral lender in Latin America, providing loans, grants, equity investments, technical assistance and investment guarantees to governments and the private sector. In addition to support for individual projects, the IDB is a key player in major regional infrastructure and free trade programmes, including *Plan Puebla Panamá* (PPP) in Central America and the *Initiative for the Integration of Regional Infrastructure in South America* (IIRSA). These huge integration programmes promote regional mega-projects involving a combination of roads, sea and river ports, airports and international electrical and telecommunication connections in conjunction with energy infrastructure including pipelines and gas and oil extraction facilities. Many of these IDB projects and regional infrastructure programmes have direct or indirect implications for the rights and welfare of indigenous peoples and their territories throughout Latin America.

For many years, indigenous peoples' organisations and support NGOs have criticised the IDB for failing to uphold proper standards to safeguard the rights of indigenous peoples in projects such as the Yacretá Hydroelectric Project, which have resulted in harmful effects on indigenous communities. One long-standing demand has been that the IDB adopt a specific safeguard policy on Indigenous Peoples to ensure that its lending respects the rights of indigenous peoples and protects their territories from destructive development.

The IDB refused to adopt such a policy for many years, but eventually formulated a policy during 2004 and 2005, which was finally adopted in 2006. Though not without problems (See Section C below), the new policy does contain some potentially useful standards that may be used by indigenous peoples to raise concerns with the IDB in cases where projects may affect their lands or other interests.

Purpose of the Guide

This document aims to provide a brief overview of the new IDB Policy on Indigenous Peoples to help communities affected by IDB projects and programmes to monitor compliance of the IDB with its own public commitments and safeguard standards.

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Cover picture: [Adam Goldstein]

Camisea gas pipeline, Peru – which has suffered no less than five ruptures in the first 18 months of operation and has resulted in damage to local fish and wildlife on which local indigenous livelihoods and cultures depend. Since the Camisea development started in 2001, the project has generated serious negative environmental, social and cultural impacts, including impacts on indigenous peoples living in voluntary isolation.

Against strong public opposition and against the advice of its own environmental auditors, the IDB provided a direct loan of \$75 million and a syndicated loan of \$60 million to the Camisea Natural Gas Project in September 2003. The Bank has been strongly criticised for failing to address the legitimate concerns of Peruvian civil society about indigenous rights abuses, impact mitigation, local development, community compensation and independent monitoring. At the time the loan was approved, the Bank was again condemned for its failing to have a Indigenous Peoples Policy to address indigenous rights issues.

What is the Inter-American Development Bank?

- An international bank that grants loans to governments within the hemisphere to support projects and activities directed at economic, social and institutional development.
- It has staff in each country of the hemisphere and in its headquarters in Washington, DC.
- It has 47 member countries (26 are “Borrowers” in the region).
- The member states are the Bank’s Director (they control and manage the bank and make all the key decisions, such as the approval of projects).

■ What is the Operational Policy on Indigenous Peoples?

- It is an internal rule of the Bank that establishes mandatory requirements and safeguards that apply to the Bank, its staff (at certain levels) and the Borrower (the state).
- It applies to all operations and activities financed by the Bank (including specific projects carried out near to or in your community).
- To obtain a copy of this Policy, see:
http://www.iadb.org/sds/ind/site_401_e.htm

■ What are the Objectives of the Policy?

- “Support the development with identity of indigenous peoples” (II.2.1).
- “Safeguard indigenous peoples and their rights against adverse impacts and exclusion in Bank-funded development projects” (II.2.1).
- “Prevent or mitigate direct or indirect adverse impacts on indigenous peoples, rights or patrimony, individual or collective”(IV.B.4.4.a).

■ To which people does the Policy apply?

- “Peoples who meet the following three criteria” (I.1.1):
 - “they are descendants from populations inhabiting Latin America and the Caribbean at the time of the conquest or colonization”;
 - “irrespective of their legal status or current residence, they retain some or all of their own social, economic, political, linguistic and cultural”; and
 - “they recognize themselves as belonging to indigenous or pre-colonial cultures or peoples.”

A What is *prohibited* by the Policy?

The Policy prohibits:

- ***the involuntary resettlement*** of indigenous peoples without their consent (VI.6.3).
- ***the financing of projects when there is the exclusion of indigenous peoples on the basis of ethnicity*** (IV.B.4.4.d).
- **financing of any operation that fails to comply with the “applicable legal norms” and safeguards** articulated in the Policy (IV.B.4.4)
 - The applicable norms include “*national legislation*”, “*international norms*” (such as the jurisprudence of the Inter-American system and international treaties) and “*indigenous juridical systems*” (this last item is limited because the Policy only considers “laws of origin, customary rights, customs and uses, and indigenous justice and juridical systems” that are “taken into account according to the rules for their recognition established in the legislation of each country.”) (I.1.2 and footnote #5).
- **the financing of projects that fail to respect the right of uncontacted indigenous peoples** “to remain in said isolated condition and to live freely according to their culture” (IV.B.4.4.g).

B What is *required* by the Policy?

The Policy requires:

- **the delivery to the Community of information related to the proposed project and activity** (VI.6.3 and the IDB Policy on Disclosure).
- **that the Bank undertake a technical review during the planning and identification phase** (taking into account the perspectives of indigenous peoples) to:
 - determine the presence of affected indigenous peoples,
 - determine the likely potential impacts and benefits, direct, indirect, cumulative or regional,
 - identify the nature, scope and intensity of the identified impacts and benefits, and
 - determine the level of necessary analysis needed, including the sociocultural analyses and consultation and good faith negotiation processes (V.5.3(a)).
- **that the Borrower undertake sociocultural and environmental evaluations to**
 - “determine the seriousness of potential adverse impacts on physical and food security, lands, territories, resources, society, rights, traditional economy, way-of life and identity or cultural integrity of indigenous peoples, and to identify the indigenous peoples affected and their legitimate representatives and internal decision-making procedures.”
 - This phase calls for preliminary consultations with potentially affected indigenous peoples. (IV.B.4.4.a.i & V.5.3.b).
- **when there are potential adverse impacts** (Art. IV.B.4.4.a.ii and iii)
 - measures to minimize and avoid such impacts (including “consultation and good faith negotiation processes consistent with the legitimate decision-making mechanisms of affected indigenous peoples or groups”), and
 - mitigation measures, monitoring, and fair compensation.

The Policy requires:

- **in cases of particularly significant potential adverse impacts**, that the Borrower produce evidence to the Bank's Directors that it has obtained, through a good faith negotiation process, an agreement with the affected people(s) regarding the operation and measures to address the adverse impacts. (IV.B.4.4.a.iii y V. 5.3.c).
- **in cases of "operations specifically targeting indigenous beneficiaries"** (IV.A.4.2.a)
 - the completion of a *diagnostic study* with indigenous participation, and
 - the carrying out of a *socioculturally appropriate processes of consultation* with the indigenous peoples in question (i) "in a manner appropriate to the circumstances" and (ii) "with a view to reaching agreement or obtaining consent."
- **(or at least "promotes and supports"), when there are cases of activities and operations "not specifically targeting indigenous peoples but of potential benefit to them," measures to** (IV.A.4.2.b)
 - implement *socioculturally appropriate and effective consultation processes* and *good faith negotiations*; and
 - respect the traditional knowledge, cultural heritage, natural assets, social capital, and the systems specific to indigenous peoples with respect to social, economic, linguistic, spiritual and legal systems.
- **when there are "operations that directly or indirectly affect the legal status, possession, or management of territories, lands, or natural resources traditionally occupied or used by indigenous peoples"** (IV.B.4.4.b):
 - respect for the rights recognized in accordance with "the applicable legal norms" (defined above);
 - prior consultation mechanisms;
 - mechanisms for the participation of said peoples in the utilization, administration and conservation of the resources;
 - fair compensation for any damage; and
 - "whenever possible" participation in the benefits of the project.
- **when the "legal or administrative protections" in a country are "insufficient" to project the rights of indigenous peoples**, the inclusion in the project of "restrictions or corrective or compensatory measures" (IV.B.4.4.b).
- **when there are cases involving the "commercial development of indigenous culture and knowledge resources"**, the *prior agreement* of the affected indigenous peoples (IV.B.4.4.e).
- **the necessary measures to safeguard the culture, identity, language, and traditional knowledge of the indigenous peoples** (including process of consultation and good faith negotiations) (IV.B.4.4.e).
- **the adoption of measures to guarantee that the projects do not adversely affect transborder indigenous peoples** (IV.B.4.4.f).
- **with respect to uncontacted indigenous peoples**, the use of "appropriate measures to recognize, respect and protect their lands and territories, environment, health and culture, and to avoid contact with them as a consequence of the project." (IV.B.4.4.g).
- **that the agreement and consent of indigenous peoples are obtained in a certain form** (footnote #10), specifically:
 - "free from coercion or undue influence", and
 - based on "proper information to affected persons as to the nature, scope, and impact of the activities concerned."

C CAUTION! Two critical limitations to this Policy:

There are “loopholes” to the consultation process whereby under certain circumstances some requirements need not be followed, even though recent IDB staff guidelines suggest that exemptions to policy requirements may need prior approval by the Board of the Bank. Specifically, the Borrower (State) is not obliged to fulfil all requirements for consultation, good faith negotiations, and applicable agreements provided they are able to present evidence to the Bank that:

- (i) The “potentially affected indigenous peoples show no interest in taking part in the consultation process” (footnote #16) or if
- (ii) an agreement has been reached with the indigenous peoples, before the first disbursement, that “the circumstances of the operation justify additional rounds of negotiations in order to finalize said agreements” (footnote #18).

D What can a community do when approached by representatives from the Bank or State (Borrower) regarding an activity or proposed project that could be financed, in whole or part, by the Bank?

- **Obtain** all the relevant information about the proposed project and/or activity (in your own language as necessary) before entering into and concluding negotiations and before arriving at a community decision.
- **Remind** the Bank and State representatives of their obligations to carry out socioculturally appropriate consultations and good faith negotiations aimed at achieving agreement or consent.
- **Document** each meeting with these individuals, all those that participated in the meeting, the content of the discussions and any agreement *or lack thereof* (insist on this documentation).
- **Ask for** “logistic, financial, or other Bank support,” from the Bank to carry out consultations and negotiations (as per paragraph 7.8 of the IDB Strategy for Indigenous Development).
- **Take** the necessary time to arrive at a decision and agreement according to your own customs and practices (including a decision not to support the proposed project or activity).
- **Educate** the representatives of the Bank and Borrower (State) about your community, the use of your lands, territories and resources, your rights, and some of your norms and relevant traditional practices (i.e. mechanisms of decision-making, way of life, and subsistence).
- **Document** your community’s decision or position in written form and send it to the relevant parties.
- **Establish** mechanisms for participation of your community in all of the phases of the project or activity (including the implementation, monitoring, and evaluation phases).
- **Ensure** the full and effective participation of your community in the benefits of the proposed project or activity.
- **Request** affirmations of all the various agreements reached between your community and the Bank and/or Borrower in the contracts and formal documents of the proposed project or activity.
- **Try** to secure *independent* verification of the consultations, negotiations or agreements – including those that resulted in the absence of agreement or consent (under the Policy, said verifications are only carried out by Bank staff).

E What can the community do if the Bank or State does not comply with the binding requirements of the Policy?

- First, try to resolve the problem directly with the country representatives (national representatives of the Borrower (State)) and the Bank (Operations)) and then the Bank Administration in Washington, DC.¹
- If no results are forthcoming, send a written complaint to the Coordinator for the Bank's Independent Investigation Mechanism detailing how the Bank has not respect its operational policies during the formulation, analysis, or implementation of a project or activity financed by the institution.²
- Make the national and the international community aware of what is occurring (using the press and utilizing connections and partnerships with national and international civil society organizations).

Note: It will be important to consider all of your options to appeal and submit complaints regarding the IDB project or activity. These include the Bank's internal complaint mechanisms, as well as external means available in national and international forums.

F Other relevant policies at the IDB:

Certain sections of the IDB's Policy on *Involuntary Resettlement* are also of potential relevance to indigenous peoples. Crucially, this IDB policy stipulates:

The Bank will . . . only support operations that involve the displacement of indigenous communities . . . if the Bank can ascertain that: customary rights will be fully recognized . . . ; and the people affected have given their informed consent to the resettlement and compensation measures”³

¹ Contact details for IDB Country Offices: <http://www.iadb.org/aboutus/vii/cof.cfm?language=english>

² Send complaints and requests to: Inter-American Development Bank, Independent Investigation Mechanism, Stop E-1205, Washington, DC 20577, Tel +202-623-1635/3952; Fax +202-312-4057; sec-iim@iadb.org

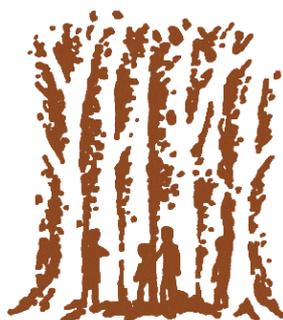
For more information, see: http://www.iadb.org/aboutus/iii/independent_invest/independent_invest.cfm

³ *Involuntary Resettlement Policy – OP-710* http://www.iadb.org/exr/pic/VII/OP_710.cfm

IMPORTANT

Ensure you obtain the **complete policy** document:

If you consider that an IDB project may potentially affect your communities and their territories, it is recommended that you obtain a full copy of the complete IDB Policy, known as the *Operational Policy on Indigenous Peoples – OP-765* available from the IDB web pages at:
http://www.iadb.org/sds/ind/site_401_e.htm



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